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Principles governing the evidence of litigation in Iranian and French law

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ABSTRACT

Proof of litigation with reason is possible. The necessity of having a reason is that the litigants and the judge must follow the reason and prove the lawsuit based on the reason. The judicial system is formed based on the same rules and helps the litigants and the judge to use and apply them in line with the purpose of the trial. At the same time, it must be acknowledged that the existence of rules for proving litigation and reason is for social peace and justice, and therefore must be regulated in such a way as to lead to this lofty goal. To this end, in this chapter, we examine the reason and rules governing it, the system of proof of litigation and the principles governing a fair trial.

Keywords
fair trial, Iranian law, French law, evidence, social justice, social peace.

Introduction

Evidence of litigation in Iranian and French law

Proof of litigation in a judicial authority is done for a reason. Therefore, a person who claims a right, if he cannot prove his claim and show it with the help of reason, in the world of law, is like someone who has no right. Therefore, reason is of great importance, in which it has been said: "Right without reason is like a worthless commodity" or "Reason revives right". Despite the fact that the reason is to show the truth, it should be, it is always possible that the thing that is not true, to appear as a real thing by presenting the reason, in other words, the reason is not always to discover the truth and is only to show the fact. In proving the truth, the judge must follow the rules of reason set forth in the third volume of the Civil Code, Articles 1257 to 1335, as well as Articles 194 to 289 of the Code of Civil Procedure regarding the administration of reason, because these articles are the method of proving and Positive value determines each of the reasons.

In France, which is affected by Iranian law, especially with regard to evidence, confession, written document, testimony and oath are among the most important evidence in civil lawsuits, the relevant provisions of which are set out in the Code of Civil Procedure and Civil Code.

Reasons:

Basically, what is considered provable in jurisprudence and takes it out of the proof stage is due to the existence of reason. If there is no reason to prove his claim in the courts, the lawsuit is basically out of court. This conveys the importance of the reason without which there would be no litigation. The reason that must be presented in court has features that distinguish it from other concepts, and it can be said to be a judicial reason that is separate from a logical reason. The evidence presented in court is used to prove the case. Matters on which the litigants disagreed and the truth of which must be revealed and discovered in court, on the basis of which a verdict can be issued. The right in dispute is proved by reason, and therefore reason is used to prove it in litigation or defense. In the position of proving a claim, we can consider two material and spiritual elements as evidence: the material element includes the fixed elements and events of the claim that are proved before the judge, so that its realization implies proving an event that is the subject of the trial. And the spiritual element is the inference of the judge who, based on his intelligence, experience and knowledge, and makes a general evaluation of the evidence and material elements, which is also variable according to different reasons.

Definition of reason:

For a reason, there are two specific and general meanings: In the general sense, it refers to any means that can satisfy the conscience of the judge, and in the specific sense, it includes what is provided by law, which in the judiciary, by showing something, causes the conscience of conscience (creation Inner belief) the judge becomes reality. According to Article 194 of the Code of Civil Procedure: "The reason is something that the litigants rely on to prove or defend the lawsuit".

In France, the term reason is used in the sense of sign and evidence, but in the term jurisprudence it is used in a different sense. For example, the definition of reason states: reason is the proof of something by means of the means prescribed by law. Another definition states: "refers to any means used to prove the existence or non-existence of a thing or the correctness or incorrectness of a thing." Thus, to say that "the burden of proof is on the plaintiff" means that both the plaintiff and the defendant must satisfy the judge's conscience with what he claims.

Definition of proof:

In jurisprudential terms, the stage of knowledge of something is called the stage of proof of that thing, and in terms of the term jurisprudence, proof is used in two senses: in the general sense and in the specific meaning. In the general sense, the presentation of evidence is the right or event of events, and in the specific sense, the presentation of evidence before the court in the manner prescribed by law in a particular case on which the legal effects are arranged.

Proof is often used against proof. Proof in jurisprudential terms means the order of external existence of beings, in other words, it refers to the existence of everything in reality and the matter itself, regardless of human knowledge and ignorance. Proof is related to the stage of facts that exist independently of our science and knowledge, and proof in that sense is the stage of knowledge and science and discovery with the help of a means.

In jurisprudence, the stage of proving the truth refers to its real existence, according to which there is a reality, and we try to explain its material elements and features and its rules so that we can define the legal institution as a set of relations.

To understand the social and environmental rules and in the stage of proof, we seek to reach the reality and discover it, and this is due to the reason and event that has the desired legal effects, whether the event is the subject of doubt or a material event. If we want to clarify the occurrence and occurrence of litigation issues that have occurred and happened from the perspective of the narrator, so that it has the desired legal effects, we need to prove them. "Proof is to convince a judge, using means that are legally acceptable, about an event or the subject matter of a lawsuit," Motolowski said in his definition of proof. Therefore, the person who claims the right from the judicial authority and the court must prove it.

Definition of litigation:

In the literal sense, fight means to want, to quarrel, to claim. The legislature has used the word litigation in three different meanings: First, the specific meaning of litigation means the legal ability of the claimant to infringe or deny the right to appeal to the competent authorities in order to judge whether the claim is valid or not and the relevant legal effects. . Second, it is a dispute that has been raised in the judiciary and is being processed. Therefore, what is meant by litigation is in the second sense that the plaintiff claims a right and requests its application from the court and judicial authority during the petition. Third, the legislature has used a lawsuit in the sense of a claim, meaning that a lawsuit has not yet been filed in court or in a judicial authority, or a claim that is raised as a matter of course during the proceedings. Thus, litigation as a legal situation has elements: the context of the litigation, the subject of the litigation and the cause of the litigation.

In France, there is disagreement about the meaning of litigation, which has been confused with concepts such as the right to sue, litigation, claim, petition, and has led to controversy. However, Article 30 of the French Code of Civil Procedure defines a lawsuit and states: "It is a denial of the basis of that dispute".

Therefore, the meaning of litigation in this treatise is civil and legal lawsuits that are opposed to criminal lawsuits and court cases, and when we talk about the powers of the judge in the evidence, we mean the powers that the law has given him in civil matters. . These powers are associated with intensity and weakness in civil, criminal, and criminal matters, so that in criminal cases, the court has a very wide discretion in discovering the truth and can rely on all kinds of evidence and investigations, even in criminal matters, of course. Not so severely, the court has some extensive powers, but in civil matters and the subject matter of this treatise, the principle of the rule of law is at stake, and it is believed that individuals have the right to exercise or waive their rights. In other words, in criminal law, if a crime is committed, the court has a duty, even if no complaint is made, to seek the discovery of the crime and punish the perpetrators, although there are exceptions. Take action and make decisions without anyone filing a lawsuit, because it must oversee the rights of people such as the inmates who are unable to defend their rights, and work to protect their rights. However, in legal cases, the court has no authority until a lawsuit is filed, and if a lawsuit is filed, the duties and powers of the court are within the framework of principles and regulations, limiting him to some extent and reducing the severity of his powers. To this end, the legislature stipulates in Article 14 of the Code of Civil Procedure adopted in 1319: "The proceedings can accept the reasons cited." In France, too, Article 26 of the Code of Civil Procedure explicitly allowed the judge to base his decision on all matters relating to the case before him, including what was not stated, and under Article 27 of that law. Can even directly do any useful research. He can listen to the statements of people who are able to explain the issue, such as people who fear that his interests will be affected by his decision, without following any formalities. In addition, the judge can explore to find other subject matter. In litigation, on the other hand, the judge has only the right to investigate within the scope of the matter raised by the litigants.

Types of evidence in Iranian and French law:

Article 1258 of the Civil Code considers the reasons for proving a lawsuit to be five cases: confession, written documents, testimony, UAE, oath. In addition, the Code of Civil Procedure introduces the principle of istishab and the principle of innocence, as well as local investigation, on-site examination, and expertise as evidence of litigation. In France, the evidence has been presented in both the Civil Code and the Code of Civil Procedure, which we will examine below.

Confession:

According to Article 1259 of the Civil Code: "Confession is true news for others to their detriment." The confession is made according to the will of the headquarters, according to which he declares and confirms what is to his detriment. This voluntary announcement is in the form of a news sentence and not an essay. In fact, the headquarters announces something that has happened: that is, the announcer announces the existence of an event that has legal effects to his detriment. The subject of confession is the news of the existence of a right, and of course it is a matter of subject matter and does not include legal matters.

In France, confession is one of the most important proofs in civil law. "Confession is the expression by which a person acknowledges an event that has legal effect against him or her to his or her detriment," says Sava tier, a well-known French jurist. The French Civil Code defines a confession as: "A confession is a declaration by which the headquarters acknowledges the existence of an event which could have legal consequences to its detriment." Confessions are divided into different types: judicial and non-judicial confessions, explicit and implicit confessions, written and oral confessions, conclusive and non-conclusive confessions. In France, confession comes in two forms: simple confession and restricted confession. A simple confession is the acknowledgment of the claimant's right,

and the headquarters, without any restrictions, accepts the plaintiff's claim and confesses to the religion. Restricted confession is the acknowledgment of the subject matter of the claimant with a clause or description that changes the nature of the claim, which is also common to the said confession.

Written documents:

A document is any writing that can be cited in a position of litigation or defense (Article 1284 of the Civil Code) and has the signature, fingerprint or seal of the person to whom the document is attributed. There are two types of documents: official document and ordinary document (Article 1286 of the Civil Code). An official document is a document that must be prepared by official officials and within their competence and according to special legal regulations (Article 1287 of the Civil Code), therefore, it has more validity and power, and the legislator has the validity of the contents of the official document. Knows. In contrast, an ordinary document does not have such features, and its validity stems from the signatures of those who have declared and registered their rights and obligations. The influence of both documents is conditional on their not being against the law (Article 1288 of the Civil Code).

In two cases, the legislator considers ordinary documents to be valid documents that are valid about the parties, their heirs and their successors: 2. whenever it is proved in court that the said document has in fact been signed or stamped by the party who has denied or doubted it.

In some cases, the legislature has required official registration, so it should be noted that in relevant lawsuits, the document must be provided as a necessary reason. According to Article 46 of the Law on Registration of Deeds and Property: "Registration of documents is optional except in the following cases: 1- All contracts and transactions regarding the property or interests of real estate that have already been registered in the real estate office. 2. All transactions regarding rights that have already been registered in the real estate office.

The electronic document according to paragraph A of Article 2 of the Electronic Commerce Law adopted in 2003 is: "Any symbol of an event, information or concept that is produced, sent, received, stored or processed by electronic means, light or new information technology Lawsuits are invoked to prove or defend a lawsuit.

In France, Article 1315 of the Civil Code sets out the reasons, the first of which is a written document. Such documents are both formal and ordinary. But in 2000, after the passage of the regulations on electronic signatures, the rules for written reasons changed dramatically, and the status of official documents, as regulated by official agents, became much more prominent and credible.

Written documents are divided into two categories: The first category is some private documents that are designed as evidence, which are called existing evidence and therefore have a high probative value, provided that according to certain laws be set. There are two types of documents in this group: official documents and valid documents. The second category includes other documents that, although of lower probative value, May, under certain circumstances, act as evidence. This category is very large: from copying accounting documents to simple letters and notes.

Witness:

Testimony is one of the reasons for proving that it has a great place in Iranian law and has stated its quality and number separately, and if they do not meet the legally prescribed number and conditions, the validity of that testimony will be invalidated. Witnesses who are a group of witnesses are those who are present at the time of the action or legal event and can tell the court how and the quality of the event. In France, the same definition of testimony is given, but the oath is added to it, and witnesses must take an oath before testifying. Witnesses only report what happened and there is no special benefit or privilege for them.

Articles 1309 to 1320 of the Civil Code, without defining testimony, list some of its provisions and effects. Article 1013 of the Civil Code mentions conditions for a witness: "In the witness, maturity, intellect, justice, faith and purity are productive." According to Article 1315 of the Civil Code: "Testimony must be based on certainty, not doubt." Therefore, the one who testifies must have knowledge about the case and this knowledge must have been obtained in conventional ways. Also, the testimony must be consistent with the lawsuit (Article 1316 of the Civil Code) and its provisions must be the same and to prove a specific matter, as well as the testimony of someone who has a personal interest as an object or benefit or right in the lawsuit and also the testimony of those "It is not acceptable for them to make begging their job".

In France, the rules of testimony are set out in both Articles 1341 to 1348 of the Civil Code and Articles 199 to 221 of the Code of Civil Procedure. The scope of testimony in French law is limited, and the reason for this limitation is considered to be forgetfulness, error, and resentment of man in presenting facts. According to Article 205 of the Code of Civil Procedure, witnesses must have legal capacity, and also according to Article 211 of the said law, swearing is considered as one of the conditions for testifying. However, special conditions are not required for testimony and therefore the judge is not obliged to issue a verdict just for the sake of testimony and has wide authority to evaluate the testimony and can even entrust this task to a specialist (Article 215 of the Code of Judicial Procedure). Civil proceedings.

Oath:

An oath is an expression of a will by which a person takes God as a witness to the correctness and truthfulness of his words over the existence of a right in his favor or the fall of a right. Judicial or affirmative oath ***(Le Serment Affirmatif ou Probatoire)*** is an oath that proves the allegation or veracity of the statements of the swearing oath within the framework of the law. And it is divided into three types of decisive oaths: supplementary, supplementary and explicit oaths. A conclusive oath of allegiance, or Betty, is an oath by which the claimant invalidates or proves, and does not return only to a particular subject, and its purpose is to fall or confirm the claim, is done at the request of the litigants and the court in summons or The obligation to swear does not interfere. A supplemental oath is one that the plaintiff takes to complete the incomplete reason he has given. And the oath of allegiance is an oath in a lawsuit against the deceased whose right of origin has been proven and its survival has not been proven in the eyes of the ruler, the ruler can ask the plaintiff to swear allegiance to the survival of his right. The oath is one of the weakest proofs that in

Iranian law, almost all claims are accepted by oath, except in special cases such as contracts and transactions related to real estate or real estate interests, in which case, an official document must be expressed.

In France, a judicial oath is divided into two types: affirmative oath and supplementary oath. The final oath of litigation is the oath that one of the litigants requests from the other, and if he swears, the dispute ends, and in other words, the dispute is decisive and the absence of the oath is also decisive in the dispute and causes a chapter of hostility. (Article 1331 of the French Civil Code). But in the supplementary oath, the court asks the person whose reason is incomplete.

Emirates:

In the Civil Code, the UAE is one of the proofs in Article 1258, and Article 1321 of the Civil Code defines it, which states: "It can be." So the UAE is of two types: the legal UAE and the judicial UAE. Despite the fact that among the reasons for proving a lawsuit, statistics have the least evidence, but they take precedence over the practical principle. In fact, the verdict obtained through statistics is a real verdict and it is actually more likely to be hit. . Legal statistics are based on suspicion, which proves the existence of something that is usually impossible or very difficult to prove. Such as possession statute (Article 35 of the Civil Code), statistic of sharing the wall between two adjacent properties (Article 109 of the Civil Code), statistic of the bed (Article 1158 of the Civil Code). But due to the signs that it brings with it, the judicial authority convinces the judge's conscience, which indicates that the claim is true, and the law leaves it to the judge's discretion and causes a kind of knowledge. Local research, local examination and expertise are the most important judicial emirates. In many cases, due to the judge's lack of mastery of the subject and specialized information, it is necessary to refer to experts, ie experts, the law has interpreted these people as experts. Expertise uses the expertise of an expert person or persons to provide a judicial solution and help the judge, in other words, experts in this case will help the judge to know the truth. In France, too, an expert is considered a member of the judiciary, and his opinion is advisory to the judge, and the judge is not required to accept the expert's opinion.

In the French legal literature, the word "presomption" means a situation that is justified by law or in the opinion of a judge. Therefore, it is both a legal and judicial statistic. Article 1350 of the French Civil Code, in the definition of legal authority, states: "Legal authority is that which is returned to a certain act or event by law, including: It is done in order to evade the law. 3) The validity of the convicted case, 4) the validity that the law gives to the confession or oath of the plaintiffs. Judicial statistics (La Presomption du Fait ou de l`Homme).

Rules governing the evidence of litigation:

Judicial procedure, like other laws of any country, is inspired by a certain school according to the thinking of the legislator. The school of liberalism believes that the rights and freedoms of the individual must be protected in order for society to survive. The school of socialism, on the other hand, seeks to compensate for the inequality between the parties by relying on the strength and power of society to support the weak and gain the beneficiary, with the extensive legal authority it gives the judge to discover the truth. Therefore, the rules related to the evidence are inspired by these different schools and determine the rules for the reason. ***These rules have their own characteristics in each system, but it can be considered rules that govern all the arguments and put them in a specific framework and even reconcile these two types of thinking. Article 10 of the French Civil Code, for example, states: "Everyone has the duty to assist a judge in discovering the truth".***

3) In principle, any lawsuit can be substantiated by any legitimate reason, unless in some cases a specific reason is worthy of citation or only a specific reason is required or the legislature has prohibited the use of a particular type of reason in that area. . For example, in the registration law, the legislature has made the registration of documents mandatory (Articles 46 and 47 of the Registration Law), and only official documents can be submitted for claims related to them.

2) The rules related to the evidence have a complementary aspect and the optional principle related to the evidence, i.e. the authority of the litigants in the agreement, is contrary to the rules related to the evidence. In this way, the litigants, based on the principle of free will, can, by mutual agreement, consider it valid or invalidate it.

3) The rules governing the evidence in time can be divided into two categories: the first category, the laws that govern the procedure of preparation, presentation and use of evidence, and the other category of laws that govern the conditions and value of the evidence. In the first category, if the law changes, they must be enforced immediately during the time the court is hearing and the case is pending, both in the initial and higher stages, except in cases where the acquired rights of individuals are violated. Therefore, in the ongoing trials, the new law on the procedure for preparing, presenting and using evidence must be implemented. But in the second category, the rules governing the condition and value of the evidence, they are divided into two parts. One, the evidence presented to prove legal acts is subject to the laws that were enforced at the time of their conclusion, unless otherwise specified in the law (Article 195 of the Code of Civil Procedure). Therefore, the conditions and value of the evidence presented to prove legal acts, including contracts and agreements, are measured according to the law that was in force at the time of their conclusion, and the subsequent change in the law in this regard has no effect on the past. Second, the evidence presented to prove external events such as coercive guarantee, lineage, etc. is subject to the law that is in force at the time of filing a lawsuit (Article 196 of the Code of Civil Procedure).

4) The laws governing evidence in place are divided into two parts: one, the formal rules of evidence and the substantive rules of evidence. Formal rules related to the evidence and the procedure for presenting and considering the reason and its application are subject to the law of the country where the court is located. Therefore, the time and manner of presenting the reason and citing it, the manner of examining witnesses, the manner of conducting local investigation appointments and on-site inspections, cases of issuing expert appointments, paying expert salaries, etc. are subject to the law of the country of the court hearing the case. Because the mentioned rules guarantee a proper judiciary and the credibility of the judicial system of the country where the court is located. In France, some people

believe that the procedure for examining the authenticity of a document that has been violated is subject to the law of the country where the document was signed, because it is related to the authenticity of the document. For example, if an ordinary document signed in France and expressed in an Iranian court is denied and the Iranian court examines its authenticity, if the Iranian court determines the authenticity of the document, it can be reassuring that the same way Certificates of authenticity of the document, which are valid in France, the country where the signature is signed, shall be implemented. Second, the substantive provisions of the evidence, such as the bearer of the burden of proof, the circumstances or the probative power of the reason, the interests of the litigants take precedence over the proper judiciary, and therefore a law governing the nature that's right. Regarding the conditions of the evidence, one should refer to the law in which the legal relationship has been established, and whenever there is a probative value, the ruling law is al-Qaeda, the law of the country where the court is located.

Purpose of the proceedings:

In Iranian law, the issue of the purpose of the trial is faced with the ambiguity of whether the purpose is the chapter of hostility or the discovery of the truth? The reason for this ambiguity has a jurisprudential and legal origin. Because the jurists have often defined judgment as the chapter of hostility "Al-Qaida is the chapter of enmity" and its legal reason is the reason based on the traditional mentality of forbidding education, which is based on the principle of impartiality of the judge. However, although the Code of Civil Procedure considers the chapter on hostility as a necessity of the proceedings (Article 3 of the Code of Civil Procedure), the purpose of the proceedings should be to discover the truth. Also, by pondering on the original Islamic principles and relying on the jurisprudential arguments of enjoining the good and ruling on justice and installment, it should be acknowledged that the primary goal of the trial is to realize the right and true judgment, and the season of hostility has never been desirable as the goal of the trial. But as a last resort and assuming the impossibility of achieving reality, it will replace real judgment. The prerequisite for this purpose in civil litigation is to identify and give the judge broad discretion to discover the truth. With the developments in the jurisdiction of the judge, the removal of restrictions on the positive value of testimony and the development of its scope, and in terms of the method of evidence and its non-limitation and no restrictions on the scope and variety of judicial statistics, the free evidence system has overshadowed the Iranian trial. With this dynamic, which is carried out only within the framework of the principles of procedure, and according to which the judge can decide for any logical and conventional reason that leads him to the truth and causes his knowledge and conviction to the truth of the case, the legislator Has discovered the truth and predicted the chapter of hostility as the last resort if it is not possible to reach the truth, to end the fight.

There is no principle of material truth in French civil procedure. Contrary to criminal law, civil law does not state the system of proving, seeking and discovering the truth and achieving certainty. Of course, as stated in Article 10 of the law, the trial process tends to uncover the truth: "Every person has a duty to assist in the administration of justice in determining the truth." However, as is often pointed out, the practice of litigation, which is to end a dispute, limits the search for the truth in itself. If a judge refuses to make a decision because the truth has not yet been established, he or she has committed a violation (Article 4 of the French Code of Civil Procedure). But there are some situations in which the law distinguishes a judicial truth from a material truth or prohibits the search for material truth. For example, in family law, a person who has a status, such as being someone's son or daughter, is considered by others to have that status. Therefore, if the child is raised by a man who is not his natural father, but has raised him, in these cases, it can be said that this man is his father. Thus, sociological truth becomes a judicial truth and overcomes the (possible) scientific truth.

Features of Evidence in Civil Matters:

The plaintiff needs a reason to prove his claim, and without a reason, his claim is not accepted. However, in order for a reason to prove its claim, it must have certain characteristics and be so-called court-friendly. The reason, without having legal characteristics, will have only the form of reason and will not be admissible in court. The legislature states in Article 200 of the Code of Civil Procedure regarding the nature of the reason: "Consideration of reasons whose validity is disputed between the parties and influences the final decision shall be dealt with in the hearing, except in cases provided by law." Conditions can be inferred in the trial of the judge for reasons: 1) the dispute between the two parties regarding the reasons, 2) the reason is effective in the hearing, 3) the reason must be raised and considered in the hearing. The condition of "effectiveness of reason" is a common feature of all evidence so that the court can consider reasons that the subject of reason is effective in the verdict. This is because the "impact on litigation" rule regulates the relationship between the plaintiff's allegations and the facts he gives to prove them, and reduces futile action and length of proceedings. In other words, by relying on the provisions and meaning of the effective reason in the final decision, it is possible to prove the claim. ***Any reason is not admissible and the litigants' discretion for the reasons presented by the court is limited to the following:*** 1) the reason must be legally admissible. 2) Be able to prove the issue and 3) be effective and relevant.

Conclusion:

In proving a civil lawsuit, due to the principle of the rule of the litigants, it is the litigants who must present their evidence to the court to prove their claim, and the role of the judge is not as broad as in criminal cases. However, by analyzing the rules, principles and purpose of the trial, it should be said that achieving the truth and administering justice is the desire of any judicial system. The parties to the dispute must be free in their will to be able to defend their rights and not have any restrictions on proving their claim, and at the same time the judge must have broad powers to be able to discover the truth. Therefore, in response to the research questions, what is the role of the judge and the litigants in proving the lawsuit? And what are the mechanisms of the judge's broad powers in the implementation of Article 199 of the Code of Civil

Procedure? And what is the solution of French law in increasing the powers of the judge in matters of proof? And how can a balance be struck between the plaintiffs' authority and the judge in proving the claims? It should be said that justice requires that the role of litigants and judges in proving litigation be defined in a balanced way. Certainly, the protection of the public interest does not allow the litigants to have absolute freedom in the conduct of their litigation, and the judge, as the guardian of the public interest, must proceed to a certain extent. The system of spiritual or persuasive evidence is the method that can bring the trial to the desired perfection, that is, the truth. In Iranian law, despite the doubts, the same system can be considered as the ruling system of proving civil lawsuits, and the judge has a duty to act with the freedom given to him by law, in order to discover the truth and according to certain principles and criteria. The freedom of action exercised by the legislature in Article 199 of the Code of Civil Procedure for the judge to carry out any investigation or action necessary to discover the truth is related to the establishment of the truth and the discovery of the truth and the assessment of the reasons. The legislator's view of legal litigation and the reasons and proof of litigation is such that in principle the judge has the role of verdict and except in exceptional cases, his duty is to comment on the reasons provided by the litigants and he himself cannot Profit from one of the parties. In fact, the principle of domination of litigation by the parties, they have a duty to provide the court with the necessary information to prove their claim, and the court, after accepting the reason and managing whether it can be investigated, should and has the duty to conduct investigative actions. To discover the truth, and at this stage, which can be referred to as evaluating the reasons, the legislator has given him a lot of freedom of action, and he can use any legal means to evaluate the reasons to reach the conscience to correct And check the quality of the data provided to him by the parties. In France, despite the extensive caution that the legislature has given the judge in Article 10 of the Code of Civil Procedure, the scope of his action is specified in Article 7 of that law. However, this vast freedom and authority is in the direction of discovering the truth, and in this way there is no obstacle to the judge finding the evidence, if the goal is to discover the truth, the court must have the tools to do so. He must seek the truth as long as he does not oppose the rights of the companions and the principles of justice do not forbid him.

The judge has a great mission and he is more concerned about justice, so he has an important role in the administration of justice. Decide. The judge must realize what is right and who is wrong. Achieving this goal requires that all the rules of proof be in order to satisfy the judge's conscience, a kind of consent that every conscious conscience accepts, and although the judge says at the time of taking the oath: "I, as a judge, "I swear ... that I will always strive to discover the truth and the realization of the right and the administration of justice and the divine installment ...", but this oath puts him within the framework of the principles and rules of procedure and his powers are in accordance with the law will be.

Changes related to the active role of the judge are due to the judicial policy of each country and the degree of trust in the judge, which determines the adjustment and coordination of law and order. The legislature seeks to give the judge a broad role in proving civil litigation, although no provision has been made. For example, the legislature, in paragraph 3 of Article 371 of the Code of Civil Procedure, states that non-compliance with the principles of procedure and the rules of law and the rights of litigants, if it is of a degree of importance that invalidates the verdict, can lead to violations. The verdict will be in the Supreme Court. In other words, the legislature's view was to give the judge broad powers to seek to discover the truth while observing the principles of the trial, and certainly in this direction his conduct may be contrary to the principles and rules of the trial, but to the extent It does not matter if the vote is invalid. As a result, the discovery of a reason for the parties may be contrary to the principle of impartiality of the judge, but a degree of impartiality of the judge is acceptable and does not affect the rights of litigants. However, there are cases in the law that, despite giving an active role to the judge (Article 199 of the Code of Civil Procedure), the authority of some investigations is at the request of the litigants. For example, Articles 258, 209, and 210 of the Code of Civil Procedure, which state that a request for a document must be made by the litigant so that the judge may consider it. The judge sought to find out the truth, but on the other hand, some of his actions were limited to the will of the litigants. In France, the same view prevails that the judge in his opinion cannot issue an order to express documents or commercial offices (Articles 138 and 139 of the Code of Civil Procedure). Such legal provisions have led jurists to consider the system governing the evidence as a complex system and even in some cases, to consider its objectivity. If, in the author's view, the evidence is a way of convincing the judge, if the law places particular value on a reason, it must clearly state the reasons for its use and the formalities and other matters which have given rise to its validity. N. Evidence of litigation is enumerated in both Iranian and French law, and the law places special value on reasons such as official documents, confessions, and testimony. Official document in Iranian and French law, due to the complexity and strictness of the appointment of a notary public and the issuance of official documents, these documents have a high credibility among the evidence of litigation and the legislator has given special privileges to official documents. . This kind of view of the reasons, if it causes confidence and trust in them, can convince the young judge, but in the case of testimony, the same value and position cannot be identified. The fact that the Iranian legislature considers all claims to be provable on the basis of testimony and considers the number and gender in its validity and value is something that does not have a strong argumentative basis. In other words, the testimony of two male witnesses, having other legal conditions, cannot be considered equal to the testimony of two female witnesses, with the same legal conditions. This difference between men and women in validating their testimony is not acceptable, although it has a jurisprudential background and the laws of Iran, following the famous fatwa of jurists in Imami jurisprudence regarding the martyrdom of men and women, have differentiated. A kind of evidence in most cases meant the martyrdom of two men. This domination and emergence was misinterpreted in later generations and led to the emergence of the fact that the evidence must be the testimony of two men.

Therefore, in proving the research hypotheses, it can be said that the relationship and cooperation between the litigants and the judge in proving the lawsuits can lead to the discovery of the truth, because the role of the main actors in the civil procedure should not be neglected. These are the litigants who have to work to achieve what they want. It is the litigants who determine the scope of the trial, raise issues, present their arguments, and try to assert their rights by proving their claim. Given the broad powers that the legislature has given the judge to discover the truth, the rights of the parties, including their right to a defense, should not be compromised. Any evidence presented must be made known to the other party so that he or she can defend himself or herself, and be given ample opportunity to substantiate his or her claim. In France, the legislature has come to the conclusion that litigants and judges must work together. The parties can present all their arguments and statements and, in return, seek to discover the truth with the extensive authority given to the judge. It seems that by maintaining a fair trial and respecting the rights of litigants, with a fair trial, the parties can be resolved to the best of their ability.

The manner of settlement and justice in the judicial system of the country, and justice requires that we give a wide role to litigants and judges in discovering the truth, but the same justice that recognizes a wide role for them, their powers within the framework And defines certain principles, and therefore for this purpose, a reason for the administration of justice may have a thematic aspect, but this requires the establishment of specific and definite rules in the relevant field. Given the available evidence, to some extent this role can be attributed to the official document in proving ownership (immovable property), because it has many economic and social effects.

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