

***Resolution of Conflict of Interest in Chinese Civil Court
Hearings: A Perspective of Discourse Information
Theory***

Yunfeng Ge (2018)

Peter Lang. 306 pp

Reviewed by Hong Wang

China's economic and social development in the past 40 years has greatly transformed its social structure and legal system. The development of a market economy has given rise to a surge of civil disputes and lawsuits, the efficient resolution of which makes an independent judicial institution a prerequisite. As a result of the subsequent judicial reform, judicial institutions in China have gained more and more independence in hearing cases and entering into judgments. By highlighting the role of court hearings in discovering evidence and forming judicial decisions, China has transitioned from an inquisitorial system, where the judge is actively involved in the search for evidence and questioning of witnesses, to a litigation system that is centred on case hearings. Researchers in the past decade have been focusing on the description and explanation of the dynamic features of Chinese courtroom discourses, especially how different discourse strategies and genre types are employed by judges and litigants to achieve their communicative goals. Among those studies, *Resolution of Conflict of Interest in Chinese Civil Court Hearings: A Perspective of Discourse Information Theory* explores

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how conflict of interest is resolved by analysing the language, social factors and dynamic elements of the legal process in Chinese civil court hearings.

It should be noted that in the context of Chinese civil proceedings Ge conceptualises conflict of interest (COI) not as a conflict of loyalty facing a particular party, but rather as a kind of interest relation between two different parties as a result of the difference and contradiction in their pursuit of interest (p. 5).

Chapter 1 introduces the research background and previous studies on interest, with such concepts as interest difference, classification of interest and conflict of interest being elaborated. Ge gives a detailed interpretation of how interest may be classified according to different categories, highlighting subject difference, object difference and temporal-spatial difference. These in turn may result in different forms of interest relations and different types of conflict of interest.

The research objective and research questions of the study are also presented in this chapter. Taking the court hearing as a kind of discursive practice, the research aims to explore from the perspective of discourse information theory the process of how COI is resolved in Chinese civil court hearings. Focusing on the ‘interest appeal’, which is defined (p. 51) as ‘the preliminary stage where participants in lawsuits express their basic positions or attitudes towards the infringements that lead to the litigation’, the author raises three research questions: (1) What are the features of discourse information processing in interest appeals? (2) What factors influence the negotiation of interest between participants in court hearings? And (3) how is discourse managed to reach agreement on the resolution of conflict of interest?

Chapter 2 presents a review of theories of discourse analysis and studies on courtroom discourse. The review of theories of discourse analysis includes cognitive discourse analysis, discourse information theory, discourse management models and different approaches to context. The review of studies on courtroom discourse introduces the sociological approach, cognitive psychological approach and corpus-based approach to courtroom discourse analysis, demonstrating that different approaches to discourse analysis help to shed new light on such familiar topics as narration, testimony, perjury, etc., which have long been the focus of legal research.

In Chapter 3, the author constructs an operable analytical framework to be applied to the analysis of resolution of COI in Chinese civil court hearings, elaborates the methodology used for the study and describes the process of data collection and data analysis. The analytical framework incorporates the theoretical constructions of Discourse Information Theory, and Context Model Schema, and the concepts of construal and conceptualization in cognitive linguistics for the description, interpretation and explanation of the language used by participants

Cognitive management mainly involves integration of discourse information, assimilation of goals of opposing litigants and reconciliation of litigants' construal phenomena. Ge's investigation reveals that, in Chinese civil court hearings, it is a common practice for judges to employ mediation strategies to reconcile and assimilate the communicative goals of opposing litigants. In a liability dispute, for example, where the defendant is employed by the plaintiff to sow seeds and sued for poor seedling emergence, the judge successfully reconciles their conflicting views by commenting on other potential causes of poor seedling emergence such as temperature, moisture, land quality or field management. This appears to show that judges continue to play a somewhat inquisitorial role.

Linguistic management in Chinese civil court hearings is mainly realised through referential management, thematic management and rhetorical management. Ge demonstrates that in court hearings the proper use of the referential pronoun 'we' can help to mitigate conflict between opposing litigants. For example, at the court mediation stage in a case of personal injury, the plaintiff frequently employs the referential pronouns 'we' and 'us' to refer to the opposing litigants. With such expressions as 'we [the opposing litigants] are from the same village' to highlight the common identity with the defendant, the plaintiff's referential management makes a positive contribution to the resolution of COI through mediation.

Chapter 7 concludes the book by summarising the major findings of the research, answering the research questions and elaborating the implications of the research for judicial practice and academic studies. Firstly, Ge finds discourse information serving as an important medium in the process of the resolution of COI in Chinese civil court hearings. Litigants resort to three kinds of discourse information to facilitate interest appeals in court hearings. While subjective information and objective information are distinct in either making claims or providing a basis for claims, explanatory information is mainly used by litigants to ensure the reasonableness of claims by making interpretations, elaborating connections or eliminating uncertainties.

Secondly, Ge also sees the resolution of COI in Chinese civil court hearings as a cognitive process where sociological, psychological and discursive factors are integrated with each other during participants' negotiation of interest. Social identities, and in particular social relations among participants, can activate certain values or beliefs, which in turn may contribute to the modification or assimilation of participants' intentions and communicative purposes.

Finally, Ge contends that discourse management strategies play a key role in the promotion of agreement between opposing parties. While information management can help litigants clarify disputes and promote consensus by reinforcing shared information and eliminating controversial information, linguistic man-

agement can help promote agreement between opposing parties by highlighting mutuality and seeking common ground.

A key contribution of the book is its analytical framework for analysing courtroom discourse, especially the description, interpretation and explanation of the linguistic, cognitive and social variables that are interwoven together to contribute to the resolution of COI in Chinese civil court hearings. The first strength of the analytical framework is that it defines resolution of COI as a dynamic and complex process involving three different types of practices, namely, information practice, cognitive practice and discursive practice. This definition enriches our understanding of the various factors that underlie courtroom discourse and the process of how COI is resolved in civil court hearings. The second strength of the analytical framework is that it centres on the analysis of discourse information. In contrast to the traditional practice that views discourse either as a vehicle of social or professional functions or as the realisation of speakers' cognitive activities, the analytical framework holds that discourse information acts as a bridge between linguistic representation and cognition in human communications. According to this understanding, the production of discourse involves the different, but closely interrelated, levels of cognition, information and language. Cognition results in communicative contexts that manifest first as different types of discourse information and are then represented in various linguistic structures. By defining discourse information as the minimal integral meaningful unit used for communication, the analytical framework expands the study of discourse semantics through such concepts as information unit, information knot, tree information structure and information flow, and further enriches our understanding of how cognitive activities, information processing and linguistic output are interrelated with each other to contribute to the final production of discourse.

Practically, by exploring the cognitive, social and discursive factors underlying courtroom discourse, this study is helpful for litigants, judges and lawyers to achieve a better understanding of how COI is resolved in Chinese civil court hearings and thus promote the efficiency of the resolution of COI in future court hearings. Secondly, by correlating the features of discourse information processing with China's broad legal and social background, this study helps readers to learn more about the judicial reform that has been ongoing in China and, more importantly, about how such concepts as 'the rule of law', 'procedural justice', 'protection of human rights', etc. are applied in the discourse of Chinese court hearings.

Finally, the book contributes, both theoretically and methodologically, to the research of forensic linguistics. It demonstrates how discourse information analysis can work as an applicable perspective in the investigation of courtroom discourse and how it can assist in solving judicial problems in court hearings.

