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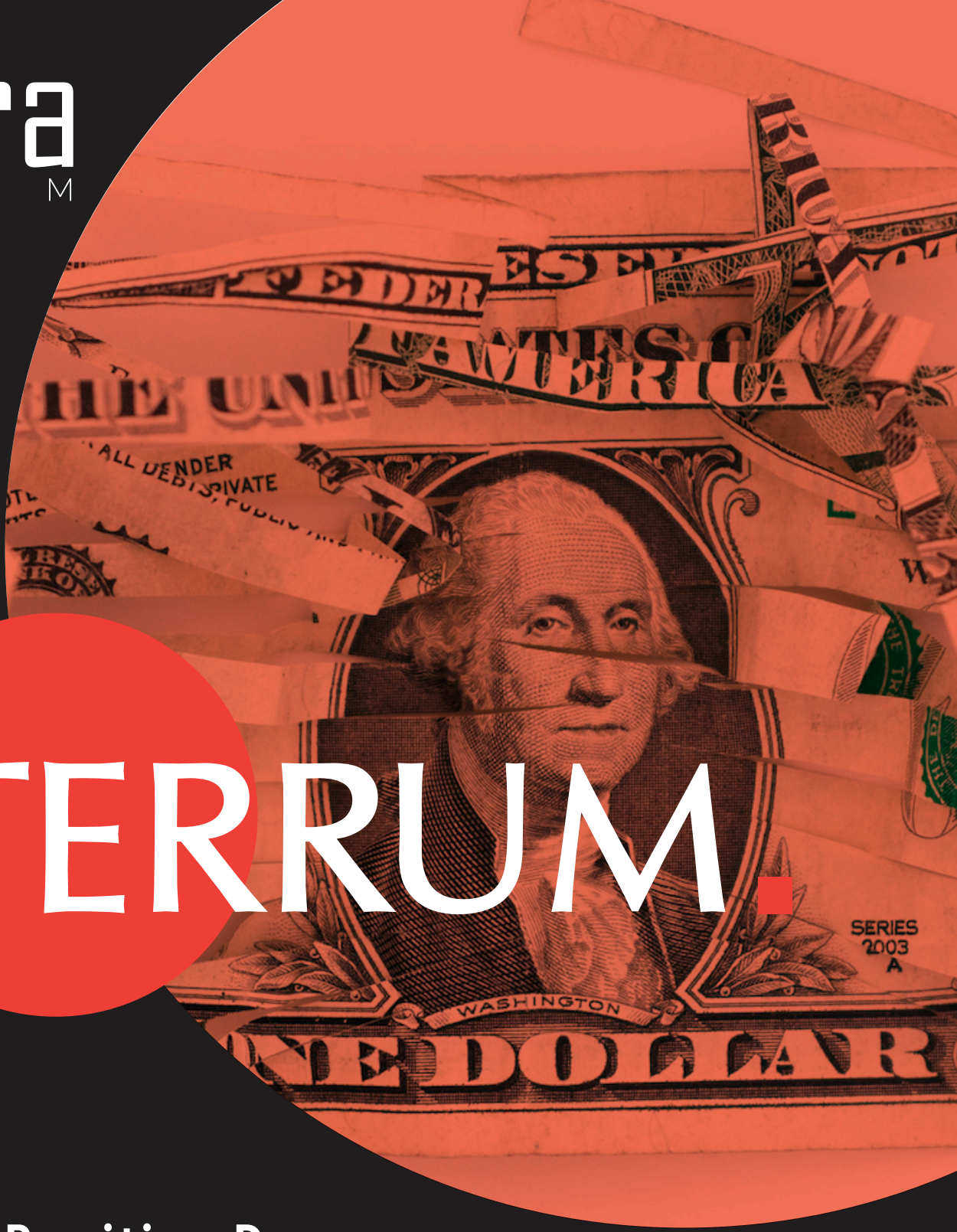
"DILIGITE JUSTITIAM QUI JUDICATIS TERRAM." "Ye who judge the earth, give diligent love to justice"



TERRUM.

Punitive Damages.

By Julio Vargas.

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Punitive Damages

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For some years now, Mexican high courts have been developing the damages rights and theories. Since the general concept of material damages as a consequence of the liability incurred by any person that affects another causing damage or harm either intentionally or because of simple negligence.

Mexican legal system considers different types of damages, all regulated in our Federal Civil Code; starting with the material damages that occur when a person unlawfully or against good habits causes damage to another, is obliged to repair it, unless he proves that the damage occurred as the victim's inexcusable fault or negligence. It also contemplates, moral damages that are understood as the affectation that a person suffers in its feelings, affections, beliefs, decorum, honor, reputation, private life, configuration and physical appearance, or in the consideration that of itself have the others. It shall be presumed that there is moral damage when the freedom or physical or mental integrity of the persons is infringed or is unlawful[1].

"Also, the law states that the amount of any compensation will be determined by the judge, considering the injured rights, the degree of responsibility, the economic situation of the liable person and the victim's, as well as the other circumstances of the case."

These cases have been evolving continuously and increasing and our high courts and Supreme Court have been creating several precedents and mandatory jurisprudence filling this general concepts with material content.

In general terms, the amount of the award granted to repair moral damages derived from an extracontractual civil liability action, it must be sufficient for that precise purpose, taking into consideration all the circumstances on each case.

Also, the law states that the amount of any compensation will be determined by the judge, considering the injured rights, the degree of responsibility, the economic situation of the liable person and the victim's, as well as the other circumstances of the case.

Derived from all these circumstances that the judge must take into consideration when awarding a compensation, during the last 10 years our Supreme Court has been developing criteria related to the punitive damages which should be considered as an additional claim to the material and moral harm compensations.

The Supreme Court has held up that punitive damages fall within the human right to a complete repair of the harm or damage, specifically the right to a fair compensation, that essentially seeks to add to the repair compensation a dissuasive effect of the harm conduct in order to prevent similar acts in the future, it is intended to constitute an exemplary punishment with the objective of prevention, to discourage illicit actions and in general harmful, as part of the social condemn[2].

According to our supreme Court Ministers, punitive damages is a legal institution from the common law systems

1.- Código Civil Federal. (1928). Estados Unidos Mexicanos: Honorable Congreso de la Unión. Artículo 1916.
2.- Tesis: 1a. CCLXXII/2014 (10a.) Semanario Judicial de la Federación y su gaceta, Undécima Época, Libro XIV, julio de 2014, Tomo I, página 142, Reg. IUS. 2006958.

built over the strict liability and absolute liability or liability without a fault, that state that the liability does no depends nor is based in negligence or the intent to harm. The existence of moral damage does not influence in the awarding of punitive damages, since its cause reveals, says the minister, a deterrent nature through a clear and striking message sent from all the courts to the persons, that consist in the granting of substantial amounts of money to the victim simply because of the use of, for example, an object and the damage caused by this action[3].

"This punitive damages concept does not only seek the repair of the harm in the victims affections, but also it allows to value the level of responsibility or liability of who caused the damage."

Through high court rulings, we have been taught that this class of damages were imported to Mexican positive law through a binding jurisprudential construction from our Supreme Court resulting from a direct interpretation of the granting of material and moral damages already provided in our laws and our Supreme Court has been developing consistently the punitive damages theories and the right for the victim to claim them.

Several and different legal precedents on these regards, state that by these awards, the law disapproves the people that act illicitly and tends to reward the compliance of the rule of law. In this way, victim´s conviction is reinforced in the sense that the legal system is just and fair and that their decision to file a legal action was useful. In other words, compensation is a social expression towards the disapproval of the illicit act, and if such punishment is not granted, the recognition of such disapproval simply disappears. Furthermore, our Supreme Court has established that restricting the payments of the damages suffered to its plain repair, in some cases, would mean to accept that the liable party would enrich itself at the expense of its victim.

This punitive damages concept does not only seek the repair of the harm in the victims affections, but also it allows to value the level of responsibility or liability of who caused the damage. Therefore, such damages awards have the purpose to prevent similar actions in the future, it is intended to impose negative incentives so that people should act with due diligence even more in cases where a person or entity has the duties to protect lives and physical integrity of its clients, for example.

Through these exemplary punishments the courts tend to procure among citizens and entities a culture of responsibility and liability in which avoiding following the legal care duties have a real cost.

Finally, in very recent precedents published just this December of 2022, the Supreme Court has determined that even though punitive damages consist, as mentioned, in an exemplary punishment that tends to prevent similar harming conducts in the future, nevertheless, they cannot be granted in all cases[4], but as an element that is related to the harmed right and the degree of liability of the active person, that may be added only when the severity of the claim derives a high level of social punishment that justifies such condemn.

3,- Tesis: I.4o.C.1 C (11a.), Semanario Judicial de la Federación y su Gaceta, Undécima Época, Libro XIV, junio de 2022, tomo VII, página 6241. Reg. IUS. 2024743.
4.- Tesis: 1a./J. 136/2022 (11a.), Semanario Judicial de la Federación, Undécima Época. Reg. IUS. 2024743.

Senate approves 12 vacation days for workers in Mexico starting in 2023.

The reform to the Federal Labor Law was sent to the federal government for publication in the Official Gazette and will become effective on January 1, 2023, so that workers in Mexico will enjoy 12 continuous vacation days in their first year of service, when currently it is 6 days. The period will increase by two days until reaching 20 days for each subsequent year of work and from the sixth year of service, it will increase by two days for each five years of work. *www.forbes.com.mx/senado-aprueba-12-dias-de-vacaciones-a-trabajadores-en-mexico-a-partir-de-2023/?utm_campaign=later-linkinbio-forbesmexico&utm_content=later-31733712&utm_medium=social&utm_source=linkin.bio* December 14, 2022.

Rules of origin will attract more automotive investment to Mexico in 2023: INA.

The rules of origin established in the Treaty between Mexico, the United States and Canada (USMCA) would attract more investment in the automotive industry in 2023, as this will be the year in which they will be applied at their peak for passenger vehicles and light trucks. From January to October 2022, Mexico exported automotive products to the United States for 124.752 billion dollars, of which 59.870 billion dollars were auto parts. Of the total auto parts imported by the United States, 39.1% originated in Mexico. Francisco González, president of the National Auto Parts Industry (INA), noted that nearshoring has the potential to attract an estimated US$70 billion in trade and a similar amount in investment in Latin America, with Mexico accounting for more than 50% of those possibilities. *www.eleconomista.com.mx/empresas/Reglas-de-origen-atraeran-a-Mexico-mayor-inversion-automotriz-en-el-2023-INA-20221219-0141.html* December 19, 2022.

Peso continues to gain against dollar.

The peso has been making slow, but steady progress since December 16th. The exchange rate stood at 19.37 pesos per dollar the week of December 12th-16th. The US Dollar Index (DXY), which measure the strength of the dollar against other currencies demonstrated a decrease of 0.08%. The peso has also registered a 4% advance in 2022, with only the Russian ruble, the Argentine peso, and the Brazilian real outperforming the Mexican peso. The government has also seen a 10-year bond increased by 2.8 points. *www.mexiconewsdaily.com/peso-gain-dollar-2022/* December 26, 2022.

AICM TUA increases 7% for 2023.

The Airport Use Tariff (TUA) of Mexico City International Airport (AICM) in 2023 will have an increase of 7% over its current value. The current TUA at AICM is $26.06 USD for domestic flights and $49.41 for international flights, both of which will increase 7.7%/. The amount of the TUA is established by the Ministry of Finance and Public Credit (SHCP), considering the increase in the Consumer Price Index for Total Urban Consumers, published by the Federal Reserve Bank of the United States of America. This represents the largest increase to the AICM's TUA so far this administration and occurs in the midst of an adverse global economic context, marked by rising inflation. *www.forbes.com.mx/tua-del-aicm-sube-7-para-2023-asi-quedan-los-montos-para-vuelos-nacionales-e-internacionales/* December 28, 2022.

SEDENA to spend 42 million pesos for IT reinforcement.

The Ministry of National Defense (SEDENA) requested 42 million pesos from the Treasury to renew and update its computer equipment and databases, after being the victim of a hack in which the Guacamaya group stole six terabytes of information. With the resources requested, the agency seeks to improve the infrastructure of database servers. Said investment will allow the SEDENA to meet the demand and quality of the services provided in the information systems for administrative, logistical, and operational activities, with the purpose of contributing to the conception, planning, and execution of military activities carried out for its missions. *www.elsoldemexico.com.mx/finanzas/sedena-gastara-42-millones-de-pesos-para-refuerzo-informatico-9394676.html* December 29, 2022.

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