

Consumer Pamphlet: A Civil Case or a Criminal Case?

Note: This pamphlet is available online only

What are the types of legal cases?

Our legal system recognizes two kinds of law cases — civil and criminal. In civil cases, a person who feels wronged — called the “plaintiff” — brings legal action against a perceived wrongdoer to protect the plaintiff’s interests and, if appropriate, to collect damages. The person being sued is called the “defendant.” In a civil case, the person who feels wronged decides whether to bring suit and also decides how much money in damages to seek. In criminal cases, a victim of a crime does not sue, but rather the state (plaintiff) sues the person allegedly committing the crime (defendant), and the victim becomes a witness in the case.



What happens in civil cases?

Civil cases often involve a dispute over a contract or what is called a “tort.” A tort has been defined as “[a] civil wrong, other than a breach of contract, for which a remedy may be obtained, usu. in the form of damages.” Torts can be intentional, such as civil theft, or unintentional, such as a claim for motor vehicle negligence.

In civil cases, if the defendant is found responsible, the court can enter a judgment for money damages, punitive damages, compensation for lost time/wages/income and/or reimbursement for certain costs, maybe even specific performance of something to be done that was not done. The court also can issue injunctions against the defendant restricting the defendant from some activity, and sometimes a court may enter a judgment awarding the plaintiff or the defendant for attorney’s fees. The judge cannot enter a judgment sending the defendant to jail or prison except in unusual cases in which the defendant may have violated a court order.

What is a criminal case?

A criminal case is one in which the local, state or federal government brings an action (lawsuit) in the name of all of its citizens. The plaintiff is the government agency, and it is acting on behalf of the people. The government is represented in court by the local state attorney or the U.S. attorney, depending upon whether the alleged crime is prosecuted in state court or federal court.

Who are the defendants in a criminal case?

In a criminal case, the accused, also known as a “defendant,” is charged with a crime against society — that is, a violation of the laws regulating our conduct, such as murder, assault, conspiracy, theft, DUI, vandalism, robbery, etc. In addition, less serious conduct such as driving without a license may also violate criminal laws.

How does a criminal case proceed?

In a criminal case, the prosecutor or a grand jury decides whether to start proceedings. If a defendant is found guilty, the punishment can be: fines, reimbursement to victims, attending classes to educate the offender on avoiding similar behavior, attendance at drug or alcohol counseling, probation, jail and/or prison. The punishment depends on the circumstances and the type of crime. In cases involving murder in which the state has decided to pursue the death penalty, the punishment could be a death sentence and ultimately execution.

What is the burden of proof in a civil case?

In a civil case, the person (or a company) who started the lawsuit (plaintiff) has the burden and obligation to prove the case with stronger evidence than the defendant has. This is called the “preponderance of the evidence” standard. In other words, for the plaintiff to win the case, the judge or a jury must believe that the weight of the plaintiff’s evidence is greater than the weight of the defendant’s evidence.

What is the burden of proof in a criminal case?

In criminal cases, because the person charged with a crime (defendant) is presumed to be innocent until proven guilty, the prosecution must prove the case “beyond a reasonable doubt.” This does not mean beyond all possible or speculative doubt, but it does mean the court or jury must have an abiding conviction to a moral certainty of the truth of the charge. Because a person’s liberty and freedom are at stake, the standard for prosecutors proving the case is necessarily a higher burden than the proof required in a civil case.

Who gets to testify in a civil case?

In civil cases, any person may be required to testify in court. A plaintiff may call the defendant to testify, among other witnesses, and likewise, the defendant may call the plaintiff to testify.

Who gets to testify in a criminal case?

In criminal cases, the testifying witnesses are just a bit different because a criminal defendant (the accused person) cannot be forced to testify. The accused has the right to remain silent at all stages of the criminal case, from arrest through trial, and also to be represented by an attorney appointed by the court and without charge if the person doesn’t have the means to hire an attorney. In

criminal cases, the accused has many rights that defendants in civil cases do not have. Again, this is due in part to the fact that a criminally accused person may lose liberty or freedom and be required to go to jail or prison.

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Should I consult an attorney?

If you are involved in either a civil or a criminal case, you should contact an attorney. There are many deadlines and time limitations that can affect your rights in either a civil or a criminal case, so consulting an attorney may help you understand your rights and obligations as well as your options for resolving the case.

Everyone has the right to hire and appear with an attorney, but in a civil case an attorney is not automatically appointed to represent a person who cannot afford one. In some circumstances, however, local legal aid organizations, as well as private attorneys, will agree to represent a person free of charge or for a reduced charge.

If you do not know whom to call, you may want to start with your local county bar association or The Florida Bar. You can find a local bar association online through **The Florida Bar's Lawyer Referral Service** . Or you can call the referral service at 800-342-8011.

This pamphlet is produced as a public service for consumers by The Florida Bar.

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