

## Human rights

Consider the following situations:

- A man is arrested and held in a police station for longer than the law allows.
- At the trial of a woman in the Crown Court, one of the jurors is a police officer. This officer knows (and has worked with) one of the police who gives important evidence in the case.
- The eight-year-old child of a well-known author is photographed by a journalist as he goes to school. The journalist does not have permission to take the child's photo. The photo is then published in a newspaper.

All these situations involve breaches of human rights. In (a) there is a breach of Article 5 of the European Convention on Human Rights – the right to liberty. In (b) there is a breach of Article 6(1) of the Convention – the right to a fair trial. In (c) there is a breach of Article 8 of the Convention – the right to respect for private life. These rights will be upheld in the English courts. There is also a right to take the case to the European Court of Human Rights.

Compensation can be awarded where there is a breach of human rights. It is also possible for other remedies to be given, such as an injunction to prevent the future publication of photographs.

### 1.3.3 Differences between criminal and civil law

There are many differences between civil cases and criminal cases. It is important to understand fully the distinctions between civil and criminal cases.

#### Purpose of the law

Criminal law is aimed at trying to maintain law and order. So, when a person is found guilty of an offence, that offender will be punished. There is also the aim of trying to protect society and this is the justification for sending offenders to prison.

Civil law upholds the rights of individuals and the courts can order compensation in an effort at putting the parties back to the position they would have been in if there had not been any breach of the civil law.

#### Person starting the case

Criminal cases are taken on behalf of the state, and so there is a Crown Prosecution Service responsible for conducting most cases. However, there are other State agencies which may prosecute certain types of offence, for example the Environment Agency which prosecutes pollution cases.

In civil cases, the person starting the case is the individual or business which has suffered as a result of the breach of civil law.

The person starting the case is given a different name in criminal and civil cases. In criminal cases they are referred to as the **prosecutor**, while in civil cases they are called the **claimant**.

#### Key terms

**Prosecutor** – the legal term for the person or organisation bringing a criminal charge against a defendant.

**Claimant** – the legal term for a person or organisation starting a civil claim in the courts.

#### Courts

Criminal cases will be tried in either the Magistrates' Courts or the Crown Court. The Magistrates' Courts deal with less serious offences and the case is tried by a panel of lay magistrates or by a single legally qualified District Judge. Serious offences are tried in the Crown Court. The case is tried by a judge sitting with a jury. The judge decides points of law and the jury decide the verdict of 'guilty' or 'not guilty'.

The cases take place in different courts. In general, civil cases are heard in the High Court or the County Court. The High Court deals with more serious cases while the County Court deals with cases of lower value.

In both the High Court and the County Court a judge will try the case. It is very rare to have a case tried by a jury in a civil matter.

#### Standard of proof

Criminal cases must be proved 'beyond reasonable doubt'. This is a very high standard of proof, and is necessary since a conviction could result in the defendant serving a long prison sentence.

Civil cases have to be proved 'on the balance of probabilities'. This is a much lower standard of proof, where the judge decides who is most likely to be right. This difference in the standard of proof means that it is possible for a defendant who has been acquitted in a criminal case to be found liable in a civil case based on the same facts.

This can happen in driving cases where a driver may be found not guilty of dangerous driving but can still be liable in the law of tort for damage or injury caused by negligent driving.

## Outcome of case

A defendant in a criminal case is found 'guilty' or 'not guilty'. Another way of stating this in criminal cases is to say that the defendant is 'convicted' or 'acquitted'. A defendant in a civil case is found 'liable' or 'not liable'.

At the end of a criminal case a defendant found guilty of an offence may be punished. The courts have various penalties available depending on the seriousness of the offence. A defendant may be sent to prison, given a community order, fined or (for driving cases) disqualified from driving.

At the end of a civil case, anyone found liable will be ordered to put right the matter as far as possible. This is usually done by an award of money in compensation, known as damages, though the court can make other orders such as an injunction to prevent similar actions in the future or an order for specific performance (where the defendant who broke a contract is ordered to complete that contract).

**Figure 1.2** Key facts table on differences between criminal and civil cases

	Criminal cases	Civil cases
<b>Purpose of the law</b>	To maintain law and order: to protect society	To uphold the rights of individuals
<b>Person starting the case</b>	Usually the state through the Crown Prosecution Service	The individual whose rights have been affected
<b>Legal name for that person</b>	Prosecutor	Claimant
<b>Courts hearing cases</b>	Magistrates' Court Crown Court	County Court High Court
<b>Standard of proof</b>	Beyond reasonable doubt	The balance of probabilities
<b>Person/s making the decision</b>	Magistrates in Magistrates' Court A judge and jury in Crown Court	Judge Very rarely a jury
<b>Decision</b>	Guilty (convicted) or not guilty (acquitted)	Liable or not liable
<b>Powers of the court</b>	Prison, community order, fine, driving ban	Usually an award of damages (compensation); also possible – injunction, specific performance of a contract

## Activity

Read the newspaper article below and say whether it is a criminal or a civil case. What specific points or words in the article led to your decision?

### Rip-off plumber danced jig of joy in OAP's garden after overcharging her £6,000

A rogue plumber was spotted dancing a jig outside a frail pensioner's house after he conned her out of nearly £8,000, a court heard.

Tradesman Russell Lane, 38, made no attempt to hide his joy after shamelessly ripping off Patricia Binks, 72, who had called for help after suffering a blocked drain.

But yesterday he was counting the cost of his dishonesty after the company he worked for was fined £15,000 in fines and costs.

Lane was also found guilty of fraud and is due to be sentenced in March. Bournemouth Crown Court heard Mrs Binks contacted Plumbers 24/7 Ltd after finding the number in *Yellow Pages*.

Lane, who was with a second unnamed man, produced paperwork he ordered Mrs Binks to sign. It had no prices on and the men told her that if she didn't sign they wouldn't be able to carry out the work.

The men worked on the drains for five hours – then handed Mrs Binks a bill for £7,800. They produced a card machine and ordered her to pay the full amount immediately.

Officials called in an expert to examine the work who found Lane overcharged Mrs Binks by £6,000.

The jury agreed the price charged by Lane was so significantly above a reasonable charge that the demand to pay that amount could only have been made dishonestly.

Source: Adapted from an article by David Pilditch, in the *Daily Express* online, 21 January 2016

## 1.4 Sources of law

There are several sources of law: custom, common law, statute law.

### 1.4.1 Custom

A custom is a rule of behaviour which develops in a community without being deliberately invented. Historically these are believed to have been very important in that they were, effectively, the basis of our common law (see below). It is thought that following the Norman Conquest, judges appointed by the king travelled around the land making decisions in the king's name. The judges based at least some of their decisions on the common customs. This