

Coordinating Between Administrative and Civil Law: the Pursuit of Justice in Consumer Protection

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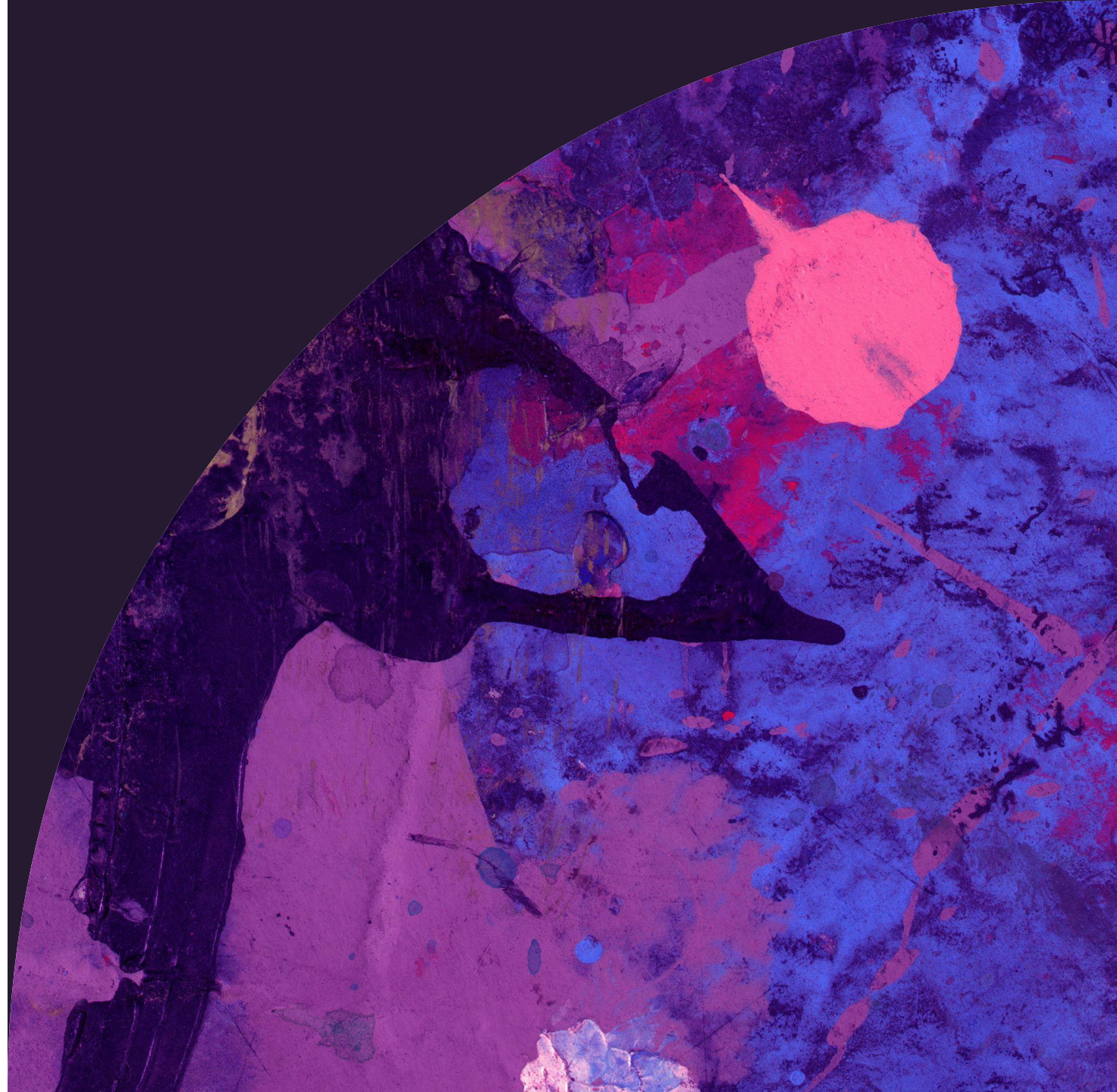



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Part 0: Background

- With the rise of online shopping in China, a great number of online shopping platforms have decided to launch a wide range of online promotions with more favorable prices in order to attract customers, which opens up the possibilities to price frauds.
- An example of online shopping promotion:



Promotion
Price

Original Price

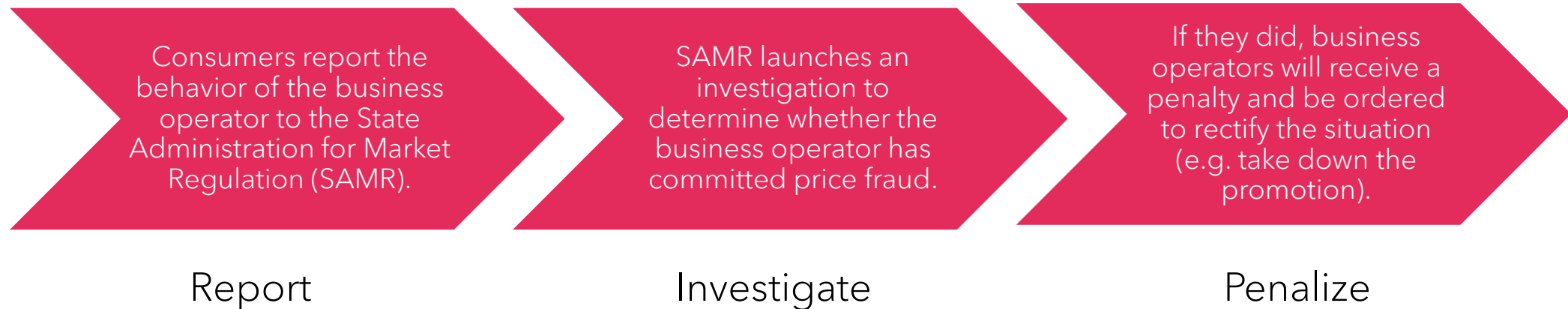
The Problems with the Original Price

- The “original price” is much higher than the average price which the business operators usually charge for the particular product.
- As a result, consumers are tricked into believing that they are being offered a discount while in reality the “promotion price” may be higher than the price at which the product is usually sold.
- The “original price” is false. There are no transaction records of the product being sold at that price at the particular platform which offers the promotion.
- Without a transaction record, it is impossible to judge whether the so-called “promotion price” really gives consumers a discount.

Part 1: the Consumer Protection System in Contemporary China

- The Consumer Protection System in Contemporary China consists of two parts: administrative supervision/regulation and civil litigation.
- Together, they form a sort of **double insurance** to protect consumers from price fraud.
- Each part has its own function.

Administrative Supervision and Regulation



Laws and Regulations

Administrative Law

- Provisions on the Prohibition of Price Fraud Behavior by the National Development and Reform Commission
- Article 3: "Price fraud refers to the operator's use of false or misleading form of price indication or price means to deceive, induce consumers or other operators to conduct transactions with them."
- Article 7: "It is an act of price fraud if the business operator displays the following pricing behavior when acquiring , selling goods and providing paid services:
 - ❖ (a) faking the original price, the discount, or the reason for discount; lying about the reduction or the uprising of the price to deceive consumers into purchase. "

Civil Litigation



Laws and Regulations (cont'd)

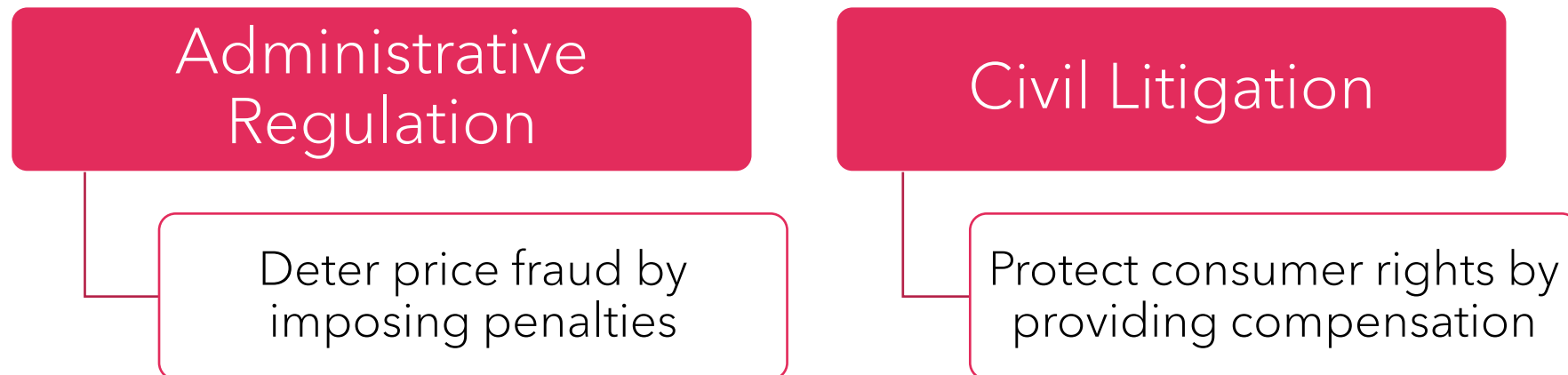
Civil Law

- Consumer Rights Protection Law of the People's Republic of China
- Article 55(1): "If the operator provides goods or services in a fraudulent manner, he or she shall, at the request of the consumer, increase the compensation for the loss suffered by him or her. The amount of **increased compensation** shall be three times the price of the goods purchased, or the cost of services received by the consumer; if the amount of increased compensation is less than 500 RMB, it shall be 500 RMB."
- Notice by the Supreme People's Court of Issuing the Meeting Minutes on the Implementation of the Civil Code by Courts Nationwide
- "In case any party purposely conveys any false information to the other party, or purposely disguises any fact so as to induce the other party into making any false declaration of will, such act shall be determined as a fraudulent act."



Summary

- The Consumer Protection System in Contemporary China consists of two parts: **administrative supervision/regulation** and **civil litigation**.
- Together, they form a sort of **double insurance** to protect consumers from price fraud.



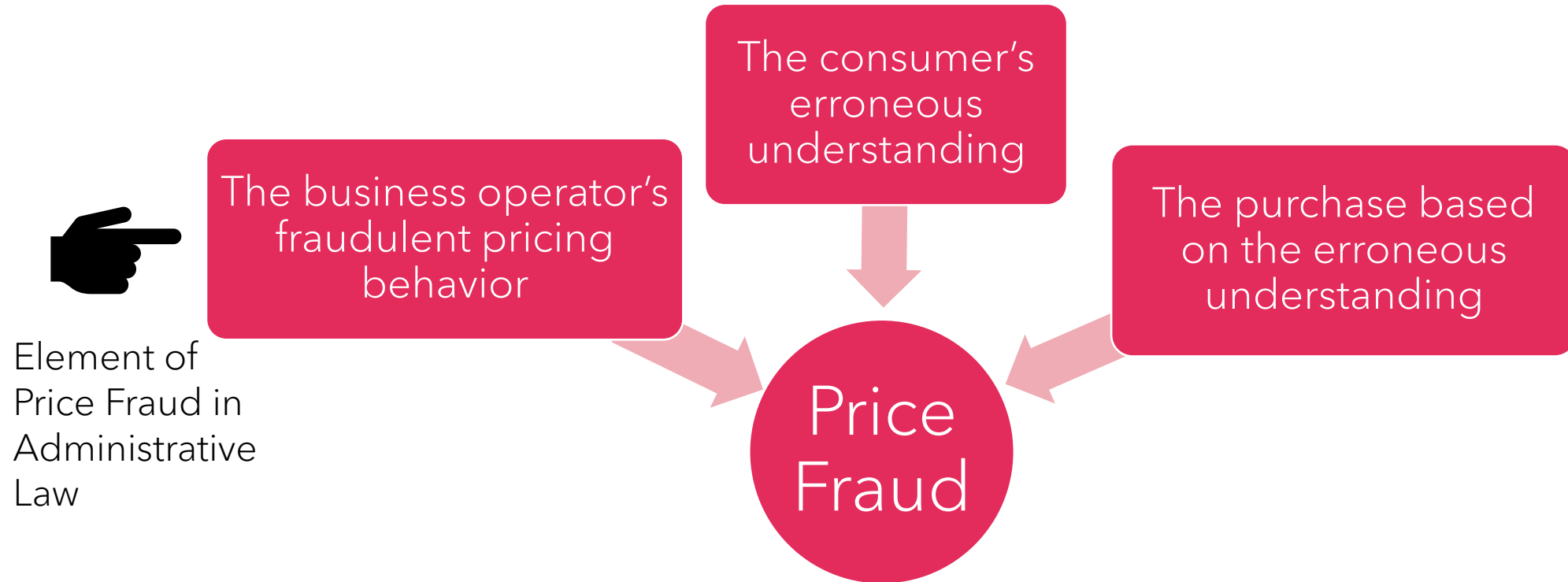
Part 2: Inconsistency Between Administration and Judiciary



Reason

- Judges distinguished between “price fraud” in the sense of administrative penalties and “fraudulent conduct” in Consumer Protection Law.
- The administrative law on price fraud focuses on whether the business operator’s price behavior is consistent with the specific types of behavior listed in the Provisions on the Prohibition of Price Fraud. Meanwhile, fraud in the sense of civil law requires that the consumer is actually adversely affected by the behavior and consumer rights being violated in addition to requiring the operator’s behavior being fraudulent. The fact that the business operator’s pricing behavior had been marked as price fraud by administrative authorities does not necessarily imply that the plaintiff (the consumer) was deceived by the business operator’s behavior, or that the decision to purchase the product was based upon the business operator’s fraudulent behavior.

Elements of Price Fraud in Civil Law



The Civil Court's Denial of Price Fraud

- Lack of erroneous understanding
 - ❖ The consumer was already (or was likely to be) **aware of the existence of potential price fraudulent behavior** in the business operator's conduct prior to the purchase of the product marked with that price and it is unlikely that he/she has been deceived. (See *Wang Guosong v. Shanghai Honglin audio-visual equipment Co., Ltd.* [2016] Shanghai Hongkou District People's Court, Shanghai 0109 15234 Civil Judgment.)
- Lack of causality between erroneous understanding and the purchase
 - ❖ The consumer **made multiple purchases** or **bought a large amount** of that product in a short amount of time. (See *Wang Hai v Suning Purchase Center of Suning.com Co., Ltd.* [2019] Beijing Fourth Intermediate People's Court Civil Judgment, Beijing 04 175, 177, 178, 196 Civil Final Judgment.)

The Civil Court's Denial of Price Fraud (cont'd)

- In some cases, judges also consider the fact that consumers take many factors other than the price itself into account when determining the purchase of a certain good or service.
- Interestingly, in these cases, judges will also mention that there is some **reasonableness to the business operator's pricing behavior**.



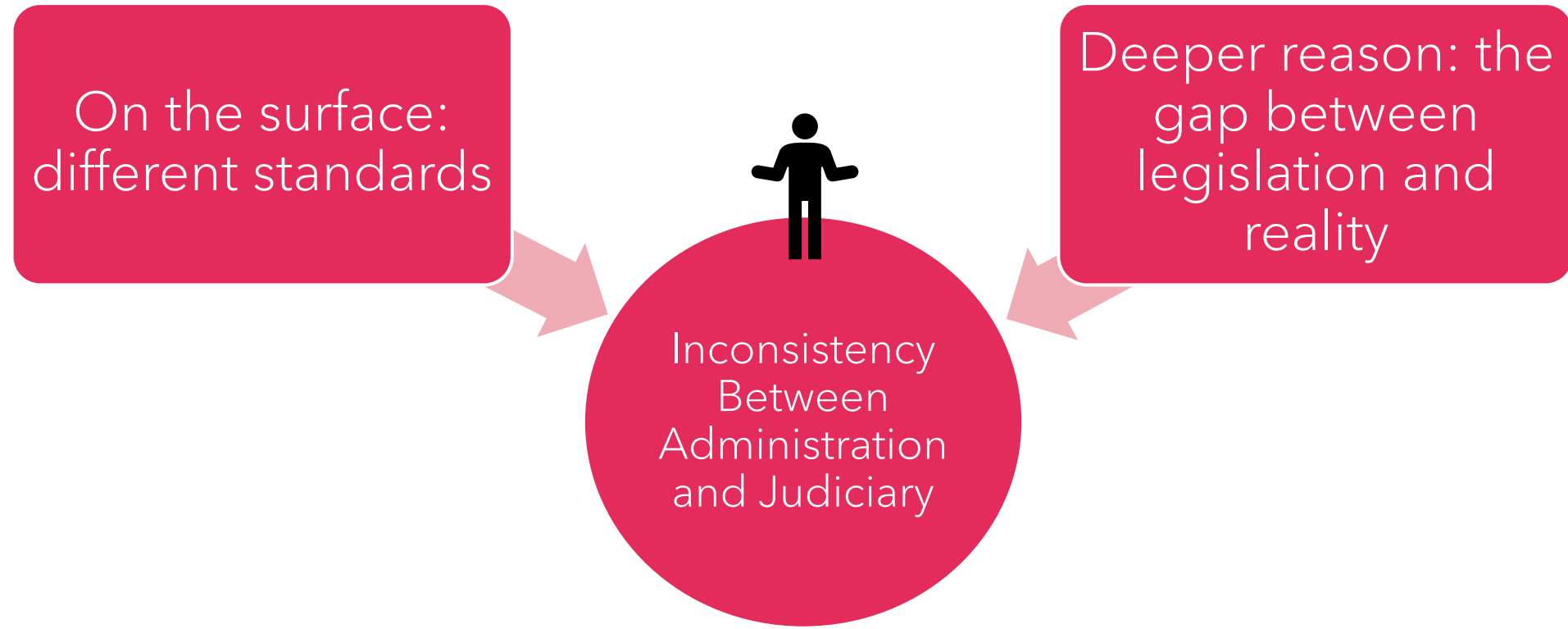
Controversy Caused by Administrative Penalties

- Many business operators believe that the **administrative regulations**, especially the Provisions on the Prohibition of Price Fraud are **too rigid** when it comes to defining price fraud.
- According to the regulations, the concept “original price” is not applicable to the prices of a product which had just started to sell in China, and previously had been sold outside the country with that price.
- However, many business operators determine the original price of the product by the overall sales of the product across a range of platforms, instead of by the sale of the product from a particular platform alone.
- The scope of the transaction record should be limited to a specific platform to better determine what the original price of the product is.

Controversy Caused by Administrative Penalties (cont'd)

- **Administrative officers** have taken **an alternative approach**, allowing business operators the opportunity to explain how they obtained their original prices, and if they manage to convince the officers, the business operator will not be deemed to constitute price fraud.
- This judgment is somewhat arbitrary and the approach **lacks normative bases**.
- In the end, many administrative officers go back to following the strict regulations.
- **Civil courts** attempt to **maintain a balance** between protecting the interests of the business operators and the consumers by implementing civil law norms.

Conclusion



The Imbalance of Administration and Judiciary

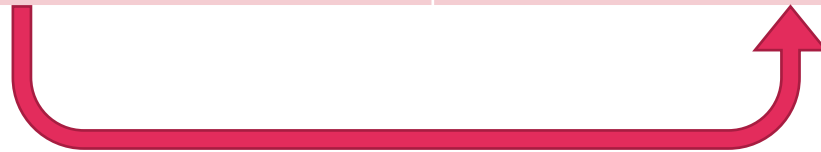
- It seems that **civil courts** do little more than **provide aftercare to** the decisions made by **administrative authorities**, instead of working independently to provide consumers with double protection.
- The challenge of "**explosion of litigation**"
- The **limited deterring effect** due to the application of **mediation**

Part 3: Coordinating Between Administrative Regulation and Civil Litigation

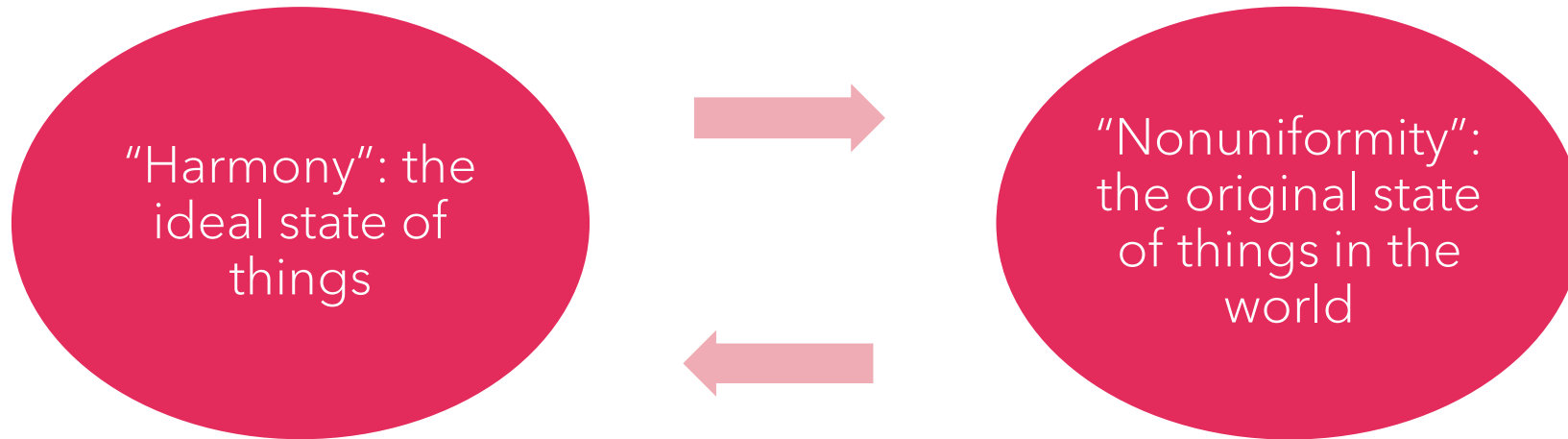
- **Administrative authorities** should **play a more active role in dispute resolution** by making decisions that are justifiable to both consumers and business operators alike.
- **Civil courts** should **make a reduction in** the existence of cases in which the decision of the administrative authority is **inconsistent** with the judgment made by the civil court.

Two Levels of Coordination

The normative level	The outcome level
<ul style="list-style-type: none">• Certain articles in the Provisions on the Prohibition of Price Fraud could be changed to be made more flexible and adaptable to the commercial environment, in order to have better civil effects.	<ul style="list-style-type: none">• Civil judges could make more references to administrative regulations when hearing cases related to price fraud so they can assure that there is consistency between the decisions made by administrative authorities and civil judgments.



"Harmony but not Uniformity"



- By acknowledging the differences, allowing them, and appreciating them, we can move towards harmony and achieve universal happiness.

Conclusion

- Different state organs have **different duties and powers** and are bound by different procedures, and they can **play different roles** in the process of achieving justice by working together and complementing each other. What the law should do is to **form a coordinated normative system**, so that different state organs can **cooperate and interconnect with each other** to give full play to their respective functions according to their respective characteristics, instead of working separately and not communicating with each other. The goal of justice is more easily achieved if all resources are fully mobilized.

THANK YOU!

