

## DISCLOSURE AND PROOF IN LITIGATION

The principles in litigation are evidently that the claimant is required to deliver proof of what he is claiming. This also applies to the defendant insofar as it is relevant for its defense and arguments against the claim.

Is this principle absolute in Belgium ?

Belgian law allows to deliver proof with any means possible, being:

- Authentic documents
- Private documents
- Documents that provide a beginning of a written proof (such as bank extracts of one party that mention certain references which were not denied or contradicted shortly after the date of the extract)
- assumptions
- declarations of witnesses that can be considered as objective witnesses

That the claimant has to deliver proof by any of these means is a basic principle that applies most of the time but it can be put aside in some cases, either by law or by the “active” judge.

First of all, the law can provide in the rule that the defendant has to deliver active proof. Such will be the case amongst others in the event the law provides in an objective responsibility of a defendant or in the event that law itself creates “assumptions” as a basis for objective responsibility. Such responsibility will e.g. be applicable in insolvency cases and responsibility towards the tax administration. It will be up to the defendant to deliver proof that the conditions of the objective responsibility are not met and in such event turn around the assumption.

But this is not the only exception.

In Belgium the judges have an active role when ruling in a case. The basis for this reasoning is that judges have to be able to resolve conflicts in full and not just the limited issues parties are presenting.

Parties to a litigation are free and decide themselves to disclose documents and other means of proof.

In the event nonetheless that a judge is convinced that some documents are not disclosed the judge can oblige either of the parties to deposit additional documents or even to deliver other proof of certain elements the judge may consider important to reach a decision.

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