

KNOW YOUR RIGHTS: TORTS & DAMAGES

By Attorney **Humberto Cobo-Estrella**



The concept of *negligence* and duty to respond for *damages* and *losses* is governed by Article 1536 of the New Civil Code of Puerto Rico. Omissions only give rise to a cause of action when there is a *duty* to act. José Castán Tobeñas, *Spanish Civil Law*, common and regional, Volume IV, 15th ed., Reus, 1992, p. 942, note 1. Thus, the imposition of liability rests on the *duty* of individuals to subordinate their actions to the rules of prudence, so that if one acts contrary to these, the obligation to compensate the injured party arises. Carlos J. Irizarry Yunque, *Extracontractual Civil Liability*, 5th ed., 2003, p. 56. From the above, a general *duty of diligence* can be inferred, the use of which can prevent harmful results. *Jimenez v. Pellegrina Espinet*, 112 D.P.R. 700, 704 (1982).

An essential element of liability is the *foreseeability* factor of the risk involved. Thus, the duty of care includes the obligation to *anticipate* as well as to *avoid* harm. If the damage is foreseeable, there will be liability; if it is not, we are generally dealing with a fortuitous event. *Jiménez v. Pelegrina Espinet*, *supra*, p. 704. However, "[i]t is not necessary for the person who acted negligently to have been able to precisely imagine all the consequences of their conduct." José Puig Brutau, *Compendium of Civil Law*, Vol. II, 3rd ed., Bosch, 1997, p. 634. The essential thing is that there is a *duty to foresee*, in general terms, the consequences of a certain kind. *Elba A.B.M. v. U.P.R.*, 125 D.P.R. 294, 309 (1990); *Ginés Meléndez v. Water Authority*, 86 D.P.R. 518, 524 (1962). To determine if the result was reasonably *foreseeable*, it is necessary to refer to the concept of the *prudent and reasonable person*, who acts with the degree of care, diligence, vigilance, and caution required by circumstances. See *Monllor Arzola v. Soc. de Gananciales*, 138 D.P.R. 600, 604 (1995). For *liability* to be imposed for the damage caused, there must be a *causal relationship* between damages and the *negligent* action or omission. This determination is governed by the theory of *adequate causality*, which dictates that "[n]ot every condition without which the result would not have occurred is a cause, but the one that ordinarily produces it according to general experience." See *Soc. de Gananciales v. Jerónimo Corp.*, 103 D.P.R. 127, 134 (1974). Accordingly, *damage* can be considered a probable and natural result of a *negligent act or omission* if, after the event, looking back, the damage appears to be reasonable consequence of the action or omission. See *Montalvo v. Cruz*, 144 D.P.R. 748, 756-757 (1998). "The Judge must establish a retrospective prognosis of probability, asking whether the action being judged was by itself capable of normally causing that consequence." Castán Tobeñas, *supra*, pp. 967-968.

The concept of *fault* (a culpable act) includes *intentional*, *reckless*, and *criminal acts or omissions*. However, negligence is an unintentional act or omission that does not meet the standard of care of a prudent and reasonable person. The "good family father" in Civil Law is equivalent to the figure of the "prudent and reasonable person" in Anglo-Saxon Law, and this area of law is *extracontractual civil law*, as it arises from the civil obligation to compensate for damages between persons where there is *no prior agreement or contractual relationship*. The *quantum of proof* is the *preponderance of the evidence*, and you have the responsibility to prove each element of your cause of action with all the evidence you have, whether documentary, tangible, illustrative, and/or testimonial. As a general rule, its elements are: (1) duty of care or obligation to avoid harm; (2) the occurrence of actual harm; and (3) causal link between the culpable or negligent act and the damages suffered by the injured party. Damages consist of both economic and moral (i.e. mental anguish, pain and suffering). Our new Civil Code has also introduced punitive damages in Article 1538.

