

5.3: Civil vs. Criminal Liability

A legal case can be civil or criminal. Each case has different components and requirements. Before one can understand the civil and criminal systems, it is important to understand the aspects of both civil and criminal laws. The scope, consequences, and treatments of each vary.

Constitutional Rights

It is important to understand the Constitution, which is the basis of all law. States are allowed to create and categorize crimes and punishment, as long as they do not violate rights protected by the U.S. Constitution. For example, in a fairly recent United States Supreme Court case, *Lawrence v. Texas*, the defendants asserted the unconstitutionality of a Texas law (enacted by the Texas legislature) regarding a particular act. When the United States Supreme Court ruled it unconstitutional, Texas could no longer enforce it.

Frequent issues litigated in the courts are:

- Whether evidence must be suppressed (not allowed to be introduced at trial) because it was obtained pursuant to an unreasonable search and seizure (violating the Fourth Amendment). This category might involve a sub-issue about whether officers had sufficient probable cause to conduct a warrantless search. Without a warrant, and without the suspect's consent, officers generally may only conduct searches if they have "probable cause" to do so; any evidence obtained without consent or probable cause can be objected to, and ultimately ruled inadmissible by the court in trial, if illegally obtained.
- Whether evidence must be suppressed because it was obtained while the suspect was "in custody" without advising a suspect of his rights to remain silent, to speak to an attorney, and to the appointment of an attorney if he cannot afford one (Fifth Amendment privilege against self-incrimination and Sixth Amendment right to counsel), as required by the Supreme Court in the famous *Miranda v. Arizona* case. The term often used to describe these rights is "Mirandizing," which is named after the case.
- Whether a state law or constitutional provision provides more protection than the U.S. Constitution.



Figure 5.3.1: Both civil and criminal convictions are based on precedent. (Credit: PactoVisual/ pixabay/ License: CC0)

Components of Crime

There are usually two components to criminal conduct that must be proven by the prosecutor. The prosecutor prosecutes the case against the accused: ***mens rea*** (the criminal, or guilty, or "wrongful" mind) and ***actus reus*** (the criminal, or guilty, or "wrongful" act).

Each statute creating a crime is supposed to include a description of:

- a. the mental state (***mens rea***) required to establish that the suspect committed the crime, coupled with
- b. a description of the conduct (***actus reus***) that the suspect must have done.

The statute generally also indicates the category of crime (felony/misdemeanor/gross misdemeanor).

Criminal Procedures

Generally, the first pleading filed by the prosecutor is called the **information**. (This step could be described as the criminal counterpart to a civil “complaint.”)

The next stage is called the **arraignment**, where the defendant appears in court so that the court can determine or confirm his or her identity, inform the defendant of the charge the prosecutor has filed against him or her, and hear the defendant’s plea.

Then, there will be discovery and trial. In criminal cases, the jury will convict only if convinced “beyond a reasonable doubt” that the defendant committed the crime, and the verdict must be unanimous. This type of case involves a higher burden of proof than in civil cases.

Criminal and Civil Law

Criminal law addresses behaviors that are offenses against the public, society, or state. Examples of criminal law offenses include assault, drunk driving, and theft. In contrast, **civil laws** address behavior that causes an injury to the private rights of individuals in areas such as child support, divorce, contracts, property, and the person. Examples of civil law offenses include libel, slander, or contract breaches.

Criminal and civil cases differ in who initiates the case, how the case is decided, what punishments or penalties are issued, requirements of proof, and legal protections provided.



Figure 5.3.2: Civil and criminal cases involve the court system. (Credit: Brett Sayles/ pexels/ License: CC0)

Initiation and Roles

Criminal and civil cases are initiated differently, and the titles of the individuals involved differ slightly. Criminal cases are only initiated by the federal or state government in response to a law being broken. The federal or state governments are known as the prosecution. The prosecution is an attorney, or group of attorneys, hired by the government to present a case against the accused. Criminal cases are usually titled something like “State v. [last name of the defendant accused of a crime].” In criminal prosecutions, the victim is not a party to the lawsuit, but might be a witness for the state at the trial.

In contrast, private parties initiate civil cases when they feel that someone has injured them. Again, civil cases stem from breach of contract, custody cases, and attacks on one’s character. Private parties can include an individual, a group, or a business. The person, group, or business who initiates the case is referred to as the plaintiff or complainant. The accused is referred to as the defendant, in both criminal and civil proceedings.

Typically, there is a difference in the burden of proof for the two types of cases. In a criminal case, the defendant must be proven guilty “beyond a reasonable doubt.” In a civil case, the defendant must be proven liable through a “preponderance of the evidence.” In other words, the prosecution in a civil case must prove that it is more probable than not that the defendant is liable.

In criminal cases, the defendant is entitled to an attorney and may be appointed an attorney if he or she is not able to afford one. The state appoints the attorney. In contrast, all parties involved in a civil case are required to secure their own legal representation.

Typically, civil and criminal laws use different terminology, and being found guilty or accountable in each type of case results in different consequences.

In a civil action (lawsuit), the plaintiff is the person who is alleging that he or she has actually been harmed (physically, financially, or in another manner), and the defendant is the one who is asked to pay damages or otherwise compensate the plaintiff. Outside of financial compensation, the plaintiff may be ordered to do something or refrain from doing something, which is referred to as injunctive relief.

In the *Liebeck v. McDonald's* case, a woman sued McDonald's for serving hot coffee. The woman spilled hot coffee on her lap while trying to add cream and sugar. The woman sued McDonald's for negligence in a civil suit. The issue centered on whether or not the coffee's specific temperature was unreasonably hot. McDonald's lost the lawsuit. The compensatory verdict was \$160,000. McDonald's was found liable.

Conversely, if a defendant is convicted of committing a crime, the consequences are usually incarceration (jail/prison) and/or a fine (payment of money to the state).

The word used to describe the legal responsibility for harm in a civil case is liability, not guilt. Guilty is the word used to describe a person found guilty of committing a crime in a criminal case.

Businesses can be charged with criminal acts as well. In 2017, Oliver Schmidt, former manager of a Volkswagen engineering office near Detroit, was arrested. He faced years in prison for attempts to defraud the United States, wire fraud, violation of the Clean Air Act, and a charge of giving an untrue statement under the Clean Air Act. Schmidt's actions directly violated a business law and, since his actions violated an established law, he was held criminally liable. In December of 2017, Schmidt was sentenced to seven years in prison.

Professional Negligence

Professional negligence is often called **malpractice**. A professional's duty of care is usually a duty to exercise the degree of care, skill, diligence, and knowledge commonly possessed and exercised by a reasonable, careful, and prudent professional of the same type in the state (or sometimes in the community). Along with attorneys and health care providers, the following professionals might be sued for malpractice: accountants, architects, engineers, surveyors, insurance brokers, real estate agents and brokers, and clergy.

For negligence, the usual kind of damages recoverable are **compensatory**, or money to compensate for the injuries/damages incurred to make the person **whole** (e.g., money for medical bills, lost wages, loss of future earning capacity, pain and suffering, emotional distress, property damage, etc.).

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