

# Opposition of knowledge of judge and conventional proof in penal law

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The knowledge of judgment as one of the reasons of proof in penal and civil cases, especially when the issue is unprovable on other basis, can aid the judge. Experts in judgment do not distinguish penal and civil cases. Most of the Emamieh experts totally rely on the knowledge of the judge, Sunni experts, on the other hand, see the knowledge of the judge as contrary to the prophet's tradition and see it as cause for mistakes. Lawyers believe that a judge can only use his knowledge to assess the evidence and proof presented to the court, but cannot use it to prove or disprove any of the documentations. In the Iranian thematic law, in penal law the knowledge of the lawyer is accepted as both credit and contributor to the proof as well as one of the reasons to prove the penal case. But in civil cases, as acquiring proof by one of the sides is strictly forbidden, the knowledge of the judge is not accepted as proof. The relation between the knowledge of the judge and confession is different in penal and civil cases. Since the sentence is against the individual, and knowledge is in the nature of the judge, assuming opposition, the knowledge of the judge will be prior to the confession. But in civil cases the opposition does not exist, and the judge is obliged to act according to the confession. Assuming opposition, the knowledge of the judge, which is absolutely certain, is presumed. And since the knowledge is stronger than the presumption, therefore, it should be acted according to the knowledge rather than the presumption. Also if the knowledge of the judge is opposed to the proof, and even the opposing sides agree that the knowledge of the judge is prior to the proof. It can be assumed that there is incongruence between the knowledge of the sworn judge and the official documentations, and one is uncertain as to which should be prioritized. The research, the examination of the location, the opinion of the expert, and the evidence is all the bases for the judge's knowledge, and their opposition is unimaginable, because the whole value and credit of these is to satisfy the conscience of the judge.

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