



Contemporary Chinese Legal System

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Schedule

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

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- I. Structure of Court system
 - II. Role of Courts



I. Structure of Court System

1. Institutions:

- * People's Court: adjudication
- * People's Procuratorate: supervision

I. Structure of Court System

2. Court System of China

- Court of general jurisdiction

the Supreme People's Court



the High People's Courts



the Intermediate People's Courts



the Basic People's Courts

I. Structure of Court System

2. Court System of China -Court of Special Jurisdiction

Maritime Courts

Military Courts

Forestry Courts

IP Courts

I. Structure of Court System

3. Internal structure of court

President, Vice Presidents Party Committee

Judicial Committee

Division Heads, Deputy Heads, Deputy Heads

Admin. Civil Criminal Filing Execution Supervision

I. Structure of Court System

3. Internal structure of court

Single Judge Collegial

Presiding Judge Presiding Judge

Judge, Assessor Judge, Assist. Judge

Clerk, Secretary

I. Structure of Court System

4. Trial system

Two instances, with the appellate trial as the court of final instance （两审终审制）

I. Structure of Court System

3. Trial system

inquisitorial trial system

collegiate bench

single judge

people's assessor

II. Role of Court

Application of law

Interpretation of law

No recognition of doctrine of precedents

II. Role of Court

Interpretation of law takes two formats:

- To concretize or substantiate rules with factual data within a particular social setting (literal approach).

This format requires formal logic on the theoretical foundation of legal positivism and analytical jurisprudence

- To change the meaning or the scope of rules to meet new situations or new social demands. It requires dialectical logic on the theoretical foundation of sociological jurisprudence (“telescopic approaches-purposive approach).

“Five Golden Flowers” “五朵金花” vs. Qujing Cigaret Co.

—Should work title be protected by Copyright Law? (图片下载于央视网站
经济与法)



Defendant

Yun Nan Qujing Cigaret Co.

Plaintiff

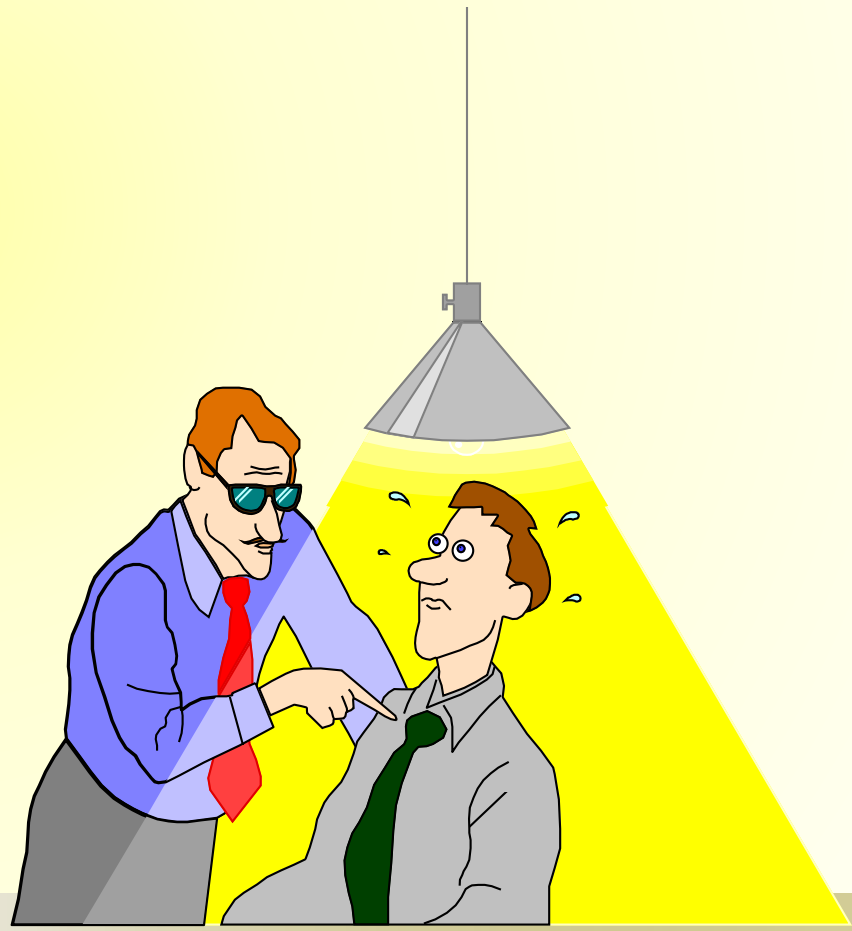
Scriptwriters of the Movie
“Five Golden Flowers”

Beijing Audio-visual Co. vs. Beijing Film Academy

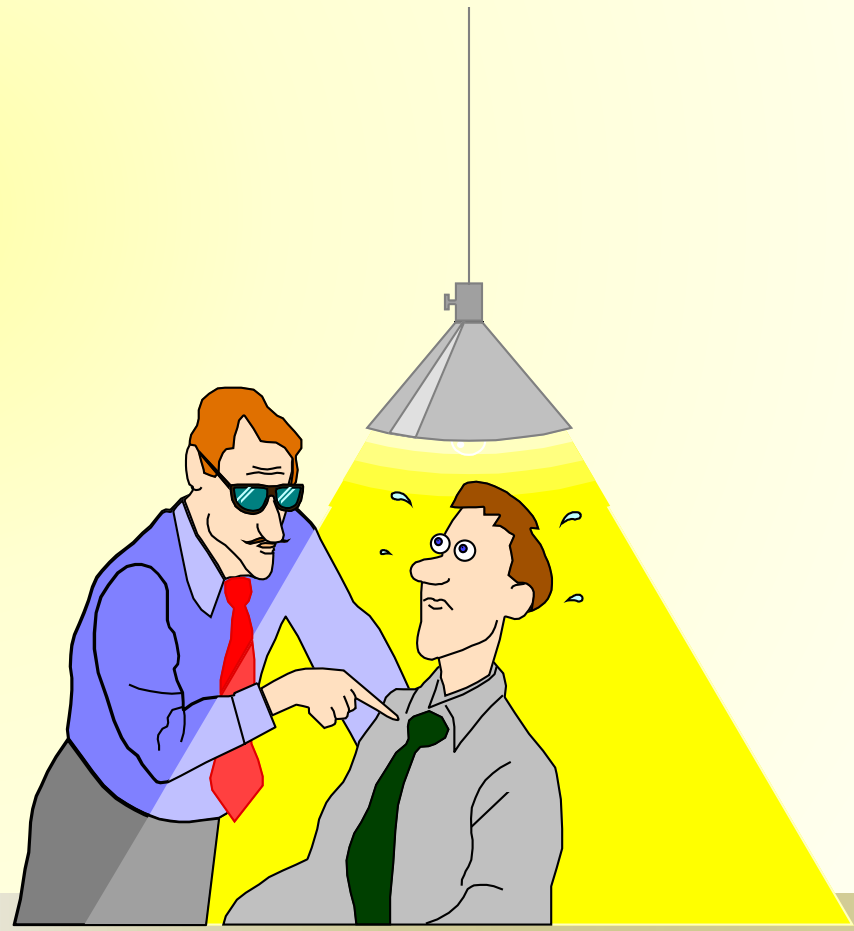
March, 1992, Beijing Audio-visual Co. signed exclusive license with Novelist Wang Zengqi and was authorized adaptation right and right to make cinemagraphical work.



Oct. 1992, the student adapted the novel of Wang Zengqi into a play for her graduation thesis.



In April 1993, her play was chosen to be made into a film by students with the financial support of the Film Adademy.



During the summer holiday, the movie was completed and was shown in the Uni Theater twice for students to view.

In Nov. 1994, the Film Academy took the movie to France to enter for the World Film Festival for University Students. And the movie was shown twice during the Film Festival.

The movie won the 1st prize, and such news was reported widely in China



Article 22 In the following cases, a work may be exploited without permission from, and without payment of remuneration to, the copyright owner, provided that the name of the author and the title of the work shall be mentioned and the other rights enjoyed by the copyright owner by virtue of this Law shall not be prejudiced:

...

(6) translation, or reproduction in a small quantity of copies, of a published work for use by teachers or scientific researchers, in classroom teaching or scientific research, provided that the translation or reproduction shall not be published or distributed;

....

II. Role of Court

Chinese judiciary adopts both interpretive formats in the adjudicative process. The second one has more impacts on the legal development in China. Although it is called “judicial interpretation”, it has particular features:

- 1) It is not triggered off by any particular case, but by the necessity in expounding abstract rules;
- 2) drafted by a special organ in the judiciary;
- 3) It is similar to a written rule rather than a judgment;
- 4) It mainly provides further explanation of existing rules, also adding or deleting meanings of the original rules;
- 5) It has general binding effects over all similar cases;

But it is not regarded and listed by “Law on Legislation ” (《立法法》), as a part of the formal statutory laws.

II. Role of Court

Reasons for the lack of formal recognition:

- 1) Chinese legal system follows Continental Legal Tradition, codification which are made by the Congresses and Administrative Organs; it is a kind of State-Positivism.
- 2) Chinese governmental structure is a uniform system of pyramid, with the National People's Congress sitting at the top;
- 3) Chinese history and culture stresses harmony and integrity as a basic value;
- 4) Socialist system serves as the foundation for the current legal and governmental structure.

II. Role of Court

Legal grounds for judicial interpretation

- .Organic Law of People's Court and Organic law of People's Procuratorate;

- .Decision of the Standing Committee of the National People's Congress on Strengthening Legal Interpretation;

- .Several Rules of Judicial Interpretation Work, 1997;

- .Not by Constitution.

III. Forms of Judicial Interpretation

There are common judicial interpretations (specific interpretation) in adjudicative process;
Besides, there are the general ones which include:

Three formal forms:

- .“Judicial interpretation” (sifa jieshi);
- .“Rules” (guiding) for adjudicative issues;
- .“Reply” (pifu);

III. Forms of Judicial Interpretation

- Notifications (tongzhi) or opinions (yijian);
- Minutes of national judicial meetings (zuotanhui jiyao) held by the SPC;
- Speeches by the president and vice-presidents

other forms of documents issued by the SPC, together with other governmental organs;

- Answers through telephone, mail and other forms of communication by the research office or other chambers of the SPC to lower level courts;
- Publicized exemplary cases (anli);
- Provincial Judicial Interpretations (de facto).

IV. Judicial Activism

The increasing judicial activism is apparently demonstrated by its judicial interpretation work, which arouses much criticisms against the SPC for its ultra vires role in law making.

Reasons for its existence and functions:

- .Constant and rapid social changes left laws far behind the reality;
- .The long process of legislation forced the judiciary to act more actively;
- .It has been functioning in a very positive way by promoting new legal development (civil law, evidence rules, constitutional law, administrative law, etc.);
- .Increasing professionalism in the judiciary.

Example

Is framing a direct infringement of copyright?

- Server test
- User's perception test
- Substantial control test