

## 2.1: COMPARING AND CONTRASTING CIVIL AND CRIMINAL LAW

### INTRODUCTION

The law is generally divided into two categories – civil and criminal law. This chapter will assist the student in identifying the differences and similarities between them.

#### EXAMPLES OF CRIMINAL CASES IN NEW YORK STATE :

**MURDER/HOMICIDE:** The unjustified taking of another human life.

**ROBBERY:** Stealing property by force from another person.

**LARCENY:** The intent to wrongfully take, withhold, or obtain the property of another person.

**ARSON:** The burning of another person's dwelling, building, car, etc.

**BURGLARY:** The knowingly entering or remains unlawful in a building with the intent to commit a crime therein.

**RAPE:** Having sex with an individual without their legal permission.

**ASSAULT:** Intentionally or recklessly striking and injuring a person.

**DRUG OFFENSES:** Selling or possessing illegal drugs or controlled substances.

#### COMMON EXAMPLES OF CIVIL CASES IN NEW YORK STATE :

**WRONGFUL DEATH:** Asking for money damages when the death of a person is caused by another.

**CONVERSION:** The unauthorized assumption and exercise of the right of ownership over property belonging to another to the exclusion of the owner's rights.

**DIVORCE:** Terminating the marital relationship.

**NEGLIGENCE:** Cases such as personal injury claims, car accidents, and medical malpractice cases.

**ASSAULT AND BATTERY:** A civil assault is the intentional placing of another person in fear of imminent or harmful contact, and battery is an intentional wrongful physical contact with another person without consent.

### CAN A PERSON COMMIT A CRIME AND ALSO BE SUED IN A CIVIL COURT FOR THE SAME ACT?

The answer is yes. Some actions involve both criminal and civil matters. For example, assault can be both a civil matter and a criminal matter. It is criminal case because when one person intentionally strikes and injures another individual, he has committed a crime in violation of the Penal Code. At the same time, if a victim of said crime receives injuries and experiences pain and suffering, he can sue the person who caused the injury in civil court for money damages to compensate the victim for his medical expenses, pain and suffering.

Many court cases can be both civil and criminal. For example, a person who has intentionally killed another can be charged in criminal court with homicide and can also be sued civilly for wrongful death. A person who takes your car can be charged criminally with larceny and can be sued civilly for conversion.

Because the standard of proof in a criminal case is higher than that of a civil lawsuit, a guilty verdict or plea may help a plaintiff in their civil lawsuit. However, a not guilty verdict in the criminal case does not stop the civil case from proceeding forward on its own merits.

### WHAT LAW APPLIES?

How many laws exist in the United States? No one really knows for sure. It is estimated that there are at least 20,000 laws just regulating guns. Perhaps as many as 300,000 federal regulations include criminal penalties if violated. Regardless of the number, the following is where you will find them in NYS and at the federal level.

#### New York – Consolidated/Unconsolidated Laws

Criminal

- Penal Law
- Criminal Procedure Law

#### Civil

- Civil Practice Law and Rules

For administrative law, the New York Codes, Rules and Regulations (NYCRR) contains the state agency rules and regulations.

### Federal – Code of Laws of the United States (U.S.Code or U.S.C.)

#### Criminal

- U.S. Code: Title 18 – Crimes and Criminal Procedure
- Federal Rules of Criminal Procedure

#### Civil

- Federal Rules of Civil Procedure

The Code of Federal Regulations (CFR) is the official record of all federal government regulations. The CFR consists of 50 volumes called titles, each of which focuses on a particular area.

### WHO IS THE VICTIM?

In both a civil and criminal case, the victim is a person or entity (such as an agency, business, or corporation) that is harmed, injured, killed, or has their property rights violated.

### WHO ARE THE PARTIES AND WHO BRINGS THE CASE TO COURT?

In a criminal case, the party bringing the action is the people of NYS, not the victim. In other words, the People are society. The district attorney or prosecutor decides whether the case will be brought to court on behalf of the People. The victim has no control on whether a criminal case will be brought to court. If a criminal case is brought to court by the People, it will be against an accused known as the defendant. In a civil case, the victim files a lawsuit in civil court. They are known as a plaintiff. The party they file their lawsuit against, who they believe has wronged them, is known as the defendant.

### IS THE CASE CAPTIONING THE SAME FOR CIVIL AND CRIMINAL CASES?

The case caption is the name of a civil or criminal case. It is not the same for criminal and civil cases. Criminal cases in NYS will have a case caption that typically reads: *THE PEOPLE OF THE STATE OF NEW YORK, v. JOHN DOE*. The State of New York is the party charging a suspect with a crime, so they are the first party named in a criminal case caption with the second name being the defendant. In NYS civil cases, it will name the parties with the first name being the plaintiff and the second name being the defendant. A typical NYS civil case caption may read: *John Doe v. EYZ Corporation*.

### WHO IS SEEKING WHAT?

In a criminal case, the people of NYS (society) seek to punish the defendant, who is the perpetrator of the crime. Besides punishment, rehabilitation of the defendant, as well as deterrence from committing future crimes, is often sought by society. The defendant is seeking to have the case dismissed prior to a trial. If unsuccessful, the defendant may seek a plea bargain to lessen the charge and/or punishment or end the case before trial. If unsuccessful in obtaining a plea bargain, the defendant is seeking a not guilty verdict from the jury or judge. The vast majority of criminal cases end with a plea bargain.

In a civil lawsuit, the person suing in most instances is seeking a verdict in their favor in money damages for the wrong they suffered. This is often referred to as “making the plaintiff whole again”. So, what does making a person whole again mean? If you are injured in an automobile accident due to the negligence of a defendant and you are now a paraplegic, there is nothing a court can do to get you back to your normal physical self. However, the court can award you money damages to be paid by the defendant. This is the only way a court can make you whole again.

In some civil lawsuits, money damages may not be the best or only remedy sought by a plaintiff. The plaintiff may need an injunction to stop the defendant from doing something that is harming or wronging them or ask the court for specific performance to force the defendant to do something. For example, if your neighbor is dumping the water of his swimming pool repeatedly on your property, which is causing flooding and killing your grass, you may not only be interested in being compensated for monetary damages you have suffered, but you may also wish to prevent the dumping from happening again. In such an instance, a judge may issue an injunction, which is an order from the judge to the neighbor barring them from doing it again in the future. If you were

buying a specific antique and the dealer would not deliver it to you after payment, you may ask the court to issue a specific performance order requiring the defendant to give you that specific antique you paid for.

The defendant will be seeking a dismissal of the case prior to trial. If unsuccessful, they may seek a settlement with the plaintiff. This requires a negotiated agreement between the plaintiff and the defendant on the resolution of the lawsuit. If unsuccessful in getting either a dismissal or working out a settlement, the defendant will seek a verdict in their favor from a jury or judge.

### WHAT IS THE STANDARD OF PROOF AND WHO HAS THE BURDEN OF PROOF?

In criminal cases, the People of the State of New York have the burden of proof. In civil cases, the plaintiff has the burden of proof.

In a criminal case, the standard of proof is “beyond a reasonable doubt.” The District Attorney has the task of proving to the jury each and every element of the crime beyond a reasonable doubt. This is the highest, most demanding standard in any court. If the prosecutor fails to do this, the jury must come back with a verdict of “not guilty.”

The New York Pattern Jury Instructions are the official guide to judges on how to instruct or charge a jury on all civil and criminal matters. The New York Pattern Jury Instructions charge for beyond a reasonable doubt reads in part:

What does our law mean when it requires proof of guilt “beyond a reasonable doubt”? The law uses the term, “proof beyond a reasonable doubt,” to tell you how convincing the evidence of guilt must be to permit a verdict of guilty. The law recognizes that, in dealing with human affairs, there are very few things in this world that we know with absolute certainty. Therefore, the law does not require the People to prove a defendant guilty beyond all possible doubt. On the other hand, it is not sufficient to prove that the defendant is probably guilty. In a criminal case, the proof of guilt must be stronger than that. It must be beyond a reasonable doubt.

A reasonable doubt is an honest doubt of the defendant’s guilt for which a reason exists based upon the nature and quality of the evidence. It is an actual doubt, not an imaginary doubt. It is a doubt that a reasonable person, acting in a matter of this importance, would be likely to entertain because of the evidence that was presented or because of the lack of convincing evidence.

Proof of guilt beyond a reasonable doubt is proof that leaves you so firmly convinced of the defendant’s guilt that you have no reasonable doubt of the existence of any element of the crime or of the defendant’s identity as the person who committed the crime.

The two standards of proof in civil litigation are a preponderance of the evidence, and clear and convincing evidence. In most civil lawsuits the plaintiff must only establish their case by a preponderance of the evidence. Preponderance of the evidence means that it is more likely than not that the defendant is legally responsible for the plaintiff’s injuries. If the plaintiff proves their case by more than 50 percent of the evidence, the jury must come back with a verdict in favor of the plaintiff.

In some civil lawsuits, the plaintiff may have to prove their case by clear and convincing evidence. This standard is sometimes required in administrative hearings, fraud cases, and in some family law cases. It is a higher standard than preponderance of the evidence, but a lower standard than beyond a reasonable doubt. Clear and convincing evidence requires a jury or judge to find that the plaintiff has proven their case so that it is highly probable that what the plaintiff claims is what happened.

The New York Pattern Jury Instructions provide the following explanation of these respective standards of proof:

Clear and Convincing evidence means evidence that satisfies you that there is a high degree of probability that there was (e.g., fraud, malice, mistake, a gift, a contract between the plaintiff and the deceased, incompetency, addiction), as I (have defined, will define) it for you.

To decide for the plaintiff, it is not enough to find that the preponderance of the evidence is in the plaintiff’s favor. A party who must prove (his, her) case by a preponderance of the evidence only need satisfy you that the evidence supporting (his, her) case more nearly represents what actually happened than the evidence which is opposed to it. But a party who must establish (his, her) case by clear and convincing evidence must satisfy you that the evidence makes it highly probable that what (he, she) claims is what actually happened.

### WHAT DO WE CALL THE ATTORNEYS IN THESE CASES AND WHO PAYS FOR THEM?

In a NYS criminal case, the person who brings the case is called the District Attorney. They are sometimes referred to as the prosecutor. The District Attorney is an elected official chosen by the voters in each county. His/her term is four years. The District

Attorney will also have Assistant District Attorneys (ADAs) who actually do the bulk of the prosecuting. They are paid for by the local/state government.

In a criminal case, the defendant is represented by his own attorney, called a defense attorney. They are sometimes referred to as defense counsel. They are paid for by the defendant. If the defendant is unable to afford an attorney, the court will appoint one to represent him/her. This will usually be an attorney from the Public Defender's Office. Under this system, the Public Defender and her/his Assistants represent indigent defendants who are charged with a crime in local criminal courts. In counties that do not have a Public Defender, or in cases where there may be a conflict of interest in having the Public Defender represent an indigent criminal defendant, the court may appoint a private attorney known as assigned counsel. The Public Defender and assigned counsel are paid for by the local/state government.

A conflict of interest usually arises when there are two indigent co-defendants. The Public Defender's Office cannot represent both clients. One client would be represented by the Public Defender's Office and the trial judge would have to assign an attorney in private practice to act as assigned counsel for the other defendant.

In a civil case, the person bringing the suit is referred to as the plaintiff. Their attorney is called the plaintiff's attorney. The plaintiff's attorney is paid for by the plaintiff himself. A plaintiff or defendant who is indigent may be able to seek legal assistance from some nonprofit legal organizations such as the Legal Aid Society or from attorneys that work "pro bono" which means for free or at a substantially reduced rate.

In a civil case, the party being sued is referred to as the defendant. Their attorney is called the defense attorney. The defense attorney in a civil lawsuit is paid for by the defendant, unless the defendant is indigent and is able to obtain pro bono representation (see above). If a defendant has insurance coverage, they may be represented by an attorney paid for by their insurance carrier. For example, if you are the defendant in an automobile negligence case and have automobile insurance, your insurance carrier will provide you with and pay for your attorney.

#### WHAT IS THE NUMBER OF JURORS AND WHAT IS THE VERDICT REQUIRED?

In NYS a criminal defendant is always entitled to a jury trial if they face a misdemeanor or felony criminal charge. The exception is in New York City where you are not entitled to a jury trial if you are charged with a B misdemeanor. In NYS felony jury trials have 12 jurors, and misdemeanors jury trials have 6 jurors. A defendant may elect to waive a jury trial and proceed by judge alone, which is called a bench trial. In a criminal case, the verdict required by a jury must be unanimous. This means all jurors must agree to the guilty or not guilty verdict.

In a civil case, the jury will consist of 6 jurors. Their verdict does not have to be unanimous. It only requires 5 out of the 6 to find in favor of either the plaintiff or the defendant.

#### ARE THE COURTS AND COURT PERSONNEL THE SAME?

Generally speaking, except in certain specialized courts (like drug court), the courtrooms, the courts, and the court personnel are the same for civil and criminal cases. Most judges handle both criminal and civil cases. They use the same courtrooms for both types of cases. All courts have a court clerk. Most judges besides those in the Justice Courts have law clerks. They all have bailiffs and stenographers.

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