

Lambarth, Michael. A Really Basic Introduction to English Law and the English Legal System

Chapter 3 – Criminal and Civil Law

When we think of the English legal system many of us will think about images we have seen on the television. This might be a courtroom with a judge and jury, lawyers in wigs and the person suspected of the crime sitting in the dock. It is important to appreciate that there is a key division which runs through much of the English legal system, that division being between criminal matters and civil matters.

The image referred to above from the television is that of a criminal trial. When a crime is committed, the police are usually involved in its investigation. If they find enough evidence against a person who they suspect of committing the crime, only then will they refer the case to the Crown Prosecution Service (CPS). The CPS employs lawyers who use the Code for Crown Prosecutors to work out whether it should prosecute the suspect or not. This Code requires the CPS to take into account what evidence is available and whether it is in the public interest to pursue the prosecution, based on, amongst other things, the characteristics of the offence itself. A prosecution is where someone is actually taken to court and put on trial. Many crimes are not prosecuted, often because there is simply not enough evidence to give a realistic chance of a successful prosecution. Evidence means those pieces of information that point towards someone being guilty or not guilty of the crime, such as witness statements, CCTV footage, documents, photographs and many other things. It could, for example, include a knife with blood on it.

When we think of law, a criminal case is often the first thing that comes to mind. Examples of criminal offences range from grave and serious crimes such as murder and rape, through crimes such as theft and burglary, to what are often considered to be more trivial crimes such as speeding or littering.

However, whilst the criminal law is generally the area of law which makes the headlines in our newspapers, and provides intriguing storylines for books, films and television, it is in fact a relatively small part of English law as a whole. Anything which is not a crime generally falls into a category of law called “civil law”. If we think for a minute about things which are not crimes but can still be decided by the court, then we start to realise just how large and complex the body of civil law is.

Property law or land law is a hugely important area of English law for example. It has very specific rules which are different to many other countries, even Scotland. These rules tell us who owns property, what rights a person has when they rent property, how to transfer ownership of property and so on. Whole text books have been written about the laws relating to property. If I have a dispute with my neighbour about where the boundary line falls between our properties, then this is not a criminal matter. I cannot call the police to help decide the true boundary line. If we cannot reach an agreement, then we will have to go to a civil court and ask a judge to decide.

Similarly, commercial law is a huge area of English law. This governs the relationship between parties in business. At its core it includes contract law and consumer protection law, but it also

includes insurance law, company law, taxation law and laws relating to copyright, trademarks and patents to name but a few. If I buy a product from a shop and it turns out to be faulty, then again this is a civil matter and not something about which I can call the police. It is unlikely that a crime has been committed (assuming no fraud has taken place).

Finally, think of the laws relating to families. This includes the law of marriage, divorce, child protection and custody and adoption. We could also think about artificial reproduction, abortion, death and so on. In fact, the range of legal matters which are not classed as criminal matters is almost endless. There are far more lawyers working every day on these “civil” matters than there are on criminal cases. Criminal cases attract the headlines because they are exciting and interesting and more often have an impact on other people than the more private nature of civil legal matters.

In a civil matter, one person is usually suing another person. To sue someone means to take legal action against them in order to obtain a remedy, which usually consists of the payment of money or compensation, known as damages. For example, if Mr Green drives his car in such a way as to knock me off my bicycle and I can show that he was careless or negligent in doing so, then I may be able to sue him. This would involve me taking legal action against Mr Green. The law states that car drivers have a legal duty to take reasonable care not to cause injury or damage to people and objects around them. If I can show that Mr Green breached that duty and in so doing caused injury to me or damage to my bicycle, then I can sue him for what is known as negligence. Negligence on its own is not a crime and therefore the court case would be me against the driver, or “Lambarth v Green”. The police and the Crown Prosecution Service would not be involved. If I win my case, then the judge is likely to order Mr Green to pay me a sum of money to compensate me for my injuries and the damage to my bicycle. Of course, Mr Green should have car insurance and so the insurance company will pay the compensation. In actual fact the insurance company is likely to take over the case on behalf of Mr Green, and if it is clear that Mr Green was at fault, the insurance company may well make an offer to pay a sum of compensation before the case goes to court. This will save the insurance company the legal costs involved and is called an “out of court settlement”. Such settlements are very common in all kinds of civil cases.

So that is how a civil matter would generally proceed. Of course, in that particular case there could also be a criminal aspect. Careless driving can constitute a criminal offence, such as driving without due care and attention, and so it is possible that the police would be involved. They would try to gather sufficient evidence that Mr Green had been careless. This could consist of statements from people who had witnessed the accident, or from CCTV pictures, but also includes any injuries which I have suffered or damage caused to my bicycle. If there is enough evidence then the police might refer the matter to the Crown Prosecution Service, who will decide whether to take the matter to court. If they do, the case will be the Crown against Mr Green, or R v Green. (R here stands for Regina, Latin for “Queen”.) Note that it would not be me personally who takes Mr Green to court for a criminal matter. If the court finds that Mr Green was guilty of the crime, then he would receive some kind of punishment. Criminal punishments range from community sentences through fines to imprisonment for the most serious of crimes.

The incident with the bicycle could therefore potentially give rise to two court cases. One civil case brought by me against Mr Green for compensation, and one criminal case brought by the Crown against Mr Green, probably leading to a community punishment or a fine, depending in part on how seriously I am injured.

Many civil cases do not have a criminal aspect to them. For example, if two businesses enter into a commercial contract with each other, then the breach of that contract is not something which would have any criminal aspect. If ABC Limited agrees to buy a commercial oven from XYZ Limited for £10,000 and XYZ fails to deliver the oven on time, then ABC could take them to court to seek legal redress. It would have to prove to the court that it has an agreement with XYZ in which they agreed to supply the oven by a certain date, and that the oven had not been supplied as at that date.

Once ABC Limited satisfies the court that the contract has been breached (in other words, that XYZ Limited has failed to do something it promised in the contract to do), it would need to prove how much it has lost due to the breach of contract. This is similar to what I needed to do when I sued Mr Green above. I would need to prove to the court what damage had been caused to my bicycle, and what injuries were caused to me. The courts use special tables to help them to work out how much compensation is payable for different personal injuries.

ABC Limited will need to do the same for the oven which is delivered late to it by XYZ Limited. Assuming that ABC Limited is a bakery, then it could sue XYZ Limited for any lost profit arising from the fact that it did not have a working oven for a period of time.

So far, I have focused on cases which result in a dispute which ends up in court. Lawyers do of course work on these cases. Some solicitors specialise in criminal matters and will advise clients at the police station after they are arrested, and also advise them about the court case should things proceed that far. A solicitor will often also represent the client in the early court hearings. By this I mean they will present the client's arguments to the court on behalf of the client. Should the matter be serious and continue to the higher courts, then a barrister specialising in criminal law is likely to be instructed to present the case to those higher courts. We will look more at the court system in a later chapter.

The same applies to civil matters, in that a solicitor will usually be the first port of call for someone involved in a civil dispute. Again, a barrister may be instructed to assist if the case is complex or is presented to a higher court.

Although, as I said above, I have focused on cases which end up in court, it is worth remembering that the vast majority of legal work does not involve the courts at all. Legal work which leads to a court case is referred to as "litigation" and is said to be "litigious" or "contentious". Most lawyers work in a non-contentious area of law. Let's think of some examples of non-contentious law.

Assume you want to make a will. A will is a written document which sets out a person's wishes in the event of their death. It allows a person to state to whom they want their money and possessions to go when they die. If you go to see a solicitor about making a will, you will be instructing them to work on a non-contentious matter on your behalf. You are not suing anyone, and there has been no crime. You are simply telling the solicitor that you want to make a will and the solicitor will ask you lots of questions about family members and what possessions you have and will make a note of your wishes. He or she will then draft a will reflecting those instructions and send it out to you so that you can sign it. It will then be held in a safe place until your death. The solicitor has completed their work at this point and you will no doubt have to pay for the service.

Of course, the matter might one day become contentious. On your death, there may be someone who feels aggrieved that you did not leave them anything in your will and they may try to contest the will. If they can prove the necessary legal elements to make such a challenge, then the matter may go to court. This would be a civil matter, but until this occurs, if ever, the matter is non-contentious.

Other areas of non-contentious work that lawyers undertake include the buying, selling and leasing of property, the formation of contracts, various types of commercial and corporate work, taxation advice, banking work, drafting terms and conditions of employment and so on. Again, the list is almost endless and includes a huge variety of work.

The point here is that whilst our everyday perception of a “lawyer” is probably that of a barrister presenting a criminal case in court, in fact the vast majority of lawyers are solicitors undertaking non-contentious work.

In this chapter we have looked at some of the differences between the criminal and civil legal systems. We have seen that the police investigate and collect evidence in a criminal matter, and then refer the case on to the Crown Prosecution Service which decides whether or not to prosecute. If they do, then the case is brought to court by the Crown against the individual defendant, and penalties include community sentences, fines and imprisonment. Civil matters are investigated by lawyers and others who they may employ to do the job. The lawyer representing the party seeking redress will help their client to decide whether to take the matter to court or not. If they do, then the case is brought against the person from whom a remedy is sought. The main remedy is an award of monetary compensation (called “damages”) although other remedies can be obtained where appropriate.