

Criminal Law

Criminal law is concerned with protecting the citizens of a community from actions that disturb the social order of that community, such as murder and assault. This body of law provides a set of rules for peaceful, safe, and orderly living. People that break these laws can be prosecuted, and if found guilty, could be fined or sent to prison, or both. Because criminal law deals with protecting the community as a whole, the government is empowered to enforce it. In a criminal case, the federal, state, or municipal government brings the action in the name of its citizens against a defendant who has been accused of committing a crime. The people are represented by a prosecuting attorney such as the local county District Attorney General, the Attorney General for a state, or the United States Attorney General. The case proceeds to trial only if the defendant pleads not guilty. If the defendant pleads guilty, there is no need for a trial to determine innocence or guilt.

Parties

In criminal law, the legal action which is also known as a suit, is initiated by the prosecutor who decides whether to bring charges and what charges to bring. A criminal law attorney represents a defendant who is being prosecuted by the state or federal government for an act that has been classified as a crime. If he cannot afford an attorney, the court appoints one free of charge, except in the case of certain minor offenses such as traffic violations when the prosecutor is not seeking time in jail as punishment. This is unique to criminal law in that the results of a conviction can lead to the loss of liberty.

Testimony

In a criminal case, the defendant is not required to testify and has the right to legal counsel. Even if law enforcement agents simply want to question someone before any criminal charges are filed, that person has the right to consult with an attorney before speaking to the police. In a criminal proceeding, an individual is considered innocent until proven guilty. The defendant has the right to plead not guilty and be tried in a court. Even if the defendant is guilty, the criminal law attorney might think that the evidence against the defendant is not enough to prove the individual guilty. If this is the case, the defendant might have a better chance going to trial.

Burden of Proof

The burden of proof in criminal law is completely on the state to prove its case. The state (the prosecution) must prove that the defendant satisfies each element of the definition of a crime and that his participation was beyond a reasonable doubt. The defendant retains the presumption of innocence until proven guilty by the state. The prosecutor in a criminal law case must prove to the judge or jury "beyond a reasonable doubt" that the defendant is guilty of the crime charged. Although this does not mean proof beyond all possible doubt, it is a heavier burden of proof than required in civil cases. At the end of a trial, the judge or jury can only find the defendant guilty if they are left without a reasonable doubt about the defendant's guilt.

Types of Activities

Any act or failure to perform an act as designated by public law is considered a crime. Most crimes consist of three elements: an act (actus reus), a mental state (mens rea), and the intent to do social harm. In a criminal case, the defendant is charged with a crime against society such as murder, burglary, robbery, or theft. In criminal law, police generally must first obtain a search warrant in a proceeding showing a "neutral and detached" magistrate that there is "probable cause," before searching or seizing items from a person's house. Crimes classified as misdemeanors include less serious offenses that are normally punishable by a fine, such as some traffic violations, petty theft, or possession of a small amount of marijuana. Felonies include more serious offenses that warrant imprisonment of one or more years, such as rape, grand theft, assault and battery, assault with a deadly weapon, or homicide/murder.

Penalties

In criminal law, the penalties include loss of liberty, which distinguishes it from civil law. Penalties can be imposed as fines, imprisonment, and the ultimate loss of liberty, the death penalty. Crimes are divided into misdemeanors, which are punishable by one year or less in prison, whereas felonies are punished by imprisonment for one year or more up to life, or death. Criminal law is about punishing offenders and stopping them from doing it again. It is not generally about dealing with individual rights that is the realm of civil law. Criminal law is about protecting the community of citizens as a whole; however, the court might award the victim compensation at the end of a case, if the defendant is found guilty. A federal criminal conviction requires a unanimous decision by 12 jurors, or to be found guilty by a judge if the defendant chooses not to have a jury. Should the defendant be acquitted, the government has no right of appeal. Because law believes the possibility of the loss of one's freedom is much more serious than having to pay damages to a plaintiff, criminal litigation is a much more serious process than civil litigation and gives criminal defendants more rights and protections than civil defendants have.

Protections Specified in the U.S. Constitution

1. A defendant who is found not guilty of a more serious charge cannot have a second trial on a lesser included offense. For example, if D is found not guilty on a charge of felony murder (that is, incidental killing of someone during the commission of a felony, such as robbery), D cannot be tried for the underlying felony (that is, robbery).
2. The prosecution cannot appeal a not guilty verdict. Of course, the criminal defendant can appeal a guilty verdict, and an incarcerated criminal can file a habeas corpus writ. (This is the legal action by which detainees can seek relief from unlawful imprisonment. The writ of habeas corpus has historically been an important instrument for the safeguarding of individual freedom against arbitrary state action.)

Due Process

Due process is the legal proceedings carried out fairly and in accord with established rules and principles. Due process standards are sometimes referred to as either substantive or procedural. Substantive due process refers to a requirement that laws and regulations be related to a legitimate government interest (e.g., crime prevention) and not contains provisions that result in the unfair or arbitrary treatment of an individual. The 5th Amendment to the Constitution of the United States states that "no person shall...be deprived of life, liberty, or property, without due process of law." This right was extended to the states by the 14th Amendment (1868). Fundamental to procedural due process are adequate notice before the government can deprive one of life, liberty, or property, and the opportunity to be heard and defend one's rights. The boundaries of due process are not fixed and are the subject of endless judicial interpretation and decision making. Due process embodies the Constitutional protections listed.

Civil Law

A civil case is one in which a person who has a complaint can bring a legal action to protect his interests or collect monetary damages. Civil law deals with the rights and duties of one individual to another. The person claiming relief is called a plaintiff, petitioner, or complainant. The person against whom relief is sought is called a defendant or respondent. In a civil case, it is the individual who feels wronged or injured (the plaintiff) who decides whether to file a civil suit. When damages are sought, the plaintiff decides how much to demand in damages, although the judge or jury decides whether and how much a plaintiff can recover. In a civil case, the plaintiff cannot seek to have a defendant jailed unless the defendant has violated a court order.

In civil law, an individual must take personal action to start the process; the state will not do this for you. You can hire an attorney to pursue the action at your expense. For example, you engage a contractor to build an extension on your house, but he does not complete the job. You might have to sue the contractor for breach of contract. If so, you must take the action

against the contractor because this is a private matter between you and the contractor. The state or the police will not get involved. Civil law relates to the relationships of contract and exchange between private parties (individuals, businesses, or individuals and businesses), such as marriage, divorce, buying and selling property, contracts, and warranties, and so on. Rather than being tried in a criminal court and a criminal conviction and sentence being imposed, civil law cases are litigated in civil courts as lawsuits, and the end result is normally financial compensation. Civil law encompasses all law that is not criminal and is divided into two branches: tort law and contract law.

Tort Law

Torts are civil wrongs recognized by law as grounds for a lawsuit. These wrongs result in an injury or harm constituting the basis for a claim by the injured party. Although some torts are also crimes punishable with imprisonment, the primary aim of tort law is to provide relief for the damages incurred and serve as a deterrent to others committing the same offense. The injured person can sue for an injunction to prevent the continuation of the harmful conduct or for monetary damages. Among the types of damages the injured party might recover are loss of earnings capacity, pain and suffering, and reasonable medical expenses. They include both present and future expected losses. Tort law is state law created through judges (common law) and by legislatures (statutory law). Specific torts include trespass, assault, battery, negligence, products liability, and intentional infliction of emotional distress. Torts fall into three general categories: negligent torts (e.g., causing an accident by failing to obey traffic rules); intentional torts (e.g., intentionally hitting a person); and strict liability torts (e.g., liability for making and selling defective products). Negligent torts occur when the defendant's actions are unreasonably unsafe. Intentional torts are those wrongs that the defendant knew or should have known would occur through his actions or inactions. Strict liability wrongs do not depend on the degree of carefulness by the defendant but are established when a particular action causes damage.

Contract Law

Contracts are promises that the law will enforce. The law provides remedies if a promise is breached or recognizes the performance of a promise as a duty. Contracts arise when a duty does or might come into existence because of a promise made by one of the parties. To be legally binding as a contract, a promise must be exchanged for adequate consideration. Adequate consideration is a benefit or detriment that a party receives that reasonably and fairly induces them to make the promise/contract. For example, promises that are purely gifts are not considered enforceable because the personal satisfaction the grantor of the promise might receive from the act of giving is normally not considered adequate consideration. Certain promises that are not considered contracts might, in limited circumstances, be enforced if one party has relied to his detriment on the assurances of the other party. Contracts are mainly governed by state statutory and common (judge-made) law and private law. Private law principally includes the terms of the agreement between the parties who are exchanging promises. This private law might override many of the rules otherwise established by state law. Statutory law might require some contracts be put in writing and executed with particular formalities. Otherwise, the parties might enter into a binding agreement without signing a formal written document.

Testimony in Civil Law

In a civil case, anyone with knowledge of facts relevant to the case can generally be required to testify as a witness in court, and any witness has a right to appear with an attorney. "In civil law, an attorney may demand information from the opposing party about any matter that is relevant to the case, provided that information is not privileged. In civil law, an attorney may properly demand information that would be *inadmissible* at trial, if such demand 'appears reasonably calculated to lead to the discovery of admissible evidence'. An attorney may even take the deposition of nonparties in a civil case, and require them to bring documents with them. In civil law, an attorney may request documents or a visit inside a building." "In a civil case, the defendant must be available and cooperative for depositions and testimony as a witness in the trial. In fact, the defendant in a civil case in Federal court must voluntarily provide his/her opponent with a copy of documents 'in the possession, custody, or control of

the party that are relevant to disputed facts alleged with particularity in the pleadings." Further, the defendant in a civil case must voluntarily provide names of people who are "likely to have discoverable information relevant to disputed facts alleged with particularity in the pleadings." In other words, the defendant in a civil case must help his/her opponent collect evidence that will defeat the defendant. And, at trial, if a party invokes their Fifth Amendment privilege against self incrimination, then the judge will instruct the jury that they may make an adverse inference against the party who refused to testify.

Parties

Civil law is about private disputes between individuals or between individuals and organizations. Civil matters include areas such as contract law, family law, tort law, property law, and labor law. The person suing for a wrong has the burden of proving his case on a "balance of probabilities." This means that a judge or jury must believe his story and evidence more than the defendant's version. They do not need to be convinced beyond a reasonable doubt. One or both parties can be represented by an attorney.

Types of Activities

Civil disputes usually involve some loss or injury to one party or his property. Unlike criminal law; however, civil law is primarily involved with compensating victims. If a civil action is successful, the defendant will be responsible for the wrongful action. Although a defendant in a criminal case might be found guilty or not guilty, a defendant in a civil case is said to be liable or not liable for damages. Civil law offenses range from a breach of contract or warranty, the unlawful taking of property, invasions of privacy, negligence, or intentional and unintentional infliction of physical injury or emotional distress (personal injury) to severe rights violations such as gross negligence, medical malpractice, and wrongful death. In addition, civil law addresses the following:

1. Property—Boundary disputes, trespass
2. Work-related disputes—Unfair dismissal, personal injury
3. Defamation of character
4. Consumer disputes—Faulty goods, trades-description offenses
5. Copyright or intellectual property disputes

Burden of Proof

Plaintiffs in a civil lawsuit need to show only by the weight or preponderance of the evidence that a defendant is 51% or more liable (responsible) for the damages. This is a lower burden of proof than in criminal law. The standard is what a reasonable and prudent man would have done. The burden of proof begins with the plaintiff, and then the burden switches to the defendant to rebut the plaintiff's evidence. "In civil law, the plaintiff wins if the preponderance of the evidence favors the plaintiff. For example, if the jury believes that there is more than a 50% probability that the defendant was negligent in causing the plaintiff's injury, the plaintiff wins. A few tort claims (e.g., fraud) require that plaintiff prove his/her case at a level of 'clear and convincing evidence,' which is a standard higher than preponderance, but less than 'beyond a reasonable doubt used in criminal court.

Penalties

In civil law, a guilty party cannot be imprisoned or executed. A party found guilty is usually referred to as the losing party, and he will be required to reimburse the plaintiff the amount of loss determined by the judge or jury that can include punitive damages. It is important to realize that punitive damages cannot be awarded in a civil case that is covered by contract law. "In a civil case under tort law, there is a possibility of punitive damages, *if* the defendant's conduct is egregious and had either 1.) a malicious intent (desire to cause harm), 2.) gross negligence (conscious indifference), or 3.) a willful disregard for the rights of others. The use of punitive damages makes a public example of the defendant and supposedly deters future wrongful conduct by others. Punitive damages are particularly important in torts involving invasion of privacy and civil rights, where the actual monetary injury to plaintiff(s) may be small.

Protections under the Constitution

Many of the protections that are available to defendants in a criminal case are not available in civil law. For instance, the prohibition against double jeopardy applies only to criminal trials. "In civil litigation the concept is *res judicata*: you can only have one trial for issues coming from one occurrence.

Summary

The O. J. Simpson case demonstrates both the criminal and civil law system. How can a person be acquitted of murder in a criminal trial and then be held liable for a victim's wrongful death in a civil trial? First, a criminal prosecution involves different laws, a different court system, and different burdens of proof. Specifically, the definition of first degree murder in the context of the O.J. case requires that the act be done deliberately and with a great deal of malice directed toward the victim. And to convict in the criminal court, the case against the defendant must be proven beyond a reasonable doubt. However, in a civil case for wrongful death, the plaintiff has to show only that the defendant was legally responsible for the death. To get punitive damages, as the plaintiffs did in the O.J. case, you have to show that the defendant acted recklessly. The burden of proof in a civil case is preponderance of the evidence, which is a much lower standard than is used in criminal law. Such was the case for O. J. A civil jury found it more likely than not that he caused the death of his wife and her friend. A criminal jury was unable to find beyond a reasonable doubt that O.J. committed first-degree murder.