

Explain and illustrate the main distinctions between civil and criminal law.
(20 marks)

This question is designed to provide a clear explanation and illustration of the main distinction between criminal and civil Law. The civil justice system is designed to decide disputes between individuals. Criminal Law serves to maintain law and order, to protect society.

Civil claims will arise when an individual or a business believes that their rights are being infringed in some way. Civil cases cover a wide range of issues, as there are different areas of civil law. These include:

- Contract law
- Tort law
- Family law
- Employment law
- Company Law

The criminal justice system affects large numbers of people. Criminal law is central to the relationship between law and society. It looks to regulate behaviour; it provides sanctions against those who break those rules. It can be classified as a formal mechanism of social control. It is formal because the rules set by the law can be strongly enforced through the courts and legal system.

In civil cases, the party starting the case is called the claimant and the other party is the defendant. The person who commits a wrong or breaks a contract or trust is said to be liable or responsible for it. In the civil proceedings the defendant can either be liable or not liable.

An example of a civil case that can be used to illustrate this is the;
(Entores Ltd v Miles Far Eastern Corporation) 1955

The plaintiff, who conducted a business in London, made an offer to the defendants' agent Amsterdam by means of a teleprinter in London. Later the defendants were in breach of contract and the plaintiffs wished to sue them. The defendants had their place of business in New York and in order

to commence an action the plaintiffs had to serve notice of writ on the defendants in New York. The Rules of Supreme Court allow service out of the jurisdiction when the contract was made within the jurisdiction.

In criminal cases, usually the State through the police and crown prosecution service starts the case against the defendant. The defendant in a criminal proceeding can either be found guilty or not guilty.

An example of the criminal case law is;

(R v Gotts) 1991- Attempt murder under duress.

Ben Gotts was charged with the attempted murder of his mother. The mother had left the family home after arguments with the father and gone to a women's aid refuge with two of the young children. One morning as the mother left the refuge to take one of the children to school Ben aged 16 armed with a knife supplied by his father ran up behind her and stabbed her. He was charged with attempted murder and wounding with intent.

A court is a place where justice can be administered. A court where a case is heard is called a court of first instance. For civil cases these are:

- The County Court

The county court is the court, which deals with the largest number of civil cases. Founded in 1846 it was designed to provide a forum for the resolution of what would these days be regarded as relatively modest consumer complaints. Throughout the years, its jurisdiction has been expanded. Today all civil actions can be started in the county court, save for a small number of cases in which there are special statutory rules which require proceedings to be started in the High Court.

- High Court

The Judicature Acts 1873-1875 created High Court of justice as part of the Supreme Court. It originally had five divisions but now has three: the Queens Bench Division, the Chancery Division and the Family Division. It is a superior court of record.

In addition the Magistrates' Court hears some civil cases, especially family matters.

- Crown Court

The first stage at the crown court is a Plea and Directions Hearing when the defendant is asked how (s)he pleads to the charges. If the plea is not guilty then the prosecution and defence must inform the court of the issues in the case and the number of witnesses so that a date for jury so they can be arranged. In criminal cases the person making the decisions are either the magistrates or jury.

- Magistrates' Court

All criminal prosecutions start in the magistrate's court. Those accused of the most serious crimes such as murder, rape and robbery can only be tried in the Crown Court and hence the magistrates function is limited to holding proceedings to decide whether there is sufficient evidence to justify transferring the case to the crown court for trial.

The distinction between civil and criminal law is noticeable. One of elements that separate civil law from criminal is the standard of proof; in civil cases, the court makes its decision on the “balance of probabilities”. In criminal cases, the jury must be satisfied as to whether the defendant's guilt is “beyond all reasonable doubt”. However, there are also some similarities that link the two; for instance, liability can be civil or criminal according to whether it is enforced by the civil or criminal courts.