Chapter 28 - Non-Performance (Breach) of Contracts

2 - The System and Terminology Proposed

2.3 - Duty to Achieve a Specific Result and Duty of Best Efforts (Obligations de Résultat and Obligations de Moyens)

The debtor's duty varies depending upon the nature of the obligation incurred. Sometimes the debtor must bring about a specific result, and he carries the risk that it is achieved. If he fails there is a case of non-performance. In many legal systems the seller's duty to deliver conforming goods at the right time is a duty to achieve a specific result, and if he fails he is strictly liable. In other cases a party is bound only by a duty of best effort. He must then make the efforts that a normal person would reasonably be expected to exert in similar circumstances. If he is a professional he will have to live up to the standards of the profession or trade, but he will not have to bring about a specific result. If he has made his best efforts he has performed his duty and the creditor must bear the risk for the non-achievement of the desired result. A doctor's attempt to cure his patient is to be made with his best efforts. And if he has done so there is due performance even if the patient is not cured. This distinction between what the French call an *obligation de résultat* and an *obligation de moyens* shows typical degrees of duties in contract. In some contracts part of a party's obligation is one of *résultat* and part of it one of *moyens*. A party, who has undertaken to deliver a computer with a programme which is aimed at performing certain functions, is strictly liable for the defects in the hardware but, unless he has warranted that the software can perform the desired functions, he is only obliged to make his best efforts to achieve that result. In some laws there are further distinctions to be made. There are situations where the creditor can terminate a contract or claim a reduction of the price if the result is not achieved, but where the debtor is liable in damages only for fault.

In case of force majeure the contract disappears, which will exonerate the debtor; see on French law 3.5 below (page 515).

**Referring Principles:**

5 See German BGB § 276. This is probably also the general rule in Nordic law; see Gomard, Obligationsret Vol. 2 1995 141 ff.; Ramberg & Herre, Köplagen 1995 105 ff.
IV.6.5 - Best efforts undertakings