



**ZHENGRUI HAN**

# **LEGAL COMMUNICATION OF CHINESE JUDICIARY**

**A DISCOURSE-BASED VIEW**

PETER LANG

China's society and economy have been developing remarkably fast over the past three decades, and accordingly it makes continuing effort to conduct a judicial reform in order to upgrade its comparatively static legal system. The judicial reform changes a number of aspects of Chinese litigation practices. This research aims at describing, analyzing and explaining some of the ways Chinese judges change their discursive construction of civil judgments because of the on-going judicial reform. A variety of data are used in this book: a medium-sized corpus of Chinese civil judgments, lawyers and judges' accounts, written laws (statutes), legal news reports, and more. It is intended to produce an empirical description of Chinese judges' adjudicative practices in the process of hearing trials, weighing up parties' arguments, quoting the law and finally delivering judicial opinions, which may be of interest for scholars and researchers in the field of discourse analysis, applied linguistics and contemporary China studies.

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## Preface

This research attempts to analyze empirically judges' writing of civil judgments in Mainland China, where the judges' writing is traditionally considered structured, conventional and free from rhetorical variations. The writing of civil judgements in Mainland China requires that judges strictly adhere to a number of rules and conventions, the contravention of which deleteriously affects the generic integrity of civil judgements and the perceived professionalism of judges' writing. While rules and conventions are fixed, society is ever changing. It is therefore common for judges to manipulate rules and conventions legitimately or illegitimately to solve contemporary situation-specific problems. This research conducts a multidimensional and multi-perspective analysis of Mainland Chinese civil judgments to demonstrate some of these rules and conventions and, more importantly, show how judges manipulate them in specific cases.

The research data constitutes a comprehensive medium-sized corpus of civil judgments (100 cases), interviews with ten legal specialists (seven lawyers and three judges), intertextual data of related written laws and news reports, and other law-related documents rendered by provincial courts and authorities. Research findings are divided into three groups based on move analysis, lexico-grammar and discourse coherence.

Move analysis in this research identifies the required and optional moves/steps in civil judgments and macro rhetorical patterns. Since civil judgments are publicly accessible and enable laypersons to study litigation practices, there are two groups of target readers: specialists and non-specialists. Specialist readers refer to judges, lawyers, law professors, and other legal professionals. Non-specialist readers refer to laypersons who may lack legal knowledge but are interested to learn about legal affairs. The distinction between the two is important when interpreting the readability and accessibility of

civil judgments. The analysis identifies several important findings. For example, Mainland Chinese litigants seldom engage lawyers when undertaking complicated litigation proceedings. More commonly, individual parties seek assistance from relatives and friends, while corporate parties are usually represented in court by non-legal staff. This is explained by a traditional distrust of lawyers in Mainland China, and by the parties' intentions to avoid costly lawyer fees.

The lexico-grammatical analysis in the present research investigates the use of numerical expressions and the occurrence of metadiscourse in civil judgments. Numerical expressions are widely used by judges in the moves *Parties' Arguments* and *Judges' Arguments*. Some are used to describe a particular time when a specific event occurred, and others report specific sums of money claimed as compensation by the plaintiffs. The analysis reveals that these numerical expressions do not appear in isolation. Temporal expressions in the move *Parties' Arguments* always correspond closely with more exact ones used in the move *Judges' Arguments*. The interview and intertextual data verify that this correspondence demonstrates that the primary intention of Mainland Chinese judges' written civil judgments is to report the working of their results in litigation, not to provide a faithful recontextualization of parties' arguments. The occurrence of metadiscourse suggests that Mainland Chinese judges make considerable rhetorical and legal effort when resolving the tension between parties' views and when they interpret the law to build legal bases for litigation.

Coherence analysis in this research concentrates on how specialist and non-specialist readers can acquire a coherent reading of Mainland Chinese civil judgments. Non-specialist readers face two levels of reading difficulty: the linguistic level and the discursive level. A civil judgment is the final textual artefact of the specialized litigation practice and employs many legalized terms and expressions to report court proceedings. A preliminary understanding of these terms and expressions is required for a coherent reading of civil judgments. However, familiarity with legalized words and expressions does not guarantee a thorough understanding of the judges'

writing in civil judgments. For example, everyday language might carry specialized meanings in a legal field, the connection among specific arguments might be mediated by quoted texts, and the actual litigation practices might be intentionally or unintentionally simplified. Judges who write civil judgments presuppose that their readers will have considerable social and legal knowledge. A reconstruction of this presupposed knowledge is therefore necessary for specialist and non-specialist readers to understand civil judgments at the discursive level, which only specialist readers may achieve.

This research has both academic and pedagogic significance. Few empirical studies of Chinese professional discourses exist and there are fewer still of legal discourse. This research makes a preliminary attempt to examine the genre of Chinese civil judgments from an empirical perspective and attempts to understand how judges write rules and conventions and how they manipulate them in specific cases. The research findings suggest that the impression that Chinese civil judgments primarily consist of standardized jargon and conventional syntax is inaccurate. Rather, rules and conventions are principles that are constantly manipulated by experienced judges to solve a number of situation-specific problems. The findings revealed in this research can be utilized to produce several pedagogic tasks suitable for use in legal education and training. Such tasks will help law students critically read civil judgements and raise their awareness of litigation practices embedded in this genre.



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## Chapter 1

# Introduction

### 1.1 Introduction

Genre studies has become an established field in applied linguistics over the past two decades and proved itself to be a useful approach for analyzing academic and professional discourse. There are a number of studies of academic/disciplinary discourse (Swales, 1981, 1990a, 1998, 2004; Johns, 1997; Berkenkotter & Huckin, 1995; Bazerman & Paradis, 1991; Hyland, 2000; Flowerdew, 2002), business discourse (Bargiela-Chiappini, & Nickerson, 1999; Bargiela-Chiappini, Nickerson, & Planken, 2007), and legal discourse (Bhatia, 1993, 2004; Bhatia, Candlin, Engberg, & Trosborg, 2003a; Bhatia, Candlin, & Sharma, 2009). Academic discourse remains a strong research focus in the literature within which researchers have studied a variety of professional discourses in their research agendas, including legislation, administration, teaching, business, advertising, etc. However, most of these studies have been conducted in English contexts, and few attempts have been made to study Chinese professional genres, especially legal ones.

Following the research in Bhatia (1983a, 1993, 2004), Swales (1990a, 1998), Bazerman (1988), Bazerman & Paradis (1991), and Miller (1984, 1994), the present research intends to expand the territory of genre studies by applying it to a non-English language (Chinese), a different profession (Chinese judges), and a different text (civil judgments). This research examines civil judgments, which refers to Mainland Chinese civil judgments (not criminal judgments), from the perspective of applied genre analysis, aiming to understand its roles, textual features, and contextual interpretations. In addition,

this study is intended to introduce the multidimensional and multi-perspective framework of genre analysis to Mainland China, where discourse analysts have traditionally focused only on the linguistic level.

Compared to legal genres in legislation and courtroom trials (Atkinson, & Drew, 1979; Levi, & Walker, 1990), little attention has been given to civil judgments. Some practical reasons make civil judgments less accessible to genre analysts than other academic and professional genres. Firstly, civil judgments are neither easy nor interesting to read because of the complex syntax and specialized vocabulary used. Secondly, civil judgments can appear more intimidating than other genres like business letters and book blurbs because they cover tens of pages. Thirdly, some analysts reasonably assume that civil judgments are formal and institutionalized such that few significant generic variations occur. Finally, limited access to legal specialists in China and the difficulty of understanding basic content knowledge pose practical difficulties for genre analysts.

It is a fact that institutional genres seem conventional and free from variation because they are often de-contextualised because they are separated from the people who routinely produce, interpret, and consume them. Freedman & Medway argue that

to analyze [...] writing in the light of the recent reconception of genre is a demystifying move, in that it, for instance, affords explanations of conventional forms that previously appeared arcane or arbitrary (1994b, p. 12).

This is also true for legal settings where much specialized knowledge and information is hidden from non-specialist readers. This research aims to demystify some of the ‘backstage work’ (Goffman, 1959) that gives appropriate meanings to civil judgments and thus uncover the true dynamic nature of this genre.

## 1.2 Context of the research

This discursive research is designed to explore the ongoing judicial reform (Jiang, 1997; Hu, 2007) being conducted in Mainland China and also the influence of this judicial reform on aspects of Chinese litigation practices. Chinese society, in particular its economy and technology, has been developing remarkably fast over the past three decades; however, its judicial system has remained fairly static when compared to China's fast-developing social and economic situation. Chinese judges must today handle a variety of disputes in new areas that were never handled by their predecessors, like contract, patent, computer, internet, and international trade. The challenge of these new areas is magnified by some judges' lack of professional experience and skills (Gechilk, 2005, p. 123). In order to upgrade the judicial system and improve the judges' professional competence, China officially launched its ongoing judicial reform in 1997 (Jiang, 1997). This comprehensively conducted judicial reform programme has influenced several aspects of Chinese litigation practices, including judges' writing of civil judgments, as examined in this research.

China follows a civil law tradition, like countries such as Japan and Germany. Although China shares many legal practices with these countries, the Chinese legal system differs in a number of areas. As illustrated in Stevenson (2003), legal texts in the U.S. and other common law countries are mainly addressed to 'the state itself, or more specifically, a set of state actors – courts, agency officials, and enforcement officers' (p. 108). Laypersons, as non-specialists, are not usually the target audience in judges' and lawyers' professional writing; rather, the lay reader accesses legal texts through lawyers' and other legal specialists' explanations and interpretations. The major function of civil judgments (judicial opinion) in common law countries is to establish authority for the judicial system and for future adjudication (White, 1995, p. 1368).

However, Fu convincingly pointed out that China stresses both the legal and social function of civil judgment as a legal genre (2000, p. 123).

Civil judgment in China is not only an authoritative text which carries the judges' legal opinions and settles the parties' dispute but also an important textual artifact which illustrates and popularizes law for the public (Article 134, *the Civil Procedural Law of PRC, 1991*; Article 13, 38, *Five-year Reform Outline of People's Courts, 1999*). The situation in China now is that civil judgments are mostly required by the Supreme People's Court to be made accessible to the public through either the internet or printed volumes. Consequently, in addition to their legal function, the generic analysis of Chinese civil judgments has to consider the social function of this legal genre and their readability for both specialist readers and non-specialist readers.

The primary concerns in analyzing Chinese civil judgments and civil judgments in common law countries are also significantly different. Firstly, because judges in common law countries enjoy professional judicial independence in litigation, their writing is usually personal and furnished with legal reasoning and rhetorical considerations (Carroll, 1995; Hafner, 2006; Posner, 1995; Solan, 2004, 2005; Tiersma, 2001). However, Chinese judges, as pointed out by Su, do not have the power to establish judicial precedents or even to interpret the written laws flexibly (2001a, p. 12). Chinese judges' writing of civil judgments is dominated not by individuality but by standardized rules and conventions. So, most research findings revealed in the above studies of judges' writing in common law countries are not found in the present study of Chinese civil judgment. A primary concern of practising Chinese judges is how they can conduct the judicial reform that requires they break some of the over-standardized rules and conventions while also disclosing relatively sufficient information about the background litigation practices. The Chinese judicial reform process has yet to reach a stage where civil judgments cease to be a legal genre dominated by the collective voice of the court, and where judges have adequate power to demonstrate their individual voices. Secondly, because of the judges' considerable lack of professional independence (Su, 2000, 2001b) and their closer connection with the government, a strict observation of government policies is always important when judges write civil judgments. In cases where policies and law are not completely in agree-



ment, the judges will give priority to government policies. This point is also reported in Lin (2003), Pan (2003), and Peerenboom (2003). Accordingly, the interpretation of the judges' discursive practices in this research needs to take into account these concerns of the judges, who sometimes produce significantly different interpretations and findings from those found in studies conducted in common law systems.

### 1.3 Aims of the research

The major aim of this research is to investigate the generic features of civil judgments, their writing rules and conventions, and manipulations made by judges and lawyers. Generic features in this research refer to both text-internal features and text-external ones (Johns, 1997, p. 93). Through studying textual data of judgments, indictments, statements of defence, legal news reports, etc., the researcher analyzes text-internal features including the move structure of judgments, their discipline-specific vocabulary, lexico-grammatical patterns, rhetorical strategies, and textual coherence. Moreover, identified textual characteristics are interpreted with reference to analysts' insights, specialist informants' intuition, and with reference to the Chinese judicial context and its ongoing reform.

Text-external factors include intertexts, readers/writers, the social function of genres, and the discursive/social practices of which civil judgments are a part. As in the case of text-internal resources, the research findings are verified against specialists' accounts. The text-external factors include the litigation context of civil judgments and the broad socio-political contextual elements, such as professional practices and cultures in professions, institutions, political parties and social lives as a whole. Verification of the research findings is conducted through discourse-based interviews based on preliminary textual analysis, the purpose of which is to invite specialists to crosscheck the findings and give comments on them.

## 1.4 Research questions

This research is intended to answer the following research questions:

- What are the status, role, and function of civil judgments in litigation practice? Who drafts them and who reads them? What are the roles of judges?
- How are civil judgments structured? Are there any typical structural patterns? What are the specific moves typically used in this genre? Which moves are required and which are optional?
- What are the typical lexico-grammatical features of civil judgments? How are these features textualized?
- What are the typical rhetorical strategies used in civil judgments? How do judges justify using these strategies?

## 1.5 Research methodology

The writing of civil judgments requires judges to follow a number of legal and rhetorical conventions and rules, although they may sometimes be manipulated by experienced judges. In order to acquire a comprehensive understanding of these conventions and manipulations, the research method adopts the multi-perspective and multi-dimensional model of Bhatia (1993, 2004) and includes textual analysis of judgments, intertextual analysis of quoted/referred texts in judgments, and analysis of specialists' accounts. Furthermore, drawing on the analysis of disciplinary discourse in Hyland (2000), this research analyzes civil judgments in three steps. Firstly, the judgments in the corpus are read carefully. For example, in order to get a general understanding of the texts, the crucial textual features are explicitly marked, which includes identifying signpost sentences, section boundaries, parts in bold type, frequently repeated sentences/

phrases, and highly legalized expressions. From this preliminary analysis, attempts are made to identify the move structures of civil judgments. Secondly, typical uses of lexico-grammar are identified and interpreted, including nouns, verbs, adjectives, sentence types (declarative/interrogative), and others which are relevant. The purpose is not only to understand their meanings at sentence level but to place them in the context of the broader litigation practice and judicial culture. Thirdly, effort is made to examine in what ways civil judgments can be read coherently, and what knowledge is necessary for a coherent reading of this genre.

## 1.6 Structure of the book

This book consists of seven chapters. Chapter one introduces the general background of the study, the methodology used, and the research significance. Chapter two highlights a number of conceptions of genre accepted in different research traditions to lay the theoretical ground for the analysis of civil judgments. Chapter three explains the methodological framework by drawing on the dimensions of genre analysis reviewed in Chapter two. The research results are reported in Chapters four, five and six. Chapter four reports the move pattern of civil judgments, including required moves, optional moves, and their conventional textualization. Chapter five reports and explains the typical lexico-grammatical patterns in civil judgments from the multiple perspectives of texts, analysts and specialists. Chapter six examines judges' construction of coherence in civil judgments and the ways readers can understand this construction. Chapter seven summarizes this research and discusses directions for further research.

## 1.7 Significance of the research

This study of civil judgments as a Chinese professional genre expands the territory of genre studies. Furthermore, genre analysis adds an empirical and grounded dimension to the study of Chinese professional genres. This study of civil judgments can be drawn on in other studies of Chinese legal or political genres. Law in Mainland China is closely related to sensitive political issues. A detailed and insightful interpretation of civil judgments therefore needs to incorporate some discussion of the background judicial and political issues. Since Mainland China conventionally holds a conservative attitude towards any kind of critical analysis of political power and structure, this problematizes discursive studies of Chinese legal and political issues. The analysis and investigation conducted in this research concentrate on the description and explanation of judges' professional practices, rather than on the analysis of power relationships between judges and readers of civil judgments. Interview questions in the appendix are sensitively structured so that lawyers and judges may feel appreciation and respect rather than critical evaluation. This strategy can be repeated in other similar discursive studies conducted by discourse research in Mainland China.

The research also has practical pedagogic significance because the study tries to reveal the hidden lexico-grammatical features, move patterns, and judges' practical considerations in writing civil judgments. The research findings can guide junior judges when writing similar texts. They may also be used to design discussion topics, writing tasks, or reading materials in other legal education and training settings. Since linguistic features and underlying rhetorical motivations are explored, instructions can be supplied so that the legal awareness of students and trainees can be raised in relation to civil judgments on issues like textual conventions, discursive strategies, legal professional practices, and socio-legal cultures. This may enable legal students to develop enhanced competence and expertise in handling civil judgments and improved reading and writing abilities.