

An applied genre analysis of civil judgments: the case of mainland China

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China officially launched its ongoing judicial reform in 1997 (Jiang 1997) and since then a number of aspects of litigation have been changed. One of the notable changes occurred to judges' writing of civil judgments, i.e. judicial opinions of civil cases, and these received the focus of examination in the present research. Chinese civil judgments are not only authoritative texts carrying judicial opinions in resolving parties' disputes and establishing precedent 'authority' (White 1995:1368), but are also important documents popularising law to the general public (Fu 2000). Compared to the legal writings employed by judges of common law countries, the writing style of Chinese judges is usually less personal and furnished with less legal reasoning and rhetorical strategies

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(see, e.g., Solan 2004 and Su 2001 for overviews). Drawing on the model of applied genre analysis (Bhatia 1993, 2004; Swales 1990), this research attempted to describe, explain and interpret Chinese judges' discursive constructions of civil judgments. Analytical focus was placed on the generic structure, rhetorical strategies, and context-specific writing variations exploited by the judges. Data collected in this research included a medium-sized corpus of civil judgments (100 cases) and 20 hours of interview recordings with ten legal specialists (seven lawyers and three judges). In addition, this was supplemented by an investigation of the statutes involved, legal news reports, and related official documents issued by courts and other authorities. The analysis of the verbal interviews concentrated on the content information they supplied, as done in Hyland (2000). Analytical findings were organised around the concepts of move analysis (Swales 1990:140), lexico-grammar analysis (Bhatia 1993:5) and discourse coherence analysis (van Dunné 1996).

Move, as conceptualised in Swales (1990), refers to conventional component sections of a particular genre, the awareness of which significantly reduces readers' cognitive efforts needed to map out textual structures of formalised genres such as journal articles, news reports, textbooks and judicial opinions. The investigation and analysis of the corpus revealed the following move pattern typical of Chinese civil judgments:

Move 1: HEADING

HEADING was the most standardised move of Chinese civil judgments, where judges report the case number and list litigants' names in a formatted sequence.

Move 2: INTRODUCTION

INTRODUCTION briefly introduced the parties' disputes and a history of the courtroom trial. Because the information disclosed here was usually insufficient, the purpose of introducing these two matters seems to be to meet formality requirements, instead of establishing a foreground context for the follow-up judicial opinions.

Move 3: PARTIES' ARGUMENTS

The inclusion of PARTIES' ARGUMENTS in civil judgments is a recent litigation practice adopted by Chinese judges, the main purpose of which is to show institutional respect towards parties' rights to be heard in litigation. In this move, judges reported plaintiffs' and defendants' respective claims and arguments and, sometimes, the supporting evidence supplied by either party.

Move 4: JUDGES' ARGUMENTS

JUDGES' ARGUMENTS is the very move performing the adjudicating

function of Chinese civil judgments. In this move, judges conventionally conducted three tasks: 1) to identify the legal fact, 2) to cite and interpret the law and 3) to apply the law to fact. This move, usually the most bulky one, is the main venue where judges need to demonstrate their mastery of legal knowledge, their ability of legal reasoning, and their competence in writing persuasively.

Move 5: COURT DECISIONS

COURT DECISIONS delivered judges' decisions on parties' disputes and the corresponding legal remedies to be taken. This move normally reformulated, in a reader-accessible way, judges' elaborately constructed decisions reported in Move 4 JUDGES' ARGUMENTS. Non-specialist litigants and other lay readers usually pay their sole attention to this move because they cannot handle the specialised discourse in Moves 3 and 4.

This research discovered that Chinese civil judgments have two groups of target readers: specialists and non-specialists. The term 'specialist readers' refers to judges, lawyers, law academics and other legal professionals, and non-specialist readers are usually parties and other laypersons who may be of insufficient legal literacy but are interested to learn about courtroom adjudications. Although it is legally required that civil judgments in China should be accessible to specialists and non-specialists, the majority of its contents (Moves 1, 2, 3 and 4), as also noted in other jurisdictions (Posner 1995), are beyond non-specialist readers' abilities.

Lexico-grammatical analysis concentrated on Chinese judges' use of personal-opinion-loaded 'hedges' and 'boosters' (Hyland 2005:53). The expression of judges' personal opinions is also a litigation practice newly adopted to enhance the transparency and credibility of civil judgments. The traditional prevalence of standardisation and serious lack of transparency in Chinese litigation has made judges' opinions in civil judgments 'essentially a private opinion without public supervision' (Zhang 2010:88) and has further weakened the general public's trust in the Chinese judiciary. Accordingly, the judicial reform requires judges to make experimental rhetorical and legal efforts to disclose more of their personal opinions in written form. Such efforts can be seen in a number of aspects. For example, judges may select and arrange parties' points of argumentation (Move 3) in such a way that the non-negotiable tension between both sides is effectively demonstrated. They also, at times, go beyond the traditional use of direct quotation of written law without necessary interpretations (Move 4) and manage to produce case-specific interpretation of legislative intent.

Coherence in this research refers to textual features that enable readers to acquire a plausible and intelligible comprehension and understanding of texts (van Durné 1996). Coherence analysis of civil judgments examined how Chinese judges organised and connected specific moves of this genre, what specific mechanisms they used to link individual sentences into a coherent text, how their writing could be read coherently, and what knowledge was needed to reach this coherent understanding. Civil judgments pose great reading difficulty for non-specialist readers due to their heavy use of legalised concepts and expressions (Sun and Gao 2007) to report courtroom proceedings. Indeed, a familiarity with these legalised concepts and expressions does not necessarily guarantee a reasonable understanding of judges' writing either, because everyday language may carry specialised meanings in the legal context, the connection among individual arguments may be mediated by legal reasoning, or the report of litigation practices may be intentionally or unintentionally simplified by judges. Chinese judges sometimes neglect that it is likely that their readers do not have the required social and legal knowledge to recover a full litigation picture from their writing. The reconstruction of information presupposed by judges is necessary for a plausible understanding of civil judgments and is, according to White (2009), possible and achievable only for specialist readers.

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