
Know your Rights, An Information Guide to the Basics of New York State Legal System 了解您的权益，纽约州 法律制度基础信息指南

By Shan Gao



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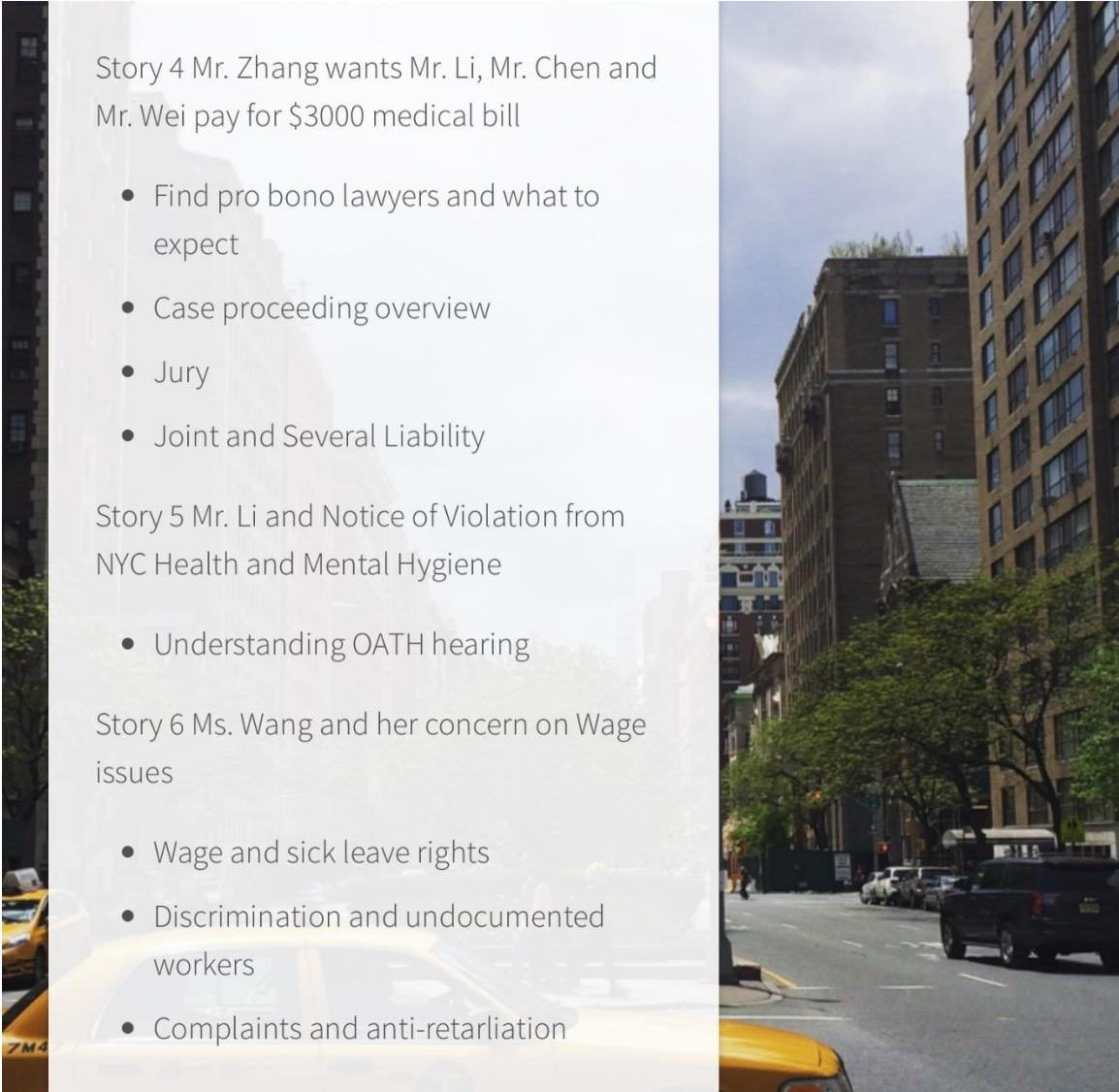
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Special thanks to:



COALITION FOR
PEACE AND ETHICS

[Coalition for Peace & Ethics](#)

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[Larry Backer Profile @ Penn State](#)

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MESSAGE FROM THE AUTHOR

Starting a new life in a foreign land has always been exciting for many new immigrants, but it could also be quite challenging and stressful: there is so much to learn. Language and culture barriers sometimes make this process even harder. When you have an unexpected dispute with your neighbors, your sellers, your landlords, or your local government agencies, or your boss, you have no clue how to react or proceed. You worried that others might take advantage of you.

America is a civilized society with rule of law: it promotes justice and fairness while condemns violence and inequitable acts. It has a long history of common law tradition and evolving democratic social culture. It is not uncommon that some norms and practice adopted by new immigrants from their home country might not conform with the standard here. Sometimes, misunderstanding could be dangerous and illegal.

The mission of this booklet is to provide new immigrants a framework of basic knowledge about American legal system and concept (New York State as an example) in their native language, so they could be more confident and comfortable in terms of understanding the nature of their disputes, and taking proper action to resolve such disputes. This booklet invites new immigrants to take advantage of the information provided here to understand and respect American legal culture and rules, to protect their rights and liberty, to get the help they need.

The research and drafting of this booklet is supervised and supported by Larry Catá Backer (白 轲), a lawyer admitted to the California Bar. He is also a director of the Coalition for Peace & Ethics (“CPE”), an independent organization founded in 2006, which engages and promotes the production and dissemination of knowledge that is meant to empower people to take control of their lives for personal and societal betterment in ways that are respectful to individuals and the communities to which they belong. Its website can be accessed at <http://thecpe.org>. Professor Backer also serves on the faculty at Pennsylvania State University where he teaches classes in law. Dr. Gao is a member of CPE.



COALITION FOR
PEACE AND ETHICS

Disclaimer

Please note: This booklet was prepared as a part of a pro bono work by Dr. Gao. Its object is to provide basic information for Non-English speaking Chinese immigrants to help them understand the basics of the New York Legal System **only**. Future booklets will focus on federal law (the law of the United States and its administrative agencies).

DISCLAIMER: This booklet is offered as a public resource. It is not intended to provide legal advice or to be a substitute for consultation with a lawyer on any specific matter. The booklet provides basic and general information and does not cover all aspect of any of the topics addressed. Neither Dr. Gao nor his supervisor make any warranty, express or implied, or assumes any legal liability or responsibility for the accuracy, completeness, or usefulness of any information.

If you believe that your legal rights have been affected, we urge you to consult a lawyer licensed to practice law in the state in which you live. Otherwise, if you have any legal questions, please contact a licensed attorney for a consultation. If you are not represented by a lawyer, you may be at a disadvantage. The booklet includes some information to help you find a lawyer, and, if you cannot afford a lawyer, to help you find a pro bono lawyer. The information is not comprehensive; please note there may be other lawyers or organizations in New York that may also be helpful.

Lastly, please note that all names, characters, businesses, places, events and incidents depicted in this booklet are fictitious. Any resemblance to actual persons, living or dead, or actual events is purely coincidental. If you have questions or comments about the booklet or have interested in learning more about the topic, please feel free to contact author Dr. Gao.

How to use this information booklet

This booklet provides an easy, straightforward and intuitive framework for readers to understand some basics concepts and information about the organization and operation of the law of the State of New York in situations that individual may commonly encounter. The law of New York can be a number of different forms—the common law (created through the courts), statutes (created by the legislature and enforced through the courts), and regulations (created by administrative agencies as permitted by statute and administered through these agencies and courts). The booklet also introduces the multiple dispute resolution options provided under New York State legal system. To make this learning process easier, these options are taught through the development of Six fictitious stories about four immigrants. These stories are built around situations encountered by immigrants in the community. At the beginning of each story, a short summary will be provided to guide you with the main issue of the segment. A detailed discussion about the main issue will be provided at the end of the story. The first story

will introduce our main character and plot, but the rest of each story can be read independently because each story will introduce a different issue. The quick reference part will give you a quick view of some key contact information.



Quick reference

New York City Bar Association, referral service

<http://www.nycbar.org/get-legal-help/>

New York City Court system free lawyer help center location

<https://www.nycourts.gov/courts/nyc/civil/pubtr>

Asian American Legal Defense and Education Fund

<http://aaldef.org/contact-us/>

Information about Lawyer complaints in Chinese

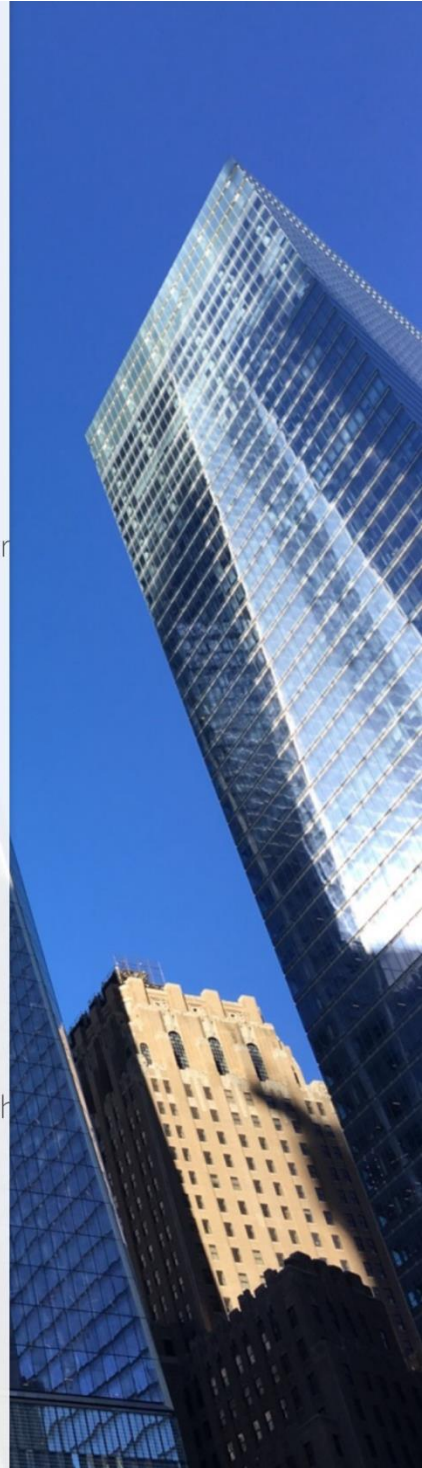
Information on free mediation service in Chinese:

<http://www.courts.state.ny.us/courts/nyc/civil/ch>

PEACE Institute website

<http://nypeace.org/mediation-services/>

New York City Consumer Complaints 311 hotline page



hotline page

<http://www1.nyc.gov/311/index.page>

Free City & Legal resource for new immigrant

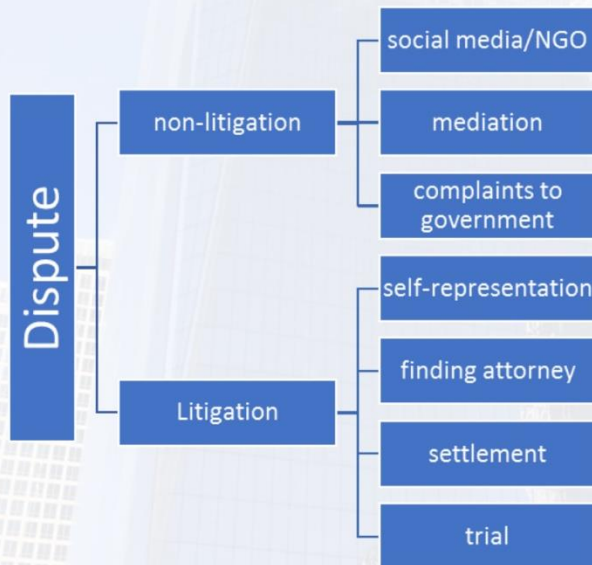
<http://www1.nyc.gov/site/immigrants/help/city-services.page>

ActionNYC program for immigrants

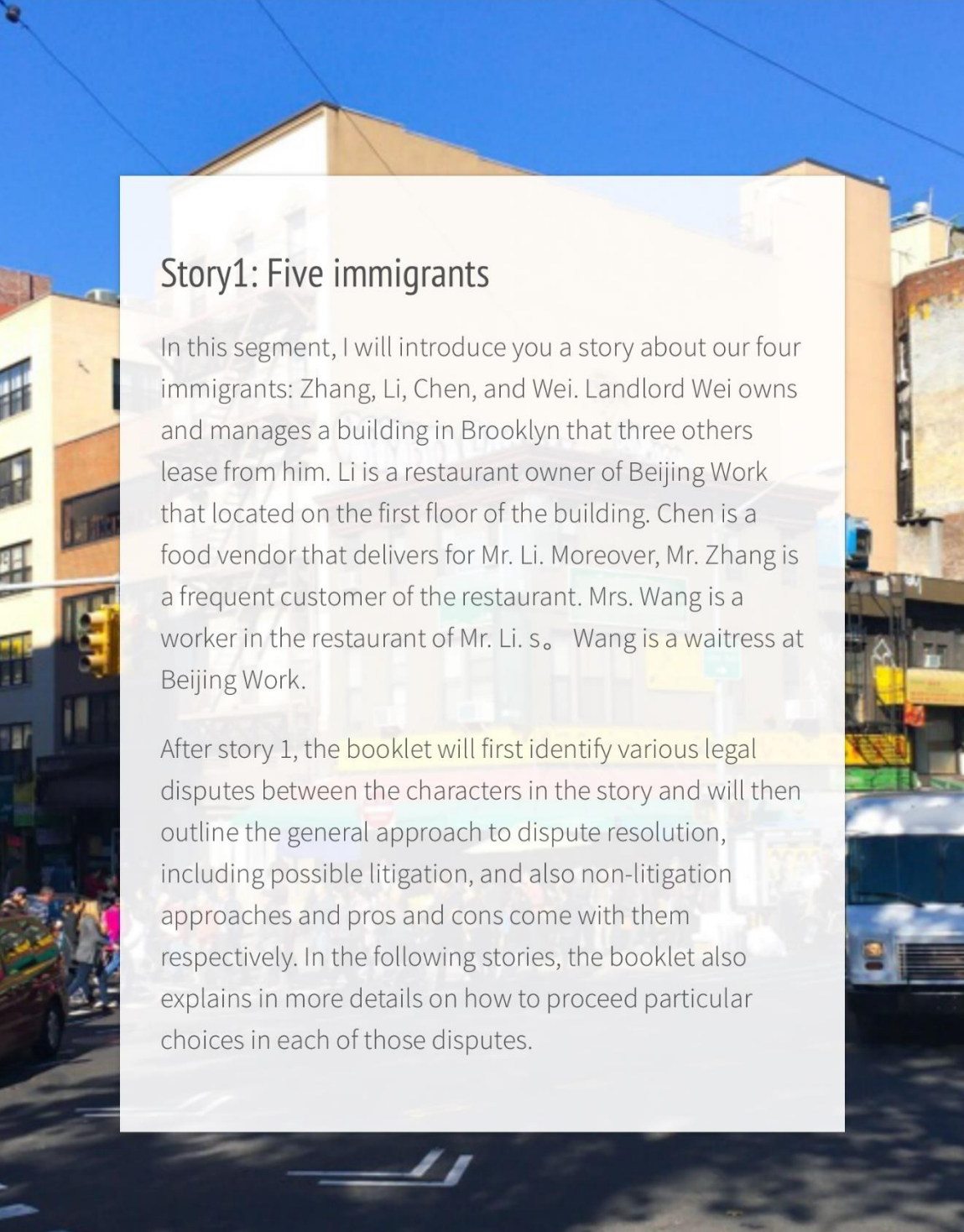
<http://www1.nyc.gov/assets/immigrants/download/17-2016-chinese.pdf>

New York State Department of Labor

<https://www.labor.ny.gov/home/>



Flowchart for different options



Story1: Five immigrants

In this segment, I will introduce you a story about our four immigrants: Zhang, Li, Chen, and Wei. Landlord Wei owns and manages a building in Brooklyn that three others lease from him. Li is a restaurant owner of Beijing Work that located on the first floor of the building. Chen is a food vendor that delivers for Mr. Li. Moreover, Mr. Zhang is a frequent customer of the restaurant. Mrs. Wang is a worker in the restaurant of Mr. Li. s。 Wang is a waitress at Beijing Work.

After story 1, the booklet will first identify various legal disputes between the characters in the story and will then outline the general approach to dispute resolution, including possible litigation, and also non-litigation approaches and pros and cons come with them respectively. In the following stories, the booklet also explains in more details on how to proceed particular choices in each of those disputes.

The Story 1

Zhang, Li, and Chen are the tenants in the same building owned by landlord Wei. Li is a small business owner of Beijing Work, a Chinese food take-out restaurant located on the first floor of Wei's building. Zhang is a tenant of the same building and a regular customer of the restaurant. Chen is a driver and food vendor who deliver fresh food for local restaurants, including that of Li, on a weekly basis.

This week, Zhang's five-year-old boy got sick after ordering stir fried cabbage at Beijing Work and hospitalized. The diagnosis indicated Zhang's boy became ill from food contamination. Now Zhang was unhappy about this issue and come forward ask Li to compensate the huge amount of hospital bills, \$3000. Li refused and argued the food contamination results from the supplier, and it is Chen's issue. Chen told Zhang although Li always late on the payment of delivery and only order the cheapest inventory he stocked, the food is still acceptable and he never had any problems for years since he started the business decades ago. Chen further told Li that, the storage area of the restaurant is filthy, and the ceiling of the area is damp with mold because the landlord Wei has not fixed the water pipe leak in the building for Li, even after Li complained numerous times.

Zhang and Li aware of the water pipe leaking issue in the building and last complained to Wei about it a week before Zhang's son got sick. It was the holiday season, due to the shortage of handyman, Wei promptly fixed the water pipe issue for Zhang's room by hiring outside helper. But Li agreed to wait

until the two weeks later in exchange for late payment of discounted rent.

Li, Chen, and Wei all denied any responsibilities for the food contamination. Zhang became impatient for being “nice and civil” to these people. He started to show up in the restaurant and demand payment from Li during the lunch time. This drama led to customer loss because no one wants to be part of that scene. Consequently, Li refused to pay Chen for his food supply, and he claimed, “bad food” caused him the loss of customer traffic. Mr. Chen then notified Mr. Li he was no longer obligated to deliver food to him until he paid his bills. Without Li’s payment, Chen defaulted on his rent payment after Wei’s three times personal request.

In response to a complaint forwarded from the consumer department, a food service inspector from New York City Department of Health and Mental Hygiene is planning to have a sanitary inspection. If the inspector found out about the mold condition, Mr. Li would be subject to violations and fines.

With the money issue and ongoing investigation issues. Mr. Li refuse to pay salary on time to his employee. One of his employees, Ms. Wang was unhappy about her treatment as a waitress at Mr. Li’s restaurant. Although she never misses a day of her work and tried her best at this place, Mr. Li seems always to find a way to cut her salary. Since her day one at the job, she got less salary than Mr. Li promised for various reasons such as she has to pay for the repair of a dishwasher that she load dishes

less salary than Mr. Li promised for various reasons such as she has to pay for the repair of a dishwasher that she load dishes every night, she had a sick leave of two days, the business was bad, and everyone has a paycheck cut to \$4/h. Mr. Li warned everyone disagrees with those decisions will suffer consequences and U.S. government will deport them if they acted as disobeying labors.



A.
*UNDERSTANDING
WHAT HAPPENED*

America is a civilized society with a long tradition of rule of law that expresses its fundamental political and moral ideology: the law is supposed to promote justice and fairness while condemning violent and illegal petition or harassment that disturb the public peace. These principles are then written into the common law, statutes and administrative regulations of New York State with respect to specific conduct. For example, when Mr. Li refuse to pay for the \$ 3000 medical bill, Zhang repetitively show up at the restaurant during lunch hour, and aggressively yelling at Zhang “poison food, I will shut this place down!” This may not be the best way of expressing your discontent and may place you in some disadvantage situation. Just like language and culture, American rules and laws might be very different: what might seem reasonable in other locations might be illegal here.

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Here are identified 5 basic potential conflicts between the characters, which may lead to legal disputes. The conflicts are written in a way that is intended to help you understand what happened and what does it mean for you before you considering what is the appropriate action for it:

1. Consumer Zhang seeking compensation for economic loss of \$3000 medical bill;
2. Food vendor Chen and restaurant owner Li dispute for unpaid food delivery bill;
3. Food vendor Chen and Landlord Wei dispute for unpaid rent bill;
4. Restaurant owner Li and New York Health Department potential dispute for inspection outcome.
5. Employee Wang for wage disputes.



Consumer Zhang and restaurant owner Li dispute for \$3000 medical bill

Zhang wants restaurant owner Mr. Li to pay for his son's \$ 3000 medical bills. He believed that, but for the food provided by Li's restaurant, his would not pay for the treatment that his son needs due to the food contamination. Here I would discuss what does this mean under U.S. common law system:

Under U.S. legal system, such dispute could be a common-law tort dispute when there is evidence show Zhang would not injury but for Li's tortious act. The basis of the claim is that, as a food service provider, Mr. Li has a duty of reasonable care to ensure the food is safe and clean to his customer. Common law provides Mr. Zhang different options for compensations. First, he is entitled to compensation for economic loss. In this case, that means the \$3000 hospital bill. Second, he is entitled to compensation for non-economic damages, such as compensation for physical and emotional stress caused by looking after his son during the food contamination treatment. Third, he could further seek punitive damage if evidence shows Li acted in bad faith. That means punish Mr. Li for his intentionally or gross disregard reasonable care in providing safe food for his customers. But it is important to note that Zhang will have to be able to prove his losses. It is important to retain all invoices and to be able to document all damages. Where that is not possible, then it will be necessary to find an expert to speak to such issues as emotional distress and similar matters. Mr. Zhang will want to consult a lawyer to ensure that the proper records have been kept.

It is also important for immigrants to understand that unlike many states, including China, most states in the United States (including New York) have adopted a common law legal system, a different form of approaching legal issues. Common law means rather than relying on code like the civil law state; the courts decide the dispute by applying legal standards and conditions established by previous courts' rulings on cases with similar

facts. Further, a group of civilian, called a jury, will be organized in court to determine the facts relevant to the dispute. Such as whether Mr. Zhang entitles to compensation and how much to be compensated based on their views on the evidence presented in the court. The jury system and common law legal practice could be complicated, unpredictable and less intuitive than civil law practice. It is important to understand the necessity of having professional help in the process. Details about the jury will be discussed in story 4.

In cases like this, the issue of causation will play an important role. In this dispute, for example, Mr. Li is very much likely to try to reduce or eliminate his liability by claiming that the food contamination resulted from unsafe food that was sold to him by Mr. Chen or that the contamination resulted directly from mold condition caused by leaking pipe that the landlord failed to fix. Thus, it is foreseeable to have a legal dispute involved with Mr. Chen, Mr. Wei, and Mr. Li as to who should be held responsible for the medical bill and potential non-economic damages. Such responsibility commonly termed as joint and several liable, a form of liability distribution between defendants, which will be discussed in story 4. The rules of liability are complicated in New York, and it is prudent to consult a lawyer to determine who may be at fault. As one can see, something that looks simple can quickly become quite complicated.

Food vendor Chen and restaurant owner Li for unpaid food delivery bill:

Food vendor Chen and restaurant owner Li for unpaid food delivery bill:

- Mr. Li believes that but for the cabbage he bought from Chen, he would not have to deal with Mr. Zhang. He is angry, and now he does not want to pay the \$450 he still owes Chen for food under their agreement. Responding to this, Mr. Chen notifies Mr. Zhang that he will no longer be obligated to deliver food to him until he paid those foods.
- Here Mr. Chen and Mr. Li has a dispute over breach of contract. There are two main issues that the parties will have to consider. First Mr. Chen wants Mr. Li to pay for the food under the agreement. There are two potentially applicable rules that may apply in this case. One is the common law of contracts. The second are statutory rules under the Uniform Commercial Code (UCC). It is important to find out because the rights and obligations of the parties may be different depending on which applies). The UCC applies only to disputes between “merchants” as that term is defined in the statute. A lawyer will be able to help make the determination of coverage.

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- Second, Mr. Chen wants to rescind from the contract based on Mr. Li non-performance of contract. This may be an equity claim. Equity differs from common law in some respects. The most important point is that the judge will tend to apply a fairness standard. He will look to determine whether the parties acted in good faith or whether they did not act fairly with each other (a doctrine that is sometimes called a “dirty hands” doctrine). The judge will likely “balance the equities” between the parties, considering who suffered the greatest harm under the principles of the conduct standards to be applied. In other respects, the court will act as common law courts, that is there are no statutes and courts are usually guided by the result in similar cases.
- It is important for immigrants to understand, and it is emphasized here, that contract disputes like this may be covered under one of two different systems. If this is a dispute between two ordinary individuals, then the common law of contracts of New York would apply. If, on the other hand, the two are considered “merchants,” then the statutory law applies. In New York that statutory law, derived from the Uniform Commercial Code can be complex and may produce results different than under common law. If the two cannot settle their dispute, it is important to make sure that a lawyer becomes involved. This is important as well if there will be equitable claims made—something a lawyer can advise after consultation.

Food vendor Chen and Landlord Wei for unpaid rent bill:

- Food vendor and tenant Chen thought, but for Mr. Li unpaid food, he would not default in \$3000 rent payment. Thus, he refuses to pay rent until Mr. Li could pay for his food. This is a landlord-tenant rent dispute. It is a common-law dispute as previously defined. Story 3 will provide a sample solution for this dispute.
- It is important for immigrants to understand that disputes about rent are governed by very specific state laws and by municipal “city regulations.” These provide rights and obligations that can be complicated. It is important for the parties to document their interactions and consult either a lawyer or a local legal aid agency to protect rights. It is important to act quickly because in many cases there are very specific time periods that are permitted for actions under the law.

Restaurant owner Li and New York City Health Department:

- This is a matter of administrative dispute that involves the meaning and application of a city administrative regulation. Applicable statute and agency rules will determine the form and substance of proceeding under government internal dispute resolution system. Story 5 will provide a detailed discussion.
- Like the issue of apartment rental agreements, the rules covering restaurant health inspections can be complicated. There are many regulations that cover the obligations of

covering restaurant health inspections can be complicated. There are many regulations that cover the obligations of restaurant owners and inspectors to enforce the rules. The legal issues that the parties will face are of three different kinds. First is the issue of applying the right regulations. Second, is whether the inspector used the correct regulation. Third, is whether the inspector correctly applied the regulation, that is whether he interpreted the rules correctly. These issues will require the help of a legal aid organization or a lawyer, especially if the penalties are large. In addition, where inspectors engage in corrupt actions or are unnecessarily spiteful, it may be possible to lodge a complaint with the authorities. Again, this decision can be complicated and is best undertaken with advice from a lawyer or legal aid society.

- It is important for immigrants to remember that dealing with the government is always official. Everything said to and written for the government and it also will be preserved and may be used as the government wants. Always be truthful but always be careful when communicating with government officials. Where English language skills are not good, it may be useful to have an interpreter available. Moreover, it is always better for the immigrant to have an interpreter she or he trusts. The interpreter can then also serve as a witness.

Employee Wang and her Wage Dispute

Employee Wang and her Wage Dispute

- This is a matter of statutory dispute that involves the meaning and application of statutory laws and certain city administrative regulations. Sometimes these issues can be quite complicated just as story 5 indicated.
- New York City supports human rights of the immigrants and undocumented workers. there are varies government supported and private supported programs that help and defend your rights. It is important for immigrants to understand the benefits of using these help.



The above discussion highlights the nature and implications of each parties' disputes. Here, I would like first to outline some basics about the non-litigation and litigation solutions. Then I would point out the pros and cons naturally comes with these options and factors you can consider before you decide what works best for you. Before I begin, it is important to remember that many times, a simple and polite discussion between the parties may effectively resolve the dispute between them. It is always useful to try to settle a dispute informally if one can. However, sometimes peaceful resolution between the parties may not be possible. In those circumstances, and with the aid of lawyers or legal aid societies, individuals can work to protect

Some common non-litigation options:

Not all the disputes need to be resolved in the court of the house. In fact, most of the dispute are resolved through non-litigation method. For example:

Social Media



- **Social Media:** It is not uncommon for many Americans to express their discontent through social media and obtain some form of help from the public shortly after their story went viral and gained social attention. This is especially advantageous for Mr. Zhang because it is practically free. Besides medium such as Facebook, he can also try cloud funding service “Gofundme.com.” Posting Mr. Zhang’s boy’s food contamination story creates social pressure that force the owner of the restaurant reduce negative publicity by settling the hospital bill disputes. Further, social media exposure may draw sympathized public member to donate for the hospital bill. However, this method is relying too much on the uncertainty of social sympathy, and it requires a certain level of knowledge of social media and public reaction. However, this option might not be effective for the type of dispute between Mr. Chen and Mr. Wei. The public may not have much interested in a dispute involved with a small restaurant and common food contamination story in

the local community. In addition, using these approaches also has potential legal consequences. If Mr. Zhang's accusations turn out to be false or if there are other misstatements, or if Mr. Zhang urges people to take physical action against the restaurant or its owner, he may face issues of law (defamation and injury to reputation) or even the criminal law. Much care should be exercised, and strict truthfulness should be observed at all times.

GOVERNMENT

- **Government regulatory agency:** provides a traditional way for one to express their discontent with the service provider. In many cultures, it is nature to go to a local government for help. In New York City, you can freely report your complaints to a business entity through the official website <http://www1.nyc.gov/311/index.page>
- On the upper right part of the website you can click on Chinese language option and report your complaint online, or download the app of NYC 311 on your smartphone. This service is particularly useful for Mr. Zhang because it is free. With the pressure of government agency, Mr. Li could settle with Mr. Zhang. However, this option might not be very much helpful for Mr. Chen and Mr. Wei. However, it is important to remember that large metropolitan areas may have government officials that are overworked and who may not be able to attend quickly to these matters. There is always a risk as well that the government officials may not take your side. Also sometimes a complaint will result in

punishing the official but will not do anything to fix the problem. Think carefully as you consider this option.

ActionNYC program and New York City Human Rights Law

New York City recently designed new campaign to help and protect immigrants against discrimination based on their immigration status. ActionNYC website provides rich resources on various social topics ranging from education, social welfare, to labor rights and legal service. With the protection of New York City Human Rights Law, immigrants are encouraged to use these tools to protect their rights. This webpage (<http://www1.nyc.gov/site/immigrants/help/city-services.page>) provides Chinese introduction on what kind of free service provided by the New York City are available for immigrants.

here are some useful info:

- Consumer Protection Tips for Immigrants: explaining immigration legal service, job reference service, and taxation service

Consumer Tips for Immigrants

<http://www1.nyc.gov/assets/dca/downloads/pdf/consumers/Tips-for-Immigrants-Chinese.pdf>

New York Human Rights protection for Immigrants

<http://www1.nyc.gov/assets/immigrants/downloads/pdf/Immigrant%20Bro>

NGO, Social Service, Church

- **NGO/ Social Service/ Church::** Civil society is quite mature in the United States, there are different types of social service provided by the private agency and public agency. Sometimes it is quite economical and efficient to try NGO, charity and or social service for your problems. These agencies might not be legal professionals, but they are quite resourceful and good at communicating the needs and help through their charity network.
- You can always start by talking with someone from the social service or church. Volunteers from these organization are immigrant friendly and free, and they can connect you to the right person to help you. There are several ways of finding such service; you can either look at your yellow page or your county community center, (please see: Department of Social Services, Locations can be found at <http://otda.ny.gov/workingfamilies/dss.asp>) your local Chinese church or visit website of Asian American Legal Defense and Education Fund: <http://aaldef.org/contact-us/>.

Mediation

New York City free mediation service: this is a service that both parties voluntarily agree to get together for a private session conducted by a trained professional serve as neutral third party to let parties negotiate and resolve their problems. Normally, mediation will have:

- A legal professional (lawyers certified by the state to do mediation) will have both sides come to talk about the dispute.
- Both sides can present evidence to support their side of story
- Communication in mediation is confidential (with some exceptions)
- Non-binding, one party can still sue for the dispute

The New York State Uniform Court system website provides information about free mediation service in Chinese:

<http://www.courts.state.ny.us/COURTS/nyc/ssi/chinese/pdfs/mediation.pdf>

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<http://www.courts.state.ny.us/COURTS/nyc/ssi/chinese/pdfs/mediation.pdf>

You can find the location of a community dispute resolution center near you in the phone book or at

<http://www.nycourts.gov/ip/adr/ProgramList.shtml>.

New York PEACE INSTITUTE also provide online request about the free mediation application

<http://nypeace.org/mediation-service>

Pros and cons of non-litigation option

There are always pros and cons come with these options. The most striking advantage of these options is the low cost and flexibility of time involved. Post your story on social media is free and most NGO and social workers provide free consultations or connect someone who can provide needed service for a low price or free. The disadvantage of these options also quite obvious, relying on social pressure and sympathy could be quite unpredictable, sometimes these social attentions may be backfired or rise libel claim from the other parties. Mediation also tends to be less expensive and can be completed in much less time than a litigation—which can be quite expensive. In many cases, the amount of money at issue is too small to make the use of litigation a good decision (for example, if Zhang’s legal fees will be \$10,000 it does not make sense for Zhang to start with litigation over the much smaller amount of damages he seeks).





In comparison with these non-litigation options, litigation is the most traditional way of resolving parties' disputes. **The**

advantage of litigation includes:

1. The judgment is legally enforceable.
2. Professional representation can provide a more certain result for your condition.

The disadvantage of litigation includes

1. Court proceeding could be time, energy and money consuming.
2. It is less flexible and complex, and it requires you strictly follow legal procedures and rules.




Consideration for litigation or non-litigation

In every dispute, each party has their unique position. It is important to understand the nature of your dispute and your position in assessing whether to proceed with litigation or non-litigation options. Traditional litigation can be complex and demanding. It requires a commitment of time, money and energy. It is advised to discuss and consult with professionals about these factors before you decide litigation or non-litigation proceeding.

1. The financial conditions of the defendant: whether he/ she would be able to pay for the judgment
2. The financial condition of yourself: whether you would be able financially and time wise committed to litigation

If your defendants aren't able to pay for your loss, then it might not be a good idea to devote time and energy into litigation, even you could win.





Story 2 Mr. Chen wants Mr. Li to pay the food delivery

In the last segment, I first identified legal issues between different parties in the story 1 and then offered a general overview that comparing pros and cons of litigation and non-litigation options. Important factors should be considered with care before you decide what option to proceed for your dispute. In this segment, I will explain how it might be possible for Mr. Chen obtains unpaid food delivery from Mr. Li by using free mediation service provided by New York PEACE Institute.

Story 2

With the help from his son, a college student, Mr. Chen learned more about the free mediation service. After some consideration, Mr. Chen decided to give it a try for the free service and professional help. After some research, Mr. Chen and his son, as his translator, come to the help desk of Kings County Housing Court located in Brooklyn. The staff at the help center explained to them he cannot give them any advice about the contract dispute. However, they are welcome to visit the facility of New York PEACE Institute; an NGO provides free mediation service for the city resident. This program is free and approved by New York Court.

Mr. Li has been a customer of Mr. Chen since the beginning of the restaurant business, and Mr. Chen's produce has an unbeatable price. Thus when Mr. Li been notified by Mr. Chen about mediation, he agrees to attend the session and expect to negotiate some payment plan for the unpaid foods. In this story, it is important to remember that the strength of the relationship between Mr. Li and Mr. Chen was important in reaching this outcome. Where relationships are not strong or where there is much bitterness between the parties mediation may be both more necessary but harder to accomplish.

Mediation Service and where to find them

Unlike court proceeding involving lawyers, judges, procedures and court schedules, mediation is a private, less expensive and time-saving solution for a legal dispute. Mediation is a process that two parties come to the negotiation table voluntarily, negotiate and communicate to resolve their disagreements under the guidance of a trained neutral professional. This option works best for those who have disagreements but still be able and willing to find a solution to the dispute.

There are many advantages of using mediation to resolve their dispute, for example:

FREE, FAST, CONFIDENTIAL

- Mediation is free. New York City Civil Court had programs that provide free mediation service to the residents through local community dispute resolution center or NGO such as PEACE Institute.
- When both parties sign a written settlement, this agreement becomes legal contract enforceable by the judge. If both sides cannot reach a written agreement, they can still pursue their dispute in the court
- All conversations during the mediation are confidential. That means normally others cannot use your words during the mediation to against you in the court.
- Mediation is fast, and it normally takes few hours.

There are few disadvantages for medications that one should consider carefully before proceed with it.

- Mediation is voluntary, that means the other party can freely walk away from the negotiation.

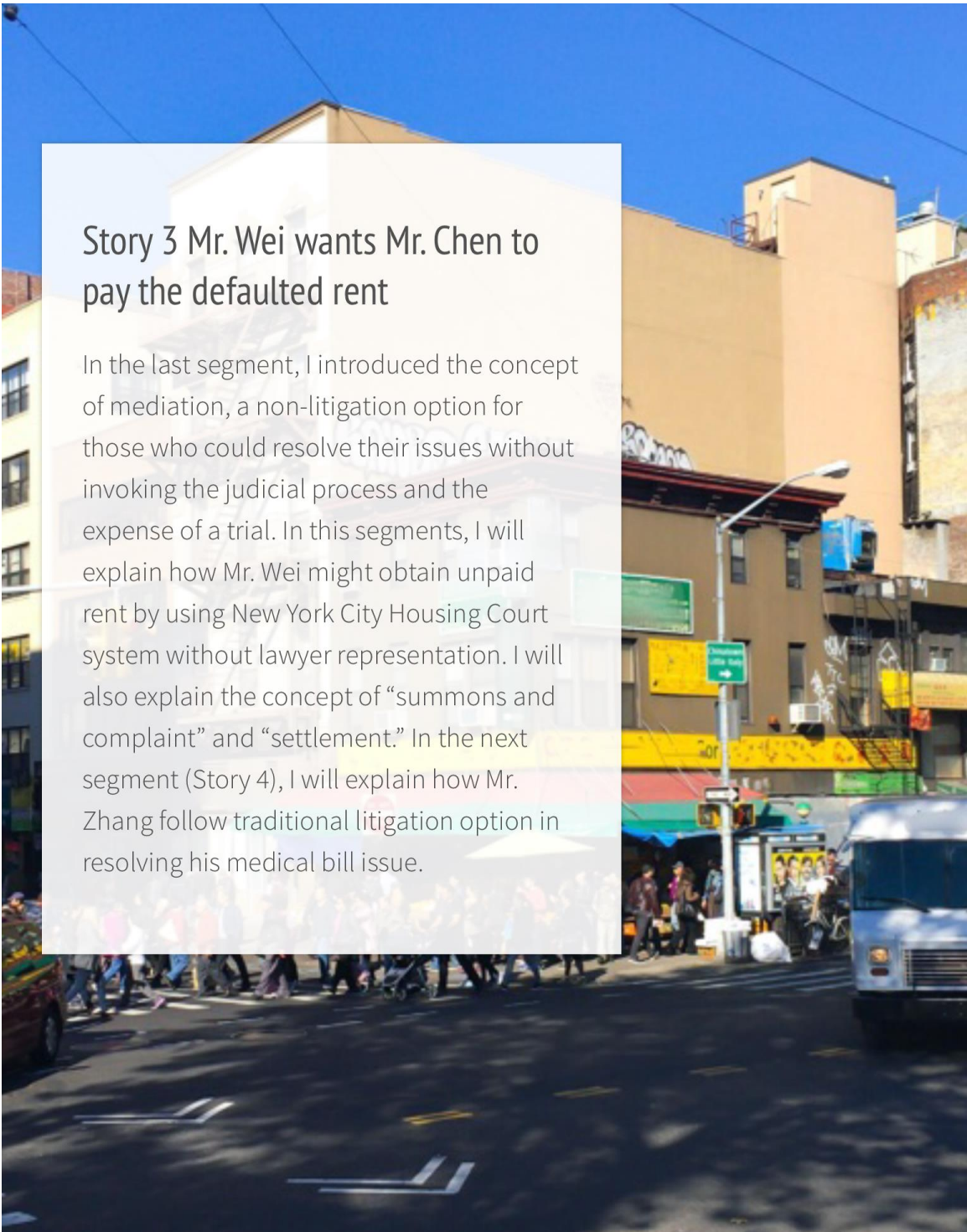
- Mediation is not a substitute for legal service, if you have any legal advice, you cannot ask from a mediator because the mediator must stay neutral to both party.

The New York City Civil Court prepared a Chinese guide on some basic information about the mediation. Here is the link:

<http://www.courts.state.ny.us/COURTS/nyc/ssi/chinese/pdfs/mediation.pdf>

PEACE Institute website provides contact information about the free mediation service, here is the link:

<http://nypeace.org/mediation-services/>



Story 3 Mr. Wei wants Mr. Chen to pay the defaulted rent

In the last segment, I introduced the concept of mediation, a non-litigation option for those who could resolve their issues without invoking the judicial process and the expense of a trial. In this segments, I will explain how Mr. Wei might obtain unpaid rent by using New York City Housing Court system without lawyer representation. I will also explain the concept of “summons and complaint” and “settlement.” In the next segment (Story 4), I will explain how Mr. Zhang follow traditional litigation option in resolving his medical bill issue.

Story 3

With the current incident of food contamination, Mr. Chen decided to leave the city for a few days to visit his friends to pursue a business opportunity that might result in getting a new client. When he returns from his trip, he found an envelope marked “personal and confidential” on his door; several days later he also receives a similar envelope in his mailbox too. Mr. Chen opens the envelope he reads that he being served because Mr. Wei filed a suit in New York Housing Court against him.

How did this happen? Two weeks before Mr. Chen received the envelopes, Mr. Wei had personally asked Mr. Chen to pay rent three times, but there was no payment. With intensive research and the help of his American wife, Mr. Wei decided to file a complaint against Mr. Chen at New York City Housing Court. With the assistance of his wife, he went to the office of court clerk and requested a court form. Because he is a landlord suing for rent, he does not need to pay the court fee. He further requested a translator for his case. After he had left the court, he asked his wife to serve the paper to Mr. Chen. No one came to answer the door when Mrs. Wei visited Mr. Chen first time. She tried again next day, but Mr. Chen was traveling outside New York City at that time. Thus, Mrs. Wei taped the envelope on the door and went to post office to mail another copy to Mr. Chen. After finishing this procedure, Mrs. Wei signed an “affidavit of service” and returned it to the clerk next day.

On the scheduled first appealing day, both Mr. Wei and Mr. Chen

came to a courtroom called “Resolution Part.” They told the clerk that they both came and they need translation. After the clerk had called their names, they both went forward and explained that they willing to settle the case in front of a Court Attorney. Later that day, they reached an agreement and signed for a payment plan.



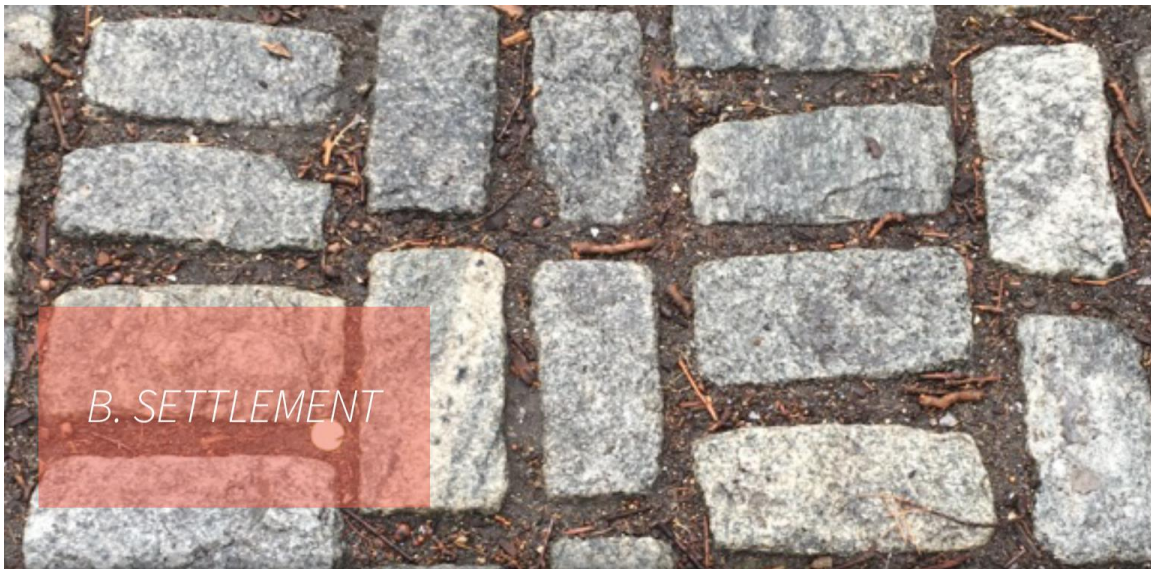
When Mr. Wei filed a complaint against Mr. Chen at housing court for unpaid rent, it is important for Mr. Chen to be notified about the existence of this action, so he has enough time to prepare the case. In legal terms, this called service of process. The court of law has very strict rules about how to serve a paper to the defendant, even slightest deviation from such process could result in prejudice to the defendant and dismiss your case. Sometimes you can hire a commercial service to do this job to avoid inappropriate service.

There are two parts to the service: one is “delivery of the paper” (notify the defendant about the existence of the litigation), and another is “affidavit for service of paper” (delivery person signed the paper in front of a public notary to confirm the delivery).

There are three ways to deliver the court paper to a defendant, and two of them can only be used when the first one does not work. To serve court paper, you cannot do it yourself, but you can ask anyone who is above 18 years old. For example, your friend or wife. You must try personal delivery first. This is quite straightforward: one copy of the notice of petition and petition may be given to the defendant personally.

Sometimes when that person named in the petition is not at home or work, you can try to left the paper to certain people when conditions are met. For example, when Mr. Chen is not at home, the wife can give the paper to Mr. Chen’s son or “any person suitable age and discretion who lives or works at your home.” This means someone who understands the importance of the paper and stays at Mr. Chen’s home. By the next day, excluding weekends and certain holidays, the two other copies must be mailed to Mr. Chen, one copy by regular and one copy by registered or certified mail. The third way is what Mrs. Wei did here: “tape the paper on the door when no one answer the door at two different times of the day.” Further, two other copies must be mailed to Mr. Chen, one copy by regular and one copy by registered or certified mail.

After Mrs. Wei finished the service, she needs to sign an affidavit of service in front of a public notary. This indicates that you affirmed you had delivered the paper in a manner described in the form. The form must be given to court clerk within 3 days of the service. The form can be found at Housing Court's website: <http://www.nycourts.gov/courts/nyc/housing/forms.shtml#affsofservice>.



Before the court adjudicates the case in housing court, the parties are required to wait at “resolution part” courtroom. If they cannot settle the case at this stage, the court will assign you different hearing date to adjudicate the case. The advantage of settlement is time saving and flexibility. A free court lawyer would be assigned to both parties to guide them for settlement.

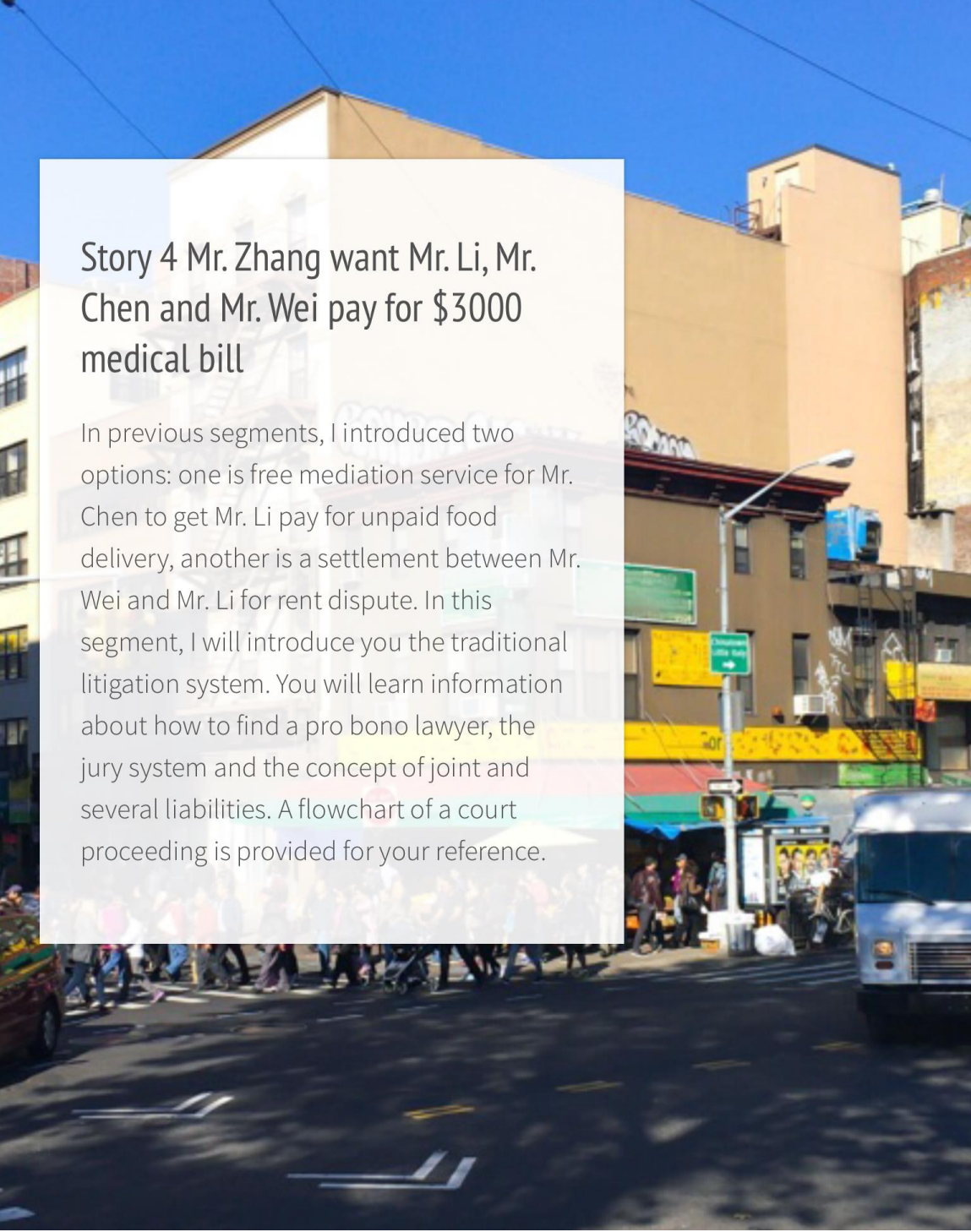
There are few pieces of advice provided by the housing court about the settlement, which are:

- Be sure you can do what you promise by the dates you

- Make sure the agreement takes care of all your defenses.
- Ask the Judge to explain any legal terms.
- Put everything you agreed to in writing and make a copy for records.

There are many NGOs and court office help tenant and landlord under the court procedures and rules; you can contact Legal Aid Society at (212) 577-3300 or Legal Services NYC at (917) 661-4500, or visit <http://cwtfhc.org/> for more information.

It is important to remember that in this case, the parties were willing to settle. That is not always the case. It is also important to remember that if the service is not done correctly, it can be challenged and the service will have to be done again if it was defective. Moreover, it is also important to remember that it may be useful to know the rules about the landlord and tenant relationship before starting the process. That means understanding the terms of the lease and the rules that govern leases in New York. Again, consulting professionals—either a lawyer to the legal aid society might sometimes be useful if the amounts at issue are large.



Story 4 Mr. Zhang want Mr. Li, Mr. Chen and Mr. Wei pay for \$3000 medical bill

In previous segments, I introduced two options: one is free mediation service for Mr. Chen to get Mr. Li pay for unpaid food delivery, another is a settlement between Mr. Wei and Mr. Li for rent dispute. In this segment, I will introduce you the traditional litigation system. You will learn information about how to find a pro bono lawyer, the jury system and the concept of joint and several liabilities. A flowchart of a court proceeding is provided for your reference.

Story 4

After speaking with a member of the local community center, Mr. Zhang decided to seek some professional help to proceed with litigation. The community center worker advised Mr. Zhang to consider using the New York City Bar Association legal referral service, whose telephone number was available through the internet, and from the local yellow pages. He then made the phone call to 212-626-7373 and spoke to a representative. After briefly hearing about his claim and financial situation; the representative suggested two attorneys whose phone numbers the representative then provided.

One of the attorneys quickly responded to Mr. Zhang's story about the food incident. This is the first time that Mr. Zhang talks with an attorney for legal advice. The attorney is precise and efficient, quickly outlined the possibility of his case and agreed to consider pro bono service for his case. However, the attorney refused to give Mr. Zhang any guarantee of winning when he asked. The attorney later left his contact information with Mr. Zhang and told him to feel free to contact him for this case. The other attorney responded more slowly, and Mr. Zhang did not get a feeling that the lawyer was very interested. After speaking with him, Mr. Zhang decided to engage the services of the first attorney. Note that Mr. Zhang was free to call as many other attorneys as necessary to find one that suited Mr. Zhang's needs. There is no obligation to choose any specific attorney.

After several meetings with the attorney, Mr. Zhang and his attorney believed it is the time to file complaints against the restaurant owner Mr. Li, the food vendor Mr. Chen and landlord Mr. Wei jointly and severally liable for the economic loss of \$3000 medical bill due to the food contamination.

On scheduled hearing date, 6 private citizens who had been called to court for this purpose formed a jury. In a court case, the jury is responsible for determining which facts were proven by the parties. The judge has the responsibility of finding and interpreting the law and legal standards to be applied to the dispute. In the hearing, Mr. Chen presented three important pieces of evidence: 1: certificate from local health department showing all food past local health inspection and 2, records showing there were no complaints from his customer during the previous five years of business. 3, Testimony from another local restaurant owner who ordered the same cabbage that Mr. Li's restaurant served, indicated there were no complaints from customers about the cabbage. Mr. Wei provided email exchange between him and Mr. Li indicate that both agree to wait two weeks to fix leaking pipe in return for rent deduction. Mr. Li's testimony reaffirmed such agreement. Later, the jury found that Mr. Chen is not liable for the economic loss because he did not cause the food contamination. Mr. Li and Mr. Wei are jointly and severally liable for economic loss of \$3000 hospital bill because their actions contributed to the food contamination. That means that both individuals will have to pay and may have to decide among themselves (and perhaps in a separate hearing) who has to pay what portion of the damages to Mr. Zhang. In this case, Mr. Wei is 10% at fault, and Mr. Li is 90% at fault. Usually, that means that the damages will be divided in that proportion. But if Mr. Li has no money then Mr. Wei may have to pay the entire amount.



*A. FIND PRO BONO
LAWYERS AND
WHAT TO EXPECT.*

There are many organizations and services in the New York City that provided pro bono legal service for low-income residents and immigrants. Some of the services can even connect you with an attorney who can speak your native language. For legal referral service, you can check

New York City Bar Association: <http://www.nycbar.org/get-legal-help/>

Asian American Legal Defense and Education Fund:
<http://www.aaldef.org/>

The Legal Aid Society: <http://www.legal-aid.org/en/home.aspx>

Legal service is a highly-regulated industry to ensure the quality of the service. Here I highlighted few things you can expect from legal service and few things that lawyers are not allowed to do for you.

Confidentiality

In the United States, communication with your attorney regarding legal issues is confidential. With this protection, you can honestly explain your situation with an attorney without concern that the someone would use disadvantageous information expressed during the communication against you unless certain legal conditions apply. Confidentiality encouraged you to ask your attorney anything or any concerns. It is his/ her duty to explain the issue in a way that you could understand.

The immigrant should remember that while communications are generally confidential it may be easy to waive confidentiality or to lose it through carelessness. For example, if you talk about what you and your lawyer discussed with friends or neighbors you may lose the protection of confidentiality. Also, discussions with civil society organizations and others, including government officials, may not be protected. Please use caution when discussing the issues you already spoke about with your lawyer.

Be Honest With Your Lawyer and Do Not Expect full any Guarantee of Success

It is understandable that most people would like to ask a lawyer if there is any guarantee for the win or loss of the case. However, under U.S. laws and regulations and due to the complexity of the law and court system, lawyers would not be able to give any guarantee about the outcome of the case. It is against the law and public policy for a lawyer to give a full guarantee on the outcome of the case. Also, it is wrong and illegal for a lawyer to collaborate or encourage a client to make an untrue statement. You cannot ask your lawyer to lie for you, and you should not make any false statement of your case during the communication with your attorney.

Complaints

The lawyer owes you important professional obligations which are set out in the New York Rules of Professional Conduct. There are many rules, but for the people in the stories, there are a few that might be most important. Rule 1.3 provides that:

1. A lawyer shall act with reasonable diligence and promptness in representing a client
2. A lawyer shall not neglect a legal matter entrusted to the lawyer.
3. A lawyer shall not intentionally fail to carry out a contract of employment entered into with a client for professional services, but the lawyer may withdraw as permitted under these Rules.

When you felt uncomfortable about your experience with your lawyer, or you have some concerns that you are not being treated fairly, you can always fire your attorney or make a complaint about the legal service provider. Normally, there is NGOs, NYC court system, and bar association can accept these complaints and make an investigation.

You can find out the right place to contact on the court system's website at:

General information:

<http://www.nycbar.org/for-the-public/about-lawyers-and-judges/complaints-about-lawyers-and-judges-how>

the literature on complaints against lawyers:

<http://www.courts.state.ny.us/courts/nyc/civil/chinese/attyinfo.shtml>
complain form:

<http://www.nycourts.gov/courts/ad2/forms/Grievance%20Committee%20C>



Strictly for purposes of illustration, let us call the case Zhang v. Beijing Work Food Inc. We can call Mr. Zhang the plaintiff, the person who starts the case. Beijing Work Food Inc is the defendant. The plaintiff, Zhang, states his claim in a paper called the complaint. As Story 3 clearly indicated, Zhang must strictly follow the rules of service, delivery the complaints to the defendant. Otherwise, the case would be dismissed. Defendant replies to the complaint in a paper called the answer. Defendant file answer explaining why he is not liable and may also file counterclaim indicate someone else liable to the plaintiff. For example, Beijing work can claim it is Mr. Wei leaking pipe caused the contaminations. If D need more time to file a counterclaim, he may request an adjournment.

The next step is discovery: this is a step that both parties exchange information to prepare for the trial. Information can be present in the form of document record or statements by a person. There are two concepts “interrogatories” and “depositions.” “Interrogatories” is a list of numbered written questions you send to other side wish them to answer. “deposition” is also a list of numbered written questions, but you send it to other people. “subpoenas” is a requirement from one party requiring another side to produce a record. You can object or may ignore the above requests, but the demanding party can also ask the judge to decide if their wish can be granted.



Flowchart showing pre-trial proceeding

*settlement: about settlement, please refer to story 3

If the case not settled during the pre-trial period, then it will be scheduled for trial. The New York Uniform Court system recommended on its website to arrive the courthouse more than half an hour in advance for the trial. You can expect to see these people in a courthouse:

- Judge: a person who

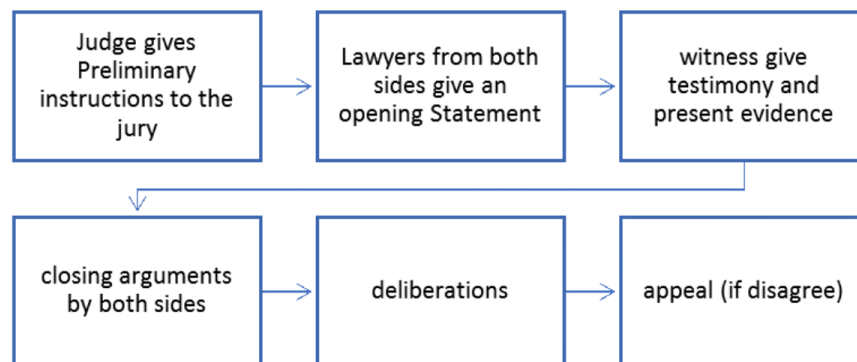
- Court Clerk: a person who helps the judge manage the cases, keeps track of the court file and orders, and calls out the names of the cases to see if you are there and to call you if the judge is ready for you. may wear a black robe at the front of the courtroom.
- Court Attorney: They work for the court, and they can be the neutral party in the process of settlement.
- Court Officer: a court officer in uniform that in charge of security.
- Court Reporter: a court reporter sits close to the judge to write down, word for word, what is said during the trial. You can ask for a copy of this record for a fee. Not all court cases are recorded, like Small Claims cases.
- Court Interpreter: if a party does not speak English well, the court will provide an interpreter for free.



图示：法庭座席

The trial process starts with an opening statement from both sides. Here, that means, Mr. Zhang or his attorney (when he was represented by an attorney) will explain the dispute from his perspective. The same opening statement will conduct by the defendants. Then the plaintiff will present evidence or call a witness to testify about the facts he/ she claimed. The other party has rights to cross exam and to quest the witness or evidence. Everyone who testifies must swear to tell the truth, otherwise, may subject to some criminal punishments.

Before the jury makes the decision about the case, plaintiff and defendant will make a closing argument to persuade judge or jury for their side. The judge will give the jury instructions on the law and standard of proof. After the jury made a decision, and the court enters judgment, the winning side can enforce the judgment, and the losing party can decide whether to appeal the case or not.



flowchart of court proceeding



One of the unique features of American law system is the jury trial. You may see it from TVs or movies that numbers of civilians are sitting in a section of the courtroom to hear and decide the outcome of the case. The jury is an important and unpredictable part of the trail. Here I simply try to explain two things: first, what jury do and what is their duties and rights. Second, how one become the jury sitting in the court.

In common law system, for a civil case in New York City, plaintiff or defendant can request for jury trial by paying certain fees. The jury is a sworn body of civilians convened to render an impartial verdict, finding facts of the case. For example, decide if the

leaking pipe caused the food contamination based on the evidence presented in the case. In a civil trial, New York State not requiring unanimous jury verdict.

The jurors in a trial have the power to affect the outcome of the case, and thus they have a huge responsibility. Below, I outline some of the most important duties:

- A juror cannot refuse to serve jury duty, refuse or skip would result in a civil or criminal penalty.
- Must be honest and impartial during the trial.
- Follow the instruction provided by the judge during the service.
- The jury should not talk about the case with fellow jurors or attorneys. Report immediately to the court when someone outside jury contact with them during the trial in pending, or juror accidentally hear something about the trial outside the courtroom while the trial is still on.
- The jury cannot research or investigate the case by him/herself. The jury cannot consume any media related to the case when the case in trial.

Jury service is not an entirely free service; each juror would be compensated a small amount by the court; they may also be compensated by their employer. In New York City, it is illegal for an employer to refuse to release an employee for jury duty or fail to compensate such person for service as a juror. Below, I outline few rules regarding employer's responsibilities on this issue:

- Employer means whoever pay the juror for his/ her service.
- An employer cannot refuse to pay or penalize or discharge those who need to serve jury duty, a violation subject to criminal prosecution by state DA.
- For the first 3 days of trial in state court, juror (with the full-time/ part-time job, whether scheduled work or not during the trial) will be paid by the employer who hires more than 10 people (not include 10) that are working in NY state. The payment will be the less of salary or juror fee (40 dollars a day). When salary is less than 40 dollars, the state will pay the difference.
- An employer cannot force juror to make up the time. When juror only serves less than half day, it is up to the jury commissioner to decide if a juror needs to report back to work.
- Night time worker who serves daytime juror will be paid by the state rather than the employer.

More information, please see:

<http://www.nyjuror.gov/handbooks.shtml>

To be able to sit in the courtroom as a juror, one must pass through three processes:

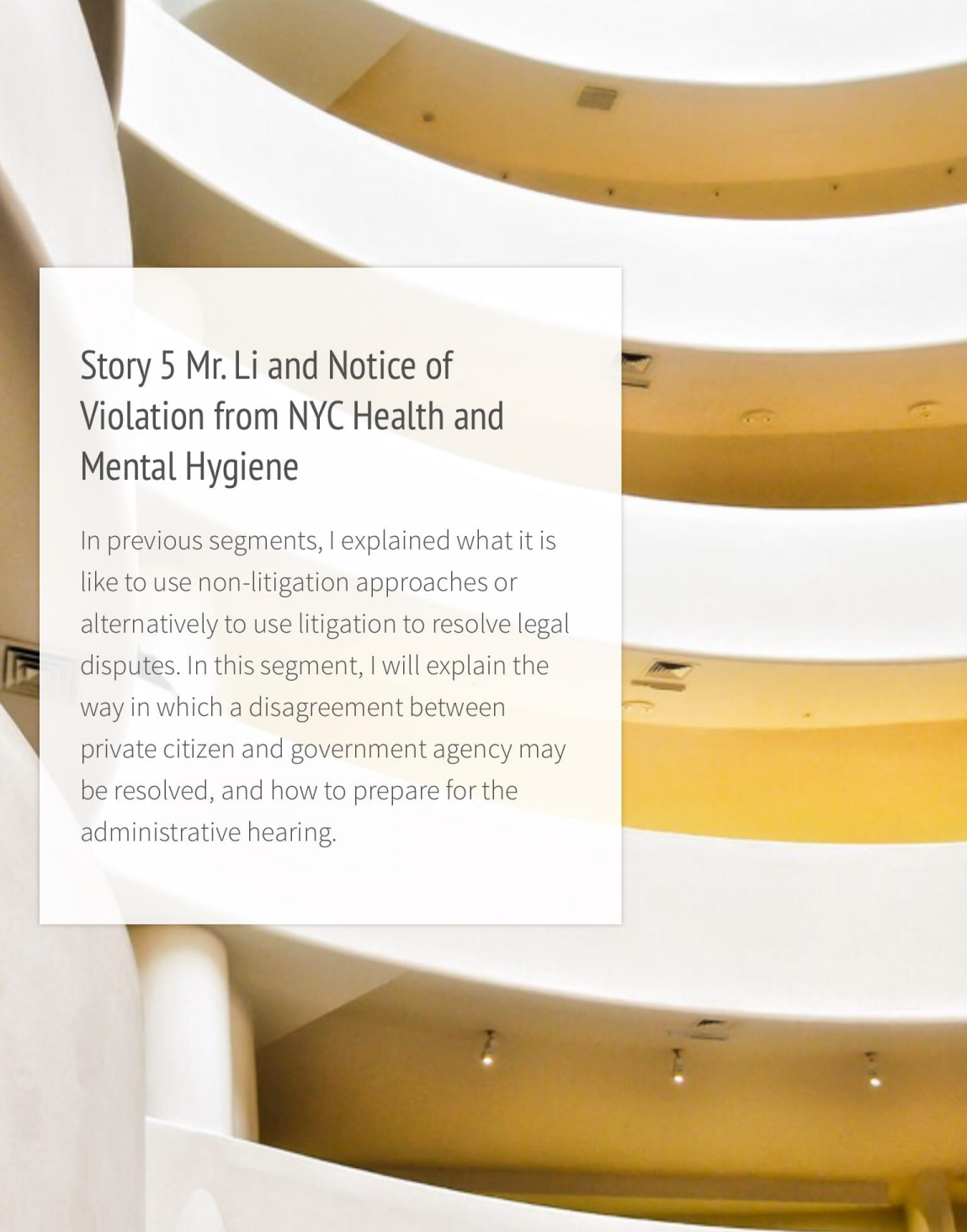
First, Summon and report: the eligible juror will receive a letter ask them to report at a scheduled date to the court (he/ she can

postpone the date once by replying the letter).

Second, jury selection: Juror shows up on the court and is instructed to answer questions either by a judge or lawyers honestly. The judge would inform what the case is and identify parties and their lawyers, and conduct questions to find out if any jurors have any personal interest or any reasons impair their ability to render an impartial verdict. In a civil case, normally the court would have 6 jurors plus 4 alternatives. Third, when lawyers from both parties selected their jurors, the juror will be sworn in for the trial.



Joint and several liability is a legal term describe the allocation among defendants of any award made to the plaintiff when there are multiple parties who are found liable for the damages of the plaintiff. For the plaintiff, joint and several liability means he/ she can ask any or all of the defendants pay the amount awarded by the court as damages. In this case, it means Mr. Zhang can ask either Mr. Li or Mr. Wei to pay the full \$3000 in medical bills even though the court only found Mr. Wei 10% liable for the damages. Joint and several liability is considered advantageous for the plaintiff. However, if Mr. Wei paid \$3000 medical bills, the full amount of the damages, he can always ask Mr. Li to reimburse for the part exceed his share of fault. Here, Mr. Zhang could consider who is more financially viable to pay for the \$ 3000 medical bill and then leave it to Mr. Li and Mr. Wei to decide among themselves how much each pays.



Story 5 Mr. Li and Notice of Violation from NYC Health and Mental Hygiene

In previous segments, I explained what it is like to use non-litigation approaches or alternatively to use litigation to resolve legal disputes. In this segment, I will explain the way in which a disagreement between private citizen and government agency may be resolved, and how to prepare for the administrative hearing.

Story 5

After learning from Mr. Chen about the dirty storage condition, and further discussion of his experience with a social worker from the local community center, Mr. Zhang filed a complaint through New York City website under the category of food contamination. In response to this complaint, a health inspector from New York City Department of Health and Mental Hygiene appeared at the door of the Beijing Work restaurant where he announces that he is there to perform a sanitary inspection. The inspector showed his badge and photo id and requested Mr. Li to show him the kitchen and storage area.

The New York City Department of Health & Mental Hygiene established guidelines on the specification for dry storage areas, which provided: "Ceiling: Fiberboard plastic coated, metal clad, drywall with the epoxy surface, plastic laminated panels... [I]deally, the storeroom should be free of un-insulated steam and water pipes... The area should be well ventilated and maintained at 50°F to 70°F..." Every restaurant is required to prominently display a letter grade indicating the level of compliance with health and safety regulations. The highest grade is "A." A grade of "C" generally substantially reduces the customer traffic to a restaurant and owners tend to want to avoid a grade of "B" or less. The grade is based in part on the accumulation of violation points that are incurred where a restaurant is found to fail to meet all of the requirements of the regulations. Every violation is

scored on a point system, and the accumulation of different levels of points permits the inspector to impose different levels of penalties. Currently, the restaurant is scored at a grade of “B.”

The health inspector immediately spotted mold condition around leaking pipe at the ceiling, and the room is quite humid with 76°F degree temperature. After discovering several other violations based on “Food Service Establishment Inspection Procedures” under Title 24, Chapter 23 of Rules of the City of New York, the inspector issued a printed Inspection Report that includes the inspector’s observations, the number of violation points and the inspection score, which is 30 points. As a result, a Notice of Violation was issued, which included the hearing date at the Office of Administrative Trials and Hearings (OATH), Hearings Division. After both Mr. Li and the inspector signed the Inspection Report, Mr. Li was required to take down his B grades letter certificate and replace it with a “C” grade or “Grade Pending” card in accordance with the regulations. After carefully read the Notice of Violation, Mr. Li would like to explain the mold condition in the hearing. Hopefully, the judge from the NYC Office of Administrative Trials and Hearings (OATH) would reconsider and reduce the fine for his violations.

Understanding OATH hearing

Here, in this case, the Notice of Violation issued by health department listed the violations, fines, and options to argue this notice in a specific period of time. The basis of notice is New York City administrative law and code, not common law, and the OATH office is not a court.

OATH office is not a court.

OATH is an independent administrative court. It is equivalent to a government agency in those civil law state. It conducted adjudication and hearing for cases come from the different government law enforcement agency.

OATH hearings are different from trails before a judge. First, the hearing is presided over by a hearing officer, who may be an employee of the agency that also employees the inspector and that helps write the regulations. Second, the rules for conducting the hearing may be more informal than those at a trial. Third, many of the decisions of hearing officers may be appealed, although the level of appeal may be severely restricted by regulation. Yet despite these differences, there are similarities. First, the hearing officer performs a function similar to a judge. Second, the decision of the hearing officer may be as difficult to appeal as that of a judge. In any case, these hearing can result in significant penalties. Although it is not necessary to have a lawyer represent you at such hearing, it is usually a good idea to consult with a lawyer or a legal aid group before attempting to participate in these hearings. Because they are sometimes critical to the continued business, it is never a good idea to ignore or to treat these hearings lightly.

After receiving the notice of violation, you can:

- Check the notice and summon and decide if you can accept it and pay the fine.
- Check the notice and summon to see if there are any options for settlement with the agency and then decide if

you want to settle it with the agency.

- Check the notice and summon and then decide

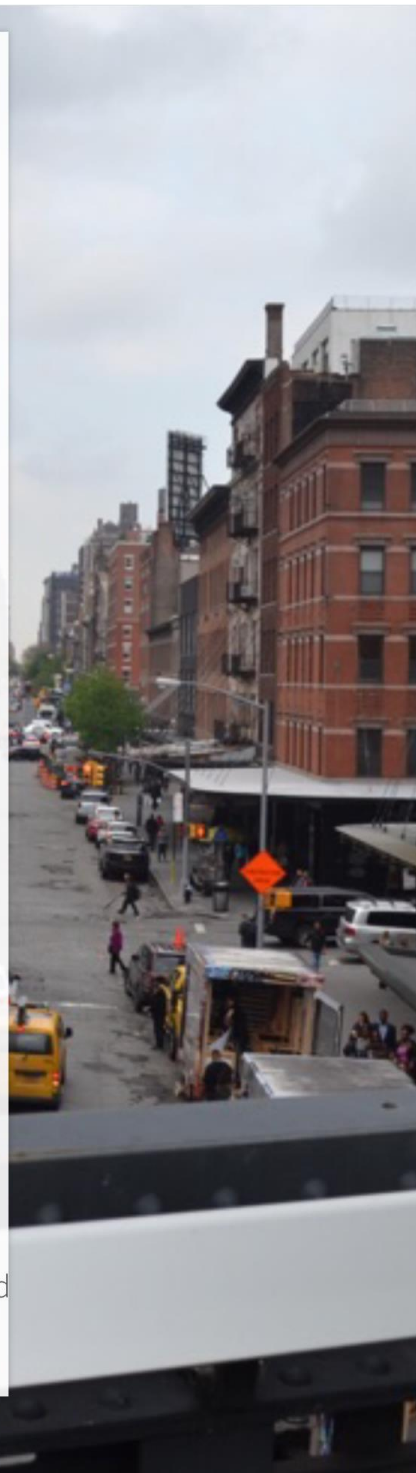
If you decide to attend the hearing, OATH provides multiple ways for you to attend the hearing. You can either: you disagree and you want to attend the hearing.

- Check the website
(<http://www.nyc.gov/html/oath/html/health-tribunal/one-click-hearing.shtml>) and type your defense through an online form.
- Make a phone call to (212) 436-0777, telling the operator your defense to the notice.
- Send a written letter to OATH office address.
- Attend the hearing by yourself and bring all necessary documents to support your defense.

Story 6 Ms. Wang and her wage issue

In previous segments, five stories showcased some basics about different approaches to disputes. In this segment, the booklet will focus one singular issue that concerns many new immigrants, wages, and labor protection. As an employee in New York, you are entitled to various labor protections regardless of your immigration status. It is important to know that labor protection is one category that relates to federal, state, local laws and government regulations. This publication only focuses on three topics: wages and sick leave, discrimination, and undocumented workers, and complaints and retaliation. New York State Department of Labor's Workers' Compensation Board prepared a rich list of Chinese publications on worker's compensation. It is beneficial to refer to this link for some useful and valuable information.

<http://www.wcb.ny.gov/content/main/TheBoard>





Story 6

Ms. Wang was unhappy about her treatment as a waitress at Mr. Li's restaurant. Although she never misses a day of her work and tried her best at this place, Mr. Li seems always to find a way to cut her salary. Since her day one at the job, she got less salary than Mr. Li promised for various reasons such as she has to pay for the repair of a dishwasher that she load dishes every night, she had a sick leave of two days, the business was bad, and everyone has a paycheck cut to \$4/h. Mr. Li warned everyone disagrees with those decisions will suffer consequences and U.S. government will deport them if they acted as disobeying labors.



New York State Department of Labor's Division of Labor Standards District Offices established a comprehensive minimal wage scheme applied to the employees in New York State. The different minimum wage rate for different industries. The current general minimum wage (from 12/31/2016-12/30/2017) is \$11/h for an employer with 11 or more employees and \$10.50 for an employer with 10 or fewer employees. In our story, Ms. Wang is a restaurant waitress relies on the tip for a wage. The lowest cash wage 现金工资 is \$7.50/h. The tip credit 消费信用 is 3.5/h for an employer with 11 or more employees. The tip credit is 3.00 for an employer with 10 or fewer employees. This means as a waitress; she can still earn minimum wage in total.

For further reading, Chinese publication on hospitality industry tipped minimum wage

<https://labor.ny.gov/formsdocs/factsheets/pdfs/p717c.pdf>

Fast food industry minimum wage

<https://labor.ny.gov/formsdocs/factsheets/pdfs/p716c.pdf>

To protect employee's right to wage, New York Wage Theft Prevention Act (WTPA) 纽约工资保障法 established rules to ensure employer maintain a record of wage payment. WTPA mandatory require an employer provide written notice to each new hire with employee's signature and a wage statement to each employee at the pay day in English and primary language of the employee with mandatory information. For a notice of wage rate to each new hire, the notice must display information:

- hour/ shift/ day/ week or commission/ rate and overtime rate;
- Official name, address, and phone number of the employer or business.
- Allowance is taken as part of the minimum wage (tip, meal and lodging deductions)

Violation of this requirement will result in damages of up to \$50 per day, per employee, unless they paid employees all wages required by law. (This stops at \$5,000 per employee in civil lawsuits filed by workers.)

Employers must give a wage statement to such employee on each payday with mandatory information:

- Employee's name
- Employer's name, address and phone number
- Dates covered by the payment

Violation of this requirement might result in payment of damages of up to \$250 per day, per employee unless they paid employees all wages required by law. (This stops at \$5,000 per employee in civil lawsuits filed by employees.) As an employee, you have a right to demand a written explanation from the employer on the computation of the wage.

For a willful failure to pay all wages under this law, DOL may post a summary of violations in a place where the public can see it, for up to 90 days. It is a misdemeanor to remove or tamper with this notice without permission. (see: <https://www.labor.ny.gov/formsdocs/wp/p715.pdf>)

The Department of Labor provides sample notice and wage statement for employer, for further reading, please see:

薪资和发薪日通知及员工确认书模板 LS 53 C

<https://labor.ny.gov/formsdocs/wp/LS53C.pdf>

工资与发薪日通知与确认书 LS 54 C (时新)

<https://labor.ny.gov/formsdocs/wp/LS54C.pdf>

酒店餐饮业工资通知样本--更新版 LS 48 C

<https://labor.ny.gov/formsdocs/wp/LS48C.pdf>

Furthermore, without a court order or other legally allowed remedy, employer are not allowed to automatically taken any portion of money from your wage as compensation for the damage of property that you are liable.

An employee who works in New York City for more than 80 hours a year is entitled to paid sick leave for 40 hours a year when an employer with 5 or more employees. It is illegal for an employer to retaliate against you when you require a sick leave. For more information, please refer to Chinese publication by Department of Consumer Affairs

<http://www1.nyc.gov/assets/dca/downloads/pdf/about/PaidSickLeave-EmployeeOnePager-SimplifiedChinese.pdf>



New York City also designed special programs such as ActionNYC to assist immigrant in fighting unfair treatment based on immigration status. Under City Human Rights Law, your employer cannot pay you less than minimum wage or refuse to follow labor laws and rules based on your immigration status, even when you are undocumented. You can either relying on human rights protection or other labor regulation to protect your rights. But when you filed complaints to other labor protection agency or filed a litigation, you cannot repeatedly file again under human rights protection. It is also important to know that many undocumented workers are also victims of human

trafficking. For example, there are incidents that employer made the fraudulent promise of obtaining immigration status in exchange for free labor or labor with very little payment, or employer refuses any payment or provide very little payment with threats of reporting the employee to immigration authority. It is important to know these behaviors are illegal and you may be a victim of human trafficking and forced labor. United States provide U visa and T visa for victims in such situations. It is your best interest to immediately contact NGOs or attorneys specialized in this field for consultation and solutions. There are many NGOs and programs designed to help you and protect your rights.



For wage-related violation, an employee should file complaints to New York State Department of Labor, Division of Labor Standards or to the Attorney General's Office, Labor Bureau at (212) 416-8700. For job safety and health protection related issues, an employee should file his complaints to New York State Department of Labor's Division of Safety and Health (DOSH). For discrimination issues, an employee can file complaints to Law Enforcement Bureau of the NYC Commission on Human Rights.

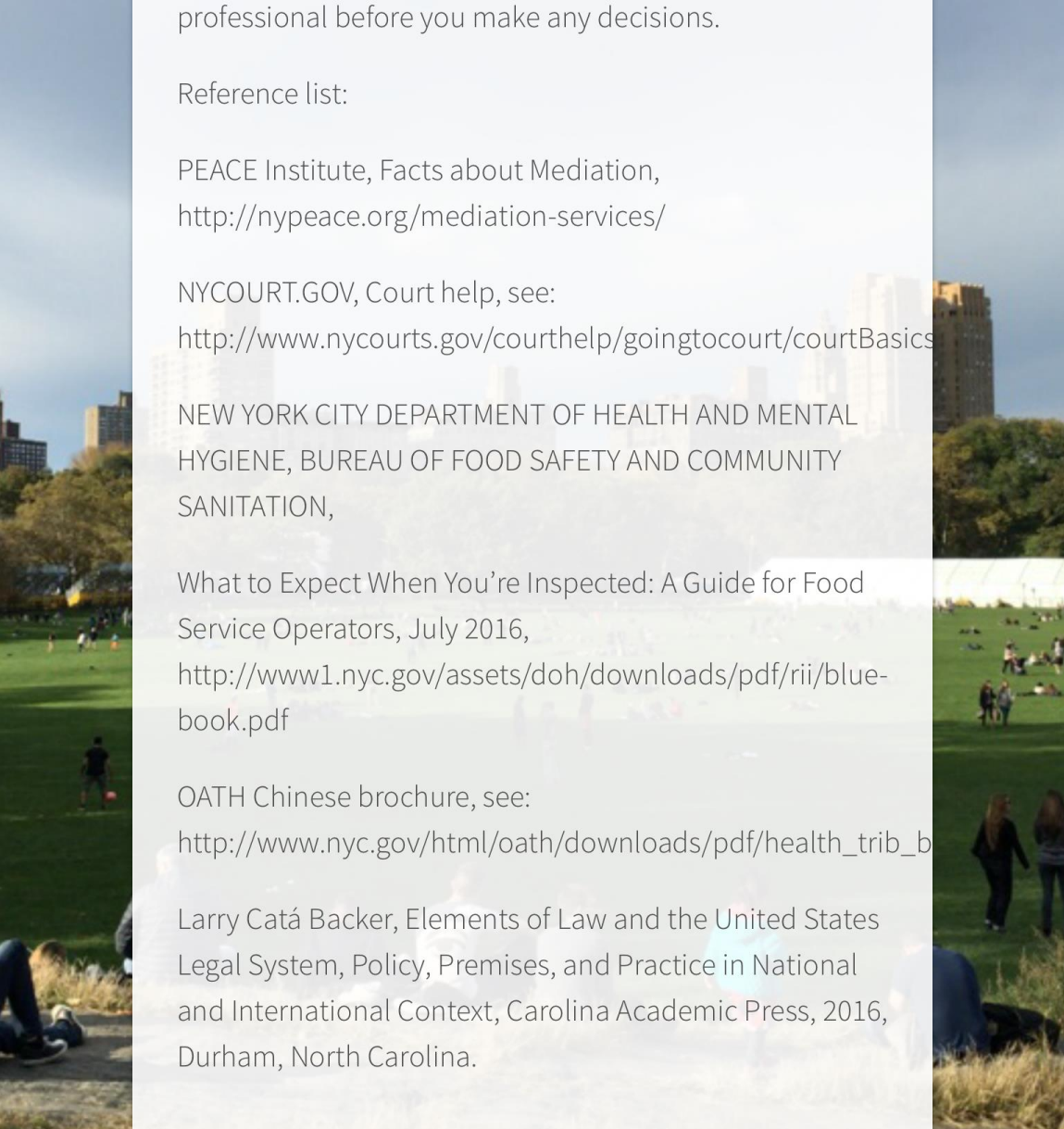
Under WTPA, it is illegal to retaliate against an employee who makes a complaint. That means DOL can order the employer or the person who acted against the employee to pay liquidated damages. The payment can be up to \$20,000. It also opens potentiality for criminal penalties. (employee's belief for violation can be mistaken or non-specific as long as it is in good faith)

Chinese brochure

<https://labor.ny.gov/formsdocs/dipa/p744c.pdf>

Conclusion

This booklet provides a simple framework of information with five different segments that introduced some basic and general idea about the U.S. legal system (N.Y. as an example). Through six different segments, the booklet outlined the pros and cons of non-litigation and litigation approaches to some common issues that new immigrants encountered in their daily life. It concluded that various factors need to consider before you decide what option is best for your case. Through story 2 and story 3, the booklet illustrates how to settle a dispute through pre-trial settlement or free mediation service provided by NGO. Through story 4, the booklet illustrates traditional litigation process between private citizens and how to obtain a pro bono legal service in New York city. The story 5 explained a different type of legal issue, a dispute between a government agency and a private citizen. The story 6 particularly focus on the important issues related to immigrant workers. These segments showcased that each type of issue requires some different considerations. America legal system is complex, and it is very normal for you as an immigrant to have difficulty in understanding it. This booklet only touches very limited area of the law, and I hope it provided some useful information as a start point for you to learn more. As always, it is usually a good idea to consult with a

The background of the slide is a photograph of a park, likely Central Park in New York City. In the foreground, there are people sitting on the grass. In the middle ground, there are more people walking and playing. In the background, there are tall buildings and a clear sky. The image is slightly faded to make the text more readable.

professional before you make any decisions.

Reference list:

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NYCOURT.GOV, Court help, see:
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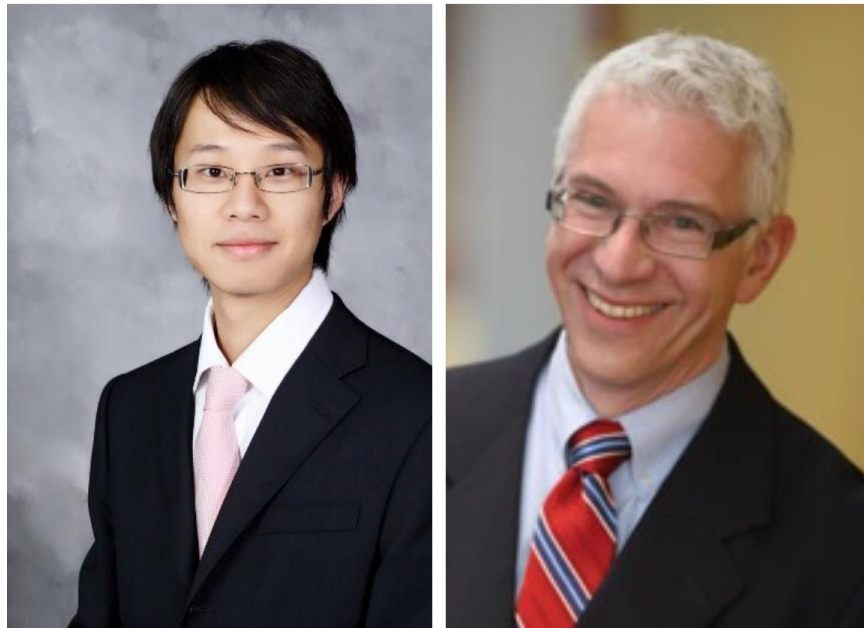
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Shan Gao (Left) Larry Catá Backer (Right)

