

Taking of evidence - France

TABLE OF CONTENTS

- 1 The burden of proof
 - 1.1 What are the rules concerning the burden of proof?
 - 1.2 Are there rules which exempt certain facts from the burden of proof? In which cases? Is it possible to produce evidence in order to prove that a specific legal presumption is not valid?
 - 1.3 To what extent must the court be convinced of a fact in order to base its judgment on the existence of that fact?
- 2 The taking of evidence
 - 2.1 Does the taking of evidence always require the application by a party, or can the judge in certain cases also take evidence on his/her own initiative?
 - 2.2 If the application by a party concerning the taking of evidence is approved, what steps follow?
 - 2.3 In which cases can the court reject an application by a party to obtain evidence?
 - 2.4 What different means of proof are there?
 - 2.5 What are the methods of obtaining evidence from witnesses and do these differ from the means employed to obtain evidence from expert witnesses? What are the rules in relation to the submission of written evidence and expert reports /opinions?
 - 2.6 Are certain methods of proof stronger than others?
 - 2.7 In order to prove certain facts, are certain methods of proof obligatory?
 - 2.8 Are witnesses obliged by law to testify?
 - 2.9 In which cases can they refuse to give evidence?
 - 2.10 Can a person who refuses to testify be sanctioned or forced to give evidence?
 - 2.11 Are there persons from whom evidence cannot be obtained?
 - 2.12 What is the role of the judge and the parties in the hearing of a witness? Under what conditions can a witness be heard via videoconferencing or other technical means?
- 3 The evaluation of the evidence
 - 3.1 Where evidence has not been obtained legally by a party, are there restrictions placed on the court in reaching its judgment?
 - 3.2 As a party to the case, will my own statement count as evidence?



1 The burden of proof

1.1 What are the rules concerning the burden of proof?

According to the Civil Code (*Code civil*), the person claiming performance of an obligation must prove its existence. Conversely, a person who claims to be released must justify the extinction of the obligation.

Each of the litigants must therefore in principle provide proof of the alleged facts. For example, Article 9 of the Code of Civil Procedure '*Code de procédure civile*' provides that: 'Each party must prove, according to the law, the facts necessary for the success of their claim.'

1.2 Are there rules which exempt certain facts from the burden of proof? In which cases? Is it possible to produce evidence in order to prove that a specific legal presumption is not valid?

In certain cases, there are presumptions that give exemption from providing proof of a fact that is impossible or difficult to establish.

In a manner of speaking, legal presumptions reverse the burden of proof incumbent on the person who has to prove the existence of the alleged fact. In general, presumptions are said to be 'simple': evidence can then be provided to rebut them. For example, where a child is born during a marriage, the mother's husband is presumed to be the father, but an action may be brought to contest paternity.

In rarer cases, presumptions are declared *juris et de jure*: in this case no evidence to the contrary is admissible.

1.3 To what extent must the court be convinced of a fact in order to base its judgment on the existence of that fact?

The court may base its decision only on proven or uncontested facts.

2 The taking of evidence

2.1 Does the taking of evidence always require the application by a party, or can the judge in certain cases also take evidence on his/her own initiative?

Preparatory inquiries may be ordered by the judge at the request of one of the parties, but the judge may also take the initiative.

2.2 If the application by a party concerning the taking of evidence is approved, what steps follow?

If the judge orders preparatory inquiries to be made at the request of one of the parties, the court office informs the appointed technician of the scope of his mission; the latter then calls on the parties to be present at all subsequent operations. If expert testimony is required, this will not begin until the relevant party has handed over a sum of money (a deposit) to be decided by the judge, which will guarantee payment for the expert. All preparatory inquiries are carried out in the presence of the parties.

2.3 In which cases can the court reject an application by a party to obtain evidence?

The judge may refuse a request for preparatory inquiries on the grounds that it would have the effect of compensating for the inaction of the party bearing the burden of proof or that it is not necessary.

2.4 What different means of proof are there?

French civil law draws a distinction. For legal facts (for example, an accident), proof is discretionary and may therefore be provided by any means (documents, witness testimony, etc.). For legal acts (contract, donation, etc.), written evidence is required in principle, but the law allows exceptions (for example, for acts relating to a sum below a certain amount, defined by decree, or if it is impossible to produce a written document). It should be noted that between traders the rule of evidence by any means applies, including for legal acts.

2.5 What are the methods of obtaining evidence from witnesses and do these differ from the means employed to obtain evidence from expert witnesses? What are the rules in relation to the submission of written evidence and expert reports/opinions?

Witness testimony can be gathered in two separate forms: orally, through an investigative procedure, or in writing, in the form of statements which must respect a certain degree of formalism. The written statement must mention in particular the identity of the witness and, if applicable, his or her family relationship or relationship through marriage, subordination, collaboration or community of interest with one of the parties. The statement also indicates that it has been drawn up for use in legal proceedings and that its author is aware that false testimony entails the risk of criminal sanctions. It is also possible to gather testimony in the form of affidavits. (These are documents drawn up by a judge or a public official containing the declarations made by several witnesses on the facts to be proved.)

Expert opinion differs from witness testimony as it is a preparatory inquiry consisting in entrusting a particularly competent person with the task of giving a purely technical opinion, after having invited the parties to provide explanations. The expert gives an opinion, orally or in writing. Written opinions are drawn up in the form of a report containing in particular the written observations of the parties. The judge is not bound by the expert's opinion.

2.6 Are certain methods of proof stronger than others?

An authenticated deed, drawn up by a public official (notary public, bailiff) in the course of his or her duties, is deemed authentic unless a plea of forgery is entered.

A private agreement (a document drawn up without the intervention of a public official, by the parties themselves and with their signatures only) is deemed authentic in the absence of evidence to the contrary.

Witness testimony, as well as other means of proof, is within the discretion of the judge.

2.7 In order to prove certain facts, are certain methods of proof obligatory?

As stated under 2.4, written proof is necessary to draw up a legal document of a value exceeding EUR 1 500. In contrast, the form of evidence of a fact is discretionary.

2.8 Are witnesses obliged by law to testify?

Every person is obliged to cooperate in legal proceedings with a view to discovering the truth.

2.9 In which cases can they refuse to give evidence?

Persons in possession of information gathered in the pursuit of their profession and covered by professional secrecy must refuse to testify, failing which they are liable to a criminal sanction. Furthermore, witnesses may refuse selectively to testify if they can prove just impediment (for example: impossibility of travel, illness, professional reasons, etc.). The judge will assess the legitimacy of this impediment.

2.10 Can a person who refuses to testify be sanctioned or forced to give evidence?

Defaulting witnesses and those who, without legitimate cause, refuse to testify or to take an oath may be ordered to pay a civil fine of up to EUR 3 000.

It must also be pointed out that perjury is punishable as a criminal offence.

2.11 Are there persons from whom evidence cannot be obtained?

Any person may be heard as a witness, except persons who may not testify in court, which covers those with civil disqualifications (minors and protected adults) or with certain criminal convictions (deprivation of civil rights). The judge may, however, question them for information purposes, without putting them on oath. Furthermore, the descendants of the spouses may never be heard or testify in divorce or legal separation proceedings.

2.12 What is the role of the judge and the parties in the hearing of a witness? Under what conditions can a witness be heard via videoconferencing or other technical means?

The judge conducts the examination of witnesses and puts questions to them. While present, the parties may not interrupt witnesses or address them directly so as not to influence them. If the judge deems it necessary, the judge will ask the questions that the parties wish to put to witnesses.

There is nothing to prevent the judge from making an audio, visual or audio-visual recording of the preparatory inquiries, when the circumstances so demand (as in a case of geographic separation).

3 The evaluation of the evidence

3.1 Where evidence has not been obtained legally by a party, are there restrictions placed on the court in reaching its judgment?

The judge will not admit any evidence obtained by fraudulent means (hidden camera, recording of a telephone conversation without the speaker's knowledge, etc.) or in a way that does not respect privacy.

3.2 As a party to the case, will my own statement count as evidence?

The declarations of the parties to the case will not have the status of evidence.

Related links

 [Legifrance website](#)

The national language version of this page is maintained by the respective EJM contact point. The translations have been done by the European Commission service. Possible changes introduced in the original by the competent national authority may not be yet reflected in the translations. Neither the EJM nor the European Commission accept responsibility or liability whatsoever with regard

to any information or data contained or referred to in this document. Please refer to the legal notice to see copyright rules for the Member State responsible for this page.

Last update: 03/05/2018