

1.3: The Difference Between Civil and Criminal Law

Learning Objectives

1. Compare civil and criminal law.
2. Ascertain the primary differences between civil litigation and a criminal prosecution.

Law can be classified in a variety of ways. One of the most general classifications divides law into civil and criminal. **Civil law** is “a branch of law that regulates the non-criminal rights, duties of persons ([natural persons](#) and [legal persons](#)) and equal legal relations between private individuals.”¹ As this definition indicates, civil law is between individuals, not *the government*. **Criminal law** involves regulations enacted and enforced by government action, while civil law provides a remedy for individuals who need to enforce private rights against other individuals. Some examples of civil law are tort law, family law, wills and trusts, and contract law. If individuals need to resolve a *civil dispute*, this is called **civil litigation**, or a civil lawsuit.

Characteristics of Civil Litigation

It is important to distinguish between **civil litigation** and **criminal prosecution**. Civil and criminal cases share the same courts, but they have very different goals, purposes, and results. Sometimes, one set of facts gives way to both a civil lawsuit *and* a criminal prosecution. This does not violate double jeopardy and is quite common.

Parties in Civil Litigation

In civil litigation, an injured party sues to receive a court-ordered remedy, such as money, property, or some sort of performance. Anyone who is injured—an individual, corporation, or other business entity—can sue civilly. In a civil litigation matter, the injured party that is suing is called the **plaintiff**. A plaintiff must hire and pay for an attorney or represent themselves. Hiring an attorney is one of the many costs of litigation and should be carefully contemplated before jumping into a lawsuit.

The alleged wrongdoer and the person or entity being sued are called the **defendant**. While the term *plaintiff* is always associated with civil litigation, the wrongdoer is called a defendant in *both* civil litigation and a criminal prosecution, so this can be confusing. The defendant can be any person or thing that has caused harm, including an individual, corporation, or other business entity. A defendant in a civil litigation matter must hire and pay for an attorney *even if that defendant did nothing wrong*. The right to a free attorney does not apply in civil litigation, so a defendant who cannot afford an attorney must represent themselves.

Goal of Civil Litigation

The *goal* of civil litigation is to *compensate the plaintiff* for any injuries and to put the plaintiff back in the position that person held before the injury occurred. This goal produces interesting results. It occasionally creates liability or an obligation to pay when there is no fault on behalf of the defendant. The goal is to make the plaintiff whole, not to punish, so *fault* is not really an issue. If the defendant has the resources to pay, sometimes the law requires the defendant to pay so that society does not bear the cost of the plaintiff's injury.

A defendant may be liable *without* fault in two situations. First, the law that the defendant violated may not require fault. Usually, this is referred to as **strict liability**. Strict liability torts do not require fault because they do not include an intent component. Strict liability and other intent issues are discussed in detail in [Chapter 4](#).

Another situation where the defendant may be liable without fault is if the defendant did not actually commit any act but is associated with the acting defendant through a *special relationship*. The policy of holding a separate entity or individual liable for the defendant's action is called **vicarious liability**.

An example of vicarious liability is employer-employee liability, also referred to as **respondeat superior**. If an employee injures a plaintiff while on the job, the *employer* may be liable for the plaintiff's injuries, regardless of whether the employer is at fault. Clearly, between the employer and the employee, the employer generally has the better ability to pay.

Example 1.3.1

Chris begins his first day at his new job as a cashier at a local fast food restaurant. Chris attempts to multitask and pour hot coffee while simultaneously handing out change. He loses his grip on the coffee pot and spills steaming-hot coffee on his customer Geoff's hand, causing Geoff to sustain burns. Chris doesn't have the money to pay for Geoff's medical treatment or

the value of his pain and suffering. Even though the restaurant did not spill the coffee, can the restaurant still be liable to Geoff?

Solution

Yes, even though the restaurant did not cause the spill, it may be liable for Geoff's injuries resulting from the spill under a theory of *respondent superior*.

Harm Requirement

The goal of civil litigation is to compensate the plaintiff for injuries, so the plaintiff must be a bona fide **victim** that can prove **harm**. If there is no evidence of harm, the plaintiff has no basis for the civil litigation matter. An example would be when a defendant rear-ends a plaintiff in an automobile accident without causing damage to the vehicle (property damage) or physical injury. Even if the defendant is at fault for the automobile accident, the plaintiff cannot sue because the plaintiff does not need compensation for any injuries or losses.

Many crimes have corresponding civil "wrongs" called **torts**. However, while not all crimes require harm, torts generally do require harm.

Damages

Often the plaintiff sues the defendant for money rather than a different, performance-oriented remedy. In a civil litigation matter, any money the court awards to the plaintiff is called **damages**. Several kinds of damages may be appropriate. The plaintiff can sue for **compensatory damages**, which compensate for injuries, **costs**, which repay the lawsuit expenses, and in some cases, **punitive damages**. Punitive damages, also referred to as **exemplary damages**, are *not* designed to compensate the plaintiff but instead focus on *punishing* the defendant for causing the injury. *BMW of North America, Inc. v. Gore*, 517 U.S. 559 (1996).

Characteristics of a Criminal Prosecution

A criminal prosecution takes place after a defendant violates a federal or state criminal statute or, in some jurisdictions, after a defendant commits a common law crime. Statutes and common law crimes are discussed in [Section 1.6 Sources of Law](#).

Parties in a Criminal Prosecution

The government commences the criminal prosecution, rather than an individual plaintiff. If the defendant commits a federal crime, **the United States of America** pursues the criminal prosecution. If the defendant commits a state crime, the state government, often called the **People of the State** pursues the criminal prosecution. As in a civil lawsuit, the alleged wrongdoer is called the **defendant** and can be an individual, a corporation, or other business entity.

The *attorney* who represents the government controls the criminal prosecution. In a federal criminal prosecution, this is the **United States Attorney**. In a state criminal prosecution, this is generally a state **prosecutor** or a **district attorney**. A state prosecutor works for the state but is typically an elected official who represents the county where the defendant allegedly committed the crime.

Applicability of the Constitution in a Criminal Prosecution

The defendant in a criminal prosecution can be represented by a private attorney or a *free* attorney paid for by the state or federal government if he or she is *unable to afford attorney's fees* and is *facing incarceration*. *Alabama v. Shelton*, 535 U.S. 654 (2002). Attorneys provided by the government are called **public defenders**. [18 U.S.C. § 3006A](#). This is a significant difference from a civil litigation matter, where both the plaintiff and the defendant must hire and pay for their own private attorneys. The court appoints a free attorney to represent the defendant in a criminal prosecution because *the Constitution is in effect* in any criminal proceeding. The Constitution provides for the assistance of counsel in the Sixth Amendment, so *every* criminal defendant facing incarceration has the right to legal representation, regardless of wealth.

The presence of the Constitution at every phase of a criminal prosecution changes the proceedings significantly from the civil lawsuit. The criminal defendant receives many constitutional *protections*, including the right to remain silent, the right to due process of law, the freedom from double jeopardy, and the right to a jury trial, among others.

Goal of a Criminal Prosecution

Another substantial difference between civil litigation and criminal prosecution is the *goal*. Recall that the goal of civil litigation is to compensate the plaintiff for injuries. In contrast, the goal of a criminal prosecution is to *punish* the defendant.

One consequence of the goal of punishment in a criminal prosecution is that *fault* is almost always an element in any criminal proceeding. This is unlike civil litigation, where the ability to pay is a priority consideration. Clearly, it is unfair to punish a defendant who did nothing wrong. This makes criminal law justice-oriented and very satisfying for most students.

Injury and a victim are *not* necessary components of a criminal prosecution because punishment is the objective, and there is no plaintiff. Thus, behavior can be criminal even if it is essentially harmless. Society does not condone or pardon conduct simply because it fails to produce a tangible loss.

✓ Example 1.3.2

"Harmless" or "Victimless" Crimes

Steven is angry because his friend Bob broke his skateboard. Steven gets his gun, which has a silencer on it, and puts it in the glove compartment of his car. He then begins driving to Bob's house. While Steven is driving, he exceeds the speed limit on three different occasions. Steven arrives at Bob's house and then he hides in the bushes by the mailbox and waits. After an hour, Bob opens the front door and walks to the mailbox. Bob gets his mail, turns around, and begins walking back to the house. Steven shoots at Bob three different times but misses, and the bullets end up landing in the dirt. Bob does not notice the shots because of the silencer. Did Steven commit any crimes even though no one was harmed?

Solution

Steven has committed several crimes: (1) If Steven does not have a special permit to carry a concealed weapon, putting the gun in his glove compartment is probably a crime in most states. (2) If Steven does not have a special permit to own a silencer for his gun, this is probably a crime in most states. (3) If Steven does not put the gun in a locked container when he transports it, this is probably a crime in most states. (4) Steven committed a crime each time he exceeded the speed limit. (5) Each time Steven shot at Bob and missed, he probably committed the crime of attempted murder or assault with a deadly weapon in most states. Notice that none of the crimes Steven committed caused any discernible harm. However, common sense dictates that Steven should be punished so he does not commit a criminal act in the future that *may* result in harm.

Table 1.3.1 Comparison of Criminal Prosecution and Civil Litigation

Feature	Criminal Prosecution	Civil Litigation
Victim	No	Yes. This is the plaintiff.
Initiator of lawsuit	Federal or state government	Plaintiff
Harm	No	Yes. This is the basis for damages.
Constitutional protections	Yes	No
Attorney for the initiator	US Attorney or state prosecutor	Private attorney
Attorney for the defendant	Private attorney or public defender	Private attorney

Table 1.3.2 Comparison of Criminal and Civil Laws Related to Causing Another's Death

Criminal	Civil
Wisconsin	

<p>Wis. Stat. § 940.01(a): First-degree intentional homicide. [W]hoever causes the death of another human being with intent to kill that person or another is guilty of a Class A felony. [For a Class A felony, life imprisonment.]</p>	<p>Wis. Stat. § 895.03: Recovery for death by wrongful act. Whenever the death of a person shall be caused by a wrongful act, neglect or default and the act, neglect or default is such as would, if death had not ensued, have entitled the party injured to maintain an action and recover damages in respect thereof, then and in every such case the person who would have been liable, if death had not ensued, shall be liable to an action for damages notwithstanding the death of the person injured; provided, that such action shall be brought for a death caused in this state.</p> <p>Wis. Stat § 895.04(4): Plaintiff in wrongful death action. Judgment for damages for pecuniary injury from wrongful death may be awarded to any person entitled to bring a wrongful death action. Additional damages not to exceed \$500,000 per occurrence in the case of a deceased minor, or \$350,000 per occurrence in the case of a deceased adult, for loss of society and companionship may be awarded to the spouse, children or parents of the deceased, or to the siblings of the deceased, if the siblings were minors at the time of the death.</p>
<p style="text-align: center;">Michigan</p>	
<p>Mich. Comp. Laws § 750.316(a): First Degree Murder. [A] person who commits...the following is guilty of first degree murder and shall be punished by imprisonment for life without eligibility for parole: (a) Murder perpetrated by means of poison, lying in wait, or any other willful, deliberate, and premeditated killing.</p>	<p>Mich. Comp. Laws § 600.2922(1): Death by wrongful act, neglect, or fault of another . . . Whenever the death of a person, injuries resulting in death...shall be caused by wrongful act, neglect, or fault of another, and the act, neglect, or fault is such as would, if death had not ensued, have entitled the party injured to maintain an action and recover damages, the person who or the corporation that would have been liable, if death had not ensued, shall be liable to an action for damages, notwithstanding the death of the person injured... and although the death was caused under circumstances that constitute a felony.</p>

Law & Ethics Exercises: The O. J. Simpson Case

Two Different Trials—Two Different Results

O. J. Simpson was prosecuted criminally and sued civilly for the murder and wrongful death of victims Ron Goldman and his ex-wife, Nicole Brown Simpson. In the criminal prosecution, which came first, the US Constitution provided O. J. Simpson with the right to a fair trial (due process) and the right to remain silent (privilege against self-incrimination). Thus the burden of proof was **beyond a reasonable doubt**, and O. J. Simpson did *not* have to testify. O. J. Simpson was acquitted, or found *not guilty*, in the criminal trial.²

In the subsequent civil lawsuit, the burden of proof was a **preponderance of the evidence** (in essence, 51–49 percent), and O. J. Simpson was forced to testify. O. J. Simpson was found *liable* in the civil lawsuit. The jury awarded \$8.5 million in compensatory damages to Fred Goldman (Ron Goldman’s father) and his ex-wife Sharon Rufo. A few days later, the jury awarded punitive damages of \$25 million to be shared between Nicole Brown Simpson’s children and Fred Goldman.³

? Law & Ethics Exercise 1.3.1

Do you think it is ethical to give criminal defendants more legal protection than civil defendants? Why or why not? Compare your answer to the discussion below.

Discussion

The reason criminal defendants get special protections not extended to civil litigation defendants is the harshness of the *punishment* and the *inequality* of the criminal prosecution itself. Criminal defendants may lose their lives or their liberty.

Civil litigation defendants risk only a loss of *money*. Additionally, criminal defendants face the intimidating prospect of fighting the government and all of its vast resources. Civil litigation defendants are squaring off against *another individual*. As a society, we believe that there is nothing as unjust as punishing an innocent person. Thus, we give criminal defendants special protections to level the playing field.

? Law & Ethics Exercise 1.3.2

Considering the rights of criminal defendants granted by the Bill of Rights, what is the likely reason the criminal trial of O. J. Simpson occurred before the civil trial?

Answer

The criminal trial took place first because O. J. Simpson was a criminal defendant and therefore had the benefit of the Sixth Amendment right to a *speedy trial*. Constitutional protections are discussed in [Chapter 3](#).

Key Takeaways

- Civil law regulates the private rights of individuals. Criminal law regulates individuals' conduct to protect the public.
- Civil litigation is a legal action between individuals to resolve a civil dispute. Criminal prosecution is when the government prosecutes a defendant to punish illegal conduct.

Exercises

? Exercise 1.3.1

Jerry, a law enforcement officer, pulls Juanita over for speeding. When Jerry begins writing Juanita's traffic ticket, she starts to berate him and accuse him of racial profiling. Juanita later calls the highway patrol where Jerry works and files a false complaint against Jerry. Being afraid of the potential political implications of citizens believing that the department won't handle racial profiling complaints seriously, Jerry gets fired. Jerry sues Juanita for \$50,000 for defamation related to filing the false report. Is this a **civil litigation matter** or a **criminal prosecution**?

Answer

This is a *civil litigation* matter. Although the incident involves Jerry, who is a law enforcement officer, and it takes place while Jerry is writing a traffic ticket, Jerry is suing Juanita for *damages*. Thus, this is civil litigation, not criminal prosecution. If Juanita is *prosecuted* for the crime of filing a false police report, then this would be a criminal prosecution.

? Exercise 1.3.2

Read [Johnson v. Pearce](#), 557 S.E.2d 189 (N.C. Ct. App. 2001). In this case, the plaintiff sued the defendant for "criminal conversation." Is this a civil litigation matter or a criminal prosecution?

Answer

The *Johnson* case reviews an award of damages and is thus a *civil litigation* matter. Criminal conversation is the tort of adultery in North Carolina.

Footnotes

1. [Wex legal dictionary and encyclopedia](#). ↵
2. Linder, n.d., [O.J. Simpson Trial](#). ↵
3. Ayres, 1997, [Jury Decides Simpson Must Pay \\$25 Million in Punitive Award](#). ↵

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