

## New Puerto Rico Civil Code: Torts and other Sources of Obligations

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### An McV Corporate Alert

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This is the seventh of eight Alerts on the recently enacted Civil Code of Puerto Rico (the “[New Code](#)”), which will repeal the current Civil Code of 1930, as amended (the “[Previous Code](#)”). **The New Code becomes effective on November 28, 2020.**

This Alert addresses the most relevant changes between the Previous Code and the New Code regarding **Torts and other Sources of Obligations**, which are codified in the Fifth Book of the New Code.

These changes are as follows:

#### **I. Torts**

##### **Punitive Damages**

Discarding almost a century’s worth of case law reiterating the unenforceability of punitive damages under Puerto Rico law, the New Code expressly authorizes the imposition of punitive damages in torts suits.

Pursuant to Article 1538 of the New Code, punitive damages cannot exceed the amount of compensatory damages awarded and may only be imposed by the court when the act or omission causing the damage was deceitful (*doloso*) or with wanton disregard for the life, safety and property of another person. Further, the New Code’s Statement of Motives explains that punitive damages must be awarded by way of exception and subject to judicial discretion.

##### **Liability of Parents – Administration of Childrens’ Property**

Articles 635 and 636 of the New Code regulate the parents’ administration of their children’s property. Pursuant to Article 635, having demonstrated that a parent’s administration was negligent, incompetent or harmful to his or her child’s property, the court may take the necessary measures to ensure the protection and integrity of the property.

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If a child's property is lost or deteriorated due to his or her parents' deceit, fault or gross negligence in the administration of such property, Article 636 provides that the administering parent will be liable for any damages suffered by the child.

### **Products Liability**

The New Code codifies the products liability doctrine adopted and developed over the years by the Puerto Rico Supreme Court's jurisprudence concerning manufacturing, design and failure to warn or instruct defects. The New Code also adds new rules.

For example, Article 60 provides that, when a product causes damages in Puerto Rico, the person injured may choose between the legal remedy provided under Puerto Rico law or under the laws of the jurisdiction where the product was manufactured, designed or purchased.

Article 1542 of the New Code further provides that any person involved in the chain of distribution of an unreasonably dangerous product due to its manufacture or design will be liable for any damage caused by the product, even if the person in the distribution chain was not negligent or at fault.

### **Strict Liability** (*Responsabilidad Objetiva*)

The strict liability doctrine, which imposes liability on a person even if that person was not negligent or at fault, was extended to healthcare institutions by the New Code. Article 1541 provides that a healthcare institution will be strictly liable for any damages caused by persons (i) who operate exclusive health services franchises in the institutions; or (ii) who have been entrusted by the institutions to treat patients who visit the institution without a referral from their primary care physician.

This provision is likely to spur litigation, particularly concerning the scope of some of its operative terms, such as "*exclusive health services franchises*" and persons "*entrusted with the treatment*".

### **Vicarious Liability**

Article 1540 of the New Code codifies the norm established through case law that provides that the owner of a motor vehicle will be liable for any damages caused by a person authorized by such owner to use the vehicle. In addition, it

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introduces a new a modality of vicarious liability under which a principal will be liable for any damages caused by an independent contractor engaged by the principal to perform an unreasonably dangerous activity. It further eliminates the Previous Code's provision making the Commonwealth vicariously liable under the same circumstances and conditions where a private person would be vicariously liable.

Article 1540 also codifies certain rules governing the relationship between the persons subject to the vicarious liability doctrine. For example, parents, legal guardians and teachers, respectively, will not be liable for their children, wards or students' acts or omissions if they demonstrate that they exercised the diligence that a reasonably prudent person would have exercised in their circumstances.

In addition, Article 1540 provides that employers (public or private), principals and owners of motor vehicles held vicariously liable for the acts of their employees, independent contractors and representatives will be able to recover any amounts paid on their behalf.

### **Interruption and Suspension of Statutes of Limitations**

The New Code recognizes new ways to interrupt limitation periods ("Periods") and codifies the concept of suspension of such Periods. Pursuant to Article 1197 of the New Code, a creditor may now interrupt a Period upon the filing of an administrative or arbitration claim against a debtor and, in disciplinary proceedings, upon the claimant's filing of the complaint.

In addition, Article 1198 provides that Periods may be suspended: (i) when a disabled person is not under the custody of his or her legal guardian; (ii) between spouses, during the matrimony; (iii) between minors and their parents or legal guardians during the legal custody or guardianship; and (iv) in several other instances. Pursuant to Article 1199, Periods may also be suspended by law or by a decree issued by competent authority on account of a natural catastrophe or other extraordinary reason.

Furthermore, Article 2101 of the New Code prohibits and voids any agreement prospectively waiving the right to invoke time bar as a defense if the applicable Period has not yet elapsed (the "Prescription Defense"). However, Article 2101 allows waiving the Prescription Defense when the applicable Period has already elapsed.

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### **Judicial Deposit**

Article 1137 of the New Code adopts a new rule regarding judicial deposits, also known as consignment. Consignment is a judicial proceeding intended solely to secure, in the possession of a court, a sum due to a party. Pursuant to Article 1137, if consignment takes place because the creditor refuses to accept payment and the court determines that the consignment was appropriate, the creditor will be subject to an economic sanction of up to 5% of the consigned sum in addition to any legal fees and expenses and any damages caused.

### **II. Other Sources of Obligations**

The New Code includes other sources of obligations by adopting, in a modified way, some provisions of the Previous Code and incorporating doctrine established by the Puerto Rico Supreme Court, such as: (i) spontaneous voluntary agency (*negotiorum gestio*), (ii) undue payment, (iii) unjust enrichment, and (iv) unilateral declaration of will.

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