

3 Civil and public law

verejne' pravo
občiansky, občianskoprávny
kontinentálne občianske právo

Main categories

One important distinction made in all these countries is between private—or civil—law and public law. **Civil** law concerns disputes among citizens within a country, and **public** law concerns disputes between citizens and the state, or between one state and another. The main categories of English civil law are:

- Contracts: binding agreements between people (or companies);
- Torts: wrongs committed by one individual against another individual's person, property or reputation;
- Trusts: arrangements whereby a person administers property for another person's benefit rather than his own, Land Law;
- Probate: arrangements for dealing with property after the owner's death;
- Family Law.

The main categories of public law are:

- Crimes: wrongs which, even when committed against an individual are considered to harm the well-being of society in general;
- Constitutional Law: regulation of how the law itself operates and of the relation between private citizen and government;
- International Law: regulation of relations between governments and also between private citizens of one country and those of another.

In codified systems there are codes that correspond to these categories, for example, France's Code Civil and Code Pénal. Justinian's Roman codes covered such areas of law as contracts, property, inheritance, torts, the family, unjust enrichment, the law of persons, and legal remedies, but said little about criminal law. Consequently, most Continental criminal codes are entirely modern inventions.

Differences in procedure

Most countries make a rather clear distinction between civil and criminal procedures. For example, an English criminal court may force a defendant to pay a fine as punishment for his crime, and he may sometimes have to

pay the legal costs of the prosecution. But the victim of the crime pursues his claim for compensation in a civil, not a criminal, action. (In France, however, a victim of a crime may be awarded damages by a criminal court judge.)

The standards of proof are higher in a criminal action than in a civil one since the loser risks not only financial penalties but also being sent to prison (or, in some countries, executed). In English law the prosecution must prove the guilt of a criminal "beyond reasonable doubt"; but the plaintiff in a civil action is required to prove his case "on the balance of probabilities." Thus, in a ^{criminal} civil case a crime cannot be proven if the person or persons judging it doubt the guilt of the suspect and have a reason (not just a feeling or intuition) for this doubt. But in a civil case, the court will weigh all the evidence and decide what is most probable.

Criminal and civil procedure are different. Although some systems, including the English, allow a private citizen to bring a criminal prosecution against another citizen, criminal actions are nearly always started by the state. Civil actions, on the other hand, are usually started by individuals.

Some courts, such as the English Magistrates Courts (see Chapter 4) and the Japanese Family Court, deal with both civil and criminal matters. Others, such as the English Crown Court, deal exclusively with one or the other.

In Anglo-American law, the party bringing a criminal action (that is, in most cases, the state) is called the **prosecution**, but the party bringing a civil action is the **plaintiff**. In both kinds of action the other party is known as the **defendant**. A criminal case against a person called Ms. Sanchez would be described as "The People vs. (= versus, or against) Sanchez" in the United States and "R. (Regina, that is, the Queen) vs. Sanchez" in England. But a civil action between Ms. Sanchez and a Mr. Smith would be "Sanchez vs. Smith" if it was started by Sanchez, and "Smith vs. Sanchez" if it was started by Mr. Smith.

Evidence from a criminal trial is not necessarily admissible as evidence in a civil action about the same matter. For example, the victim of a road accident does not directly benefit if the driver who injured him is found guilty of the crime of careless driving. He still has to prove his case in a civil action. In fact he may be able to prove his civil case even when the driver is found not guilty in the criminal trial.

Once the plaintiff has shown that the defendant is liable, the main argument in a civil court is about the amount of money, or **damages**, which the defendant should pay to the plaintiff.

Points of contact

Nevertheless there are many point of contact between criminal and civil law. In most countries if the loser of a civil case refuses to comply with the order made against him—for example, to pay money to the winner of the action—the procedures for forcing him to comply may result in a criminal prosecution. Disobeying any court may constitute criminal conduct, and the disobedient loser of a civil action may find he or she not only has to pay the damages originally ordered by the court, but a criminal penalty as well.

Although the guilty defendant in a criminal case will not automatically be found liable in a civil action about the same matter, his chances of avoiding civil liability are not good. This is because the standard of proof in the civil case is lower than it was in the criminal case. The plaintiff will therefore make sure any information about a relevant criminal case is passed to the civil court.

It is also possible in English law to bring a civil action against the police. Sometimes this is done by someone who was mistreated when questioned by the police about a criminal case. This right, along with the right to challenge government decisions in courts of law, is discussed in Chapter 14.

ale inadmissable