

PROMOTING INNOVATION CULTURE FOR IMPROVING LEGAL SYSTEM THROUGH COMPARISON REGARDING EVIDENCE ASSESSMENT PRINCIPLES IN CIVIL PROCEDURAL LAW BETWEEN VIETNAM AND USA

¹ Phan Thi Chanh Ly, ² Phan Quoc Nguyen

¹ Msc. College of Economics and Law - Tra Vinh University Email: ptcly@tvu.edu.vn

² Associate Professor Doctor, University of Law, Vietnam National University, Hanoi.

Corresponding Author. Email: pqnguyen77@yahoo.com

Abstract:

This paper analyzes the principles of evidence evaluation in Vietnamese civil procedure law based on the provisions of the 2015 Civil Procedure Code, focusing on the criteria of objectivity, comprehensiveness, and completeness in the examination and determination of the probative value of evidence. On that basis, this research compares the mechanism for evaluating evidence in the U.S.A civil procedure system, particularly the provisions of the Federal Rules of Evidence and the adversarial model. Through this comparison, the article clarifies the differences between the central actors in the evaluation process (the judge in the inquisitorial model and the jury in the adversarial model), the mechanisms for excluding evidence, the standard of proof, and the degree of distinction between the pre-trial and trial stages as the spirit of promoting innovation culture in Vietnam today. From this perspective, the article proposes some recommendations to improve Vietnam's civil procedure law in the direction of enhancing transparency in evaluation criteria, strengthening mechanisms for the exclusion of evidence, and reinforcing the adversarial process in determining the probative value of evidence.

Keywords: Principles of evidence evaluation, Evidence in civil procedure, Probative value, Innovation culture.

Introduction

The evaluation of evidence is central to civil proceedings, as all court decisions must be based on legally proven and convincing facts. In civil proceedings, evidence is not only a means of determining the objective truth of a case but also the foundation for ensuring justice and public trust in the judicial process. Therefore, the principle of evidence evaluation plays a particularly important role, clearly reflecting the nature of the procedural model and the degree of protection of the parties' right to litigation.

In Vietnam, the principle of evidence evaluation is recognized in the 2015 Civil Procedure Code¹, which requires the court to examine evidence objectively, comprehensively, and fully. However, the criteria for evaluating the probative value of evidence remain general, giving judge's broad discretion in the decision-making process. Meanwhile, the USA civil procedure system—operating on an adversarial basis—establishes a strict mechanism for controlling the admissibility of evidence through the Federal Rules of Evidence².

¹ Article 108 of the 2015 Civil Procedure Code

² Rules 401–403, 901 Federal Rules of Evidence

To promote innovation culture for improving legal system in Vietnam, the Resolution 57-NQ/TW of was launched in 2024 on the breakthroughs in the development of science technology innovation in Vietnam³. The first mission of this Resolution is to raise awareness, promote innovation culture and change way of thinking in all fields including judicial system innovation.

Therefore, this paper will define and analyze the principles of evidence evaluation in Vietnamese civil procedure law based on the provisions of the 2015 Civil Procedure Code, focusing on the criteria of objectivity, comprehensiveness, and completeness in the examination and determination of the probative value of evidence. Then, based on these analyzes, this article compares the mechanism for evaluating evidence in the U.S.A civil procedure system, particularly the provisions of the Federal Rules of Evidence and the adversarial model and thereby clarifies the differences between the central actors in the evaluation process (the judge in the inquisitorial model and the jury in the adversarial model), the mechanisms for excluding evidence, the standard of proof, and the degree of distinction between the pre-trial and trial stages. From this perspective, the research proposes some recommendations to improve Vietnam's civil procedure law in the direction of enhancing transparency in evaluation criteria, strengthening mechanisms for the exclusion of evidence, and reinforcing the adversarial process in determining the probative value of evidence for promoting innovation culture in Vietnam today.

Literature review

The issue of evidence assessment in civil proceedings has been the subject of many legal research studies in Vietnam, primarily from the perspective of general theory on evidence and proof in civil proceedings. Some relevant publications could be noted such as Do Thi Phuong (2019), Discussion on notion of electronic evidence, electronic data and electronic means in criminal proceedings⁴; Leonid Lichmana, Andrii Dryshliuka, Maksym Murzenkoa, Valeriia Boikob (2022), Principle of reasonableness in international standards of civil proceedings⁵; Trinh Duy Thuyen (2026), Resolution No. 57-NQ/TW of Poliburo, theoretical foundations for improving laws on electronic evidence as source of evidence⁶; Vu Hoang Anh (2021), Discussion on term to provide evidence of persons concerned in civil cases⁷.

Almost provisions of the 2015 Civil Procedure Code, particularly Article 108, focus mainly on the principles of evidence evaluation, emphasizing the requirements of objectivity, comprehensiveness, completeness, and accuracy in judicial proceedings. However, most of studies interpreting norms generally, with little in-depth analysis of the mechanism for controlling judicial power in the evaluation of evidence or the two-tiered structure between admissibility and probative value.

In the American legal system, the issue of evidence evaluation has been studied in depth through the doctrines of admissibility, balancing tests, and the gatekeeping function of judges under the Federal Rules of Evidence. This evidence assessment could be viewed in the relevant article such as Dang Quang Huy (2021), Discussion on evidence duties of persons concerned in civil procedural law according to

³ Resolution 57-NQ/TW in 2024 of Central Committee Vietnamese Communist Party on the breakthroughs in the development of science technology innovation and digital transformation in Vietnam

⁴ Do Thi Phuong (2019), Discussion on notion of electronic evidence, electronic data and electronic means in criminal proceedings [Ban Ve Khai Niem Chung Cu Dien Tu, Du Lieu Dien Tu Va Phuong Tien Dien Tu Trong To Tung Hinh Su], Journal Description, Volume No.19 (October, 2019), pp.28-34.

⁵ Leonid Lichmana, Andrii Dryshliuka, Maksym Murzenkoa, Valeriia Boikob (2022), Principle of reasonableness in international standards of civil proceedings, International Journal of Law, Crime and Justice, 3 February, 2022, pp. 1-9.

⁶ Trinh Duy Thuyen (2026), Resolution No. 57-NQ/TW of Poliburo, theoretical foundations for improving laws on electronic evidence as source of evidence [Nghị quyết 57-NQ/TW của Bộ Chính trị, cơ sở lý luận để hoàn thiện quy định của pháp luật về nguồn chứng cứ là dữ liệu điện tử], Vietnam Social Sciences Review, No.2-2026, pp.67-74.

⁷ Vu Hoang Anh (2021), Discussion on term to provide evidence of persons concerned in civil cases [Ban ve thoi han Cung cap chung cu cua duong su trong Vu an dan su], Journal Description, Volume No.20, 2021, pp.45-50.

British-American legal systems⁸; Some other works analyze the distinction between “admissibility” and “weight of evidence,” as well as the role of juries in determining credibility. However, direct comparative studies between Vietnam and the United States on the principles of evidence evaluation in civil proceedings are still relatively limited, often only stopping at the level of reference to experience without systematic comparison.

Therefore, this article aims to fill the research gap by conducting an in-depth analysis of the principles of evidence assessment in Vietnamese law from a comparative structural perspective with US law, thereby clarifying the nature of the procedural model and proposing directions for improvement.

Research Methodology

This paper was conducted based on a combination of the following research methods:

First, the method of analyzing and synthesizing legal norms. The author analyzes the content of the provisions of the 2015 Civil Procedure Code, particularly Article 108 and provisions related to evidence, comparing them with corresponding provisions in the Federal Rules of Evidence such as Rules 401, 403, and 901.

Second, the comparative law method. The article places the two legal systems in the context of different procedural models (inquisitorial and adversarial), analyzing differences in the structure of evidence assessment, the deciding authority, and the mechanism for excluding evidence.

Third, the case law and judicial practice analysis method. Several typical cases in the USA system are cited to illustrate how Rule 403 and Rule 901 are applied in practice, thereby drawing points that can be referenced for Vietnam.

Fourth, the method of legal commentary and argumentation. Based on theoretical and practical analysis, the author presents observations and proposals to improve the evidence evaluation mechanism in Vietnamese civil proceedings towards aligning with progressive procedural standards.

Findings and comments

1. Principles for Evaluating Evidence

In the process of evaluating evidence, the parties involved in the proceedings must adhere to certain principles to ensure that the evaluation of evidence is conducted objectively, comprehensively, with focus, and in accordance with the law. These principles not only guide the process of recognizing, examining, and using evidence, but also play an important role in ensuring that civil cases are resolved fairly, correctly, and convincingly. Among them, the following basic principles can be summarized:

First, the principle of compliance with legal provisions in the evaluation of evidence.

When evaluating evidence, judges and people's assessors must strictly, fully, and uniformly comply with the provisions of civil procedural law, with a high sense of responsibility. The evaluation of evidence must be carried out on the basis of respect for the law, ensuring self-discipline, seriousness, and compliance with the order and procedures prescribed by the Civil Procedure Code⁹. Respect for and compliance with the law is not only an essential requirement of the law but also a legal obligation, a professional responsibility, and a requirement of conscience and ethics for those conducting proceedings. As has been affirmed: “Respecting and implementing the law in a voluntary, serious, complete, and consistent manner is not only a requirement and demand of the law itself, but also a legal obligation, a matter of conscience, and a moral duty of every individual.”¹⁰

⁸ Dang Quang Huy (2021), Discussion on evidence duties of persons concerned in civil procedural law according to British-American legal systems [Ban Ve Nghia vu Chung minh cua duong su trong to tung dan su theo he thong phap luat Anh-My], Legal Professions Review, June, 2021, pp. 86-90.

⁹ Article 8 and Article 108 of the 2015 Civil Procedure Code

¹⁰ Hanoi University of Law (2021). Textbook on State and Law Theory. National Political Publishing House, p. 109.

In civil proceedings, strict compliance with the law in evaluating evidence aims to ensure legal order, guarantee fairness and equality among the parties, and protect the legitimate rights and interests of individuals, agencies, and organizations. Accordingly, evidence provided by the parties or lawfully collected by the Court during the resolution of civil cases must be evaluated objectively, comprehensively, and accurately, serving as the basis for the Court to correctly determine the nature of the legal relationship in dispute, clarify the circumstances and facts of the case, and issue a lawful judgment. In the process of evaluating evidence, judges and people's assessors must rely on the provisions of substantive law and civil procedural law, as well as relevant legal documents, to determine the probative value of each piece of evidence, each group of evidence, and the entire body of evidence. The evaluation of evidence must ensure compliance with the legal attributes of evidence, such as legality, relevance, and authenticity¹¹, thereby ensuring that civil cases are resolved objectively, comprehensively, lawfully, and with a high degree of persuasiveness.

Second, the principles of honesty, objectivity, comprehensiveness, and completeness in evaluating evidence

The evaluation of evidence as the basis for issuing civil procedural decisions depends heavily on the perceptions and actions of those conducting the proceedings, primarily the judge and the people's assessors. If, during the evaluation of evidence, the judicial officer imposes their subjective will, personal bias, or intentionally distorts the nature of the case, reflecting inaccurate information or details of the civil case, this will undermine the objectivity and impartiality of the trial, thereby directly affecting the quality and fairness of the resolution of the civil case. Therefore, during the evaluation of evidence, no preconceived notions about the probative value or validity of the evidence may be formed until the evidence has been examined, compared with other evidence in the case file, and placed in the context of the objective reality of the civil legal relationship in dispute. Each piece of evidence can only be accepted and used after it has been carefully and objectively examined and found to be consistent with the entire body of evidence in the case¹².

In addition, the professional experience and inner convictions of the person conducting the proceedings play an important role in the evaluation of evidence. Experience is the result of the accumulation of knowledge through practical trial proceedings, reflecting the objective world in the form of intuitive and practical knowledge; while inner convictions are subject to a certain degree of influence by the subjective factors of each individual. Therefore, if emotions, feelings, prejudices, or personal interests dominate the process of thinking and evaluating evidence, it is easy to lead to one-sided, subjective, and distorted assessments of the nature of civil cases. Based on this requirement, the evaluation of evidence in civil proceedings requires the parties involved in the proceedings to have a high sense of responsibility, to study and examine all the circumstances of the case in a comprehensive and objective manner; and to make judgments and conclusions based on scientific knowledge, legal provisions, and the consistency of information with certain objective laws.

The principle of comprehensiveness and completeness also requires that the evidence evaluation process must examine and analyze all documents and evidence that have been legally collected. Each piece of evidence usually reflects only one or a few specific aspects of the subject matter being proven. Therefore, only by studying, comparing, and synthesizing all the evidence in dialectical relation to each other can the Court fully clarify the nature of the disputed civil legal relationship and the circumstances of the case. At the same time, the evaluation of evidence must ensure that both the favorable and unfavorable circumstances for the parties are fully considered, avoiding a situation where only evidence and circumstances favorable to one party are emphasized while ignoring evidence and circumstances that

¹¹ Articles 93, 94, 95, and 108 of the 2015 Civil Procedure Code

¹² Paragraph 2 of Article 108 of the 2015 Civil Procedure Code

are legally significant to the other party. Only then can the evaluation of evidence truly ensure the truthfulness, objectivity, comprehensiveness, and completeness required by civil proceedings.

Third, the principle of ensuring human rights in the process of evaluating evidence in civil proceedings

In the socialist rule of law state of Vietnam, people are placed at the center of all socio-economic development policies. From the early years of the renovation process, the Communist Party of Vietnam has affirmed that the goal and driving force of development is for the people and by the people; individual interests are organically linked to collective and social interests, with individual interests being the direct driving force of development. The 2013 Constitution, amended and supplemented in 2025, clearly recognizes the principle of ensuring human rights in Article 14, according to which human rights and citizens' rights in the political, civil, economic, cultural, and social fields are recognized, respected, protected, and ensured in accordance with the Constitution and the law.

In the field of civil proceedings, ensuring human rights is particularly important, as this is the field that directly resolves disputes arising from civil, economic, marriage and family, labor, and other legal relationships closely linked to the legitimate rights, interests, and material and spiritual lives of individuals and organizations. The evaluation of evidence in civil proceedings is not only aimed at determining the objective truth of the case but must also ensure respect for and protection of fundamental human rights, particularly the right to access justice, the right to a fair trial¹³, the right to equality before the law¹⁴, and the right to protection of legitimate interests¹⁵.

Accordingly, in the process of evaluating evidence, the Court must ensure the rights of the parties to provide evidence¹⁶, present opinions, argue, refute, and request the Court to comprehensively examine and evaluate the documents and evidence they submit. The evaluation of evidence shall not prejudice the legitimate rights and interests of the parties, nor shall it use evidence collected unlawfully or in violation of human rights or civil rights. All conclusions regarding the probative value of evidence must be formed on the basis of respect for objective truth, ensuring the fairness, transparency, and legality of the proceedings. Thus, ensuring human rights in the process of evaluating evidence is a guiding principle of civil proceedings, reflecting the humanitarian nature of the socialist rule of law in Vietnam. Strict adherence to this principle not only contributes to improving the quality and effectiveness of civil case resolution but also strengthens the people's trust in justice, the law, and the court system.

Fourth, the principle of evaluating evidence in a manner that ensures the legitimate rights and interests of the parties in civil proceedings

The evaluation of evidence in civil proceedings does not stop at examining the evidence used as a basis for accepting the claim of one party, but must also simultaneously examine the evidence refuting or denying that claim or clarifying the circumstances favorable to the other party. Therefore, the evaluation of evidence must be carried out on the basis of considering both the evidence supporting the claim, the counterclaim, and the evidence that does not support or reduces the probative value of these claims. This

¹³ Article 16, Constitution of 2013, amended and supplemented in 2025

¹⁴ Article 16 of the Constitution of 2013

¹⁵ Article 9, Civil Procedure Code of 2015

¹⁶ Articles 9 and 70 of the Civil Procedure Code of 2015.

is an essential requirement to ensure fairness and equality between the parties in the process of resolving civil cases¹⁷.

In civil proceedings, evidence “favorable to the party” can be understood as evidence that establishes that the party’s claim is well-founded and lawful; or proves that the party does not have the civil obligations as claimed by the other party; or clarifies circumstances that exclude, limit, or reduce civil liability; or establishes that the party’s lawful rights and interests have been infringed and need to be protected. This evidence may reflect that the party did not commit a civil obligation violation; or committed a violation but did not meet the conditions for civil liability to arise; or falls under the cases of exemption or reduction of obligations as prescribed by law; or reflects a change or termination of the disputed civil legal relationship.

The process of proving in a civil case aims to clarify the claims of the parties, and also has significance in determining whether those claims are well-founded and protected by law. Therefore, evidence in civil proceedings may be used as a basis for accepting the claim of one party, but at the same time may also be used to reject the claim of the other party; or may initially be considered evidence favorable to one party but, when placed in relation to other evidence and the actual developments of the case, may be transformed into evidence unfavorable to that same party. This requires the person conducting the proceedings to have dialectical thinking, to evaluate the evidence in its overall context, and not to mechanically and disjointedly separate each piece of evidence. Throughout the process of resolving civil cases, judges and people’s assessors must always maintain an objective, impartial attitude, without prejudice or preconceived notions about the outcome of the case in terms of accepting or rejecting the claims of any party. The evaluation of evidence in a manner that ensures the legitimate rights and interests of the parties clearly reflects the humanitarian nature of civil proceedings, while also embodying the principles of ensuring human rights, citizens’ rights, and equality before the law in judicial activities.

However, it should be noted that this principle should not be understood simplistically to mean that whenever any doubt arises, that doubt is automatically interpreted in favor of one party. The assessment of evidence in a manner that ensures the legitimate rights and interests of the parties is only applicable in cases where, after conducting a comprehensive, thorough, and objective examination, comparison, and evaluation of the evidence in accordance with the prescribed legal procedures, there remain unresolvable doubts about the circumstances of the case. In such cases, the interpretation of these doubts must be directed towards protecting the legitimate rights and interests of the parties, in accordance with the principles of fair trial and access to justice.

Even at the first instance or appellate court, before the panel of judges deliberates, the court may still receive and examine new documents and evidence provided by the parties or collected legally, if such evidence is relevant to the resolution of the civil case. Court judgments must be based on a solid body of evidence, clearly demonstrating the logical relationship between the facts of the case and the rights and obligations of the parties as prescribed by law.

Along with the principles of objectivity, comprehensiveness, and completeness, the evaluation of evidence in civil proceedings requires the person conducting the proceedings to examine the evidence from both sides: the side supporting and the side not supporting the claims of the parties. It is not permissible to focus only on evaluating evidence favorable to one party while ignoring or downplaying evidence that refutes or negates that claim. Even in cases where one party admits all or part of the other party’s claims, the Court must still place those admissions in relation to the entire body of other evidence to assess their voluntariness, legality, and consistency with the objective facts of the case, thereby ensuring that the resolution of civil cases is objective, fair, and in accordance with the law.

¹⁷ Article 5 and Article 70 of the Civil Procedure Code of 2015

PROMOTING INNOVATION CULTURE FOR IMPROVING
LEGAL SYSTEM THROUGH COMPARISON REGARDING
EVIDENCE ASSESSMENT PRINCIPLES IN CIVIL
PROCEDURAL LAW BETWEEN VIETNAM AND USA

The U.S.A system regulates evidence primarily through the Federal Rules of Evidence (FRE). In federal civil proceedings, the FRE are applied under Federal Rules of Civil Procedure Rule 43(a).

Unlike a codified legal system that provides detailed rules on “evidence evaluation principles,” the United States operates based on three major principles:

First, the principle of relevance

According to Rule 401 and Rule 402 of the Federal Rules of Evidence, evidence is considered admissible if it tends to make a material fact in the case more likely than not¹⁸. This has been widely applied in recent federal civil cases where the Court has determined the relevance of emails, messages, or electronic documents to the main dispute.

For example, in a recent California labor civil case (*Christian L. Johnson v. California Department of Transportation*)¹⁹, although an email sent internally by an official contained many technical elements²⁰, the California State Court still allowed the email to be presented because it was directly relevant to the agreement and conduct of the parties in the labor dispute. Although this ruling has not been widely publicized, the court transcript shows that the Court proceeded to recognize and determine the relevance of the email before considering other objections.

Specifically: *Christian L. Johnson v. California Department of Transportation* (2025)²¹

In *Christian L. Johnson v. California Department of Transportation*, Mr. Christian L. Johnson – an employee of the California Department of Transportation (Caltrans) – sued Caltrans based on allegations of discrimination, harassment, and retaliation arising from the employment relationship. While the lawsuit was ongoing, Caltrans' attorney, Paul Brown, sent an internal email about the lawsuit to Nicolas Duncan, Johnson's direct supervisor at Caltrans. This email contained information relevant to the litigation context and was clearly marked with a security warning stating that it was an “attorney-client privileged communication” and fell under the “work product doctrine.” Duncan – who was not authorized by Caltrans – photographed this email and forwarded it to Johnson. Johnson then forwarded the image of the email to his attorney, John Shepardson, who subsequently shared the email with several consultants and other individuals.

Determining the relevance of the internal email

Caltrans argued that this email was protected by attorney-client privilege and should not be used as evidence in the lawsuit. The trial court issued a protective order against the use and dissemination of this email, requiring Johnson and his attorney to destroy or return all copies and cease any dissemination.

However, even though the email was procedurally classified as an internal document with a “CONFIDENTIALITY NOTICE” warning, the Court still considered it relevant evidence because it directly described the conduct and agreements in the ongoing labor dispute. Specifically, although the email was outside the formal discovery process, its content referred to legal advice and how Caltrans handled the situation involving Johnson, so the Court still found the email “directly relevant” to the issues in dispute between the parties.

In determining relevance, the Court considered:

¹⁸ Rule 401–402, Federal Rules of Evidence

¹⁹ *Johnson v. California Department of Transportation*

²⁰ *Christian L. Johnson v. California Department of Transportation* (California Court of Appeal 2025) Internal emails are established as relevant and accepted by the State Court.

²¹ *Johnson v Department of Transportation* (2025) C099319 (Cal Ct App, Third Appellate District, 17 Mar 2025) (Justia Opinion Summary).

First, the email contained information related to legal strategy and assessment of Johnson's conduct, which could impact the claims and arguments in the lawsuit.

Second, the email was shared outside Caltrans' internal scope, indicating it had entered the litigation process through relevant parties and experts.

Third, the details of the email's content and context increased the likelihood that it would affect the Court's decision on the labor dispute, even though confidentiality and immunity had been clearly stated.

The California Court of Appeal (Third Appellate District) affirmed the trial court's order that the email was covered by attorney-client privilege and that Caltrans did not waive this privilege through Duncan's informal sharing. At the same time, the Court rejected Johnson's argument that the privilege was waived and also rejected any basis for applying the crime-fraud exception. The Court further affirmed compliance with procedural principles by upholding the disqualification of Johnson's attorneys and certain experts for violating the protective order.

The relevance of the email was determined based on its direct content related to the labor dispute, not merely on the form of the email or the manner of its collection. The content of the email influenced how the parties proved their claims and rebuttals in the record. The Court prioritized ensuring that content relevant to the dispute was considered, even if the email contained elements of privacy or was initially confidential.

Second, the balancing test – Rule 403

Another important principle in U.S. evidence evaluation is Rule 403 of the Federal Rules of Evidence (FRE)²², under which the court has the authority to exclude evidence, even if it is relevant, if its probative value is outweighed by the risk of unfair prejudice, confusion, or unnecessary delay²³. Although Rule 403 originates from federal law, both state and federal courts apply this principle in all civil cases. In the recent case *United States v. Ferguson* – although a criminal case – the manner of implementing Rule 403 was clearly defined: The court must take a step-by-step approach to evaluating evidence, first considering its relevance, then whether it is prohibited by another rule, and finally weighing whether to exclude it based on the criterion of “unfair prejudice” outweighing its probative value²⁴.

In civil practice, Rule 403 is often used when assessing the value of sensitive or highly prejudicial evidence, such as shocking images of objects or past conduct that is not directly relevant but easily prejudicial, even though both are somewhat relevant. This is an example of the power to balance interests that U.S. law grants to judges—a tool for which the 2015 Civil Procedure Code has no clear equivalent provision.

Third, the principle of authentication (Authentication)

FRE Rule 901²⁵ requires evidence, especially documents or electronic data, to be authenticated, meaning there must be sufficient evidence to conclude that it is what is presented.

A recent decision regarding the authentication of electronic documents is that in most labor and civil cases, the Court requires proof of the origin of emails or social media messages for authentication: for example, in *Johnson v. Department of Transportation* (California, 2025), the state court publicly disclosed the text and transcript to authenticate internal emails in the record before using them to prove the defendant's conduct²⁶.

Specifically:

²² Rule 403 Federal Rules of Evidence.

²³ Rule 403 Federal Rules of Evidence

²⁴ The Rule 403 evaluation process in the *US v. Ferguson* decision shows that the court examined each factor to consider excluding evidence.

²⁵ Rule 901 Federal Rules of Evidence

²⁶ *Christian L. Johnson v. California Department of Transportation* (California Court of Appeal 2025)

PROMOTING INNOVATION CULTURE FOR IMPROVING
LEGAL SYSTEM THROUGH COMPARISON REGARDING
EVIDENCE ASSESSMENT PRINCIPLES IN CIVIL
PROCEDURAL LAW BETWEEN VIETNAM AND USA

Case: Johnson v. Department of Transportation (California Court of Appeal, 2025)²⁷

Mr. Christian L. Johnson sued the California Department of Transportation (Caltrans) for allegations of wrongful treatment, discrimination, and retaliation in the workplace. During the proceedings, a lawyer representing Caltrans (Paul Brown, Esq.) sent an email related to the lawsuit to Nicolas Duncan, Johnson's direct supervisor. This email contained a confidentiality warning:

"This is a privileged attorney-client communication and/or is covered by the attorney work-product doctrine [...] Any unauthorized review, use, disclosure, or distribution is prohibited."

Duncan – without explicit permission – photographed this email and sent it to Johnson, who then forwarded it to his lawyer John Shepardson and shared it with several expert advisors. Caltrans subsequently filed a motion for a protective order, arguing that the email was confidential and subject to attorney-client privilege.

Court and Email Authentication

Step 1 – Confidentiality and Privilege

The court determined that Brown's emails contained clear language regarding confidentiality and attorney-client privilege ("privileged attorney-client communication"), and Caltrans had sufficiently demonstrated the elements to establish this right: the emails were sent in the context of a lawyer-client relationship and were intended to serve Caltrans' legal defense preparation.

Step 2 – Determining the Source of Evidence and Scope of Sharing

Although the email was not originally part of the case file and only appeared because Duncan forwarded it to Johnson, the Court considered:

The origin of the email (the sender was Caltrans' lawyer);

The extent of sharing contrary to confidentiality instructions;

And the fact that the email was disseminated to multiple individuals outside the legal scope.

The Court determined that this email was still relevant evidence because it reflected attitudes and content related to the lawsuit, but also acknowledged the "confidentiality" element under the legal standard of privilege.

Step 3 – Authentication

The Court held that although the email affected privilege, it could still be authenticated before the Court through:

Evidence of the attorney-client relationship;

A confidentiality warning embedded in the email content;

The email being sent during the course of litigation.

This reflects the principle of evidence authentication under U.S. standards. Under FRE Rule 901, a document is only considered evidence if there is sufficient proof that it is what the party claims it to be – in this case, that the email was sent by the attorney and bears clear markings proving its origin and purpose. Although the email only exists as a photograph, the Court still considers the photograph to be evidence supporting the authentication of the original email.

Additionally, federal courts have illustrated this principle in a recent decision in the D.C. Circuit, where the Court determined that for a "high-quality" email to be considered evidence, it must be presented along with supporting evidence proving that the email is accurate and has not been tampered with. This is a very specific application of Rule 901 in civil litigation, especially as electronic data becomes increasingly prevalent.

²⁷ *Johnson v Department of Transportation* (2025) C099319 (Cal Ct App, Third Appellate District, 17 March 2025) (Justia Opinion Summary).

In addition, U.S. law emphasizes the balance between admissibility and probative value. A notable feature of the U.S. evidentiary standard is the clear distinction between admissibility and probative value. Data, physical evidence, or documents may be admitted into the record (admissible), but the jury (or the judge in a non-jury trial) will assess their value in persuading the final decision. This is reflected in recent trial manuals and appellate court decisions—for example, courts dealing with video, email, or audio recording trials emphasize that admitting evidence does not mean that evidence determines the verdict; probative value is still considered independently by the adjudicator or jury.

In the Vietnamese system, the 2015 Civil Procedure Code stipulates that the court shall evaluate all evidence to determine the objective truth, but it does not clearly distinguish between the level of acceptance and the level of persuasion as in the United States, leading to a “blending” in the judge’s evaluation from start to finish.

According to the 2015 Civil Procedure Code, particularly Article 108, the evaluation of evidence must be objective, comprehensive, complete, and accurate. The court is responsible for examining each piece of evidence, evaluating the relationship between pieces of evidence, and determining the legality, relevance, and probative value of each piece of evidence.

Compared to the United States, there are some fundamental differences from Vietnam:

First, Vietnamese law does not clearly distinguish between “admissibility” and “evidentiary weight.” The assessment of legality and probative value often occurs simultaneously during the resolution of a case.

Second, in the United States, Rule 403 allows evidence to be excluded even if it is relevant if the risk of prejudice outweighs its probative value. Vietnamese law does not have a similar provision for excluding evidence solely because it may negatively influence the perception of the adjudicator.

Third, in the US system, when there is a jury, the assessment of credibility belongs to the jury; whereas in Vietnam, the judge and the people’s assessors are the ones who directly assess all evidence.

Fourth, the US model is highly adversarial, with the responsibility for providing and arguing evidence falling to the parties; whereas Vietnamese law maintains a certain degree of proactive involvement by the court in collecting and verifying evidence.

From the above analysis, several important theoretical conclusions can be drawn.

Comparing Vietnamese and U.S. law reveals differences not only in legislative technique but also in fundamental procedural philosophy.

First, U.S. law establishes a two-tiered control mechanism: a pre-trial tier (admissibility) conducted by the judge and a tier assessing evidentiary weight decided by the jury or judge. This structure helps limit perception risks and prevent evidence that could cause unfair prejudice. Meanwhile, Vietnamese law grants the trial panel the power to comprehensively evaluate both legality and evidentiary value in the same process, lacking an independent pre-trial mechanism.

Second, Rule 403 of the US system allows for the exclusion of evidence, even if relevant, if the risk of prejudice outweighs its probative value. This mechanism reflects a deep understanding of judicial psychology and the risk of cognitive bias. Vietnamese law currently lacks a similar provision, leading to the possibility that legally admissible but prejudicial evidence is still fully considered in case files.

Third, the clear separation between admissibility and weight in U.S. law creates a more transparent and verifiable control mechanism, contributing to higher-quality reasoning in judgments. Meanwhile, the comprehensive approach to evidence evaluation in Vietnam sometimes reduces the transparency of the judicial reasoning process.

However, it should also be noted that the U.S. adversarial system requires significant resources, a jury system, and a developed case law tradition. The adoption of experience should be selective, consistent with Vietnam’s institutional conditions and legal culture.

Recommendations

PROMOTING INNOVATION CULTURE FOR IMPROVING
LEGAL SYSTEM THROUGH COMPARISON REGARDING
EVIDENCE ASSESSMENT PRINCIPLES IN CIVIL
PROCEDURAL LAW BETWEEN VIETNAM AND USA

Based on the above analysis, several recommendations can be made to improve the mechanism for evaluating and using evidence in civil proceedings, as follows:

First, improve the mechanism for excluding evidence based on ensuring the legality and reliability of evidence. It is necessary to study and supplement provisions on the exclusion of evidence in cases where the collection, provision, or use of evidence seriously violates procedural rules, infringes on human rights or civil rights, or undermines the objectivity, integrity, and probative value of the evidence. This mechanism not only aims to ensure procedural discipline but also plays a role in preventing the unlawful collection of evidence. At the same time, it is necessary to clearly establish criteria for determining the degree of violation and the corresponding legal consequences (absolute exclusion or consideration of limiting probative value), avoiding arbitrary application and inconsistency in judicial practice.

Specifically

Article 108a. Exclusion of evidence

1. Evidence shall be absolutely excluded if it falls under any of the following cases:

- a) It is collected through acts of torture, threats, coercion, or violations of human rights or civil rights;
- b) It is collected, provided, or used contrary to the provisions of the law, and such violation seriously affects the objectivity and integrity of the evidence;
- c) It infringes on private secrets, personal secrets, family secrets, business secrets, professional secrets, or state secrets without legal grounds.

2. Evidence may be limited in its probative value in cases where its collection, provision, or preservation violates procedures but does not alter the substance of the evidence. In such cases, the Court must consider the extent of the violation, the possibility of independent verification, and the relationship with other evidence in the case file to determine the probative value.

3. When considering the exclusion of evidence, the Court must apply the principle of balancing the probative value of the evidence and the risk of causing unfair prejudice, confusion, or negatively affecting the objectivity of the trial.

4. Decisions to exclude or limit the probative value of evidence must be made in writing, clearly stating the legal basis and reasons, and must be announced at the trial so that the parties can exercise their right to debate.

5. In cases of dispute over the legality of evidence, the Court must organize a public review and debate before deciding to accept or exclude such evidence.

Second, standardize and specify the criteria for assessing the probative value of evidence. In addition to recognizing the principle of judicial discretion in evaluating evidence, it is necessary to strengthen professional guidance by clearly defining core criteria such as: the legality, relevance, authenticity, and completeness of evidence. The evaluation must be placed in the overall context of other evidence in the case file, ensuring the principles of comprehensiveness and objectivity. At the same time, it is necessary to require that the reasoning in the judgment clearly reflect the judicial reasoning process, indicating the basis for accepting or rejecting each piece of important evidence. This not only improves the quality of adjudication but also enhances transparency and the ability to control judicial power.

Specifically:

Article 108 (amended and supplemented). Evaluation of evidence

1. The court shall evaluate evidence according to the principles of independence and freedom of evaluation, on an objective, comprehensive, complete, and accurate basis.

2. The evaluation of evidence must be based on the following criteria:

- a) Legality: Evidence must be collected, submitted, preserved, and used in accordance with the procedures prescribed by law;

- b) Relevance: Evidence must be capable of clarifying the circumstances and events that are the subject of the case;
- c) Authenticity: Evidence must be reliable in terms of its origin, content, and integrity;
- d) Completeness and systemic connection: Evidence must be considered in relation to other evidence in the case file, ensuring that it fully reflects the nature of the events and circumstances of the case.

Third, gradually strengthen the adversarial element in the evidence control mechanism. Enhancing the adversarial nature should be carried out by gradually shifting the focus from the Court's active role in collecting and evaluating evidence to a verification mechanism through confrontation, rebuttal, and debate between the parties. The court plays a neutral role, presiding and ensuring procedural order, while the parties bear primary responsibility for presenting and defending their arguments. This mechanism helps to disperse the risk of judicial error, enhance the objectivity of the trial process, and strengthen confidence in the fairness of the judgment. Overall, the above recommendations aim to establish an evidence evaluation mechanism that balances the principle of free evaluation with the requirement for strict legal control, thereby improving the quality of trials, ensuring justice, and approaching progressive procedural standards.

Specifically: Article 108b (proposed addition). Evidence control based on the adversarial principle

1. The examination, acceptance, and evaluation of evidence at trial must be conducted through open and equal debate between the parties.
2. The parties have the right to:
 - a) Present, explain, and analyze the probative value of the evidence they submit;
 - b) Object to, request the exclusion of, or propose to limit the probative value of the evidence provided by the other party;
 - c) Request cross-examination, interrogation of witnesses, experts, or persons providing documents to clarify the authenticity and reliability of evidence.
3. The court shall play a neutral role, preside over the trial, and ensure procedural order; it shall not replace the parties' burden of proof, except as provided by law.
4. All decisions on the acceptance, exclusion, or evaluation of evidence must be made after the parties have been given sufficient opportunity to argue their case.
5. Where the court collects evidence itself, such evidence must be made public and the parties must be given the opportunity to examine and challenge it before it is used as a basis for resolving the case.

Conclusion

The principle of evidence evaluation is central to civil proceedings, reflecting the nature of the trial model and the degree of judicial fairness. Vietnamese law, through the 2015 Civil Procedure Code, has recognized the principles of objectivity, comprehensiveness, and completeness in evidence evaluation. However, this mechanism remains general and has not clearly established a hierarchical structure between admissibility and probative value as in the Federal Rules of Evidence. This difference stems from different procedural models, but at the same time opens up opportunities for innovation towards enhancing transparency and controlling cognitive risks in adjudication as spirit for promoting innovation culture and improving legal system in Vietnam today.

REFERENCES

2013 Constitution, amended and supplemented in 2025

2015 Civil Procedure Code

Federal Rules of Evidence. (2024). U.S. Government Publishing Office

Christian L. Johnson v. California Department of Transportation (California Court of Appeal 2025) – internal email established relevance and accepted by the State Court.

Dang Quang Huy (2021), Discussion on evidence duties of persons concerned in civil procedural law according to British-American legal systems [Ban Ve Nghia vu Chung minh cua duong su trong to tung dan su theo he thong phap luat Anh-My], Legal Professions Review, June, 2021, pp. 86-90.

PROMOTING INNOVATION CULTURE FOR IMPROVING
LEGAL SYSTEM THROUGH COMPARISON REGARDING
EVIDENCE ASSESSMENT PRINCIPLES IN CIVIL
PROCEDURAL LAW BETWEEN VIETNAM AND USA

D.C. Circuit Court Report on the Authentication of Electronic Evidence.

Do Thi Phuong (2019), Discussion on notion of electronic evidence, electronic data and electronic means in criminal proceedings [Ban Ve Khai Niem Chung Cu Dien Tu, Du Lieu Dien Tu Va Phuong Tien Dien Tu Trong To Tung Hinh Su], Journal Description, Volume No.19 (October, 2019), pp.28-34.

Hanoi University of Law (2021). Textbook on State and Legal Theory. National Political Publishing House.

Johnson v Department of Transportation (2025) C099319 (Cal Ct App, Third Appellate District, 17 Mar 2025) (Justia Opinion Summary).

Leonid Lichmana, Andrii Dryshliuka, Maksym Murzenkoa, Valeriia Boikob (2022), Principle of reasonableness in international standards of civil proceedings, International Journal of Law, Crime and Justice, 3 February, 2022, pp. 1-9.

Trinh Duy Thuyen (2026), Resolution No. 57-NQ/TW of Poliburo, theoretical foundations for improving laws on electronic evidence as source of evidence [Nghị quyết 57-NQ/TW của Bộ Chính trị, cơ sở lý luận để hoàn thiện quy định của pháp luật về nguồn chứng cứ là dữ liệu điện tử], Vietnam Social Sciences Review, No.2-2026, pp.67-74.

Vu Hoang Anh (2021), Discussion on term to provide evidence of persons concerned in civil cases [Ban ve thoi han Cung cap chung cu cua duong su trong Vu an dan su], Journal Description, Volume No.20, 2021, pp.45-50.