



# LAW 101

Welcome to *MBA Fundamentals Business Law*. In Part I, we will start with the basics. When you begin cooking, you first learn your way around the kitchen. In “Law 101,” we’ll learn the basic divisions of the law and the steps that a lawsuit follows. We’ll also explore some variations on the typical litigation process by reviewing methods of alternative dispute resolution. We will keep our legal analysis healthy by adding ethical considerations to our ingredients. Finally, we will see how all these elements mix with the business world.



## Classifications of the Law

The law involves the most ancient of arts—storytelling. Actually, all of life’s activities involve storytelling—some fiction, some nonfiction. My car starts to make a grinding sound when I start the ignition. I go to the mechanic and he translates my story into “bad spark plugs and corrosion on the cables.” I get a terrible sore throat and my ears hurt. I go to the doctor and she translates my story into “strep throat, a septic bacterial infection to be treated with antibiotics.” Practitioners of the law do the same thing. They label things in their own way, but they are just expressing your story in another way. Don’t be too intimidated by the silly terms and ancient phrases. It is just storytelling, and you too can understand the language and translate the ideas with a little practice, patience, and common sense.

### WHAT’S AHEAD

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| <ul style="list-style-type: none"><li>• Criminal Law<ul style="list-style-type: none"><li>• Misdemeanor</li><li>• Felony</li><li>• Standard of Proof</li></ul></li></ul> | <ul style="list-style-type: none"><li>• Civil Law<ul style="list-style-type: none"><li>• Contracts</li><li>• Torts<ul style="list-style-type: none"><li>◦ Intentional</li><li>◦ Reckless</li><li>◦ Negligent</li></ul></li><li>• Standard of Proof</li></ul></li></ul> |
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## IN THE REAL WORLD

In June 1994, Orenthal James Simpson, a.k.a. O. J. Simpson, a football running back legend, was arrested and charged with the murder of his ex-wife, Nicole Brown Simpson, and a Los Angeles waiter, Ronald Goldman. Ms. Simpson and Goldman were found brutally murdered outside her home in Brentwood, California. The State of California charged Simpson with two counts of first-degree murder. One of the more bizarre aspects of the case was that before being arrested, Simpson was on the run in a famously televised car chase through the streets of L.A. A jury trial ensued. High-powered lawyers were present. And, despite the endless press analysis, the televised court sessions, the dozens of witnesses, and the incriminating car chase, Simpson was found not guilty.

Thereafter, the families of Nicole Brown Simpson and Ronald Goldman sued Simpson civilly for wrongful death. They claimed that he was responsible for the loss of their loved ones. A jury trial ensued. High-powered lawyers were present. And despite the fact that Simpson was found not guilty of the crime, he was found *liable* to the Goldman family and ordered to pay \$8.5 million in *damages*. He was also found guilty of committing battery on his ex-wife, although no damages were sought by the Brown family.

How can this be? You can't be tried twice for the same crime, can you? If a criminal jury finds you not guilty—beyond a reasonable doubt—how can a civil jury punish you? And why wasn't the jig up when Simpson tried to elude the police in his Ford Bronco with a wad of cash, his passport, and a false beard?

## KEY CONCEPTS

The law is a set of rules about acceptable conduct. Legal types categorize the rules that talk about conduct. The first main categories are criminal law and civil law.

### Criminal Law

*Criminal law* regulates public standards of conduct. Each of us lives in a community, or more accurately, in layers of communities—a city, a county, a state, a nation. There are principles of conduct that your community has

agreed upon, and by being a member of your community, you are held to those standards. In my community, you must drive no more than 25 miles per hour in a school zone, you cannot legally buy tobacco products until you are 18 years old, and it is against the law to break into your neighbor's house and take his property. We all agree to these rules.

If you violate a public standard of conduct, you are not always in big trouble. Sometimes a minor rule is broken. This crime is called a *misdemeanor*—and your infraction can be remedied by paying a fine or losing a *privilege*. If I linger at lunch too long, my downtown parking meter may expire, and I will get a ticket to pay. If I keep a library book too long, I cannot check out more books until I return the overdue one and pay a fine. Luckily, the law does not require you to be perfect. You can goof up quite a few times and still keep your rights and privileges, although your pocketbook may be a little lighter.

If you violate a public standard in a serious way—one that causes damage to property or injury to persons—you may have a lot to lose. When you commit a serious crime, called a *felony*, the consequences for violating the public standard of conduct could include large fines, big loss of privileges, and even the loss of your freedom to be in that society, commonly referred to as prison time. Because a felony conviction could potentially deprive a citizen of constitutionally guaranteed rights—life, liberty, and property—the stakes are very high and the law goes out of its way to get it right.

With felony charges comes a list of protections for the accused citizen, including the right to counsel, the right to trial by jury, the right to confront accusers, and the right against *self-incrimination*. Breaches of public standards of conduct are prosecuted by a public representative—the U. S. attorney, state's attorney, or county attorney—and the public pays, via their taxes, for these officials to uphold the standards that their community has set. If any fines or monetary damages are due because of violations of conduct, they are paid into the public coffers, not to individuals who may have been hurt.

You can almost always identify a criminal case by the way it is named, or *styled*, as they say in the legal world. The case will be one brought by the public against the accused, such as *U.S. v. Timothy McVeigh*, *State v. Simpson*, *People v. Larry Flynt*, or *Commonwealth v. Lizzie Borden*. The *standard of*

*proof*, or the degree with which the charge needs to be proven against the accused in a criminal case, is *beyond a reasonable doubt*, which is the highest standard in the law. It means that the accused is presumed innocent until the *decider of fact* (the judge or the jury) believes beyond any doubt that there is no other possible explanation for what happened and who caused it. They have to be 100 percent and unanimously convinced that the person accused did what he was accused of to find criminal liability. This is another way in which the individual is protected against unfair government action.

## Civil Law

The law also imposes personal responsibility on citizens in the community. This is *civil law*. The area of civil law is further divided into contract cases and tort cases. A *contract* has to do with a private promise between individuals to do something, such as provide a product, build a house, or enter into a marriage. A *tort* is a wrong you do to another person or his property. Torts are sometimes called personal injuries. It is human nature to sometimes break a promise or fail to be as careful as you should in your dealings with others. Examples of torts could be the following:

1. Joe gets drunk at a bar on Saturday night and intentionally breaks his best friend's jaw over a comment about a pool shot. An intentional injury to a citizen is quite serious. Our civil laws strive to protect citizens from this type of behavior.
2. Vice President Dick Cheney accidentally shoots his hunting partner, Harry Whittington, in the face. This is not an intentional act, but when someone is careless or reckless and bad things happen, civil law allows the injured party to recover.
3. Your neighbor takes your daughter to the swimming pool one hot afternoon with her children. She fails to keep her eye on your child every moment. Your child slips on the wet pool deck, hits her chin, and requires three stitches. This is a negligent act, but luckily, not a serious fault of your neighbor or a serious injury to your child.

There is no public *prosecutor* for these cases. Many of these cases are settled without recourse to court. If they cannot be resolved, the injured

parties, called *plaintiffs*, have to hire their own lawyers and file their own lawsuits. The persons accused of violating these private standards are called *defendants* and also hire representatives to help them tell their side of the story. If the plaintiff wins, he cannot put a defendant in jail or take away his privileges. Civil claims are all about damages, or monetary amounts, to compensate the plaintiffs for the broken promises or injuries.

The cases are brought in the parties' names, so are styled, for example, as *Smith v. Jones* or *Doe v. Wal-Mart*, or *Homeowner v. Builder* or *Credit Card Co. v. Customer*. The standard of proof, or degree with which the claim needs to be proven against a civil defendant, is a lesser standard than the criminal standard of proof. In a civil case, the plaintiff has to prove his claim by a *preponderance of the evidence*, which means that more likely than not, the defendant caused the damages that are claimed. It is not a unanimous standard, and a plaintiff can recover some damages even if there are other plausible or likely contributing factors to the situation that may have caused some harm. Sometimes the preponderance of the evidence standard is called the 51 percent rule because all the decider of fact (judge or jury) needs to find is that the defendant is more than halfway at fault in the situation.

You cannot be charged twice for the same crime. The U.S. Constitution says so in the Fifth Amendment, which forbids *double jeopardy*. But that doesn't mean that an act on your part cannot result in a number of charges. It all depends on what standards, public or private, that you violate. If you run a stop sign, you could be charged with multiple public violations: failing to stop, causing an accident, exceeding the speed limit, perhaps even failure to wear your seat belt or driving without a valid license. And all you were doing was getting a quart of milk from the corner store. In addition, your actions could have violated a private standard, to not run into others' cars, causing personal and property damage. You could then be sued civilly for damages by the owner of the car and any hurt parties. So, one action could result in a criminal and a tort charge—or several charges. Also, it could result in charges against you from many levels of government. If you rob the local bank before going for the milk, you have committed both a federal and a state crime.

## THE LAW IN ACTION

O. J. Simpson was accused of two heinous crimes—breaches of public standards of conduct—that is, taking the life of two human beings. The State of California, which is where the incident occurred, brought the charges against him. The case was styled *State v. Simpson*. This was a felony charge, a serious crime, with penalties upon conviction up to and including the death penalty. The defendant was presumed innocent until proven guilty. The defendant's actions before being taken into custody were not part of the record and could not be construed as admissions of guilt. The defendant was afforded all the rights reserved to him by the law and the U.S. Constitution, including the right to a speedy trial, the right to confront his accusers, and the right to be free of incriminating himself. A trial was held where a jury of 12 citizens heard all the evidence.

The evidence presented focused on the defendant's motives and opportunities to commit the crime. It included forensic and crime scene evidence and testimony about where the defendant was during the commission of the crime. The defendant had every right to question the evidence presented and present alternate theories of what happened. One alternative theory presented was that this was a racially based case and that a detective in the case wished to frame the defendant by planting a bloody glove at the crime scene. The defendant did not take the stand in his own defense, and this fact could not be construed against him because of his Fifth Amendment right against self-incrimination. The matter of the pre-arrest flight was never brought up to the jury. It was not relevant to the homicides.

After a 133-day trial and less than four hours of jury deliberation, the defendant was found not guilty on both counts of murder and Simpson was free to go. Forever after, he would be legally not guilty of these felonious claims in the eyes of the law, although many bystanders (media, citizens) questioned the verdict. There was no appeal. The state had its chance to try the case and that was it. For better or worse, Simpson's criminal case was over.

But one act can be a crime (breach of a public standard of conduct) and also a tort (breach of a personal standard of conduct). The families of the victims sued Simpson in state court, in a case styled *Rufo v. Simpson*

(Ronald Goldman's mother's name is Sharon Rufo). The claim here was that Simpson had some involvement—51 percent or more—in the deaths of the victims and those deaths left the surviving loved ones without the support, comfort, and company of their family members. This is called a case for *wrongful death*. Here, the evidence centered on how much the victims supported and aided their families, how their deaths would result in more costs—to raise children, be without the assistance of the loved one, etc. Economic matters were at issue, not forensic findings. In this trial, the defendant's failure to testify in his own defense could be construed against him and Simpson did take the stand to deny his involvement. The fact of the *acquittal* in the criminal trial was not relevant in this trial. A jury of 12 citizens heard all the evidence in a trial lasting 41 days. After 12 hours of deliberation on the compensation issue alone, they found Simpson guilty by a preponderance of the evidence for causing the death of Ronald Goldman and ordered him to pay \$8.5 million to the family for their loss. Simpson was also found guilty by a preponderance of the evidence of committing battery on his ex-wife. The Brown family did not seek damages.

Simpson was not charged twice for the same crime. He had multiple criminal charges against him, the result of one act of violence. He had multiple civil charges against him, the result of the same act. The criminal trial and the civil trial focused on entirely different evidence, and had entirely different judges presiding and juries deciding.

The potential consequences—death or lots of money—were on completely different levels. The burden of proof in each case was completely different; they do not affect each other and one does not determine the outcome of the other.

## TEST YOURSELF

In 2002, Tri-State Crematory, Inc. in Noble, Georgia, was in the news. It was discovered that the business had not cremated bodies sent to them from area funeral homes. In fact, over 330 bodies were found on the 16-acre site of the business, some dating back to the early 1990s.

The state of Georgia has laws prohibiting the abusing of a corpse, laws prohibiting individuals from making false statements on death certificates, and laws prohibiting theft by deception. All these criminal violations are classified as felonies.

The crematorium had contracts with many area funeral homes to provide the cremation services for their customers. In many instances, the crematory delivered concrete mixing powder to grieving families instead of remains. Tri-State was paid for their services by the families of the deceased through the various funeral homes.

1. Could Tri-State be charged with a crime? Could they be charged with more than one crime?
2. Who would prosecute this crime?
3. What could the consequences of committing such a crime be?
4. Could anyone sue Tri-State on a civil charge? If so, who could sue and what would it be based on—a contract or a tort?
5. What could the consequences of civil liability be for Tri-State?

## Brain Teaser

6. Is it easier to prove the criminal case than it is to prove the civil case?

## Questions Future Chapters Will Answer

7. Could this be a federal case?
8. How can Tri-State Crematory, Inc., which is a corporation, be put in jail?
9. Could the families sue anyone other than Tri-State for their damages?

Answers can be found on pages 207–208.

## KEY POINTS TO REMEMBER

- The law loves to label things. Legal terminology categorizes ideas, just like a grocery store categorizes produce and canned goods; with a road map, legal terms make sense.
- The law is all about regulating conduct among people in a community. It does not demand the best of us, but it sets minimum standards of conduct.
- Two big categories of the law are criminal law and civil law.
- Criminal law is divided into misdemeanors and felonies.
- Civil law is divided into cases involving contracts and cases involving torts.
- One act can result in both criminal and civil charges.

