gLAWcal Comment #323

IS IT CIVIL OR CRIMINAL LAW?

Based on

Shujie Feng, Xin Shu & Ningning Zhang "The Protection of Biotechnological Innovation by Patent in the United States, Europe, France, and China. A Comparative Study from the Perspective of the TRIPs Agreement"

Another consideration to be made when observing the body of tort law in a given jurisdiction is to look at the two broad areas of the law, the criminal and the civil areas of the law. Tort law exists between them, but leans towards the civil law more because real harm is often remedied by monetary payment to the victim from the tortuous party. While this may be a distinction that is of no consequence to most, the greater the number of statutes that is in the area of torts, the greater likelihood of their being effective consumer protections policies. It appears that the body of Chinese tort law exists in the realm of civil law. This could be a signal that there is consideration for the value of certain actions, but also may be insufficient if certain actions rise to the level that should be considered criminal in nature. These complicated cases are ones in which there could be state actors that are truly infringing upon citizen's civil rights. While the definitions of civil rights depend upon the jurisdictions, there is an overlap of tort law and criminal law when a product that is produced by the state is the cause of a tort. It is still notable that the bulk of statutes that are considered the body of tort law in China have been recently adopted, within the last fifty years. There is a definite overlap in the expansion of tort law that correlates with the expansion of manufacturing practices in China.

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To influence policymakers, to raise awareness over Non Trade Concerns, to encourage stakeholder participation, and to disseminate gLAWcal's publication results.

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