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Legality, discretion and informal practices in China's courts : a socio-legal investigation of private transactions in the course of litigation

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Propositions Ling Li

1. The high frequency of occurrence of corruption in China reflects a high degree of efficiency of the corrupt conduct that has occurred. Such conduct can be understood and studied as a four-phase contracting process. (Chapter 3)
2. Corruption can take place in any Chinese court regardless of its hierarchical level in the judicial system, its geographic location or financial conditions and it may be committed by any type of judge regardless of their occupational competence or income. (Chapter 2)
3. The endemic social and cultural conduct of guanxi-practice has helped corruption participants to reduce the legal, moral and cognitive barriers of communicating corrupt intent and has thus greatly improved the efficiency of the otherwise cumbersome and costly initiation phase of the corrupt exchange. (Chapter 3 & 4)
4. The decision-making process in China's courts, with loose procedures in decision-formulation and strict disciplines in decision-implementation, has facilitated the delivery of corrupt services and enabled the proliferation of corrupt opportunities. (Chapter 3, 5 & 6)
5. To conduct corruption in order to avoid a less-than-fair treatment is different from conducting corruption in order to obtain a better-than-fair treatment only in terms of the level of risk and the volume of the bribe. Both are equally harmful since they create similar incentives for the corrupt agents to privatize their entrusted power.
6. In China the lack of judicial independence reflects more of a problem of the placement of power above law rather than of a problem of the "politicalisation of the judiciary".
7. More laws do not necessarily bring more justice if judicial corruption is pervasive and distorts rules for the benefit of the ones who have the discretion to interpret and apply the laws.
8. Guanxi-practice, as a form of favor exchange, is conducted with a conspicuously high frequency in China as well as in many other developing countries. This is because, by being able to externalize the cost involved in the favor, the favor-grantor can significantly reduce the risk of loss in such cases where that favor is not returned in the future.
9. Officials possessing a good sense of humor tend to be less prone to corruption.
10. A "good" briber is also a good entrepreneur, who has vision and a risk-taking personality.