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Moral Damages under the Civil Law of Mexico. Are These Damages Equivalent to U.S. Punitive Damages?

Jorge A. Vargas

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ARTICLES

MORAL DAMAGES UNDER THE CIVIL LAW OF MEXICO. Are These Damages Equivalent to U.S. Punitive Damages?

JORGE A. VARGAS*

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I. INTRODUCTION

Under Mexican Civil Law, successful lawsuits in tort law cases culminate with the awarding of an economic indemnification in favor of the victim (or the victim's heirs in wrongful death cases), as mandated by the Civil Code of the jurisdiction where the injury occurred.¹ Out of a total of 3,074 sections, Mexico's Civil Code includes only thirty-five sections that contain the basic principles governing tort law cases,² known in Mexico as "extra-contractual liability cases."³

During the first fifty years of the application of the Civil Code for the Federal District (1932-1982), the reparation of the damages awarded by Mexican courts, at the election of the injured party, consisted of either the restoration of the damaged item to its previous condition, if possible, or in the payment of a liquidated amount legally consisting of both damages and losses.⁴ As defined

1. As a country, Mexico strongly adheres to the *Lex loci delicti* principle. This principle is closely associated with, and derives from, the "Principle of Limited Territoriality." The principle is enunciated in Article 12 of the Federal Civil Code (from which text has been reproduced *verbatim* by the civil codes of the thirty-one states which compose the Republic of Mexico as well as the Civil Code for the Federal District). Article 12 prescribes:

"[M]exican laws apply to all persons within the Republic, as well as to acts and events which take place within its territory or under its jurisdiction, including those persons who submit themselves thereto, unless the law provides for the application of foreign law, or it is otherwise provided by treaties or conventions to which Mexico is a signatory party." *CÓDIGO CIVIL PARA EL DISTRITO FEDERAL* [C.C.D.F.] art. 12.

2. *Id.* at arts. 1910-1934; see also Liabilities from Illicit Acts (*Obligaciones que Nacen de los Actos Ilícitos*).

3. For an overview of the legal regime that Mexico applies to personal injury cases, see Jorge A. Vargas, *Tort Law in Mexico*, *MEXICAN LAW: A TREATISE FOR LEGAL PRACTITIONERS AND INTERNATIONAL INVESTORS* [hereinafter, Vargas, *Tort Law in Mexico*] (West Group, 1998), 209-239.

4. C.C.D.F. art. 1915.

by the Code, "damages" are the loss or diminution of assets suffered as a result of the failure to comply with an obligation, and "losses" are the deprivation of lawful gains that would have resulted had there been compliance with an obligation.⁵

Essentially, under the legal regime prescribed by the Civil Code, the Mexican court follows these very simple steps: (1) it determines the occurrence of the tortious act; (2) it establishes the causality relationship between the injury and the tortious act; (3) it ascertains and quantifies the damages and losses based on the evidence submitted to the court; and finally (4) it awards an economic indemnification. This calculation is in accordance with two legislative enactments: (1) the rules prescribed by the applicable Civil Code; and (2) the supplementing provisions taken from the Federal Labor Act.⁶

Traditionally, Mexico's legal regime does not provide reparation or compensation for any non-material, or non-physical, damages. However, this situation changed in 1982 when the Civil Code for the Federal District was amended to include the novel notion of *daño moral*, or "moral damage."⁷ The relatively recent

5. These definitions of "damages" and "losses" are taken respectively from C.C.D.F. arts. 2108-2109. These damages and losses "must be a direct and immediate consequence of the failure to comply with the obligation, whether they have already occurred or will necessarily occur." *Id.* at art. 2110.

6. Under Mexican law, the economic compensation due to a victim of a tortious act incorporates principles of Mexico's Federal Labor Act. The Act is the Mexican equivalent of Mexico's worker's compensation law. An injured person is compensated in the same fashion as an employee who is injured while in the workplace. Thus, Mexico adheres to the legal fiction that personal injury cases and wrongful death cases must be compensated under the same rules as an employee who is injured in the workplace. For a detailed explanation of the application and rules of the Federal Labor Act to personal injury cases, see Vargas, *Tort Law in Mexico*, *supra* note 3, §§ 21.17-21.20 at 224-226.

7. Today, Article 1916 of the Federal Civil Code, as amended, reads:

It should be understood for moral damage the non-physical injury inflicted upon a person's feelings, affections, beliefs, decorum, honor, reputation, privacy, image and physical appearance, or how that person is being perceived in the opinion of others. Moral damage is to be presumed when any person's freedom, or his or her physical or psychological integrity, are illegitimately injured or diminished.

When an illicit act or omission causes a moral damage, the person responsible shall be liable to repair it through a monetary indemnification, independently of having caused material damage as a result of contractual or extra-contractual liability. The same obligation to repair the moral damage exists when objective liability occurs pursuant to Article 1913, including the State and its public servants, in accordance with Articles 1927 and 1928 of this Code.

emergence of moral damages in Mexico, a legal tradition more closely associated with the Anglo-Saxon legal system (in particular the U.S. legal system), is beginning to produce repercussions in Mexico and the U.S.

In Mexico, civil law specialists are beginning to examine this notion more closely in order to determine its precise legal meaning and scope, since Mexican courts have now decided numerous cases involving moral damages and, thus, have gradually produced relevant jurisprudence.

In the United States, federal and state courts in cases involving American citizens who have been injured while visiting Mexico are increasingly confronted with the delicate technical question of determining whether Mexico's moral damages may have a legal counterpart in the U.S. legal system. It has been claimed by U.S. legal practitioners, for example, that the Mexican version of these moral damages may correspond to punitive damages or to damages awarded for pain and suffering. Others suggest that notion of moral damages is more akin to exemplary damages or loss of consortium.

This article has two main objectives: (1) to analyze in detail Mexico's moral damages and; (2) to compare such damages to similar legal remedies, if any, under U.S. law. The article is divided into five sections. The first section introduces the reader to the

The cause of action to receive reparation is not transferable to third parties through an *inter vivos* act and it is only passed to the victim's heirs when the victim has filed said action while he/she was still alive.

The amount of the indemnification shall be determined by the judge taking into account the injured rights, the degree of responsibility, the economic situation of the responsible person, and that of the victim, as well as the other circumstances of the case.

When the moral damage has affected the victim in his or her decorum, honor, reputation or status, the judge shall order the publication of a summary of the judgment through any mass media the judge deems appropriate, at the victim's request and at the expense of the responsible party, which reflects in an adequate manner the nature and scope of said judgment. In those cases when the damage derives from an act which has been disseminated through the mass media, the judge shall order said media to give publicity to the judgment's summary with the same prominence given to the original dissemination.

C.C.D.F. art. 1916, as amended by decree published in the Federal Official Gazette, *Diario Oficial de la Federación*, [D.O.], Dec. 31, 1982. Mexico's D.O. is similar to the *Federal Register*. Please note that English translations with no attribution are by the author.

fundamental principles that govern extra-contractual civil liability cases under Mexican law. The second section traces the origin and legislative history of moral damages, as reflected in the legislative bill formulated in 1982 by the Federal Executive to amend Articles 1916 and 2116 of the current 1928 Civil Code by decree published in Mexico's Official Gazette (*D.O.*) on December 31, 1982,⁸ including the discussions held by Federal Congress on this matter. The third section provides information on moral damages in other civil law countries from Europe and Latin America. The purpose of the analysis and discussion of these Latin American and European legal "models" is to produce information which would enrich and clarify both the substantive and the legal modalities of Mexican moral damages, thus assisting in the task of determining their possible influence on the formulation and legal architecture of the "Mexican model." The fourth section centers on the jurisprudential analysis of salient moral damages cases decided by federal and state courts in Mexico over the last two decades. This analysis may provide a clear idea of the content and scope of moral damages in Mexico, as well as indicate or suggest the presence of any apparent judicial trend in this area. Finally, the fifth section engages in a comparative analysis between Mexico's moral damages and similar U.S. reparation notions commonly used in tort law cases.

II. CIVIL LIABILITY AND TORT LAW IN MEXICO

Mexico's legal system belongs to the civil legal tradition reputed to be the oldest, the most influential, and the most geographically widespread. Starting with the establishment of the very first *Ayuntamiento* in the city and port of Veracruz, along the Gulf of Mexico, in 1519, Mexico became the conduit through which European legal principles and institutions of the European legal tradition as reflected in the codes, laws and royal decrees of Spain that were transplanted into the western hemisphere.

In Mexico, like in any other country within that rich civil law tradition, codes play a primary role in defining the relative legal rights and obligations of the parties. As legislative enactments, codes are unitary works that integrate all norms in a given branch

8. Formulated by Lic. Miguel de la Madrid Hurtado, then President of Mexico, the legislative bill to amend C.C.D.F. arts. 1916, 2116 (in Ordinary Matters and for the entire Republic in Federal Matters) was sent to the General Congress on December 27, 1982; the decree containing the accompanying amendments appeared in Mexico's *D.O.*, Dec. 31, 1982.

of the law in a systematic, comprehensive, organized, and logical manner.⁹ The Civil Code plays a most salient role within Mexico's society and is prominently placed at the core of its legal system, jointly with the Federal Constitution of 1917. From a public order perspective, this fundamental law occupies the apex of that country's legal and political system.

The current Civil Code for the Federal District was formulated by an eminent group of Mexican jurists appointed by the President of the Republic. The final draft was submitted to the President, then to Congress, and was enacted in 1928 and took force in 1932.¹⁰

The Civil Code is composed of four parts, commonly referred to as "Books"¹¹ and contains 3,074 Articles. Book Four is devoted to the regulation of "obligations" (*i.e.*, contracts), which includes civil liability matters. Chapter V of this Book, entitled "Liabilities Arising from Illicit Acts"¹², enunciates the basic principles that govern civil liability in personal injury and wrongful death cases.

The Civil Code provides the cause of action in personal injury cases in Article 1910, which reads, "whoever, by acting illicitly or against good customs, causes damage to another, is obligated to

9. At the federal and state levels, Mexico has these distinct codes: 1) the Civil Code; 2) the Code of Civil Procedure; 3) the Penal Code; 4) the Code of Criminal Procedure; 5) the Code of Commerce; and 6) a Tax Code. Pursuant to Article 40 of Mexico's Federal Constitution of 1917, Mexico's government is politically structured as a federal republic. CONSTITUCION POLITICA DE LOS ESTADOS UNIDOS MEXICANOS [CONST.] art. 40. Thus, the federal government and each of the thirty-one states maintain a separate set of codes. For the most part, state codes, also known as "local" codes, parallel in format and substance the federal codes. From a legal standpoint this means that, *de facto*, the Federal District and the thirty-one states are governed by federal law.

10. Until 2000, when a separate Federal Civil Code (*Código Civil para el Distrito Federal*) was enacted (D.O., May 29, 2000), the 1928 Civil Code (D.O., Mar. 26, 1928) served both as the "local" Civil Code for the Federal District in Ordinary Matters and, at the same time, as the Federal Civil Code in Federal Matters. Today there are two codes: the Federal Civil Code passed in 2000, and the Civil Code for the Federal District. However, save for minor changes, the text of the Civil Code for the Federal District is taken *verbatim* from the Federal Civil Code (which is heavily based on the 1928 Code).

11. In Mexico, all Civil Codes are divided into the same four parts: *Book One (Persons)* refers to the rights and obligations of individuals and legal entities, including marriage, divorce, adoption, custody, emancipation, etc. *Book Two (Property)* regulates personal and real estate property, possession, usufruct, etc. *Book Three (Successions)* addresses legal and testamentary successions, executors and partition questions. Finally, *Book Four (Obligations or Contracts)* governs contracts, leases, agency, professional services, associations and companies, etc.

12. This Book contains thirty-five provisions, located within articles 1910 through 1934.

repair it, unless he/she can prove that the damage was caused as a result of the fault or inexcusable negligence of the victim."¹³

Under Mexico's civil law, extra-contractual liability may be defined as that which derives from "illicit acts." Apart from the acts explicitly defined by the criminal code as criminal offenses, within a civil context, an act is "illicit when is contrary to the laws of public order or good customs."¹⁴

Ordre public, or "public order" is a French legal notion that in Mexico denotes "the mechanism through which the State (i.e., the legislator or, in some cases, the judge) declares that certain particular acts may impinge upon the fundamental interests of [the Mexican] society."¹⁵ The Federal Civil Code is explicit in prescribing that "acts executed against the tenor of prohibitive laws or laws of public interest shall be null and void, unless otherwise provided by law."¹⁶

In an *Amparo* case decided in 1954, Mexico's Supreme Court advanced this opinion with respect to good customs:

[A]nything that hurts morality is contrary to good customs, and jurisprudence has slowly considered that there is a criterion of morality in the society and that the social environment constitutes the source of good custom. Therefore, it is not necessary to give a precise definition of 'good customs' because no legislature is going to do this but leave it to the wisdom of the courts.¹⁷

Based upon this opinion, it is safe to assume that the notion of "good customs" is a fluid one and corresponds to the judge and place of a given historical moment to individually assess the changing social reality. Particularly, the collective and ethical values and mores associated with it, to reach the determination that a certain act is to be declared null and void because it contravenes good customs.

According to Manuel Borja Soriano, a highly reputed doctrinarian in Mexican Civil Law,¹⁸ the legal principle contained in Article 1910 of the Civil Code was formulated by the Mexican Drafting Commission by combining the texts of two foreign codes:

13. C.C.D.F. art. 1910.

14. C.C.D.F. art. 1830.

15. *Orden Público*, NUEVO DICCIONARIO JURÍDICO MEXICANO (Porrúa-UNAM), 2001, Vol. 3 at 2702-2703.

16. C.C.D.F. art. 8.

17. "Iliadas Viuda de Ize, Elena," 120 S.J.F. 1821 (5a época 1954).

18. MANUEL BORJA SORIANO, TEORÍA GENERAL DE LAS OBLIGACIONES 355-357 (Porrúa ed.).

Article 41 of the Swiss Code,¹⁹ and Article 403 of the Russian Civil Code.²⁰ However, the substance of Article 1910 can be traced back to Article 1382 of the French Civil Code, because both the Swiss and Russian codes were inspired by the French provision.²¹

There are two fundamental principles in civil liability cases under Mexican law: first, the person causing damage or injury to another has a legal to repair said damage or injury, including the corresponding indemnification mandated by the law. The origins of this civil law notion may be traced back to Roman times, to the legal notions of *Iniuria* and the *Lex Aquilia*;²² however, others argue that the duty to compensate exists because it has been statutorily imposed by the legislature.²³ The second important principle is that a victim is barred from recovery when the damage or injury was caused by "fault or inexcusable negligence of the victim."

A. *Triad of Civil Liability Requirements*

Like U.S. tort law, civil liability in Mexico requires the concurrence of three basic elements: (1) commission of an illicit act; (2) causation of an injury or damage to the victim; and, (3) a causal relationship between the commission and causation.²⁴

19. *Id.* at 355. Article 41 of the Swiss Code of Obligations reads: "Whoever causes injury to another in an illicit manner, whether intentionally, by negligence or imprudence, is obliged to repair it. He/she who intentionally causes a damage to another through acts contrary to good customs, is equally obliged to repair it." SCHWEIZERISCHES ZIVILGESERTBUCH [ZGB], CODE CIVIL SUISSE [Cc], CODICE CIVILE SVIZZERO [Cc], art. 41.

20. *Id.* at 355. Article 403 of the Russian Civil Code reads: "Whoever causes damage to a person, or to his or her property, is obliged to repair it. The author [of this damage] is freed from this obligation if it proves that the damage was not preventable or that he/she had the power [the right] to cause it, or that it was produced as a result of the victim's intention or inexcusable negligence." GRAZHDANSKII KODEKS RF [GK RF] art. 403.

21. *Id.* at 355-56. Article 1382 of the French Civil Code prescribes that, "any act whatever of man which causes damage to another obliges him by whose fault it occurred to make reparation." JOHN H. CRABB, *THE FRENCH CIVIL CODE* 253 (1977). This Code has no article which explicitly refers to "moral damages."

22. See REINHARD ZIMMERMANN, *THE LAW OF OBLIGATIONS: ROMAN FOUNDATIONS OF THE CIVILIAN TRADITION*, 998-1030 (Juta & Co./Kluwer ed., 1992).

23. *Responsabilidad Civil*, NUEVO DICCIONARIO JURÍDICO MEXICANO (Porrúa-UNAM), 2001, Vol. 4 at 3350-3352.

24. European doctrinarians cite four requirements: 1) An act (commission or omission); 2) Imputable to the defendant; 3) Damaging to the plaintiff (damage and loss); and 4) Illicit (caused outside the law, or *non jure*; intentional, by fault or negligence). See BORJA SORIANO, *supra* note 18, at 356.

1. Commission of Illicit Acts

In civil liability cases, an illicit act does not necessarily correspond to a criminal offense. The Civil Code explicitly defines "illicit acts" as those "contrary to the laws of public order or to good customs."²⁵ In other words, an illicit act takes place when the author of the tortious act engages in unlawful conduct with the intention of causing a damage or an injury, or when the resulting damage or injury are the direct result of the author's fault or negligence.

The burden of proof is upon the plaintiff to demonstrate that the defendant committed the illicit act in question, while acting in an intentional or negligent manner. Under Mexican law, the court is empowered to receive any evidence submitted by the parties, provided that the evidence is permitted by the law refers to the issues in contention.²⁶ Accordingly, valid evidence may consist of public and private documents, technical reports by expert witnesses, judicial examinations or inspections *in situ*, or testimony of witnesses.²⁷

Under Mexican law, the Federal Code of Civil Procedure also prescribes that the court is endowed with exclusive powers and with "the most ample freedom" to conduct the analysis of the evidence submitted. Article 197 of said Code mandates:

The [competent federal Mexican] court enjoys the most

25. C.C.D.F. art. 1830.

26. CÓDIGO DE PROCEDIMIENTOS CIVILES PARA EL DISTRITO FEDERAL [C.P.C.D.F.] art. 285.

27. This list of evidence was taken from CÓDIGO DE COMERCIO [CÓD. COM.] art. 1205 that governs mercantile suits between merchants. C.P.C.D.F. art. 93 has a virtually identical list. More explicitly, the Federal Code of Civil Procedure prescribes:

To know the truth, the judge may rely on any person, whether a party or not, and of any thing or document, whether it belongs to the parties or not, with no other limitations save that the evidence be recognized by the law and have an immediate relationship to the controverted facts.

[Mexican] courts have no temporal limitations to order the submission of evidence which they deem indispensable to reach their conviction regarding the substance of the suit nor apply to them the limitations and prohibitions in evidentiary matters which have been established for the parties. CÓDIGO FEDERAL DE PROCEDIMIENTOS CIVILES [C.F.P.C.] art. 79. Given the progress and global utilization of scientific and technological developments, Mexican courts allow the submission of a variety of electronic, scientific and technological devices including photographs, photocopies, films, video recordings, videotapes, and digital images.

C.P.C.D.F. arts. 373-375.

ample freedom to conduct the analysis of the evidence submitted; to determine the value of said evidence, some in comparison with the other; and to establish the results of said contradictory assessment, unless the law establishes the rules to make such assessment, taking into consideration, however, what is provided in this Chapter with respect to each type of evidence.²⁸

2. The Causation of Damage

Under Mexican law, the concept of damages is formed by two components. The first is the physical or material damage caused to the victim. For example, a person hit by a speeding driver running a red light can recover damages for his physical injuries, as well as those caused to his vehicle. The Federal Civil Code defines "damages" as "the loss or diminution of assets suffered as a result of the failure to comply with an obligation."²⁹

Second, an individual can recover for the deprivation of any specific lawful gains that would have been received in the future had the illicit act that caused the damage not taken place. For example, suppose the victim in the previous example was a famous opera singer scheduled to appear at La Scala, in Milan, Italy. The singer was to receive a fee of \$1,000,000 dollars for this performance. As a direct consequence of the accident, the singer was unable to appear, and as a result, the performance was cancelled. According to the Federal Civil Code, "losses are the deprivation of lawful gains that would have resulted had there been compliance with an obligation."³⁰ As a result, the opera singer would be entitled to loss of \$1,000,000 dollars, the amount he would have received had the accident not occurred.

3. Causal Relationship between the Illicit Act and the Resulting Damage

The Federal Civil Code is explicit in prescribing that "the damages and losses must be the direct and immediate consequence of the failure to comply with the obligation," whether they have already occurred or will necessarily occur.³¹ It is left to the judge to determine whether the commissions of the illicit act, as

28. C.F.P.C. art. 197.

29. C.C.D.F. art. 2108.

30. *Id.* at art. 2109.

31. *Id.* at art. 2110.

well as the resulting damage, are attributable to a given individual.

Mexican law recognizes the attribution of civil liability not only to the author of the illicit act, but also to Mexican companies and other legal entities,³² in *respondeat superior* cases.³³ Moreover, this civil liability also encompasses the State, which can be held "liable for the damages caused by its public officers in the exercise of their duties."³⁴

Mexico's Civil Code, patterned after the French Code, also regulates the civil liability in tort law cases involving parental authority, owners of hotels and innkeepers, animal owners, building owners, and heads of households.³⁵

Because of the relatively recent amendment to the Civil Code for the Federal District in 1982, which added the novel concept of "moral damage", the traditional notion of civil liability has been expanded in Mexico to now include not only material or physical damages, but also non-material or non-patrimonial damages.³⁶

B. Mechanism to Quantify Damages and Losses under Mexican law

There is an abysmal difference between the legal regime formulated respectively by Mexico and the United States to govern civil liability cases resulting from tortious acts. In the U.S., tort law may be characterized as a relatively modern and technical area of civil litigation with a long progeny of case law, technical standards, principles, and rules, including a panoply of reparations designed to compensate the victim. In contrast, Mexico's "extra-contractual liability" principles appear to be somewhat outdated, simplistic, and unfair.

32. In general, under Mexican law, legal entities such as the Nation, public corporations, civil and commercial companies, unions and professional associations, cooperative associations, etc., are regulated by the Civil Code of the state of establishment or incorporation. In addition, commercial companies are governed by the Commercial Companies Act (*Ley General de Sociedades Mercantiles*). See *id.* at arts. 25-28 and 2668 *et seq.*

33. See *id.* at art. 1918 (describing lawful representatives in the performance of their duties); art. 1924 (discussing managers and owners of commercial establishments); art. 1925 (concerning owners, innkeepers, etc.); art. 1927 (regarding the Mexican State for damages caused by its officers in the exercise of their official duties).

34. *Id.* at art. 1927.

35. See *id.* at arts. 1928-1930 (regarding animal owners); arts. 1931-1932 (relating to owners of buildings); and art. 1933 (discussing heads of households).

36. For a detailed discussion of this topic, see Part VI.B.1.c.

In the U.S., personal injury cases are among the most common civil litigation cases; in Mexico, these cases have been legally non-existent for decades. It may be quite surprising, or even amusing, for a Mexican attorney to learn that someone filed a suit arising out of an extra-contractual liability situation. Indeed, it is common knowledge in Mexico that no major law firm would even contemplate filing a suit in an extra-contractual liability case.

Three reasons may be advanced to explain the peculiar absence of personal injury and wrongful death cases in the Republic of Mexico. First, under current Mexican law, the reparation to indemnify a victim is extremely low, economically speaking. Second, law firms in Mexico tend to be closely associated with major corporations. Consequently, firms are not interested in representing personal injury victims in cases that are economically and professionally "unappealing." Finally, the level of education of most Mexicans is low. Accordingly, the knowledge and familiarity of Mexican nationals regarding their legal rights tends to be extremely limited and, as a result, legal culture among Mexicans is virtually non-existent.

1. How to Calculate Damages and Losses in Personal Injury Cases

The Federal Civil Code states the rules that must be observed by the judge in determining the reparation due in extra-contractual liability cases, as well as the methodology to arrive at the specific amount to be paid as indemnification. Article 1915 of the Federal Civil Code reads:

The reparation of the damage shall consist, at the election of the injured party, either in the restoration of the damaged item to its previous condition when this is possible, or in the payment of the damages and losses.

When the damage is caused to persons and produces death, total permanent disability, partial permanent [disability], total temporary [disability] or partial temporary [disability], the amount due as reparation shall be determined pursuant to what is prescribed by the Federal Labor). In order to calculate the indemnification due, the highest minimum daily wage in force in the region shall be multiplied by four and shall be applied to the number of days during which the victim suffers from each of the incapacities set forth in the Federal Labor Act. In the event of the victim's death, the corresponding indemnification shall be paid to the victim's heirs.

When the victim is a wage earner) the indemnification cannot be assigned or transferred), and it shall preferably be paid in one lump sum, except when the parties agree otherwise.³⁷

The following clarifications may be needed to properly interpret the preceding text:

- Under Mexican law, the controlling principle in reparation cases consists in the restoration of the damaged item to its previous condition, if possible;
- If the restoration is impossible, the responsible party must then pay the corresponding damages and losses, including the economic indemnification mandated by the Federal Labor Act, as decided by the court;
- Unlike other civil law countries, Mexican Civil Law (as reflected in the Federal Civil Code, the corresponding thirty-one State codes, and the Civil Code for the Federal District) *does not have* a special civil legal regime that governs the different types of reparations in civil liability cases.
- The absence of this special civil regime obligated the Civil Code Drafting Commission to turn to the Federal Labor Act, which is Mexico's worker's compensation statute, and apply the disabilities set forth by this statute for cases involving permanent or temporary incapacities, including death, resulting from work-related risks.
- Accordingly, in the Republic of Mexico, the victim of a tortious act is equated to a worker who has been incapacitated due to a work-related risk, as provided by the Federal Labor Act.
- Several other provisions in the Federal Civil Code complement the tenor of Article 1915. For example, (a) in the case of commercial companies, Article 27 provides that legal entities shall act and obligate themselves through their lawful representatives, as provided by law or in accordance with their respective charters of incorporation or their by-laws; (b) Article 2116 prescribes that, in principle, the sentimental value shall not be considered in determining the value and deterioration of an asset; and (c) Article 1934, which mandates that a cause of action for damages resulting from tortious acts "shall be barred after two years from the date the damage occurred."³⁸

37. C.C.D.F. art. 1915.

38. *Id.* at arts. 27, 2116, 1934.

Pursuant to Article 1915 of the Federal Civil Code, it is indispensable to know the specific categories of disabilities set forth by Chapter IX of the Federal Labor Act, "Work-Related Risks,"³⁹ to calculate the corresponding reparation and economic indemnification due as a result of a tortious act.

The Federal Labor Act recognizes four different types of disabilities: 1) temporary disability; 2) partial permanent disability; 3) total permanent disability; and 4) death.⁴⁰ Temporary disability is the loss of faculties or abilities, thus making it partially or totally impossible for a worker to perform a job for a period of time.⁴¹ Partial permanent disability is a decrease of a worker's faculties or abilities to work.⁴² Total permanent disability is the loss of faculties or abilities, thus making it impossible for a worker to perform any work for the rest of his life.⁴³

The Federal Labor Act further provides that the indemnity for work-related risks leading to disability "shall be paid to the worker directly."⁴⁴ In order to determine the economic indemnifications mandated by this Act, the "base figure" shall be the daily wage the worker was receiving when the risk occurred, or on the date of death,⁴⁵ emphasizing that the amount used for payment of indemnifications "may not be less than the minimum wage."⁴⁶

Mexico's National Commission of Minimum Wages, established in 1970 pursuant to the Federal Labor Act and formed by representatives of the federal government, workers' unions and employers,⁴⁷ has the exclusive function each December of every year, to establish the official minimum wages to be in force in each of three geographical areas⁴⁸ throughout the Republic of Mexico

39. LEY FEDERAL DEL TRABAJO [L.F.T.] art. 473. "Work-related risks" are those accidents and illnesses to which workers are exposed in the course and scope of their employment. MEXICAN LAW LIBRARY, COMMERCIAL CODES (West Publishing Co.), Vol. 1: *Business and Commercial*.

40. *Id.* at art. 477.

41. *Id.* at art. 478.

42. *Id.* at art. 479.

43. *Id.* at art. 480.

44. *Id.* at art. 483.

45. *Id.* at art. 484.

46. *Id.* at art. 485.

47. *Id.* at arts. 551 *et seq.*

48. The Republic of Mexico has been divided into three geographical areas, each with a different minimum wage. The variation in these wages is attributable to the differences in the socio-economic conditions prevailing in each of the three areas. The official minimum wages, as contained in a Resolution passed by the Commission, are published in late December of each year in the *Diario Oficial*. For the calendar year 2003, the official minimum wage in Mexico City was \$43.65 pesos, which was equivalent to \$4.07 U.S. dollars at the current exchange rate at that time. Mexico

the following calendar year, as mandated by Mexico's Federal Constitution.⁴⁹

It should be added that according to the Federal Labor Act, employees or, in this case, victims of tortious acts, have the right to:

- i) Medical and surgical assistance;
- ii) Rehabilitation;
- iii) Hospitalization, when required;
- iv) Medications and curative materials;
- v) Necessary prosthetic or orthopedic devices; and
- vi) The corresponding economic indemnity mandated by the Act.⁵⁰

For personal injury cases resulting in temporary disability, the Act mandates that "the worker shall be paid loss wages in full for the period he or she is unable to work, beginning from the first day of disability."⁵¹ If the risk results in partial permanent disability, the worker shall be paid the percentage specified in the Disability Evaluation of the total that would have to be paid if the disability had become a total permanent disability.⁵² Finally, if the risk results in total permanent disability, "the indemnification consists of an amount equivalent to wages for 1,095 days."⁵³

In the event of the *worker's death*, the victim's heirs "shall receive an indemnification in an amount equal to 730 days of wages, without deduction of the indemnification received by the worker while on temporary disability."⁵⁴ In addition, the indemnification shall include two months' wage for funeral expenses.⁵⁵

2. Two Personal Injury Cases under Mexican Law

The following examples are provided to illustrate the application of the principles of the Civil Code with the specific rules of the Federal Labor Act in a couple of civil liability cases arising out of a tortious act under Mexican law:

City lies within "Zona A," which is the highest zone and is composed of: the Federal District, the State of Mexico, the State of Baja California, the State of Baja California Sur, the State of Sonora, the State of Chihuahua, the State of Nuevo León, and the State of Veracruz. D.O. Dec. 29, 2002. These are the minimum wages a Mexican worker makes in Mexico City for eight hours of work every day.

49. CONST. art. 123.

50. L.F.T. art. 487.

51. *Id.* at art. 491.

52. *Id.* at art. 492.

53. *Id.* at art. 495.

54. *Id.* at art. 502.

55. *Id.* at art. 500.

Case 1: The Plácido Pérez Case:

Plácido Pérez is a world famous Mexican opera tenor. His professional fees depend upon the season, the locale, and the repertoire. For a performance at La Scala, in Milan, Italy, in *La Bohème*, Pérez charged \$10,000 dollars. All related expenses were to be paid by the contracting company. While driving his Mercedes in the Pink Zone, in Mexico City, a month prior to his artistic engagement, Pérez's car was hit by a speeding vehicle. As a result of the accident, Pérez was injured and hospitalized for a week. His Mercedes was repaired at a cost of \$10,000 dollars. The singing contract at La Scala was cancelled.

The following chart illustrates Perez's damages and losses:

	Damages	Losses
Hospitalization	\$7,000	\$10,000
Surgical	2,000	
Medical	1,000	
Rehabilitation	1,000	
Car repairs	10,000	
60 day-incapacity ⁵⁶	976.80	
SUB-TOTAL	\$21,976.80	

Thus, under the Mexican framework, Perez would be entitled to \$31,976.80 U.S. dollars: the total sum of his damages and losses.

Case 2: The Gumersindo Sánchez Case

Gumersindo Sánchez worked as a gardener and swimming pool cleaner in a luxurious resort in Ensenada, Baja California. On July 4, 2003, while Sánchez was cleaning the swimming pool in preparation for a party celebrating the U.S. holiday of Independence Day, the underwater lamps malfunctioned and Sánchez was electrocuted. Comatose as a result of the accident, Sánchez was hospitalized and treated for two days until his untimely death. Sánchez had been working at the resort for two years for a minimum salary of \$4.07 per day. He was the family's sole benefactor, leaving behind a wife and three minor children. The following chart illustrates Sánchez's damages and losses:

56. This figure was determined by multiplying \$4.07 (the minimum daily wage) by four for sixty days. The determination of the pecuniary amount due for this concept varies depending upon the applicable Civil Code. The codes of a few states recognize a fixed income, or a determination to be calculated by experts. Most codes, however, adhere to the terms of the Federal Civil Code.

	Damages	Losses
Hospitalization	\$1,500	
CPR and Emergency Services		NONE
Medical	\$500	
Total	\$2,000 ⁵⁷	
Indemnification due to Death (\$4.07 by four by 730 days)	\$11,884.40	
Funeral expenses (\$4.07 by 60 days)	\$244.20	
	\$14,128.60	
Minus: \$2,000.00		
SUB-TOTAL	\$12,128.60	
TOTAL: \$12,128.60 U.S. dollars		

Professionally, legal practitioners in Mexico are both uninterested in defending extra-contractual liability cases and somewhat unfamiliar with their legal technicalities since such cases are rarely filed.

Mexican social mores dictate that when an individual is injured as a result of a tortious act, for example, being burnt by hot coffee in a restaurant, falling and tripping in a store, or breaking a finger in a revolving door of a banking institution, the manager of the commercial establishment is supposed to compensate the victim for his or her emergency services or minor medical treatment as an *ex gratia* act. Evidently, this rule –if any such rule really exists– works mainly in favor of the commercial establishment. The company's *ex gratia* spirit quickly vanishes when the company realizes the severity of the victim's injuries or when they require delicate and costly surgical interventions and prolonged rehabilitation. The general public impression seems to be that these acts are fortuitous acts, so-called Acts of God, or "mere accidents," which certainly do not require filing a suit seeking to obtain any type of economic compensation.

In this regard, a fundamental principle of Mexican law in civil liability cases predicates that the reparation of the resulting damage consists, above all, "in the restoration of the damaged item to its previous condition," as mandated by Art. 1915 of the Federal Civil Code⁵⁸ and, *only* when this is not possible, in the payment of

57. By law, all Mexican workers have access to medical and hospital treatment (as well as other services, such as rehabilitation, unemployment insurance, maternity leave, pension fund, etc.) which are provided by Mexico's Social Security Institute (*Instituto Mexicano del Seguro Social* or IMSS). These public services are paid from the quotas the IMSS discounts every month from each worker (one third), his or her employer (one third) and the Mexican federal government (one third), pursuant to IMSS Act.

58. See C.C.D.F. art 1915.

damages and losses. Mexican Civil Law doctrinarian, Dr. Gutiérrez y González refers to this type of payment as "*indemnizatorio*."⁵⁹ This is a payment in the precise amount, which merely indemnifies a victim for the damage caused. A payment exceeding the actual damages caused to a victim would be tantamount to receiving an illegitimate enrichment (or windfall), which under Mexican Civil Law would go contrary to the fundamental principles of justice and equity. Gutiérrez y González, following the ideas of the eminent French jurists Marcel Planiol and Joserand, assert that "it is not licit for anyone to enrich himself without a cause and to the detriment of another."⁶⁰

Thus, the civil law notion of "enrichment without a cause" or "illegitimate or unjust enrichment," contained in the Federal Civil Code,⁶¹ is advanced in Mexico to justify the lack of a specific civil remedy in Mexico's country's legal system equivalent to the U.S. concepts of "punitive or exemplary damages." However, from a theoretical viewpoint, the doctrine of illegitimate or unjust enrichment need not be an obstacle for Mexico to introduce a legal remedy akin to U.S. punitive damages, as proven by the more progressive and modern civil legislative enactments of other civil law countries, such as France, Spain and Germany. These countries, while embracing the doctrine of illegitimate enrichment, also include civil reparations equivalent to punitive and/or exemplary damages.

Among the incentives for U.S. law firms to take personal injury cases on a contingency basis is the prospect of receiving a large economic award. Since the awards in Mexico are so economically modest, even by Mexican standards, civil litigation in this area, as indicated earlier, is virtually non-existent. As a consequence, the jurisprudence generated by Mexican courts on these matters has been scarce and somewhat repetitive, adding little to the substance of the legal issues raised. In turn, this relative lack of litigation and the paucity of the judicial decisions has kept Mexico's legislative power quite distant from modernizing the Civil Code in the area of extra-contractual liability. This may explain the fact that the original provisions in this area have not changed

59. See ERNESTO GUTIERREZ Y GONZALEZ, DERECHO DE LAS OBLIGACIONES [hereinafter GUTIERREZ Y GONZALEZ, OBLIGACIONES] 367 (Porrúa ed., 1996).

60. *Id.*

61. Article 1882 of the Federal Civil Code reads: "Whoever becomes enriched without cause at the expense of another shall be obligated to indemnify that person for his or her loss in the same measure of the former's enrichment." C.C.D.F. art. 1882.

since they were originally enacted by Congress in 1928, save for the surprising introduction of moral damages in 1982. Furthermore, from a political and economic viewpoint, it is unquestionable that Mexico's Legislative Power has other more important and pressing issues than modernizing the precepts of the Civil Code addressing tort law.

Finally, how does the lack of legal culture among Mexicans relate to the skeletal principles that govern extra-contractual liability cases there? A cursory review of its history reveals that Mexico has not been a country of law and order. Until the 20th century, the nation and its inhabitants were tragically immersed in an interminable series of civil revolts, wars, military attacks by foreign powers (including the United States), and *coups d'état*, all of which culminated in the violent, destructive and prolonged revolution of 1910. During these violent and anarchic times, the rule of law was placed at a secondary level at a time when the form of government, the need to bring peace to the entire nation, and the very existence of the country were at stake.

During those violent and tragic years, the rule of law in Mexico was ephemeral at best. In his excellent compilation,⁶² Tena Ramírez reproduces the texts of the twenty constitutional documents which governed the political and legal life of Mexico, from the initiation of its independence in 1810 until the promulgation of the Federal Constitution of 1917, which continues to be in force today, even after some 500 amendments.⁶³

In actuality, the contours of modern Mexico did not emerge until the end of World War II. The country at last entered into a process of relative social and political stability, followed by gradual industrialization, commercial development, demographic growth, and legal and political consolidation. Legally, during these years, the country endeavored in updating and modernizing its legal system, giving emphasis to foreign investment, infrastructure and business transactions.

Given Mexico's relatively low level of education, the level of legal culture is also quite low. Parallel with the governmental efforts to increase and improve the country's education, special campaigns have been launched to educate the Mexican population, with an emphasis on urban areas, and on fundamental

62. FELIPE TENA RAMÍREZ, *LEYES FUNDAMENTALES DE MÉXICO, 1808-1991* (1996).

63. Jorge A. Vargas, *The Constitution Of Mexico*. Mexican Law: A Treatise For Legal Practitioners and International Investors [hereinafter Vargas, *The Constitution of Mexico*], 37-67 (West Group ed., 1998).

aspects of the Mexican legal system. Labor rights, consumer protection, environmental law, and in recent years, human rights, are emerging as areas where Mexicans are beginning to demonstrate a practical proficiency in the identification and defense of their rights.

It is unknown whether this facet of legal culture may some day eventually extend to embrace extra-contractual liability cases. What appears to be certain is that Mexico's legal system cannot reach the levels of modernity, efficiency, and honesty already present in other civil law countries, such as France, Germany and Spain, until Mexico becomes a middle-class nation, with a higher level of education, a just and equitable treatment of its indigenous populations, a truly democratic system, and a fair and general distribution of wealth.

III. LEGISLATIVE HISTORY OF MORAL DAMAGES

A. *Two Types of "Moral Reparations" in the Federal Civil Code of 1928*

The notion of "moral reparation" does not appear in the legislative history of Mexico until the current Federal Civil Code, which was promulgated in 1928. Although the expression "moral reparation" is not completely analogous to "moral damages," which is the terminology introduced to the Civil Code as a result of the 1982 amendment, Mexican civil law specialists⁶⁴ are of the unanimous opinion that "moral reparation" is definitely a legal antecedent, if not a substantive equivalent, to the more modern notion of "moral damages."

The Federal Civil Code of 1928 utilizes the legal notion of "moral reparation" in two different contexts: first, an economic indemnification to be paid by the offending party as "a moral reparation" to the innocent party when a betrothal agreement is breached; and, second, an "equitable indemnification as a moral reparation" to be paid by the individual who is responsible of an illegal act.

1. Moral Reparation in the 1928 Civil Code

The expression "moral reparation" is used as the economic indemnification to be "prudently determined" by the judge when the affianced person, without a serious reason, fails to comply to

64. See *id.* at 370-377; GUTIÉRREZ Y GONZÁLEZ, *OBLIGACIONES supra* note 59 at 814-818. See also JORGE OLIVERA TORO, *EL DAÑO MORAL* 27-28 (Themis ed., 1996).

his promise of marriage.⁶⁵ Although breaching the promise to marry clearly does not produce a material damage to the fiancée, the indemnification to be paid “as a moral reparation” is considered legitimate by reason of the pain and suffering caused to the innocent party in her honor and reputation.⁶⁶

It should be evident that the payment of the economic indemnification by the offending party corresponds to a pecuniary compensation for the pain and suffering caused or inflicted upon the innocent party. Since the breach of the betrothal caused no material or physical damage to either of the affianced parties, the indemnification in question is thus awarded to the innocent party to provide an affirmation or enhancement to his or her “societal subjective rights.” These rights are inalienable, eminently subjective and non-patrimonial. These rights form an inherent part of a person, defined by the law as an integral part of any human being within the temporal context of a given society.⁶⁷ In general, societal subjective rights are expressed in the form of certain values such as honor, reputation, affection, beliefs, or privacy. These rights incorporate not only legal concepts recognized by domestic law but also by international law, both conventional and customary, in the area of human rights. Inspired by the French doc-

65. “A betrothal agreement is a promise to marry, made in writing, that is accepted.” C.C.D.F. art 139. These agreements do not create an obligation to marry, nor can the agreement stipulate any penalty for non-performance. *Id.* at art. 142. The cause of action may only be brought within one year of the date of termination of the betrothal agreement. *Id.* at art. 144.

66. This expression is used in Article 143 of the Federal Civil Code which reads:

He who without a serious cause in the opinion of the Judge, refuses to comply with his promise of marriage, or indefinitely delays compliance therewith, shall pay the expenses made by the other party by reason of the projected marriage.

The same liability shall be incurred by the fiancé who gives *serious cause* for breaking the betrothal.

The fiancé who, without a serious reason, fails to comply with his promise, shall also pay an indemnification *as a moral reparation* when by reason of the length of the engagement, the intimacy established between the persons affianced, the publicity of their relations, the proximity of the marriage or other similar causes, the breaking of the betrothal *causes serious damage* to the reputation of the innocent party.

Id. at art. 143.

Further, the indemnification shall be prudently determined in each case by the Judge, taking into account the resources of the guilty party and the seriousness of the damage caused to the innocent party. This Article has been repealed in current Civil Code for the Federal District. D.O., May 25, 2000.

67. BORJA SORIANO, *supra* note 18, at 689-691.

trinarians, in recent years these rights are beginning to be characterized in Mexico as "personality rights".⁶⁸

2. Moral Damages in the Civil Code of 1928 (Prior to the 1982 Amendment)

Prior to its amendment in 1982 by President De la Madrid, Article 1916 of the Federal Civil Code, in its 1928 original text, read as follows:

Independently of the damages and losses, the Judge may grant in favor of the victim of an illicit act, or of his or her family if the victim dies, *an equitable indemnification as a moral reparation* to be paid by the person responsible for the act. Such indemnification cannot exceed one-third of the amount of the civil liability. The provisions of this Article shall not be applied to the State in the case in Article 1928.⁶⁹

In Mexico, the normal reparation in civil liability cases resulting from an illicit act consisted in the payment of damages and losses. As explained by Borja Soriano, in early Civil Law, "damages" a loss a person suffers in his or her patrimony, were referred to as *damnum emergens*, and "losses", the deprivation of lawful gains, were also known as *lucro cessans*.⁷⁰

In its original version, Article 1915 of the Federal Civil Code did not enunciate the methodology to be followed to calculate the economic indemnification to be awarded to the victim in civil liability cases involving illicit acts. This methodology was added by the Presidential decree of December 30, 1939,⁷¹ later modified by a subsequent decree of September 16, 1975.⁷² The methodology

68. See ERNESTO GUTIÉRREZ Y GONZÁLEZ, *EL PATRIMONIO PECUNIARIO Y MORAL O DERECHOS DE LA PERSONALIDAD* [hereinafter GUTIÉRREZ Y GONZÁLEZ, *EL PATRIMONIO*] (Portúa ed., 1995).

69. C.C.D.F. art 1916. Original version in the Federal Civil Code of 1928, now abrogated by the amendment introduced by President De la Madrid in 1982. Article 1928 provided: "the State is liable for the damages caused by its officials in the exercise of the functions confided to them. This liability is of a secondary nature and can be enforced against the State only if the official directly responsible has no property, or the property he/she has is insufficient to cover the damage caused." (Emphasis added). *Id.* at art. 1928.

70. See BORJA SORIANO, *supra* note 18, at 352. See also definitions of "damages" and "losses," C.C.D.F. arts. 2108-2109. According to Borja Soriano, in the reparation of the damage in this type of cases, the Mexican Civil Code "adheres to the doctrine of the Swiss jurist Rossel." BORJA SORIANO, *supra* note 18, at 352.

71. D.O., Jan. 20, 1940.

72. D.O., Dec. 22, 1975.

established by the 1975 decree continues in force today,⁷³ taking as a base the minimum wage of the victim when the incident occurred, multiplied by four and then by the number of days mandated by the applicable provisions of the Federal Labor Act, depending on the specific type of incapacity.⁷⁴

Compared to the 1939 decree, which established a maximum of \$20 pesos as the basis to calculate the victim's indemnification, the decree of 1975 was quite generous. However, with the abysmal difference in salaries between the United States and Mexico, the quadruple of the Mexican salary continues to be patently inequitable.

The following are some of the decisions rendered by the Supreme Court of Mexico regarding cases involving civil liability arising from an illicit act as enunciated by Article 1916 of the Federal Civil Code, or its equivalents in the respective State codes.

a. Moral Reparation,⁷⁵ Mexico City, 1938

It is unquestionable that according to the precepts of our law, the obligation to repair the damage comprises⁷⁶ both the material and the moral. A doctrinarian asserts that said damage or losses may transcend not only to the patrimony but also to the moral aspects, embracing within this concept, the entire series of moral problems which may be caused to the victim of an illicit act, and to his or her family. Since the difficulty of the evidence is insuperable for demonstrating the damage caused in its moral aspect, it should be left to the discretion of the Judge, to evaluate [said evidence], taking into consideration the circumstances associated with the act and the material damage, to derive from these facts and impose, according to his or her good judgment, the obligation to pay an amount which may repair the resulting moral damage.⁷⁷

b. Moral Reparation,⁷⁸ 1942

Pursuant to Article 1837 of the Civil Code of Jalisco, the

73. See *supra* notes 39-47, 50-55.

74. Prior to this methodology, the Civil Code stipulated that when the victim's minimum wage exceeded \$20.00 pesos, this amount was the maximum to be considered to calculate the accompanying indemnification. See BORJA SORIANO, *supra* note 18, at 360.

75. C.C.D.F. art. 1916.

76. "Ovadief, Jako (Jacobo)," 56 S.J.F. 2323, (5a época 1938). Each case heard before the Mexician Supreme Court is decided by a panel of five Justices.

77. "Ovadief," 56 S.J.F. 2323.

78. CÓDIGO CIVIL PARA EL ESTADO DE JALISCO art. 1837 (Mex.).

indemnification for a moral reparation cannot exceed one third of the civil liability amount, namely, the damages and losses, which are indeed assessed in monetary terms. Therefore, to impose a moral reparation sentence it is indispensable to fully document the amount and scope of the material damage since the amount of the moral damage is to be estimated, in accordance with the law, in relation with the material damage.⁷⁹

*c. Moral Reparation*⁸⁰

The indemnification for moral reparation prescribed by Article 1813 of the Civil Code of the State of Nuevo León applies only to the person responsible of an illicit act. Even though Article 1814 establishes that persons who have jointly caused a damage are severally liable to the victim for a reparation to which they are obligated, according to the provisions of the chapter which governs extra-contractual obligations, however, said joint liability applies only in cases involving a reparation of the damage resulting from a created risk but not regarding an illicit act.⁸¹

The equitable indemnification to be paid to the victim by the person responsible of the illicit act *as a moral reparation* in the original Article 1916 of the Federal Civil Code was granted at the discretion of the court independently of damages and losses. In order for this moral reparation to be granted by the court, these requirements had to have been met:

1. The court first had to award some "regular" economic indemnification for damages and losses in the case at bar. Therefore, the equitable indemnification did not occur if damages and losses were not granted by the court in the first place. In other words, the granting of the "regular" indemnification was the *conditio sine qua non* for the awarding of the "additional" *equitable indemnification as a moral reparation*.
2. The equitable indemnification cannot exceed one-third of the "regular" indemnification for damages and losses. The corresponding amount was to be determined and granted by the court.
3. The equitable indemnification was awarded at the absolute discretion of the court, possibly in egregious cases or in cases where the illicit act caused the death of the sole benefactor of the family. Accordingly, this "additional"

79. "Sánchez Morales Manuel," 72 S.J.F. 362, (5a época 1942).

80. CÓDIGO CIVIL PARA EL ESTADO DE NUEVO LEÓN art. 1813 (Mex.).

81. "González, Octavio," 20 S.J.F. 197 (6a época 1959).

equitable indemnification was considered to be a moral reparation for the egregious damages caused to the victim or for the death inflicted to the only working member of the family in question.

Although the Drafting Commission of the Federal Civil Code of 1928 already incorporated an equitable indemnification as a moral reparation in Article 15, which has been generally assimilated to the later notion of "moral damages," a number of Mexican civil law specialists have been critical of this concept because, *inter alia*, the awarding of said reparation was, in the first place, not independent or autonomous but rather conditioned upon the granting of an indemnification for damages and losses. Furthermore, it was subject to a ceiling of one-third of the indemnification for damages and losses.⁸²

This notion of equitable indemnification as a *moral reparation* represents the original, or first phase, of "moral damages" in Mexico, stemming from the creation of the Code in 1928 until 1982. The second phase is initiated by the amendment to Article 1916 of the Federal Civil Code by President De la Madrid.⁸³

B. The Legislative Bill by President De la Madrid

1. Legal Rationales

Pursuant to the powers granted by the federal constitution, the President of the Republic is empowered to submit legislative bills to Congress.⁸⁴ Thus, Miguel de la Madrid Hurtado, President of Mexico, sent Congress a "Bill to Amend Articles 1816 and 2116 of the Civil Code for the Federal District" on December 2, 1982.⁸⁵ In his legislative bill, President De la Madrid expressed:

The respect for the personality rights, guaranteed through the civil liability imposed to those who infringe them, shall contribute to complete the framework our laws have established to accomplish a social life in which the respect to the [constitutional] freedoms does not lead to the possibility of

82. SALVADOR OCHOA OLVERA, *DANO MORAL*, 29 (Montealto, 2nd ed., 1999).

83. C.C.D.F. art. 1916, as amended by decree published in the Federal Official Gazette, D.O., Dec. 31, 1982.

84. CONST. art. 71, para I. The President shares this power with the deputies, senators, and the State legislatures. Art. 72 of the Constitution prescribes the legislative process that bills are to follow accordance with the Congress' Internal Regulations. In Mexico, the President of the Republic submits a large percentage of the total number of bills submitted to Congress.

85. Debate de la Cámara de Diputados, Diario 46 at 24, 52 Legislatura, 1° año legislativo, 12 de marzo de 1982.

abuses that threaten the legitimate affections and beliefs of individuals, or attack their honor or reputation.

Under the name of *Personality Rights* the contemporary civil doctrine and some modern statutes embrace a wide spectrum of privileges and powers which guarantee to the individual the enjoyment of his or her faculties and the respect for the comprehensive development of his or her physical and moral personality.⁸⁶ An individual is endowed with attributes inherent to his or her condition that are qualities or assets of his or her personality and which the positive law should adequately recognize and protect through the granting of an ambit of power and the general duty of respect that imposes to third parties, within Civil Law, which should translate in the granting of a subjective right to obtain the reparation in the case of transgression.

The reparation of the moral damage is accomplished by means of a pecuniary compensation, at the free discretion of the judge. Today, this principle is unanimously admitted by the [national] laws and jurisprudence, discarding past scruples of attaching a pecuniary value to an asset of a spiritual value.

Our civil code in force, in pointing out that the reparation of moral damage can only be claimed in those cases in which it co-exists with a patrimonial damage thus limiting the amount of the indemnification to a third of the pecuniary damage, establishes very narrow parameters which, in most cases, currently impede an equitable compensation for extra-patrimonial damages.

The executive power, which I represent, considers that there is no effective responsibility when the affected party cannot demand in an easy, practical, and efficacious manner its full compliance, taking into consideration that liability does not present itself in reality when the obligations are merely declarative, when said obligations are not to be legally demanded, and where there is impunity or lack of adequacy of the sanctions imposed when there is no compliance. Based upon the preceding reasons, in matters of liability for moral damages, it is necessary to expand the hypotheses to demand the corresponding reparation. *This*

86. LEY ORGÁNICA DEL CÓDIGO PENAL [hereinafter Spanish Criminal Code Act] 10/1995 (Spain).; LEY ORGÁNICA DE PROTECCIÓN CIVIL DEL DERECHO AL HONOR, A LA INTIMIDAD PERSONAL Y FAMILIAR Y A LA PROPIA IMAGEN [hereinafter Spanish Civil Protection Act] 1/1982, art. 4, para. 2 (Spain) published in BOLETIN OFICIAL DEL ESTADO [B.O.E.], (1982); Spanish Civil Protection Act, art. 9, para. 2.

*is particularly important in cases in which through any media, including those that disseminate the information, an individual is attacked attributing him/her alleged acts, conducts or preferences, considered as illegal or in violation of the moral values of society.*⁸⁷

Based upon the preceding considerations, the rationale advanced by the executive to support the amendment of the Federal Civil Code to add a new, autonomous, and more vigorous notion of "moral damages," may be summarized as follows:

- The traditional notion of civil liability arising out of tortious acts should be enlarged to include an economic indemnification for non-material damages or injuries, to be known as "moral damages," *i.e.*, harm inflicted on non-pecuniary rights inherent to the legal sphere that protects each individual as a human being (*Personality Rights*);
- Moral damages should not be conditioned upon the existence of material damages but should rather be something autonomous and independent from said material damages, as a separate cause of action;
- The judge is empowered to determine, at his or her sole discretion, the pecuniary compensation to be granted as a reparation for moral damage depending on the circumstances of each individual case; and
- Although not necessarily limited to mass media cases, moral damages should be a particularly apt mechanism for granting a pecuniary compensation in this type of civil liability case (independently from a criminal law case).

2. Text of the Proposed Amendment

The proposed amendment intended to change Articles 1916 and 2116 of the Civil Code for the Federal District in Ordinary Matters and for the Entire Republic in Federal Matters, submitted by President De la Madrid to Congress in December of 1982, reads:

Article 1916. It should be understood for moral damage the injury a person suffers in his or her personality rights, such as sentiments, affections, beliefs, decorum, honor, reputation, secret of intimate life and physical integrity, or in the opinion he or she has of his or her own.

87. Debate de la Cámara de Diputados, Diario 46 at 24, 52 Legislatura, 1º año legislativo, 12 de marzo de 1982.

When an illicit act or omission produces a moral damage, the individual responsible for it shall be obligated to repair it through a compensatory payment in money.

The cause of action to receive reparation it is not transferable to third parties through an *inter vivos* act and it is only passed to the victim's heirs only when there is an action pending upon death of the victim.

The amount of the compensatory payment shall be determined by the judge in a prudent manner, taking into account the injured rights, the intention or degree of fault of the agent, the economic situation of the responsible and of the victim, as well as the other circumstances of the case.

When the moral damage has affected the victim in his or her decorum, honor or reputation, the judge shall order, at the defendant's expense, the publication of the summary of the judgment which reflects in an adequate manner the nature and scope of the judgment. This summary may be published in the information media deemed appropriate by the judge. In those cases when the damage derives from an act which has been disseminated through said media, the judge shall order that the information media to give publicity to the judgment's summary with the same prominence given to the original dissemination.⁸⁸

Article 2116. In estimating the value and the damage of a thing, a subjective or sentimental price shall not be considered, unless it is proved that the responsible party destroyed or damaged the thing with the object of hurting the sensibilities of the owner; the increase made for these causes shall be determined as prescribed by Article 1916.⁸⁹

3. Discussion of the Proposed Amendment by Congress

The legislative bill submitted to Congress by President De la Madrid was discussed both in the Chamber of Deputies and in the Senate, as mandated by the Federal Constitution.⁹⁰ In general, the debate was divided into two contending groups: those persons strongly opposed to the bill, formed by representatives of the Partido de Acción Nacional (or PAN), the opposition political party, and those who supported the presidential bill and were deputies of the official party, the Partido Revolucionario Institucional (PRI)

88. *Id.*

89. *Id.*

90. CONST. art. 72.

and those of the Partido Socialista Unificado (PSUN).⁹¹

The representatives of the PAN argued that the proposed bill was contrary to several of the “individual guarantees”⁹² prescribed by the Federal Constitution; in particular, the freedom to practice any lawful activity or profession (Art. 5); the freedom to express ideas (Art. 6); and the right of any individual not to be violated in his or her home, family, documents or possessions (Art. 16). In addition, it was alleged that the proposed legislative bill would constitute a severe restraint or an insurmountable obstacle to Mexican citizens who, in good faith, would consider bringing charges against public officials denouncing their dishonesty, corruption or other criminal activities, for fear of being countersued by said officials for the infliction of moral damages upon their honor, decorum, and reputation.⁹³ Finally, it was argued that it was impossible to put a price on or to determine in monetary terms the amount of the indemnification for moral damages to be given when “the sentiments, affections, beliefs, decorum, honor, reputation, secret of intimate life or physical integrity” of a given individual had been injured by the declarations or acts of another individual.⁹⁴

The deputies of the PSUN and the PRI advanced the thesis that was regulated at that time by the Federal Civil Code: civil liability arising out of illicit acts was incomplete because it only provided a cause of action to obtain reparations for material damages but not for moral damages. They added that the inclusion of moral damages, as proposed by the legislative bill submitted by the President, was necessary to modernize and strengthen the notion of civil liability, especially when, in their opinion, the

91. See Debate de la Cámara de Diputados, Diario 49 at 3-5, 52 Legislatura, 1° año legislativo, 12 de noviembre de 1982; Debate de la Cámara de Diputados, Diario 51 at 1-21, 52 Legislatura, 1° año legislativo, 12 de diciembre de 1982.

92. In Mexico, the constitutional rights enunciated in the first twenty-nine Articles of the Federal Constitution are commonly referred to as “*Garantías individuales*” (individual guarantees). These rights include, inter alia, equality rights without sexual distinction, prohibition to be subject to judicial proceedings based on special laws or special courts, liberty to engage in family planning, liberty to work, liberty of movement within and to leave the country, freedom to information, freedom to write and publish intellectual works, freedom of assembly, freedom of religion, etc. See JORGE A. VARGAS, MEXICAN LEGAL DICTIONARY AND DESK REFERENCE [hereinafter VARGAS, MEXICAN LEGAL DICTIONARY] (Thomson/West 2003).

93. It was alleged that the proposed bill would violate Articles 85 and 91 of the Act on the Responsibilities of Public Officials.

94. Debate de la Cámara de Diputados, Diario 51 at 5-10, 52 Legislatura, 1° año legislativo, 12 de diciembre de 1982 (noting the long intervention by the deputy of the PAN, Gabriel Salgado Aguilar).

majority of countries today recognize the legal notion of "moral damages" as an important part of the so-called "personality rights."⁹⁵

Additionally, the deputies emphasized that the legislative bill in question sought to give autonomy to the cause of action for moral damages as a separate and independent action from the existence of any material damages. Finally, it was suggested that the proviso mandating that the indemnification for moral damages must not exceed two-thirds of the material damages, as it existed at that time in Article 1916 of the Federal Civil Code, had no reason to read as such. It was also clarified that the reparation to be awarded at the judge's discretion was not to be considered a "punitive" reparation but an "compensatory" reparation, and that the state was also subject to pay indemnifications for moral damages when harm was caused by its public officials.⁹⁶

4. Final Text of the Amendments as Published in the D.O. of December 31, 1982

The text of the amendments as approved by Congress reads as follows, and was taken from the corresponding decree published in the *Diario Oficial de la Federación* (Federal Official Gazette) of December 31, 1982:⁹⁷

DECREE:

The Congress of the United Mexican States decrees:

Articles 1916 and 2116 are Amended, and Article 1916 Bis is Added to the Civil Code for the Federal District in Ordinary Matters and for the Entire Republic in Federal Matters.

FIRST ARTICLE. Articles 1916 and 2116 of the Civil Code for the Federal District in Ordinary Matters and for the Entire Republic in Federal Matters are amended, as follows:

Article 1916. It should be understood for moral damage the injury a person suffers in his or her sentiments, affections, beliefs, decorum, honor, reputation, private life, con-

95. See *infra* discussion on "Personality Rights."

96. See Debate de la Cámara de Diputados, Diario 51 at 10-21, 52 Legislatura, 1° año legislativo, 12 de diciembre de 1982 (discussing the statements of the PSUN deputy, Daniel Angel Sánchez Pérez, and the PRI deputies, Viterbo Cortez Lobato and Salvador Rocha Díaz).

97. See Debate de la Cámara de Diputados, Diario 57 at 133, 52 Legislatura, 1° año legislativo, 27 de diciembre de 1982. The final Congressional decree of approval was published in the D.O., Dec. 31, 1982.

figuration and physical aspects, or in the opinion that others have about that person.

When an illicit act or omission produces a moral damage, the responsible for it shall have the obligation of repairing it through a pecuniary indemnification, independently that a material damage has been caused, whether in contractual or extra-contractual liability. The same obligation to repair the moral damage shall attach to those who incur in objective liability in conformity with Article 1913, as well as the State and its officials in accordance with Article 1928, both of these provisions from this Code.

The cause of action to receive reparation it is not transferable to third parties through an *inter vivos* act and it is only transferred to the victim's heirs when the victim has filed the corresponding action while he/she was still.

The amount of the indemnification shall be determined by the judge taking into account the injured rights, the degree of liability, the economic situation of the responsible, and of the victim, as well as the other circumstances of the case.

When the moral damage has affected the victim in his or her decorum, honor or reputation, or in the opinion others have about him/her), the judge shall order, at the request of the victim and at the expense of the responsible, the publication of a summary of the judgment in the media deemed appropriate by the judge, which adequately reflects the nature and scope of said judgment. In those cases when the damage derives from an act that has been disseminated through said media, the Judge shall order the information media to give publicity to the judgment's summary with the same relevance given to it in the original publication.

Article 2116. In estimating the value and the damage of a thing, a subjective or sentimental price shall not be considered, unless it is proved that the responsible party destroyed or damaged the thing with the object of hurting the sensibilities of the owner; the increase made for these causes shall be determined as prescribed by Article 1916.

SECOND ARTICLE. Article 1916 *Bis* is added to the Civil Code for the Federal District in Ordinary Matters and for the Entire Republic in Federal Matters, as follows:

Article 1916 Bis. Whoever exercises his or her rights of opinion, criticism, expression and information shall not be obligated to repair the moral damage, under the terms and

with the limitations [prescribed in] Articles 6 and 7 of the General Constitution of the Republic.

In any event, the plaintiff who files for the reparation of moral damage for contractual or extra-contractual liability shall fully prove the illicit act of the Defendant and the damage directly caused to the Plaintiff by said act.

TRANSITORY:

SOLE ARTICLE. This decree shall enter into force the following day of its publication in the Federal Official Gazette).⁹⁸

5. The Latest Amendments to the Civil Code in 1994

By means of a presidential decree signed by President Carlos Salinas de Gortari and published in the Federal Official Gazette of January 10, 1994,⁹⁹ Article 1916 of the Civil Code for the Federal District was amended (along with other provisions, including Articles 1927 and 1928 of the same code), in the following terms:

ARTICLE 1916. It should be understood for moral damage the injury a person suffers in his or her sentiments, affections, beliefs, decorum, honor, reputation, private life, configuration and physical aspects, or in the opinion that others have about that person. It is presumed that moral damage was inflicted when the liberty or the physical and psychological integrity of any persons is illegitimately violated or deteriorated.

When an illicit fact or omission produce moral damage, the responsible for it shall have the obligation to repair it through a pecuniary indemnification, independently that a material damage has been caused, whether in contractual or extra-contractual liability. The same obligation to repair the moral damage attaches to whoever incurs in objective liability (*i.e.*, strict liability) pursuant to Article 1913, as well as to the State and its public officials, in accordance with Articles 1927 and 1928, all of this Civil Code.

ARTICLE 1927. The State has the obligation to respond for the payment of damages and losses caused by its public officials as a result of the exercise of the functions assigned to them. This shall be a joint and several liability in intentional illicit acts and secondary liability in the other cases,

98. This decree was published in the D.O., Dec. 31, 1982, and entered into force on Jan. 1, 1983.

99. The decree amends, adds and repeals several articles of, inter alia, the C.C.D.F. See D.O., Jan. 10, 1994. This decree entered into force on Feb. 1, 1994.

where it can only be made effective against the State when the directly responsible public official does not have assets or those owned by him/her are not sufficient to respond for the damages and losses caused by its public officials.

ARTICLE 1928. Whoever makes payment for the damages and losses caused by its servants, employees, officials or operatives may claim restitution for the corresponding amounts from the individual responsible of the act.¹⁰⁰

6. Spain's Organic Act of Civil Protection of 1982.

On May 2, 1982, Juan Carlos I, the King of Spain promulgated the "Organic Act 1/1982, for the Civil Protection of the Right to Honor, to Personal and Familial Privacy and to Personal Image."¹⁰¹ Given its legal content, scope, and time of publication in Spain's "Official Bulletin," it is evident that this is the statute which served as the model utilized by President De la Madrid to formulate the legislative bill on moral damages submitted to the Mexican Congress in early December 1982.¹⁰²

In his introductory remarks, King Juan Carlos I pointed out that the new civil protection statute derived directly from the fundamental rights enunciated by the Spanish Constitution.¹⁰³ Thus, expressly recognized as "fundamental rights and public freedoms," Article 18.1 of the Spanish Constitution "guarantees the right to honor, to personal and familial privacy, and to personal image," jointly with "the inviolability of the personal domicile and the privacy of personal communications, in particular postal, telegraphic and telephone, save for a judicial resolution."¹⁰⁴ Article 20.1 recognizes, in general, the freedom of expression; the freedom of literary, artistic and technical production and creativity; academic freedom; and the freedom of freely communicating or receiving

100. The amendments to Articles 1916, 1927 and 1928 entered into force on Feb. 1, 1999, pursuant to the First Transitory Article of the Jan. 10, 1994 decree. Article 1916 was not affected. The text of all of these Articles is the text in force today.

101. See generally Spanish Civil Protection Act.

102. See *supra* § III.B.: The 1982 Legislative Bill of President De la Madrid.

103. See Spanish Civil Protection Act, at introductory paragraphs.

104. CONSTITUCIÓN DE ESPAÑA [C.E.], art. 18, ¶ 2 and 3. From a Mexican Constitutional Law perspective, Article 16 of Mexico's Federal Constitution of 1917 expressly protects, as "Individual guarantees" (*garantías individuales*), "the inviolability of private communications," as a result of an amendment to the Constitution in 1996. See CONST. art. 16.; D.O., July 3, 1996. However, as of today, Mexico's Constitution—unlike the Spanish Constitution—does not have a provision explicitly protecting "honor, personal and familial privacy, and personal image."

truthful information through any means of communication.¹⁰⁵ The only limitations to the exercise of these fundamental rights are found in the rights enunciated in Section I of the Constitution, which emphasizes respecting the right to honor, to privacy, to personal image, and to the protection of youth and childhood.¹⁰⁶

The Spanish legislation in question is formed by nine articles divided into two chapters. *Article 1* prescribes the "civil protection" to the enumerated rights "against any kind of illegitimate intrusion or interference,"¹⁰⁷ recognizing that some of these rights shall also be protected by certain criminal law provisions.¹⁰⁸ Although criminal actions may be filed separately pursuant to the applicable provisions of the Criminal Code, the Civil Protection Act details the liability relating to criminal offenses in civil cases. This Act recognizes that the protection of these civil rights is to be placed within the context of the so-called "personality rights," which cannot be legally renounced.¹⁰⁹ In this regard, the Act prescribes that the protected rights are "non-renounceable, inalienable, and imprescriptible." The renunciation of the protection provided by this Act shall be null and void, without prejudice to the alleged authorization or consent to which Article 2 of this Act refers to.¹¹⁰

Article 2 of the Civil Protection Act regulates the scope of protection attributed to the enunciated rights. These rights are protected "as prescribed by the applicable laws and social mores taking into consideration that, by one's own acts, each person maintains a reserved space for him or herself or for his or her family."¹¹¹ By adopting this methodology, a judge is expected to determine the degree of protection to be granted, considering the variable data influenced by the passage of time and of individuals.

Evidently, the fundamental rights protected by this Act cannot be considered "absolutely unlimited." First, the requirements imposed by public interest may mandate some intrusion into an individual's privacy as authorized by the law.¹¹² These considered

105. C.E. art. 20.1, ¶ a-d.

106. *Id.* at art. 20.4 ("Estas libertades tienen su límite en el respeto a los derechos reconocidos en este Título. . . y, especialmente, en el derecho al honor, a la intimidad, a la propia imagen y a la protección de la juventud y de la infancia.")

107. *See* Spanish Civil Protection Act, art. 1, para 1.

108. *See generally* Spanish Criminal Code Act.

109. *See* Spanish Civil Protection Act, introductory remarks regarding art. 1.

110. *See id.* at art. 1, para 3.

111. *Id.* at art. 2, para 1.

112. *Id.* at art. 2, para. 2 (providing that there is no illegitimate intrusion of the protected rights when expressly authorized by the law; when the holder of the right

legitimate intrusions. Second, one may expressly authorize an intrusion; however, consent does not equal complete relinquishment of these rights. Instead, one's authorization signifies only a partial state of exception. The Act prescribes, in these cases, that the consent granted may be revoked at any time; however, when this happens, the individual in question is required to pay the corresponding indemnifications for the damages and losses caused, including justified expectations.¹¹³

Article 3 refers to the consent given by minors and incapacitated persons which should be followed in accordance with the applicable civil law. Article 4 provides that the cause of action of a decedent may be brought by a designated in decedent's will. This designation may be given to a legal entity.¹¹⁴ Interestingly, the Civil Protection Act prescribes that in the absence of a specific designation, or when the designated individual is deceased, "the spouse, the descendants, ascendants and siblings of the affected person who are still alive at the time of his or her death," are recognized to have a legitimate cause of action to obtain the corresponding protection.¹¹⁵ In this regard, the Spanish Act is more flexible, more reasonable, and more encompassing than Article 1916 of Mexico's Federal Civil Code which in principle adheres to the principle of non-transferability to third parties, thus severely limiting the benefits of this right.

Articles 4 through 6 of Spain's Civil Protection Act of 1982 contemplate the death of the holder of the right and regulate the resulting legal consequences based on the time when the injury was caused. Although the victim's death extinguishes the respective "personality rights," under this statute, the memory of the deceased person is considered as "the prolongation of this person that must be protected by the law."¹¹⁶ Accordingly, this Act recognizes a valid cause of action by the person designated by in the

has expressly granted his or her consent to that effect; or when it involves opinions expressed by Deputies or Senators in the exercise of their functions, pursuant to Article 71 of the Spanish Constitution).

113. *Id.* at art. 2, para 3.

114. *Id.* at art. 4, para. 1. *Cf.* Paragraph three of the proposed amendment to Article 1916 of the Mexican Federal Civil Code.

115. *Id.* at art. 4, para. 2. In contrast, art. 1916 of the Federal Civil Code prescribing: "The cause of action to receive reparation is not transferable to third parties through an *inter vivos* act and it is only transferred to the victim's heir *when the victim has filed the accompanying action while still alive.*" (emphasis added). In Mexico's Article 1916 of the Federal Civil Code there is no mention whatsoever to "the spouse, descendants, ascendants and siblings" of the victim. C.C.D.F. art. 1916.

116. See Spanish Civil Protection Act, Introductory remarks.

decendent his or her will, or the surviving relatives at the time of the decedent's death. Interesting, even the public prosecutor to bring a claim), but only as a last resort.¹¹⁷

Specifically, Article 6 prescribes that if the victim dies without having had the opportunity of exercising his or her right, either personally or through a legal representative, the corresponding right is transferred to the persons mentioned in the preceding paragraph, who also have the right to continue the legal action already filed by the victim prior to his or her demise.¹¹⁸ If the injury is inflicted prior to the demise of the holder of the right, and the victim did not exercise the corresponding action during life, the Act assumes that, in that circumstance, there is no cause of action since "in the eyes of the victim, or of his or her legal representative, there is a valid presumption that the offending acts did not merit consideration" to lead to the filing of a lawsuit.¹¹⁹

Articles 7 and 8 define illegitimate intrusions or interferences. Thus, Article 7 specifically provides that these are "[t]he imputation of facts or the manifestation of personal opinions through actions or expressions which in any manner injure the dignity of another person, deteriorating his or her fame or attacking his or her own personal sense of self."¹²⁰ Article 8 enumerates the exceptions, which include "acts authorized or conducted by the competent authority in accordance with the law," or when there is "a relevant historic, scientific, or cultural interest."¹²¹

Furthermore, Article 9, in accordance with what is prescribed by Article 53, para. 2, of the Spanish Constitution, establishes the ordinary legal avenues that may be utilized to receive legal protection when certain fundamental rights may be infringed upon, as well as to prevent or impede future intrusions. These rights include civil rights, criminal rights, and rights granted *via*

117. *Id.* at art. 4, para 2-3.

118. *Id.* at art. 6, para 1-2.

119. *Id.* at Introductory remarks.

120. *Id.* at art. 7 (as formulated pursuant to the Organic Act 10/1995 Nov. 23, 1995).

121. *Id.* at art. 8, para 1. Article 8 makes the following clarifications regarding the legal notion of "self image." Article 8 states that it is not an illegitimate intrusion to: a) capture the image, reproduce it or publish it through any means when said image refers to persons in public office or in a profession with public visibility and the image is captured during a public act or in a public place; b) use a caricature to depict said persons, according to social mores, or; c) utilize graphic information regarding a public event when the image of the person in question appears as merely an accessory). The exceptions in paragraphs a) and b) shall not apply to authorities or persons who perform functions whose nature requires their anonymity. *Id.*

Amparo before the Constitutional Tribunal.¹²² The Act prescribes that, in general, the judicial protection includes the adoption of any and all measures necessary to put an end to the illegitimate intrusion and to restore the victim to the full enjoyment of his or her rights, as well as to prevent or impede any future intrusions.¹²³ These judicial measures may include any cautionary measure directed at the immediate ceasing and desisting of the illegitimate intrusion, the right to respond, the publication of the judgment, and the economic indemnification of the damages caused.¹²⁴

The Civil Protection Act prescribes that the damage is to be presumed upon every occasion an illegitimate intrusion is recognized. The indemnification is extended to embrace the *moral damage* which will be calculated, taking into consideration "the circumstances of the case and the seriousness of the injury effectively caused."¹²⁵

The amount of the indemnification for *moral damage* shall correspond to those persons enumerated in Article 4.2 of the Act and, in their absence, to the heirs, in the proportion determined by the judgment.¹²⁶ In the case where the holder of the right passes away (Art. 6), the indemnification is understood to be included in the victim's inheritance.¹²⁷ Finally, the Act provides that in cases involving illegitimate intrusions, the statute of limitations is four years.¹²⁸

The following chart, which compares some of the major substantive issues between Spain's Civil Protection Act of 1982, and Mexico's legislative bill formulated by President De la Madrid (and the resulting 1982 decree amending Article 1916 of the Federal Civil Code), clearly demonstrates the profound influence the Spanish Act exercised upon the legal content and scope on Mexico's novel legal notion of "moral damages:"

122. *Id.* at art. 9, para 1.

123. *Id.*

124. *Id.* at art. 9, para 2.

125. *Id.* at art. 9, para 3.

126. *Id.* at art. 9, para 5.

127. *Id.*

128. *Id.*

LEGAL SYMMETRIES BETWEEN SPAIN'S CIVIL PROTECTION
ACT OF 1982 AND MEXICO'S ARTICLE 1916 OF THE FEDERAL
CIVIL CODE ON MORAL DAMAGES

	Spain's Act	Mexico's Moral Damages
<i>Rights protected</i>	Personality Rights: a) right to honor; b) right to personal and familial privacy; and c) right to personal image	Personality Rights: Sentiments, affections, beliefs, decorum, honor, reputation, private life, configuration and physical aspects, and opinion held by others
<i>Legal nature of Rights</i>	Fundamental rights protected by the Spanish Constitution in Articles 18.1 and 20.1 Non-renounceable, inalienable and imprescriptible	Private rights <i>not</i> expressly enunciated by Mexico's Federal Constitution of 1917 Non-renounceable, inalienable and imprescriptible
<i>Cause of action</i>	Individual holder of right (<i>i.e.</i> , victim) or person (or legal entity) designated in testament when victim has passed away, (Art. 4.1); Also minors and incapacitated, (Art. 3.1, CPA); Or spouse, descendants, ascendants, and siblings, (Art. 4.2, CPA); Or by Public Prosecutor (in the absence of all of the above, Art. 4.3, CPA) Spouse and relatives may sue to protect deceased victim's rights (Art. 6.1, CPA)	Individual holder of right (<i>i.e.</i> , victim) Not transferrable to third parties but only by victim while still alive
<i>Exceptions</i>	"Legitimate intrusions" by competent authorities as authorized by law (Art. 8.1) Or historical, scientific or cultural interest (Art. 8.2) Image of public officials or profession with notoriety (Art. 8.1, (a)) Or caricatures or graphics (Art. 8.1, (b) and (c))	Opinions or criticisms based on as constitutional freedom of expression (Arts. 6-7, Federal Constitution)
<i>Indemnification</i>	Moral damage to be estimated Taking into account "circumstances of the case and the seriousness of the injury effectively caused" and the means and dissemination utilized to inflict the damage (Art. 9.2)	To be determined by the Judge taking into account (a) the injured rights, (b) the degree of liability, (c) the economic situation of the responsible, and (d) of the victim, and other circumstances of the case
<i>Beneficiaries</i>	As indicated above Or heir(s) (Art. 9.2)	Victim and victim's heir(s) when victim filed action while still alive
<i>Statute of Limitations</i>	Four years (by spouse, heirs or ascendants/descendants) (Art. 9.5, CPA) Or eighty years when exercised by Public Prosecutor (Art. 4.3, CPA)	Two years (Art. 1934, Federal Civil Code)
<i>Presumed injury</i>	When the illegitimate intrusion is judicially acknowledged	n/a

IV. MORAL DAMAGES IN THE MEXICAN DOCTRINE

Since "moral damage" is a relatively novel concept under Mexican Civil Law, most Mexican doctrinarians are still in the process of developing a uniform and common terminology to explain the legal essence and scope of this concept. The following section includes a discussion of Mexican doctrinarians and their opinions regarding moral damages.

A. Manuel Borja Soriano

1. Comments on Moral Damages in General

This author distinguishes between patrimonial damage and moral damage, which is an extra-patrimonial damage or non-economic damage.¹²⁹ Adhering the ideas of French specialists,¹³⁰ Borja Soriano concurs that moral damages may be divided into three categories:

- (1) Those which affect the "*social part of the moral patrimony*:" these are those which injure an individual in his or her honor, reputation or esteem. These are generally associated as a pecuniary value in cases involving defamation or libel. In these cases, as Soriano asserts, there is no difficulty in admitting the need of reparation.¹³¹
- (2) Those which injure the "*affective part of the moral patrimony*:" these hurt an individual in his or her "sentiments or affections," such as the pain suffered by the loss of a dear person. In these types of cases, some specialists question and even refuse the idea of giving any indemnification since the injury does not inflict "*any patrimonial damage*" on the victim and "only causes pain and suffering."¹³²
- (3) Those which, rather than impinging upon the "social or affective part of the moral patrimony," *cause a non-pecuniary injury to the victim without diminishing the person's ability to work*. As a consequence, some raise the question of whether these "moral injuries" should, or should not, receive some kind of reparation. Soriano recognizes that "an enumeration is impossible" although he provides these examples: attacks to a per-

129. BORJA SORIANO, *supra* note 18, at §730, pg. 371.

130. *Id.* In this regard, Borja Soriano follows the ideas advanced on this subject by H. AND L. MAZEAUD, *TRAITÉ THEORIQUE ET PRATIQUE DE LA RESPONSABILITÉ CIVIL DELICTUELLE ET CONTRACTUELLE*. Vol. I, § 405 (1957).

131. BORJA SORIANO, *supra* note 18, at §730, pg. 371.

132. *Id.*

son's "convictions and beliefs," "suffering," or "scars and injuries causing a damage on the physical appearance".¹³³

Contrary to the doctrine advanced by the French authors Meynial and Esmein,¹³⁴ who predicate that moral damages should only be awarded when there is "a material repercussion," Borja Soriano adheres to the idea that moral damages, *per se*, impose the obligation of providing a pecuniary indemnification. He supports his thesis with two arguments: first, money is capable of making a given injury disappear or attenuate, in part or completely, even if this injury does not have a pecuniary nature. However, he recognizes there are cases where money is not enough to restore things to their previous condition, upon which he inquires whether this is a reason to refuse indemnification for damages and losses to the victim.

Borja Soriano concludes that it is not a valid justification. When it is asserted that the goal of civil liability is to guarantee the reparation of the injuries caused a victim, it has never been suggested that the victim has no right when restoration *per se* cannot be accomplished. Often, this reparation is unattainable. In general, the most appropriate equivalent is money, because with money a victim is afforded limitless possibilities. Reparation for damage may also give a victim the possibility of receiving equivalent satisfactions for what has been lost. Therefore, the reparation of a moral damage is indeed possible.¹³⁵

The second prong of Borja Soriano's argument is directed at refuting the claim that money cannot provide equivalent satisfaction in certain cases, such as the moral pain of a father who lost his son or in the case of a husband with an adulterous wife. Borja Soriano writes:

Even though the judge evaluates the material damage and is more or less influenced by the seriousness of the offense, this cannot be used as a preemptory argument against the reparation of a moral damage because this offense is not but a personal pain. This explains why numerous authors, who favor this type of reparation, do not hesitate to find its foundation, albeit partially, in the idea of a private punishment. They see this private punishment as a sanction against the author of the injury, as well as a reparation

133. *Id.* at 371-72.

134. *Id.* at 372, §372: Sistema de Meynial y A. Esmein.

135. BORJA SORIANO, *supra* note 18, at 372.

and, without a doubt, most of the courts are of the same opinion. [However], it is necessary to investigate which is the amount of money necessary to provide the satisfactions of a moral nature susceptible of replacing in the moral patrimony the value which has been taken out of it. There is no impossibility in accomplishing this. These ideas have led to an almost unanimity of authors admitting the reparation of the moral damage in the criminal and quasi-criminal area.¹³⁶

2. Comments on Article 1916 of the Federal Civil Code, as Amended

According to Borja Soriano, the 1982 amended text of Article 1916 includes the dual categorization of moral damages caused on the "moral patrimony," as enunciated by Mazeaud.¹³⁷ However, to explain the Mexican concept of moral damages, this author transcribes the opinion of the Swiss jurist Tuhr, who predicates:

[The reparation for moral damages] provides the victim with an increase in his or her patrimony; an increase which may be applied to any satisfaction, whether material or ideal. The resulting satisfaction, and the fact of knowing that this amount of money has been taken from the responsible person, should attenuate the bitterness of the offense and calm down, to a certain extent, the desire of vengeance which has not disappeared in any modern man despite Christianity and civilization.

Moral damage is not a punishment inflicted upon the guilty person even though the result, and the fine, represent a diminution of the patrimony. The goal of moral reparation is not to inflict a loss to the offending party, but to endeavor in increasing the victim's patrimony.¹³⁸

Borja Soriano concludes his commentary by pointing out that, in order to avoid speculation, the current Civil Code forbids any transfer of the legal cause of action for moral damages and limits its exercise by the victim's heirs only to those cases in which the legal action was filed by the victim while he or she was still alive.¹³⁹

136. *Id.* at 373.

137. *See supra* note 98 and accompanying text.

138. TUHR, *cited by* BORJA SORIANO, *supra* note 18, at 375-76.

139. *Id.* at 376.

B. Ernesto Gutiérrez y González

1. Comments on Moral Damages in General

Dr. Ernesto Gutiérrez y González is the leading civil law specialist who has produced the most current and detailed scholarly work devoted to analyzing and determining the precise legal contours of the novel notion of moral damages in Mexico.¹⁴⁰ He is of the opinion that the civil legal concept of "patrimony" should be given a larger scope, embracing both values of a pecuniary nature (under the traditionalist approach) and moral and affective values of a non-pecuniary nature (under a more modern approach). These moral or affective values conform the notion of "Personality Rights."¹⁴¹ Highly influenced by Castán Tobeñas, as well as other European authors,¹⁴² Gutiérrez y González defines Personality Rights as: "[A]ssets formed by certain physical or psychological extensions of the human being relative to his or her physical or mental integrity, which are applied to himself/herself or to other legal entities created by the law, and which are individualized by a given legal regime."¹⁴³

In other words, personality rights are subjective rights that protect an individual's interests or values over patrimonial assets (for example, a house or a car) or non-patrimonial assets (such as an affection, a sentiment, or a belief), including those associated with legal entities, as enunciated and recognized by the law. Emulating the work of the renowned Italian scholar De Cupis, who has produced the most complete "catalogue" of Personality Rights,¹⁴⁴ Gutiérrez y González adapts the catalogues produced by De Cupis and Gangis to the Mexican legal system, dividing the Personality Rights into the following categories and sub-categories:

140. See GUTIERREZ Y GONZALEZ, *OBLIGACIONES*, *supra* note 59, at 805; GUTIERREZ Y GONZALEZ, *EL PATRIMONIO*, *supra* note 68, at 717.

141. The expression "Personality Rights" can be traced back to an article published by E. H. Perreau in France in 1909, according to ROGER NERSON, *LA PROTECCION DE LA PERSONALIDAD EN EL DERECHO FRANCÉS* 7-8 (J. Castán Vázquez trans., Reus ed., Madrid 1961). See also JOSE CASTÁN TOBEÑAS, *LOS DERECHOS DE LA PERSONALIDAD* 63 (Reus ed., Madrid 1952). This author has exercised a powerful influence on this subject throughout Latin America, in particular in Mexico and Argentina.

142. These authors include JOAQUÍN Díez Díaz, MAZEAUD, ROGER NERSON, MARIO ROTONDI, FERRARA, etc. See CASTÁN TOBEÑAS, *supra* note 141, at 12-22.

143. GUTIERREZ Y GONZALEZ, *EL PATRIMONIO*, *supra* note 68, at 767-68 and 769-773.

144. This "catalogue" appears in CASTÁN TOBEÑAS' book, and is reproduced in GUTIERREZ Y GONZÁLEZ, *EL PATRIMONIO*, *supra* note 68, at 745-46.

A. Public social part	<ul style="list-style-type: none"> Right to honor or reputation Right to a professional title Right to personal secrets 	<ul style="list-style-type: none"> In correspondence Domicile Telephone Professional Image Will (or testament) Intimacy
	<ul style="list-style-type: none"> Right to a name Right to an aesthetic presence 	
	<ul style="list-style-type: none"> Rights of convenience 	<ul style="list-style-type: none"> Evening sleep Free transit Access to home Public trash service Help in case of an accident Clean environment
B. Affective part	<ul style="list-style-type: none"> Affective rights Right to life Right to freedom Right to physical integrity 	<ul style="list-style-type: none"> Familial Friendship
C. Psycho-somatic part	<ul style="list-style-type: none"> Ecological rights 	
	<ul style="list-style-type: none"> Body rights 	<ul style="list-style-type: none"> Total disposition of the body Disposition of certain body parts Disposition of body accessions
	<ul style="list-style-type: none"> Cadaver rights 	<ul style="list-style-type: none"> Over the whole cadaver Only parts of it¹⁴⁵

Contrary to the opinion of other specialists who consider the Personality Rights as “extra-patrimonial,” Gutiérrez y González concludes that these rights form an inherent part of any individual’s personal patrimony, and are patrimonial rights subject to changes and transformations over time and space, as they are influenced by public policy and law, customs and mores, religion, science and technology, which dictate their creation, legal content and existence.¹⁴⁶

C. Ignacio Galindo Garfias

1. Comments on Moral Damages

According to Galindo Garfias, the “pecuniary indemnification” to be awarded in civil liability cases does not truly constitute a “reparation” but instead a “compensation” to be “freely determined by the judge, taking into account the nature of the damage caused, the circumstances, and the social and economic position of

145. GUTIÉRREZ Y GONZÁLEZ, *EL PATRIMONIO*, *supra* note 68, at 749.

146. *Id.* at 763.

the agent (*sic*) causing said damage.¹⁴⁷

Personality rights place the emphasis upon third parties and impose upon them, an obligation to respect the rights of third parties. Such obligations are not merely 'declarative norms', since any violation of personality rights results in the obligation to *compensate* the moral damage caused to the victim, as provided by Articles 1916 and 2116 of the Civil Code for the Federal District.¹⁴⁸

Galindo Garfias also shares the idea that compensatory indemnification to be paid when moral damages are inflicted is based on the notion of personality rights. For Galindo Garfias, "personality" is a legal construct which rests upon the recognition of certain essential assets which are inherent to a person for his or her legal protection through the duty of respect imposed to the other individuals in a given society.¹⁴⁹

Therefore, the object of personality rights consists in the enjoyment of those fundamental or essential assets to any person's spiritual and physical life.¹⁵⁰ He asserts that these rights are opposable not only to all other individuals but also to the State. These are qualities inherent to a person as recognized by the law; they constitute *sine qua non* components indispensable for the enjoyment of all other rights, whether pecuniary or non-pecuniary, which form a person's patrimony, both in an economic and moral sense.¹⁵¹

D. Jorge Olivera Toro

1. Comments on Moral Damages.

Olivera Toro defines moral damage as any harm that adversely affects the person's immaterial and invisible legal sphere, characterized by its extra-patrimonial aspect.¹⁵² This legal sphere is formed by three different types of assets:

- 1) Personal assets (*i.e.*, life, name, honor, etc.);
- 2) Patrimonial assets which surround any individual in the economic arena; and
- 3) Family and social assets represented by the individual's

147. IGNACIO GALINDO GARFIAS, *DERECHO CIVIL (General Part: Persons and Family)* 336, § 164 (Porrúa, México 20th ed.).

148. *Id.*

149. *Id.* at 330.

150. Dr. Galindo Garfias includes: a) the right to life and human freedom; b) the right over a person's own body and health; c) the right to honor; and d) the right to privacy or intimacy, as forming a part of personality rights. *Id.* at 331-335.

151. *Id.*

152. OLIVERA TORO, *supra* note 64, at 3.

power within his or her social environment.¹⁵³

Whereas the patrimony determines what the person *has*, the social environment indicates what a person *is*.¹⁵⁴ Accordingly, the material damage harms the economic assets or the rights that are placed within the patrimonial or economic legal sphere. Non-patrimonial (or moral damage) injures the assets or rights belonging to a person's legal sphere.¹⁵⁵

According to Olivera Toro, a person is molded by his or her human attributes. These attributes are inherent to any human being and they are known as personality rights. Since people are sociable individuals, their inclusion within a given social context determines what that individual is as a member of a family or as a component of a group of people who form a society. The social roles that each individual plays in society are defined and protected by the law and, as a consequence, any damage or harm caused to these personality rights is something completely different than the damages caused to a person's patrimony.¹⁵⁶

Personality rights are those assets or rights that form the legal sphere that is strictly personal to each individual and which define the special and peculiar attributes that a given individual possesses. These rights or assets, according to Olivera Toro, are quite different from the patrimonial rights. Therefore, the name and type of damage depends upon the legal sphere affected by the damaging act.¹⁵⁷

Olivera Toro suggests that traditional concepts such that it is immoral or inconvenient to put a price on pain, or that moral damages cannot be measurable from an economic viewpoint. He argues that positive criteria have been advanced which predicate: (a) it is a valid claim that the victim of a [moral] damage should be compensated for the damages suffered; (b) moral damage is the cause of action for the [economic] indemnification; and (c) the vic-

153. *Id.*

154. *Id.* at 3-4.

155. *Id.* at 4. Following the ideas advanced by an Argentinean scholar, Dr. Olivera Toro adopts these examples of moral or non-patrimonial damages: 1) Bodily injury threats; 2) Threats to a person's honor; 3) Illegal deprivation of freedom; 4) Culpable transmission of diseases; 5) Insulting or offending graffiti in a person's home; 6) Domicile violation or intrusion; 7) Revealing a private and dishonorable secret; 8) Intimacy rights violations; 9) Publication of photographs showing serious physical defects; 10) Disfigurement of a woman's face; and 11) Death of a dear person. *Id.* at 7-8. These examples are taken from ALFREDO ORGAZ, *EL DAÑO RESARCIBLE* 42 (Omeba ed., Buenos Aires 1960).

156. OLIVERA TORO, *supra* note 64, at 3-4

157. *Id.* at 4.

tim may use the money to obtain other assets that may compensate for the lost ones.¹⁵⁸

In accord with other specialists, Olivera Toro clarifies that moral damages may be either repaired or compensated, depending on the emphasis. Thus, moral damages can be "repaired" when the situation that existed prior to the causing of the damage is restored. The moral damage can also be "compensated" when the victim is economically indemnified with a given compensation for the damages inflicted to the victim's personality rights.¹⁵⁹

Finally, Olivera Toro agrees with Gutiérrez y González that "the moral damage can definitely be repaired,"¹⁶⁰ and concurs with Mazeaud that the moral damage can be repaired even though "the damage may not be erased." This can take place, for example, when the victim is given an indemnification that may be used to acquire certain assets that may substitute or replace those which were lost.¹⁶¹

V. MORAL DAMAGES: A BRIEF COMPARATIVE LAW SURVEY

One cannot dispute the direct and profound influence that the Code of Napoleon exercised upon the structure, content, and institutions of civil law in a significant number of countries, including Mexico, which are now generally comprised under the civil legal tradition.¹⁶² In essence, the formulation of that legal archetype by a small but brilliant group of jurists led by Pothier may be fairly characterized as a modern and more lucid version of the *Institutes* formulated by Gaius as one of the fundamental works of Roman law.¹⁶³

Since the Code of Napoleon,¹⁶⁴ in particular the 1804 Civil Code, was virtually adopted *in toto* (both in format and substance) by a number of European, Latin American, African and even

158. *Id.* at 19.

159. *Id.* at 20.

160. See GUTIÉRREZ Y GONZÁLEZ, *EL PATRIMONIO*, *supra* note 68, at 687-688.

161. *Id.* See *supra* Part IV.A.2, notes 168-174 and accompanying text.

162. See JOHN H. MERRYMAN ET AL., *THE CIVIL LAW TRADITION. EUROPE, LATIN AMERICA, AND EAST ASIA* 1156-1162 (1994); RENE DAVID AND J. BRIERLEY, *MAJOR LEGAL SYSTEMS IN THE WORLD TODAY: AN INTRODUCTION TO THE COMPARATIVE STUDY OF LAW* 102 (2nd ed. 1978).

163. JOHN H. MERRYMAN, *THE CIVIL LAW TRADITION: AN INTRODUCTION TO THE LEGAL SYSTEMS OF WESTERN EUROPE AND LATIN AMERICA* 38 (1985).

164. In reality, Napoleon appointed a commission of prominent jurists to codify the French law. This commission, headed by Napoleon himself, produced five "codes," the Civil Code being the first one to be completed, given its perceived salient importance for the French people.

Asian countries, it is not surprising that the legal notion of moral damages may be found, with some variations, in the respective codes of most of these countries. A few examples from Europe and Latin America have been chosen merely for illustrative purposes.

A. *European Countries*

1. France

Articles 1382 and 1383 of the French Civil Code enunciate the fundamental principles that govern the French law of torts.¹⁶⁵ Both of these Articles are of paramount importance in civil liability cases. However, it may be interesting to point out that the legal notion of “moral damages” is not found in the text of any of the Articles included in this Chapter of the French Civil Code. Instead, moral damages appear as part of the jurisprudence produced by civil courts when applying these provisions to individual cases.

When one suffers damage as a result of a tortious act, the resulting damage is generally divided in civil law countries into two categories: material or economic, on the one hand, and non-material or moral, on the other. A Paris court, in a 1904 decision, wrote: “from the viewpoint of its nature, the damage may not only be material but also bodily [damage] which is the case when a disability is caused by an accident, or when a contagious disease is transmitted.”¹⁶⁶

Commenting on the “moral” nature of the resulting damage, a French Criminal Court in 1957 wrote: “the pain suffered by the children of the victim of a fatal accidents suffices, in the absence of any material damage, for them to have legal cause of action to be indemnified for damages by the author of said accident.”¹⁶⁷

There are other cases decided by French courts involving moral damages. One decision held that the death of an animal, such as a horse, may cause its owner “a damage of a subjective and sentimental nature, to be indemnified by reparation.”¹⁶⁸ Another case determined that “if the legal cause of action for

165. THE FRENCH CIVIL CODE art. 1382, 1383, at 252 (John H. Crabb trans., Revised Ed. Fred B. Rothman & Co. 1995). Article 1382 prescribes that: “any act whatever of man which causes damage to another obliges him by whose fault it occurred to make reparation,” and Article 1383 states that: “each one is liable for the damage which he causes not only by his own act but also by his negligence or imprudence.”

166. CODE CIVIL, *Jurisprudence Générale Dalloz* art. 1383, comment 5 (63rd ed. Petits Codes Dalloz 1973) (Fr.).

167. *Id.* at comment 6.

168. *Id.*

indemnification, in the case of a fatal accident, is directed at obtaining the reparation of an exclusively moral damage, it shall not be admissible until there is a family or matrimonial bond between the plaintiff and the victim.¹⁶⁹ Finally, "regarding the transfer of a cause of action to the heirs of a victim of a fatal accident, when the action in question was not exercised by the *de cuius*, for the heirs to obtain indemnification for the moral damage caused to them due to the victim's death."¹⁷⁰

In other cases, French courts determined that judges have absolute discretion "to determine the extent of the damage and the type of reparation"¹⁷¹ or "the amount of the indemnification."¹⁷² The judiciary also has the discretion to decide "the right to an indemnification in favor of the victim as a consequence of an injury,"¹⁷³ as well as the criteria to be taken into consideration to determine the applicability of past-due interests as a portion of the indemnification.¹⁷⁴ Judicial discretion has also decided that the statute of limitations for a cause of action in a civil liability case is thirty years and ten years in a criminal case .

Under French law, it seems that the "essential rights inherent to the personality," particularly when these refer to the right to an individual's own image, is an expression used in cases involving damages arising out of a journalistic or mass media context, clarifying that the exercise of a right cannot be considered a civil or criminal offense.¹⁷⁵

2. Germany

Under the German Civil Code,¹⁷⁶ civil liability cases are controlled by Book Two, Law of Obligations, Section VII, Title 25: *Delicts*.¹⁷⁷ Section 823 titled: "Duty to compensate for damages," enunciates the fundamental principle in civil liability cases, namely: "a person who, willfully or negligently, unlawfully injures the life, body, health, freedom, property or other right of another

169. *Id.* at comment 8.

170. *Id.* at comment 9.

171. *Id.* at comment 19.

172. *Id.*

173. *Id.* at comment 22.

174. *Id.*

175. *Id.* at comments 11-12.

176. THE GERMAN CIVIL CODE (Simon L. Goren trans., Revised Ed. Fred B. Rothman & Co. 1995).

177. Title 25 was recently changed to Title 27, based on Article 1 of the Modernization of Obligations Act, published on November 26, 2001 (BGBC. I. at 3138). Today, Title 27 is composed of §§823-853.

is bound to compensate him for any damage arising therefrom.”¹⁷⁸ Although the expression “moral damages” is not found in any of the sections in this Title, it seems that Section 847, entitled “Money for Pain,” resembles the notion of moral damages. This section reads:

“[i]n the case of injury to the body or health, or in the case of deprivation of liberty, the injured person *may also demand fair compensation in money for damage which is not damage to property.*”¹⁷⁹

Leading commentators of the German law of torts indicate that the heading “body and health” covers any adverse interference caused to an individual without his or her consent.¹⁸⁰ In more precise terms, the use of the word “body” refers to cases involving the “severing of the plaintiff’s finger, breaking his leg, or external abrasions of the kind typically found in car accident cases,”¹⁸¹ whereas “health” refers to “externally provoked malfunctions of the plaintiff’s inner body,” such as “internal infections, gastroenteritis, bacterial infection, inhalation of poisonous fumes, etc.”¹⁸² However, these commentators consider that “[p]sychological disturbances that we would classify under the heading of ‘psychiatric injuries’ would also be brought under this heading *though not, of course, mere pain, grief and suffering.*”¹⁸³ (Emphasis added). Under the German law of torts, “psychiatric injury” denotes cases where there is a recognizable medical illness entailing such conse-

178. THE GERMAN CIVIL CODE, §823. In 2001, Section 823 of the German Civil Code was repealed by the Second Act on the Modification of the Rules for Compensation for Damages, found now under Section 253, II (BGBC at 2647), July 15, 2002. Today, the new Section allows an economic compensation “because of an injury to the body, the health, deprivation of liberty or sexual self-determination. . . [a] fair compensation in money can only be demanded because of the damage, which is not a damage to property (patrimonial damage).”

179. *Id.* Interestingly, section 847 subsection (2) recognizes that “a similar claim belongs to a woman against whom an immoral crime or offense is committed, or who is induced by fraud, by threats or by abuse of a relationship of dependence to permit extra-marital cohabitation.” *Id.*

180. BASIL S. MARKESINIS AND HANNES UNBERATH, *THE GERMAN LAW OF TORTS. A COMPARATIVE TREATISE* 45 (4th ed. 2002).

181. *Id.*

182. *Id.* “Loss of sleep” may also be included “in appropriate circumstances.”

183. *Id.* Germany’s Supreme Court (*Bundesgerichtshof* or BGH) has held that “the transmission of the AIDS virus constitutes an injury to health even when it has not yet developed into AIDS. Rendering the plaintiff HIV positive is thus actionable under the heading of interference with health even though the infection has “not apparently affected the plaintiff’s physical condition. For the contamination of blood with HIV is known to have devastating consequences for the person affected and those who come in close contact with him. . .” (BGH 30 April 1991, NJW 1991, 1948).

quences as sleeping disorders, headaches, vomiting, speech disturbances, inability to concentrate, loss of libido and even, in the most serious cases, suicidal mania.¹⁸⁴

Section 824 of the German Civil Code (*Bürgerliches Gesetzbuch* or BGB) imposes civil liability for oral or written statements that are likely to endanger the credit of another person or otherwise damage his or her earnings or "prosperity."¹⁸⁵ Liability under this heading may involve criminal issues pertaining to insults or defamation.¹⁸⁶

In accord with France's legal notion of "personality rights," certain doctrinarians in Germany developed an incipient concept of the "general right to one's personality" in the late nineteenth century.¹⁸⁷ However, it was not until after World War II, and the horrors of the Nazi holocaust, when a more detailed enunciation of a person's all embracing right would be formulated under the term *allgemeines Persönlichkeitsrecht*.¹⁸⁸ This right was created in 1954 and was added to the list of other rights already included in the German Civil Code which protected the interests of life, body, health, and freedom.¹⁸⁹ The development of this novel right was triggered by the Constitution's protection of the "human personality," enunciated by Articles 1 and 2 of the German Constitution.¹⁹⁰

184. *Id.* at 122, citing *Attia v. British Gas Plc* [1988] QB 304, 317, 320, per Bingham, L.J. Cf. *Toms v. McConnell*, 45 Mich. App. 647, 207 NW 2d 140 (1973). Attempts by German lawyers to enlarge the definition of compensable harm to include life's general risks —*allgemeines Lebensrisiko*— such as pain, grief, and other expenses connected with the "inconvenience" suffered as a result of the death of a close relative, have been rebuffed by the courts (*See* BGH NJW 1989, 2317).

185. THE GERMAN CIVIL CODE, *supra* note 176, §824, at 153. Section 824. "Endangering credits" reads: (1) A person who declares or publishes, contrary to the truth, a statement which is likely to endanger the credit of another, or to injure his earnings or prosperity in any other manner, shall compensate the other for any damage arising therefrom, even if he does not know of its untruth, but should know of it."

186. MARKESINIS AND UNBERATH, *supra* note 180, at 901-902.

187. B.S. MARKESINIS, A COMPARATIVE INTRODUCTION TO THE GERMAN LAW OF TORTS 55-58 (2nd. Ed., 1990).

188. *Id.* at 294-328. Under the heading "Privacy," this author reproduces salient cases involving the Right to Privacy and the Right of Protection of the Human Personality involving publications in journals, use of a person's image for commercial purposes, offenses to a person's reputation, slander to a person in a television documentary, etc.

189. *Id.* at 56. This author points out that some of these rights occasionally enter into conflict with an "irresponsible press" and must be counterbalanced by the imperative need to preserve the freedom of the press, guaranteed by Article 5 of the German Constitution. Grundgesetz [G.G.] (Federal Constitution of Germany), art. 5.

190. Article 1 of the German Constitution prescribes that "Human dignity is inviolable;" and Article 2 that "[E]veryone has the right to free development of his

In section 847, the Great Civil Senate stated that when assessing the amount of reasonable compensation in money pursuant to this section, "all the circumstances must be taken into account, including the financial circumstances and the degree of blameworthiness of the person liable to pay damages."¹⁹¹ However, a more recent view asserted that the compensation must only be "equitable", or "fair", with reference to the purpose, which is to compensate non-pecuniary damage. Therefore, it only takes into account the extent and the duration of the pain, disfigurement, suffering, and intrusion as well as the means necessary to compensate for non-pecuniary damage.

Unlike Mexican courts, German courts, for some decades now, have been awarding damages for "pain and suffering" in civil liability cases under §§823-853 (*Delicts*) of the Civil Code.¹⁹²

3. Italy

Article 2043 of the Italian Civil Code applies to civil liability cases arising out of tortious acts.¹⁹³ More specifically, Article 2059 refers to "non-patrimonial damages" in civil liability cases and prescribes that these damages "should only be compensated in the cases determined by the law."¹⁹⁴ The legal basis of this Article derives from Articles 3 and 24 of the Italian Constitution.¹⁹⁵

In general, "non-patrimonial", or "extra-patrimonial", damage may exist in an illicit intrusion into an individual's state of disposition as a consequence of an unexpected affront or emotional injury.¹⁹⁶ Non-patrimonial damages may also correspond to "moral damage", when this term is explicitly used by the applicable code or statute. For example, there is a cause of action to be indemnified for moral damages in certain circumstances, such as

(*sic*) personality insofar as he (*sic*) does not violate the rights of others or offend against the constitutional order or against morality." G.G., art. I.

191. MARKESINIS AND UNBERATH, *supra* note 180, at 706.

192. See MARKESINIS AND UNBERATH, *supra* note 180, *Commentary to Liability under Paragraph 823 I BGB* at 32 *et seq.*

193. CODICE CIVILE [C.C.] art. 2043 (Ita.) Article 2043 is titled: *Reparation for an illicit act*, and reads: "Any intentional or non-intentional act that causes an unjust damage obligates its author to repair the damage." See also CODICE CIVILE ITALIANO, Book Four: *Obligations*, Title IX: *Illicit Acts (Dei fatti illeciti)* at 1568.

194. CODICE CIVILE ITALIANO, *supra* note 193, at 1649 *et seq.*

195. *Id.* at 1650, §1.

196. *Id.* The Code's description of the "non-patrimonial damage" reads: ". . . consiste nell'ingiusto turbamento dello stato d'animo in conseguenza dell'offesa subita. . ."

the death of a close relative,¹⁹⁷ an injury to personality rights,¹⁹⁸ or for an illegal detention.¹⁹⁹

Unlike the United States or Germany, where damages for pain and suffering are readily available under their respective legal systems, there is no general rule in Italian law which permits compensation "for the injury or loss of rights of a personal nature which are not measurable in money terms; in other words, injuries comprising physical and psychological suffering."²⁰⁰ Furthermore, "moral damages are only available in the cases defined by law and it so happens that all such cases relate to damage suffered pursuant to a crime."²⁰¹

4. Spain

Since its inception, Mexico's legal system has been under a direct, constant, and pervasive influence from Spain. Historically, this influence has been present throughout the political, legal and constitutional life of Mexico. The legislative bill submitted to Congress by President Miguel de la Madrid in 1982 which intended to modernize the Civil Code for the Federal District, expanding the legal notion of moral damages, as indicated earlier, was clearly inspired by Spain's Organic Act of Civil Protection of 1982.²⁰² This may suggest the continued doctrinarian influence that Spain, and its leading jurists, continue to exercise today upon Mexico's legal landscape, particularly in the civil law arena.

The basic provision which governs tort law cases in Spain, also known as "extra-contractual liability," is found in Article 1902 of the Spanish Civil Code, which prescribes: "whoever by action or omission causes damage to another, whether by fault or negligence, is obliged to repair the damage caused."²⁰³ In conformity with the legislative practice in other civil countries such as Germany or Italy, Spain has enacted specific statutes which apply in other areas of civil liability such as: civil aviation,²⁰⁴ civil liabil-

197. *Id.* at 1653, §16.

198. *Id.* at 1655, §21.1.

199. *Id.* at §29.

200. G. LETROY CERONA, *THE ITALIAN LEGAL SYSTEM* 368 (Butterworths, 1985).

201. *Id.*

202. *See supra* notes 98-127, and the accompanying text.

203. JAIME SANTOS BRIZ, *CÓDIGO CIVIL. COMENTARIOS Y JURISPRUDENCIA* 834 (Granada, 1991).

204. LEY SOBRE RESPONSABILIDAD EN EL TRÁFICO AÉREO, art. 120 (*Civil Liability Act on Air Transport*), July 21, 1960.

ity derived from nuclear energy,²⁰⁵ consumer protection,²⁰⁶ and protection to an individual's honor, image and familial and personal intimacy.²⁰⁷ These specific statutes detail and expand the civil liability areas, in the understanding that the principles and the doctrine generated by Article 1902 of the Civil Code are to be applied as supplementary sources in interpreting these statutes.²⁰⁸

Regarding the concept of moral damages, as enunciated by the Organic Act of 1982 for the Protection of the Honor the Image and the Personal and Familial Intimacy, Santos Briz, Magistrate of Spain's Supreme Tribunal, indicates that jointly with the fundamental rights of individuals there is another group of rights protecting the right of the person. The former group of rights is known as "*personalísimos*", or rights inherent to each individual, and includes a special legal protection to the honor, the image, and personal and familial intimacy, as enunciated by the 1982 Act.²⁰⁹

The latter group of rights includes the professional prestige of that person's patrimony, as well as those rights protected by Article 1902 of the Civil Code, when the existence of moral damage is proven. Sometimes the facts in the case may lead to a criminal action which also involves civil liability.²¹⁰ It is not necessary that the act which offends a person's honor is done or disseminated with malice, provided that it affects an individual's private and public sphere.²¹¹ With respect to freedom of expression, Briz asserts that this freedom cannot justify the attribution and dissemination to a given individual, identified by name, of certain acts which diminish that individual's public recognition and respect, and which are clearly censurable, regardless of the social mores of the moment.

Finally, regarding *respondeat superior* situations, Briz comments that this type of civil liability is direct, and not subsidiary, upon those who have to respond for the acts of those persons

205. LEY SOBRE RESPONSABILIDAD CIVIL DERIVADA DE ENERGÍA NUCLEAR, (*Civil Liability Act derived from Nuclear Energy*), April 29, 1964.

206. LEY PARA LA DEFENSA DE CONSUMIDORES Y USUARIOS DE 19 JULIO 1984, arts 25 and 27 (*Act for the Defense of Consumers and Users of July 19, 1984*).

207. LEY ORGÁNICA DE PROTECCIÓN DEL HONOR, DE LA IMAGEN Y DE LA INTIMIDAD PERSONAL Y FAMILIAR 5/1982, (Spain) published in BOLETIN OFICIAL DEL ESTADO [B.O.E.], (1982); (Organic Act of May 2, 1982, for the Protection the Honor, the Image and Personal and Familial Intimacy).

208. SANTOS BRIZ, *supra* note 203, at 834.

209. *Id.* at 837.

210. *Id.*

211. *Id.*

under their direction, control, and supervision.²¹² Thus, a legal cause of action for civil liability against an entrepreneur or a company may be filed directly against said entrepreneur or company, without having to sue the workers or employees first since the company or entrepreneur has the right to recover from its employees.²¹³

However, the existence of a subordinate labor relationship and the fault or negligence of the employee is a *conditio sine qua non* in these kinds of cases.²¹⁴ Without a subordinate relationship between companies, Article 1903 of the Spanish Civil Code does not apply.²¹⁵

In recent years, Spanish attorneys and legal scholars are beginning to ponder the convenience of adding *punitive damages* in civil liability cases, a concept similar to the U.S. punitive damages, as a "legal technique for social regulation."²¹⁶

5. Switzerland

According to Manuel Borja Soriano, a leading expert in Civil Law, Mexico's legislative notion of "moral reparation" first introduced in Article 143 of Mexico's Civil Code of 1928, was inspired by the Swiss jurist Rossel.²¹⁷ The parallelism between Mexico's Article 143 of the Civil Code and the Swiss counterpart, Article 92, is remarkable. The final paragraph of Article 143 reads:

ARTICLE 143.

The affianced person who, without a serious reason, fails to comply with his (*sic*) promise, shall also pay an indemnity as *moral reparation* when by reason of the length of the engagement, the intimacy established between the persons affianced, the publicity of their relations, the proximity of the marriage or other similar causes, the breaking of the betrothal causes serious damage to the

212. CÓDIGO CIVIL [C.C.] art. 1903 (Spain).

213. C.C. art. 1904 (Spain).

214. SANTOS BRIZ, *supra* note 203, at 843. See also decisions rendered by Spain's Supreme Tribunal of July 3, 1984; January 30, 1985; and October 3, 1961.

215. *Id.* See decisions of the Supreme Tribunal of October 30, 1985 and May 10, 1986.

216. See ALEJANDRO ATILO TARABORRELI AND EDUARDO OMAR MAGRI, ACERCA DE LOS 'PUNITIVE DAMAGES.' ANÁLISIS ECONÓMICO DEL INSTITUTO; Luis Díez-Picazo y Ponce de León. Derecho de Daños. Ed. Civitas, Madrid, 2000; Salvador Codrech, Prevenir y Castigar. Madrid, 1997; and Fernando Gámez Pomar. Daño Moral.

217. See *supra* notes 69-77, and the accompanying text.

reputation of the innocent party.²¹⁸

Whereas Mexico's first Civil Code of 1870 (as well as its successor, the Civil Code of 1884) was highly influenced by the French Civil Code, as was expressly recognized by its Drafting Commission, neither of these two Mexican codes incorporated the notion of moral damages or moral reparation, as seen earlier.²¹⁹ Accordingly, it is not until the enactment of the current Civil Code of 1928, when the equitable notion of "moral reparation" was first introduced in Mexico's Civil Law and the substance of this provision was taken from the Civil Code of Switzerland.

For comparative purposes, the text of Article 93 of the Swiss Civil Code is reproduced here:

ARTICLE 93. Where one of the parties is seriously injured in his (*sic*) person or reputation by the other's repudiation of his (*sic*) promise of marriage, and he (*sic*), the plaintiff, was not himself (*sic*) at fault, while the defendant was at fault at repudiating, the court may award the plaintiff a sum of money as *moral compensation*.

This claim for *moral compensation* cannot be assigned to another. But it passes at the plaintiff's death to his (*sic*) heirs, where at the date of the opening of the succession the claim was recognized or the action begun.²²⁰

The Swiss notion of "moral compensation" is legally closer to the French concept of "moral damage" (or to the 1982 amendment to Mexico's Civil Code). Whereas the 1928 Mexican code introduced Mexicans to the concept of "moral reparation," the substance and scope of this concept was much more limited when compared to its Swiss counterpart, which was enacted in 1907. Pursuant to the Swiss Civil Code, "moral compensation" constituted a civil remedy which was to be granted to an individual when his or her "person or reputation" had been injured by an illicit act committed by a third party. In contrast, the Mexican version applied exclusively in cases of a breached betrothal.

Unlike Mexico's Civil Code of 1928, which is silent in this regard, Article 28 of the Swiss Civil Code²²¹ advances a detailed

218. THE MEXICAN CIVIL CODE. (Michael W. Gordon, transl. Oceana Publications, 1980.

219. See *supra* notes 65-66, and the accompanying text.

220. THE SWISS CIVIL CODE, Transl. by Ivy Williams, Rothman & Co., ReMak, Zurich, 1976 at 21-22 (Emphasis added). Article 93 is placed under Book II: Family Law; Title III: Marriage; Chapter I: Betrothal.

221. Article 28 of this Code is placed under Chapter I, Book I, devoted to the "Law of Persons."

and sophisticated notion of "personality rights," clearly inspired by the French notion of *Droits de la Personnalité*.²²² Thus, Article 28 of the Swiss Civil Code reads:

ARTICLE 28. When anyone is being injured in his (*sic*) person or reputation by another's unlawful act, he (*sic*) can apply to the judge for an injunction to restrain the continuation of that act.

An action for damages or for the payment of a sum of money by way of *moral compensation* can be brought only in special cases provided by law.²²³

Swiss courts have determined that "personality rights" comprise "those interests that serve to 'individualize' a given person who deserves to be protected taking into consideration the necessity of having social interactions among individuals and the existing social mores."²²⁴ Specifically, Article 28 protects, *inter alia*:

the personality against illicit intrusions; those whose personal interests have been injured cannot invoke this provision unless the act is illicit; an act is illicit when it violates the written and non-written orders or prohibitions of a legal character formulated to protect the specific right that has been injured; for example, the dissemination by the press of novels, texts or drawings which injure a person's honor.²²⁵

Therefore, the cause of action in Article 28 of the Swiss Code, enacted in 1907,²²⁶ constitutes a civil liability action arising out of a tortious act which puts it substantively closer to Mexico's version of "moral damages." However, contrary to the provisions of the Mexican Code, in cases seeking to obtain a "moral compensation" under the Swiss Code, the corresponding indemnification can only take place when expressly authorized by a specific

222. See *supra* notes 162 and 172, and the accompanying text.

223. THE SWISS CIVIL CODE, *supra* note 220, at 7. This principle of civil liability is enunciated in greater detail in Section 41 of the Code of Obligations, and prescribes that "any person who has unlawfully caused damage to another, whether intentionally or through negligence, is held liable." Under this section, the "moral compensation" is justified "by the special gravity of the injury and of the culpability." See IVY WILLIAMS, THE SOURCES OF THE LAW IN THE SWISS CIVIL CODE, 92, ReMak, Verlag, Zurich, 1976.

224. GEORGES SCYBOZ AND PIERRE-ROBERT GILLIÉRON, CODE CIVIL SUISSE ANNOTÉ 18 (Payot ed., 1972).

225. *Id.* at 28-29.

226. WILLIAMS, *supra* note 223, at 13.

statute.²²⁷

VI. ANALYSIS OF DECISIONS RENDERED ON MORAL DAMAGES BY MEXICAN COURTS, INCLUDING THE SUPREME COURT, 1982-2003

A. *A Brief Explanation of Mexico's "Jurisprudencia" and "Ejecutorias"*

It is generally recognized that Mexico, unlike the United States and other common law countries, does not adhere to the doctrine of *stare decisis*.²²⁸ Couched in these terms, this assertion may lead some to erroneously believe that in Mexico, judicial precedents are unimportant and that judges pay no attention to the decisions because they carry no legally binding force in deciding subsequent judicial cases.

However, although it is true that the doctrine of *stare decisis* has no applicability in Mexico, it should be clarified that under certain circumstances, federal judicial precedents rendered by Mexico's Supreme Court and by the Circuit Collegiate Courts exercise a clear and persuasive influence upon judges when they decide cases involving identical or similar legal issues. These persuasive decisions are known as "*ejecutorias*." Furthermore, decisions by the Supreme Court and Collegiate Circuit Courts may become legally binding to lower courts and authorities, thus acquiring precedential value, when the special formalities regarding the legal substance and the requisite number of these decisions are complied with.²²⁹ These important legally binding decisions are known as "*jurisprudencias*."²³⁰

Accordingly, it may be said that the federal judicial decisions known in Mexico as "*jurisprudencias*" and "*ejecutorias*" may be

227. SCHWEIZERISCHES ZIVILGESERTBUCH [ZGB], CODE CIVIL SUISSE [Cc], CODICE CIVILE SVIZZERO [Cc], art. 28. This policy seems to be in accord with the system adopted by the Italian Civil Code in Article 2059 C.c. art. 2059 (Ita.); see *supra* notes 179-184, and the accompanying text.

228. See MERRYMAN, *supra* note 163, at 22, 36 and 46-47.

229. LEY DE AMPARO [hereinafter Amparo Act], (Miguel Acosta Romero & Gerardo David Gongora Pimentel, eds., 1st ed. 1983), arts 192-197. Articles 177-179 prescribe the special procedure to create "*Jurisprudencias*" and "*Ejecutorias*."

230. See JORGE A. VARGAS, MEXICAN LAW: A TREATISE FOR LEGAL PRACTITIONERS AND INTERNATIONAL INVESTORS 58-59 (West Group, 1998). Regarding the statutory basis and the special procedure to be followed to create, interrupt or modify "*Ejecutorias*" or "*Jurisprudencias*," see Vargas, *The Constitution of Mexico*, *supra* note 63, at §Jurisprudencia and Amparo, Chap. 2. For a definition of these terms, see VARGAS, MEXICAN LEGAL DICTIONARY, *supra* note 92, at 299-300.

validly compared, *mutatis mutandis*, to the legally binding precedential value attributed in the United States to certain judicial decisions under the doctrine of *stare decisis*.²³¹

Under Mexican law, "*jurisprudencia*" is a Mexican term of art used to refer to the event whereby five uninterrupted and consecutive judicial resolutions rendered by the Supreme Court of Justice, or by a Circuit Collegiate Tribunal, sharing the same legal holding, become obligatory to all lower courts, provided that said federal resolutions had been approved by eight Justices (*Ministros*) when decided by the Supreme Court *en banc*, or by four Justices when generated by a Supreme Court Chamber.²³² Under the Amparo Act, "*jurisprudencias*" are obligatory to the Supreme Court (whether acting in Chambers or *en banc*), when created by the Supreme Court *en banc*, and are also obligatory to the Unitary and Circuit Collegiate Tribunals, District Courts, Military Tribunal, State Courts and Federal District Courts (Mexico City) in Ordinary Matters, and Administrative and Labor Courts at the local and federal levels.²³³

It should be indicated that, in very special cases, a "*Jurisprudencia*" may be interrupted by a contrary judicial resolution pursuant to the requisite procedure prescribed by the Amparo Act.²³⁴ In this case, the corresponding judicial resolution must clearly enunciate the reasons that were taken into account to support said interruption.²³⁵

Contrary to other decisions, the federal judicial resolutions that create or modify "*Jurisprudencias*," including the dissenting votes of Supreme Court Justices and Circuit Collegiate Magistrates, must be published in the "*Semanario Judicial de la Federación*" or Federal Judicial Weekly, jointly with the "*Ejecutorias*" generated by the Supreme Court (either working *en banc* or in Chambers) or the Collegiate Circuit Tribunals.²³⁶

"*Ejecutorias*" are each of the individual federal judicial resolutions of Mexico's Supreme Court and the Circuit Collegiate Tribunals rendered to decide a given legal issue or question. When five

231. See definitions for "*Precedente*," "*Jurisprudencia Judicial*" and "*Ratio Decidendi*." NUEVO DICCIONARIO JURÍDICO MEXICANO (Porúa ed., 2001).

232. Amparo Act, art. 192. The "*Jurisprudencia*" generated by the Circuit Collegiate Tribunals (*Tribunales Colegiados de Circuito*) must have been approved by unanimity of all the Magistrates of the accompanying Tribunal. *Id.* at art. 193.

233. *Id.* at art. 192.

234. *Id.* at art. 194.

235. *Id.*

236. *Id.* at art. 197-B.

of these uninterrupted and consecutive "*Ejecutorias*" (also referred to as "*Tesis*") are rendered, advancing an identical legal holding, as explained earlier, the fifth of these resolutions becomes "*Jurisprudencia*," as statutorily mandated by the Amparo Act. It then becomes obligatory to all lower courts.

In a judicial sense, each of these individual resolutions marks a successive progression in the five-step process required by the Amparo Act for the successful formal creation of a given "*Jurisprudencia*." However, this process may be interrupted at any time, thus aborting the prospects of reaching the fifth required, "*Jurisprudential*" resolution. Within this judicial progression, each individual "*Ejecutoria*" carries a specific degree of "judicial persuasiveness" which may be relatively low, in "*Ejecutorias*" numbers one and two, for example, or very high, in "*Ejecutoria*" number four, which is close to reaching a new "*Jurisprudencia*."

Each of these "*Ejecutorias*" is published in the Federal Weekly Gazette, thus sending a clear message to all the judges and public authorities in Mexico as to the "judicial thinking" being developed by the Supreme Court or by the Circuit Collegiate Courts with respect to a specific legal issue. This message clearly influences the decisions to be rendered by lower courts in addressing the same legal question, as well as legislators and public officials in formulating legislation or public policies, respectively. The persuasive value of each of these individual "*Ejecutorias*" becomes stronger as they become closer to reaching the fifth consecutive and uninterrupted resolution. In other words, each of these "*Tesis*" or "*Ejecutorias*" clearly delineates the trend or judicial path suggested by Mexico's highest courts regarding a given legal issue or question.

B. *Three Kinds of Judicial Decisions on Moral Damages*

For purposes of this article, the judicial decisions rendered by Mexico's Supreme Court and the Circuit Collegiate Tribunals on moral damages²³⁷ since 1928, the year that the Civil Code for the

237. Although the term "moral damages" does not appear in the Civil Code for the Federal District until 1982 (see *supra* notes 92-94), the expression "an equitable indemnification as a moral reparation" appears in the original text of Article 1916 of the 1928 Code and is considered as an antecedent of the current notion of moral damages. Therefore, it is under this construction that the judicial decisions between 1928 and 1982 are cited or analyzed, especially for comparative purposes to contrast the pre-1982 decisions with the post-1982 judicial resolutions.

Federal District was enacted, until the end of December of 2003, have been grouped into three major categories:

- 1) Old *Jurisprudencias* and *Ejecutorias* on Moral Reparations, 1928-1982;
- 2) Current *Jurisprudencias* on Moral Damages, 1982-2003; and
- 3) Relevant *Ejecutorias* on Moral Damages, 1982-2003.

Quantitatively, the bulk of these federal judicial resolutions (consisting of both *Jurisprudencias* and *Ejecutorias*), first deciding "moral reparations," as they were known between 1928 and 1982, and then "moral damages," as they have been referred to since 1982, comprise a total of 125 decisions.

1. Old *Jurisprudencias* and *Ejecutorias* on Moral Reparations, 1928-1982.

When the Civil Code for the Federal District was enacted in 1928,²³⁸ Article 1916 endowed the competent judge in civil liability cases with the power to grant "in favor of the victim of an illicit act, or of his or her family if the victim dies, independently of damages and losses, 'an equitable indemnification as a moral reparation' to be paid by the person responsible of the act. Such indemnification could not exceed one-third of the amount of civil liability.)"²³⁹

Out of a total of thirty-seven judicial resolutions rendered on issues pertaining to Article 1916 of the Civil Code during these fifty years,²⁴⁰ the following four *Jurisprudencias* were created: (1) moral damage is exclusively reserved for extra-contractual liability cases; (2) moral reparation is not allowed in objective liability cases; (3) the lack of evidence on the material damage does not impede the judge to grant a moral damage indemnification to a the victim, and; (4) the economic capability of the responsible person should be taken into account only when the amount of the "moral damage" is to be determined. Each *Jurisprudencia* will be now be explored in some detail.

238. The Civil Code for the Federal District of 1928 was published in the *Diario Oficial* of March 26, 1928, and entered into force four years later, on March 26, 1932. See also *supra* note 12, and the accompanying text.

239. For the original 1928 text of Article 1916 of this Civil Code, see *supra* note 69, and the accompanying text. An English translation of the original text of Article 1916 appears in THE MEXICAN CIVIL CODE, *supra* note 218, at 350.

240. These thirty-seven judicial resolutions were taken from SALVADOR OCHOA OLVERA, LA DEMANDA POR DAÑO MORAL 173-222 (Montealto Editores, 1999).

a. *Moral Damage is Exclusively Reserved for Extra-Contractual Liability Cases*

Under Mexico's Civil Law, "extra-contractual" liability cases may be described as tort law cases. The author of the tortious act is obliged to repair said damage, as prescribed by Article 1910 of the Federal Civil Code.²⁴¹

Regarding damages and losses, and the resulting civil liability from a tortious act, the Supreme Court of Mexico in a *Jurisprudencia* published in 1941, wrote:

Civil liability for damages and losses, according to our Civil Law, may arise out of contractual and extra-contractual facts, [legal] acts and omissions; however, said Civil law expressly reserves questions pertaining to "moral damage" only to extra-contractual liability cases; namely, those civil liabilities whose obligatory nature derives from illicit acts.²⁴²

According to this *Jurisprudencia*, the Civil Law of Mexico did not provide a cause of action for moral damages either in contractual or in objective liability cases.²⁴³ Accordingly, in these two types of cases, only material damages were recoverable at that time.

This old federal decision suggests that in this case, the Supreme Court of Mexico adhered to the original intention of the Drafting Commission in Article 1916 of the 1928 Civil Code when it prescribed that, "[i]ndependently of the damages and losses, the Judge may grant in favor of the victim of an illegal act (or of his or her family if the victim dies), *an equitable indemnity as a moral reparation*," which was not to exceed one-third of the amount of the civil liability.²⁴⁴

Therefore, it seems that the original intention of the 1928 legislation was to provide an additional indemnification to the victim of an illicit act (or to his or her relatives, in the case of the victim's death) as an "equitable act." This may be one of the rare instances whereby a civil law country, such as Mexico, relies on the discre-

241. See Vargas, *Tort Law in Mexico*, *supra* note 3, at 209-239.

242. DAÑOS Y PERJUICIOS, RESPONSABILIDADES PROVENIENTES DE LOS. QUINTA ÉPOCA. INSTANCIA TERCERA SALA. FUENTE: SEMANARIO JUDICIAL DE LA FEDERACIÓN, TOMO: LXIX at 2826. Compañía Editorial Sayrols, S.A., Agosto 21, 1941.

243. See *id.* The *Jurisprudencia* cited below, titled *Responsabilidad Objetiva, Daño Moral. Improcedencia de su Reparación*, expressly affirms this principle.

244. MEXICAN CIVIL CODE, *supra* note 218, at 350, discussing Article 1916.

tion of the Judge to provide an equitable remedy suited to the special conditions of the individual case.

b. Moral Reparation is Not Allowed in Objective Liability Cases

In its opinion, the Supreme Court wrote that the reparation of "moral damage"²⁴⁵ in objective liability cases²⁴⁶ is not allowed since Article 1916 of the Civil Code refers to cases involving civil liability arising out of an illicit act. In contrast, objective liability presupposes the licit use of dangerous things.²⁴⁷

As a result of the amendments made in 1982 and 1994, Article 1916 of the Federal Civil Code currently prescribes: "the same obligation of repairing the moral damage corresponds to those who incur in objective liability in accordance with Article 1913."²⁴⁸ In this regard, a decision by the Eighth Collegiate Court in Civil Matters of the First Circuit in an *Ejecutoria* rendered in 1995, entitled "Civil Objective Liability and the Reparation of Moral Damage are Not Contradictory Actions and May Validly Co-Exist in the Same Proceedings," affirmed the new legal principle enunciated by the now amended Article 1916:

Even though it is true that the objective liability prescribed in Article 1913 of the Civil Code for the Federal District does not require as a valid cause of action the realization of an illicit conduct, and that in contrast to the moral damage referred to in Article 1916 of the same Code it does require the realization of an illicit act or omission in order to result in the corresponding reparation, it is nonetheless true that the joint exercise of both causes of action is not contradictory and may validly co-exist in the same proceedings. This is so due to the fact that there is no obstacle and no legal incongruity when an indemnification for damages resulting

245. Rather than using the term "moral reparation," which is the expression utilized in the original text of Article 1916 of the Federal Civil Code, the Supreme Court prefers to use the more modern term of "moral damages."

246. Under Mexican Civil Law, "objective liability" results from the use of "mechanisms, instruments, equipment or substances which are inherently dangerous, or because of the speed they develop, their explosive nature and inmmable characteristics, or by the intensity of the electric current, or similar characteristics," the person who employs them "is liable for the damages or injuries they cause *even though* [that person] *is using them licitly*," as prescribed by Article 1913 of the Federal Civil Code. Objective liability closely resembles the U.S. notion of strict liability.

247. *Responsabilidad Objetiva, Daño Moral. Improcedencia de su Reparación.* Amparo Directo 8909/66. "Ferrocarriles Nacionales de México," S.J.F. (época 1968). Enero 8 de 1968. 5 votos. *Ponente:* Rafael Rojina Villegas.

248. See *supra* notes 96-97, and the accompanying text.

from the objective civil liability when using dangerous substances or instruments is demanded, including the moral damage caused in a person's physical appearance as a consequence of an illicit conduct. What is not permitted in a firm *Jurisprudencia* rendered by the Supreme Court of Justice, titled: *Objective Liability. This Does Not Imply Moral Reparation*, is that due to the objective liability the resulting damage is considered as an illicit fact and, for this reason, the reparation of moral damages is thereby imposed. However, what is not permitted is that both legal actions be filed simultaneously and, once their requisite elements are duly proved, an indemnification will be granted in each of those actions. This becomes evident from reading the second paragraph of Article 1916 of the Civil Code, which provides: "the same obligation of repairing the moral damage corresponds to those who incur in objective liability in accordance with Article 1913."²⁴⁹

The original text of Article 1913 prescribed a valid cause of action to receive indemnification when a person uses mechanisms, instruments, or devices inherently dangerous which result in material damage even though this damage was not caused by an "illegal" act, unless such damage was produced by the fault or inexcusable negligence of the victim.²⁵⁰ This is the basic principle that Mexico originally applied to "civil objective liability." However, a claim for "moral damages" was excluded prior to the amendment of 1982 because the resulting damages did not arise out of an "illicit act", which is the *sine qua non* requirement in extra-contractual liability cases.

By changing this principle as a result of the 1982 Article 1916 amendment, Mexico's legislature departed from the traditional policy and decided to embrace the principle that in objective liability cases, the resulting material damages also resulted in moral damages. The legal philosophy behind this new principle was articulated in President De la Madrid's legislative bill when he asserted that by prescribing a statutorily mandated respect for "personality rights," guaranteed through the civil liability imposed to those who infringe them, this was to contributorily complete Mexico's legal framework "to accomplish a social life in which the respect to [constitutional] freedoms does not lead to the possibility of abuses that threaten the legitimate affections and

249. "Petróleos Mexicanos," 1 S.J.F. 401 (9a época 1995).

250. MEXICAN CIVIL CODE, *supra* note 218, at 349, *discussing* Article 1913.

beliefs of individuals, or attack their honor or reputation."²⁵¹

Given this philosophy, it was relatively easy for the Mexican legislature to extend the benefit of an additional economic indemnification to compensate for the inflicted moral damage, especially when one considers that, in most cases, the injuries caused on the victim's personality rights, such as "sentiments, affections, beliefs, reputation, intimate life and physical integrity,"²⁵² may be even greater, deeper, and more emotionally devastating than the adverse consequences resulting from the material damage. In general, it would seem that the object of moral damages is to provide an equitable indemnification for the resulting pain and suffering that would place them in closer symmetry with the U.S. notion of punitive or exemplary damages.

c. Lack of Evidence of the Material Damage Does Not Prevent the Judge from Granting a Moral Damage Indemnification in Favor of the Victim

In its third *Jurisprudencia* on moral damage, rendered in 1963, the Supreme Court of Mexico wrote:

The lack of evidence regarding the material damage does not constitute an impediment to the Judge to grant an indemnification for the "moral damage" in favor of the victim. The "moral damage" cannot be precisely quantified. Its economic reparation is not possible to be determined with exactitude, and its pecuniary amount or importance cannot be subject to any type of proof. It would be absurd to leave to the experts the assessment of the price of a pain, an honor, a revenge (*sic*). Indeed, it corresponds to the Judges to determine the amount of the indemnification through their wise judgment, taking into account the economic capabilities of the responsible person, the nature of the damage, and the pertinent material in the proceedings.²⁵³

In Mexico, opponents to the notion of "moral damages" traditionally argued that this kind of non-material damages was eminently subjective and, as a consequence, impossible to quantify in economic or commercial terms. During the Congressional discussion of President De la Madrid's Legislative Bill to Amend Article 1916 of the Federal Civil Code, some Deputies of the PAN raised

251. See President de la Madrid's Legislative Bill, *supra* notes 83-85, and the accompanying text.

252. C.C.D.F., *supra* note 7.

253. "Flores Hernández, Eleuzinque," 111 S.J.F. 39 (6a época 1963).

this same argument.²⁵⁴ However, in attempting to discern the rationale behind the Supreme Court's opinion on this matter, it may be argued that Mexico's highest court sided in favor of the victim, given the clear intention of the Drafting Commission of the 1928 Civil Code to award a moral damage indemnification more as a "novel" and "equitable remedy," rather than relying on the more traditional legal concept of "damages and losses."²⁵⁵

Because moral damage was new, there were no technical standards of proof to be used to assess or quantify said damage. *Ergo*, the role of the Judge to grant indemnification and to determine the amount was based on "wise judgment" and on the criteria enunciated by the pertinent provision of the applicable Civil Code which appeared to be the most appropriate course of action in these types of cases. In fact, the *Jurisprudencia* rendered by the Supreme Court on this matter in 1963 not only provided the strongest support to the trial Judge in civil liability cases but also gave that Judge an explicit deference to rely on his or her discretion when awarding moral damages.

The opinion of the 1963 *Jurisprudencia* was reiterated by the Supreme Court in an *Ejecutoria* published in 1987, in these terms:

Since moral damage is something subjective, it cannot be proven in an objective manner as demanded by the aggrieved parties, who point out that the moral damage has not been proved. [However], since there is difficulty to demonstrate the existence of pain, of an injured sentiment touching upon intimate affections, [injuries to] honor and reputation, all the victim needs to prove is that the injury took place.²⁵⁶

d. The Economic Capability of the Responsible Person Should be Taken into Account Only When the Amount of the "Moral Damage" is to be Determined.

This *Jurisprudencia*, written in 1966, prescribes that the eco-

254. See the intervention in the Chamber of Deputies of Panista Gabriel Salgado Aguilar, *supra* note 92, and the accompanying text.

255. Regarding the role of "damages and losses" in the determination of material damages in civil liability cases, see *supra* notes 29-30, and the accompanying text.

256. *Daño Moral, Prueba del Mismo*. Amparo Directo 8339/86, "G.A. y Otra," 217-228 S.J.F. 217, part 4 (7a época 1987). Abril 6 de 1987. Unanimidad de 4 Votos. Ponente: Jorge Olivera Toro. Instancia: Tercera Sala. SEMANARIO JUDICIAL DE LA FEDERACIÓN. Séptima Época, Tomo: 217-228, Cuarta Parte at 98. This thesis appears again in the *Informe de 1987*, Tercera Sala, Tesis 382 at 271.

conomic capabilities of the author of the tortious act should be taken into consideration while determining the amount of moral damages but not in cases involving material damages. This resolution reads:

“regarding material damages, the economic capabilities of the person obliged to pay them should not be taken into account since these capabilities can only be considered in cases involving ‘moral damage’.”²⁵⁷ After Article 1916 of the Federal Civil Code was amended in 1982, the Supreme Court of Mexico has dictated several *Ejecutorias* which substantively adhere to the *Jurisprudencia* rendered in 1966 on this matter.²⁵⁸

During this initial period of application of the notion of “moral reparation” in civil liability cases arising out of illicit acts, initiated in 1932 when the Civil Code for the Federal District entered into force and ending in 1982 when Article 1916 of said Code was amended, the legal analysis of the *Jurisprudencias* and other judicial resolutions produced during this period lead to the following three conclusions: first, that indemnifications for “moral reparation” only took place within the context of “extra-contractual liability” cases. Second, that indemnification for “moral reparations” had a statutorily mandated cap consisting of a maximum of “one-third of the amount of the civil liability.” And third, probably the most significant, that “moral reparation” constituted an equitable remedy to be granted and quantified at the sole discretion of the Judge. Accordingly, the notion of “moral reparation” as an “equitable indemnification” clearly marks the intriguing and unique presence of an eminently common law remedy within the *corpus* of a most salient and ever present component of Mexico’s legal system: its Civil Law.

2. Only Four *Jurisprudencias* on Moral Damages between 1982 and 2003.

Only four *Jurisprudencias* have been produced on “moral damages” between the amendment in 1982 and December of 2003.

At the outset, it may be interesting to observe that the formulation of only four *Jurisprudencias* on “moral damages” produced

257. “Quijada Carrera, Rafael,” 48 S.J.F. 21, part 2 (7a época 1996). The tenor of this *Jurisprudencia* was reiterated, in greater detail, in a subsequent *Jurisprudencia* rendered in 1972: “Pérez Rivera, Gonzalo,” 102 S.J.F. 40, part 2 (7a época 1972).

258. See “Rivera Cruz, Manuel,” 2 S.J.F. 269 (9a época 1995).

by both the Supreme Court of Mexico and by Circuit Collegiate Courts in a period of over two decades appears to be a decidedly low number. Among the reasons that may be advanced to explain this modest "jurisprudential" output, one may include the fact that the filing of "extra-contractual" liability cases arising out of illicit acts in Mexico's Civil Courts, *i.e.*, tort law cases, continues to be a professional area which has not been traditionally incorporated within the mainstream of legal practice in Mexico. The answer may be found in the popular *motto* that in Mexico, in the present day, "tort law cases are not for Mexican attorneys."²⁵⁹ There are four reasons which may provide a valid answer as to why there is a lack of tort law cases in Mexico. The reasons are: cultural, economic, legal, and professional. These reasons are discussed below in further detail.

a. Cultural

From a cultural viewpoint, when someone in Mexico suffers a personal injury in a store or hotel, traditional mores have dictated that the commercial would take care of the victim's medical expenses as an act of generosity, provided that the injury was relatively minor. When the injury was serious, a negotiated extra-judicial settlement between the interested parties generally rendered more expeditious and practical results than suing the company before a court of law. It seems that in those days, most Mexicans were somewhat familiar with the inefficiency and corruption that then prevailed in the country's judicial system. This state of affairs made the Mexican populace reluctant to seek justice from the court, especially if the victim was uneducated and poor. A sound popular policy in those days was to stay away from Mexican attorneys at all costs.²⁶⁰

Although this traditional perception has drastically changed, the relatively low level of education among most Mexicans and the virtual absence of a legal culture, especially for those who live in rural areas, continues to produce an adverse impact in assisting Mexicans to become proficient with their legal rights in certain basic areas of the Mexican legal system and to encourage them to settle their disputes through the judicial system.

259. See Vargas, *Tort Law in Mexico*, *supra* note 3, at 214-215.

260. In early nineteenth-century Mexico, a common curse was: "*Entre abogados te veas!*" (Be in the midst of attorneys) to suggest that nothing worse could happen to the cursed person than to be among attorneys: discussions and arguments, documents and motions, court appearances, legal opinions, growing emotional stress, and money.

b. Economic and Legal

In the recent years, many Mexicans have started to move out of the rural areas into the country's urban centers. However, given the relatively low income of these people and the fact that Mexico's government maintains a very low minimum, the economic indemnification established by Mexico's civil liability system in tort law cases is very modest.²⁶¹ In the example provided earlier, a wrongful death case may grant a plaintiff a total equivalent to approximately \$12,000 U.S. dollars,²⁶² which is nothing compared to the awards plaintiffs receive in the United States.

Under Mexican law, a case of this nature may be before a Civil Court for over a year before reaching a final resolution. From the victim's viewpoint, if the surviving spouse is in a dire economic situation because of the death of the head of the family, it is likely that the defendant, especially if a corporation, may negotiate an even lower indemnification as an extra-judicial settlement with the victim's family, depending upon the family's needs.

Regarding Mexico's legal system in the area of civil liability, it is important to remember that Mexico lacks a legal regime designed to provide a remedy to victims of tortious acts, unlike the United States, and other civil law countries.²⁶³ This explains why, in civil liability cases arising out of illicit acts, *i.e.*, tort law or "extra-contractual" liability cases, Mexico has to produce a hybrid that combines basic provisions from the applicable Civil Code with principles and technical standards taken from its Federal Labor Act,²⁶⁴ which equates victims of tortious acts to employees when they become physically incapacitated as a result of work-related accidents or occupational illnesses.

c. Professional

Additionally, a tort case would also offer little to no incentive for a Mexican attorney. He would be professionally engaged for a year, or longer, only to receive a modest professional fee, especially if the attorney had to pay some or all of the expenses associated with litigating the case.

From a different angle, major industries in Mexico such as

261. See *supra* Part II.B.1, "How to Calculate Damages and Losses in Personal Injury Cases."

262. See the hypothetical case of Gumersindo Sánchez, *supra* note 56, and the accompanying text.

263. See *supra* Part V, notes 162-227, and accompanying text.

264. See *supra* notes 38-55, and the accompanying text.

hotels, stores, restaurants, airlines, banking institutions, commercial bus and train services, shopping centers and factories regularly include the professional legal services of major law firms or attorneys ready to provide legal counsel in corporate matters. Considering the significant economic and professional resources at the disposal of these Mexican corporations, out-of-court settlements tend to be the standard in a large number of tort law cases. The practicality of this system tends to reduce or minimize the number of tort law cases that finally reach a competent Mexican court.

Finally, it should be mentioned that in recent years, Mexican attorneys appear to be more interested in rendering their legal opinions on Mexican tort law in international cases involving U.S. citizens who were injured while visiting Mexico. Since these cases are litigated before U.S. courts, they provide more of a financial and economic gain than a Mexican tort law case which can drag on for more than a year.

The increasing number of these international cases and the variety of factual situations presented by them, as well as the opinions written on these matters by U.S. judges and magistrates, are becoming a unique and growing source of intriguing jurisprudence which may merit a closer examination and analysis.

d. First Jurisprudencia, 1995: Moral Damage, Necessary Elements

Pursuant to Article 1916, and particularly with the second paragraph of Article 1916-Bis, of the current Civil Code for the Federal District, two elements are required to generate the obligation to repair the moral damage: first, it must be proven that the damage took place; and second, said damage must be the consequence of an illicit act. The absence of either of these elements impedes the emergence of the respective obligation, since both of these elements are of an indispensable nature. It is not accurate to say, therefore, that after the amendment of January of 1983, Article 1916 of the Civil Code expanded the concept of moral damage to embrace illicit acts. On the contrary, when Article 1916-Bis entered into force, the elements required to give a legal cause of action to validly indemnify a moral damage were defined with greater clarity.²⁶⁵

In essence, this *Jurisprudencia* simply reiterates the lan-

265. "López Mejía, Humberto," 85 S.J.F. 65 (8a época 1995).

guage of the second paragraph of Article 1916-Bis of the Federal Civil Code, as amended. It may be added that it is also in symmetry with another *Jurisprudencia*, published in 1941, under the original version of Article 1916 of same Code, asserting that moral damage is exclusively reserved to "extra-contractual" liability cases.²⁶⁶

e. Second Jurisprudencia, 2000: Moral Damage Must be Proved in a Criminal Proceeding

The language of the Second *Jurisprudencia* reads as follows:

Pursuant to Article 37, para. II, of the Code of Social Defense (*i.e.*, Criminal Code) of [the State of] Puebla, the monetary sanction comprises the fine and the reparation of the damage. The latter constitutes a public sanction under the terms of Article 50-Bis of said Code. Article 51 refers to the restitution of the object obtained or of its commercial value, such as the indemnification of the material and moral damage, and the reparation for the injuries caused. Thus, if according to the second paragraph the reparation of the damage is to be demanded by the Public Prosecutor determining its amount based on the evidence submitted to the trial, it is evident that [the accused] cannot be condemned to pay said reparation when no proof was submitted to demonstrate the existence of moral damage as a result of the illicit act.²⁶⁷

This *Jurisprudencia* establishes a higher technical standard for moral damages after the 1982 amendment, especially in criminal law cases. Under Mexican Criminal Law, the imposition of a sanction constitutes a "public sanction" which generally comprises a fine and the reparation of the damage. In order to receive an indemnification for moral damages, however, the Public Prosecutor, as mandated by the applicable Code, must prove the existence of said moral damages as a result of the criminal offense.

It should be pointed out that in civil liability cases, the illicit act that generates the obligation to indemnify for the damage caused, does not constitute a criminal offense.

f. Third Jurisprudencia, 2000: Moral Damage and Indemnification in Criminal Cases

According to the Third *Jurisprudencia* 2000:

266. See *supra* notes 238-240, and accompanying text.

267. "Estado de Puebla," 11 S.J.F. 926 (9a época 2000).

Pursuant to what is provided by Articles 1958 and 1996 of the Civil (*sic*) Code of the State of Puebla, the reparation of the damage caused by homicide and injuries constitutes a public sanction and must be imposed on the sentenced individual; said damages may be of a material or moral nature, in the understanding that the material damages originate from the expenses made as a consequence of the death or injury of the victim. Whereas moral damage is that suffered by a person as a consequence of a damaging act (*Hecho dañoso*) [inflicted upon] his or her decorum, prestige, honor, good reputation or in his or her social image (*Consideración social*). In sum, in his or her personality rights. Therefore, for an indemnification claim to be filed in any of these cases, the corresponding judgment must enunciate the specific type of damage inflicted and how these were proved. And with respect to moral damage, in what manner the victims' personality rights were injured as a consequence of the criminal offense (*Delito*).²⁶⁸

*g. Fourth Jurisprudencia, 2002: Moral Damage.
Right to a Reparation in a Medical Malpractice
Case*

Pursuant to the Fourth *Jurisprudencia* 2002:

Under the terms of Article 1916 of the Civil Code for the Federal District and the Federal Civil Code, moral damage consists in an injury suffered by a person in his or her sentiments, affections, beliefs, decorum, honor, reputation, intimate life, configuration and physical appearance, or in the opinion that others have about said person. Moral damage is to be presumed when it illicitly injures or deteriorates the freedom or the "physical or psychological make up" of an individual, and it is independent from any material damage. Therefore, if a hospital provides inadequate medical attention to a patient, causing him/her a permanent incapacity, it is clear that apart from the material damage, the patient in question had suffered a psychological injury which translates into a moral damage that affects his or her sentiments and affections. In this case, the hospital must repair the damage caused [to the patient] as provided by the law, independently from the corresponding indemnification for the material damage.²⁶⁹

268. *Id.* at 1199.

269. "Hernández Rodríguez, Isidro," 16 S.J.F. 1034 (9a época 2002).

In a *dictum*, the Sixth Civil Collegiate Court clearly enunciated the two hypotheses in which moral damages may be validly claimed, namely:

First, when an illicit act or omission produce moral damage, the responsible person is obliged to repair it through a monetary indemnification, independently of the material damage that may have been caused, whether in contractual or extra-contractual liability. Pursuant to Article 1916-Bis [of the Civil Code for the Federal District] when a complaint is filed for the reparation of a moral damage resulting from contractual or extra-contractual liability, the illicit act of the defendant and the damage which directly resulted from said act must be fully proved.

Second, when objective liability occurs pursuant to Article 1913, including the State and its public officials, pursuant to Articles 1927 and 1928 of the Civil Code for the Federal District.

Accordingly, in the first case, in dealing with contractual and extra-contractual liability it is necessary to prove the illicit act(s) that causes the moral damage. In contrast, in the second case, it is necessary to prove the objective liability, but not the illicit act, since the right to be indemnified for a moral damage is based on the fact that [the case] originated by the acts which constituted the objective liability.²⁷⁰

3. Fifty-Two Relevant *Ejecutorias* on Moral Damages, 1982-2003

Basically, the preceding four *Jurisprudencias* simply reiterate the language of the applicable legislative enactment, whether from a State Civil Code or from the Civil Code for the Federal District. Each of these *Jurisprudencias* adopts a strict construction of the language in question, and emphasizes the importance of the role of the trial judge "to adjust the law to the individual case," at his or her own discretion, which constitutes the essence of equity. Little is added by Mexico's highest federal courts to discern whether the awarding of the corresponding moral damages is equivalent to the U.S. notion of punitive damages or exemplary damages. It seems that it is the legislature's intention—as derived from the 1982 initial legislative bill formulated by the Executive, the resulting congressional debates in the Federal Congress, as

270. *Id.*

well as the specific language of Articles 1916 and 1916-Bis of the Civil Code for the Federal District— to provide the only essential components that may be analyzed in an attempt to reach a legal conclusion on this matter.

In contrast to the very few number of *Jurisprudencias* on moral damages, Mexico's Supreme Court of the Nation and Circuit Collegiate Courts produced a total of 52 interesting *Ejecutorias* addressing different types of cases involving moral damages between January 1, 1983, when the amendment of the Civil Code articles entered into force,²⁷¹ until December 31, 2003.

From a substantive viewpoint, these 52 *Ejecutorias* have been grouped into the following eleven categories:

1. Changes made by the 1982 Amendment
2. Requisite elements of Moral Damage
3. Economic capacity of the Defendant
4. Moral Damages need not be proven by Plaintiff
5. Companies and Moral Damages
6. Reputation and mass media
7. Criminal law cases
8. Parents'/Relatives' Standing
9. Objective liability
10. Judge's discretion; and
11. Miscellaneous

a. Changes made by the 1982 Amendment

Five major changes were introduced to Article 1916 of the Civil Code for the Federal District as a result of the 1982 amendment. These changes are as follows:

- a) Moral damages became an "independent" and separate legal cause of action, not conditioned upon the granting of material damages by the trial court, nor to be subject to the one-third cap of the amount of the civil liability.²⁷²
- b) The legal scope of moral damage was expanded to embrace not only extra-contractual liability cases, but also contractual cases.²⁷³
- c) Moral damages applied also to objective liability cases,

271. See *supra* note 96, and accompanying text.

272. The amended pertinent language of Article 1916 reads: "When an illicit act or omission produces a moral damage, the responsible for it shall have the obligation of repairing through a pecuniary indemnification, *independently that material damage has been caused, whether in contractual or extra-contractual liability.*" See C.C.D.F., art. 1916. See also *supra* note 96, for the complete amended text (Emphasis added).

273. *Id.*

in accordance with Article 1913 of the Code.²⁷⁴

- d) Contrary to the tenor of the original Article 1916 of the Civil Code which excluded the State from moral damage liability, the amended text of Article 1916, in conjunction with Article 1927, imposed a joint and several liability regarding intentional illicit acts, and a subsidiary one in any other cases, upon the State and its officials.²⁷⁵
- e) Of course, instead of referring to the economic indemnification as an "equitable indemnification as a moral reparation," the new language of Article 1916 refers to it as "moral damage," as the pecuniary indemnification to be awarded when a "moral damage" is inflicted upon the "personality rights" of any individual, as enunciated by said Article. Whereas the original language is more direct and explicit regarding the *equitable or moral nature of the remedy* of the indemnification, subjecting it to be awarded at the absolute discretion of the competent Judge, *the new statutory language mandates the imposition of moral damages in specific cases*, thus diminishing the role of the Judge although recognizing his or her crucial involvement in determining the amount of the indemnification pursuant to the explicit guidelines provided in the Article.²⁷⁶

If not all, at least some of these substantive changes are reflected in the following *Ejecutorias*. The first *Ejecutoria*, regarding the *independent nature* of moral damages, in 1990 the Third Collegiate Court in Civil Matters of the First Circuit in a case involving Article 1916 of the Civil Code for the Federal District (*i.e.*, Mexico City), sentenced: "It is not necessary to previously demonstrate that damages and losses were caused in order to obtain a moral damage."²⁷⁷

As indicated earlier, the overwhelming majority of the thirty-one States that compose the Republic of Mexico have copied virtually *verbatim* the language of each and every Article that form the

274. The applicable language reads: "The same obligation to repair the moral damage applies to those who incur in *objective liability* in accordance with Article 1913, as well as the State and its officials in accordance with Article 1928, both of these provisions from this Code." See C.C.D.F. art. 1916 (Emphasis added).

275. See C.C.D.F. art. 1916, 1927.

276. The applicable new language of Article 1916 reads: "The amount of the indemnification shall be determined by the Judge taking into account *the injured rights, the degree of liability, the economic situation of the responsible, and of the victim, as well as the other circumstances of the case.*" See C.C.D.F. art. 1916, 124 (Emphasis added).

277. "Aranda Ruiz, Francisco," 6 S.J.F. 1, part 2 (8a época 1990).

Civil Code for the Federal District of 1928, including Article 1916 on "moral reparation," as it was named at that time. Accordingly, when said Article was amended in 1982, and the new provision on moral damages entered into force on January 1, 1983, the immense majority of States followed suit and gradually proceeded to amend in the corresponding terms of their respective Articles. This process of State legislative amendments took several years; however, sometimes the Supreme Court of Justice and the Circuit Collegiate Courts, however, decided cases involving provisions of the State Civil Codes *prior* to the respective amendments. This explains why some *Ejecutorias*, although published after 1982, rendered decisions utilizing the original language of the 1928 Federal Civil Code.²⁷⁸

In the second *Ejecutoria*, discussing the *requisite elements* of moral damages, in 2001 the Third Collegiate Court on Civil Matters of the First Circuit wrote:

In Mexico, the goal of the legislature in amending Articles 1916 and 1916-Bis of the Civil Code for the Federal District. . . was to make liable any individual who. . . injures other individuals attacking their morality, public peace, the rights of third parties, including those who exercise their right of expression through the mass media, or when [an individual] commits a criminal offense or disturbs the public order, which are precisely the limits clearly established by Articles 6 and 7 of the General Constitution of the Republic. . . Therefore, *for moral damage to take place it is required: a) that a damage is inflicted on a person in any of the legally protected rights enunciated by Article 1916 of the Civil Code; b) that said injury is the consequence of an illicit act; and, c) that there is a causal relationship between both situations.*²⁷⁹

There have been other almost identical *Ejecutorias* on this subject in 1995 and 2002.²⁸⁰ The third *Ejecutoria*, regarding the *economic capacity of the responsible person*, was produced in 1993 by the First Collegiate Court of the Fifteenth Circuit, and is typical on this subject. The Court wrote:

Notwithstanding that the second part of Article 34 of the

278. See, for example, *Ejecutorias* published in 1992 involving the State of Veracruz, and 1994 involving the State of Querétaro. "Broissin Ramos, Juan Luis," 12 S.J.F. 191 (8a época 1992); "de Lourdes Rodríguez, Rosario," 15 S.J.F. 213 (8a época 1994), respectively.

279. "Rascón Córdova, Marco Antonio," 14 S.J.F. 1305 (9a época 2001).

280. See "Aidé Grijalva Larrañaga, Edna," 16 S.F.J. 1131 (9a época 2002).

Criminal Code of the State of Baja California prescribes that in injuries and homicide cases in the absence of specific evidence with respect to the damage caused, the Judge shall take into account as the base for the moral reparation the tabulation established for this purpose by the Federal Labor Act, he/she should also take into consideration the economic capacity of the responsible [person]. . .²⁸¹

Regarding the *proof required for moral damage*, several *Ejecutorias* have prescribed that no proof is necessary. For example, in a 2003 *Ejecutoria*, the Fourth Collegiate Court on Civil Matters of the First Circuit wrote:

In the technical opinion of the Reviewing Chamber [of the Federal Congress] of the decree dated December 29, 1982, that amends, *inter alia*, Article 1916 of the Civil Code for the Federal District, it is established, in the pertinent part: ' . . . The legislative bill [of the Executive, of 1982] is based upon the contemporary Civil Law doctrine of the Personality Rights formulated to guarantee any person's enjoyment of his or her faculties and respect for the development of his or her physical and moral personality.' The rights protected by this notion are, not in an exhaustive enunciation: a) affections; b) beliefs; c) sentiments; d) private life; e) configuration and physical appearance; f) decorum; g) honor; h) reputation; and, i) the opinion that others have about that person. *These rights cannot be assessed or appraised in monetary terms neither in an approximate or exact manner because they refer to a given person in his or her individuality or intimacy.* For this reason, the Mexican legislation adopts the theory of proving the damage objectively —and not the subjective [theory]. In other words, it suffices to demonstrate: 1) the legal relationship between the active subject with the passive or injured individual; and, 2) the existence of an illicit act or omission that injured one or several of the rights legally protected by this notion, previously enunciated. Therefore, *it is not required the existence of, nor the extension or gravity of the damage, which would lead us to an impossible proof.* The corresponding demonstration and assessment [of the resulting damage] are left to the wise discretion of the Judge."²⁸²

Regarding *companies [legal entities] and moral damages*, several *Ejecutorias* have determined that, under Mexican law, Mexican

281. "Carlón Ruiz, Enrique," 12 S.J.F. 235 (8a época 1993).

282. "El Espectáculo Editorial, S.A. de C.V. *et al.*," 17 S.J.F. 1073 (9a época 2003).

companies (known otherwise as “legal entities”²⁸³) may be both subject to civil liability and be the beneficiary entity of moral damages. In the first instance, in a case decided in 1991, the Third Collegiate Court on Civil Matters of the First Circuit sentenced a hospital of the Mexican Social Security Institute (IMSS) to pay moral damages when a baby born in that hospital was kidnapped due to the hospital’s negligence.²⁸⁴ In this 2002 *Ejecutoria*, a company was recognized as a commercial company having standing to sue for the infliction of moral damages.²⁸⁵ The pertinent part of

283. For a definition of “legal entities” or companies, see C.C.D.F. art. 25. Under Mexican law, companies are governed by the Commercial Companies Act (*Ley General de Sociedades Mercantiles*, D.O. of June 11, 1992, as amended). See “Commercial Companies in Mexico,” in VARGAS, MEXICAN LAW, *supra* note 230, at 231-75.

284. The pertinent portion of this *Ejecutoria* reads:

The stealing of an infant from a hospital by a third party cannot be characterized, according to the civil law doctrine, as a fortuitous or *force majeure* case considering that it does not involve an unpredictable or insuperable (*sic*) event, or that having been anticipated it was not avoidable. It constitutes a foreseeable event given the nature of the activities of the enterprise and, for that reason, susceptible of preventing such occurrences. . . . [The hospital] could and should have prevented the above mentioned event, since the [hospital’s] civil liability derived from the contract to render medical services to the mother to deliver the baby in that hospital is not limited to merely rendering medical or clinical attention but also personal care and supervision to the newborn while interned at the hospital. . . . [T]he resulting moral damage consists in the stealing of the infant out of which derives also a moral suffering that is not necessary to be proven through any type of evidence when its is considered that any person would suffer unmeasurably if it had been the victim of a newborn infant to be stolen. Such [moral] damage derives directly from the hospital’s negligence, thus having been established the causal nexus between the negligent conduct and the result or effect consisting in the stealing of the baby. If the defendant institution had not incurred in the above mentioned omissions the baby would have not been stolen.

See “Sociedad de Beneficiencia Española,” 7 S.J.F. 169 (8a época 1991).

285. Article 3, paragraph II of the Code of Commerce prescribes that “Merchants are the legal entities that have been formed pursuant to Mercantile Laws,” and that all the mercantile associations mentioned in Article 1 of the Commercial Companies Act acquire juridical personality [distinct from that of their partners or shareholders] by holding themselves out as such before the public, whether by their inscription in the Public Registry of Commerce. For a description of the official functions of this Registry, see *Public Registry of Property and Commerce* in VARGAS, MEXICAN LEGAL DICTIONARY, *supra* note 92, at 450-51, or when entering into contracts with third parties, deriving their personality both from Article 2 of said Act as well as Article 25, para. III, and Article 26 of the Civil Code for the Federal District, C.C.D.F. art. 25, para. III; art. 26. [*These companies*] may exercise all the rights that may be necessary to accomplish the institution’s object within which it evidently includes that of

this *Ejecutoria* reads:

Recently, there have been two *Ejecutorias* rendered in 2003 on this subject: one reiterated this holding and the second denied it.²⁸⁶ Basically, the second decision argued that companies have no legal standing in Mexico City to claim indemnification for moral damages since the enunciated rights protected by Article 1916 of the Civil Code for the Federal District apply only to physical persons and not to legal entities.²⁸⁷

Regarding *reputation and mass media*, ten *Ejecutorias* have been rendered. In a 2000 *Ejecutoria*, the Court wrote:

... the mass media in print are obligated to ascertain the veracity of the information notes (*i.e.*, articles) they are intending to publish; in other words, they must verify that what they are going to make of the public knowledge is in symmetry with reality, in order to be in aptitude of publishing truthful and objective information, and not to affect the honor and reputation of individuals, causing them a demerit in their prestige that, according to Article 1 of the current Printing Act constitutes an attack to private life which is the only limitation to the freedom of expression, prescribed in Articles 6 and 7 of the Federal Constitution.

initiating a judicial proceeding to defend its prestige and reputation. Therefore, if as a result of an illicit act, whether intentional or by negligence, one or several of these inherent rights pertaining to its juridical personality are attacked, including, *inter alia*, its reputation, social name, prestige and freedom to enter into contracts, which are precisely the basis for their existence and activity, it becomes clear that said behavior endangers a true moral damage under the terms of Article 1916 of said Civil Code. This gives [the company] a cause of action to claim the corresponding indemnification, considering that moral damage is characterized precisely by the violation of one or more of these inherent rights to the personality of any legal actor. "Ramírez Sánchez, Arturo," 16 S.J.F. 765 (9a época 2002).

286. See *Moral Damage, Its Existence Regarding Mercantile Societies*. Alejandra Acimovic Popovic, June 11, 2002. Majority of Votes. Dissenting Vote: Arturo Ramírez Sánchez. Ponente: Martín Antonio Ríos. SEMANARIO, Novena Época, Tomo XVIII, July 2003 at 1073. But *Contra* in: *Moral Damage. Moral Persons Cannot Suffer Injury to the Values Enunciated in Article 1916 of the Civil Code for the Federal District because These are Inherent to the Human Being*. "Lapidus de México, S.A. de C.V.," 18 S.J.F. 1727 (9a época 2003).

287. See "Estado de Puebla," 11 S.J.F. 926, (9a época 2000). The Eighth Collegiate Court on Civil Matters of the First Circuit rendered this decision; the Court, in a dictum, added: "Notwithstanding the preceding holding, it may be argued that the reputation of a legal entity may have been affected, since this refers to a patrimonial injury which translates into a merely economic damage or loss; but in no manner an injury of this type is to be equated to the deterioration of the [company's] sentiments, decorum, honor, or any of those subjective values which are, as said earlier, intrinsic to the human being." *Id.* It should be noted that this *Ejecutoria* has been challenged for being contrary to the Thesis 100/2003. The case is currently pending before the First Chamber of Mexico's Supreme Court of Justice.

As a consequence, said mass media must adjust their information notes, being careful of the terms used when writing them, having in mind that it should not be justifiable that a person who writes an article ignores the legal meaning of the term used since the ignorance of the law cannot serve as an excuse of a mass media company who is presumed to have specialists and professionals in the reporting profession.²⁸⁸

Regarding *criminal law*, Mexico's highest federal courts have rendered several *Ejecutorias* involving claims for moral damages when the defendant denounced to the Public Prosecutor certain acts conducted by the plaintiff that were deemed to constitute a criminal offense. Eventually these were dismissed, jointly with the complaint to obtain an economic indemnification. A 2001 *Ejecutoria* exemplifies these cases:

. . . Thus, the denunciation of certain acts which contributed to the initiation of the formal investigation and the beginning of the criminal proceeding that culminates in the acquittal of the accused, would only prove the first element of the moral damage, namely, that there was a damage due to the implications that produce the eventual deprivation of the personal freedom and the submission to a criminal proceeding; however, said acquittal does not prove the second element of the cause of action since this acquittal does not constitute by itself an illicit conduct likely to cause a moral damage when one it is considered that an illicit act is formed by a positive or a negative conduct that is contrary to the law or good customs duly sanctioned by the applicable statute. A different situation takes place when it is proven that the denunciation was made in a deceitful manner and with the clear intention of involving the plaintiff in a criminal proceeding in order to damage him. In this case, the acquittal proves that the illicit act, identified with the behavior attributable to the defendant is contrary to the law and, therefore, as a result of this conduct the second requisite element of the cause of action for moral damage is thereby proven and the defendant must respond for the damage caused.²⁸⁹

These criminal law resolutions may suggest that there is a relatively recent and growing awareness in Mexico of the availability of a cause of action to sue for moral damages when someone

288. "Salinas Pliego, Ricardo Benjamin," 11 S.J.F. 921 (9a época 2000).

289. "Cruz García, Avelino," 16 S.J.F. 1271 (9a época 2002).

attempts to incriminate an individual, and after the corresponding investigation there is an acquittal of said charges by the competent authority. In this type of cases, the wrongly accused person feels that his or her personality rights have been injured and demands an economic indemnification for moral damages. In most of these cases, the claim for moral damages has been denied.

Regarding the *Right of a Wrongful Death Victim's Parents or Relatives* to have standing to file a cause of action for moral damages, a number of *Ejecutorias* have affirmed this right. A 2000 *Ejecutoria*, involving the application of the pertinent provisions of the Civil Code for the State of Chihuahua, reads:

. . . [I]t is evident that the loss of a son morally and directly affects the son's parents; therefore, the parents of the deceased minor possess standing to claim the moral damage they suffered. . . [I]n addition to the emotional suffering that a loss of this nature signifies, it also constitutes the loss of a possible economic support to be received from this son had he continued with his life. A different situation would be if the parents would claim the reparation of the damage experienced due to the loss of their son. It may be considered that in this situation the standing to claim this type of damage belongs to the minor's succession because this is a right that pertains to the minor's patrimony. . . . [A] hypothesis may be that the parents claim the moral damage they suffered themselves, because of their son's loss, because in this case the reparation sought is directed to the moral damage they suffered as a personal matter; so, if what the parents want is this type of reparation it is clear that they have standing since they are not claiming the reparation of the damage directly suffered by the son as a result of the losing of his life. In this hypothesis it may be considered that, the one to have standing to effectively claim the right for the reparation of this damage, should be the succession of the deceased minor considering that said right already entered into the hereditary succession.²⁹⁰

The standing of parents or relatives of the victim in wrongful death and personal injury cases was not contemplated either in the language of Article 1916 of the 1928 Code, or in the 1982 amendment. The decision to recognize their standing in these cases was the product of a judicial determination.

In this regard, Article 1916 of the Civil Code for the Federal

290. "Luna Carreón, María Guadalupe y Arneses de México, S.A. de C.V.," 11 S.J.F. 979 (9a época 2000).

District is explicit in prescribing that the cause of action to receive reparation "is *not* transferable to third parties through an *inter vivos* act and *it is only transferred to the victim's heir(s)* when the victim has filed the corresponding action *while he/she was still alive.*"²⁹¹ Wrongful death cases generate two different kinds of indemnification claims: one that is directly connected with the victim's heirs, as part of the deceased victim's hereditary succession rights. In this case, the language of the Article controls. Second is the right of the parents to receive an indemnification for the death of their son/daughter due to the material and moral damages *personally inflicted to the parents* for the death of their son/daughter. The quoted *Ejecutoria* refers to this second claim. As a logical extension, it may be expected that the same right may also apply to the siblings of the deceased victim. This seems to be an interesting departure from the statutory language.

There are a number of isolated *Ejecutorias* addressing a variety of legal issues which were grouped under the general title of *Miscellaneous*. Many of these are procedural in nature.²⁹² Others are technical and refer to the moment when the statute of limitations should be applied.²⁹³ And yet, several others involve HIV cases.²⁹⁴

VII. CONCLUSIONS

The notion of "moral reparation" appears for the first time in Mexico's legislative history in the Civil Code for the Federal District of 1928. Although the term "moral reparation" may not fit exactly the current connotation of the novel notion of "moral damages," as this term was introduced in that Code by a 1982 amendment, leading Mexican specialists are of the opinion that the original term definitely constitutes a legal antecedent to the modern notion of "moral damages."

At the time when that Code was promulgated in 1928, "moral reparation" applied in two different legal contexts: first, in cases of breach of a betrothal agreement as an economic indemnification to be paid by the offending party to the innocent party as a "moral

291. See C.C.D.F. art. 1916, 124.

292. *Moral Damage Reparation, Undue Confirmation of Payment*. Circuit Collegiate Court. SEMANARIO. Queja 38/86. Alvaro "Almaguer Caballero, Alvaro," 217-228 S.J.F 552, part 6 (7a época 1987). January 15, 1987. Séptima Época, Tomo 217-228, Sexta Parte at 552.

293. See "Chimalistac Posproducción, S.A.," 9 S.J.F. 473 (8a época 1992).

294. "IMSS," 15 S.J.F. 214 (8a época 1994).

reparation" for the personal, familial and social inconveniences generated by the breach. It may be said that this economic reparation was to be paid to the innocent party for pain and suffering inflicted on that party's honor and reputation. Second, the term "moral reparation" also applied to civil liability cases arising out of illicit acts, commonly known in Mexico as "extra-contractual" liability cases. In this second connotation, the author of a tortious act is statutorily mandated to pay a monetary indemnification, independently of the material damages and losses, as an equitable moral reparation. It corresponds to the Judge, at his or her discretion, whether or not to grant in favor of the victim (or of his or her family upon the death of the victim), the "equitable" indemnification in question.

It should be underlined that, in both cases, the use of "moral reparation" constitutes a legal remedy that operates as an "equitable complement" to the "legal indemnification" statutorily imposed by the applicable provision of the Civil Code. Whereas the material damages suffered by the victim are to be *statutorily compensated* by the economic indemnification calculated in Mexico on the basis of the notions of "damages" and "losses" clearly enunciated by the Code, the moral reparation constitutes an *equitable indemnification* to compensate for the non-economic injuries inflicted on the victim. It corresponds to the Judge to determine, based on his or her experience and legal competency—and at his or her sole discretion—to apply the notion of equity to the individual case. The former is mandated by the Code, the latter imposed by equity at the discretion of the Judge.

A former 1971 *Ejecutoria* rendered by the Supreme Court of the Nation regarding the notion of moral reparation in a civil liability case, clearly emphasizes the "equitable complement" to the economic indemnification for material damages in these terms:

. . . The discretion of the Judge to quantify the indemnification [for moral damages] *must respond the criterion of equity*. Traditionally, equity is the result of the application of justice to the individual case. From another angle, equity presupposes that in any lawsuit where there is the need of imposing a sentence for moral damage, *the obligated party should not suffer excessively with a detriment in his or her patrimony for the benefit of the victim's patrimony*. It is to be considered that by filing a civil liability action, and when there is an imposition of an adverse judgment, this judgment *legally satisfies the damages and losses* suffered by

the victim. . .²⁹⁵

This is the most detailed Supreme Court *Ejecutoria* rendered between 1928 and 1982. From its language, the importance attributed to the notion of equity, as well as the *non-punitive nature of the judgment*, becomes quite clear when it cautions that “. . .the obligated party *should not suffer excessively* with the detriment in his or her patrimony. . .” This assertion may provide a sound basis to underline that, at least during the first fifty years of the legal life of the 1928 Civil Code, both the intention of the Civil Code Drafting Commission and that of Mexico’s highest tribunal, its Supreme Court of the Nation, in imposing moral damages in civil liability cases was to do it based on equitable principles and certainly not as a punitive legal remedy.

From the analysis of the three *Jurisprudencias*, as well as the one-hundred and twenty-five *Ejecutorias* rendered on moral damages during the last 75 years (1928-2003), there is no indication that Mexico’s highest federal courts have departed from the legal philosophy embraced by the Drafting Commission of the 1928 Civil Code, the tenor of the 1982 Legislative Bill to amend Article 1916 of same Code, or the legislative intention of Mexico’s Federal Congress when it passed the amended text of Article 1916 of the Civil Code for the Federal District, adding the novel notion of moral damage.

Through the prism of the legal analysis conducted by U.S. courts while applying the Mexican law notion of “moral damages” to international cases litigated in the United States when U.S. citizens are injured while in Mexico, however, it may not be surprising to read decisions by American judges who have made determinations that Mexico’s “moral damages” are equivalent to punitive damages, exemplary damages, or loss of consortium.

From the professional viewpoint of U.S. and Mexican legal practitioners, there is an emerging international legal arena where a legal battle involving legal practitioners and legal experts is already brewing. Plaintiffs’ advocates argue in favor of a recognition by U.S. courts of Mexican moral damages with one or more categories of U.S. damages. Defendants’ attorneys claim, to the contrary, that there is no such equivalency between Mexican and U.S. legal notions. It is not only probable, but necessary, to expect in the not too distant future that a uniform body of jurisprudence

295. “Fernández, Iparino,” 33 S.J.F. 23 (7a época 1971).

to be developed by U.S. courts will have the last word in this intriguing and unprecedented bi-national legal confrontation.

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APPENDIX ONE

Articles of the Civil Code for the Federal District and of the Federal Civil Code, as amended by Decree published in the *Diario Oficial de la Federación* on January 10, 1994

ARTICLE 1916. It should be understood for moral damage the non-physical injury inflicted upon a person's feelings, affections, beliefs, decorum, honor, reputation, privacy, image and physical appearance, or how that person is being perceived in the opinion of others. Moral damage is to be presumed when any person's freedom, or his or her physical or psychological integrity, are illegitimately injured or diminished.

When an illicit act or omission causes a moral damage, the person responsible shall be liable to repair it through a monetary indemnification, independently of having caused material damage as a result of contractual or extra-contractual liability. The same obligation to repair the moral damage exists when objective liability occurs pursuant to Article 1913, including the State and its public servants, in accordance with Articles 1927 and 1928 of this Code.

The cause of action to receive reparation is not transferable to third parties through an *inter vivos* act and it is only passed to the victim's heirs when the victim has filed said action while he/she was still alive.

The amount of the indemnification shall be determined by the judge taking into account the injured rights, the degree of responsibility, the economic situation of the responsible person, and that of the victim, as well as the other circumstances of the case.

When the moral damage has affected the victim in his or her decorum, honor, reputation or status, the judge shall order the publication of a summary of the judgment through any mass media the judge deems appropriate, at the victim's request and at the expense of the responsible party, which reflects in an adequate manner the nature and scope of said judgment. In those cases when the damage derives from an act which has been disseminated through the mass media, the judge shall order said media to give publicity to the judgment's summary with the same prominence given to the original dissemination.

ARTICLE 1927. The State has the obligation to respond for the payment of damages and losses caused by its public officials (*Servidores públicos*) as a result of the exercise of the functions

(*Atribuciones*) assigned to them. This shall be a joint and several liability (*Solidaria*) in intentional illicit acts (*Actos ilícitos dolosos*) and secondary liability (*Subsidiaria*) in the other cases, where it can only be made effective against the State when the directly responsible public official does not have assets or those owned by him/her are not sufficient to respond for the damages and losses caused by its public officials.

ARTICLE 1928. Whoever makes payment for the damages and losses (*Daños y perjuicios*) caused by its servants, employees, officials or operatives (*Operarios*) may claim restitution for the corresponding amounts from the individual responsible of the act.²⁹⁶

296. See Federal Civil Code, *supra* note 1, art. 1916, 1928 .

MORAL DAMAGES IN MEXICO'S FEDERAL DISTRICT AND THE THIRTY-ONE STATES
APPENDIX TWO

S T A T E	MATERIAL DAMAGES	MORAL DAMAGES	D E F I N I T I O N	CAUSE OF ACTION	E X C E P T I O N S	STATUTE OF LIMITATIONS
Federal District (Mexico City) (2001)	1915, 1916	1915, 1916	An equitable indemnification	1910, 1915, 1916 and 1916 Bis	No cap; limited freedom of the press. Government is liable	1934 - 2 years
Aguascalientes (1988)	1790	1790	An equitable economic indemnification to repair the moral damage	1788	Must not exceed amount of the material damage. Government is liable according to 1802	1808 - 2 years
Baja California (2001)	1794	1794	Ditto	1788	Must not exceed amount of the court liability. Government is liable according to 1806	1812 - 2 years
Campeche (1990)	1811	1811	Ditto		Must not exceed amount of the damage. Government is liable according to 1823	1829 - 2 years
Chiapas (1990)	1892	1892	Ditto	1986	Must not exceed amount of the damage. Government is liable according to 1904	1910 - 2 years
Chihuahua (1983)	1801 1801 b	1801 1801 b	Indemnification for damages against feelings, beliefs, decorum, honor, reputation, privacy, and physical appearance			
Coahuila (1988)	1895, 96, 97, 98 & 1813	1895, 96, 97, 98 & 1813	An equitable economic indemnification to repair the moral damage	1807	Must not exceed amount of the damage. Government is liable according to 1825	1831 - 2 years

S T A T E	MATERIAL DAMAGES	MORAL DAMAGES	D E F I N I T I O N	CAUSE OF ACTION	E X C E P T I O N S	STATUTE OF LIMITATIONS
Colima (1989)		1807	Indemnification for damages against feelings, beliefs, decorum, honor, reputation, privacy, physical appearance	1801	Rights of opinion, critique and expression subject to the limits of Articles 6 - 7, of the Federal Constitution	1825 - 2 years
Durango (1989)		1800	An equitable economic indemnification to repair the moral damage	1794	Must not exceed ___ of the amount of the damage. Government is liable according to 1812	1818 - 2 years
Guanajuato (1989)		1406	An equitable economic indemnification to repair the moral damage	1399	Must not exceed ___ of the amount of the civil damage.	1424 - 3 years
Guerrero (1988)		1916	An equitable economic indemnification to repair the moral damage	1910	Must not exceed ___ of the amount of the civil damage. Government exempted according to 1928	1934 - 2 years
Hidalgo (1989)		1900	An equitable economic indemnification to repair the moral damage	1894	Must not exceed ___ of the amount of the civil damage. Government is liable according to 1812	1918 - 2 years
Jalisco (1979)		1837	An equitable economic indemnification to repair the moral damage	1831	Damage must not exceed \$50,000 pesos	1855 - 2 years
Michoacán (1988)		1774	An equitable economic indemnification to repair the moral damage			
Morelos (1980)	2018, 2019,	Damages for spiritual values Such as honor, prestige, integrity, etc.	2012	It must not dis-able totally or partially of the damage. Government is liable according to 1825	2039 - 2 years	
Nayarit						

S T A T E	MATERIAL DAMAGES	MORAL DAMAGES	DEFINITION	CAUSE OF ACTION	EXCEPTIONS	STATUTE OF LIMITATIONS
Nuevo Leán (1978)	1813	An equitable economic indemnification to repair the moral damage	1807	Must not exceed <u>of</u> the amount of the damage. Government is liable according to 1825	1831 - 2 years	
Oaxaca (1988)	1787	An equitable economic indemnification to repair the moral damage	782	Must not exceed <u>of</u> the amount of civil damages. Government is liable according to 1800	1806 - 2 years	
Puebla (1986)	1958, 1993 1994, 1995 1996, 2002	Damages for violation of personal rights	1788	Damages must not exceed the minimum wage of 1,000 days		
Querétaro (1979)	1800	An equitable economic indemnification to repair the moral damage	1794	Must not exceed <u>of</u> the amount of the damage. Government is liable according to 1812	1818 - 2 years	
Quintana Roo (1989)	131, 132, 133, 2299	An equitable economic indemnification to repair the moral damage	1746	N/A	134 - 2 years	

S T A T E	MATERIAL DAMAGES	MORAL DAMAGES	DEFINITION	CAUSE OF ACTION	EXCEPTIONS	STATUTE OF LIMITATIONS
San Luis Potosí (1990)	1752	An equitable economic indemnification to repair the moral damage	1986	Must not exceed <u>of</u> the amount of the damage. Government is liable according to 1764	1770 - 2 years	
Sinaloa (1989)	1800	An equitable economic indemnification to repair the moral damages		Must not exceed <u>of</u> the amount of the damage. Government is liable according to 1812	1818 - 2 years	
Sonora (1988)	2087, 2088	Damages for harm to spiritual values	2081	N/A	2108 - 2 years	
Tabasco (1981)	1817	An equitable economic indemnification to repair the moral damage	1811	Must not exceed <u>of</u> the amount of civil damages. Government is liable according to 1861	1835 - 2 years	
Tamaulipas (1987)						
Tlaxcala (1979)						

S T A T E	MATERIAL DAMAGES	MORAL DAMAGES	D E F I N I T I O N	CAUSE OF ACTION	E X C E P T I O N S	STATUTE OF LIMITATIONS
Veracruz (1988)	1849	An equitable economic indemnification to repair the moral damage		Must not exceed of the amount of the damage. Government is liable according to 1861		
Yucatán (1981)	1794	An equitable economic indemnification to repair the moral damage	1805	Government Immunity according to 1102. When exercising the rights of opinion, critique and expression within the limits of Articles 6 and 7 of the Federal Constitution	1108 - 2 years	
Zacatecas (1988)	1201	An equitable economic indemnification to repair the moral damage	1194, 95	Must not exceed of the amount of the damage. Government is liable according to 1823	1219 - 2 years	

APPENDIX THREE
MORAL DAMAGES IN SELECTED CIVIL CODES OF EUROPEAN COUNTRIES

	Spain	France	Italy	Germany	Switzerland
Cause of Action: Civil Liability	Arts. 1902, 1903	Arts. 1382, 1383	Arts. 5, 10, 2043.	Arts. 823, 826	Art. 46. Code of Obligations, Art. 41
Calculation of Damages	Art. 1108	Code of Civil Procedure, Art. 521	Arts. 2056-2058	Arts. 249, 255, 842-846	Art. 41. Code of Obligations, Art. 42
Moral Damages	Art. 1152	Jurisprudence of Civil Courts	Art. 2059	Art. 847	Art. 28. Code of Obligations, Art. 49
Exceptions to Recovery of Damages	Art. 1103	Art. 1384	Arts. 2044-2047	Arts. 824, 827-829, 853	Art. 18. Code of Obligations, Art. 52
Statute of Limitations	Art. 1968	Art. 2262	Art. 2947	Art. 852	Art. 28 (e)2. Code of Obligations, Art. 60
Specific Liability for: companies and government	Arts. 36, 38, 1105	Art. 1382 & Jurisprudence of Civil Courts		Arts. 839, 840	Art. 46, 52. Code of Obligations Art. 61
Contributory negligence and multiple tortfeasors	Arts. 220, 1904	Arts. 1386-13, 1386-14	Art. 2055	Arts. 830, 840	Code of Obligations, Art. 50

APPENDIX FOUR
MORAL DAMAGES
DECISIONS RENDERED BY THE SUPREME
COURT OF MEXICO

Citation	Title
SJF, Ninth Epoch, Vol. XVI at 1034 (November 2002)	Negligent surgical operation by the Mexican Institute of Social Security (IMSS) causing patient physical or psychological incapacitation gives right to be economically indemnified for moral damages.
SJF, Ninth Epoch, Vol. XVI at 765 (December 2002)	Mercantile companies may claim indemnification for moral damages.
SJF, Eighth Epoch, Vol. XV at 82 (January, 1994)	Necessary Requirements for the reparation process
SJF, Ninth Epoch, Vol. XVI at 1123 (October 2002)	When it is indicated the responsible authority is the one who dictated the definite sentence, but the judge of the first instance is also responsible or the clerks appointed, without attributing to any of them any act or conferring upon them any culpability, must hold themselves out as executors if any fault is attached.
SJF, Ninth Epoch, Vol. XI at 930 (March 2000)	Monetary indemnification proceeds as a means of amending the moral damage, independent of the civil responsibility that had derived (Chihuahua state legislation).
SJF, Sixth Epoch, Vol. XXX at 152	Condition in which the reparation is secure.
SJF, Seventh Epoch, Vol. IV at 166,	Article 1916 of the civil code is not retroactive, but rather applies only to those films causing moral damages, after the Code has entered into force.
SJF, Eighth Epoch, Vol. XIII at 339 (March)	Estimates to determine the amount of moral damage, in regards to rights of an author.
SJF, Seventh Epoch, Vol. VII at 23	Quantification of moral damages.
SJF, Fifth Epoch, Vol. LXXVI at 5034	Indemnification for the moral damage.
SJF, Ninth Epoch, Vol. II at 269 (July 1995)	Reparation of the Moral Damage. Conviction. Payment of Moral Damage must conform with economic capacity.
Report, Seventh Epoch, Vol. II at 271 (1987).	Proof of moral damage.
SJF, Fifth Epoch, Vol. LXXVI at 3542	Moral Damage.
SJF, Ninth Epoch, Vol. XIII at 1584 (January 2001)	Illicit. Every legal adjective contained in Article 1916 of the civil code for the Federal District, should be understood when applied in a broad sense.
Report, Seventh Epoch, Vol. II at 297 (1987)	Retroactivity of Article 1916 of the civil code is not given if the exhibition of a film is after the date the Article entered into force.
SJF, Seventh Epoch, Vol. IV at 98	Proof of moral damage.
SJF, Sixth Epoch, Vol. LXII at 16	Accusation of the Public Ministry, the judge should not exceed, reparation of Moral Damage, inadmissible.

Citation	Title
SJF, Ninth Epoch, Vol. XVI at 1271 (August 2002)	Accusation of facts as the reason for seeking moral damages.
SJF, Ninth Epoch, Vol. XVI at 1131 (November 2002)	Necessary estimates for the origin of a moral damage action (Legislation of EL DISTRITO FEDERAL).
SJF, Ninth Epoch, Vol. I at 401 (May 1995)	Objective civil responsibility and reparation for Moral Damage, They are not contradictory actions and can coexist validly in the same procedure.
SJF, Ninth Epoch, Vol. XII at 740 (September 2000)	The right to moral damages. Is given in favor of a person, as a consequence of an inadequate medical attention given by a hospital center which causes harm or damage to the persons physical or mental wholeness.
SJF, Fifth Epoch, Vol. CXXIII at 1732	Reparation of Moral Damage.
SJF, Eighth Epoch, Vol. XII at 191 (July)	Moral Damage, is a (casuistico) extra of civil responsibility (Legislation of the state of Veracruz).
SJF, Eighth Epoch, Vol. VI at 126	The payment of moral damages is independent of whether it was proven or not that harm and damages weren't caused.
SJF, Sixth Epoch, Vol. CII at 40	Reparation of moral damages, settlement amount for sexual offenses.
SJF, Sixth Epoch, Vol. XL at 72	Reparation of moral damages, substitution of the claim in an Amparo suit (Legislation of Jalisco).
SJF, Fifth Epoch, Vol. XCIV at 1363	Moral Damage.
SJF, Ninth Epoch, Vol. XI at 979 (March 2000)	Moral Damage. The parents of the deceased minor have the right to claim reparation in moral damages, when they claim the right as a result of their suffering personally and with the aforethought of the child's death (Legislation of the State Of Chihuahua).
SJF, Ninth Epoch, Vol. XIII at 1120 (May 2001)	Moral Damage. Freedom of Print and Press. Established limitations in Article 7 of the Constitution.
SJF, Fifth Epoch, Vol. CXXIV at 513	Settlement for the reparation of the Moral Damage.
SJF, Sixth Epoch, Vol. LXXIV at 22	Moral Damage. The lack of evidence for material damage, does not impede the judge to set an indemnification in favor of the victim.
SJF, Ninth Epoch, Vol. XIV at 113 (December 2001)	Reparation of moral damage in the case of homicide. For the sentence it is enough that the judge has guaranteed to the board that the crime was committed (Legislation of Federal District).
SJF, Eighth Epoch, Vol. VII at 169 (April)	The basis of quantifying moral damages.
SJF, Fifth Epoch, Vol. CXXV at 2840	Reparation of Moral Damage.
SJF, Eighth Epoch, Vol. 85 at 65 (January 1995)	Necessary requirements to proceed with reparation of moral damages.
SJF, Eighth Epoch, Vol. VIII at 213 (January)	Moral damage is in addition to the existence of the material damage (Legislation of the State of Coahuila).
SJF, Seventh Epoch, Vol. 217 at 97	Prison Sentence. Failure to have a good reputation should not be considered.

Citation	Title
SJF, Fifth Epoch, Vol. CXXIII at 262.	Reparation of moral damages caused by rape (Legislation of Tabasco).
SJF, Fifth Epoch, Vol. CVIII at 912	Reparation of moral damage.
SJF, Seventh Epoch, Vol. 193 at 137	The source of a moral damage claim, is conditioned on the test of civil responsibility.
SJF, Sixth Epoch, Vol. CVI at 49	Reparation of Moral Damage.
SJF, Sixth Epoch, Vol. CXXVII at 41	Objective responsibility. Moral Damage. Admissibility of its reparation not permitted.
SJF, Seventh Epoch, Vol. 103 at 110	Admissibility of the reparation of moral damages is not permitted.
SJF, Sixth Epoch, Vol. CIV at 15	Settlement of the amount of reparation for moral and material damages.
Report, Seventh Epoch, Part II at 270 (1987)	In case of causing moral damages.
SJF, Seventh Epoch, Vol. 217 at 97	In case of causing moral damages.
SJF, Eighth Epoch, Vol. XIV at 527 (July)	Settlement of moral damages.
SJF, Fifth Epoch, Vol. CXVII at 515	Reparation of moral damage.
SJF, Ninth Epoch, Vol. XII at 1199 (December 2000)	Moral damages and indemnity in the case of homicide or battery, estimates should be updated prior to the payment of these damages resulting from the crimes.
SJF, Ninth Epoch, Vol. XIII at 1781 (January 2001)	Reparation of moral and material damages and indemnification. Regarding the crimes of homicide and battery. Differences and quantification of each of these concepts (Legislation of the State of Puebla).
SJF, Eighth Epoch, Vol. XIII at 302 (January)	Settlement of the amount of reparation for moral damages.
SJF, Sixth Epoch, Vol. LXXXVII at 14	Pain and suffering and moral damages as a general rule do not correspond to the labor law.
SJF, Ninth Epoch, Vol. XVII at 1755 (January 2003)	A person has a right to accuse or charge, but if the accusation/claim is sustained on false facts, it may serve as the basis for a claim seeking indemnification of moral damages.
SJF, Fifth Epoch, Vol. XCIV at 1363	Reparation of moral damages in the case of an attack on modesty and battery.
SJF, Eighth Epoch, Vol. XII at 235 (September)	Reparation of moral damages for the crimes of homicide and battery.
SJF, Eighth Epoch, Vol. XI at 237 (April)	The payment of moral damages is independent of whether or not it was demonstrated that pain and suffering was also caused.
SJF, Ninth Epoch, Vol. XI at 926 (February 2000)	In the criminal process, moral damages should be accredited for the sentencing process.
SJF, Sixth Epoch, Vol. XC at 19	Proof of moral damages in the case of sexual offenses.

Citation	Title
SJF, Ninth Epoch, Vol. XIV at 1305 (September 2001)	Moral damages caused by a crime include the disturbance that each individual suffers in their feelings, affections, beliefs, dignity, honor, reputation, private life, form and physical attributes or better yet the effect it has upon others treating them.
SJF, Ninth Epoch, Vol. I at 355 (May 1995)	It is not necessary for the person causing the harm to be aware that they are committing the act and causing its consequences, to be liable,
SJF, Fifth Epoch, Vol. LXXIX at 1755	Reparation of moral damages.
Informe, Parte II at 270 (1987)	If a person has already been sentenced to prison, then their lack of good reputation cannot be considered.
SJF, Fifth Epoch, Vol. LIII at 2084	Reparation of the damage (Legislation of the State of Nuevo Leon).
SJF, Eighth Epoch, Vol. XV at 214 (January)	The requirements to bring an action for indemnification of moral damages, after being contaminated with the human immunodeficiency virus (HIV).
SJF, Eighth Epoch, Vol. VII at 169 (April)	Reparation of moral damages in the case a newborn child is kidnapped from the hospital in which they were being cared for.
SJF, Fifth Epoch, Vol. CXVII at 1463	Reparation of the damage.
SJF, Eighth Epoch, Vol. VI at 125	The accusation of facts to authorities, which may constitute a crime, does not establish causation, in the absence of a casual nexus.
SJF, Seventh Epoch, Vol. 115 at 95	Reparation of moral damages, to a victim's mother.
SJF, Seventh Epoch, Vol. 217 at 98	Regulation of moral damages.
Report, Seventh Epoch, Part II at 271 (1987)	Regulation of moral damages.
SJF, Eighth Epoch, Vol. XIV at 301 (September)	Moral damages not configured (Legislation of the State of Querétaro). The accusation of facts to authorities, which may constitute a crime does not establish causation, in the absence of a casual nexus.
SJF, Ninth Epoch, Vol. III at 911 (March 1996)	Publication of the conviction and sentence shall make up for the moral damages. This only occurs in those cases in which a persons' honor has been damaged or blemished.
SJF, Eighth Epoch, Vol. XV at 214 (January)	The requirements to bring an action for indemnification of moral damages, after being contaminated with the human immunodeficiency virus (HIV).
SJF, Eighth Epoch, Vol. VI at 503	Standing to bring a suit against government authorities for moral damages (Legislation of the State of Mexico).
SJF, Ninth Epoch, Vol. XIII at 1119 (May 2001) SJF, Ninth Epoch, Vol. XVII at 1756 (January 2003)	Statements published through mass media, which can be proved. A claim for moral damages cannot be maintained by a simple presentation of a lawsuit, if it is not based on acts, which are false, slanderous, offensive or similar nature.
SJF, Sixth Epoch, Vol. XCIX at 60.	Sentence, individualized for the crime of Lenocinio

Citation	Title
SJF, Fifth Epoch, Vol. LXI at 1708	When the Public Ministry is the appellant, in cases related to criminal matters.
SJF, Ninth Epoch, Vol. XI at 921 (May 2000)	Journalistic publications that cause moral damage.
SJF, Ninth Epoch, Vol. XIV at 1047 (October 2001)	Alibi Witnesses.
SJF, Fifth Epoch, Vol. LXIX at 2826	Responsibilities arising from pain and suffering.
SJF, Eighth Epoch, Vol. XII at 235 (September)	Reparation of moral damages for the crimes of homicide and battery.
SJF, Fifth Epoch, Vol. CIV at 2463	Reparation of the damage.
SJF, Sixth Epoch, Vol. LX at 19	Inadmissibility of grievances that contradict the Public Ministry's conclusions.
SJF, Fifth Epoch, Vol. CXX at 1898	Reparation of moral damages corresponds to the Public Ministry.
SJF, Fifth Epoch, Vol. CXII at 2270	Reparation of the damage.
SJF, Fifth Epoch, Vol. LXXXI at 1602	Reparation of the moral damage in the case of civil responsibility.
SJF, Fifth Epoch, Vol. LVIII at 1953	Origin of indemnification for moral damage.
SJF, Seventh Epoch, Vol. 163 at 43.	Our laws does not provide for the reparation of moral damages, rather they are an added part of the material reparation for pain and suffering (Legislation of the State of Querétaro and the Federal District).
SJF, Fifth Epoch, Vol. XC at 1917	Damages caused by trains.
SJF, Eighth Epoch, Vol. I at 595	Economic ability of the obligator to pay for the reparation of moral damages.
SJF, Seventh Epoch, Vol. 217 at 552	Improper confirmation of the sentence, after payment of the reparation fort moral damages.
SJF, Eighth Epoch, Vol. XIII at 197 (January)	Elements to determine the amount of indemnification for moral damages.
SJF, Eighth Epoch, Vol. CXVII at 532	Reparation of moral damages (the objective of civil responsibility).

SJF = Semanario Judicial de la Federación (Judicial Weekly of the Federation)

APPENDIX FIVE
**MORAL DAMAGES DECISIONS RENDERED BY MEXICAN
 FEDERAL COURTS 1982 - 2003 (CLASSIFIED BY LEGAL AREAS)**

Changes made by the 1982 Amendment	7.6%
Requisite Elements of Moral Damages	5.8%
Economic capacity of the Defendant	5.8%
Moral Damages need not be proven by the Plaintiff	9.6%
Companies and Moral Damages	9.6%
Reputation and mass media	11.5%
Criminal law cases	5.8%
Parents'/Relatives' standing	2.0%
Objective liability	7.7%
Judge's discretion	2.0%
Miscellaneous	32.6%
	100.0%

