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Legal Studies
Teach Yourself Series
Topic 7: Issues in Civil Law

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Issues in Civil Law

Our legal system categorises laws into criminal and civil law. Civil law is concerned about the rights of individuals and the responsibilities that go with those rights.

Initial terminology

As it appears in Units 2 & 4

In TYS1 the concept of why laws are needed were discussed and in TYS2 reasons why laws need to change were introduced. These reasons apply to civil law as well as criminal law.

During your study of civil law you will be required to study two specific areas of civil law – Tort law and one other area drawn from the following list:

- Contract law
- Family law
- Environmental law
- Workplace law
- Sports and the law
- Human Rights

Civil Law characteristics

As it appears in Units 2 & 4

Civil law is needed:

- To protect the rights of individuals and groups in society. For example, a person who buys a product has the right to expect that the product is not faulty and will operate as described. A person has the right to enjoy their land and their possessions without undue interference. These are two examples and there are numerous others
- To impose a duty on us and on others to not cause harm by their actions or their omissions (failure to act). This is about responsibilities and how each person is responsible for the way they interact with other members of society.
- To provide a means of resolving a dispute and provide a remedy for those whose rights have been breached by others.

The Principles of Civil Law

There are a number of key principles upon which all civil law is based. These principles are:

- A person must believe their rights have been infringed upon for there to be a civil dispute
- A person must have suffered some harm or loss as a result of that infringement
- The person who has had their rights infringed is responsible for bringing the dispute forward for resolution
- The person who is bringing the dispute forward for resolution has the burden of proof – they must prove that their rights have been infringed and that loss or harm was suffered as a result of the infringement.
- The person bringing the dispute is called the plaintiff
- The plaintiff must meet the necessary standard of proof to be successful in their civil claim. This standard of proof is ‘on the balance of probabilities’. This means that on balance, the plaintiffs version of the facts are more probable than the other parties version.
- The party defending the civil claim is called the defendant
- The plaintiff is seeking a remedy from the resolution
- A remedy is designed to restore the injured party (the plaintiff) back to the position they were in (or as near as possible) before the infringement occurred.
- A breach of civil law is referred to as a ‘wrong’
- A wrong can result from an act or an omission by the defendant
- If the plaintiff is successful in the case the defendant is held liable
- Juries are optional in a civil trial
- When used, a jury will comprise of six jurors
- A jury’s role is to determine if the defendant is liable or not liable for the harm or loss suffered by the plaintiff

Review Questions

1. What is the standard of proof in a civil case and who has the onus of proving the case?

2. What is the aim of civil law?

3. What is meant by the term Tort?

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Solutions to Review Questions

1. The standard of proof in a civil matter is based on the Balance of Probabilities and the onus lays with the Plaintiff to show that the defendant is most probably in the wrong.
2. The aim of civil law is to protect the rights of the individual and return the wronged person/party to a position similar to the one they were in prior to the wrong having occurred.
3. A tort is a civil wrong.
- 4.

Feature	Civil Law	Criminal Law
Purpose	Protect individual rights	Protect society as a whole
Party bringing the dispute for resolution	Person whose rights have been infringed	Society
Party holding the burden of proof	Plaintiff	Prosecution
Party defending the claim	Defendant	Defendant
Term to describe act by defendant	Wrong	Crime
Burden of proof	Plaintiff	Prosecution
Standard of proof	Balance of probabilities	Beyond reasonable doubt
Verdict	Liable or not liable	Guilty or not guilty
Use of a jury	Optional jury of 6	Jury of 12 in County and Supreme Courts
Outcome	Remedy	Sanction

5. Directions Hearings are held once parties are ready to go to trial. The aim is to speed up the trial process by encouraging the parties to jointly admit certain facts in the case so they don't need to be discussed at trial. They are generally held 7 days after the defendant has filed a Notice of Appearance.