

JRSB205 (summer 2010)

Topic 2, Lesson 1, Activity 3: The Courts - Criminal and Civil

Group C

1. O.J. Simpson case

a. Were criminal charges laid?

Mr. O.J. Simpson was charged with two counts of first degree murder, the victims was his ex wife Nicole Brown and her friend Mr. Ronald Goldman.[4]

b. Was O.J. Simpson convicted?

No, Mr. Simpson was acquitted from all charges.

c. Who sued O.J. Simpson?

The People of the State of California (plaintiff) sued Simpson for damages in a criminal trial. Both the Brown and Goldman families sued Mr. Simpson for civil damages.

d. What was the result?

Criminal case: O.J. Simpson pleaded not guilty to the two counts of first-degree murder. [4]

Civil case: on February 5, 1997, the jury unanimously found there was a preponderance of evidence to find Simpson liable for damages in the wrongful death of Goldman and battery of Brown. Simpson was ordered to pay 33.5 million dollars to the two families.

e. Based on what you now know about criminal and civil proceedings, explain why the outcomes of the criminal and civil trials differed.

Civil procedure is where private rights are imposed and it determines liabilities. Criminal trial occurs when there is offense towards the authority of the state: "In criminal law, the burden of proof is that guilt must be shown beyond all reasonable doubt. Whiles in civil law the burden of proof is that liability must be shown on the balance of probabilities".

[5]

The balance of probabilities in the civil trail conduct to prove that there was greater than 50% likelihood that events took place as claimed.

In a criminal prosecution the judge must be convinced beyond a reasonable doubt of the guilt of the accused. This stringent test has played in favour of Mr. Simpson and they marked the difference of outcomes in the civil and criminal proceedings.

Simpson's lawyer, Robert Shapiro, F. Lee Bailey and Johnnie Cochran played a key role persuading the jurors with reasonable doubt about different important issues in the trail (DNA analysis, blood sample evidence, policy misconduct, witnesses).

Other important difference about the proceedings was the juries' composition (see below) and the media coverage (huge coverage in the criminal trial and no coverage during the civil trial).

f. Were both matters determined by juries?

Yes, both the civil and criminal matters were determined by the jury.

g. If so, by the same jury or by different juries?

No there were two different juries. According to Joe Chidley with Anne Gregor [1], the composition of the jury had a very important incidence in the outcome of the trials. "In the criminal trial - where Simpson's "dream team" of lawyers argued that their client had been framed by racist cops - the panel was drawn from mostly black downtown Los Angeles, and nine of the jurors who eventually acquitted Simpson were African-American. The civil jury, by contrast, was drawn from predominantly white Santa Monica. Of the 12 jurors who unanimously found Simpson liable, none were black, although one was of mixed race."

h. Who bears the onus of proof in a criminal case?

In O.J. Simpson case, the state of California is the onus of proof in a criminal case. [6]

i. Who bears the onus of proof in a civil lawsuit?

The plaintiff, which in this case are the citizen of California are the onus of proof in a civil lawsuit. [6]

j. What is the amount of proof required?

"In a civil lawsuit, the plaintiff's case must be proved by a, meaning that the plaintiff must convince the judge or jury that his or her version of the facts is more likely than not and that he or she is entitled to judgment. This degree of proof is sometimes called presenting a prima facie case or "crossing the 51 percent line", because the plaintiff must out prove the defendant by more than half the evidence." [7]

"In a criminal lawsuit the prosecutor must prove the case beyond a reasonable doubt. This means that judge or jury must believe the defendant's guilt without significant reservations. This burden of proof is much more difficult than either of the proof levels required in civil cases. This heavier burden on the government exists to protect defendants from overzealous prosecutors who might succeed in convicting innocent individuals with less evidence if the proof requirements were easier to satisfy." [7]

The accused is presumed innocent until proven guilty, if there is any reasonable doubt about guilt; the accused remains innocent. Therefore, the burden of proof shifts from side to side throughout the trial as evidence is introduced and the trial progresses.

- 2. In 2007, trials were conducted in the Court of Queen's Bench in Edmonton against several individuals charged with murdering Nina Courtepatte, a 13 year-old girl whose body was found on a golf course. One of the accused, Joseph Laboucan, was convicted of murder; Michael Briscoe was acquitted; another co-accused pleaded guilty. Charges were also laid against two further teens, whose names were not published because they**

were youths. Can the family of the victim now sue? In light of the verdicts, will a civil case be difficult to establish?

There is a wide discrepancy in the awards made in Canada for damages in civil suits for sexual assault.

It is true that by our law there is a higher standard of proof in criminal cases than in civil cases, but this is subject to the qualification that there is no absolute standard in either case. In criminal cases the charge must be proved beyond reasonable doubt, but there may be degrees of proof within that standard. Many great judges have said that, in proportion as the crime is enormous, so ought the proof to be clear. So also in civil cases. The case may be proved by a preponderance of probability, but there may be degrees of probability, within that standard. The degree depends on the subject matter. A civil court, when considering a charge of fraud, will naturally require a higher degree of probability than that which it would require if considering whether negligence were established. It does not adopt so high a degree as a criminal court, even when it is considering a charge of a criminal nature, but still it does require a degree of probability which is commensurate with the occasion [11].

In the context of civil litigation, some courts and masters have examined claims of privilege. In *M.(A.) v. Ryan*, 1993 CanLII 1915 (BC S.C.), [1993] 7 W.W.R. 480, the British Columbia Supreme Court considered whether psychiatric records had to be produced in a civil suit for sexual abuse [10].

In the other side, a survey of Canadian cases reflects that the damages awarded in civil suits for sexual assault vary from as low as \$25,000.00 to a high of \$300,000.00 in a very extreme case. Many of the awards remain inadequate because the courts erroneously focus on the severity of the assault, rather than on the gravity of the damage caused to the victim [8].

The family of the victim could claim for lost income, medical treatment cost, etc. such as in [9].

The following cases have been conducted for a sexual assault [8]:

- *B.(A.) v. J.(I.)*, reflex, [1991] 5 W.W.R. 748 (Alta. Q.B.); three children were sexual assaulted by their stepfather several times a month. The court awarded \$65,000.00 to each victim for non-pecuniary damages and \$10,000.00 each for aggravated damages.
- *C. (J.C.) v. Keats*, supra, a family friend sexually assaulted two sisters. The court awarded \$18,000.00 general damages to each plaintiff, which the courts stated as being lower than normal because they had not sought help with counselling.
- *C.(P.) v. C.(R.)* reflex, (1994), 114 D.L.R. (4th) 151 (Ont. Ct. (G.D.)), a father sexual assaulted his daughter between the ages of 14 to 18. As the victim had been abused by others prior to these assaults, the damages were reduced to \$45,000.00 general damages, being 60% of the award.
- *D. (Guardian ad litem of) v. F.* [1995] B.C.J. No. 1478 (Q.L) (B.C.S.C.), a father sexual assaulted his daughter from the age of 11 to 15. The court awarded \$100,000.00 general and aggravated damage, as well as damages for future therapy, educational upgrading and loss of earning capacity.

- In *Gray v. Reeves*, 1992 CanLII 4040 (BC S.C.), [1992] 89 D.L.R. (4th) 315 (B.C.S.C.), an uncle sexual assaulted a female child from the age of 4 to 12, approximately fifteen times. As an adult she experienced employment difficulties due to feelings of stress. The court awarded \$45,000.00 general and aggravated damages.
- *H.(S.) v. L.(R.G.)*, 1993 CanLII 6887 (BC S.C.), [1994] 2 W.W.R. 276 (B.C.S.C.), a step-father sexual assaulted his step-daughter from the age of 9 to 12, and at the time the child believed the defendant to be her natural father. The court awarded \$100,000.00 general and aggravated damages.
- *T.P.S. v. J.G.* [1995] B.C.J. No. 150 (Q.L.) (B.C.S.C.), a foster father sexual assaulted a female child between the ages of 7 and 9. The court awarded \$100,000.00 non-pecuniary damages and \$20,000.00 aggravated damages.

Works Consulted

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- [7] Civil versus Criminal Law, retrived May 25, 2010, from <http://www.otto-graph.com/samples/3/civil.html#civil>
- [8] *P.(S.) v. K.(F.)*, 1996 CanLII 6981 (SK Q.B.)
- [9] *J.L.L. and S.R.H. v. Ambrose*. 2000 BCSC 0351
- [10] *A. (L.L.) v. B. (A.)*, [1995] 4 S.C.R. 536

[11] B. (E.) v. Order of Oblates, 2001 BCSC 1783