

New Civil Code of Puerto Rico: Legal Relations

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

This Alert specifically addresses **Legal Relations: Persons, Domestic and Domesticated Animals, Goods and Facts, Legal Acts, and Transactions.** Like the Previous Code, this area of the New Code delves into legal relations, distinctions between public and private property, and other building blocks of our society and comprises almost three hundred articles, covering a myriad of topics.

Below are some of the key changes:

■ **Rights of the Unborn Fetus**

- Rights of unborn fetus: Despite public outcry from various sectors, the New Code does not explicitly assign rights to the unborn fetus. According to the New Code, life begins at birth. Article 70 of the New Code states that rights recognized to the *nasciturus*, or fetus, are dependent on the fetus being born and cannot interfere with the constitutional rights of the pregnant mother.
- Abortion: The New Code also incorporates legal precedent established by the Supreme Court of the United States and does not ban or undermine the right to obtain a legal abortion by recognizing a pregnant mother’s right to choose.

■ **Domesticated Animals**

- Recognition of animals as sensible beings: The New Code makes significant changes on how animals are treated. For instance, Article 232 of the New Code recognizes that domestic and domesticated animals are “sensible beings” that should not be classified as goods and are not subject to embargoes.
- Custody of animals in divorce proceedings: Pursuant to Article 235 of the New Code, if the custody of an animal is in dispute during divorce

proceedings, the court must determine where the animal should go based on the safety and well-being of the animal, as well as what is in the best interest of the family.

■ **Public and Private Goods**

- Public Heritage Goods: The New Code introduces the classification of public goods that are part of the Puerto Rican heritage due to among others, their historical, cultural, environmental, and archeological value and thus fall outside the commerce of man (“Public Heritage Goods”). Articles 238, 239 and 240 define different categories of public goods, distinguishing between the newly recognized Public Heritage Goods and those assigned to the Commonwealth which have been destined for public use (“Public Use Goods”).
- Transmutation of Public and Private Goods: Article 244 of the New Code recognizes for the first time the way by which private goods become public goods (“*afectación*”), and vice versa (“*desafectación*”). Pursuant to the New Code, the specifics of how both these processes will take place shall be set forth by statute or regulation. The transmutation from public to private goods, and vice versa, has been the subject of much controversy and debate in Puerto Rico. However, through its incorporation to the New Code, the possibility of turning Public Heritage Goods and Public Use Goods into private goods is now black letter law.

■ **New Concepts and Updates**

- The New Code addresses legal areas that were not codified under the Previous Code. Some of the most relevant are discussed below:
 - Cloning and Genetic Diseases: Pursuant to Article 75 of the New Code, reproductive cloning and other practices that would upset human evolution are banned. However, that same article introduces language allowing scientific research into the prevention and treatment of genetic diseases, including procedures that would fix or prevent hereditary diseases from being passed down to an unborn fetus.
 - Profit Driven Organ Donation: Pursuant to Article 77 of the New Code, a person is forbidden from selling (i.e. receiving compensation for donating) organs, blood, plasma, or other parts of the human body. As stated in that same article, only donations of said body parts are accepted, once the person consents to the procedure.

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- Immunity when physicians consent: Article 79 of the New Code provides immunity for physicians and other health professionals who, in order to avoid a grave and imminent danger to their patients, have to make decisions for their patients when the patient is incapacitated and the person authorized to make decisions on their behalf is unavailable.
- Legal acts by minors: Under the New Code, the age of majority remains at 21 years old. However, the New Code recognizes the capacity of a minor to perform legal acts if the minor is 18 years old or older. The assessment of whether the minor can consent to the legal act will be based on the minor's education level, ability to discern from right and wrong, and maturity level. Similarly, minors older than 10 years old can provide input during the process of naming his or her legal guardian. Article 133 of the New Code states that the court will ultimately select a legal guardian considering the minor's input and reaching a decision based on the best interest of the minor.
- Fraudulent Conveyance: Reasons that nullify legal acts performed with the intention to defraud creditors were expanded. For instance, Article 299 of the New Code introduces the term of *acción pauliana*, or fraudulent conveyance, a fixture of local jurisprudence that allows creditors to recover goods transferred by debtors to third parties with the intent to defraud creditors.

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