

Key Concept 8: Understand and Identify the Differences Between Civil and Criminal Liability¹

Criminal Law - Crimes are public wrongs prohibited by a state or the federal government. Criminal law is comprised of principles and rules that protect all of society by establishing certain minimum standards of acceptable conduct on the part of each member of society. Failure to meet these standards of conduct will result in criminal prosecutions being initiated by a prosecutor (an elected or appointed government employee) in the name of the state or the United States, whichever is appropriate. The purpose of a criminal prosecution is to punish those who fail to meet the established standards of acceptable conduct. Punishment for failing to abide by the prescribed standards may be a fine or imprisonment.

Suppose Zeno, an employee of Bank One for the past 10 years, has been actively involved in embezzling (a crime) money from the bank. Once Zeno's activities are discovered, he will be prosecuted by the government, regardless of what the bank representatives want to do. The appropriate government prosecutor will bring the case to court. The injured party, the bank in this case, is not in charge of the case. Once the government is successful in establishing that Zeno is guilty of embezzlement, it will seek to punish Zeno with either a fine or a prison term.

Criminal law thus creates duties owed to the community or public at large and is penal (punitive) in nature.

Civil Law - Non-criminal consequences for breaches of legal duties are also part of our legal system. This civil law system of rules mainly concerns the rights and duties that exist between private parties and is primarily remedial, rather than punitive, in nature. It is the civil law that is applied when one private party (the plaintiff) sues another private party (the defendant) alleging a violation of a legal right or breach of a legal duty. The primary focus of the lower division business law course covers the civil law system in relation to two major civil law areas - torts and contracts. Remedies for violations of the civil law are provided in the form of money damages and or equitable relief.

Suppose on June 1, Hera agrees in writing to sell you her home in Malibu for \$3,000,000. On June 5 Apollo, a recent lotto jackpot winner, offers to buy Hera's Malibu home for \$4,000,000 and Hera agrees. On June 6, Hera calls and tells you that she has decided to sell her home to Apollo and that she will not go through with her June 1 agreement with you. When Hera signed the sale agreement with you on June 1 she became legally obligated to transfer title to the house in accordance with the written agreement. By refusing to perform, Hera has violated or breached her legal obligation, but she has not committed a crime. No governmental prosecutor is going to bring any legal action against Hera. It will be up to you to file a civil action against Hera. Assuming you establish a breach of contract on Hera's part, you should win your suit, and recover damages or equitable relief. However, Hera will not go to prison.

¹ Excerpts taken from Jane P. Mallor, et. al., Business Law and the Regulatory Environment, (11th. ed. 2001)

Likewise, suppose the same basic deal between you and Hera. On June 1 Hera agrees in writing to sell you her home for \$3,000,000. However, on June 5 you win the lotto jackpot. You then decide that Hera's home is now too small for your new lifestyle. On June 6, you call Hera and tell her you will not buy her house in accordance with the June 1 written agreement. As was the case with Hera, when you signed the sale agreement you became legally obligated to perform in accordance with the terms of the written agreement. In your case you became legally obligated to buy the home for \$3,000,000. By refusing to perform, you have violated or breached your legal obligation to Hera, but you have not committed any crime. It will be up to Hera to file a civil action against you. Assuming she establishes a breach of contract on your part, she should win her suit, and recover damages or equitable relief. However, you will not go to prison.

Even though the civil law and the criminal law are distinct bodies of law, the same behavior can violate both. For instance, suppose A has just been terminated from his employment by Unicom and is so upset over the termination that he goes to a bar where he drinks to the point of becoming intoxicated. After leaving the bar, A is driving home when he becomes involved in a serious car accident in which B is severely injured. As a result of A's driving while intoxicated, A has committed a crime and will be prosecuted by the state. In addition, A has also committed a tort (most likely negligence), a civil wrong, and B may file a civil lawsuit against A, seeking damages.

References:

Business Law and the Regulatory Environment, Concepts and Cases, Eleventh Edition, by Mallor et. al. Published by McGraw-Hill/Irwin.

Business Law, Principles, Cases, and Policy, Fifth Edition, by Mark E. Roszkowski. Published