

CIVIL LEGAL EXPERT EXAMINATION IN SPAIN

(SUBJECT TO LEGAL OR JURISPRUDENTIAL DEVELOPMENTS)



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Questions	Answers	Observations
o. Separate administrative order	Yes	
1. Procedures for launching an expertise		
1.1. Initiative :	Parties (or civil judge in exceptional cases)	It is up to the parties in a civil trial to add expert examinations to their grievances when scientific, artistic, technical or practical knowledge is necessary to evaluate relevant facts or circumstances on the case or to establish certainties from them.
1.2. Compulsory expertises	Yes (in disability trials)	In exceptional cases the law provides that the civil judge can appoint the expert: legal aid, procedure of parentage, paternity, maternity, disability, or when the parties jointly decide to ask the judge to appoint an expert.
1.3. Decision	Parties (lawyers)	In disability trials, Article 759,1 LEC in fine does not allow the judge to render a decision without calling for medical expertise. The judge must request a medical expert's opinion whether or not the parties have appointed their own experts.
1.4. « In futurum » expertise possible ?	Yes (when there are new allegations by one party and the other considers that an expert examination is necessary based on new evidence)	It is possible for expert examinations not to be taken into account by the judge if they are neither useful nor relevant nor necessary for the resolution of the trial in which they were included.
2. Appointing an expert (or experts)		
2.1. List In case of a list : Identification, address, Internet address (URL)	No list, for private expert opinions	For private expert opinions (most cases in civil law), there are no registers of legal experts, and lawyers can appoint experts registered on professional orders or in expert companies or associations or academic field.
2.2. Oath	Yes	For court appointments, that is to means, those provided in an exceptional way, in January of each year, specialised professional organisations (official orders or "colegios" of doctors, architects, etc. and private expert companies or associations as well as academic institutions) draw up a register of at least five members who have stated that they accept to be appointed as experts.
2.3. Choice of the expert	Parties, or judge	The parties choose the expert who will carry out the mission in support of their claims. If the expert is court-appointed, the judge must forward the request for appointment of an expert to the Court in charge of expertise (Juzgado Decano) for selecting an expert from the register. The selection is done in alphabetical order.
2.4. Parties associated to the appointment ?	Yes	Legal experts can be recused by a litigant if there are duly proven facts which could nurture doubt about his sincerity or objectivity. The recusal is at the court's discretion.
2.5. Nationality	Irrelevant	After being appointed by the court, the expert is notified very shortly (Article 342 LEC) and has two days to signify his acceptance or his refusal of the mission. The refusal should be motivated by a just cause, including if he is materially unable to carry it out.
2.6. Objection by the parties	Yes	
2.7. Possibility to refuse to the mission	Yes	
2.8. Possibility to add an other expert	No provision	
2.9. Possibility for the expert to use an assistant	Yes, if his request is duly reasoned	
3. Expert's mission definition		
3.1. Who defines the mission ?	The party who has appointed the expert, and the judge	The mission is determined by the party who has appointed him and by the judge. The expert must abide by it.
3.2. Type of missions	All	There is no text preventing the intervention of another expert, but the appointed expert is the only one liable for the good progress of his mission.
4. Expert's mission progress		
4.1. Supervision by a judge	The judge supervises the good progress of the expert's mission	The judge supervises the good progress of the expert's mission, can set deadline and order expert examination measures. It is the only one that may require the expert to file his report within the time limit.
4.2. Presence of both parties	The contradiction is limited to the time of the oral procedure.	The expert does not have to call on the litigants for all his operations, unless they request it of the court, and it grants this request. The contradiction is limited to the time of the oral procedure, when the parties can ask the expert what was the process of elaboration of his report.
4.3. Attendance to the hearing	Yes	If a litigant hinders the good progress of the expert's mission, the judge can order him to end his obstruction.
		The parties can intervene in the expert's proceedings (Article 345 LEC).
		The expert can be called in for a hearing by the court, confronted with the litigants' questions and with other experts, especially the litigants' experts.



Questions	Answers	Observations
5. Closing an expertise : 5.1. Does a conciliation end an expertise ?	Unspecified	Procedural law does not provide that the report be in a specific format. It must be submitted in written form and written in Castilian Spanish or in the language of the Autonomous Community of the jurisdiction in which the affair is being held.
5.2. Compulsory form for the report	No	It must include all the necessary intellectual and material elements necessary to the court's good understanding and the discussion with the litigants. The expert submits a written report which does not necessarily put an end to his mission. In any event, if the judge deems it necessary (art. 346 LEC) or if the parties request it, the expert will have to go to the hearing to confirm and explain the content of his report (Article 347 LEC).
5.3. Does the report end the expert's mission ?	No (the expert may have to go to the hearing to confirm and explain the content of his report)	The court is not bound by the expert's opinion, but must always argue any total or partial rejection of his conclusions. In order to follow or disregard an expert's findings, the judge must base himself on the principle of "healthy criticism" (it does imply a duly motivated evaluation) provided for in Article 348 LEC and duly reason his decision, most notably if there are several experts with the same opinion.
5.4. Is there a compulsory structure for the report ?	No	Article 336 LEC requires the parties to a civil trial to present the expertise on which they must rely for their rights.
5.5. Is a pre-report compulsory ?	No	
5.6. Do the expert's conclusions tie the judge ?	No	
5.7. Possibility for a second opinion	Yes	
6. Paying for the expertise : 6.1. Provision - deposit	Applicant	In judicial expertise (experts lists), the deposit will be paid by the applicant. The expert requests a large part of his total final fees when he accepts a mission. If within 5 days the party requesting the judge for an expert opinion has not deposited the amount requested by the expert, the expert remains free from having to do his report (Article 342.3 LEC).
6.2. Deposit determination	Expert	The expert freely decides the amount of this initial payment and the court can later rule on the correction of this payment.
6.3. Possibility for a complementary deposit	Yes, if the mission must be extended to include other issues.	When issuing its judgement, the court usually burdens the unsuccessful litigant with the fees, as long as the expert's intervention was considered useful, and within the limit of a third of the quantum of the damage for which compensation is attributed.
6.4. Determination of remuneration and charges	Expert	
6.5. Challenging possible ?	Yes	
7. Expert's liability 7.1. Are there documents governing the expertise ?	Civil procedure law of January 7 2000 (Ley 1/2000, de 7 de enero, de Enjuiciamiento Civil ou « LEC »), art. 335 à 352.	The expert must respect the professional rules which regulate his specialty. He must be honest and objective, which implies the absence of personal or economic ties to any of the litigants, which would compromise his impartiality and his independence. There is no representative structure for legal experts as such. The expert takes a written oath for each appointment and includes the corresponding formula into his report.
7.2. Expert's liability	The expert may be held civilly liable	The expert may be held civilly liable in conditions of common law: existence of misconduct, prejudice, and causal tie between one and the other.
7.3. Obligation for the expert to have an insurance	No	Intentional breach of the rule of honesty on the expert's part, when he has taken an oath, can lead to criminal penalty.
8. Statutes of the expert 8.1. Selection criterias	No	
8.2. Competencies classification	by the institution to which the expert belongs	
8.3. Required qualifications	by the institution to which the expert belongs	Accreditation : automatic when one belongs to an institution or expert association.
8.4. Accreditation	With expert institution or association	Classification of skills : set by the institution to which the expert belongs. Required qualifications, or in-depth knowledge when there is no specific academic title that validates the profession (Article 340 LEC). Set by the institution to which the expert belongs or by the universities.
8.5. Possibility to accredit a legal entity	Yes	Grant of accreditation : automatically results from belonging to an expert institution or association.
8.6. Accreditation duration	by the institution to which the expert belongs	Possible appointment of a legal person but with a preference for renowned universities and / or scientific establishments.
8.7. Ability periodic monitoring	No	Code of ethics and « good practice » : set by the institution to which the expert belongs.
8.8. Activity monitoring	No	Laws governing the expert's status : Civil procedure law of January 7 2000 (Ley 1/2000, de 7 de enero, de Enjuiciamiento Civil ou « LEC »), art. 335 à 352.
8.9. Activity reporting by the expert	No	
8.10. Ethics rules	Yes	
8.11. « Best practices »	Yes	
8.12. Possibility for sanctions	No	
8.13. Texts governing the expert's statutes	Yes	

Bibliography	<p>ABEL, Xavier et PICO, Joan : La prueba pericial. Ed. Bosch, 2009 Loi de procédure civile du 7 janvier 2000 (Ley 1/2000, de 7 de enero, de Enjuiciamiento Civil ou « LEC »), art. 335 à 352. Sonia Monserrat Gutiérrez Muñoz, La prueba pericial en el proceso civil, Ed. Bosch, Biblioteca básica de práctica procesal n° 121, 2009 (avec un Cd-rom et une importante bibliographie en annexe à cet ouvrage). www.cogiti.es = Conseil Général des Collèges Officiel des Experts et Ingénieurs Techniques Industriels www.cscae.com/uapfe = Union des Architectes Experts Légistes d'Espagne www.cgcom.org = Conseil Général des Collèges Officiel de Médecins www.refor.org = Registre des Économistes Légistes</p>
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