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# The 2020 Revision of the Puerto Rican Civil Code: A Brief Explanation of Major Changes

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# THE 2020 REVISION OF THE PUERTO RICAN CIVIL CODE: A BRIEF EXPLANATION OF MAJOR CHANGES

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ABSTRACT

*Puerto Rico is with Louisiana one of the two United States jurisdictions having kept the civil law tradition as the bedrock of its private law. One of the last Spanish colonies, Puerto Rico became a US Territory in 1899. The Spanish Civil Code was replaced by a Puerto Rican Civil Code in 1930. A revision process spanned over a period of 23 years, ending with the adoption of a new Civil Code in 2020. After a presentation of the revision process, this report presents and discusses the changes and innovations in family law, property, contractual obligations, torts, and successions, also discussing the transitory provisions. It focuses on changes. The report also shows that in order not to weaken the US inspired commercial*

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*legislation, Spanish-speaking Puerto Rico resisted a contemporary trend of merging the Commercial Code into the Civil Code.*

Keywords: Puerto Rico, Civil Code, Code Revision, Codification, Private Law, Civil Law, Commercial Law

## I. INTRODUCTION

Some 23 years after formally starting its Civil Code revision, Puerto Rico adopted a new code on June 1st, 2020. The pages which follow will attempt to explain what changes the Civil Code of 2020 brought about. Some changes were significant, some were minor, and others were cosmetic. A general assessment would probably conclude that the new code generally brought welcome but timid changes to the existing law, which might reflect the fact that Puerto Rico is a relatively conservative society.

The goal of this report is to explain—not to justify, applaud or condemn—the revision. Much of what at first was thought would be revised remains unchanged and will not be modified, at least soon. Legal revisions, be they of major codes and constitutions, or of minor municipal ordinances, rarely achieve the goals that were initially stated. This is especially the case after public debate. The initial proposals proved to be ill-advised, too hard to achieve or out of sync with current societal values. Firstly, there will be a summary of the revision and drafting process, secondly, there will be a discussion of some of the main innovations in the code, and finally, the report will address some of the ongoing efforts to revise the new code, initiated just a few months after its adoption.

Some confusion exists as to Puerto Rico itself, which should be explained. Often, people are confused as to its political status, and its place within US and Latin-American culture. Puerto Rico was discovered by Spain in 1493 in Christopher Columbus' second voyage to what eventually became known as the Americas. Though it is important to recognize that the island was not uninhabited at the time

the Spanish colonizers had arrived, the native Taino who lived there have essentially been wiped out. In modern times, the main groups of people that live on the islands are descendants from Spain and Western Africa, a reminder of Puerto Rico, and the Spanish Empire's involvement in the Atlantic Slave Trade. Puerto Rico remained one of Spain's last colonies in the Americas throughout the 19th century. Despite most other Latin-American countries gaining their independence from Spain earlier on, Puerto Rico and Cuba remained as the last remnants of what used to be one of the largest colonial empires in history.

Spain was late to the Civil Code adoption race. France, Louisiana, and most of Latin-America and Europe, had already adopted a Civil Code for their respective nations in the early and mid-19th century. It was not until 1889 that Spain adopted its very first Civil Code, a code that was also meant to apply to their colonies. This code became the framework for what Puerto Rico would use as its main source of law for when it developed its own Civil Code later on. A decade later, Puerto Rico, Cuba, and the Philippines, as well as some other Pacific territories, were taken over by the United States as part of the Spanish-American War of 1898 or of events closely linked. In the Treaty of Paris of 1899, Cuba became a US Protectorate, and Puerto Rico and the Philippines became US territories. Though Cuba and the Philippines gained full independence from the US later in the 20th century, Puerto Rico remains the sole, predominately Spanish-speaking, jurisdiction in the United States.[1]

With that language distinction, there is also a cultural distinction, as Puerto Ricans are inherently different from the rest of the American, Anglo-Saxon culture. When the time came to organize the local government and decide on what would become of the territory, many legal challenges arose. Firstly, the Spanish Civil Code, which at the time had been in force for a little over a decade, was

1. Olivier Moréteau & Luis Muñiz Argüelles, *Multicultural Populations and Mixed Legal Systems in the United States: Louisiana and Puerto Rico*, 70 (Supp. 1) AM. J. COMP. L. 1 (2022).

left as the main source of law in the island. This code was modified to account for differences in American and Spanish culture, as well as to ensure there were no constitutional conflicts with the US. The first version of this revision process became known as the Puerto Rican Civil Code of 1902.[2]

This adaptation of the Civil Code, as well as a series of Supreme Court decisions collectively known as the "Insular Cases" (*Casos insulares*),[3] concluded that Puerto Rico was to be an unincorporated territory. That is, a territory that—unlike all other territories acquired in the US western expansion—did not necessarily need to become a state in the nation. This decision is still constantly debated in Puerto Rican society. The goal of the US mainland at the time was to establish and strengthen political and military control. This is why the decision to develop a mixed legal system was made. In essence, the legal system became predominately civil law-derived in its private law aspect, and common law-derived in its public, as well as its commercial law aspect.

The Civil Code of 1902 was revised and updated in what became the Puerto Rican Civil Code of 1930. Though not much was changed from the previous edition, the code was the primary source of private law in Puerto Rico until the new, 2020 edition was adopted. The 2020 Civil Code revision did not bring about drastic changes, some of the code articles can be traced all the way back to the Spanish

2. For a more detailed explanation of Puerto Rican legal history, *see* VERNON PALMER, MIXED JURISDICTIONS WORLDWIDE: THE THIRD LEGAL FAMILY (2d ed., Cambridge U. Press, Cambridge 2012). The 1889 Code was slightly modified in 1902 to reflect the new political reality (nationality articles were repealed, as they were now ruled by Congressional statutes, and divorce, decreed by a US military order, was formally introduced). Further changes were made in the 1930 code revision, but most legislative changes were made to commercial statutes, many of them copied from US unform statutes which in the mainland led to the adoption of the first version of the Uniform Commercial Code (UCC) in 1952.

3. Downes v. Bidwell*,* 182 U.S. 244 (1901), Balzac v. Porto Rico*,* 258 U.S. 298 (1922); De Lima v. Bidwell*,* 182 U.S. 1 (1901), etc. There are about a dozen Insular cases; these are some of the most relevant to the topic.

Civil Code of 1889 as verbatim copies of it. This has led some to question the purpose of the revision.

Often doubts exist as to the meaning of some amendments. Some say the goal was merely to use modern Spanish language; others that the goal was far more reaching. Normally, one would go to the legislative history of the bill, and to prior laws that served as model for the specific change. Although this is certainly the case with the 2020 code, the explanations one often finds—especially in the House Civil Justice Commission Report (*Reporte de la Comisión Jurídica Civil de la Cámara*), hereafter, the House Commission Report—are very ambiguous. At times, one finds reference to scholarly journals and treatises that support conflicting ideas, and at other times one finds general comments that shed little light on the meaning of the new articles. Although discussion in the House Commission were often deep and lively, little of that is reflected in the report and one often finds no guidance as to how the courts should ascertain the legislative intent.

It is perhaps telling that the House Commission Report, which was supposed to guide the elected representatives and senators as to why a certain rule was proposed, was filed seven months after—not before—the final House and Senate votes were issued. This was two days before the end of the calendar year, and four days before newly elected senators and representatives were to swear office. Obviously, given that the legislators did not even have access to it, the House Commission Report was not a guide for elected officials on why they should vote for or against certain rules. It was issued merely to comply with protocol rules. That report does give some guidance, but certainly not enough, and the legislative intent will often be hard to ascertain.

## II. THE HISTORY OF THE REVISION AND DRAFTING PROCESS

Formal revision efforts started in August 1997, with the approval of Law No. 1997-85. This law created the Joint Permanent Commission for the Revision and Reform of the Puerto Rican Civil Code (*Comisión Conjunta Permanente para la Revisión y Reforma del Código Civil de Puerto Rico*),[4] hereafter 1997 Commission. It was obvious from the start that a full code revision would not be possible in the less than three years from the statute's adoption to the end of the legislative session, hence the "permanent" nature of the commission, which meant it would continue in its investigative role after the 2000 legislative year ended. Since it was a joint commission, it was cochaired by two elected officials, the head of the House Civil Matters Judiciary Commission and the chairman of the Senate Judiciary Commission.

Inspired by suggestions from French professor André Tunc and others, the plan was first to revise, in other words, to take a new look at the existing code and related rules to determine which should be kept, and which required revision or substitution.[5] Obviously, some things warranted change, and both major and minor statutory and judicial reforms had already taken place in the more than one hundred years since the 1889 Spanish Civil Code was made applicable to Puerto Rico, Cuba, and the Philippines. For example, in 1963, the Puerto Rican Supreme Court held in the *Ocasio v. Díaz*[6] case that filiation rules granting children born in wedlock more rights in their parent's estates were impermissibly discriminatory and thus

4. Very few of the documents examined in the revision process are in languages other than Spanish. The code itself has not been formally translated.

5. In GENEVIÈVE VINEY, LE DÉCLIN DE LA RESPONSABILITÉ INDIVIDUELLE p. ii. (L.G.D.J. 1965), Professor Jean Louis Baudouin, who was Vice President of the Quebec Civil Code Revision Office, emphasized that often, much of the previous law is retained, even if the exact language changes. *See* Jean-Louis Baudouin, *Quelques perspectives historiques et politiques sur le processus de codification*, *in* CONFÉRENCES SUR LE NOUVEAU CODE CIVIL DU QUÉBEC 17-18 (Yvon Blais, 1992). *See also* GERARD CORNU, LA LETTRE DU CODE A L'ÉPREUVE DU TEMPS, MÉLANGES OFFERTS À RENÉ SAVATIER 157-181 (Dalloz, 1965).

6. Ocasio v. Díaz, 88 D.P.R. 676, 727 (1963).

nullified a number of code articles adopted during the latter part of the Spanish colonial rule. In the 1970s, statutory changes granted women equal administrative status in the marital estate. Court rulings, some isolated statutes and administrative regulations had also modernized much of family law, consumer law and contract law doctrines regarding no fault mutual consent divorce, unconscionability, changed contractual conditions like the doctrine of *rebus sic stantibus*, and other rules. Although the formal language remained unchanged, the law was more attune with general theories adopted elsewhere than what would at first appear. In the early part of the 21st century, new adoption and child custody statutes were adopted, and spouses were allowed to change the matrimonial regimes under which they were originally married. Thus, there was some consensus of what should be modified. However, that consensus did not cover certain areas, such as secured transactions and government contracts.

The 1997 Commission adopted guidelines regarding what was to be examined, and what procedures were to be implemented for the revision effort. The procedural model was patterned after the Quebec Civil Code Revision Office (*Office de Révision du Code Civil*)[7] and the guidelines that preceded the Dutch revision efforts.[8] Unfortunately, the announced procedure was often ignored, which led many of the originally identified revision topics to be left aside. In depth studies were, however, conducted and published, and are available through the Office of Legislative Services website

7. *See* FRATICELLI TORRES ET AL., EL CÓDIGO CIVIL DE 2020: PRIMERAS IMPRESIONES (Fideicomiso para la Escuela de Derecho, 2021). For a more detailed guideline, *see* Luis Muñiz Argüelles, *La Revisión y Reforma del Código Civil de Puerto Rico*, 59 REV. COL. ABOG. P.R. 149 (1998). The article is a slightly expanded version of the Commission resolution, and was preceded by an initial proposal, published some years earlier in Luis Muñiz Argüelles, *Propuesta para un mecanismo de revisión del Código Civil de Puerto Rico*, 54 REV. JUR. U.P.R. 159, 160 (1985).

8. Joseph Dainow, *Civil Code Revision in the Netherlands: The Fifty Questions*, 5 AM. J. COMP. L. 595 (1956).

(*Oficina de Servicios Legislativos*), hereafter OSL.[9] The University of Puerto Rico Law School and the OSL have digitalized and are in the process of publishing much of the documents that were damaged after extensive flooding due to the 2017 Irma and María hurricanes. These hurricanes hit the island within days of each other, and caused damages beyond what living Puerto Ricans had ever witnessed.

After some time, legislative interest in the process waned and progress was seen as too slow and costly. Finally, funding for the 1997 Commission was cut and, although the Commission remained in the books, for all practical purposes, it and the civil code reform were all but dead. It was not until 2016 when, on the last day to file new bills, Senate Judiciary Commission Chairman Miguel Pereira filed Senate Bill 1710. The new bill was based partly on suggestions made by various members of the 1997 Commission. Because of this, the effort to revise the code took on a new life. Contrary to what had happened earlier, even though academic and public input was limited, Pereira held public hearings regarding the revision efforts. For the first time, a significant number of academics expressed their views over the proposals. Although the bill was never brought to a floor vote in either the Senate or the House, it did become the blueprint for the House Civil Law Judiciary Commission to work on until 2020, when Bill no. 1654 became Law 55-2020, the new Civil Code.

Initial goals were spelled out in a resolution adopted in 1998. Contrary to what many have stated was the political unification and national identity goals of the early and mid-19th century codifications, the stated aim of the late 20th century codifiers was more of providing a coherent and comprehensive tool of social and economic organization. Overall, the goal was to reach a codification that would encompass scattered statutes and court mandated rules

9. Oficina de Servicios Legislativos, Sistema Único de Trámite Legislativo (SUTRA), available at https://perma.cc/62HW-9TPN. Bills mentioned later in this report— such as the Senate Bill No. 1710 of the 2013-2016 legislative term and the House Bill 1654 of the 2017-2020 legislative term—can be downloaded from this very user-friendly website with its own tutorial.

into a relatively coherent group of legal mandates accessible in a simple to use statute.

As it turned out, nationalistic politics did play an important role in the process, although perhaps subconsciously. In analyzing what went on, University of Puerto Rico Law School professor José Julián Álvarez has said that the fact that some of the initial late-20th century Western civil code revisions have taken place in Quebec, Catalonia and Puerto Rico, reflect the aim of these jurisdictions to reassert their cultural uniqueness *vis à vis* another country: English-speaking Canada, the United States, and Spain, countries that sometime earlier had conquered them. This is made explicit in the very first article of the 2020 Puerto Rican Civil Code, which states that the new code will be interpreted ". . . pursuant to the techniques and methodology of the civil law, so as to protect its character,"[10] a clearly nationalistic phrase with little legal significance as legal methodology and techniques are part of a society's culture and not learned or dictated by any legislative body.

The revision process was to begin with an examination of existing law, as modified by special statutes and case law, and an evaluation of what needed to be modified. It also evaluated the extent of the proposed changes, and whether they were merely grammatical, or substantive. Following this, when substantive changes were to be carried out, the new proposals were to be drafted to avoid contradictions and lacunae and prevent conflicts with federal or international

10. The new code has not been formally translated; all translations are the author's. We personally believe that the inclusion of this article, as well as article 2—which states cases solved by the Supreme Court—will merely *complement* the other legal sources, is more a recognition of the fear Puerto Ricans have of being assimilated into the US legal world than a legal rule as such. In the first place, legal techniques and methodologies are part of a cultural tradition and not susceptible of being enforced as legal norms. Secondly, the fact that publishers throughout the world, in both common law and civil law countries, make immense amounts of money printing or publishing court decisions is more than needed proof that case law is also a source of law that all lawyers use. There is little doubt an attorney would rather read a first-rate novel or poetry book than a court case, were it not for the fact the latter will help him or her win a case and the first will provide the reader with a necessary, but not economic advantage.

statutes and treaties. During the 20th century, Puerto Rico adopted new statutes regarding adoption, condominium rights, consumer protection, exempt property, land reforms, labor, and other statutes often not adequately correspondent to code articles. Property, secured transactions, and intellectual property were registered in a wide array of government offices, so legal needs were often met on an *ad hoc* basis. The goal was to consult with many players in various committees, chaired by university professors, as was done in Quebec under the guidance of Paul André Crépeau. The purpose was to achieve consensus following an inclusive discussion process, while keeping in mind that many problems would later again be fought out in the legislature.

Unfortunately, for a variety of reasons, this was not done. Each committee chairman personally gathered the information he or she felt was necessary, with little interaction amongst them or with actors in the greater society. As perhaps should have been expected, some of those outside the process felt threatened and prepared to combat what they feared would be proposed changes. At one moment, for instance, the Catholic Church was actively preparing its opposition to what it anticipated could be proposed family law amendments. This happened through at least five different pressure groups, ranging from the Episcopal Conference where all island bishops belong to, to informal groups which were in alliance with fundamentalist protest groups with which they were normally at odds. An attempt to get judges to cooperate with the revision effort failed when the 1997 Commission chairwoman—instead of requesting informal meetings—chose to formally summon the Chief Justice of the Supreme Court. The Chief Justice was a former legal counsel to the previous governing party, later in opposition. She summoned him to a public hearing headed by the chairmen of the joint House and Senate commission, and the Chief Justice feared he would be questioned over the need for granting the Judicial Branch more funds, as he had requested. The Chief Justice did not comply with the summons and issued instructions to all judges that they must first

seek his permission prior to sharing their suggestions with the Joint Civil Code Revision Commission, which essentially closed the door to the flow of information.

Yet many excellent studies were made, that are available through the OSL website, with so much of the groundwork laid out for latter commissions to work on, particularly with regards to family and successions law. The Puerto Rican Academy of Law and Jurisprudence (*Academia Puertorriqueña de Legislación y Jurisprudencia*) also cooperated in suggesting its draft revision on conflict of laws be made part of the new code. These three areas of law—family, successions, and conflict of laws—are the areas where one finds most changes. Obligations, property law and torts were revised and, although some important changes were made, these changes are generally less dramatic than those previously mentioned. Very little was done regarding integrating procedural, evidentiary, commercial statutes, or government contract rules into the new code.

Early on, a decision was taken to adopt what is known as a *modern* code structure. This meant steering away from the French Civil Code structure and adopting a German-type, more theoretical model. There was some opposition from those who felt the existing code—essentially the French-inspired 1889 Spanish Civil Code—had proven useful and thus, that adoption of a revised code would be easier. To a large extent, the advocates of the more *modern* structure won, and articles dealing with persons (both natural and juridical), domicile, capacity, emancipation, tutorship, absence, presumption of death, animal rights (a new category distinct from things in general[11]), obligations and contract formation, validity, and transmission were placed in Book 1. Prescription and preemption,

11. The term "animal rights" is used for lack of a better term but is not technically correct, as articles 232 to 235 and 1157 not only do not regulate all aspects of the law as it pertains to animals, but also only state that those domesticated or domesticable animals not used for commercial purposes may not be seized in contract or family cases and should be protected by the courts in ways which recall child custody rules.

however, were placed in Book 4, the book that deals with obligations, despite the fact that time affects all legal relationships: contractual, property, or family in nature.

An initial decision to incorporate Commercial Code articles and merchant law statutes into the code was rejected. This was mainly due to informally voiced opposition from business lawyers, who warned that any attempt to vary existing rules would be seen as an effort to repeal the adoption of the US Uniform Commercial Code articles that were already adopted.[12] The reasoning for these decisions will be more adequately elaborated on later.

Conflict of laws provisions were also left as part of the *Preliminary Title.* These do not deal with problems of jurisdiction, *forum non conveniens,* recognition of foreign judgements, international procedural cooperation in matters—such as provisional remedies—or serving of process. This reflects the pull of the Spanish Civil Code, which had four articles on choice of law in its 1889 version. Of these, three were retained after the 1902 and 1930 code revisions in Puerto Rico. There was a suggestion to adopt a comprehensive statute on Private International Law, however it was not adopted by the Legislature. Although, the 1997 Commission had favored the idea that one of the code's books was made to deal with all aspects of conflicts, as was done in the new Quebec Civil Code. Rules on the recognition of foreign judgements and on *apostilles* are found in Rule 56 of the Puerto Rico Rules of Civil Procedure. These are supported by US ratified treaties, case law, and US constitutional and federal jurisdiction rules (both US and local). They help determine if the court has jurisdiction on a certain case.

The conflict of laws rules—articles 30 to 66—focus on the applicable law to a given case. The articles were drafted with recommendations from professors Arthur von Mehren and Symeon Symeonides, who worked on a revision of the old Spanish Code and

12. Puerto Rico has adopted all UCC articles except articles 2 and 2-A, although some have not been revised as suggested by the National Conference of Commissioners on Uniform State Laws.

on some special statutes adopted during the 20th century.[13] Major changes to their proposal reflect a reluctance to delegate to judges the task of determining the applicable law. The new code adopts a more Continental European methodology of having the legislature establish which will be the applicable law, unless that law is so irrelevant and unjust that an escape clause—such as article 66 of the new code—may be invoked. Overall, the new rules favor the validity of marriage, contracts and wills. They are in favor of children receiving full filiation rights, and promote the protection of secured creditors, as well as freedom of contract. Regarding civil liability or torts, the code adopts the US choice of law rules derived from the 1963 *Babcock v. Jackson*[14] decision. The doctrine of *Renvoi* is eliminated, and prescription rules are those of the jurisdiction whose laws are deemed to be binding on the rest of the case: consumers, employees, and tort victims are generally favored.

Except for the conflicts of law provisions, the initial code articles in the *Preliminary Title* change little regarding the prior law, even though it incorporates some special statutes dealing with how time is measured, the legal value of case law, and the like. One major and very welcomed change, was the adoption of article 8, the *vacatio legis* article, which states that unless stated otherwise, no statute will come into effect until after 30 days of publication.[15]

The *Preliminary Title* is followed by six books: (1) Juridical Relationships: Of Persons, Animal Rights, Of Things, and General Contract Law (juridical facts, juridical acts, and judicial agreements or transactions); (2) Family Law; (3) Property and Real Rights; (4) Obligations; (5) Contracts, Special Contracts, and other Sources of Obligations; and (6) Successions Law. Transitional Articles and

13. A new effort is being made by the Academy of Legislation and Jurisprudence (*Academia de Legislación y Jurisprudencia*) to amend the code and reinstate the judge-controlled statutes rather than rely more on legislative guidance. Its initial report was published in mid-2023.

14. Babcock v. Jackson, 91 N.E.2d 279, 12 N.Y.2d 473 (N.Y. 1963).

15. The code itself was effective 180 days after its publication, a time span many felt was too short given its complexity and the fact few continuing legal education courses could be offered during a time of global pandemic.

Provisions are included at the end, from articles 1806 to 1817. The internal structure of these books is very similar to that of other civil codes, although at times there is less detail than in recent versions of the Quebec or Louisiana codes. For reasons having to do with US Federalism, topics such as Maritime Law and Bankruptcy are left out of the code.

## III. Changes and Innovations in the Civil Code

### *A. Changes and Innovations in Family Law*

Most of the 2020 revisions dealt with family law, which had already been the object of reform in the 1970s when women were recognized equal rights with men in the administration of matrimonial property. The 2020 changes dealing with persons appear in Book 1, and others dealing with same sex marriages, divorce and matrimonial regimes appear in Book 2.

The code incorporates legislative reforms adopted during the 20th and early 21st century, as well as changes made by local and federal court decisions. These statutes—particularly those adopted by the Puerto Rican legislature regarding the adoption process, admittance of changes to matrimonial regimes after the marriage celebration, the power given to notaries to celebrate marriage and administer divorce—came about shortly before or soon after the revision process started. They belong to the revision process because debate as to their usefulness was part of the general revision effort. This is also true of other major changes to the law of succession, such as those increasing testamentary freedom as well as the share allocated to the surviving spouse.

Other changes do reflect a new vision of the family enhancing the traditional family support, called "the solidary family" *(familia solidaria).* These affect both the property held by spouses before marriage and the rights on the succession of the deceased, as explained below. They are the result of a conscious debate to modify

legal rules which might not have come about had a revision effort not been performed.

Although there was some debate as to whether the recognition of the rights of the unborn child might erode a pregnant woman's right to an abortion, article 70 of the new code specifically states that this is not the case.[16] The Civil Code grants these rights and it is generally felt that despite the Supreme Court's decision in *Dobbs v. Jackson Women's Health* Organization,[17] abortion in Puerto Rico is protected by article II §8 of the Puerto Rico Constitution.[18] This was reaffirmed in *People v. Duarte Mendoza,*[19] a case where the Puerto Rico Supreme Court interpreted the right to an abortion for purposes of "preserving the life and health of the pregnant person" to include both physical and mental health.

Theoretically, the debate is still open, and some feel that if the Puerto Rican Constitution is amended, abortion might be forbidden, but it is doubtful this will occur. One author, Carlos Sagardia Abreu, has stated that the decision is,

> a great setback in the historical role of the United States Supreme Court as a granter of individual liberties set out to protect all citizens in the course of their lives in the nation, and in the pursuit of happiness that the Constitution recognizes as crucial in the American social experiment.[20]

Article 74 lists the essential rights of persons, not limiting them to those spelled out in the new code, and accepting that through legislation or case law, other rights might be recognized.

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16. The article states that this recognition ". . . in no way reduce the constitutional rights of a woman to take decisions regarding her pregnancy." [. . . *no menoscaban en forma alguna los derechos constitucionales de la mujer gestante a tomar decisiones sobre su embarazo*].

17. Dobbs v. Jackson Women's Health Organization*,* 142 S.Ct. 2228 (2022).

18. P.R. CONST. art. II, § 8: "Every person has the right to the protection of law against abusive attacks on his honor, reputation and private or family life."

19. People v. Duarte Mendoza*,* 109 D.P.R. 596 (1980).

20. Carlos Sagardia Abreu, *Dobbs, Supremo asedio de la libertad individual,* MICROJURIS AL DIA (June 28, 2022), available at https://perma.cc/FK4Y-C5TG. The original quote is in Spanish, and the translation is provided by the editor.

Article 77 now allows organ donations and transplants, provided these are not profit based. A proposal in the 2012 Senate bill to allow a terminally ill patient to end his or her life, known as the "right to die with dignity" was rejected. A similar provision was rejected in the legislative joint commission. However, there is an effort to reconsider the matter as part of a new code revision started in 2021.

A proposal to authorize the medical director of a hospital or health institution to consent to treatment of an unconscious person if the patient's parents, spouse, or other legal guardian are unavailable, and the medical director fears the patient's life or health is in danger, was long debated but not approved. The right would have conveyed the obligation to try to locate the relative or guardian in the shortest possible time. This would have involved calling on the help of the police and other officials. It was believed it would save crucial time, for a judicial authorization would not be essential to provide such treatment.

Article 97 retains the legal age of majority at 21. This is in part because of the fear of losing federal funds for highway improvements, for example. Here too, there is an attempt to reexamine the rule, as part of the revision of the revised code.

Even when the legal age of majority is set at 21 (based on a Quebec Civil Code revision project), article 107 provides that some contracts entered into by minors over 18 can be considered legally binding. In those cases, the minor must be deemed sufficiently mature to enter into the contract and the contract cannot be one that normally requires consultation with a parent or guardian.

In practical terms, if the minor was given the means—money, credit cards, or the like—to enter into contracts such as a lease for student housing, the purchase of clothing, books, and other items, and the amounts paid are deemed to be reasonable, the contract will be upheld. Although article 97 keeps the age of majority at 21,[21] an

21. This means that, according to articles 380 and 381, marriages consented to by minors of even 18 years old without parental approval, and all marriages of persons under 18 years old, even with parental approval, are deemed null.

anomaly in today's world, and though parents retain the support obligations of children up to age 26, article 99 provides that support obligations may extend beyond that age if the child is undergoing uninterrupted and fruitful higher education.

The new rule is part of the code's view of the family as a mutual support venture which extends beyond formal dates or legal relationships. Thus, according to articles 399 and 653 et seq., spouses and former spouses may be held liable for some measure of support. This can even apply to former in-laws, for example, if these were dependent on the spouses' income, as typically occurs when they used to share common quarters. This obligation can be imposed even when the marriage has been terminated by divorce. This concept of "the solidary family," which stems from articles 476 et seq., has ramifications on a former spouse or a widow or widower's claim to possession of what were family living quarters after dissolution of marriage by death or divorce, called the right of *preferential attribution.*

Tutorship was also modified and articles 101, 104 and 107 allow for partial incapacity. This allows the incapable to express him or herself regarding decisions by the tutor. According to article 122, the courts will provide the degree to which such consent is necessary.

Closely related to this is the allowance of extended parental rights when a child reaches legal age but remains incapable. The measure, which appears in articles 109 and 622 et seq. avoids having to claim for official tutorship of an incapable minor when the incapacity extends beyond the 21st birthday.

Rules regarding absence—often thought unnecessary—were also revised. As natural catastrophes, such as hurricanes Irma and María, left several thousand dead, it revealed that some unaccounted persons simply disappeared. If these people may well be dead, there is a chance they simply left leaving no trace. Articles 182 et seq. also simplify and shorten the time span for declaring the absent person dead, and for allowing a divorce from this person.

The following is perhaps the most profound change in family law regard marriage and its dissolution: Article 376 allows for same-sex marriage, pursuant to US Supreme Court decisions.[22] Polygamy was never suggested and not even remotely considered. Some of these changes are the result of adapting US Supreme Court decisions to local law, while following an international trend that might also have triggered this evolution. In any case, resistance to same-sex marriages and the recognition of almost unrestricted abortion rights was consciously made because it was apparent that any opposition would probably be overruled by the courts.

Based on recent legislative changes, articles 392 and 473 also allow for notaries to both marry and divorce people, the latter subject to certain conditions in cases where there are minor, common children, or other incapables.[23] It is also possible, under article 91, for spouses not to share a common domicile. The two main obligations of mutual support and marital fidelity are maintained.

Legal prohibitions for marriage based on physical health reasons were abolished. However, articles 385 and 386 do mandate medical laboratory tests and would allow for annulment should one party keep essential information regarding the test results from the other. The other grounds for annulment are the lack of mental capacity of one of the spouses, or that they are genetically or legally related to each other or to their offspring within certain limits. The main intent is to forbid marriages between uncles and nieces and the like, or for cases where they have been convicted of killing their own, or the other spouse's partner. Marriage bonds with incapables or with

22. There was some early debate as to whether persons of the same sex would be allowed to marry, or if their agreement should be deemed a *civil union*, for example. US Supreme Court decision of Obergefell v. Hodges, 576 U.S. 644 (2015) sealed the debate and led to recognition of same sex marriages and civil unions entered in another jurisdiction. The new code article defines marriage as an institution entered into by two "natural persons" with no reference to sex or gender.

23. Laws No. 201-2016 and 52-2017. Puerto Rico has a Latin or European type notary, which in our case means that all notaries must have law degrees and have passed the general bar exam and a special notary exam.

those declared to be absent may be dissolved by divorce, with proper legal assistance for all parties, but not by annulment.

The new code abolishes all grounds for a fault-based divorce.[24] Article 425 allows only for joint petition to declare the marriage bond dissolved due to mutual consent or irrevocable rupture of the marriage liens. It also allows for one party to establish that the irrevocable rupture has occurred. In the latter case, the only controversy before the court would be if such rupture does or does not exist. While judges, notaries, and ordained ministers may marry, religious annulment—while not forbidden—has no legal consequences, as has been the case since the takeover of Puerto Rico in 1898.

Another rule established in article 455 states that after a spousal separation prior to divorce, debts incurred by one spouse are considered exclusive and not matrimonial community obligations. This, of course, presupposes that the spouses were married pursuant to the community property regime, as is the case where no marriage contract has been agreed to.

Article 488 retains a recent change[25] that allows spouses to modify their matrimonial regime or agreement even after the marriage has taken place.

A suggestion to automatically modify the alimony or support obligation pursuant to increases or reductions in the consumer price index—aimed at avoiding recurring court procedures to adjust these obligations as prices and salaries increase—was not incorporated into the new code. The variations would have been subject to court revision, if deemed unfair. Another suggestion to have courts mandate security on the support obligation to simplify collection was also not incorporated into the code.

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24. The prior law had some 12 grounds, most of them fault based.

25. With Law No. 62-2018, changes in the economic aspects of the marriage arrangement must be registered in a special registry if they are to have any legal effect on third parties.

Filiation rules adopted in a recent law were kept and are similar to those in force in the US, Europe, and Latin American countries.[26] In the wake of the *Ocasio v. Díaz* case, cited earlier, Puerto Rico has maintained a steadfast rule that children born out of wedlock have the same rights as those born in wedlock. This applies to children whose filiation is established through medical tests, traditional judicial methods, or adoption, regardless of their nationality or place of birth.

The new code also allows for name and gender changes to be recorded. However, some debate has brought to question whether the fact that the original certificate is not held permanently unavailable to anyone, violates constitutional rights of the affected party. Proposals to revise the statute are now being discussed in the Bar Association and the Legislature.

One of the goals of the new code was to create a uniform registry of both natural and legal persons.[27] Articles 216 and 222 require—as a matter of public policy—that all legal persons be registered in a special registry to be created in the State Department, or in a preestablished legal registry. The result of non-registration is that the entity would not have a legal personality or, to put it in another way, that the officials and shareholders would not benefit from limited liability and could not enter into contracts.

There is currently no such special registry and, while most entities could claim that they are registered in the State Department Corporations Registry or others, there seem to be significant lacunae. The State Department is currently working at creating such a

26. The basic adoption statute is Law No. 61-2018 and is complemented by Law No. 223-2011 on the protection of minors subject to custody.

27. The 1997 Commission guidelines called for a creating of an integrated registry to comprise all persons, natural or legal (including trusts, banks, financial institutions, insurance companies, cooperatives and other legal entities), all vital statistics, all property law claims, all secured transactions and all commercial registries. Such entities exist elsewhere—Uruguay being a case in point—and modern electronics make the registry viable. The suggestion was rejected, and the legal mandate was limited to creating a unified natural and legal person registry.

registry, also integrating all existing registries electronically or physically.

*B. Changes in Real Rights, Property Law, and Rights over Things*

There were few changes regarding things and real rights in property law. The code respected doctrines of an unlimited number of rights under the *numerus apertus* doctrine. Even when *emphyteusis* and other annuities running with the land (*censos reservativos* or *consignativos*) are no longer statutorily recognized, nothing prevents parties from establishing rules whereby rights over things may be valid against all, regardless of whether they were part of the contract that created them or not.

The old 1930 rules establishing that delivery (*tradición*) occurs if real rights implying possession are involved was also kept, in article 797.

Article 761 purports to expand rights to property through accession but adds little in practice. The article states that a builder in good faith may claim title even if he built exclusively on land belonging to a third party, and not only partially on this land and partially on his own, as before, but requires that the construction takes place after acquiring all legal permits, which in practice means that only isolated cases may qualify. Indeed, the Government Buildings Permit Office usually verifies thoroughly that the applicant holds a legal title or has been granted the right to build by the owner, who must generally endorse the construction proposals.

The provisions on usufruct (articles 877 et seq.) were slightly revised. A number of special usufructs rarely used over the past century (eg, mines, petroleum usufructs) or of little use nowadays (livestock and sugar cane field usufructs) have been eliminated. The obligation of inventory and surety payments (*fianzas*) is also eliminated unless required by the parties (article 920). It is expressly provided that parties may, by contract, create these rights, should they wish to, thus exercising their right to create real rights not spelled

out in the law. To the surprise of many, use and habitation rules were revised and are part of the legal claims that surviving spouses and divorced parties may invoke. These rules are ambiguous, and courts must fill the lacunae.

Although articles 991 et seq. somewhat spell out in greater detail some real property security rights, such as pledges and antichresis, no effort was made to modify or incorporate secured transaction rules copied from the UCC in Law No. 208-1995, which is specifically mentioned in article 1000.

Some special statutes are now in the code at least by reference. They include those dealing with moral rights (Law No. 55-2012) and condominium rights, now governed by statute 2020-129, adopted some weeks after the new Civil Code; timeshare, water and mining rules are also mentioned the code, at articles 871 et seq. which refer to special laws.

Although the annuities running with the land *(censos)* are expunged from the code, air or surface rights—as regulated by the Mortgage Law No. 210-2015—are kept, and if a condominium is built on land leased or subject to these surface rights, the landowner must forever renounce to all claims based on violation of the lease or surface rights contract, which in practice means that the land has been in effect sold to the condominium developer. This also closes the door on arrangements valid in other jurisdictions, such as Spain, France, Argentina, Quebec and the US such as those stemming from leases with the right to build or *baux à construction*. The fear, not shared by the author, was that consumers might be tricked into thinking they were acquiring perpetual property rights when only buying temporal rights.

Options to buy, rights of first refusal (*tanteos*) and redemption rights *(retractos)* are regulated in more detail than previously though with little change. The time allocated to exercise these rights remains very short, previously 7 to 30 days, now more generally 30 days, so that they are seldom used, as banks and financial institutions rarely have the time to evaluate loan requests in this time span.

An effort was made to prevent certain things from being seized, but it remains to be seen how the categories listed in article 239 are to be protected from judgement and other claims. The article states that things having environmental, historic, cultural, artistic, monumental, archeologic, ethnographic, documental or bibliographic value are not subject to private claims (*están fuera del tráfico jurídico*) and claims as to them will be determined by special laws that have not been passed yet.

The three most noteworthy changes are the following. Firstly, the shortening of acquisitive prescription (adverse possession). Possession of immovables must last 10 to 20 years instead of 10 to 30 years, depending on whether the possessor is in good faith (article 788) and possession of movables must last two to four years instead of three to six years (article 786).[28] Secondly, the requirements for the validation of some contractual or as they were called equitable predial servitudes—now called voluntary restrictions on property rights are changed—and thirdly, the solar and wind energy servitudes are now recognized.

Article 813 codifies earlier jurisprudence[29] in stating that for what was formerly called equitable servitudes to exist they must be reasonable, be part of a general land improvement scheme and be registered. However, it also adds that these servitudes must also be compatible with public policy regarding land use. This opens the door to having land registers deny registration, and thus also deny any value to the restrictions, should they feel public policy forbids them or, as some land planners have held, if they interfere with

28. 1916 Senate Bill 1710 proposed time spans on immovables to be shortened to 5 and 15 years. The 2020 statute, probably through an oversight, kept adverse possession of dividing walls, enclosures, or fences *(medianerías)*, article 861, and servitudes at 15 years, article 945. These articles will probably be amended to unify the acquisitive prescription time spans on all real rights over immovables. Paragraph (e) of article 1205, which states that prescription on real property clams runs out after 30 years is also probably an oversight, given that no real property rights affected by adverse possession may be claimed after the 20-year statutory span decreed by article 788.

29. *See* Colón v. San Patricio, 81 D.P.R. 242 (1959).

legitimate government land use plans. This means that developers would probably have to get prior endorsement from land use agencies for the restrictions to be registered. The legislative process says nothing as to the reasons for the new validation requirement.

Article 963 creates a new legal servitude which seeks to promote the installation of solar panels and windmills in substitution to fossil energy. If the owner has already installed either of these on his land, the neighbor must either refrain from interfering with the usefulness of the new devices or supply the affected party with the energy he has lost. As an alternative, he or she may allow the affected party to pay half of the transfer costs of his devices to the plot where the interference exists, which would normally be a new high-rise building where solar or windmill energy devices are being installed. Article 747 complements this article establishing that no one may be charged or taxed for using solar or wind energy which by nature exists on this land. The goal is to bar public power companies from charging a special surtax on those landowners for not using and therefore not paying for electricity they supply on the network.

Proposals to incorporate basic land use rules into the code were not considered. This in effect means that these laws and regulations retain all the force they had before, but conflicting rules might prevail. The same can be said of cooperative apartment schemes, governed by special laws that sometimes conflict with the general law on condominium or possession to be found in the code. The housing cooperative statutes, for example, allow for eviction of unruly tenants, something not contemplated by condominium or Civil Code rules.

### *C. Modifications in the Law of Obligations and Contracts*

The law of obligations is largely unchanged, except a few significant provisions making some clauses in contracts of adhesions presumptively null.

A change was made in the categorization of obligations. The jurisprudential recognition of a tripartite division of obligations was adopted, the code now distinguishing juridical facts (*hechos jurídicos*), juridical acts (*actos jurídicos*) and juridical transactions (*negocios jurídicos*). Juridical facts will have whatever legal effect the law assigns to them regardless of the parties' intent. Birth, death, perception of income, passage of time, for example, will imply that a party has gained or has lost legal personality, must pay income tax, will have attained legal age or whatever regardless of that party's willingness to be a taxpayer, a fully capable adult, or the like.

Juridical acts, such as negligent or intentional killing—while causing a death that will have legal consequences such as the opening of a succession—will also trigger the liability of the perpetrator according to the law. Intentional or negligent homicide, speeding on a highway, damage to property of a third party, justify the law to impose special obligations to pay fines, serve time in prison and repair the damage.

Juridical transactions have whatever effect the parties wished, within the limits or prohibitions imposed by the law. Thus, a sale will transfer ownership while a lease allows the use of property not owned by the user or occupant. A testator may intentionally transfer title to assets by drafting a will, as long as it does not adversely affect the reserved rights of legitimate heirs, as provided by law.

The new classification is more theoretical than practical and reflects the general theory of contracts. The change was made to acknowledge that wills, for example, will have whatever consequence the deceased wished for, provided they do not infringe on legitimate heir's rights.

As to general contract theory, concepts such as cause, object and consent are retained. No effort was made to reform these as happened recently in France, which did away with cause. Rules governing nullification of contract based on vices or lack of consent were retained.

The jurisprudence regarding *culpa in contrahendo* was codified in articles 1271 and 1272 and rules validating and regulating penal clauses were clarified, with little change, in articles 1257.

One significant change was the inclusion of article 282, which allows for the validation of contracts signed in blank, contrary to earlier jurisprudence. Unless there is proof by the signatory that the other party did not follow the instructions, these contracts will now be regarded as concluded based on a so-called *tacit mandate*, though this concept of tacit authority (*poder tácito*) is not defined in the Code.

Article 299 provides that a creditor winning a revocatory action of a contract for fraud to the creditors' rights (*acción pauliana*) is the primary beneficiary of property reverted to the debtor.

As stated, many changes were merely semantic. Novation, which under the 1889 Spanish Code implied either the extinction of a prior obligation and the birth of a new one or merely a change in the prior one, with no extinctive effects, will now, under article 1182 always convey the extinction of the prior obligation, unless it is established that the parties merely wished to modify it, in which case the word novation will not be used. This does not change the law—since just like before the parties may either merely modify or novate the prior obligation—but brings language clarification.

Several articles, starting with number 1528, spell out the conditions and effects of unilateral declarations of will (*declaraciones unilaterales de la voluntad*), but these will seldom, if ever, be used. They may only affect parties in cases involving offer and acceptance, commercial advertisements and reward offers, which are already regulated in some detail under special regulations or specific Code articles.

There was some debate as to whether there was an increase in creditor's rights of retention of movables or immovable. It is however agreed that the new code recognizes retention rights only where special statutes provide for it, such as in cases known as mechanic's liens, a guarantee of payment to builders, contractors, and

construction firms that build or repair structures. No change was made by the new code.

Major changes affect consumer protection, especially regarding things and rights not subject to seizure by creditors other than lenders (purchase money creditors). Article 1157 modernizes an archaic legislation passed in the 1930s exempting some debtor property from seizure. However, criticism remains regarding inadequate valuation of farm equipment and the total protection of the main home when recorded as homestead (*hogares seguros*) by the owner.

Earlier jurisprudence on unconscionability (*clausula rebus sic stantibus*) was formally adopted in articles 1258 and 1259. Initial unconscionability occurs when one party takes unlawful advantage of another party's needs, age or other conditions and contracts beyond twice or under half of the value received or given. Subsequent unconscionability or the possibility of contract revision for subsequent events requires an aggrieved party to file suit withing six months of that event taking place, a peremptive, not a prescriptive term. In both unconscionability cases, courts may either annul or modify the contract but must opt for modification if the defendant so requests.

Perhaps a more drastic change was the adoption of article 1249, which lists a series of clauses that are "especially susceptible of nullification" in adhesion contracts. The new article fairly targets clauses allowing the drafter of the contract to modify the contract unilaterally or to impose a contract written in a language unknown to the other party. The law specifically mentions Spanish and English, but US jurisprudence has stated that there is lack of consent if one of the parties does not know the language used in the written contract.

The main problem lies with an effort to annul clauses limiting or excluding liability, and to forbid arbitration clauses, although the word arbitration was replaced by a longer phrase addressing any clause "limiting or forbidding a party to sue under any legal procedure or reversing burden of proof."

The phrase "especially susceptible of nullification" (*especialmente anulables*) is problematic because it suggests a hard and fast rule against the use of these clauses and yet does not make them automatically null. Some of these clauses, such as those limiting or excluding liability (article 1249(d)), are deemed essential to mass market offers of consumer goods. The article will probably be interpreted in some of the first cases to reach the Supreme Court.

Efforts to include the formation and performance of special public or government contracts did not come to fruition. This is in part due to a debate as to whether these warranted a special statute or should be part of a civil code, as in the 19th century, the civil code did not apply to governmental entities. These special rules and regulations are nevertheless in force and available in the island's controller website.[30]

Some significant changes took place regarding liberative prescription and peremption *(caducidad)*, though less radical than many vied for. The terms are generally used to signal the impossibility of requesting compliance with obligations while the word *usucapión* is used to point out the loss to a third party of a right due to non-use.

Articles 1190 et seq. provide new clearer rules regarding prescription, peremption and suspension of times to file suit. The Spanish Civil Code of 1889 did not have any peremption rules, which were adopted by Spanish law after analysis of the 1896 German Code, and there was some confusion regarding peremptive terms. Prior to 2020 it was generally held that if the law fixed a term as part of a special statute or in a part of the code dealing with special situations—the contract articles allowing for annulment of contracts for vices of consent or for builder's responsibility in construction contracts—then these were deemed to be peremptive terms. Those fixed in the final part of the code were deemed to be prescriptive. As of

30. Oficina del Contralor, Estado Libre Asociado de Puerto Rico, available at https://perma.cc/6FC9-LJ7Y.

2020, for the term to be peremptive it must be so stated in the law, although there remains some doubt as to whether terms fixed on statutes prior to the new code are prescriptive or peremptive.

Articles 1196 and 1198 provide that prescription does not run unless parties may start legal action against each other. A very early 20th century case had ruled likewise in a case where the Catholic Church sued for payment where the cause of action had been barred under Spanish law because the debtor was a government agency, and suits between government agencies and the Church were barred under a treaty (*concordato*) between the Vatican and the Spanish Crown. It was held that the prescriptive period had not run when the suit was finally filed.

A major change was brought by article 1203 that lowered the prescriptive period from 15 to 4 years in the absence of a special provision. This means that actions for failure to perform a contractual obligation prescribe after 4 years. Unfortunately, the number of special provisions with different times remains quite high, despite calls to limit their number. For example, the 20-year period for prescription of hypothec-guaranteed obligations was kept because it was part of the Commercial Transaction Statute, Law No. 208-1995, copied from the UCC. Even if vested rights are to be protected, the time span could have been shortened in obligations incurred after entry into force of the new code, but fear of business opposition led to keep the law unchanged.

Given the application of US Bankruptcy Law rules and the impossibility of providing alternate rules in this area, privileges and liquidation rules inherited from the 1889 Spanish Civil Code were repealed. Business bankruptcy rules in the Commercial Code have not been invoked in over a century since the US takeover of the island in 1898.

Part of the reform effort dealt with updating rules on existing special contracts and adding four new contracts that, despite their commercial nature, were made part of the Civil Code for fear that if they were left out, no new special statute would adopt them.

At the start of the revision process, it was felt that an effort to integrate civil and commercial rules would take place. The special mercantile rules were in a large part the result of the special status granted to businessmen in Europe, and particularly in France, where commercial court judges are elected by delegates of merchants operating within the territorial jurisdiction of the court and not in the normal judicial selection process. Puerto Rico has no special commercial law courts. The Spanish Commercial Code, in force in Puerto Rico, has been depleted of many of its rules due to federal US statutes (on bankruptcy, maritime and aviation law, for example). Special laws have been copied from US model laws and thus abrogated other Commercial Code provisions regarding insurance, banking, secured transactions among others. Yet, Argentinians, Italians, Quebeckers, Americans and other have integrated civil and commercial legislation with no apparent problems.

The business community, however, feared that what they perceived as a decade long effort to have the UCC adopted in Puerto Rico would be lost should US rules be replaced by civil-law style rules, felt to be incompatible with common-law legislation. Although no analysis was conducted—it may have revealed that Louisiana enacted the sales provisions of the UCC inside its Civil Code, at the cost of some inconsistencies—the opposition of the business community was conveyed informally, but effectively. The 2016 Senate Civil Code Reform Bill No. 1710 discarded suggestions to remove four commercial contracts from the Civil Code, with no suggestion of integrating them into the somewhat weakened but still valid Commercial Code. The new bill introduced after the New Progressive Party victory in November 2016 reincorporated the special contract provisions but did not further any civil-commercial code integration and never seriously considered adopting the US compatible Organization of American States Model Secured Transaction statutes to replace almost unintelligible translations of the UCC Secured Transaction statutes. The four contracts were those of supply (*suministro*) (article 1297 et seq.), financial leases over immovable

(article 1351 et seq.), brokerage (article 1416 et seq.), and agency or mandate (*agencia*) (article 1421 et seq.).

Some minor changes were also made to existing special contracts. Here are a few examples. In the absence of agreement to the contrary, leases of immovables have a one-year term, and the sale of leased immovables no longer entailed the dissolution of leases (article 1348). Loan contracts are enforceable after agreements to lend are made and not only after the loaned thing or money is delivered to the other party and the like. Annuities running with the land were suppressed. Air or surface rights (*superficie*) and secured transaction agreements such as rules on pledges and antichresis and some hypothec rules have been moved in the book dealing with real property rights.

Compromises or settlements (*transacciones*) must all be in writing, which the legislative commission held would prevent anyone from alleging that agreement to end a suit be accord and satisfaction would no longer be possible, something not yet tested before the courts.

### *D. Changes and Innovations in Tort Law*

Tort rules were also somewhat modified, in large part to incorporate US inspired judge-made rules regarding product liability. The main change was the adoption of punitive damages, albeit timidly, at least in tort law or non-contractual liability cases. According to article 1538, when the wrong is a criminal offence, or an act made with intent or in complete disregard of a third party's life, safety or property (gross negligence), the court may increase the damages by an amount that may not exceed the cost of the damage caused. Proof of damage remains of course necessary. Puerto Rico has other, but isolated punitive-damages statutes, such as those dealing with antitrust claims (article 12.10 of Law No. 77 of June 25, 1964, 10 L.P.R.A. §268). The Supreme Court insisted, in interpreting the 1930 Civil Code, that the role of tort law is to compensate the victim,

not to punish the tortfeasor. The adoption of punitive damages is therefore a breakthrough, even if the victim cannot receive more than a double compensation.

Some tort articles were brought in line with jurisprudence, particularly regarding family immunity, to prevent lawsuits between spouses, parents and siblings or grandparents and grandchildren if not explicitly authorized by a special statute, provided there are healthy family relations between the parties. Article 1537 describes this relationship, in so far as grandparents and grandchildren are concerned, as tight and affectionate or loving (*estrecha y afectuosa*). Domestic violence statutes allow for such suits between family members. The same applies when the tort is also a criminal offense.

Articles 1541 to 1544 impose strict liability to all those involved in the distribution chain of defective products, product liability encompassing defects in manufacture, design and directions. Vicarious liability rules, codified in article 1540, make custodial parents, tutors and teachers responsible for damages caused by their children, pupils, or students, provided they do not establish that they exercised due care in their supervision. Employers, whether of the private or public sector, are responsible for harm caused by their employees and also independent contractors when the activity is unreasonably dangerous. The same rule applies to vehicle owners. This part of the law remains unchanged.

Owners of animals, trees, homes or building sites remain liable for damage attributable to them. Yet a new rule is making hospitals responsible for harm caused by those holding exclusive rights in health institutions or for those caused to patients who visit the health facility on their own, not referred by a doctor.[31] Suggestions to limit

31. The Spanish text of Article 1541, paragraph (g) states that these health institutions are liable:

> (1) por los daños que causan aquellas personas que operan franquicias exclusivas de servicios de salud en dichas instituciones; o
> (2) por los daños causados por las personas a quienes la institución encomienda atender a un paciente que accede directamente a la institución sin referido de un médico primario.

strict liability to amounts payable under liability insurance contracts were left out.

Another suggestion was to allow the reopening of damage claims within a limited time after the judgment, to obtain supplemental damages when the actual damage was not properly ascertained during the initial proceedings. This proposal was not even considered.

Payment of damages may either be in the form of a lump sum, which is usual, or through structured agreements. The court cannot deviate from the payment of a lump sum payment when the victim so desires.

*E. Modifications Affecting the Law of Successions*

The last Civil Code book, Book 6, deals with the distribution of the succession of the deceased. Though views to the contrary have been expressed, the succession does not include monies or benefits derived from insurance or contracts or annuities, even when constituting the most substantial part of what is left by the decedent.

Puerto Rico has inherited forced heirship from Spain and shares this institution with most civil law systems. Legitimate heirs protected by a reserved portion are the offspring, the surviving spouse, and in their absence, the ascendants of the deceased. In the presence of legitimate heirs, the testator may only dispose of up to half of his or her belongings, as one-half is reserved to the legitimate heirs. In the absence of legitimate heirs, the testator may dispose of everything as he or she wishes (articles 1621-1624). This centuries-old tradition of reserving part of the estate to legitimate heirs such as descendants and ascendants proved strong enough to resist the free-will proponents' suggestions to allow the testator to distribute all monies and assets as he or she saw fit.

The new code is placing the surviving spouse in a much stronger position. As in times past, in the absence of a prenuptial agreement to the contrary, the surviving spouse owns half of the community

property. This share is not part of the succession but is a matrimonial right. The surviving spouse traditionally inherited a usufruct over a fraction of the spouse's succession. The new code is making a radical change, making the surviving spouse a legitimate heir. Under article 1721, "the children of the deceased and the surviving spouse inherit equally." In addition, according to article 1625, "the surviving spouse can request preferential allocation [*atribución preferente*] of the family home" or can request a lifelong right of habitation for whatever exceeds the combined value of the inheritance right and the share in the community.

The new code also validates trusts, which have been in place for most of the 20th century, pursuant to the adoption of a Panamanian statute, as recipients of part of the succession, provided they do not infringe on the reserved share of legitimate heirs.

An important innovation limits the heirs' liability for the deceased's debts to the value of the assets they receive in the succession (article 1587). Article 1588 however provides:

> When the obligations of the succession exceed the value of the assets, the heir is liable on his own patrimony if he disposes of, consumes or uses hereditary assets to pay undue hereditary obligations. He is also responsible for the loss or deterioration that, due to his fault or negligence, occurs to the hereditary assets.

Rules regarding testaments were also modified and closed wills—those where the testamentary provisions are kept sealed and secret, normally under a notary's care—are now abolished, as they were very rarely used (article 1644). Joint wills (*testamentos mancomunados*) were not valid under prior law and remain null (articles 1641). According to article 1644, notarial wills can be made with or without witnesses. Special wills, such as those made on the deathbed, remain regulated in the code but are very rarely used. Military wills, allowed by federal military law, are not expressly recognized but remain valid, as they exist pursuant to federal law. If a decedent made two wills, the second testament may now be used to modify

the first one without totally nullifying it, as was the case under the 1930 code. Minors over fourteen are allowed to make wills, but they must be eighteen or older to make an ológraphic testament.

The testamentary exclusion or omission of a legitimate heir from a succession (*preterición*) for reasons other than those expressly allowed, does not automatically annul the distribution of assets as mandated by the will, as was the case in prior law. Article 1629 allows the excluded heir to receive the reserved share as if the exclusion had not taken place.

The execution of the decedent's succession may be carried out by various parties with different persons being called to defend, divide or otherwise carry out the decedent's wishes (article 1729 et seq.).

The fideicommissary substitution (*reserva, retorno y de la sustitución tanto fideicomisaria como pupilar y ejemplar*) is a gift of property under Roman and civil law by testament or donation *inter vivos.* There, the donee (as an heir of the testator or an heir of such person) is directed and under a duty to transfer the property to another or other persons designated as donees. It is now abolished.

*F. Transitory Provisions*

The code ends with some transitory provisions, in articles 1806 to 1817, aimed at solving conflicts regarding the transition between the 1930 and the 2020 codes. Unfortunately, little thought was given to these, as can be ascertained by the fact that nowhere does one find anything regarding the legislative intent or discussion of these articles. Some of these provisions may generate litigation, for instance regarding the prescription of contractual action, after 15 years under the old code and 4 years under the new one. Likewise, problems may occur regarding civil penalties, where neither the old nor the new code provide guidance.

The House Civil Justice Commission chose to simply copy rules adopted in 1889, 1902 and 1930, with no analysis, and one finds

little guidance or update in the report to the legislative body. Quebec and German studies are available on the Internet and there is thus no excuse for the perfunctory treatment of these articles.

Examples of this lacuna are articles 1806 and 1817. The first states that vested rights will be respected—without defining what these are—despite varied definitions of these being found in the Spanish and US legal systems Puerto Ricans normally resort to. Article 1817 states that where there are doubts as to which law applies, these will be resolved pursuant to the principles stated in the previous articles,[32] which indirectly refers to the principle of non-retroactivity of the law, articulated in the Preliminary Title of the Code at article 9. Indeed, non-retroactivity is pervasive in these transitory provisions.

32. ". . . aplicando los principios que les sirven de fundamento."