



## Information on national legislation

### The new constitutional law of 1 March 2/2019 amending the Penal Code concerning reckless driving and leaving the scene of an accident.

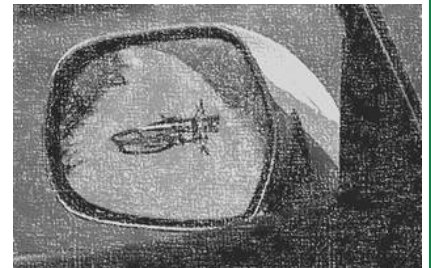


In response to an important social demand and given the increase in the number of accidents resulting in injuries to pedestrians and cyclists as a consequence of the reckless driving of motor vehicles, a new law has been passed based on three main elements:

1. The introduction of three scenarios which will be classed as misdemeanour, as well as a new interpretation of minor infringement
2. The increasing of the penalties in the scenarios at point 1
3. The introduction of the offence of leaving the scene of an accident

Point 1 aims to guarantee that certain serious acts resulting in death - in particular if the driver of a motor vehicle is under the influence of alcohol or narcotics, or speeding – have an admonitory penalty. In these circumstances a driver shows particular negligence and must be subject to the same consequences as for a misdemeanour. The judge may impose a prison sentence of one to nine years if there are several fatal victims or fatal victims and seriously injured parties. Also the period of the driving ban will be increased.

Point 3 introduces the offence of leaving the scene of an accident, though this must be differentiated from the offence of failing to stop at the scene of an accident to help the victims, as it has been classically referred to in the criminal code. In this case, the aim is to punish the wickedness of someone who leaves behind an injured party, failing to comply with the legitimate expectations of pedestrians, cyclists or drivers of any vehicle to be assisted. This would be punished with a prison sentence of between six months and four years.



## SPANISH SUPREME COURT CASE LAW NEWS

We would like to inform you of new guidelines regarding the means of compensating for damages that result from a collision between two vehicles without evidence to determine each party's contribution to the accident.



### Factual situation

These new guidelines emerge from a Supreme Court ruling issued in the context of a road traffic accident, - a mutual collision of two vehicles resulting in material damage. In that case, it has not been possible to prove which of the two vehicles was subject to a red traffic light.

As established by the previous ruling of 2012, on the CROSSED DAMAGES Theory, this can only be invoked in those cases in which the Judge declares it proven that the cause of the accident cannot be determined - because both parties give contradictory versions and no other evidence to determine the cause of the accident exists.



## Legal texts

The Supreme Court ruling we are discussing refers particularly to Civil Code Art. 1902 (whoever by action or omission, through fault or negligence, causes damage to another, is obliged to repair the damage) dealing with MATERIAL DAMAGE only.

## CASE LAW

The Supreme Court has agreed that this action should be ruled on in the Chamber. This, in itself, means that Case law prevails.

## CONCLUSIONS

With regard to **DAMAGE TO PROPERTY**, if it can be proven that the party causing the damage was driving with due diligence, he will be exonerated of liability.

The aforementioned ruling refers to and resolves only those cases in which the cause or causes of the accident cannot in the opinion of the Court, be determined.

The new case law established in the Supreme Court by this ruling for cases in which the cause of the accident cannot be proven, is to order the defendant to settle the plaintiff **50% of the damages caused**, unlike the 2012 ruling which ordered the defendant to settle 100% of the damages.

## CURRENT CASE LAW



When the Court deems that the cause of the accident is not proven, it applies a different theory if we speak about INJURIES or MATERIAL DAMAGE.

**INJURIES:** the doctrine established by the 2012 ruling will apply, stating that each driver will have to settle all damage caused to the third party.

**MATERIAL DAMAGE:** the doctrine established by the 2019 ruling will apply, stating that each driver will have to settle 50% of damages caused to the third party.

If the Judge considers the cause of the accident proven, the ruling will be issued according to the result of the aduced evidence on the liability of one or both drivers and in the proportion that the evidence substantiated as proved.

The aforementioned is the Spanish higher Court case law. However, we believe that in our everyday cases, the insurers negotiating will not accept a settlement if circumstances are as described in the recent ruling issued by the Supreme Court. In our opinion, when it is proved that the cause of the accident cannot be determined, that versions of the facts are contradictory and that there is no further evidence which determines the cause of the accident, the case will be solved judicially and in sight of the evidence put before a Judge.

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