4. ORDER OF PERFORMANCE

210. Introductory. A claim under a contract may be resisted on the ground that the claimant has not yet performed his own obligations under the contract, or that he has not tendered such performance or is not ready and willing to do so. The COMMON LAW rules for dealing with such a defence are expressed in terms of promissory conditions (supra, s. 198), while the CIVIL LAW solutions turn on the scope and effect of the exceptio non adimpleti contrarius. The exceptio is, however, not restricted to cases in which a problem arises as to the order of performance: it applies also where refusal to perform is based on the allegation that performance by the other party, though rendered in the right order, is defective or incomplete (infra ss. 228 to 231).

Referring Principles:

V.1.4 - Principle of simultaneous performance; right to withhold performance