

Question no. 4

Civil and Criminal

LAW :-

Civil law deals with with the civil wrongs while criminal law deals with the criminal wrongs. A rough distinction between the criminal and civil wrong is that crimes are public wrongs and civil wrongs are private wrongs.

"wrongs" by blackstone:

Wrongs are divisible into two sorts or species, private wrongs or the public wrongs.

Private wrongs are infringement of privation of the private or civil rights belonging to individuals, and are thereupon termed civil injuries.

Public wrongs are the breach and violation of public rights and duties which effects the whole community.

Civil law ^{and criminal law} according to Salmond:

Salmond points out that from a practical standpoint;

"The importance of distinction lies in the difference in the legal consequences of crime and civil wrongs."

Civil justice is administered in one set of courts and criminal justice is administered in somewhat different set of courts.

He elaborated the difference b/w civil and criminal law in such a way;

For Civil law, if proceed successfully result in a judgement for damages, payment of debt or penalty or an

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injunction or decree for specific
restitution or performance.

For example

Order for delivery of possession of
land or land or in a decree of
divorce.

For Criminal law, if proceed
successfully result in number
of punishments, ranging from hanging
to fine or in a binding over
to keep peace or release upon
probation.

Remedies of

Civil Law

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There are 3 remedies of civil law:-

i- Compensation

ii- Injunctions

iii- Specific Performance,

Specific performance of contracts, agreements.

COMPENSATION

1-

Compensation in a civil litigation is designed

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To redress the wrong doing done to the plaintiff by the way of financial help from the defendant - This compensation is the legal right of anyone who has suffered monetary losses or injury due to another person's action.

Damages are the way to compensate and compensation is the remedy of civil law.

There are 4 types of Damages :-

- i- General damages,
- ii- Nominal damages.
- iii- Special damages.
- iv- Liquidated damages.

General Damages

When someone is ^{physically} hurt by your action, then general damages are awarded to compensate.

If you are injured in an accident, you will almost certainly experience some measure of pain and suffering for which you can claim general damages - In addition to the inflicting pain, memories of the accident can cause

ii - Special damages :-

Special damages financially compensate the injured person for losses suffered due to defendant's action.

Special damages compensate the claimant for the quantifiable monetary losses suffered by plaintiff. For example, extra costs, repair or replacement of damaged property, lost earnings (both historically and in the future), loss of irreplaceable items, additional domestic costs, and so on.

iii - Nominal Damages :-

"A small sum of money awarded as damages to someone who has suffered a legal wrong but no actual financial loss."

These are the damages in name only, a trifling sum

awarded to recognize an infringement
of rights without resulting
substantial loss or injury

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Liquidated Damages

An amount of money agreed upon by both parties to a contract which one will pay to the other upon breaking the agreement. Some times the liquidated damages are the amounts of a deposit or a down payment or are based on a formula. These damages are settled before the actual events.

2-

Injunctions

An injunction is a legal and equitable remedy in the form of a special court order that compels a party to do. In injunction there is no remedy in the sense of money when a court employs the extraordinary remedy of injunction, it directs the conduct of a party; and does so with the backing of its full coercive power. It can order to do something which you were obliged to do & not to do something which you were not supposed to do.

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3- Specific performance =

Specific performance is specialized remedy used by courts when no other remedy (such as money) will adequately compensate the other ~~problem~~ party. If a legal remedy will put the injured party in the position he or she would have enjoyed had the contract been fully performed, then the court will use that option instead.

CRIMINAL LAW :

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"It is the law of crimes and their punishment."

Criminal justice attempts at punishment, contrast to civil law ~~breaching~~ which effect private individuals, Crimes injure the public at large.

Purpose of criminal

Justice / law :-

The purpose of criminal justice is to punish wrongdoer. He is punished by the state.

Jurists describe two theories of purpose of criminal justice.

- 1- The view of One class of theories is that the end of criminal justice is to protect and add welfare of the state and society.

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2. The view of other class of theories is that the purpose of punishment is **retribution**. The offender must be made suffer for the wrong committed by him.

⇒ Ingredients/Elements of CRIME :

A act of breaching law cannot be considered as a crime until it has included both these elements in it.

1) Mens Rea

2) Actus Reus

MENS REA :-

Mens Rea mean "a guilty intention or mind". Mens Rea is considered as mere a thought and Society or state cannot punish bad thoughts, they

are only capable of punishing bad deed not bad thoughts or intention.

The rationale behind the rule is that it is wrong for society to punish those who innocently cause harm, for example a mentally retarded person.

Actus Reus :-

Actus Reus means "guilty or actual act" and generally refers to an overt act in furtherance of a crime. Even if someone has ~~int~~ guilty intention or mens rea but he hasn't committed the crime in actual or reality, it will not be considered as a crime.

So, to constitute criminal behavior the actus rea and mens rea must occur simultaneously.

Any act cannot be considered as a crime until both these factors are present in it.

Punishments :-

Civil cases generally only result in monetary damages or orders to do or not to do something, known as injunctions.

There are different types of punishments in the context of criminal law. It begins by considering the four most common theories of punishment.

1- Retribution:

If an offender breaks the law; justice requires that they suffer in return. For example punishment code "an eye for an eye".

"a tooth for a tooth".

2- Deterrence :-

The punishment

to discourage the offender

from criminal acts in the

future. Through these punishments,

offender recognize the unpleasant

consequences of their actions on

themselves and will change their

behaviour accordingly.

3- Rehabilitation:-

These punishments are to apply

treatment and training to

the offender so that he is made

capable of returning to society

as a law-abiding member of

the community.

4- Incapacitation :-

It involves capital punishments,

sending an offender to prison,

or restricting their freedom in the

community to protect society and

prevent that person from committing

further crimes.

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And there are also some other punishments like physical punishments, death penalty, removal of an offender from a territory through banishment etc -