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Research Paper

Philosophy of Bankruptcy Law

Behnam Bigdeloo[1]✉*, **Zahra Mirshahpanah**[2]

1. Corresponding Author: PhD in Private Law from Allameh Tabatabai University, Tehran, Iran. Email: B_bigdeloo@atu.ac.ir
2. PhD in Private Law from University of Judicial Sciences and Administrative Services, Tehran, Iran. Email: Mirshahpanah.z@ut.ac.ir

Abstract

Law is a phenomenon born of human reason and designed to achieve a specific end. Legislation is a scientific method that is carried out in order to achieve a specific goal, without which legislation remains a pile of rules that are unrelated to each other. Therefore, the legislator must always take into account the goals he is trying to achieve when creating new legal regulations in order to avoid inconsistencies between legal regulations. Regarding the special importance of the objective of bankruptcy law, it should be said that the design and implementation of bankruptcy law affects the economy of the country, and the design of an efficient bankruptcy law also depends on the knowledge of the appropriate objectives of bankruptcy law. In addition to the authority of the legislation, the existence of the objective of the bankruptcy law helps to interpret the legal provisions correctly. Of course, setting appropriate goals for a law is not enough and must be accompanied by its effective implementation. Therefore, once the appropriate law has been enacted, it is necessary to monitor its objective results at the level of society to see whether it has achieved the desired goals in practice or not.

In this research, the importance of paying attention to the principles and objectives of bankruptcy has been recalled and various theories that exist in this regard have been examined. In Iran's legal system, the basic goal of bankruptcy law is to protect the rights of creditors, but in this research,

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regardless of Iran's laws, the basic goal of bankruptcy law has been considered and studied. One of the common functions of bankruptcy law in different legal systems is to reduce the problems of coordination between debtors and creditors and to adjust the incompatible demands of them and other parties affected by bankruptcy, but the basic question in this research is what is the fundamental purpose of bankruptcy law? In fact, bankruptcy affects a wide range of groups, so the main issue is whether bankruptcy law should only protect creditors or should balance the rights of different groups? Another question is what is the main objective of bankruptcy law, to satisfy creditors' claims or to rehabilitate and survive the business and give the entrepreneur a fresh start? In response to this question, several theories have been expressed and analysed as follows: creditors' bargain theory, broad-based contractarian theory, multiple value theory, explicit value theory and fresh start theory.It seems that bankruptcy law should keep all creditors, debtors and different interested groups in proper conditions, and with the fair and optimal distribution of losses, bankruptcy law should balance the conflicting interests of different groups.
Indeed, the most effective means of balancing the interests of disparate interest groups is to redistribute the losses incurred as a result of bankruptcy among them. The fundamental objectives of bankruptcy legislation can be distilled into two key principles: firstly, to achieve a balance between the interests of the various groups affected by bankruptcy, and secondly, to provide debtors with a fresh start and to stimulate the economic activity of companies. It appears that bankruptcy legislation should prioritise the provision of a fresh start for the merchant before preparing collective debt collection in an optimal and fair manner. The objective of enhancing the welfare of creditors represents only one aspect of the secondary goals of bankruptcy law. Furthermore, legislative and judicial policies should align with this fundamental objective. Indeed, rehabilitating viable businesses and offering a second chance to enterprising individuals can facilitate job retention, enhanced creditor repayment, sustained business relationships, economic growth, and increased social welfare. Ultimately, it is essential to integrate these objectives into the design of a bankruptcy system, with due consideration for their relative priority.

Keywords
Credit, Creditors-oriented, Debtor-oriented, Debt, Fresh Start.

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Research Paper

Civil proof in the light of ethics of Belief

Mahdi Hamze Howeyda[1] * , Mohammad Moloudi [2] ✉

1. Assistant Professor, Nahavand Higher Education Complex, Bu-Ali Sina University, Hamedan, Iran. Email: m.hamzehoweyda@basu.ac.ir
2. Corresponding Author: Assistant Professor, Department of Law, - Bu-Ali Sina University, Hamedan- Iran. Email: M.molodi@basu.ac.ir

Abstract

The fact that the judge must reach certitude and then proceed to issue a judgment is a truth acknowledged in the law of proof of claim. Acquiring certitude is subject to a set of norms and rules called "ethics of certitude". Not all certitudes, with different bases, could be considered valid. Regardless of the philosophical and epistemological issues regarding the nature of certitude, how to achieve it is also very important. Relativists believe that the criterion of acceptability and validity of certitudes is their reliance on reason. A valid certitude is a certitude that is justified by sufficient evidence and reasons. A certitude that is not supported by reason lacks epistemological value and validity and cannot be used as a basis for action. The necessity of the judge's compliance with the rules related to the ethics of certitude is higher because judicial certitudes involve important social and practical consequences. The certitude of the judge seriously affects the rights and social affairs of the people; therefore, achieving the certitude is extremely important to the judge. In a descriptive-analytical way, the present article examined and compared the rights of proof of litigation with the criteria of certitude ethics. Whether the judge has the authority to evaluate the evidence

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freely or whether he has to agree to the provisions of the evidence and issue a verdict based on them are among the most critical challenges of proving a claim.

The current study examined proving a lawsuit in the courts from the perspective of ethics of certitude. According to al-Qaida, a judge must follow all the moral rules and knowledge frameworks to gain certitude, and only then can he make his certitude the basis for issuing a verdict. The basic question is whether it is possible to pay attention to these criteria in the court according to the rules governing the rights of proof of litigation and the criteria raised regarding the validity of certitudes. Is it possible that the rules related to proof of litigation conflict with the principles of certitude ethics? One of the most important challenges ahead is the concept of imposing proof on the judge. Some reasons, such as confessions, regardless of whether they convince the judge or not, "must" be the basis for a verdict. Such a concept strengthens the hypothesis that it is basically not important for the legislator to believe in the judge, and contrary to the initial idea, the judge, without certitude and knowledge about the subject of the lawsuit, must also make his decision. On the other hand, the free assessment and the granting of absolute discretionary powers concerning the evidence in the case give rise to the fear of judicial tyranny and disregard for reasons. It seems that a correct understanding of how the judge acquires certitude is related to the fundamental positions in the ethics of certitude. Without paying attention to these original foundations, getting a clear and comprehensive picture of the relationship between reason and the judge's certitude is impossible. Although the prevailing approach in the domestic and international legal systems is that the judge is free to evaluate and accept reason, epistemological investigations and attention to the foundations of moral certitude clarify that certitude gets its value and validity from reason and not vice versa. On this basis, it is not acceptable for the judge to hear (consider) the reason and pass it by without gaining certitude. Either one should argue against the reason, or as long as the light of the reason is clear, one should stick to its implication and believe its contents. In this sense, the imposition of evidence and their priority on the judge's certitude is more defensible than arbitrary freedom in accepting and rejecting evidence.

Keywords: Civil proof, Evaluation of evidence, Belief, Evidentialism.

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Research Paper

Human Genetics Modification from the Perspective of Kant's Rationalism

Mojtaba Shafizadeh Khoulenjani[1], Mahdi Shahabi[1]✉*, Seyyed Mohammad Sadegh Tabatabaei[3]

1.phD student of private law, Department of Law, Faculty of Administrative Sciences and Economics, University of Isfahan, Isfahan, Iran.
Email: moshafizadeh@ase.ui.ac.ir

2. Corresponding Author, Associate Professor, Department of Law, Faculty of Administrative Sciences and Economics, University of Isfahan, Isfahan, Iran. Email: m_shahabi@ase.ui.ac.ir

3. Associate Professor, Department of Law, Faculty of Administrative Sciences and Economics, University of Isfahan, Isfahan, Iran. Email: tabatabaei@ase.ui.ac.ir

Abstract

Genes are implicated in the manifestation of not only physical traits but also behaviours, moods and mental illnesses. Genetic modification enables the alteration of an individual's characteristics. In addition, some diseases have a genetic origin that can be treated using this method.

Genetic engineering is classified into four principal categories: somatic gene therapy, somatic genetic enhancement, germline gene therapy, and germline genetic enhancement. The genetic alterations achieved through somatic gene therapy are confined to the individual undergoing the procedure and are not inherited by subsequent generations. In contrast, the consequences of germline gene therapy persist across multiple generations.

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The ethical and legal challenges associated with human genetic modification are manifold, with informed consent being a particularly salient issue, particularly in the context of genetic modification of germ cells.

Genes are implicated in the manifestation of not only physical traits but also behaviours, moods and mental illnesses. Genetic modification enables the alteration of an individual's characteristics. In addition, some diseases have a genetic origin that can be treated using this method.

In this study, we employed an analytical-descriptive methodology to examine this challenge and the perspectives that have been put forth in relation to it.

Modern natural law posits reason as the foundation for legal and moral norms, leading to the term "rationalism." The objective of modern natural law or rationalism is to safeguard individual rights. The individual is regarded as the ultimate end, and the principles of individual freedom and the sovereignty of the will are considered to be of paramount importance. This perspective emphasises the importance of undertaking rational tasks in a manner that is guided by benevolent intentions, and posits that the realisation of perfection is contingent upon this approach. The physical and mental faculties serve as the instruments and preliminary steps in the accomplishment of these tasks. From the perspective of rationalism and Kant's thought, people have a moral obligation to pursue their own perfection and that of others. One proposed method for fulfilling this obligation is through genetic modification. However, several principles have been proposed in this thought which are considered to be the most important rational reasons for opposing human genetic modification. Genes are implicated in the manifestation of not only physical traits but also behaviours, moods and mental illnesses. Genetic modification enables the alteration of an individual's characteristics. In addition, some diseases have a genetic origin that can be treated using this method.

In this study, we employed an analytical-descriptive methodology to examine this challenge and the perspectives that have been put forth in relation to it.

The ethical and legal challenges associated with human genetic modification are particularly pertinent in the context of informed consent, particularly in relation to genetic modifications on germ cells.

The question thus arises as to whether an individual is entitled to make a decision to undergo genetic modification with a view to influencing the traits and characteristics of subsequent generations and thereby determining their future and life prospects in a positive or negative manner. This raises the question of whether the principle of informed consent presents an obstacle to human genetic modification. Alternatively, can it be accepted by reference to other rational principles of Kant's moral philosophy, including deontology and the concept of the human being as an end in themselves? What are the human duty and role in perfecting themselves and others on this basis? Is proxy consent accepted by Kant's rational view and can it replace the consent of the patient or a person who is created in the future or not? Given that the majority of objections to human genetic modification have a Kantian basis, is such an approach correct and complete? If this view is not correct,

can a view in favour of genetic modification be inferred from Kant's thought?

The initial stage of the discussion centred on an examination of the fundamental principles, concepts and categories of informed consent. This was followed by an investigation into the constituent elements of the process of informed consent and the circumstances under which the principle of informed consent can be applied. In addition, the potential implications of this principle for the field of genetic modification were considered. Finally, this study analyses the effect of Kantian dutyism and the concept of the human being as an end in itself on genetic modification.

It seems that genetic modification does not necessarily mean violating the rights of individuals, and on the other hand, embryos or even germ cells do not have free will, which can be seen as an obstacle to genetic modification. Moreover, human beings have a duty to the happiness of others, and parents have a duty to their children. Although this duty is in conflict with the duty to respect individual autonomy and informed consent, the way out of the conflict is to emphasise the results orientation and to pay attention to the end of the human being, because there is no basis for preferring one of these two tasks over the other, and therefore Kant's thought is blocked in this respect. In this way, the treatment of diseases of genetic origin and the provision of a better life through the development of the individual's traits is the cause and introduction to other rational tasks, in other words, the positive results of genetic modification are preferable to the obstacle of lack of conscious consent. Acceptance of genetic modification and exit will result from this blockage and conflict, and therefore the duty to fulfil the duties of the parents is superior to the duty to respect the individual autonomy of the foetus, and in the meantime there is a difference in the therapeutic goal or the strengthening goal in germline methods or somatic in children will not be incompetent. Finally, according to Kant's view of duty, genetic modification of human embryos can be accepted.

Keywords: Genetics, Duty, Informed consent, Child, Fetus.

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Human legislation in "Ma La Nass Fieh" by Mirza Naini and "Mantaqato Al-Faragh" by Seyyed Mohammad Baqer Al- Sadr

Abdoreza Alizadeh[1]✉*, Seyed Ali Alavi[2], Seyedeh Fatemeh Mirbagheri[3]
1. Corresponding Author: Associate Professor, Department of Private Law, Faculty of Law, University of Tehran (Farabi College), Qom, Iran, Email: alizadeha@ut.ac.ir
2.Associate Professor, Department of Private Law, Faculty of Law, University of Tehran (Farabi College), Qom, Iran, Email: saalavi@ut.ac.ir
3. PhD Student (Private Law), Faculty of Law, University of Tehran (Farabi College), Qom, Iran, Email: mirbagheri_sf@ut.ac.ir

Abstract
In modern societies, although in most legal systems of the countries there is a legislative power, the mechanism of drafting and reforming laws in each of them is based on the principles and intellectual and historical foundations and social and cultural conditions of the country. Therefore, examining the relationship of Islamic Sharia with laws and legislation in Islamic societies is a crucial legal issue; In Iran, scholars of Shi'i jurisprudence have extensively explored and investigated this issue since the Constitutional Revolution (the *Mashrutiyat* 1906-1911), and tried to theorize the possibility (*javaaz*) and mechanism of legislation within the Islamic societies. Notably, the theory proposed by Mirza Mohammad Hussein Naini, which categorizes rules as fixed or variable, significantly influences the legislative process in the Islamic Republic of Iran. In this descriptive-analytical essay, we are dealing with the views of two most important designers of the theories in the field of variable rules and we are comparing what Naini calls "*ma la nass*

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fieh" and possibility and mechanism of human legislation in this area, with what Al-Sadr calls "*mantaqato Al-faragh*" and the authorized scope for human legislation in this area.

According to the Naini's theory, most of the cases related to governmental administration, ranging from micro-levels matters such as traffic laws, to macro-levels issues such as development plans, fall into the variable category of rules; And in this way, we can justify transtemporal and extraspatial rules and cossistant with social and economic developments in the Islamic legal system. While these variable rules are considered part of Shariah, their content is entirely customary and expert-driven, described by Naini as "orfiyah mahzah" (purely customary). Consequently, the duty of the legislative power is not merely to derive God's commandments or applying these commandments to the issue (ie. compliance in the application stage); instead, the duty of the parliament is enacting laws based on expert assessments of societal benefits.

But according to Al- Sadr, the rules of Islam, whether are superstructural and substructural, should be deduced in the form of a theoretical compound and all of these rules should be implemented. When mandatory superstructure rules exist, they must be followed. In other cases, adherence to basic rules provides the foundation, and variable rules are enacted accordingly. As a result, the Islamic Ruler, in the area where there are no mandatory rules, formulates and enacts laws based on general implications of existing rules and taking into account the non-opposition to mandatory laws.

Therefore, even though Al-Sadr's theory in relation to dividing rules into fixed and variable, is similar to Naini's theory, but it differs from it in many ways. One of the most important differences in these two theoris is the permissible scope of human legislation and mechanism of it. Mirza Naini calls this scope "*ma la nass fieh*" and in the way of attributing variable laws to religion, in his opinion, it is enough that variable laws are not "definitively contrary to" fixed rules of Sharia. But Sadr calls it "*mantaqato Al-faragh*" and considers it "free from mandatory rules" (no '*ma la nass fieh*'); And he believes that in this area, although there is no specific text about a specific issue and there is no a direct mandatory rules regarding a specific issue, but the evidence and texts here also have hints and implications and there are general rules that legislation should be based on. Therfore, unlike Mirza Naini, who believes that there is no implications for Islamic evidences in this area, Al-Sadr believes in the general principles and general implications of the evidence in this area, and in this way he have given a role to Islamic jurisprudence in enacting of variable rules, and he believes that the system of jurists should applying two methods of inference and performing *ijtihad* for Islamic legislation in *mantaqato Al-faragh*: firstly, they deduce the principles from the religion, and secondly, they legislate according to these principles. But in the view of Mirza Naini, the Islamic jurists should only control customary legislation that is not against the Sharia and then validate its implementation.

Of course, Al-Sadr also believes in the role of the people and the customary expert in the legislative process, and he states that in addition to

the role of Islamic jurists, the benefits of the society according to situations and circumstances should also be considered in the legislation. But it is clear that the legislation in theory of Al-Sadr (the combination of expertise and religion) is different from that in Naini's theory (legislation based on custom and does not contradict Sharia rules): In Al-Sadr's opinion, the legislation must be consistent with Islam; That is, the involvement of religion in legislation must be a procedural interference, and to achieve consistency with religion, simply creating a council and guarding after the legislative process is insufficient to ensure consistency with religious principles. Also, our article critiques this perspective.

Keywords: Fixed rules, Human legislation, Ma la nass fieh, Mantaqato Al-faragh, Variable rulings.

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Research Paper

Researching the Distinction Between Real Right and Personal Right and Its Effects; A Comparative Study in Islamic and Western Law

Mahmoud Kazemy[1]✉ *, **Rahim Pilvar** [2]

1. Corresponding Author, Associate Professor, Department of Private Law and political science, University of Tehran,Tehran, Iran, Email: makazemy@ut.ac.ir

2. Associate Professor, Department of Private Law, Faculty of Law, University of Tehran (Farabi College), Qom, Iran, Email: rahimpilvar@ut.ac.ir

Abstract

The field of financial rights is divided in a number of ways within the context of legal knowledge. One of the most fundamental of these divisions is the distinction between "objective" and "personal" or "in personam" rights. The genesis of this distinction can be traced to Roman law. It subsequently permeated the Western legal system, including that of France, following a protracted journey. The foundation of this differentiation lies in the legal tenets governing litigation, the enforcement of rights, and the conduct of court proceedings. It has now become the primary consequence of embracing this differentiation in the proceedings and the exercise of rights.

However, over time, a substantial number of rulings have been issued on this matter. An objective right is a right that an individual possesses over an external object, which they are able to exercise independently, without the need for the involvement of others. In contrast, a personal right is attributed to the entirety of a particular individual's property, and the holder of the right does not possess dominion over a specific asset belonging to the debtor. This

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article's focus is on examining the existence of the division of financial rights into objective and personal categories and its implications in Islamic and Iranian law, despite the existence of differing interpretations.

In examining this issue and related issues in this article, the descriptive analytical method is employed, and materials are collected through the library method. This is done with the aim of investigating the concept, history and distinction of objective right from personal in Western law, and of re-examining the place of this separation and its implications. In examining rulings in Islamic jurisprudence and Iran's law, as well as the latest developments in Western law (France) and Imamiyya jurisprudence, this article aims to delineate the border between them in Iranian law. It will then proceed to examine some of the most important examples of this distinction, and elucidate the significant practical effects that arise from it.

In response to this, the authors argue that in Islamic law, the objective right is distinct from the personal one, and that there are specific rulings and effects associated with each. This is because, within the field of jurisprudence, the financial right is not divided in this way. Additionally, the distinction between objective and personal rights in Iranian law can be discerned from the Civil Code and the Code of Civil Procedure. However, with regard to the concepts of object (ein) and debt (dein), as well as the scope of objective and personal rights, there are notable differences between the legal systems of Islam and the West, which have been the subject of extensive investigation.

In conclusion, it can be stated that the distinction between objective right and personal right in Western law, including in France, is a well-established concept with roots in Roman law. This distinction has significant implications and has shaped the structure of the French civil code.

In Islamic law, although the jurists have not explicitly articulated this distinction between rights and obligations, they have instead distinguished between "right" and "melk" as well as "ain" and "dain," which is a division of property based on its existence in the world.

In conclusion, it can be stated that the distinction between objective right and personal right in Western law, including in France, is a well-established concept with roots in Roman law. This distinction has significant implications and has shaped the structure of the French civil code.

However, there are rulings in jurisprudence that cannot be justified except on the basis of distinguishing between objective and personal rights. This demonstrates that the jurists were aware of this division and accepted it. Examples of such rulings include the mortgagor's right of precedence over the mortgaged property over other creditors, the dissolution of the mortgage contract, rent and usufruct in the event of the destruction of the subject of the contract due to force majeure, and so forth.

In conclusion, it can be stated that the distinction between objective right and personal right in Western law, including in France, is a well-established concept with roots in Roman law. This distinction has significant implications and has shaped the structure of the French civil code.

In Western law, "ownership" represents one of the most evident instances of an objective right, with its foundation invariably situated in an external

specific object. However, in Islamic and Iranian law, the ownership right exhibits a distinct character, contingent upon the object in question, whether external or general. If the property in question exists in the external world, In Islamic and Iranian law, ownership is an objective right. However, since general property can also be the subject of ownership, this assumption of ownership is not objective. This is to say that a person may be the owner of another person's liability (zemme). In other words, every creditor is the owner of the debtor's zemme. In conclusion, it is notable that in Western law, the term "object" is used in contrast to "obligation," and the concepts of "objective right" and "personal right" have been established as a foundation for this distinction. However, in Islamic law, there is no such contrast between "object" and "obligation." In other words, in Western law, the term "object" is synonymous with a material object that exists outside the legal system. However, in Islamic and Iranian law, the term "object" refers to both an external object, which is a material object and is a "definite object", and also to the object in zemme, which is the general object and "ein koli dar zemme" is actually the same as "debt". "Dein" is defined as "general property under zemme". This fundamental distinction between the concept of "object" in Western and Islamic law has prompted some scholars to question the existence of objective and personal rights in Islamic law. This article addresses these concerns and provides a comprehensive analysis of the subject. It should also be noted that in Islamic law, "dein" is the opposite of "specific object" (ein moayan) and the word "object" is used absolutely in contrast to "profit".

In conclusion, it can be stated that the distinction between objective right and personal right in Western law, including in France, is a well-established concept with roots in Roman law. This distinction has significant implications and has shaped the structure of the French civil code.

In contrast to Western legal systems, Islamic law distinguishes between the concepts of debt and obligation. In the event that the subject is a general obligation, the term "obligation" is also "debt"; otherwise, it is solely an obligation. In Western law, absolute obligation constitutes a personal right, with the rules of the personal right pertaining to it. However, in Islamic law, the distinction between debt and obligation means that some rules of the personal right are related only to debt, not pure obligation. From the perspective of civil procedure law, this division exists in Iranian law, with lawsuits divided into personal and objective lawsuits.

Furthermore, at the execution stage, once the claimant's objective right has been established and a definitive judgment has been issued, this judgment is enforceable against any individual or entity in possession of the property subject to the judgment, even if they are not a party to the proceedings. Consequently, the expropriation decree is enforceable against any possessor, even if they are not a party to the lawsuit. However, when the court judgment contains an individual condemnation of the obligor, it is enforced only against that same person.

Keywords: Object and debt, Definite object, Objective and personal right, Right of priority, Right of pursuit, Asset.

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Research Paper

The Cause in Civil Actions and Its Features in Divorce Lawsuits A Comparative Study in French Law

Hassan Mohseni*
Associate Professor, Department of Private and Islamic Law, Faculty of Law and Political Science, University of Tehran, Tehran, Iran. Email: hmohseny@ut.ac.ir

Abstract

This article employs a library-based research method that is both critical and analytical-comparative. This approach entails the utilization of resources available in libraries, encompassing both paper and electronic materials. The methodology employed in the study and review was entirely critical. No comment has been included in this article unless it has been subjected to a thorough review and critique. In addition, the contents of this article, including topics and questions, have been subjected to analytical scrutiny with a view to comparative law. Comparative studies have been carried out concerning French law to focus on the analysis and evaluation. The law of French civil procedure and the court precedence of this country have been considered in the comparative study. Along with this study, court precedence has also been examined.

Article 51 (4) of the Civil Procedure Law stipulates that the petitioner must set forth "the obligations and reasons according to which the petitioner considers himself entitled to a claim" to ensure that the intent is clear. This request requires the petitioner to specify the grounds on which they believe their claim to be justified. Although the concept of "reasons" ("le moyen" in French terminology) is discussed in terms of several thematic, prescriptive, and affirmative categories, from an objective standpoint, the reasons can be

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anything from the perspective of the claimant. They may be rooted in the law of contracts, outside of it, or even in the law. For this reason, an answer within the legal system is sufficient.

This article focuses on whether the plaintiff can rely on more than one aspect in his lawsuit or whether the defendant can raise some aspects and defer others for subsequent consideration rather than presenting all aspects as the basis of his defense. To illustrate, should the petitioner petition the court for a divorce judgment and allege instances of bad behavior, non-payment of alimony, addiction, and neglect? Is it permissible for a divorce seeker to consolidate multiple analogous grounds for dissolution of the marriage into a single category, thereby indicating that she is in a predicament? In a lawsuit to terminate a contract, may the claimant request the termination in general and state his entitlement defect in goods or fraud? In all of these examples, can the judge select one of these aspects and refrain from commenting on the others or issue a judgment of disqualification and rejection? What is the effect of this type of judging? If a person has not raised the claim of termination of the contract due to fraud and other similar grounds in the lawsuit that require the preparation of an official document, can they raise such a claim in a subsequent lawsuit? How would the defendant respond to such a claim?

Two categories of solutions have been proposed to address these questions. One proposed solution is the concentration or consolidation of the aspects in question, which would require the petitioner and the defendant to present all aspects in a proceeding. If they fail to do so, it is assumed that they have claimed or defended all aspects. The other solution, which is the result of the first, is the prohibition of restating these aspects. Subsequently, a new lawsuit is initiated, which includes the *res judicata*.

The article's primary contribution is delineating a clear distinction between the underlying causes of a dispute and the factors that precipitate and perpetuate it. This distinction is crucial for understanding the complexities of dispute resolution. Accepting that the cause is not one of the fundamental principles of res judicata is impossible. Instead, the subject of the dispute and its entitlements, along with the parties' unity, represent the fundamental principles underpinning the validity of res judicata.

Furthermore, assuming that the general rule is to present all sides simultaneously in every trial is untenable. It is presumed that this has been done, and the res judicata prevents filing a lawsuit or defense against any other party in litigation.

Another noteworthy development is acknowledging the distinction between civil and family procedural norms in this context. Nevertheless, family law and its associated procedures exhibit a distinctive aspect pertaining to the demand for divorce. In this context, divorce is initiated through a formal request, which legal considerations may prompt, the circumstances of the parties involved, or a judge's decision in a complex case involving a woman. One reason, and several reasons, falls into several categories. The Constitution and the symbolic nature of hardships and difficulties make it reasonable to conclude that the judge of the family court

may consider the possibility of divorce due to hardships and difficult situations. Furthermore, changes in these reasons should be accepted, even if this is done at the appeal stage. The criterion is that these actions and changes are compatible with the purpose and intent of the request, even though they result in a shift in the legal basis of the lawsuit.

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