Liability for Environmental Damage:

STJ Case Law



The Superior Court of Justice (STJ) has released the second edition of its Thematic Case Law publication on liability for environmental damage (Issue No. 257). This edition highlights 14 theses addressing key topics within the environmental agenda. The court first addressed civil liability for environmental damage in 2019, releasing Issue No. 119. Thematic Case Law is a regular publication featuring selected theses based on the STJ's most recent rulings. The content is curated by the Court's Library and Case Law Secretariat.

1. Environmental damage is intergenerational, as it imposes a duty of solidarity on the present generation toward future generations.

2. Polluters shift negative environmental externalities onto neighbors, society, and future generations—retaining profits while outsourcing economic activity's health, ecological, aesthetic, and cultural costs. One of the core goals of environmental law is to reverse this logic of extreme individualism in pollution. Through precautionary, preventive, restorative, and punitive instruments, it seeks to ensure that the final price of goods and services accurately reflects the reality of public environmental degradation, which is essential to human well-being and the survival of life on Earth.

3. Civil liability for environmental damage has both compensatory and punitive-educational purposes.

4. Liability for environmental damage is joint and several among all polluters or degraders, whether direct or indirect. Therefore, the joinder of defendants is optional.

5. A party who creates or assumes the risk of environmental harm must repair the damage and bear the burden of proving that their conduct was not harmful.

6. The absence or unavailability of technical evidence does not prevent recognizing environmental damage when such damage is evident or widely known.

7. Once environmental harm is established, collective moral damage is presumed and does not require proof of emotional distress, suffering, repulsion, or indignation from the affected community.

8. Deforestation and logging activities conducted without proper licensing or authorization from the competent environmental authority give rise to collective moral damage.

9. Native vegetation in Restinga ecosystems is always considered a permanent preservation area. (See Article 4, VI and Article 8, §1 of the Forest Code; Article 3, IX of CONAMA Resolution No. 303/2002.)

10. Legal protection of permanent preservation areas (PPAs) constitutes an administrative limitation on property rights.

11. Environmental protection does not distinguish between urban and rural areas. It aims to enhance the quality of life guaranteed by the Constitution, the Forest Code, and environmental legislation.

12. Unauthorized structures built in permanent preservation areas must be demolished, and the area restored, even in consolidated urban zones. The theory of a fait accompli does not apply in environmental law.

13. Environmental protection is a shared responsibility among all levels of government. Supplemental action is permitted if the agency initially responsible for licensing or authorization fails to act or does so insufficiently.

14. In cases of significant environmental damage, courts may apply the doctrine of jurisprudential distinction ("distinguishing") to use the Public Civil Action Law as a subsidiary basis to establish jurisdiction in the location where the damage occurred to hear a popular action. (See Article 2 of Law No. 7,348/1985.)

We are available if you have any questions or need additional information.

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