



# CONTEMPORARY CHINESE LEGAL SYSTEM

Dr. Haihong Liu, SISU

Spring Semester, 2016-2017

Week	Date	Topic
1	Feb 23	No Class
2	March 2	Topic 1: Chinese legal system in general-Chinese Legal Culture and Traditions
3	March 9	Topic 1 Chinese legal system in general - Experience of Law in PRC
4	March 16	Topic 2: Chinese Constitutional Law & Rule of Law-Chinese Constitution
5	March 23	Topic 2: Chinese Constitutional Law & Rule of Law-Legal Institutions and the Administration of Justice and Law
6	March 30	Topic 2: Chinese Constitutional Law & Rule of Law-Sources of Law and Law-making
7	April 6	Topic 3: Chinese laws in operation-public law
8	April 13	Topic 3: Chinese laws in operation- civil law
9	April 20	Topic 3: Chinese laws in operation-Business law
10	April 27	Topic 3: Chinese laws in operation-Foreign Trade & Investment law
11	May 4	Internship: Visit the legal department of a multinational company in Shanghai (The time may be changed)
12	May 11	Topic 4: Dispute Resolutions
13	May 18	Topic 5-Implementation and Enforcement of Law

## Problem

- Yi Nao (医闹) - healthcare disturbance

## Discussion

- How are medical disputes resolved in your country?

## Legal Framework

- Administrative resolution
- litigation
- ADRS

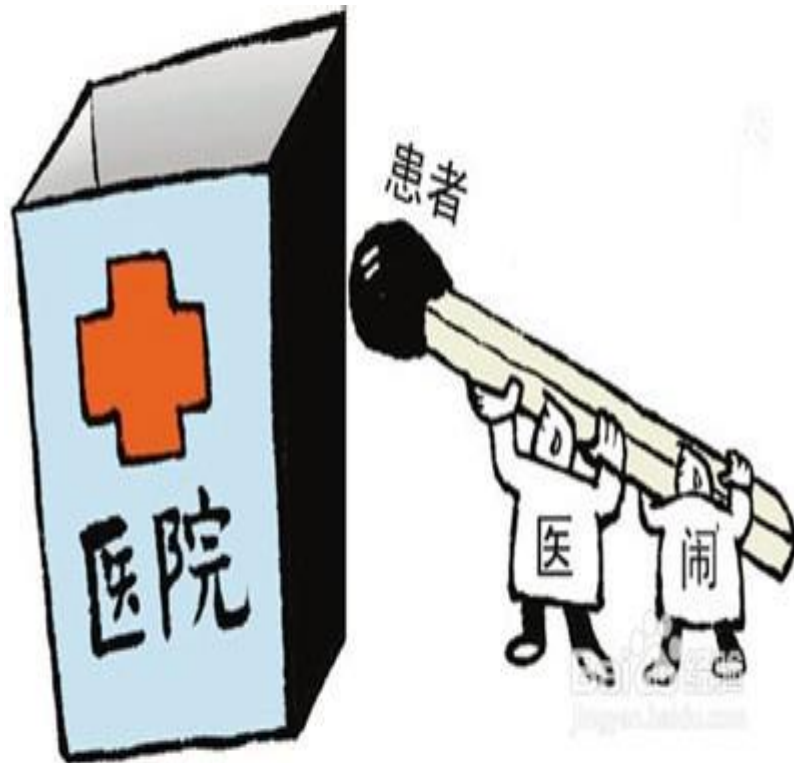
## Case Analysis

# Problem: Yi Nao 医闹

## Healthcare Disturbance



Yi Nao is the organised disturbance of hospitals or medical staff, usually to obtain compensation for actual or perceived medical malpractice. Yi Nao is usually perpetrated by organised criminal groups hired by patients or their families, although Yi Nao gangs may also solicit activity. Yi Nao has been increasing in recent years.



职业病

新华社发 朱慧卿 作

# Questions:

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What are normal ways to resolve disputes between patients and hospitals regarding medical accident in your country?

# Dispute Resolutions in China

- Administrative resolutions
- Litigations
- ADRS (negotiation, mediation, arbitration)
- Exceptional way: Letter and Call (信访)

# Dispute Pyramid



Felstiner, W., R. Abel, and A. Sarat. 1980-81. "The Emergence and Transformation of Disputes: Naming, Blaming, Claiming ..." , Law and Society Review 15: 631-54

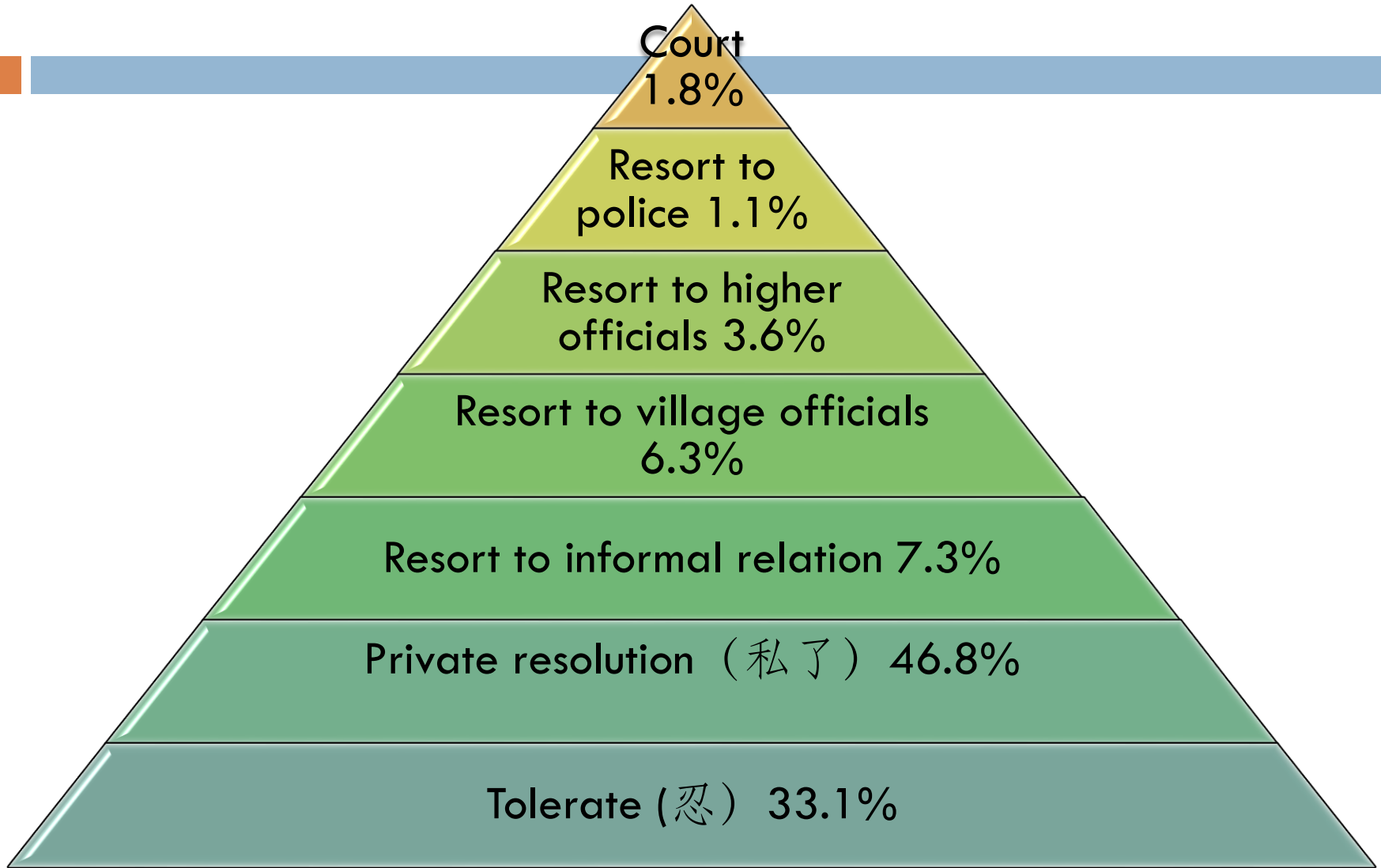


# Dispute Pyramid



1. Most disputes are resolved by lower-level resolutions .
2. The more disputes resolved at lower levels, the less disputes left for higher-level resolution.

# Dispute Pagoda



Michelson, E. 2007. "Climbing the Dispute Pagoda: Grievance and Appeals to the Official Justice System in Rural China" *American Sociological Review* 72:459-485.

# Dispute Pagoda

1. The resolutions at different level are relevant separate from each other. The decrease at lower level does not lead to the increase at the higher level.
2. The major factor which leads farmers to resort to official ways of resolution is their relationship with the relevant authorities.

# Dispute Pagoda

- Why do people choose to tolerate? Due to cost? No other choices? No trust for the authority?
- Why are relationship resources and the nature of dispute the significant factors for the choice of resolutions?
- Does the operation of litigation affect the choice?

# Dispute Pagoda

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Factors for choice of dispute resolutions:

- Legal mobilization
- Recognition of authority
- Legal consciousness

# Case Analysis: How is law practiced?

## Theoretical issues:

1. What is the operating logic of formalist law philosophy (Max Weber)?
2. How does the law operate according to the instrumentalist law philosophy?
3. What is the role of law according to legal sociology? (Eugen Ehrlich)

# Case Analysis: How is law practiced?

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## Facts:

1. What happened during the pre-judiciary period? What resources do parties mobilize?

# Case Analysis: How is law practiced?



Facts:

Power, relationship, media...



# Case Analysis: How is law practiced?

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Facts:

2. Why didn't the victims inform police about their injury? How did it affect the resolution of dispute?

# Case Analysis: How is law practiced?

Facts:

3. Why was such a complicated case of chain robberies simplified into a “April 13” case? How was such simplification achieved? How are the interest, power and law mingled?

# Case Analysis: How is law practiced?

Facts:

4. What is the purpose of collegiate panel?  
How does it operate in reality in local courts? Why does it operate that way?  
What are the problems of such operation?

# Case Analysis: How is law practiced?

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Facts:

5. What is the relationship between procedural justice and substantive justice? Please analyze according to formalism and pragmatism respectively.

# Case Analysis: How is law practiced?

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Facts:

6. What is the essence of handling a case at Chinese grass-root court?

# Case Analysis: How is law practiced?

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Facts:

7. What tactics did the judge apply in mediation? How is law practiced in mediation?

# Case Analysis: How is law practiced?

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Facts:

8. What are the problems of collegial panel and review committee?

# Case Analysis: How is law practiced?

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Facts:

9. How do you understand “the law is an art, the law is about technique”? Is there such understanding in your own country?



# Suggested topic for research:



- Analysis of Yi Nao according to legal sociology
- Research of dispute resolution between foreigners and Chinese within Chinese community
- Role of chamber of commerce in disputes resolution involving foreigners

# Further reference reading:

- Ang, Y. Y., & Jia, N. (2014). Perverse Complementarity: Political Connections and the Use of Courts among Private Firms in China. *The Journal of Politics*, 76(02), 318-332.
- Pierre, L. (2008). The institutional diffusion of courts in China: Evidence from survey data. In T. Moustafa & T. Ginsburg (Eds.), *Rule by law: The politics of courts in authoritarian regimes* (pp.207-34). Cambridge, New York: Cambridge University Press.
- Liebman, B. L. (2014). Legal reform: China's law-stability paradox. *Daedalus*, 143(2), 96-109.
- Michelson, E. (2007). Climbing the dispute pagoda: Grievances and appeals to the official justice system in rural China. *American Sociological Review*, 72(3), 459-485.
- Miller, R. E., & Sarat, A. (1980). Grievances, claims, and disputes: Assessing the adversary culture. *Law and Society Review*, 525-566.