

# An Introduction to Law

## Chapter Learning Objectives

After completing this chapter, you should be able to:

- Discuss the definition and sources of law
- Explain the differences between civil and criminal law
- Describe the organization of the state and federal court systems
- Explain the basic hierarchy of the court systems ranging from the trial court to the various courts of appeal
- Explain the powers of the three branches of government



### INTRODUCTION

In this chapter, we focus on the basic foundations of U.S. law. In attempting to define what *law* is, we address a wide range of issues. This chapter also begins a discussion of the basic organization of the court system that is expanded in later chapters. Finally, we address the concepts of statutory law, case law, and common law and explain the crucial role played by each in the legal system.



### WHAT IS THE LAW?

When people use the term the **law**, they usually do not realize that this term encompasses a wide variety of topics. For instance, if you look up the word “law” in a legal dictionary (such as Ballentine’s Legal Dictionary), you will see that the definition takes up nearly a page of written text. For legal professionals, the word *law* can encompass many different terms, depending on the circumstances of a case. For a prosecutor, the law refers to the criminal statutes that

#### **Law**

A rule or regulation that, if not followed, subjects the rule breaker to some form of sanction

make certain behavior illegal. For a civil attorney, “law” could refer to the rules of court or the rules governing civil procedure. The law could also refer to the decisions of the U.S. Supreme Court. Because the term is open to so many different interpretations, as a student of the law, you must understand how the law applies in different contexts. For purposes of introducing the topic of the study of law, we use a working definition that will slowly expand as we develop concepts in later chapters.

This working definition of the law covers areas as diverse as criminal statutes and rules of civil procedure. Before we develop any other concepts of what the law is and how it affects the legal system, we should first address some of the misconceptions that surround the study of law. Perhaps the biggest misconception has to do with the interplay of law and moral codes.

## A. LAW AND MORALITY

Legal codes and moral codes operate independently of one another. Simply because something is legal does not mean that it is moral, and vice versa. It may be immoral to do many things that are not illegal to do. In this way, law and morality have very little to do with one another.

*Example:* Bill and Joe are at a casino. Joe begins to play with an eight-year-old girl who is there with her father. The girl’s father is playing blackjack at a table across the room. Joe, who is eighteen years old, lures the little girl into the men’s room, where he attacks her, savagely beating and raping her. While Joe is assaulting the girl, Bill walks into the men’s room and clearly sees what Joe is doing. Bill does not attempt to stop the assault. Instead, he simply walks out of the men’s room and leaves the casino. Later, the little girl’s body is found in the men’s room and the police focus on Joe when they review the casino surveillance tapes that show Joe and the little girl playing. When they ask Bill about what happened, he freely admits that Joe killed the girl and that he saw it happen.

Can Bill be prosecuted for his failure to stop the assault?

*Answer:* No. Criminal law does not, in most cases, provide any sanction against a person who fails to stop another person from committing a crime. While we would argue that Bill’s actions are clearly immoral, they are not illegal. As you may have guessed, this factual scenario is based on a real case. Although the names have been changed, the result was the same. In the actual case, the witness who failed to stop the attack was not prosecuted. “Joe” was convicted and sentenced to life in prison, but “Bill” was never tried for any crime. Later, when we discuss criminal law, we explore this issue in greater depth, but it is important to remember that the standard of proof in criminal cases is very high. Many of the acts that we would consider to be immoral or improper are not necessarily illegal.

ISSUE AT  
A GLANCE



**Although many laws are based on moral codes, in a strict sense, law and morality are independent of one another.**

If any one bring an accusation against a man, and the accused go to the river and leap into the river, if he sink in the river his accuser shall take possession of his house. But if the river prove that the accused is not guilty, and he escape unhurt, then he who had brought the accusation shall be put to death, while

he who leaped into the river shall take possession of the house that had belonged to his accuser.

If any one bring an accusation of any crime before the elders, and does not prove what he has charged, he shall, if it be a capital offense charged, be put to death.

FIGURE 1-1

Excerpt from the Code of Hammurabi

## B. A SHORT HISTORY OF LAW

As long as there have been human societies, there have been rules. Prehistoric people did not leave written records of their laws, but they surely had some form of law. Stealing from a member of the tribe has always been against the rules in all communities (although stealing from other tribes often was not). With the advent of cities and greater sophistication in society, including the invention of writing, law came into greater prominence. In fact, many of the first writings discovered by archeologists center almost exclusively on two concerns: business and law. These two issues have been linked ever since. (Without law there is no way to enforce a contract.) As society evolved, laws became more extensive to deal with the wide variety of relationships between individuals. Eventually, the body of law was so diverse that almost every society sought some way of organizing it for ease of reference. Most of these societies **codified** their laws.

One notable early attempt to codify the laws of human society, the Code of Hammurabi (1700 B.C.), stands out as a particularly well-organized, if somewhat drastic, series of laws.

Later, the Romans, who developed legal concepts to a complexity not seen again until the twentieth century, codified their laws in the Twelve Tables (450 B.C.), which set out all the basic laws of society (and the punishments for breaking them). Among Roman legal innovations were the concept of the condominium, wills, trusts, basic property law, and the creation of lawyers as a separate professional class.

### Codify

A systematic arrangement of the laws of a particular jurisdiction or area of law

All societies have created laws to control the behavior of their citizens.



ISSUE AT A GLANCE

## C. SOURCES OF LAW

There is a wide variety of sources of law. For instance, a state legislature may vote on a particular bill to make a certain action illegal. When this bill is signed by the state governor, it becomes a **statute**. A statute is binding on everyone inside the geographic limits of the state. Similarly, the United States Congress may also vote

### Statute

A law that is enacted by the legislature and signed into existence by the executive branch

**FIGURE 1-2**

Excerpt from the  
Twelve Tables

### Table VIII: The Law of Torts

1. If any person had sung or composed against another person a song such as was causing slander or insult to another . . . he should be clubbed to death.
2. If a person has maimed another's limb, let there be retaliation in kind unless he makes agreement for compensation with him.
3. If he has broken or bruised a freemen's bone with his hand or a club, he shall undergo a penalty of 300 pieces; if a slave's, 150.

on a bill and send it to the President for signature. When he signs the bill, the federal statute becomes binding on everyone in the United States. There are also administrative rules and regulations that carry the same force as a statute. IRS regulations, for instance, although not statutes, carry as much weight as statutes. These administrative rules and regulations are covered in a later chapter. In discussing the sources of law, what is important is to understand that law can be found in many different places. To locate the law on a particular topic, you must first know and understand what type of law is involved in the case. In later chapters, we address the varied topics of criminal law, real estate law, and administrative law, among others. However, before moving on to those specialized areas of practice, we first address the various sources of law.

## 1. STATUTORY LAW

A statute is legislation that has been created by the legislature and signed into existence by the President (or the governor on the state level). Statutes can regulate a dizzying array of behavior, from crimes to agricultural practices. Legislatures enact new statutes every year and make changes to existing statutes. All these statutes are published in codes for ease of reference.

## 2. CASE LAW

In addition to statutory law, there is another, equally important, source of law: case law. Case law consists of the published decisions of appellate courts. These courts are empowered to interpret statutes and even, under certain circumstances, to invalidate a statute. We discuss case law in greater detail in the next chapter.

## 3. ADMINISTRATIVE RULES AND REGULATIONS

In addition to statutes and case law, there is another significant source of law: administrative rules and regulations. Federal and state agencies promulgate rules to enforce their areas of responsibility. These rules can be as important to a person as any statute. An agency, such as the Federal Emergency Management Agency or the Transportation Security Administration, can establish a rule that affects the entire nation.

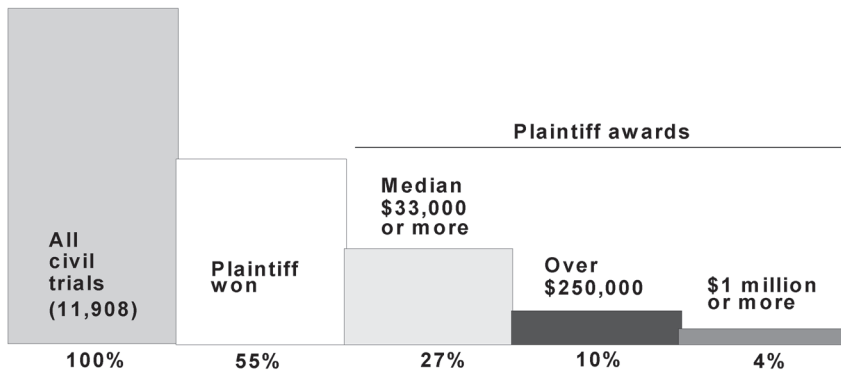


## DIFFERENT TYPES OF LAW

In later chapters, we address legal topics as diverse as administrative law, real property law, and business law. But before we explore those legal topics, we can divide up the entire body of law into two general categories: criminal law and civil law.

### Highlights

**In 2001 plaintiffs in the 75 largest counties won just over half the 12,000 general civil cases at trial, with 442 or 4% awarded \$1 million or more**



- During 2001 a jury decided almost 75% of the 12,000 tort, contract, and real property trials in the Nation's 75 largest counties. Judges adjudicated the remaining 24%. Tort cases (93%) were more likely than contract cases (43%) to be disposed of by jury trial.
- The 11,908 civil trials disposed of in 2001 represents a 47% decline from the 22,451 civil trials in these counties in 1992.
- In jury trials, the median award decreased from \$65,000 in 1992 to \$37,000 in 2001 in these counties.
- Two-thirds of disposed trials in 2001 involved tort claims, and about a third involved contractual issues.
- Overall, plaintiffs won in 55% of trials. Plaintiffs won more often in bench trials (65%) than in jury trials (53%), and in contract trials (65%) more than in tort (52%) or real property trials (38%).
- An estimated \$4 billion in compensatory and punitive damages were awarded to plaintiff winners in civil trials. Juries awarded \$3.9 billion to plaintiff winners while judges awarded \$368 million. The median total award for plaintiff winners in tort trials was \$27,000 and in contract trials \$45,000.
- Punitive damages, estimated at \$1.2 billion, were awarded to 6% of plaintiff winners in trials. The median punitive damage award was \$50,000.
- Plaintiffs prevailed in about a fourth (27%) of medical malpractice trials. Half of the 311 plaintiffs who successfully litigated a medical malpractice claim won at least \$422,000, and in nearly a third of these cases, the award was \$1 million or more.

**FIGURE 1-3**

Highlights of the American Court System\*

\*Bureau of Justice Statistics, U.S. Department of Justice. Civil Trial Cases and Verdicts in Large Counties, 2001.

# Profiling a Paralegal

## ► Leah Laidley

**I** worked as a computer programs analyst for years before getting laid off and deciding to go back to school to become a paralegal. I went to work for a small firm almost as soon as I started my classes. I was surprised at how different a law office is from other types of offices. My biggest problem was that my “secretarial skills”—for want of a better term—weren’t what they could have been. I had to learn some of the basics, like the right way to take a phone message. When I first started answering the phone, I’d just jot down the person’s name and telephone number. When I handed it to the attorney, he’d say, “what’s this about?” After that, I learned that you had to get more information. I had to learn how to type up letters and motions from a tape machine. The attorney I worked with just used a tape recorder. He’d dictate everything and I’d have to type it up from the tapes.

The firm I work for handles just about everything, although we concentrate on personal injury cases.

My particular specialty—learned through a lot of trial and error—is getting medical records. Contacts are everything when you’re trying to get records. I think I was lucky when I first started doing it because I was honest with people. I’d call them up and say, “hey, I don’t know what I’m doing. I’m new, so forgive me if I mess up.” Once I got a name, like someone at the hospital records department, whenever I called back, I’d always ask for that person. I still do that. If I’m not sure about exactly what I’m doing when I call someone up, I’ll just tell them. Most people are really friendly to you. Once I get the records ordered, I keep track of them. I get them all organized and filed so that the attorney can go through them later and get what he needs out of them. I’ll sift through them all and find out exactly what insurance paid and what the client paid. I’ll summarize all of this information for ease of reference and make sure that the attorney sees it.

## A. CIVIL LAW VERSUS CRIMINAL LAW

Criminal law governs the area of arrest and prosecution of a person for committing a crime. Civil law governs areas as widely divergent as personal injury lawsuits, divorce, child custody, and administrative law, among many others.

To a legal professional, the differences between criminal law and civil law are profound. But to someone who is unfamiliar with the day-to-day practice of law, those differences might not be as obvious. Figure 1-4 highlights the main differences between civil and criminal law.

### 1. THE PARTIES

Governments bring criminal prosecutions against individuals. A private individual brings a civil lawsuit. The person who brings the civil lawsuit is referred to as a plaintiff. The person who is being sued is referred to as the defendant. When you see a case printed in a case law reporter, the first item listed is the **caption** (or the name) of the case. This is always given as the names of the parties involved. Civil cases are usually captioned *Plaintiff A v. Defendant B*. Because the government always brings criminal cases, the government is listed by name, not as a plaintiff. Criminal cases are captioned *Government (or State) v. Defendant*. The fact that the

#### Caption

The heading or title used in all legal pleadings

	Civil Law	Criminal Law
The Parties	Plaintiff — person who brings the suit Defendant — person against whom suit is brought	Government — entity that brings charge on behalf of citizens Defendant — person accused of a crime
The Pleadings	Plaintiff begins lawsuit by filing a complaint	Government begins prosecution by filing an indictment (a/k/a accusation)
The Rules	Rules of Civil Procedure (more relaxed rules about discovery and pleadings); few, if any, constitutional protections for defendant	Rules of Criminal Procedure (more strict rules about discovery and pleadings); numerous constitutional protections for defendant
The Burden of Proof	Preponderance	Beyond a Reasonable Doubt
The Verdict and Outcome	Liable Not Liable  Monetary damages paid by liable party to other party	Guilty Not Guilty  Defendant can be found guilty and sentenced to prison and/or fine; if found not guilty, defendant will be set free

FIGURE 1-4

The Difference Between Civil Law and Criminal Law

person who is sued and the person who is accused of a crime are both termed *defendant* sometimes causes confusion. However, if you are ever in doubt about the kind of a case you are reading, the caption will normally give it away. (See Figure 1-5.)

A crime is a violation of a law. Crimes are usually based on statutes. We discuss statutes in much greater detail later in this book, but a word about them here is also appropriate. When a statute has been enacted by the legislature, it sets a standard by which a person's actions can be judged. In our previous example of Joe and Bill and the terrible crime that Joe committed, there was a specific statute that Joe violated. Criminal statutes cover behavior as diverse as rape, murder, shoplifting, and tax evasion. Civil actions, on the other hand, are usually not based on a statutory violation. Instead, they are based on property or financial losses. Rape and murder are examples of crimes; contract disputes and divorce are examples of civil actions.

## 2. THE PLEADINGS

The pleadings refer to the documents used in the case. In a civil case, the pleading that actually begins the suit is called a **complaint**. A complaint is drafted by the plaintiff's attorney and sets out the wrong suffered by the plaintiff and the reasons that the defendant should be forced to compensate the plaintiff for that wrong. A criminal case begins when the government charges a person with a crime through an indictment, information, or accusation.

### Complaint

The pleading filed by the plaintiff and later served on the defendant; it sets out the details of the wrong suffered by the plaintiff and the reasons why the defendant is liable for those wrongs