

Introduction of China Legal System

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History

Legal history of China is divided into two categories: traditional China and modern China.

- In traditional China, the emperor was vested with the executive, legislative and judicial powers. As the supreme judicial power, the emperor could determine the guilt of accused individuals, dictate the penal sentence, or modify the judgments given by lower judicial authorities.
- Legal system of modern China were initiated in late Qing Dynasty



Law-Making Institution

- **The National People's Congress (NPC) is the highest organ of state power. Its permanent body is the Standing Committee of NPC**
- **NPC and its Standing Committee exercise the legislative power of the state**



Judicial Lawmaking

The main characteristics of judicial lawmaking

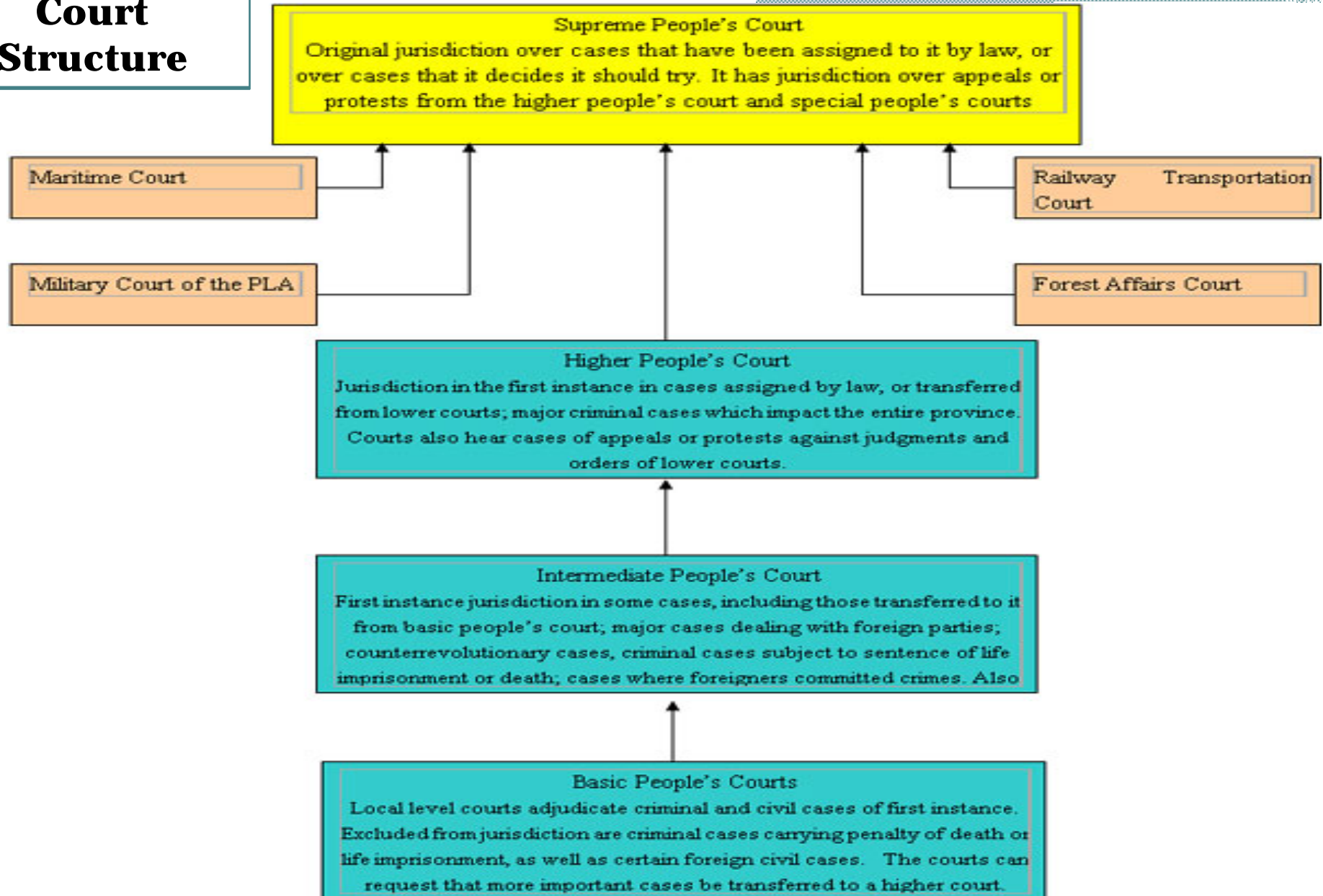
- **It is Done Only by the SPC**
- **It Occurs in the Process of Law-Interpretation**
- **It is not Judge-making Law**
- **SPC has been not officially recognized as a law-making institution**
- **SPC is criticized for its ultra vires role in lawmaking**

Judicial Lawmaking

Forms of judicial interpretation are classified into three categories, i.e. 'interpretation', 'rule', 'answer' and 'decision'

- The **interpretation** deals with the issues of how to implement a piece of law or how to apply legal rules into certain types of cases or problems
- The **rule** mainly deals with procedure issues
- The **answer** shall be used by SPC to respond the legal question raised by high courts and military courts concerning application of law to concrete trial
- The **decision** is used to amend or repeal judicial interpretation

Court Structure





Litigation

Litigants are generally limited to one appeal, on the theory of finality of judgment by two trials

- Appeals : lodged by parties to the case, defendants and private prosecutors.
- Protests : filed by the procuratorate in criminal cases when it is believed that an error has occurred in the law or facts as determined by the judgment or order of the court of first instance



Functions of People's Procuratorate

- **Oversee investigations by the public security organs**
- **Decide which cases will be prosecuted**
- **Supervision of the legal activities of the people's courts, execution of judgments, and the activities of prisons**

Formal Sources of Law

forms		lawmakers
Constitution		NPC
Law	Basic Law	NPC
	Others	The Standing Committee of NPC
Administrative Regulations		The State Council
Local regulations		Local NPC and its Standing Committee of Provinces or equivalent levels
Administrative rule	National	Ministries or agencies of State Council
	Local	Local governments that have rulemaking power
Autonomous regulations	General	the Congresses and the Standing Committees of five Autonomous Regions
	Special	
Special Distract		Hong Kong, Maco Authorities
Convention or Treaty Signed by China		



Informal Sources of Law

The informal sources of law include Policies, customs or practices, ethics, legal theories or principle



Notes

Not all the sources of law can be cited in decision-making

- **Note 1: Courts are not allowed to rely on constitutional provisions directly in deciding a case**
- **Note 2: Source of law is different from the citations in the judicial decisions: Administrative rules (national and local) can't be cited by judges directly; the legal theories, ethics can't appear in the judgment**



PRC Constitution 2004

Highest source of laws: “Mother Law”

Highest Legal Effect

Contents:

- **General principle of government and society**
- **Fundamental Rights and Duties of Citizens**
- **Structure of the State**
- **National Flag, National Anthem, National Emblem and Capital**



NPC Statutory Law and Other Legislative Enactments

State Level

- Law which is to have general impact throughout the state is enacted by the NPC or its Standing Committee. The Standing Committee also enacts regulations, decisions and resolutions
- Administrative regulations are one type of legislative enactment by the State Council. The State Council and its ministries or commissions can also make rules



NPC Statutory Law and Other Legislative Enactments

Local Level

- Local people's congresses can enact local regulations and the local people's governments can make local administrative rules
- National autonomous regions are permitted to enact autonomy regulations and specific regulations



International Treaties

In practice, the legislative approach has been to automatically incorporate international law as part of PRC law. If, however, the PRC has made a reservation to a provision of a treaty, this aspect or provision of the treaty is not implemented in the law.



Case Law?

- Unlike common law jurisdictions, there is no strict precedential concept for case law.
- In theory, each case stands as its own decision and will not bind another court.
- Since 1985, the PRC has published selected cases from the Supreme Court in the Gazette of the Supreme Court



Legal Effect of Published Model Cases

- Judgments of past court proceedings, including those of the Supreme People's Court, have no binding power over the later case but serve only for reference purposes.
- Published cases function as examples that exemplify how to apply relevant legal rules and judicial interpretations in real social contexts.
- Chinese judiciary never uses the word “precedent” but that of “case of example” (some foreign scholars call it “model case”)



Application Rules of Statutes

Priority Order of Statutes

- Constitution
- National laws
- Administrative regulations
- Local regulations
- Administrative rules

Application Rules of Statutes

- Legislative interpretations issued by the Standing Committee of National People's Congress shall have the same force as national law
- Among the statute issued by the same lawmaking organ:
 - Special statute shall prevail general statute
 - New statute shall prevail older statute



Application Rules of Statutes

Where any discrepancy occurs and it cannot be decided which provision shall apply, the Standing Committee of NPC or the State Council or the Lawmaker of the same level shall have authority to make a determination depending on different situations



Example: PRC Company Law 2005

- PRC Company Law 2005 was amended and adopted at the 18th session of the Standing Committee of the Tenth NPC on October 27, 2005.
- The amended Company Law was promulgated by the President Order No.42 and went into effect as of January 1, 2006