

## 3.2: Civil, Criminal, and Moral Wrongs

This chapter is about people committing crimes—engaging in behavior that violates the criminal law—and how society responds to these criminal behaviors. Crimes are only one type of wrong. People can also violate civil law or commit a moral wrong and not be guilty of any crime whatsoever. So, what is the difference between a civil wrong, a criminal wrong, and a moral wrong?

### Civil Wrongs

A civil wrong is a private wrong, and the injured party's remedy is to sue the party who caused the wrong/injury for **general damages** (money). The **plaintiff** (the injured party) **sues** or brings a **civil suit** (files an action in court) against the **defendant** (the party that caused the harm). Plaintiffs can be individuals, businesses, classes of individuals (in a **class action suit**), or government entities. Defendants in civil actions can also be individuals, businesses, multinational corporations, governments, or state agencies.

Civil law covers many types of civil actions or suits including: **torts** (personal injury claims), contracts, property or real estate disputes, family law (including divorces, adoptions, and child custody matters), intellectual property claims (including copyright, trademark, and patent claims), and trusts and estate laws (which covers wills and probate).

The primary purpose of a civil suit is to financially compensate the injured party. The plaintiff brings the suit in his or her own name, for example, Sam Smith versus Joe Jones. The amount of damages is theoretically related to the amount of harm done by the defendant to the plaintiff. Sometimes, when the jury finds there is particularly egregious harm, it will decide to punish the defendant by awarding a monetary award called **punitive damages** in addition to general damages. Plaintiffs may also bring civil suits called **injunctive relief** to stop or “enjoin” the defendant from continuing to act in a certain manner. Codes of the civil procedure set forth the rules to follow when suing the party who allegedly caused some type of private harm. These codes govern all the various types of civil actions.

In a civil trial, the plaintiff has the burden of producing evidence that the defendant caused the injury and the harm. To meet this burden, the plaintiff will call witnesses to testify and introduce physical evidence. In a civil case, the plaintiff must convince or persuade the jury that it is more likely than not that the defendant caused the harm. This level of certainty or persuasion is known as **preponderance of the evidence**. Another feature in a civil suit is that the defendant can **cross-sue** the plaintiff, claiming that the plaintiff is actually responsible for the harm.

### Criminal Wrongs

Criminal wrongs differ from civil or moral wrongs. Criminal wrongs are behaviors that harm society as a whole rather than one individual or entity specifically. When people violate the criminal law there are generally sanctions that include incarceration and fines. A crime is an act, or a failure to act, that violates society's rules. The government, on behalf of society, is the plaintiff. A criminal wrong can be committed in many ways by individuals, groups, or businesses against individuals, businesses, governments or with no particular victim.

Criminal Defendant	Victim	Examples
Individual	Self or with no particular victim	Gambling or drug use,
Individual	Other individual(s)	Assault, battery, theft
Individual	Business or government	Trespass, welfare fraud
Group of individuals	Individual(s)	Conspiracy to commit murder
Group of individuals	Government or no particular victim	Riot, rout, disorderly conduct
Business entity	Individuals	Fraud
Business entity	Government or no particular victim	Fraud, pollution, tax evasion

Criminal laws reflect a society's moral and ethical beliefs. They govern how society, through its government agents, holds criminal wrongdoers accountable for their actions. Sanctions or remedies such as incarceration, fines, restitution, community service, and restorative justice program are used to express societal condemnation of the criminal's behavior. Government attorneys **prosecute**, or file charges against, criminal defendants on behalf of society, not necessarily to remedy the harm suffered by any particular

victim. The title of a criminal prosecution reflects this: “State of California v. Jones,” “The Commonwealth v. Jones,” or “People v. Jones.”

In a criminal **jury trial** (a trial in which a group of people selected from the community decides whether the defendant is guilty of the crime charged) or a **bench trial** (a trial in which the judge decides whether the defendant is guilty or not) the prosecutor carries the burden of producing evidence that will convince the jury or judge beyond any reasonable doubt that the criminal defendant committed a violation of law that harmed society. To meet this burden, the prosecutor will call upon witnesses to testify and may also present physical evidence suggesting the defendant committed the crime. Just as a private individual may decide that it is not worth the time or effort to file a legal action, the state may decide not to use its resources to file criminal charges against a wrongdoer. A **victim** (a named injured party) cannot force the state to prosecute the wrongdoing. Rather, if there is an appropriate civil **cause of action**—for example, wrongful death—the injured party will need to file a civil suit as a plaintiff and seek monetary damages against the defendant.

### Moral Wrongs

Moral wrongs differ from criminal wrongs. “Moral law attempts to perfect personal character, whereas criminal law, in general, is aimed at misbehavior that falls substantially below the norms of the community.” <sup>[1]</sup> There are no codes or statutes governing violations of moral laws in the United States.

#### “The Witness” Exercise

Watch the 2015 Netflix documentary “The Witness” in which Bill Genovese re-examined what was said, heard and reported about his sister, Kitty Genovese. This frequently cited examples of a moral wrong involve the story of thirty-seven neighbors who purportedly did nothing when “Kitty” Genovese was stabbed to death outside their apartment building in New York City in 1964. There are many discrepancies about this story and what the neighbors knew, or didn’t know, and what they did, or didn’t do, but the general belief is that they had at least a moral obligation to do something (for example, call the police), and by failing to do anything, they committed a moral wrong. Ultimately, none of the neighbors had any legal obligation to report the crime or intervene to help Ms. Genovese.

### Overlap of Civil, Criminal, and Moral Wrongs

Sometimes criminal law and civil law overlap and an individual’s action constitute both a violation of criminal law and civil law. For example, if Joe punches Sam in the face, Sam may sue Joe civilly for civil assault and battery, and the state may also prosecute Joe for punching Sam, a criminal assault and battery. Consider the case involving O.J. Simpson. Simpson was first prosecuted in 1994 for killing his ex-wife and her friend (the criminal charges of murder). After the criminal trial in which the jury acquitted Simpson, the Brown and Goldman families filed a wrongful death action against Simpson for killing Nicole Brown and Ronald Goldman. The civil jury found Simpson responsible and awarded compensatory and punitive damages in the amount of \$33.5 million dollars. Wrongful death is a type of **tort**. Torts involve injuries inflicted upon a person and are the types of civil claims or civil suits that most resemble criminal wrongs.

Sometimes criminal behavior has no civil law counterpart. For example, the crime of possessing burglary tools does not have a civil law equivalent. Conversely, many civil actions do not violate criminal law. For example, civil suits for divorce, wills, or contracts do not have a corresponding criminal wrong. Even though there is certainly an overlap between criminal law and civil law, it is not a perfect overlap. Because there is no legal action that can be filed for committing a moral wrong, there really is not any overlap between criminal wrongs, civil wrongs, and moral wrongs.

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1. Gardner, T.J. (1985) *Criminal Law: Principles and Cases* (3rd ed., pp.7). West Publishing Company. [↩](#)

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