

Criminal Procedure



Criminal procedure is the legal process for judging claims that someone has violated criminal law.

Differences between Civil Law and Common Law Systems

- **Civil Law** jurisdictions follow an **inquisitorial system**, in which judges undertake an active investigation of the claims by examining the evidence and preparing reports.
- In **Common Law**, the trial judge, the investigators, and the prosecution are separate functions. After an investigation has been completed and charges lodged, the trial judge presides over proceedings based on an **adversarial system** of dispute resolution, where both the prosecution and the defence prepare arguments to be presented before the court. Some Civil Law systems have adopted adversarial procedures.

Common Law countries believe that Civil Law systems do not have the so-called "*presumption of innocence*", and do not provide the defence with adequate rights. Civil Law countries believe that accusatorial proceedings favour rich **defendants** who can afford large legal teams, and are very hard on poorer defendants.

Basic Rights

Currently, in countries with a democratic system and the **rule of law**, criminal procedure puts the **burden of proof** on the prosecution - that is, it is up to the prosecution to prove that the **defendant** is guilty; as opposed to having the defence prove innocence: any doubt is resolved in favour of the defendant. This is known as **presumption of innocence**.

Democratic systems allow the defendant the right to **legal counsel** and provide any defendant who cannot afford their own lawyer with a lawyer paid for at the public expense.

Difference in Criminal and Civil procedures

Most countries make a rather clear distinction between *civil* and *criminal* procedures. A Commonwealth criminal court may force a defendant to pay a fine as punishment and any associated legal costs of the prosecution. But the victim of the crime pursues their claim for **compensation** in a civil, not a criminal, action. In countries practicing Civil Law, the victim of a crime ("**injured party**") may be awarded **damages** by a criminal court judge.

The required standards of proof are higher in a *criminal action* than in a *civil* one since the penalties are not only financial but can also involve a prison sentence. Under Commonwealth Law the prosecution must prove the guilt of a criminal "**beyond reasonable doubt**"; but the **plaintiff** in a civil action is required to prove his case "**on the balance of probabilities**". "Beyond reasonable doubt" is not defined for the **jury** which decides the **verdict**, but requires the prosecution to exclude innocence. In a *civil case*, however, the court simply weighs the **evidence** and decides what is most probable.

Criminal and civil procedures are different. Although some systems, including the Commonwealth, allow a private citizen to bring a criminal prosecution against another citizen, criminal actions are nearly always started by the state. Civil actions, on the other hand, are usually started by individuals.

Evidence given at a criminal trial is not necessarily admissible in a civil action about the same matter, just as evidence given in a civil case is not necessarily admissible in a criminal trial.