

CRIMINAL LAW  
VERSUS  
CIVIL LAW

## Criminal Law versus Civil Law

Criminal law, also called penal law, refers to different jurisdictions of various bodies of rules whose general characteristic is incomparable and often severe impositions as punishment for failure to comply. Criminal punishment includes execution, loss of liberty, government supervision (either parole or probation), or fines depending on the offense and jurisdiction. Murder is one example of some of the archetypal crimes, but the acts that are prohibited are not wholly consistent between different criminal codes, and even among a particular code lines may be confused as civil infractions giving rise to criminal consequences as well. Unlike civil law, this may be enforced by private parties, while criminal law is typically enforced by the government.

Civil law, branch of law, dealing with disputes between organizations and/or individuals, which compensation may be given to the victim. Civil law courts provide a confabulation for deciding disputes involving torts (such as libel, accidents and negligence), contract disputes, property disputes, the probate of wills, trusts, commercial law, administrative law, and other private matters that involve private parties and organizations which include the government departments. An action by an individual against the attorney general is a civil matter, but if the state is represented by the attorney general, or other agent from the state and takes action against an individual, this is no longer civil law but instead this is now public law. Civil laws objective differs from other type of law. Civil law attempts to right a wrong, settle a dispute, or honor an agreement. The victim is being compensated by the person who is at fault, this becomes a legal alternative to, or civilized form of, revenge. There is often a pie of division and is

allocated by the process of civil law, probably by invoking the doctrines of equity, in cases of an equity matter.

Criminal lawsuits differ from civil lawsuits in that the criminal prosecutions are intended to convict and punish the offender, while civil lawsuits are intended to settle disagreement between private parties. The convicted defendant in criminal actions may be fined or may be punished by imprisonment by the government. Whereas, in civil suits, the defendant who losses to the plaintiff, must indemnify to the plaintiff directly.

An action in criminal law does not necessarily preclude an action in civil law in common law countries, and a mechanism for compensation to the victims of crime may be provided. Like in the situation that occurred when O.J. Simpson was ordered to pay damages to the unlawful death after being acquitted of the criminal charge of murder. Civil Law determines private rights and liabilities, whereas Criminal Law concerns offenses against the authority of the state.

Civil lawsuit includes plaintiff, the defendant, and possibly third parties. Plaintiff allegedly suffered some legal wrongdoing at the hands of the defendant, the party that is responsible for infringing upon the plaintiff's right. The plaintiff files a lawsuit against the defendant, the court being used as the forum to argue that the defendant should be held responsible for the plaintiff's injuries and should compensate the plaintiff for its losses.

The parties in a criminal lawsuit are different from those in a civil action. In criminal cases, the public, through the authority of the state (or, if federal, the United States), brings the defendant (accused criminal) to court to decide his or her guilt or innocence. Masses of citizens do not actually haul defendants bodily into the courtroom. The

government provides the special officer, called the prosecutor or district attorney in many localities, who files criminal charges against the defendant on the public's behalf instead. At the state level, this official might be called the attorney general; at the federal tier, he or she would be the United States Attorney serving the Department of Justice under the United States Attorney General.

### *Civil and Criminal Procedure*

Civil litigation that deals with private disputes between parties is subject to the rules of civil litigation, sometimes referred to as civil procedure. Criminal cases, deals with acts that are offenses against society as a whole, such as murder and robbery, as subject to the rules for criminal law, and is also known as the rules of criminal procedure.

Sometimes the same act results in both a civil and a criminal action. Example, suppose that Faye Wood drives her car under the influence of alcohol. And then crashes into another vehicle and injures the driver of that car, Bill Smith. Faye Wood would be arrested for the crime of drunk driving, but Bill Smith might also sue civilly. The civil case (Smith vs. Wood) will proceed according to the rules of civil procedure.

The government (in this case the state) would file an action against Faye Wood for the crime of drunk driving as a criminal case. If she were found guilty, the court could send her to jail or impose a fine payable to the state. While the civil case, Bill Smith would sue Faye Wood for money to compensate him for his medical bills, his lost wages, and his pain and suffering.

The same act may spawn both a civil and a criminal case, but the two legal cases are always kept separate. They will never be tried together. In part, this is because a different

standard or burden of proof is required in criminal case. The standard of evidence used to judge the criminal case is higher than the standard applied in civil cases.

### *Burden of Proof in Civil and Criminal Law*

Civil and criminal law may be further distinguished in terms of burdens of proof. In civil lawsuit, the plaintiff's case must be affirmed by a preponderance of evidence, meaning the plaintiff must persuade the judge or jury that his or her version of the facts is more likely than not and that he or she is entitled to judgment. This degree of proof is sometimes called presenting a prima facie case, or "crossing the 51 percent line", because the plaintiff must out prove the defendant by more than half the evidence.

In some cases, such as those involving misrepresentation, fraud, intentional infliction of emotional distress, and probate contests, the plaintiff must prove his or her case by clear and convincing evidence, which is a higher standard and more difficult to meet than a mere preponderance.

In contrast with criminal lawsuit the prosecutor must prove the case is beyond a reasonable doubt. Meaning that judge or jury must believe the defendant's guilt without significant reservations. This burden of proof is much more difficult than either of the proof levels required in civil cases. This heavier burden on the government exists to protect defendants from overzealous prosecutors who might succeed in convicting innocent individuals with less evidence if the proof requirements were easier to satisfy.

### *Criminal law history*

The first civilizations generally did not distinguish between civil and criminal law. The Sumerians produced first known written codes of law. In the 21st century B.C., King Ur-Nammu as the first legislator and created a formal system in thirty-two articles: the Code

of Ur-Nammu. Code Hammurabi was another important ancient code, which formed the core of Babylonian law. Neither set of laws separated penal codes and civil laws.

A depiction of a 1600s criminal trial, for witchcraft in Salem

The similarly significant Commentaries of Gaius on the Twelve Tables also conflated the civil and criminal aspects, treating theft as a tort. Assault and violent robbery were analogized to trespass as to property. Breach of such laws created an *vinculum juris* discharged or obligation of law by payment of monetary compensation or damages.

During the Norman Invasion of England, the first signs of the modern distinction between crimes and civil matters emerged. In the eighteenth century, the development of the state dispensing justice in a court clearly emerged when European countries began maintaining police services. From that on, criminal law had formal the mechanisms for enforcement, which allowed for its development as a discernable entity.

### *Criminal Sanctions*

Criminal law is distinctive for the uniquely serious potential consequences of failure to abide by its rules. In some jurisdictions for the most serious crimes death by capital punishment may be imposed. Physical or corporal punishment may be imposed such as whipping or caning, but these punishments are prohibited in much of the world.

Depending on the jurisdiction, individuals may be incarcerated in prison or jail in a variety of conditions. Confinement may be solitary. Length of incarceration may vary from a day to life. Government supervision may be imposed; including convicts may be required to conform to particularized guidelines as part of a parole or probation regimen and, house arrest. Fines also may be imposed, acquiring money or property from a person convicted of a crime.

There are five objectives that are widely accepted for the enforcement of the criminal law by punishments: retribution, deterrence, incapacitation, rehabilitation and restitution.

Jurisdictions differ on the value to be placed on each.

Retribution - Criminals should suffer in some way. This is the most widely seen goal.

Criminals have taken inflicted unfair detriment or, improper advantage, upon others and consequently, the criminal law will put criminals at some displeasing disadvantage to "balance the scales." This belief has some connection with utilitarianism. People submit to the law to receive the right not to be murdered and if people contravene these laws, they surrender the rights granted to them by the law. Thus, one who murders may be murdered himself. A related theory includes the idea of "righting the balance."

Deterrence - Individual deterrence aims toward the specific offender. It is to impose a sufficient penalty to discourage the offender from criminal behavior. General deterrence aims at society at large. A penalty is imposed on those who commit offenses; other individuals are discouraged from committing those offenses.

Incapacitation - This is designed simply to keep criminals away from society so that the public is protected from their misconduct. This is often achieved through prison sentences today. The death penalty or banishment has served the same purpose.

Rehabilitation - Aims at transforming an offender into a valuable member of society. To prevent further offending by convincing the offender that their conduct was wrong that is its primary goal.

Restitution - This is a victim-oriented theory of punishment. The goal is to repair, through state authority, any hurt inflicted on the victim by the offender. For example, one

who embezzles will be required to repay the amount improperly acquired. Restitution is commonly combined with other main goals of criminal justice and is closely related to concepts in the civil law.

### *Elements of Criminal Law*

The criminal law generally prohibits undesirable acts. Thus, proof of a crime requires proof of some act. The requirement of an actus reus or guilty act as the scholars label this. Some crimes — particularly modern regulatory offenses — require no more, and they are known as strict liability offenses. Because of the potentially severe consequences of criminal conviction, judges at common law also sought proof of an intent to do some bad thing, the mens rea or guilty mind. As to crimes of which both actus reus and mens rea are requirements, judges have concluded that the elements must be present at precisely the same moment and it is not enough that they occurred sequentially at different times.

### *Actus reus*

An English court room in 1886, with Lord Chief Justice Coleridge presiding

Actus reus is Latin for "guilty act" and is the physical element of committing a crime. It may be accomplished by an action, by threat of action, or exceptionally, by an omission to act. The act of A striking B might suffice, or a parent's failure to give food to a young child also may provide the actus reus for a crime that is one example.

Where the actus reus is a failure to act, there must be a duty. A duty can arise through contract, a voluntary undertaking, a blood relation with whom one lives, and occasionally through one's official position. It can also arise from one's own creation of a dangerous situation. Occasional sources of duties for bystanders to accidents in Europe and North

America are good Samaritan laws, which can criminalize failure to help someone in distress (e.g. a drowning child).

An actus reus may be nullified by an absence of causation. For example, a crime involves harm to a person, the person's action must be but for cause and proximate cause of the harm. If more than one cause exists (e.g. harm comes at the hands of more than one culprit) the act must have "more than a slight or trifling link" to the harm.

Causation is not broken just because a victim is particularly vulnerable. The so-called the thin skull rule. It may be broken by an intervening act (novus actus interveniens) of a third party, the victim's own conduct, or another unpredictable event. A mistake in medical treatment typically will not sever the chain, unless the mistakes are in themselves "so potent in causing death."

### *Mens rea*

The English fictional character Robin Hood had the mens rea for robbing the rich, despite his good intentions of giving to the poor.

Mens rea is another Latin phrase, meaning "guilty mind." An intention to commit some wrongful act is a guilty mind. Intention under criminal law is separate from a person's motive. If Mr. Hood robs from a rich man because his motive is to give the money to poor, his "good intentions" do not change his criminal intention to commit robbery.

A lower threshold of mens rea is satisfied when a defendant recognizes an act is dangerous but decides to commit it anyway. This is recklessness. Like for instance, if C tears a gas meter from a wall to get the money inside, and knows this will let flammable gas escape into a neighbor's house, he could be liable for poisoning. Courts often consider whether the actor did recognize the danger, or alternatively ought to have

recognized a risk. A requirement only that one ought to have recognized a danger (though he did not) is tantamount to erasing intent as a requirement. The importance of mens rea has been reduced in some areas of the criminal law in this way.

Due to the seriousness of an offense, wrongfulness of intent also may vary. A killing committed with specific intent to kill or with conscious recognition that death or serious bodily harm as a result, then it would be murder, whereas a killing effected by reckless acts lacking such a consciousness could be manslaughter. On the other hand, it matters not who is actually harmed through a defendant's actions. The doctrine of transferred malice means, for instance, that if a man intends to strike a person with his belt, but the belt bounces off and hits another, mens rea is transferred from the intended target to the person who actually was struck.

### *Strict liability*

Not all crimes require bad intent, and alternatively, the threshold of culpability required may be reduced. It might be sufficient to show that a defendant acted negligently, rather than intentionally or recklessly. In offences of absolute liability, other than the prohibited act, it may not be necessary to show anything at all, even if the defendant would not normally be perceived to be at fault. Most strict liability offences are created by statute, and often they are the result of ambiguous drafting.

### *Fatal offenses*

Murder, Involuntary manslaughter, and Voluntary manslaughter

A murder, defined broadly, is an unlawful killing. Unlawful killing is probably the act most frequently targeted by the criminal law. In many jurisdictions, the crime of murder is divided into various gradations of severity, e.g., murder in the first degree, based on

intent. Malice is a required element of murder. Manslaughter is a lesser variety of killings committed in the absence of malice, brought about by reasonable provocation, or diminished capacity. Involuntary manslaughter, where it is recognized, is a killing that lacks all but the most attenuated guilty intent, recklessness. This short section requires expansion.

### *Personal offenses*

Assault, Battery (crime), Rape, and Sexual abuse

Many criminal codes protect the physical integrity of the body. The crime of battery is traditionally understood as an unlawful touching, although this does not include everyday knocks and jolts to which people silently consent as the result of presence in a crowd.

Creating a fear of imminent battery is an assault, and also may give rise to criminal liability. Non-consensual intercourse, or rape, is a particularly egregious form of battery.

### *Property offenses*

Criminal damage, Theft, Robbery, and Burglary

Property often is protected by the criminal law. Trespassing is unlawful entry onto the real property of another. Many criminal codes provide penalties for conversion, embezzlement, theft, all of which involve deprivations of the value of property. Robbery is a theft by force.

### *Participatory offenses*

Accomplice, Aid and abet, and Inchoate offences

Some criminal codes criminalize association with a criminal venture or involvement in criminality that does not actually come to fruition. Some examples are aiding, abetting, conspiracy, and attempt.

## *Defenses*

Category: Criminal defenses

Defenses, a variety of conditions that will tend to negate elements of a crime (particularly the intent element). The label may be apt in jurisdictions where the accused may be assigned some burden before a tribunal. In many jurisdictions, the entire burden to prove a crime is on the government, which also must prove the absence of these defenses, where implicated. In other words, in many jurisdictions the absence of these so-called defenses is treated as an element of the crime. So-called defenses may provide partial or total refuge from punishment.

## *Insanity*

Insanity defense and Mental disorder defense

Insanity or mental disorder (Australia and Canada), may negate the intent of any crime, although it pertains only to those crimes having an intent element. A variety of rules have been advanced to define what, precisely, constitutes criminal insanity. The most common definitions involve either an actor's lack of understanding of the wrongfulness of the offending conduct, or the actor's inability to conform conduct to the law. If one succeeds in being declared "not guilty by reason of insanity," then the result frequently is treatment mental hospital, although some jurisdictions provide the sentencing authority with flexibility.

## *Automatism (law)*

Automatism is a state where the muscles act without any control by the mind, or with a lack of consciousness. One may suddenly fall ill, into a dream like state as a result of post traumatic stress, or even be "attacked by a swarm of bees" and go into an automatic

spell. However to be classed as an "automaton" means there must have been a total destruction of voluntary control, which does not include a partial loss of consciousness as the result of driving for too long. Where the onset of loss of bodily control was blameworthy, e.g., the result of voluntary drug use, it may be a defense only to specific intent crimes.

#### Intoxication defence

In some jurisdictions, intoxication may negate specific intent, a particular kind of mens rea applicable only to some crimes. For example, lack of specific intent might reduce murder to manslaughter. Voluntary intoxication nevertheless often will provide basic intent, e.g., the intent required for manslaughter. In other cases, involuntarily intoxication, for example by punch spiked unforeseeably with alcohol, may give rise to no inference of basic intent.

#### *Mistake (criminal law)*

"I made a mistake" is a defense in some jurisdictions if the mistake is about a fact and is genuine. A charge of battery on a police officer may be negated by genuine (and perhaps reasonable) mistake of fact that the person battered was a criminal and not an officer.

#### *Self-defense (theory)*

In general, self-defense is, some reasonable action taken in protection of self. An act taken in self-defense often is not a crime at all; no punishment will be imposed. To qualify, any defensive force must be proportionate to the threat. Use of a firearm in response to a non-lethal threat is a typical example of disproportionate force.

### *Duress*

One who is "under duress" is forced into an unlawful act. Duress can be a defense in many jurisdictions, although not for the most serious crimes of murder, attempted murder, being an accessory to murder and in many countries, treason. The duress must involve the threat of imminent peril of death or serious injury, operating on the defendant's mind and overbearing his will. Threats to third persons may qualify. The defendant must reasonably believe the threat, and there is no defense if "a sober person of reasonable firmness, sharing the characteristics of the accused" would have responded differently. Age, pregnancy, physical disability, mental illness, sexuality have been considered, although basic intelligence has been rejected as a criterion.

The accused must not have foregone some safe avenue of escape. The duress must have been an order to do something specific, so that one cannot be threatened with harm to repay money and then choose to rob a bank to repay it. If one puts himself in a position where he could be threatened, duress may not be a viable defense.

### *Civil law history*

Civil law or Continental law or Romano-Germanic law is the predominant system of law in the world. Civil law as a legal system is often compared with common law. The main difference that is usually drawn between the two systems is that common law draws abstract rules from specific cases, whereas civil law starts with abstract rules, which judges must then apply to the various cases before them. Civil law has its roots in Roman law, Canon law and the Enlightenment. The legal systems in many civil law countries are based around one or several codes of law, which set out the main principles that guide the law. The most famous example is perhaps the French Civil Code, although the

German Bürgerliches Gesetzbuch (or BGB) and the Swiss Civil Code are also landmark events in legal history. The civil law systems of Scotland and South Africa are uncodified, and the civil law systems of Scandinavian countries remain largely uncodified

The civil law system is based on Roman law, especially the Corpus Juris Civilis of Emperor Justinian, as later developed by medieval legal scholars. The acceptance of Roman law had different characteristics in different countries. In some of them its effect resulted from legislative act, i.e. it became positive law, whereas in other ones it became accepted by way of its processing by legal theorists.

Consequently, Roman law did not completely dominate in Europe. Roman law was a secondary source, which was applied only as long as local customs and local laws lacked a pertinent provision on a particular matter. However, local rules too were interpreted primarily according to Roman law (it being a common European legal tradition of sorts), resulting in its influencing the main source of law also.

A second characteristic, beyond Roman law foundations, is the extended codification of the adopted Roman law, i.e. its inclusion into civil codes.

The concept of codification developed especially during the 17th and 18th century, as an expression of both Natural Law and the ideas of the Enlightenment. The political ideal of that era was expressed by the concepts of democracy, protection of property and the rule of law. That ideal required the creation of certainty of law, through the recording of law and through its uniformity. So, the aforementioned mix of Roman law and customary and local law ceased to exist, and the road opened for law codification, which could contribute to the aims of the above mentioned political ideal.

Another reason that contributed to codification was that the notion of the nation state, which was born during the 19th century, required the recording of the law that would be applicable to that state.

Certainly, there was also reaction to the aim of law codification. The proponents of codification regarded it as conducive to certainty, unity and systematic recording of the law; whereas its opponents claimed that codification would result in the ossification of the law.

At the end, despite whatever resistance to codification, the codification of European private laws moved forward. The French Napoleonic Code (code civil) of 1804, the German civil code (Bürgerliches Gesetzbuch) of 1900 and the Swiss codes were the most influential national civil codes.

Because Germany was a rising power in the late 19th century and its legal system was well organized, when many Asian nations were developing the German Civil Code became the basis for the legal systems of Japan and South Korea. In China, the German Civil Code was introduced in the later years of the Qing Dynasty and formed the basis of the law of the Republic of China, which remains in force in Taiwan.

Some authors consider civil law to have served as the foundation for socialist law used in Communist countries, which in this view would basically be civil law with the addition of Marxist–Leninist ideas.

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