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**Resolving Work-related Injury Problems in China:
Comparing Migrant and Urban Workers**

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Doctor of Philosophy in School of Social and Political Science



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ABSTRACT

This thesis seeks to describe and explain differences in the ways in which migrant and urban workers in China deal with problems arising out of injuries sustained at work. A socio-legal approach is adopted and a mixed-method research design, involving a questionnaire completed by 291 migrant and urban workers and qualitative interviews with 22 injured workers, 28 mediators and human resource managers, and seven judges, arbitrators and other legal actors, is used.

In the light of questionnaire findings, this study shows that the paths and outcomes of the claiming and dispute process for migrant and urban workers are different. Migrant workers who are dissatisfied with the initial decision are more likely to follow a 'private route' for seeking compensation and to achieve a less satisfactory outcome, while urban workers are more likely to follow an 'administrative route' for claiming insurance and to achieve a more satisfactory outcome.

To explain the differences, three hypotheses are tested: a dual legal systems hypothesis, which attributes the differences to differences in the way the law treats migrant and urban workers; a dual labour market hypothesis, which attributes the differences to differences in the way firms treat migrant and urban workers; and a legal consciousness hypothesis, which attributes the differences to differences in the beliefs and attitudes of migrant and urban workers.

The legal framework for work-related injury compensation in China gives equal rights to migrant and urban workers but stipulates different dispute-resolution procedures and different remedies for insured and uninsured workers. As migrant workers are less likely to be insured than urban workers, they are less likely to be able to take the administrative route, and have to undertake private bargaining and/or initiate legal proceedings to seek compensation. Since the public (administrative)

legal system is superior to the private (civil) one, migrant workers often achieve less satisfactory outcomes than urban workers.

Firm-level practices reinforce and reproduce the labour market inequalities between migrant and urban workers. Priority for participating in the insurance scheme is given to those who are highly skilled, formal workers, higher wage earners, workers who are paid on a time basis and trade union members. These workers are more likely to be urban workers. Temporary, unskilled employees and workers who have a higher risk of experiencing an industrial accident, who are often migrant workers, are marginalised by these practices. Such a situation is more common in foreign-owned and collectively-owned enterprises and domestically-owned private enterprises than in state-owned enterprises. In the case of private bargaining, whether workers achieve a satisfactory outcome is also related to the internal dispute resolution system of the enterprise. In state-owned-enterprises and foreign-owned enterprises, migrant and urban workers have more equal access to internal dispute resolution procedures than in collectively-owned and domestically-owned private enterprises.

The three hypotheses are not mutually exclusive. The study concluded that the legal consciousness hypothesis was not supported by empirical evidence, that there was empirical evidence to support the other two hypotheses but that dual labour market hypothesis was more important than the dual legal systems hypothesis. The findings suggest that regulating the state-enterprise relationship is likely to be the most effective means of tackling the inequalities in dealing with disputes arising out of injuries sustained at work.

DECLARATION

I declare that this thesis is of my own composition, based on my own work, with acknowledgement of other sources, and has not been submitted for any other degree or professional qualification.

Xin Zhang

May 1, 2015

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For many reasons, this thesis took longer to be completed than usual. But a completion delayed is still worthy of effort. I was able to convince myself of the things I really want to do. I believe that my commitment to carrying on socio-legal studies is now ‘beyond all reasonable doubt’.

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LIST OF ABBREVIATION

ABA	American Bar Association
ACFTU	All-China Federation of Trade Unions
ACLA	All-China Lawyers Association
ADR	Alternative Dispute Resolution
CAB	Citizen Advice Bureau
CPC	Communist Party of China
CSJPS	English and Welsh Civil and Social Justice Panel Survey
GDP	Gross Domestic Product
IDR	Internal Dispute Resolution
IMC	Internal Mediation Committee
LSNJ	Legal Services of New Jersey
MLSS	Ministry of Labour and Social Security of the People's Republic of China
MOHRSS	Ministry of Human Resources and Social Security of the People's Republic of China
NBS	National Bureau of Statistics of the People's Republic of China
SOE	State-owned Enterprise

CHAPTER 1

INTRODUCTION

1.1. RESEARCH AIMS

The main aim of this thesis is to identify and explain the differences in the ways in which migrant and urban workers in China deal with problems arising out of injuries sustained at work. To further address the aim, the study can be divided into two parts: first, it attempts to provide a full picture regarding the ways in which migrant and urban workers deal with problems by tracing both the *paths* and *outcomes* of the claiming and dispute process. The second task involves mapping the dynamics of this process in the social and economic context of contemporary China and explaining the differences in the experiences of migrant and urban workers in resolving their work-related injury problems from the perspectives of the legal system, the labour market and legal consciousness.

1.2. RESEARCH QUESTIONS

In order to achieve these objectives, the research attempted to answer the following questions:

- Are there any differences in terms of the strategies adopted by migrant and urban workers to resolve their work-related injury problems?
 - Do they attempt to resolve their problems by claiming insurance or seeking compensation?
 - Do they apply for work-related injury identification? If not, why do they not do so?
 - Do they obtain any advice?

- Are there any differences in terms of the outcomes achieved by migrant and urban workers?
 - How many problems are resolved and how many are left unresolved?
 - For those who achieve a resolution, are their problems resolved through negotiation, mediation or adjudication?
 - How satisfied are they with the outcomes?

- Can the differences in the paths and outcomes of claiming and dispute process be explained in terms of the existence of dual legal systems?
 - Does the legal system establish equal rights and remedies for migrant and urban workers who encounter problems arising out of injuries sustained at work?
 - How do legal institutions interpret and apply the law in practice?

- Can the differences in the paths and outcomes of the claiming and dispute process be explained in terms of the existence of a dual labour market?
 - Do enterprises in Dongguan arrange work-related injury insurance coverage for migrant and urban workers in the same way?
 - If not, are the differences related to workers' characteristics or enterprises' ownership types?
 - How do enterprises respond to workers' claims in terms of work-related injury compensation through their internal dispute resolution systems?

- Can the differences in the paths and outcomes of the claiming and dispute process be explained in terms of differences in the legal consciousness of migrant and urban workers?
 - How do migrant and urban workers interpret their injurious experience?
 - Do they have different legal knowledge and attitude?
 - Do they have different interests in the claiming and dispute resolution process?

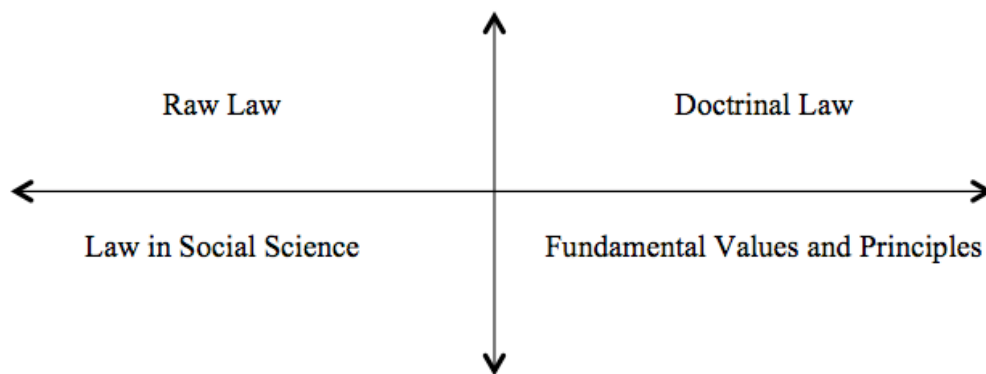
The above questions are important as, in answering them, we can gain a deeper understanding of any inequalities that exist. Answering them should be useful for discovering the legal needs of workers and understanding how they can be better met. It should also be helpful for identifying problems in the law, or in employment practices that might undermine the legislative intent, and for finding better ways of redressing inequalities. In brief, the thesis provides an answer to the question: do we need better laws, or, should we try to make the existing laws work better for migrant workers?

1.3. A SOCIAL-LEGAL APPROACH

The research questions are addressed using a number of different empirical methods and informed by a number of different theoretical concerns. A socio-legal approach is adopted in this study. McCormick (1994) has identified four key modes of legal scholarship, which he calls '*raw law*', '*doctrinal*' or '*black-letter law*', '*law in social science*' and '*fundamental values and principles*' (Figure 1.1). According to McCormick (1994), '*raw law*', i.e. '*law in action*' understands law as activities apart from any theories. It is concerned with unexamined facts and people's everyday experience of the law. '*Doctrinal law*' engages in the '*rational reconstruction of law*'. This approach, which is often employed by legal actors, including: judges, legislators and lawyers, employs an internal perspective to understand the logic and rationale of

decisions, rules and norms. ‘Law in social science’, i.e. socio-legal studies, in contrast to ‘doctrinal law’, seeks to understand the law from an external perspective. Socio-legal research involves using social science methods to study the law and legal institutions. It covers both theory-based legal inquiries, e.g. the sociology of law, and empirical legal studies (Adler and Simon, 2014). ‘Fundamental values and principles’ analyses law in terms of pure ideas and values e.g. justice, human rights, and concerns the ‘ought’ of the law and society. It embraces jurisprudence, the philosophy of law, ‘law and economics’ and ‘critical legal studies’ (Adler and Simon, 2014).

Figure 1.1: Four quadrants of legal scholarship



These distinctions between the four approaches are analytical. Among them, a ‘law in social science’ or socio-legal approach is the optimal one to address the research questions listed above. This thesis is concerned with inequalities in the context of work-related injury problems in China. However, it aims to diagnose the causes of inequalities and to find solutions for them rather than to discuss abstract legal values and principles. This study is built upon understanding ‘raw law’, i.e. the legal system concerning work-related injury compensation, and uses both qualitative and quantitative methods, e.g. a questionnaire survey and in-depth interviews to explain the ways in which migrant and urban workers deal with their work-related injury problems. Rather than being restricted by the scope of ‘doctrinal law’, which often views dispute resolution as a product of the legislative body and the courts, this study attempts to examine whether the normative regulations and decisions of legal

institutions have a ‘radiating effect’ on non-legal actors (Galanter, 1983); and whether bargaining over compensation between workers and their employers is carried out ‘in the shadow of the law’ (Mnookin, 1979). Using a socio-legal approach in this study allowed me to investigate claiming and dispute resolution as a social process, and to understand the differences between migrant and urban workers in their attempts to resolve their work-related injury problems in the light of several bodies of scholarship relating to access to justice surveys, labour market theories, and studies of legal culture and legal consciousness.

1.4. MIGRANT AND URBAN WORKERS IN THE HUKOU SYSTEM

1.4.1. *The definition of migrant and urban workers*

The terms ‘*migrant worker*’ and ‘*urban worker*’ are a direct consequence of the Hukou system (the Household Registration System), i.e. the national administrative mechanism for controlling the internal migration of the population between rural and urban areas in China, which divides the entire population according to their residential location. Under this ‘birth-subscribed’ Hukou system (Potter, 1983), the term ‘urban worker’ refers to a worker who is officially registered as an urban resident, while the term ‘migrant worker’ refers to people who hold agricultural Hukou but perform non-agricultural jobs in urban areas. In addition, a person’s Hukou status is also determined by location. A person without a local Hukou is often regarded as an outsider. In this study, the term ‘migrant worker’ refers to ‘rural-to-urban migrant workers’ and not to ‘urban-to-urban migrant workers’, as the thesis aims to address the differences between workers with agricultural Hukou and workers with non-agricultural Hukou in terms of their ways in dealing with work-related injury problems.

Most migrant workers leave their home area and hold non-local Hukou. Even though some of them have a stable job and life in the city, they still have limited rights in terms of their work and their life compared with local Hukou holders (Chan, 2012;

Chan and Buckingham, 2008). As a national policy, the institutional arrangement of the Hukou system, which serves the state's interests, gives priority to economic growth and helps to maintain public security (Chan and Zhang, 1999), has shaped the social structure, particularly the labour market in China (Fan, 2002).

1.4.2. *The historic development of the Hukou system*

The segregation between urban and rural China has historic roots. The Hukou system was formally established in 1958 by the enactment of the 'Ordinance of Hukou Registration of the People's Republic of China'. In order to finance the expansion of industry, the state introduced an 'unequal exchange', known as the 'scissor price', between the agricultural and industrial sectors to block the free flow of resources between industry and agriculture, between cities and the countryside (Chan and Zhang, 1999). The Hukou system is an important contributor to this policy, as it is a state tool to support rapid industrialisation and urbanisation by providing low-cost raw materials and labour from rural to urban areas in China (Chan, 2009; Cheng and Selden, 1994; Fan, 2002).

In the pre-reform era, i.e. before 1976, Hukou status determined an individual's livelihood. Rural people were strictly confined to the agricultural sector, while only the urban population could be hired in the industrial sector. During this period, the term 'worker' in official documents referred exclusively to workers who had an urban Hukou. Hukou status also determined an individual's socio-economic eligibility (Chan and Zhang, 1999). Urban workers were guaranteed permanent job security and had access to housing, medical, child-care and retirement benefits (Li and Freeman, 2014). In addition, as the socialist economy was directly controlled by the central government, and mainly consisted of state-owned and collectively-owned enterprises (Nee, 1992; Walder, 1995), entitlements to social insurance benefits were only provided in the public sector.

1978/9 was regarded as a year of transition, witnessing economic reforms that started in the state-owned enterprise (SOE) sector, along with a tremendous growth in non-state/publicly-owned enterprises (Sabin, 1994). These reforms have led to an increase in the manpower requirements of the industrial sector. As a consequence, rural residents were permitted to have off-farm employment opportunities in cities, although they were required to obtain special certification through administrative procedures. Since then, considerable pressure has been put on the Hukou system. Until 2011, this created a new member of the working class in China, which consisted of a ‘floating population’ of 260 million migrant workers in cities (National Bureau of Statistics of the People’s Republic of China (NBS), 2011). The enactment of the Labour Law of the People’s Republic of China (the *Labour Law*) in 1995 is often regarded as one of the initiatives of the state for regularising new forms of employment during this period. However, some scholars have argued that, along with state-driven economic development, a ‘withdrawal process’ in terms of social reproduction and social protection took place (Ngai et al., 2009). This implied that the *Labour Law* mainly aimed to adapt to the new situation by restructuring the state and non-state economy rather than by protecting and empowering migrant workers (Li and Freeman, 2014; Liu, 2010; Zheng, 2009). Thus, although the definition of ‘worker’ officially extended beyond urban Hukou holders, few substantial work-related entitlements and benefits were given to the ‘floating population’ of migrant workers (Chan, 2001; Lee, 2007).

The Hukou system has experienced some real changes. Some studies indicate that the reforms were successful because the significance of Hukou has diminished and the rural-urban divide has declined (Zhang, 2014). Others have argued that, although the reforms were effective, they have many limitations (Cai, 2011). On the other hand, critics have argued that the reforms have made permanent migration to cities even harder than before (Chan and Buckingham, 2008). They have suggested that, in contrast to the official aim of ‘abolishing the Hukou system’, the nature of the reform is devolve responsibility for hukou policies to local governments. Thus, a few provinces have started to implement policies of ‘*Nongzhuanfei*’, which refers to the introduction of administrative channels for rural residents to convert their

agricultural Hukou into a non-agricultural one (Chan and Zhang, 1999). On the other hand, migrant workers, as a social group, were a complex group. Researchers have noted differences between permanent and temporary migrants (Chan et al., 1999; Kojima, 1996), planned and non-planned migrants¹, formal and informal migrants² in terms of their rights to reside and to work (Chan et al., 1999; Fan, 1999; Gu, 1992; Li, 1995; Yang, 1994). Despite these changes, the Hukou system reform is regarded as ‘cosmetic and marginal’ (Wang, 2010). The inequalities between migrant and urban workers were largely unchanged, as there were no credible, concrete and comprehensive means were adopted by the state to bridge the rural-urban gap. Access to work-related benefits was still linked with a person’s Hukou status, and such privileges were still restricted to urban Hukou holders (Chan, 2001; Lee, 2007).

The Hukou system has created a ‘dual society’ in China (Wang, 2010) through a variety of institutional means (Chan, 1999; Chan and Zhang, 1999). The division of rural and urban society has a far-reaching impact on the labour market in China. Studies indicate that migrant workers are often treated as second-class citizens, as their opportunities for settling legally in cities are curtailed, and their access to basic social welfare and state-provided services enjoyed is often restricted (Cai, 2011; Chan, 2009; Chan and Buckingham, 2008; Wang, 2004; 2005). In addition, migrant workers are confined to labour-intensive sectors (Fan, 2002), work in ‘3-D jobs’ (dangerous, dirty and demeaning) with low pay and limited job security (Cai, 2007; Chan, 2010; Nielsen and Smyth, 2008; Roberts, 2001; Solinger, 1999).

1.4.3. Employment inequalities between migrant and urban workers

In 2004, migrant workers have been officially recognised as a very important source of industrial labour in China (Central Committee of Communist Party of *China* (CPC), 2004). By the end of 2012, China’s workforce was 767.04 million people, of

¹ The difference between informal and formal migrants is in whether their off-farm employment opportunities were sought voluntarily by themselves or obtained through any government programs.

² The difference between informal and formal migrants is in whether a migrant worker has obtained the official certification from the government.

whom 262.61 million were migrant workers (Ministry of Human Resources and Social Security (MOHRSS), 2013). Migrant workers are particularly important in mining, construction and manufacturing industries and in the service sector (NBS, 2010). It is estimated that migrant workers contribute 16 to 24 per cent of China's Gross Domestic Product (GDP) growth and 30 to 40 per cent of rural net income (Cai and Chan, 2009; Harney, 2008; Yan and Li, 2007).

However, as long as the Hukou system remains, the *de facto* inequalities between migrant and urban workers will probably never disappear (Lu, 2011). In relation to employment, migrant workers commonly experience problems of overtime working, as they worked an average of 53.25 hours per week in contrast to 48 hours per week for urban workers (Fan and Yu, 2014). The problem of wage differentials between migrant and urban workers is also prominent (Meng and Zhang, 2001; Tian, 2010)³, and it is more common for employers to withhold all or part of the wages owed to migrant workers (Halegua, 2008; Zhang, 2006). They had a lower rate of joining trade unions than urban workers (NBS, 2014). In addition, as a result of lacking proper health and safety precautions, migrant workers are more likely to suffer work-related injuries than urban workers (Chan, 2001).

Employment practices in China are still in a state of lawlessness and irregularity. Non-compliance with legal obligations is common. Migrant workers have been the major victims of firms' failures to meet their obligations in terms of the provision of employment contracts and social insurance coverage. According to NBS (2014), in 2013, there were only 41.3 per cent of migrant workers who had signed labour contracts; only 28.5 per cent of them participated in the work-related injury insurance scheme; and 9.1 per cent of them participated in unemployment insurance. As the employment relations for migrant workers were often informal, those who suffered

³ According to Meng and Zhang (2001), migrant workers' average monthly earnings were only 61% of those of urban residents. Their average hourly earnings are 48% of those of urban residents. According to a more recent study of Tian (2010), urban workers' average annual income is 31.6% higher than migrant workers'. Urban workers' monthly income is 11.9% higher and the hourly wage is 26.2% higher.

from work-related injuries were less likely than urban workers to receive proper medical treatment, and to obtain the compensation to which they are entitled (Li and Peng, 2006; Ngai and Lu, 2010b).

1.5. EMPLOYMENT PROTECTION LEGISLATION

Until very recently, migrant workers were still officially excluded from the social security scheme. Key changes were made by the Communist Party of China (CPC) in a top-down approach in 2004⁴. Since then, the issue of migrant workers has been raised onto the official agenda. A big step forward was taken in 2007 when the Labour Contract Law of the People's Republic of China (the *Labour Contract Law*) was approved, officially recognising migrant workers' legal status (Cooney et al., 2007; Friedman and Lee, 2010)⁵. Meanwhile, the Employment Promotion Law of the People's Republic of China (the *Employment Promotion Law*) prohibited any employment discrimination to migrant workers in a general sense.

The *Labour Contract Law* has been described as '*the most significant reform to the law of employment relations in more than a decade*' (Cooney et al., 2007, p. 786). Employment protection legislation in China in 2007 and 2008 set a very high standard at face value in improving legal protection for all workers, in particular, in improving migrant workers' living and employment conditions (Chang 2006; Dong, 2006a; Dong, 2006b; Wang, 2008). According to Gallagher et al. (2013), China ranks third in terms of the strictness of employment protection legislation among all OECD countries. However, most academic discussion of the legislation mainly focused on enforcement and its effects (Cheng et al., 2014; Cui et al., 2013; Gao et

⁴ In 2004, Opinions of the CPC and the State Council Concerning Several Policies on Promoting the Increase of Farmers' Income, (also called No.1 central circular 2004), officially announced that migrants have become an important part of the industrial worker force. In 2006, Opinions of the State Council on the settlement of the issue of migrant workers clearly defined migrant workers as 'the emergent labour force in the process of reform, industrialisation and urbanisation, which has already become an important part of the industrial workers.'

⁵ The *Labour Contract Law* supplements the Labour Law rather than replaces it. The Labour Law is still applicable now.

al., 2012; Li, 2008; Li and Freeman, 2014; Wang et al., 2009). These studies indicate that legislation marks the start of tackling the problems of migrant workers rather than its full resolution.

1.6. DEALING WITH LABOUR PROBLEMS

1.6.1. Legal and non-legal means

The legislation in 2007 and 2008 also sought to regulate employment relations by channeling labour problems into state institutions, in particular, by enacting the ‘Law of Mediation and Arbitration of Labour Disputes of People’s Republic of China’ (the *Labour Dispute Law*)⁶ (Cooke, 2008; Friedman and Lee, 2010; Halegua, 2008). In that sense, some labour problems are justiciable problems. According to the *Labour Law* and *Labour Contract Law*, the term ‘labour dispute’ refers to disputes over disagreement on conditions of employment contracts, disputes over unfair dismissal and resignation, disputes over work-related benefits and social insurance, disputes over wages and working hours, etc. ‘Using the law as your weapon’ became a popular slogan in the public media. This led to the raising of workers’ legal consciousness and a ‘labour dispute explosion’, which has put unprecedented pressure on local arbitration committees and courts in dealing with labour disputes (Friedman and Lee, 2010; Wang et al., 2009).

In responding to labour disputes, workers can express their grievances through legal or (and) non-legal channels (Li and Freeman, 2014; Thireau and Hua, 2003). The current labour dispute resolution system is known as a ‘three-level resolution system’ of mediation, arbitration and litigation, and is regulated by the *Labour Dispute Law*. However, the dispute resolution system has for a long time been criticised for being

⁶ Before this point, mediation and arbitration of labour dispute were mainly governed by the Labour Law, the Civil Procedure Law of the People's Republic of China (1991), and the Interpretation of the Supreme People's Court on Several Issues about the Application of Laws for the Trial of Labour Dispute Cases (II) (2006).

biased, for its high costs and for being time-consuming, all of which often act as barriers to dispute resolution rather than as a smooth procedure for workers to claim their entitlements (Halegua, 2008; Peerenboom and He, 2009; Zheng, 2009).

Workers in China frequently seek solutions for their labour problems outwith the legal system (Ho, 2009; Landry, 2008). On the one hand, workers can complain within firms, or negotiate with their employers privately and reach agreement voluntarily. For example, Sun and Liu (2014) argue that most injured migrant workers, no matter whether they were insured or uninsured, tended to achieve a settlement through informal channels (e.g. through bargaining, negotiation, threats or violence) and received compensation from their employer. On the other hand, workers, especially migrant workers, have frequently been reported taking ‘extreme measures’, including protests and other collective actions against their employers or against the authorities that deal with their problems (Becker, 2008; Su and He, 2010; Xu, 2007). These actions explained the need for changes from the bottom-up (Chan and Ngai, 2009; Chen, 2003).

1.6.2. Resolving work-related injury problems

In China, work-related injury problems are *justiciable problems*, i.e. problems for which there are legal remedies. This is because, first, according to the *Labour Law* and *Labour Contract Law*, work-related injury disputes are officially categorised as a type of labour disputes. However, procedures for dealing with work-related injury problems could be more complex than for other types of labour disputes, which usually only regulated by the *Labour Dispute Law* and its ‘three-level resolution system’. In most cases, work-related injury problem are assumed to be resolved through administrative redress procedures.

(1) Work-related injury identification procedure

Generally speaking, the term ‘work-related injury’ refers to an injury that ‘happened at work’, ‘is related to work’, or ‘in the course of employment’. In China, the basic definition of work-related injury, according to the *Regulation on Work-related Injury Insurance*, involves ‘accidental injuries suffered which are due to work activity, during work hours and within the workplace.’ In many western countries, workers can be compensated for both physical and psychological damages⁷. In China, however, work-related injury insurance only covers compensation for physical injury.

There are two key normative documents regulating work-related injury compensation in China, i.e. the Social Insurance Law of the People’s Republic of China (the *Social Insurance Law*) and the Regulation on Work-Related Injury Insurance (the *Regulation on WRI Insurance*). According to the two legal documents, to resolve their work-related injury problems, injured workers shall complete the *work-related injury identification procedure*. As Article 36 of the *Social Insurance Law* says:

Employees who suffer from accidents due to work...shall enjoy the work-related injury insurance benefits after being identified as work-related injury...

To file administrative claims for work-related injury problems, according to Article 18 of the *Regulation on WRI Insurance*, injured workers need to provide ‘the evidential materials of their labour relationship with their employer’ and ‘a certificate of medical diagnosis or a certificate of diagnosis of occupational disease (or an assessment of diagnosis of occupational disease)’. The local social insurance agency, through its *Board of Work-related Injury Insurance*, will investigate the accident, and make decisions, according to Article 14 of the *Regulation on WRI Insurance*⁸, on

⁷ For example, in UK, US and Australia, workers can sometimes be compensated for psychological/mental injury caused by the job, e.g. work-related stress. However, compared to claims involving physical injuries, claims involving psychological/mental injury usually face more difficulties in meeting the standard of proof.

⁸ Article 14 states that: An Employee shall be determined as having a work-related injury if: (1) (s)he is injured in an accident at work during working hours in the workplace; (2) (s)he is injured in an accident while engaging in preparatory or finishing-up work related to work; (3) (s)he is injured and

whether this injury can be treated as a work-related injury. There are two possible results for the application: either the injury is confirmed as a work-related injury, or the injury is not identified as a work-related injury. The decision is issued in written form, accordingly, either as a '*Decision to Approve the Application*' or a '*Decision to Reject the Application*'. Parties can challenge the decisions by initiating an administrative review or administrative proceedings, as stated in Article 53 of the *Regulation on WRI Insurance*:

...Individuals may apply for administrative review or file administrative proceedings in accordance with the law... if they are dissatisfied with... the decision of the identification of work-related injury...

The work-related injury identification procedure is assumed as a prior procedure for all workers who wish to resolve their problems, regardless of their insurance status. There is no remedy can be sought from administrative redress procedures for a rejected application.

(2) Administrative claims and disputes

For workers who are covered by work-related injury insurance, i.e. insured workers, once their application is approved, their cases are automatically transformed into administrative claims for insurance benefits. The amount of insurance benefit to be awarded is then calculated, based on a ten-point *impairment of the working ability scale* (See Article 22 the *Regulation on WRI Insurance*). The *decision on the amount to be awarded* is then issued by the social insurance agency. Depending on the severity of the impairment, compensation will be paid to the injured workers on a monthly basis according to this sliding scale⁹ (Table 1.1).

disabled in war or on duty while in military service and has obtained a revolutionary injured and disabled soldier certificate, and suffers from a relapse of the old injury while being employed.

⁹ The insurance covers medical costs, the cost of emergency care, the cost of prosthetics, orthotics, artificial eyes, teeth, wheelchairs and rehabilitative treatment costs. For disabled employees, the

Table 1.1: Insurance benefits for work-related injuries

Level of Impairment	Employment Contract Arrangement	Amount of Lump sum Disability Allowance
1-4	Remained	18-24 times of monthly wage
5-6	Remained; But could be ended upon employees' request	14-16 times of monthly wage
7-10	Remained; But could be ended on the terms of contract or upon employees' request	6-12 times of monthly wage

In this case, injured workers can challenge the decisions, i.e. decisions on the amount to be awarded, by initiating an administrative review or administrative proceedings. Such cases are not common in practice. In this way, administrative claims are transformed into administrative review and litigation cases, which will firstly be reviewed by the social insurance agency. If workers do not accept review outcomes, they can take the case to court.

Insured workers' work-related injury problems can be resolved by the payment of *insurance benefits* from the social insurance fund. Thus, the outcome for insured workers is largely determined by administrative decisions, the procedures and conducts concerning such decisions are regulated by the Administrative Reconsideration Law of the People's Republic of China (the *Administrative Reconsideration Law*) and the Administrative Procedure Law the People's Republic of China (the *Administrative Procedure Law*).

(3) Private bargaining and labour disputes

insurance also covers their care costs. In the event of death, funeral costs and lump sum compensation for dependents are covered by the insurance. The employer is entitled to pay for a meal allowance, nursing care, some travel costs, employee' wage and benefits during suspension-of-work period.

Although the *Social Insurance law* and the *Regulation on WRI Insurance* require employers to provide work-related injury insurance coverage for all their employees¹⁰, contrary to the legislative intent, a large number of employers have failed to fulfill their statutory obligations (NBS, 2014). Under these circumstances, some of their employees are not provided with work-related injury insurance coverage, who are referred to as *uninsured workers*.

To regulate the claims and disputes procedures of uninsured workers, the *Social Insurance Law* and the *Regulation on WRI Insurance* differentiate legal remedies for insured workers from legal remedies for uninsured workers by providing exception clauses and special provisions for the latter group.

Uninsured workers are also required to go through the work-related injury identification procedure first, although in practice, some of them choose to not do so. But no matter whether they have applied for it, their work-related injury problems can only be resolved by the payment of *compensation* from their employers¹¹. As stated in Article 41 of the *Social Insurance Law*:

...if employers fail to pay work-related injury insurance premiums in accordance with law, and work-related accidents take place, the employers shall pay for the work-related injury insurance benefits...

And Article 62 of the *Regulation on WRI Insurance*:

... If an employee of the work unit suffers from work-related injury during the period in which the work unit has not participated in work-related injury insurance, the employer shall make payments according to the items of work-related injury insurance benefits and at the standard stipulated herein.

¹⁰ This kind of coverage is to be distinguished from health insurance, which covers only medical bills for non-work related injuries.

¹¹ The process for seeking compensation from the employer is discussed in chapter Four.

If employers refused to do so, uninsured workers could file a labour dispute case against them, according to Article 52 of the *Regulation on WRI Insurance*,

'Disputes arising between employees and their employers in regards to work-related injury shall be handled in accordance with the relevant provisions on resolution of labour disputes.'

Thus, disputes between uninsured workers and their employers regarding work-related injury problems are mainly regulated by the labour law system, in particular, the *Labour Dispute Law* and its 'three-levels resolution system'.

In summary, resolving work-related injury problems could involve claims and disputes. Remedies and procedures for resolving work-related injury problems could be different for insured and uninsured workers. Generally speaking, remedies for insured workers are social insurance benefits. Remedies for uninsured workers are private compensation. Administrative redress procedures for insured workers to claim insurance benefits are straightforward. If disagreement arises, they will be dealt with by the administrative law system. Procedures for uninsured workers to obtain compensation could involve the administrative application procedure and private bargaining with their employers. If necessary, their bargaining could become labour dispute cases, which will be dealt with by the labour law system. These differences between insured and uninsured workers in the paths of claiming and disputing are reflected in the *Social Insurance Law* and the *Regulation on WRI Insurance*. A more comprehensive analysis of these differences is provided in Chapter Four.

1.6.3. Mapping 'the known' and 'the unknown'

As shown in the previous section, the law tells us there are some differences between insured and uninsured workers in their ways of dealing with work-related injury problems. However, it is still unclear how these differences influence the paths and

outcomes of claiming and disputing resolution. We do not know whether and to what extent such differences are associated with inequalities between migrant and urban workers.

Some studies have argued that, in the context of labour disputes, migrant workers were less likely to go to court to seek legal remedies (Sun and Liu, 2014; Weng and Tan, 2006; Zheng, 2007). In work-related injury compensation cases, compared with legal insurance compensation, informal private settlement often leads to lower levels of compensation (Sun and Liu, 2014). The costs in time and money for migrant workers to claim their rights were unreasonably and disproportionately high¹² (Tong and Xiao, 2005). For those who went to court, migrant workers had a lower chance of winning their cases than urban workers (He and Su, 2013). As these studies have examined labour disputes as a whole, it is still not clear whether migrant workers who have work-related injury problems experienced similar problems as above. There was not sufficient knowledge about the differences between migrant and urban workers in terms of the advice that was sought¹³, and strategies that were adopted to pursue their claims and resolve their disputes, and more importantly, whether different means of claiming and disputes can lead to different outcomes.

There is insufficient evidence about the relationship between the experiences of injured workers in pursuing their claims and resolving their disputes and the external institutional environment, including: the state social insurance scheme, the labour dispute resolution system, and the dynamics of the labour market. These relationships are important for understanding the differences between migrant and urban workers, and need to be worked out in this study.

¹² According to the study, an migrant worker need to spend at least 920 yuan and at least 11-21 days on average to go through all the necessary procedures and to claim back every 1.000 yuan of wage in arrears.

¹³ The studies of advice and its position in the claiming and dispute resolution process are discussed in Chapter Six.

Previous studies have indicated that migrant workers feel less powerful to mobilise the law and legal institutions than urban workers (Zheng et al., 2004), but we do not know whether such powerlessness can be explained by their lack of knowledge, by the lack of advice, or because of their different attitudes to the law.

As it is commonly believed that migrant workers are more often associated with these problems in the claiming and disputing process, most studies which have assessed the issue tend to look at migrant workers independently rather than systematically comparing them with urban workers. We do not know whether such problems are common among all types of workers, or whether they are just problems experienced by migrant workers.

1.7. THREE POSSIBLE HYPOTHESES

Three hypotheses for interpreting the inequalities between migrant and urban workers in how they deal with problems arising from work-related injuries and in the outcomes of these problems are considered in this study: the dual legal systems hypothesis, the dual labour market hypothesis and the legal consciousness hypothesis.¹⁴ The study aims to assess the relative importance of each of these explanations.

The first hypothesis attributes the differences between migrant and urban workers in their experiences of dealing with work-related injury problems to dual legal systems of work-related injury compensation. In China, old and new systems of labour law, of social security and of dispute resolution coexist. These laws have very different historical origins, principles and ideologies. In addition, legal enforcement may deny the equal rights of migrant and urban workers.

¹⁴ Chapter Two provides a detailed account for the three hypotheses in the light of relevant studies.

The second hypothesis attributes the differences between migrant and urban workers in their experiences dealing with work-related injury problems to a dual labour market. The inequalities may be explained by differences in enterprises' social insurance arrangements, as well as their strategies in dealing with employees' claims regarding work-related injury compensation.

The third hypothesis attributes the differences between migrant and urban workers in their experiences dealing with work-related injury problems to differences in their legal consciousness. In this thesis, the experience of migrant and urban workers sorting out their work-related injury problems is understood from the perspective of what they think about the law, as well as what they expect from the law. In other words, the inequalities not only involve differences in *structure* but also differences in *agency* (Giddens, 1979).

The thesis is structured around these three hypotheses.

1.8. THE STRUCTURE OF THE THESIS

The thesis has seven chapters.

Following on from the introductory chapter, Chapter Two presents a review of relevant literature, in particular studies of dual legal systems dual labour markets and legal consciousness.

Chapter Three deals with methodological issues. It aims to provide a justification for the chosen research strategy and the methods used in this study, including the choice of location, the choice of dispute, the choice of industry, and the methods used for data collection and data analysis. It also includes a discussion of relevant ethical

issues. At the end of this chapter, a description of the respondents, based on the questionnaire survey, is presented.

Chapters Four-Six comprise the core of the thesis by presenting empirical findings based on the questionnaire survey and on interviews. Chapter Four deals with the dual legal systems hypothesis by analysing the current legal system for work-related injury compensation cases by presenting empirical findings on the ways in which workers and legal institutions dealt with work-related injury problems.

Chapter Five addresses the differences between migrant and urban workers from the perspective of the dual labour market hypothesis. The chapter provides an analysis of how the law is implemented at the firm level. Empirical evidence concerning firm-level practice is presented, including the ways in which enterprises organised work-related injury insurance provision for their employees, as well as the ways in which they handled disputes using the internal dispute resolution procedures.

Chapter Six focuses on the differences between migrant and urban workers in legal consciousness by presenting evidence on the differences on the ways they perceive their injurious experience, and on the ways they make sense of law.

Chapter Seven discusses the relative importance of the three hypotheses. By summarising both the empirical and theoretical findings, this chapter makes a number of policy recommendations. It also makes suggestions for future studies based on methodological reflection.

CHAPTER 2

LITERATURE REVIEW

2.1. INTRODUCTION

This chapter aims to provide a critical review of the literature on the claiming and disputing process. The literature is divided into four parts: surveys on access to justice, studies of differences in legal systems, studies of differentiated strategies adopted by firms, and studies of legal consciousness. It is important to identify two key areas of investigation: how claims and disputes have been conceptualised in previous studies, and how inequalities in claiming and dispute resolution between different social groups in the population can be explained from three possible perspectives. The literature reviewed in this chapter informs the theoretical framework and the research design adopted in the study.

2.2. SURVEYS ON ACCESS TO JUSTICE

In most studies of access to justice, disputes are not only considered as problems dealt with by legal institutions and legal practitioners, but also as problems that arise in everyday life. Surveys of access to justice often adopt a bottom-up approach and attempt to assess the fairness and efficacy of the justice system from people's experiences.

Surveys on access to justice appeared first in the USA (Carlin, et al., 1966; Curran, 1977). In these studies, access to justice was examined in terms of its association with people's income, race, social class, gender, etc. (American Bar Association, 1994; Carlin, et al., 1966; Curran, 1977; Goodman and Sanborne, 1986; Trubek et al., 1983). The unequal access to justice of different social groups was understood in terms of the uneven distribution of social resources, i.e. in terms of differences in

their socio-economic status. The focus on people's demographic characteristics and socio-economic status gradually shifted to one on their substantive problems and on the types of disputes that arise (Engle, 1984; Miller and Sarat, 1980-81). A number of large-scale surveys focusing on a broad range of civil matters have been carried out around the world since then. Among them, the *Paths to Justice* studies (Genn, 1999; Genn and Paterson, 2011), carried out in the UK, are probably the most influential¹⁵.

The following accounts present the key findings of *Paths to Justice* and some other important studies of access to justice. To show the connection between these western studies and relevant Chinese studies, I have also reviewed some Chinese literature under each subtitle. Reviewing these Chinese studies highlights the gap between them and western studies, and their different focus. However, it also underlines the possibilities for 'conversations' between them: i.e. about how the western approach can be used to investigate Chinese problems; and how the findings of Chinese studies could contribute to debates on this subject.

2.2.1. Studies of the paths and outcome of dispute resolution

The *Paths to Justice* studies examined the ways in which people deal with *justiciable problems*, which are the focus of this thesis. The survey examined four aspects of access to justice: dispute resolution strategies, dispute resolution outcomes, objectives in dispute resolution and respondents' attitudes towards the legal system.

Respondents were divided into three types based on the *paths*, i.e. their advice-seeking behaviours. These comprised: '*lumpers*', i.e. people who had taken no action, made no contact, sought no advice; '*self-helpers*', people who had handled

¹⁵ Genn carried out two *Paths to Justice* studies, one in England and Wales (Genn, 1999), and another (with Alan Paterson) in Scotland (Genn and Paterson, 2001). In this chapter, all my references are to the English study.

their problems without any advice; and *'the advised'*, people who had obtained advice on their problems (Genn, 1999, p. 67-68). The group of people who had taken no action to deal with their problems, i.e. *'lumpers'*, who had been overlooked in most previous studies, were a source of much information about dispute resolution in *Paths to Justice*.

The *outcomes* were categorised into three types in terms of whether and how the problem was resolved. These comprised: *problems which were resolved through agreement*, *problems which were resolved through legal proceedings and adjudication*, and *problems which were still unresolved* (Genn, 1999, p.146-154). *Paths to Justice* indicated that unresolved problems were very common, as nearly half of respondents' problems were unresolved in the end. In most circumstances, people resolved their problem through mutual agreement while problems resolved by adjudication were only the tip of the iceberg. In addition, respondents whose problems were concluded by adjudication were more likely to experience stress and to suffer from health problems. More importantly, respondents whose problems were resolved through adjudication were less likely to achieve their main objectives than those whose problems were resolved through agreement (Genn, 1999, p.194).

Paths to Justice further developed Festiner et al.'s (1980) dispute resolution framework, where access to justice is viewed as a path with barriers: an injurious problem is transformed into a dispute through *'naming'* (defining a particular incident as an injurious experience), *'blaming'* (attributing the injury to the responsibility of another individual or organisation) and *'claiming'* (taking the grievance to the responsible party and requesting a remedy) stages. *Paths to Justice* expanded the scope of this approach by looking at problems which were not recognised as justiciable problems by people, problems which had legal remedies that the respondent was unaware of, problems which were claimed through informal channels, and problems which were ignored and (or) unresolved at the end (Coumarelos, 2012). In this way, Genn (1999) enabled unarticulated grievances, lumped claims, and bilateral disputes to be examined empirically.

Paths to Justice also revealed that problems and misfortunes had a tendency to come in clusters (Genn, 1999, p.31-36), e.g., victims of accidental injury were more likely to mention that they had experienced money problems or employment problems as well. It suggested, although the study did not take the issue further, that ‘the financial vulnerability, emotional impact, and other consequences’ of one problem can lead to another one. This tendency impacted on the type of advice and assistance that is needed to deal with problems. This finding can be understood from the other side, and as Genn proposed, when studying a specific type of problem, it is necessary to unpack it to see whether there are any associated problems.

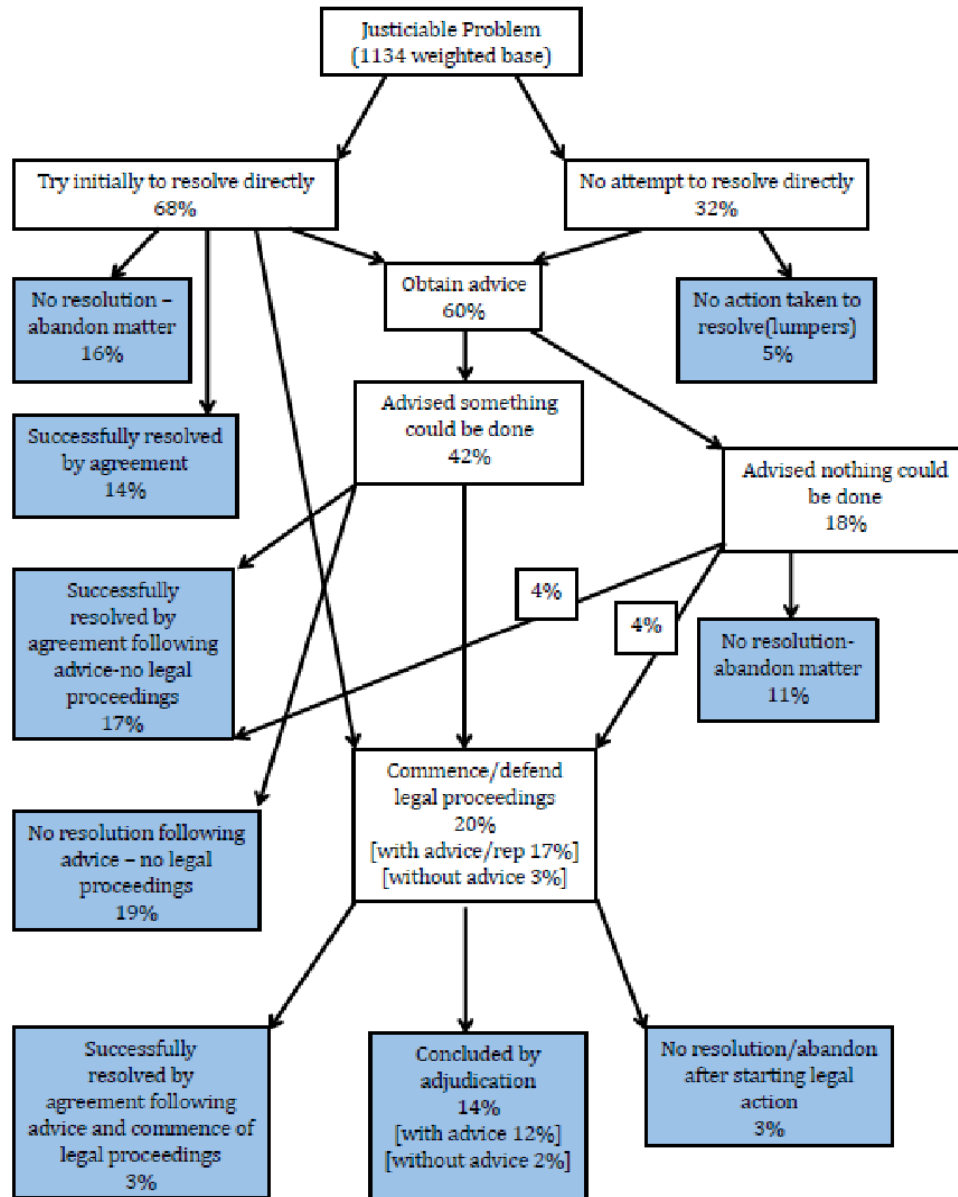
2.2.2. The role of advice

Advice was placed in a central position in the *Paths to Justice* studies. Although the decision to seek advice and the choice of advisors varied with the type of problem, most people actively sought advice to resolve their problems. Most of them did so after having direct contact with the other side (Genn, 1999, p.82). However, Genn pointed out that the cases of people who experienced accidental injury and work-related ill health were different as they were more likely to obtain advice without prior contact with the other party (Genn, 1999, p.82).

According to *Paths to Justice*, solicitors and Citizens Advice Bureaux (CAB) were the two major sources of advice in the UK. Apart from them, local authorities, the police and trade unions were also consulted (Genn, 1999, p.83). On the other hand, informal advisors, e.g. friends and relatives, were less likely to be consulted. Respondents most frequently sought advice on how to resolve their problems, and then on their legal rights and on court procedures, etc. (Genn, 1999, p.95). Genn suggested that whether an individual sought any advice, or what kind of advice they sought, had no significant association with whether they achieved a resolution or not. Respondents who obtained legal advice, i.e. advice from a solicitor or a law centre, were more likely than respondents who obtained no advice and non-legal advice, e.g.

from a CAB, to initiate legal proceedings and to have their problems resolved by adjudication. However, the source of advice had little impact on their opportunity to resolve their problems through agreement (Genn, 1999, p.154-55).

Figure 2.1: Chart for the route of seeking advice and dispute resolution



Source: *Path to Justice* studies (Genn, 1999, p.147)

Figure 2.1, adapted from *Paths to Justice*, summarises the dispute-resolution process. The figure is taken from Genn’s 1999 study and refers to England and Wales.

Japanese studies provided a very different picture regarding advice seeking in Japan. According to Murayama (2007) and Sugino and Murayama (2006), social networks in Japan acted as a more important source of advice than formal and professional advisors in resolving their problems. They suggested that family and friends were Japanese people's first option in seeking advice and support. In addition, Japanese people preferred consulting acquaintances to consulting professionals about their problems. This is because, when encountering disputes, they were more likely to seek emotional and psychological support than professional assistance. Sugino and Murayama (2006) suggested that, in Japan, people were not so keen to seek advice from lawyers, especially for resolving labour problems. Public bodies and administrative agencies more often consulted than lawyers.

The topic of advice has not been systematically addressed in studies of access to law in China. A number of studies have made initial attempts to explore patterns of advice seeking behaviour. For example, Friedman and Lee (2010) and Halegua (2008) indicated that lawyers, local government agencies, trade unions and NGOs were the main sources of advice for workers who had labour problems. Gallagher (2006) has pointed out that friends and colleagues who had previously been involved in labour disputes were likely to offer hands-on assistance to their co-workers, and influence their strategies in dealing with and resolving labour disputes. Michelson (2007b) highlighted the importance of mass media, in particular, the importance of newspaper articles and radio hotlines in influencing public' opinion and strategies for dispute resolution, including educating workers in rights protection techniques, e.g. how to collect and use evidence, and how to present their cases to labour arbitration committees or courts. In the context of labour disputes, it is widely recognised that migrant workers have less access to lawyers than urban workers (Cai et al., 2009; Jia and Gao, 2006; Liebman, 1999; Zheng, 2005). Some studies attribute this problem to the fact that most migrant workers cannot afford the costs of lawyers despite the efforts of the Ministry of Justice, the All-China Federation of Trade Unions (ACFTU) branches and the All-China Lawyers Association (ACLA) in promoting legal aid

services for unemployed workers and migrant workers. Instead, Halegua (2008) and Michelson (2006) suggested that the less frequent use of lawyers among migrant workers could be explained by the fact that most lawyers were unwilling to act for migrant workers in labour disputes even on a contingency fee basis, as such cases were often regarded by lawyers as tricky and less rewarding cases.

2.2.3. Socio-economic status

The survey approach developed in *Paths to Justice* influenced a number of follow-up studies, including the English and Welsh Civil and Social Justice Panel Survey (CSJPS), and similar studies in Australia (Coumarelos et al., 2006), Canada (Currie, 2005), Japan (Murayama 2007; 2008), the Netherlands (van Velthoven and ter Voert, 2004) and New Zealand (Maxwell, et al., 1999), etc. Through all these studies of access to justice, attempts were made to explore the association between a person's socio-economic status and the paths and outcomes of dispute resolution. The following account presents the key findings on this topic.

(1) Income

There are many debates on the relationship between a person's income and dispute resolution, i.e. on whether higher-income earners are more likely to use lawyers and to achieve a more satisfactory outcome than lower-income earners.

In contrast to the common belief that poorer people had less access to the formal justice system as they were less likely to be represented by lawyers (American Bar Association (ABA), 1994; Carlin, et al., 1966; Curran, 1977; Goodman and Sanborne, 1986; Trubek et al., 1983), *Paths to Justice* revealed, quite strikingly, that there was no significant difference in terms of their use of legal advisers between respondents from different income groups. Poorer respondents were as likely to go to a solicitor

as respondents with higher incomes. This was explained as a possible result of the effectiveness of legal aid provisions in the UK (Genn, 1999, p.86).

Similarly, Kritzer (2008) casted doubt on the common belief that people with lower incomes were less likely to obtain legal assistance. Based on data from seven different countries, he suggested that there was no significant correlation between a person's income and whether (s)he used a lawyer. He argued that income has little impact on whether people decide to seek assistance or advice from a lawyer. Instead, the likelihood was strongly associated with the nature and severity of their problems. Whether or not to hire a lawyer was influenced by the likely benefits that a lawyer can produce, i.e. on calculations of cost-efficiency. In that sense, Kritzer (2008) has shown that assessing the issue of access to justice was a more complex issue than had been assumed in previous studies, and highlighted the importance of the type and nature of disputes in influencing the paths adopted by people for achieving a resolution.

Although the factor of income was not correlated with the path of dispute resolution, *Paths to Justice* indicated that it was associated with the outcome of dispute resolution, as respondents with higher incomes were more likely to achieve a favourable resolution than those who with lower incomes (Genn, 1999, p.86). A number of studies in the USA suggested that lower rates of satisfaction with the outcomes were more likely to be reported by respondents in lower levels of incomes (ABA, 1994; Legal Services of New Jersey (LSNJ), 2009). However, the relationship between a person's income and the outcome of the dispute resolution is far from clear-cut, and there has been no further discussion in terms of how to interpret this empirical evidence.

Buck et al. (2005), Coumarelos et al. (2006), Currie (2007a) and Pleasance (2006) have investigated the relationship between the types of problems experienced by people with their level of income. By looking at a person's economic status in terms of his/her personal income, household income, and whether s(he) is in receipt of

some types of welfare benefits, these studies suggested that differences between poorer and richer people can be explained by the fact that they often encountered different types of problems. These studies provide a different angle from which to look at the issue of income inequality and its impact on dispute resolution.

(2) Education and legal knowledge

People's educational background, in particular, their legal knowledge, influences the paths of claiming and dispute resolution. Some studies have suggested that people with higher educational attainments were more likely to report and externalise their problems than those with lower educational attainment (Coumarelos et al., 2006; Currie, 2007b; Pleasance, 2006; van Velthoven and ter Voert, 2004). Other studies have shown that less educated people were less aware of their substantive and procedural rights, and were more likely to ignore their problems than others (Balmer et al., 2010; Buck et al., 2008). A study on labour disputes in Japan has revealed, more specifically, that respondents who were aware of the exact amount of compensation they were entitled to tended to take action to contact the other side more frequently than those who were not or less aware of it (Sugino and Murayama, 2006). These findings imply that people who are more capable of understanding their legal position are more likely to 'name' their injurious experience and to 'blame' it on a responsible party.

Education is not only associated with the likelihood of paths of claiming and disputes will be obtained, it could also influence whether or not a resolution can be achieved. According to *Paths to Justice*, respondents with no educational qualifications were less likely to achieve a resolution for their problems than those with higher levels of education (Genn, 1999, p.135). Some other studies (Balmer et al., 2010; Coumarelos et al., 2006; Pleasance et al., 2006) have indicated that socially disadvantaged groups usually lacked the necessary knowledge to sort out useful information and advice to meet their specific legal needs.

(3) Age and gender

Empirical evidence showed that younger and middle-aged people were much more likely to report they have experienced justiciable problems than older people (Buck et al., 2005; Coumarelos et al., 2006; Currie, 2007a; Genn, 1999; Maxwell et al., 1999; Pleasance et al., 2006; Pleasance et al., 2010). This might be explained by their economically active position. But, on the other hand, findings in some of these studies indicated that younger people are more tolerant of their problems, and are less likely to initiate action or seek advice than people who are older (Coumarelos et al., 2006; Currie, 2007a; Genn, 1999; Pleasance, 2006; Pleasance et al., 2010; van Velthoven and ter Voert, 2004). *Paths to Justice* also indicated that younger respondents were less likely to achieve a resolution for their disputes than older respondents (Genn, 1999, p.171-174).

Compared to age, the association between gender and dispute resolution is less significant, although a few studies have pointed out that men are less likely to seek advice than women (Fishwick, 1992; Maxwell et al., 1999). What is more worthy of attention, according to Pleasance (2006) and Currie (2007b), is the fact that female and male respondents often experience different types of problems, i.e. the rates of experiencing family and neighbour problems were higher among women than among men, however, the rates of experiencing employment problems, money/debt and problems involving the police were higher among men than among women. However, these studies did not make any further attempts to interpret such differences in the light of social science theories, e.g. theory of gender role.

(4) Social Disadvantage

Empirical evidence suggests that a person's ethnic background and employment status were associated with the paths of claiming and dispute resolution. Some

surveys shown that ethnic minorities and the unemployed were less likely to seek advice (Coumarelos et al., 2006; Currie, 2007b; LSNJ, 2009; Pleasance et al., 2006). English and Welsh Civil and Social Justice Panel Survey (CSJPS) indicated that the chances of experiencing a dispute were not randomly distributed: people who are vulnerable to social exclusion, and who are eligible for legal aid, i.e. lone parents, those on benefits, those who suffer from long-term illness or disability and victims of crime were more likely to experience and report justiciable problems (Pleasance et al., 2006; Pleasance et al., 2010). These studies also found that some disadvantaged social groups, including: welfare recipients, respondents who were eligible for legal aid, black and minority ethnic groups, unemployed and self-employed, had a higher rate of ‘inaction’ towards their problems than the general population (Pleasance et al., 2006). That is to say, those people who were in a more socially and economically vulnerable position were less likely to take action to deal with their problems. Such situation might, in turn, increase their vulnerability.

(5) China: rural and urban status

Apart from the discussions of a person’s income, gender, age, education background, etc., studies in China introduced a person’s rural/urban status as a factor that could influence the paths and outcomes of dispute resolution. Michelson (2007a; 2007b) conducted the first survey of dispute resolution in China, which consisted of two parts, one for urban China and the other for rural China. The survey sample consisted of 2,902 rural households and 1,124 urban households. He suggested that self-helping strategies, i.e. bilateral negotiations, were the most common strategies adopted to deal with disputes, in both urban and rural China. He also noted that a significant proportion of people had made no attempt to resolve their problems. Urban respondents were more likely than rural respondents to take their problems to the legal system, and urban respondents’ attitudes towards the legal system were generally more positive than rural respondents’ (Michelson, 2007a; 2007b).

Michelson attributed these differences to the imbalance in economic development between the two communities. He then suggested that 'the best medicine for treating China's ailing legal system is economic development' (Michelson, 2007b). The limitation of this study is that Michelson did not pay enough attention to differences in the types of problems that rural and urban people had encountered, as many western surveys mentioned above have done. A possible explanation for their differences may be the fact that the two population groups experienced different problems due to their different life styles, and to the different communities in which they lived. In addition, the reasons that rural people used the legal system less frequently, and had a more negative assessment of it than urban workers, as pointed out by Michelson, may be due to the fact that some of the dispute resolution institutions are not available in rural China. Thus, it was easier for rural people to resolve their problems through informal mechanisms. However, these issues were not addressed in Michelson's study.

Gallagher and Wang (2011) have argued that, in China, people's attitudes towards the law were associated with their 'political identity', which was defined in terms of a person's citizenship status, i.e. the rural/urban Hukou status, as well as their employment relations with the state, i.e. whether they work for state-owned enterprises (SOEs) or non-SOEs. They suggested that older and urban disputants who worked for the state sector were more likely to feel powerless in front of the legal system, and were more likely to consider the legal system inefficacious. However, younger migrant workers from non-state sectors were more likely to have positive attitudes towards the legal system, and to regard law as an important means for protecting their rights. Zheng (2007) has pointed out that the situation is different in the group of migrant workers. He indicated that legal knowledge has greater influence for migrant workers: older migrant workers tended to have more access to legal knowledge than those who are younger, so they were more likely to make successful claims than those who are younger and less experienced.

2.2.4. Informal resources

(1) Users vs. non-users

Paths to Justice showed that attitudes towards the legal system are related to individuals' experience of legal proceedings. On the one hand, the public generally has a rather negative attitude towards the legal system (Genn, 1999, p.226). Although they agree that courts are an important way to enforce their rights, the fairness of the courts is widely questioned by respondents (Genn, 1999, p.230). On the other hand, people who had engaged with courts, although they only comprise a very small minority of all the respondents, generally expressed positive attitudes towards their experience with the legal system and considered the outcome to be fair (Genn, 1999, p.200).

Michelson (2007b) has pointed out that, in general, the Chinese public had a high degree of confidence in the formal justice system. He has suggested that, in China, most of the positive assessment of courts came from respondents who have not engaged with the legal system (Michelson, 2007b). 'Users' of the legal system tended to evaluate the legal system more negatively than non-users. People who have engaged with the legal system in the past were more likely to seek informal advice, to settle problems privately, and to find that this is more helpful than going to law (Michelson, 2007b).

Gallagher and Wang (2011) have indicated that workers gained more confidence in using legal means to enforce their rights through their engagement with the legal system. However, their attitudes to the fairness of the legal system became more negative during their engagement with the legal system.

(2) 'Repeat players' vs. 'one shotters'

Galanter (1974) has argued that the ‘haves’ regularly and systematically ‘come out ahead’ in court proceedings, as case-by-case adjudication tends to give advantages to ‘repeat players’. As a result, those who know the rules better, have more experience and have more legal and financial resources are much less likely to lose any particular case than ‘one shotters’, i.e. those who have limited resources and less knowledge and experience of the legal system. Unlike ‘one shotters’ who usually have ‘one-off’ goals in a dispute, ‘repeat players’ have their long-term strategies. Thus, their control over the litigation produces rule changes in their favour.

The study by He and Su (2013) demonstrated that Galanter’s findings are applicable in the Chinese legal context. They found that the stronger party prevailed over the weaker party in litigation in the courts of Shanghai. More specifically, their findings suggested that urban workers have advantages in litigation over migrant workers, as ‘farmers’ (in the context of this study, most of whom are migrant workers) were more likely to lose a case against a firm than urban workers.

(3) ‘Official power’ vs. ‘unofficial power’

Hoffmann (2008) expanded Galanter’s study into a non-litigation context. She suggested that the strategies adopted by workers to resolve their employment problems are correlated with both of their ‘official power’ and ‘unofficial power’. According to Hoffmann (2008), the term ‘official power’ refers to a worker’s formal rights or entitlements, the term ‘unofficial power’ refers to their ability to gain more advantages within the firm, which could be understood as whether they had access to organisational information, to workplace knowledge, and whether they had strong informal networks at work. She found that ‘the haves’, i.e. workers with both official and unofficial power were more likely to resolve their problems informally; ‘have-somes’, i.e. workers with high official power, but low unofficial power, tended to file formal complaints to resolve their problems; and ‘have-nots’, i.e. workers with neither much official nor unofficial power, were less likely to achieve a resolution, and they often chose to tolerate the problems or decided to quit their jobs.

Michelson (2007a; 2007b) has pointed out that, in China, families' 'political connections', were an important factor influencing the paths and outcomes of dispute resolution. Families' connections with local political elites or officers either significantly reduced the probability of grievances being experienced, or increased the probability of people with a grievance from climbing to the top of the 'dispute pagoda' and reaching the formal justice system (Michelson, 2007a; 2007b). 'Political connection', in this context, which can be considered as a form of unofficial power or as a special form of social network, which can not only prevent someone from being involved in conflicts, but also help them to facilitate privileged access to law when conflict is unavoidable (Michelson, 2007b). The situation is consistent in both the urban and rural surveys. Michelson concluded that access to the official justice system is limited, and very unequal in China among people with different social resources.

2.2.5. Summary

The literature reviewed above shows that how a person's demographic characteristics and socio-economic status, in particular, their level of income, gender, age, welfare and employment status, can influence the paths and outcomes of claims and disputes. These studies also demonstrate that a person's previous experience with the legal system, their unofficial power and informal resources can also shape the development and resolution of their disputes. We notice variations in terms of the influence in different contexts. Thus, these findings are not generalisable, and the situation could be totally different in any new context. However, it suggests that we should definitely look at the issue of access to justice and people's experience of dispute resolution from these perspectives. One of most crucial limitations of these surveys on access to justice, which were reviewed above, from my perspective, is that they lack theoretical support. This might be relevant to the nature of these studies, as these surveys are often commissioned and funded by the government. Without further interpretations of differences in the paths and outcomes of the

claiming and dispute process in the light of relevant social theories, it is impossible to gain any in-depth understanding of the differences in gender, age and socio-economic status.

Despite the convention of access to justice studies in the west focusing on a person's demographic characteristics and socio-economic status, studies in China on access to justice are more interested in the differences between a person's rural/urban status, i.e. the Hukou status. Although, compared with western studies, limited research has been undertaken in China, it has attempted to explore differences between rural and urban people in the strategies they adopt to resolve their disputes, and the outcomes that are achieved. These studies have shown that surveys can be used to illuminate our understanding of some social and legal matters in China. However, we do not know that whether or not a person's Hukou status trumps other demographic and socio-economic factors. It is unclear that, in addition to demographic and socio-economic factors, whether differences between migrant and urban workers can be explained in terms of differences in the types of disputes they have encountered. These issues are addressed in this study in the context of work-related injury problems.

2.3. DIFFERENCES IN THE LAW AND LEGAL SYSTEM

Wheeler et al. (1987) have proposed that the fact that some parties have more advantages than others in winning a case could be explained by three possible factors: the law, the courts and the party's resources. Literature which has been reviewed in Sections 2.2.3. and 2.2.4. has shown that a person's advantages in dispute resolution resources could be explained by his/her various 'resources'. Apart from that, explanations in terms of the law and legal institutions were also common when symptoms of inequality appear, as the structure and functions of legal institutions reflect how rights and obligations are stipulated and, how disputes are managed by the state.

Engels (2010) and Renner (1949) have pointed out that the law is not always an impartial instrument; it can be manipulated and oriented on behalf of some groups or classes which have more power to make use of legal orders to their own advantage. Thus, the law serves to protect the rights and enhance the interests of those in a position of wealth and authority. Weyrauch (1966) suggested that the legal system tended to reflect and protect the 'value preferences of a dominant culture' and has an 'ethnocentric orientation'. According to Carlin et al. (1966), there are three forms of bias in the law: first, towards 'favoured parties', which means that the law itself is unequal, benefiting one party and bluntly ignoring or discriminating against the other; second, through 'dual law' - *de jure* denial of equal protection; which refers to the existence of a separate and unequal system of law for a disadvantaged social group, e.g. the poor or racial minorities; third, through '*de facto* denial of equal protection', which means that the law itself is impartial on paper, but is unequal in practice as a result of the relevance of some social groups' vulnerability or poverty.

2.3.1. Dual legal systems: The classic example of California family law

With an empirical approach and by 'using legal references as data' (Weyrauch, 1966), Jacobus tenBroek (1964) provided a classic example of 'dual legal systems', and he pointed out that there were two separate legal systems dealing with California family law. The two systems were regulating the same relations, i.e. relations between husband, wife, and children, and were dealing with the same matters, i.e. parents' liabilities, the custody of children, the creation and dissolution of the family, etc. According to tenBroek, the two systems were parallel, as one legal system targeted the poor while the other was for those 'in a more comfortable position'. The system for the poor was regulated by the administrative law system while the system for the fortunate was governed by the private law system. He pointed out the dual legal systems contained many different aspects. The family law system for the poor was closely connected with welfare programmes, and it was more unstable, as it varied along with the changing social values and administrative considerations, i.e. in particular, how the purposes of government, welfare workers, the police, etc. could

be situated. So it was subjected to the government's financial considerations. The family law system for the fortunate, however, was created and administered by the courts rather than the administrative law system. Since judges often had a conservative standpoint, this legal system was more stable. The key issue in terms of the family relations of the more fortunate, according to tenBroek, was their proprietary, which the courts, in most circumstances, shall not interfere with. As a result, an institutional wall was created in the society, dividing the poor and the fortunate in terms of their entitlements, legal positions and liabilities. As suggested by tenBroek, the existence of the dual legal systems deviated from the purposes of constitutional law. He has pointed out that, although laws are supposedly to provide equal treatment, in this case, differentiations were made according to people's socio-economic conditions. tenBroek criticised these practices and he argued that separate treatment of different social groups in respect of public services should not result in social equality.

'Family Law in California is not single, uniform, and equal as to all families whatever their status, condition, or wealth. On the contrary, it is dual and distinguishes among families on the basis of poverty. It is therefore discriminatory as to the groups which are the principal victims of poverty: racial and ethnic minorities, the economically, socially, and educationally under privileged, children of broken homes, the aged, the physically and mentally handicapped.' (tenBroek, 1964, p.978)

A number of studies of dual legal systems have been undertaken by legal anthropologists interested in the coexistence of formal and informal systems of law and dispute resolution in many third world settings, in particular in Africa, Asia, and the Pacific, where this is often a legacy of colonialism (Chanock, 1985; Comaroff, 1985; Moore, 1986). However, what is distinctive about ten Broeck's study, and likewise this thesis, is that the focus is on parallel provisions within a single legal system.

2.3.2. Biases in the administration of law

Apart from the dual legal systems, many studies have argued that the administration of law, rather than the orientation of the law, has negatively affected socially

disadvantaged groups, and created inequalities. For one reason, agencies involved in the administration of the law often have to deal with a massive number of cases that can be beyond their own capacity (Carlin et al., 1966). An inevitable consequence is that cases are more likely to be dealt with 'in a standardised mechanical manner', and it is unlikely that any particular case will receive enough attention and time from legal actors for examining or weighing facts or for exploring grounds for decisions (Carlin et al., 1966). Galanter (1974) has also suggested that legal institutions might have limited resources to undertake timely and full-scale adjudication in every case, so that the parties are permitted or, sometimes are even strongly encouraged to withdraw their cases and to 'settle'. He argued that this tendency could influence the ways in which the law is enforced. He distinguished two levels of agencies in enforcing the law: 'peak agencies' are responsible for making rules and 'field level agencies' are responsible for enforcing and applying them. According to Galanter (1974), there is a gap between the higher and the lower agencies in terms of the ways for interpreting and enforcing the laws, either because the latter are often short of resources, skill and commitment to enforce the rules effectively, or because of problems in communication between them. By examining workers' experiences with Employment Tribunals and Advisory, Conciliation and Arbitration Service (Acas), Busby and McDermont (2012) have shown that how the principle of impartiality in administrative justice has been overlaid by 'pragmatic rationalities of managerialism', which have transformed the nature of the system of dispute resolution and created barriers for achieving justice for vulnerable workers.

Halegua (2008), Li and Freeman (2014) and Xu et al. (2009a; 2009b) suggest that, in China, many of the labour arbitration committees and courts are overburdened and understaffed in the face of an increasing number of arbitration requests from workers. Under such circumstances, the quality of decisions made by arbitrators and judges can be questioned. Labour arbitration committees are financially dependent on local government, which often attempts to promote local business and employers' interests. In addition, as local political elites have the power to influence or even control the appointment of senior court officials (Lubman, 1999; Peerenboom, 2002), this 'local protectionism' may skew courts' decisions (Gallagher et al., 2013). According to

Gallagher, et al. (2013) and Peerenboom (2001), corruption or bribery by disputing parties can also influence the fairness of arbitrators' and judge's decisions. In addition, institutional pressure is another factor which can undermine a judges' neutrality. He (2009) indicated that, when the performance of judges was assessed, efficiency of resolution, i.e. whether cases were resolved completely with fewer appeals, was more important than the quality of their decisions, i.e. whether decisions were fair and consistent. According to He (2009), the assessment criteria of courts might indirectly affect the fairness of their decisions.

2.3.3. Summary

The literature reviewed above suggests that the legal system can be a source of social inequalities. Although direct discrimination to some social groups is uncommon in the Chinese legal system, in most circumstances, inequalities may be created for indirect reasons, e.g. due to the existence of dual legal systems, creating a *de jure* denial of equal protection, or a *de facto* denial of equal protection in terms of the administration of the law (Carlin et al., 1966). These studies suggest that inequalities may arise in the legislation, or in the court system, or be produced by biases in the administration of the law. These inequalities can reflect an individual judge's attitudes, the interests of the 'elite' or the dominant social class, or more broadly, the prevailing social and political values in society. The consequence of the inequalities created by the legal system is that the entitlements of vulnerable social groups are more likely to be undermined, as they have less power to influence the legislation, and to control and dominate the dispute resolution process.

These literature throw a light on this study. When examining the differences between migrant and urban workers in terms of the paths and outcomes of the claiming and dispute process from the perspective of law and legal system, we should identify whether the inequalities are a *de jure* or a *de facto* denial of equal protection. It is important to find out whether the law itself is impartial on paper, and, whether it is carried out fairly in practice.

2.4. DIFFERENCES IN THE LABOUR MARKET

To understand the ways in which employers arrange social insurance provisions and the ways they handle complaints and disputes, in particular, how employers treat different categories of employees, three aspects of studies need to be particularly examined. First, the literature on the labour market inequalities will be reviewed, including the literature on labour market segmentation in China. Second, the literature on employers' social insurance arrangements is considered, aiming to find out whether the differences in these arrangements is related to workers' characteristics or the ownership of enterprises. Third, the literature on dispute resolution and human resources management is reviewed, focusing on how firms respond to employees' claims.

2.4.1. *Inequalities in the labour market*

In some studies, the inequalities of the labour market, which involve wage, opportunities for promotion, workplace power, etc., are attributed to discrimination against people with protected characteristics, in particular, racial background and gender (Tomaskovic-Devey, 1993a; Wilson, 1997). These studies tended to focus on the phenomenon of inequalities rather than the causes.

The perspective of labour market segmentation shifted its focus from protected characteristics to differences in workers' human capital, to differences between sectors and jobs. The dual labour market theory, as a classical neo-economic theory, was initially developed by Piore (1970; 1975), who argued that the economy could be divided into two sectors: primary and secondary sectors, based on workers' job characteristics. According to these studies, the primary sector of the labour market contains better jobs, which provide higher wages, better work conditions and greater job stability. On the contrary, the secondary sector contains worse jobs, providing

workers with lower wages, poorer work conditions, and less job stability (Bosanquet and Doeringer, 1973; Doeringer and Piore, 1971; Reich et al., 1973).

According to Deakin (2013) and Jaramillo (2013), labour market inequalities may arise from contractual arrangements (permanent or temporary employment) and the types of workers concerned (migrant, domestic, or dispatch workers). The implications of segmentation are multiple, and include: wage gaps, workplace discrimination, differences in access to training and social security, as well as differences in working conditions and tenure. Moreover, segmentation leads to differential transitions to better jobs. Their studies have attempted to connect the labour market segmentation with the forms of employment.

An exception to the studies on dual labour market came from Finlay (1983), who has argued that the dualisation of the labour market could also take place in a single occupation based on a case study on American longshore crane operators. As a result, he found that within this occupation, some workers enjoyed more employment advantages, e.g. access to official training programmes, opportunities for certification, and more job security, over the others.

Unlike situations in the countries where most labour market theories were developed, China is often deemed to be a country without a complete or mature labour market (Knight and Song, 2005). However, there are many studies which use these theories to analyse the 'labour market' in China. Focusing on workers' Hukou status is different from the classic dual labour market theories, which looks at the segmented labour market as 'a natural consequence of economic globalization and market penetration across national boundaries' (Massey, et al., 1993, p. 432). The inequalities between migrant and urban workers are created by more institutional factors than economic factors (Yuan, 2011). Thus, Chinese studies may add a new dimension to the classic dual labour market theories. Some of them have indicated that the Chinese labour market is segmented between urban residents and migrants (Cai, 2001; Knight and Song, 1999; Knight and Yueh, 2004; Zhang et al., 2010;

Zhao, 2005). They have also pointed out that there are still considerable barriers to labour mobility for migrant workers across individual enterprises (Dong et al., 2002; Knight and Yueh, 2004; Li, 2008). Migrant workers have higher unemployment rates and lower wage incomes than urban workers. Studies of labour market segregation between migrant and urban workers have tended to focus on wage differentials, and an emphasis has been placed on sectoral inequalities. For example, Meng (2011) has suggested that the labour market in the formal sector is more regulated and is shielded from the competition of migrant workers, while the labour market in the informal sector is more developed. Meng and Zhang (2001) have pointed out that wage differentials are also associated with direct labour market discrimination against migrant workers. Yao (1999) suggested that wage rates for urban workers are determined by their marital status and political affiliation rather than their human capital. But human capital plays a more important role in determining rural migrant workers' wage rates. Yao pointed out that migrant workers' wage rates are closely linked with their age, education and years spent on the current job. Gordon and Li (1999) added sector wage differentials in examining the inequalities between migrant and urban workers. Their study indicated that education was not important for migrant workers in the informal sector, but was important for those who were in the formal sector. Training was important for both migrant and urban workers. The study by Knight et al. (1999) demonstrated that only 1 per cent of migrant workers held managerial and technical positions, compared with 19 per cent of non-migrants. Differences in their skill levels and job positions could explain their wage differentials. Similarly, Yao (2001) implied that a migrant worker is only 17.6 per cent as likely to have a white-collar job as an urban worker. Although these studies were interested in exploring the relationship between different labour market variables with wage differentials, their commonality was that nearly all of them tended to focus on the differences in jobs, as well as intra-sectoral labour market segmentation between migrant and urban workers.

2.4.2. *Studies of firms' social insurance practices in China*

Many other empirical studies have attempted to investigate the relationship between labour market segmentation and the formality of employment in China, and key concerns have been the provision of labour contracts and the coverage of social insurance.

Zhang et al. (2010) investigated inequalities between migrant and urban workers from the perspective of human resource practice within firms, which they referred to using the term of '*socially embedded HRM*'. They pointed out that rural migrant workers tended to suffer from more employment discrimination than urban workers, and that migrant workers had less access to training programmes, to entitlements to social insurance benefits and had fewer opportunities for promotion than urban workers. They attributed such divisions to the firm's human resource management policy, which is heavily influenced by the larger institutional environment. Zhang et al. (2010) highlighted the importance of the firm-level practices in generating employment inequalities.

Gallagher et al. (2013) differentiated the concepts of 'employment security' from 'employment equality'. They pointed out that, by enacting the *Labour Contract Law* and by introducing the obligation of signing written employment contracts, the state aimed to formalise the employment relations. It was commonly believed that improving the formality of the employment relations could increase the possibilities of gaining access to national social insurance programs. For example, Gao et al. (2010) have suggested that having a long-term labour contract could significantly improve the social insurance participation for migrant workers. However, Gallagher et al. (2013) have argued that, although this legislation has been successful in improving the levels of formality, as there are now more workers with written labour contracts, it has led to a decline of employment security (as labour subcontracting has been used more frequently by enterprises), an increase in the inequalities between formal workers and temporary workers, and between migrant and urban workers, as well as a large increase in the numbers of labour disputes. Gallagher et al. (2013) have revealed the complexity of firm-level practices in enforcing state

regulations, and pointed out that the relationship between the employment formality and employees' eligibility to social insurance benefits is not as straightforward as expected. They also highlighted that achieving employment equality in the labour market is a task requiring the combined efforts of the state and the enterprise.

There are a few studies which have investigated the social insurance participation from the perspective of employers' social insurance evasion conduct, which, according to Bailey and Turner (2001), refers to the conduct of firms of not paying or underpaying their mandated social security contributions. These studies have mainly addressed this issue from two perspectives: firms' ownership and workforce characteristics. Nielsen et al. (2005), for example, have suggested that the inequalities regarding workers' insurance coverage is more strongly related to the ownership of the enterprise than to the worker's status. They suggest that SOEs tend to treat their migrant and urban workers equally regarding their wage rates and social security provisions, but non-SOEs are less likely to do so. They also point out that workers' characteristics are only important in non-SOEs. Migrant workers are less likely to be insured in non-SOEs, as many SOEs classify their migrant workers into three categories and treat them differently: *key migrant workers*, who are skilled and have worked for the enterprise for a long time, *casual and unskilled migrant workers* and *migrant workers who are assigned by employment agencies*. According to Nielsen et al. (2005), key migrant workers are more likely to be treated in the same way as urban workers. Casual and unskilled migrant workers have less social insurance or none at all. Agency migrant workers' social insurance is usually provided by the employment agency rather than by the firm. In fact, they have the least chance of obtaining any insurance benefits.

Nyland et al. (2006) also suggested that the ownership type of enterprises was important in terms of social insurance coverage. However, they argued that the key difference was not between SOEs and non-SOE, but was between domestic and foreign enterprises. They pointed out that foreign enterprises were less likely to provide social insurance for their employees than domestic firms. Despite the large

sample size and a multiple research strategy adopted in their study, it only looked at the social insurance provision for maternity, medical, pension and unemployment insurance, so this finding is not necessarily applicable to the provision of work-related injury insurance.

Gao and Rickne (2014) have shown that the ownership type is more important than workforce characteristics and any other features of enterprises in explaining inequalities in social insurance participation. They argue that domestic private firms, which had the highest proportion of migrant workers, were lowest in terms of their participation rate in pension and medical insurance, unemployment insurance and housing provident fund and housing subsidies. In addition, state-owned firms were more likely to participate in social insurance programmes than collective-owned and foreign-owned firms. However, once again, they did not compare participation in work-related injury insurance, and did not provide further explanations for differences across ownership structure.

Workers' characteristics may also influence firms' social insurance participation. Skill level is considered to be one of the most important factors. Mabry (1973) and Woodbury (1983) have pointed out that retaining skilled workers is an important motive in employers' provision of non-wage benefits. Thus, workers who are poorly educated and less skilled are more likely to be hired to reduce the firm's social insurance costs. The study of Gao and Rickne (2014) also suggested that workers' educational backgrounds and skills are both positively associated with their participation in social insurance schemes. Generally, firms whose workforce has higher education and skill levels do better in fulfilling their social insurance obligations.

In addition to workforce characteristics and forms of ownership, studies of Nielsen et al. (2005) and Gallagher et al. (2013) have provided a different angle for interpreting inequalities in access to social insurance programmes between migrant and urban workers. Nielsen et al. (2005) argued that migrant workers had a lower social

insurance participation rate than urban workers because they were more unwilling to participate in social insurance. This was due to the fact that some temporary migrant workers who might return to their rural hometown or move elsewhere after working in cities after working in a place for a period of time, they could be unsure of whether these social insurance contributions are worth paying.

Gallagher et al. (2013) pointed out that the main purpose of local governments in China for enforcing social insurance participation was due to their financial consideration and their wishes to boosting their social insurance income, as the social insurance contributions for migrant workers went into the pool of the local governments, which could mainly be used to pay pension for current retirees. Thus, the participation of migrant workers in local social insurance programmes tended to benefit the local urban residents because only a very small part of migrant workers' contribution was portable. These studies have attempted to interpret the social insurance evasion problems by questioning whether the current social insurance scheme is fair and reasonable. In this way, social insurance participation is treated as an individual choice rather than the outcome of the labour market.

2.4.3. *Studies of the ways in which firms handle labour disputes*

The key issue regarding the ways in which firms deal with labour disputes includes how employers respond to their employees' claims. In most circumstances, employees can adopt both formal and informal procedures to resolve a labour dispute. On the one hand, employers cannot prevent employees from using formal channels, i.e. administrative and legal proceedings to deal with their grievances. Once such procedures are initiated, employers get involved in the disputes as the opposing party. On the other hand, employers can certainly encourage or direct their employees towards internal or at least less formal procedures to achieve a private resolution without initiating a lawsuit or seeking the intervention of a government agency. In that sense, internal dispute resolution (IDR) can be viewed as an important form of alternative dispute resolution (ADR). As a way of '*privatising the adjudication of*

public rights' (Edelman et al., 1993), IDR functions '*as a system of private law... with its own interpretations, practices, and customs built up over times*' (Thomson, 1974, p.1), which can substantially influence the paths and outcomes of dispute resolution.

(1) IDR and power imbalance

Compared with using litigation to resolve a dispute, Fisher et al. (2011) and Menkel-Meadow (1984) have argued that ADR has greater flexibility in discovering parties' real interests and in achieving satisfactory outcomes. In particular, one of the advantages of ADR is that it can offer parties different solutions from remedies which are provided by the law (Moore, 1986; Pearson and Thoennes, 1985). However, ADR can seriously undermine parties' legal rights (Adler et al., 1988), lower parties' expectations of what they are entitled to (Luban, 1989), and change the way in which disputes are framed (Macaulay, 1986; Merry, 1990; Silbey and Sarat, 1989). These effects are more evident for people who have less political and social power. Silbey and Sarat (1989) have criticised this process as it usually transforms a *rights-based* dispute into an *interests-based* dispute, which undermines the parties' legal rights. When claims are framed in terms of interests rather than of rights, they become more conducive to compromise (Edelman, 1992).

Some studies of ADR have underlined the fact that, in the context of labour disputes, both employers and employees can obtain advantages from ADR (Cobb and Rifkin, 1991). However, other studies have highlighted the inequalities between the parties. For example, Gutek (1992) and Hasenfeld et al. (1987) have pointed out that, as labour disputes often arise within organisations characterised by power differentials, i.e. subordinates challenge the actions or decisions of their superiors, IDR can reinforce parties' power imbalance. Edelman et al. (1990) have suggested that IDR can reproduce and reinforce power imbalances between employees and their employers, because the staffs in charge of IDR find it impossible to act as a neutral

third party in dealing with complaints and disputes as they were supposed to, and IDR is often conducted on behalf of the employer.

Another limitation of ADR is that it lacks formal due process protections, and can lead to inequalities between parties that may increase power and class differentials between them. Fiss (1984) pointed out that when disputes were resolved through informal means, parties who were in a socially disadvantaged position tended to be more vulnerable in the process than when their disputes are resolved through formal means. In informal settings, where legal protection was often unavailable, people's prejudices and discrimination against them was less likely to be controlled, and was more likely to influence the process and the outcome. As a result, IDR may allow more powerful parties to dominate the dispute resolution process, and the rights of less powerful parties could be undermined (Auerbach, 1983; Delgado et al., 1985; Lazerson, 1982).

(2) IDR: 'transforming the goal'

As pointed out by Macaulay (1986), people who are in the position to handle complaints in 'private government', e.g. IDR staff, tended to bring their own goals and interests into the dispute resolution process, and this could affect the paths and outcomes of dispute resolution. He suggested that, in the context of labour disputes, IDR was underpinned by two contradictory goals, i.e. the goal of resolving disputes fairly and the goal of maintaining the economic order of the firms. Edelman et al. (1993) have suggested that, by channeling employees' complaints into IDR, employers tended to subsume legal goals under managerial goals, which could redefine the nature of the problem and the scope of their employees' claims, as well as modify the remedies they would like to seek. The focus of IDR is usually on the resolution of a conflict rather than the enforcement of the law. According to Edelman et al. (1993), employers might, intentionally or unintentionally, transform disputes over legal entitlements into disputes over interests. In some circumstances, conflicts over the fact of employers' violations of law are treated as problems of personal

disagreement, problems of poor communication or problems of bad management practices, etc. Hofrichter (1987) and Silbey and Sarat (1989) also noted that IDR was quite likely to transform a legal matter into an interpersonal matter. From this perspective, these studies have pointed out that the IDR solution sometimes differs markedly from the legal remedy.

(3) Workplace structure and the internal dispute resolution

According to Reskin et al. (1999), workplace structure can present additional barriers to the dispute resolution for some disempowered groups. They have pointed out that, female workers, for example, were often in a lower position than their male colleagues in the workplace structure, which could make women less likely to achieve a successful resolution of their dispute. Their access to dispute resolution procedures may be constrained by the workplace hierarchy, as well as their marginal positions in unions, firms and occupations (Gwartney-Gibbs and Lach, 1994). Fiorito et al. (1986) also indicated that, as there were fewer women than men who joined trade unions, women had less access than men to union-negotiated grievance procedures.

2.4.4. Summary

This section provided a literature review on the issue of labour market inequalities by examining firm-level practices. According to the classical theories of labour market segmentation, wage differentials and differences in social insurance benefits can be explained by inter-sectoral segmentation of the labour market, i.e. migrant workers have poorer employment conditions because they are often doing different jobs and are in different sectors from urban workers. In terms of the differences in social insurance participation, current debates focus on whether social insurance evasion is conducted in particular type of enterprises, i.e. in non-SOEs, domestically-owned and foreign-owned enterprises, and whether it involves employees who have specific characteristics, i.e. in terms of human capital and levels of skill (Gallagher et al.,

2013; Gao and Rickne, 2014; Gao et al., 2010; Nielsen et al., 2005; Nyland et al., 2006). However, other labour market variables, such as trade union membership, wage rates, contractual term, have not been introduced into the debate. In addition, as suggested by Gallagher et al. (2013), relationship between employment formality and inequalities in social insurance participation which are still far from clear-cut, should be considered in this study.

Entitlements to social insurance benefits can be undermined by the arrangements for their provisions. Studies of human resource management and organisational behaviour shed light on the possibilities of firms reproducing inequalities in the dispute resolution process. These inequalities can perhaps be explained by the nature of the IDR system, by the power imbalance in employment relations, or by the workplace structure and attitudes of IDR gatekeepers, etc. These factors should be taken into account when investigating the firm-level resolution of work-related injury problems.

However, we notice that there is a gap between the two aspects of research. It is unclear to what extent human resources practices can be influenced by labour market segmentation, in particular, whether there is any relationship between the IDR system and firms' ownership type, or workers' characteristics. These issues will be explored in this study.

2.5. DIFFERENCES IN LEGAL CONSCIOUSNESS

2.5.1. *Scope, approach and limitation of legal consciousness studies*

According to Silbey (2005, p.323), studies of legal consciousness initially emerged to address the issue of 'legal hegemony'. In pursuit of an answer to the question '*Why do people acquiesce to a legal system, which despite its promises of equal treatment, systematically reproduces inequality?*', these studies have offered an

explanation for the gap between *law in the books* and *law in action* (Pound, 1910). By exploring how and why people turn to (or do not turn to) law, legal consciousness studies have challenged the notion that people simply absorb and follow a dominant legal ideology.

According to Cotterell (2004), studies of legal consciousness are studies of legal culture, and legal consciousness is a theoretical concept bridging law and popular culture. In contrast to the broad and vague notion of ‘culture’, studies of legal consciousness offer a relatively ‘tight and narrow’ research framework. As pointed out by Silbey (2001), legal culture concerns an aggregated and macro-level social phenomenon and legal consciousness usually refers to micro-level social action.

The term ‘legal consciousness’ is defined as ‘*all the ideas about the nature, function, and operation of law held by anyone in society at a given time*’ (Trubek, 1984), or as ‘*the ways people understand and use the law*’ (Merry, 1990) and ‘*the ways in which individuals construct legality*’ (Ewick and Silbey, 1992). Most empirical studies of legal consciousness have been carried out using qualitative methods (Cowan, 2004; Ewick and Silbey, 1998; Hoffman, 2003; Hull, 2003; Nielsen, 2000) or ethnographic methods (Bumiller, 1988; Engle, 1984; Greenhouse, 1986), and have usually involved the discovery and development of theory through the collection and analysis of data. By interpreting individual narratives, these studies have attempted to describe how different social actors experience and make sense of the law.

Studies of legal consciousness commonly abandon the ‘law-first’ perspective. Instead, they examine legal consciousness ‘organically’ (Nielsen, 2000, p.1060), ‘*with eyes not on law, but on events and practices that seem on the face of things removed from law or at least not dominated by law*’ (Sarat and Kearns, 1993, p.55). Rather than confining questions to legal ‘probes’ or limiting interview samples to people who have used the law, a conventional legal consciousness study often starts with questions about respondents’ general problems in everyday life. Respondents are asked to attach their own meanings to these experiences and encouraged to

interpret and define their problems in their own way. A connection with law takes place only when respondents mention it rather than being imposed by the interviewer. E.g., in Nielsen's (2000) study of street harassment and offensive speech, some respondents interpreted their experiences of offensive speech as a personal problem or a social problem rather than as the subject of legal intervention.

Legal consciousness studies attempt to understand law and legality from people's experiences. Although some important studies have explored the legal consciousness of average citizens (Engle, 1984; Ewick and Silbey, 1998; Feeley, 1979; Nielsen, 2000; Yngvesson, 1988), a more conventional approach was to focus on the legal consciousness of particular social groups, especially of socially or legally disadvantaged groups and communities, e.g. working-class Americans (Ewick and Silbey, 1992; Merry, 1990), people who suffer from poverty (Sarat, 1990), people who suffer from racial and gender discrimination (Bumiller, 1988), social activists (McCann, 1994), homeless welfare applicants (Cowan, 2004) and women in the street-level drug economy (Levine and Mellema, 2001). As a consequence, these studies usually ignore subjects in other groups, and variations in the correspondent group.

2.5.2. Legal consciousness of marginalised actors and communities

Ewick and Silbey (1998) have identified three types of legal consciousness - '*before the law*,' '*with the law*,' and '*against the law*'. According to them, these three types of legal consciousness can exist independently or coexist at the same time. They suggested that people who have a 'before the law' consciousness tend to perceive law as something 'objective', 'powerful', and even 'sacred'; people who have a 'with the law' consciousness are more likely to mobilise and manipulate the law for their own advantage; people who have an 'against the law' consciousness, instead, often regard law as a barrier for them to achieve their own goals, and try to distance themselves from or even stand up to the law. From the perspective of people with 'against the law' consciousness, legality is 'something to be avoided' (Ewick and

Silbey, 1998). Ewick and Silbey (1998) and Nielsen (2000) have suggested that socially marginalised actors were more likely than others to express an 'against the law' consciousness, and those people tend to express negative views about the law, as well as to avoid using legal means to deal with their disputes. Busby and McDermont (2012) have pointed out that vulnerable workers, i.e. those who are unable to afford legal representation, and who have no access to trade union representation, are more likely to perceive Employment Tribunals as barriers to justice.

From the perspective of legal consciousness, law is not the only point of reference for interpreting people's attitudes and experiences. Sometimes, legality can be understood in terms of other factors and considerations. Levine and Mellema (2001) showed that women who worked in the drug economy were less concerned with the illegal nature of their behaviour because they had to consider the issues of survival and life in the first place. Morgan (1999) demonstrated that some women chose to waive their rights for filing a sexual harassment claim because they found such litigation might affect their roles of being a wife or a mother. In that sense, Morgan (1999) has argued that, in this case, women's gender socialisation could topple over the legal frames.

Except for focusing on these socially marginalised groups, other studies have extended their reach to non-western communities and societies. Engle (2012) has distinguished a vertical perspective towards legal consciousness from a horizontal one. She has suggested that studies using a vertical perspective trace the flow of legal forms and practices from authoritative centres of cultural production to local settings, where they may be adopted, resisted or transformed. Studies using a horizontal perspective examine various norms, beliefs and practices prevailing within a society through ordinary people's everyday experiences and interactions. Combining both perspectives on legal consciousness is necessary. In that sense, Engle (2005) pointed out that there were two horizontal forms of legal consciousness in Thailand, one produced by the liberal legalism imposed by western culture, and the other rooted in

Buddhist beliefs and practices imposed by the culture of Thailand. The former unexpectedly plays a lesser role in Thai society. Engle (2005) showed that people who experienced injuries in Thailand tended not to perceive their injuries as grievances and to express their claims in terms of rights, remedies and compensation. Instead, they more often relied on a Buddhist religious belief to justify their decision to refrain from the pursuit of compensation.

The well-known study by Kawashima (1963) has revealed the extensive use of informal mechanisms to resolve disputes in Japan. Kawashima (1963) has argued that, for most Japanese people, using litigation was the last resort in resolving disputes, and legal proceedings were only initiated in extremely intractable conflicts. These unique characteristics of dispute resolution, according to Feldman (2007), were associated with the legal culture in Japan, as Japanese people believed that lawyers and courts, which tended to depersonalise disputes, could destroy the social fabric and community order.

Studies of Chen (2007; 2008) found that similar situations exist in rural China. He indicated that the formal legal system played a very marginal role in resolving disputes and maintaining community order in China. Guo and Wang (2003) have argued that there were three competing mechanisms that were often used to resolve neighbourhood disputes in rural China, including: *social networks*, i.e. resolving disputes informally by resorting to families, friends or other members of communities, the *administrative law system (government)*, and the *courts*. Resolving neighbourhood disputes informally by mobilising social networks was the dominant approach in rural China. However, although these studies assume that rural China is rather different from urban China, there was limited empirical evidence to support this assumption.

These studies have engaged with legal culture and legal consciousness in a rather superficial way. Sorting out the direction of causality between ‘culture’ and various other aspects of social, political, and economic life is a difficult task, and the concept

of legal consciousness has not been taken seriously in previous research. More importantly, there has been a tendency to regard cultural explanations as a safety-zone for Chinese scholars. Diverting the focus from the law, the courts and the problematic aspect of labour market regulation, some Chinese scholars have attempted to avoid political incorrectness by arguing that migrant and urban workers come from different cultural backgrounds, and to attribute actual legal inequalities to their cultural differences.

The term 'legal consciousness' has appeared frequently in media, official documents and academic studies in recent years in China. It has become shorthand for interpreting and evaluating the new emphasis on the rule of law in Chinese society (Gallagher, 2006). In many studies, legal consciousness is simply equated with legal knowledge and the use of courts following a linear (low to high) conception (Gallagher, 2006; Wong, 2011). The consensus view regards China's transformation as being from a state of 'low' legal consciousness to one in which legal and rights consciousness is expanding rapidly. According to Gallagher, 'the linear definition of legal consciousness ... is mostly found in contexts where the legal system itself is still under construction in fundamental ways'.

Wong (2011) focused on the legal and rights consciousness of migrant workers and argued that better-educated migrant workers had higher legal awareness than those who were less well educated. She also indicated that knowing one's legal rights increases one's faith in bureaucratic solutions to rights violations.

Gallagher (2006) has adopted the legal consciousness perspective in studying labour disputes in China. She investigated changes in legal consciousness among Chinese workers, and found that their attitudes to '*how well does the law work?*' were more negative than their attitudes to '*how well can I work the law?*' She used 'informed disenchantment' to describe the complexity of the status of legal consciousness of Chinese workers. On one hand, they perceived law as an important means to enforce

their rights, and they were confident in gaining access to justice. On the other hand, Chinese workers had less confidence in the fairness of the legal system.

However, in her study, the interviewees were workers who had been to courts, and they were asked about their experiences and attitudes in dealing with disputes, in particular, about using court procedure. Her study of legal consciousness, adopted a 'law-first' label, which has been criticised by other studies in the area. Thus, its definition of legal consciousness is different from the original meaning which can be found in other western studies. There is therefore a theoretical gap between her studies and mainstream legal consciousness studies.

Several studies have noticed that Chinese rural citizens, including migrant workers, tend to be in a state between 'with the law' and 'against the law'. For example, O'Brien and Li (2006) have suggested that rural citizens tended to conduct 'rightful resistance' to protect their rights. Lee (2007, p.239) noted that migrant workers choose disruptive actions over legal channels to deal with their labour problems, but that they also use legal language to organise and articulate their claims. Su and He (2010) described labour protests as a phenomenon in which workers use the 'street as [a] courtroom' to resolve their problems. These studies have provided important empirical evidence of rural citizens and migrant workers' attitudes and actions in the process of dispute resolution. However, they fail to engage in any theoretical discussions relating to legal consciousness.

A recent study of He et al. (2013) explored the legal consciousness of migrant workers in China and developed Ewick and Silbey's (1998) legal consciousness trichotomy. Focusing on migrant workers who tried to reclaim unpaid wages, the study revealed that, as a subordinate social group, migrant workers' legal consciousness could be described as a state of being 'beneath the law'. According to He et al. (2013), migrant workers often conducted 'disruptive actions' to resolve their problems. They preferred using non-official channels, e.g. collective action and demonstrations to call for attention and elicit a favourable response from the

authorities for ‘strategic, tactical, and pragmatic reasons’. In fact, they were neither playing ‘with the law’ nor ‘against the law’. There is a gap in terms of what the law is between migrant workers’ views and the state’s view. He et al. (2013) claimed that migrant workers were fully aware of their rights, and they even support the law in their mind, but the law and legality were too ‘high’ and beyond their reach. Their study pointed out that ‘technical or cosmetic improvements of the laws and legal institutions’ (He et al., 2013) could not substantially improve the rights protection of migrant workers.

2.5.3. Summary

Legal consciousness studies have suggested a micro-level perspective for examining how individuals construct legality. According to the studies of legal consciousness, legal consciousness not only involves people’s attitudes and beliefs towards law, but also the way people use law. Integrating the two aspects, a legal consciousness perspective should enable us to examine the differences between migrant and urban workers in the ways they understand the law, as well as of how such differences contribute to the paths and outcomes of dispute resolution. The literature on legal consciousness reviewed here demonstrates that the paths adopted by people to resolve their disputes, in particular, their choices of legal or non-legal means, are often associated with their social-economic status. As suggested by Ewick and Silbey (1998), people who were more vulnerable were more likely to have an ‘against the law’ consciousness. In other words, they tended to avoid initiating legal proceedings to deal with their problems and were more likely to choose informal means for a settlement. This argument can also be applied to explaining the legal consciousness of a community or a society. Communities that were marginalised from western society may have their own cultural schema, which could dominate the dispute resolution process.

These studies imply that law has different meanings for different people. The power of the law can depend on individuals’ values and beliefs and on their forms of social

existence. By reviewing relevant studies in China, we noted that the scholarship of legal consciousness studies has been used to interpret social inequalities between rural and urban population and communities. It is commonly believed that rural people are more likely to avoid the legal frame of reference and to choose informal means to resolve their problems. However, we do not know whether such differences exist between migrant and urban workers in the context of work-related injury problems. It is not clear whether migrant workers express an ‘against the law’ consciousness, and whether or how their attitudes to law influence the paths and outcomes of dispute resolution.

CHAPTER 3

METHODOLOGY

This chapter describes the research strategy and methods used in the study. It also explains the rationale for the choices taken in research design, discusses the ethical issues that arose during the research, and reflects on the limitations of the methods that were used. An overview of the respondents' personal and employment backgrounds is presented at the end of this chapter.

3.1. RATIONALE FOR RESEARCH STRATEGY

3.1.1 Case studies

The case study, as a research method, has been criticised on the grounds that results cannot be generalised (Sarantakos, 2005). Yin (2003) has responded to this criticism by distinguishing between statistical generalisation and analytic generalisation. He has highlighted the strength of case studies in terms of their potentials for analytical generalisation, i.e. their use in expanding and generating theories. According to Yin (2003), a case study cannot necessarily guarantee the statistical representativeness of research findings to a larger population that has been sampled, but is important as an exploratory tool to understand the context, and to gain insight into a particular phenomenon.

As discussed in Section 3.2.2 below, Dongguan was chosen as the site for data collection for both scientific and pragmatic reasons. Although it could be risky to generalise the research findings of the Dongguan case to other cities in China, or to China as a whole since the specific local context of Dongguan may not be representative, particularly of cities that are less industrialised, pursuing statistical generalisation is not the main purpose of this study. By using the case study method, this study has shown that, in the specific social and economic conditions of Dongguan, the problem of claims and disputes relating to work-related injuries is

clearly evident, and this case provided rich material and robust empirical data which should enable readers to understand the differences between migrant and urban workers in the ways in which these work-related injury problems are resolved. In that sense, using the case study method has not limited the value of this research.

3.1.2. Multi-strategy research

A multi-strategy research design, also known as multi-methods (Brannen, 1992), mixed methods (Creswell, 2003), or mixed methodology (Tashakkori and Teddlie, 1998), integrating quantitative and qualitative methods, was employed in this study. There have been some debates about whether two modes of research strategies can be adopted into a single research design, which have raised both epistemological and technical issues (Bryman, 2004, p.454). The epistemological critique claims that there are distinct and incompatible epistemological positions and paradigms embedded in quantitative and qualitative research, which make a multi-strategy research design impossible (Guba, 1985; Morgan, 1998; Smith, 1983). Others claim that such a strategy is applicable as research methods are fundamentally autonomous (Bryman, 2004, p.454). Although there are many critiques of using quantitative methods in case studies, Yin (2003) argued that combining quantitative and qualitative methods is feasible and important in the light of analytic generalisation.

This study aims to describe and explain differences in the ways in which migrant and urban workers deal with their work-related injury problems. The quantitative strategy, exemplified in the questionnaire survey, uses a deductive approach to explore the different aspects of claiming and disputing. At the same time, the qualitative approach, employed in the in-depth interviews, seeks to investigate a number of issues in an inductive way: how arbitrators, judges and employers perceived their roles and handled work-related injury problems in practice, what respondents' attitudes to the legal system were, how individual workers made sense of their experiences, etc. In this study, a multi-strategy is used, mainly because quantitative and qualitative methods can be used to answer different research questions.

Combining quantitative and qualitative research is not only feasible, but also has many advantages for this study. In particular, questionnaires and interviews complement each other, enhancing the reliability and validity of research findings, and making the most of limited research resources (Creswell et al., 2003; Jick, 1979; Webb et al., 1966).

3.1.3. *Studying China from the UK*

Based at the University of Edinburgh, this thesis attempts to explore a socio-legal topic of some importance in contemporary China. A cross-cultural approach has many advantages for research. On the one hand, learning experiences in the UK expanded my view of law and society studies. Studying the relevant literature in the UK, USA and Europe made me aware of debates in studies of access to justice, the process of claiming and dispute resolution, of labour market segmentation, and of legal culture and legal consciousness, which has triggered my theoretical interests. By reviewing Chinese literature, I obtained necessary knowledge of the subject and gained insights into the social realities of contemporary China. On the other hand, my research training at the University of Edinburgh provided a methodological grounding in how to conduct a piece of social science research according to the academic standards that apply in the UK, which are more strict and comprehensive than I would have encountered in China. By taking data collection and data analysis courses, I was trained to master a variety of quantitative and qualitative research methods.

This approach, however, brings many challenges. Bridging the gap between the western and Chinese studies has been one of them. As shown in chapter Two, the western and Chinese literature has quite different theoretical and policy interests, I needed to be sensitive to both western and Chinese scholarship and to the connection between them. Meanwhile, there were many methodological issues which needed to be addressed before and during my fieldwork. Socio-cultural differences needed to be taken into account, and ‘local knowledge and experience’ of the field needed to be

comprehended. To make the most of the opportunity of studying a Chinese topic in the UK, I needed to keep in mind the differences between UK and China in terms of the requirements.

3.2. RESEARCH DESIGN

3.2.1. *First-hand information*

Rather than relying on secondary data from official reports or previous studies, I decided to collect first-hand information on Chinese workers' experiences in resolving their work-related injury problems. This is because official data is insufficient and only reveals the tip of the iceberg of the true level of labour disputes in China (Cooke, 2008). Empirical evidence about claims and disputes involving work-related injuries is quite limited, and is usually collected through a 'top-down approach', which involves government-oriented criteria. Most of the available data regarding labour dispute resolution and work injury compensation claims are concerned with the ways in which courts deal with disputes, rather than the ways in which individual workers deal with their problems. Although the data for insured workers who had suffered from work-related injury problems were usually recorded by the local labour bureau if the administrative redress procedure was initiated, there was no way to get access to them. The issue of industrial accidents was regarded as a sensitive issue. Only aggregate data such as the total number of industrial accidents and expenditure from social insurance funds were open to the public and these could not be used for quantitative analysis at the individual level. In addition, official data which is available can be misleading, and I have no control over data quality (Bryman, 2004, p.206). In addition, data concerning uninsured workers' compensation was not always formally recorded as many of them achieved a resolution without the government being aware of it. Since using secondary data was not the best strategy in this study, collecting first-hand information was the only option.

3.2.2. Fieldwork background

(1) Focusing on work-related injury problems

The study does not aim to describe the broad landscape of claiming and disputing, but puts one type of problem, namely work-related injury problems, under the microscope. In China, the term ‘labour dispute’ refers to disputes involving employment contracts, unfair dismissal and redundancy, benefits and social insurance, leave, working hours, etc. In spite of a variety of legal issues that are raised and the different procedures that are adopted, the term ‘labour dispute’ is viewed as a single entity in most studies. Previous studies have suggested that there is considerable variation in the objectives as well as strategies taken to deal with different types of legal problem (Engle, 1984; Genn, 1999; Miller and Sarat, 1980-81). This conclusion is based on research carried out in the UK and the USA, and may not be applicable in the Chinese context, but it highlights the importance of recognising such variations in research design. To reduce errors, this study only focuses on problems following injuries resulting from workplace accidents not from occupational illnesses.

Studying work-related injury problems has considerable social significance. Workplace accidents and industrial injuries are global issues. As the ‘world factory’, maltreatment in sweatshops and poor working conditions in China are well documented in the literature (Chan, 2001; Gallagher, 2005; Ngai, 2005). In 2010, 1.14 million workers were officially identified as having had work-related injuries, causing the death of 79,552 people (State Administration of Work Safety, 2011). Industrial workers in China commonly experience problems resulting from work-related injuries. Also, among all the types of labour disputes, work-related injury disputes rank second in terms of their frequency in China (Cooke, 2008; Friedman and Lee, 2010).

Although the *Regulation on Work-related Injury Insurance* has specified that ‘*the contraction of an illness as a direct result of the employee’s working conditions*’ shall be treated as work-related injury, the nature of occupational diseases, i.e. physical injuries caused by conditions and/or ailments that arise from longer-term harm, is quite different from other types of work-related injury, in particular, those physical injuries caused by one-off industrial accidents.

In the USA, to be covered by workers’ compensation, an injury does not need to be caused by a sudden accident (such as a fall or malfunctioning equipment). In the UK, an employee injured at work can not only claim no-fault social security benefit from the state under the industrial injuries scheme, but can also claim damages from the employer if liability in tort can be established (Lewis, 2012). This is because the UK has placed certain clear duties on employers to take proactive measures to avoid harm across a wide potential spectrum (i.e. through risk assessment). In China, employees who suffer work-related injuries caused by one-off accidents are eligible for work-related injury insurance. However, such injuries have often been differentiated from occupational diseases in some official documents because of their different nature rather than because there is any basis for imposing liability on an employer. For example, in the regulation which specifies the standard for identifying an employee’s work ability, i.e. *the Gradation of Disability Caused by Work-Related Injuries and Occupational Diseases*, occupational diseases are treated as an exceptional form of work-related injuries. It should be noted that this study mainly focuses on injuries caused by one-off accidents rather than on occupational diseases.

(2) The field: City of Dongguan

According to Stake (2003), the most important criterion in choosing a single case is whether the researcher can gain good access to it, and whether it can ensure the researcher’s ‘opportunity to learn’. Dongguan was chosen as the location for data collection for both scientific and pragmatic reasons. Dongguan is a city which epitomises both economic success and social problems. Studies suggests that there is a close relationship between the economic success of the ‘world’s factory’ and the

concentration of a very large number of migrant workers there (Chan, 2010). As a city in the central area of the Pearl River Delta, Dongguan is regarded as being the core of the ‘world’s factory’. The annual GDP of Dongguan is 424.6 billion CNY, half of which is contributed by manufacturing industry (Bureau of Statistics of Dongguan, 2011) and the city is known as a major manufacturing hub in China, which specialises in electronics, telecommunications equipment and furniture (Bureau of Statistics of Dongguan, 2011). The population of Dongguan is 8.28 million, including 1.87 million residents with urban Hukou (Bureau of Statistics of Dongguan, 2011). The rest of the population, which is referred to as ‘the floating population’, largely consists of migrant workers, and migrant workers account for the greater part (70 to 80 per cent) of the labour force of Dongguan (Chan, 2009).

Dongguan is the ‘pilot zone’ for many national and regional social and legal reform projects, e.g. work-related injury insurance reforms, minimum wage schemes and work-related injury rehabilitation schemes. Labour problems have become one of the most prominent social problems in this area. As Dongguan deals with a massive number of labour problems every day, the municipal court is regarded as ‘the busiest court’ in China (Southern Weekly, 2008). Dongguan provides a rich setting for investigating issues relating to both migrant workers and labour problems.

(3) Focusing on the manufacturing sector

The manufacturing sector was chosen for the following reasons. First, primary manufacturing is the main industry of Dongguan. Mechanical failure, fatigue and improper operation of machines result in a large number of work accidents and injuries, which provide many cases that can be looked at. Compared to other sectors, the nature and extent of work injuries occurring in the manufacturing sector displays a higher degree of homogeneity, involving hand or arm injuries (Xie *et al.*, 2005). Second, the *Classification of National Economic Industries* (National Bureau of Statistics, 2013) divides industries into three types: low-risk, medium-risk and high-risk industries. According to the *National Risk Categorisation of Occupational*

Injury Insurance of China (Ministry of Human Resources and Social Security¹⁶, 2003), three levels of risk have been differentiated and firms are required to pay one of three different levels of work injury insurance premiums. The manufacturing sector belongs to the medium-risk category. Compared with low-risk industry, such as the finance, retailing, cultural and education sectors, which employ fewer migrant workers, focusing on manufacturing is a better way of comparing the differences between migrant and urban workers. Unlike high-risk industries, such as chemical, mining and smelting sectors, which would be difficult or even forbidden for researchers to access, working with people in the manufacturing sector has many advantages in terms of feasibility.

3.3. DATA COLLECTION

3.3.1. Questionnaire survey

(1) Sampling

This study is interested in workers' experiences in dealing with their work-related injury problems. Although the absolute number of industrial accidents is high, such incidences were only experienced by a narrow range of the population. To effectively reach the target population, i.e. workers attempted to resolve their problems through different claiming and disputing mechanisms, questionnaires were distributed in multiple locations, including: local labour bureaux, the court and two hospitals.

The municipal court of Dongguan, two labour service centres in the counties of Xiagang and Wusha, and two arbitration committees within the labour bureaux in the towns Chang'an and Humen, were visited during the period from May 2010 to

¹⁶ The Ministry of Labour and Social Security is the predecessor of the MOHRSS. In 2008, the Ministry of Labour and Social Security and Ministry of Human Resources were combined and MOHRSS was established.

September 2010. As there is only one municipal court in Dongguan, it is not necessary to justify the choice. There were not many differences among the different arbitration committees in terms of the way they worked, the two committees were chosen mainly for the convenience of transportation. The case for labour service centre is similar. In Dongguan, there were some hospitals which were designated for treating victims of industrial accidents. The two hospitals were chosen to target manufacturing workers by the local government. Access to the two hospitals was gained through an introduction by the court.

A random sample was not feasible for this study. In order to do so, I would have had to distribute questionnaires to a wider population, which would have consumed much more time and money than I could afford. However, by using a convenience sampling strategy, some groups in the population are inevitably under-represented. For example, respondents who had taken no action to deal with their problems were significantly under-represented, including workers who did not perceive their injuries as severe enough to do anything about, and workers who had left Dongguan when they experienced work-related injuries. Respondents who achieved a resolution through private negotiation were also probably under-represented since they were less likely to approach the labour bureau or the court to seek help.

In this study, the limitation that the sample may not have been representative for certain types of respondents may have affected the validity of the findings. When analysing questionnaire data, these limitations should be borne in mind. It would undoubtedly be better if future studies were based on a random sample of injured workers, although this would require more funding and more time than were available to me.

(2) Administration

In most cases, the survey was administered as a self-completion instrument, as this was cheaper and quicker to administer, and avoided interviewer effects (Bryman, 2004, p.133). There were a few exceptions e.g. when the respondents were unable to complete it on their own due to health problems or literacy difficulties, and, in these cases, the questionnaires were administered as structured interviews.

The survey period was divided into two stages. The first wave of the survey was conducted by myself from May to August 2010. During that period, 356 questionnaires were distributed and this generated 118 valid questionnaires. As the basic rule of thumb for a quantitative study is that increasing the sample size increases the reliability of its findings, after I left Dongguan, questionnaires continued to be distributed from August 2010 to June 2012 in the courts, labour bureaux, and hospitals. Four receptionists assisted this project voluntarily and helped me to distribute questionnaires to some of the respondents and to collect the returned questionnaire. This proved to be an effective way to increase the sample size, as 173 valid questionnaires were collected after my departure.

The problem concerns the response rate. As the helpers failed to provide an accurate number of the total questionnaires that were distributed, it was impossible to calculate the response rate for the second wave of survey. Although the response rate of the first wave survey was 33 per cent, the response rate for the whole survey is uncertain. The response rate is important, as it can be viewed as an indicator of the quality of data and the accuracy of survey results (Aday, 1996; Backstrom and Hursh, 1963). Thus, a low response rate is often associated with sampling bias while a high response rate can insure that missing data is randomly distributed (Altman and Bland, 2007). If I had the chance to do this research again, I would stick to the strategy of using helpers to collect the data but pay more attention to effective communication and ensure that helpers were informed, in a clearer way, about the need to keep a record of the number of questionnaires that were distributed and returned.

(3) Questionnaire design

Dillman et al. (1993) showed that shortening the questionnaire and making it more respondent-friendly could improve the response rate. Asking respondents difficult questions, e.g. their social security number, would probably have lowered the response rate. In this study, all the questions were closed-ended and included yes/no questions, single-choice questions or scaled questions, which are easier for respondents to understand and answer.

The questionnaire focused on four main issues: respondents' personal characteristics, their employment situation, their experiences in dealing with work-related injury problems, and their attitudes toward the law and the legal system. Accordingly, questions were designed to address the relevant theoretical debates on the dual legal systems, labour market segmentation and the issue of legal consciousness.

In the section on personal information, respondents were asked to provide their Hukou status, Hukou location, age, gender and educational attainment. In the section on their employment situation, the questions asked included: the type of contract provided by their employers, their skill level, their wage rate and payment arrangements, their average weekly working hours, the type of enterprise they worked in and whether they were members of a trade union.

Questions concerning the ways in which respondents dealt with work-related injury problems as well as their outcomes, in particular, whether they have taken any action for their problems; and if they had, whether they attempted to claim insurance or seek compensation from their employers. Respondents were also asked whether their problems were resolved through bilateral negotiation with their employers, through mediation involving a third party, or through adjudication by arbitrators or judges. Respondents' outcomes were assessed using the question: '*was this more, less or about the same amount of money as you had hoped for?*' using a 5-point scale: (much less than hoped for; a bit less than hoped for, about the same, a bit more than

hoped for, and much more than hoped for). When designing these questions, in particular those concerned with the third issue, the questions used in the *Paths to Justice* studies (Genn, 1999; Genn and Paterson, 2001) and the *English and Welsh Civil and Social Justice Survey* (Pleasance et al., 2006; 2010) were used, with some minor modifications to better align them to the legal and social context in China.

Respondents' attitudes toward the legal system were assessed in terms of their answers to three questions in the survey, which were also used in the *Paths to Justice* studies (Genn, 1999; Genn and Paterson, 2001) and the *English and Welsh Civil and Social Justice Survey* (Pleasance et al., 2006; 2010). The levels of agreement or disagreement of respondents with the following four statements were measured using a 5-point scale (strongly agree, agree, neither agree nor disagree, disagree, strongly disagree): '*Courts are an important way for ordinary people to enforce their rights*'; '*People should resolve their problems within their family or community, not by using lawyers or courts*'; '*If you went to court with a problem, you would be confident of getting a fair hearing*'. The answers to these questions are helpful in understanding respondents' impressions and attitudes towards the court and the legal system, which are explored in Chapter Six. The following set of questions asked respondents about whether they had sought any advice on the claiming and disputing process; and if they had, what types of advice they expected from advisors.

The questionnaire, both the Chinese version and the English translation, can be found in Appendix One.

3.3.2. Qualitative interviews

(1) Interviews with injured workers: sampling and administration

Interviewees were selected from respondents to the questionnaire survey through a purposive sampling strategy. At the end of the questionnaire, I enclosed my contact

details and invited respondents to participate in a follow-up interview. Between June 2010 and August 2010, 22 respondents participated in the in-depth interviews. Qualitative interviews usually require a flexible and iterative approach in sampling and data collection (Maxwell, 2008). According to Marshall (1996), an appropriate sample size is one that can reasonably address the research questions, which is known as a theoretical sampling strategy. In this study, this sample included two workers who had taken no action to resolve their problem, eight workers who had attempted to claim insurance, and twelve workers who had sought compensation from their employers through a variety of mechanisms. In terms of respondents' Hukou status, it included fifteen migrant workers and seven urban workers. The sample was enough to provide useful information on workers' strategies and attitudes for resolving their work-related injury problems, and for making sensible comparisons between migrant and urban workers.

As many interviewees were suffering from injuries, priority in choosing the interview sites was given to health and safety issues. Interviews were conducted at the workers' convenience, in most cases, in hospital wards and interviewees' dormitories.

Interviews with workers sought to explore migrant and urban workers' cultural attitudes towards the law, and to test whether they were different, to probe how they may have influenced the paths or outcomes of their claiming and disputing. The following questions were asked:

'How do you perceive your injurious experience?'

'Who should be blamed?'

'What are you actually pursuing in this case?'

'What actions have you taken to deal with the problem?'

'What kinds of difficulties have you encountered?'

'What was the outcome, and what do you think about it?'

'If you faced the same situation again, what would you do?'

(2) Interviews with judges, arbitrators and staff in labour service centres: access and administration

I spent two weeks in each of the two labour service centre (Xiagang and Wusha) observing how staff handled workers' complaints and helped them to resolve their problems. The heads of the centres were interviewed and shared their thoughts about their work and how migrant and urban workers were treated in practice. Working files and reports were also inspected. Another two weeks were spent in two branch-bureaux, in particular, the two arbitration committees. Two arbitrators were interviewed to get a better understanding of their work and attitudes. Then I worked in the municipal court for three weeks, collected first-hand information about how courts dealt with work-related injury problems, and interviewed the chief judge and two judges from the civil tribunal. During the interviews, I found that judges, arbitrators and staff in the labour service centres tended to provide answers with a high degree of homogeneity. That is to say, common topics and similar issues appeared across them. Saturation point was achieved after seven interviews. Thus, a total of seven qualitative interviews were carried out.

Building rapport with respondents was very important, as trust and respect are helpful in establishing a safe and comfortable environment for respondents to share their personal experiences and attitudes (DiCicco-Bloom and Crabtree, 2006). Before conducting the interviews, I spent several days doing some peripheral work, including reading files, observing daily activities and discussing cases with respondents. In this way, rapport was built up between the respondents and me. This also provided me with an opportunity to get a general idea of how they dealt with problems and to get familiar with their working style. After that, the actual interviews were carried out.

Morton-William (1985) has noted the importance of choosing a place which guarantees that respondents can speak freely. In the study, I was interested in hearing interviewees' stories and in understanding the attitudes and opinions that were embedded in their daily legal practices. They were the key parties in terms of knowledge and experience. However, they were also subject to organisational commitments and peer pressure. To encourage them to speak freely, the interviews were usually conducted in the tearoom or a cafe away from their work sites and out of working hours. It turned out that keeping distance was helpful for ensuring confidentiality and for creating a relaxed and friendly atmosphere.

For interviews with the staff of labour service centres, arbitrators and judges, a series of open-ended questions were asked to explore their experiences of dealing with work-related injury claiming and disputing procedures, and their attitudes toward migrant and urban workers. These interviews sought to assess whether the practices of these legal institutions had created inequalities between migrant and urban workers in terms of the paths and outcomes of claims and disputes. These questions were the following:

'Please describe your role in resolving work-related injury problems/disputes or labour problems/disputes in a general.'

'How important is the role of the law and regulations in your work?'

'How do work-related injury problems/disputes differ from other types of labour problems/disputes?'

'How do you usually deal with such (work-related injury) problems/disputes? Please describe the standard procedure.'

'What are main challenges in the process?'

'Do you always treat the claims from migrant and urban workers in the same way? If not, please explain what the differences are, as well as the reasons.'

(3) Interviews with mediators in firms: sampling, access and administration

Permission was obtained in advance through initial contacts. In the beginning, there were 30 firms who agreed to be interviewed. However, only 21 of them fulfilled their promise. In the end, I interviewed four human resource managers, eight heads of internal mediation committees and nine appointed mediators from the 21 enterprises. These enterprises were selected to cover all types of ownership. Among the 21 interviewees, six were from SOEs, eight from domestically-owned private enterprises, four from foreign-owned enterprises and three from collectively-owned firms. The study attempted to focus on small and medium size enterprises, which are the major forms of business in Dongguan. However, the size of SOEs is often larger than other types of enterprises. As previous studies suggest that the size of the firm could affect the outcome (Saridakis et al., 2008), one limitation of the sample is the variation in the size of these enterprises.

A summary of the questions that were asked was sent to the interviewees in advance of my visit, so that they could provide accurate data in advance. Attempts were made to ensure that interviews were conducted in a 'neutral' place (Krueger and Casey, 1994). Some interviews were conducted in the conference room or a spare office in the firm's headquarters, while others took place at work sites with the interviewee's agreement. Most interviewees provided supporting documents, such as the Corporate Annual Report, Insurance Report, Personnel Guideline, Labour Dispute Mediation Handbook, and Employee Handbooks during the interview. Interviews with mediators sought to find out how firm-level practices, especially the provision of work-related injury insurance, and internal dispute resolution forums affect the way in which migrant and urban workers deal with their problems. The following questions were asked:

'Does your enterprise provide work-related injury coverage for all employees?'

'If not, why not? And how is this arranged? Who would be given priority, and who would be on the 'waiting list'?''

'From the perspective of human resources management, do you find any differences between migrant and urban workers in your enterprise?'

'What is your opinion on the statutory regulation concerning labour protection, in particular, the regulations on the work-related injury insurance? Are they all necessary or reasonable?'

'How do you perceive work-related injury problems/disputes, and how do you often handle them?'

'Has your enterprise set up any internal dispute resolution forum? If yes, please provide more details about this forum. If no, please explain the reasons.'

'Has your enterprise laid down any internal grievance procedures? If yes, please provide more details.'

'When handling worker's complaints of work-related injury problems, do you take the same strategies in all cases? Or do you differentiate situations case by case, or by individual employees?'

Semi-structured interviews were chosen because, first, I had a rather clear focus at the beginning of the data collection and this theoretical perspective provided guidance for the study. Second, a semi-structured interview meant that the interviewer could have control over the interview to achieve more effective communication. But unlike a structured interview, a semi-structured interview enabled respondents to tell their stories in a more flexible way. For examples, judges and arbitrators were asked to explain the ways in which they reinterpreted 'problems' as 'cases' under the legal framework, to explain any differences in the ways they dealt with migrant and urban workers' cases and to describe the constraints and pressures which may have influenced their decision-making. Workers were encouraged to share their views on how they made sense of their injurious experiences. The process of interviews was largely pre-set, but was open-ended. The semi-structured format ensured that hypotheses could be tested while respondents' insights on the themes of the investigation could also be included (Drever, 1995).

Three interview guides, which were prepared in advance, listed the questions to be asked. However, the order in which these questions were asked varied in each

interview, and the topics discussed were not confined to these guides. In addition, I used a digital voice recorder to record all the 50 qualitative interviews, and all the respondents were informed about this in advance.

3.4. DATA ANALYSIS

3.4.1. Quantitative data analysis

Questionnaire data were first typed into Microsoft Excel, and then analysed using SPSS. The majority of data obtained from the questionnaire survey are derived from categorical variables. To measure the association between two categorical variables, the chi-square test was used.

A chi-square test is mainly used for hypotheses involving categorical variables. To test the null hypothesis that two variables are independent, the χ^2 statistic is calculated by squaring the difference between each expected count and the corresponding observed count, dividing by the expected count and summing these results over all categories. The χ^2 test statistic measures by how much the observed values differ from the expected ones.

The value of the test statistic is:

$$\chi^2 = \sum_{i=1}^n \frac{(O_i - E_i)^2}{E_i}$$

O_i = an observed frequency;

E_i = an χ expected (theoretical) frequency, asserted by the null hypothesis;

n = the number of cells in the table.

The common rule of significance is that, when the p-value (χ^2) is less than 0.05; the null hypothesis that the two variables are independent can be rejected.

It should be noted that the results of chi-square tests only make sense when the size of the dataset is large enough. Although there is no commonly accepted rule in terms of how large the sample needs to be for yielding accurate inferences, most studies recommend that the chi-squared test should not be used if the sample size is less than 50. This study follows this convention.

3.4.2. Qualitative data analysis

(1) Transcription approach

Transcription is important in qualitative data analysis. Around the issues of whether nonverbal cues and emotional aspects should be incorporated into transcribed text, there is much debate. Accordingly, transcription practices are classified into two dominant modes: *naturalism* and *denaturalism* (Poland, 2002). In a naturalistic approach, the transcript reflects a verbatim depiction of speech and non-verbal details should be transcribed as much as possible (Oliver et al., 2005). A denaturalistic approach insists that within speech are meanings and perceptions that construct the reality (Cameron, 2001). Thus, the emphasis in transcription should be placed on the accuracy of the substance of the interview. In this research, denaturalistic approach was adopted for transcription.

(2) Translation

Since the interviews were carried out in Chinese, a key methodological challenge involved the translation of Chinese into English before analysis. A meaningful translation of the original version of the questionnaire required someone not only to ensure overall conceptual equivalence but also to consider vocabulary, idiomatic and

syntactic equivalence (Sekaran, 1983). Brislin (1980) has suggested using simple sentence structures as well as clear and familiar wording as much as possible to facilitate translation. In addition, by adding necessary context for difficult phrases, the researcher is able to clarify the intended meaning. Otherwise, inferential errors might be introduced in cross-cultural studies (Singh, 1995).

It was also thought that using two independent translators would increase the chances that the original meanings could be retained, increase literal accuracy and help to detect mistakes more effectively. In this study, two persons translated the 50 transcripts from Chinese to English, one was me, and the other was a Chinese student in the School of Education at the University of Edinburgh, who specialises in TESOL. She offered this help as a volunteer. However, some studies cast doubt on using more than one translator as it does not guarantee overall conceptual equivalence as the translator's understanding of a concept may vary (Peng et al., 1991). To ensure that the other translator had the same conceptual understanding of the topic as me, the aims and key concepts of the study were fully communicated to her in advance. In the end, I went through all the transcripts completed by her. Where we had disagreements in terms of the way of translations, we discussed them, and I made the final decision.

Although most interviewees spoke in Mandarin, a few of conversations contained a few Cantonese words and sentences. To ensure a correct understanding of them, I consulted some students familiar with Cantonese.

(3) Thematic analysis

In analysing the empirical material, a thematic analysis approach was employed. The main task in analysing interview data involved 'identifying, analysing and reporting patterns (themes) within data.' (Braun and Clarke, 2007). The key task in the process concerned data reduction, which involves simplifying, abstracting and exploring the

data (Miles and Huberman, 1994). Different from content analysis, another major approach for analysing qualitative data, which involves a systematic coding and categorising approach to determine pattern, frequency, relationships, structures and discourses of communication (Gbrich, 2007; Pope et al., 2006), thematic analysis aims to identify common threads that extend across interviews (DeSantis and Noel Ugarriza, 2000).

This choice was made because, in this study, qualitative evidence was mainly used to test hypotheses rather than to generate conclusions. In particular, qualitative evidence was used to enrich and complement quantitative findings. The main interests for using qualitative data were to provide a detailed account of respondents' experiences and opinions, and to explore who said what, and why they said it. Also, the sample size for the qualitative interviews was rather small. It was impossible and unnecessary to use a systematic coding frame.

(4) Using a CAQDAS package-Nvivo

In the study, I engaged with Nvivo in terms of the ongoing data administration task but did not rely on it to analyse the data. In other words, I used Nvivo to familiarise myself with the data, generate initial codes and search for themes, but not to define and name themes. Due to the relatively small size of the data set, the study used Nvivo to code texts and restore files while some other tasks, e.g. writing memos/notes and identifying themes, were carried out manually. In this way, using Nvivo made data management more simple, reliable and efficient. But, as pointed out by its opponents, using software like Nvivo can affect the independent role of researchers by guiding them in a specific direction (Seidel, 1991), and/or by creating a distance between the researcher and the data (Barry, 1998). I believe that these limitations were overcome by combining computer and manual methods in the study.

(5) Quotation from interviewees

There are 50 individual interviewees in total. A list of interviewees is provided in Appendix two, three and four, detailing their background, including their gender, age, position, the type of legal institutions or enterprises they work for, as well as their code name in this study. I quoted conversations from 45 of interviewees. Although I tried to quote as many as possible to include a wide selection of interviewees, five interviewees were not quoted, including one mediator from an SOE, one mediator from a foreign-owned enterprises, one migrant worker and two urban workers. This is because, on the one hand, some interviewees were more expansive and revealing than others. The conversations with them, which were more interesting and important than with some other interviewees, were more likely to be quoted. On the other hand, as conversations with some interviewees did not provide any new or helpful information for addressing the research questions, they were not quoted in chapters Four, Five and Six.

3.5. ETHICAL ISSUES

In the study, working with injured workers and prestigious organisations posed a number of ethical challenges. In addition, the cross-cultural context led to ethical dilemmas. Due to the different social, cultural and political conditions, the ethical guidelines, primarily designed for research conducted in western countries, had to be reconsidered in the Chinese context. This reconsideration focused on issues of informed consent, confidentiality and anonymity, and power, etc.

Completion of School of Social and Political Science's Self-Audit Checklist for Level 1 Ethical Review failed to reveal any readily foreseeable ethical risks that could arise in relation to questions I asked in the survey. It turns out that there are seven children completed the questionnaire. I only discovered this when I analysed the data. By that stage, I could do nothing about it.

3.5.1. Informed Consent

Obtaining respondents' informed consent could guarantee the moral correctness of research (Marzano, 2007). In this study, a copy of a consent form setting out the aims of research, explaining the principles of confidentiality and anonymity, and containing a blank space which required their signatures at the beginning of the interview, was given to all interviewees.

It should be noted that, in China, the use of consent forms in social research practice is quite rare. In this study, most workers were happy to sign it without even glancing at its content. Ignoring the issue of confidentiality was common among worker respondents. They were more likely to use the interview as an opportunity to share their experiences of injury and to express their grievances. On the other hand, respondents from legal institutions, especially judges and arbitrators, often refused to sign the consent form after reading it carefully. Most of them preferred an oral agreement rather than a written form, as they felt '*uncomfortably restricted by that*' (A1). It was surprising to find that judges and arbitrators were so wary of using contracts to protect their rights, probably due to their hidden worries of being traced. In the circumstances, the consent form lost its original meaning and in order to carry on the interview, a small proportion of respondents did not sign the consent form.

Another ethical issue was to decide what extent of information about research to provide to those who participated in the study, which aimed to explore inequalities in claiming and dispute resolution. If one would have pointed out the aim explicitly, the request would have had a greater chance of being rejected, or the participants' responses could have been affected by it. Some researchers have argued that if information could result in a change in participants' behaviour, then it is not always appropriate to provide information to them (Homan and Bulmer, 1982). To solve the problem, the aims of the research were communicated to interviewees in a general way. For example, the labour bureaux and courts were informed that the research focused mainly on how they processed work-related injury problems and how they

interpreted the law. Firms were asked to share their experiences of allocating resources and taking measures to deal with labour problems and disputes. During the process, information about the research was delivered to them in a general sense without specifying my research questions, so that a balance between conformity with ethical guidelines and ensuring data validity could be achieved.

3.5.2. Confidentiality and ambiguity

All personal details of the respondents have been treated as confidential. The names of respondents in the questionnaire survey and of all the interviewees are pseudonyms. In some cases, minor amendments have been made to the details of their cases and to employment information in order to ensure anonymity.

(1) Access and Guanxi

In China, researchers are difficult to gain access to the government or the courts without any *guanxi*, i.e. social relationship or connection. The strict but sometimes unwritten rules embedded in China's political environment require that gatekeepers cautiously filter out any unwanted outsiders without *guanxi*. For a researcher with an overseas background, gaining access is even more difficult.

In the study, I obtained access to the court via an introduction from Professor Xin Xu. I was one of his students when I was doing my undergraduate degree in law. He had cooperated with the municipal court of Dongguan to produce reports on the topic of labour disputes and the justice system (Chen, 2009; Xu, 2009; Xu, et al., 2009a; 2009b). My fieldwork quickly got strong support from the court. I was given access to most of the case profiles, periodical work reports, conference minutes, electronic datasets, and even some 'confidential' files, etc. Access to the local arbitration committees and labour service centres was gained through introductions from the court staff. The snowballing introduction turned out to be a very efficient and

convenient way of building contacts with potential respondents, and was helpful in building a sense of trust between researcher and respondents.

A researcher with *guanxi* has many advantages but also risks being in a dilemma. Compared with the freedom I was given regarding data collection, restrictions and boundaries could be less visible. One has to pay careful attention to independence in these circumstances. Also, due to the absence of any ethical guidelines for conducting social research in China, how a researcher acts in courts and governments is uncertain, and is depended on the researcher's moral compass. This highlights the importance of appropriate trainings and oversight in the responsible and ethical conduct of research to postgraduate students.

(2) Imbalance in power relation

The power imbalance between the researcher and workers was another ethical issue. On one hand, since most respondents had physical injuries and/or grievances, the interview could have caused them physical inconvenience as well as anxiety and distress. On the other hand, workers might consider a researcher with an academic background in law or social science as a powerful role. Sometime, as they wanted to seek advice, to express their grievances, or just to get some emotional support from the interviewer, there was a chance that the respondents would exaggerate their situations concerning injuries and disputes.

In China, government agencies are more concerned with how the work is presented, and whether the research findings are politically correct than with whether the interviews were transcribed properly. If the research relates to a sensitive area such as human rights, social disturbances, corruption, judicial injustice, etc., the concerns will be more serious. Even when one has been approved to collect data at the outset; there is still a considerable chance that the 'ownership' of the data and publication, and the researcher's academic career will be affected for unforeseen political reasons.

The researcher may have to face a number of dilemmas: how to let the data speak for the truth without creating extra trouble, how to deliver the social facts in an honest but politically ‘acceptable’ way, or how to express ideas independently and critically, but avoiding crossing the line. Sometimes, the researcher even needs to ‘take a side’ as being independent can put the researcher at risk (Becker, 1967).

For researchers studying in foreign settings, a critical issue is how to deal with the cross-cultural issues. The ethical guidelines need to be reconsidered in the light of *guanxi*. The issues go beyond ‘Does *guanxi* work?’ or ‘Should academics use *guanxi*?’ For me, ‘how to use *guanxi* in academic research?’ was more important than simply asking ‘is the practice of *guanxi* ethical in academic research?’. *Guanxi* suggests that individuals must interact, exchange some favours and benefits, and work over time to establish and maintain relationships. It may also constitute an informal network allowing individuals to bypass the inefficiencies inherent in regulation or in a bureaucracy (Xin and Pearce, 1996). Fieldwork experience of this study suggests that a researcher with an overseas background should make contact with potential respondents as early as possible. When interviewees are government agencies or other authorities, researchers need to build a relatively long-term relationship with them. This is important for building trust and credibility, and is also helpful for gaining access. However, there are many forms of *guanxi* and researchers should be wary of those forms of *guanxi* which may violate fundamental ethical principles and cause psychological harms to respondents.

In addition, personal involvement and mental health of academic researchers in the field needs to be given more attention. Challenges from different cultural and political environments could lead to anxiety, discomfort and frustration, etc. To better cope with such challenges, researchers should have regular contact with their supervisors, colleagues or others in his/her own institution and get professional support from them when needed. In addition, these issues should be taken into account at the stage of research design, rather than left until the researchers are already in the field.

Nowadays, many Chinese students are studying overseas. Meanwhile, more and more foreign researchers are becoming interested in social problems in China. I believe these methodological issues will be taken seriously in the future though seminars, workshops or conference.

3.6. AN OVERVIEW OF RESPONDENTS

This section first outlines the profiles of survey respondents, as shown in Table 3.1. A statistical breakdown of each variable is presented according to the respondent's Hukou status. By describing the main features of the sample of respondents, we can draw a picture of the characteristics of these injured workers, which will then be used to analyse the experiences and outcomes of migrant and urban workers.

Table 3.1: Questionnaire data: description of sample

	Frequency	Percentage
Hukou status		
Migrant worker	189	65%
Urban worker	102	35%
Total	291	100%
Hukou location		
In Guangdong	65	22%
Outside Guangdong	226	78%
Total	291	100%
Age (years)		
Less than 16	7	2%
16-29	160	55%
30-50	81	28%
Greater than 50	43	15%
Total	291	100%
Gender		
Male	142	49%
Female	149	51%
Total	291	100%
Education		

(Highest level attained)			
	Primary School	43	14%
	Junior School	89	31%
	High School	130	45%
	Undergraduate and College Degree	27	9%
	Postgraduate Degree and above	2	1%
	Total	291	100%
Types of contracts			
	Labour contract	174	60%
	Labour service contract	75	26%
	Other contract	4	1%
	No contract	38	13%
	Total	291	100%
Term of contracts			
	Less than 1 year	115	46%
	1-3 years	55	22%
	Above three years	64	25%
	Open-ended contract	19	7%
	Total	253	100%
Insurance status (Work-related injury insurance)			
	Insured	175	60%
	Uninsured	100	34%
	Unsure	16	6%
	Total	291	100%
Type of enterprises			
	State-owned enterprises (SOE)	47	16%
	Collective-owned enterprise	42	15%
	Domestically-owned private enterprise	120	41%
	Foreign-owned enterprise	82	28%
	Total	291	100%
Skill level			
	Unskilled worker	169	58%
	Semi-skilled worker	102	35%
	Skilled worker	20	7%
	Total	291	100%
Monthly wage rates (RMB Yuan)			
	Below 920	6	2%
	920-1340	93	32%
	1341-3028	124	43%
	3029 and above	68	23%
	Total	291	100%

Payment of wages			
	By piece-work	108	37%
	On a time basis	183	63%
	Total	291	100%
Working Hours (Per week)			
	Less than 44 hours	34	12%
	44-55 hours	71	24%
	56-70 hours	101	35%
	Above 70 hours	85	29%
	Total	291	100%
Trade Union Members			
	Member worker	70	24%
	Non-member worker	199	68%
	Unknown status worker	22	8%
	Total	291	100%

3.6.1. Personal information

(1) Hukou: status and location

Table 3.2: Location of Hukou by respondents' Hukou status

	Within Guangdong	Out of Guangdong
Migrant worker (n=189)	24%	76%
Urban worker (n=102)	66%	34%

Result of chi-square test: $p=0$. As $p<0.05$, the statistical association is significant.

Of the 291 respondents who completed the survey, 189 (65 per cent) were migrant workers and 102 (35 per cent) urban workers. As shown in Table 3.2, more than three quarters of migrant workers were inter-provincial migrants, who moved into Dongguan from other provinces. Intra-provincial migrants, who moved in to this city from the rural areas of Guangdong, accounted for less than a quarter. The situation was quite different from that of urban workers, as 66 per cent of whom were local residents of Guangdong.

(2) Age

As shown in Table 3.3, the majority of respondents were young adults. There were 160 respondents aged between 16-30 years, accounting for over a half of the overall respondents. There were seven respondents who were below 16 years of age, all of whom were migrant workers. According to the Labour Contract Law of China, the employer is banned from recruiting children under the age of 16. These respondents were certainly in an illegal status in terms of their employment relations, and were ineligible to participate in the work-related injury insurance scheme¹⁷. Such a situation did not exist among urban workers. In addition, older respondents were more common among urban workers than among migrant workers. 53 per cent of urban workers whose age were above 30 years of age, while migrant workers in this age group only accounted for 37 per cent.

Table 3.3: Respondents' age by Hukou status

	Below 16	16-29	30-50	Greater than 50
Migrant workers (n=189)	4%	59%	21%	16%
Urban workers (n=102)	-	47%	41%	12%

Result of chi-square test: $p=0.001$. As $p<0.05$, the statistical association is significant.

(3) Gender

Of all the respondents in this survey, 49 per cent were male workers, and 51 per cent were female workers. Similar proportions of male and female respondents were found both among migrant workers and urban workers (See Table 3.4).

¹⁷ I had not anticipated that any respondents would be under the age of 16 and their inclusion in the survey came as a surprise to me. None of them were interviewed. This issue is discussed in Section 3.5 dealing with Ethical Issues.

Table 3.4: Respondents' gender by Hukou status

	Male	Female
Migrant workers (n=189)	50%	50%
Urban workers (n=102)	47%	53%

Result of chi-square test: $p=0.663$. As $p>0.05$, the statistical association is not significant.

(4) Education

Table 3.5: Respondent's education attainment by Hukou status

	Primary school	Junior school	High school	Undergraduate and College Degree	Postgraduate Degree and above
Migrant worker (n=189)	18%	35%	37%	10%	-
Urban worker (n=102)	9%	22%	59%	8%	2%

Result of chi-square test: $p=0.001$. As $p<0.05$, the statistical association is significant.

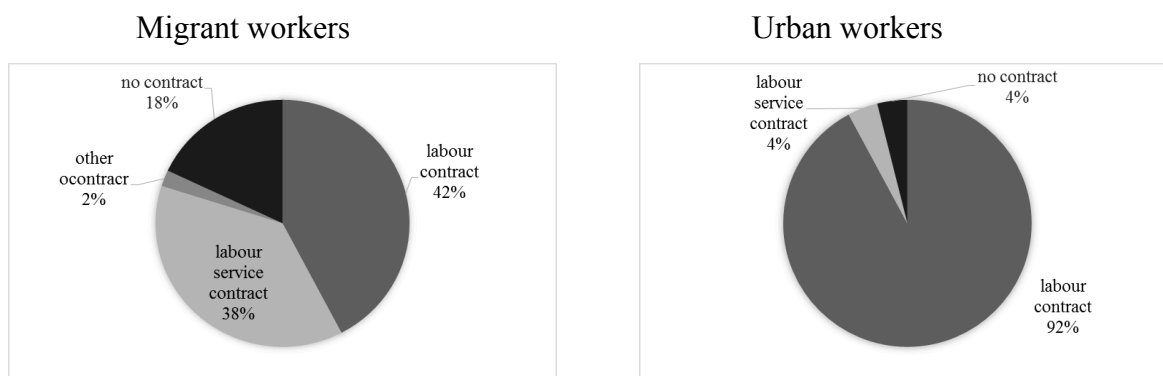
Injured workers generally had a low educational background. 15 per cent of them only completed their primary education, which meant they did not even finish their compulsory education¹⁸. Migrant workers were more poorly educated than urban workers. As shown in Table 3.5, 53 per cent of migrant workers either did not go to or did not finish their education in high schools. However, 69 per cent of urban workers had a high school degree or above. The proportion of respondents who had a higher education background was very low both among migrant and urban workers. Only 10 per cent of respondents reported they had a college degree and above (including postgraduate qualification). The relationship between Hukou status and education attainment was significant at the 95 per cent level.

¹⁸ In China, all citizens must attend school for at least nine years, known as the nine-year compulsory education. It includes six years of primary education, starting at age six or seven, and three years of junior secondary education (middle school) for ages 12 to 15.

3.6.2. Employment information

(1) Contract: type and term

Figure 3.1: Respondent's contract type by Hukou status



Result of chi-square test: $p=0$. As $p<0.05$, the statistical association is significant.

Injured workers were quite likely to be in informal employment relations. 13 per cent of all respondents reported that they did not have a formal labour contract. The situation was more common among migrant workers than among urban workers. 18 per cent of migrant workers reported they did not have any form of contract, while such respondents accounted for only 4 per cent of urban workers. Meanwhile, 40 per cent of migrant workers and 4 per cent of urban workers reported that they worked under a non-labour contract, in particular, a labour service contract. These respondents were often agency workers, who worked on a temporary basis.

Among the 253 respondents who worked under a contract, only 8 per cent of them had an open-ended contract and the rest of them were on a fixed term contract. The terms of the contracts significantly differed between migrant and urban workers. Migrant workers were often on a short-term contract: 72 per cent of them reported that their contracts were for less than one year. However, most urban workers were in relatively long-term employment relations with their employers. 70 per cent of urban workers had a labour contract for more than three years, including open-ended contracts (See Table 3.6). This relationship was significant at the 95 per cent level.

Table 3.6: Contractual terms by respondents' Hukou status

	Less than 1 year	1-3 years	Above three years	Open-ended contract
Migrant worker (n=155)	72%	19%	2%	7%
Urban worker (n=98)	4%	26%	62%	8%

Result of chi-square test: $p=0$. As $p<0.05$, the statistical association is significant.

(2) Insurance status

Although employers are legally required to provide work-related injury insurance for all their employees, 34 per cent of respondents reported that they were uninsured, and 16 per cent did not know or were unsure about their insurance status. More importantly, significant differences were found between migrant workers and urban workers in terms of their eligibility for the work-related injury insurance benefits. 87 per cent of urban workers were insured, but less than a half of migrant workers had work-related injury insurance (see Table 3.7). This relationship was also significant at the 95 per cent level.

Table 3.7: Insurance status by respondents' Hukou status

	Insured worker	Uninsured worker	Unsure worker
Migrant worker (n=189)	46%	46%	8%
Urban worker (n=102)	87%	13%	-

Result of chi-square test: $p=0$. As $p<0.05$, the statistical association is significant.

(3) Skill level

Among all the respondents, 58 per cent were unskilled workers, whose jobs only required menial and repetitive tasks. Another 35 per cent were semi-skilled workers,

who were quite familiar with working tasks and processes, and had stronger on-site experience than unskilled workers. About one in seven of them were skilled workers, who performed jobs requiring special skills and technical abilities, and often had professional certification¹⁹. Importantly, there were no significant differences between migrant and urban workers who participated in the survey regarding their skill levels.

Table 3.8: Respondent's skill by Hukou status

	Unskilled worker	Semi-skilled worker	Skilled worker
Migrant worker (n=189)	62%	32%	6%
Urban worker (n=102)	51%	41%	8%

Result of chi-square test: $p=0.196$. As $p>0.05$, the statistical association is not significant.

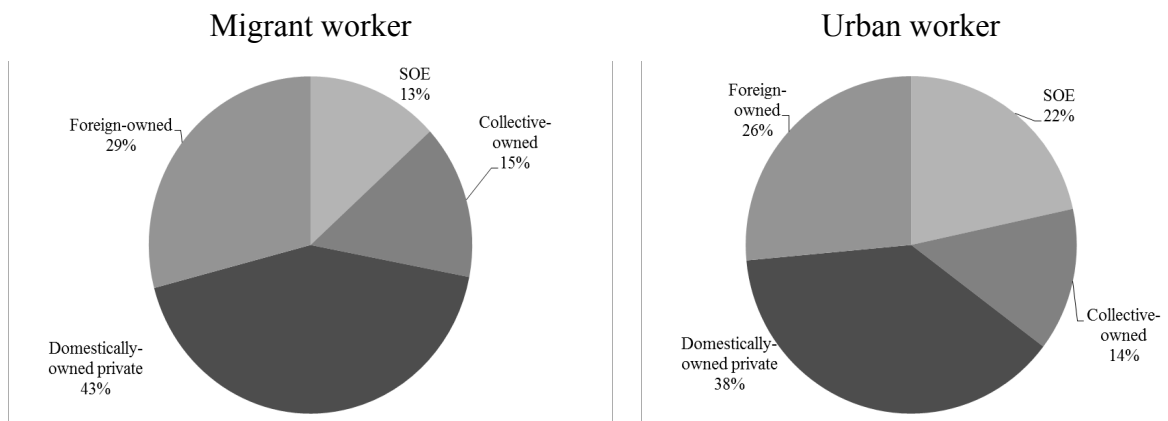
(4) Type of enterprises

Respondents were asked about the type of enterprises they worked for. There are four types of enterprises in China, each one distinguished by its legal ownership. As shown in Figure 3.2, the pattern of enterprises was quite similar for migrant workers and urban workers. Respondents who had work-related injury problems were more likely to be from domestically-owned private enterprises and foreign-owned enterprises than SOEs and collective-owned enterprises. However, this does not necessarily indicate that workers of domestically-owned private and collective-owned enterprises were more likely to experience work-related injury problems than workers in SOEs and foreign-owned enterprises, as the number of the

¹⁹ According to the questionnaire, the term unskilled workers corresponds to the Chinese term 'common workers' (*Pu Gong*); semi-skilled workers refer to those who have gained strong on-site experience, but without professional qualification. For example, line leader, section foreman, etc. 'Skilled workers' includes technicians and advanced skilled workers, and example positions include: Computer Numerical Control, advanced electric welder, turner, miller, lathe operator, grinder, puncher, mechanic, and mould worker.

four types of enterprises, as well as the number of their employees were different in Dongguan.

Figure 3.2: Enterprises of respondents of migrant and urban workers



Result of chi-square test: $p=0.332$. As $p>0.05$, the statistical association is not significant.

(5) Wages: rate and payment

Respondents were asked to report their monthly wage rate²⁰ and method of payment. The distribution of wages of migrant workers was quite different from that of urban workers. About half migrant workers had a lower wage than the average monthly wage of Dongguan; six of them were even paid below the mandated monthly minimum wage rate. However, 91 per cent of urban workers were paid above the average level, and more than a third reported their wage rate reached the urban residents' average level (See Table 3.9). The relationship between Hukou status and wages was significant at the 95 per cent level.

²⁰ 920 yuan was the minimum monthly wage (MMW) of Dongguan in 2010, according to the 'Notice to adjusting the minimum wage standard of employees of Dongguan' (Dongguan Social Security Department, 2010). The average monthly wage (AMW) of Dongguan in 2010 was 1340 yuan. The average monthly wage of urban residents of Dongguan was 3029 yuan (Bureau of Statistics of Dongguan, 2011).

Table 3.9: Wage rates of migrant and urban workers

(RMB: Yuan)	Below 920	920-1340	1341-3028	3029 and above
Migrant worker (n=189)	3%	45%	36%	16%
Urban worker (n=102)	–	9%	55%	36%

Result of chi-square test: $p=0$. As $p<0.05$, the statistical association is significant.

Table 3.10: Method of payment by respondents Hukou status

	By piece work	On a time basis
Migrant worker (n=189)	50%	50%
Urban worker (n=102)	13%	87%

Result of chi-square test: $p=0$. As $p<0.05$, the statistical association is significant.

In addition, migrant and urban workers differed significantly in the way in which the wage was paid (See Table 3.10). Half of migrant workers were paid by piece work, which is known as a type of incentive system. Only 13 per cent urban workers received their wage in this way. Another half of migrant workers were paid on a time basis²¹, which is the way in which 87 per cent of urban workers were paid. The relationship between Hukou status and method of payment was also significant at the 95 per cent level.

(6) Working hours

In contrast with the limit of eight working hours per day and 44 hours per week²² stipulated by the Labour Law of China, the survey indicates that 88 per cent of respondents had extend their working hours for extra pay. However, the extent of

²¹ This includes a time plus production bonus basis as well as a time basis.

²² According to the 'Labour Law', out of the limit of eight working hours per day and 44 hours per week, the employer may extend working hours, but the total extension in a month shall not exceed thirty-six hours.

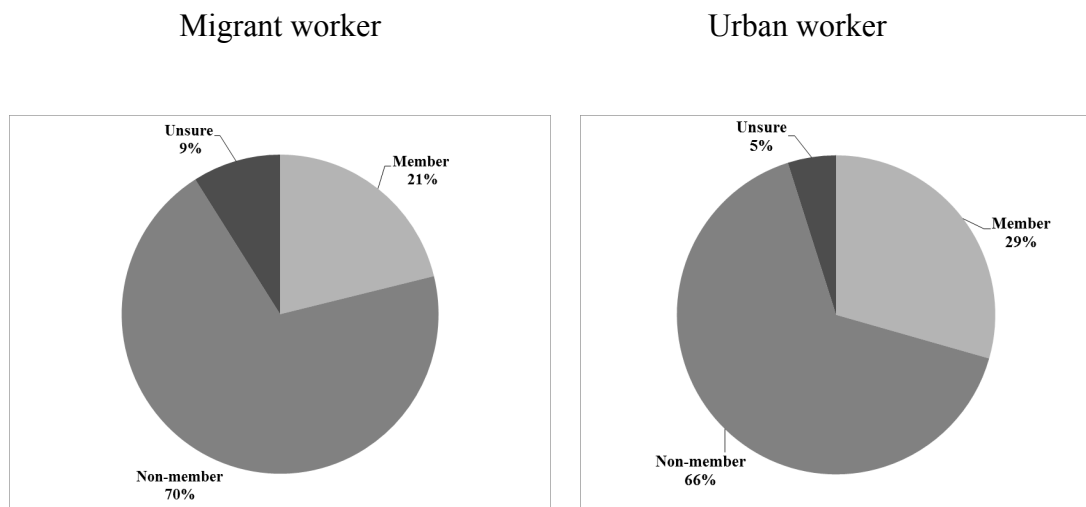
overtime working was different for migrant and urban workers. As shown in Table 3.11, 86 per cent of migrant workers worked 12 extra hours on average, but urban workers who did so accounted for less than a quarter of them. 38 per cent of migrant workers reported they worked more than 70 hours per week on average, but only 13 per cent urban workers did so. Working longer is often the result of financial considerations, but it may increase the chance of work-related illness or injury (Dembe, 2005). The relationship between Hukou status and working hours was significant at the 95 per cent level.

Table 3.11: Weekly working hours of migrant and urban workers

	Less than 44 hours	44-55 hours	56-70 hours	Above 70 hours
Migrant worker (n=189)	2%	12%	48%	38%
Urban worker (n=102)	29%	48%	10%	13%

Result of chi-square test: $p=0$. As $p<0.05$, the statistical association is significant.

Figure 3.3: Respondents' trade union membership by Hukou status



Result of chi-square test: $p=0$. As $p<0.05$, the statistical association is significant.

(7) Trade union membership

199 (68 per cent) respondents were not members of trade unions. 22 (8 per cent) of them claimed they were unsure about this, with most of these unsure about what the concept of a trade union meant. As shown in Figure 3.3, migrant workers had a lower level of trade union membership rate than urban workers.

The dataset concerning workers' employment situation, including variables of skill, working hours, wage, type of enterprises, trade union member is examined in Chapter Five, with a focus on the influence of these variables on the ways in which migrant and urban workers deal with their work-related injury problems, as well as the outcome. In addition to the data presented here, the survey also included questions about respondents' attitudes towards the law and the legal system, and their experiences of seeking advice. These data are presented and analysed in Chapter Six.

CHAPTER 4

THE DUAL LEGAL SYSTEMS HYPOTHESIS

4.1. INTRODUCTION

The first hypothesis attributes the differences between migrant and urban workers in their experiences dealing with work-related injury problems to dual legal systems of work-related injury compensation cases. This chapter presumes that both *law in the books* and *law in action* contribute to the differences in the paths and outcomes of the claiming and dispute process for migrant and urban workers.

This hypothesis is approached from two standpoints. First, it examines the changing legal context of work-related injury compensation claims and disputes in China by tracing its historic development. The emphasis is placed on the development of the social security system and on the process of dispute resolution and their influence on how problems were dealt with by migrant and urban workers. Second, empirical evidence from the questionnaire survey illustrating the relationship between workers' insurance status, contractual status, Hukou status and their means of resolution is presented. Differences in the paths and outcomes of the claiming and dispute process between migrant and urban workers are illustrated using evidence from qualitative interviews with workers and representatives of legal institutions.

4.2. THE TERM 'LEGAL SYSTEM' IN CONTEXT

Sociologists and legal philosophers have defined the term 'legal system' in various ways. Among them, the institutional perspective views the legal system as a union of lawyers and legal institutions, particularly the courts (Black, 1972; Bohannon, 1965).

The functional perspective, instead, considers a legal system as a set of rules (Barkun, 1968; Hart, 1961; Parsons, 1971). Under such a definition, any official or unofficial rules that can settle a dispute should be treated as law.

Unlike previous studies, this study adopts a wider definition of the legal system, which embraces both the institutional and functional perspectives. On the one hand, it is interested in *the system of substantive and procedural law* and its impact on claiming and dispute resolution. It deals with work-related injury problems on the macro level by defining their nature and enumerating the remedies. Problems are then allocated to different administrative and civil justice systems. On the other hand, this study recognises the importance of *impacts of legal institutions*, which determine how problems are dealt with by making decisions or engaging in mediation.

4.2.1. The system of substantive and procedural law

A number of legal documents are examined here. This is because, first, in China, problems with work-related injury compensation touch upon a number of legal matters, including occupational health and safety issues, issues of employees' entitlements to social insurance benefits and employers' obligations, and issues concerning the procedures for claiming and dispute resolution. To understand this type of problem it is necessary to examine several pieces of legislation covering the labour law system, the social insurance system, and the system of claiming and dispute resolution. Second, a comprehensive understanding of the Chinese legal system requires a researcher to look at both 'official law', i.e. binding statutes, and 'non-official law', i.e. administrative regulations issued by the government and judicial interpretations²³ issued by the Supreme Court, which can serve as 'functional

²³ The Judicial Committee of the Supreme People's Court, under powers granted to it by the CPC, has issued an Opinion (considered a supplementary law) designed to clarify the application of the General Principles of Civil Law (GPCL). This Opinion is used when further clarification on points of law is

equivalents' to statutes. Appendix five provides a list of all these normative documents, including the title, effective date, current status and the category for each of them.

4.2.2. Legal institutions

In Dongguan, both social insurance agencies and legal institutions take part in resolving work-related injury problems. The social insurance agencies are mainly responsible for identifying whether an injury meets the conditions of a work-related injury, and for deciding the extent of the injury and the amount of the compensation to be awarded. However, when such a problem becomes a dispute, i.e. when the claim for compensation is partially or fully rejected by the social insurance agency or the employer, and the worker disagrees with the decision, the social insurance agency no longer has the power to deal with it. Instead, legal institutions are involved. Work-related injury problems can become either administrative disputes or labour disputes. Administrative disputes can appear in two forms: administrative review cases and administrative litigation cases, which are dealt with by the administrative law system. Administrative review cases are heard first in administrative agencies. If one of the parties disagrees with the decision and decides to appeal, the case is transformed into an administrative litigation case, although this is quite uncommon in practice²⁴, which is heard in the Administrative Division of the court. This study regards these legal institutions as components of the system of labour dispute resolution, which include the labour service centre, the labour arbitration committee, and the court.

required by the courts. Case law, which is used in common law countries for statutory interpretation, is not relevant for purposes of judicial interpretation in Chinese legal system.

²⁴ In this study, among the 291 respondents who completed the questionnaire, none of them have brought an administrative litigation case.

The labour service centre²⁵ aims to provide first-hand advice and assistance to workers. It also plays an active role in processing complaints and settling disputes. Labour disputes have to be considered first by the Labour Arbitration Committee before they can be heard by the courts. The Labour Arbitration Committee, as one of the sub units of the Labour Bureau²⁶, is located in the centre of the dispute resolution system. The court is on the top of the system. Claims for worker-related injury compensation are heard in the Civil Division.

4.3 LAW IN THE BOOKS: THE EVOLUTION OF WORK-RELATED INJURY COMPENSATION LAW

The legal system for work-related injury compensation cases in China has undergone a considerable development in recent decades. Two issues stand out in the process as being of crucial importance. One is how problems concerned with work-related injury compensation have been divided into labour disputes and administrative claims. The other is how the social insurance system is gradually expanding its scope from covering a narrow range of workers to a broader range, especially how some workers who were previously in a marginalised position have gradually been included. Without explaining the development, we cannot provide a full picture of the current legal system, and its impact on different groups of workers.

4.3.1. From 'labour disputes' to 'administrative claims'

Until quite recently, work-related injury compensation problems were exclusively treated as labour problems in China. This new possibility for initiating a case of

²⁵ There are 598 labour centers in Dongguan, locating in the communities or villages; 32 branch labour arbitration committees, and one municipal court.

²⁶ The other two units of the labour bureau are the Labour Surveillance and Career Service.

administrative review or litigation for resolving work-related injury problems was generated along with the development of the social security system, which has shifted the boundary between the social insurance system and the labour law system. By tracing the development and transformation of work-related injury disputes from labour disputes to administrative disputes, this section reflects a range of issues at the interface between the social insurance system and the labour law system, in particular, issues concerning fairness and equality.

(1) Integration of labour disputes and disputes over social insurance benefits

For a long time, disputes over entitlements to social insurance benefits were dealt with as a type of labour dispute. For example, according to a national administrative regulation issued in 1951, i.e. the ‘Regulation on Labour Protection of People’s Republic of China’²⁷, the social security system for workers was administered solely by enterprises. This regulation suggested that the relations concerning workers’ entitlements to social insurance benefits were a bilateral one, involving the employer (as the obligation bearer) and the employee (as the welfare recipient). Accordingly, social insurance disputes were a kind of dispute arising out of the employment relations. For a long time, treating disputes over social insurance benefits as labour disputes was a common practice, which was reflected in many normative administrative and legal documents, for example:

Article 4 of the ‘Regulations on Labour Dispute Resolution Procedures’ says:

²⁷ It notes that this regulation only applied to a specific range of enterprises and employees, including state-owned enterprises, such as postal services, aviation and mining, where the employer employed more than one hundred workers. As a consequence, the Labour Insurance Regulations covered very few workers.

The scope of labour disputes includes.... disputes over matters of labour protection and labour insurance...

Article 2 of the ‘Provisions on the Negotiation and Mediation of Enterprise Labour Disputes’ says:

The Regulation is applicable to the following labour disputes: ... Disputes concerning implementation of relevant state regulations on wages, insurance, welfare, training and labour protection...

As indicated by the ‘Opinions on Implementation of the Labour Law’ issued by the Minister of Labour and Social Security, the *Labour Law* should treat disputes over social insurance benefits in the same way as the ‘Provisions on the Negotiation and Mediation of Enterprise Labour’ did. As a type of labour disputes, procedures for resolving disputes over social insurance benefits were regulated by the labour dispute resolution system, also known as the ‘three-level system’, involving mediation, arbitration and litigation. According to the ‘Provisions on the Negotiation and Mediation of Enterprise Labour’, if workers wanted to seek compensation for their work-related injuries, they had to negotiate with their employers in the first place. If a disagreement occurred, this would have to be resolved first within the enterprise, which had the power to mediate on behalf of employees to settle their disputes. Disputes that could not be resolved within the enterprise would then be referred to the Labour Arbitration Committee or the court.

However, we also need to note the fact that, until 1993, the majority of migrant workers were still excluded from the labour dispute resolution system. The ‘Interim Provisions on Handling the Labour Dispute of the State-owned Enterprise’ stipulated that ‘*temporary workers*’, ‘*seasonal workers*’ and ‘*rural workers*’ in SOEs were not eligible to take their disputes to the labour dispute resolution system, so the

procedural right was only given to *permanent and formal employees* in SOEs as a privilege. As foreign-owned enterprises and collective-owned enterprises were not subject to this provision, the procedural rights of employees in non-SOEs concerning labour disputes were still undefined.

Until the ‘Interim Provision on Handling Labour Disputes in SOEs’ was abolished and replaced by the ‘Regulations on Settlement of Labour Dispute in Enterprises of the People’s Republic of China’ in 1993, Article 6 of the ‘Explanations for Several Issues of the Regulations on Settlement of Labour Disputes in Enterprises of the People’s Republic of China’ gave migrant workers (in this legal document, referred to as ‘rural employees’) the right to take a labour dispute through this prescribed resolution system. Since then, all workers have been treated equally in terms of their rights in labour disputes, and the norm of equality is reinforced by the enactment of the *Labour Dispute Law* in 2007.

(2) The emergence and development of administrative dispute

Before the enactment of the *Administrative Procedure Law* in 1990²⁸, individuals were not allowed to challenge administrative actions and decisions by initiating lawsuits. The *Administrative Procedure Law* authorised private suits against administrative organs and personnel on the grounds of infringement of their rights, and laid down the relevant criteria and procedures for administrative review and litigation cases. Article 50 gave the court the power to revoke or amend administrative action when necessary.

²⁸ Before the law was officially enacted, there had been some progress. In the end of 1988, the Supreme People's Court established an administrative law division and more than 1400 local courts had created administrative panels to hear administrative cases.

The link between work-related injury disputes and administrative disputes was made with the establishment of a state social insurance programme, in particular, the enactment of the ‘Provisional Regulations on the Collection and Payment of Social Insurance Premiums’ in 1999 and the *Social Insurance Law* in 2011. The *Social Insurance Law* classified disputes over social insurance entitlements into two types according to the parties involved, including: the employer/employee vs. the social insurance agency disputes, and the employer vs. the employee disputes. According to the *Administrative Procedure Law*, the former type of disputes, which often involve disagreement with improper administrative action, should be treated as cases of administrative review or litigation, according to Article 83 of the *Administrative Procedure Law*:

...If the employer or the employee considers their rights to social insurance have been infringed by a social insurance agency, the employer or employee can apply for administrative review or initiate administrative proceedings in accordance with the law.

And, such infringement includes the agency’s failure to:

... Handle social insurance registration, social insurance premiums calculation and collection, or the formalities for the transfer and renewal of social insurance properly...

As the infringement involves exclusively ‘technical issues’ in terms of workers’ entitlements to social insurance benefits, it can be argued that this article may imply that a worker who is in a position to bring an action against the government agency should, above all, be an insured worker. Otherwise, the infringement of rights to social insurance is out of the question. As a result, the term ‘dispute over social

insurance right' refers mainly to disagreements regarding how rights to social insurance should be enforced rather than whether these rights are enforced.

Article 7 of the *'Interpretation of the Supreme People's Court on Several Issues about the Application of Laws for the Trial of Labour Dispute Cases (II)'* proposed that a dispute arising when a worker has a disagreement with the decisions on work-related injury identification and on working capacity appraisal shall not be regarded as a labour dispute. Article 53 of the *Regulation on WRI Insurance* clearly stipulated that such a dispute should be regarded as administrative disputes:

... A worker may initiate an administrative proceeding if (s) he is dissatisfied with the administrative review decision, including the 1) decision to not accept the application 2) decision on work-related injury identification, 2) conclusion of injury/and decisions on the amount of insurance benefits to be awarded.

It extended the circumstances in which a work-related dispute can be handled by the administrative redress procedure. Under this regulation, if a worker does not agree with the administrative decisions on whether an injury is a work-related injury, and on how much compensation should be granted, this worker could take his/her case through the administrative law system.

At this point, social insurance agencies, as third parties, were introduced into the relations concerning social insurance entitlements, and the bilateral relations concerned with social insurance entitlements was transformed into a trilateral one, involving worker, employer and social insurance agency. Disputes concerning unlawful administrative action or unsatisfactory administrative decisions on injury identification and amount of compensation to be awarded are now regarded as administrative review and litigation cases.

(3) Legal remedies for uninsured workers

Since the state applies a compulsory work-related insurance scheme to all employees in China, the procedural right for an uninsured worker to seek compensation is laid down by the *Regulation on WRI Insurance*. Article 60 of the *Regulation on WRI Insurance* states:

If an employer has not fulfilled the obligation to provide work-related injury insurance to its employees, and the employee has experienced a work-related injury, the employer shall make payments to the employee according to the standard of the work-related injury insurance.

This article indicates, first, that compensation for uninsured workers should be made at the same level as the insured workers' insurance benefit. Second, the employers rather than the social insurance agency should compensate their workers. This arrangement for uninsured workers is an *alternative* way of obtaining compensation for a work-related injury, which is parallel with the formal claiming procedures.

Article 60 only sets out uninsured workers' rights without specifying their legal remedies²⁹. It does not explain what remedies are available if the employer refuses to make the compensation payment to the uninsured worker. It says nothing about whether uninsured workers can bring an action against their employer in this circumstance, and if they can, which mechanism should be invoked.

²⁹ This regulation has laid down the rules of administrative penalty, and prosecution in circumstances where the employer fails to provide social insurance coverage for employees.

The relevant regulations are laid down in by Article 41 of the *Social Insurance Law*, i.e. Article of the *Advance Payment Scheme*, compensation can be paid to uninsured workers in the first place from a special government fund when their employers refuse to make compensation. It is the social insurance agency's responsibility to claim such costs from employers³⁰. Thus, an uninsured employee's risk of obtaining no compensation can be offset by the operation of the state's Advance Payment Scheme. However, Article 41(2) of the *Social Insurance Law* is widely regarded as 'window-dressing', as it is not really enforceable in practice³¹. Without the efficacy of the state fund, in most cases, uninsured workers still have to claim compensation from their employers on their own.

Article 83 of the *Social Insurance Law* has divided disputes over social insurance benefits into two types. The second types of disputes, i.e. the employee vs. the employer disputes were specified as the following:

If an employee has a social insurance dispute with his/her employer, (s)he could apply for mediation or arbitration or initiate litigation in accordance with the law... Or, if an employee considers his/her right to social insurance has been infringed by his/her employer, s(he) could call upon the social insurance agency to deal with their problems.

³⁰Article 41 of the *Social Insurance Law* also states that: ...If the employers fail to make the payment, it shall be made from the work-related injury insurance fund ...the work-related injury insurance benefits paid in advance by the work-related injury insurance funds shall be repaid by the employers. If the employers fail to do so, the social insurance agency shall be entitled to chase up the costs from the employers...

³¹ According to the result of the 'Report on the Implementation of advance payment schemes for Work-related Injury Insurance in 2011-2012' (Yilian Legal Aid, 2012), only 11.4 per cent of municipal labour bureaux in China confirmed that they accepted such cases in practice. 77.2 per cent stated that they never carried out this policy. In addition, 91.8 per cent of injured workers reported they had never heard of the advance payment scheme.

The employee *vs.* the employer disputes over social insurance benefits, according to this article, could either be taken as a labour dispute, which can be dealt by the ‘three-levels resolution system’, or, just as an administrative problem, that only requires attention from the courts. The term ‘*right to social insurance*’, in this context, mainly refers to a disagreement on whether the right was been carried out, i.e. whether the employer has extended social insurance coverage to the employee.

By dividing social insurance disputes into administrative litigation and labour disputes, the *Social Insurance Law* indirectly makes a *de facto* distinction between the legal remedies for insured and uninsured workers, although this difference is not articulated in a blunt and clear way. Justiciability of uninsured workers’ disputes over social insurance benefits with their employers again are acknowledged by the ‘*Interpretation of the Supreme People's Court on Several Issues about the Application of Laws for the Trial of Labour Dispute Cases (III)*’ as well as the ‘*Guidance on issues regarding the application of the Law of Mediation and Arbitration of Labour Disputes and the Labour Contract Law of Guangdong*’, as Article 1 of the interpretative document says:

In the case where uninsured an employee asks his employer to compensate the losses while his employer has not fulfilled the social insurance application and registration for him/he... the court shall accept this case as a labour dispute.

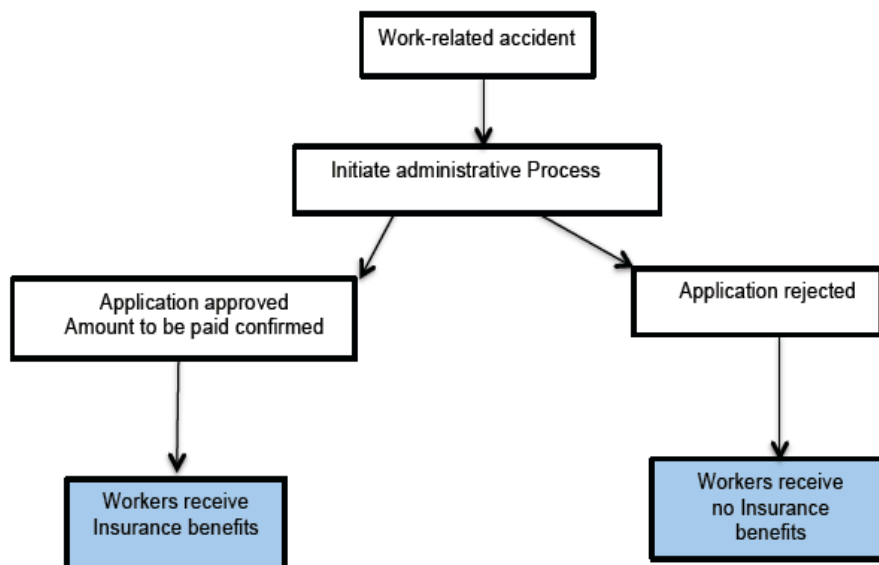
And, Article 2 of the *Guidance* states:

The following disputes shall be treated as labour disputes ...the worker requests insurance compensation for his/her work-related injuries... on the ground that the employer did not pay the social insurance premium, ... Or if such compensation is made if it is less than the legal standard.

4.3.2. Paths and outcomes: insured workers vs. uninsured workers

It is clear that both the insured and uninsured workers are entitled to be compensated for their work-related injuries. However, their procedural rights are different. Insured workers can claim insurance benefits directly, and their problems are dealt with by the administrative redress procedures. Uninsured workers have to seek private compensation from their employer. They are encouraged to settle in a private manner, however, if any dispute arises, it will be dealt with by the labour dispute resolution system.

Figure 4.1: Paths and outcomes for insured workers' cases

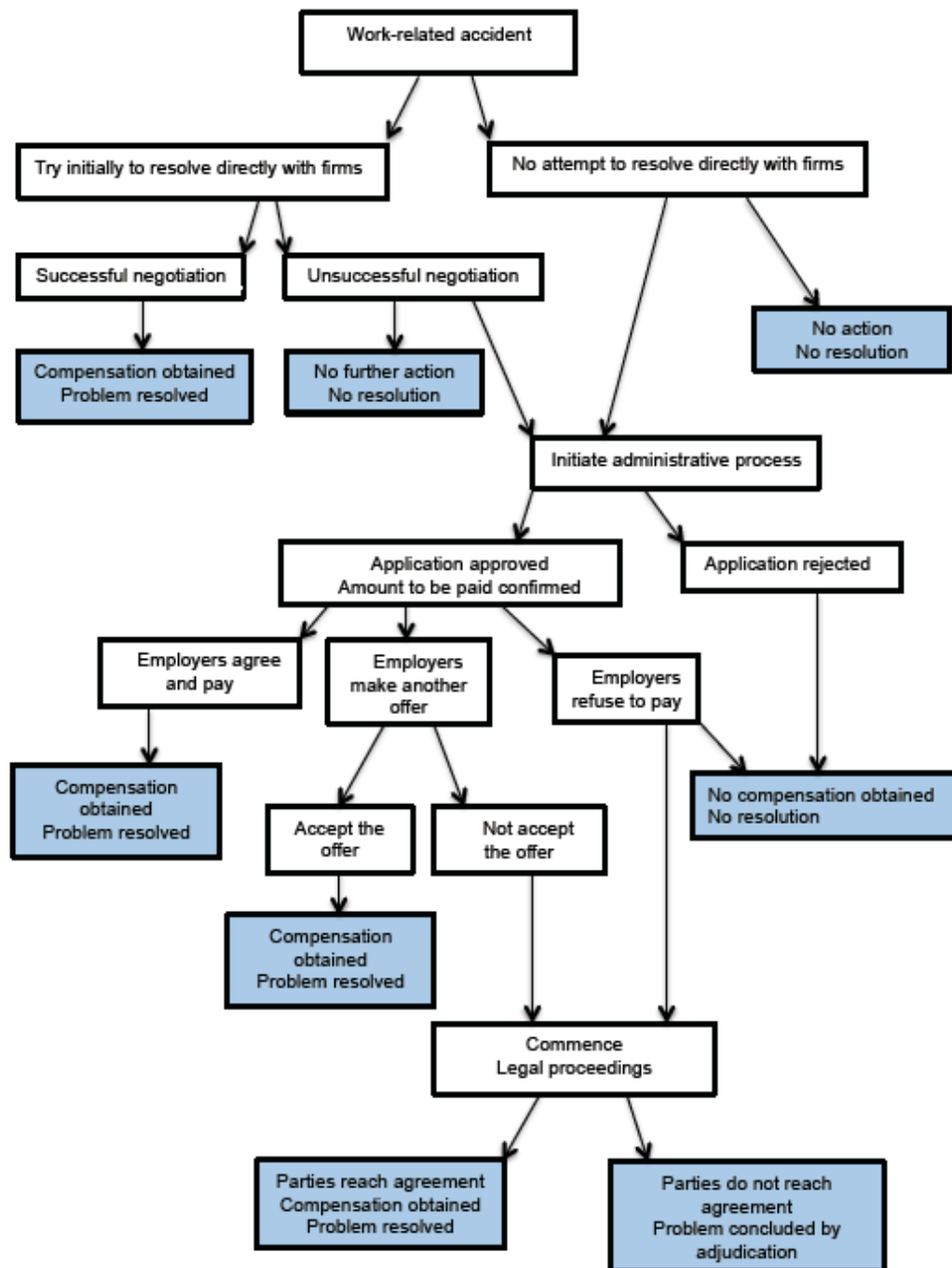


The insurance benefits are quite straightforward for insured workers. If they have sustained a work-related injury, their claims are likely to be accepted by the social insurance agency. The most possible disputes, in this context, often concern disagreement with administrative decisions, and are between an individual worker and the administrative agencies. As insured workers' cases are dealt with by the administrative redress procedures, although some of them may be dissatisfied with the amount to be paid, they will receive the payment of insurance benefits. Their injuries

can be treated appropriately, medical costs will be largely covered by the insurance scheme, and their original job positions will be reserved. Insured workers' rights to obtain insurance benefits are stipulated by the *Social Insurance Law* and the *Regulation on WRI Insurance*, and the procedures to claim the benefits are guaranteed by the *Administrative Reconsideration Law* and the *Administrative Procedure Law*.

As shown in Figure 4.2, the paths of resolving work-related injury problems for uninsured workers are more complex and uncertain, and lack procedural securities. Figure 4.2 shows that not every uninsured worker completes the work-related injury procedures. Even if they do and their application is approved and the amount of compensation to be paid is confirmed by the social insurance agency, there is still a chance of receiving no compensation. This is quite different from the case of insured workers. Uninsured workers' outcomes could be subjected to the results of a number of resolution mechanisms: private negotiation and/or bargaining, administrative identification and decisions, arbitration and litigation, depending on the different situations in each case. This is because uninsured workers' entitlements to social insurance benefits are not regulated by a single system, but fall into the cracks between the social insurance system and labour dispute resolution system, and the latter one plays a bigger part in their cases. Compared with the administrative redress procedures, the labour dispute resolution system adopts less coercive means to enforce the law. Workers can only reach arbitration committees and courts if they can show that negotiation and mediation have been unsuccessful in reaching agreement.

Figure 4.2: Paths and outcomes for uninsured workers' cases



That is reflected in Article 5 of the *Labour Dispute Law*³². In the Civil Division of courts, employers and employees who were involved in work-related injury disputes tended to be treated as equal parties. In addition, both arbitration committees and courts invest themselves in persuading parties to settle privately. As private agreement is usually a product of compromise and concession, workers probably choose to give up part of their vested interests to achieve a resolution (Halegua, 2008).

4.3.3. Summary

Figure 4.3: Two types of work-related injury disputes



The above section has reviewed the process by which social insurance practice gradually grew out of the realm of employment practices. Along with the establishment of the administrative law system, some of the disputes over social

³² Where a labour problem arises, if a party does not desire a consultation, or the parties fail to settle the problem through consultation, or a party does not execute a reached settlement agreement, any party may apply to a mediation organization for mediation;

...if a party does not desire a mediation, or the parties fail to settle the dispute through mediation, or a party does not execute a reached mediation agreement, any party may apply to a labour dispute arbitration commission for arbitration; and a party disagreeing to an arbitral award may bring an action in the people's court except as otherwise provided for by this Law.

insurance and entitlements came to be recognised as administrative review and litigation cases while the rest remained as labour disputes. The task of division is accomplished by the legal system, and the different treatment of insured and uninsured workers is one of its products. Accordingly, work-related injury problems of insured and uninsured workers have largely been allocated to two separate systems: the social insurance (administrative) system and the labour dispute resolution (civil) system.

Insured workers' problems are dealt with by the administrative law system. In most circumstances, their insurance benefits are granted smoothly. If they have a dispute over an administrative action or decision, their rights to social insurance can be protected by the administrative litigation procedure. Uninsured workers' problems are dealt with by the civil justice system, often involving painstaking negotiation and bargaining. When their rights to social insurance cannot be secured in a private manner, they can sue their employer, through the labour dispute resolution system.

With the newly established social security system, some workers are allowed to use the administrative law system to claim compensation. These workers are insured, and in an advantageous position in terms of their employment relations. However, the forum for other workers remains the same, as uninsured workers do not meet the criteria for filing an administrative case. In the context of work-related injury problems in China, the administrative law system is superior to the labour law system.

4.4. LAW IN ACTION: HOW MIGRANT AND URBAN WORKERS DEAL WITH THEIR PROBLEMS

This section presents empirical findings on workers' experiences in dealing with their problems. It examines the paths and outcomes of the claiming and dispute resolution

process, and focuses on differences between migrant and urban workers, as well as insured and uninsured workers.

4.4.1. Paths of claiming and dispute resolution

This study suggested that injured workers might deal with their work-related injury problems in three ways: by claiming insurance, by seeking compensation, or by taking no action. The majority of respondents have attempted to resolve their problem rather than doing nothing, however, the process of claiming and dispute resolution varied markedly between migrant and urban workers.

(1) Means of resolution

Table 4.1 suggests that migrant workers were more likely to seek private compensation deal with their problems, while urban workers were more likely to claim social insurance. Claiming social insurance was the dominant way of resolving a work-related injury problem among urban workers, 87 per cent of them did so. However, only 44 per cent migrant workers were allowed to and attempted to claim insurance. Migrant workers were more likely to seek compensation from their employers. In addition, migrant workers were more likely to do nothing for their problems than urban workers.

Table 4.1: Means of resolution by respondents' Hukou status

Means of resolution	Migrant worker (n=189)	Urban worker (n=102)
Claiming insurance	44%	87%
Seeking compensation	47%	8%
Taking no action	9%	5%

Result of chi-square test: $p=0$. As $p<0.05$, the statistical association is significant.

After examining the statistical correlation between respondents' means of resolution and other socio-economic and employment variables, it was clear that the difference between migrant and urban workers could be explained by the differences in their insurance eligibility and contractual status (Tables 4.2-4.5).

Table 4.2: Means of resolution and respondents' insurance status

Means of resolution	Insured worker (n=175)	Uninsured worker (n=100)	Unsure worker (n=16)
Claiming insurance	99%	-	-
Seeking compensation	0.5%	84%	75%
Taking no action	0.5%	16%	25%

Result of chi-square test: $p=0$. As $p<0.05$, the statistical association is significant.

A respondent's insurance status is the most important factor in deciding which route they adopted to resolve their work-related injury problem. Nearly every insured worker claimed insurance directly while all uninsured workers were excluded from this channel. On the other hand, uninsured workers either chose to bargain with their employers for compensation or did nothing to resolve their problems. As shown in Table 4.2, of the 175 respondents who were provided with work-related injury insurance, 99 per cent of them attempted to resolve their problems by claiming insurance. Only two insured respondents waived their social security entitlements: one sought compensation from his employer³³; the other took no action to deal with it. However, of the 100 respondents who were uninsured, no one knocked on the door of the social insurance agency, as they were not eligible to do so; 84 per cent tried to obtain compensation from their employers; and the remainder 16 per cent made no attempt to resolve their problems.

³³ A detailed look at this insured worker shows that his inaction was because his employer took the initiative to compensate him so that he did not need to resort to the social insurance agency.

Table 4.3: Insurance status by Hukou status

Insurance status	Migrant worker (n=189)	Urban worker (n=102)
Insured worker	46%	87%
Uninsured worker	46%	13%
Unsure worker	8%	-

Results of chi-square test: $p=0$. As $p < 0.05$, the statistical association is significant.

Overall, urban workers were more proactive in resolving their problems than migrant workers. This is probably because 87 per cent of them were insured, as discussed in Section 4.3.2, their path of obtaining insurance benefits was straightforward and secured. Insured migrant workers actively claimed their insurance. But, as only 46 per cent migrant workers were insured, the rest 54 per cent of them, either uninsured or uncertain about their insurance status, had to initiate private bargaining or choose to be tolerant of their injuries, even when their physical condition was obviously affected.

The system of law becomes the watershed for dividing migrant and urban workers' claiming and dispute resolution experiences. This is not because the law discriminates migrant workers, but because it provides separate remedies for insured and uninsured workers. This had a negative impact on migrant workers, who were more often uninsured. These migrant workers chose to seek private compensation, not because they wanted to, but because they were unable to activate the administrative redress procedure. Although seeking a private remedy was arduous, it was the only possible option. The alternative way was doing nothing.

Table 4.4: Means of resolution and respondents' contractual status

Means of resolution	With a labour contract (n=174)	Without a labour contract (n=117)
Claiming insurance	96%	5%
Seeking compensation	3%	79%
Taking no action	1%	16%

Results of chi-square test: $p=0$. As $p<0.05$, the statistical association is significant.

Table 4.5: Contractual status by Hukou status

Contractual status	Migrant worker (n=189)	Urban worker (n=102)
Have a labour contract	42%	92%
Have no labour contract	58%	8%

Results of chi-square test: $p=0$. As $p<0.05$, the statistical association is significant.

The association between respondents' contractual status and their means of resolution is shown in Table 4.4. Workers who had formal contractual employment relations were more likely to deal with their problems by claiming insurance. Respondents who had no labour contract were more likely to rely on the private relief for dealing with their problems³⁴. As shown in Table 4.5, more than a half of migrant workers reported they had no labour contract while only 8 per cent of urban workers did so.

Having a labour contract is a sign of formal employment relations, and providing a written labour contract for employees is an employer's mandatory obligation. Both a worker's labour contractual status and insurance eligibility could influence the ways in which workers deal with their work-related injury problems. According to the

³⁴ These respondents may either work under a labour service contract, or any other types of contract, or they may work without any contract. This chapter focuses on the differences between workers with and without a labour contract. Differences among workers with a fixed-term labour contract and an open-ended labour contract, as well workers with a short-term or long-term labour contract are explored in the next chapter.

Labour Contract Law, the rights and benefits of workers, including entitlements to work-related injury insurance, are closely connected with their contractual status. Without a proper employment contract, a worker is unlikely to become a work-related injury insurance recipient.

(2) An intermediate factor: applying for injury identification

Application for work-related injury identification is an important stage in the process of claiming and dispute resolution, which has been ignored in previous studies. As outlined in Section 1.6.2(1), the law assumes that all the insurance claimants and compensation seekers should make such an application in order to confirm their eligibility for work-related injury insurance and the specific amount to be awarded. A local regulation in Guangdong province has further strengthened the necessity of this step for compensation seekers. As stated in Article 15 of the ‘Guidance on issues regarding the application of the Law of Mediation and Arbitration of Labour Disputes and the Labour Contract Law of Guangdong’ (Higher People’s Court of Guangdong, 2010):

... if the employer does not pay the social insurance premiums, the worker can request his/her employer to pay for the social injury benefit. If the worker cannot provide any evidence that (s)he has obtained the work-related injury identification from the Labour Administrative Department, the case will not be supported by the Labour Dispute Arbitration Committee, and will also be rejected by the court.

As a city of Guangdong, in Dongguan, an injured worker has no way to mobilise the labour dispute resolution system without going through the process of work-related injury application. This local regulation has given more importance to work-related

injury identification procedures than the way it is laid down in the administrative regulations.

Table 4.6: Whether or not applied for identification by respondent's Hukou status

Application status	Migrant worker (n=189)	Urban worker (n=102)
Applicant	65%	100%
Non-applicant	35%	-

Results of chi-square test: $p=0$. As $p<0.05$, the statistical association is significant.

There is sharp difference between migrant and urban workers in terms of whether they applied for work-related injury identification (See Table 4.6). All the urban workers who completed the questionnaire, regardless of their insurance status, applied for administrative identification. All the respondents who reported they did not go through this process were migrant workers. Work-related injury identification procedure, a procedure for all injured workers according to the *Regulation on WRI Insurance*, was less likely to be taken by migrant workers than urban workers.

More specifically, we find that nearly all (97 per cent) the non-applicants were either uninsured or unsure about their insurance status. Likewise, 97 per cent of respondents who have not applied for work-related injury identification did not have a labour contract. These workers, who were in informal and illegal employment relations, had no choice but to initiate private compensation procedures, and were more likely to skip over identification than others (See Table 4.7-4.9).

Table 4.7: Non-applicants' contractual status

Contractual status	Non-applicant (n=67)
With a labour contract	3%
Without a labour contract	97%

Table 4.8: Non-applicants' insurance status

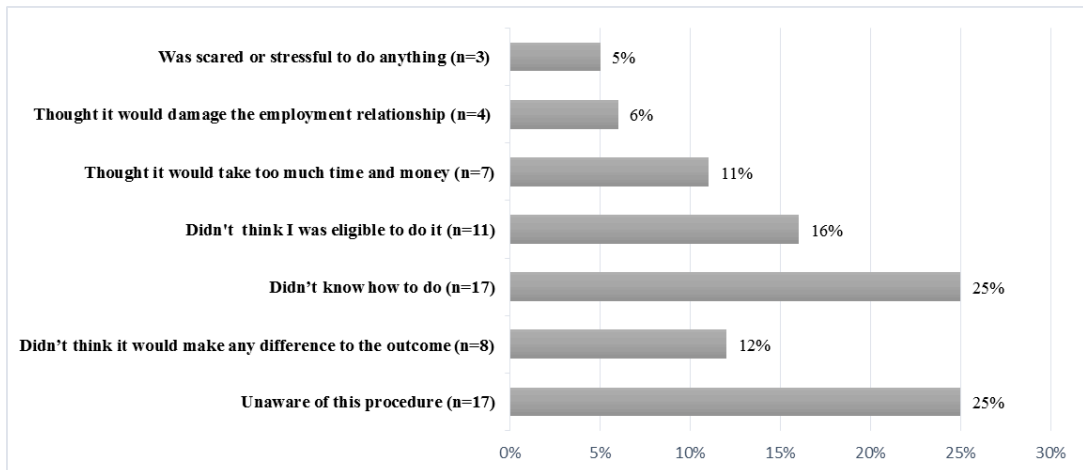
Insurance status	Non-applicant (n=67)
Insured	3%
Uninsured	87%
Unsure	10%

Table 4.9: Non-applicants' means of resolution

Means of resolution	Non-applicant (n=67)
Claiming insurance	-
Seeking compensation	76%
Taking no action	24%

Figure 4.4 demonstrated the reasons given by non-applicants. We can find that there was a considerable number of respondents who had never heard of the identification procedure, or held a mistaken impression of it. As shown in Figure 4.4, of all 67 non-applicants who completed the questionnaire, 17 (25 per cent) did not know about the procedure at all, 11 (16 per cent) believed they were ineligible to initiate this procedure and 17 (25 per cent) were not sure how to apply for it.

Figure 4.4: Reasons for ignorance of identification procedure given by non-applicants



Despite its importance for determining the outcome, as well as the expectation of the legal system that it will be done in every case, migrant workers were less likely to initiate the application. Among the non-applicants, the majority of them gave up the right to an administrative application not due to concerns about costs or stress, but due to a lack of basic knowledge of this procedure. In the process of claiming and dispute resolution, they were not fully informed by their employers or advisors about it.

According to Felstiner (1980), injurious experiences can only be transformed into disputes when parties go through the *naming, blaming and claiming* stages. In this case, work-related injury identification procedure is an institutional barrier for ‘naming’ and ‘blaming’ in the dispute resolution process for migrant workers. Without completing it, there were no ways for them to externalise their problems successfully, and make a successful claim.

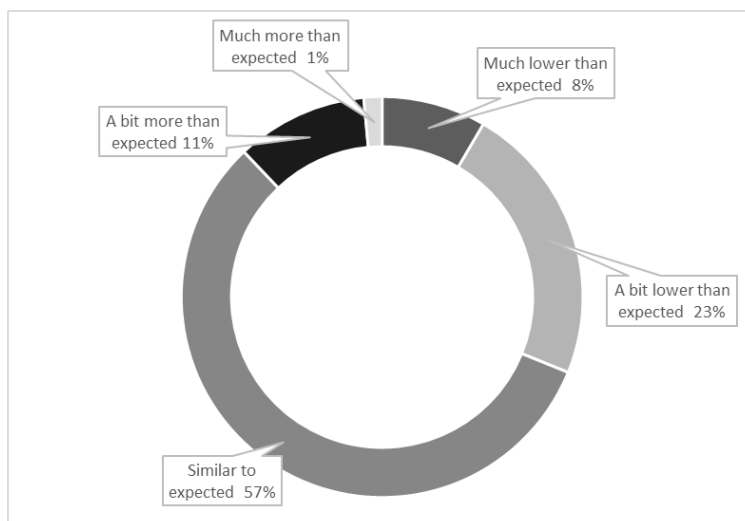
4.4.2. Outcome of claiming and dispute resolution

In this study, the outcomes of claiming and dispute resolution are measured by two indicators: first, whether the respondents were satisfied with the outcome, which is assessed by comparing the ‘expected amount’ with the ‘recovered amount’, as a worker’s main objective in resolving a work-related injury problem was money-related, usually involving paying for medical expenses and recovery of loss of earnings. Second, the way in which the compensation is obtained³⁵. Respondents who claimed insurance would obtain their benefits from the social insurance agency once their application was approved. However, respondents who relied on private remedies could receive the compensation through three mechanisms: negotiation with their employer, mediation conducted by the legal institutions, or adjudication made by the Labour Arbitration Committees or courts. The first two mechanisms involved a

³⁵ It also included cases where respondents did not receive any compensation.

resolution by agreement, and the third mechanism involved a resolution by adjudication³⁶.

Figure 4.5: The resolution outcome of all respondents (n=273)



(1) Migrant workers vs. urban workers

The majority (57 per cent) of respondents believed they were compensated fairly, as they thought the amount of compensation was similar to what they expected. This includes 12 per cent of respondents who reported that they were compensated above their expectation. 31 per cent of respondents who dissatisfied with the compensation, including 8 per cent of respondents who believed they were paid significantly less than expected.

The differences between migrant and urban workers look much clearer if the assessment of resolution outcome is simplified from five options into two: lower than expected, equal to or more than expected. We find that 40 per cent of migrant workers

³⁶ Another difference between these mechanisms is whether the compensation was obtained by internal resolution, or by the third parties' involvement. This will be discussed in Chapter Five.

rated their resolution outcome as unsatisfactory, but only 17 per cent of urban workers did so (See Table 4.10). Urban workers were more likely to rate the outcome, i.e. the amount of compensation they were awarded as positive, while migrant workers were more likely to consider that they did not get what they deserved. From the perspective of outcomes, urban workers tended to come out ahead in the compensation system.

Table 4.10: Outcomes by respondents' Hukou status

Outcome	Migrant worker (n=171)	Urban worker (n=102)
Equal to or more than expected	60%	83%
Less than expected	40%	17%

Result of chi-square test: $p=0$. As $p<0.05$, the statistical association is significant.

(2) Administrative System vs. Non-administrative system

Respondents who dealt with their work-related injury problems through administrative redress procedures were generally satisfied with their outcomes. In addition, there was no significant difference between migrant and urban workers in terms of their attitudes to the outcomes. In other words, administrative redress procedures treated migrant and urban workers equally and fairly.

Table 4.11: Outcomes achieved through the administrative system (n=173)

	Less than expected	Equal or more than expected
Migrant worker (n=84)	14%	86%
Urban worker (n=89)	16%	84%

Result of chi-square test: $p=0.709$. As $p>0.05$, the association is not significant.

As shown in Table 4.12, of all the respondents who dealt with work-related injury problems outwith administrative redress procedures, migrant workers were more likely to be dissatisfied with their outcomes than urban workers. Compared with the administrative route, the differences in outcomes between migrant and urban workers were more pronounced. The following section provides an in-depth analysis of the work-related injury problems which were dealt with by the non-administrative system from legal institutions' perspective.

Table 4.12: Outcome achieved through non-administrative system (n=100)

	Less than expected	Equal or more than expected
Migrant worker (n=87)	64%	36%
Urban worker (n=13)	23%	77%

Result of chi-square test: $p=0.0001$. As $p<0.05$, the association is significant.

(3) 'Bargaining in the shadow of the law'?

We find a widespread tendency among arbitrators and judges to differentiate their role in conducting mediation and undertaking adjudication. They switched their position from 'being legal' to 'being extra-legal' between the two mechanisms. When conducting mediation, their roles were described as 'being extra-legal', which is quite different from public perceptions of what they do, which is prescribed by the law. Many of them expressed a sense of alienation from the law, despite the fact they regarded law as the most important source and norm for their work, for example:

'People usually regard the court's role as that of an organisation to resolve disputes. Being on the top of the pyramid (dispute resolution system) ... our role is far beyond applying the law and making decisions. We are here to maintain the social order of this community.' (J1)

'It's a two-way role here... protecting workers, and guaranteeing the prosperity of local economy ... Decisions have to be made with an 'overall' view rather than by following the law rigidly, and we have to consider the impact (of arbitration decisions) on society.' (A2)

When conducting mediation, their role goes beyond remaining neutral, assessing the evidence, interpreting and applying the law, and making a decision. Instead, they made it clear that maintaining the 'social order' is as important as, if not more important than, applying the law. Their responses also implied that, in some circumstances, 'being legal' might be an inappropriate approach for dealing with claims and disputes. The term 'social order' can be understood largely in terms of economic considerations, as made clear by several respondents. Labour centre staff, arbitrators and judges expressed their concerns for social order in a variety of ways, referring to factors such as local GDP, tax revenue, investment, unemployment in the local community, etc. Such considerations ran through their daily work. On one hand, they were all aware of their 'legal role'. On the other hand, they found being an 'in-between' of the law and the practice was a better choice.

'We don't want to be a bad example. A too harsh employment law is no good for attracting investors... Last year, as the minimum wage increased, some foreign corporations abandoned Dongguan and moved their plants to Vietnam... it was a great loss for us, and it was also a great loss for workers, obviously, you know...' (A1)

Respondents were not always value-free when conducting mediation. Instead, they held preconceived notions about disputes. Workers' complaints and disputes were often considered and treated, especially by staff in labour service centres and arbitrators, as something '*destructive*' and '*troublesome*' to the normal order of business and production, as they might have a negative impact on the interests of the community. '*Being normal*' is important; it refers to the fact that business should be trouble-free. It should be noted that, unlike arbitrators and staffs in labour service

centre, judges did not express the same opinions as labour service staff and arbitrators. But, in most cases, they agreed that *'it is necessary to resolve work-related injury problems at an earlier stage'*, as *'the longer it takes (to finish a case), the more troubles arise.'* The labour service staff and arbitrators described their role as that of a *'fire extinguisher'*, or a *'bridge between the employer and the employee'*. Some respondents considered the essence of a dispute as *'in hostility'* and *'a lack of communication between the employer and the employee'*. Thus, resolving a dispute entailed reconciling such hostility, and providing a better opportunity for the employer and employee to negotiate.

For staff in labour service centres, the statutory standard of compensation in the law *'is clearly given, but does not always need to be followed'*. Rather than providing parties with a suggestion or a resolution according to the law, they often chose to bypass the law. They frequently engaged in mediation by probing parties' *'bottom line'* first, as discussed by one interviewee:

'We want to be clear what kind of objective they are pursuing, their position and their needs ...we then need to figure out the amount (of compensation) which would be enough for the (workers), and the amount which is acceptable for the employer. That is the foundation of work for a successful mediation.'
(LS1)

'They (injured workers) came here, with the idea of fighting against their employers. But most of them are not quite sure of their statutory rights... there is plenty of room for mediation to be carried out'. (LS2)

'The legal standard of compensation for one finger loss (in a work accident injury) is about RMB 20,000 Yuan. The price is a bit too high for firms, they cannot accept it easily ... I successfully resolved a case last week and reduced the compensation to RMB 5,000 Yuan (he paused and smiled) ...what I mean to say is the key is not necessarily to encourage them to pursue rights, but to lead them to a practical solution, which is good for both parties.' (LS2)

The elasticity in applying the law is also followed by judges and arbitrators. Some of them justified the flexibility in interpreting and applying the law in cases of mediation on the ground that ‘...cases should be handled according to specific circumstances’. Others thought that flexibility was useful in considering the wider and long-term implications of the resolution of the dispute. For example:

‘If the compensation sanctioned is too high, it could easily push a firm, especially a small-sized firm, into financial difficulties... we must refrain from such situations. The critical task is gaining a balance between workers’ benefits and the community’s interests.’ (J1)

‘Individualising cases’ means that outcomes might be inconsistent, uncertain and random. Arbitrators and judges kept the initiative in interpreting statutory standards. The interview data also revealed, quite strikingly, that statutory standards have sometimes be ‘redefined’ by joint efforts from the arbitration committee and the court, as expressed by one arbitrator:

‘We had different standards. (What do you mean?) For example, the value of disability allowance and subsidy is determined partly by the individual worker’s income. In practice, we apply the average income. In government statistics, we can find a number of types of ‘average income’. We adopted a different one from the court. Thus, our compensation standard was slightly lower than the one of courts... (A1)

A judge mentioned the ‘communication’ in terms of the legal standard for work-related injury compensation in this way:

‘In recent years, we have strengthened communication with each other... we had two meetings with the arbitration committee in the past year... we discussed these issues and tried to unify our understanding of the standard...We reached some agreement at the end. Convergence is good, as

they don't want to see that their decision was frequently challenged or modified by us.' (J2)

The trade-off between different standards, made by different legal agencies, on the one hand, reveals that the law is not clearly written, empowering enforcement agencies to interpret it. On the other hand, it shows how arbitration committees and courts interpret the laws is a form of compromise, and that the purposes of the law are often overlooked, and are sometimes subordinated to their organisational concerns.

The high rate of settlement among respondents who followed the quasi-administrative route can also be explained by the pre-established criteria and organisational objectives. Judges and arbitrators said that the rate of settlement was one of the most important indicators for evaluating organisational performance. The number of cases that are resolved through mediation can directly influence promotion and remuneration for judges and arbitrators. Arbitrators and judges are encouraged by legal institutions to reduce the use of formal and strict decisions, and to adopt a 'tender' way to resolve disputes timeously at an early stage in order to minimise the negative impact of such disputes, such as social instability. In most cases, compromise must be reached in a manner that is most appropriate in the context of Chinese culture and politics. For some of the judges, *'resolving disputes by mediation is not only a professional choice, but is also driven by political correctness'*. (J3)

However, arbitrators and judges acknowledged the importance of 'law', and regarded workers' compensation disputes as 'bargaining in the shadow of law' (Mnookin, 1979). The courts encouraged private bargaining but were ready to come out from the shadows and resolve the dispute by coercion if the parties could not agree.

The time and effort an arbitrator or judge could spend on each case were quite limited. To achieve the 'optimum' allocation of limited human resources, prior to any formal hearings and trials, a screening process first identified each case, and then labelled it as either an 'easy case' or a 'tricky case'. Easy cases were put on a fast track while tricky cases stayed on the regular track. For judges and arbitrators, work-related injury disputes were often regarded as 'easy cases' or 'unimportant cases', as there were no 'substantial conflicts' between parties. As expressed by one judge, 'workers were looking for a powerful tool to persuade their employers to make compensation.'

As a formal hearing requires more time than conducting mediation, parties in an easy case had a much smaller chance to attend formal hearings, and an attempt would be made to resolve their disputes through mediation. In work-related injury problems, victims were often in an urgency to obtain compensation.

This screening standard often coincided with their willingness for achieving a resolution as quickly as possible. Such demands gave legitimacy to the court for differentiating parties and their cases. Judges, based on their experience, reported that workers who were in a more vulnerable situation were more willing to make compromises, and less determined to pursue their cases to the end. According to a judge:

*'Workers who showed a more cooperative attitude to the mediation were more likely to be migrant workers, workers who were experiencing financial difficulties, or workers who lacked the power to bargain with their employer'.
(J2)*

Judges were convinced that these workers benefited if their cases are placed on the fast track. These workers need to get the compensation sooner to cover their medical costs and living costs, which they could not afford. They were more likely to receive

compensation which was lower than the statutory standard, and lower than their own expectations. This is consistent with the questionnaire findings, among respondents who adopted the quasi-legal route that urban workers were more likely to rate the resolution outcome reached by mediation more positively than migrant workers.

4.5. CONCLUSION

As discussed in Section 2.3.1, the accounts of tenBroek (1968) demonstrated that, under the dual legal systems of family law in California, family law for ‘the poor’ was regulated by the public law system while family law for ‘the fortunate’ was dealt with by the private law system. The two legal systems were separate and parallel, creating social inequalities between the two groups of population.

By analysing law in the books in relation to work-related injury compensation, this study suggests that there are dual legal systems of work-related injury compensation in China, one legal system for insured workers, and the other one for uninsured workers. Thus, the claiming and dispute resolution process for workers is bound up with their insurance status. Insured workers tended to use the administrative redress procedure for obtaining insurance benefits. Uninsured workers were unable to use the administrative redress procedure. For them, seeking a private compensation was their only choice. Otherwise, there was nothing they could do to resolve their problems.

Work-related injury identification procedures are important for resolving work-related injury problems. However, a substantial proportion of migrant workers did not apply for it, as they were unaware of this process or unaware of the way to apply for it. This procedure has become an institutional barrier for migrant workers to gaining access to civil justice.

The legal remedy for the administrative compensation claims is insurance benefits, which is governed by the social insurance agencies and is regulated by administrative redress procedures. The legal remedy for the private compensation claims is private compensation, which is regulated by the *Labour Dispute Law*. As migrant workers were more likely to be uninsured than urban workers, the entitlements to social insurance of the ‘more fortunate’, i.e. urban workers, were more likely to be regulated by the administrative law (public) system while the entitlements of the ‘more vulnerable’, i.e. migrant workers, often subject to the labour (private) law system.

Administrative law system, which governs the administration of welfare rights, represents a value of ‘the citizen receiving what is due to them’ (Adler, 2003). The labour law system, which governs the private bargaining, represents the value of civil justice, i.e. giving parties equal positions. The aim of the labour (private) law system is private compensation from employers, the forms of resolution could be negotiation, bargaining with the involvement of mediation, and if necessary, civil litigation.

We find the dual legal systems in China are a mirror image of tenBroek’s (1968) accounts. This because, in the context of work-related injury problems, the administrative (public) law system is superior to the labour law (civil) one in terms of the level of satisfaction of the outcomes. This is mainly because of a downgrading of justice in the legal institutions which deal with work-related injury disputes as labour disputes. Mediation was the dominant mechanism of arbitration committees and courts for resolving work-related injury problems, while formal hearings and adjudication were rarely used. Uninsured workers were often led to a resolution by agreement. The civil justice system, in most circumstances, plays a role in settling work-related injury problems, and in facilitating compensation rather than enforcing the *Labour Law* and the *Social Insurance Law*.

Work-related injury insurance compensation is a form of insurance in exchange for mandatory relinquishment of the employee's right to sue his/her employer for the tort of negligence (Epstein, 1981; Larson and Larson, 2008). However, the prevalence of private remedies outside the administrative law system among migrant workers obscures the essential spirit of the insurance scheme. For migrant workers, especially the uninsured ones, there are intangible barriers that hinder them from reaching 'what is due to them'. This dual legal systems, which divide and separate workers in respect of their social insurance eligibility, cannot result in social equality.

In conclusion, the dual legal systems hypothesis is supported by empirical evidence. On the one hand, differences in the paths taken by migrant and urban workers to resolve their work-related injury problems are shaped by the dual legal systems of work-related injury compensation, which recognises their equal right to compensation, but stipulates different types of remedies and procedures for insured and uninsured workers. Under this dual legal system, insured workers are able to take the administrative route while uninsured workers are not, and have to take the private route. On the other hand, since the administrative route often produces more favourable outcomes than the private route, migrant workers often achieved less satisfactory outcomes than urban workers.

CHAPTER 5

THE DUAL LABOUR MARKET HYPOTHESIS

5.1. INTRODUCTION

The second hypothesis attributes the differences between migrant and urban workers in their experiences dealing with work-related injury problems to a dual labour market in China. The paths of claiming and dispute resolution can be understood from the dynamics of the labour market, in particular, from the perspective of the suppliers of labour, i.e. workers, as well as the demands of labour, i.e. employers. The outcomes of claims and disputes are then investigated from the perspective of firms' human resources management practice.

This hypothesis is approached from two standpoints. First, it attempts to examine whether the disparity in insurance provisions between migrant and urban workers can be explained by differences in their characteristics and by variations in enterprises' ownership types. Evidence from the questionnaire survey is presented. Second, by presenting evidence from qualitative interviews with human resource representatives, it aims to find out whether the differences in the ways in which the employers deal with work-related injuries complaints contribute to the differences between migrant and urban workers in their access to internal dispute resolution resources.

5.2. PATHS OF CLAIMING AND DISPUTE RESOLUTION

This section aims to explore the association between relevant labour market factors and the ways in which migrant workers and urban workers resolved their problems.

As discussed in Chapter Four, the paths of claiming and dispute resolution are largely determined by workers' eligibility for state social insurance benefits³⁷. Thus, the indicator of 'means of resolution' represents here, first, how respondents resolved their problems, second, whether they were insured or uninsured/unaware of their insurance status. This section takes a realistic perspective to explore under what kinds of circumstance, or according to what kinds of criteria, firms decided not to comply with the statutory regulations in terms of work-related injury insurance provision.

5.2.1. Workers Characteristics: Who came out ahead?

(1) Human capital

Economists argue that an individual's accumulation of human capital, which mainly refers to a worker's schooling and the skills acquired from on-the-job training, contributes to inequality in their wage and non-wage benefits (Blundell et al., 1999; Chiu, 1998; Mincer, 1958;1974). More investment in human capital accumulation increases an individual worker's earning power. This study assumes that when firms make a decision on whether or not to provide social insurance coverage for an employee, they take human capital into account.

Empirical evidence suggests that whether or not workers were insured and were allowed to initiate an administrative claim was strongly associated with their educational attainment. Workers who were more educated were more likely to be insured and to follow the administrative route than those who had a lower educational background. On the other hand, less educated workers were not necessarily more

³⁷ In rare circumstances, exceptions existed: when workers were insured, they gave up their right for claiming insurance and accepted private compensation from their employers. However, this situation is uncommon in practice and lacks generalisable significance.

likely to be uninsured, or to be kept away from the administrative law system than those who were more educated.

Table 5.1: Means of resolution by respondents' educational attainment

	Below high school (n=132)	High school and above (n=159)
Claiming insurance	48%	69%
Seeking compensation	39%	28%
Taking no action	13%	3%

Result of chi-square test: $p=0$. As $p<0.05$, the association is significant.

Table 5.2: Respondents' educational attainment by Hukou status

	Below high school	High school and above	Total
Migrant Worker (n=189)	53%	47%	189
Urban worker (n=102)	31%	69%	102

Result of chi-square test: $p=0$. As $p<0.05$, the association is significant.

Table 5.3: Means of resolution by respondents' skill levels

	Unskilled (n=169)	Semi-skilled (n=102)	Skilled (n=20)
Claiming insurance	50%	67%	100%
Seeking compensation	38%	31%	-
Taking no action	12%	2%	-

Result of chi-square test: $p=0$. As $p<0.05$, the association is significant.

Table 5.4: Respondents' skill level by Hukou status

	Unskilled	Semi-skilled	Skilled
Migrant worker (n=189)	62%	32%	6%
Urban worker (n=102)	51%	41%	8%

Result of chi-square test: $p=0.196$. As $p>0.05$, the association is not significant.

Although skilled workers were more likely to be insured, there was no significant difference in terms of migrant and urban workers' skill level. In the manufacturing sector, both migrant and urban workers' human capital generally remained low. Therefore, the factor of skill did not directly contribute to the disparity between migrant and urban workers in terms of their insurance eligibility and means of resolution. Furthermore, as the rate of insurance participation was much higher in skilled workers than in semi-skilled workers, the study suggests gaining a professional skill and qualification made a significant difference. However, gaining on-site training and experiences were less helpful.

(2) Working hours

Table 5.5: Means of resolution by respondents' working hours

	Less than 44 hours (n=34)	44-55 hours (n=71)	56-70 hours (n=101)	Above 70 hours (n=85)
Claiming insurance	79%	82%	51%	43%
Seeking compensation	12%	14%	42%	48%
Taking no action	9%	4%	7%	9%

Result of chi-square test: $p=0$. As $p<0.05$, the association is significant.

Table 5.6: Respondents' weekly working hours by Hukou status

	Less than 44 hours	44-55 hours	56-70 hours	Above 70 hours
Migrant worker (n=189)	2%	12%	48%	38%
Urban worker (n=102)	29%	48%	9%	14%

Result of chi-square test: $p=0$. As $p<0.05$, the association is significant.

As shown in Table 5.5, those who had longer working hours per week were less likely to be insured, and to have access to the administrative redress procedure than who worked fewer hours. Compared with urban workers, migrant workers were more likely to work long hours than urban workers. 86% migrant workers had a working schedule of longer than 55 hours, but only 23% urban workers did so.

(3) Wages (rate and payment)

Table 5.7: Means of resolution by respondents' wage rate (RMB Yuan)

	Below 920 (n=6)	920-1340 (n=93)	1341-3028 (n=124)	3029 and above (n=68)
Claiming insurance	17%	47%	59%	81%
Seeking compensation	83%	41%	35%	16%
Taking no action	-	12%	6%	3%

Result of chi-square test: $p=0$. As $p<0.05$, the association is significant.

Table 5.8: Respondents' wage rates by Hukou status

	Below 920	920-1340	1341-3028	3029 and above
Migrant worker (n=189)	3%	44%	34%	19%
Urban worker (n=102)	-	9%	55%	36%

Result of chi-square test: $p=0$. As $p<0.05$, the association is significant.

Empirical evidence suggests that wage rates are strongly associated with the ways in which workers dealt with their problems. Higher wage earners were more likely to be insured, while lower wage earners were more likely to be uninsured and to seek private compensation from their employers.

Within the same occupation, there was a wage gap between migrant and urban workers. As shown in Table 5.8, 53 per cent migrant workers received a wage higher than the local average rate, but 91 per cent urban workers did so. Therefore, migrant

workers more often experienced the procedural difficulties and uncertainties associated with the private compensation system than urban workers.

Table 5.9: Means of resolution by respondents' wage payment

	By piecework (n=108)	On a time basis (n=183)
Claiming insurance	6%	91%
Seeking compensation	78%	7%
Taking no action	16%	2%

Result of chi-square test: $p=0$. As $p<0.05$, the association is significant.

Table 5.10: Wage payment by Hukou status

	By piecework	On a time basis
Migrant workers (n=189)	50%	50%
Urban workers (n=102)	13%	87%

Result of chi-square test: $p=0$. As $p<0.05$, the association is significant.

We found significant differences between workers who were paid by piecework and workers who were paid on a time basis in terms of their eligibility to insurance, as well as the means they adopted to resolve work-related injury problems. Workers who received their wage by piecework were more likely to be uninsured and to seek compensation from their employers or take no action to deal with their problems. Workers who were paid on a time basis (including hourly and monthly) were more likely to be insured and to be eligible for initiating administrative claims. Previous studies suggested workers who were paid by piecework were generally more productive but had a greater risk of experiencing work-related injuries than workers who were paid on a time basis (Adams, 1963; Roy, 1953; Siegrist, 1996). This study indicates that workers who were paid by piecework were also in a more vulnerable position in terms of their entitlements to social insurance benefits and choice of claiming and dispute resolution procedure. As shown in Table 5.10, half the migrant

workers were paid by piecework, compared to 13 per cent of urban workers. The negative impact of piecework was mainly borne by migrant workers.

(4) Term of relationships

In Chapter Four, I have compared the differences between those workers who had a labour contract and those who did not from the perspective of law. Here, emphasis is placed on the terms of contract, no matter what kind of contract was provided³⁸. This indicates that long-term employment relations increased the employee's probability of gaining access to state-run social insurance programmes, which further influenced the path which was used to resolve their work-related injury problems. Workers who had a longer contractual relationship with their employers were more likely to be brought into firms' social insurance plan, and once problems arisen, to the administrative redress procedure, while workers who had a shorter contractual relationship were more likely to be kept out of the system, so that they had to seek private remedies when they suffered work-related injuries.

Table 5.11: Means of resolution by the length of respondents' contract

	Less than 1 year (n=113)	1-3 years (n=53)	Above three years (n=64)	Open-ended contract (n=19)
Claiming insurance	38%	89%	100%	100%
Seeking compensation	53%	7%	-	-
Taking no action	9%	4%	-	-

Result of chi-square test: $p=0$. As $p<0.05$, the association is significant.

³⁸ The total number of respondents here is 249 rather than 291 as the respondents who did not work under any contract were excluded from this analysis.

Table 5.12: Contract term by Hukou status

	Less than 1 year	1-3 years	Above three years	Open-ended contract
Migrant worker (n=155)	72%	19%	2%	7%
Urban worker (n=94)	2%	24%	65%	9%

Result of chi-square test: $p=0$. As $p<0.05$, the association is significant.

Of all the migrant workers who completed the questionnaire, 72 per cent of were on a contract of less than one year. But only 2 per cent of urban workers were on a contract of less than one year. 74 per cent of urban workers had a contract for longer than three years, including an open-ended contract. As migrant workers were more likely than urban workers to be on a shorter contract, they were less likely to be placed on firms' work-related injury insurance scheme.

(5) Trade union membership

Table 5.13: Means of resolution by trade union membership

	Member (n=70)	Non-member (n=199)	Unknown (n=22)
Claiming insurance	100%	50%	18%
Seeking compensation	-	42%	64%
Taking no action	-	8%	18%

Result of chi-square test: $p=0$. As $p<0.05$, the association is significant.

Table 5.14: Trade union membership by Hukou status

	Member	Non-member	Unknown	Total
Migrant worker (n=189)	6%	85%	9%	189
Urban worker (n=102)	58%	37%	5%	102

Result of chi-square test: $p=0$. As $p<0.05$, the association is significant.

Trade union members enjoyed more advantages in work-related injury participation and dispute resolution than non-union members. They were more likely to be allowed to deal with their problems through the administrative redress procedure. This was presumably related to their stronger rights consciousness and greater informal power, as well as their closer relationship with the firms. Although the association is found for both migrant workers and urban workers, fewer migrant workers enjoyed these insurance and procedural advantages than urban workers. This is because of all the migrant workers who completed the questionnaire; only 6 per cent of them had joined a trade union, while 58 per cent of urban workers had done so (Table 5.14).

(6) Summary

Empirical evidence for the questionnaire survey referred to firm-level social insurance arrangements. When employers perform their mandatory obligations to provide work-related injury insurance coverage for all employees, urban workers came out ahead. As a result, they had a number of procedural advantages in terms of dispute resolution when they attempted to seek compensation. This disparity can be further understood by the strategy adopted by employers. It can be argued that enterprises adopted a two-tiered system in arranging work-related injury insurance provision for their employees. Priority of participating in the insurance scheme was given to those who were more educated, highly skilled, were in a formal contract, had higher wage but less working hours, workers who were paid on a time basis and trade union members. These workers were often urban workers. Temporary, semi-skilled and unskilled workers, as well as workers who were paid by piecework, had longer working hour, had more risks of experiencing industrial accidents, tended to be marginalised by firms' social insurance scheme. These workers were often migrant workers.

From the perspective of studies of the dual labour market theory, employers tended to invest less in secondary labour market, as there was little incentive for them to promote employment stability. Rapid turnover and the lack of cumulative growth in job skills was the result. This study has suggested that the impact of the labour market segmentation has extended to firms' social insurance arrangement, which should be regulated by the state's mandatory regulations rather than be determined by the dynamics of labour market. The role of the state was weakened, as the firms had great autonomy in arranging work-related injury insurance, even if this sometimes was against the law.

5.2.2. Differences in ownership types of enterprises

This study assumes that different types of enterprises adopted different strategies for dealing with work-related injuries, and that can influence the ways in which migrant and urban workers dealt with their work-related injury problems. This section presents empirical findings from the questionnaire survey and qualitative interviews on the relationship of respondents' Hukou status with the means of dispute resolution in four types of enterprises: SOEs, collectively-owned enterprises, domestically-owned private enterprises and foreign-owned enterprises.

(1) Questionnaire findings

Of the 47 respondents who worked for SOEs, all took action to deal with their problems. 94 per cent of them were insured and sorted their problems by claiming insurance using administrative procedures. SOEs provided the best example in fulfilling the statutory obligation of providing work-related injury insurance. However, that was still not perfect. Among the three respondents who sought private

compensation, two, both migrant workers, were uninsured. In SOEs, there was no significant difference between migrant and urban workers in means they used to resolve their problems. It might indicate that SOEs treated migrant and urban workers equally.

Among the respondents from collectively-owned enterprises, only 24 per cent were insured and they sorted out problems by the administrative redress procedure. Among the four types of enterprises, collectively-owned enterprises presented the worst example of providing work-related injury insurance coverage. In collectively-owned enterprises, all the 28 migrant workers were excluded from the channel for administrative compensation, while only 11 per cent urban workers were. Work-related injury insurance coverage, as a type of exclusive benefit, belonged exclusively to urban workers.

Table 5.15: Means of resolution by respondents' Hukou status in domestically-owned private enterprises

	Migrant worker (n=81)	Urban worker (n=39)
Claiming insurance	33%	90%
Seeking compensation	56%	8%
Taking no action	11%	2%

Result of chi-square test: $p=0$. As $p<0.05$, the association is significant.

In domestically-owned private enterprises, nearly half of respondents were uninsured, and either sought private compensation from their employers or made no attempts to resolve their problems. A significant statistical difference was found between migrant and urban workers in their ways of dealing with their problems. 67 per cent of migrant workers had to initiate private bargaining, while 10 per cent of urban workers did so. This indicates that in domestically-owned private enterprises, migrant workers

and urban workers had unequal access to insurance benefits, and therefore also had unequal access to the administrative redress procedure.

Foreign-owned enterprises also underperformed in fulfilling their mandatory obligations. 30 per cent of respondents from foreign-owned enterprises reported they did not claim insurance for work-related injuries, and they either sought compensation from their employers or did nothing about their problems. However, foreign-owned-enterprises did not make a distinction in terms of employees' Hukou status, as no statistical difference was found in the means of dispute resolution used by the two groups of respondents.

Table 5.16: Means of resolution by respondents' Hukou status in foreign-owned enterprises

	Migrant worker (n=55)	Urban worker (n=27)
Claiming insurance	64%	81%
Seeking compensation	29%	7%
Taking no action	7%	12%

Result of chi-square test: $p=0.081$. As $p>0.05$, the association is not significant.

(2) Prevalence of non-compliance: a further investigation

Qualitative interviews provide first-hand information about compliance and non-compliance with the statutory work-related injury insurance regulations from the perspective of employers. SOEs were in the leading position in terms of the work-related injury insurance provision, both in respect of participation rate and of equal treatment for migrant and urban workers. This is closely connected with their position in the social insurance system as well as in the market economy. As discussed in Chapter Four, the Chinese social insurance scheme was first introduced in SOEs and then gradually spread into other types of enterprises. Compared with

them, SOEs have a longer tradition of social insurance implementation than other types of enterprises. Two human resource representatives in SOEs expressed the view that they had a 'closer connection' with central and local government (SOE1, SOE2), and one mediator from SOE reported that they were 'supposed to do it (provide work-related injury insurance) well' (SOE5). They also said that they 'abided by the law and local regulations were important for their 'reputation' (SOE1), or their 'good image and record' (SOE4). They generally adopted employee-friendly human resource policies and were more concerned with their social responsibilities. Interviewees from SOEs did not often link their obligations in relation to social insurance with cost control considerations, probably because they had a greater legal consciousness, or because they were less concerned with profitability and market competitiveness than other types of enterprises.

However, even in SOEs, insurance coverage had not reached 100 per cent. This situation was more problematic in other types of enterprises. Non-compliance was explained in terms of a number of different considerations. Most managers expressed their concern about labour costs when arranging work-related injury insurance provisions. An HR manager from a domestically-owned private enterprise said:

'There is an unwritten regulation in Dongguan: in an enterprise, the number of employees who were covered with work-related injury insurance often determines the number of employees who should be covered with old age insurance. If we pay work-related injury insurance premiums for all the employees, we need to pay for more endowment insurance premiums for a wider range of employees, which is sometimes economically unnecessary...'
(DPE1)

Another interviewee who was from a collectively-owned enterprise said:

'Those lawmakers are living in a world far away from us. They don't understand our difficulties. The labour costs in Dongguan keep increasing in recent years...Last year, the minimum wage system was enacted, then, social insurance premiums increased... We don't know what will happen next. You see the economic recession since 2008 has transformed Dongguan into a different place. The number of orders we received this year significantly shrank. Nearly all the small and medium enterprises are experiencing capital turnover problems. These costs are a really burden for us... The best time for Dongguan has gone. Underpaying insurance premiums is a survival strategy... this is an open secret in Dongguan... As the social injury premiums are calculated on the basis of employees' total wages... many enterprises underreported the total wages in order to reduce the amount to be paid. A similar approach as employers adopted for tax evasion.' (COE2)

These employers should have known that it was a violation of the law if they failed to provide work-related injury insurance coverage for their employees. However, such consideration had taken second place to the utilitarian concern for cost control. When they found that costs were too high, as they could not change their role as an insurance provider, they could only choose to cut costs by cutting back, and moving to a less expensive plan. In doing so, two interviewees emphasised that they had obtained the consent of their employees to abandon their rights to social insurance. In return, they were paid at a higher rate. For employers, social insurance participation is not only a straightforward yes-or-no option, but also a process involving a complex calculation of costs and benefits. In domestically-owned private and collectively-owned enterprises, employers were not convinced of the necessity of establishing workplace health and safety systems, including investment in work-related injury insurance. They were reluctant to do so because they *'did not believe it could bring any substantial benefits for them'* (DPE3), or did not think *'it was really helpful for improving the firm's overall profitability and productivity'* (COE1). Although work-related injury insurance is designed to remove employers' responsibilities for covering relevant costs for injured workers, some employers perceived it as *'a set of unnecessary and inappropriate costs which were imposed on us by the government'* (DPE4).

Under the recurring theme of cost control, when asked how to allocate the limited quotas for work-related injury insurance, interviewees reported that the allocation was made in a certain ordered sequence or '*in a rational or reasonable way*' (DPE5). Some of them said priority was given to '*workers who perform critical tasks and high-risk tasks*' (DPE3). Others stated that '*senior workers always came before newcomers*'. Two interviewees, one from a collectively-owned enterprise (COE3), the other from a domestically-owned private enterprise (DPE7), similarly mentioned that '*locals and workers who had a longer and more stable relationship with them were placed on the first round list, migrant workers came behind them.*' It was unclear, based on the interview evidence, whether migrant workers had experienced any direct or indirect discrimination from employers in terms of work-related injury insurance provision. This is because the allocation itself was made in response to practical demands rather than following any consistent policy.

Unlike collectively-owned enterprises and domestically-owned private enterprises, which had negative attitudes towards the state social insurance system, interviewees of foreign-owned enterprises were more concerned with the issue of legality. They tended to identify the legal loopholes, and their non-compliance was not necessarily against the law, but, rather involved '*outwitting the law*'.

'We should obey a law that is explicitly laid down for employers. However, everything which is not forbidden is allowed. Providing social insurance for formal employees is necessary, but is unnecessary for temporary employees. Although the law stipulates we must provide it for all of our employees, but it does not fully interpret the definition of employee...We do not pay insurance contribution for workers who are in a labour service contract. When the law is clear, we follow it; but when it is unclear, we can make our rules liberally... There is a boundary between firms' governance in employment problems and state law.' (FOE1)

This implies that, in foreign-owned enterprises, workers' social insurance eligibility was closely linked with their contractual status, or in a general sense, with their legal status. Direct discrimination towards migrant workers was not found, but migrant workers were more likely to face the negative consequences as they were more often subcontracting workers than urban workers. This can be treated as a source of indirect discrimination (Ngai and Lu, 2010b).

The prevalence of non-compliance was also related to the weak enforcement of statutory regulations. Misbehaviour concerning insurance evasion and underpayment were sometimes tolerated, and unlawful conduct was not always penalised, mainly because local government supervision was inadequate. If non-compliance is less likely to be identified and penalised, employers could be encouraged to evade their social insurance responsibilities. In Dongguan, firms' evasion and underpayment of social insurance contributions were mainly detected in two ways: as a result of complaints from employees, and by monitoring and supervision of the Labour Bureau, in particular, the labour surveillance team³⁹. More than half of interviewees from enterprises have admitted that their enterprise had underpaid or failed to pay social insurance contributions, and at the same time, they reported not all this conduct had been detected and punished. Several interviewees from SOEs and foreign-owned enterprises emphasised that the Labour Bureau was sometimes ineffective.

'In enforcing the regulations, the stringency varies, and local government seems has off-seasons and peak seasons... Sometimes they have tight controls over our employment practices, but sometimes the monitoring is weaker. The reasons for the variations are complex... due to social and political factors and

³⁹ This is an independent unit of the Labour Bureau. As the 'watchdog' of local government, it is responsible for overseeing the implementation of labour protection legislation, including the operation the work-related injury insurance scheme. It is supposed to regularly check the performance of individual enterprises to detect unlawful or irregular conduct. It has the power to inform and warn these employers, educate them, or impose administrative penalties where necessary.

economic conditions ...Many firms provide work-related injury insurance only for some of their employees rather than all of them.’ (SOE3)

Managers’ decisions were influenced by the way in which the state enforces its regulations, as well as by the risk of being caught for not complying with them. Some of them implied that, if other enterprises were overlooked for evading social insurance contributions, they believed that they could act likewise. Interviewees from collectively-owned enterprises and domestically-owned private enterprises commonly believed that social relationships with local government ‘*can help them to avoid being audited*’ (COE2), or enable them ‘*to get a lesser penalty when problems happened*’ (DPE8). One interviewee from a collectively-owned enterprise mentioned that, by taking advantage of such a relationship, firms’ perceived risk could be reduced, and that may keep them away from the Labour Bureau’s ‘blacklist’. This kind of relationship was sometimes established on the basis of personal relationships, sometime by using bribery. In other cases, the relationship was recognised, as some local government officials were direct or indirect stakeholders in the enterprise. Turning a blind eye on firms’ social insurance misbehaviour relates to mutual benefits of the government and enterprises. The situation was typical in collectively-owned enterprises or domestically-owned private enterprises, probably as they had a closer connection with local communities than SOEs and foreign-owned enterprises. This evidence indicates that, when monitoring and overseeing the implementation of labour protection legislation, not only the effectiveness but also the impartiality of local government was questionable. This might be another incentive for encouraging enterprise managers to take a chance on social insurance evasion.

(3) Summary

Quantitative evidence suggests that, among the four types of enterprises, SOEs had the highest participation rate for work-related injury insurance, and for treating

migrant and urban workers equally. The other three types of enterprises were problematic in terms of insurance coverage to varying degrees. Collectively-owned enterprises and domestically-owned private enterprises had lower participation rates than foreign-owned enterprises, and their insurance provisions were more likely to discriminate against migrant workers. Such discrimination was not found in foreign-owned enterprises (see Table 5.17).

Table 5.17: Work-related injury insurance participation rate and equality to migrant and urban workers across enterprises

	Participation rate	Equality
SOEs	High	Equal
Collectively-owned enterprises	Low	Unequal
Domestically-owned private enterprises	Low	Unequal
Foreign-owned enterprises	Medium	Equal

Qualitative interview evidence supports the above findings. SOEs were more likely to comply with the statutory regulations and to provide equal social insurance arrangements to migrant and urban workers. Non-compliance was commonly found in all other types of enterprises. Reasons for evading social insurance obligations were often related to cost controls, but different approaches were adopted by non-SOEs. Collectively-owned and domestically-owned private enterprises chose to do it by underreporting the total wage, or by directly removing some categories of workers from their lists of recipients, with or without their consent. In doing so, although they often failed to admit that they discriminated against migrant workers, however, the ways they allocated the quota, whether in terms of workers' skills, employment status, or the importance of their position, tended to exclude migrant workers from the core social insurance plan. Foreign-owned enterprises challenged the statutory regulations in a more tactful way. They created different labels for employees by providing them with different types of contract. As employers were exempted from paying social insurance contributions for agency workers and other subcontracting workers, their contractual arrangements became an important source of legality for foreign-owned

enterprises' non-compliance. Qualitative interviews also revealed a cat-and-mouse game between the enterprises, in particular, collectively-owned and domestically-owned private enterprise, and local government over the mandatory social insurance regulations, highlighting the importance of supervision and control in enforcing state law in the workplace.

5.3. RESOLUTION OUTCOME

According to Budd and Colvin (2014), equality in workplace dispute resolution can be achieved in three respects. First, conflicts should be resolved in a similar fashion without arbitrary or capricious decision-making. Second, the resolution outcome should be consistent. Third, all participants should be treated with respect, sensitivity, and privacy without bias. This section sets out to explore whether, and if so, how firms influence the outcome of claims and disputes. It assumes that the enterprises' strategies for dealing with work-related injury problems are influenced by types of ownership. In different types of enterprises, the ways in which workers obtain compensation, as well as their satisfaction with it, may vary. To investigate the topic, this section mainly focuses on respondents whose injuries did not enter into the insurance claiming process. This is because, when workers are insured and follow the administrative route to claim the insurance, the resolution outcome is decided by the social insurance agency instead of employers. As discussed in chapter Four, insured workers generally reached a more satisfactory outcome than uninsured workers. Firms play a part only when workers are uninsured, and when they choose to seek compensation through the quasi-administrative route or the private route.

It needs to be noted that the sample size of uninsured respondents is relatively small. Less than half the respondents who completed a questionnaire were in this group. As the majority of urban workers were insured, the sample of urban workers is even

smaller and is unrepresentative. Also, a statistical breakdown of respondents by the type of enterprises raises similar problems, which could limit the generalisability of the findings. However, the evidence provides valuable information for understanding the experiences of a specific group of workers. In practice, experiences of workers who relied on private compensation in dealing with work-related injury problems have undeniable significance for understanding this topic. For these reasons, these questionnaire findings need to be interpreted carefully, and considered together with the qualitative interview evidence, which provides an important supplementary source of evidence to this issue.

5.3.1. Questionnaire findings

(1) State-owned enterprises (SOEs)

As there were only three respondents from SOEs who chose to seek compensation from their employers, the sample was too small for any quantitative analysis. But it is worthy of note that all of them were migrant workers, and they reached agreement for compensation by negotiation without a third party's intervention. All of them rated the outcome as satisfactory.

(2) Collectively-owned enterprises

In collectively-owned enterprises, most migrant workers obtained compensation for their injuries after many setbacks. Only 4 per cent of them obtained compensation by negotiation, and 78 per cent of them were not compensated until a third party got involved. 18 per cent of migrant workers did not receive any compensation from their employers. However, none of urban workers' problems were left unresolved, they all

obtained compensation, either by negotiation or by mediation. Significantly, none of these respondents had their cases adjudicated by arbitration committees or courts.

As the majority of urban workers were insured, there were only four urban workers who sought private compensation, with two of them achieved resolution by mediation, and the other two of them by negotiation. The sample size of urban workers is small.. 70 per cent of migrant workers considered they did not receive the compensation which was due to them. However, all urban workers, no matter in what ways they obtained compensation, were pleased with the outcome. It suggests that collectively-owned enterprises tended to adopt a lower-level compensation plan for migrant workers than urban workers.

(3) Domestically-owned private enterprises

Table 5.18: Means of compensation obtained by Hukou status in domestically-owned private enterprises

	Settled by third parties		Settled independently	No compensation
	By mediation	By adjudication	By negotiation	
Migrant worker (n=54)	59%	15%	6%	20%
Urban worker (n=4)	-	-	100%	-

Result of chi-square test: $p=0$. As $p<0.05$, the statistical association is significant.

In domestically-owned private enterprises, there were only four urban workers in this group, and the sample was small. It suggests that migrant and urban workers obtained compensation in quite different ways (see Table 5.18). 6 per cent of migrant workers in domestically-owned private enterprises resolved their problems without any third party interventions, while 74 per cent of them obtained the compensation by mediation or by adjudication. In domestically-owned private enterprises, the

proportion of respondents who received no compensation was the highest among the four types of enterprises, and all of them were migrant workers. In contrast, problems of urban workers were all settled independently by negotiation.

In domestically-owned private enterprises, as the majority of urban workers were insured, there were only four urban workers who sought private compensation, and all of them achieved resolution through negotiation. 74 per cent of migrant workers resolved their problems with the help from a third party. Only 6 per cent of migrant workers achieved settlement through negotiation. In addition, 70 per cent of migrant workers considered they have obtained compensation less than they hoped for while 30 percent of them thought the compensation was more than or equal to what they expected. Among the four uninsured urban workers, two of them were satisfied with the outcome while the other two of them were dissatisfied with it.

(4) Foreign-owned enterprises

In foreign-owned enterprises, no respondents had their cases adjudicated by the arbitration committees or courts for adjudication. Among the 20 migrant workers, 35 per cent of migrant workers settled their problems by mediation, and more than half of them obtained compensation directly from their employers by negotiation. 10 per cent of migrant workers were left with their work-related injury problems unresolved. There were only five uninsured urban workers. Four of them achieved settlement through negotiation while only one urban worker achieved resolution through mediation.

5.3.2. A closer look at the internal dispute resolution (IDR)

Interview findings can be used to question whether equal treatment of migrant and urban workers was associated with two factors: first, whether or not enterprises had an IDR system; and second, how employers understood its function. It assumes that the arrangement of IDR has an impact on whether migrant and urban workers are treated equally. IDR, operated by the employer, usually provides accessible ‘extra-legal’ options for employees to make complaints or raise grievances (Edelman et al., 1993). In the social and political context of China, IDR was not initially born in enterprises’ employment practices. Instead, it was advocated and encouraged by the government mainly for pursuing better administrative management and control over the employment relations as well as the labour market. Setting up an IDR mechanism is not a compulsory obligation for enterprises in China. Employers are allowed to make their own decisions on whether, and if so, how to arrange their own IDR procedure. However, the *Labour Dispute Law* and the ‘Provisions on the Negotiation and Mediation of Enterprise Labour Disputes’ strongly encourage employers to set up Internal Mediation Committees (IMC) or to appoint Specialist Mediator(s) to deal with labour disputes⁴⁰.

(1) SOEs

According to informants, SOEs had greater commitment to ‘resolve disputes internally’ than the three other types of enterprises. Of the six interviewees from SOEs, all of them had an internal mediation system, either in a form of a committee or individual mediators. Five of them had an IMC and the other one had appointed full-time specialist mediators to deal with employment grievances. However, only one

⁴⁰ Adopting an internal mediation committee to settle disputes was a convention in Chinese SOEs only. In 2013, the MOHRSS issued the ‘Opinions on Strengthen Mediation and Prevent Labour Disputes in the non-public Enterprises’ to encourage non-SOEs to establish their own internal dispute resolution forum. According to the official statistics, there are more than 20,000 enterprises in Dongguan. However, only there were 894 enterprises with an internal mediation committee (IMC) in 2011, with 10,541 mediators in total (Dongguan Justice Bureau, 2013).

SOE confirmed that it had a written form of complaint procedure. In SOEs, IDR emphasised the principles of compromise and settlement, rather than regulation and procedure.

Table 5.19: IDR in SOEs

SOE	Formal Complaint procedure	Internal Mediation Committee	Specialist Mediator
No.1	✗	✓	✗
No.2	✗	✓	✗
No.3	✗	✓	✗
No.4	✓	✓	✗
No.5	✗	✗	✓ (full time)
No.6	✗	✓	✗

✗do not have ✓have

In the past, setting up IMCs to settle disputes was a convention in Chinese SOEs. IDR in SOEs was heavily influenced by the administrative tradition of labour protection legislation, which implied that enterprises should exhaust all the possibilities for settling a dispute before involving a third party. Several interviewees from SOEs expressed the view that it was somehow ‘a disgrace to enter into the public view as a defendant’. For SOEs, the main function of IDR was to provide opportunities for early-stage settlement, as they were reluctant to be sued. In SOEs, employers often adopted soft bargaining strategies, aiming to reduce the level of conflict, as they were concerned with ‘the preservation of employment relations’, as well as with a ‘harmonious and equal business atmosphere’. Of course, soft bargaining strategies did not always lead to satisfactory outcomes. When they were unsuccessful, legal proceedings could be initiated as a ‘last resort’. However, these cases were very rare in SOEs.

SOEs not only constructed their IDR actively, as expressed by four interviewees from SOEs, they also considered that IDR was important, as it was a ‘self-correction

mechanism’. They showed strong awareness that work-related injury problems were fundamentally different from other types of employment problems, as made clear by one interviewee:

‘When employees file a complaint about their injuries and compensation, they are often uninsured, as a consequence of our negligence. In the circumstances, we have to address this mistake and prevent any negative impact for the employee’s work and life. In that sense, our work is not to conduct mediation, but to identify the problem and to address it...as a channel to granting post-accident remedy.’ (SOE4)

As expressed by several interviewees from SOEs, non-compliance with statutory regulations was legally and morally wrong. SOEs took a proactive approach to address the problems for uninsured workers. Although most SOEs lack a written procedure, , five SOEs mediators believed they always delivered equal treatment to migrant and urban workers, *‘as differential strategies to migrant and urban workers were not necessary at all’*. (SOE1)

(2) Collectively-owned enterprises

Table 5.20: IDR in collectively-owned enterprise

Collectively-owned enterprise	Formal Complaint procedure	Internal Mediation Committee	Specialist Mediator
No.1	✘	✘	✘
No.2	✘	✘	✓ (full time)
No.3	✘	✘	✓ (part time)

✘ do not have ✓have

As reported by three interviewees from collectively-owned enterprises, none of them had a formal complaint procedure or had set up an IMC. Although two collectively-owned enterprises had appointed specialist mediators, only one worked

on a full-time basis. We found IDR in collectively-owned enterprises was most problematic because of its loose structure and insufficient personnel, mainly due to the fact that employers failed to recognise the importance and necessity of IDR.

Based on the interview evidence, the ways in which collectively-owned enterprises dealt with work-related injury problems can be characterised as ‘informal and unsustainable’. It was because complaints concerning work-related injury compensation were often dealt with in a rather informal manner by individual mediators or the human resource managers, following a fairly random procedure. Without a proper internal dispute resolution forum or a written grievance procedure, some workers were likely to encounter difficulties in raising their problems.

‘Injured employees usually approached me in person or by phone, sometimes before and sometime after consulting the Labour Service Centre or their lawyers... They raised similar issues: they experienced injuries and want us to cover their medical costs. But they are at different stages, and have different backgrounds, personalities, attitudes and levels of need... Applying a standard procedure (to deal with their problems) just won’t work well. What we need to do is to manage the diversity rather than to give them a fair shake.’ (COE3)

‘Clients are different, and cases are different. We must address such differences. Some workers, we know they are stubborn and unreasonable. It will be a waste of time to negotiate with them or persuade them. Just let them do whatever they want... We only need to have a discussion with rational and sensible workers...’ (COE2)

Mediators or human resources managers’ personal style and preferences, which may or may not be influenced by the overall human resource management policies of the enterprise, significantly impact the outcome. These actors take the initiative in allocating internal dispute resolution resources to some employees. Interview

evidence reveals that ‘suitable clients’ were selected according to the individual complainant’s background, personality or attitude.

Work-related injury problems were handled in an unsustainable way in collectively-owned enterprises mainly because there were no long-term goals and policies involved in the process. In resolving work-related injury problems, the dominant principle, as expressed by one interviewee, was to ‘*get rid of troubles with minimum costs*’ (COE1). In the process, restoration of the employment relations was irrelevant, the importance of statutory regulations was diluted, substantive issues were seldom addressed, and employees’ claims were simplified by firms’ strategies into a simple choice ‘to accept it (the proposed compensation plan) or not’. It was common to give injured migrant workers lump-sum compensation by means of an under-the-table payment where the injury was not even recorded. In most cases, when payment was made, workers were forced to leave, and the employment relations ended. As the negotiation was carried out in an oversimplified and crude way, in many cases, internal dispute resolution forums of collectively-owned enterprises were unable to provide claimants satisfactory negotiation or to achieve a satisfactory outcome. Thus, a second-round of negotiation often took place involving the intervention of the labour service centre, the labour arbitration committees, or sometimes, the courts. As shown in the questionnaire findings, this is helpful for understanding the lower rate of internal settlement in collectively-owned enterprises.

Mediators rarely contested legal claims presented by employees. For them, the crucial task was to convince claimants that ‘*accepting the proposed compensation plan*’, and ‘*resolving problems within the enterprises were the best strategy*’ (COE2). Going to law was described by them as a ‘*costly, frightening, fruitless*’ choice (COE3). It usually involved interpersonal and emotional persuasion rather than any confrontational negotiation. Claimants were asked to ‘*be realistic and make concessions*’ (COE3). Under such a strategy, bargaining was not conducted ‘in the

shadow of the law'. Employees, who had less financial and legal support, were more likely to compromise, and accept an unfair outcome.

(3) Domestically-owned private enterprises

Of the eight domestically-owned private enterprises, only one had a formal complaints procedure. Three enterprises neither had a complaints procedure, nor an IMC, nor used mediators. One had an IMC, and four had appointed specialist mediators to deal with employment complaints. However, three mediators undertook this role on a part-time basis, as they held other positions in their firms at the same time. Clearly, the situation in domestically-owned private enterprises was undesirable. Although enterprises with an IMC or appointed specialist mediators were not in the minority, their ways of dealing with work-related injury problems were problematic.

Table 5.21: IDR in domestically-owned private enterprises

	Formal Complaint procedure	Internal Mediation Committee	Specialist Mediator
No.1	✗	✗	✗
No.2	✗	✗	✓ (full time)
No.3	✗	✗	✗
No.4	✗	✗	✓ (part time)
No.5	✓	✓	✗
No.6	✗	✗	✓(part time)
No.7	✗	✗	✓(part time)
No.8	✗	✗	✗

✗ do not have ✓have

The main problem of IDR in domestically-owned private enterprises was that it was not always accessible or effective. The quality of the service provided by IDR remained low. Migrant workers in domestically-owned private enterprises commonly

reported that they came across obstacles when making a complaint, as expressed by one interviewee:

'I feel I am like a ball kicked by them back and forth... when I made complaints to my boss, he said I need to speak with the human resource manager. As he did not work in his office, I phoned him. He told me for work-related injury problems, I should talk to the person at the Social Insurance office... Then she said that the issue for temporary workers was beyond her power, so I needed to go back to the human resource manager...But his (human resource manager) phone has been busy for a week...I spent a lot of time looking for the right person who can help me. It is so frustrating...' (MW11)

Without sufficient guidelines and support, the service of IDR could be unreliable. It was difficult for complaints to overcome the barriers of organisational hierarchy and structure. This was even more difficult for those workers were already in a marginalised position in the enterprises, as they not only had procedural difficulties, but also might have psychological obstacles. Given their unequal positions, these employees were often hesitant to raise grievances against their employers. They might be more likely to take no action to deal with their problems, or to go outside the organisation to address their grievances, e.g. by filing for arbitration or litigation.

The poor functioning of IDR in domestic-owned enterprises gave individual mediators more power in influencing the path and outcome of dispute resolution, as in collectively-owned enterprises. However, among the four types of enterprises, mediators in domestic enterprises projected their self-doubt most frequently. Many interviewees considered the internal dispute resolution as something 'useless' that 'existed in name only'.

'The form of IMC is much more important than the content of it. From my perspective, it is useless...If the compensation is negotiable, and if the problem is not that tricky, agreement will be reached automatically without the

intervention of IMC. But if neither the worker nor the boss want to concede, then, what can I do? Persuade my boss? I doubt I have such power to make a change... we are supposed to carry out their work in a neutral way, but that is impossible. In the end, we are still members of this company, and all we can do is to represent our company and bargain on behalf of it. IMC is fundamentally not an independent unit.' (DPE2)

Besides, unlike in SOEs, IDR was rarely taken as a self-correction system by mediators. Thus, a hard bargaining strategy was adopted in domestically-owned enterprises more frequently. They tended to view complainants as being on 'the opposite side' rather than their members. In the process, they often distrusted employees, asking them to accept concessions, misleading them about their 'bottom line', and pressuring them in an effort to win. Domestically-owned private enterprises had different attitudes to work-related injury insurance provisions from the ways they dealt with work-related injury complaints. Although cost considerations were closely associated with their non-compliance with statutory regulation, benefits and priorities were given to employees who were more skilled and experienced. However, once the problems developed into a certain stage, e.g. when early resolution was no longer available, or when there was no chance to reach any reasonable agreement, they were inclined to drag the case into the formal justice system at any cost, regardless of this complaint's background.

'We must be careful as this sort of thing (filing arbitration and litigation) can snowball. If one employee gets what they wanted easily, others might follow this examples. Then we will need to face endless complaints, claims and lawsuits... Unless we are armed to the teeth and participate in legal battles, they (employees) will never know that going to the law rather than accepting our (compensation) offer is a wrong decision... We must show our attitude...' (DPE6)

These interviewees emphasised their commitment to the external resolution, i.e. achieving resolution by mediation or adjudication were part of their 'long-term'

concerns. As domestically-owned private enterprises had a lower insurance participation rate, and migrant workers were less likely to be insured than urban workers (See sections 5.3.1(3)), work-related injury problems were common in domestically-owned private enterprises and compensation bargaining took place more frequently. This situation encouraged them to take the ‘chain reaction’ of complaints into consideration when dealing with work-related injury problems. Sometimes, they changed their tactics and deliberately delayed the process by using all the procedural rights, as they wanted other employees to ‘draw a lesson’ from their action. The strategy adopted revealed that domestically-owned private enterprises dealt with work-related injury problem, ironically, in a ‘sustainable way’. They knew that social insurance evasion would still carry on in their enterprises, and, to prevent future troubles, they should act decisively and sometimes ruthlessly. They believed that, by doing so, their employees would be more cooperative, and were more likely to compromise. Their attitudes and approach could explain the lower rate of internal settlement, but the relatively higher rate of litigation in domestically-owned private enterprises.

(4) Foreign-owned enterprises

Table 5.22: IDR in foreign-owned enterprises

	Formal Complaint procedure	Internal Mediation Committee	Specialist Mediator
No.1	✓	✗	✓ (part time)
No.2	✓	✓	✗
No.3	✓	✗	✓ (full time)
No.4	✓	✓	✗

✗do not have ✓ have

All the interviewed foreign-owned enterprises had ad-hoc dispute resolution forums, either taking the form of a mediation committee or using specialist mediators. In

addition, all of them had a written form of complaint procedure. In contrast to SOEs, foreign-owned enterprises tended to deal with disputes in a realistic manner, where concerns about the preservation of the employment relations gave way to the application of internal and statutory regulations. Foreign-owned enterprises stressed the importance of achieving resolution ‘by the book’. Employees were required to follow the written complaint procedure. Mediators or other personnel who were in charge of dispute resolution were usually legal practitioners, and their conducts and decisions were subject to these regulations. All the interviewed foreign-owned enterprises had an IDR which was derived from their ‘parent companies’. As an interviewee pointed out:

‘We copied nearly the whole package of regulations from our Headquarters in Denmark, including the complaints and disciplinary procedures ...In fact, we were not only subject to the law in China, but were also indirectly influenced by the Danish law and EU law in a general sense...’ (FOE2)

Others admitted that their current internal procedures were followed by or modified from the ones adopted by their parent companies in the USA, Japan or Hong Kong. IDR in foreign-owned enterprises was generally more detailed and integrated than in other types of enterprises, due to its close relationship with employment practices in more developed societies. When procedure plays an important role in processing employees’ grievances, and when statutory regulations are taken into account when deciding whether, and (or) how much an individual employee should be compensated, the influence of arbitrary decisions and variations between individual mediators are significantly reduced. Employees are presumably more likely to be treated equally by their employers.

In addition, two interviewees from foreign-owned enterprises said work-related injury problems should be placed on a fast track as they were concerned with employees’

health issues, and should therefore be treated as a matter of urgency. Although foreign-owned enterprises admitted they conducted social insurance evasion, they took responsibility once problems occurred.

‘Such problems (work-related injury problems) are always less controversial than others. We do not have much disagreement on whether the compensation should be made. Most times we are discussing the compensation plan: the amount... in a lump sum or monthly payments...as well as how to arrange the future employment relations... It’s not like other types of labour disputes, agreement can always be reached unless the employee asks for something astronomical or unreasonable.’ (FOE3)

5.3.3. Summary

Table 5.23: Summary of questionnaire findings on resolution outcome by enterprises

	Means of resolution		Compensation outcome	
	<i>Preference</i>	<i>Equality</i>	<i>General</i>	<i>Equality</i>
SOE	Internal resolution	-	Satisfactory	-
Collectively-owned enterprise	External resolution	Unequal	Unsatisfactory	Unequal
Domestically-owned private enterprise	External resolution	Unequal	Unsatisfactory	Equal
Foreign-owned enterprise	Internal resolution	Equal	Satisfactory	Equal

As shown in Table 5.23, questionnaire data suggests that SOEs and foreign-owned enterprises were more likely to reach internal settlement with their employees. On the other hand, collectively-owned enterprises and domestically-owned private enterprises often made compensation with a ‘push’ from a third party, such as labour service centre, labour arbitration committee or court, involved in the dispute resolution process. In SOEs and foreign-owned enterprises, more than half of respondents were satisfied with the compensation they were awarded, while in collectively-owned enterprises and domestically-owned enterprises, more respondents

were not satisfied with it. We also found, in collectively-owned enterprises, migrant workers tended to be less satisfied with the outcome than urban workers. However, we did not find such disparities in SOEs, domestically-owned enterprises and foreign-owned enterprises.

These preliminary finding can be interpreted with the help of qualitative interview data. We found IDR in SOEs and foreign-owned enterprises; IDR was generally better structured and functioning than in collectively-owned enterprises and domestically-owned private enterprises. There is no strong evidence to say that IDR in any enterprises has adopted discriminatory strategies intentionally against migrant workers. However, it can be argued that whether enterprises have effective internal dispute resolution procedures reflected whether they attempt to equalise employees' access to such resources. It should be noted that, if there are more employees who have achieved internal settlement, the firm often has a better IDR, but this does not necessary means settlement is always a better strategy for addressing work-related injury problems. By resolving privately, the grievance receives little publicity, and does not serve to raise the consciousness of, or give support to, other workers in similar situations. In other words, IDR lacks the greater consciousness-raising power of more public forums, such as litigation.

5.4. CONCLUSION

This chapter reveals the complexity of the differences in the ways in which migrant and urban workers dealt with their work-related injury problems. It is clear that the governance of enterprises substantially influenced the workers' rights to social insurance benefits, the ways their problems were handled, as well as the fairness of outcomes.

Whether or not employees were provided with work-related injury insurance determined the paths of claiming and dispute resolution: via the administrative route or via the private route. However, statutes and regulations concerning work-related injury insurance were widely resisted and challenged by enterprises. Compared with urban workers, migrant workers were more often uninsured, as a consequence of their disadvantaged position in the employment situation. Migrant workers were less likely to be insured and to follow the administrative route to claim compensation, as they had less informal power than urban workers. Migrant workers generally had a lower education background, had a short-term relationship with their employers, and rarely joined trade unions, despite the fact that they had similar skill levels to urban workers. Arguably, migrant workers made a greater contribution to enterprises than urban workers as they worked longer, and were usually paid on an incentive system. These characteristics reflected the fact that migrant workers had a greater risk of experiencing work-related injury problems than urban workers. In that sense, keeping migrant workers out of the social insurance scheme is not a rational decision made by enterprises. Instead, firm level practices actually reinforced and reproduced the labour market inequalities between migrant and urban workers. On the other hand, whether workers chose to resolve their problems by claiming insurance or seeking compensation was associated with the type of enterprises they worked for. Migrant and urban workers in SOEs had equal access to the work-related injury insurance scheme, this was because social insurance participation was high in SOEs, and employers in SOEs tended to comply with regulations due to the advantageous position in the national economy and the availability of resources. Social insurance evasion was common in non-SOEs, but was not always detected and penalised by local government. Non-SOEs were unwilling to provide insurance coverage for all their employees. In collectively-owned and domestically-owned private enterprises, migrant workers were excluded from the social insurance arrangements for a variety of reasons. The evasion in these enterprises was unlawful. Foreign-owned enterprises more frequently used subcontracting workers to adapt to the changing market and climate. Social insurance evasion was carried out in a lawful or quasi-lawful way;

migrant workers were channeled into a different contractual relationship when they were recruited. Empirical evidence also highlighted that a higher insurance participation rate might imply a more equal arrangement within firms. In some government reports and studies, the two indicators, i.e. the social insurance participation rate and the equality of the insurance coverage, have been conflated. The association between them was not entirely clear, and future studies need to be carried out.

As the number of uninsured workers is still large, the private route plays an important role in determining outcomes for work-related injury problems where the administrative route was blocked. Employers, as an opposite party, broadly defined the scope of work injury compensation claims by providing remedies of a different nature to the parties. Human resource management policy, in particular, the internal dispute resolution system, influenced the dispute resolution process. The goal of organisational conflict management, according to Budd and Colvin (2008), is efficiency, equity, and voice. Using these metrics to evaluate IDR in different enterprises, we can find, in SOEs, the value of equity and efficiency were not really recognised. However, fair outcomes were often achieved by a socialist or patriarchal grievance system, in which all types of employees were given the opportunity to voice, and to negotiate. Collectively-owned and domestically-owned private enterprises prioritised the value of efficiency at the expense of equity and fairness. IDR was poorly structured and functioning in collectively-owned and domestically-owned private enterprises, power was given to individual mediators, bargaining was not carried out 'in the shadow of the law', and employees were not often treated in the same standardised ways. Procedure and equity dominate in the IDR in foreign-owned enterprises, where work-related injury problems of migrant and urban workers were treated in a similar fashion and achieved similar outcomes.

In conclusion, the dual labour market hypothesis is supported by empirical evidence. On the one hand, differences in the paths taken by migrant and urban workers to resolve their work-related injury problems, which are determined by their work-related injury insurance eligibility, are closely associated with their characteristics. In addition, the arrangement of social insurance provisions also varies across different types of enterprises, creating the inequalities between migrant and urban workers in their social insurance eligibility. On the other hand, the structure and function of an enterprise's IDR is also associated with the ownership type of an enterprise. Enterprises with a better-structured and functioning IDR, i.e. SOEs and foreign-owned enterprises, tend to adopt more equal treatment of migrant and urban workers in the case of private bargaining.

CHAPTER 6

LEGAL CONSCIOUSNESS HYPOTHESIS

6.1. INTRODUCTION

The third hypothesis attributes the differences between migrant and urban workers of their experiences of dealing with work-related injury problems to their different legal consciousness. In this thesis, the experience of migrant and urban workers sorting out their work-related injury problems is understood from the perspective of what they think about the law, as well as what they expect from the law.

This hypothesis is approached from two standpoints. First, it aims to find out whether the differences between migrant and urban workers in the paths and outcomes of work-related injury claims and disputes are due to the differences in the ways they interpret and externalise their injurious experiences, and in how they attribute them to a responsible party. Second, by investigating the differences in the knowledge of labour law and relevant procedures, the attitudes to law as well as workers' 'interests' in the claiming and dispute resolution process between migrant and urban workers, it attempts to investigate whether such differences can be explained by the differences in the ways they make sense of the law. Evidence from the questionnaire survey and qualitative interviews with workers is presented.

6.2. HOW WORKERS MAKE SENSE OF INJURIES: NAMING AND BLAMING

In the aftermath of industrial accidents, workers often made sense of their injurious experience by considering the nature and severity of the injury, as well as by

identifying whom the responsible party is. Known as ‘naming, blaming and claiming’ (Felstiner et al., 1980), this process is often subtle and difficult to identify, but it has significance in influencing whether the respondents take any action to deal with their problem, and how they decide to deal with it. By asking interviewees’ questions about their work-related injury experiences, this study uncovers differences between migrant and urban workers regarding how injurious experiences were perceived and whom they were attributed to.

6.2.1. Naming: is it a work-related injury?

Although the majority of respondents who experienced work-related injuries had taken action to deal with them, qualitative interview evidence reveals that migrant workers were probably more tolerant of work-related injuries than urban workers. Such differences between migrant and urban workers were not significant when they were seriously injured. But when respondents had suffered slight injuries, which had relatively little impact on their work and life, migrant workers were less likely than urban workers to externalise their problems or to file a complaint or take similar action.

The ‘naming’ stage for urban workers was usually clear and direct, and did not involve any hesitation. Most urban workers were quite sure about whether an injury could be treated as a work-related injury and this had nothing to do with the level of their injury. Rather, they knew that the nature of the work-related injury was determined by when and how they got injured. However, when migrant workers described their injurious experience, they gave statements like the following:

‘My right foot was hit by a falling part when I set up a dyeing machine... I first noticed the bruises on my instep. It hurt... But as I was still able to walk, I

thought I was tough and this was going to be OK...It was my fault, I did not operate the machine in the correct way...' (MW10)

This respondent did not report his injury to his employer immediately. He overlooked it and took it as a personal matter, and he kept on working until his problems got worse when he found his toes were numb. He then began to take it seriously and to consider it as an industrial accident.

Another worker, who suffered lumbar sprain, talked about her injury in this way:

'Industrial accident? No, don't exaggerate...This happens every week here. I am just a bit unlucky. I was given a break for three days...' (MW4)

Another migrant worker, whose three fingers were crushed and burned when he operated an injection-moulding machine, talked about his injurious experience in this way:

'It was not the first time my hand was injured... But it was the first time I took action. Compared with my previous experience, this time it was too serious and I can't work and live as normal any more...so I decided to use the legal weapon.' (MW12)

When asked to describe his previous experience, he added:

'About six months ago, my two fingers were cut on broken glass. The wound was deep and it bled a lot... My boss took me to the hospital and paid for the treatment. I did not seek any other compensation for this, as I could still carry on with my work. It was true that it was an uncomfortable experience, but I did not think it deserved a formal complaint or anything...' (MW12)

Unperceived injurious experiences, according to Felstiner et al. (1980), may reflect differences in definitions as to what constitutes an injury, a lack of awareness of rights, or a failure of diagnosis. Even if an injury is perceived, people could still not take any action to deal with it, as they might accept that the injuries as a normal part of life

(Engle 1980, 1984; Friedman, 1987), or something for which they bore responsibility. According to the qualitative interview evidence, some migrant workers, although they knew that they were entitled to seek compensation and that there was a legal remedy for a work-related injury, were not sure what constituted a 'work-related injury'. Some migrant workers lacked general health knowledge and did not take their injuries seriously by seeing a doctor; they simply chose to ignore their symptoms and signs. Injury is more than a personal and private experience. People's perceptions of the injury were shaped constantly by the external environment. We speculate that the difference between migrant and urban workers could be understood in terms of migrant workers' previous experience living in Chinese rural communities, which lacked a decent health care system. In brief, some injuries that are perceived as a problem by an urban worker may not be recognised as such by a migrant worker. Even when the injury has been recognised, migrant workers may accept the injury as a normal part of life. More importantly, quite a lot of migrant workers failed to recognise the experience as an injury with legal remedies. We can conclude that, the rate at which injuries are named is lower among migrant workers than among urban workers. Thus, there may be some work-related injury problems that never have a chance of getting into the administrative law system or the labour (private) law system.

6.2.2. *Blaming: who should be responsible for the injury?*

A problem becomes a grievance only when the injured party blames someone else for it (Festiner et al., 1980). More specifically, a potential claimant must be aware that there is an external source for the injury, and the injured party must be prepared to attribute the responsibility for the injury to such a source.

The qualitative interview evidence suggests that nearly all the urban workers crossed the attribution barrier by targeting their employer as the party who should be held

responsible for their injuries. However, of the 22 migrant workers who participated in the interviews, 6 had difficulties or problems with this. There were three situations in which this could arise. First, some migrant workers blamed themselves when they were injured during work. They took it as a personal matter. Second, some of them only blamed a third party for their injuries. Third, although some migrant workers were clear that the employer should be held responsible for their problems, they still took their own mistake, or a third party's fault into account. Two examples are presented here:

'Our factory produces diaries, notebooks and other luxury stationery for the European market. I've heard that machines here are superannuated ones from Germany. They are not full-automatic ones, and some tasks still need to be done manually.... My task involves putting semi-finished diaries into the machine and making those round corners and a more smooth edge... This needs to be done with one hundred per cent care and concentration...A little bit of distraction could lead to a serious injury... I was unlucky on that day, and my left hand was cut by the blade, as many of my colleagues have been. Those machines are bloody finger eaters.' (MW8)

'My task is to operate the pin insertion machine. There are eight workers in our section, and six of us have had our fingers pricked by this machine since the beginning of this year. The strange thing is, whenever things in the upstream section go wrong, our machine can suddenly get stuck and we are easily injured in such a situation... I was not entirely clear about the problem, but it seems that the two sections were not fully integrated...Their section head never seriously addressed the issue' (MW6)

The attribution of problems can shape an individual's reaction to it (Kelley and Michela, 1980). Qualitative interview evidence also indicates that there is some association between respondents' 'attribution' and means they choose to resolve it. Workers who blamed themselves once they were injured at work were less likely to voice a grievance than those who attributed their problems to the employer or to a third party, especially when they had minor injuries. Workers who blamed a third party rather than the employer in the first place were more likely to make

compromises during negotiation and to achieve a resolution which was below their expectations.

According to Harris et al. (1984, p. 161),

'The way in which accident victims attribute fault for their accidents and responsibility for compensation is a reflection of, rather than reflected in, the law...fault, including moral fault, does not necessarily imply liability and ... where it does, it is probably a justification rather than a reason for claiming damages.'

Although work related injuries compensation generally adopts a non-fault liability in China, in practice, there are fewer migrant workers who blamed the correct party for their problems. Interestingly, migrant workers were not really less informed about their legal rights regarding work-related injury problems (see Section 6.3), but once they experienced any injuries and problems, they were less likely than urban workers to cross the attribution barrier correctly, timeously and confidently. This situation can be probably explained in terms of migrant workers' marginalised roles in the workplace. But, as the sample size is small, we cannot guarantee the validity of this finding.

But what we can infer, from the qualitative evidence, is that the actual number of work-related injury cases, especially among migrant workers, is much greater than the number recorded. In contrast to the opinions of many doctrinal legal scholars that legal institutions are congested with labour disputes (Chen, 2009; Halebua, 2008; Xu, 2009; Xu et al., 2009a; 2009b), studies underpinned by a socio-legal perspective', including those from a legal consciousness perspective, suggest that the claims and disputes that are brought to the administrative or legal system are just the tip of iceberg (Lee, 2003; Wong, 2011). Those unreported injuries and unclaimed problems should not be overlooked. As fewer migrant workers than urban workers were able to

complete the naming and blaming stages, the gap between them regarding their claiming and resolution rate could be even larger than which we already knew.

6.3. HOW WORKERS MAKE SENSE OF LAW

6.3.1. Knowledge of law

In contrast to the importance of legal knowledge in shaping the path and outcome of claims and dispute resolution, doctrinal legal studies often assumed that individual actors' legal behaviour and decisions are made rationally and with sufficient information and legal knowledge (Polinsk, 1989; Priest, 1981; Shavel, 1980), it is commonly found that ordinary people are not familiar with law, or misunderstand the law (Ellickson, 1994; Kim, 1999; Sarat, 1975). The legal consciousness hypothesis assumes that migrant and urban workers adopt different routes in dealing with work-related injury problems due to their different levels of knowledge about their substantive and procedural rights.

(1) Knowledge of substantive rights

Table 6.1: Responses for 'How aware were you of your substantive rights when the problem first started?' by respondents' Hukou status

	Fully aware	Mostly aware	Partially aware	Unaware	Unsure
Migrant worker (n=189)	25%	34%	24%	7%	10%
Urban worker (n=102)	41%	33%	19%	2%	5%

Result of chi-square test: $p=0.68$. As $p>0.05$, the statistic association is not significant.

For injured workers, legal knowledge concerning their substantive rights is important. This involves: the right to be protected from occupational accidents, and the right to be covered by work-related injury insurance. Respondents were asked to rate how aware they were of their substantive rights, and the findings are set out in Table 6.1.

We find that respondents were fairly confident about their legal knowledge of their substantive rights in respect of work-related injuries. Migrant and urban workers were equally aware of their legal rights and positions. This reflects the labour law campaign of the Chinese government, and, in particular, the local government of Dongguan, which has led to increasing social media coverage of how ordinary workers can be protected by the law once their rights are violated. This has improved ordinary workers' awareness of their rights. In qualitative interviews, respondents, both migrant workers and urban workers, reported they had gained access to information concerning the law and their rights through newspapers, legal pamphlets provided by local government, official websites, and all sorts of training programs, etc. The majority of them were aware that they were entitled to work-related injury compensation.

(2) Knowledge of procedural rights

Table 6.2: Responses for 'Were you aware of your procedural rights when the problem first started?' by Hukou status

	Fully aware	Mostly aware	Partially aware	Unaware	Unsure
Migrant worker (n=189)	8%	16%	54%	16%	6%
Urban worker (n=102)	17%	24%	53%	2%	4%

Result of chi-square test: $p=0.001$. As $p<0.05$, the statistic association is significant.

When workers are injured, they need also to be clear about their right to claim the compensation from the national social insurance system; or if not, ask for compensation based on the *'Regulations on WRI Insurance'* from their employer. Respondents were asked to evaluate their knowledge in terms of their procedural rights, and their responses are shown in Table 6.2.

We find migrant workers were less informed about their procedural rights than urban workers. 22 per cent of migrant workers were totally unaware or unsure about their procedural rights, compared to only 6 per cent of urban workers. Around half of migrant and urban workers reported that they were partially aware of their procedural rights. But only 24 per cent migrant workers found they were confident about their knowledge compared to 41 per cent of urban workers.

Qualitative interview evidence indicates that the differences between migrant and urban workers in terms of their levels of procedural knowledge were not necessarily relevant to inequalities in their access to legal knowledge and advice. Instead, in many cases, migrant and urban workers gave totally different stories of procedures as they have encountered different situations. The difficulties they experienced called for different levels and different types of procedural knowledge. As discussed in Chapter Four, insured workers have the right to file an administrative claim, and in rare circumstance, to file a dispute against the social insurance agency. On the other hand, uninsured workers can file a labour dispute case against their employer. This also involves the right to take the dispute to arbitration or file a suit against their employers.

Urban workers, apart from the fact that they had better knowledge of their procedural rights, were not always sure about how to handle their problems. However, as long as they were insured, their ignorance would not prevent them from obtaining insurance

benefits. This was because, under this circumstance, their employers often helped them directly, as the employers also wanted to push things in the right direction. The role of employers tended to be supportive and helpful. The administrative law system often appeared as a 'client friendly' system, as administrators were in a position to grant social insurance benefits rather than to investigate the fact regarding disputes. All insured workers needed to do were to 'go with the current' and 'take the advantage of the opportunities', which were created by their eligibility for the insurance. One interviewee (an insured urban worker) provided a representative example in terms of the procedure to obtain insurance benefits.

'The injury was a painful memory...but I have to say I was well taken care of by my employer... Compensation was one aspect, and it went smoothly. I did not even intervene in the process that much... I mean I haven't had any direct contact with the government officials, all I did was to ask for a medical certificate from the hospital and fill out the (work-related injury identification) application form, my employer prepared the other documents, including photocopies of my contract, salary slips...and submitted the application for me... After about 5 weeks, I received the money.' (UW1)

On the other hand, migrant workers reported their difficulties in terms of the procedures to present their cases as requested, including '*how to collect evidence*', '*how to prove their employment relations*', '*how to file an arbitration or litigation*', and so on. This is because, as discussed in Chapter Four, the civil justice system is, by its nature, an adversarial system, which involves a confrontation between two parties. Urban workers seldom reported such difficulties, not because they knew how to sort out them, but because they hardly had any opportunity to experience these problems. We may conclude that the differences between migrant and urban workers in terms of their knowledge of procedural rights were due to the fact that the procedures confronting them were so different. Thus, we can conclude that differences in the levels of procedural knowledge did not contribute to the inequalities in the paths and outcomes of claims and disputes. It is an irrelevant factor.

(3) Expected advice

In the context of work-related injury problems in China, both migrant and urban workers actively sought advice: 89 per cent migrant workers had sought advice and, similarly, 88 per cent urban workers had done so. By asking respondents who had sought advice what was the first thing they expected from advisors, the study attempted to investigate what type of help they needed most for resolving their problems. Three options for the question⁴¹ can be respectively understood as ‘information support’, ‘strategic support’ and ‘legal representation’. We find that what they expected from advisors significantly differed, as shown in Table 6.3. 80 per cent of urban workers expected the advisors could provide them ‘information support’, i.e. explaining their legal rights, legal position, indicating the procedures; while only 27 per cent migrant workers expected this. Instead, 48 per cent of migrant workers expected ‘strategic support’, i.e. advice on practical strategies, and 25 per cent of them who expected someone could sort out the problem on their behalf, e.g. make decisions for them and act to help them in the way they think best. But only a small proportion of urban workers expected this.

We find that urban workers were more likely to look for ‘information support’ than migrant workers. In other words, although migrant workers were less informed in terms of their knowledge of procedural rights than urban workers, they did not often seek advice about how to acquire this type of knowledge. Instead, they were more interested in seeking strategic assistance, or even legal representation.

⁴¹ The option answers were: *‘The advisor should let me know my legal rights and legal position, the procedures, e.g. how I could apply for identification, or how I file arbitration’*; *‘The advisor should recommend practical strategies and suggestions to resolve my problems, e.g. who I should contact’*; and *‘The advisor should make decisions and sort out the problems in the way they think best’*.

Table 6.3: Expected advice by Hukou respondents (n=258)

	Information support	Strategic support	Legal Representation
Migrant worker (n=168)	27%	48%	25%
Urban worker (n=90)	80%	13%	7%

Result of chi-square test: $p=0.023$. As $p<0.05$, the statistic association is significant.

This finding can be understood in two ways. First, consistent with the finding in Section 3.2 that the majority of urban workers were insured, and that their problems can be resolved in a straightforward way, urban workers thought that better information about the law could help them to sort out their problems, and they did not need much other advice other than ‘information support’. However, although migrant workers had a right to obtain compensation, the paths of resolving problems were more complex, and required strong communication skills for negotiation and bargaining, and more experiential knowledge of the legal system. Some of this legal knowledge is not directly linked with work-related injury compensation, but is equally important for resolving problems. An insured worker’s compensation claim often requires a knowledge of evidence: what constitutes evidence, as well as how to collect and present evidence. It requires an understanding of the strategies that employers adopt to put pressure on them, and sometimes of the strategies of arbitrators, judges and mediators who encourage them to make compromises. It also requires experience of the way ordinary citizens cope with the unfamiliarity and stress which they might experience with the legal system.

Second, migrant workers had a more ‘realistic’ attitude to the dispute resolution process. Although they knew their work-related injury compensation rights, their stronger interests in ‘strategic support’ than ‘information support’ can be understood as a pragmatic approach, which indicated that they felt powerless to mobilise the law without external support and assistance. Unlike urban workers, they expressed the

ideas that *'knowing the law is not enough for resolving a problem'* and *'there is no way to handle the problems on my own'* (MW13); and they needed more support regarding strategies to resolve the problems or legal representation, as they knew *'the right cannot be realised without overcoming all these practical constraints.'* (MW8)

It is believed that people with more complete and accurate information about and first-hand experience of law and legal institutions have a better chance of using effective strategies, making sound decisions and getting better outcomes in terms of their work-related injury claims and disputes. The differences between migrant and urban workers in terms of their expectations about advice highlights the importance of the belief in how much they can mobilise the law, as well as how much of an impact the law can make. This is as important, as legal knowledge itself. This question is further investigated in Section 6.4.

(4) Summary

This study found that migrant and urban workers had similar levels of knowledge about their substantive rights, although differences were found between them in terms of their knowledge of procedural rights. That difference can be partly attributed to the different nature of their problems, as those who claim insurance do not need the same levels of procedural knowledge as those who seek compensation. We also found that migrant workers more often sought strategic assistance or legal representation to deal with their problems, no matter whether or not they were aware of their legal position. This finding suggests that, for migrant workers, their beliefs in how they can mobilise the law, as well as how much impact the law can make, are more important than their knowledge of the law in influencing the paths and outcomes of claiming and dispute resolution.

6.4. LEGAL ATTITUDES

One of the assumptions of the legal consciousness hypothesis is that some members of the society are more reluctant to go to law because they prefer non-legal means to resolve their problems due to their negative attitudes to the legal system. Respondents were asked a range of questions about their attitudes toward the legal system, including their preference for the legal or other (non-legal) approaches, and their attitudes to the importance and fairness of the legal system.

6.4.1. Preference for the legal and non-legal approaches

Table 6.4: Responses for 'People should resolve their problems within their family or community, not by using lawyers or courts'

	Agree strongly	Agree	Neutral	Disagree	Disagree strongly
Migrant worker (n=189)	11%	13%	21%	42%	13%
Urban worker (n=102)	6%	17%	18%	45%	14%

Result of chi-square test: $p=0.606$. As $p>0.05$, the statistical association is not significant.

Table 6.4 indicates migrant and urban workers' attitude to the statement 'people should resolve their problems within their family or community, not by using lawyers or courts'. We find that there were no significant differences between migrant workers and urban workers in terms of their opinions. The majority of respondents, including 55 per cent of migrant workers, and 59 per cent of urban workers did not agree with that resolving their problems within their community was more appropriate and attractive than appealing to lawyers and courts. Only 24 per cent of migrant workers and 23 per cent of urban workers agreed with this statement.

This finding casts doubt on the argument, which suggested that some societies, communities, or some members of a society have different legal consciousness, in particular, show a consciousness of resistance to law due to their marginalised position (Engel, 2005; 2012; Ewick and Silbey, 1998; Morgan, 1999). In the context of China, a number of studies have suggested that rural people are more likely to choose non-legal means to resolve their problems than urban citizens because they live in communities underpinned by a different culture and different values. It would appear that such an argument is fundamentally faulty, and that rural people think about law in the same way as urban people do. But, a more reasonable explanation could be that migrant workers, who used to live in rural communities but are now working in cities, are inevitably influenced by the legal culture they encounter in urban China. Thus, their ideas about how to sort out their problems, and their attitudes toward the legal system have changed. More specifically, their new identity as a worker gives them a new perspective on seeing and interacting with urban society, and they are no longer ordinary rural citizens any more.

This explanation is supported by qualitative interview evidence. A male migrant worker expressed his 'original' perception and observation in terms of dispute resolution when he lived in a rural community in Northern China before he came into the city of Dongguan in this way:

'In our village, when people around me had problems which cannot be resolved on their own, they always went to see our respected village elders, who were known by all of us and had many experiences and a good reputation. For instance, if a couple fought with each other; or someone had stolen an others' livestock, or people had problems with arable land delimitation or demarcation, they preferred to resolve their problems within our community... They all brought their problems to these elders, who listened to people's complaints, gave advice, and encouraged them to settle... That seems most common and was an effective way (to resolve our problems)... If someone had really serious problems, I think they would go to the village head, or local township government... But law? At least I never saw anyone go to

court...maybe it is not that necessary, and it is far from our life... that (commenting on litigation) could lead to embarrassment, couldn't it? If you consider all of us were living under the same roof and running into each other every day! You wouldn't sue your family or acquaintances. Otherwise, you'd be seen as a joke by the whole village.' (MW1)

However, when he talked about his experiences in seeking compensation from his employer by appealing to the arbitration committee, he expressed his opinions on the resolution of employment problems in quite a different way:

'But in Dongguan, the situation is different. Every month, there are many newly recruited workers in the factory, and the same number of old workers leave here... I mean, we know each other briefly and there is no sincere and close relationship between us (the employer and employee). I saw many many examples and I am sure when serious (employment) problems happened, employees' experiences were always unpleasant. Never think your problems can be resolved easily... If the employer is heartless, don't blame my disloyalty. In Dongguan, 'the milk of human kindness' doesn't work, people are only interested in money and benefits... Using the weapon of law to protect oneself is the right way, and I have never been afraid to stir up trouble for them (the employer).'' (MW1)

Although not every migrant worker expressed similar ideas during the interviews: some did not think going to law was a worse option even when they still lived in rural communities; others still preferred to keep a distance from law when they became quasi-urban or urban citizens. Among the 15 migrant workers who participated in the qualitative interviews, eight of them expressed similar idea to that of MW1. These migrant workers made a clear distinction between their social relationship in their 'past days' and the employment relations they had in this new environment, and they knew that using the old methods was not the best way to resolve their new problems. Therefore, changing their attitudes to dealing with their problems reflected their attempts to adapt to the new environment and to integrate themselves into urban society. From an individual perspective, they learned to use the law in a variety of ways, and such learning process could be made in an active or a passive way.

Collectively speaking, such learning experiences demonstrate the increasing rights awareness of migrant workers, as a newly formed social group in China.

6.4.2. *Importance of the legal system*

Table 6.5 Responses to ‘Courts are an important way for ordinary people to enforce their rights’

	Agree strongly	Agree	Neutral	Disagree	Disagree strongly
Migrant worker (n=189)	26%	39%	18%	10%	7%
Urban worker (n=102)	20%	38%	17%	15%	10%

Result of chi-square test: $p=0.642$. As $p>0.05$, the statistical association is not significant.

There were no strong differences between migrant and urban workers regarding their attitude toward the statement that ‘courts (arbitration) are an important way for ordinary people to enforce their rights’. Most respondents, including 65 per cent of migrant workers and 58 per cent of urban workers, believed that courts were important ways to enforce their rights. 17 per cent of migrant workers did not consider that courts were important, and the proportion of urban workers who held this opinion was slightly higher (25 per cent). This finding shows that the importance and effectiveness of courts in dealing with work-related injury problems, as the symbol of the formal justice system in contemporary China, is widely recognised by members of society.

Qualitative evidence suggests that some interviewees, in particular, migrant workers who were relatively older (above 40 years), considered the court was important due to their adherence to and respect for authority. Some of these respondents could not tell the difference between the court and the government regarding their roles and

functions. They adopted the terms ‘authority’ ‘government’ ‘bureaucrats’ and ‘court’ to refer to the government, including the social insurance agency, the labour arbitration committee and courts. They perceived the government and courts as ‘parental tribunes’, and firmly believed that *‘they are always in the position to help ordinary people and protect the poor’* (MW14). Such beliefs were unconditional and were not directly associated with their real experiences or their participation in the legal system, but were influenced by government propaganda and slogans. It needs to be noted that, based on the findings of this study, such opinions rarely exist among urban workers or younger migrant workers.

6.4.3. Fairness of the legal system

Compared with their attitudes to the importance of courts, respondents were generally less confident about the fairness of courts. In particular, urban workers were more likely to think that they would get a fair hearing than migrant workers. Although the role of courts in resolving work-related injury disputes is important, utilisation rates are low, as shown in Section 4.4.2 (2), only 4 respondents had formal hearing in courts, questionnaire data suggest that all the respondents who attended a formal court session were migrant workers.

Table 6.6 Responses to the statement *‘if you went to court with a problem, you would be confident of getting a fair decision’* by Hukou status

	Agree strongly	Agree	Neutral	Disagree	Disagree strongly
Migrant worker (n=189)	15%	10%	27%	25%	23%
Urban worker (n=102)	21%	27%	24%	12%	16%

Result of chi-square test: $p=0.0373$. As $p<0.05$, the statistical association is significant.

Interestingly, it can be asked: why do migrant workers consider courts as an important means for resolving disputes without holding a strong belief that it is a fair mechanism. The sample size for respondents who had been to court to resolve their problems was too small to provide any valid answers. So, comparing the attitudes of users and non-users does not make much sense in this study. The complexity of migrant workers' attitudes towards the legal system can be understood using qualitative evidence. Some of them were not convinced that courts could make a fair decision, although '*the conduct of courts was still much better than the rest.*' Migrant workers differentiated courts from arbitration committees, labour bureaux, and the labour service centres, etc.

'People says that they (staff of the labour centre and the labour bureau) are in cahoots with employers. They have formed a close-knit community of interests... when handling labour disputes, the government always shields the business side. They are unlikely to act impartially for us...Courts are supposed to be different. They represent the ultimate justice. Although you cannot guarantee it always acts impartially, the chance is greater...' (MW5)

Some interviewees, who were migrant workers, no matter whether they had filed a work-related injury claim in court, reported that they did not think that fairness was important, as they were more interested in the direct outcome that legal institutions produced rather than in the ways that decisions were made. Migrant and urban workers' different perspective on procedural fairness are discussed in Section 6.5.2.

It needs to be emphasised that although migrant and urban workers were different in terms of their beliefs in the fairness of courts, evidence suggests this did not contribute to the differences in the paths of resolving their work-related injury problems. Whether or not a worker chooses to go to law is determined by other factors.

6.5. WOKRERS' INTERESTS: A FURTHER INVESTIGATION

The interests of parties in the disputing process have been categorised into three parts: substantive, procedural and emotional/psychological interests (Moore, 2003). In brief, substantive interests refer to parties' needs to get through legal remedies for wrongdoings. Procedural interests refer to disputants' expectation that their problems can be handled using a given procedure. Emotional interests and needs refer to disputants wish they should be listened to and addressed patiently, and that understanding and sympathy should be shown. This framework is used to identify workers' underlying interests and expectations in the process of resolving their work-related injury problems was the evidence of qualitative interviews.

6.5.1. *Substantive interests*

Substantive interests dominated the process of dealing with work-related injury problems. The priority interests of both migrant and urban workers were pursuing their substantive rights and remedies. Nearly every injured worker knew that they were entitled to compensation for their injuries, and they expected their rights to be enforced, as discussed in Section 6.3.1 (1). However, qualitative evidence illustrates there were some differences between migrant and urban workers in this regard.

As in most studies of legal consciousness, respondents were not given a 'law-first' label in the first place. Instead, they were encouraged to talk about their experience of getting injured and claiming the compensation. We found that, both migrant and urban workers tended to use 'legal language' to organise their claims spontaneously. They frequently referred to terms such as 'law' 'rights' and 'entitlements', indicating a strong legal awareness. However, their claims were somewhat different. When

urban workers talked about the issue of compensation, they usually referred to money to cover their medical costs as well as money for post-accident care, such as nursing costs, and losses of income resulting from their injuries. They also expressed concerns about the possibility of carrying on in their current job and the future arrangements for their employment. In other words, they expected that their work and life should be properly taken care of; and they knew that this was part of their entitlements stipulated by law.

'I understand that someone needs to accept the consequences for this accident and be responsible for my injuries, either the government or my employer. Clearly they should pay the medical bill, including the ambulance fees, the surgery fees, as well as fees for hospitalisation and medicine. This is the basic thing. Since I stayed in hospital for two weeks and was unable to do any work in this period, I should be paid for the loss of employment. Then my movement was restricted for a nearly a month and a half, and I could not work as usual during this time, I think I was also entitled to claim losses for this... It is not my fault... and I do not think I should be subject to any discipline for my absence and for leaving early some days...' (UW1)

'I challenged the administrative decision as I did not think the amount of insurance benefits calculated in the right way. The costs of nursing care were not counted in, and it should be paid by the insurance fund rather than by myself.' (UW3)

A number of urban workers even expressed the idea that the current compensation regulations were not fair.

'The amount (of insurance benefits) was below my expectation. There were some problems...When they (the social insurance agency) calculated the amount for work-related injury subsidy, they used the average wage rate of Dongguan rather than my own wage rate...it's not fair...I was a senior technician and I was paid more than this (the average rate) in the past...I accepted their decision... but it does not mean I think it is fair. Obviously I deserved more than this.' (UW4)

According to the three types of legal consciousness identified by Ewick and Silbey (1998), these urban workers not only claimed their rights ‘with the law’, they considered and approached their problems in a way that can be called ‘*beyond the law*’.

Nearly half the migrant workers made similar statements to urban workers in terms of what they expected from the law. However, it was still common to see that migrant workers had ‘substandard claims’, i.e. they asked their employers or expected the social security system to recover their ‘bottom-line’ costs, which were below the standard set in the regulations. They asked their employers, in a rather confident and righteous way, to pay for their medical costs, transportation costs and meal allowances. But they were quite unsure about whether they were entitled to compensation for other items until I mentioned them during the interviews. Among these migrant workers, there was a gap between what they thought they knew and what they actually knew about the law. In contrast with the overall pattern of their beliefs that they knew their legal positions, qualitative evidence indicates some of them were not really familiar with the content of their rights.

‘Businessmen are always dishonest and evil...I was injured when I operated the crankshaft lathe on a Monday morning. That clearly fell into the category of a work-related injury. But my employer only paid for the emergency costs. When I was sent to the hospital, more costs were generated in the following days...including, costs for binding up, dressing, and transfusion... But he refused to pay. Eventually these were all paid out of my own pocket. This was so unreasonable... I was asking for what I deserved, and I wanted my money back.’ (MW2)

Qualitative evidence provides another version of account of respondents’ substantive interests. We found that respondents’, in particular, migrant workers’, paths and outcomes of the claiming and dispute process were also influenced by the realities of

their situation. Respondents' were asked '*have you experienced the following problems together with [or as a result of] your work-related injury problem*', and the following problems were listed: loss of income; financial problems, e.g. debt, mortgage problems; other employment problems, e.g. unpaid wages or becoming unemployed; family problems, e.g. damage to a family relationship. Their answers indicate that 72 per cent of migrant workers reported they had at least one other problem while only 24 per cent of urban workers did so. This finding reflects the fact that migrant workers' work-related injury problems were often closely connected with many other problems in their lives. This is similar to *Paths to Justice*, which argued that problems and misfortunes had a tendency to come in clusters (Genn, 1999, p.31-36). But this situation was less common among urban workers.

More specifically, migrant workers were more likely to suffer financial hardship and other financial problems than urban workers. Although quantitative data did not suggest that respondents, either migrant or urban workers, had significant problems in terms of their family relationships, qualitative evidence highlighted the fact that migrant workers' financial problems were often associated with the welfare of their family members. This was because many migrant workers, who made a living in cities far away from their home, were their family's breadwinners. If their source of income was interrupted, they would quite likely not only face personal financial difficulties, but also family problems. We found the reason that some migrant workers made the decision to accept an unfair offer and to give up their right to file an arbitration case was linked with their real situations and difficulties. Bargaining can be a time-consuming and costly process, which migrant workers cannot afford. Concerns about these difficulties overshadowed migrant workers' substantive interests as they considered they had limited bargaining power. This is illustrated by two interviewees:

'This was unequal from the beginning. We (workers) are always the underdogs... Now I still owed the hospital the money for medical treatment. If I do not accept it (employer's proposed offer for compensation) now, then I might obtain nothing in the end...What else can I do? I knew that he (the employer) underbid the compensation, but half a loaf is still better than no bread...' (MW7)

'This (compensation) had to be made quickly. I was responsible for my sister's tuition fees and living costs... she is studying in college... My mother suffers from a long-term illness, and I needed to cover her medication costs... It was not a rational choice to spend too much time in negotiating with my boss... It was necessary to make a concession... and accept his (the employer's) offer, as I couldn't afford the consequences of being obstinate, in terms of time... and more importantly, money.' (MW9)

Substantive interests were respondents' priority pursuit. By providing qualitative evidence, this study demonstrates that some migrant workers expected less compensation for their injuries than urban workers. If the process of claiming and dispute resolution is viewed as a long-distance race, these migrant workers have already 'lost at the starting line'.

6.5.2. Procedural interests

As discussed in Section 6.3.1(2), migrant and urban workers had different levels of knowledge of the procedures for resolving their problems. Qualitative interview evidence throws some light on their procedural interests. The most important finding is that migrant and urban workers tend to have different focuses in terms of procedural justice, i.e. they defined procedural fairness in different ways. Urban workers commonly believed that *'if compensation has been awarded in a similar precedent case, then I should be treated in the same way'* (UW2). They were good at finding out the 'market price' of injury compensation. They expected that their problems could be resolved in an appropriate and direct procedure. Their procedural

interests mainly involved their interests in the consistency of compensation outcomes. As they paid more attention to the issue of whether they had obtained fair compensation compared with similar cases, their procedural interests were closely connected with their substantive interests.

On the other hand, migrant workers were less interested in the consistency of the outcome, and were more likely to express their concern about 'whether the compensation is enough'. When migrant workers mentioned the notion of fairness, the majority of them referred to their concerns about the power imbalance between them and their employers. They were more likely to consider whether the court and other legal institutions could make the decision impartially as they were aware that they were in a weaker position compared with their employers. However, unlike urban workers, migrant workers seldom discussed the issue of whether they were treated, either by their employers or legal institutions, in the same way as other work-related injury victims in the claiming and dispute resolution process. Qualitative evidence indicates that migrant workers seldom spoke of the issue of equality, not because they did not notice there were any differences, but because whether they were treated equally was not less important, or it was an issue out of their control.

'I never think about this issue (outcome consistency)... It was not my major concern. Possibly I obtained less than others who presented a similar case. But I can do nothing about it...' (MW2)

These findings indicate that many migrant workers have probably got used to their socially marginalised position. They tend to normalise the situations when they receive unequal treatment, as they are always treated in this way. Expecting equal opportunities was something unrealistic for migrant workers, who often struggled with other practical constraints.

6.5.3. *Emotional interests*

Although expressing one's ideas and releasing emotions is viewed as a necessary part of the dispute resolution process (Moore, 2003), we found that this was fairly common among migrant workers, but rather uncommon among urban workers. There were nine migrant workers who expressed such emotional interests during the interview while only one urban worker did so. Urban workers valued substantive and procedural interests much more than emotional interests. This did not mean they had never experienced any feelings of frustration, pressure, disappointment, but they could cope with them well on their own. As expressed by one interviewee:

'I didn't need their (employers') cheap sympathy. What really matters was the procedure they adopted and the outcome achieved. I wanted them to be helpful for this problem, rather than their mercy...' (UW5)

In the process of dispute resolution, migrant workers often needed psychological support from their advisors, and from the staff in legal institutions. They hoped that their difficulties could be approached with sufficient attention and understanding. They preferred to be treated in a *'friendly and warm-hearted'* way to a *'routinised and indifferent style'* (MW10), which, from their perspective, could distance them from the legal system. Formal legal institutions required workers to express their feelings in an impersonal way, and sometimes overlooked their feelings and the ways in which they felt comfortable.

'They (court staff) didn't really listen to me at all. When I told them how I was injured and how negligent my boss was, they kept interrupting me, and asked me, repeatedly, to 'focus on the key facts and claims'... I was very confused about what the key facts were, and I believed I was talking about the right things... If they don't listen to me, how they can treat me fairly? ... I suffered from great pain and loss, but they behaved like cold-blooded animals.' (MW5)

'I tried to present them evidence to show I was injured during the work, and to let them know the fact that my employer was wrong in the first place as he refused to make the compensation which he should do. This was the most important thing, right? But they seemed not interested in this, and just asked me to bring the evidence of my employment relations, my injury certificate and so on. I doubted whether they were interested in my case.' (MW12)

'At first I felt terribly uneasy... I hope someone could tell me that there is a solution for my problem... I knew there is a solution in law. But that's too abstract. I was still not confident to do so (seek compensation) until someone pushed me a bit and showed me enough successful examples.' (MW6)

Although emotional interests were usually not respondents' priority consideration, whether or not these expectations were fulfilled could influence their satisfaction with the resolution outcome. For some migrant workers, emotional interests take second place to substantive interests. Although they expected they could be listened to, understood and sympathise with, whether these expectations could be realised was secondary to their substantive interests, i.e. whether they obtained the compensation as they expected. As long as they were happy with the outcome, even if they thought they were treated or by their employers or the legal institutions with less patience and respect, they did not really mind that. However, for some other migrant workers, their emotional interests tended to be mixed up with their substantive and procedural interests. When their needs to be heard and understood were not satisfied, these migrant workers were frustrated, and were more likely to consider the outcome was less satisfactory and fair.

We also notice that migrant workers often had a moral claim associated with their legal claim. They not only asked for adjudication, but also expected recognition that their employer was wrongful, which should be rectified and punished, and that they would obtain apologies from employers. In addition, for some migrant workers, being treated with patience and kindness was a symbol of justice. Ruthlessness was

associated with injustice and bias. As mentioned by a few migrant workers, they were frustrated with their employers' behaviour, and they viewed claiming through an official channel as 'revenge' on their boss. They wanted punishment, revenge, and an apology. This was also associated with their failure in negotiations with their employers and their painstaking bargaining experience in the early stage of their dispute.

A small proportion of migrant workers' claims did not involve reasonable expectations in terms of compensation. In these cases, migrant workers' emotional interests were reflected indirectly by the way in which they formed their substantive interests:

'It is often said that the money you can eventually get is always below your expectation... I heard people talk about the strategy of asking for an incredibly high amount of compensation, you can then get a reasonable amount of money after bargaining...which will be much lower your original claim. I asked them to compensate me 50,000 yuan for my lost fingers, I knew this was higher than usual, but it could take more attention of my boss, so they won't easily ignore my case'. (MW15)

This case indicates that migrant workers sometimes believed that to take a normal and rational strategy would be less helpful for reaching a satisfactory outcome. This did not indicate their confidence, but rather suggests their powerlessness in face of the law, as they were not convinced that playing the game in the normal way could make a real impact on their problems.

6.6. CONCLUSION

By presenting three aspects of evidence, this chapter address the differences between migrant and urban workers in terms of the paths and outcomes of the claiming and dispute process from the perspective of legal consciousness.

First, focusing on the initial stage of work-related injury problems, by comparing the differences between migrant and urban workers in terms of how they make sense of their injurious experience, and how they attribute their injuries to a responsible party, we find that urban workers were more familiar with the nature of work-related injury compensation, and were more likely to blame and contact their employers for their problems than migrant workers. Some problems were identified regarding the naming and blaming stage in the case of migrant workers, including the fact that they were more likely to tolerate and to not externalise their injuries than urban workers. In particular, when they suffered slight injuries, the difference was significant. Chapters 4 and 5 presented and interpreted the differences between migrant and urban workers in their approaches to claiming, while this chapter explores differences in the ways they make sense of injuries upstream the process. Such differences, although they do not directly contribute to differences in terms of paths and outcomes of claims and disputes, are quite important, and may suggest that we could underestimate the issue of work-related injury problems if we rely on the findings of most existing studies, as there is not enough knowledge of the naming and blaming strategies of those concerned in China. Compared with urban workers who had similar problems, a considerable proportion of migrant workers' work-related injury cases never enter into the formal compensation process, either into the administrative redress procedures or into the legal procedures. If this conjecture is correct, the real differences between migrant and urban workers regarding the paths and outcomes for resolving their work-related injury problems would be even greater than has been assumed. That is because there are more migrant workers who took no action to deal with their problems.

Secondly, this study reveals that migrant and urban workers have different levels of legal knowledge. Although questionnaire responses indicated that there were no significant differences between the two groups of workers in terms of knowledge of their substantive rights, and they were well informed about their legal position, qualitative evidence reveals that they had different levels of understanding in terms of the specific content of their substantive interests. Urban workers tended to be more familiar with the different aspects of work-related injury compensation. Migrant workers' understanding of this compensation was far from sufficient, and they only took it as a way for recovering or reimbursing costs for treatment and medication. In addition, questionnaire data suggests that migrant and urban workers had different levels of legal knowledge in terms of their procedural rights. Urban workers had a better grasp of the procedures than urban workers. Qualitative evidence suggests that such differences are due to the fact that the procedure for those migrant workers, who fell into the labour (private) law system due to their ineligibility for the work-related injury scheme, are much more complex than procedures for insured workers, who were more likely to be urban workers. Questionnaire findings regarding respondents' expectations about advice indicates that workers' knowledge of the law is a less important factor than their beliefs about the role of law in the dispute resolution process. Most urban workers were able to obtain insurance benefits only as long as they knew the '*law in the books*', or sought technical support and advice about the law. But many migrant workers could only resolve their problems when they took strategic action, or found someone to represent them. Migrant workers powerlessness cannot be fully explained by their lack of legal knowledge, but was directly related to the nature of their problems and the difficulties of private bargaining. Presumably, their scepticism that law could help to resolve their problems can also be explained by their marginalised role in the society. Either way, the assumption that differences in legal knowledge led to the divergent paths and outcomes of the claiming and dispute process was not supported by empirical evidence.

The assumption that the different paths which migrant and urban workers followed to resolve their problems are due to their different attitudes to courts was not really supported by the evidence. We found that migrant and urban workers both agreed that courts were an important way of enforcing their rights. Qualitative evidence did not support the argument that rural citizens were more bound by their traditional culture, or were more likely to resolve their problems within their communities without appealing to the law. Instead, like urban workers, migrant workers tended to think that using the law to protect them when their rights were violated was an appropriate action. One exception was that migrant workers tended to rate the fairness of courts more negatively than urban workers. However, questionnaire responses revealed that all respondents who filed a labour dispute in courts were migrant workers. Thus, respondents' opinions on the fairness of courts were irrelevant to the ways in which their problems were resolved.

Table 6.7: Migrant and urban workers' 'interests' in the dispute resolution process

	Substantive interests	Procedural interests	Emotional interests
Migrant worker	High	Low	High
Urban worker	High	High	Low

The substantive, procedural and emotional interests of migrant and urban workers were rated according to Moore's framework (see Table 6.7). In the context of work-related injury compensation problems, substantive interests are the dominant pursuit for both migrant and urban workers. Urban workers might have greater expectations of compensation. This is either because they had a clearer sense of the specific regulations, or because their concerns about fair compensation were less likely to be compromised by reality than migrant workers. Migrant workers had fewer procedural concerns than urban workers, who showed more concerns with the issue that whether the problems were handled correctly, and whether outcomes were consistent and fair. A considerable proportion of migrant workers undervalued the

importance of procedural fairness, not necessarily because of their cultural beliefs, but mainly as a result of their unfavourable situations. For them, placing too much emphasis on procedural justice was impractical. Moreover, migrant workers were more likely to express their emotional and psychological interests than urban workers, as they were in a vulnerable social position, and often viewed the legal system as something threatening and powerful. They wanted their injurious experience to be listened to and understood, and their problems to be handled individually and patiently. This is very different from urban workers, who viewed claiming compensation as a game, or, as a set of procedures and resources that can be manipulated for their own advantage. It needs to be noted that, although the three types of interests are investigated separately, in the case of migrant workers, their substantive interests, procedural interests and emotional interests were not mutually exclusive. Instead, they were interconnected with each other.

In conclusion, the hypothesis of differences in legal consciousness is not supported by empirical evidence. On the one hand, there were no differences between migrant and urban workers in terms of their knowledge of substantive rights, and they equally considered courts are important in enforcing their rights and redressing wrongs. Although migrant workers were less convinced than urban workers about whether they can mobilise the law, and whether the law could lead to a fair outcome, differences in the paths taken by migrant and urban workers to resolve their work-related injury problems cannot be explained by these facts. Instead, such differences can be better explained by their distinct interests in the claiming and dispute resolution process, which were more closely associated with differences in the nature of their problems, and differences in their social and economical status.

CHAPTER 7

CONCLUSIONS

7.1. SUMMARY OF THE EMPIRICAL FINDINGS

At the beginning of this thesis, the following questions were asked:

- Are there any differences in terms of the strategies adopted by migrant and urban workers to resolve their work-related injury problems?

- Are there any differences in terms of the outcomes achieved by migrant and urban workers?

In the light of questionnaire findings, this study has shown that the paths and outcomes of the claiming and dispute process for migrant and urban workers are different. First, migrant workers who experience work-related injuries are more likely than urban workers to seek compensation from their employers, while urban workers are more likely than migrant workers to claim insurance for their injuries. Migrant workers are less likely to go through the work-related injury identification procedure than urban workers.

In contrast to the findings of most surveys on access to justice, which argue that vulnerable social groups are less likely to seek advice and to take action for their problems (Genn, 1999; Pleasance et al., 2006), in the context of work-related injuries, migrant workers actively sought advice for their problems, and there was no difference between migrant and urban workers in this regard. The differences were in the types of advice they looked for, i.e. migrant workers were more interested in

seeking advice on how to proceed and on representation while urban workers were more interested in seeking advice on their legal position and available procedures for claiming and dispute resolution.

Secondly, this study indicates that migrant workers who were dissatisfied with the initial decision were more likely to follow a ‘private route’ for seeking redress and to achieve a less satisfactory outcome, while urban workers were more likely to follow an ‘administrative route’ for redress and to achieve a more satisfactory outcome. Migrant workers were more likely to consider that the amount of compensation they obtained was less than what they had expected while urban workers were more likely to consider that it was equal to or greater than what they had expected. In addition, those who obtained no compensation were more likely to be migrant workers. This finding is consistent with most surveys on access to justice, which indicate that socially disadvantaged groups are more likely to achieve less satisfactory outcomes (ABA, 1994; Genn, 1999, p.86; Legal Services of New Jersey (LSNJ), 2009).

In terms of the forms of resolution outcome, the study indicates that, among respondents who were uninsured, migrant workers were more likely to reach agreement through mediation with a third party while urban workers were more likely to achieve an internal resolution, i.e. resolution through bilateral negotiation with their employer. He et al. (2013) and Michelson (2007a; 2007b) suggested that migrant workers or rural citizens less frequently than urban workers or urban citizens used the legal system to resolve their problems. In the context of work-related injury problems, we did not find that urban workers went to the law more often than migrant workers. Instead, this study found that all the respondents who went to law, i.e. to an arbitration committee or a court to resolve their work-related injury problems were migrant workers.

To explain these differences, three hypotheses – set out below – were put forward, namely a dual legal systems hypothesis, a dual labour market hypothesis and a legal consciousness hypothesis:

- The differences in the paths and outcomes of the claiming and dispute process can be explained in terms of the existence of dual legal systems.

- The differences in the paths and outcomes of the claiming and dispute process can be explained in terms of the existence of a dual labour market.

- The differences in the paths and outcomes of the claiming and dispute process can be explained in terms of differences in the legal consciousness of migrant and urban workers.

As shown in Chapter Four, empirical evidence does support the dual legal systems hypothesis. Although the current legal system of work-related injury compensation in China gives equal rights to migrant and urban workers, it provides different types of remedies and different procedures for insured and uninsured workers. Under this system, insured workers are able to take the administrative route to claiming insurance while uninsured workers have to undertake private negotiation and/or initiate legal proceedings to obtain compensation from their employers. In the view of this dual legal system, differences between parties in the paths of resolving work-related injury problems are not often associated with differences in their demographic characteristics, as proposed by most surveys on access to justice (Carlin, et al., 1966; Coumarelos et al., 2006; Curran, 1977; Currie, 2007a; Genn, 1999; Pleasance, 2006; Pleasance et al., 2010), but was closely associated with their insurance status, and the types of claims and disputes concomitantly.

The administrative route, i.e. administrative redress procedures, which is more likely to be adopted by insured workers, produces more satisfactory outcomes than the private route, which is more likely to be adopted by uninsured workers. As migrant workers are less likely to be insured than urban workers, they are less likely to be able to take the administrative route, and less likely to be satisfied with the outcomes than urban workers.

Empirical evidence also supports the dual labour market hypothesis. Firm-level practices reinforce and reproduce the labour market inequalities between migrant and urban workers. Priority for participating in the work-related insurance scheme is given to those who are highly skilled workers, higher wage earners, workers who are paid on a time basis and trade union members. These workers are more likely to be urban workers. Temporary, unskilled employees and workers who have a higher risk of experiencing an industrial accident, who are often migrant workers, are marginalised by these practices. This finding fills the gap in previous studies on the issue of inequalities in social insurance coverage, which placed more emphasis the enterprise's ownership structure than on workers' characteristics (Gao and Rickne, 2014; Nielsen, et al., 2005; Nyland, et al., 2006).

This study also finds that the segmentation of social insurance coverage between migrant and urban workers is more common in foreign-owned, collectively-owned and domestically-owned private enterprises than in state-owned enterprises. So the key differences are between SOEs and non-SOEs, as pointed out by Nielsen et al. (2005), Gao and Rickne (2014), but not between domestic and foreign enterprises (Nyland et al., 2006). In addition, the lower participation rate in work-related injury insurance cannot be explained by the unwillingness of workers, as pointed by Nielsen et al. (2005) and Gallagher et al. (2013), as firm-level practices rather than workers' wishes determines their social insurance eligibility.

In the case of private bargaining, whether workers achieve a satisfactory outcome is also related to the nature and quality of the internal dispute resolution (IDR) system of the enterprise. In state-owned-enterprises and foreign-owned enterprises, which have better-structured and better-functioning IDRs, migrant and urban workers have more equal access to internal dispute resolution procedures, and to achieve more equal outcomes. In collectively-owned and domestically-owned private enterprises, the power imbalance between employers and employees, between ‘repeat players’ and ‘one shotters’ could be strengthened in the settings of IDR (Galanter, 1974). As a result, these effects are more evident for people who are in a vulnerable position in the workplace, in this case, migrant workers. According to Hoffmann’s (2008) categorisation, we can argue that, although migrant and urban workers have equal formal work-related injury entitlements (‘official power’), urban workers are ‘the haves’ while migrant workers can be regarded as the ‘have-somes’ according to whether they have access to IDR resources (‘unofficial power’). In the context of work-related injury compensation, the cases of ‘the haves’ are more likely to be resolved within the firm while the ‘have-somes’, in most circumstances, can only reach agreement with the involvement of a third party.

Empirical evidence does not really support the legal consciousness hypothesis. On the one hand, this study found there were no differences between migrant and urban workers in terms of their knowledge of substantive rights, and both groups equally regarded courts as important means of enforcing their rights and redressing wrongs. According to Gallagher (2006), both groups were positive about the ‘external efficacy’ of the legal system. This is different from a number of earlier studies, which argued that urban people’s attitudes towards the legal system were generally more positive than rural people’s (Michelson, 2007a; 2007b) or *versa vice* (Gallagher and Wang, 2011). On the other hand, this study showed that migrant workers were less convinced than urban workers about their procedural rights, about whether they could

mobilise the law, and about whether the law could lead to a fair outcome. In other words, migrant workers were more negative than urban workers about the ‘internal efficacy’ of the legal system (Gallagher, 2006). In addition, legal consciousness was not associated with the paths that insured workers used to resolve their problems or their satisfaction with the outcome. However, in the case of uninsured workers, legal consciousness appears to have had some small effect, in particular, in determining whether uninsured workers would take any action to resolve their problems.

In conclusion, the study indicates that the legal consciousness hypothesis has less explanatory power than the others but that there is empirical evidence to support the other two hypotheses.

7.2. THE STATUS OF THE THREE HYPOTHESES

7.2.1. *Some comments on the key concepts*

(1) The dual legal systems hypothesis

There is a dual legal system for work-related injury compensation in China, which is actually the mirror image of the dual legal systems in California family law, as described by tenBroek (1964). In contrast to family law in California, this study suggests that, in the work-related injury compensation law in China, the rights of the ‘more fortunate’, i.e. urban workers, are more likely to be regulated by the administrative law system, while the entitlements of the ‘more vulnerable’, i.e. migrant workers, are more likely to be regulated by the labour (private) law system. The legal remedy for public claims is administrative compensation, which is regulated by the social insurance agency, while the legal remedy for private disputes is private compensation, which is associated with negotiation, private bargaining, and if

necessary, civil action. The dual legal systems, which differentiate between insured and uninsured workers, create inequalities between migrant and urban workers in terms of their access to administrative remedies. It does so not because there is any overt discrimination between migrant and urban workers, but because migrant workers are less likely to be insured than urban workers and thus do not have access to administrative procedures for resolving problems that urban workers, who are more likely to be insured, can use. By resorting to the administrative law system, urban workers are more likely to receive compensation at the level stipulated by law and more likely to be satisfied with the outcome.

(2) The dual labour market hypothesis

Following the insights of classical dual labour market studies (Bosanquet and Doeringer, 1973; Doeringer and Piore, 1971; Piore, 1971, 1979; Reich et al., 1973), many studies have used this theory to address Chinese problems, and they conclude that the inequalities between migrant and urban workers are associated with an inter-sectoral segmentation in the labour market, i.e. with their different jobs, sectors and positions in the labour market (Cai, 2007; Chan, 2010; Gordon and Li, 1999; Knight et al., 1999; Meng, 2011; Nielsen and Smyth, 2008; Roberts, 2001; Solinger, 1999; Yao, 2001). By focusing on inequalities in the insurance participation rates of frontline workers in the manufacturing sector, this study suggests that the labour market inequalities go beyond what has been addressed in previous studies, as migrant and urban workers who are doing similar jobs and in the same sector are also treated in different ways. The segmentation is more like the situation proposed by Finlay (1983), namely, intra-occupational segmentation. Enterprises reproduce labour market inequalities when they arrange social insurance provision for their employees. In this sense, it can be argued that the Hukou system has a more far-reaching impact on the labour market than has been suggested by previous studies. It is not only

inter-sectoral segmentation but also intra-occupational segmentation that create barriers for achieving social equality between migrant and urban workers in China.

(3) The legal consciousness hypothesis

The findings from this study extend the focus of previous legal consciousness studies from differences between groups in the population defined in terms of their gender, income, race, social class, welfare status and sexual orientation (Bumiller, 1988; Cowan, 2004; Ewick and Silbey, 1992; Hull, 2003; Levine and Mellema, 2001; Merry, 1990; Sarat, 1990) to differences between workers in terms of their Hukou status in the Chinese context.

There are no significant differences between migrant and urban workers in terms of legal knowledge and attitudes to the law. Migrant workers would like to use legal means to obtain compensation. We find that ‘legal hegemony’ (Silbey, 2005) has extended its impact in Chinese society in the course of industrialisation. By focusing on migrant workers, it can be argued that the differences in horizontal forms of legal consciousness (Engel, 2005; 2012), i.e. between western and non-western worlds, between modern and traditional societies, and between rural and urban China (Chen, 2007; 2008; Feldman, 2007; Guo and Wang, 2003) have decreased, and have less explanatory power in interpreting the differences between migrant and urban workers in their experience of claiming and dispute resolution.

In contrast to previous legal consciousness studies, which suggest that socially marginalised groups are more reluctant to take their problems to law, we find that migrant workers were more likely to appeal to the courts than urban workers. However, the relatively higher usage of the courts by migrant workers, who constitute a significant segment of Chinese society, in the context of work-related injury

problems is due to the fact that they have less access to administrative redress procedures, which constitutes a system that is superior to private redress procedures. Having to use courts and arbitration committees, in this context, demonstrates migrant workers' socially disadvantaged position and their relative powerlessness in Chinese society. It points to the complexity of legality in the Chinese context.

If the legal system and the labour market are regarded as examples of 'structure', i.e. as recurrent patterned arrangements which influence or limit choices and opportunities available to workers who encounter work-related injury problems, then individual workers who have the capacity to act independently and make their own free choices to resolve their problems and disputes, are regarded as 'agency', this study can be seen to raise the well-known *structure versus agency* debate (Berger and Luckmann, 1966; Bourdieu, 1977,1990; Giddens, 1979).

In the case of work-related injury problems, the study indicates that individual workers are far from being free agents; instead, they sort out their problems in a manner dictated by the social structure, i.e. by the legal system and the labour market. At least in work-related injury compensation cases, socialisation can undermine individual worker's autonomy in sorting out their problems. As Levine and Mellema (2001) and Morgan (1999) have demonstrated, legality can be rendered by other factors. In resolving their work-related injury problems, workers inevitably enter into definite legal positions and employment relations, which are irrelevant to their will. That is to say, their social existence on the basis of Hukou status determines their consciousness.

7.2.2. The relative explanatory power of the three hypotheses

Sorting out work-related injury problems is a social process which involves three major parties: the state, the enterprise, and the worker.

The dual legal systems hypothesis considers the issue at the macro level. The emphasis is placed on normative rules and legal institutions, i.e. on workers' rights and employers' legal obligations. This hypothesis focuses on how work-related injury problems are officially defined. By defining employers' responsibilities and employees' entitlements in work-related injury compensation cases, it embraces the state-enterprise relationship as well as the state-worker relationship. As work-related injury problems fall at the interface of the legal system and public policy, they can be regulated either by the social security system or by the labour law system (i.e. the civil justice system). This hypothesis reveals how, because of its responsibility for managing and providing social welfare, the state regulates the workers' compensation scheme and allocates social insurance benefits. The dual legal systems hypothesis addressed both types of relationships in the light of normativity, i.e. the ways in which work-related injury problems ought to be resolved according to the legislative intent and the values of the legal system.

The dual labour market hypothesis considers the issue at the middle level. The emphasis is placed on the dynamics of the labour market, i.e. how enterprises respond to economic conditions and make regulations to reflect their internal strategy and structure. This hypothesis highlights the state-enterprise relationship by examining how enterprises fulfill their social insurance obligations, and the enterprise-employee relationship by investigating their internal dispute resolution procedures. Both types of relationship were understood in the light of objectivity, i.e. the issues were addressed as a reality: how legality is constructed or deconstructed in firm-level practice.

The legal consciousness hypothesis considers the issue at the micro level. The focus is on workers' motivations and on their choices and decisions regarding the resolution of their work-related injury problems. This hypothesis highlights the state-worker relationship by investigating how workers make sense of law and how they are motivated by their attitudes and beliefs to choose certain paths to resolve their work-related injury problems. The relationship is understood in the light of subjectivity, i.e. whether and how people's consciousness influences and informs their choices in dealing with these work-related injury problems.

Table 7.1 Illustrating the three hypotheses

Hypothesis	Level	Focus	Standpoint
Dual legal systems hypothesis	Macro level	Normative regulations and legal institutions	Normativity
Dual labour market hypothesis	Middle level	Employment relations	Objectivity
Legal consciousness hypothesis	Micro level	Individual attitude and belief	Subjectivity

This study provides a three-level framework, involving three aspects of actors, to demonstrate the dynamics of the different types of the relationship between the state, the employer and the worker for work-related injury problems. They are summarised in Table 7.1 above.

Such a framework can be used to study other types of problems/disputes. The different aspects of the relationship between the state, the employer and the worker are interlinked. This is because social inequalities result from interactions between a number of mechanisms. For example, enterprises' social insurance arrangements belong to the overlapping realm of state regulations and autonomous employment practices. In the private bargaining setting, the normative rules, the conduct of legal actors, as well as the power imbalance in the employment relations, all exert an

influence on workers' decisions. The differences in the paths and outcomes of the claiming and dispute process for migrant and urban workers, which appear in concrete individual phenomena, can be better understood by integrating the three aspects of the relationship concerning work-related injury problems without overlooking the connections between them. It follows that the three hypotheses are not mutually exclusive but interlinked with each other.

The primary empirical findings of this study concern the inequalities between migrant and urban workers in the coverage of work-related injury insurance, which directly and significantly affects the paths of claiming and dispute resolution. Differences in outcomes, which mainly reflect differences between the administrative redress mechanism and private bargaining, are created by the strategies adopted by these institutions for dealing with migrant and urban workers' complaints and claims, and can be regarded as the secondary findings, this is because, as suggested by empirical evidence, the 'outcomes' are heavily influenced by the 'paths' adopted by injured workers.

From the perspective of the dual legal systems hypothesis, the questions to be asked are: how should administrative non-compliance be dealt with and how should private bargaining for work-related injury compensation be regulated? From the perspective of the dual labour market hypothesis, the question to be asked is: should the problems have been tackled 'upstream' before they entered the jurisdiction of legal institutions? Reducing the number of such claims and disputes from the start would be a more effective way of tackling inequalities than reforming claiming and dispute resolution procedures.

Although both the legal system and the labour market hypothesis are supported by empirical evidence, the differences in the experiences of migrant and urban workers

in sorting out their work-related injury problems are fundamentally problems arising out of the labour market rather than out of the legal system. That is to say, firm-level practices, rather than state regulations, have primary responsibility for the differences.

The dual legal systems of work-related injury compensation cases provide separate remedies and procedures for insured and uninsured workers. As a result, migrant workers are less likely to follow the administrative route than urban workers. The labour (private) law system acts as an alternative way for workers to obtain compensation when they cannot claim social insurance benefits through administrative redress procedures. Social insurance agencies are only empowered to deal with the cases of eligible workers, as they pay recipients on the basis of contributions paid, not on the basis of need. The legal system extends the reach of compensation to the cases of ineligible (uninsured) workers for the sake of natural justice, i.e. when the negative consequences of injuries are directly linked to their employers' liability or fault, which fail to be redressed by the labour law system. Thus, uninsured workers are empowered to seek compensation from their employers by initiating private bargaining and legal action. However, the dual legal systems contain no discriminatory provisions to migrant workers as such.

Rather, the dual labour market is the main source of discrimination against migrant workers. Differences between migrant and urban workers in their attempts to resolve their work-related injury problems can be significantly reduced, or even eliminated, if, as set out and anticipated by the social insurance system, all employers were to satisfy the regulations and provide insurance coverage for all their employees. In that case, every injured worker would be eligible to initiate administrative procedures and to obtain social insurance compensation without resorting to the labour (private) law system. Consequently, the importance of insurance status in terms of its influences on the paths and outcomes for work-related injury problems would be diluted, so that the differences between workers with different Hukou status would no longer exist.

As employers do not all fulfill their statutory obligations, non-compliance is prevalent and migrant workers are often excluded from the enterprise's social insurance scheme. The labour (private) law system, which should only be used in exceptional circumstances, has moved 'out front' and plays an almost equal role as the administrative law system in determining the outcome of work-related injury problems. This is probably because the situation of non-compliance has been significantly underestimated by the state. The phenomenal existence of the dual legal systems is closely associated with the emergence of the dual labour market. The dual legal systems hypothesis can, in fact, be explained in terms of the differences in the paths and outcomes of uninsured and insured workers. These differences reflect the different ways in which employers treat migrant and urban workers which are not due to different legal provisions, but to different conditions of employment and reflect a dual labour market, especially in certain types of enterprise. In this sense, the dual legal systems hypothesis is less important than the dual labour market hypothesis.

7.2.3. *The secondary importance of the dual legal systems*

Although it is a less significant hypothesis, the workings of the dual legal systems do also need to be considered. The key issues are whether the labour (private) law system should get involved in work-related injury problems, and whether it is appropriate to use the labour dispute resolution system to correct administrative non-compliance. In work-related injury cases, the fact that employers have a legal responsibility to compensate injured workers for their losses (i.e. for their physical injuries and economic losses), and the fact that injured workers are allowed to take action against their employers, is not because employers had committed a 'civil wrong', or a breach of contract, but because their conduct was intentionally against the law, i.e. the *Labour Law* and the *Social Insurance Law*. By channeling uninsured workers' cases into the labour (private) law system, loopholes in the state-enterprise relationship are

assumed to be rectified by the enterprise-employee relationship, i.e. through bargaining between employers and employees. In this way, uninsured workers' entitlements to social insurance benefits are not really secured, but are transformed from insurance benefits that are due to them into compensation, which is voluntary and unpredictable. The emergence of bargaining over compensation in the labour (private) law system, despite its *bona fide* intentions, transforms employers and employees into equal parties in a more adversarial and confrontational procedure. In that sense, it redefines the nature of entitlements to social insurance benefits as well as the legislative intention, because a *rights-based* dispute is transformed into an *interests-based* dispute (Silbey and Sarat, 1989).

The nature of the dual legal systems in China is not quite the same as pointed out by Engels (2010), Renner (1949) and Weyrauch (1966), who argue that law is not an impartial instrument, as it reflects the interests of the dominant social groups or classes. It is not quite the same as tenBroek (1964)'s accounts of the California family law system, which was a legal system of differentiations based on people's economic conditions. But, in relation to work-related injury problems in China, tenBroek's account of dual legal systems is reversed because the public (administrative) legal system is superior to the private (civil) one.

Leaving aside questions of legal theory, empirical evidence suggests that the dual legal systems face practical problems. Although we cannot necessarily conclude that the administrative law system always produces better outcomes than the labour (private) law system, respondents who took the administrative route were more satisfied with the outcomes than those who followed the private route (See Section 4.4.2.). The outcomes resulting from the administrative redress procedure tended to be experienced as consistent and fair. However, when work-related injury compensation cases were dealt with by the labour (private) law system, justice was less likely to be achieved, and the statutory compensation standard was less likely to influence the

outcomes in individual cases. There is a gap between ‘peak agencies’, i.e. the law-making institution, and ‘field level agencies’, i.e. local courts and government agencies (Galanter, 1974). The reasons for this gap, however, are not attributable to the unfairness, corruption or poor quality of the decisions made by legal institutions, as suggested by Gallagher et al. (2013), Li (2010), Lubman (1999) and Peerenboom (2002). In the case of work-related injury claims and disputes, resolution by adjudication, although it was rarely initiated, often led to satisfactory outcomes, which is very different from the findings in *Paths to Justice* (Genn, 1999, p.194). The real problem is that the legal institutions have overused alternative dispute resolution, which can be explained in terms of their limited resources, caseloads, and the struggle between impartiality and managerialism (Busby and McDermont, 2012), and between efficiency and justice (He, 2009).

By resorting to legal institutions, workers seek to press their employers to pay compensation that they were unwilling to do in the first place. From the perspective of legal institutions, work-related injury claims and disputes are not as controversial as, and therefore not as significant as, other types of case. Work-related injury claims and disputes are less likely to receive sufficient attention, time and effort from the legal actors in order to balance justice with economic efficiency. Problems are left to be resolved through mediation, and compensation is made ‘in the shadow of the law’ (Mnookin, 1979). So, rather than criticising the performance of legal institutions, as most doctrinal legal studies do, it can be argued that allowing private bargaining for work-related injury compensation cases is an inappropriate use of the private law system.

7.3. POLICY RECOMMENDATIONS

7.3.1. *Shifting the focus: the advantages of a socio-legal approach*

To redress the differences between the experiences of migrant and urban workers, we must concentrate on the right targets. However, previous studies have failed to do so. Currently, there are three groups of scholars working on relevant topics. Social policy researchers (Gao and Rickne, 2014; Nielsen et al., 2005; Nyland et al., 2006; Zhang et al., 2010) have attempted to construct a better social insurance scheme by improving the level and coverage of compensation for work-related injuries. However, they seldom address the issues of claims and disputes concerning social insurance and their resolution.

Doctrinal legal scholars in China are divided into two groups. Those who work in the area of labour protection legislation (Chang, 2006; Cheng et al., 2014; Cooney et al., 2007, p.786; Cui et al., 2013; Dong, 2006a; 2006b; Li and Freeman, 2014; Wang, 2008; Wang et al., 2009) emphasise the importance of making better laws for improving workers' employment and living conditions, especially for those who are in more vulnerable positions in the labour market. They believe that strengthening the scope of anti-discrimination could improve equality in employment in many respects. They also suggest that, by transforming some administrative regulations, for example the *Regulation on WRI insurance* into statute, and by increasing the power of the state in regulating the labour market, the situation could be improved. The problems is that they tend to equate 'employment formality' with 'employment equality', in particular, to understand equality in terms of workers' eligibility to social insurance benefits (Gallagher et al., 2013).

The other group of legal scholars who work on civil justice and dispute resolution (Gallagher et al., 2013; Halegua, 2008; He, 2009; Li and Freeman, 2014; Lubman, 1999; Peerenboom, 2002; Xu et al., 2009a; 2009b) are keen to tell stories about 'dispute explosion', indicating that large caseloads and inadequate resources can affect the quality of decision-making. They are more interested in procedural than in

substantive laws, and they believe that, by improving the quality of courts' decisions, social justice and social equality can be improved. Since they are aware of the limitations of the claiming and dispute resolution system and the constraints on parties who wish to take their cases to law, their studies often promote alternative dispute resolution (ADR). They tend to encourage legal institutions to simplify their procedures, to reduce their costs and to improve judicial efficiency. However, there is not enough evidence to prove that these changes would be an effective means for migrant workers to obtain access to justice, as they fail to make the distinction between, or to examine the paths and outcomes of the claiming and dispute process separately.

Another problem in previous studies is that most of them treat work-related injury problems as labour problems. This is not surprising as work-related injury disputes are officially classified as labour disputes in the *Labour Law* and the *Labour Contract Law*. The limitation of this approach is that it overlooks the fact that the paths of resolving disputes are closely associated with the type of problem that gives rise to the dispute. Workers' strategies for dealing with work-related injury problems are likely to be different from those they adopt in dealing with disputes over employment contracts, unfair dismissal disputes or disputes over unpaid wages. More importantly, by viewing work-related injury claims and disputes as an aspect of labour law rather than a social process, researchers cannot extend their tentacles into other areas and obtain a full picture of the problem.

This segmentation of academic studies has arisen for a variety of reasons. Scholars have had different academic and policy interests and different funding sources, and have tended to adopt the approaches and research methods that are commonly used in their own areas. This is not to say that their points of view are unimportant. But, they have failed to tackle the different experiences of migrant and urban workers in

resolving their work-related injury problems. By using ill-fitting approaches, the focus has been shifted in the wrong direction.

This study provides an example that illustrates the power of the socio-legal approach, which fosters a natural overlap between different academic areas, reveals the complexity of claiming and dispute resolution, and makes it possible to gain a new perspective for observing and understanding the problem.

Recalling the two most salient hypotheses, the dual legal systems hypothesis led us to focus on workers' insurance status, on the downgrading of justice in private bargaining settings, and on the interactions between the administrative insurance system and the labour law system, which have been overlooked by doctrinal legal scholars in China. Unlike their standpoints, this study points to failures of the 'superstructure', i.e. of the state, legal institutions, and normative ideas for resolving work-related injury compensation cases. The dual labour market hypothesis underlines the linkages between workers' employment status, their labour market characteristics, and the ownership structure of their enterprise with their eligibility to social insurance benefits. It also enables us to appreciate the importance of internal dispute resolution systems in resolving work-related injury problems, and their potential for guaranteeing equality for migrant and urban workers. It stresses the need to shift the focus from the 'superstructure' to the 'base'. In other words, we should understand legality in the light of economic rationality, the segmentation of the labour market, and the dynamics of employee-employer relations.

7.3.2. Enhancing the firm-level enforcement of state regulations concerning insurance for work-related injuries

Based on these facts, the questions proposed in the end of section 1.2. can now be answered. In the case of work-related injury claims and disputes, we probably do not need better substantive law, a more important task is to make the existing laws work

better for migrant workers. The social insurance system should have the participation of all members of society. This study suggests that activating the role of enterprises and regulating the state-enterprise relationship are likely to be the most effective means of tackling the inequalities between migrant and urban workers in dealing with claims and disputes arising out of injuries they have sustained at work. The priority for policy is therefore to enhance the firm-level enforcement of state regulations concerning insurance for work-related injuries.

On the one hand, the importance of supervision and control in enforcing state law in the market place should be highlighted. Employers' non-compliance should be effectively detected and punished. The labour bureau, in particular, the labour surveillance team should undertake its responsibilities. Their conduct could effectively reduce the large number of work-related injury disputes. The relationship between the state and the enterprise is essentially one-way and is typically a relatively passive one, i.e. the state lays down regulations and enterprises are supposed to implement them. In practice, the expectation is often not fulfilled. There is then a cat-and-mouse game between the enterprise and local government over the mandatory social insurance regulations. Empirical evidence indicates that, among the four types of enterprises, none of them fulfills their obligations in full. Even SOEs, which did best in providing work-related injury insurance coverage to their employees, did not achieve 100 per cent in terms of social insurance coverage. Enterprises use a variety of strategies to evade their social insurance obligations.

The government needs to have greater knowledge of firm-level employment practices in formulating policy. This study suggests that the characteristics of workers and the ownership structure of enterprises are two important factors in determining the eligibility of workers, in particular, migrant workers, to social insurance. The government should target its resources on supervising social insurance coverage for

migrant workers, temporary workers and unskilled workers, as well as on the social insurance arrangements in more risky firms, i.e. in non-SOEs.

Strengthening monitoring and supervision, however, are only external pressures for legal enforcement. What is equally important, if not more important, is to reconsider the state-enterprise relationship. This is because treating it as a one-way relationship could make policy makers underestimate the complexity of the labour market, and also cause them to overlook the potential of enterprises to realise their legal responsibilities as social actors.

This study reveals that cost considerations are one of the most important factors in determining the extent of evasion. Since economic rationality determines firms' decisions, regulations will only be complied with when employers consider that the costs of social insurance premiums and the benefits for workers from the scheme are balanced. In other words, persuading employers to fulfill their obligations not only needs to highlight the coerciveness of state regulations, but also to stress that investment in workplace health and safety issues is an economically sustainable choice. Assessing the current social insurance scheme is not what this study is interested in. But as expressed by one interviewee: *'Those lawmakers are living in a world far away from us.'* This suggests that the voices of enterprises should be heard. In the process of creating a unified national work-related injury scheme, the differences between enterprises with different ownership types, different sizes, in different industrial sectors, with different wage structures and workforce composition, should be considered by the government.

The labour market could also be regarded as a structure which provides workers with resources with which to bargain (Hodson and Kaufman, 1982). This study indicates that, by regulating the practice of internal dispute resolution systems, different types

of worker would be given more equal access for filing workplace complaints, and would have more opportunities for achieving a fair resolution, and enterprises would have more opportunities for resolving work-related injury problems at an early stage. Foreign-owned enterprises (FOEs) provide a good example. An effective IDR should be underpinned not only by specially-trained staff, but also by a written form of complaint procedure. More importantly, the enterprises should incorporate their IDR procedures and practices into corporate governance codes, so that the influence of individual gatekeepers of IDR systems on the dispute resolution process can be minimised to ensure that all complaints are handled in a similar fashion.

The state should play a more active part in administering IDR practices. Although the current labour dispute resolution law, i.e. the '*Labour Dispute Law*' and the '*Provisions on the Negotiation and Mediation of Enterprise Labour Disputes*', strongly encourage employers to set up Internal Mediation Committees or to appoint Specialist Mediators to deal with labour disputes, they do not provide any specific templates, guidance or recommendations on how the Internal Mediation Committees and the Internal Complaint Procedures should be formulated. These regulations should be constructed in a more workable and constructive way for enterprises. In addition, employers often regard compensation bargaining within or outwith the enterprise as two separate actions. As discussed in Section 5.3.2(2) above, some enterprises had totally different attitudes and strategies for dealing with work-related injury problems in the early stages and, later on, when the cases entered into the formal justice system. Thus, the study suggests that, if IDR practices can be connected more closely with, or even incorporated into the administrative redress procedures, as well as into private law remedies, compensation standards are more likely to be unified.

7.3.3. *Unifying the dual legal systems*

Recommendations in terms of the dual legal systems should be made more deliberately. How should we define the roles of the administrative law system and the private law system, and draw a clearer line between them? These procedural issues should be discussed in future studies. From my perspective, the first step to equalising the paths for migrant and urban workers who are in dispute with their employer over compensation for their work-related injuries is to activate the *Advance Payment Scheme*⁴². This is probably the most efficient way of solving the contradictions inherent in the dual legal systems, and the differences between migrant and urban workers in the outcomes of their claims and disputes. As discussed in Section 1.6.2(2) above, the *advance payment scheme* is already written into the law, i.e. Article 41(2) of the *Social Insurance Law*. The problem is that Article 41(2) has never turned itself into ‘law in action’ since it is widely regarded as ‘window-dressing’. By implementing this article, the risks of non-compliance with state regulations would be shifted from workers to their employers. In this way, legal remedies for insured and uninsured workers would be equalised. The majority of work-related injury problems would be dealt with by this unified system, i.e. through the administrative redress procedures, instead of through a dual system as at present. However, the law also needs to clarify how the administrative agency should pursue the employer for the costs of compensation, define the limits of the powers of the administrative agency in the process, and clarify the remedies for situations where the employer refuses to pay or disagrees with the administrative decision.

7.4. FURTHER RESEARCH

As pointed out by Yin (2003) and Stake (2003), a number of case studies could effectively increase the scope for generalisation (Yin, 2003; Stake, 2003). One way of

⁴² This provides that compensation should, in the first place, be paid to uninsured workers from a specific government fund when employers fail to provide them with social insurance coverage. It is then the obligation of the administrative agency to chase up the employers for these costs.

increasing confidence in the validity of these research findings would be to replicate this study in another city and/or with workers in a different industry.

In Chapter Four, which dealt with the dual legal systems hypothesis, the findings in terms of the differences between insured and uninsured workers, and between migrant and urban workers in terms of the paths of claiming and dispute resolution were clear-cut. The differences in the outcomes of claiming and dispute resolution, and in particular, differences in the outcomes of respondents who followed the administrative route, the quasi-administrative route and the private route, could be investigated further in future studies, in particular, through large-scale research. If the findings from this study, which indicated that the administrative law system produces better outcomes than the private law system, were supported by future studies, this would be a strong argument for persuading policy makers in China to unify the dual work-related injury compensation channels.

In Chapter Five, which dealt with the dual labour market hypothesis, the problem of the small sample size was more pronounced. As discussed in Section 5.3, the small sample size could be unrepresentative of workers and the ownership structure of enterprises. As the majority of urban workers were insured, the sample size of uninsured urban workers was very small. Also, a statistical breakdown of respondents by the type of enterprise they worked for led to the relatively small sample size of injured workers by the ownership type of their enterprises, which could limit the generalisability of the findings. Empirical evidence provides valuable information for understanding the experiences of specific groups of workers. This chapter interpreted the quantitative data carefully and attempted to offset its limitations by using qualitative interview evidence. Future studies, using large-scale data sets, could be conducted to clarify the relationship between workers' characteristics and firms' ownership structure and their social insurance arrangements. Also, although this study only looked at differences in the ownership of enterprises, other factors are equally

important and future studies could be conducted to compare enterprises' employment practices, in particular, the social insurance arrangements of enterprises of different sizes, in different industrial sectors, with different wage structures and with different workforce composition.

As this study mainly focuses on the differences in terms of the 'route' between migrant and urban workers, advice was not put in the central position. Future studies could be conducted to investigate the role of advice, in particular, the role of lawyers and other sources of advice in the dispute resolution process.

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APPENDIX ONE

Questionnaire Form (in English)

Thank you for taking part in this survey.

You will be asked some questions regarding your experience with work-related injury problems.

This questionnaire will take you approximately 20 minutes to complete.

This survey is anonymous, and your identity is no way connected to your answers. Your confidentiality is given the highest priority.

You can find an explanation for this research on the slip in the envelope. We suggest you to have a look before you fill this form.

If you need any assistance in terms of reading or writing; or if you have any questions in the process, please feel free to let me know.

When you complete it, please put the form back into this envelope and return it to us following the instruction.

Your opinions are very important to my research. Thank you very much for your participation!

- Please fill this form as instructed.
- If you have suffered work-related injury more than once, please fill this form according to your most updated experience.

Section One: Personal information

1. Which type of Hukou do you hold?

- A. Agricultural Hukou
- B. Non-agricultural Hukou

2. The location of your Hukou is:

- A. In Guangdong
- B. Outside Guangdong

3. Your Age (please refer to the information of age shown on your ID card):

- A. Less than 16
- B. 16-29
- C. 30-50
- D. Greater than 50

4. Your gender:

- A. Male
- B. Female

5. Your highest education attainment:

- A. Primary School
- B. Junior School
- C. High School
- D. Undergraduate and College Degree
- E. Postgraduate Degree and above

Section Two: Job information

*Please answer the following questions according the information of the job you were doing when you suffered from work-related injury This is **NOT** necessarily your current job.*

1. What type of enterprises do/did you work in?

- A. State-owned enterprise
- B. Collective-owned enterprise
- C. Domestically-owned private enterprise
- D. Foreign-owned enterprise
- E. Do not know

(If you are not sure, please provide the name of your enterprise here ____)

2. Which one could best describe your level of skill for this job?

- A. Unskilled workers ('Pu gong')
- B. Semi-skilled (more experienced than 'Pu gong', but without professional qualifications)
- C. Skilled worker (workers who have professional qualifications)

3. Your monthly salary was?

- A. Below 920
- B. 920-1340
- C. 1341-3028
- D. 3029 and above

4. In average, how many hours do you work per week?

- A. Less than 44 hours
- B. 44-55 hours
- C. 56-70 hours
- D. Above 70 hours

5. In which way your wage is paid?

- A. By piece work
- B. On a time basis

6. Which one could best describe your contract for this job?

- A. Labour contract
- B. Labour service contact (often provided by labour agencies)
- C. No contract (Jump to 8)
- D. Other form of contract, if you knew, please specify__
- E. Not sure

7. Which of the following could best describe the term of your contract

- A. Less than 1 year
- B. 1-3 years
- C. Above three years

D. Open-ended contract

E. Unsure

8. Have your employers provided work-related injury insurance coverage for you?

A. Yes

B. No

C. Do not know

9. Are you a member of any Trade Union?

A. Yes

B. No

C. Not sure

Section Three: Claiming and dispute Resolution

1. Which of the following option best describes the strategy you adopted to sort your work-related injury problem?

A. I attempted to claim insurance benefits from the Bureau of social insurance.

B. I attempted to ask compensation from my employer.

C. I have taken no action to deal with it.

2. Have you applied for work-related injury identification?

A. Yes (Jump to 4)

B. No

3. Which of the following statement could best describe your reason for not applying for it?

A. Did not think I was eligible to do it

B. Thought it would take too much time or money

C. Thought it would damage relationship with other side

D. Was stressful or (and) scared to do it

E. Didn't know how to do

F. Didn't think it would make any difference to the outcome

G. Unware of the procedure

H. Other, please specify _____

4. Have you challenged any administrative decisions concerning work-related injury compensation by filing an administrative review or litigation in this process?

A. Yes

B. No

5. Have you experienced the following problems together with [or as a result of] your work-related injury problem? [Multiple options]

A. Loss of income

B. Personal or family financial problems, e.g. debt, mortgage problems...

C. Other employment problems, e.g. unpaid wages or overtime, having to change jobs, becoming unemployed...

D. Family problem, e.g. damage to relations with partners, parents, children...

E. None of the above

6. How aware were you of your substantive rights when the problem first started?

A. Yes, I was fully aware of them.

B. Yes, I was mostly aware of them.

C. Yes, I was partially aware of them.

D. No, I was unaware of them.

E. Not sure/don't know.

7. How aware were you of your procedural rights when the problem first started?

A. Yes, I was fully aware of them.

B. Yes, I was mostly aware of them.

C. Yes, I was partially aware of them.

D. No, I was unaware of them.

E. Not sure/don't know.

8. Have you sought any advice from any individuals or organisations for resolving your work-related injury problem?

A. Yes

B. No

9. Which of these statements best describes your expectation from advisers?

A. The advisor should let me know my legal rights and legal position, the procedures.

B. The advisor should recommend practical strategies and suggestion to resolve my problems.

C. The advisor should make decisions and act to help me in the way they think best, sort out the problem on behalf of me.

D. Other, please specify _____

10. Which of these descriptions best describes the way your problem was concluded?

A. By agreement through negotiation with their employer

B. By mediation through mediation involving a third party

C. By adjudication made by labour arbitration committees or courts.

D. By receiving social insurance benefits

E. No compensation/insurance benefits obtained (Jump to Section Four)

11. Was the compensation/insurance benefits more, less or about the same amount of money as you had hoped for?

A. Much less than hoped for

B. A bit less than hoped for

C. About the same

D. A bit more than hoped for

E. Much more than hoped for

Section Four: Attitude

Please choose the answer best describes your attitude to the following statements.

1. Courts are an important way for ordinary people to enforce their rights.

A. Agree strongly

B. Agree

C. Neither agree nor disagree

D. Disagree

E. Disagree strongly

2. People should resolve their problems within their family or community, not by using lawyers or courts.

A. Agree strongly

B. Agree

C. Neither agree nor disagree

D. Disagree

E. Disagree strongly

3. If you went to court with a problem, you would be confident of getting a fair hearing.

A. Agree strongly

B. Agree

C. Neither agree nor disagree

D. Disagree

E. Disagree strongly

Questionnaire Form (in Chinese)

亲爱的工人朋友：

感谢您参与这项调查。

这份问卷将询问有关您工伤经历的问题。填写这份问卷大约会花费 20 分钟左右。

问卷调查将采用无计名的方式，所以你对任何问题的回答都不涉及个人的具体身份信息。保护您的隐私将是我进行这项研究最优先的考量。

信封中里的那页纸包含了关于这项研究的各种信息。建议您在填写问卷前先看一看。如果您需要任何阅读或填写问卷的帮助，或者有任何问题，请您联系我。

填写完毕后请将问卷放入信封，密封好，并按照信封背面的说明返还。

您的参与对我的研究非常重要,感谢您!

注意事项:

- 请按照要求答题。
- 如果您有过多受工伤的经历，请以最近的那次情况为准来回答以下问题。
- 在没有特别说明时，问卷中的题目均为单选题。

一、 个人信息

1. 您现在持有的户口是?

A. 农村户口

B. 城镇户口

2. 您的户口所在地是?

A. 广东省

B. 广东省外

3. 您的年龄属于下列哪个区间? (请以身份证年龄为准)

A. 16 岁以下

B. 16 岁-29 岁

C. 30—50 岁

D. 50 岁以上

4. 您的性别

A. 男

B. 女

5. 您的教育程度为:

A. 小学

B. 初中

C. 高中 (包括中专)

D. 大学 (包括大专、本科)

E. 研究生及以上

二、工作及单位信息

(请注意,填写这部分时,参照您你遭遇工伤问题时所在单位以及所从事的工作信息来回答下列问题,并不一定是你当下这份工作。)

1. 您所在单位属于下列哪类?

- A. 国企
- B. 集体所有制企业
- C. 私有企业
- D. 外资企业
- E. 不清楚

如果不清楚企业的类别, 请在这里企业的名称_____

2. 您的工作技术水平更符合下列哪项?

- A. 非熟练工人 (即: 普工)
- B. 熟练工人 (相比普工有比较丰富的车间经验, 但没有任何职业资格证书)
- C. 专业技术工工 (拥有职业资格证书的工人)

3. 您每月的工资收入总额最符合下列哪项?

- A. 920 元以下
- B. 920-1340 元之间
- C. 1341-3028 元之间
- D. 3029 元及以上

4. 您平均每周工作多少小时?

- A. 低于 44 个小时

- B. 44-55 小时
- C. 56-70 小时
- D. 70 小时以上

5. 您的工资是按照以下哪种形式计算的?

- A. 按件数计
- B. 按单位时间计 (包括时薪制、周薪制、月薪制、年薪制)

6. 您与单位签订的是以下哪种合同?

- A. 劳动合同
- B. 劳务合同 (通常由劳务中介提供)
- C. 没签任何合同 (如果您选 C, 请跳过第 7 题, 直接填写第 8 题)
- D. 其他合同, 请详细说明合同的种类_____
- E. 不清楚

7. 如果您了合同, 份合同的期限为?

- A. 一年以内
- B. 一到三年
- C. 三年以上
- D. 无固定期限合同
- E. 不确定

8. 单位是否为您购买了工伤保险?

- A. 有
- B. 没有
- C. 不确定

9. 您是工会成员吗?

- A. 是
- B. 不是
- C. 不确定

三、 工伤问题的解决

1. 发生工伤后, 您是通过以下哪种方式解决问题的?

- A. 申请工伤保险赔偿
- B. 向雇主索赔
- C. 我没有采取任何行动
- D. 其它, 请详细说明_____

2. 您申请进行工伤鉴定了吗?

- A. 申请了 (如果您选 A, 请跳过下一题, 直接回答第 4 题)
- B. 没申请

3. 您没有申请工伤鉴定的原因

- A. 我认为申不申请工伤鉴定并不重要
- B. 我不具备申请的资格
- C. 这个程序太花时间
- D. 申请工伤鉴定可以有损我和老板的关系
- E. 这让我感到压力大、很紧张
- F. 我不知道该怎样申请
- G. 认为这对进行索赔没有多少帮助
- H. 以上答案都不是，我有其他原因，请详细说明_____

4. 针对社保局做出的有关工伤鉴定和赔偿的决定，您是否申请过行政复议
或行政诉讼？

- A. 有
- B. 没有

5. 在您受伤的那段时间里，你同时还遇到过下列哪些问题（多选）

- A. 失去收入来源
- B. 个人或家庭经济困难（包括债务、还贷问题）
- C. 其他劳资的问题（如遭遇欠薪、克扣加班费等、失业等）
- D. 与家人关系出现问题（包括与父母、子女、兄弟姐妹、伴侣等）
- E. 以上问题都没有

6. 当您遇到工伤问题时，您清楚自己的权益吗

(例如，安全生产的相关权利、获得工伤保险的权利)

- A. 我十分了解
- B. 我大概了解
- C. 我只了解一部分
- D. 我完全不了解
- E. 很难说

7. 当您遭遇工伤时，您清楚应该通过什么程序来解决吗？

(例如，申请工伤鉴定的办法、申请劳动仲裁的程序)

- A. 我十分了解
- B. 我大概了解
- C. 我只了解一部分
- D. 我完全不了解
- E. 很难说

8. 为了解决工伤问题，您曾有向任何机构或个人寻求帮助和建议吗？

- A. 有
- B. 没有 (如果选 B，请跳过下一道题，直接填写第 10 题)

9. 下列几类帮助建议，哪一项最符合您的期待。

- A. 我希望能了解关于法律权利，以及法定索赔程序的信息
- B. 我希望能获得一些更实用的建议指导我该如何去解决问题
- C. 我希望能有人直接为我做主，或者直接代理我解决问题
- D. 以上都不是，请详细说明_____

10. 下列哪个选项最能描述您工伤问题的解决方式

- A. 通过与雇主协商，达成协议
- B. 通过第三方调解，与雇主达成协议
- C. 法院或劳动仲裁判决
- D. 获得工伤保险赔偿
- E. 没有能够获得任何赔偿（如果选E，请你跳过下一题，直接回答第四部分的问题）

11. 最终您获得的赔偿金额，符合您所期望的金额吗？

- A. 远低于我的期望
- B. 略低于我的期望
- C. 基本与我的预期一致
- D. 略高于我的预期
- E. 远高于我的预期

四、 对司法体系的态度

(请选择最符合您对下列陈述所持态度的选项)

1. 法院是保障人们权利的重要方式。

A. 非常同意

B. 同意

C. 中立 (没有同意也没有不同意)

D. 不同意

E. 非常不同意

2. 人们应当尽量在家庭或社区内部化解纠纷，而不是找律师、上法院。

A. 非常同意

B. 同意

C. 中立 (没有同意也没有不同意)

D. 不同意

E. 非常不同意

3. 如果通过法院解决争议，我相信会得到一个公平的判决。

A. 非常同意

B. 同意

C. 中立 (没有同意也没有不同意)

D. 不同意

E. 非常不同意

APPENDIX TWO

Interviewees from legal institutions

No	Code	Gender	Position	Organisation
1	LS1	Male	Head	Labour service centre of Xiagang
2	LS2	Male	Head	Labour service centre of Wusha
3	A1	Male	Chief arbitrator	Labour arbitration committee of Humen
4	A2	Female	Arbitrator	Labour arbitration committee of Chang'an
5	J1	Female	Chief judge	Municipal court of Dongguan
6	J2	Male	Judge	Municipal court of Dongguan
7	J3	Male	Judge	Municipal court of Dongguan

APPENDIX THREE

Interviewees from enterprises

No	Code	Gender	Position	Type of enterprises
1	SOE1	Male	Head of IMC	State-owned enterprise
2	SOE2	Male	Head of IMC	State-owned enterprise
3	SOE3	Male	Head of IMC	State-owned enterprise
4	SOE4	Female	Head of IMC	State-owned enterprise
5	SOE5	Female	Mediator	State-owned enterprise
6	SOE6	Male	Head of IMC	State-owned enterprise
7	COE1	Male	HR manager	Collectively-owned enterprise
8	COE2	Male	Mediator	Collectively-owned enterprise
9	COE3	Male	Mediator	Collectively-owned enterprise
10	DPE1	Female	HR manager	Domestically-owned private enterprise
11	DPE2	Male	Mediator	Domestically-owned private enterprise
12	DPE3	Male	HR manager	Domestically-owned private enterprise
13	DPE4	Male	Mediator	Domestically-owned private enterprise
14	DPE5	Female	Head of IMC	Domestically-owned private enterprise
15	DPE6	Female	Mediator	Domestically-owned private enterprise
16	DPE7	Male	Mediator	Domestically-owned private enterprise
17	DPE8	Male	HR manager	Domestically-owned private enterprise
18	FOE1	Male	Mediator	Foreign-owned enterprise
19	FOE2	Female	Head of IMC	Foreign-owned enterprise
20	FOE3	Female	Mediator	Foreign-owned enterprise
21	FOE4	Female	Head of IMC	Foreign-owned enterprise

APPENDIX FOUR

Interviewees: injured workers

	Code	Hukou status	Gender	Age	Means of resolution
1	MW1	Migrant worker	Male	27	Claiming insurance
2	MW2	Migrant worker	Male	31	Seeking compensation
3	MW3	Migrant worker	Male	45	Claiming insurance
4	MW4	Migrant worker	Female	22	Taking no action
5	MW5	Migrant worker	Male	21	Seeking compensation
6	MW6	Migrant worker	Female	34	Seeking compensation
7	MW7	Migrant worker	Male	19	Seeking compensation
8	MW8	Migrant worker	Male	29	Seeking compensation
9	MW9	Migrant worker	Female	27	Seeking compensation
10	MW10	Migrant worker	Male	39	Seeking compensation
11	MW11	Migrant worker	Female	42	Seeking compensation
12	MW12	Migrant worker	Male	24	Seeking compensation
13	MW13	Migrant worker	Female	33	Took no action
14	MW14	Migrant worker	Male	48	Claiming insurance
15	MW15	Migrant worker	Male	21	Seeking compensation
16	UW1	Urban worker	Male	36	Claiming insurance
17	UW2	Urban worker	Female	28	Claiming insurance
18	UW3	Urban worker	Male	40	Claiming insurance
19	UW4	Urban worker	Female	39	Claiming insurance
20	UW5	Urban worker	Female	32	Seeking compensation
21	UW6	Urban worker	Male	46	Claiming insurance
22	UW7	Urban worker	Female	22	Seeking compensation

APPENDIX FIVE

List of Normative Documents

Title	Effective Date	Status	Category
Ordinance of Hukou Registration of the People's Republic of China	Jan. 1958	Effective	Administrative Regulation
Regulation on Labour Protection of People's Republic of China	Feb. 1951	Effective	Administrative Regulation
Regulations on Labour Dispute Resolution Procedures	Nov. 1950	Effective	Department regulation
Interim Provisions on Handling the Labour Dispute of the State-owned Enterprise	Jul. 1987	Abolished in Aug 1993	Administrative regulation
Responses to Questions about the 'Interim Provisions on Handling the Labour Dispute of the State-owned Enterprise'	Oct. 1987	Abolished in Aug 1993	Department regulation
The Administrative Procedure Law of the People's Republic of China	Oct. 1990	Effective	Law
Civil Procedure Law of the People's Republic of China	Apr. 1991	Effective	Law
Regulations on Settlement of Labour Dispute in Enterprise of the People's Republic of China	Aug. 1993	Abolished in Jan 2011	Administrative Regulation
Explanations for Several Issues of the Regulations on Settlement of Labour Dispute in Enterprise of the People's Republic of China	Sep. 1993	Abolished in Jan 2011	Department regulation
Labour Law of the People's Republic of China	Jan. 1995	Effective	Law
Opinions on Implementation of the Labour Law	Jan. 1995	Effective	Department regulation
Provisional Regulations on the Collection and Payment of Social Insurance Premiums	Jan. 1999	Effective	Administrative regulation
Administrative Reconsideration Law of the People's Republic of China	Oct. 1999	Effective	Law
The Regulation on Work-Related Injury Insurance	Jan. 2004	Effective	Administrative regulation
Interpretation of the Supreme People's Court on Several Issues about the Application of	Oct. 2006	Effective	Judicial opinion

Laws for the Trial of Labour Dispute Cases (II)			
The Labour Contract Law of the People's Republic of China	Jan. 2008	Effective	Law
The Employment Promotion Law of the People's Republic of China	Jan. 2008	Effective	Law
The Law of Mediation and Arbitration of Labour Disputes of People's Republic of China	May. 2008	Effective	Law
Guidance on issues regarding the application of the Law of Mediation and Arbitration of Labour Disputes and the Labour Contract Law of Guangdong	Jun. 2008	Effective	Judicial opinion (local)
Interpretation of the Supreme People's Court on Several Issues about the Application of Laws for the Trial of Labour Dispute Cases (III)	Sep. 2010	Effective	Judicial opinion
The Social Insurance Law of the People's Republic of China	July. 2011	Effective	Law
Provisions on the Negotiation and Mediation of Enterprise Labour Disputes	Jan. 2012	Effective	Department regulation
Opinions on Strengthen the Mediation and Prevent of Labour Disputes in the Non-public Enterprises	Jan. 2013	Effective	Department regulation