

What is the difference between the Criminal and the Civil Law?

Criminal Law

The criminal law ensures every citizen knows the boundaries of acceptable conduct in the UK. For example, it is clearly unacceptable conduct to steal from another individual, or take the life of another. The vast majority of criminal law is codified in Acts of Parliament, such as the Theft Act, and the Offences Against the Person Act.

A breach of criminal law is seen as a wrong against society as a whole. If an individual breaches the criminal law and commits an offence, they may well face criminal prosecution by the state and, if convicted, will receive an adequate penalty. Punishments for criminal offences are typically fines, imprisonment and or a community sentence.

Cases brought in the name of the Crown

Criminal proceedings will be initiated by the police and the Crown Prosecution Service (CPS) but will all be brought in the name of the Crown. Almost all criminal cases start in the Magistrates' Court. Depending on the nature and seriousness of the offence, the defendant charged with an offence will be tried before a magistrate in the Magistrates' Court; or before a judge and jury in the Crown Court.

Elements of the crime

Criminal liability usually involves both a mental element (*mens rea*) and a physical element (*actus rea*) of the offence. *Mens rea* may be intention, recklessness or negligence. For instance, in the case of theft under the Theft Act, there must be a mental element (dishonesty) and physical element (ie conduct) – the appropriation of property – in order for a defendant to be convicted.

The physical element or conduct of a crime does not have to involve an actual physical movement of the individual. For instance, in the case of fraud, the mental element necessary is dishonesty, and the physical act will be the false representation by the individual.

However, in some criminal offences such as road traffic accidents and environmental offences, the requirement for a mental element is not necessary. Such offences are called 'strict liability' offences and include driving without insurance, and various health and safety offences.

Standard of proof

The cornerstone of criminal justice is that a defendant is presumed innocent until proved guilty. The criminal standard of proof is applied in criminal proceedings: the prosecution must prove beyond reasonable doubt that the defendant is guilty. If there is reasonable doubt, a jury or magistrate must acquit the defendant.

Civil Law

What is the civil law?

The civil law exists to protect individuals against one another and the state. The civil law sets out the rights and duties of individuals – both in legislation and through the common law (court rulings). If, for instance, an individual or a business agrees to provide goods or services to another at a price, but the goods or services are substandard, a claim can be brought under consumer protection law.

Sometimes, both the criminal and civil law will arise in relation to an incident. Road users, for instance, have a duty of care towards other road users. If a road user is driving carelessly and causes an accident which injures another person, a civil claim can be brought for damages for negligence, in addition to any criminal prosecution.

In the employment law context, all employees have a right to work in a safe environment. This means that their employers have a duty to protect their safety. If an employer does not take appropriate measures to ensure a safe workplace and an employee is injured, a civil claim may be brought against the employer. There could also potentially be criminal action.

Burden and standard of proof

As in criminal law, certain factors must be satisfied before a civil claim can succeed. For instance, for negligence to be established, the claimant must prove that the following elements were present:

- A duty of care
- This duty of care must have been breached
- The breach must have caused injury or loss to another

The standard of proof is lower than in a criminal trial: the claimant need only prove their case on the balance of probabilities in order to succeed.

Public Law

Public law is a branch of civil law under which the state is required to protect the rights of an individual from other people or organisations. For example, the state can impose an anti-social behavioural order on an individual; various orders may be imposed on domestic abuse offenders; and orders may be made by the local authority in relation to the safety and care of vulnerable individuals such as children. Breach of public law orders may result in a criminal prosecution.

Individual civil law proceedings

The individual who believes they have cause to assert their civil rights can start court action as the ‘claimant’ in the County Court or High Court (depending on the value of the claim). The individual (or organisation) against which the claim is made is known as the ‘defendant’.

Remedies

Under the Civil Law, various remedies are available including damages, an injunction (ordering someone to stop doing something) or an order for specific performance. Where a claimant's case is successful, the court will order an appropriate remedy. For instance, if the claim is for a sum of money, the defendant will be ordered to pay the amount claimed (probably with interest). If the claimant's case concerns a property boundary encroached upon by the defendant, the court can order the defendant to restore the claimant's boundary to what it should be by way of an order for specific performance. Damages may also be awarded where there has been a financial loss.

Summary

The main differences between the two legal systems can be summarised as follows:

Aim

- Criminal – to punish criminals for offences against individuals and society as a whole
- Civil – to regulate relationships between individuals, and between individuals and organisations

Commencement of Action

- Criminal – by the police and the CPS
- Civil – by an individual or an organisation suing another individual or organisation

Burden of Proof

- Criminal – on the Crown to prove the charge beyond reasonable doubt
- Civil – on the claimant to prove their claim on the balance of probabilities

Venue

- Criminal – Magistrates Court or Crown Court
- Civil – County Court or High Court

Outcome

- Criminal – conviction or acquittal
- Civil – defendant is or is not liable to claimant

Remedy

- Criminal – sentence to a punishment imposed by the state
- Civil – damages or other remedy such as injunction