

Advisory Opinions and Their Reliability in Apportioning Civil Liability

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Abstract

Although formal documents such as confessions, testimonies, and oaths are recognized under Iran's civil law, they have notable limitations, particularly in complex, technical, or specialized cases where comprehensive accountability is required. In lawsuits seeking compensation for losses and in civil liability cases, judges often issue a writ of advisory opinion, referring the matter to experts in relevant fields to investigate, calculate, and estimate each party's degree of fault (liable and loss-incurred). These experts assess the case and determine the percentage of responsibility assigned to each party. Regarding the nature of advisory opinions, there is some disagreement. One group of jurists views them as a form of testimony, asserting that conditions such as numerosity and justice must be met for the opinion to be valid. Another group emphasizes their independent character, holding that certainty alone is sufficient to validate the opinion. In judicial practice, advisory opinions are considered valid to the extent that they specify the compensation amount payable by the liable party. Consequently, expert opinions can serve as an independent justificatory proof among other evidences and, in some cases, may even be regarded as superior. This study employs an analytical-descriptive approach to examine and evaluate the nature and validity of advisory opinions in comparison with other forms of justificatory evidence.

Keywords: Advisory, Guilt estimation, Justificatory proof, Civil liability

Introduction

To determine compensation in civil liability cases, it is essential to assess the degree of fault of both the liable party and the loss-incurred party. Often, the loss-incurred party may have contributed to the damage by failing to follow relevant principles and regulations. Given modern advancements in science and industrialization, individuals are expected to observe safety standards in daily life; therefore, ignoring the negligence of the loss-incurred party and holding the liable party fully responsible would be unjust.

The nature and status of advisory opinions remain a debated issue among jurists. This controversy is heightened by the fact that civil law does not explicitly mention advisory opinions as proofs of claim justification, while civil trial procedures include them alongside other forms of evidence. The regulations provide little clarity on their legal standing and character. Understanding the nature, validity, and conditions of expert opinions in civil liability cases becomes particularly important when expert conclusions conflict with other recognized proofs of claim. In such instances, judges face a dilemma: should they prioritize traditional proofs such as confessions and testimonies, or can an advisory opinion by a specialist take precedence?

Civil liability

A liable party is defined as the person against whom a claim has been made [1]. Liability arises when a loss can be attributed to an individual. In civil cases, the claimant

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seeks compensation from the person responsible for causing the loss.

Guilt is a central basis for liability, often described as either excess or deficiency [2]. “Guilt” refers to failing to meet certain standards or exhibiting carelessness. Article 951 of Iran’s civil law defines “abuse” as exceeding permissible limits concerning another’s rights or property, typically resulting in loss. Article 952 addresses deficiency, describing it as the failure to perform an action required by contract or law to protect another person’s property.

Claim justification proofs

Proof is understood as a tool or guide for justifying claims or defending a case [1, 3]. According to Article 194 of Iran’s civil procedure law, proof is “the instrument used by the lawsuit’s parties for justifying a case or defending a claim.”

Article 1258 of Iran’s civil law lists five claim justification proofs: 1) confession; 2) written documents; 3) testimony; 4) indisputable circumstantial evidence; and 5) oath. This raises the question of whether Iran follows a strict legal proof system or a free proof system. In the legal proofs system, the legislator specifies the acceptable proofs, and judges cannot alter their evidentiary value. In contrast, the free proof system allows any material capable of justifying a claim, with its value assessed by the judge based on certainty [4, 5].

Iran’s civil law appears to adopt a mixed approach. While some proofs are predefined by law (legal proofs system), the judge evaluates the justificatory value of others (free proofs system). Therefore, Iran’s system of claim justification proofs can be considered a hybrid of both legal and free proof systems [6].

The nature of advisory opinion

Judges cannot be expected to possess complete expertise in every science or technical field, making it difficult for them to independently resolve complex disputes. Consequently, they often refer cases to specialized experts to ensure that rulings are both realistic and morally sound [5]. Despite this practice, jurisprudential literature rarely addresses the referral of cases to experts in a dedicated manner; references to such referrals appear only sporadically across different legal discussions.

The discussion of advisory opinions is relatively recent in both jurisprudence and law. Scholars have sought to justify why lawsuits are referred to experts and to

determine whether individuals outside the judge or parties—without witnessing the incident—can legitimately provide input. To understand the nature of advisory opinions, it is helpful to compare them with other legal tools, such as testimony and scene inspection.

Advisory opinion and testimony

Some scholars trace the idea of considering advisory opinion as a type of testimony to Roman law [7]. Both involve the assessment of evidence, with witnesses and experts forming conclusions based on what they perceive. However, while witness testimony is generally simple, normative, and based on direct observation, an expert’s opinion involves analysis, reasoning, and specialized knowledge, making it more comprehensive and impactful.

The differences outweigh the similarities. Advisory opinions require technical knowledge, and experts perform investigations to form an informed judgment. In contrast, witnesses recount events they directly observed using their senses. Experts are not present during the incident; they rely on documentation and evidence, whereas witnesses experienced the event firsthand. Accordingly, courts may substitute experts if necessary, but no one can replace a direct witness.

Additionally, experts are appointed by judges to analyze specialized matters and provide their professional opinions, whereas witnesses happen to be present at the incident and are summoned to court afterward [8]. In Iranian law, advisory opinions are treated separately from testimony in civil procedures, and expert qualifications differ from those of witnesses. Therefore, equating advisory opinions with testimony is largely unjustified, and most jurists recognize a clear distinction between them [9].

Advisory opinion and scene inspection

Iran’s civil procedure lists scene inspection as a form of claim justification, with Article 255 recognizing evidence gathered from such inspections as valid judicial evidence [10]. Scene inspection involves the judge or a trusted individual visiting the relevant site and recording observations. While there are similarities between scene inspections and expert evaluations, experts do more than observe—they analyze evidence, apply scientific knowledge, and provide specialized opinions in language understandable to both the court and parties. Unlike

simple inspection reports, expert opinions offer interpretations grounded in expertise.

Due to the complexity of certain cases, some jurists accept expert opinions as an independent form of proof [11]. While testimony directly reflects reality and is highly reliable, expert opinions guide the court toward understanding reality through investigation, which is inherently probabilistic. Advances in science and industry make such expertise increasingly necessary, justifying the inclusion of advisory opinions among claim justification proofs [12].

The importance of advisory opinions is underscored in technical cases, where an expert's inability to reach a conclusion may invalidate a plea. Article 259 of the civil trial procedures states that if a court requires an advisory opinion to issue a ruling, the expert's fees are borne by the plaintiff at the first instance and by the appellant at the appeal stage. Article 265 further establishes that an expert's opinion must align with verified facts; if it does, it serves as a basis for judicial action.

The absence of advisory opinions from the formal list of legal proofs likely reflects historical oversight rather than diminished validity. The omission does not imply that advisory opinions are less credible than documents, testimony, or confessions. Instead, it is a result of Iran's legislative borrowing from French civil law, where advisory opinions were not explicitly included, rather than a substantive assessment of their evidentiary value [8].

Reasons for the validity of the expert's opinion

Referring to experts has deep historical roots. Humans have always sought guidance from those with greater knowledge in areas they do not understand, a practice also endorsed in religious teachings. For instance, the Qur'an explicitly supports seeking advice from knowledgeable individuals, as reflected in the following verses:

1. "We sent you not, [O Muhammad], except to men to whom We revealed [Our message]. So ask the people of knowledge if you do not know" (NAHL: 43)
2. "We sent you not before except to men to whom We revealed [Our message]. So ask the people of knowledge if you do not know" (ANBIĀ'A: 7)

Since specialists possess deeper insight and understanding of specific matters, individuals seeking information should consult them [13]. Shiite interpretations, which describe the "Ahl Al-Zikr"

(fellows of reminding), do not undermine this reasoning. The Qur'anic guidance, though revealed for a specific context, applies broadly to justify consulting experts [14].

The practice of seeking expert advice is also evident in the Prophet's conduct. For example, he appointed Abdullah Ibn Ravaheh to determine crop prices, demonstrating the reliance on specialized knowledge for practical decision-making [15, 16].

A central justification for the validity of expert opinions lies in the established practices of intellectuals. The term "way of conduct" refers to consistent methods or approaches used in handling various matters [17]. Historically, intellectuals have consistently sought the guidance of knowledgeable individuals when faced with uncertainty, such as consulting experts on pricing matters. Importantly, they rely on expert advice not only to achieve certainty but also as a trusted method even when absolute certainty cannot be guaranteed [18].

The validity of consulting experts does not necessarily require religious sanction. The absence of prohibition is often interpreted as implicit endorsement, indicating that such intellectual methods are acceptable [18-20].

The foundation of expert consultation rests on the assumption that experts rarely err in their areas of specialization. While mistakes can occur, they are sufficiently uncommon that they do not undermine the reliability of expert opinion. Therefore, seeking expert advice represents an act of a less knowledgeable individual deferring to a more informed one. When the expert is trustworthy and their opinion persuasive, there is no need for them to meet formal testimony qualifications [21].

Issuance of a writ of advisory opinion in loss compensation claims

In loss compensation cases, it is essential to determine the degree of fault of both the liable party and the loss-incurred person. Often, the incident cannot be entirely attributed to the liable party alone, as the loss-incurred person's negligence or failure to observe safety measures may also contribute. Consequently, the court cannot impose full liability solely on the defendant. The proportion of each party's responsibility must be precisely established using credible evidence and clearly documented by the judge in the court's formal judgment. When both parties share responsibility for an incident, questions arise about how to fairly allocate fault and what

evidence can justify the proportion of each party's guilt. Traditionally, guilt has been assessed according to societal norms and customary practices [23, 24]. However, customary norms are insufficient in complex or technical cases; expert analysis is necessary to accurately determine the distribution of fault.

If the liable party confesses to full responsibility, the judge may issue a sentence based solely on this confession to expedite the proceedings, obliging the party to compensate the losses. Nonetheless, even when the defendant admits fault, the court may still seek an expert opinion, particularly in technical matters, to verify the extent of the violation, determine the degree of guilt, and assess the nature of injuries—such as in cases requiring forensic medicine evaluations (Notion No. 71/7244, 01/12/2005). Similarly, vehicle and maritime accident cases often rely on police and forensic reports [24].

When the defendant denies full responsibility and the plaintiff presents a witness, relying solely on testimony may not suffice, especially in technical or specialized matters. A non-specialized witness can only recount sensory observations and cannot accurately evaluate the extent of the defendant's negligence or the plaintiff's contributory fault. Even a judge present at the scene cannot reliably quantify each party's share of responsibility.

In such situations, expert analysis plays a crucial role in ensuring justice. The expert assesses the actions and negligence of each party and provides an opinion that is generally more reliable than witness testimony. The advisory opinion forms the basis for judicial action unless it contradicts well-established facts. Even when discrepancies arise, the court may request supplementary clarification from the expert or refer the matter to a panel of experts for further evaluation.

Conclusion

Consulting an expert is an established intellectual method, also supported by Islamic teachings and exemplified in the practices of the Prophet (may Allah bless him and his family). Experts, due to their specialized knowledge, are unlikely to make errors in their assessments, and any minor risk of mistake is generally disregarded by scholars. Many jurists recognize the advisory opinion as a robust and independent form of evidence.

The absence of explicit mention of advisory opinions in Iran's civil law does not diminish their credibility or legal

significance. To hold a party liable for loss compensation, the court must first determine the proportion of fault attributable to each party. While a defendant's confession can resolve simple cases, more complex situations require expert evaluation. Similarly, witness testimony may not provide sufficient certainty, particularly when the witness lacks specialized knowledge.

Overall, advisory opinions provide higher reliability and greater judicial confidence than testimony and can serve as the primary basis for the court's judgment. In determining civil liability and apportioning fault between the liable party and the loss-incurred person, the advisory opinion holds a superior status over other forms of evidence.

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