
Contents lists available at Sjournals

Scientific Journal of
Pure and Applied Sciences

Journal homepage: www.Sjournals.com



Original article

Survey evidence fights in criminal matters in accordance with the Islamic penal code act 2013

S. Darougari*, M. Hariri, M. Soleimani

Department of Law, Kermanshah branch Islamic Azad University, Kermanshah, IRAN.

*Corresponding author; Department of Law, Kermanshah branch Islamic Azad University, Kermanshah, IRAN.

ARTICLE INFO

ABSTRACT

Article history,

Received 11 July 2014

Accepted 22 August 2014

Available online 29 August 2014

Keywords,

Criminal

Evidence

Confession

Testimony

Oath

Science judge

Sets lawsuit is evidence to prove the claim in the courts, used and Article 166 of the Constitution, emphasizes this is a criminal trial evidence, as one of the most important issues of criminal justice, there has been a dramatic transformation. Throughout history, testimony and confession, the crime proved a major role, and often inevitable, especially in the period legal reasons played. Basically, though, some common evidence in criminal and civil, but there is evidence of criminal, has unique characteristics that distinguish it from civil evidence. Provided out evidence in criminal proceedings, should be in terms of its relation to crime and punishment, and dealing with the rights and freedoms of the individual and society, the legislator should be. The lack of exposition, in the form of rules Iran, particularly in the Procedures Public and Revolutionary Courts in criminal matters in the plant ambiguity remains is perhaps for this reason that legislators and place less importance because, in criminal matters have noticed. While the fundamentals of a subject makes legislators, compared to those rules, it wrote. In this paper an attempt has been subject to criminal evidence, the definition and its history, discussed and reviewed. In this paper analyzes the status and importance of criminal evidence, the Iranian legal system explains.

© 2014 Sjournals. All rights reserved.

1. Introduction

Rules of evidence and proof in civil and criminal proceedings differ lawyers have rights, and issues documented proof civil and criminal, according to these differences individually examined. Despite that conflict proof in civil and criminal law, as can be seen, there are many similarities, for example, the nature and circumstances of the confession, is the same in civil and criminal litigation, and just might be the number of confession, proving to some civil and criminal, is different. Capacity that must be confessed, the confession issue should be clear and specific, and many of the procedural and substantive provisions of the plea form and the proof rules, and the rules of evidence in criminal and civil matters, is identical (Zeraat, 2011). Thing an quasi-independence as possible civil and criminal, too, to highlight its substantive legislation and civil manner and the difference is, the legislation is substantive and formal criminal. An overview of civil law, on the rules of proof and proof showing that has developed these rules in detail. While the criminal law, to express a short story about fights sufficient evidence, and has not been detailed in this field. One implication is that, subject to any rules and regulations of criminal proof, not a judge could in any way be true, and if he should be rules and restrictions, meant to tie up his vain, to discover the truth. The prevailing theory is that criminal proceedings, criminal justice His contentment education is free, but accepts the evidence of absolute freedom, not be accepted, but must be established for restrictions, for example, an insane person is not entitled to plead, give effect to, or accept testimony in favor.

Proven history

Justice proved right, has a long history, and the writings of ancient regulations in this area exists. For example, cases of Hammurabi's law on this subject has been assigned. In this Act, the reasons and means of proof, a different form of expression is. Witnesses, one of the reasons specified in the law, and guarantee executing intense, like death and compensation for testifying falsely considered to be (al-Aboodi, 1990.) Exam divine, another reason was that the whereby the occult and the supernatural, referred to, they claimed, for example in water are thrown, so the right to tell God to save her, and if you lie in centimeters of water (Alnedvay,1995). Islamic law also important reasons are given, so that verses from the Koran, the evidence is dedicated argument, and the Prophet said repeatedly, no litigious no reason not to be accepted, otherwise the public blood and property together, they appealed to and I'm judging based on reason, because I am human just like you.

First topic: evidence fights

A) release for Criminal Justice, the use of evidence :Freedom of Criminal Justice, to establish the facts is justified by several reasons, one reason is that, Criminal Justice in addition to the material elements of the offense, must also satisfy moral, and spiritual elements of the mental entities that, not be easily detected, so the judges have great discretion to establish through evidence that internal and external Emirates is. So the judge should not be confined to traditional arguments, but he must use discretion, scientific practices also have to condemn the persons, the penalty is the dogmatic certainty. Contentment of Criminal Justice have issued a warrant for education, justice contentment with names, personal contentment, contentment conscience be remembered.

B) definition proven: The definition reads: suits because the judge, to prove the existence of the event legitimately from the ways in which the set-up of the events that relate to (Esnafmoori, 1952)., And saying the truth is something that the alleged is it legal effect, it is applied (Soleiman Marghad, No. 1981). When put to the proof, the work order is right, whatever is true, whether legal effect to it, or not. Dictionary of English Prevue, Evidence, Proof is the French equivalent of the word proof, which sometimes it means bringing into operation because the judge is and are sometimes said to be the reason for the judge to refer to.

C) demonstrate the importance of : Proof rules fights, important because each right is subject fights take place, if not provable, no credit and no value. One outcome of this important issue, it should be easy to reasons cited regulations, the parties can easily take advantage of these reasons. Demonstrate the importance not only of litigation, the plaintiff makes it difficult, but also the duty of the judge and the litigants, heavy because a judge must have sufficient proficiency on inferences from the evidence, and therefore, a detailed study and complete procedure for judges is emphasized, and the parties should be able to provide sufficient grounds to judge, and to use them properly, to judge, to prepare for the actual sentencing.

D) the nature of the proof rules and their enforcement violation: proof rules are divided into two categories: those of the form executive and a bunch of others are essential., In the form of rules related to public order, there is no serious disagreement, because the rules of justice has been served and the judicial order, so your parties and judges must adhere to these rules to maintain. Section B of Article 265 of the Criminal Procedure Code, which states that if, out-of-court lacked jurisdiction without due process, and without regard to the reasons for and advocates on both sides, was issued in the case of non-compliance, the degree of importance which leads to lack legal validity of the vote, for or against Sharia, or contrary to law is issued, Ratings issued a violation and the following action be ...) For reasons of judicial proceedings in a criminal trial procedure is part of the bi attention and credit it invalidation of enforcement of judicial decisions, face Therefore, this rule is part of the rules of legal certainty, the condition matter of law, be taken into consideration in Article 193 of the Criminal Procedure Code, hearing the statements of the complainant and the accused and their lawyers and experts from, and review the tools and instruments of crime, and the court has a duty to consider the new evidence, according to the original judge has no right to vote on the basis of their personal information to be popular. The set of rules, it is inferred that, proceedings of the legislature void of substantive and formal theory is accepted, the rules but also prove them, but revoked its decision criterion reference sequence, the judges recognize the supreme authority, although the diagnosis must be justified and documented.

E) the degree of legitimacy: Chapter antagonizing the purpose of criminal proceedings is not an objective truth, and the truth is not always easy, especially when the offense contrary actions, corporate events, secretly, and a way to do that, it can not be proved. certain cases, because of the lack of illegitimacy, in the pre is expected, such as illegitimacy intercepted calls, without the consent of the judicial authorities (Article 25 of constitution), or Catch confession and testimony from torture (Article 38 of the Law Constitution). Now, we're close to Iran's sharia law and the legal system, extends the meaning of the term legitimacy and legal rules of jus cogens is defined as. So the legitimacy of studying the means to comply with Sharia law, and oppose Sharia is not unique.

Second topic: proven

The proof is the subject of a judicial unknowns, and unknown as the judiciary and the general description, with numerous examples, proven criminal in the event of a material and sometimes legal action. Criminal proven, the general elements of any offense that, from the perspective of most lawyers legal element, element material and spiritual element that contains :

1 -Legal elements: Legal descriptions are primarily charged with the responsibility of prosecutors, courts, as public parties, should a legal matter alleged in the indictment mentioned, and defend it in court, but the law may, for reasons of time or amnesty, or the like..., has been exhausted, often to the point not mentioned in court, is not the primary consideration, and noted that the defendant is also common (Khazayi, 1998).

2 - Element material: Material element in the trial of criminal conduct constituting a crime be prove a material element of the offense, whether physical behavior (act or omission), and the conditions and causes that trigger gets punished, prosecutors have charged. Material element of positive terms, subject to certain rules. Prove a material element, it becomes important to, the distinction between the majority of the crimes of the material element, they will face.

3 - The spiritual element: Bad faith or spiritual element, an element necessary for the fulfillment of any crime, or any crime, except in special cases, with no ill not be achieved, so it is necessary to prove the mental element of the crime, but a civil trial, it may no spiritual element, it is true, and therefore would not need to prove it. responsibility to prove the mental element for the offense, but the issues are different, but the prevailing view that proof of criminal intent or fault, the court assumed that.

Article 217 of the Civil Code states, "The transaction does not need to be specified, but if it is specified, it must be legitimate, otherwise the transaction is void." Unlawful motive is an internal affair, and if it is clear, the reasons for the contract is verifiable in principle, but if it is not specified, the other reason is provable, Rights lawyers, however, occur in this area disagree (Katoozian, 1998).

Classified into reason

The reasons for the different aspects are different can be divided into categories, and the splitting scheme sometimes expressed in the law, and has spent some scientific and historical aspects. transition rule, the same as the reason divided into categories to 's works as they are, for example, for reasons of state, the judges are fighting, Apr certain reasons, and reasons for inducing suspicion that such state the man does not, and just to get out of doubt, be referred to (Practical principles) to divide.

Accordingly arguments will be based on the nature of evidence in terms of form or substance, or on the basis of origin, evidence, proof, or in terms of the range of legal and scientific perspective, a division yields.

Doctrine or the relevant

Criminal Procedure Code, the General Regulations to deal with all crimes (including jail time and Non term), which implies. Certain topics because of their proven value, have been accounted for, but the Penal Code, Section V evidence in criminal matters stated. This type of legislation, it is concluded that the evidence in the criminal system of imprisonment, subject to the general rules, and thus are evidence doctrine, but about and retribution are legitimate arguments on the subject, and the result is that the legal system, are relevant evidence (Goldoozian, 1995).

The truth is that, in spite of the legality of the evidence with relevance to, inter are not arguments the only legislator to prove some crimes stated, UAE to actually be (Rashti, 1990). in other words, in spite of the inherent arguments described path, so that it is inseparable the same reason as the name suggests, indicative of the fact that, in spite of all their values. Participants will denote, and it is not possible to describe something that does not imply action, because it is said.

The third debate: evidence in criminal matters stipulated in the islamic penal code act 2013

Evidence of the Penal Code, Article 160, it is stated that, "confessed the crime evidence - testimony - Aliquot - swearing, in law and knowledge of the judge."

1.1. Confession

Confession, the word is Arabic and means to put something in place that is. And whenever it is in the words and phrases meant to acknowledge and confess the truth, confession means to agree well. Therefore confess to something, it means everything is agreed. Confessions in criminal justice reform, means admitting the facts alleged, that all or part of the elements of the offense constitutes (Mahmood Mostafa, 1996). Admit the reason is customary, has a long history and was approved by the Islamic Sharia it is also used as a justification based on rational rests. Describing jurists admit it, giving the right man to another, or giving or denial of the right to a non-confessed ex visitors know (Najafi, 1988).Acknowledge the Islamic Penal Code, it is stated in Article 164, "the confession of news person, to commit crimes on behalf of itself." Article 169 of the Penal Code, if the value and validity of the plea knows that, under duress, coercion and physical and psychological torture and not otherwise, this plea has no value, it is typical to Article 38 back to the constitution. This entails that, confession is not valid in any way, under any circumstances, but in certain circumstances, be in the absence of them will be void. Islamic judge, a great quote that infallible Imams claim against much attention had to admit, and even the content of the form contents have been saying that, " Approval of mind for themselves permissible " (Horr Ameli , 2003).

1.2. Legal nature of confession

article 1258 of the Civil Code and Article 202 of the Civil Procedure Code, admit reason into account, but the specific meaning direct way to get in, then a chance of the legal nature of a confession, because of it, but the views of other there is about it. One approach is to acknowledge the reality of the legal presumption is overcome by the legislator said: When someone admits to be right, is evidence of the fact it often men to admit the truth, they admit they are in accordance with. Although the theory admitted presumption of legality, is justifiable, but it appears that the direct reason to assume that does not match reality.

1.3. Wife's confession

Admit any concubine and expression can be realized, whether literal or something that, in the judgment rhetoric, also admit concubine could be in the form of verbal or written. Article 166 of the Penal Code, which

states, "The confession must be a literal or writing, and if Exposure with verbs such as pointing, is located, and in any case must be clear and without ambiguity. "Wife admits that sometimes explicit, as it remembers pleading, and sometimes implies an implicit acknowledgment that the case should be struck between what, and this confession, Corollary rational or customary exist. jurisprudence, history shows that focus on the expressed will of theologians admit, a term due to the special circumstances of the time, people are rarely written by the scribe, in ties were used, and the word's most important means understand internal purposes were considered. Our legislators are also aware of this fact, and Article 1280 of the Civil Code that states that, "the written confession of judgment is an oral confession," and in Article 1281 of the Civil Code applies to this plea on counts, "stated Dean the business office constitutes acknowledgment is written ", so the term, pillars confession, not the means to express inner and is giving the event.

1.4. confess conditions

Article 168 of the Penal Code, the headquarters of the conditions stated, "If the confession is valid, a plea during the plea wise, mature, purposes and governing." Refers to the prohibition of the substance, including a plea also be a minor point, the same such that they admit a minor point, the general lack of know effect, due to the reluctance to admit, there are differences of opinion, not valid or completely invalid (Katoozian, 2001). But if the relationship reluctantly admit causation, there is no not generally admitted to be due. The concept of anti-article 1263 of the Civil Code states that acknowledge the idiot in the criminal is acceptable, "confessed idiot finances are not effective." The material in 1264 and 1265 of the Civil Code, in the case of lenders and bankruptcy, as well as can be deduced., in Article 170 of the Penal Code also stipulates that confessions stupid and bankrupt, over the penetrates criminal, but crime is not valid due to the financial liability.

1.5. Types of confession

A) admit the principality, and admits the representation: is usually done by the original confession because the confession is detrimental effect that confession, the original time be. Attorney or guardian or guardian, the defendant's confession and the mole is, in particular, the amendment to Article 165 of the Penal Code, which states confessed to committing the crime is not a substitution., In criminal matters, philosophy ban plea behalf, consistency demands that they fought a decisive admit that, usually confesses to be crime, but the crime is not acceptable, however, to admit part of the preliminary hearing, the attorney work is necessary, or where the hearing. not win, then you acknowledge that lawyer, his client at the crime scene of the crime has had a significant effect, since the confession, so the argument does not depend on the nature of the crime to prove it. bulk of disputes on behalf confession about the recognition of the overwhelming evidences of preliminary fights, and fights, because to admit represent only the preliminary fights admitted to the Supreme Court, the vote has no such 1057-980 is, "that would mean confessing certainty, and it is impossible to document the order being appealed, claiming the confession is not admitted to the premises Suspect it." Confession confessional strong argument that the right to seek prayer is, whether all or part of its rights. A decisive quarrel some criterion admits, and admits to being a substantial lead subject knowledge have to admit the confession, is about the nature of the dispute or matter that is associated with the nature of the dispute., But the evidence is objectionable because some of like the authenticity of the document, are essential. But admit they do not admit it outright fights, and the nature of the case on the right as required (Katoozian, 2001).

B) admit in court and out of court confession: Article 203 of the Civil Procedure confession to confession in court and out of court confession is divided. The trial court admitted the confession also called. Principle, be competent judge to be most important classified into effect, the method proved to be decisive vote confession document, it will appear, but admitted in criminal matters alone is not a decisive argument, but with other symmetric feature is invoked.

Confessions in criminal matters, especially when, as part of the work proof crime is, without any doubt or ambiguity, resellers, system builders is that most practices restraining confessing to the magistrate's decision is not enough to know the magistrate did not admit as could be documented in court unless the plea is still remains to be confessed. A question that arises here is that confessed in the confessional is limited to criminal matters, the court When ruling takes place, or a confession out of court can also order effect. Legal Department, 7180/7-3/12/1986 number theory stating that, acknowledging that the Penal Code, by the way proof mass, where required by law, as described above, admits that, in the presence of the judge and the compliance requirements

done. It is necessary to note that the order of the trial judge is the judge here, in terms of his jurisprudence as (Judgment of his hand) remembered, so the magistrate judge's ruling stands, investigators said.

C) acknowledge and confess Completed suspended: Completed confession should be admitted because of hanging predictive in nature, and it is not compatible with being dogmatic, and resellers, system builders, and Article 167 of the Penal Code stipulates that, should Completed confession, and the confession is not valid conditionally suspended. Acknowledging the suspension, the suspension is different confessions, and confessions of the matter, is penetrating (Najafi, 1988)., As the defendants say (the Battering,'ve done in self-defense, I admit), the here battering suspended matter has been admitted, the incident that occurred and are aware of, but admitted the suspension so that the defendant say (if my punishment is suspended, such crimes I am committed).

D) oral confession, confession Nonverbal: The word appears in many of the jurists, who comes back confession, the confession unique oral and written confessions and a pointing though the effect would have to admit, admit to a certain sense, it does not count, but with its recent scholars disagree (Khoyi, 1988).

Though originally confession, oral confession, but confession is accepted nonverbal, as defined in Article 166 of the Penal Code, which stipulates that confessions must be a literal or writing.

1.6. Quantity confession

Principle is that, once admitted, the event proved, and Article 172 of the Penal Code also insists on the principle that, in all crimes confessed once is enough. The general authority of the confession, the (Approving Rationally themselves permissible), is such a contingency. And the confession, the side effect does not prove adds. But the legislature, jurisprudential viewpoint consequently, in clauses (a) and (b) of Article 172 of the Islamic Penal Code, it has been necessary in some confession numerous crimes. In the case of adultery, in Article 232 of the Penal Code, stipulates that, if a man or a woman less than four times, to confess to adultery, flogging Term be condemned. Frequency necessary to prove adultery confession, documenting the religious traditions that have been narrated by Shia and Sunni. thing about the quantity of confession is to say, that the confession, is less than the legal minimum limit, the effect on the applied is whether, in Article 232 of the penal code, admitting less than the legal minimum limit on adultery charges - sodomy - Tafkhiz and lesbianism, expressed, however, about criminal prostitution - Fling - drinking alcohol - theft, there is no specific ruling. Resellers, system builders, it may be said, the principle of legality of punishment is to punish and not be the sentence, until the legislature to determine its extent, but precedent and famous jurists that it is punishment lower level of punishment should be determined (Average Number 218-16/4/70 Supreme Court, and an advisory opinion 718/7-3/12/1986 Legal Department).

The case, refer to the frequent confession, the former Islamic criminal law, confession, insisted the frequency of meetings, and yet the Islamic Penal Code, it is stated in Clause 2 of Article 172, be admit that, in one or be done in several sessions.

1.7. confess conflict and other reasons

Confessions in criminal matters is the credits, does not conflict with the evidence and other evidence, (Article 194 of the Criminal Procedure Code), or else he should know the rules of conflict resolution. Priority because of other reasons to admit it, admit it does look really, just trying to be hostile to the season, but for other reasons, are going to discover the truth, if a judgment by confession is issued, it is valid sentence, of the reasons confession obtained without credit, it can directions is restitution hearing.

1.8. to deny the confession

Article 1277 of the Civil Code, reject the claim does not admit it, but Article 173 of the Penal Code, contrary to the rule denying, then admitting, except in two cases, and they admit it is a crime, punishable by stoning or degree murder that, in this case, is denied at any stage, stumbling punishment, flogging and imprisonment into the Termy be., but denial is usually attributed to admit face, which occurred out of court because admitted at trial, the judge made, is undeniable, but refers to Article 173 of the Penal Code, indicates that, if confesses to adultery in court, it is confessed, then deny it again down as much as stoning and murder.

If it invalidation confessions and false confessions, with another reason to be proven, admit to be invalid, the judgment is enforceable in civil and criminal plea because the plea to the criminal justice depends. According to article 171 of the Penal Code, if the evidence and the Emirates, which is contrary to the provisions of the plea, the court conducts research and analysis necessary to.

2. Testimony

Many faults, at common law, than the testimony or evidence, as the evidence has been fighting every day reduce the scope of its validity, but because of their credibility in the Islamic law has remained. Accordingly, it is said that, to avoid relying on the testimony, the court strengthens opinions, and factual Votes will become.

Our legislators in recent reforms, the positive power of the witness, or a very extended, contrary to international law only the claims of certain witnesses to prove that.

2.1. Definition testimony

is an Arabic word testimony, the nectar is obtained from the roots, culture of the word, it means to see, and the proof of going to the science of observing and understanding what they have brought to . Persian culture and also have similar meanings express (Moin, 1992). In common sense, the novelty of attending each event, and express what is seen or heard, testimony is called. However, Article 174 of the Penal Code Act, transition, the news of the martyrdom of a person other than the parties to the occurrence or non-occurrence of crime by the accused or any other matter, the Supreme Court has defined. The set of what was said the witness expressed a sense of perceived control, is the official event, it is through his eyes, ears or other senses, it has earned. What is the significance of the testimony, establish facts, and whether direct or indirect evidence, not the testimony of elements, such that in Article 188 of the Penal Code, the testimony of the witness has been validated. "Testimony of religious martyrdom, if it is valid, the key witness has died or because of absence, illness, and so is his presence Apologizer." In Article 189 of the Penal Code, which stipulates Term crime and the causes of, not be proved by the testimony of the witness. See also, such testimony is both specific and general meaning, general meaning of the evidence, and the proof is proof. But in a certain sense be called to testify that, legal and regulatory requirements, and the Magistrate to impose, it is typical that the testimony of two just men, many scholars see it as well, to have the same meaning have. You see, used to be an absolute must and general word literally means a proof of this. Testimony distant past, the writing was common, usually orally stated, and why this perception arose that the testimony should be pronounced orally, but in the Article 184 of the Penal Code, including verbal or written or verbal testimony as was pointed.

2.2. nature of martyrdom

Article 155 of the Criminal Procedure Code, which stipulates "in cases where the judge, citing religious reasons testimony as may be necessary to control the situation..." This matter comes back testimony may reason, and the reason might be. Although legal constraints adverb is redundant because of religious reasons, the legal reason (illicit) does not exist, because the device is legally functionality is invoked unless the legislation is where the testimony as proof proof in particular, Sharia law and is expressed as a testimony to the extent of crime, to prove.

Article 176 of the Islamic Penal Code, because into evidence and reason, so that other states, "If the witness is not qualified legal testimony, his testimony will be heard by the. Recognize the impact and value of this testimony, the judge's knowledge about the legal presumption, the court. ». So the testimony, the case may be, the legal presumption is one of the constituent symmetric, and that in cases where the witness is qualified to testify. From what has been said may be concluded that such a result testimony, sometimes alone, is cited as proof fights take place, and sometimes complement other reason is that, in the first grade because of the specific meaning, and the second grades of justice Statistics., in criminal proceedings, as confession, not because of overwhelming evidence to the dispute, be cause not directly, but also a way to satisfy the conscience of the judge, and even the extent to which crime specific testimony, including the testimony of two just men are mentioned, only if a judge may, in his testimony may invoke that, conscientious contentment is found, the nature of the evidence of witnesses in criminal justice, the same way that other arguments, too, are of this nature (Katoozian, 2001).

2.3. condition of testimony

Conditions, rules and provisions of the substantive component of the testimony, and the credibility of testimony largely depends on the validity and reliability of control, and the major objections to the testimony entered observer features and qualities can be seen. Witness credibility is necessary, it is established that two of the witness's testimony in the record, and felt it was not a mistake, and what is seen or heard, to express (bear

witness), and it does what it says, according truth and what is seen or heard that. (testify) A question that arises here is that, control conditions, in which one of the two phases must be provided? The jurists agree that the terms of the testimony, however, must be provided in time to bear witness, is not present. (Najafi, 1988). Article 177 of the Islamic Penal Code, this implies, and control conditions at the time testimony is admitted, so that stipulates that, legal witness to testify at the following conditions, that is...). This claim is considered objectionable because some time to bear witness to testify as, eg bear testimony of the witness at the time, it is insane how authenticity of the testimony, she there is no doubt that took, in some situations involving is time to testify, such as immorality bear witness testimony at the time, but it has no effect on the testimony must be just. However, Article 178 of the Penal Code, Article 177 refers to conditions that existed at the time of assignment of the debt-ridden, and insane periodically if the witness admitted that, at the time of transport are also being Prospects.

2.4. certainly testify

Prophet Muhammad (PBUH) said: (If you like a certain sun, then to testify), in Article 183 of the Penal Code, as well as which witnesses should certainly be on, and documenting the conventional sense, and the resulting be. Certainly here meant is common knowledge that, be conventional methods and tangible results. Testimony of the doubt, too, are called to testify but lawmakers not to credit this testimony, in Article 187 of the Penal Code also emphasizes the fact that, contrary to the provisions of the witness's testimony should not exist, and if the evidence and the Emirates, there is testimony contrary to the provisions of, or evidence and the UAE, as opposed to the testimony of the provisions is not reached, the testimony is not valid.

2.5. Union, the provisions of the testimony

In case of dispute with a number of witnesses to prove, testimony terms must be equal, otherwise false presumption they are conflict testimony would be, Article 185 of the Islamic Penal Code, otherwise known as the testimony of the conflict they refer. testimony to the unity, unity in essence argued that the testimony, and is also subject to obtaining this recognition, it is the judge,. course, it should be noted that the Alliance provisions of the testimony, not because they are true. In other words, the Union and their compliance with the provisions of the testimony, there is no causality.

Also Back witnesses, the unity of the subject should prove useful properties are the same, so if witness testimony on the same subject, but not the same as the effective features, this testimony was not valid (Derived of Article 182 of Law IPC).

2.6. adaptable witnesses

That's why witnesses are usually requested persons diagnosed with the judge, the case shall refer. Numerous and sometimes difficult conditions, is expected to witness the pre, they must be established because the condition prevents the contrary, the lack of it, if it can not doubt the existence of the contract, it is not even original, it is taking so long. Therefore, the law, the evidence against the intended witness mayhem is right, this right shall be declared by the judge (Article 192 of the penal code), control battery should testify before the coming into operation, unless the witness appears to cause injury (Article 193 Penal Code). Adaptable to the rig, in Article 195 of the Penal Code as well as the legal conditions to control that, despite that, due to the lack of adjustment, it can cause injury to. Assault Witnesses and knower, one way is to discredit the witness, but the conditions that must be seen to be part of the jus conges, then the judge directly and without objection, the parties also sought to take control of absence, citing the testimony of his will. The court saw no specific adaptable, rules and procedures are appropriate,, it is clear that the task of delivering a battering in the court because the court should have his indictment because the evidence is cited.

2.7. Etienne oath from the witness

Witness in criminal proceedings (in court or courts), the prior sworn testimony, and lack of enforcement Etienne oath, citing lack of evidence as the reason. Amendment of Article 153 of the Criminal Procedure Code, no sworn testimony, in a case is accepted: "In cases where adjudication stop the witness is justified, and controls Etienne refuses to swear no oath, his testimony will be heard," but Etienne is no sworn testimony given, because no value, but can not be considered as legal evidence. Etienne require sworn testimony before a jus conges norm, and does not need to ask litigants.

3. Oath

3.1. Definition and nature of the oath

Swear words that the Lord has been witness to the truth of, and Etienne means giving of an oath, along with taking control of the Lord, that is true. Article 201 of the Islamic Penal Code, under oath, the witness of God, properly speaking, is defined. Be sworn before the legal aspects, legal aspects and ethical criteria. The Islamic judges sworn have wide application, and is frequently used, as a rule, must see, Etienne swear by the claims, but denied the well-known rules of jurisprudence is that (Evidence the defendant and the right on the Denying)

3.2. kind of oaths

Oath in a split rating, the judicial oath (Le serment Judiciaire), and is divided binding oath to swear the oath of judicial or proving that, as proved by the introduction of, and his oath Betty (Decisoire), and the oath Memorization (Suppletoire) is divided.

Binding oath, the oath said that, the fight was not proven, and special procedures for announcing action, like the sacrament of attorney or other professional when getting a work permit to teach.

3.3. Oath dogmatic

Dogmatic sworn oath that, one way to fight, to prove their claims, or other claims against it, citing skateboarding. I swear to fight to prove the usual way, but in other cases where the access is not there, and he claims the other souls and conscience, will judge the work. Oath dogmatic, but the fight is over, being denied, shall take an oath Etienne. That last comment, I swear one of the means of proof is debatable, but at a later stage on the other arguments are and when it comes to that, there is another reason.

3.4. Oath of dogmatic

Dogmatic swear, if it is effective, qualified, and the express terms of the oath, the oath of the applicant, and that it is subject, will be examined in this section.

A) court's permission

oath with the court's permission to run, and this permission in the form of a judicial decision (Etienne under oath), to adopt. Etienne for issuance under oath, must be requested documentation to the legal requirements, the request may be written or oral (section 4 of the Statute, I swear).

Also, in accordance with Article 6 of Regulation Oath, who asked him to swear, and the oath object requested was not relevant to the claim, or is not acceptable, and the way they enter the protest and court vision, which can allow not swear. Therefore, the requirement of notice of exercise of the right to request an oath to the opposite side, so it did not protest, and conditions provided by law, Etienne under oath, be issued if Etienne oath, no court has no legal effect.

B) the lack of another, and this condition is mandatory

You swear, because there is no direct proof for a fight, and Dad Emirates placed an order late proofs are longer, but may be a direct cause, it will be invoked once again, more proof that fights If there is (Karimi, 2012). But the question that arises is that, citing the oath in the absence of other reasons, a rule of jus it is up to the application oath Etienne, there are other reasons for rejection, or an additional rule to be . citing as an oath, there may also be other reasons. than fight to prove that the autonomous and for any reason provided they are handled Court for the same reason, because the magistrate judge is impartial, that function will be parties.

C) Subject to swear

Thread oath, incident is alleged claim, if proven and deny that right to those applied to. Petitioner's sworn oath to the event thread, exactly, and this event is not contrary to public order and morality. I swear this must be associated with a subject of dispute, but the relationship is not perfect, but compared to some of the fights can also be Etienne oath, and therefore as part of the fight lapses.

3.5. Further oath

Principle that every scrapper with evidence, but some evidence suggests they are not completely true, and should be another reason to come to their help, and to complete it, one of the reasons the supplementary oath, swearing Etienne Further, no request of the parties does not understand its own judge of one of the parties to make up to find conscience contentment. Our legislators supplemental oath at a special pre shaped nose, and it is a sacrament in some cases, the testimony is completed (Article 277 of the Criminal Procedure Code). I swear to want to learn, it is complementary to oath, that the testimony should be pronounced, whereas if it is a positive value, the width of the testimony. Difference there was in the primacy or regency. The judge further personal oath, realize that he does not require, swear, but you can reject it, if the oath is usually given in his favor sentence, but the judge is not required to, and It is even possible to vote against him. Oath Further, provisions and conditions of the oath as a concubine, and concentration of such oath is dogmatic and doctrinaire than the conditions that are specific to the oath, the oath of the Supplementary Conditions, apply to.

3.6. Aliquot

Article 312 of the Penal Code, states that one of the ways to prove crime Aliquot, that in the absence of other evidence, other than the oath and denied trying to mislead, to prove the crime of intentional and unintentional, or charged to dispose of their properties and charge adduced to her. Aliquot, in some cases, be running, trying to mislead exist, and trying to mislead presumption of truth claims that, by virtue of the judge's suspicion of a crime or offense by the accused to be (Article 314 Penal Code). Aliquot Unlike ordinary oath, realize the claim because a crime is proven not to be the reason for acquittal, claiming the right to murder case here, either parent or their lawyer is. In case of death of the victim, or the tail of each of the heirs of the deceased, are entitled to claim or lawsuit Aliquot. Aliquot well as ordinary oath should be uttered on dogma and science, and I swear I think not enough, also took the oath of collusion, the judicial authority shall, subject to review, and if taking the oath will not be valid.

4. Science judge

Subject to the judge's citing as evidence the fights, has long been discussed among scholars, some scholars believe that the Judge of all crimes, including the right of Allah and be people is, to our knowledge, to act. ruler of his sentence, and the sentencing range will be based on science,, stronger than the watches.

The parties appear to agree, the Imam (AS), the absolute what's right and what's right people, warrant their science, because science is infallible, he prevented the contrary, what is at issue, the judgment is not infallible, it is about 5 promise enter:

- A) Judgment of the absolute
- B) No sentence science, the absolute
- C) permit the judgment to God, and not to permit the People
- D) permits judgment in the People, and no license to Allah
- E) The difference between the principles and tools of science.

4.1. toys science

Since, the clear wording of Article 166 of the constitution, courts must be reasonable, certainly a way to prove the case, the judge is His knowledge, tools, and documentation should be sufficient reasoning, ensuring their knowledge mentioned in the text vote to provide monitoring, about whether or not it's conventional means, be provided for officials and regulatory authorities. Also according to the same principle, it is necessary to judge the matter or law, relating to the credibility of science, should be indicated in the text of the sentence, because the sentence is issued accordingly.

Judge Meaning science, science judge, and the judge's study (investigator) or the prosecutor, not the governing authority of the court, and not be cut because of, but it could be from United Arab Emirates (1124/7-31 theory / 4/63), what is important and necessary, the judge must sentence mentioned document your knowledge, so the judge can not, by virtue of its Essay Ratings y unrealistic.

4.2. obtainable through the judge's

Basically causes and attain knowledge of the judge, to issue a condemnation or acquittal is accused of not Statistically. However, this means obtaining knowledge of the judge, the criminal case within the terms of timing,

and location of the crime, is divided into two general types. I swear, when I realized that, outside of the judge's meetings, research, and tried to achieve. This means that the judge before the lawsuit in court if the criminal case, the material is achieved by directly sighted person can see and view. If a material element of the event, is studying criminal directly by the hearing, the hearing judge, outside the reach of the court. But the second kind, which is When investigator, judge, after considering the complaint and the evidence, the charges and hearing defense evidence, and the evidence alleged violation and finally, a full review of the document content and the reasons for it, and hearing statements and controversy parties, in violation of the universal content and arguments presented to verify the authenticity of documents or the documents of the crime charged to him. (Dayani, 2006) In the conventional criminal justice system, the judge's case is valid, the evidence contained in the record evidence leaves achieved. Evidence, criticized the hearing, and the parties are in dispute and negotiation. Because the judge's knowledge base, outside meetings and hearing research is valid, and the judge could rely on his views and hearings outside of the hearing, to proceed to judgment in this case, the defendant's rights will be undermined. In the criminal law of Islam, in order to obtain knowledge of the judge, outside the hearing proof or not, there is no consensus among Sunni scholars. Abu Hanifa and his companions have said that if the judge, in the case of crimes involving People Rights, and time provincial office of issuance, and their competence in science does claim can proceed to judgment. The science of sight, or hearing that led to the conviction and the judge interrupted, the knowledge of watches, thereby overcoming suspicion, the stronger it is. But the knowledge of the judge, the right to require proof of the crime upon God, lacks credibility and authority of the judiciary. Zaheriah religious scholars, believe that the judge has a duty to his knowledge of all crimes involve the judgment of God and the People, either in the attainment of tenure is a matter of judgment or earlier.

Imami jurisprudence of jurists known as the famous quote, on the judge's authority, and also appeared in some of his words, and others such withdrawal is clear that the trial judge's knowledge, whether in school, or at a meeting trial, judicial proof is valid.

The judge's credibility

Knowledge of the judge in the case is valid, the conventional and relies on reason, evidence obtained, and the methods to be legitimate businesses. Iranian criminal law, the adoption of Islamic law, the crime involves the right of Allah upon such affairs by mutual consent, the right to explore explores crime, and therefore science education has been provided to the judge. And so, though, the judge of all crimes require proof of God's truth, and the People is valid, but given that the judge mentioned in crime detection, investigation and study of the face is forbidden, exclusively through incriminating confession weakly with the frequency, and the characteristics and conditions set forth in the law. The science of the Iranian criminal law, should be documented reasons and evidence and evidence, hearing testimony and defendant pursuant to the parties, and the investigation and trial sessions, education, and thus the law Iran, sight or hearing science from criminal incident, or personal knowledge of sensory judge outside the court lacks credibility and authority because of what some scholars and jurists have stated, the authority of science, and literature sources in Islamic law is deduced, and the reliance on cause harm to the defendant, and the trial judge in a criminal case is presumed to control, and documentation section "evidence" in Article 46 procedures public and Revolutionary courts, the criminal jurisdiction of the judiciary will be in office.

Conclusions

Evidence in the criminal justice system, it is of great importance. To prove the crime, the prosecution or the plaintiff's position requires collecting, and given the evidence that the defendant is guilty. For that reason, they have legal effect, and a positive crime to be, it is necessary that these reasons are accepted by legislators, the legislative reasons by the competent authorities with a legal way to collect and handle the products can be delivered. the positive reasons to fight, they are studying ways illegitimate, because it has no positive value. However, it is illegal for reference, study and education, leaving only reason the numbers are not valid reasons. But the reasons for conflict, will happen. Although the conflict has mainly negative effects, but in some cases it has positive effects. Evidence expression of positive and negative aspects of the criminal defendant's escape from punishment, a new approximation of the Criminal Procedure Code and related sciences, including criminology, psychology, justice, forensic science And Discover crimes, including the advantages are. This conflict, which has various forms, the case is solved. The apparent conflict, adapt to the rule " Whatever the combination of the first

possible expulsion ", and in actual conflict, adapt to the rule " If a conflict manuals Waste " to resolve the conflict takes place. Positive conflict and denial, as the case may be illegal or that reason, the defendant's crime documentation will be excluded. On the other hand, these conflicts are preventable. Identify and deal with the causes of justice, it is the solution. It creates a lot of conflict is a crime that should be considered official and judicial officers, officials collecting proof is. Meanwhile, the legislators scientific evidence, and give more value to the use of reason for the courts to provide.

References

- Alaboodi, A., 1990. The Code of Hammurabi, Mosul. Press Higher Educat. Res.
- Alsanhoori, A.A., 1952. Mediator in the explanation of the civil law, c 2, Cairo. Darolnehzatolarabiah.
- Alnadavi, A.V., 1995. Explain the law of evidence, Baghdad. House Press Qaddiss.
- Dayani, A., 2006. fights evidence in civil and criminal matters. publish. teach. press I.
- Goldoozian, I., 1995. Comparative Criminal Law, Tehran: Jahad Press Institute (Majed).
- Ameli, Horr., 2003. Means Shiites uncollectible issues Sharia 0.29 folder, followed by the second, then: AL al-Bayt (AS) to rev. her.
- Karimi, A., 2012. evidence fights, Tehran, October.
- Katoozian, N., 2001. proof and proof, 2 vols, Tehran. Publicat. October.
- Katoozian, N., 1998. civil law, the current legal order, Tehran. Publicat.Dadgost.
- Khazayi, M., 1998. The Criminal Process (Collection of Articles), Tehran. Library Sci. Treas.
- Khoyi, S.B., 1985. Platform righteous, Najaf Press.
- Moin, M., 1992. Persian Culture, Theran. Amir Kabir,
- Najafi, M.H., 1988. Jewels of speech to explain Religious laws Islam, Tehran. Islamic dar library.
- Rashti, M.H., 1990. Elimination of a book, do: Dar Quran Karim.
- Solaiman, M., 1981. Assets of proof and procedure in the city material, c 1, Cairo. World Books.
- Zeraat, A., 2011. evidence fights, Tehran. Qanoonmadar.