

**“Old Civil Code of Japan” (1890):  
Book II: Law on Properties**

**< Putting in default >**

**Art. 336**

**[Putting debtor in default]**

The debtor or any other obligor shall be put in default in the following cases:

1. when there is a claim [brought by the creditor or any other creditor] before the Court, or delivery of a letter of demand or a writ of enforcement in a good and due form after the arrival of the fixed time for performance;
2. when the fixed time for performance has arrived in cases where it is prescribed by law or by mutual consent that [the debtor bears] such a responsibility simply on the arrival of the time;
3. when the debtor failed to perform in due time even though he knew that any delayed performance would be useless for the creditor.

**< Effects of obligations >**

**Art. 381**

**[Primary and secondary effects of obligations]**

(1) The effect of obligation primarily consists in entitling the creditor to take a legal action for specific performance, and alternatively in cases of non-performance a legal action for compensation for damages according to the distinctions provided in Title I, II, and III of this Chapter.

(2) Furthermore, the scope of the effect of obligation differs according to the distinction of sorts of obligation provided in Title IV.

**Art. 382**

**[Primary effect: Claim for enforcement]**

(1) The Court has to order specific performance in accordance with its proper form and content upon the claim of the creditor whenever it is possible to enforce it without any physical restraint of the debtor.

(2) If the tangible object to be delivered to the creditor is located in the properties of the debtor, then the Court has to seize it and deliver it to the creditor.

(3) In case of obligation for an act, the Court may allow the creditor to cause a third person to perform such act at the expense of the debtor.

(4) In case of obligation for an inaction, the Court may allow the creditor to cause a third person to remove the outcome of such act performed by the debtor at the expense of the latter, and to take appropriate arrangements to prevent any such act in future.

(5) In the cases mentioned above, furthermore, the creditor may also demand compensation for damages if he suffers any.

(6) The enforcement of specific performance takes place according to the provisions in the Code of Civil Procedure.

**Art. 383**

**[Secondary effect: Claim for damages]**

(1) In cases where the debtor refuses to perform his obligation, the creditor may demand compensation for damages if he failed to claim for enforcement of specific performance, or where the nature of the obligation does not permit such an enforcement; the same shall apply if the performance becomes impossible for any cause for which the debtor is responsible.

(2) The creditor may demand compensation for damages also in a case of delay in performance.

(3) The amount of compensation should be, so long as the parties have reached no agreement on it, determined by the Court according to the distinctions and conditions provided in following articles unless a certain amount of compensation is prescribed by law.

**Art. 384**

**[Due time of compensation]**

(1) The duty to pay compensation is not due until the debtor has been put in default according to Art. 336.

(2) In cases where the obligation consists in duty of inaction, however, the debtor always and inevitably bears the responsibility for delay in performance [whenever he breached his duty].

(3) The same shall apply to the cases where someone has duty to return money or other valuable things which he deprived others of through criminal offenses.

**< Scope of damages >**

**Art. 385**

**[Scope of compensation]**

(1) The compensation for damages covers the loss which the creditor has suffered as well as the profit which he has been deprived of.

(2) However, if the non-performance or delay of the performance is due merely to the debtor's negligence without any malicious intention, then the debtor is liable only for damages which the parties have foreseen or could have foreseen at the time of the agreement.

(3) In the case of the debtor's malicious intention, he is liable even for unforeseeable damages which were caused as inevitable consequence from the non-performance.