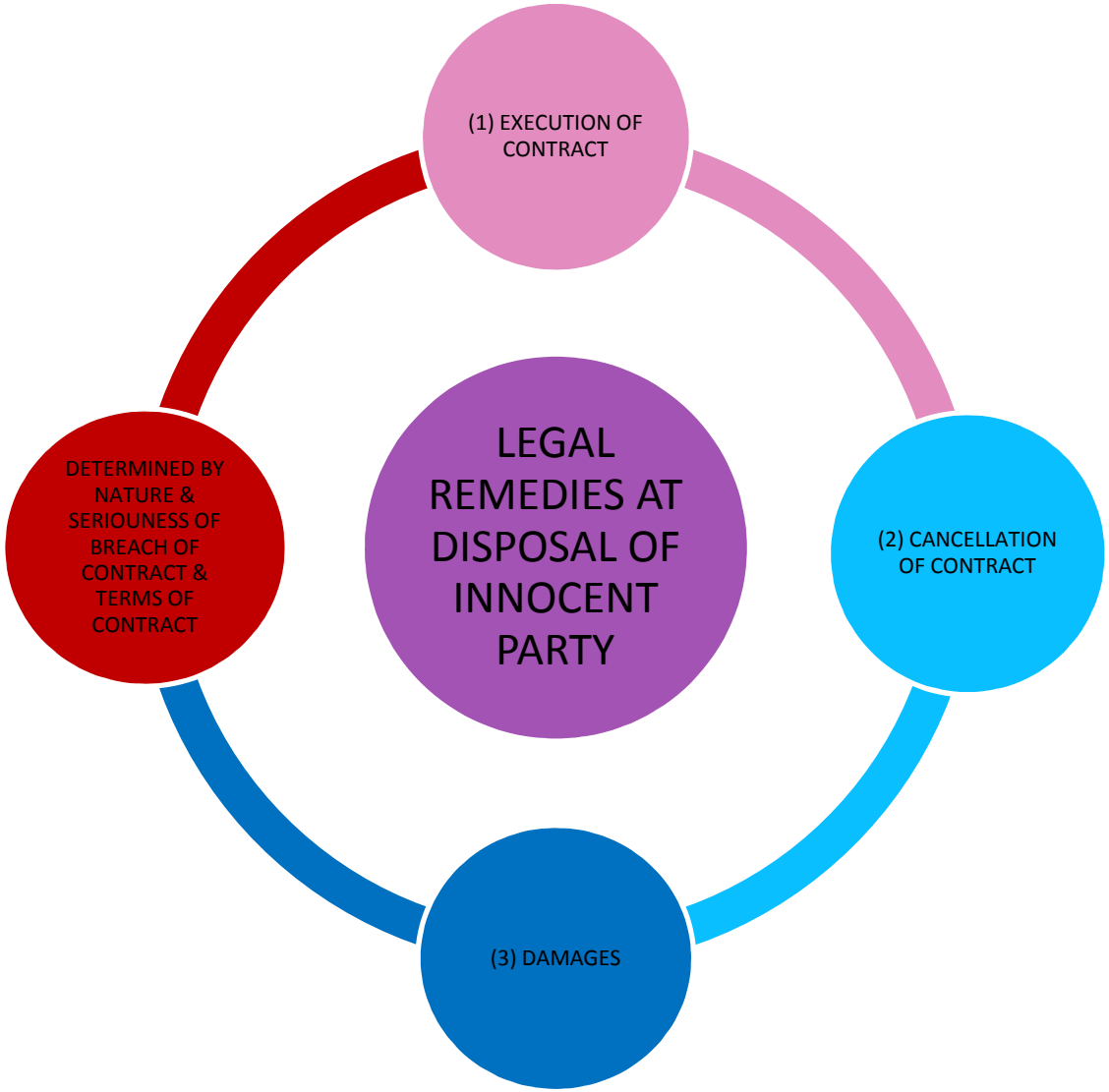
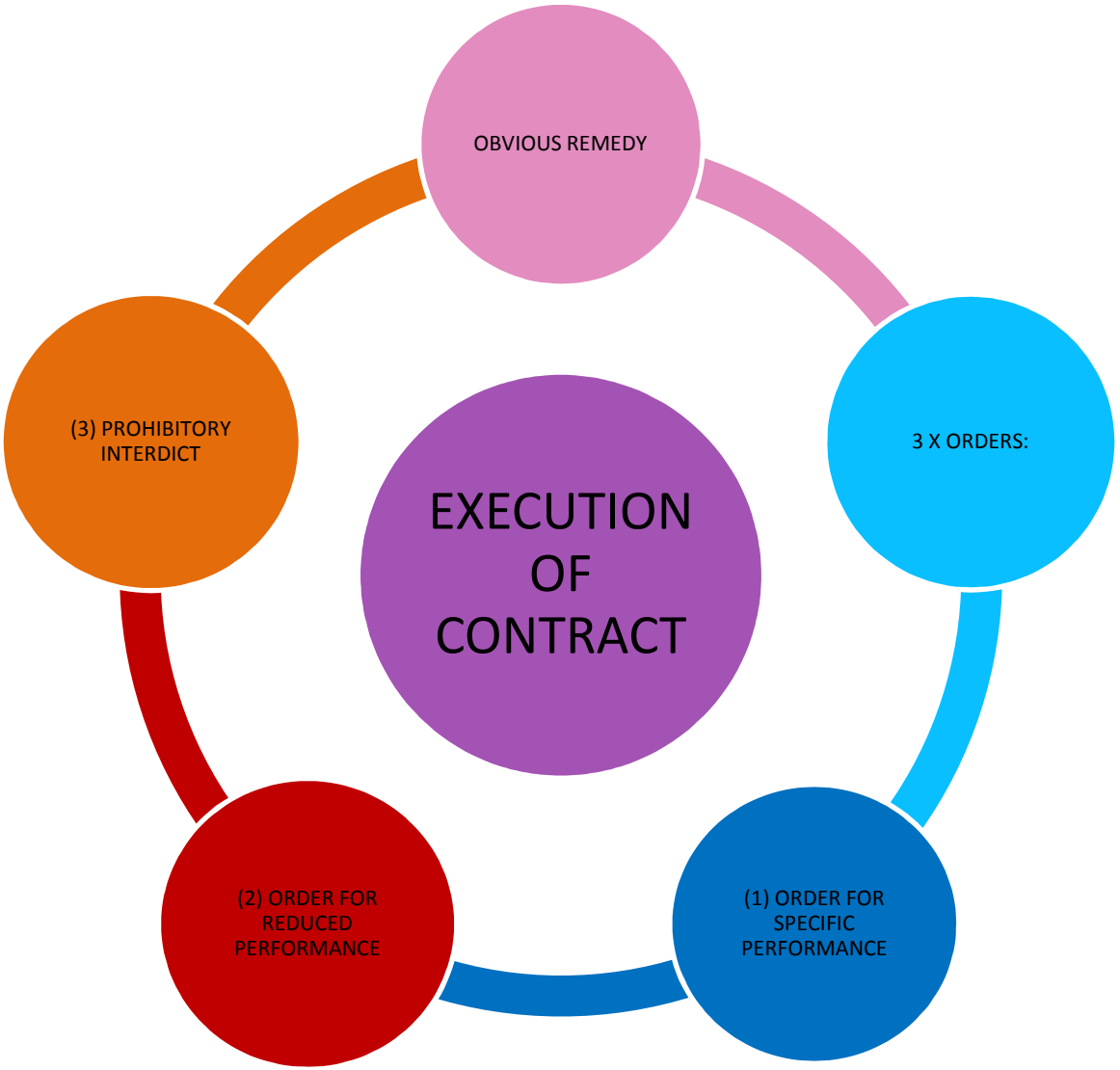
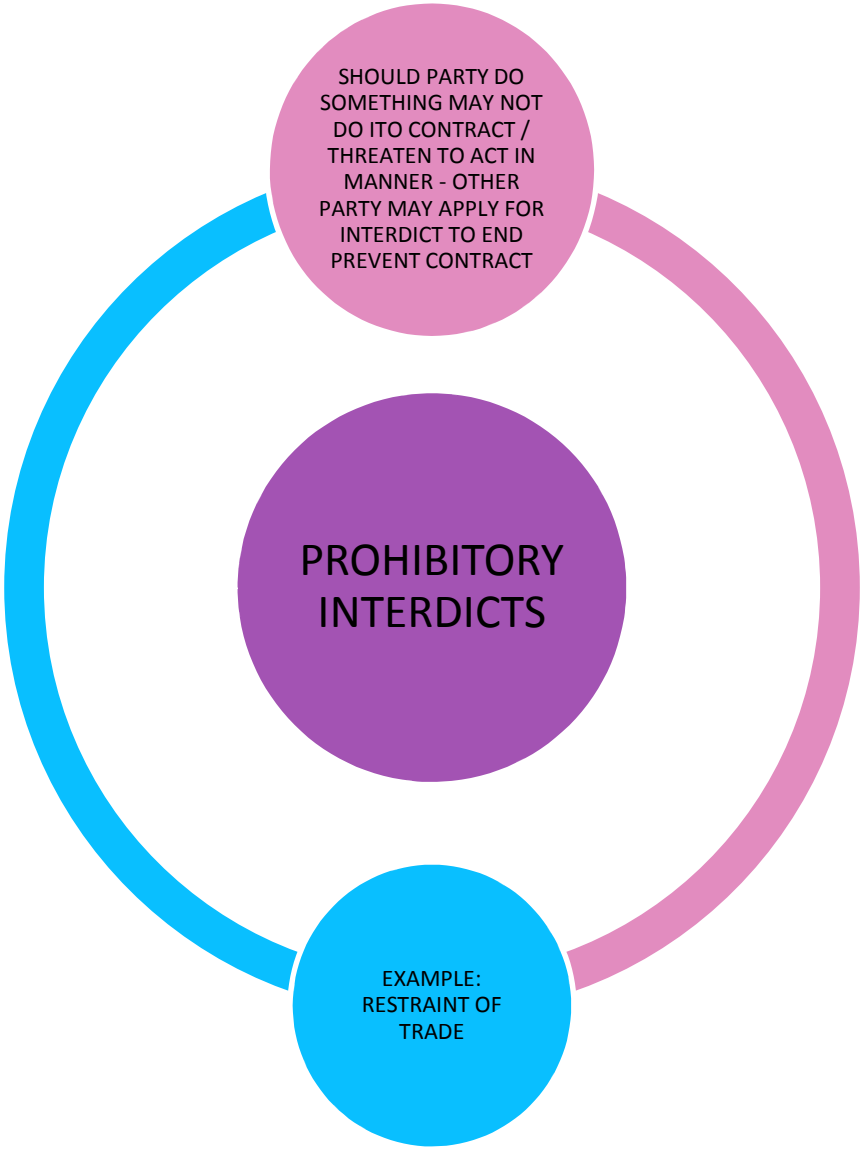
CHAPTER 11

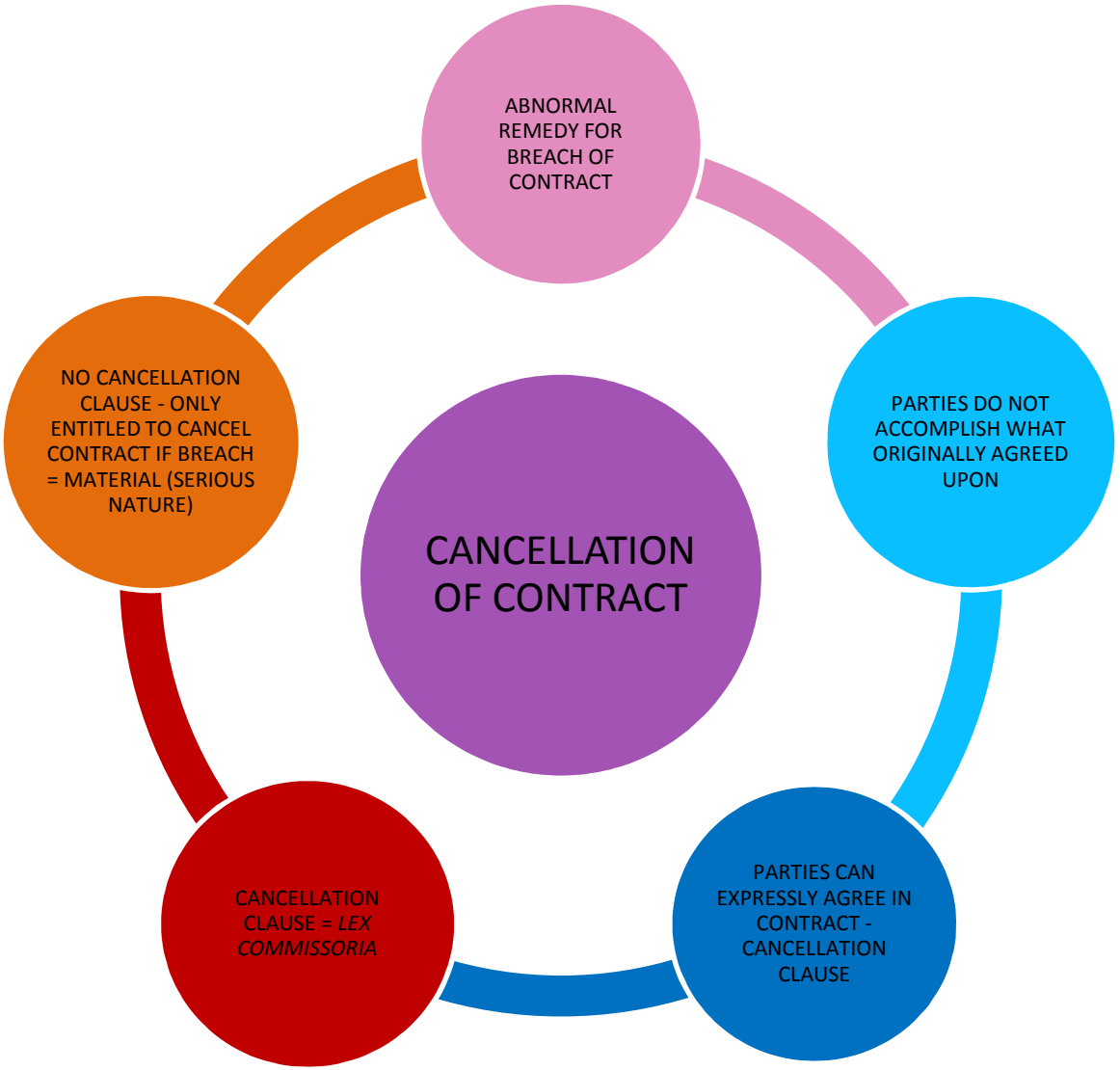

(1) EXECUTION OF CONTRACT
(2) CANCELLATION OF CONTRACT
(3) DAMAGES
DETERMINED BY NATURE & SERIOUNESS OF BREACH OF CONTRACT & TERMS OF CONTRACT
LEGAL REMEDIES AT DISPOSAL OF INNOCENT PARTY

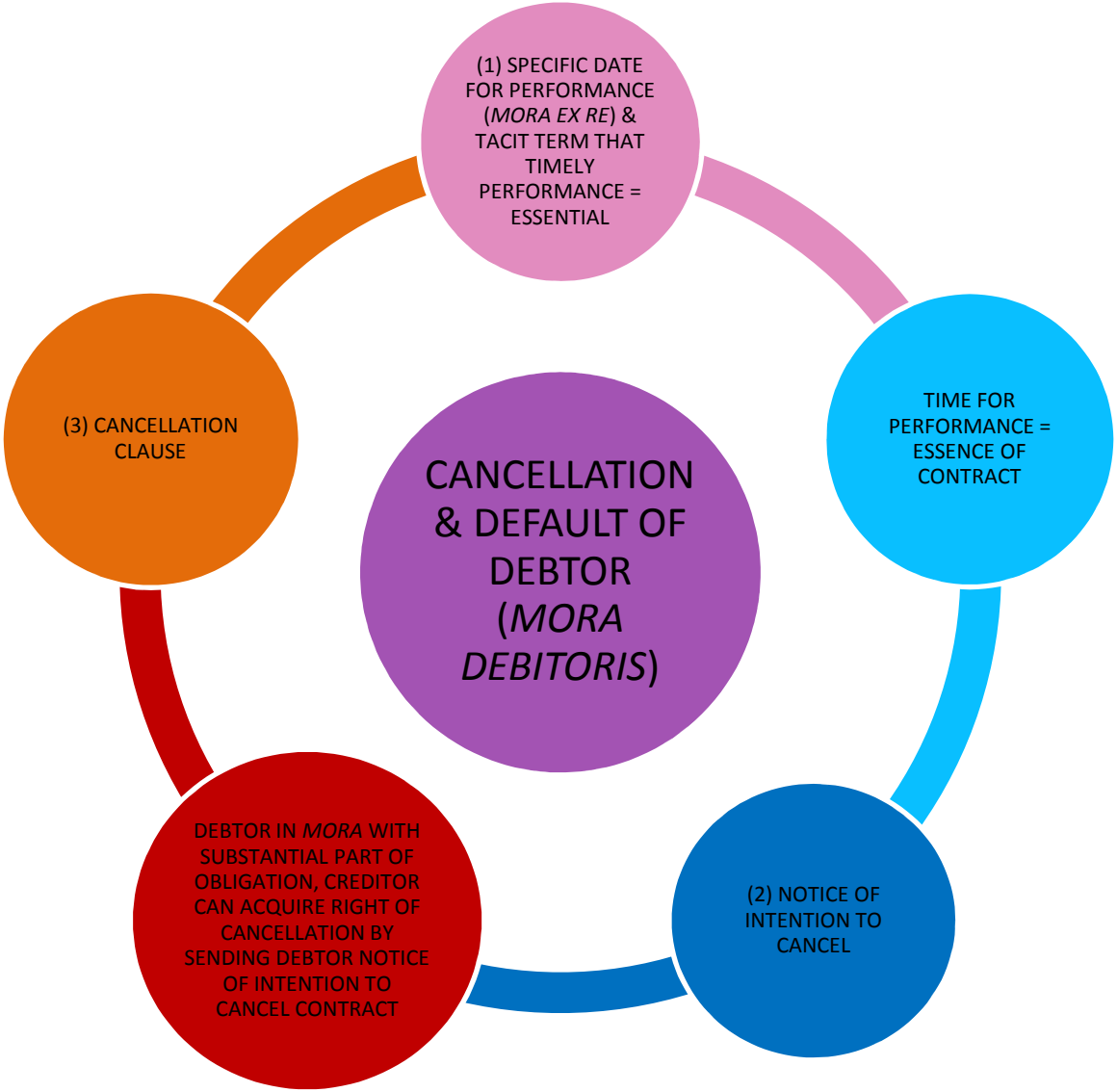

OBVIOUS REMEDY
3 X ORDERS:
(1) ORDER FOR SPECIFIC PERFORMANCE
(2) ORDER FOR REDUCED PERFORMANCE
(3) PROHIBITORY INTERDICT
EXECUTION OF CONTRACT

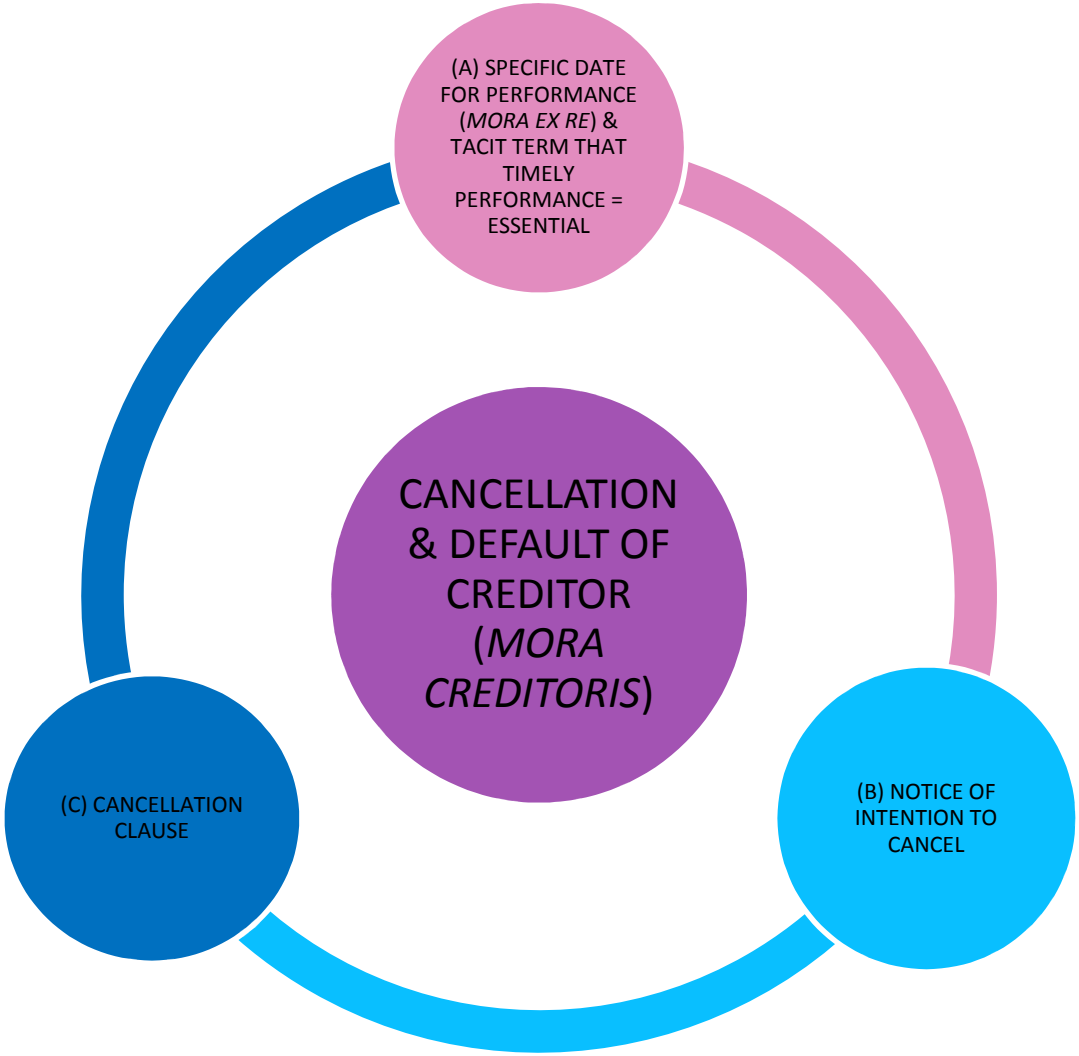
ORDERS FOR SPECIFIC PERFORMANCE
COURT ORDER - COMMANDS CONTRACTING PERTY TO RENDER PERFORMANCE
WILL NOT BE ORDERED AGAINST PERSON - ESTATE SEQUESTRATED - MAY PREJUDICE OTHER CREDITORS
CANNOT BE GRANTED WHERE PERFORMANCE NOT POSSIBLE
INNOCENT PERTY CAN CLAIM DAMAGES IN LIEU OF PERFORMANCE
COURT REFUSE ORDER: PERFORMANCE AFFECT DEFENDANT UNREASONABLY HARSLY
COURT REFUSE ORDER: ODER COMPRISE INJUSTICE / INEQUITABLE UNDER ALL CIRCUMSTANCES

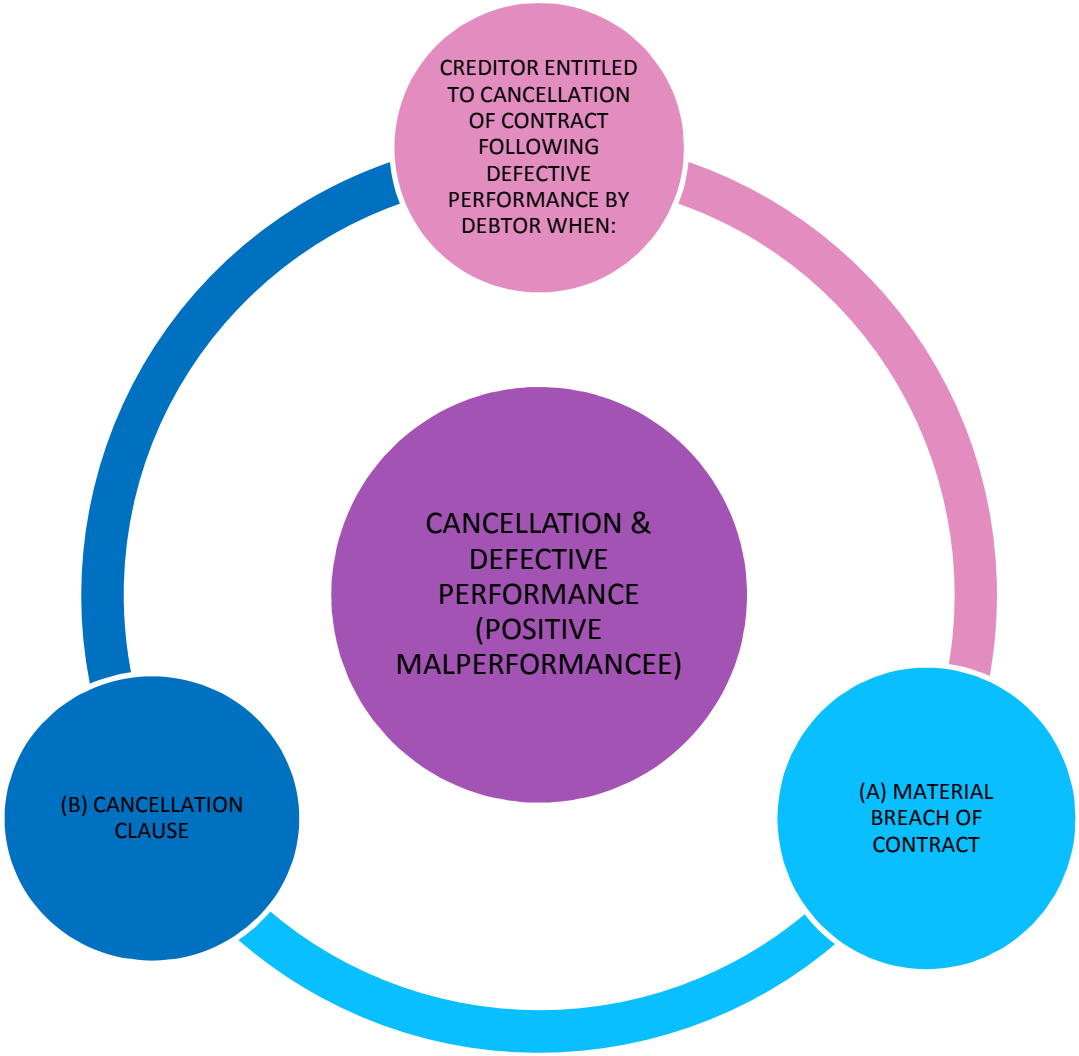
ORDERS FOR REDUCED PERFORMANCE
PARTY RENDERED PERFORMANCE - DEFECTIVE / INCOMPLETE
INTENTION OF PARTIES = DECISIVE FACTOR IN DETERMINING RECIPROCITY
RECIPROCITY - PLAINTIFF CAN CLAIM DEFENDANT'S PERFORMANCE ONLY IF HE PERFORMED / WILLING TO PERFORM
EXCEPTIO NON ADIMPLENTI CONTRACTUS - DEFENCE OF INCOMPLETE CONTRACT
EXCEPTIO NOT AVIALBELE TO DEFENDANT WHERE PLINTIFF HAS CANCELLED CONTRACT
EXCEPTIO NOT AVAILABLE WHERE PLAINTIFF DOES NOT HAVE TO PERFORM
COURT WILL GRANT REDUCED PERFORMANCE IF PROVED:
(1) DEFENDENT = USING DEFECTIVE PERFOMRANCE
(2) CIRCUMSANCES ARE SUCH THAT WOULD BE EQUITABLE FOR COURT TO EXCERCISE DISCRETION IN FAVOUR OF GRANTING SUCH ORDER
WHAT REDUCED CONTRACT PRICE SHOULD BE - CONTRACT PRICE LESS AMOUNT REQUIRED TO BRING PERFORMANCE UP TO REQUIRED STANDARD

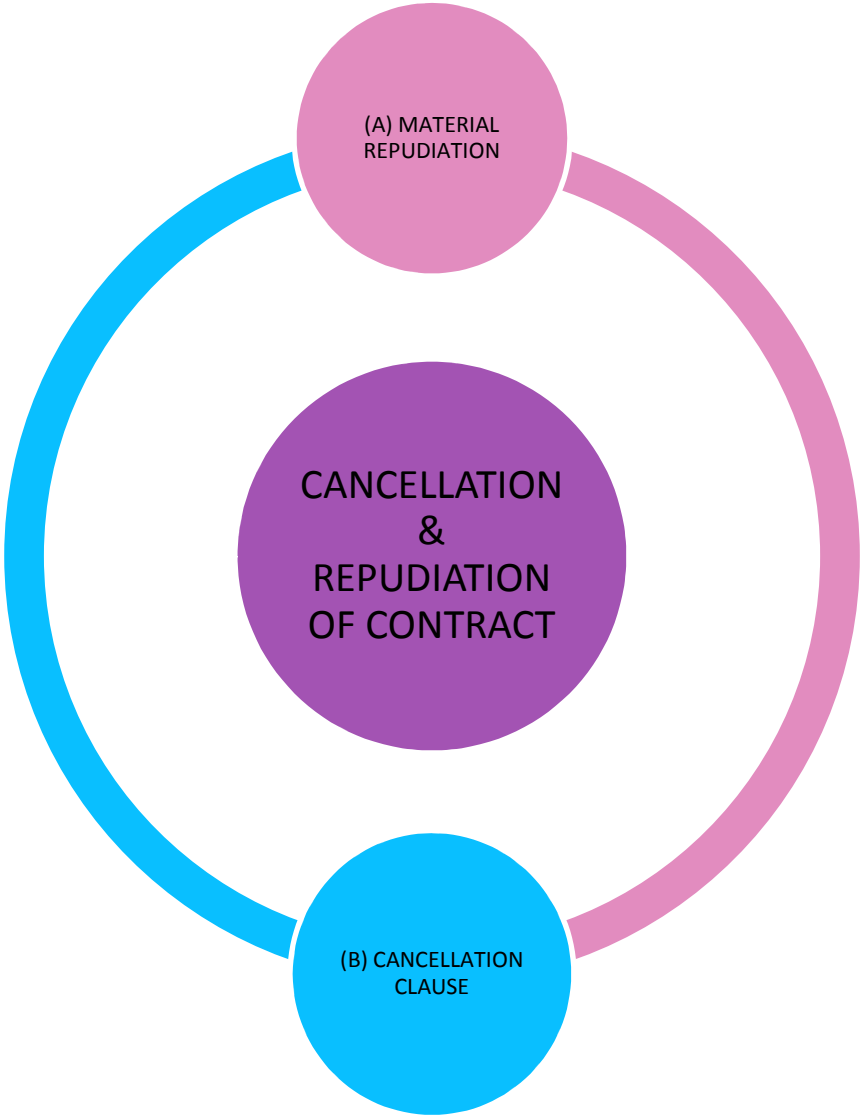

SHOULD PARTY DO SOMETHING MAY NOT DO ITO CONTRACT / THREATEN TO ACT IN MANNER - OTHER PARTY MAY APPLY FOR INTERDICT TO END PREVENT CONTRACT
PROHIBITORY INTERDICTS
EXAMPLE: RESTRAINT OF TRADE

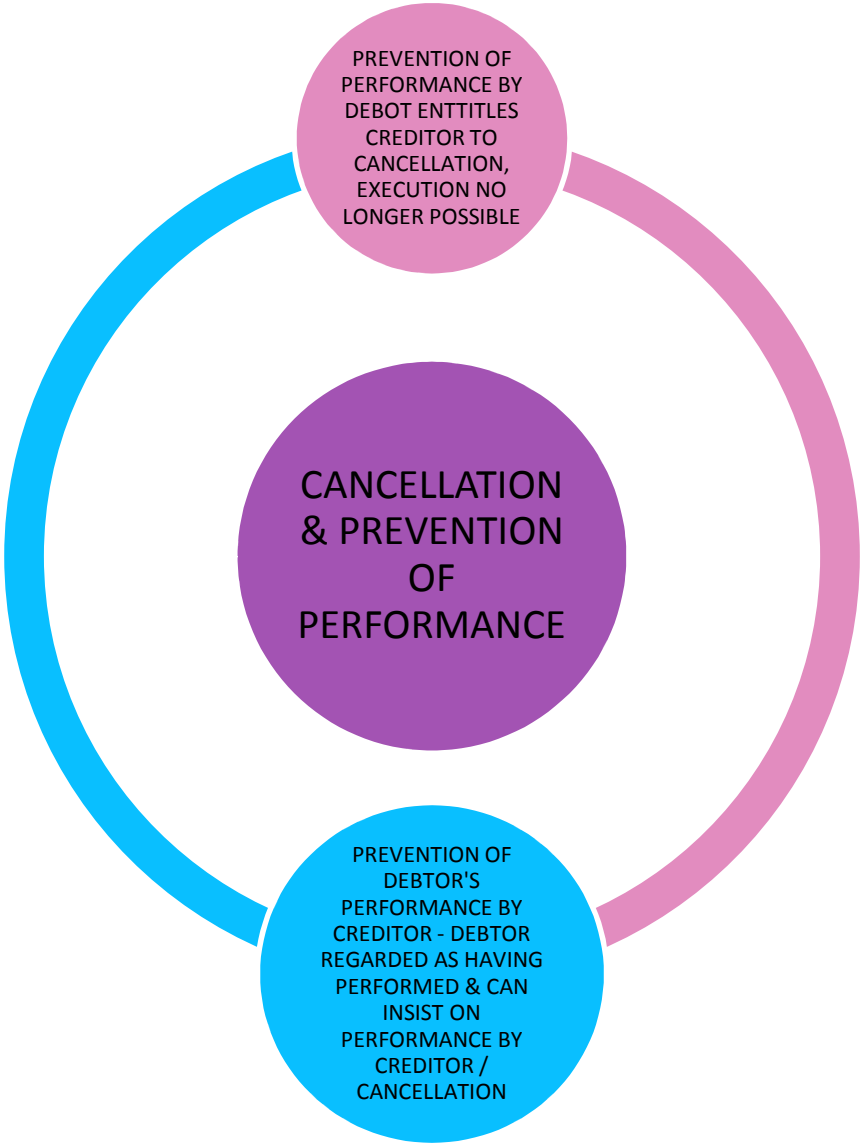

CANCELLATION OF CONTRACT
ABNORMAL REMEDY FOR BREACH OF CONTRACT
PARTIES DO NOT ACCOMPLISH WHAT ORIGINALLY AGREED UPON
PARTIES CAN EXPRESSLY AGREE IN CONTRACT - CANCELLATION CLAUSE
CANCELLATION CLAUSE = *LEX COMMISSORIA*
NO CANCELLATION CLAUSE - ONLY ENTITLED TO CANCEL CONTRACT IF BREACH = MATERIAL (SERIOUS NATURE)

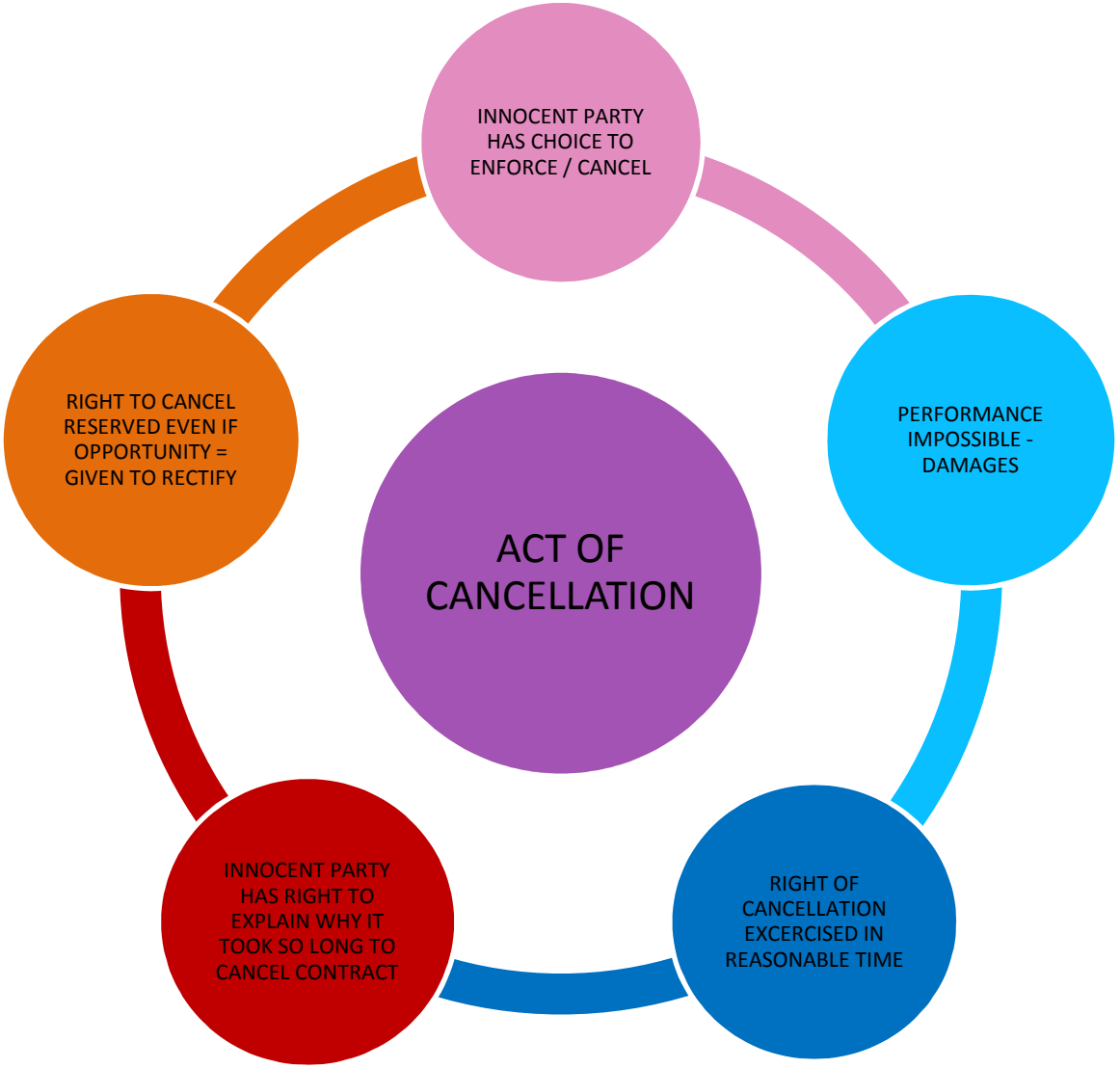

CANCELLATION & DEFAULT OF DEBTOR (*MORA DEBITORIS*)
(1) SPECIFIC DATE FOR PERFORMANCE (*MORA EX RE*) & TACIT TERM THAT TIMELY PERFORMANCE = ESSENTIAL
TIME FOR PERFORMANCE = ESSENCE OF CONTRACT
(2) NOTICE OF INTENTION TO CANCEL
DEBTOR IN *MORA* WITH SUBSTANTIAL PART OF OBLIGATION, CREDITOR CAN ACQUIRE RIGHT OF CANCELLATION BY SENDING DEBTOR NOTICE OF INTENTION TO CANCEL CONTRACT
(3) CANCELLATION CLAUSE

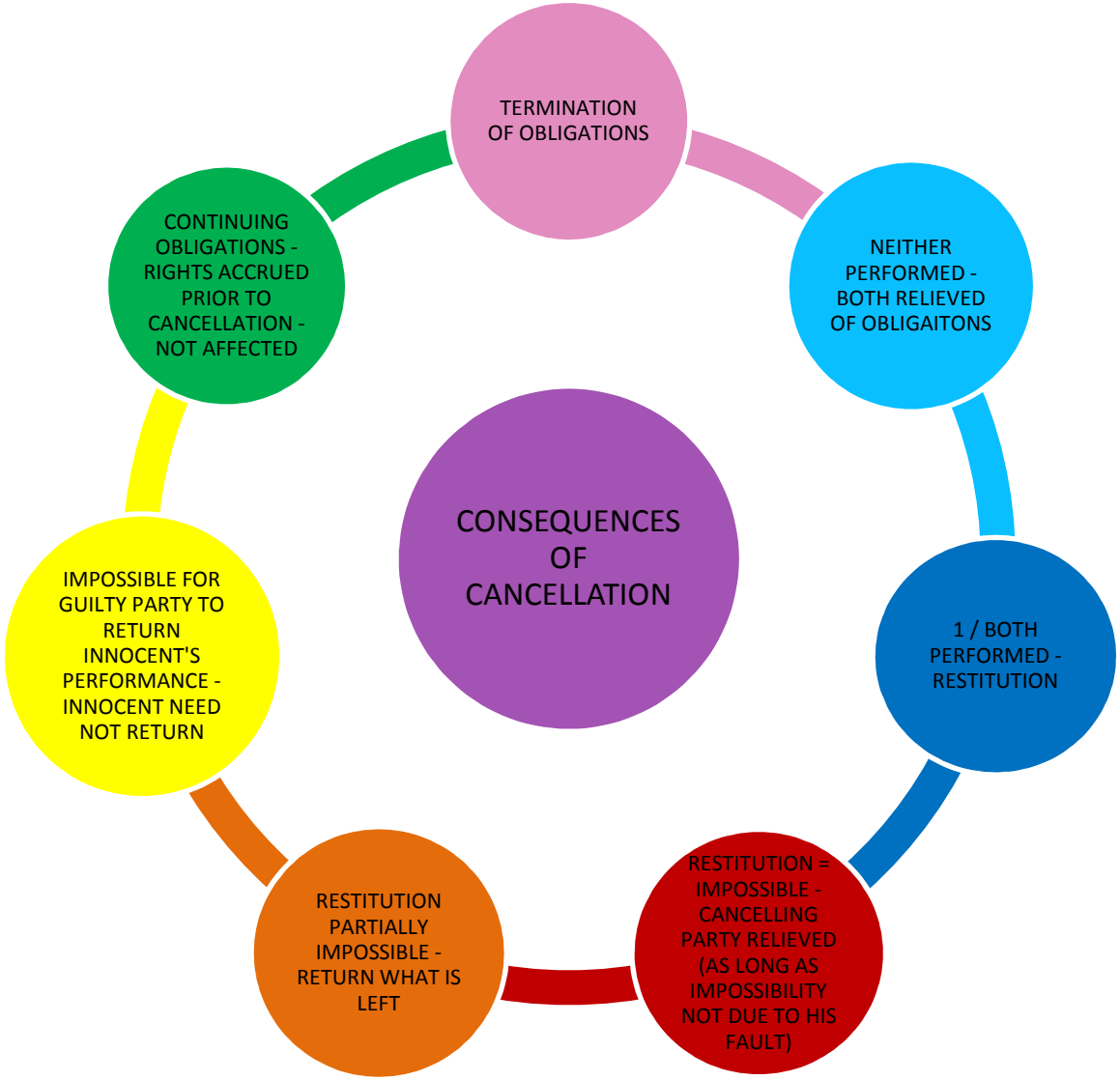

(A) SPECIFIC DATE FOR PERFORMANCE (*MORA EX RE*) & TACIT TERM THAT TIMELY PERFORMANCE = ESSENTIAL
CANCELLATION & DEFAULT OF CREDITOR (*MORA CREDITORIS*)
(B) NOTICE OF INTENTION TO CANCEL
(C) CANCELLATION CLAUSE

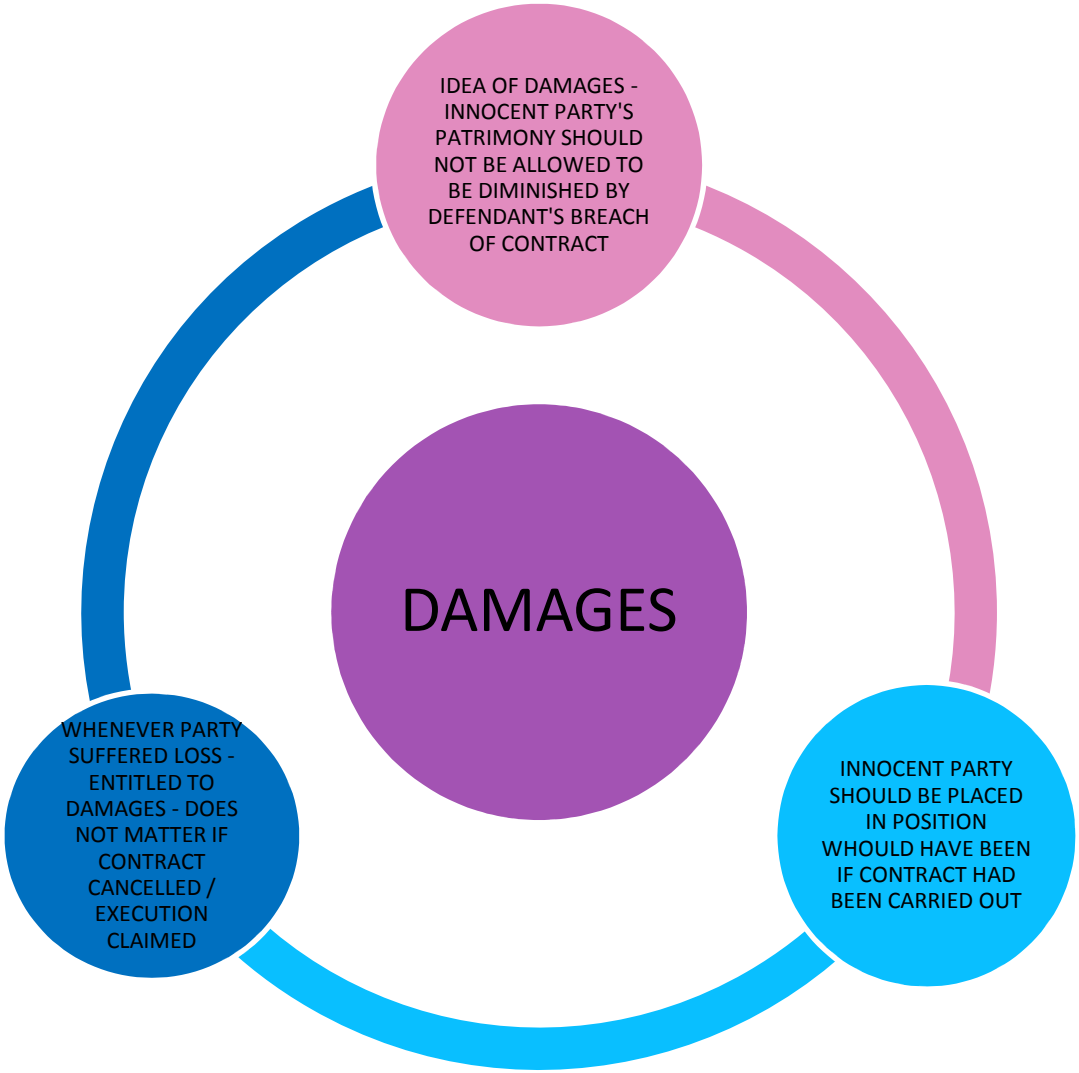

CREDITOR ENTITLED TO CANCELLATION OF CONTRACT FOLLOWING DEFECTIVE PERFORMANCE BY DEBTOR WHEN:
CANCELLATION & DEFECTIVE PERFORMANCE (POSITIVE MALPERFORMANCEE)
(A) MATERIAL BREACH OF CONTRACT
(B) CANCELLATION CLAUSE


(A) MATERIAL REPUDIATION
CANCELLATION & REPUDIATION OF CONTRACT
(B) CANCELLATION CLAUSE

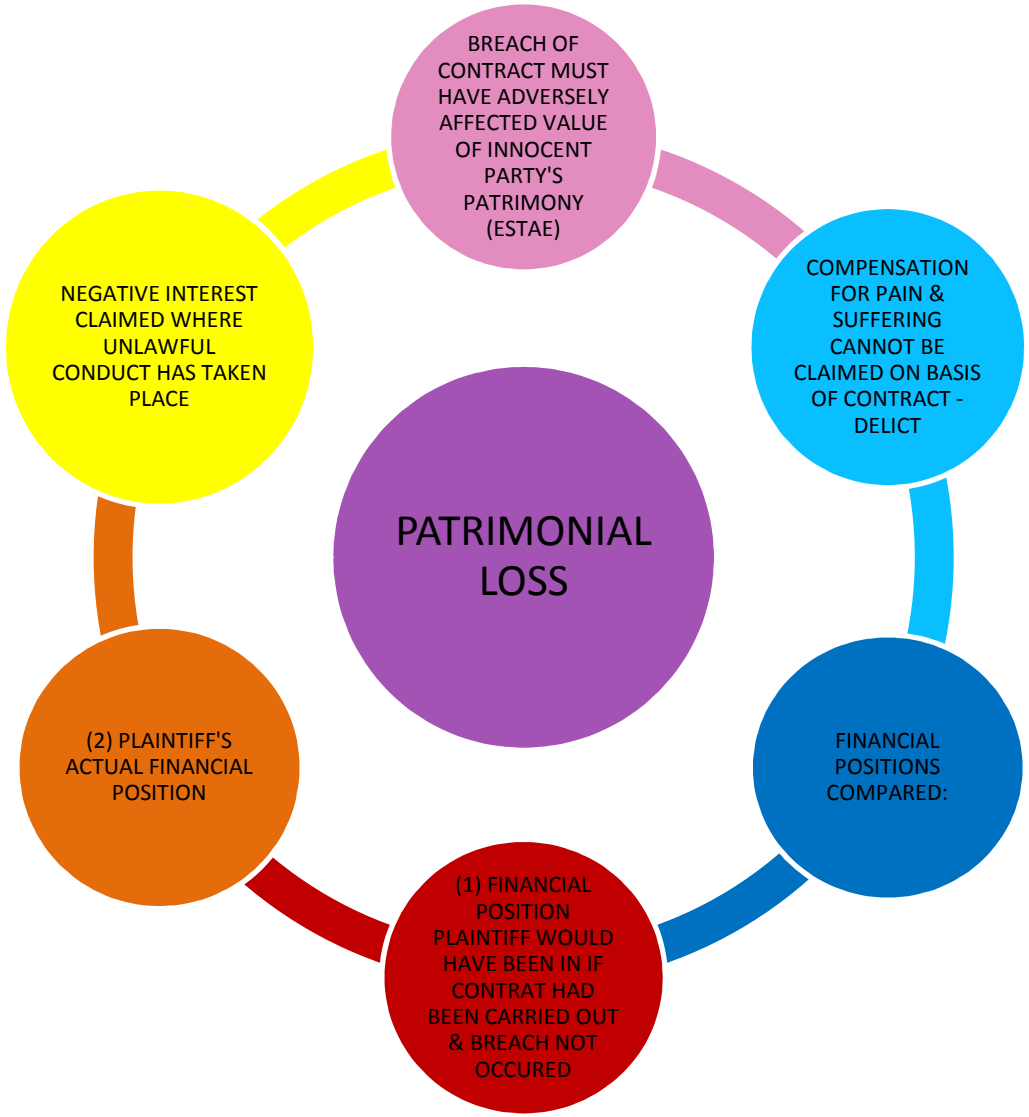

PREVENTION OF PERFORMANCE BY DEBOT ENTTITLES CREDITOR TO CANCELLATION, EXECUTION NO LONGER POSSIBLE
CANCELLATION & PREVENTION OF PERFORMANCE
PREVENTION OF DEBTOR'S PERFORMANCE BY CREDITOR - DEBTOR REGARDED AS HAVING PERFORMED & CAN INSIST ON PERFORMANCE BY CREDITOR / CANCELLATION

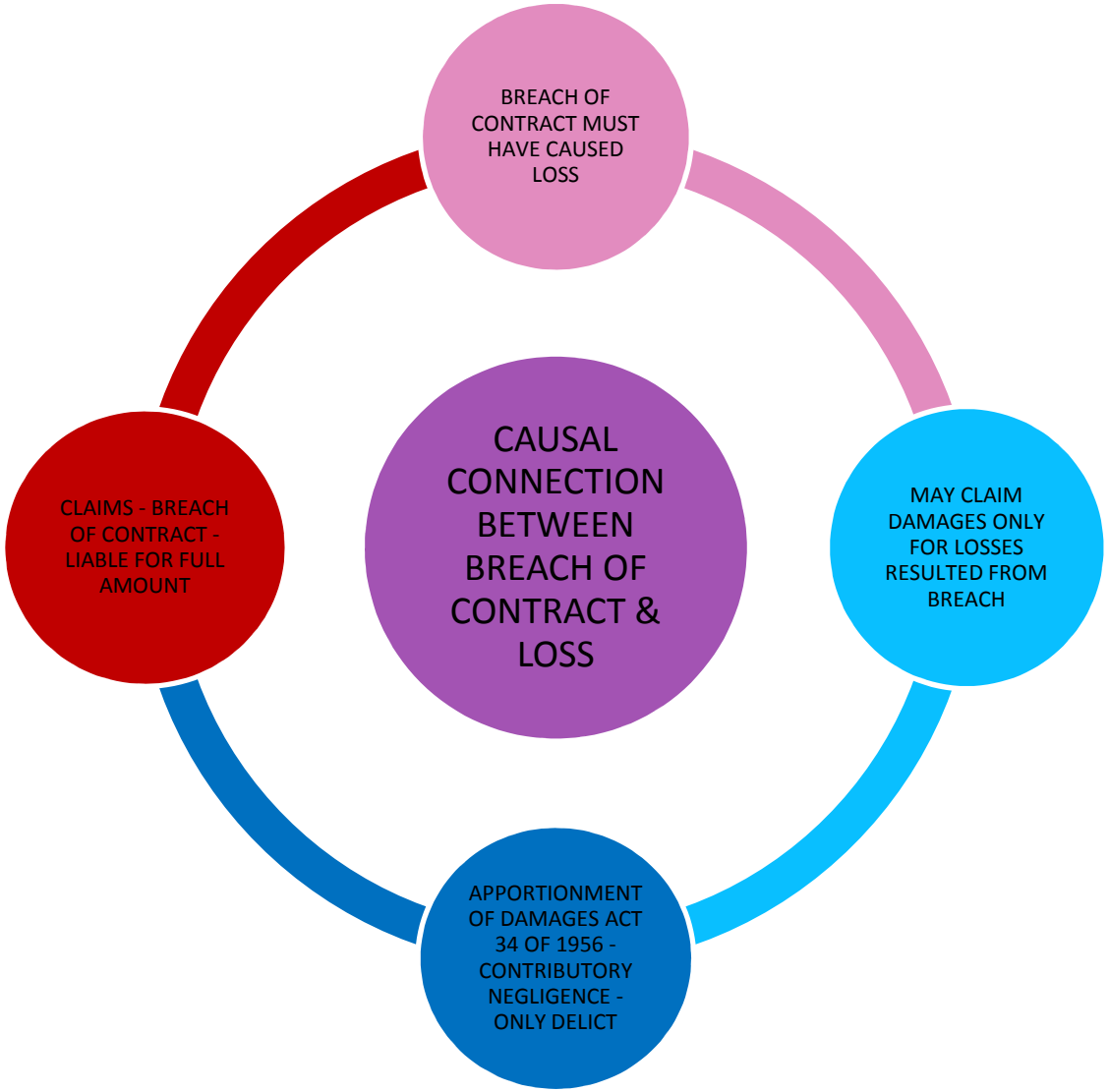

ACT OF CANCELLATION
INNOCENT PARTY HAS CHOICE TO ENFORCE / CANCEL
PERFORMANCE IMPOSSIBLE - DAMAGES
RIGHT OF CANCELLATION EXCERCISED IN REASONABLE TIME
INNOCENT PARTY HAS RIGHT TO EXPLAIN WHY IT TOOK SO LONG TO CANCEL CONTRACT
RIGHT TO CANCEL RESERVED EVEN IF OPPORTUNITY = GIVEN TO RECTIFY


CONSEQUENCES OF CANCELLATION
TERMINATION OF OBLIGATIONS
NEITHER PERFORMED - BOTH RELIEVED OF OBLIGAITONS
1 / BOTH PERFORMED - RESTITUTION
RESTITUTION = IMPOSSIBLE - CANCELLING PARTY RELIEVED (AS LONG AS IMPOSSIBILITY NOT DUE TO HIS FAULT)
RESTITUTION PARTIALLY IMPOSSIBLE - RETURN WHAT IS LEFT
IMPOSSIBLE FOR GUILTY PARTY TO RETURN INNOCENT'S PERFORMANCE - INNOCENT NEED NOT RETURN
CONTINUING OBLIGATIONS - RIGHTS ACCRUED PRIOR TO CANCELLATION - NOT AFFECTED

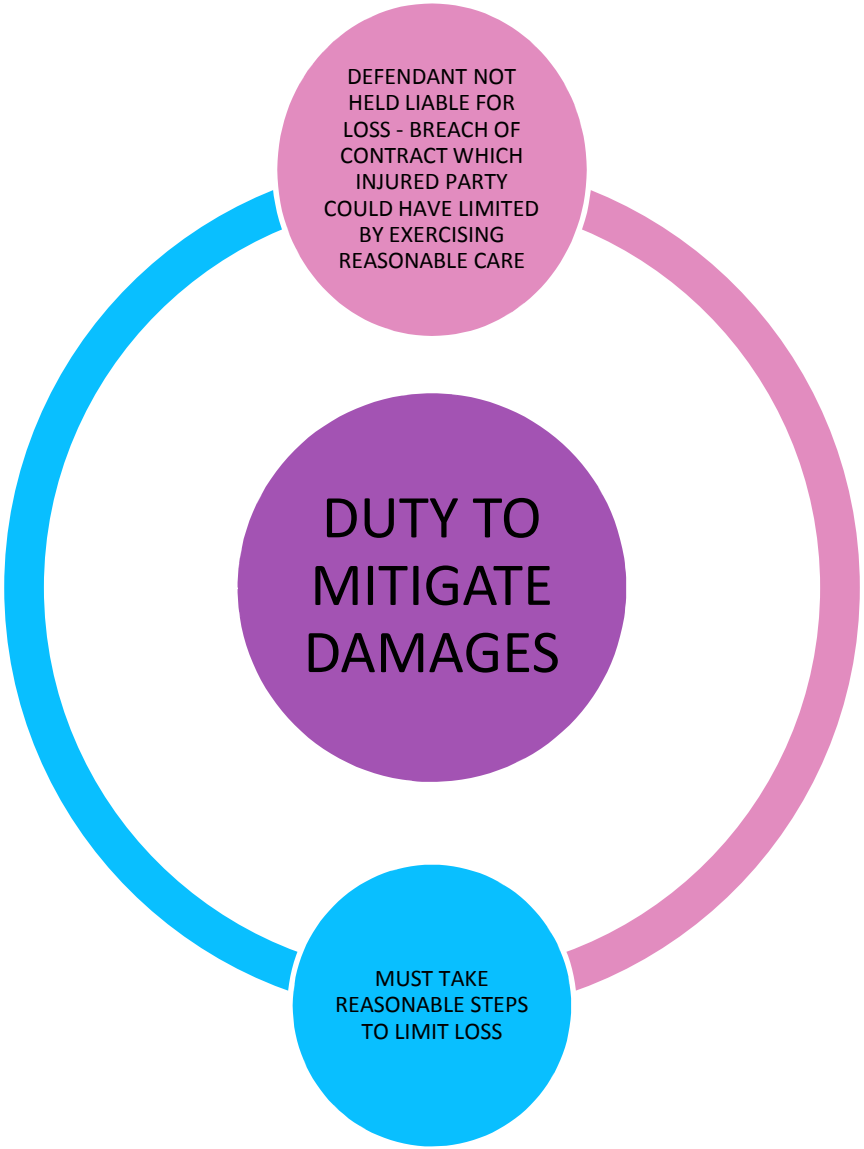

IDEA OF DAMAGES - INNOCENT PARTY'S PATRIMONY SHOULD NOT BE ALLOWED TO BE DIMINISHED BY DEFENDANT'S BREACH OF CONTRACT
DAMAGES
INNOCENT PARTY SHOULD BE PLACED IN POSITION WHOULD HAVE BEEN IF CONTRACT HAD BEEN CARRIED OUT
WHENEVER PARTY SUFFERED LOSS - ENTITLED TO DAMAGES - DOES NOT MATTER IF CONTRACT CANCELLED / EXECUTION CLAIMED

PATRIMONIAL LOSS
CAUSAL CONNECTION BETWEEN BREACH OF CONTRACT & LOSS
FORESEEABLE LOSS
DUTY TO MITIGATE DAMAGES
PROOF OF LOSS & CALC OF DAMAGES
DAMAGES


PATRIMONIAL LOSS
BREACH OF CONTRACT MUST HAVE ADVERSELY AFFECTED VALUE OF INNOCENT PARTY'S PATRIMONY (ESTAE)
COMPENSATION FOR PAIN & SUFFERING CANNOT BE CLAIMED ON BASIS OF CONTRACT - DELICT
FINANCIAL POSITIONS COMPARED:
(1) FINANCIAL POSITION PLAINTIFF WOULD HAVE BEEN IN IF CONTRAT HAD BEEN CARRIED OUT & BREACH NOT OCCURED
(2) PLAINTIFF'S ACTUAL FINANCIAL POSITION
NEGATIVE INTEREST CLAIMED WHERE UNLAWFUL CONDUCT HAS TAKEN PLACE


BREACH OF CONTRACT MUST HAVE CAUSED LOSS
MAY CLAIM DAMAGES ONLY FOR LOSSES RESULTED FROM BREACH
APPORTIONMENT OF DAMAGES ACT 34 OF 1956 - CONTRIBUTORY NEGLIGENCE - ONLY DELICT
CLAIMS - BREACH OF CONTRACT - LIABLE FOR FULL AMOUNT
CAUSAL CONNECTION BETWEEN BREACH OF CONTRACT & LOSS

SOME CASES DEFENDANT NOT LIABLE FOR PATRIMONAL LOSS
FORESEEABLE LOSS
DEFENDANT'S LIABILITY = LIMITED TO LOSS NATURALLY & GENERALLY FLOWS FROM KIND OF BREACH
SUPREME COURT OF APPEAL - TEST DETERMINING DAMAGES FLOW NATURALLY FROM BREACH = HAVEING REGARD TO SUBJECT-MATTER & TERMS OF CONTRACT, HARM WAS SUFFEREC - HAVE REASONABLY FORESEEABLE AS REALISTIC POSSIBILITY


DEFENDANT NOT HELD LIABLE FOR LOSS - BREACH OF CONTRACT WHICH INJURED PARTY COULD HAVE LIMITED BY EXERCISING REASONABLE CARE
DUTY TO MITIGATE DAMAGES
MUST TAKE REASONABLE STEPS TO LIMIT LOSS

PROOF OF LOSS & CALC OF DAMAGES
POSITIVE INTEREST
TYPICAL YARDSTICKS USED IN PRACTICE:
(1) CONTRACT OF SALE IN RESPECT OF MARKETABLE COMMODITY & *MERX* NOT DELIVERED ON TIME DAMAGE EXPRESSED AS DIFFERENCE BETWEEN CONTRACT PRICE & MARKET VALUE OF COMMODITY @ TIME & PLACE PERFORMANCE SHOULD HAVE OCCURED
(2) FAILURE TO DISCHARGE MONEY DEBT, INTEREST AWARDED AS DAMAGES, CALCULATED FROM DUE DATE OF PAYMENT
(3) DEFECTIVE EXECUTION - REPAIR AOUNT AMOUNT TO HAVE WORK DONE BY SOMEONE ELSE
PROOF OF LOSS SUFFERED - ONE OF MOST CRITICAL ASPECTS OF LITIGATION
CIVIL CASE - ONUS OF PROVING LOSS RESTS ON PARTY WHO CLAIMS DAMAGES