

CHAPTER SIX COURT TRIAL

As most people understand, the charm of legal profession can never be better reflected in a courtroom where lawyers always leave others enchanted and haunted by their wisdom, eloquence and art of persuasion. For clinical students, representing a client in court, especially court argument, is probably the most attractive but most challenging part. In this chapter, we first lay out the fundamental theories of court trial and then concentrate on the general lawyering skills in the context of court trial. Lastly, we include a case for simulation of court trial, in particular court argument.

6.1. Court Procedures & Objectives

Litigation is usually the last resort for a civil case if negotiation or mediation fails. Court trial is the most important part of litigation. Most criminal and administrative cases are concluded after court trial. As a matter of fact, a large portion of clients see representation in litigation as the major reason of retaining lawyers. Among the cases involving the vulnerable that come to clinic workshops, most often clients wish to resolve their disputes by litigation. Generally, clinical students represent the plaintiff or defendant in a civil case, the plaintiff in an administrative case, or the defendant in a criminal case. Hence court trial is a major part of clinic study and practice. This chapter, consists of the fundamental theories of court trial, simulation exercises, aims to help students understand the court procedure and lawyering skills and thus acquire the necessary knowledge and experience for representing real clients.

6.1.1. Court Procedures

Court trial is a process where the parties to a case and their legal representatives, based on the facts and applicable laws and following the instructions of the collegial panel, present evidence and arguments in a view to persuading the court to enter a favorable judgment. If a case finally reaches litigation, interviewing the client, preparing legal opinions, and conducting fact investigation should all serve the purpose of court trial. In the court inquiry and court argument (two important stages in court proceedings), attorneys should go all out to present the results of fact investigation and conclusions of legal research so as to persuade the judges to sustain their claims or defense.

Generally speaking, court trial means hearing in court sessions, that is, the parties and their attorneys prove the alleged facts and argue over the applicable laws in front of the collegial panel. In a broad sense, court trial begins with filing a complaint and is closed by judgment. Such process includes filing a complaint and defense, pretrial preparation, court inquiry and court argument, and submitting supplementary documents outside court, etc. This chapter is dedicated to court inquiry and court argument, with a brief introduction to the related work that an attorney should do before and after court proceedings.

1. Complaint, Defense & Pre-Court Preparation

(1) Complaint & Defense

Filing a complaint as plaintiff starts the engine of litigation in a self-initiated civil, administrative, or criminal case. On most occasions, litigation is commenced by a written

complaint, but oral complaint is also possible although rarely takes place. Clinical students should actively prepare the document to initiate litigation, namely, complaint. A complaint should include clearly identified defendant(s) and claims, statement of facts, legal references, as well as supporting evidence. In the meantime, it should be noted that a complaint should be filed with a competent court, that is, a court having jurisdiction over the case. A civil action should be commenced with a competent court according to the provisions concerning territorial jurisdiction and vertical level jurisdiction. If more than one court have jurisdiction over the same case, the party(ies) may choose one in consideration of litigation costs and other factors. In administrative litigation, the major jurisdiction issue is related to finding the right level. In case an action is based on the administrative acts performed by more than one administrative agency, it is possible that multiple courts have jurisdiction. Then the case should go to the court in the best interest of the parties.

Replying to claims and raising a defense are the main responsibilities of a legal representative who represents the defendant in a civil or criminal case or the plaintiff in a civil case where the opposing party files a counterclaim. Clinical students seldom represent the defendant of an administrative case. A defense, as answer to the plaintiff's claims, should be based on the claims and reasons of a complaint and submitted to the court in writing. It should be raised against the claims, facts and reasons stated in the complaint in an attempt to confront the plaintiff. In a defense, the defendant may deny all the items of the complaint or merely refute one or several items in it. A defense usually states whether the alleged facts actually exist; whether the plaintiff's claims are supported by both the facts and the law; whether the defendant should be liable; whether the court has jurisdiction; etc. The ultimate purpose of a defense is to convince the court that the claims should be dismissed, so it should contain clearly stated arguments against the claims with sufficient proof.

Both the complaint and the defense are commonly used legal forms, so clinical students should be familiar with the drafting requirements. One way to improve the drafting skills is to refer to typical complaints and responsive pleadings. We will brief you about how to draft a complaint in the following section.

General Format of a Civil Complaint

Plaintiff:

Defendant:

Claims: 1.

2.

...

Statement of Facts and Cause of Action

Respectfully Submitted to: _____ People's Court

PLAINTIFF (Signature or Seal):

Date: ____ (dd) ____ (mm)____(yy)

Notes:

1) Sufficient information should be provided under the items concerning the parties to the suit, including the name, gender, age, ethnic group, employer and address if the party is a natural person, and the name and domicile as well as the name and title of its registered representative

if the party is a corporation or other organization. The information filled in must be precise

- 2) "Claims" should be listed in separate items, setting out the claimed rights and interests.
- 3) "Statement of Facts and Cause of Action" should be a comprehensive reflection of the facts of the case and the legal support. Evidence may be listed in the appendix, including the name and source, the name(s) and domicile(s) of the witness(es), etc.
- 4) The name of the court should be stated at the end of the complaint. If the plaintiff is a natural person, he/she should sign at the end of the complaint; if the plaintiff is a corporation or other organization, the registered representative or the responsible person should sign and affix the official seal. In addition, the complaint should be dated correctly.

Complaint

PLAINTIFF

Name: ZHANG X

Gender: male

Age: X

Ethnic Affiliation: Han

Domicile: No. 31, X Rd, X District, X City

Post Code: X

Registered Representative

Name: WANG X

Gender: male

Age: X

Position: manager

Address: No.552, X Rd, X District, X City

Telephone: X

Claims

PLAINTIFF requests DEFENDANT be ordered to

- 1) compensate PLAINTIFF for the actually incurred costs, including medical costs, traveling expenses, and nursing fees, totaling RMB1896;
- 2) pay PLAINTIFF RMB20,000 as damages for mental losses;
- 3) pay PLAINTIFF RMB20,000 as follow-up treatment costs;
- 4) bear the litigation costs.

Statement of Facts and Cause of Action

As a result of the bankruptcy of the factory where PLAINTIFF worked, PLAINTIFF was unemployed and had made a living as a vendor downstairs the office building of DEFENDANT. On the afternoon of August 13, 2009, as DEFENDANT was furnishing the outside wall of said building, a wooden board fell off the scaffolding, After hitting PLAINTIFF and bounding upwards, said board hit PLAINTIFF's face which bled immediately. After PLAINTIFF called for help, the staff of DEFENDANT sent PLAINTIFF to a hospital nearby to get medical treatment.

The medical diagnosis results of the People's Hospital of X District, X City were as follows: "On the left side of PLAINTIFF's lips was found a laceration of 3.5cm long, in the shape of a triangle in radial pattern. On the inner side of his lips was found an injury of 2cm long in linear pattern. The lips were penetrated and received eight stitches." Besides, on the left side of the forehead and left cheek were found abrasions, and those on the left side of the forehead reached the dermis. After one-month treatment, the wounds were healed, and PLAINTIFF almost recovered. The total medical costs, traveling expenses, and lost wages thus incurred came to RMB2,896 in total. Of said amount, RMB1,000 was paid by DEFENDANT at the beginning of the medical treatment, and the rest was borne by PLAINTIFF.

The wounds in the face left noticeable scars, which negatively affected PLAINTIFF's confidence in future social communication. As a result, PLAINTIFF has suffered a significant mental distress and thus lived in grief. Moreover, follow-up treatment is needed to remove the scars. In light of the prevailing medical charges, a proper removal of the scars costs RMB20,000. Nevertheless, the current medical technology is incapable to completely remove scars.

Article 119 of the General Principles of the Civil Law stipulates that "Whoever infringes another citizen's physical health and causes physical injury shall pay medical expenses, losses arising from missed working time, living provisions to the disabled, and other expenses; where death is caused, such tortfeasor shall also bear funeral expenses, the necessary living provisions of the deceased's dependents, and other expenses." Therefore, DEFENDANT should bear the medical costs, traveling expenses, lost wages, and follow-up medical expenses arising from PLAINTIFF's injuries.

Article 1 of the Interpretation of the Supreme People's Court on Several Issues concerning the Compensation for Mental Losses in Torts stipulates that "Where a natural person suffers infringement upon any one of the following rights of the person and thus files a complaint with the people's court to seek compensation for mental losses, the people's court shall entertain such complaint: 1) right to life, right to health, right to physical body; ..." DEFENDANT infringed the right of physical body of PLAINTIFF who has suffered and will suffer mental distress for a long period of time, so DEFENDANT should compensate PLAINTIFF for mental losses. In light of PLAINTIFF's injuries, we pray for a compensation of RMB20,000 for mental suffering against DEFENDANT.

To sum up, DEFENDANT'S conducts were a direct cause of PLAINTIFF's injuries, so DEFENDANT should compensate PLAINTIFF for the actually incurred medical costs, traveling expenses, lost wages, mental suffering, and costs arising from follow-up medical treatment and bear the litigation costs.

Respectfully Submitted to the People's Court of X District, X City

Complainant: ZHANG X

Date: November 11, 2009

Appendices:

- 1. Medical and traveling invoices;*
- 2. One copy of medical record;*
- 3. One copy of Charging Standards of X Hospital;*
- 4. Two copies of this complaint.*

(2)Pre-Court Preparation

If a case is placed on a court's docket, court proceedings are crucial to the outcomes of the case. In order to sufficiently present evidence and raise strong arguments in court, Good pre-court preparation is indispensable. Otherwise, a minor mistake may ultimately lead to an unfavorable judgment, and there is little you can do to make up for such a mistake once the court proceedings are closed. Therefore, it is of vital importance for clinical students to realize how important pre-court preparation is. It is not advisable to lay your fate on improvisation, although a quick-witted mind is very important in court argument. As a matter of fact, even an experienced lawyer has to carefully plan almost every step in court and even have a simulation with colleagues playing the role of the opposing party if the case is a complex one so as not to miss any important point. At the same time, clinical students should also note that even seemingly perfect preparation cannot survive unpredictable changes and development, but we do preparation in a view to minimizing mistakes and maximizing success.

The top priority of pre-court preparation is to decide the strategies in court. After being retained, an attorney should fully communicate with the client about the representation strategies and work out a representation proposal. Such strategies determine the strategies in court which will be applied throughout the court proceedings. The court strategies are important in that they are conducive to effective resolution and mistake prevention. By looking into such strategies, the attorney is able to focus on the important aspects of litigation and make proper adjustment in a changing situation.¹

Secondly, sorting out the facts and evidence is also part of pre-court preparation. Before going to court, the attorney should try every means to have all the facts at his fingertips. As for major facts, he should make every effort to do fact investigation and collect the relevant evidence. Based on the previous work, he should get ready all the evidence for his case to effectively support his claims or refute the arguments of the opposing party. On most occasions, the parties are required to submit evidence checklists and exchange evidence before going to court.

Thirdly, the attorney should prepare legal opinions. Court inquiry and court argument, two stages in court proceedings, call for careful preparation by the attorney. The former focuses on facts, and the latter application of law, strength of evidence, and final conclusion. Therefore, legal opinions in court are actually arguments towards a certain court decision, namely, praying the court to enter a judgment for the represented party. For this purpose, the attorney should base his legal opinions on the following aspects: 1) factual issues of the case, mainly about the strength of critical evidence; 2) issues regarding the application of law, mainly about the application of particular laws and regulations to the case. By careful scrutiny of the above issues, the attorney

¹ Source: LI Ao, 2004, *Interactive Teaching – Clinical Legal Education*. Beijing: Law Press, P303.

should be well prepared for any possible issues, that is, combing and identifying the major issues which should be expounded on in legal opinions.

2. Court Representation

Representing a client in court is one of the major jobs for an attorney. The key parts of court representation are court inquiry and court argument. The former focuses on fact findings, including presenting and challenging evidence. Presenting evidence means that a party who bears the burden of proof presents evidence to support a particular allegation of facts in favor of the party. However, evidence presentation does not mean satisfying the burden of proof but is intended to exclude the challenge of the opposing party, especially evidence to the contrary. Challenging evidence means raising challenges against and destroying the credibility of the evidence presented by the opposing party. Such challenges may contradict the legality, authenticity, relevance, and objectivity of the evidence of the opposing party. Both parties argue over and assess such issues. The attorney should adopt different methods of challenging depending on the categories of evidence. For instance, for documentary evidence, physical evidence, and audio-video evidence, originals are required. If the originals are unavailable, relevant evidence should be submitted to prove that photocopies or duplicates are identical with the originals. Otherwise, the opposing party is entitled to objection. Witnesses must testify in court except on certain occasions as prescribed by the law. The opposing party is entitled to contradict written testimonies (depositions). As for expertise-related issues, a party may apply to call experts to court to challenge the relevant evidence.

Another important stage during the court proceedings is court argument where both parties and their representatives argue over the issues in dispute in order to establish the facts and thus to correctly decide the liabilities and apply the law at a later stage. Court argument is concentrated on facts and law application which are different but related to each other. When arguing over the facts, the attorney assesses the evidence and probes into the relationship among different items of evidence and that between the evidence and the pending facts for the purpose of supporting the fact allegations in favor of the represented party. In the meanwhile, the attorney analyzes the defects in the evidence presented by the opposing party and repudates the fact allegations in favor of the opposing party. When arguing over law application, the attorney expounds on the laws applicable to the case and reveals the bugs in the arguments of the opposing party. At the end of court argument, the presiding judge asks the plaintiff, defendant, and third party for conclusive opinions subsequently. At the same time, the parties are given an opportunity to state their case. It should also be noted that at any time after the case is entertained but before the closing of court argument, the plaintiff may add new claims, the defendant may file a counterclaim, and the third party may raise claims relevant to the case. The court should integrate such claims and counterclaims if the law permits.

In fact, court inquiry and court argument can by no means be completely separated. For example, in the course of court inquiry, challenging evidence often goes hand in hand with argument. On the other hand, argument, to some extent, is one way of inquiry. Argument can finally lead to proper fact findings. Clinical students should never rigidly separate the two phases.

3. Post-court Submission

In many cases, judgments are pronounced in different court sessions (not immediately after court argument). Post-court submission has actually become a big job almost of the same importance as court representation.² Post-court submissions usually include the following. Firstly, representation statement and supplementary statement. Representation statement is usually prepared before going to court. However, after court proceedings, further changes may be required after intensive argument over the major issues in court argument, so it is necessary to submit more concrete and focused opinions for the collegial panel to consider in deliberation. A supplementary statement may be submitted at the same time as or after submission of the representation statement for the collegial panel to refer to if an additional statement is needed to clarify a certain major fact or evidence or include a new fact but without changing the bulk of the representation statement. Although a party's position can be reflected in oral presentation in court, such presentation is often insufficiently systematic or expressive. Therefore, it is an important although not necessary step to submit the representation statement and supplementary statement after court.

Secondly, evidence list and new evidence. After court inquiry, especially after evidence challenging, new evidence may be required to prove the pending facts, or the existing evidence needs to be sorted out again based on the major issues to create a new evidence list. Such evidence list and new evidence should be submitted after court. The parties may decide on their own whether new evidence should be presented based on the court inquiry, or submit certain evidence within a certain period of time as requested by the judges. Submitting evidence after court is a remedy to satisfying the burden of proof. Since such evidence is not challenged in court, its strength should be subject to careful scrutiny. In the same time, such evidence should be submitted within a prescribed time limit; otherwise it does not have any legal effect.

6.1.2 Objectives and Responsibilities

Court trial is the core of litigation, and its objective is identical with that of litigation from a party's respective, that is, to seek relief in support of its claims. To meet this objective, a legal representative needs, among others, raise claims and arguments and refute the position of the opposing party to seek a favorable judgment. Therefore, clinical students should fulfill the following tasks when representing a client in court.

1. To State Position

Court proceedings begin with a preparatory stage where the court ascertains the general information of the case, including the identities of the parties. The second stage is court inquiry. Firstly, the plaintiff and the defendant make a statement of facts successively in a straightforward way. Whether representing the plaintiff or the defendant, clinical students should keep in mind that the first job in court is to make a statement of position regarding the facts and claims so as to clearly express the position and issues in front of the judges and the opposing party, which is critical to the progress of the court trial. One common way to do this is to read out the complaint or defense. Firstly, the plaintiff reads the complaint, outlining the claims and reasons. Then the defendant reads the defense or makes an oral defense. If a counterclaim is filed, the defendant should also raise claims and provide supporting reasons.

It deserves attention that the statement of position at the beginning of the court trial should

² Source: LI Ao, 2004, *Interactive Teaching – Clinical legal Education*. Beijing: Law Press, PP313-314.

be brief, clear, and to the point but without excessive arguments. Such statement is merely intended to express the position, and issues in dispute are usually the main topics of court argument. Moreover, the statement should be logic in reasoning. Nothing could be worse than an ambiguous statement with a messy list of facts and claims.

2. To Present Evidence to Prove Facts

After stating the position, a party should prove the fact allegations. Clinical students should pay special attention to this task when representing a client in court.

There are multiple ways to prove the alleged facts, including proving facts without evidence according to the evidential rules. However, the major method is to prove facts with supporting evidence. During the court trial, evidence should be presented to address every fact allegation, so that different items of evidence are supportive of each other, sufficing to prove the overall facts of the case. To fulfill the job, the attorney should seriously conduct fact investigation and work out a plan in response to any possible challenges from the opposing party.

3. To Illustrate Application of Law

To be granted a favorable judgment, the attorney should not only sufficiently prove the alleged facts but also find the applicable laws. Application of law is extremely important to the outcomes of a so called “complex case”. For clinical students, another important job in court representation is to illustrate the applicable laws to support the claims.

Finding the applicable laws is the core of legal counseling and research. It is necessary to clearly illustrate the applicable laws with well-grounded reasons before the court trial. In case the opposing party have disputes over the applicable laws, the attorney should be able to backup his own position.

It is worth attention that in a civil case, if the laws and rules are defective, the fundamental principles of the civil law³ may apply. Therefore, special attention should be paid to the illustration of fundamental principles and analysis of defects in rules besides jurisprudential reasons. That is to say, the application of law allows much room for argument in a civil case, which requires clinical students to conduct thorough legal research before representing a client in court. On the contrary, laws are strictly applied to criminal and administrative cases, and the interpretation of such laws should be kept in strict boundaries, while arbitrary construction should be avoided.

4. To Rebut Opposing Position

All the aforesaid are the major responsibilities of a party and its representative in court trial, that is, directly stating the position. Another important job is to rebut the opposing position in court in a view to supporting the party’s own position ex adverso.

Rebuttal should be well targeted. Be it a rebuttal of claims or defense, it should be to the point. A successful rebuttal of the opposing position means a strong support of one’s own position. Of course, it is advisable to evade a well-grounded argument or make a concession if no reliable reasons can support a rebuttal in order not to miss the forest for the trees.

A rebuttal should be based on both facts and law. On the one hand, a rebuttal of facts may be supported by challenging the evidence, including the legality, relevance, objectivity, and any other factors that affect the strength of evidence. The attorney should be adept in discovering the defects in the evidence presented by the opposing party. On the other hand, the attorney may

³ Source: XU Guodong, 2004, *On Fundamentals of Civil Law – From the Perspective of Good Faith*. Beijing: Law Press.

provide stronger evidence to prove the alleged facts to the contrary. This cannot be done without good pre-court preparation. In the same spirit, a rebuttal of an allegation concerning application of law should be based on legal research. The attorney should carefully look into the scope and conditions of applying the law and attack the opposing arguments with convincing grounds.

Clinical students should remember that stating applicable laws, proving facts, and rebutting opposing arguments are often mingled with each other. In a broad sense, justifying one's own position means rebutting the opposing arguments, and vice versa. Good preparation is also a must in raising an effective rebuttal. Direct rebuttal works best when it comes to a key argument raised by the opposing party.

5. To Pray Court to Sustain Claims

The ultimate goal of court trial for a party is to have its own claims sustained by the court, namely, to receive a favorable judgment. All the aforesaid responsibilities serve this purpose. A party is most likely to win the case if it has successfully fulfilled such responsibilities. However, two more points deserve careful attention.

Firstly, requests directly addressed to the court. If court inquiry and court argument is a battlefield for the parties, final statements at the end of court trial is a critical point for a party to directly convey its requests to the court. It is a process where a party, after statement of facts and applicable laws, directly pray the court to sustain its claims.

Secondly, requests in representation statement. Although it is not mandatory to submit a representation statement, many attorneys do so in practice to provide the court with easy reference concerning the claims and allegations of the party. In such statement, the attorney should, on behalf of the client, expound on the position and supporting grounds, including facts and application of law, as well as the overall opinions and requests in a hope of getting the claims sustained by the court.

Representation Statement

Your honor:

Guangdong XX Law Firm, as entrusted by the Plaintiff Wang X, appoints us to be the legal representatives for the Plaintiff in this case. After being appointed, we studied the case file, interviewed the client, and participated in today's court proceedings. We now have a better understanding of the case and would like to make the following representation statement based on the facts and law.

1. The policemen with the Public Security Bureau ("PSB") of X City was at fault in chasing the children, which was a direct cause of Wang XX's falling into the water.

We have never denied the legality of the police investigation after the case report. However, the police should have abided by the relevant laws and regulations during their performance of the duty. No law allows a person to infringe another person's legitimate rights and interests in the name of police investigation. In this case, the police with the PSB of X City did not drive a police car or wear police uniform or demonstrate their police identity to the children in the course of investigation. Said fact is proven by the testimonies provided by the Plaintiff. Among the evidence presented by the Defendant, the interview

notes taken by the PSB of X City during the interview of three eyewitnesses as reflected on Pages 11, 22, and 47 of the case file prove that at that time, two people in plainclothes were chasing several children, holding a black stick in hand. However, the testimony of the newspaper booth owner provided by the Defendant arouses more suspicion. The interview notes of said owner in the PSB on March 19, 2008 (see Page 85 of the case file) read: "This morning, I recalled the situation on that day. I was wrong in saying that the two policemen were in uniform. Only one of them was wearing a blue police coat, ..." Therefore, the testimony of Yao De is a result of "repeated recalling and processing". The authenticity of said testimony is questionable. Moreover, the children destroyed his newspaper booth, which turned him into an interested party. Therefore, his testimony is not objective and should not be admitted as evidence. The fact is that the illegal conducts of the policemen with the PSB of X City directly led to Wang XX's falling into the water.

2. The police with the PSB of X City failed to save Wang XX after the latter fell into the water, thus failing to perform the obligation of salvage.

Article 21 of the Law for the People's Police stipulates that "In case a citizen's body or property is infringed or in a dangerous situation, the police shall offer immediate help and salvage." After Wang XX fell into the water, the two policemen should bear the statutory obligation of actively saving Wang XX who fell in the water when being chased by said policemen. Therefore, it is of doubt that said policemen should be liable to save Wang XX.

However, said policemen failed to perform such obligation. The testimonies of the eyewitnesses provided by the Plaintiff prove that when Wang XX was crying for help in the water, the two policemen stood on the bank and failed to offer salvage help. However, the two copies of notes on the interview of the newspaper booth owner provided by the Defendant were self-contradictory. In the notes dated March 18 (see Page 58 of the case file), said owner said: "Then I saw two policemen jump into the water to save another child..." However, in the notes dated March 19 (see Page 65 of the case file), said owner said: "I was on the bank and did not go there, over 100 meters away from the accident spot. I did not see clearly whether the two policemen jumped into the water to save the children ..." Therefore said testimony was untruthful and should not be admitted as evidence.

3. The two types of illegal conducts of the Defendant were the cause of Wang XX' falling into the water and death for which the Defendant should bear the liability accordingly.

The children chased by the police, mostly at the age of 14 or 15, were minors with little social experience, so they were unable to well understand their conducts and possible consequences. However, the policemen were adults and had received professional training. As professionals who shouldered the responsibilities of protecting the life and property of the people, the policemen should predict the outcomes of their own conducts. Said policemen did not wear any police uniform, nor did they drive a police car. They, holding a black stick in hand, chased the children, so the children mistook them for hired thugs sent by the newspaper booth owner and ran for their life. It was out of shock that they jumped into the river. However, after the accident, the police did not jump into the water to save the children, nor did they ask for salvage help, missing the best chance to save the children. As a result, Wang XX died.

We hope the PSB of X City faces up to its own fault and is courageous enough to bear its own liability. We pray the court to order the Defendant to reasonably compensate the Plaintiff.

Legal representatives: Xiao X and Wang X, both lawyers with Guangdong XX Law Firm

Date: October 14, 2008

6.2 Skills of Court Representation

Compared with other phases of representation, court trial, especially court proceedings, is subject to stricter time limit. Either court inquiry or court argument is finished in a short period of time, so legal representatives meet more challenges. Clinical students are less experienced in court representation and thus more likely to get nervous and attend to one thing but lose another. Therefore, it is of great importance to enhance the basic skills of court representation through simulation exercises.

6.2.1 Essential Requirements

Attorneys should be serious with court trial to maintain the solemn nature of hearing. They should not only earnestly prepare the evidence, legal forms, legal research, etc. but also strictly comply with the court etiquette during and after the court proceedings. When representing a client in court, clinical students should pay special attention to the following two requirements.

1. Be Well Prepared for Court Trial.

Court proceedings are the core of court trial. As legal representatives, clinical students should take preparatory work as a major part of their job. The preparatory work is mainly concerned about evidence and legal research. The following are a few points that clinical students should always keep in mind.

(1) Be a good time manager and well prepared for court representation. Firstly, everything should be properly scheduled before court trial. Attorneys should have good communication with their clients, collect necessary evidence, and conduct legal research before the court day as stated in the court notice. Never rush into a courtroom without being well prepared. Secondly, never miss the court session time. Do not arrive late or leave early or get busy with other affairs during the court proceedings. Never get a client to receive an unfavorable judgment merely because of failure to appear in court. Thirdly, work out a reasonable schedule during the court proceedings in advance. An attorney should predict the duration of his speech and evidence presentation in court in light of the complexity of the case and the usual practice of the court. Properly allocate time to the major issues and never miss any important work.

(2) Get all written documents ready and keep the case file in safety. Before the court proceedings, the attorney should draft the complaint, defense, representation statement, etc. for submission in court and properly keep the case file. He should never leave or lose any document during the court proceedings. Otherwise, he should be liable for any losses thus incurred by the party.

(3) Properly keep the originals and legally reach witnesses. As for important evidence, the attorney should negotiate with the client about the evidence custodian to prevent any loss, damage,

or non-submission of such evidence due to an unclearly defined division of the responsibilities of the representative and the client. The attorney should also by legal means get witnesses to testify in court and avoid any adverse consequences from unconfirmed testimonies because of failure to summon witnesses to court.

(4) Find related legal sources and get any applicable laws at hand. Besides the cited laws during legal research, the attorney should also be familiar with any other relevant laws and keep such laws at hand for easy reference during court inquiry and court argument. It is possible to be granted an unfavorable judgment merely because of being unfamiliar with the laws and failing to find the legal support in quick response to a strong opposing argument.

(5) Work out an emergency plan and keep timely communication with the court or the opposing party. In reality, a representative may be unable to appear in court due to an emergency. Clinical students should predict any possible accidents before going to court and work out a reasonable emergency plan, including a proper representative candidate or alternative transport means, so as to avoid any losses to the client from emergency. In case of a special circumstance, for instance a natural disaster, the attorney should immediately contact the court staff to change the court time or seek other remedies.

2. Understand Essential Requirements

Court representation is an important process for a lawyer to display his wit and wisdom. The outlook of a lawyer also has an impact on the persuasiveness and effectiveness of his argument. Therefore, clinical students should be critical about their own tire and comportment and always maintain a professional image in court. It is of particular importance for clinical students to minimize the possible incredibility resulting from their unofficial status as lawyer. Such details may be found in the *Rules of Professional Conduct for Lawyers* (trial version, “Rules”) passed by the Ninth Standing Council of the Fifth All China Lawyers Association (“ACLA”) on March 20, 2004. During the court proceedings, lawyers should be aware of the requirements concerning appearance, comportment, language, judicial remarks, respect to the court, and contact with the judicial staff, etc.

(1) Appearance

(2) Section 2 Chapter 10 of the Rules stipulates that working as defense counsels or legal representatives in court, lawyers should wear lawyer’s attire and be mindful of their professional image; keep their attire clean, tidy and not worn out; male lawyers not wear shoulder-length hair, and female lawyers not wear heavy makeup; keep face and hair clean and not wear any fancy accessories.

(3) Comportment and Language

(4) Section 3 Chapter 10 of the Rules stipulates that when delivering a speech in court, lawyers should use polite and proper language; use standard language when voicing an argument; try to use mandarin and refrain from using such nonstandard language as argot or vulgar language; use courteous comportment; use necessary hand gestures but not over-exaggerated body language.

(5) Judicial Remarks

Section 4 Chapter 10 of the Rules stipulates that lawyers should refrain from disseminating to and providing the media or making in public places any indiscreet remarks relating to the credentials and ethics of the judicial and arbitration staff, or making any comments that may be reasonably understood to have jeopardized the judicial justice via the media or in public places.

(6) Respect to the Court and Contacts with Judicial Staff

Section 5 Chapter 10 of the Rules stipulates that lawyers should observe the disciplinary rules of the court and arbitration tribunal; meet the time requirements of court appearance, evidence presentation, document submission and other procedural regulations; show full respect to the court; follow the instructions of the presiding judge or arbitrator-in-chief; give no commentary remarks (criticism and compliments) on the speech of judges or arbitrators; submit an oral or written statement on any problems with the court proceedings to the judges, arbitrators, or their authorities after the court proceedings; contact and communicate with the trial staff only in the places designated by the judicial authorities for the purposes of ascertaining facts, verifying evidence, clarifying law application, challenging the opposing arguments, or submitting new evidence; refrain from any contacts with the judicial or arbitration staff with improper and unjustifiable motives.

6.2.2 Essential Techniques for Court Inquiry

Court inquiry is an important phase of court trial, the first stage of material hearing, and the precondition of court argument. Court inquiry is intended to 1) examine the evidence and facts and establish the facts on a preliminary basis; 2) find out the positions and claims of the parties and the difference between the disputes and the expected results; 3) narrow down the major issues in dispute to facilitate the follow-up court argument. The two major steps in court inquiry are presenting and challenging evidence. Usually first comes the evidence presentation, and then evidence challenging. In practice, evidence challenging is often accompanied by presentation of new evidence, so the two steps cannot be completely separated.

1. Evidence Presentation Techniques

During court proceedings, evidence presentation means submitting evidence to support one's own position. Clinical students should be able to differentiate major evidence from minor evidence and present different items in a sound and logic manner in order to obtain a favorable judgment. If a representative is poorly prepared and present evidence in a chaotic sequence, the effects of evidence will be diminished significantly, which may finally result in unfavorable fact findings and even unfavorable judgment by the court.

(1) Sort out the pending facts and corresponding evidence list.

Presenting evidence in court is in nature applying the achievements in fact investigation to the court trial. Before court proceedings, the attorney should sort out the pending facts and corresponding evidence list for later use in court inquiry.

Take the simulation about pear rust in the previous chapter as an example. When presenting evidence in court, the legal representative should make clear the two major pending facts are: firstly, losses incurred by the pear farmer; secondly, the relation between the Plaintiff's planting junipers and such losses.

Concerning the losses incurred by the pear farmer, the possible evidence includes:

- 1) Appraisal report proving the decrease in pear production;*
- 2) Photographs of the pear trees suffering pear rust;*
- 3) Contracts and invoices of pear sales of the year;*

- 4) *Invoices for the anti-rust chemicals;*
- 5) *Certification of planting area of the pear tress;*

...

The evidence supporting the cause-and-effect relation between the Plaintiff's planting junipers and the pear farmer's losses may include:

- 1) *Expert testimonies concerning the pathogenesis of pear rust;*
- 2) *Photographs and measurement documents of the physical locations of the pear trees and the junipers;*
- 3) *Photographs of the spores suffering pear rust on the junipers;*

...

The attorney should note whether different items of evidence are supportive of each other and decide the sequence of presentation so as to enhance the internal logic and strength of the evidence

(2) Focus on the major evidence and efficiently finish the burden of proof.

When presenting evidence in court, the attorney should pay special attention to the key facts and spend more time presenting evidence to support such facts. In the fact investigation section, we said we should take efforts to find the key evidence in order to prove the key facts. In court, the main purpose of evidence presentation is to prove those facts crucial to the outcomes of the case. On the other hand, the attorney should focus on the strongest evidence and put the weak or defective evidence in an inferior position. According to the *Provisions on Evidence in Civil Proceedings* promulgated by the Supreme People's Court, different evidence is different in strength. The attorney can get twice the result with half the effort if he focuses on strong evidence in court. In the pear rust case, evidence concerning the pear farmer's losses is crucial and is capable to prove the actual existence of losses, so such evidence is effective to convey the belief that the pear farmer should get compensation for his losses. However, the causal relation between the planting of junipers and the pear rust is indefinite in nature and thus hard to prove, so the evidence in this regard should be taken as minor evidence. If differing opinions arise from such evidence, the attorney may leave the issue to the court argument instead of relying on evidence.

(3) Employ various fact-proving methods.

Fact-proving methods include reasoning, inference, judicial cognition and inference, etc⁴. Judicial cognition is also called trial cognition which was developed from the old proverb in the western litigation that known facts call for no evidence. That is to say, judges may have the knowledge regarding the applicable laws and the existence and authenticity of certain facts and enter a judgment accordingly without requesting submission of evidence by the parties. Inference means that as the law expressly stipulates, the decision on the existence of a fact means supposition of the existence of another fact, and such supposedly existent facts call for no evidentiary support. Reasoning is the most important fact-proving method, while formal logic is also significant.

Evidence presentation is a process of logic and reasoning. A proposition, namely an object to be proved, is a pending fact. The factual aspects of an argument, namely evidence, are used to prove the authenticity of a proposition. Proof is a bridge between a proposition and an argument, that is, reasoning or proof. It is always necessary to expressly illustrate the proving methods in evidence presentation. However, there must be certain logic between the evidence and the pending

⁴ Source: FAN Chongyi, 2008, *Law of Evidence* (fourth edition). Beijing: Law Press, P273

facts. Moreover, the evidence should have an internal coherence, that is, the reasoning relating the evidence with the pending facts should be clearly defined and correct as well.

Proof can be either direct or indirect. Direct proof means that a fact can be directly inferred from authentic evidence, and it is used to prove the authenticity of a pending fact. In the pear rust case, the photographs of the pear trees suffering pear rust and the testimonies about the actual existence of pear rust are direct evidence proving the losses arising from pear rust. Indirect proof means that the authenticity of a pending fact can be established by inference on the grounds that the facts related to such pending fact are proved untruthful. By indirect proof, the authenticity of a pending fact is not established by direct inference from the evidence, rather it is indirectly inferred from the non-existence of other facts. Indirect proof consists of apogoe and exclusion. The former means that the original proposition is proven true if the contrary proposition is proven false based on the law of excluded middle. It mainly applies to the situation where the two parties make completely different fact statements. The latter means that the original proposition is proven true if the relevant proposition(s) is proven false. When applying exclusion, all related possibilities must be exhausted, or a correct judgment may be missed, and an argument may become weaker than it should have been.

It should also be noted that direct proof and indirect proof in this context do not correspond with the direct evidence and indirect or circumstantial evidence in the evidentiary rules⁵. Direct evidence and indirect evidence are categorized based on the relations between the evidence and the pending facts. Direct evidence can be independently used to prove the alleged facts, while indirect evidence cannot be used independently and can only prove the alleged facts with support of other evidence. Direct evidence supports the truth of an allegation directly, without an intervening influence. Indirect evidence, on the other hand, is only capable to prove a certain circumstance of or relating to an alleged fact. It needs to be supported by other evidence to jointly prove the truth of an assertion or allow a fact trier to decide whether a certain fact allegation should be overruled or sustained.

(4) Skillfully Examine Witnesses

Comparatively speaking, disclosure of exhibits and documentary evidences is simpler, since what is to be examined is hard content. However, testimonies by witnesses are obtained by questioning in the process of court trial. To obtain testimonies which are in favor of clients thus to win the favor of the judge, the attorney needs to be more skillful. The following discussion is to be focused on skills of examining witnesses.

Examining the witness starts with the direct examination (examination-in-chief), then proceeds to cross-examination, re-direct-examination, and re-cross-examination. As legal representatives, clinic students must understand one key point, i.e., the purpose of examining the witnesses is to persuade the judge. Thus it is important that the legal representative looks direct into the witness' eyes, listen attentively to the answers, design subsequent questions according to the answer; at the same time, the legal representative must pay close attention to judge's responses, and make precise judgment based on the judge's facial expression concerning the appropriate pace of the examination and decide whether the examination is going in a way favorable to the client.

Direct examination refers to the primary questioning of a witness that is conducted by the party or his legal representative for which that person is acting as a witness. As a dialogue between

⁵ Source: WANG Limin and MOU Xiaoyuan, 2009, *Clinical legal Education: Theory and Practice*. Beijing: Law Press, P197

the party and its witness, the topic of the dialogue is selected by the attorney, and the question is to be asked by the attorney and answered by the witness. Direct examination bears such a characteristic: the content of the witness's answer has already been acquired at the interview before the court trial, and what happens in the courtroom is re-delivery for the purpose of proving its credibility and thus leading the court in its ruling. When conducting direct examination, special attention needs to be paid to the skills⁶:

A. Being clear. Since there has been much communication between the client and the legal representative before the court trial while the judge may not necessarily have much knowledge of the case or the witness, when examining the witness, the legal representative should provide concrete clear information about exact scenario, offer sufficient information on the background related to the testimony, thus to facilitate the judge in understanding and accepting the concerned fact allegations.

B. Being transitional. In witness examination, transitional sentences should be used thus to help change the scenario. To make it more specific, the questioning should be able to direct the witness's attention to the focus intended by the legal representative and at the same time introduce the judge to the issues to be covered.

C. Controlling witness. In examination, leading questions are prohibited, i.e. legal representatives cannot ask questions which include intended answers. Because of this, it is imperative to keep the witness under control by asking open-end questions. Open-end questions are aimed at making the witness the center and focus, and making the witness talk. By getting the witness to speak up, it can enable the witness to give the important evidentiary information, to tell the witness's story, and it can also dilute the existence of the legal representative.⁷ In other words, the legal representative directs and constructs the case fact and presents the process by asking open-end questions, thus to obtain the intended testimony.

D. Choosing appropriate forms of questions. When designing questions, the legal representative should select and use appropriate words, cut long questions short, turn complicated questions simple, get vague issues clear and precise.

E. Analyzing questions. The legal representative should decide on workable questioning tactics by conducting a detailed analysis on the purpose of examining the witness, facts to be proved by the witness, status and effects of the testimony.

F. Listening attentively. Examination is a continuous process in which the legal representative not only needs to choose workable questions and appropriate questioning approach, but also listen to the narration of the witness attentively, thus to judge whether desirable testimony has been obtained, whether questioning should go further, and what follow-up questions to ask.

G. Body language and verbal expression. In the courtroom, factors such as speed and tone of the legal representative's speaking, focus of legal representative's sight, and timing of standing or walking could all influence the judge's interpretation of the presented evidence and testimony. So, the legal representative should be very cautious about his body language and verbal expression, thus to avoid leaving a negative impression on the judge.

H. Speed and rhythm of questioning. The legal representative needs to have a good control over the speed and rhythm when questioning the witness. Time should be reasonably allocated and used in the questioning process. When it comes to key questions, the questioning should be

⁶ Source: Li Ao, 2004, *Interactive Teaching – Clinical Legal Education*. Beijing: Law Press, P315-318.

⁷ Source: Liao Meizhen, 2009, *Courtroom Language Skills*, 3rd edition, Beijing: Law Press, P200.

slowed down, thus to achieve emphatic effect and to leave a strong impression on the judge.

Cross-examination refers to the questioning conducted by a party or his legal representative against a witness for the opposing party by asking challenging and rebuttal questions. Essentially, such questioning is an examination on the testimony of a witness, thus falls within cross-examination. However, since it is a process of questioning the witness, it is discussed here in this section.

The purpose of cross-examination is to discover the flaws or expose the falsity in the testimony, thus to contradict the testimony or impeach the credibility of the testifying witness. Cross-examination should be flaws-oriented, thus instead of targeting at every witness called by the opposing party, it should be focused on the witness whose testimony shows flaws and faults. Cross-examination could serve the following purposes: obtaining supplementary evidence; weakening the evidence of the opposing party's testimony; impeaching the testimony, i.e., proving the evidence in question is at flaw; impeaching the witness, i.e., proving the incredibility of the witness.⁸

There are principles that the legal representative should follow when conducting cross-examination⁹: full preparation before court trial¹⁰; confidence; keeping the focus; hitting on the key points; stressing on the primary issues, detecting and leveraging on the contradictory information; never exposing the plot or strategy unless having to do so; keeping the development of interrogation under control; avoiding being controlled by the opposing party; staying flexible and adaptable. Specifically, the tactics include:

A. Reducing hostility to lowest possible level and avoiding arguing with the opposing side. Stay friendly and never ask irrelevant questions.¹¹

B. Being straightforward and hitting on the target point directly, thus just allowing the witness minimum time to produce an answer. Avoiding questions to which the legal counsel himself has no answer, thus to avoid handing the control over to the opposing party.

D. Depriving the opposing party of the opportunity to make any explanation and precluding undesirable information.

E. Presenting a careless attitude and making unexpected attack. The purpose of this tactic is to hide the real purpose and intention of the questions, thus the legal representative should exclude the approach and strategy adopted in direct-examination. Efforts should be made to establish arguments and evidences before the opposing party figures out the purpose of the questions and leave the opposing party no chance of fighting back.

F. Delaying conclusion. Stop the questions at right time. Once intended information is obtained, the legal representative should immediately close the question. Instead of coming to conclusive remarks in the process of questioning, conclusion should be made till the stage of closing argument.

G. Insisting on important questions. In the case that the opposing party avoids giving a direct answer, questions should be raised repeatedly until the intended information is dig out.

H. Asking close questions. Questions containing answers in themselves should be asked, and efforts should be made to confine the witness to "yes" or "no" answer only. Answers by the witness should be elicited in support of the evidence the legal counsel has already obtained.

⁸ Source: Li Ao, 2004, *Interactive Teaching – Clinical Legal Education*. Beijing: Law Press, P318-319

⁹ Source: Li Ao, 2004, *Interactive Teaching – Clinical Legal Education*. Beijing: Law Press, P318-319.

¹⁰ Source: LI AO & LIAO Meizhen, 2009, *Courtroom Language Skills*, 3rd edition, Beijing: Law Press, P219.

¹¹ Source: LI AO & LIAO Meizhen, 2009, *Courtroom Language Skills*, 3rd edition, Beijing: Law Press, P219-249.

Special attention should be paid to the progression of the questioning.

I. Being concise and precise. One question should be targeted at one specific answer only. A clear argument or evidence is to be established by a series of concise and precise questions.

J. Keeping the witness under control, and never allowing the witness talk much. It is very important to prevent the hostile witness from offering unfavorable testimony by tightly controlling his talk, such as raising close questions only, preventing any opportunity of making explanation, following each answer with a pre-designed precise question, etc.

K. Impeaching the character of the witness of the credibility of his testimony. This effect could be achieved by taking advantage of misconduct of the witness or unreliability of his memory, etc.

L. Impeaching the credibility of the testimony by contradicting the testimony.

M. Impeaching the judgment of the witness. Details involved in the testimony can be used to indicate that the testifying witness makes wrong judgment.

N. Impeaching the sensibility of the testifying witness.

O. Impeaching the memory of the testifying witness.

P. Impeaching the character of the testifying witness. Usually such impeachment is conducted by exposure of misbehavior of the witness in the past.

Q. Impeaching the communication ability of the testifying witness, by finding flaws in the expression made by the witness.

R. Impeaching conducts of the testifying witness. The purpose of this tactic is to impeach the credibility of the witness by discovering the contradiction between the speech and act of the witness.

S. Impeach the knowledge of the testifying witness. Challenges against the knowledge or capability of the witness are particularly useful when the cross-examination is conducted against an expert witness.

T. Focusing on the facts and never rushing into conclusions. Instead of directly accusing the witness of telling lies, the legal counsel needs to direct the interrogation in a way where the judge himself naturally comes to a conclusion that the witness is telling lies.

Under certain circumstances, a redirect will be conducted after the cross-examination, i.e., the legal representative conducts a supplementary questioning against the witness. The redirect is clearly targeted at points where there are doubts, thus to elicit supplementary information, or to clarify doubts, or to reinforce key evidences.

2. Cross-Examination

When clinic students participate in court inquiry as legal representatives, they not only need to present evidence to support their own arguments, they also need to cross-examine the evidence presented by the opposing party, and try to rebut the opposing party' arguments by rebutting their evidence. Cross examination is essentially the litigation process under which the evidence presented by the opposing party is subject to interrogation and rebuttal thus to determine whether the evidence in question is of authenticity, relevance, legality and objectivity which in turn decide how well the evidence could be admitted to support the arguments.

Both in presenting the evidence and cross-examining the evidence, there are notable differences in introducing physical evidence and depositions. Physical evidence includes material evidences, documentary evidences, investigation records, examination reports, audio-video material, site records, etc. Physical evidence takes the forms of objects or traces, or exists in

written form, which offer proof to the facts by its presentation or its content. For any physical evidence to be relied on when making judgment, it has to meet all the three requirements of realness, legality and relevance. Because of this, when conducting cross-examination, efforts should be focused on three aspects, for the purpose of detecting falsity in the physical evidence, thus to challenge or impeach the probative value. All the following aspects need to be closely attended to in the cross-examination of physical evidence:

(1). Are the evidences authentic?

The primary concern about the authentication of the evidences is whether the evidences are the original. Physical evidences prove facts by their forms or contents, thus basically it is the originals that are of probative value. Any duplicates, with changes in their forms, shapes or distinctive features, normally cannot be introduced to prove case facts. Exceptionally, the duplicates of documentary evidences can be used as evidences if the required conditions are satisfied.

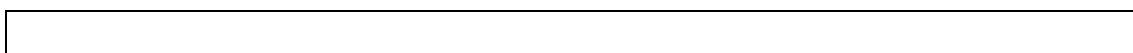
Forgery or alteration could be made to all kinds of evidences, including physical evidence, documentary evidence, audio-video material, inspection records, spot examination reports. In the first place, when deciding whether these evidences are authentic, a close look must be paid to the source of the evidences, which is often an indicator of the authentication. While evidences obtained from normal sources are normally of high authentication, evidences from abnormal sources should be treated with caution. Besides, special attention must be paid to the shape, feature, specification, and quality of the evidences concerning the authentication. For instance, authentication of documentary evidences can be judged based on verification of the signature and the handwriting attached to the evidences in question, and at the same time, technical approaches could be involved to test whether the audio-video materials in question have been altered or forged.

(2). Have the evidences been obtained legally?

The source of evidence not only could be used as an important factor in deciding the authentication, but also can be an important indicator of the legality of the evidence. By legality, it refers to the requirement that evidence be obtained, kept, preserved in a procedure as prescribed by law. In other words, it requires that the party which obtains the evidence be a legal party, that a legal procedure be followed in obtaining the evidence, that the form of the evidence be in compliance with law, and that evidence be admitted as decisive evidence in court trial after it has been found to be authentic following a legal procedure.

In criminal justice, judicial officers are obliged to respect prescribed procedures in obtaining, fixing, preserving, and examining the evidence, and they are allowed to use the evidence only after they find through examination that the evidence is authentic and true. Also in civil and administrative justice, it is clearly prescribed in law that the evidence obtained in a way violating the law prohibitions and infringing on others' legitimate rights and interests shall not be admitted as proof deciding the facts of the case.

If the evidence has been obtained illegally, even though it is authentic, they shall not be admitted to decide the case facts. In the famous case of Simpson murdering his wife, the key evidence was denied because it had been obtained illegally.



Simpson was a famous American football player, a TV host and a movie star.

At midnight June 12, 1994, in front of the apartment of Nicole, Simpson's ex-wife, Nicole and her boyfriend were found soaked in blood. The police concluded that the murder weapon was a sharp blade about 15 inches in length, and the murderer exercised exceptionally great force when using the blade, and the police targeted Simpson, Nicole's ex-husband, as the primary suspect.

On June 16, after careful investigation and detailed analysis, the police announced that Simpson was targeted as the exclusive suspect and issued an arrest warrant. On 17th, the police declared to run down Simpson. Soon after, the police discovered Simpson and Collins driving in a White Bronco on No.5 Highway and then police officers from three counties were involved in subsequent chasing which lasted for over three hours. After entering into his house, Simpson walked out from his vehicle and surrendered himself to the police.

Simpson employed the most-renowned team of attorneys to defend him, which included big-name lawyers such as Robert Shapiro, F. Lee Bailey, Alan Dershowitz, Johnnie Cochran and etc. On January 24 1995, the court trial which lasted for over one year began. After hearing and analyzing 1,105 testimonies made by 113 witnesses, the jury returned a verdict of innocence.

For those people who believed that Simpson was guilty of the murder, the prosecution's losing the case was totally beyond their understanding. However, American lawyers and criminologists held that a number of factors contributed to the prosecution's defeat.

In the first place, the prosecution had neither found an eye witness nor the murder weapon, and the evidences the prosecution possessed were all inferences or circumstantial evidences.

Secondly, the murder time that the prosecution suggested was not convincing in the way that many doubts remained unclear. The defendant had always hit hard on this weakness.

However, the fatal blow was from the blood sample that the prosecution relied heavily on. On the one hand, Fuhrman, the police officer who submitted this evidence was a racist. From the initial stage, the defendant kept emphasizing on this and went all ways to find supporting evidences. Finally in August, a woman screenwriter, Laura Mckinny, produced a tape which revealed Fuhrman's racist hatred. The tape contained evidences such as Fuhrman tore black driver's driving license into pieces and then accused the black driver of driving without a license; Fuhrman abused black suspects in custody; Fuhrman made false accusation against black suspects by making up false evidences, and etc. In the record, Fuhrman even threatened to pile all the "niggers" up and burn them to death. Fuhrman's speech and act became a powerful weapon for Cochran, who claimed that the evidence submitted by the police was merely intentional false accusation which exposed the racist hatred. On the other hand, ever since DNA was introduced into litigation, there had been on-going debates on its methods and effects. Both the prosecution and the defense called in top-class DNA experts, but their conclusions were in serious conflict and contradiction. Also because the police officers were not under proper supervision or following prescribed procedures in the process of taking specimen and inspecting the crime scene, the reliability of the taken specimen was significantly weakened. Because of the above, the evidences that the prosecution relied on completely collapsed.

(3) Is there a link between the evidence and the fact to be proved?

The probative value of evidence lies in the link between the evidence and the fact. The closer link it involves, the greater probative value the evidence bears. So, evidence not only needs to be

authentic and legally obtained, it also needs to be linked with the fact in certain manner. When examining the link between the evidence and the pending fact, the following issues need to be considered carefully.

First, the link between the evidence and the pending fact varies from case to case. It could be a direct link or indirect link, a necessary link or an accidental link. It is important to examine the link from multi-perspectives.

Secondly, while the relevance of the evidence often cannot be proved empirically, it can only be revealed through inference or experience. However, such relevance is not to be shaped or changed subjectively by people's will and it cannot be subjectively created or forced onto any party or any subject. For instance, even if the defendant once caused intentional injury to the plaintiff, it cannot be automatically established that the second injury the plaintiff suffered was also an intentional harm caused by the defendant.

Furthermore, in essence, cross-examination is an examination on the testimony made by the witness, tactics of which have been discussed in previous section. The following skills are recommended to be used in the process of court inquiry.

- (1) Hit on the point. The questioning should be focused on the weakness or the falsity. If questions are raised against points which are unquestionable, as a result, it will weaken the questions raised, which in a way, helps enhance the probative value of the opposing party's evidences.
- (2) Be coherent. The purpose of cross-examination is to impeach the opposing party's evidences by reasoning and inference, so it is very important that the attorney should not lose control or focus. The goal is to deny the opposing party's evidences by carefully presented and arranged questions. If questions are randomly raised, the intended effect cannot be achieved.
- (3) Be concise. Questioning the opposing party's evidences is a process of destroying the opposing party's reasoning. The winning strategy is to focus on the critical point, and remain coherent and clear. If the cross-examination goes loosely lengthy, the effect is to be seriously weakened.
- (4) Be flexible. The process of cross-examination is a process of heated violent argument. It is vital to respond immediately to all possible circumstances and grasp every opportunity to voice the opinions.

6.2.3 Essential Techniques for Court Argument

Court argument is something like a battle fought with swords of words, with the opposing parties making every effort to persuade the court judges to come to a favorable judgment. The parties present their own reasoning concerning the dispute at issue and at the same time rebut the arguments presented by the opposing party. To persuade, in other words, to win the debate battle, is the ultimate goal and the final pursuit of advocacy in the court room¹², and it is on the stage of court argument that the parties perform advocacy in order to persuade. A Long et al (1986) highlighted 14 winning factors (or techniques) and 8 losing factors and mistakes as displayed below.¹³

¹² Source: Liao Meizhen, 2009, *Court Room Language Skills*, 3rd edition. Beijing: Law Press, 2009, Page 191.

¹³ Source: Liao Meizhen, 2009, *Court Room Language Skills*, 3rd edition. Beijing: Law Press, 2009, Page 191.

Factors contributing to success:

1. *Credibility;*
2. *Attractiveness;*
3. *Awareness of facts, laws and precedents;*
4. *Points which are powerful, easy to understand and expressed in short sentences;*
5. *Well-prepared arguments (careful investigation; good preparation of the witnesses and true evidences; prudentially-designed outline of questions);*
6. *Plain language and common sense;*
7. *Two key factors in presenting the case: creative and suspensive;*
8. *Reasonable employment of powerful witnesses and evidences to make sure that each court trial session start in an impressive manner and close in an unforgettable way;*
9. *Presenting those arguments and evidences which not only prove your points but also attract the court's attention;*
10. *Presenting supplementary evidences in an creative way, aiding the judge in better understanding the issues;*
11. *Being straightforward and eliminating vagueness or ambages;*
12. *Preparing an outline of speech and rehearsing repeatedly rather than memorizing and reciting a pre-prepared speech. It is to be remembered that the best instant speech is a well-prepared speech;*
13. *Making every effort to create such an impression on the judges: you are helping the decision-makers find out a fair and justified settlement to the dispute instead of threatening the court with a future appeal to overrule the current decision;*
14. *Behaving in a polite way and acting in a decisive manner.*

Factors leading to loss:

1. *Always trying to instruct or teach the judges knowledge about procedures;*
2. *Instead of rebutting the arguments raised by the opposing party, efforts are targeted at making personal accusation;;*
3. *clashing with the attorney or witness of the opposing party, or even with the judge repeatedly and unreasonably;*
4. *Making objections without any legal ground;*
5. *Being overly-aggressive or as proud as a peacock;*
6. *Always temping to manipulate others;*
7. *Abusive use of legal jargons;*
8. *Constantly making a threat with an appeal.*

1. General Skills of Advocacy

When participating in advocacy, a clinic student should master some basic skills and apply them to the advocacy according to the real situation.

(1) To Make a Full Pre-Trial Preparation

A clinic student should never stop thinking about how to perform advocacy, no matter it is before the court trial starts, or during the intervals when the court adjourns. Preparation should be concentrated on three aspects. Firstly, a clinic student should make a good preparation of legal

principles. One critical question to be answered is what law or legal principles should be applied to the instant case. So, whether a clinic student can win the battle of court argument is pending on how well he is prepared in law and legal principles. Secondly, a clinic student should be psychologically well-prepared. He should overcome the stress by rehearsal and adjustment of aesthetic psychology. It is advisable for the clinic student to regard the court room as a stage for performance where the lawyers fully demonstrate their self-confidence. With this on mind, a clinic student is likely to have a satisfactory performance in court argument. Thirdly, a clinic student should be well-prepared for questions to be asked in court argument. A careful and thorough thinking over the questions at issue may give the attorney better ideas what arguments and evidences the opposing party is to raise, and thus to equip the attorney with a plan of how to respond to those arguments and evidences. With such a plan, the clinic student can actively control the process of court argument. Moreover, points of the opposing party or its attorney may have an impact on the progress of court argument. Thus awareness of these may enable the student attorney to better perform the job of advocacy in the process of court argument.

(2) 3.1.2 To Listen Attentively and Observe closely

Court argument is a process of instant communication. On the one hand, the attorney must clearly present his own arguments; on the other hand, more importantly, he must clearly understand the opposing party's arguments and respond quickly and appropriately. Consequently, it is most important for the attorney to attentively listen to the opposing party and closely observe how the judge and the opposing party respond. When the opposing party presents his case, the attorney must be fully concentrated on the key points and take notes; concentrate on the key point of the opposing party's arguments and its reasoning, fully understand opposing party's view points and detect the weaknesses or falsity. The attorney also must closely observe the act and body language of the judge and the opposing party, seeking to dig out the concealed information. For instance, the attorney must observe closely to find out whether the opposing attorney has confidence in the evidences he presents to the court, whether the judge is interested in listening further to the statements and etc. Once such information is obtained, the student attorney can form his views on the case or views on particular issues, and thus accordingly select or making adjustment to the coping strategy.

(3) 3.1.3 Raise Questions or Challenges in a Timely Manner

While closely observing and attentively listening, a student attorney must detect the falsity and contradiction in the statements made by the opposing party, raise questions or challenges correspondingly, thus reveal the weaknesses and defects of the opposing party. The attorney could prepare some questions before the court trial based on his prediction of the court argument, and raise those prepared questions at appropriate time. Moreover, more questions are asked in the process of court argument according to the actual development of the trial. Questions should be asked at good time, cutting in the opposing party's presentation or argument, destroying the opposing party's logical link and reasoning by attacking on its weakness or falsity.

... ..

Plaintiff: Is the defense attorney quoting Article 5 Award and Penalty Regulations of Enterprise Employees as the legal rule?

Defendant: Yes. This article expressly prescribes that

Plaintiff: But this law had already been annulled in 2008. The dispute in the instant case occurred

in 2009. It is no doubt that a law annulled in 2008 should not be applicable to a dispute occurring in 2009.

Defendant:

(4) 3.1.4 To Launch an Effective rebuttal

While questioning and challenging are also forms of refutation, it will be a more effective rebuttal if the attorney can make statements which effectively attack the view points of the opposing party, and can establish its own inference logics by destroying the opposing party's inference and reasoning, and thus overthrow the overall argument or particular argument.

If it is fair to say while questioning and challenging focus mainly on the details involved in the opposing party's case presentation, rebuttal concentrates on the process of reasoning, detecting the falsity in opposing party's factual basis or logical reasoning, overthrowing opposing party's arguments by following a rigid reasoning, thus enhancing and intensifying its own arguments.

(5) 3.1.5 Concentrate on the Critical Points

A primary task in court argument is to clearly present the party's own points. However, since issues are of different weight to the case, it is important to carefully control the time distribution, with less time spent on issues which are less controversial or less influential, and focus remained on critical issues. For instance, as revealed in previous pear scab case, the key issue is the causal link between the planting of junipers and the loss the pear farmers suffered and the criteria applicable in determining such causal link. With this issue being the focus and emphasis of the legal argument between the parties, whoever convinced the judge on this point wins the favorable judgment. Naturally, time and effort should not be devoted heavily to the debate concerning calculation of the loss, since it is a comparatively simpler issue.

2. Linguistic Skills in Advocacy

As court argument is carried out in speech, linguistic skills are of particular importance in advocacy. The following section is an introduction to linguistic skills.

(1) Linguistic Logic

Language used in advocacy must be logic and the persuasive effect is to be achieved by sound logic reasoning. Court argument is essentially a process whereby a party supports his arguments by making inference, i.e., a process of legal reasoning based on presupposition of laws and facts seeking justification for application of law. Basically legal reasoning can be divided into two categories: formal logic, i.e., formal reasoning and dialectical logic, i.e., substantive reasoning. Formal logic refers to the deductive approach, inductive approach and analogical approach used in settling legal problems. Substantive reasoning, also referred to as dialectical reasoning, means when logical reasoning is based on two or more contradictory legal presuppositions, the resolution of legal problem is to select the best thesis by dialectical thinking.

In the process of reasoning the claims, to justify a particular thesis, formal reasoning or dialectical reasoning is to be exercised in organizing the language and complete the legal reasoning. In advocacy, one paragraph should be centered on one point and intended to clarify one issue; meanwhile, sentences should be arranged reasonably to convey the party's ideas plainly and smoothly. An apparent pause must be made between paragraphs, in order to allow the audiences some time to understand and respond; language of transition and cohesion must be used to avoid weakening the effectiveness of argument because of fast speed of the speech.

(2) Standard Language

The language used in advocacy must satisfy the normative requirement. The following three rules should be strictly observed. Firstly, attention must be paid to the forcefulness, scope and tones of words and the attorney should never make up words. Secondly, sentences must be complete in structure. Errors such as lacking of sentence elements, wrong collocation, wrong use of connective words etc. should be eliminated. Thirdly, except for presenting case facts, dialects and slangs should be avoided.

In advocacy, efforts should be made to strike a balance between legal terms and plain language. While legal terms are used to present facts and introduce laws accurately, plain language is used to make sure the parties to the case understand the message, and at the same time make sure the court argument progress smoothly. As an attorney, it is important to demonstrate the professional qualification and at the same time avoid using expressions which is too difficult to understand.

(3) Linguistic Accuracy

Standard and accuracy are two closely-associated natures of language. In certain context, the language has to be normative in order to be accurate in conveying the speaker's meaning. The requirement of accuracy in advocacy means the language used must be true to the facts, reflecting the objective conditions, and must be precise, delicate, and clear. For instance, when describing a situation, neither overstatement nor understatement is appropriate; words or sentences which are ambiguous in meaning should be avoided; explanation or qualification should be added to eliminate linguistic ambiguity. The attorney should avoid vague expressions and try to be precise, especially when it comes to the issue of application of law to facts which are borderlines. When quoting statutes, it should be exactly precise; and when it comes to an important law provision, reference must be specific to the exact article.

If the explanation about the facts or law application is made precise, it can leave on the judge and the opposing party an impression of being prudential and credible, and thus increase the persuasive force of the advocacy. By contrast, vague expression will puzzle the judge, and thus seriously weaken the effectiveness of advocacy.

(4) Control over Speed and Pronunciation

The effectiveness of language not only depends on the content, but also the forms of expression, such as speed of the speech and intonation etc. When a student attorney participates in advocacy, he should pronounce correctly and talk at appropriate speed, thus to make sure the judge and the opposing party hear clearly. A student attorney could also slow down his speech to achieve emphasis. Besides, although in advocacy the attorney normally speaks in a level tone, when it is necessary the speaker can control and vary his tone to enhance the effectiveness of his speech.

3. Other Skills

In addition to the skills discussed above, experience gained from practice is of greater value. While different attorneys apply different strategies because of different experience, different cases require application of different strategies. This point is illustrated in the following examples.

(1) Effective Use of s Drawings and pictures

In the process of court argument background information about the crime scene often needs to be displayed in order to clearly explain the act of the parties or some related circumstances. In this situation, a drawing of the crime scene, a floor plan of the spot etc. becomes very helpful for the judge to understand the case and it facilitates judge's determination on certain facts. When a student attorney represents a case, it is recommendable for him to use drawings or pictures in the

court, thus to better explain how the event happened and illustrate some other case facts. In some cases, drawings and pictures not only simplify the work of explanation, but also better deliver the information. For instance, in a personal injury case of groups of villagers fighting with weapons, the drawing as shown below can be introduced to illustrate how the arguing developed into a fight and where the critical events occurred.

(2) Effective Use of Body Language

In the process of court argument, how the lawyer talks and acts may influence how the judge or the opposing party interprets his points. Formally, besides the factors such as the speed and tone of the speech, effective use of body language, even a facial expression, can increase the effectiveness of the speech or deliver a message beyond the words. So, when a student attorney participates in court argument, he needs to learn how to make use of his body language. For instance, standing up at the right time may show the importance he attaches to the content of the speech, and may help attract the attention of the audiences; a posture of attentive listening may indicate to the judge that the attorney is very serious about the case. On the contrary, facial expression such as a contemptuous or sardonic look may cause unfavorable response from the judge; constant nodding while the opposing party presents his case may imply that you approve what the opposing party has said. In summary, appropriate manner helps persuade the judge and win the judge's support.

(3) In-Time Interruption

Generally the opposing lawyer or party's talk should not be interrupted. However, in special circumstances, an interruption may work to remind the judge that the opposing party's presentation is irrelevant to the case or is not grounded on any evidence. An in-time interruption may change the progress of the court debate and direct it to follow the interrupting attorney's thinking line, thus to prevent any unexpected development. Of course, an interruption should be made with a good and apparent reason to get the judge's approval, for example, irrelevance to the case, personal accusation, etc. If interruption is made constantly but without good excuse, it will cause the judge to think the interrupting attorney bears no respect to the opposing party or to the court, thus it will only ruin the court argument.

(4) Mending Mistakes Immediately

Mistakes always accompany heated court argument which becomes more serious when a student attorney who lacks experience and feels stressed participates in court argument. If the mistake concerns only a slip of the tongue, what the attorney needs to do is a simple explanation. However, if there is a mistake in the content of the speech, for example, a wrong introduction of a law article, mending efforts should be made without any delay. If the error does not involve a fundamental mistake, the lawyer only needs to make a corrected statement to re-present the point in a correct way. But if the error concerns a fundamental mistake, for example, introducing a wrong law article, the attorney must acknowledge the mistake, change the reasoning strategy, and introduce another law provision to support his arguments. Although changing arguments may disadvantage the attorney in a way, it is allowed before the closing of the court argument. If the attorney can make sure the reasoning in the subsequent session is firmly-grounded, he still stands a good chance to win the judge's support. In conclusion, once mistakes happen, the attorney must admit and correct the mistakes immediately. Otherwise, it is going to produce a disastrous outcome.

6.3 Practicing Advocacy

A simulation of advocacy is actually a mock trial, which focuses on the processes of court inquiry and court argument. Presented below is a decided case, and a simulated court trial is to be carried out based on the information below.

407 pupils v. Chemical Industry¹⁴

Plaintiff: Liu and 406 people, aged between 7-14, pupils of Genglou Primary School of City X

Defendant: Plastics Chemical Industry Company of City X

Claims: cessation of the infringing act; damages

There are in total 840 pupils at Genglou Primary School where the plaintiffs study. The school is located in Town Y of City X. With Shouchang River on the west, the school is surrounded by open fields. The defendant chemical company, located 150 meters to the southwest of the school, began production in 1995, with cinnamon as main raw material and plastic foam made out of polystyrene as main product. Cinnamon is categorized by international treaty as poisonous chemical compound under category of 2B, which may cause, absorbed into respiratory passage and skin, through its vapor or its fat-soluble nature disease, malformation, or mutation in the case of constant large contact. Since minimum leakage or release in the process of loading, unloading and delivery took place, hot waste water containing cinnamon was released into Shouchang River and smell of the smoke spread and affected residents and schools nearby, complaint against the chemical company was filed with concerned authority. On February 21, 2001 the Environment Monitoring Station of City X tested the waste water released by the chemical company and the test report showed that the waste water met the concerned requirements.

At 10:30 on April 4 2001, students and teachers who were having their lesson suddenly smelled strong smell like paint and the smell quickly became unbearable. By 11 a.m., the smell got stronger and stronger and some students began to feel dizzy, headache, sick, bellyache and some began to cough. The school immediately went to negotiate with the chemical industry. By 12 o'clock the smell gradually disappeared. After the students got back home the parents, who did not have knowledge about the problem, got the students to take pills for cold or bellyache. However, the symptoms were not cured.

After receiving complaints, environmental protection authority went to the factory site to conduct investigation, and ordered the chemical company to stop production immediately and wait for further decision. The authority sent the students who reported more serious symptoms to No.1 Hospital of City X for medical examination, which reported students symptoms as "slight negative effect". Some of the parents were doubtful about the medical report, and took their children to No.2 Hospital of City X and No.3 Hospital of City X for new medical examination. The new reports were different from the report issued by No.1 Hospital of City X and some students were reported to be "cinnamon intoxication". Parents reacted strong to the medical reports and led over 100 students who flooded into No.1 Hospital of City X for new medical examination. The chemical company had paid for the medical bill for students who had been hospitalized, but

¹⁴ Souce: Lv Zhongmei, 2006, *Environment Law Case Analysis*. Beijing: Higher Education Press, P163-P166.

refused to pay the medical bill for students who later flooded into the hospital.

The municipal government commissioned an investigation team which found: at 10:30 April 4, a worker in the reaction workshop violated operation rules and caused the leakage incident. As a result, the raw material of cinnamon flowed into sedimentation tank and then about 100 kilos of which leaked into drainage. The poisonous air spread around the school nearby, caused air pollution and the subsequent incident. On April 6th, Disease Prevention and Control Center of City X conducted an investigation on the production site, which found that the production of polystyrene was in normal condition, and no leakage was discovered in the three sections of polymerization, drying and packing. The investigation team also collected sample of the production and sent it over to be tested by the Disease Prevention and Control Center of the capital city of the province, which reported a concentration of 25.4 mg/m³ in compound section and 59.8mg/m³ in the mixing section, above the national standard of 40mg/m³.

On April 12, a working team of seven experts from Provincial Disease Prevention and Control Center and the Disease Prevention and Control Center of the capital city of the Province conducted a urine test for all the students and teachers of Genglou Primary School and all the workers of the chemical company, and they also conducted an overall medical check for the students and teachers who reported symptoms. The urine test and medical check reported no cinnamon intoxication symptoms other than dizziness, headache, nausea, bellyache and cough. Nine workers who participated in the recollection work reported no symptoms other than the uncomfortable feeling in the throat. After careful investigation and analysis, and based on the conclusion of medical tests concerning the physical reaction to the cinnamon leakage incident, the expert team reached a consensus: the symptoms of dizziness, headache, nausea, bellyache, cough and etc. were reactive response to the leakage of cinnamon caused by the nearby chemical company, and there was no evidence of cinnamon intoxication. The expert team also made two recommendations concerning the incident: firstly, the chemical company should improve its safety management to prevent such incident from happening in the future; secondly, pollution monitoring and management should be strengthened. According to labor safety management rules, chemical factories should not be located near residential areas, schools or water courses.

On April 14, the Labor Administration Bureau of City X and the Township Government of Town Y called held a conference with the concerned parties to settle issue of payment for the medical costs of the students of Genglou Primary School, and proposed a specific settlement plan:

- (1) All the costs of medical examination, treatment and hospitalization conducted by medical experts at provincial and municipal level, by No. 1 Hospital of City X, Traditional Chinese Medicine Hospital of City X and Chengnan Hospital of City x for students of Genglou Primary School are to be reimbursed;*
- (2) All the costs of medical examination, medical treatment, transportation fees for students who visited hospitals out of City X are to be reported to the headmasters which are to be submitted to the School Administration for verification and reimbursement;*
- (3) The costs listed above are to be paid by the chemical company.*

However, after paying medical treatment bill of RMB132,406.80, the chemical company refused to make any further payment. On April 16, the concerned hospitals forced students who were still under treatment to leave, which again aggravated the contradictions, and triggered the overreaction of hundreds of parents who argued violently with administrators and doctors of those hospitals and gathered around the municipal government to report their problems.

Although the chemical company suspended production and carried out internal rectification following the order issued by concerned authorities, such as the Environment Protection Bureau and the Labor Administration of City X, right after it resumed its production, the parents concerned broke into the factory and blocked the road, which intensified the negative effect of the incident on the society.

Since no settlement was reached, on June 1 2001, 407 students of Genglou Primary School filed a suit with the Intermediate People's Court of the capital city of the province, pleading that the chemical company stop release hot waste water containing cinnamon into Shouchang River and claim for damages of RMB7,660,000 for economic losses and emotional injury caused to the plaintiffs by the cinnamon leakage on April 4 2001. The damages include:

- (1) RMB407,000 (RMB1,000 x 407) as loss of wages suffered by guardians because of long absence from work;*
- (2) RMB203,500 (RMB500 x 407) as loss of transportation costs incurred where the guardians took the plaintiffs to medical examination, filing complaint and making court appearance;*
- (3) RMB814,500 as medical treatment costs (RMB2,000 x 407);*
- (4) RMB6,105,000 (RMB15,000 x 407) as compensation for emotional injury*

In total the plaintiffs claimed for RMB7,829,5000 (RMB132,406.80 paid by the chemical industry not deducted from the total amount).

The court finds that in the process of litigation, the chemical company conducted an internal rectification, and equipments such as the boiler pressure container passed inspection by the Labor Administration Bureau of the capital city of the province; the Labor Administration Bureau of City X issued an opinion concerning the boiler pressure container which held that the chemical company had improved and eliminated its defects and met the conditions for production and operation; the chemical company had also treated its waste water as required by the Environment Protection Bureau of City X. The Provincial Metallurgy Environment Research Institution issued an environment evaluation report concerning the chemical company, and held that under normal conditions the waster water and waste air released by the chemical company was small in volume which produced no significant influence on the environment, thus the environmental impact caused by the chemical company was within an acceptable level; with irritant reaction of upper respiratory passage as the greatest danger caused by leakage of cinnamon, there is no threat of general intoxication or acute intoxication or death, thus the risk is within acceptable range.

The court holds that the cinnamon leakage incident which produced harm to the environment and caused the symptoms of dizziness, headache, nausea, bellyache, cough and etc. did cause bodily injury to the plaintiffs and thus constituted infringement. However, the local government and administrative authorities have handed down decisions and disposals concerning the incident and the plaintiffs, and the chemical company has compensated the plaintiffs for the fees of medical examination, medical treatment and related transportation costs. The claim that the chemical company compensates the plaintiffs for loss of wages, transportation fees, fees for further medical examination and treatment is not grounded on factual basis. Although the infringement in the instant case by the chemical company has not yet produced serious injury to the physical health of the plaintiffs, in consideration of the large scale of the people affected and the fact that the infringing act affected the normal study and life order of the 407 students, the infringing act should be deemed as producing serious consequences, thus the chemical company is liable for emotional injury. Whereas the local environment protection authority tested and found the waste

water the chemical industry released into Shouchang River reached the standard of release and the chemical company held the waste water releasing license issued by environment protection authority, the court dismisses the claim that the chemical company immediately stop releasing heat-containing waste water into Shouchang River. In consideration of local living standard, the merits of the defendant's infringing act, the degree of the faults and financial means of bearing liabilities, the court rendered damages for emotional injury of RMB203,500 to the 407 plaintiffs (RMB500 x 407) and dismissed the other claims.

6.3.1 Court Inquiry Simulation

(1). Methods of Performing the Exercise

A. Break the students into three groups: Group 1 playing the role of the plaintiff and lawyer; Group 2 playing the role of the defendant and defense lawyer; Group 4 playing the role of judges, court clerks, and witnesses.

B. Perform a simulation of court inquiry.

(2). General requirements

A. Group 1 draft the complaint, prepare the evidences, and participate in the court inquiry as plaintiffs and legal representatives.

B. Group 2 draft the answer brief, prepare the evidences, and participate in the court inquiry as the defendant and legal representatives.

C. Group 3 leads the court inquiry, including controlling the procedure of court inquiry, controlling the examination and cross-examination, taking court records, making court appearance as witnesses, etc.

(3) Reflection

A. How to display evidences in court?

B. What is the most critical point of cross-examination, and what skills to be applied?

C. What are the differences in presenting evidence and cross-examining evidence?

D. How to question the witness?

E. How well have the legal representatives of the plaintiffs and the defendant performed? What improvements should be made?

6.3.2 Advocacy Simulation

(1). Methods of Performing the Exercise

A. Break the students into groups in the same way as above.

B. Perform a simulation of court argument.

(2).General requirements

Legal representatives of the plaintiffs and defendants argue in court, and form their opinions.

(3). Reflection

A. What does court argument involve? What is the focal point of this argument?

B. Should any improvement be made concerning the language used in court argument?

C. How well have the legal representatives perform in the court argument? Is there any improper act or behavior?

D. As judged by Group 3, which party wins the case?