Breach of Contract

Business and Commercial Law
The forms of breach

- Default by the debtor
- Default by the creditor
- Positive malperformance
- Repudiation
- Prevention of performance
Default by the debtor

- **Mora Debitoris**
  - When the debtor fails to perform at the agreed time

- Two Requirements
  - Performance must be delayed
  - Delay must be the debtors fault
Failure to perform on time

- **Mora ex re** – where a time for performance has been set and debtor fails to perform, he is automatically in *mora*

- **Mora ex persona** – where no time for performance has been set & creditor then demands performance within a reasonable time & debtor fails to perform
Delay due to fault of debtor

- The delay must be due to the debtor's fault
  - Can be intentional or negligent
Default by the creditor

- Mora Creditoris
  - When the Creditor causes the debtor’s performance to be delayed
Requirements for *mora creditoris*

- Performance must be dischargeable
- Debtor must tender performance
- Creditor must fail to co-operate & thereby delay performance
- Default must be due to the fault of the creditor
# Consequences of default

<table>
<thead>
<tr>
<th>Default by Creditor</th>
<th>Default by Debtor</th>
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<tbody>
<tr>
<td>Debtor’s duty of care reduced</td>
<td>Creditor entitled to remedies for breach of contract</td>
</tr>
<tr>
<td>Debtor entitled to any counter-performance due by creditor</td>
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Positive Malperformance

- When debtor performs contrary to the agreement
  - Debtor tenders defective or improper performance, or;
  - Debtors does something not allowed in terms of the agreement
Repudiation

- Behaviour by a party which indicates that they do not intend to honour their agreement
  - Eg, where party denies the existence of the agreement or