Compulsory performance

1. Art 389 (Compulsory performance, as a default remedy)

- If an obligation is not voluntarily performed, the claimant can ask the court to compel performance unless the nature of the obligation does not permit compulsory performance.
- Compelling the performance is the primary remedy for a breach of contract. (Cf. In tort, monetary damages is the default remedy.)
- Compulsory sale of debtor's assets, delivery of movables or immovables by bailiffs
- Application to have performance done by a substitute (the costs to be reimbursed by the promisor). Art. 389(3)

2. Prohibitory Injunction (restraining order)

- if Defendant has breached a contractual obligation to refrain from engaging in a certain activity and Plaintiff proves that the Defendant is likely to engage in that activity in the future, the court may grant a permanent injunction restraining the Defendant from engaging in the activity in the future.
- 93Da40614 ('milk war' case)
    - Tort remedy.
    - "Apology" cannot be compelled. Such an order is unconstitutional (89□□160).
    - Where the likehood of repeat occurrence is proven, the court may issue prohibitory injunction together with a penalty in the event the injunction is not complied with.
- No injunction may be sought whether as an interim remedy or as an ultimate remedy with regard to 'preparation for a breach' or 'likelihood of a (first time) breach'.

3. 'Personal' performance

- If the nature of the act does not permit performance by a substitute
- Compulsory performance not available if it is against public policy to compel the act
- The court may order a payment of penalty, calculated usually on daily basis until the act is performed. The court who decides the substantive entitlement is also capable of ordering payment of penalty (i.e., enforcement order) in the event of the non-compliance. 2020Da248124
- 99Ma6107: a corporation was ordered by the court to admit the claimants into its premises during normal office hours for 20 days excluding public holidays and to provide certain documents so that the claimants can inspect and photocopy them. The order came with a daily penalty payable for the period of non-compliance.