

# Commercial law 1A - CML111S

Vacation School - 2017

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OF SCIENCE AND TECHNOLOGY

# Unit 1 - What is law



- ❖ System of rules
- ❖ Governing human relations in a community
- ❖ Recognised by a legal system
- ❖ Enforced by courts of law



# Basic legal Concepts

## Juristic Act

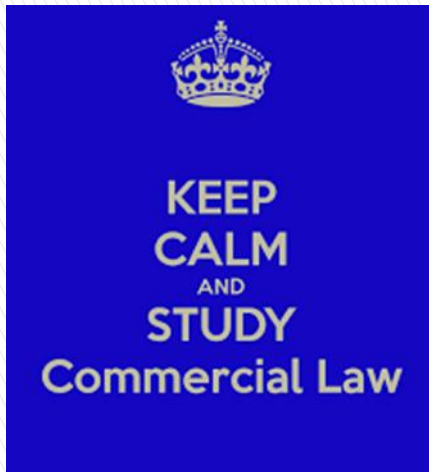
- ❑ An Act
- ❑ Intended to have legal consequences
- ❑ May be Unilateral ( 1 Party, i.e. will)
- ❑ Or bilateral or multilateral



# Basic legal Concepts - legal subjects

## Juristic Act

Human beings



## Natural persons

- ▶ Persons/entities Recognised as holders of rights and subject to duties
- ▶ Create in terms of Act of parliament
- ▶ Companies, close corporations, banks, etc.
- ▶ Voluntary association
- ▶ Special enactment of parliament i.e. UNAM



# Basic legal Concepts

- ▶ **Legal Capacity** - capacity to be bearer of rights and duties.
- ▶ **Obligation**
  - ✓ bond between legal subjects ( render performance
  - ✓ Contract - agreement between 2 or more people with intention creating obligations
  - ✓ Delict - unlawful act/omission that causes harm to person/property/ or legal personality
  - ✓ Unjustified enrichment - gaining something or obtaining an asset without legal ground



# Basic legal Concepts

**Crime** - Unlawful conduct for which wrongdoer can be punished by the state.

**Execution of property** - right to proceed to attach the debtors property and sell it in execution in order to satisfy the judgment debt



# Unit 2 - The Administration of Justice

## Criminal proceedings

- ❖ Criminal law
- ❖ State acting on behalf of community
- ❖ State will prosecute
- ❖ Prove beyond reasonable doubt

## Civil proceedings

- ▶ Civil dispute
- ▶ Between individuals/entities
- ▶ Effects them only
- ▶ No punishment
- ▶ Proof on a balance of probability



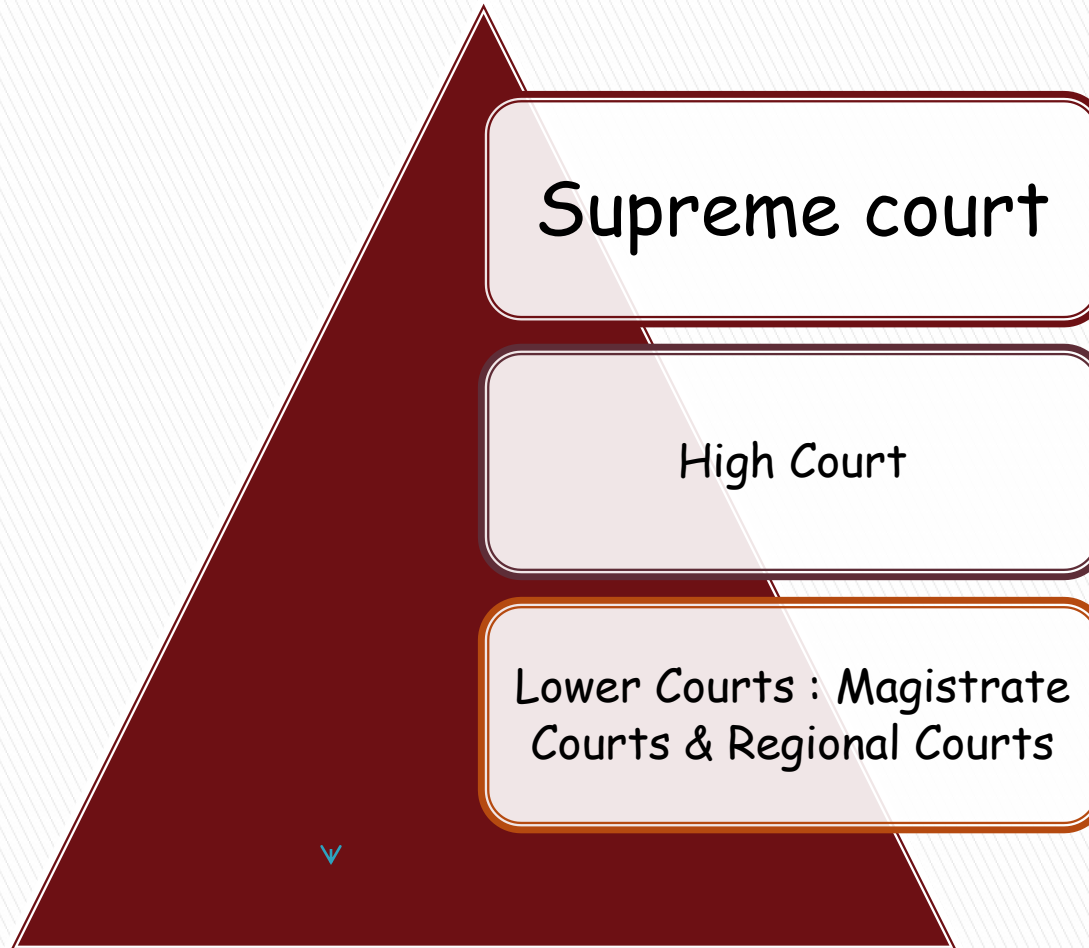
# Namibian Court System

- ❖ Chapter 9 of constitution (article 78 ) provides that judicial power vests in judiciary
- ❖ Consists of supreme, high and lower courts





# Jurisdiction



# High Court

- Consists of Judge President & Judges
- Hear and adjudicate all civil disputes and criminal prosecutions
- Hear cases involving interpretation , implementation and upholding constitution
- Divorce proceedings
- Mental capacity applications
- Sequestration & liquidation applications
- Validity or interpretation of will



# Lower Courts

- ▶ Presided over by magistrates
- ▶ Criminal and civil jurisdiction
- ▶ **Magistrate courts**
  - ❑ Cannot hear certain cases i.e. divorce
  - ❑ Illiquid claims > N\$ 25 000
  - ❑ Liquid claims > N\$ 100 000
  - ❑ No rape, murder or treason cases
  - ❑ Criminal cases - maximum of 5 years imprisonment or fine of N\$ 20 000.



# Lower Courts

## ▶ Regional Courts

- ❖ Can try murder and rape but no treason
- ❖ Can impose jail term of N\$ 20 000
- ❖ Fine of N\$ 100 000



# Rules of natural Justice

- ▶ Audi alterem Partem - listen to the other side.
- ▶ Nemo judex in sua causa - no one may act as a judge in his or her own case.



# Officers of the Court

## Legal practitioners

- ❖ Conveyancers
- ❖ Notaries Public
- ❖ Advocates

## Other Court officials

- ❑ Sheriff
- ❑ Messenger of the court



# Unit 3 - Sources and classification of Law

## Sources of law

- Common law
- Legislation
- Customary law
- Judgments of court
- Secondary sources i.e. old authorities  
foreign law text books
- International law



# Common law

- ▶ Originating source of our law
- ▶ Roman Dutch and English law in Southern Africa
- ▶ German Law & English law also influenced our law
- ▶ Many Common law principle have been replaced by legislation or case law





# Legislation

- ▶ Most important source of law in Namibia
- ▶ Law made by competent authority
- ▶ Also known as statutes & Acts of Parliament
- ▶ Most important legislation is Act 1 of 1990 - constitution
- ▶ Constitution is supreme law of Namibia



# Custom

- ▶ Rules of conduct that have become binding over the years
- ▶ Must be reasonable
- ▶ Must have existed for considerable period
- ▶ Recognised and observed by community
- ▶ Must be certain and clear



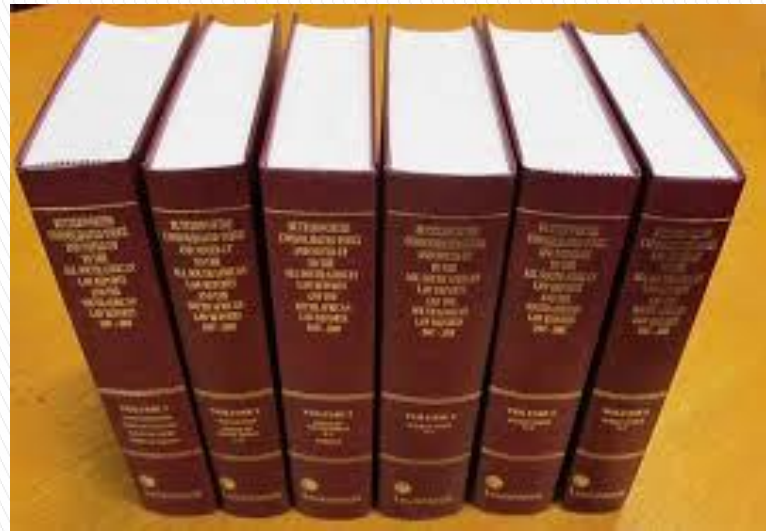
# Customary law

- ▶ Also known as indigenous law
- ▶ Passed through generations
- ▶ Article 66 of constitution recognises it to extent its not in conflict with the constitution or statutory law and may be repealed or modified by Act of Parliament



# Judgements & law Reports

- ▶ Judgements - judicial precedents
- ▶ Law Reports - selected cases for publications



# Doctrine of stare decisis

- Each court bound by its own decision previous decisions unless if it was wrong
- Courts bound by decision of a higher court unless if based of mistake
- Will not apply were legislation was promulgated after previous decision
- Implies hierarchy of courts
- Implies judgments must be reported



# Ratio decidendi

- ▶ Reason for decision
- ▶ Binding force
- ▶ Must be followed & is subject of the doctrine of stare decisis
- ▶ Statements that fall out side ratio decidendi = obiter dictum



# Classification of law

## Public law

- ❖ Governs relationship between state and its subjects

## Private Law

- ▶ Governs relationship between individuals



# Classification of law

## Substantive law

- ▶ Determines the content and meaning of different legal rules

## Procedural law

- ▶ Regulates the enforcement of substantive law
- ▶ Deals with how case must be handled when a legal rule is violated





# Unit 4 - General Introduction to contracts

## Definition of a contract

- ❖ Agreement
- ❖ Between 2 or more parties
- ❖ With serious intention to
- ❖ Bringing about an obligation



# Requirements of valid contract

- ▶ Consensus
- ▶ Contractual capacity
- ▶ Performance possible
- ▶ Performance is lawful
- ▶ Formalities complied with



# Valid, Void & Voidable

- ▶ Valid contract - all 5 requirements of a valid contract met
- ▶ Void - one of the requirements of a valid contracts is absent
- ▶ Voidable - all requirements of a valid contracts are present but can be set aside by one of the parties i.e. misrepresentation, duress or undue influence

**VOID CONTRACT**

**VS**

**VOIDABLE CONTRACT**



# Unilateral & Bilateral Contracts

- ▶ Unilateral - only one party to the contract has duty to perform and the other party a corresponding right
- ▶ Bilateral - both parties have duties and corresponding right



# Unit 5 - Consensus

- Agreement about the same subject or thing
- Reached only if :
  - ✓ Parties have serious intention to create legal obligation
  - ✓ Content of obligation is common
  - ✓ Complete agreement as to persons
  - ✓ Parties aware of legal consequences



# Requirements of valid offer

- ▶ Complete and definite
- ▶ Serious intention to be legally bound - advertises no offers unless it contains a reward
- ▶ Directed to an offeree
- ▶ Offer must have come to the knowledge of offeree



# Falling away of an offer

- ▶ Revocation
- ▶ Expiry
- ▶ Rejection
- ▶ Death or legal incapacity of either party before acceptance



# Revocation of an offer

- ▶ May be withdrawn provided that it not yet been accepted
- ▶ Must be communicated to offeree
- ▶ In the same manner as the offer was expressed
- ▶ Cannot be withdrawn if offeree has already begun to perform





# Expiry of offer

- ▶ Expires when time limit for acceptance expires
- ▶ If no time limit is set offer remains open for a reasonable period



# Rejection of an offer

- ▶ If rejected offeree cannot later change his/her mind
- ▶ Can be reject by express rejection or making a counter offer
- ▶ Counter offer : rejection of original offer and offeree becomes offeror



# Death or legal incapacity of either party before acceptance

- ▶ Offer expires
- ▶ Unless if the offeror intended other parties to be substituted for himself/herself or the offeree



# Option & Right of preemption

## Option

- ▶ Offer to conclude specific contract
- ▶ Additional contract to keep first offer open for specified period
- ▶ Option giver is obliged to sell

## Right of preemption

- ▶ Right obtained when concluding a contract with another in terms of which the grantor, in the event he decided to sell a specific thing must first offer it to the holder of the right of preemption
- ▶ Granter of right not obliged to sell





# Requirements for a valid acceptance

Must be:

- ✓ Unconditional and unequivocal
- ✓ In response to an offer
- ✓ By the person to whom an offer is made
- ✓ Communicated to the offeror in the manner prescribed
- ✓ Made while offer still exists



# Unit 6 - Time and place of conclusion of contract

## Information theory

- Agreement is reached the moment when and at the place where consensus is reached
- Acceptance by telephone



# Expedition theory

- ▶ Contract comes into existence at the moment when and where the offeree posts the letter of acceptance
- ▶ Contract becomes binding
- ▶ Subsequent rejection will be breach of contract
- ▶ Can no longer be withdrawn
- ▶ Will only apply if offeror authorised acceptance by posts





# Electronic Contracts

- ▶ No electronic communications law
- ▶ Expedition theory will not apply as sender may receive undeliverable message
- ▶ Until there is legislation information theory will apply



# Factors influencing consensus

- ▶ Mistake
- ▶ Misrepresentation
- ▶ Duress
- ▶ Undue Influence



# Mistake

- ▶ Misunderstanding
- ▶ Mistake perception
- ▶ Of the identity of the other contracting party
- ▶ Which influences decision to contract



# Types of mistakes

- ▶ Regarding the performance or the nature of the transaction
- ▶ Regarding the qualities or attributes of the agreed subject
- ▶ Regarding identity of the person or offeror's offer reach the wrong person
- ▶ Regarding the motive of the contract - not material



# Types of Mistakes

**Contract is void if:**

- Mistake relates to fact or legal rule
- fact or legal rule is material
- Mistake is reasonable and excusable



# Mistaken Party must show

- ▶ Mistake relates to a material matter
- ▶ Was not due to his own fault
- ▶ Was reasonable in the eyes of the law



# Misrepresentation

- ▶ Unlawful
- ▶ Untrue
- ▶ Statement about an existing fact or state of affairs
- ▶ Made by one party to the other party
- ▶ Before or at the time when the contract is entered into
- ▶ With the aim of inducing aggrieved to enter into the contract
- ▶ Can be by conduct or words or both
- ▶ By non disclosure only when there is a duty to speak



# Effect of Misrepresentation

- ▶ There is consensus
- ▶ Consensus is defective
- ▶ Aggrieved party can chose to uphold/cancel
- ▶ Contract is voidable
- ▶ if contract is cancelled aggrieved party can demand restitution.





# What Aggrieved party must prove

## That misrepresentation:

- ❑ There was misrepresentation of fact
- ❑ Was material
- ❑ By other party
- ❑ With intention to induce
- ❑ In fact was induced



# Kinds of misrepresentation

- ▶ Innocent - without intention or negligence
- ▶ Negligent - false statement of fact made negligently ( failure to take reasonable steps )
- ▶ Fraudulent/ intentional - knew statement was untrue or did not honestly believe in the truth of the statement or recklessly made the statement



# Duress

- ▶ Unlawful threat
- ▶ of harm or injury by one party
- ▶ Which causes the other party
- ▶ to conclude contract



# Duress - Requirements

- ❖ force or threat of force
- ❖ Threat must be unlawful
- ❖ Force directed against life freedom, person or property
- ❖ Harm must be imminent
- ❖ Fear must be reasonable ( objective )
- ❖ Threat must come from contracting party



# Undue influence

- ▶ Improper
- ▶ Unfair conduct
- ▶ That persuades
- ▶ The other party
- ▶ To conclude the contract



# Undue influence - requirements

- ▶ Party must have exercised undue influence over victim
- ▶ exercised undue influence in unscrupulous manner
- ▶ Pressure weakened powers of resistance
- ▶ Contract to the detriment of the aggrieved party



# Unit 8 - Contractual Capacity

- Capacity to be bearer of rights and duties
- Perform juristic acts

Categories:

- ❖ No contractual capacity
- ❖ Limited contractual capacity - need assistance
- ❖ Full contractual capacity - can perform themselves



# Persons with no contractual capacity

1. *Infans* - have not reached 7 years
2. Insane persons - not realising consequences of their acts (contract is void). If restitution is not possible a claim can be based on unjustified enrichment
3. Intoxicated persons (contract is void)





# Persons with limited contractual capacity

Can perform certain juristic acts but need assistance

1. *Pupillis*
2. Married persons
3. Unrehabilitated insolvent persons
4. Prodigals
5. Legal entities



# Pupillis

- ▶ Not yet 21
- ▶ Not yet married
- ▶ Not declared major by the high court ( must be at least 18)
- ▶ Not emancipated -



# How will the guardian assist the *pupillus*

- ▶ Being present when contract is concluded
- ▶ Giving approval
- ▶ Giving approval retrospectively

## When will minor not assistance:

1. Can make deposit at post office
2. If 16 may deposit and withdraw money from bank account
3. If 18 can take out insurance policy
4. If 18 can give consent to medical treatment



# Effect of a minors unassisted contract

- ▶ Minor is not bound
- ▶ Binding on the other party
- ▶ With assistance of guardian or after becoming a major can enforce contract
- ▶ Contract limps
- ▶ Other party may enforce it on following grounds of ratification, estoppel unjust enrichment.



# Married persons

Wife has capacity to:

1. Register immovable property in her name
2. Act as executor of deceased estate
3. Act as trustee of insolvent estate
4. Bind herself as surety

Section 7 of married persons equality Act - list of acts that require consent



# Unrehabilitated insolvent persons

- Someone whose estate has been sequestrated
- After sequestration trustee is appointed to distribute assets amongst creditors
- Contract voidable at instance of master of the high court
- May conclude other contracts i.e. marriage



# Prodigals

- ▶ Cannot manage their affairs
- ▶ Declared prodigal by high court
- ▶ Curator appointed to assist prodigal



# Unit 9 - Possibility of performance

- ▶ Objective impossibility - no contract will come into existence and no claim for counter performance
- ▶ Subjective impossibility - impossibility is relative and does not render contract void





# Unit 10 - Legal possibility of performance

- ▶ Contracts prohibited by statute
- ▶ Contracts contrary to the common law
  1. Contracts contrary to good morals
  2. Contracts contrary to public interest
- ✓ Contracts obstructing the administration of justice
- ✓ Contracts in restraint of trade



# Contracts in restraint of trade

- ▶ Restrict liberty of one or both parties to engage in one or more specified commercial activities for a specified period and or within a specified geographical area
- ▶ Protection of Goodwill
- ▶ Trade secrets



# Validity of contracts in restraint of trade

- ▶ Article 21 (1) (j) of constitution guarantees right to practice profession of their choice
- ▶ Law will strive to uphold contract entered into freely
- ▶ Conflict between public interest that everyone should partake in trade in business and public interest that contracts must be executed
- ▶ Courts regard contractual commitment as stronger of the two
- ▶ Valid and enforceable if concluded freely



# Consequences of unlawful Contracts

- ▶ Are void
- ▶ Cannot claim performance
- ▶ Party in possession of the performance is in the stronger position if the parties are equally guilty - par delictum rule ( parties must have clean hands )



# Unit 11 - Formalities

- ▶ Contributes to legal certainty
- ▶ Parties can agree that contract must be in writing and signed by the parties
- ▶ Non compliance with formalities results in contract that is void



# Contracts where formalities are required

- ▶ Sale of land must be in writing
- ▶ Suretyship must be in writing
- ▶ Credit agreements must be in writing
- ▶ Bill of exchange , cheques and promissory notes must be in writing
- ▶ Antenuptial contract must be notarially executed



# Parol evidence

- ▶ When a contract has been reduced to writing
- ▶ The written contract is regarded as the exclusive memorial of the transaction
- ▶ No evidence may be given in except the document or secondary evidence of its contents



# Unit 12 - Terms of a Contract

- ✓ Express - written/spoken
- ✓ Tacit - not expressed
- ✓ Implied terms - incorporated by operation of law

Can be classified as:

- Condition
- Time clause
- Warranty
- Cancellation clause
- Penalty clause
- Entrenchment clause





# Essentialia, Naturalia and Incidentalialia

- ▶ **Essentialia** – essential to place a contract in a certain category
- ▶ **Naturalia** – automatically incorporated into contract as implied terms unless if parties expressly exclude them i.e. guarantee against latent defects unless if excluded by voetstoots clause
- ▶ **Incidentalialia** – specifically agreed upon by the parties over and above required by law



# The Condition

- ▶ Renders operation and consequences of contract dependent on the occurrence , or non occurrence of an uncertain future event
- ▶ Suspensive Condition - suspends operation of contract until happening of an uncertain future event
- ▶ Resolutive condition -operative on conclusion of the agreement and has full effect but the continued existence of the contract is dependent on uncertain future even



# The Condition

- ▶ **Time clause** - performance is suspended (Suspensive time clause ) or terminated ( Resolutive time clause ) until or by the happening of a certain future event
- ▶ **Suspensive time clause** duty to perform is postponed until a determined or ascertainable moment has arrived
- ▶ **Resolutive time clause** - obligations flowing from contract will have effect only until the arrival of a certain moment or until the expiry of a certain period in time



# Warranty

- ▶ Relates to the absence of defects or presence
- ▶ Of a good characteristics in the warrantor's product or services
- ▶ Does not include sales talk and puffing



# Cancellation clause

- ▶ Known as *Lex commissoria*
- ▶ Entitles contracting party to cancel the contract if other party is in breach of contract
- ▶ Cancellation can be done without demand



# Penalty clause

- ▶ Fixed sum of money
- ▶ Or other benefit is to be paid or transferred
- ▶ To the injured party in the event of breach of contract



# Entrenchment clause

- ▶ Agreement may be altered only by means of written amendment.
- ▶ Variations must be in writing and signed by the parties or their agents



# Unit 13 - Parties to a contract

1. Agency/ representation - concludes contract on behalf of another
2. Contracts in favour of third parties
  - ✓ known as *stipulatio alteri*
  - ✓ One party agrees with another to perform something for the benefit of the third person
  - ✓ Intended to enable beneficiary to step in as party to a contract with one of the original contracting parties
  - ✓ Third party must first accept benefit before acquiring rights





# Unit 14 Transfer of contractual rights and Obligations

## Cession

- Transfer of a right by agreement
- Rights can be present or future
- Does not create new obligations
- By agreement
- Cedent divested of his rights
- Certain rights may not be ceded ( options to buy on credit
- Delegation
  - ❖ Transfer of a duty
  - ❖ From one debtor to another
  - ❖ Opposite of cession



# Distinction between Cession & delegation

- ▶ 3<sup>rd</sup> party in place of creditor
- ▶ 3<sup>rd</sup> party in place of creditor
- ▶ Transfer of a right
- ▶ Change of creditor
- ▶ Consent of debtors not needed
- ▶ Cessionary in place of cedent
- ▶ Debtor delegates duty to perform
- ▶ New contract between creditor and 3<sup>rd</sup> party
- ▶ Transfer of duty
- ▶ Consent of creditor needed
- ▶ New debtor in place of old debtor

Cession

Delegation



# Unit 15 -Termination of a Contract

- ▶ Performance
- ▶ Agreement - release, novation, compromise
- ▶ Operation of law - set off, merger, extinct prescription supervening impossibility



# Performance

- ▶ Must be in the manner specified by the contract or equivalent manner
- ▶ Generally by person obliged to perform
- ▶ Must be rendered to the creditor
- ▶ Must be made at place agreed
- ▶ At time - expressed or tacitly determined in contract



# Agreement

- ▶ Release - creditor releases debtors from contractual obligations
- ▶ Novation - replacing existing obligation with a new one which discharges the existing obligation
- ▶ Compromise - each party giving up on some or all of his /her previous demands



# Operation of law

**Set off** - 2 debts are discharge/ larger is reduced by the smaller amount

- ❑ Parties reciprocally indebted
- ❑ Debt must be of a similar nature
- ❑ Debt has to be liquidated
- ❑ Debt must be due

**Merger** - concurrence of debtor and creditor in the same person and of the same obligation



# Operation of law

## Extinctive prescription - passing of time

- **30 years** - debts for mortgage bond , judgment debt, taxation, owed to the state in respect of any share of the profits
- **15 years** - debt owed to the state arising from advance or loan of money
- **6 years** - debt arising from bill of exchange or other negotiable instrument or notarial contract
- **3 years** any other debt



# Operation of law

## Supervening impossibility of performance

- Objectively or absolutely impossible
- Vis major ( major force )
- Casus fortuitus ( inevitable accident
- Natural forces or human agency
- Beyond control of parties
- Not foreseen





# Unit 16 Breach of Contract

- ▶ Where debtor/creditor does not perform , performs late or performs in the wrong manner
- ▶ Forms of breach of contract
  - Mora debitoris
  - Mora creditoris
  - Defective performance
  - Repudiation
  - Prevention of performance



# Mora Debitoris

- ▶ Delay in performance - default to perform in time or within reasonable time
- ▶ Types - Mora ex re & Mora ex persona

## **Mora ex re**

- Failure to perform on stipulated date
- No need for any demand

## **Mora ex persona**

- No date of performance was stipulate
- Debtor not automatically in mora
- Creditor must demand performance within reasonable period



# Requirements for Mora debitoris

- ▶ There must be a delay in performance
- ▶ Debt must be claimable ( not have prescribed)
- ▶ Default to perform must be due to fault of debtor



# Mora Creditoris

- ▶ Creditor is at fault
- ▶ Delaying the debtor's performance without justified cause
- ▶ Does not cooperate to make performance possible



# Defective Performance

- ❖ Performance contrary to contract stipulations
- ❖ Takes the following forms:
  - Performance not rendered according to contract
  - Debtor does something not under the agreement



# Rescission

- ▶ Only used in exceptional circumstances
- ▶ Cancellation
- ▶ Communicated to other party
- ▶ Contract is dissolved
- ▶ Innocent party may claim damages



# Cancellation on the ground of mora debitoris

- ▶ Where such right is provided for in the agreement
- ▶ Breach is serious
- ▶ Time is of the essence
- ▶ Where the creditor made time of the essence by means of notice of rescission



## Cancellation on the grounds of mora creditoris

- ▶ Debtor may cancel contract under same circumstances as creditor may cancel
- ▶ Debtor is entitled to the ordinary remedies for breach of contract





# Damages

- ▶ Claimed whether contract is upheld or cancelled
- ▶ Only patrimonial / pecuniary ( no damages for pain and suffering)
- ▶ Purpose is to put creditor in position he/she would have been if the debtor performed according to contract
- ▶ Requirements:
  - ✓ breach of contract
  - ✓ Loss suffered
  - ✓ Reasonably foreseeable
  - ✓ Factual causation
  - ✓ Duty to mitigate



# Repudiation

- ▶ Debtor indicates that he/she rejects contractual obligations
- ▶ Expressly/ tacitly
- ▶ Must be clear intention to repudiate



# Prevention of Performance

- ▶ Debtor released from his obligations where performance becomes impossible
- ▶ Where debtor intentionally/negligently prevents performance by making it possible
- ▶ Must be an absolute impossibility



# Remedies of Breach of contract

1. Specific Performance - where a court order compels performance

Takes the form of:

- Order to do something
- Restore something
- An interdict to refrain from doing something
- Order to pay money instead of performance

Will not be ordered where

- ❖ Performance is impossible
- ❖ Will cause disproportionate loss
- ❖ Difficult for court to supervise
- ❖ Damages will adequately compensate the plaintiff



# Unit 17 - remedies for breach of contract

- ▶ Specific performance - where a court order compels performance
- ❖ An order to do something
- ❖ Restore something
- ❖ Interdict to refrain
- ❖ Order for the payment of money instead of performance
- ❖ Courts have discretion to refuse it



# Specific performance will not be ordered if:

- ▶ Performance becomes impossible
- ▶ Will cause disproportionate loss
- ▶ Difficult for court to supervise
- ▶ Award of damages will be adequate compensation



# Rescission ( cancellation)

- ▶ Specific remedy
- ▶ A creditor may use in exceptional cases
- ▶ Takes effect from time it is communicated
- ▶ Notice to cancel may be given in writing or orally
- ▶ Contract is dissolved
- ▶ Parties must restore anything received
- ▶ Innocent party may claim damages



# Cancellation on the grounds of Mora debitoris

- ✓ Where breach is serious
- ✓ Where time is of the essence
- ✓ Where creditor made time of the essence by means of a notice





# Cancellation on grounds of mora creditoris

- ▶ Debtor may cancel in same circumstances as creditor
- ▶ Debtor is also entitled to ordinary remedies



# Cancellation and defective performance

- ▶ Creditor has right to cancel
- ▶ If contract has cancellation clause
- ▶ Even if defect is trivial
- ▶ If no cancellation clause creditor can cancel if performance is serious and creditor cannot be expected to abide by the contract



# Damages

- ▶ Purpose is to put creditor in position he would have been if debtor performed
- ▶ Requirements
  - Must be breach of contract
  - Loss was suffered
  - Causation between breach and damages
  - Damages was reasonably foreseeable or agreed to
  - Reasonable steps take to mitigate damages



# Penalty stipulation

- ▶ In proof and calculation of damages
- ▶ To avoid difficulty of calculation parties may agree on penalty clause



Thank  
you

