

A COMPARATIVE GENRE ANALYSIS OF MALAYSIAN
AND ENGLISH COURT OF APPEAL JUDGEMENTS

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JUDGEMENTS**

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ABSTRACT

This genre-based research examines and compares the rhetorical structures of Malaysia and England and Wales Court of Appeal judgements. This comparative genre study is motivated by a statement by the former Malaysian Judge of the High Court, Dato' Syed Ahmad Idid and Umar A. Oseni (2011) in a writing guide book that presents a standard model to write legal judgements that can be adapted to all legal jurisdictions across the world. Normativity statements about the dos and don'ts on how to write judgements are valid and essential to the legal practices but this normative approach does not necessarily describe the compositional discoursal features and language use of legal judgements. Furthermore, a prescriptive standard model that can be adapted to all legal jurisdiction across the world might not reflect the actual comparative similarities and differences of legal judgements between legal systems. Consequently, Dato' Syed Ahmad Idid's and Umar. A. Oseni's book presents a descriptive research prospect that could accompany the normative worldview of legal judgements. Following these motivations, twenty court of appeal legal judgements from the Malaysian and English legal system in the year 2017 are selected through purposeful (non-probabilistic) sampling. Adapting and modifying Bhatia's (1993) framework, a bottom-up analysis is conducted to identify and categorize the rhetorical structures and communicative purposes of legal judgements from the Malaysia and English legal systems. The findings indicate that the legal judgements from both legal systems are generally identical at the higher level of communicative purposes and Moves and different at the lower level of Steps. Additionally, a new Move, 'Introducing the Case' is discovered in the legal judgements of both legal systems. Furthermore, expanding on the issue of linguistic resources, reporting type verbs in each Move of the legal judgements are categorized to determine their functions. Nine functional categories have been identified. However, the findings and conclusions of this

research are limited to the selected twenty Court of Appeal legal judgements of Malaysia and England and Wales.

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ABSTRAK

Kajian berasaskan genre ini memeriksa dan membandingkan struktur-struktur retorik alasan-alasan penghakiman Mahkamah Rayuan Malaysia dan England dan Wales. Kajian genre perbandingan ini didorong oleh kenyataan bekas Hakim Mahkamah Tinggi Malaysia, Dato' Syed Ahmad Idid bersama Umar. A. Oseni (2011) di dalam sebuah buku panduan penulisan yang membentangkan satu model standard untuk penulisan alasan-alasan penghakiman yang boleh disesuaikan dengan semua sistem undang-undang di seluruh dunia. Kenyataan normatif tentang apa yang boleh dan tidak boleh tentang cara menulis alasan penghakiman adalah sah dan penting untuk pengamalan undang-undang tetapi pendekatan normatif ini tidak semestinya menggambarkan ciri-ciri kewacanaan dan penggunaan bahasa dalam alasan-alasan penghakiman tersebut. Selain itu, model standard preskriptif yang boleh disesuaikan dengan semua bidang kuasa undang-undang di seluruh dunia tidak semestinya mencerminkan perbandingan sebenar tentang persamaan dan perbezaan alasan-alasan penghakiman antara sistem perundangan. Sejurus itu, buku Dato' Syed Ahmad Idid dan Umar. A. Oseni membuka prospek penyelidikan deskriptif yang boleh menemani pandangan dunia normatif alasan-alasan penghakiman. Berikutan sebab-sebab ini, dua puluh alasan-alasan penghakiman Mahkamah Rayuan daripada sistem perundangan Malaysia dan Inggeris dalam tahun 2017 telah dipilih melalui persampelan (tidak probabilistik) yang bertujuan (purposeful). Dengan menyesuaikan dan mengubah rangka kerja Bhatia 1993, analisa 'dari-bawah' ini (bottom-up analysis) dilakukan untuk mengenal pasti dan mengkategorikan struktur-struktur retorik dan tujuan-tujuan komunikatif untuk kedua-dua alasan-alasan penghakiman daripada sistem perundangan Malaysia dan Inggeris. Penemuan hasil kajian menunjukkan bahawa alasan-alasan penghakiman daripada kedua-dua sistem perundangan tersebut umumnya serupa di tahap yang lebih tinggi untuk tujuan-tujuan komunikatif dan 'Moves' dan berbeza di peringkat bawah iaitu 'Steps'. Di samping itu, Move baru,

'Memperkenalkan Kes' telah ditemui dalam alasan-alasan penghakiman daripada kedua-dua sistem perundangan itu. Tambahan pula, dalam usaha memperluaskan isu sumber linguistik, kata kerja jenis laporan dalam setiap Move telah dikategorikan untuk menentukan fungsi-fungsinya. Sembilan kategori fungsian telah dikenalpasti. Walau bagaimanapun, penemuan dan kesimpulan penyelidikan ini terhad kepada dua puluh alasan-alasan penghakiman Mahkamah Rayuan yang terpilih dari Malaysia dan England dan Wales.

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CHAPTER 1: INTRODUCTION

1.1 Introduction

Law and the legal institutions are a necessity for any modern society that expects socio-political and economic stability. Arguably, a society needs a legal system to regulate human conducts, their relationships and transactions. In other words, everyone's livelihood, opportunities, decisions and actions are directly and indirectly affected by the law and the legal institutions (Gibbons, 2005). If the law is ideally one of the sources of societal order, then it is reasonable to perceive the legal institution such as the judiciary as the guardian of societal order. Hence, although, not every aspect of society is determined by the legal system it is not an understatement to state that, for example, the dispute resolution function of the judges is an important aspect of the individual lives and society.

Within a democratic society that adapts the English originated common law, judges wield considerable powers to adjudicate the lives of its citizens without being voted by the majority unlike the Members of the Parliament. Judges are instead appointed (Wan Arfah, 2009) through a series procedures and standards. Furthermore, the power of the judges extends beyond refereeing a fair trial and resolving legal disputes. In the common law tradition, the judicial decisions made from these disputes are recognized to be an important source of law, similar to the enacted Acts of Parliament (Wan Arfah, 2009). The issue of whether the appointed common law judges 'make law' similar to how the elected Members of Parliament enact law is however controversial and debatable but it is undeniable that the judges have developed law through the practice of stare decisis or following the precedents of earlier decisions (Freeman, 2014).

The complexity of these judicial decisions containing legal binding opinions is further added that the judges are required to interpret the statutes enacted by the Parliament. It

means that although the Parliament enacts the statutes or Acts of Parliament, it is the judges that have to make sense of word of the law and appropriately apply these understandings to particular legal disputes (Wan Arfah, 2009). From a discourse analysis point of view, what is more crucial is that these complex demands made to the judges are drafted down into writings. Clearly, from these previous accounts, in order to decide a legal dispute, the common law judges are conditioned to draft and report a complex legal discourse to fulfil the particular demands of legal disputes and trial, adhering to the general practice of precedent and judge-made law, and to interpret the relevant statutes. This type of legal discourse is collectively referred to as case law (Wan Arfah, 2009) or legal judgments (Bhatia 1993). Undoubtedly, the genre of case law represents one of the important legal artefacts which contain the inner workings of the common law judiciary that affects the lives of many citizens.

1.2 Background of Study

The common law system originated from the English legal tradition (Wan Arfah, 2009) and currently had widespread application among the Commonwealth countries. Theoretically, the common law system is distinguished from other legal system such as the civil law from continental Europe or from other legal system such as the Sharia' legal system or other customary traditional legal system (Gibbons, 2005). Between the English originated common law system and the European continental legal system, there are two distinguishing features that exemplify the function of common law judicial system. The differences in particular affects the role of the common law judges. The first is the establishment of the adversarial system that permits the parties to dispute to contest the facts and law against each other through the use of lawyers or barristers during the trial (Gibbons, 2005). As a response, the role of the judge is to determine which of the two contesting parties have provided with better evidence and arguments which satisfy the conditions of law. In contrast, a judge of the European Continental civil system is

relatively proactive in which he conducts investigation to understand and decide on the dispute. In this system, unlike the common law judges, the continental judges behave similarly to a prosecutor. Thus, this practice is appropriately described as the inquisitorial system (Gibbons 2005). The second feature of the common law system has been mentioned in the last section: the doctrine of judge-made law and binding precedents. In this aspect, the English judges have historically and gradually developed important subjects of law such as contract law, tort and land law through the binding practice of hierarchical precedents alongside the Parliamentary Acts and statutes (Slapper & Kelly, 1999). Oppositely, although the Continental system judges do not decide disputes on an ad hoc basis, they are not bound by the operation of *stare decisis* (Slapper & Kelly, 1999). These two features of adversarial trial and binding precedent of common law system are defining to the extent that these features could be identified to the Commonwealth nations that practices the common law system.

A Commonwealth country, Malaysia continues to model its secular laws inherited from the British colonisations that is based on the English common law which is divided into criminal and civil. Simultaneously, the Malaysian legal system also exercises aspects of Sharia law that focuses on personal law to its Muslim citizens (Wan Arfah, 2009). According to Wan Arfah (2009), the Federal Malaysian Courts structure that establishes the common law and hierarchy to its thirteen states and three federal territories shares one defining feature to its originator, the English legal system: that the lower courts decisions are bound by the decisions of the higher court. This is the doctrine of binding precedent otherwise described as *stare decisis* which means in Latin ‘stand by things decided’. The practice of binding precedent requires that a court of a lower hierarchy has to decide a case based on opinions found in the judgments of higher courts and earlier trials. In Malaysia and in England, UK, the High Court, for an example, is generally bound to the decision found of the Court of Appeal (Wan Arfah, 2009). The hierarchical structures of

the Malaysian Federal Courts (Wan Arfah, 2009) with the highest most powerful court at

A) and the lowest at F) are:

- A) Federal Court;
- B) Court of Appeal;
- C) The High Court in Malaya and the High Court in Sabah and Sarawak;
- D) Sessions Courts;
- E) Magistrates' Courts;
- F) Penghulu Courts (in West Malaysia only)

Comparatively, the hierarchy of the England and Wales courts in the criminal division is rather similar:

- A) Supreme Court;
- B) Court of Appeal
- C) High Court and Crown Court
- D) Magistrates Court

The difference of courts within the civil division of the England and Wales hierarchical structure to its criminal counterpart does not substitute the general understanding that the courts are structured hierarchically:

- A) Supreme Court
- B) Court of Appeal
- C) High Court
- D) Magistrates' Courts and County Courts (Holland & Webb, 2013).

In the Malaysian courts structure, the superior courts' decisions which consist of the Federal Courts, Court of Appeal and the two High Courts are considered sources of law

(Wan Arfah, 2009). Similarly, the decisions of the Supreme Court and the Court of Appeal of England and Wales system, among others, are legal sources that bound the lower courts (Holland & Webb, 2013).

One important aspect of the practice of binding precedent is that the details of the reasoning, points of arguments and authorization of those arguments are generally found in the published written legal judgments (Hanson, 2010). The move into literacy or written discourse, according to Gibbons (2005) is an indication that the judges have developed a standard to legal drafting and that the continuous standardization of written text will typically developed into legal genres. From the previous discussion, there is no doubt that one differentiating and significant aspect of the common law system is the practice of the adversarial courts and the judges' hierarchical function of law applying and law making. Consequently, in order to understand the discourse of the judiciary as one of the significant functions of the common law that affects its citizen, it is important to understand firstly, the practices of its common law judges. Only after the previous understanding has been made that it is proper for the analyst to understand the legal judgments as a dynamic typified discourse managed by an institutional convention. In other words, describing common law legal judgments as a genre should at least include the adversarial nature of the trial and the practice of binding precedents.

1.3 Statements of Problems

The case laws or legal judgments are one of the legal discourses that manifest the functions of the legal system. To achieve these functions, legal judgements manifest a variety of discursal and linguistic functions. However, the discourse community of judges does not necessarily describe these functions according to these discursal or linguistic features. Rather, the judges tend to characterize the features and functions of legal judgements based upon normative terms. For example, the former Malaysian judge

of the High Court, Dato' Syed Ahmad Idid and Umar A. Oseni (2011), composed a guide book that presents a standard model to write legal judgments that can be adapted to all legal jurisdictions across the world. Normativity statements about the dos and don'ts on how to write judgments are valid and essential to the legal practices but this approach does not describe the compositional discursal features and language use of legal judgments. Furthermore, a prescriptive standard model that can be adapted to all legal jurisdiction across the world might not reflect the actual comparative similarities and differences between legal systems. Consequently, Dato' Syed Ahmad Idid's and Umar A. Oseni's book presents a descriptive research prospect that could accompany the normative worldview of legal judgments.

Achieving this requires an empirical research that describes the discursal features and functions of legal judgments. Additionally, this research necessitates a comparative approach in order to find the extent of similarities and differences between the legal judgments across the world. However, it is impractical for this research to compare all legal judgments of different legal system stated by Dato' Syed Ahmad Idid and Umar A. Oseni in their book. Between the three different legal systems discussed in the writers' book, this research starts by comparing legal judgements from the former judge's legal system of Malaysia and the originator of the common law system: the English common law system.

For the reason that composition and standardization are two of the overarching concerns of the legal writers' book, it is appropriate for this research to undertake a genre analysis that describes the macro structures and functions of the legal judgements. This genre research also includes the functional categorization of reporting verbs that are employed in the legal judgements. This addition is necessary due to the lack of discussion of grammatical categories and their in-context functions in the legal writers' book.

Reporting verbs are particularly selected for their diverse use of rhetorical meanings. Previous study, Mazzi (2007), for example, claims that reporting verbs are used to introduce judgements belonging to other authorities. Finally, the appellate legal judgements are selected for this research in order to describe legal judgements that belong to the upper hierarchy of the court system that shapes precedents and case law.

1.4 Research Objectives

This current research is an attempt to describe and compare the rhetorical structures of case laws or legal judgements between Malaysia and England and Wales Court of Appeal. Pursuing these objectives, require identifying the conventional communicative purposes between the two legal systems that realize the rhetorical structures. In addition, categorization of reporting verbs that are identified according to the functions of these rhetorical structures are also necessary in order to identify one of the lexicogrammar resources available to compose legal judgements. In summary, these objectives are an attempt to accompany and add to the normative worldview of legal judgments presented by the former Malaysian Judge Syed Ahmad Idid's and Umar A. Oseni's (2011) work with an empirical research that describes the discoursal features and language use of legal judgements.

1.5 Research Questions

Three comparative obligatory research questions are formulated in order to shape the research:

- 1) What are the rhetorical structures organized in the legal judgements of the English and Malaysia legal systems?
- 2) What are the communicative purposes of the English and Malaysia legal judgements?

- 3) How will the reporting verbs function in the rhetorical structures of the legal judgements for both legal systems?

Each of the three research questions contains different but related objectives. The first research question aims to identify the rhetorical structures of legal judgments based on Bhatia's framework (1993). The search and description of the rhetorical structures will necessarily include the communicative purposes of the legal judgments which shape the functions of the rhetorical structures. Thus, research question two aims to identify the communicative purposes. The third research questions in particular is an attempt to categorize the reporting verbs that occur in the rhetorical structures according to its specific functions. The reporting verbs are categorized according to a set of functional criteria which is based upon the nature of each rhetorical structures. Specifically, the question of 'how the reporting verbs function' is a question of use or purpose. Thus, the resulting functional categories of reporting verbs answer the question of how the reporting verbs are used in the rhetorical structures.

1.6 Structure of Study

The content of this study is divided into five chapters which begins with an introductory chapter. The second chapter expounds the relevant genre theories: from the different schools of thought to the specific legal genre framework that is applied for the analysis and descriptions. The second chapter also includes the frameworks that are relevant to the categorization of reporting verbs. The third chapter is an exposition on the nature of the data selected which is followed by the methods and methodologies involved. The fourth chapter concerns the findings and discussion with an attempt at answering the three research questions. As such, the fourth chapter is arguably substantial and most important among all chapters. The final and fifth chapter concludes and highlights possible implications that could be taken from this study.

1.7 Definition of Terms

Within the common law legal system, there are categories and terms that are ambiguous. Slapper and Kelly (1999), for example, juxtapose five pairs of legal terms in order to clarify the ambiguity of the terms. Four of these pairings are set below:

1) Common law and Civil law

This juxtaposition refers to the type of legal system rather than the code of law itself. It is previously described that the English legal system and the Commonwealth nations such as Malaysia and the United States are considered to be the common law system. Oppositely, civil law is a legal system originated from the European continent which derives its codes and practices from the ancient Roman law and the Germanic tradition (Gibbons, 2005). Gibbons (2005) provides a useful conception of the legal system: in effect, a legal system is at least made of four elements: a code of laws, a court system, a police service and prisons.

2) Common law and Equity

According to Slapper and Kelly (1990), this pair refers to the specific division within the English legal system. The division between this pair follows the impact of the Norman Conquest of England in 1066 which created the first national law that is 'common' to all of its inhabitants. However, the common law at the time was limited and did not take account other forms of legal issues that were not institutionalized formally. These weaknesses were taken by the Lord Chancellor through the notion of equity which is to take account of cases that were not institutionalized. This extension developed into the Court of Equity which was combined with the common law courts through the Judicature Acts in 1873-75.

3) Common law and Statute law

This third pairing is the most important for this study. Common law in this aspect refers to the substantive law and procedural laws that have been decided by the courts. In this meaning, the common law refers specifically to judicial decisions that are typically reported as legal judgments. According to Wan Arfah (2009), it is within these decisions or judgments that the judges find the *ratio decidendi* or reasons for deciding previous cases in order to resolve disputes that are similar. Case law is another relevant term within the practices of judicial decisions because it involves the judges deciding cases through the interpretation of statutes. While the meaning of common law in this pairing is judge-centered, Statute law represents the opposite. Statute law originates from the legislation or the parliament and is considered another important source of law within the common law legal system (Slapper & Kelly, 1999, Wan Arfah, 2009)

4) Civil law and criminal law

Typically, according to Slapper and Kelly (1999), civil law refers to a form of private law that concerns the relationships between individual citizens. Examples of civil law include legal codes that regulate commercial contract or law of torts. One distinguishing feature of civil law is that it is generally the individual citizens that will take disputes to the court. Oppositely, the criminal law is a matter of public concern or the State. Thus, any form of legal actions against a suspect criminal are taken by the prosecution service that represents the government.

For the analysis of the rhetorical structures, there are definitions that are operationalized to undertake the analysis. The definitions are:

1) Moves

Citing Swales (1981, 1990), Henry and Roseberry (2001) defines genre as consisting of a series of Moves. Mirador (2000) notes that the usage of Move by others such as Nunan

(1993) and Sinclair and Coulthard (1993) refers to the interactional unit of classroom discourse or a unit constituting exchanges in the interaction between teachers and student. Mirador (2002) defines Move as the logical maneuvers adopted by the communicators in a written and spoken discourse. Henry and Roseberry (2001) consider a Move as part of a written or spoken text that achieves a particular purpose within the text or contributes to fulfill the overall purpose of the genre.

2) Steps

Referring to Swales (1990) and Bhatia (1993), Henry and Roseberry (2001) consider Steps as strategies or rhetorical options that realize the Move.

3) Sub-Moves

Within Bhatia's (1993) analysis of legal judgements, three Sub-Moves are introduced as subparts of Move 3: Arguing the Case. Gotti (2012) considers these Sub-Moves as Steps. However, Gotti does suggest that there could more Moves and Steps besides the basic elements presented.

1.8 Significance of Study

The subject of this study belongs to the field of forensic linguistics which examines the various relationships between law and language. Gibbons (2005) considers that the field of forensic linguistics could be understood in two ways. In a specific and narrow manner, forensic linguistic study is limited to the examination of language as evidence but in a wider sense, forensic linguistics is any research between language and the law. Affirming his position, Gibbons (2005) cites the agenda of the AILA Scientific Commission on Forensic Linguistics which encourages:

- 1) “The study of the language of the law, including the language of legal documents and language of the courts, the police and prisons.
- 2) The study, the provision and the improvement of professional legal interpreting and translation services.
- 3) The alleviation of disadvantage produced by language in legal processes.
- 4) The provision of forensic linguistic evidence that is based on the best available linguistic expertise
- 5) The provision of linguistic expertise in issues of legal drafting and interpretation, including plain language drafting” (p. 12).

The study of legal judgments, which is the subject of this research, clearly shares the first agenda of the Scientific Commission of studying legal documents. A research of legal judgements as a legal genre describes how a legal discourse is shaped by a court’s norms and conventions (Gotti 2012). If this understanding is correct, a study of legal genre opens a view to the workings of a legal institution which, through the use of discourse and linguistic features, affects both the legal practitioner and the layman. Consequently, as a source of law in the common law system, legal judgements present a discourse that impacts not only the parties of dispute but possibly, future parties of dispute who will face similar legal situations. Thus, according to Solan and Tiersma, (2012), the more we comprehend the use of language in an institutional setting, the better we can understand the legal institution’s underlying structure and relationships between different institutions.

It can also be argued that a descriptive understanding of legal documents or genres is not an enclosed study which benefits those who wants to understand for understand sake. For example, it is possible to perceive the five agendas expressed by AILA Scientific Commission are interrelated. For this particular study, the descriptive research on Malaysia and England and Wales legal judgments is an attempt to complement the

normative perspective of the Court of Appeal judges. In the same manner, would not the study of legal documents in the first agenda of the AILA's Commission complement the fifth agenda of encouraging the provision of linguistic expertise of legal drafting and interpretation? Specifically, would not an understanding of a legal genre complement the linguistic expertise of legal drafting and interpretation? But do not be mistaken, clearly, this study's results, discussions and conclusions do not pretend to provide a theoretical, technical and direct account of how a Malaysia legal judgement should be drafted and interpreted. Similarly, this study is not an attempt to correct or triumph over Dato' Syed Ahmad Idid's and Umar A. Oseni's (2011) normative view of how a Malaysian judgement should be drafted. Those aims are undoubtedly beyond the limits of this research. Instead, what is being argued here is the possibility of creating awareness to the legal practitioners of how they shape and use discourse to pursue their goals with a perspective deriving from a theoretical genre analysis.

CHAPTER 2: LITERATURE REVIEW

2.1 Introduction

This chapter expounds the basic theoretical frameworks of genre research and begins the discussion with three of the most widely known approaches for genre analysis. The triadic discussion of the three main approaches is narrowed down to a brief account of the previous studies of legal genre which is followed by an introduction of Bhatia's (1990) framework of case law or legal judgements which is the primary framework for this study. Bhatia's section contains a minimal summary of the basic elements such as the rhetorical structures and the communicative purposes which are the backbone for first two research questions. This section is followed with a discussion on reporting verbs containing relevant references relating to previous study of reporting verbs and particularly to Mazzi's (2007) research on reporting verbs and the legal judgements. Finally, this chapter completes the literature review with a reflection on past studies and gaps of research relating to genre studies, legal genres, legal judgements and reporting verbs.

2.1.1 Genre Theories

The scholarly interests of how a text is formed, functioned and valued in a society have been a great concern of many and different disciplines. Swales (1990), in particular, takes notice of genre studies from ethnographers, literature studies, diachronic rhetorical researches and systemic functional linguistics from which he derived two important insights: firstly, if a text is to be perceived belonging to a genre, the text is functionally a means to an end. Consequently, a genre is not merely a collection of textual objects, instead, it is a social communicative process that is both enabled and constrained by conventions and social goals. Secondly, the analysis of forms or sequences of structures is not an attempt to limit the findings to superficial formalism and prescriptivism, but to understand and describe the rationale behind the structures. It is supported by these insights of genre analysis that this particular research seeks to complement the

prescriptive approach of the former judge Dato' Syed Ahmad Idid's and Umar A. Oseni's (2011) work. In order to conduct this research, it is imperative that the study is grounded on a particular genre theory framework. According to Handford (2012) who cited (Hyon, 1996), in the field of linguistics and discourse analysis of recent years, genre studies have developed into three broad branches:

- 1) The Sydney School of Systemic Functional Linguistics
- 2) the New Rhetoric School
- 3) Swales' English for Specific Purposes driven applied linguistics

2.1.2 Sydney School of Functional Linguistics

Within the Sydney School, Rose (2012), defines genres as staged, goal oriented social processes. He distinguishes the Sydney School approach of genre analysis as a linguistic model that prefers a semiotic analysis in contrast to an ethnographic commentary which combines a social perspective rather than the cognitive. This linguistic model of genre theory is designed as a stratified, multifunctional, multimodal theory that adopts an interventionist social goal which redistributes semiotic resources or understanding of genre and language use through education. The Sydney School (Rose, 2012) divides the families of genres into four functional general categories. The first category is stories in which the primary function is to engage and entertain the audience. This is followed with the second category of providing information which is followed by the third division that functions to manage activity through procedures. The last group of genre has an evaluative function. These general functions and its subsequent secondary and tertiary subcategories are recurrent configuration of meanings (Rose, 2012) that enacts the social practice of culture. In a more abstract perspective, following the previous statements, the Sydney School argues that any genre should not be understood as removed from a particular culture and the social practices that are relevant to that culture. This implies

that the set of functions of a genre which typify its structures and contents are actualized from the social practices of a particular culture. Such perspective, to an extent, is also asserted by the New Rhetorical School which view genres as social action.

2.1.3 New Rhetoric School

Swales (1990) while characterizing his tentative definition of a genre, describes how the discipline of rhetoric in the western civilization has had a long history of producing deductive-based categories to identify and group texts into different genres. Being deductive based, the categories of genres are flawed in that they are grouped as a closed system and they do not reflect the particular contexts that define the studied texts. Swales then notes that, alternatively, how other genre rhetoricians also produce an inductive based research that reflects the historical and social contexts that view the texts in their own term. These dynamic understandings of genre through rhetorical approach culminate with Miller (1984) that argues how genres should not be seen as substance or form but as an action to accomplish social goals. The main concerns of the genre rhetorician are how typical situations demand similar needs and expectations from the audiences which requires the typical use of rhetoric (Foss 2009). Consequently, Bazerman (2012), argues that genres are patterns of utterances or typified responses to a typified situations. From this basic definition, it is clear that rhetorical theory of genre does not necessarily depend on the semiotic model of language that is described by Sydney School. However, both of these approaches share a basic motivation to view genre and its language use as a set of actions that are influenced by the social context. The third and final approach developed by Swales also shares these defining features.

2.1.4 English For Specific Purposes

As discussed previously, Swales' work (1990) and his contribution of genre analysis to the English For Specific Purposes (ESP) studies draw multiple insights from different

frameworks and studies of genre. The defining conclusion that Swales has made from these insights is that the understanding of genre and its related texts should privilege the communicative purposes of discourse community. This means that the functions, structures and contents of a genre should be understood primarily from the communicative purpose of the related discourse community even if its members seek a different private goal. For the ESP approach, this privilege feature of the genre goes beyond analyzing and research. Sharing the intervention motive of the SFL Sydney School, the ESP approach too has pedagogical concerns. Although having different approaches, these different theories argue for the significance of conventional language use for their specific social purposes which cover wide ranges of discourse communities and disciplines: e.g. non-professional genre, professional genre that includes academic and legal discourse.

2.2 Legal Genres

Predictability of the law is one of the essences of Judge-Made law of the common law practices. Through the practice of Judge-Made law, the arguments and conclusions of similar cases are not rendered arbitrary but continuously upheld by the courts until they are distinguished and modified into a new knowledge of law (Freeman, 2014). Predictability of the law means that those who enforce the legal code and those who are bound to the code are not subjected to random understanding and application of the law. Apart from the meaning of the law, predictability also manifests in the form of standard communicative purpose or generic structures. These conventional goals that are enacted through its communicative events not only shape and facilitate the discourse but also constrain the use of vocabulary and the syntactical structures of the discourse. In this aspect, Gibbons (2005) comments that, despite the inherent syntactical complexity for comprehending legal texts, for example, in the legal contract, lawyers are able to apply an appropriate interpretation because of their knowledge of the specific legal genre.

Previous studies on legal genres have made attempts to discover and categorize the different forms of legal discourses according to different factors. Danet (as cited in Gotti, 2012), for example, classifies legal discourse according to three different modes of communication. Marriage oaths, indictments and verdicts, for example, are spoken but composed. These discourses are often formulaic in nature. Oppositely, lawyer-client interactions are spoken and spontaneous which reflect the dynamics of conversations or dialogues. The third and final mode is the written mode. In these types of legal genre, the texts often contain speech acts that are used and repeated from previous similar texts. According to Gibbons (2005), the formulaic use of language is the effect of the legal system relying on the written texts to interpret and apply the law. The effect of the written texts, Gibbons argues, creates a kind of autonomy and conservatism of wordings. This is the reason why a formulaic legal expression in the will documents, for example, “give, devise and bequeath...” or “I declare...” has become a standard (Gibbons, 2005). These modes appear to constraint the choices of textualization and structures of the discourse. Danet’s scheme (presented in Gotti, 2012) for legal genres are given in the Table 2.1.

Danet’s scheme contains seven combinations of modes to derive different legal genres. In Table 2.1, the highest row level consists of three different channels of communication. These are the written, the spoken but is pre-planned or composed and finally the spoken and spontaneous. On the left column level are four modes that are characterized by the social or the interpersonal. The first mode is the frozen which implies that the form and substance of the texts are formulaic. The second mode is the formal that is followed by the third mode consultative, and the fourth mode, the casual. Different combination of the row and the column produces different legal genres. For example, the combination between the written and the frozen produces different legal documents such as contracts, leases and wills.

Alternatively, the combination between the spoken-composed with the frozen produces witnesses' oaths or verdict which are texts that formulaic but is spoken. There are however no genres that combine the frozen and the spoken-spontaneous. Other genres are also produced by this different combination of modes. Although not specifically referred to as legal judgments, appellate opinions could be considered as legal judgments or case reports (U.S. Department of the Interior, n.d.). In other words, applying Danet's scheme, there are two modes that characterize legal judgements: the written and the formal.

Table 2.1: Danet's sociolinguistic scheme for legal genres

| Mode | Written | Spoken-composed | Spoken-spontaneous |
|--------|--|--|--------------------|
| Frozen | Documents: a) Insurance policies b) Contracts c) Landlord-tenant leases d) Wills | a) Marriage ceremonies b) Indictments c) Witnesses' oaths d) Pattern instructions e) Verdicts | - |
| Formal | a) Statutes b) Briefs c) Appellate opinions | a) Lawyer's examinations of witnesses in trials and depositions b) Lawyer's arguments, motions in trials Expert witnesses' testimony | - |

Table 2.1 continued

| Mode | Written | Spoken-composed | Spoken-spontaneous |
|--------------|---------|-----------------------------|--|
| Consultative | - | a) Lay witnesses' testimony | a) Lawyer-client interaction b) Bench conferences |
| Casual | - | - | a) Lobby conferences b) Lawyer-lawyer conversations |

Danet (1980), presented by Gotti (2012)

Furthermore, these discourses could also be further designated into different parameters. For example, it is possible to characterize the legal genres according to distribution of social power and roles. Some discourses such as the trial process are formalized in which the interactional procedures are legally constrained (Stygall, 2012). Typically, in the common law system, the trial (Gibbons, 2005) begins with the opening statements which are continued by the prosecution case which is then followed by the defence case and the closing statements. The trial ends with the jury summation and judgements. In each level of the trial process, it is the judge who regulates the dispute discourse according to the relevant procedural law. In other words, the judge would constrain what the parties of dispute can and cannot say in a trial. A well-known episode is how a judge, during questioning of witnesses, determines whether an objection made by the lawyers is to be acceptable or not (Stygall, 2012).

However, what unites these different factors and parameters are the communicative purposes. The distribution of social powers and roles that formalizes and regulates the

discourse of trial could be understood in terms of the general purpose of the court institutions. For example, the regulation of discourse during a trial by a judge could be seen as an act to referee the adversarial conducts of the trial. After all, it is the judge's general doctrine to conduct a fair trial as humanly as possible (Chan, 2013). Following this privilege feature, Gotti (2012) divides legal discourses into:

1. Legislative texts: the purpose is to regulate behaviours through obligation and rights;
2. Legal textbooks: the purpose is informative or pedagogical;
3. Counsel/witness exchanges: the purpose is to evaluate and inform evidence;
4. Lawyers' arguments: the purpose is to persuade and convince

The relations between these texts and genres should not be understood as isolated from each other. Gibbons (2005) asserts that legal genre is layered in each other's structuring into a macro genre. In his conception, the trial represents the macro genre containing several genres such as the examination-in-chief and the judge's summing up which also contain other subgenres. The examination-in-chief, for example, contains a reconstruction of evidence which is confirmed by the witnesses. Modifying and expanding Maley's (1994) chart of legal genres, Gibbons (2005) schematizes how legal genres, their participants and activities, are related to each other. Gibbon's conception of legal genre is presented in Table 2.2.

Gibbons' chart of genres could be understood at one end as the transitions or cycles between codified genres into dynamic genres and back into codified genres again. At the other end, while happening at the same, is the transitions or cycles between written genres, moving into spoken and written and moving again to predominantly spoken and back again into written. These two ends of modes of legal genres are presented in Table 2.2 at the highest row and at the lowest row of the table.

These two parameters of modes are meant to be seen as the typical cycle of legal process starting from the pre-existing codified and written stage consisting of legislation genre, wills, contracts and legal judgements. When compared to genres of the first stage, the genres within the pre-trial stage is dynamic which consists of the spoken and written channels. Typically found within the pre-trial stage is the police interview and the subpoena genres. The trial stage is the third stage. Within this stage is a set of sequences that unfolds the different genres that constitute the trial. At the core of the trial process is the opening statement, which is followed by prosecution case in criminal issues or the plaintiff case for civil issues. These genres are followed by the defence case and the closing statements by both legal representatives of the parties of dispute. The trial ends with the jury summation and the judgement that decides for one party and against the other. The content of the trial is reported as the case reports genre which ends the legal process with the codified stage.

Table 2.2: Chart of legal genres

| Codified | Dynamic | | Codified |
|--|--|---|---|
| <i>Pre-existing</i> | <i>Pre-trial</i> | <i>Trial</i> | <i>Rewording and law-making</i> |
| <i>Legislation</i> Participants: legislature, drafters | <i>Police Interview</i> Participants: police, witnesses, suspects | <i>Procedural Genres</i> Activities: calling and swearing in of witnesses Participants: clerk, officers | <i>Case Reports</i> Participants: judge, reporters |
| <i>Regulation, By-law</i> Participants: authority, drafters | <i>Subpoena, Jury Summons</i> Participants: clerk, witness, sheriff, jurors | <i>Opening Statements</i> Participants: prosecution/plaintiff counsel and defence counsel | |

Table 2.2 continued

| Codified | Dynamic | Codified | Codified |
|--|---|---|---------------------------------|
| <i>Pre-existing</i> | <i>Pre-trial</i> | <i>Trial</i> | <i>Rewording and law-making</i> |
| <p><i>Will, Contract</i></p> <p>Participants: lawyers, parties</p> | <p><i>Consultation and Instructions</i></p> <p>Participants: lawyer-lawyer; lawyer-client</p> | <p><i>Prosecution/Plaintiff Case (consist of Appearances)</i></p> <p>Participants: counsel, witnesses</p> | |
| <i>Precedent/Judgment</i> | <p><i>Committal Hearing, Hearing, Pleading and Voir Dire</i></p> <p>Participants: judge, lawyers, witnesses, jurors</p> | <p><i>Defence Case (consist of Appearances)</i></p> <p>Participants: counsel, witnesses</p> | |
| | <p><i>Swearing in of Jury and Instructions</i></p> <p>Participants: court officials, jury, judge</p> | <p><i>Closing Statements</i></p> <p>Participants: prosecution, plaintiff, counsel, defence counsel, prosecution/plaintiff counsel</p> | |
| | | <p><i>Jury Summation and Instructions</i></p> <p>Participants: judge to juror</p> | |
| | | <p><i>Judgment</i></p> <p>Activities: verdict, sentencing, conclusions</p> <p>Participants: jurors, judge</p> | |
| Written | Spoken and Written | Primarily Spoken | Written |

Gibbons' & Maley (2005)

That being the case, Gibbons' (2005) conceptions of legal genres do not end with how genres are layered into each other and create macro genres. In the most general sense, Gibbons describes and argues that the legal genres could be ultimately understood as the complex interactions between firstly, the *primary reality* which represents the legal process, secondly, the *secondary reality* that is the reconstruction of facts of the disputes between parties and finally, *the law* itself. A good example of the primary reality is the court trial which contains different stages of macro genres. It is within this primary reality of the court trial, that the secondary reality is reconstructed by the legal representatives and the witnesses in order to argue for the innocence and guilt of the accused. The arguments of opposing facts between the parties of dispute however is not conducted in a vacuum. Gibbons (2005) further explains that the secondary reality is reconstructed 'to fit' the categories and events stated by the wordings of law. This process of 'fitting' should be understood as the act of applying the law to the fact. The law in itself represents the permitted reality that sets out the boundary for any events and actions of the secondary reality. It is the degree of difference of fit between the secondary realities and the meanings of the law that will cause the accused to be blamed or found guilty.

Accordingly, the events or actions represented in the secondary reality are considered blameless if they fit the legal framework and otherwise will lead to blame and punishments if there is any degree of difference of 'fittings' between the law and reconstructed secondary reality. These complex interactions between the primary reality, secondary reality and the law is not exclusive to the genres of the court trial. Gibbons (2005) argues that these interactions also occur before the trial through the police investigations in which the secondary reality is reconstructed at the police station. Alternatively, the interactions between these three realities could also be identified after the trial through the reports of legal judgements or case laws.

Kahn (2016) asserts that judicial opinion written by the United States judges has a special place among legal texts. Just like other common law judicial practices, judicial opinions are legal judgements that contain the arguments in which the judges write their reasons for the verdict given (U.S. Department of the Interior, n.d.). If the judgements have the status of case laws that are written by the superior courts, such as the appellate court, then these texts are a source of law similar to how the Parliamentary Acts or statutes are law enacted by the Legislature.

The similarity between statutes and legal judgments as a source of law do not make them identical: the judicial opinion contains another element besides presenting a statement of law. Kahn (2016) rightly describes that while the statute is a law that merely commands, the judicial opinions not only command those that are affected but also gives persuasions for the commands. As described previously, the judges of the common law especially of the superior courts are required not only to render their verdict in order to resolve the legal disputes but the judges attempt to give explanations for the verdict. In this aspect, the legal judgement genre distinguishes itself as a legal genre from the other kinds of genres discussed above.

It is not an understatement to claim that with this particular genre involving reasonings, arguments and persuasions; that the intellectual roles of the judges are most explicitly presented to the public. A fuller description of the legal judgment genre and its theoretical framework will be discussed in the next section.

2.3 Legal Judgements and Genre Analyses

In his description of the US judicial opinion, Kahn (2016) compares the basic elements of judicial opinions to different genres. In achieving this, he segments the judicial opinion in three elements. In each of the three elements, he finds similarities between each elements and other genres. Kahn firstly compares the element of facts of the judicial

opinion to the genre of journalism and secondly, he compares the element of law to genre of legal code, in other words legislation or regulations. Furthermore, he describes how the conclusion derived from the interactions of the previous two elements as a kind of logical syllogism. However, Kahn argues that these comparisons are nothing but simplification of how the judicial opinion is drafted and interpreted. Undeniably, he exemplifies that it is possible to compare the elements of facts of the judgments to the act of reporting disputed events and that the relevant law stated in the subsequent law element is a restatement of the legal code. The logical combination of these two could then be constructed as the minor and major premise of a syllogism. For example:

- a) The major premise containing an element of the law states:

Smoking is prohibited in the school canteen.

- b) It is then determined as facts in the minor premise that:

The defendant found smoking in the canteen

- c) Conclusion: the defendant is guilty.

This mechanical description of how the legal judgment functions is simply insufficient.

Alternatively, Kahn determines that although the factual element is comparable to the reporting genre, the judicial opinion is required to fulfil other tasks as well. In the law element of the judgments, the common law judge should not randomly interpret the meaning of the law but identifies precedents of other judges which is in one aspect is an exploration of the purpose of law. These intertextual activities of, in Kahn's view is akin to writing a history text rather simply accounting the facts which is common in the reporting genre. Undoubtedly, these intertextual activities of the judges do not end there.

Kahn further describes that the process of interpretation is similar to the hermeneutical works of the biblical scholars. Consequently, the judge must also express his interpretations of these precedents by going back and forth from the legal code that is relevant to the case that the judge is deciding and to the commentaries of the code made by previous judges. Before reaching the verdict, these different activities of expressing facts and law which are then linked could not be demonstrated through the mechanics of logical syllogism.

Instead, concluding from the previous discussion, the complexity of the judicial opinion described by Kahn is a matter of arguments and persuasion. It is with these basic understandings that any genre analysis of case laws, legal judgements or judicial opinions must be undertaken as contexts before pursuing a research.

2.3.1 Bhatia's Framework on Legal Judgements

From the theoretical studies of legal judgements, Bhatia (1993) has expanded Swales (1990) academic research framework to the legal discourse and in particular he has developed a set of generic or rhetorical structures of common law legal judgements. Presented in figure 2.1, the generic structure of the legal judgement is unfolded into four stages of communication or Moves. These four Moves are further discussed in subsection 2.3.1.1.

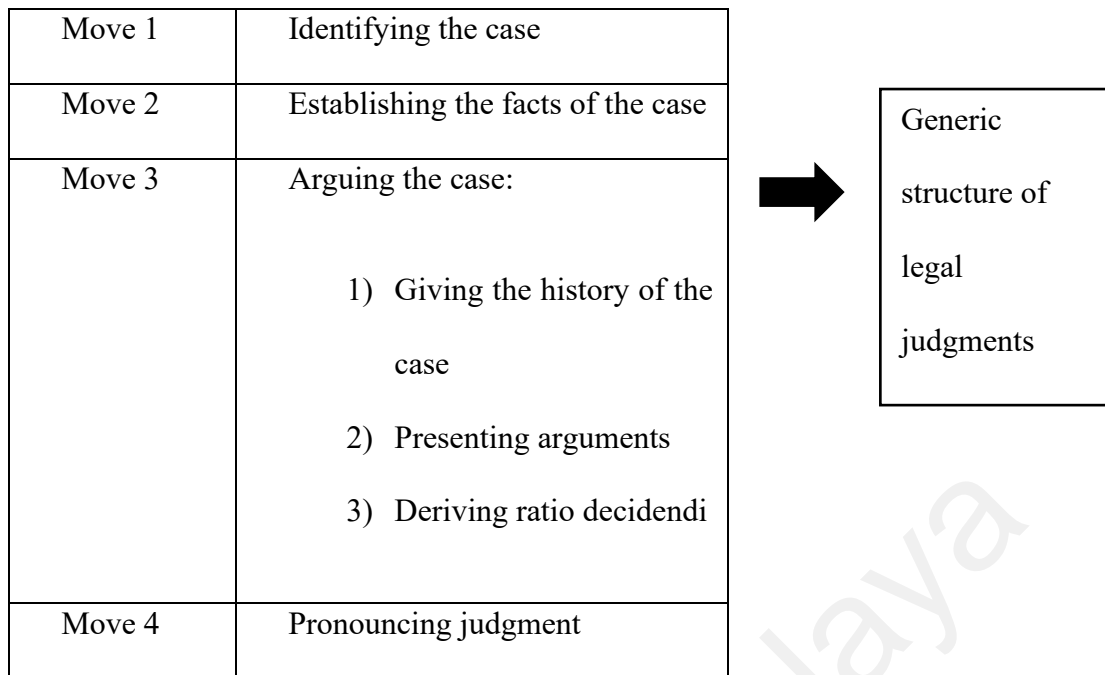


Figure 2.1: Bhatia’s rhetorical structures of legal judgments (1993)

Bhatia’s works on legal genres, particularly of legal cases have been expanded and modified in recent years. His recent theoretical framework of genre analysis is no longer concerned about how genres are individually analyzed within a specific domain. Firstly, Bhatia (2014) argues that genres within a specific domain overlap with each other. In the legal domain, Bhatia claims, for example, understanding and analyzing the genre of legislation requires a complementary understanding of genre of cases.

This recent development by Bhatia, however, goes beyond the issue of intertextuality and inter-discursivity between genres within a specific domain. Bhatia (2014), encourages a wider range of genre analysis that crosses different domains and he introduces a concept termed genre colony. Legal cases being a kind of report should be considered and analyzed against other kinds of report such as medical reports or journalistic reports creating a new and more general understanding of reporting genre. The combination of all this reporting genres coming from different domain creates a new supergroup termed reporting genre colony.

Consequently, this recent development of Bhatia's theoretical framework however has limited application to this particular study. The trajectory of this research originates from the basic motive to accompany the former judge, Dato' Syed Ahmad Idid's and Umar A. Oseni's (2011) book containing prescriptive notion of legal judgments with a descriptive analysis of genre. Furthermore, the first and second questions of this research concern the comparison between the rhetorical structures and the communicative purposes of the legal judgments originating from Malaysia and the English legal system. As such, Bhatia's older 1993 model of legal judgments should be sufficient for this study.

There is however a limitation to following Bhatia's older rhetorical structures of legal judgments. Unlike his other presentation of professional genres in his 1993 seminal book of professional genres, the discussion on rhetorical structures of legal judgements do not include any explicit example of rhetorical structure below the level of Move apart from the Sub-Moves. In his other discussion in the same book, for example of promotional letters, Bhatia presents examples of rhetorical strategies as possible constituents of the Moves. At this point, it possible for one to view the Sub-Moves of the legal judgements as equivalent to steps or rhetorical strategies similar to how Gotti (2012) in his description. On the other hand, one could also argue and suggest that the three Sub-Moves in Bhatia's structures of legal judgements could divided into further rhetorical strategies or Steps. In his discussion of the cognitive structuring (Bhatia's preferred term for rhetorical structures) of legal judgements, it is possible to interpret Bhatia's discussion of Sub-Moves for providing hints for what could be the make-up of the Steps. For example, in his discussion of the Sub-Move 1 of Move 3, *giving a history of the case*, Bhatia states that this Move "begins with a good historical description of the case because this is an appeal case". Further reading on this matter shows that *the historical description of the case* described by Bhatia refers to an episode indicating the permission to appeal by the

appellate court to the appellant, a summary of the verdict and reasoning of the lower court judge and the basis of appeal.

Clearly, these contents of this particular Sub-Move are not explicitly described as Steps or rhetorical strategies but each of it could be reworded as possible strategies and constituents of the Sub-Moves. For the purpose of this literature review, this research with its limited resources, especially time, is not able to find recent discussion of Bhatia's rhetorical strategies or Steps below the three Sub-Moves for legal judgements. For example, Gotti, in a 2012 description of Bhatia model of legal cases, restates the basic four rhetorical structures and considers the Sub-Moves as Steps although he suggests that more Moves and Steps could be found within. Consequently, adapting Bhatia's 1993 rhetorical structures represents a challenge and prospect to conceptualize in what Bhatia has termed as non-discriminative strategies or Steps below the Moves and Sub-Moves for legal judgements.

2.3.1.1 Rhetorical Structures of Legal Judgements

Bhatia's four basic rhetorical structures of legal cases provide for this study a set of categories denoting specific functions that are derived from the genre's communicative purposes. In his exposition of rhetorical structures of legal judgement, Bhatia (1993) attempts to unite, what he argues, different manifestations of the legal judgement genre. These different manifestations of the legal judgement, although united by the general functions, are different because the legal judgements are used differently by a different group of people. For example, the legal judgments that are reported are used primarily by lawyers and judges as precedents our sources of law a court proceeding. Alternatively, the shorter abridged versions of these judgements are found in legal student casebook or textbooks which serves to educate future lawyers and judges. The legal judgements being the complete version of the legal case genre are the object of study for this research.

Following Gotti's (2012) description of Bhatia's rhetorical structures of legal judgments, Move 1, *Identifying the Case*, has a referential function so that the legal judgments could be consistently referred and quoted when used by lawyers and judges in a court proceeding. Although the function of this Move is rather self-explanatory, it remains a question for this study whether the two legal systems will position the elements of Move 1 identically.

From the previous discussion, it is agreed the application of the law to the fact is the 'fitting' between Move 3, *Arguing the Case*, and Move 2, *Establishing the Facts of the Case*. Consequently, understanding the functions of these two rhetorical structures, especially Move 3 is a great concern. Furthermore, it is especially within Move 3, that Kahn (2016) argues the reason for difference and significance of legal judgments genre when compared to the legislation genre. First of all, it appears that the reported facts of the case in Move 2 are structured according to the nature of the trial process. In other words, the facts are adversarial in nature. This means, that the facts that are submitted and admitted to be the evidence of the trial according to the procedural rules which are presented and contested by the parties of dispute. The prosecutor arguing for the defendant's culpability will bring an account that will justify his or her claim while the defendant's lawyer will bring an alternative account or a different interpretation of the prosecutor's claim. The facts are contested and presented according to the logic of the Burden of Proof (Holland & Webb, 2013).

The doctrine of the Burden of Proof could present a preliminary reason of how the facts in the legal judgments are structured. As a simple understanding (Holland & Webb 2013), the doctrine requires that it is the accuser who has to prove his or her claim against the accused with evidence. In a criminal trial, this means that it is the prosecutor who has the burden to prove the guilt of the defendant. On sequential terms, it is the prosecutor

who has to initiate the legal dispute and presents his accounts or the facts of the case convincingly. The defendant's roles come after the accusation and his duty is to reply and deny the prosecutor's claim which requires him to bring a legitimate excuse or an alternative set of facts.

This brief description between legal judgements and the trial is a great indication that it is difficult or impossible to understand the structure and purpose of Move 2, Establishing the Facts, without first appreciating the adversarial nature of accounting the facts of the trial process. This procedure of a trial process could influence how the facts are reported and recorded in the legal judgments. This implies that the accounts of the facts are not exclusive to the issue of whether the facts are relevant or not, nor is it a simple presentation of the chronological order of the facts in order to prove a claim. But instead there is a possibility that the legal discourse of facts is ordered to the logic of the adversarial nature of the trial process. Each party presents their account adhering to a legal doctrine or to the procedural rules of the court trial.

Proving the facts and presenting these facts to the judge to be determined is insufficient to resolve a case. A legal case is fully characterized when the legal representatives of each party of the dispute argued that an activity or behavior presented as evidence is a legal right or prohibited by the law. What is accounted as facts and evidence must be categorized, for example, as illegal or blameworthy according to the eye of the law. However, the simple application of law to facts during a trial process does not necessarily transform the individual case into case laws.

Case laws are a source of law that are recorded from important individual judgments which contain arguments and reasonings that define legal principles (Holland & Webb, 2013). These legal judgements, typically from the appellate court, are a source authority and precedents which are followed by other subsequent similar cases. In both the

Malaysia and English legal system, the appellate court is an important institution that reconsiders the case of lower trial courts. In other words, what the appellate judges determined in Move 3 is an exemplification of the practice of stare decisis or binding precedent (Wan Arfah, 2009). It is within Move 3, *Arguing the Case*, that these legal principles are found and it is being characterized as the source of law that the legal judgment genre has a function beyond the individual case and trial. Therefore, Move 3 has a basic dual function to resolve issues of legal principles concerning an individual case and also with the understanding that the argued legal principles of a individual case could be applied generally to other similar cases. It is this dual function that transforms a legal judgement into a source of law for the common law system.

The final and fourth Move, *Pronouncing the Judgments*, is essentially the conclusion of the judgements. Whether the conclusion comes from the judgements of the appellate level or the High court, the verdict of the judgements realizes the adversarial nature of the common law system. The verdict indicates a zero-sum game in which one party will be found guilty or obligated to compensate and another party will have succeeded the prosecution and legal claim (Slapper & Kelly, 1999). In other words, there is a group that wins the case and another group that loses the case. According to Gotti (2012), this Move often constitutes the use of a highly standardized formulaic statements.

2.3.1.2 Communicative Purposes

Agreeing with Swales' (1990) privilege criteria of a genre, Bhatia's interpretation of the rhetorical structures of legal necessitates the understanding and appreciating the communicative purposes of the discourse community. In this specific study, it is the communicative purposes of the judges in relation to the reporting of legal judgments that are crucial to the analysis of this research.

As previously mentioned, Bhatia's (1993) conception of legal judgements includes this genre into a wider class of legal cases. Therefore, his discussion of communicative purposes includes a wider usage of the legal cases outside of the context of legal judgments and legal proceedings. According to the legal contexts and differentiated uses, Bhatia identifies four communicative purposes. These are:

- 1) Serving as authentic records of past judgements;
- 2) Serving as a source of law containing rules of law or *ratio decidendi* which includes the reasoning, arguments and application past precedents;
- 3) Serving as reminders to legal experts that uses the legal cases in the classroom or court of law;
- 4) Serving as illustrations of points of law that are abridged in law textbooks for the use of law students.

For this particular study, it must be stated that not of all the communicative purposes outlined above are necessary to interpret the rhetorical structures of legal judgments. The object of this study concerns itself not with the abridged version of legal cases but legal cases that are in their complete form and is being used in court proceeding. Arguably, only the first and second communicative purposes are relevant for the process of interpretation of this particular study. Furthermore, it remains a question whether the England and Wales and Malaysian Court of Appeal legal judgements contains further specific communicative purpose beyond these two general communicative purposes.

2.4 Reporting Verbs

Any study of genre must readily admit that a genre is a purposeful interaction between the participants of the discourse (Machin & Leeuwen, 2014). These communicative activities which are distributed according to the roles of the discourse participant and consequently, create a more or less definite relationship between the discourse

participants. As a genre, the legal judgements are pulled by two directions. It is, firstly, a report of the facts and argued law of a particular trial. This is what Wan Arfah (2009) describes as the *inter partes* decision which affects the particular individuals of the parties of dispute. Thus, the legal judgements record the case of a trial as particulars or individual incidents. This means that the legal judgements, to an extent, record the activities and relationships of the participants of the trial. In other words, the roles of the participants of the trial discourse which includes the testifying of witnesses, the persuasions of opposing lawyers and the determinations of judges are summarized and represented in the reported legal judgments.

The second direction that pulls the legal judgements has been discussed in the previous subsection: it is to do with the legal judgement's function as a source of law which binds and shapes the common law judges' reasoning, arguments, persuasion and conclusion. Although, these roles and relationships of legal judgements are recognized in order to analyze and interpret the legal genre, the identification and categorization of these functions is not necessarily explicit from the global functions of rhetorical structures.

The basic four Moves of the legal judgments provided by Bhatia do not state these roles and relationships in particular. In order to find these categories of roles, activities and relationships, the unit of analysis for study would need to change from the macro to the micro. Arguably, pursuing a genre analysis at smaller scale will require the analysis to find the correlation between the form and function at the grammatical level.

Studies on the lexico-grammatical textualization of reporting verbs state that the verbs possess rhetorical functions rather than simply to account for what was verbalized by another person in a discourse. Swales (1990), for example, describes that the reporting verbs cited in the research articles are used to introduce previous researchers in order to create a research space in which the research claims of others are used to support the

researcher's own claims and findings. This strongly indicates that the meanings and functions of reporting verbs vary and is dependent on the context of discourse.

A more elaborated description of the reporting verbs in academic context is established by Hyland (2002). Adapting from earlier classification, such as Thompson and Ye (as cited by Hyland, 2002), Hyland claims that the reporting verbs in the academic context is used to represent the activities of the writer of research article and the activities of the cited authors. These activities are presented in figure 2.2. He classifies these activities or processes in three: research acts, cognition acts and discourse acts. For example, verbs such as 'observe' and 'discover' represent the research activities. While 'believe' and 'suspect' represent the mental activities. Although Hyland does admit that the verbs overlaps and that few verbs represent more than one category, he maintains the overall consistency of the taxonomy nonetheless.

What makes Hyland's taxonomy appealing and significant is that the analysis includes the evaluative functions of each verbs. The three types of verbs used are not solely to represent and to report the activities of the research but the writer, when writing a research article, evaluates claims of cited authors and the writer's own claims. These evaluative features of the verbs represent the writer's commitments to the claims. In other words, these features represent the writer's attitudes and stances to the activities reported in the articles. In effect, a writer could choose to be positive and support a claim, or be critical and deny in part or whole a claim. The choices also extend to neutral and tentative stance. Figure 2.2 represents the taxonomy:

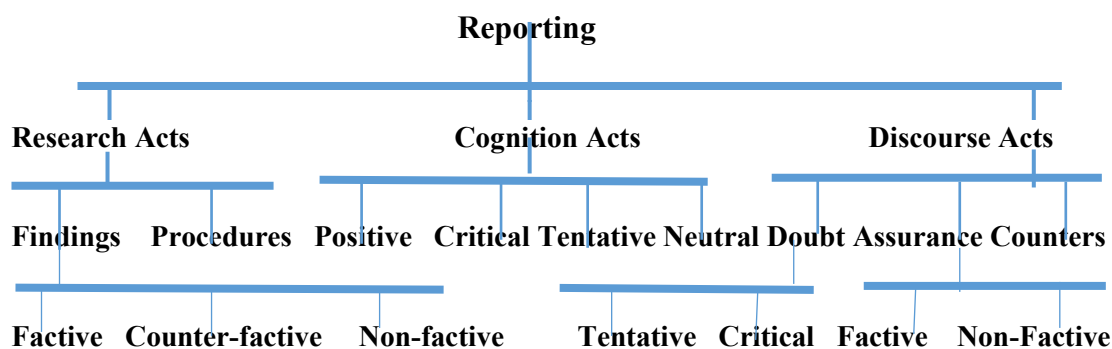


Figure 2.2: Hyland's (2002) categories of reporting verbs

The inspection of how reporting verbs functions for the genre of legal judgments is limited. As of to date, this research finds only a single research for the legal case genre. Mazzi (2007), argues that applied genre studies are most soundly carried out, when they relate Moves to the finer-grained study of the lexico-grammatical tools that realizes the Moves. In his application of a corpus assisted analysis of the lexico-grammatical feature of legal judgements, Mazzi claims that one of the main tools of realizing Move 3, *Arguing the case*, is the reporting verbs.

Among all reporting verbs that occur in his study of 40 legal judgements, Mazzi marks the reporting verbs HOLD for its highest frequency. The main issue for Mazzi is the question of, who is entitled to *hold in court*? In effect, Mazzi attempts to relate the function of the reporting verbs HOLD to its institutional context. It appears there is relation between the specific use of HOLD to the institutional role of the judges. One of the interesting findings of Mazzi, which is relevant for this particular study, is that he argues that for the common Law judges, the use of HOLD specifically textualizes the practice of precedents. Consequently, the verb occurrences with the that-clauses which reports authoritative sources is one of the lexico-grammatical patterns for the practice of *stare decisis*.

Mazzi's study of reporting of legal judgments is rather different from Hyland's comprehensive taxonomy of reporting verbs. While Mazzi focuses on the specific lexical

and its relative occurrences in a single Move structure of legal judgments, Hyland's taxonomy of reporting verbs is applicable to the whole academic text. Both studies by Hyland and Mazzi provide different approaches but is not necessarily applicable to this particular study. Mazzi analysis is relevant in the sense that it indicates the importance of reporting verbs for legal judgements but it is limited to an analysis of a single Move. The concern of this particular study, specifically to answer research question three, requires a wider range of analysis that includes all Moves of the legal judgments. In this regard, Hyland's taxonomy provides a general overview of what are the possible functions of reporting verbs occurring in all segments of the text. The crucial problem of applying Hyland's taxonomy is that the functions of the verb derive from the academic context rather than the legal world. The way to move forward for this study seems to be somewhere in between the two by combining both Mazzi and Hyland approaches to the analysis and functional categorization of reporting verbs.

2.5 Past Studies

One of the main concerns of selecting Bhatia's older framework is to find the framework outdated or to be out of touch with the current progress of genre-based research. As argued earlier, the selection between Bhatia's older and newer framework would possibly depend on the objectives and constraints of a particular research. Thus, Bhatia's older framework despite originating from 1993 would still have some application even until today. For example, Singh, Shamsuddin and Hanafi Zaid (2012), apply Bhatia's 1993 seven steps methods to discover a professional genre from the Malaysian Petroleum industry and they state that Bhatia's methods provide a fundamental ground for the analysis of genre in a professional setting.

Another possible issue is how, belonging from the ESP approaches, Bhatia's approaches to genre analysis would necessarily lead to a pedagogical concern. His

emphasis for genre analysis and ESP's pedagogical goals has undoubtedly advance to another level and he calls the need for further integration between genre studies and professional practices (2008). Other research on ESP, has not only moved on for the need to integrate the relationship between real life practices to genre analysis but advance in terms of the use of quantified methods and wider variations of data. Kanoksilapatham (2015), for example, analyses 180 research articles from three different disciplines in order to examine the significant statistical variations for Moves and Steps.

Clearly, unlike this study, most of the studies of genre adapting Swales' approach over the years are driven by a pedagogical motive with sophisticated methods. Uhrig (2012), for example, briefly notes how Bhatia's 2004 framework of genre systems and others similar to it illuminate and enculturate students into their disciplinary cultures. In fact, Bhatia's analysis of legal cases or reports has expanded to other related legal genres to the legal cases: the newspaper law report (Badger, 2003). Undoubtedly, this extension of Badger's study of legal genre is specifically pedagogical. However, similar to this study, not every research that adapts Bhatia's framework is specifically pedagogical. Mazzi (2007) for example, conducted a comparative research of legal judgments that includes a corpus-based genre analysis to reinforce the linguistic component for legal discourse study.

One of the branches of legal genre studies succeeding Bhatia's analysis of legal judgements has expanded on the basis of cultural variation. Le Cheng (2010), for example, compares the legal judgments of Hong Kong, Mainland China and Taiwan. He grounds the differences between these three courts into two interrelated issues of institutional values and procedures: i) Hong Kong courts (i.e. the judges) display more power and control and these are reflected in their discourse; ii) Hong Kong courts voice both concurring and dissenting opinions while the courts from Mainland China and

Taiwan do not. On a related issue, Zhengrui Han (2012) discovers that despite constructing similar generic structure to Bhatia's common Law legal judgements, the Mainland China civil judgments do not necessarily employ parallel communicative purposes like its English counterpart.

Similarly, Mazzi (2007) compares the construction of rhetorical structure of 40 legal judgements between the Court of Justice of the European Community, the House of Lords of UK, and the Supreme Court of Ireland. The results from Mazzi's analysis concerning the Moves indicate that there are differences between the three court institutions at the level of Moves. In particular the Irish and the English judgements are similar by sharing identical rhetorical structures of Moves. The Moves are reproduced below:

- 1) Move 1: Identifying the case
- 2) Move 2: Establishing the facts of the case
- 3) Move 3: Arguing the case
 - i. Sub-Move 1: Stating history of the case
 - ii. New Sub-Move 2: Identifying the conflicts of categorizations
 - iii. Sub-Move 3: Presenting arguments
 - iv. Sub-Move 4: Deriving ratio decidendi
- 4) Move 4: Pronouncing judgments

From the enumeration of Moves above, clearly there is one addition of Sub-Move, *Identifying the conflicts of categorizations*, to Bhatia's standard rhetorical structures. Mazzi's enumeration of the rhetorical structures of European Courts judgments, however, suggests a stark difference when compared to English and Irish courts. Mazzi's Moves of the EC judgements are reproduced below:

- 1) Move 1: Identifying the case
- 2) Move 2: Identifying the scope of proceedings before the Court
- 3) Move 3: Retrieving relevant Community and/or national legislation
- 4) Move 4: Stating history of the case
- 5) Move 5: Arguing the case
 - i. Sub-Move 1: Arguments of the parties
 - ii. Sub-Move 2: Arguments of the courts
- 6) Settling costs
- 7) Pronouncing judgments

Being a court that handles international disputes, the European Court judgments possess more specific functions than the English and Irish court judgments do not have. Despite these differences Mazzi argues for the three courts to be classified as sub-genres of the legal cases. He states that the three courts are judicial genre that are governed by discourse community of judges whose communicative purposes are to settle disputes based on arguments. Mazzi's comparative findings of the Moves structures of legal judgments between different jurisdiction and nations provides a good example for this study and affirms the increasing need of comparative studies between legal system and the possibility of finding new sub-genre and Moves of the legal judgments. However, Mazzi's findings of new Moves does not include the categorization of Steps of legal judgments.

In the Malaysian context, the study on legal language, for example, by Ain Nadzimah (2008) who studies the language choice and use among Malaysian legal professionals, notes the importance of language in the domain of legal work. In particular, she concludes on the implication of language to the administration of justice. Another study of

Malaysian legal language has instead focused on the language use of judges. Norzanita, Nor Fariza, and Noraini (2019), who were alarmed by the opinion of a former sharia judges conduct an analysis on the linguistic representation of violence in the judicial opinion in Malaysia. Their findings reveal that there are four common linguistic strategies for the judges to represent sexual violence: 1) violent terms, 2) morally/ethically disapproving terms, 3) sexual terms, and 4) ambiguous terms. From their linguistic analysis, they conclude that the judiciary system needs to improve more on its efforts, specifically toward rape victims.

Another local study which also looks into rape cases conducts a genre analysis on controversial appellate judgments. Maya Khemlani, Neda and Mumtaz (2016) have two aims. The first of which is to identify the Court of Appeal judgments as a genre which includes its Moves. Secondly, a rhetorical analysis is made in order to categorize the aspects of argumentation of the judgments based on Ethos, Logos and Pathos. Based on two controversial cases, the rhetorical aspects are found only in Move, “Arguing the Case” with a tendency for the judges to rely more on pathos argumentation. For analysis of Moves, Maya Khemlani, Neda and Mumtaz (2016), discussed Mazzi’s (2007) generic structure and referred to Bhatia’s seven steps of Genre analysis. Their analysis of the Malaysian Court of Appeal judgments reports Moves is as follows:

- 1) Move 1: Preambles
 - i. Sub-Move 1: Name of the alleged rapist
 - ii. Sub-Move 2: Name of the court
 - iii. Sub-Move 3: Name of attorney
 - iv. Sub-Move 4: Identification number
 - v. Sub-Move 5: Summary of the nature of the case
 - vi. Sub-Move 6: Particular of the nature of the case

- a) From the appellant, plaintiff
- b) From the respondent, defendant
- c) Judge's name

2) Body of the case

- i. Sub-Move 1: Explanation about the case
- ii. Sub-Move 2: History of the case
- iii. Sub-Move 3: Previous court's judgment
- iv. Sub-Move 4: Grounds of last court's sentence
- v. Sub-Move 5: Scenario of the rape

3) Explaining the Appeal

- i. Sub-Move 1: Appellant reasons

4) Arguing the Case

- i. Sub-Move 1: Referring to other cases
- ii. Sub-Move 2: Referring to existing Evidence
 - a) Medical tests
 - b) Extract of Testimonies
 - c) Reasons

Sub-Move 3: Wrapping up the reasons (Conclusion)

5) Final Sentence

- i. Sub-Move 1: Declaration of Allowing or dismissing of the Appeal
- ii. Sub-Move 2: (Name of the reporter)

In another direction, there are other studies who takes a similar approach to Mazzi by combining genre analysis and corpus but conduct studies on other kinds of lexicogrammatical items. In Maher and Milligan (2019), a genre analysis of Master theses of Engineering student is conducted with a focus on the introduction section. By combining corpus methods, the study finds a high usage of the words 'the' and 'in' their data. These two items are noted by their discourse functions in which two general functions are suggested. The first function of the words 'the' and 'in' concerns the engineering processes and the second is used for text organization and literature references. Another different but related genre-corpus study involves the comparison between corporate earning calls of Korean and native-English speakers (Cho & Yoon, 2013). For the corpus analysis, a keyword list containing positive and negative keywords is created for the Korean corpus. When compared to the native speaker corpus, it is discovered that, for example, there seems to be an overuse of the word 'decrease' which is a downgrading expression describing downward business changes. Discovering high frequency words such as 'decrease' in this research, is an important pedagogical indicator. Cho and Yoon (2013) argues that the overuse of certain words by non-native speakers can have a negative influence on messages which means that it is important for learners to differentiate between near-synonyms. Despite working on different genres, both studies appear to indicate that a genre analysis could be complemented by corpus methods.

The research on the functions of verbs of legal discourse is not limited to reporting verbs. Vass (2017), for example, identifies lexical verbs through the use of corpus with different uses of hedging in the law journal article, the Supreme Court majority opinion and the Supreme Court dissenting opinion. However, acknowledging one of the overarching purposes of legal case genre which is to report, it is arguable that reporting verbs are one of the salient features of the genre.

The study of reporting verbs such as Mazzi (2007) is not only interested in the usage of reporting verbs but specifically how the reporting verbs function in the arguments of Move 3. In his findings, he identifies two functions of the reporting verbs in legal judgments: i) introducing judgments belonging to other authorities and ii) prefacing or identifying judgments to the authoring judge. Mazzi's analysis on reporting verbs, despite its lack of a particular pedagogical aim, is within the approach of other similar studies for reporting verbs.

Nor Azma and Noorizah (2014), for example, apply Hyland's taxonomy of reporting verbs to the study of Master's theses with a pedagogical aim to include the knowledge of reporting verbs in a Research Methodology course. This pedagogical concern for use of reporting verbs is also shared by Yeganeh and Boghayeri (2015) who highlight the importance of reporting verbs for citing to non-native students. Although the objectives of study and genre are different, Mazzi, and other academic research on reporting verbs are similar because they derive their findings and their significances from the study of functions and frequency of reporting verbs in the texts.

2.6 Gaps of Research

From the previous review or discussion of past studies, it is clear that this research shares many similarities with genre analysis studies such as Mazzi (2007) and Maya Khemlani, Neda and Mumtaz Ali (2016), especially on taking datasets of judgement reports from the higher level of court hierarchy such as the appellate court of Malaysia or the Supreme Court of Ireland. In fact, the choice to study judgements from the higher level of the court hierarchy is not new. It has been made by Bhatia in his 1993 seminal work which represents the four structures of legal cases genre with a Court of Appeal case entitled *Roles v. Nathan* [1963] 1 W. L.R. 1117. Thus, this research's choice of

datasets is not original. Furthermore, this research takes the comparative approach of Mazzi by comparing similar genre of legal judgments from different legal systems.

If there is a research gap that this research attempts to fill is on the lack of comparative analysis in the Malaysian context between similar genre from different but related legal systems. Another possible research gap that this research attempts at filling is the analysis and categorization of Steps for legal judgements below the Moves and Sub-Moves. As discussed before, both Mazzi's and Khemlani, Neda and Mumtaz Ali's studies limit their analysis at the level of Moves and Sub-Moves. However, it must be admitted that the truth of these statements is conditioned on the limitation of time and resources for this research. There could be in fact other comparative genre analysis studies of legal judgments which include the study of Steps and reporting verbs that have been made in Malaysia or somewhere else but this research has failed to discover and acknowledge.

2.7 Summary

The literature review aims at presenting the minimal requisite background knowledge that is required to conduct the study. The study of genre and their multidimensional and multidisciplinary approaches offer a wide range of options on how to analyze a genre. Legal genre studies have had a rather long history. Examining Bhatia's progression, in particular, indicates that there is push to view genre in a more abstract and generalized manner. However, from this review, it must be argued that the research of for the subgenres of legal judgements and their comparisons remains valid. There is especially a need to examine the non-discriminative strategies or Steps of the rhetorical structures.

CHAPTER 3: METHODS AND METHODOLOGIES

3.1 Introduction

This chapter contains a discussion of the research design and the methods behind the analyses of rhetorical structures, communicative purposes and reporting verbs. Additionally, this chapter also attempts to explain the research limitations of having choosing a particular set of methods and methodologies and how these limitations impact the data collection and data analyses.

3.1.1 Research Design

The research design for this study is particularly influenced by Mazzi's (2007) investigation. In particular, Mazzi's comparative analysis of judgements presents a prospective path or research design to analyze judgments between legal systems and the possible relations between Moves and the reporting verbs. Clearly, not all of Mazzi's materials and methods are followed exactly. Rather than comparing legal texts from three legal systems, this study limits itself to only two legal systems. Due to the limits of time and resources, the study could only analyze half the amount of legal cases that Mazzi does with his research. Additionally, this study seeks to identify the categories of functions for the reporting verbs. In Mazzi's case, he examines a particular reporting such as the reporting verb HOLD which is prominent in his corpus.

Overall, this study follows a mixed method approach combining qualitative analysis based from genre analysis and the categorization of reporting verbs supplemented by the concordance input from a corpus software. A purposive (non-probabilistic) sampling is conducted (Creswell 2014). Emulating Mazzi's comparative theme, this research adapts a combination of twenty legal judgements with ten taken from England and Wales, and another ten from Malaysian courts. The main criteria of selection of the legal judgments is homogeneity. The judgements selected are approximately similar in terms of published

year, lengths of texts and hierarchy of courts. The cases selected are from the year 2017.

The main sources are from these websites:

- 1) <http://www.kehakiman.gov.my/ms/alasan-penghakiman-terdahulu>
- 2) http://www.bailii.org/form/search_cases.html

The first website is the official website for the Chief Registrar’s Office of the Federal Courts of Malaysia. According to the website, the Office of the Chief Registrar have two important functions: a) it implements the administration of justice in accordance with the power of justice as provided under the law and b) to protect the judicial independence in interpreting of laws passed by the legislative (Office of The Chief Registrar Federal Court of Malaysia, n.d.). Thus, the website serves as an official website containing legal cases. Another important reason is that the legal cases in the website are accessible to the public. This accessibility permits the study to select cases without incurring any costs – an important condition for a research with limited budget. This is also the reason why the second website is chosen. The British and Irish Legal Information Institute is a website containing primary legal sources from British and Ireland which are made available for the public for free.

Table 3.1 describes the basic characteristics of data selected deriving from two main sources. There are five homogeneous criteria between the two legal systems. These are the year of publication, court hierarchy, division, approximate length in terms of words, and the number of selected cases being ten from each legal system

Table 3.1: Metadata of legal judgements

| | Malaysia | England and Wales |
|-------------------|---|---|
| <i>Sources</i> | http://www.kehakiman.gov.my/ms/alasan-penghakiman | http://www.bailii.org/form/search_cases.html |
| <i>Copyrights</i> | Hakcipta Terpelihara 2017 © Pejabat Ketua Pendaftar Mahkamah Persekutuan Malaysia | Bailii, ICLR, Crown copyright |

Table 3.1 continued

| | Malaysia | England and Wales |
|-------------------------------------|-----------------|--------------------------|
| <i>Year Published</i> | 2017 | 2017 |
| <i>Cases published from website</i> | 172 cases | 232 cases |
| <i>Court</i> | Court of Appeal | Court of Appeal |
| <i>Division</i> | Criminal | Criminal |
| <i>Lengths</i> | 4000-6000 words | 4000-6000 words |
| <i>Sampling (Purposive)</i> | 10 cases | 10 cases |

Table 3.2 presents the twenty cases from the Malaysian and English legal systems that are selected for the analysis. The cases are arranged according to four information: the coding, the case titles plus the dates, legal citation and the word lengths. The ten coding for the ten Malaysian legal judgment starting from MC1 to MC10 will be employed to signify the cases throughout this study.

Table 3.2: Malaysian legal judgements

| | Coding | Case titles/dates | Legal citation | Word lengths |
|----------|---------------|--|-----------------------|---------------------|
| 1 | MC1 | Nasraf Bin Juan v Pendakwa Raya/ 27/01/2017 | S-05(M)-109-03/2016 | 5,592 words |
| 2 | MC2 | Sivabalan A/L Bathumalai v Public Prosecutor/ 08/02/2017 | B-05(M)-60-02/2016 | 5,020 words |
| 3 | MC3 | Public Prosecutor v Juli Kanoi/ 09/03/2017 | S-05-39-02/2015 | 5,304 words |
| 4 | MC4 | Public Prosecutor v Ahmadi Bin Moin & 1 Lagi/ 19/04/2017 | J-05(LB)-206-07/2015 | 4,477 words |

Table 3.2 continued

| | Coding | Case titles/dates | Legal citation | Word lengths |
|-----------|---------------|---|-----------------------|---------------------|
| 5 | MC5 | Akbar Ali Bin Abdul Rahman v Public Prosecutor/ 31/05/2017 | R-05-15-01/2015 | 5,762 words |
| 6 | MC6 | Cheng Jinhui v Public Prosecutor/ 18/07/2017 | S-05(M)-233-06/2016 | 4,544 words |
| 7 | MC7 | Mohamed Ismail Bin Sahul Hameed v Public Prosecutor/ 14/07/2017 | P-05-(M)-319-11/2015 | 4,505 words |
| 8 | MC8 | Abou Sylla v Public Prosecutor/ 30/08/2017 | W-05(M)-168-05/2016 | 5,046 words |
| 9 | MC9 | Public Prosecutor v Khairuddin Bin Abu Hassan & 1 Lagi/21/02/2017 | W-09-320-11/2015 | 5,267 words |
| 10 | MC10 | Amin Bin Hatai V Public Prosecutor/ 24/1/2017 | S-05(SH)-292-11/2015 | 4,537 words |

The England and Wales legal judgements selected are presented in Table 3.3. The coding for the England and Wales cases starts with EWC1 and ends with EWC10.

Table 3.3: England and Wales legal judgements

| | Coding | Case titles/dates | Legal citation | Word lengths |
|----------|---------------|--------------------------------------|---|---------------------|
| 1 | EWC1 | Mula & Ors, R v/ 31 January 2017 | [2017] EWCA Crim 32, [2017] 4 WLR 124 | 4,627 words |
| 2 | EWC2 | Clarke & Anor, R. v/ 9 February 2017 | [2017] EWCA Crim 37, [2017] 1 WLR 2886 | 4,203 words |

Table 3.3 continued

| | Coding | Case titles/dates | Legal citation | Word lengths |
|----|---------------|--|---|---------------------|
| 3 | EWC3 | King, R. v / 03 March 2017 | [2017] EWCA Crim 128, [2017] 4 WLR 95 | 5,453 words |
| 4 | EWC4 | Kay, R v / 23 May 2017 | [2017] EWCA Crim 647, [2017] 4 WLR 121 | 5,259 words |
| 5 | EWC5 | Agera & Anor v R / 09 June 2017 | [2017] EWCA Crim 740, [2017] 4 WLR 115 | 5,129 words |
| 6 | EWC6 | Mirza v London Borough of Newham/ 05 July 2017 | [2017] EWCA Crim 924, [2018] 1 WLR 619 | 5,127 words |
| 7 | EWC7 | Kitchener v R/ 07 July 2017 | [2017] EWCA Crim 937, [2017] 4 WLR 159 | 4,703 words |
| 8 | EWC8 | Uddin, R v (Rev 1)/ 26 July 2017 | [2017] EWCA Crim 1072, [2017] 1 WLR 4739 | 5,546 words |
| 9 | EWC9 | Ray, R v/ 26 September 2017 | [2017] EWCA Crim 1391, [2018] WLR 1148 | 5,298 words |
| 10 | EWC10 | Chapman & Ors, R v (Rev 1)/ 01 November 2017 | [2017] EWCA Crim 1743. | 4,791 words |

3.2 Methods of Analysis for Moves and Steps

This section contains expositions concerning the procedures used for analysis of Moves and Steps. Additionally, there are discussions concerning the guideline for the bottom-up criteria to identify the Moves and Steps. This section ends with the issue of categorizing the Moves as either being obligatory or conventional or optional. A graphical representation of the methodological frameworks adapted and applied for Moves, Sub-Moves, Steps and Communicative Purposes is presented in section 3.5.

3.2.1 Procedures of Analysis for Moves and Steps

The general procedures of analysis for the Moves, Sub-Moves and the Steps are partially adapted from Cotos, Huffman and Link (2015). In their study, the main objective of the analysts is to progress the pedagogical method of genre study with a computer assisted writing tool. The technological application for the analysis of academic articles genre, however, is not a concern for the methods of this research. The application of Cotos, Huffman and Link's technological methods, as significant as it is, goes beyond the scope and resources for this limited study of only twenty legal judgements.

Oppositely, for the purpose of this study, Cotos, Huffman and Link's research indicates and validates that the application of the computer assisted software is still grounded or at least begins with interpretative readings of the text to derive Moves and Steps segments. Cotos, Huffman, and Link (2015), following Johnson & Christensen (2004), describe their procedures as an essentially inductive analysis. They describe their process of analyzing as the following:

- 1) Close readings of the samples

- 2) Distinguishing segments based on their global and local rhetorical purposes
- 3) Categorizing the segments into functional-semantic discourse units of analysis which is followed by a tentative labelling
- 4) Addressing duplication and reducing the number of categories
- 5) Grouping categories to create a tentative Move/Step schema

3.2.2 Bottom-Up Guideline Criteria to Identify Moves and Steps

Additionally, not all of the categories of Steps are provided by Bhatia (1993) for the analysis legal of the judgment genre. A discovery procedure is essential to identify new and unknown Moves and Steps. Consequently, a bottom-up analysis is required in order to supplement Bhatia's framework of four Moves. According to Biber, Connor and Upton (2007), unlike a top-down analysis, a bottom-up is an analysis that develops from a set of linguistic criteria rather than a set of possible discourse unit types determined by an analytical framework. Clearly from the discussion in the previous chapter and section, this research is adapting the top-down categories of Moves and Sub-Moves developed by Bhatia (1993). Additionally, Cotos, Huffman and Link (2015) also serves a general top-down procedure of analysis of Moves and Steps for this study. Consequently, the implementation of a bottom analysis that starts from a linguistic description is not necessary for study. Instead, the bottom up analysis in this study skips the lower analysis of linguistic description and try to fill in the blank for the segments of Moves or Steps that is not provided by Bhatia's analysis at the higher level of communicative/functional categories. A bottom-up analysis for this study is essentially grounded by the three general additional criteria which are derived from reading and analyzing the twenty legal judgements. The bottom-up comparative analysis of the twenty cases of this research produces three basic criteria. In summary, the guiding criteria to determine the Moves of a legal judgements are essentially a combination of the content, structure and function.

The first criterion, the content, is what the Move is about. This means that a type of content or information is likely to be found in a type of Move. However, the content by itself is not sufficient to identify the Move. This is because that a type of information might be repeated in other Moves but function differently. Therefore, the characteristics of a Move is a combination of different criteria. Consequently, the second criterion or the structure of the Move is equally important to determine the Move.

The second criterion of structure refers to positioning or order. A Move is characterized and identified according to how the Move is structured or positioned in the text as a whole. This condition strongly suggests that each Move has a prototypical position in a text that contributes to the comprehension and purpose of the text. However, this criterion is not prescriptive and that any structural deviation from the norm is identified based on these prototypical structures.

The third and final criterion is the function. These criteria refer directly to the functions of Moves that are derived from an established framework. The list below contains the guiding criteria for each Move of legal judgments. The combination of these three criteria of the Move are realized and identified with the Steps.

Move 1: Identifying the Case

This Move realizes several Steps that identifies the case. These Steps are:

- i. Stating court location, references, dates, court hierarchy and division
- ii. Naming parties of dispute
- iii. Stating lower court location, references, court hierarchy and division
- iv. Naming lower court's parties of dispute
- v. Naming presiding and authoring judges
- vi. Naming legal representatives for parties of dispute

Move 2: Introducing the Case

This Move realizes several Steps that introduces the case. These Steps are:

- i. Summarizing the Trial of Lower Court
- ii. Reading Criminal Charge(s)
- iii. Summarizing the Appeal

Move 3: Establishing Facts of the Case

In terms of content, this Move contains the summary of facts of the case. These are typically chain of events that are ordered chronologically. In this aspect, this Move might be described as a kind of narration. The summarized events contain the prosecution case and the defense case and the facts are derived from the testimony of witnesses, the accused and the victims. Functionally, this Move establishes the facts of the crimes from the point of view of the prosecution and the accused or defendant. The Steps that establishes the case are:

- i. Summarizing the Case
- ii. Summarizing the Prosecution Facts
- iii. Summarizing the Defense Facts
- iv. Describing the law

Move 4: Arguing the case

Sub-Move 1: Stating History of the Case

In terms of content, this Move includes the history of the case of the earlier judgement in the previous trial in the lower court. According to Bhatia (1993), this refers to the findings or the statements of reasoning and conclusion of the judges of the lower court.

This Move also contains the basis of appeal that the appellant make to argue against the findings of the judges of the lower court. Functionally, this Move summarizes to the reader the findings of the lower court and contains the premises of arguments that will be reasoned fully in the next Sub-Move: presenting arguments. In effect, the history of the case creates a context and purpose for the next Sub-Move. The Steps that states the history of the case are:

- i. Stating Background of Findings
- ii. Stating Findings of Prosecution Case
- iii. Stating Findings of Defense Case
- iv. Stating Verdict(s) of Earlier Trial
- v. Reporting Permission to Appeal
- vi. Summarizing Basis of Appeal
- vii. Stating Background of Appeal
- viii. Stating Background of Appellant

Sub-Move 2: Presenting Arguments

In terms of content, this Move contains the arguments, reasoning, authority and conclusions that the appeal judges deliberate. All relevant arguments of the appellants, respondents and the findings of the judges of the lower court that are summarized in the previous Sub-Move are restated, examined and evaluated by the appeal judges. To argue, the appeal judges identify the issue, state their legal position and confirm this position with the precedent of previous judgements also known as judicial precedents. Consequently, the appeal judges might favor the position of the appeal or are against the appeal. Functionally, this Move states all the necessary arguments in order to reject or allow an appeal. The Steps that presents the arguments are:

- i. Identifying the Issue
- ii. Determining Position
- iii. Stating Legal Authority
- iv. Providing Reasons
- v. Saying Gratitude

Sub-Move 3: Deriving Ratio Decidendi

Ratio(s) are points of law that are derived in order to solve the legal disputes. The judges in their act to solve problematic or novel legal meanings or situations might derive legal arguments that becomes a new source of law or precedent. However, the nature of ratio is often complex and elusive. In effect some ratios are implicit and is not expressed directly. A possible method to find an expressed version of this Move is to locate it near the appeal judges' legal positions of each arguments. Functionally, this Move expressed legal proposition(s) that have an effect to change the meaning of law. The Step that expresses the ratio is:

- i. Expressing Ratio

Move 5: Pronouncing Judgments

In terms of content, this Move contains the verdict or the guidelines of the judgments. Functionally, this Move declares the verdict of the appeal. The Steps are:

- i. Expressing Verdict(s)
- ii. Expressing Guideline(s)

3.2.3 Obligatory, Conventional and Optional Moves

The identification of Moves for this study is divided into obligatory, conventional and optional Moves. These three categories are adapted by combining Kanoksilapatham's

(2005) study and Biber, Connor and Upton's (2007) analysis. For Kanoksilapatham, the Moves for articles are divided at the cut-off frequency of 60% of occurrence in which conventional Moves occurs in 60% and above and for optional Moves, they occur at below 60%. Similarly, Biber, Connor and Upton (2007) suggests a similar cut-off frequency of 60%, but defines the categories of Moves that occur in 60% as obligatory Moves and those occur below 60% as optional Moves. In this research, it is suggested that if a particular Move occurs at a 100%, it is regarded as 'obligatory'. On the other hand, if the occurrence ranges from 60-99%, a Move will be classified as 'conventional' and if the occurrence of a Move is below 60 %, it is considered as 'optional'.

Ideally, an inter-rater reliability test should balance the inputs of both the subject-specialist who knows and practices the genre and the field-specialist who understands the theoretical aspects of genre. Because of the constrain of time, this research is only able to enlist the help of one field-specialist to conduct the test. The field-specialist is a genre analysis expert. We sit in a session where we look into two legal judgements, with one from Malaysia and the other from England and Wales. Before the session, the field-specialist asks for a sample of a legal judgement and a set of criteria to determine the rhetorical structures such as Moves and Steps in order to prepare. During the session, the field-specialist applies the set of criteria to the two legal judgements and inquires the researcher of this study any issues concerning the Moves or Steps. At the end of the session, following the field-specialist's guidance we agree that the analysis to be of 90% reliable.

3.3 Procedural Analysis for Communicative Purposes

As mentioned in the previous chapter, Bhatia (1993) research provides four general communicative purposes for the study of legal cases. Because the object of analysis are essentially legal judgements, it can be concluded that not all four communicative purposes

are relevant to the analysis. Legal judgements are primarily used in court and such the educational motives of its use is only secondary and could be disregarded for this study.

The two communicative purposes relevant for this study are:

- 1) Serving as authentic records of past judgments
- 2) Serving as a source of law containing rules of law or *ratio decidendi*

3.4 Procedural Analysis for Reporting Verbs

This section contains expositions concerning the procedures and instrument for analysis of reporting verbs. The main instrument for corpus analysis is AntConc software (version 3.4.4w).

The identification and categorization of reporting verbs are as follows:

- 1) List the reporting verbs that is segmented by the rhetorical structures of the legal judgements manually.
- 2) Identify additional verbs based from the list of reporting verbs through to the use of the search function of the AntConc software.
- 3) Interpret the discourse function of the reporting verbs into functional categories

3.4.1 Guideline Criteria to Categorize Reporting Verbs

The process of identifying and categorizing the reporting verbs for this analysis followed a set of criteria. The first criterion was borrowed and adapted from the grammatical description of reporting verbs and its realizations in the reporting clause and the reported clause (Downing 2015). In her summary, Downing (2015), describes that when a speaker reports an utterance of others or their own, the speaker has a choice to present the utterances directly or indirectly. These two choices are known as direct reported speech or quoted speech and indirect reported speech. A direct or quoted speech aims to present the reported speech in verbatim whereas an indirect speech shifts the

deictic elements (personal pronouns, tense and etc.) of the direct reported speech. This indirect speech has the effect of representing the meaning of what is reported in full or in gist (Downing 2015).

Grammatically, the reporting verbs of verbal and cognition in these two types of speech are realized in the reporting clause which contains the subject being the speaker and the reporting verbs. On the other hand, the reported clause contains the reported statements or cited materials which are reported by the subject from the reporting clause. Consequently, the reporting verbs in this analysis have been only selected if the verbs are realized in the reporting clause and its corresponding reported clause.

Table 3.4 presents an example of the reporting verbs realizing the reporting clause and accompanying reported clause. In this example, the subject is Supreme Court which used the reporting verb 'held' to report a legal rule in the reported clause. The legal rule in the reported clause states how a common law duty of disclosure ss. 3 and 7A of the Criminal Proceedings and Investigation Act 1996. Furthermore, this legal rule from the reported clause is cited from a case, Chief Constable of Suffolk Constabulary & another [2014] UKSC. Following from this general understanding, it can be tentatively concluded that reporting verb 'held' is being used not only to report but to state legal authority for the use of an argument in the judgement.

Table 3.4: An example of the realization of reporting verbs

| <i>No.</i> | Subject | Verb | Reporting clause | Reported clause | Descriptions |
|------------|----------------|-------------|---|--|-------------------------|
| <i>1</i> | Authority | held | In R (Nunn) v Chief Constable of Suffolk Constabulary & another [2014] UKSC 37, [2015] AC 225 the Supreme Court held | that a common law duty of disclosure exists in addition to the statutory duty under ss.3 and 7A of the Criminal Proceedings and Investigations Act 1996 (CPIA 1996). | Stating legal authority |

Additionally, the reporting verbs that form indirect speeches are further filtered: the selection of reporting verbs for this analysis has ignored and dismissed reported clauses that merely contain the gist of meaning of cited statements. Rather, the verbs of indirect speech that have been selected realized reported clause that expressed its cited statements in its fullest or near to fullest meanings. This intentional discrimination is made in order to ease interpretations and categorizations and avoid potential vagueness that could arise from a concentrated reported clause. Consequently, the reporting verbs that are selected realized the clauses in full in which its subjects and predicates are identified or identifiable.

The second criterion of categorizing the reporting verbs enters from a line of inquiry on reporting verbs that culminated with Hyland's 2002 taxonomy of verbs and the verbs' evaluating significance in academic writing. The taxonomy presented by Hyland represents a complex relationship between the writer and the cited authors with a focus on how reporting verbs represent different activities of research and how the writer

employs the verbs to evaluate the cited materials from different authors in order to create a niche or research space for the writer. The analysis of the reporting verbs in this research could only adapt Hyland and his successor's line of inquiry in part. As such, the analysis that reporting verbs reflects different forms of activities within and outside the discourse is central to the identifying and categorizing of reporting verbs in legal judgments. The categorizing of verbs into different functions that reflects the activities legal discourse of legal judgements have been set out below. However, the categories provided could not adhere to Hyland's extensive taxonomy for two reasons:

- 1) The taxonomy is mainly derived from academic texts and
- 2) The taxonomy consistently pursues the relations between activities and evaluative functions which is beyond the scope and purpose of this research.

Consequently, this research presents a basic taxonomy of reporting verbs that reflects the different activities of discourse that are reported in the legal judgments.

The third and final criterion for the identifying and categorizing of the reporting verbs determines the characteristics of functions for the verbs. While the first criterion provides the formal guidelines to specify the prototypical clausal structures of reported speech in which the verbs manifested, the second criterion adapted from Hyland provides the orientation or focus that the verbs reflects or represents the discourse activities of the texts. However, by not adapting Hyland's extensive taxonomy, the second criterion does not provide sufficient concepts and characteristics to define and categorize the verbs into a clear and distinguished functions.

It is only when providing the third criterion that the reporting verbs could be categorized into their respective functions. The third criterion is an adaptation of Mazzi's (2007) analysis of reporting verbs in the Move 'Arguing the Case'. Mazzi discovers that through using both manual and computer-assisted study of frequencies, reporting verbs

are one of the discursive formulation tools in judicial arguments. Thus, it is possible to conclude that there are functional relations between reporting verbs and their realization in the Moves. Thus, the third criteria of categorizing of reporting verbs is approached sourcing from the characteristics of the genre itself. However, unlike Mazzi's analysis of reporting verbs, this study attempts to identify the function of reporting verbs beyond the Move, 'Arguing the Case' and widens the search to all Moves of a legal judgement. Furthermore, unlike Mazzi's corpus analysis which looks into the particular frequency of a specific reporting verb such as Hold and analyze the association of semantic patterns of the verb, this study does not make such attempt. Instead, this study attempts to produce a basic taxonomy of functional categories of reporting verbs based on their realization in each Moves of the legal judgments. Arguably, this attempt to produce a basic taxonomy is influenced by Hyland's (2002) work more than Mazzi's. This is what is meant when this study suggests in Chapter 2 that a way forward to analyze reporting verbs is to attempt the combination of Hyland's and Mazzi's analysis. However, clearly from this basic explanation, the attempt at combination is necessarily an adaptation which requires the analysis to be much simpler than the one produced by Hyland and Mazzi. Additionally, any issue of inconsistency by adapting these two approaches might only arise if the approaches are followed exactly.

Subsequently, this approach requires that the categories of verbs and their functions are identified according to the functions of the rhetorical structures or Moves and the general communicative purposes of the legal judgments. The basic categories of the verbs and its respective are presented and defined in Table 3.5.

For this research, the analysis of reporting verbs based on the three criteria above are general guide to construct the nine basic categories. The categories are developed gradually from going through the selected twenty cases. Initially, the categories are

identified by going through a set of two or three legal judgements. In each identification process, tentative functional labels are added with a basic description of the reporting verbs. Eventually, these nine categories are found in all twenty judgements realizing in each Moves and the analysis settles on the current labelling and categories. Each of the nine functional labelling is based on the nature of each Move. For example, in Move 3, the label “Testifying” is based on the nature Move 3, which is to reports facts of a case. Typically, the facts are testimonies of the witness of case, hence the reason for the label “Testifying”. Similarly, the other functional labels of reporting verbs are identified based on the same reasoning. The discussion of the categories of reporting verbs is presented in the next chapter. Table 3.5 presents the categories of reporting according to their respective functions in the four Moves of legal judgements. A graphical representation of the methodological frameworks adapted and applied for this reporting verbs is presented in section 3.5.

Table 3.5: Reporting verbs and functions in Moves

| <i>Moves</i> | Move 2: Introducing the Case | Move 3: Establishing Facts of the Case | Move 4: Arguing the Case | Move 5: Pronouncing Judgments |
|--|---|---|---|--|
| <i>Types of Reporting Verbs</i> | Orienting | Testifying | Addressing | Resolving |
| | | Describing the Law | Determining | |
| | | | Citing Authority | |
| | | | Citing Non- Authority | |
| | | | Commanding | |

3.4.2 Issues Regarding the Use of Corpus with Genre Analysis

Following Handford's discussion (2012), it must be recognized that there are reservations on the use of corpus methods to facilitate a genre analysis or to conduct discourse analysis in general. Handford identifies four significant issues. The first issue is the sampling size of the study. How big or small for a specialized genre corpus need to be? Answering this question, Handford suggests that a specialized genre corpus need not be as large as the register analysis research. Justifying from Tognini Bonelli's (2001) position, Handford concludes that it seems plausible and preferable for a more specialized genre corpus to be smaller. The second issue is on context. There are arguments from Widdowson (1998) that corpus data is not authentic data but at best a decontextualized sample. Countering this, Handford argues that the genre analyst is not only describing, but interpreting and explaining the data which require the analyst to be familiar with the wider social-cultural dimension of the discourse. Following this position, it appears that Handford affirms the role of corpus method to be of a supportive function rather than a total renovation of the genre analysis method. This understanding relates to the third issue concerning quantitative analysis.

Handford acknowledges that due to the smaller size of a specialized genre corpus in comparison to register analysis of lexico-grammatical features, a genre analyst is not limited to a number-crunching quantitative analysis. The smaller size of the genre corpus equally permits a combination of qualitative analysis plus a quantitative counterpart. This possible combination of quantitative and qualitative analyses, according to Handford, provides a way out to the argument that the corpus methods limits its user to a bottom-up analysis. Oppositely, a specialized genre corpus permits a top-down analysis and in addition to the typical bottom-up analysis that is used among corpus analyst. Conclusively, two lessons should be taken from Handford's discussions:

- 1) That a corpus approach is required to support human intuition to find linguistic patterns of a genre analysis
- 2) That a research using corpus is not governed by the data but instead, it is based upon the research questions that researcher wants to answer.

The complementarity of the corpus method to discourse analysis in general has also been acknowledged by Flowerdew (2012). Flowerdew's concludes that corpus linguistics has a central role rather than merely functions on the peripheral of discourse analysis.

Handford's conclusion, in particular to this research, should clarify the purpose and limits of using a corpus software. Firstly, the use of corpus is not an attempt to find the frequency of reporting verbs available from the twenty cases but rather to support the manual processing of categorizing the verbs in relation to their occurrences in the rhetorical structures. The third research question is not about the particular occurrences of reporting verbs and their relative frequency but to discover and categorize the functions of reporting verbs within their respective rhetorical structures. In this situation, the usage of the corpus software is minimal at best which do not even require the verb tagging from the CLAWS device.

As far as this research has attempted to explore, the reporting verbs are a specific class of verb that cannot be identified with the CLAWS device. Instead the process of identifying the reporting verbs is conducted manually and is supported by the concordance search function of AntConc software in order to reaffirm manual findings of reporting verbs.

Secondly, the software is used to seek other reporting verbs that the naked eyes could have missed through initial set of reporting verbs that is found manually. Clearly from this brief this explanation, it must be expressed that the process of identifying the

reporting from twenty judgements is somewhat cumbersome and time-consuming even with the help of the concordance functions of AntConc. However, even with this minimal use of corpus method, it indicates that the human intuition and eyes could be facilitated through the use of corpus method.

3.5 Graphical Representation of the Research Methodologies Frameworks

Figure 3.1 below represents an approximation of the graphical representation of the different research methodologies being conducted in this study:

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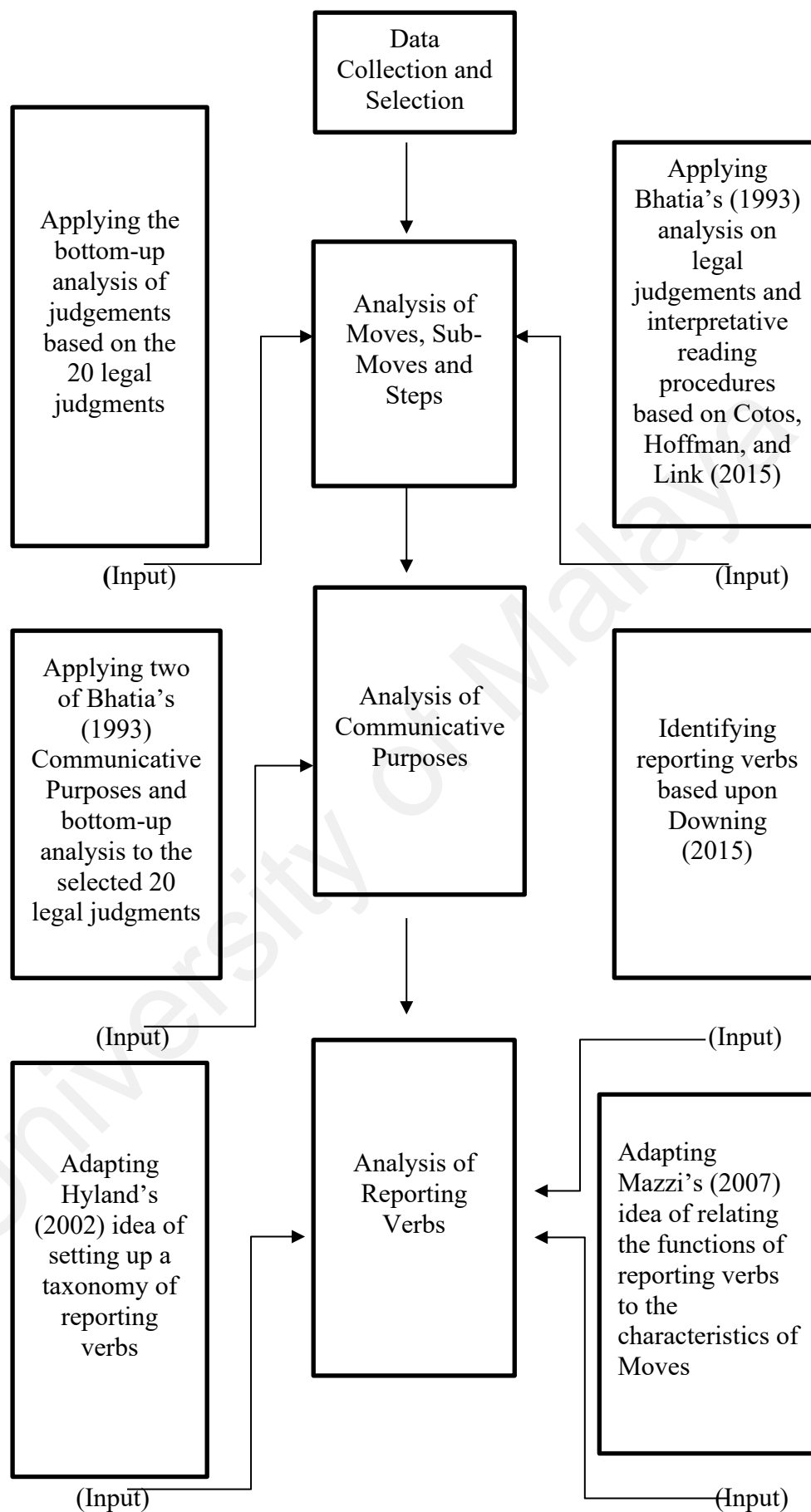


Figure 3.1: Graphical representations of research methodologies frameworks

3.6 Summary

This chapters presents the research designs and the necessary justifications for the choices of methods and methodologies. Each procedure for each question that guides the analysis and its conclusions are not without its disadvantages. For example, this comparative research of genre between two the legal systems could have benefitted from any insight of the discourse community of judges. However, such opportunity is not available. Thus, the choices of methods constrain the findings and their generalizations.

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CHAPTER 4: FINDINGS AND DISCUSSIONS

4.1 Introduction

This chapter presents the results of the three research questions established in chapter 1. These findings are divided into two parts: the results for the Malaysian Court of Appeal, followed by the results of England and Wales Court of Appeal and the comparison between the two. The findings concern the rhetorical structures and the communicative purposes of the legal judge. Part one is followed by part two which concerns the functions of reporting verbs in the rhetorical structures of the legal judgments.

Part 1

4.2 Rhetorical Structures of Court Appeal (CA) Legal Judgments

Originated from Bhatia's (1993) framework of legal judgments, the list of content below indicates that the analysis of Move has expanded from 1993's rhetorical structure. With the addition of one new Move: *Introducing the case*, Bhatia's four basic Moves legal cases have been expanded into five basic structures. Furthermore, the analysis of this study attempts to include the lower level rhetorical structure unit of Steps which was not explicitly described in Bhatia's (1993) analysis.

1) Move 1: Identifying the Case

- a) Step 1: Stating Dates, Location, References, Court hierarchy and Division
- b) Step 2: Naming Parties of Dispute
- c) Step 3: Stating Lower Court Location, References, Date, Court Hierarchy, and Division
- d) Step 4: Naming Lower Court's Parties of Dispute
- e) Step 5: Naming Presiding and Authoring Judges
- f) Step 6: Naming Legal Representatives for Parties of Dispute

- 2) Move 2: *Introducing the Case
 - a) Step 1: **Summarizing the Trial of Lower Court
 - b) Step 2: **Reading Criminal Charge(s)
 - c) Step 3: **Summarizing the Appeal

- 3) Move 3: Establishing Facts of the Case
 - a) Step 1: Summarizing the Facts of the Case
 - b) Step 2: Summarizing the Facts of Prosecution
 - c) Step 3: Summarizing the Facts of Defense
 - d) Step 4: **Describing the law as Facts

- 4) Move 4: Arguing the Case
 - i. Sub-Move 1: Giving a History of the Case
 - a) Step 1: Stating Background of Findings
 - b) Step 2: Stating Findings of Prosecution Case
 - c) Step 3: Stating Findings of Defense Case
 - d) Step 4: Stating Verdict of Earlier Trial
 - e) Step 5: Reporting Permission to Appeal
 - f) Step 6: Summarizing Basis of Appeal
 - g) Step 7: Stating Background of Appellant
 - h) Step 8: Stating Background of Appeal
 - ii. Sub-Move 2: Presenting Arguments
 - a) Step 1: Identifying the Issue
 - b) Step 2: Determining position
 - c) Step 3: Stating Authority
 - d) Step 4: Providing Reasons
 - e) Step 5: **Saying Gratitude

iii. Sub-Move 3: Deriving Ratio Decidendi

a) Step 1: Expressing Ratio

5) Move 5: Pronouncing Judgements

a) Step 1: Expressing Verdict(s)

b) Step 2: **Expressing Guideline(s)

*New Move **New Steps

Move 1 which is displayed above, Identifying the Case, contains six Steps which realize different strategies that identifies the Court of Appeal judgements. The second new Move, *Introducing the case*, realizes three different strategies. The third Move, *Establishing the Case*, contains four different Steps. The fourth move, *Arguing the Case*, being more complex are divided into three Sub-Moves. Within each Sub-Move, there are different Steps or strategies. In Sub-Move 1 of Move 4, *Giving a History of the Case*, contains the highest number of Steps among all Moves and Sub-Moves with eight different Steps. Sub-Move 2 of Move 4, *Presenting Arguments*, realizes five different Steps. The third and final, Sub-Move 3 of Move 4, *Deriving Ratio Decidendi*, contains only a single Step. The fifth and final Move, *Pronouncing Judgments*, contains two different Steps. Overall, the analysis of the twenty Court of Appeal legal judgments realizes five Moves, three Sub-Moves and twenty-nine Steps.

4.3 Discussion on Obligatory, Conventional and Optionality of Moves

The double five bars in figure 4.1 indicate that both Malaysia and English legal judgements generally realize comparable five Moves. Thus, this similarity suggests, from the collected data at least, that the Malaysian and English cases are comparatively similar and belonging to a similar legal genre. The data in the graph above indicates that all five Moves of the Malaysian legal judgements are at a hundred percent. The English judgements have three Moves; Move 1, Identifying the Case, Move 3, Establishing Facts

of the Case, and Move 4, Arguing the Case, which occur at a hundred percent rate. The other two; Move 2, Introducing the Case, and Move 5, Pronouncing Judgments, occurs at 90 percent rate.

These different rates of percentages of Moves distribution provide a means to categorize the Moves in terms of necessity and optionality. By combining Kanoksilapatham's (2005) study and Biber, Connor, and Upton's (2007) analysis, there are three different categories: obligatory, conventional and optional. The first category requires that a set of Moves is obligatory if the Moves occur at a hundred percent rate. The second category states that the cut-off point of Moves for conventional categories are from 60% to 99%. The third category of optionality occurs at the rate below sixty percent. Consequently, all of the Moves occur for the Malaysian cases are obligatory Moves with a hundred percent distribution. In the England and Wales cases, Move 2 and 5 occur with a ninety percent frequency making these Moves conventional. The rest of the three Moves, Move 1, 3 and 4 occurs at hundred percent making these Moves obligatory. In summary, all of the five Moves for Malaysian cases and three Moves for English cases are obligatory. Two Moves of the English cases are conventional. For both Malaysian and English cases, there are no Moves that are categorized as optional.

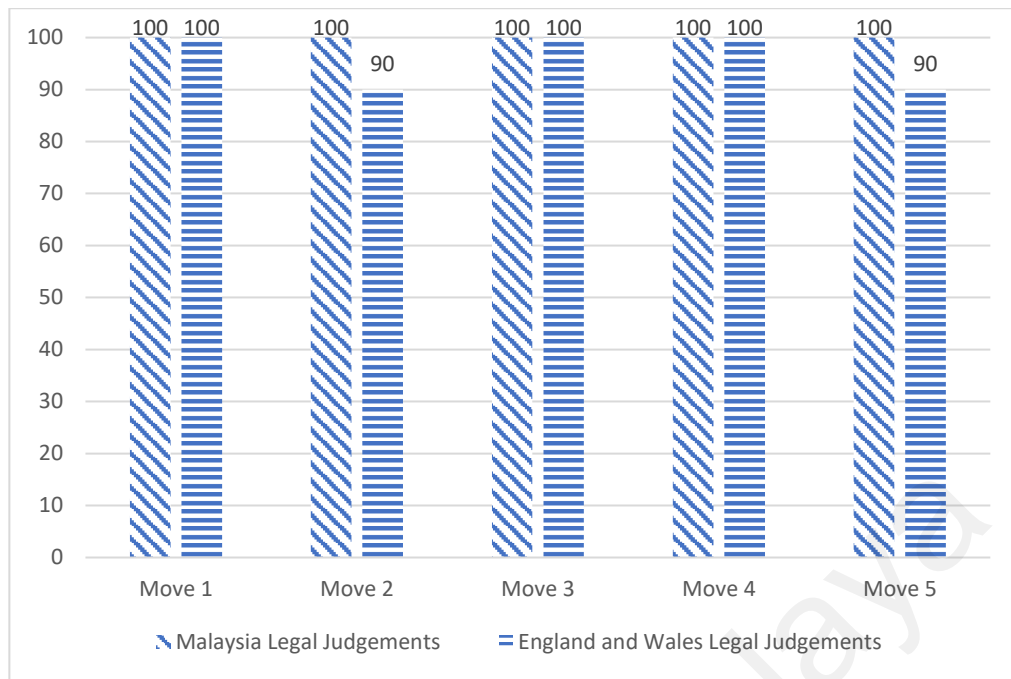


Figure 4.1: Percentage of occurrences of Moves in Malaysia and England and Wales legal judgements.

4.4 Sequential Structures of Court of Appeal (CA) Legal Judgements

This section provides two Tables (4.1 and 4.2) that outlines the sequential structures of Malaysia and England and Wales Court of Appeal judgements. The Tables are followed by a brief analysis of these sequences of Moves.

The content in Table 4.1 indicates that eight of the Malaysian legal judgements realize equivalent sequences of structures. MC1, MC2, MC3, MC5, MC6, MC7, MC8 and MC10 are structured according to eight Move-unit sequences: M1-M2-M3-M4, which repeats into M3-M4 again and continues on to M5 and finally repeats into M1. In sum, these cases are made of eight parts. The remaining two legal judgements follow a different pattern. MC4 and MC9 have a comparatively simpler Moves structure: M1-M2-M3-M4-M5-M1. The only repeated Move unit is M1 which occurs at the end. MC4 and MC9 are made of six parts. In conclusion, there are two patterns for the Malaysian legal judgements.

Table 4.1: Sequential structures of Moves of Malaysian CA legal judgements

| <i>Malaysian CA Judgements</i> | Progression of Moves |
|--|-----------------------------|
| <i>MC1</i> | M1-M2-M3-M4-M3-M4-M5-M1 |
| <i>MC2</i> | M1-M2-M3-M4-M3-M4-M5-M1 |
| <i>MC3</i> | M1-M2-M3-M4-M3-M4-M5-M1 |
| <i>MC4</i> | M1-M2-M3-M4-M5-M1 |
| <i>MC5</i> | M1-M2-M3-M4-M3-M4-M5-M1 |
| <i>MC6</i> | M1-M2-M3-M4-M3-M4-M5-M1 |
| <i>MC7</i> | M1-M2-M3-M4-M3-M4-M5-M1 |
| <i>MC8</i> | M1-M2-M3-M4-M3-M4-M5-M1 |
| <i>MC9</i> | M1-M2-M3-M4-M5-M1 |
| <i>MC10</i> | M1-M2-M3-M4-M3-M4-M5-M1 |

Legend:

M1=Move 1: Identifying the Case;

M2=Move 2: Introducing the Case;

M3=Move 3: Establishing Facts of the Case

M4=Move 4: Arguing the Case

M5=Move 5: Pronouncing Judgments

The content in Table 4.2 contains realization of sequential structures patterns of England and Wales Court of Appeal judgements. Out of ten cases selected for analysis, seven cases follow a generic or simple pattern made of five parts of Moves. Thus, EWC1, ECW3, EWC5, ECW6, EWC7, EWC8, EWC9 are structured into: M1-M2-M3-M4-M5.

The three remaining cases are structured into three different patterns. Firstly, EWC2 is missing a Move unit. Its four-part structure of M1-M3-M4-M5 is missing the second Move: Introducing the Case. EWC4 is similar to EWC2 in which it is also missing a Move unit: Pronouncing the Judgments. EWC4 is constituted into M1-M2-M3-M4 and continues with a repeated M3-M4 making the cases into six parts. The final case, EWC10 is another different pattern. Sequentially, it is structured into M1-M2 which continues into M4 that is followed by M3 and completes with M4 and M5 making EWC10 into six parts. In summary, there are four different patterns for the English judgements.

Table 4.2: Sequential structures of Moves of England and Wales CA legal judgements

| <i>England and Wales CA Judgements</i> | Progression of Moves |
|--|-----------------------------|
| <i>EWC1</i> | M1-M2-M3-M4-M5 |
| <i>EWC2</i> | M1-M3-M4-M5 |
| <i>EWC3</i> | M1-M2-M3-M4-M5 |
| <i>EWC4</i> | M1-M2-M3-M4-M3-M4 |
| <i>EWC5</i> | M1-M2-M3-M4-M5 |
| <i>EWC6</i> | M1-M2-M3-M4-M5 |
| <i>EWC7</i> | M1-M2-M3-M4-M5 |
| <i>EWC8</i> | M1-M2-M3-M4-M5 |
| <i>EWC9</i> | M1-M2-M3-M4-M5 |
| <i>EWC10</i> | M1-M2-M4-M3-M4-M5 |

Legend:

M1=Move 1: Identifying the Case;

M2=Move 2: Introducing the Case;

M3=Move 3: Establishing Facts of the Case

M4=Move 4: Arguing the Case

M5=Move 5: Pronouncing Judgments

4.4.1 Analysis of Sequential Structures of Moves of Legal Judgements

The combination of sequences of structures of twenty Malaysian and English legal judgements produces six different patterns made out of different combination of numbers. From the twenty judgments selected, the Malaysian and English judgements follow different patterns. In other words, none of the Malaysia sequential patterns are found in the English judgements and vice versa.

The two sequential patterns of the Malaysian legal judgements are typically complex with a single or triple cyclical distribution of Moves. The first sequential pattern of Malaysian cases made of two cases has a single cycle of Move 1 that happens at the beginning and ending of the sequences. The second sequential pattern of Malaysia judgements of eight cases has three cycles of Moves. The first cycle of these eight judgements is the repetition or continuation of Move 1 at the beginning and at the ending of the sequences. The second cycle and third cycle of Move 3 and 4 happen in the middle of the sequences. Thus, all of the Malaysian legal judgements are cyclical with at least Move 1 occurring at the beginning and at the ending of the texts. Additionally, within the texts, there are alternating cycles between Move 3 and Move 4.

Comparatively in the English judgements, there are seven judgements that follow a simple linear progression without any cyclical sequences. Another judgement, EWC2 follows this simple linear progression but is missing a single unit. The remaining two patterns of the English judgements from EWC4 and EWC10 contain cyclical sequences.

In EWC4, Move 3 and Move 4 is repeated in the middle structure but the progression lacks the final unit. Move 4 repeats in EWC10 but this Move occurs before move 3 making the arguments of the judgement to realize before the facts of the case.

4.5 Discussion on the Five Moves of Court of Appeal (CA) Legal Judgements

Both legal systems generally realize all five-part structures. Thus, it can be safely concluded that Malaysian and England and Wales CA judgements are comparatively similar at the level of Moves. The five Moves emerged from this study is based on Bhatia's 1993 Moves of case reports or judgments. Although, recent works such as Mazzi's 2007 comparative analysis of judgements has revealed more modification to the analysis of judgements, this study chooses Bhatia's older model because it is a seminal model that is adapted by many others. Additionally, it can be argued that adapting Bhatia's simpler generic structures of four Moves permit this research to examine the data with more analytical freedom. However, the differences between the judgements of the two legal system are more recognizable at the lower level of Steps. Following Bhatia's (1993) definition, the Steps are generally non-discriminative strategies that do not change the characteristics of the Moves of the legal judgements. Following Swales' (1990) conception of Steps, it appears that the discourse community could choose and mix different combination of Steps to realize the global or higher rhetorical structure of Moves.

However, in his presentation of the standard four-part structures of Moves, unless the Sub-Moves are considered as Steps as how Gotti (2012) does in his description, Bhatia's (1993), Sub-Moves could be reinterpreted as containing more strategies or Steps for legal judgements. Other later studies that present and adapt Bhatia's four-part structure of legal judgement, such as Gotti (2012) and Mazzi (2007), similarly do not explicitly describe nor categorize the possible Steps that may occur in the legal judgements below the level

of Sub-Moves. Pursuing the first research question, this study attempts at providing a complete analysis of the rhetorical structures of the Court of Appeal legal judgements which includes both the Moves, Sub-Moves and the Steps. The findings suggest that it is at the level of Steps and its relations to the Moves that we find superficial and substantial differences between Malaysia and English legal judgements. A complete analysis of the five structures of Moves is presented in the Appendix.

4.5.1 Move 1: Identifying the Case

The first Move under discussion is Move 1, *Identifying the Case*. The two Tables of 4.3 and Table 4.4 provide the occurrences of Steps of Move 1 for the Malaysian and England and Wales CA legal judgements respectively.

In Table 4.3, all six Steps of Move 1 are mobilized in all ten Malaysian legal judgements. In other words, each of the Step with an occurrence of a hundred percent are used to identify the cases

Table 4.3: Occurrences of Steps in Move 1 of Malaysian Court of Appeal legal judgements: Identifying the Case

| Steps | M C 1 | M C 2 | M C 3 | M C 4 | M C 5 | M C 6 | M C 7 | M C 8 | M C 9 | M C 10 | Total % |
|--|-------------|-------------|-------------|-------------|-------------|-------------|-------------|-------------|-------------|--------------|------------|
| M1s1: Stating dates, location, references, court hierarchy and division | √ | √ | √ | √ | √ | √ | √ | √ | √ | √ | 100 |
| M1s2: Naming parties of dispute | √ | √ | √ | √ | √ | √ | √ | √ | √ | √ | 100 |
| M1s3: Stating lower court location, references, date hierarchy and division | √ | √ | √ | √ | √ | √ | √ | √ | √ | √ | 100 |

Table 4.3 continued

| Steps | M C 1 | M C 2 | M C 3 | M C 4 | M C 5 | M C 6 | M C 7 | M C 8 | M C 9 | M C 10 | Total % |
|--|-------------|-------------|-------------|-------------|-------------|-------------|-------------|-------------|-------------|--------------|------------|
| M1s4: Naming lower court's parties of dispute | √ | √ | √ | √ | √ | √ | √ | √ | √ | √ | 100 |
| M1s5: Naming presiding and authoring judges | √ | √ | √ | √ | √ | √ | √ | √ | √ | √ | 100 |
| M1s6: Naming legal representatives for parties of dispute | √ | √ | √ | √ | √ | √ | √ | √ | √ | √ | 100 |

Table 4.4 presents five Steps that are used by the England and Wales legal judgements with a hundred percent occurrence. The exception is for Step 4: Naming Lower Court's Parties of Dispute with a zero percent occurrence. This means, that Step 4 did not occur in any of the ten legal judgement selected. Thus, there is a single difference between the Malaysian and English judgements.

Table 4.4: Occurrences of Steps in Move 1 of England and Wales Court of Appeal legal judgments: Identifying the Case

| Steps | E W C 1 | E W C 2 | E W C 3 | E W C 4 | E W C 5 | E W C 6 | E W C 7 | E W C 8 | E W C 9 | E W C 10 | Total % |
|--|------------------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|-------------------|------------|
| M1s1: Stating dates, location, references, court hierarchy and division | √ | √ | √ | √ | √ | √ | √ | √ | √ | √ | 100 |
| M1s2: Naming parties of dispute | √ | √ | √ | √ | √ | √ | √ | √ | √ | √ | 100 |

Table 4.4 continued

| Steps | E | E | E | E | E | E | E | E | E | E | Total % |
|--|---|---|---|---|---|---|---|---|---|----|---------|
| | W | W | W | W | W | W | W | W | W | W | |
| | C | C | C | C | C | C | C | C | C | C | |
| | 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 | |
| M1s3: Stating lower court location, references, date hierarchy and division | √ | √ | √ | √ | √ | √ | √ | √ | √ | √ | 100 |
| M1s4: Naming lower court's parties of dispute | - | - | - | - | - | - | - | - | - | - | 0 |
| M1s5: Naming presiding and authoring judges | √ | √ | √ | √ | √ | √ | √ | √ | √ | √ | 100 |
| M1s6: Naming legal representatives for parties of dispute | √ | √ | √ | √ | √ | √ | √ | √ | √ | √ | 100 |

This sub-section discusses how Steps are realized in the Malaysian and English legal judgements. Excerpts taken from the corpus are followed with a brief explanation about the function of each Step are presented in the following:

Step 1: Stating dates, location, references, court hierarchy and division

Example 1:

| MC1 | Explanation |
|--|---|
| IN THE COURT OF APPEAL, MALAYSIA (APPELLATE JURISDICTION) <u>CRIMINAL APPEAL</u> <u>NO: S-05(M)-109-03/2016</u> | Location Court hierarchy Division |

| | |
|--|-----------------|
| | References/Date |
|--|-----------------|

Example 1 contains the basic information of the Court of Appeal of date, location and references, which signifies its institutional role to hear appeal and its division of jurisdiction (being criminal and not civil).

Step 2: Naming parties of dispute

Example 2:

| MC1 | Explanation |
|-----------------------------|---------------------|
| BETWEEN | Parties of dispute. |
| NASRAF BIN JUAN - APPELLANT | Appellant. |
| AND | Adversarial aspect. |
| PENDAKWA RAYA - RESPONDENT | Respondent. |

Example 2 names the parties of disputes, particularly their roles as appellant or respondent to the hearing of appeal. This Step is the first element of the judgement that represents the adversarial aspect of the judgements. In this example, Nasraf Bin Juan is the appellant and the respondent is the pendakwa raya or known as the deputy public prosecutor.

Step 3: Stating lower court location, court hierarchy, references, date and division, and (presiding judges)

Example 3:

| MC1 | Explanation |
|-----|--|
| | Court hierarchy/Lower court location Division |

| | |
|---|-----------------|
| (In the Matter of High Court of Sabah & Sarawak at Sandakan Criminal Trial No: S-45B-2/9-2013 | References/Date |
|---|-----------------|

Example 3 of Step 3 is similar to Step 1 in which it reiterates the basic information of a court and trial processes. However, information stated in Step 3 refers to the lower court from which the appeal was made. In this example, the disputed criminal case was appealed from the High Court of Sabah & Sarawak.

Step 4: Naming lower court's parties of dispute

Example 4:

| MC1 | Explanation |
|-----------------|---------------------|
| Between | Parties of dispute: |
| Pendakwa Raya | Prosecutor |
| And | Adversarial aspect. |
| Nasraf bin Juan | Defendant |

Example 4 reproduces the names of the parties of dispute from the lower High Court. In this aspect, the information of Step 4 is similar to Step 2 producing the two names of the opposing party. However, the roles of the parties in the lower High Court differ. In the High Court, the prosecution prosecutes the defendant, while in the Appeal case, the defendant is the appellant making the appeal and the prosecution responds as the respondent.

Step 5: Naming presiding and authoring judges

Example 5:

| MC1 | Explanation |
|---|-----------------------------|
| CORAM: DAVID WONG DAK WAH, JCA ABANG ISKANDAR ABANG | The three appellate judges. |

| | |
|---|---------------------------------------|
| <p>HASHIM, JCA ZAMANI A. RAHIM, JCA</p> <p>t.t (ZAMANI A. RAHIM) ←</p> <p>Judge Court of Appeal Malaysia</p> | <p>The authoring appellate judge.</p> |
|---|---------------------------------------|

Example 5 names the three Court of Appeal judges which constitutes the Coram or the judges that preside over the appeal process. One of the judges represents and authors the legal judgment.

Step 6: Naming legal representatives for parties of dispute

Example 6:

| MC1 | Explanation |
|-----|-------------|
|-----|-------------|

Counsels:

For the appellant : Frederick Pang ← Legal representatives for the appellant.
 Messrs. Lau & Pang
 1st Floor, Lots 8 & 9,
 Block A,
 Bandar Maju, Mile 1
 1/2,
 North Road/P.O.Box 45
 90007 Sandakan
 Sabah

For the respondent : Ahmad Sazilee bin ← Legal representatives for the respondent
 Abdul Khairi
 Timbalan Pendakwa
 Raya

**Jabatan Peguam Negara
Putrajaya**

Example 6 names the legal advisor or representatives to the parties of disputes. The occurrences of Step 6, for Malaysian cases, however, are realized at the end of the legal

judgement creating a split of Move 1 realizing as the cover page and the ending. This is the reason, why the sequences of Malaysian CA legal judgements end with Move 1 rather than Move 5 which is typically found in the England and Wales judgements.

Step 1: Stating dates, location, references, court hierarchy and division

Example 7:

| EWC1 | Explanation |
|--|--|
| Case No: 201600881A4, 201600970A4 and 201600969A4 Neutral Citation Number: [2017] EWCA Crim 32 IN THE COURT OF APPEAL (CRIMINAL DIVISION) Date: 31/01/2017 Royal Courts of Justice Strand, London, WC2A 2LL Hearing date: 24th January 2017 Judgment | References. Court hierarchy. Division. Date. Location. |

Generally similar to the Malaysian example, example 7 represents the basic information of the Court of Appeal and the trial processes. The difference lies with the order or arrangement of this information.

Step 2: Naming parties of dispute

Example 8:

| EWC1 | Explanation |
|--|--|
| Between: REGINA - and - 1) GAZMEND MULA | Parties of dispute: Respondent. Adversarial aspect. Appellants. |

| | | |
|------------------------------------|-------------------|--|
| 2) ILIR HASA 3) SAIMIR NEZAJ | <u>Appellants</u> | |
|------------------------------------|-------------------|--|

Example 8 records the names of the parties of the dispute which include their roles in the hearing of the appeal. Similar to the Malaysian cases, one party of the appeal represent the appellants and the other is the respondent. In this case there are three appellants. The Regina refers to the British Crown which refers to the Crown Prosecutors (Slapper & Kelly, 1990).

Step 3: Stating lower court location, court hierarchy, references, date, division, and (presiding judges)

Example 9:

| Legal Judgments: MC1 | Explanation |
|--|--|
| ON APPEAL FROM LEWES CROWN COURT HHJ KEMP | Lower court location/court hierarchy Presiding judge of lower court |

Example 9 records the basic information of the lower court from which the appeal is made. In this example, the appeal is made from the Crown Court. However, the mentioning of the information of cases from the lower court of the English judgements limit itself to citing of the court. Unlike, the Malaysian judgments, the names of the parties of dispute in the lower court is not reproduced.

Step 5: Naming presiding and authoring judges

Example 10:

| EWC1 | Explanation |
|---------|-------------|
| Before: | |

| | |
|--|--------------------|
| LORD JUSTICE TREACY MR JUSTICE NICOL and MR JUSTICE JAY | ← Presiding judges |
| MR JUSTICE JAY: | ← Authoring judge. |

Similar to the Malaysian example, example 10 names the three judges that hear and decide the appeal. One of the judges represents three Justices and authors this judgment.

Step 6: Naming legal representatives for parties of dispute

Example 11:

| Legal Judgments: EWC1 | Explanation |
|--|---------------------------------------|
| Mr Anthony Heaton-Armstrong for Mula Mr Ahmed Hossain for Hasa Miss Sarah Lindop for Nejaz | ← Legal representative for appellant |
| Miss Rachel Beckett for the Crown | ← Legal representative for respondent |

Similar to the Malaysian example, example 11 names the legal representative of the parties of dispute. The English judgments, unlike the Malaysian judgments do not split this information and record this information at the beginning of the judgment.

For the discussion of Move 1, Bhatia (1993) does not specify any Step but he did comment on the content of Move 1 which resembles potential Steps. Although Bhatia's original conception of the legal judgement did not specify any forms of Step, it is possible to conceptualize and understand these Steps from the two forces that shape legal judgements. From the previous discussion in chapter 2, it is argued that there are two forces that pull and shape the legal judgements. The first pull comes for the relationship of legal judgements and the trial processes. Bhatia (2014) classifies legal judgments or cases as a species of reporting genre. In effect, legal judgements record and report the events, arguments and the results of the trial processes. The first Move and its six Steps

relate the reported written judgement to the trial or appeal hearing. Thus, the Steps serve to identify the particulars of a case.

When use as precedents in actual legal disputes, the users of precedents must first identify the case through the unique references of individual judges (Step 5), parties of disputes (Step 2 and 4), their representatives (Step 6), and basic information of the courts and trial (Step 1 and 3) before identifying the general rules of law. In other words, the first Move of the legal judgements does not only indicate a conventional manner of referencing a source of law, it also has the function of identifying the relationship between the trial and hearing to the written report which is an important as source of law.

Additionally, Step 3 for the legal judgements identify the source of appeal. Thus, both the Malaysian and English Appeal cases state the lower the court of the High Court and Crown Court. In other words, Step 3 indirectly signifies the hierarchical relationship between appellate courts and the lower courts.

4.5.2 Move 2: Introducing the Case

This is a new Move that is not specified in Bhatia's (1993) original schema of legal judgments. It is neither found in Gotti's (2012) general presentation of legal judgments genre nor it is structured within Mazzi's (2007) comparative Moves of Irish, English and the European Courts which include other additional Moves from Bhatia's 1993 original schema. This new Move discovered from the twenty judgements realizes different combinations of three Steps. The two Tables of 4.5 and 4.6 contain occurrences of Steps of Move 2 which suggests that both Malaysia and English judges choose and mix different combinations of Steps for this particular Move.

The distribution of the Steps in Move 2 of the Malaysian cases in Table 4.5 varies. There are cases such as MC2, MC3, MC5, MC6, MC7, MC8 that combine all three Steps

to realize the introduction. Other cases, such as MC1, MC10 combine only two Steps. Lastly, MC9, needs only a single Step to realize the introduction.

Table 4.5: Occurrences of Steps in Move 2 of Malaysian Court of Appeal legal judgements: Introducing the Case

| Steps | M2s1: Summarizing the Trial of Lower Court | M2s2: Reading Criminal Charge(s) | M2s3: Summarizing the Appeal |
|------------------|---|--|------------------------------------|
| MC1 | √ | √ | - |
| MC2 | √ | √ | √ |
| MC3 | √ | √ | √ |
| MC4 | √ | √ | - |
| MC5 | √ | √ | √ |
| MC6 | √ | √ | √ |
| MC7 | √ | √ | √ |
| MC8 | √ | √ | √ |
| MC9 | - | - | √ |
| MC10 | √ | √ | - |
| Total: 10 | 9 | 9 | 7 |
| % | 90 | 90 | 70 |

There is a stark difference between the Malaysian and the English legal judgements. Table 4.6 indicates that there is no realization of Step 2, Reading the Criminal Charges with a zero percent making the distribution of the Steps to a two combination or single use. Cases that adapt the two combination are EWC1, EWC3, EWC4, EWC5, EWC6, EWC7, EWC8. The cases that adapt the single use are EWC9 and the EWC10.

Table 4.6: Occurrences of Steps in Move 2 of England and Wales Court of Appeal legal judgements: Introducing the Case

| Steps | M2s1: Summarizing the Trial of Lower Court | M2s2: Reading Criminal Charge(s) | M2s3: Summarizing the Appeal |
|-------|---|-------------------------------------|---------------------------------|
| EWC1 | √ | - | √ |
| EWC2 | - | - | - |
| EWC3 | √ | - | √ |
| EWC4 | √ | - | √ |
| EWC5 | √ | - | √ |
| EWC6 | √ | - | √ |

Table 4.6 continued

| Steps | M2s1: Summarizing the Trial of Lower Court | M2s2: Reading Criminal Charge(s) | M2s3: Summarizing the Appeal |
|------------------|---|-------------------------------------|---------------------------------|
| EWC7 | √ | - | √ |
| EWC8 | √ | - | √ |
| EWC9 | - | - | √ |
| EWC10 | - | - | √ |
| Total: 10 | 7 | 0 | 9 |
| % | 70 | 0 | 90 |

Following this enumeration is subsection that contains discussions on the examples of the Steps of Move 2 for both Malaysia and English legal judgements. Brief explanations after each example are followed by a small discussion on general functions of the Steps.

Step 1: Summarizing the Trial of Lower Court

Example 1:

Step 1

Legal Judgements: MCI

*Summarizing
the Trial of
Lower Court*

[1] Nasraf bin Juan, the appellant was charged in the High Court of Sabah and Sarawak sitting at Sandakan with an offence of murder under section 302 of the Penal Code.

This Step contains a small account of the appellant's legal situation or status after the end of the trial. Example 1 includes the location of the charges and the specific nature of the offence: Nasraf, the appellant, was charged with the offence of murder in High Court of Sabah and Sarawak. Essentially this summary is also about the outcome of the trial which the appellant is appealing against: the appellant was charged and found guilty by

the High Court of Sabah and Sarawak. Thus, the outcome or ending of trial at the lower court becomes a beginning of starting of the appeal.

Step 2: Reading Criminal Charge(s)

Example 2:

| <i>Step 2</i> | <i>Legal Judgements: MCI</i> |
|-----------------------------------|---|
| <i>Reading Criminal Charge(s)</i> | <p>The charge reads as follows:</p> <p>The Charge</p> <p>“Bahawa kamu pada 7.12.2012 di antara jam 5.20 pagi sehingga jam 6.55 pagi, bertempat di hadapan bengkel Usaha 1 Bumiputera, Batu 2 ½ Jalan Utara, Sandakan, di dalam Daerah Sandakan, di dalam Negeri Sabah, didapati dengan niat telah membunuh Arwidah binti Misran (IMM 13 No. IP 12091-22095) dengan menikamnya menggunakan sebilah pisau (weapon of offence). Oleh itu kamu telah melakukan satu kesalahan yang boleh dihukum di bawah seksyen 302 Kanun Keseksaan.”</p> <p>Translation.</p> <p>“That you were at 7.12.2012, between 5.20 AM to 6.55 AM, locate at the workshop Usaha 1 Bumiputera, Batu, 2 ½ Jalan Utara, Sandakan, in Daerah Sandakan, in the state of Sabah, found with the intention to murder Ardiwah binti Misran (IMM 13 No. IP 12091-22095) by stabbing her with a knife (weapon of offence). Thus you committed a crime that is punishable under section 302 Kanun Keseksaan.</p> |

Step 2 of Move 2 represents a formulaic statement of about the context of the crime which include the date, location and identity of the victim: the appellant was found at a workshop found with intention to murder. In example 2, this context is followed with a specific law that represent the charges: the charges concern a crime that is punishable under section 302 Kanun Keseksaan. This formulaic statement, however, is not found in any of the England and Wales legal judgements.

Step 3: Summarizing the Appeal

Example 3:

| <i>Step 3</i> | <i>Legal Judgements: MC3</i> |
|-------------------------------|---|
| <i>Summarizing the Appeal</i> | [2] This appeal is by the learned Deputy Public Prosecutor (DPP) against the acquittal and discharge of the Respondent, which we have heard and dismissed on 20.09.2016. We set out below our reasons for our decision. |

The third and final Step is a summary of the appeal. Example 3 contains the outcome of the appeal itself in which the DPP's appeal was heard and dismissed: the appeal was dismissed in 20.09.2016. In the last sentence, the author signals that reason for the decision to dismiss the appeal contains in the subsequent Moves. The example suggest that by introducing the case, the judges do not only summarize the core of the appeal which concern the history of the parties of dispute and their legal issues from previous trials, but as an the introduction, the judges create a space to signal their intention and the approach that they will take to present the content of the judgements. In this case, the outcome of the appeal is declared as early as possible, but the reason is only known to those who read the subsequent Moves.

Next, this subsection provides examples and brief explanation of Steps of Move 2 for English legal judgments.

Step 1: Summarizing the Trial of Lower Court

Example 4:

| <i>Step 1</i> | <i>Legal Judgements: EWC1</i> |
|---|--|
| <i>Summarizing the Trial of Lower Court</i> | The appellant Gazmend Mula received a total sentence of 10 years' imprisonment on his guilty plea, composed of 6½ years' imprisonment for conspiracy to kidnap and 3½ years' |

imprisonment for possession of a class A drug (cocaine) with intent to supply.

The appellant Ilir Hasa was convicted of conspiracy to kidnap on 22nd December 2015. He was sentenced to 8 years' imprisonment.

The appellant Saimir Nejaz was convicted by the jury on one indictment on the same date as his co-accused, and pleaded guilty to a number of counts on another. In relation to his conviction, he was sentenced to 8 years' imprisonment for conspiracy to kidnap and a consecutive term of 1½ years' imprisonment for intimidation of a witness. In relation to his guilty pleas, he was sentenced to 2 years' imprisonment for possession of a class A drug (cocaine) with intent to supply, and various concurrent sentences for possession of false identity documents. Thus, his total sentence was 11½ years' imprisonment.

The English example of Step 1 is more extensive than the Malaysian example. The Step not only names the appellant's criminal history, enumerates the nature of the related law but it also contains the extent of the punishments resulting from the trial. There are three appellants in the example, Gazmend Mula, Ilir Hasa, and Saimir Nejaz, who were convicted for conspiracy to kidnap and possessions of drugs. Despite its extensiveness in terms of content, the English example is similar to the Malaysian example due to their basic function of presenting and summarizing the outcome of the trial from the lower courts: in this case all three appellants were convicted and given punishments.

Step 3: Summarizing the Appeal

Example 5:

Step 3

Summarizing the Appeal

Legal Judgements: EWCI

This is the Judgment of the Court.

These three appellants appeal with the leave of the single judge against sentences of imprisonment imposed by HHJ Kemp sitting at Lewes Crown Court on 28th January 2016

This appeal is directed to the sentences imposed for the offence of conspiracy to kidnap. Subordinate submissions were made in the grounds of appeal about totality but these were not pressed in oral

argument. The judge treated the culpability of all three appellants as being equal. His starting-point was 8 years' imprisonment across the board, and he gave Mula 20% credit for his late guilty plea.

The judge presided over the trial of Hasa and Nejaz, and was therefore well placed to assess their respective involvement. However, the case was opened to him at some length on 28th January 2016 – for the benefit of Mula. We have carefully considered the prosecution's detailed opening as well as the factual narrations set out in the three advices of appeal.

Given the focus of these appeals, our recitation of the essential factual background will focus on the kidnapping.

Example 5 from this English example presents a summary of the appeal. Although it does not contain the outcome of the appeal, the judges briefly summarize the grounds of appeal in the second paragraph (This appeal is directed to...) which will become the focus of the judgement. It's similar to Malaysian example in which it is a space for the judges to declare their intention or purpose that will shape the rest of the judgement. In this example, the judges declare their basic understanding of the case and their approach or focus that what was taken by the case.

From the examples presented, the main difference between the two legal systems of the use of Steps concern one content: the English legal judgements do not formally state the criminal charges of the parties to the dispute which the Malaysian cases typically do. In the Malaysian case almost all cases, nine out of ten, realizes this formulaic Step. Oppositely, none from the English legal judgments realizes this particular Step in Move 1. Furthermore, the formulaic charges in the Malaysian cases are typically realized in the national language of Bahasa Malaysia.

As an introduction, this new Move contains summaries of the status of the parties of dispute resulting from the trial of the lower court. These summaries encapsulate the legal

problems which signal towards the following Moves of the judgements. In conclusion, the introduction does not only summarize the happenings from the lower court but summarize the appeal judgements itself and pronounce the verdicts in this Move.

4.5.3 Move 3: Establishing Facts of the Case

As it is previously mentioned in chapter 2, this particular Move represents what Gibbons (2005) argued to be the reconstruction of secondary realities. The secondary realities refer to the happenings, episodic events or facts that occurs to the parties of dispute. The reconstruction and representation of secondary realities in the trial proceedings are necessary activities that determine the factual truth of any harmful or illegal acts.

Both Malaysian and English courts, operating within an adversarial system, require that the disputing parties represent at the trial their versions of facts. Typically, the doctrine of the burden of proof lies to those who alleges it. Following this condition, it is the prosecution that needs to establish a prima facie case first before the defendant defends himself (Wan Arfah, 2009). Consequently, the presentation of facts in the trial is structured sequentially with the prosecution calling the prosecution witnesses followed by the defense case.

From the twenty legal judgements analyzed, these Court of Appeal legal judgements do not only report the secondary realities relevant to the arguments but some of these Court of Appeal judgments seems to arrange the content of Move 3 according to the sequences of the trial proceedings. The occurrences of the Steps of both legal systems are represented in the Table 4.7 and Table 4.8.

In Table 4.7, there is no single occurrence of the judgements presenting facts generally with a zero percent rate. Oppositely, the Malaysian judgements typically

combine Step 2 and Step 3 to realize Move 3. Nine judgements with the exception of case MC9 realize Step 2 making the rate of occurrences 90 percent for Step 2. Eight judgements with the exception of judgements MC4 and MC9 realize Step 3 making Step 3 occurs at 80 percent. From all twenty judgements originating from Malaysia and England, only MC9 realizes Step 4.

Table 4.7: Occurrences of Steps in Move 3 of Malaysian CA legal judgements: Establishing Facts of the Case

| Steps | M3s1: Summarizing the Case | M3s2: Summarizing the Prosecution Facts | M3s3: Summarizing the Defence Facts | M3s4: Describing the Law |
|------------------|---|--|--|---|
| MC1 | - | √ | √ | - |
| MC2 | - | √ | √ | - |
| MC3 | - | √ | √ | - |
| MC4 | - | √ | - | - |
| MC5 | - | √ | √ | - |
| MC6 | - | √ | √ | - |
| MC7 | - | √ | √ | - |
| MC8 | - | √ | √ | - |
| MC9 | - | - | - | √ |
| MC10 | - | √ | √ | - |
| Total: 10 | 0 | 9 | 8 | 1 |
| % | 0 | 90 | 80 | 10 |

Table 4.8 indicates that there are no single occurrences of Step 4 which realizes only once in MC9 of the Malaysian judgements. Step 1 can be found in the English judgements with the occurrences up to 70 percent. Comparatively, Step 1 is not found at all in the Malaysian judgements. Similar to the Malaysian judgements, there are combination of Steps within the English judgments: EWC6, EWC8, EWC9 mixes Step 2 and Step 4.

Table 4.8: Occurrences of Steps in Move 3 of England and Wales CA legal judgements: Establishing Facts of the Case

| Steps | M3s1: Summarizing the Case | M3s2: Summarizing the Prosecution Facts | M3s3: Summarizing the Defence Facts | M3s4: Describing the Law |
|------------------|---|--|--|---|
| EWC1 | √ | - | - | - |
| EWC2 | √ | - | - | - |
| EWC3 | √ | - | - | - |
| EWC4 | √ | - | - | - |
| EWC5 | √ | √ | - | - |
| EWC6 | - | √ | √ | - |
| EWC7 | √ | - | - | - |
| EWC8 | - | √ | √ | - |
| EWC9 | - | √ | √ | - |
| EWC10 | √ | - | - | - |
| Total: 10 | 7 | 4 | 3 | - |
| % | 70 | 40 | 30 | 0 |

In summary, Move 3 realizes different combination of strategies. There are basically four types of Steps identified from both the legal systems. 4. With the exception from the fourth Step, Describing the Law, a judge could establish the facts of the case without necessarily singling whether the facts were from the prosecution or from the defence.

From Tables 4.7 and 4.8, this practice is clearly more common in English judgements where six judgements were summarized without indicating whether the facts were from prosecution or defence. This situation is in the opposite in the Malaysian judgments in which the facts were established as either from prosecution and defence. This clear delineation between the prosecution facts and defence facts for the Malaysian judgments do suggests that there is a convention between the Malaysian judges to arrange the content of Move 3 according to the sequences of the criminal trial process of the Malaysian High Court. (See Wan Arfah, 2009, for a fuller treatment of the Malaysian criminal trial process).

The fourth Steps, *Describing the Law*, is a single exception in which matters of facts is not a set of episodic testimonies about human behaviours but the law containing sections of legal provisions.

The examples of the four Steps are presented and briefly discussed in the following:

Step 1: Summarizing the Facts of the Case

Example 1

| <i>Step 1</i> | <i>Legal Judgements: EWCI</i> |
|--|--|
| <i>Summarizing the Facts of the Case</i> | <p><u>Essential Factual Background</u></p> <p>(Para 9) The victim of the kidnap was Ardi Murataj. His evidence was that he worked for Hasa and Mula in their drugs business. Later, he worked for Hasa’s cousin, Tony Sula. At the beginning of April 2015 he told his employers that he no longer wished to work in the ‘dirty’ world of drug dealing...</p> <p>... (Para 19) Thereafter, police were able to link the DNA found in the Astra with Nejaz. He was arrested in prison for conspiracy to kidnap. Nejaz gave through his solicitor a prepared statement in which he denied any knowledge of the kidnapping, and gave a no comment interview. It should be noted that text messages on the mobile phones found in Nejaz’s possession at the time of his arrest discussed the kidnapping and joked about his involvement in it.</p> |

Example 1 reports the facts an English judgement. It is a lengthy recording or summarizing of events spanning 11 paragraphs. Concerning the events that lead to criminal activities, typically, this Step is structured chronologically. In the example in paragraph 9, the judge described the relationship between the victim, Ardi Murataj to appellant Hasa and Mula. The crime events are set chronologically which begins with the victim told his employers (the appellant) that he wanted nothing to do with ‘dirty’ world of drug dealing. In paragraph 19, the last paragraph of this Step, the criminal events ended with one of the Appellant, Nejaz, who was arrested for conspiracy for kidnap with

comments made by the judge about the Nejaz’s text messages were found discussing the kidnapping.

However, unlike the Step 2 and Step 3 there are no indication that the Steps are distinguished sourcing the facts from either Prosecution’s witnesses or from the defendant’s witnesses. Thus, the facts of this case are summarized generally.

Step 2: Summarizing the Facts of Prosecution

Example 2

| <i>Step 2</i> | <i>Legal Judgements: MCI</i> |
|---|---|
| <i>Summarizing the Facts of Prosecution</i> | <p>Prosecution’s case</p> <p>(Para 2) It was common knowledge among family members of the deceased that the appellant was the boyfriend of Arwidah binti Misran (the deceased). The deceased was working as a waitress at a Jackpot shop - “Classic Hours” at Mile 4, Taman Villa Permai, Sandakan...</p> <p>... (Para 14) On 20.6.2013, at about 3.00 pm, all the exhibits were sent to the government science officer, Rina binti Md Nawi @ Rizak (PW8) of the Chemistry Department, Kuching for analysis. PW8 confirmed that blood stains were detected from the nail clippings “14a” taken from the deceased’s right hand. On DNA profile developed from the nail clippings “14a”, it was revealed that it was a mixed DNA profile of the deceased and the appellant.</p> |

Unlike Step 1 of Move 3, Step 2 of Move 3 realizes and distinguishes that the facts are derived from the prosecution. Example 2 shows Step 2 consists of thirteen paragraphs. Similar to the example 1 of Step 1, the prosecution’s facts begin with stating the relationship of victim to the appellant: in this case, the appellant was the boyfriend of the

victim. The Step is also structured chronologically which begins location and activity of the victim before the crime is committed.

In this example, the Step ends in paragraph 14 with an expert witness, a government science officer, confirming a mixed DNA profile of the victim and the appellant. Clearly from this example, the arrangement of events and witnesses are done to pursue the prosecution's purpose which is to affirm the appellant's involvement in the crime.

Step 3: Summarizing the Facts of Defence

Example 3:

| <i>Step 3</i> | <i>Legal Judgements: MCI</i> |
|---|--|
| <i>Summarizing the Facts of Defence</i> | <p>Defence case</p> <p>(Para 23) The appellant chose to give a sworn evidence.</p> <p>(Para 24) Prior to his arrest, he was working as an assistant in a workshop.</p> <p>(Para 25) He testified that he had a knife with him 3-4 days before the incident. It was for self-protection. He claimed that the place where he resided was not safe. He had seen people getting drunk and became violent...</p> <p>... (Para 31) As part of his defence, the appellant also tendered his section 112 CPC statement which was marked as exhibit, D1. The appellant admitted in exhibit D1 that he stabbed the deceased.</p> |

Step 3 could be considered as a pairing to Step 2. Example 3 is taken from defendant section of case. Step 3 which consist of nine paragraphs (23-31) begins with the appellant to give sworn evidence. In paragraph 25, he argued that although he had a knife before

incident, the knife was prepared for self-protection. This claim is one of his defences against the charges made to him by the prosecution. The Step ends with paragraph 31 in which the appellant admitted that deceased was stabbed by him. Thus, the sequences of events are presented from the from point of views of the defendant’s witnesses.

Step 4: Describing the law

Example 4

| <i>Step 4</i> | <i>Legal Judgements: MC9</i> |
|---------------------------|---|
| <i>Describing the law</i> | <p>The Background Facts</p> <p>(Para 2) On 31.7.2012, the Security Offences (Special Measures) Act 2012 (SOSMA) which was enacted by Parliament under Article 149(1) of the Federal Constitution came into force. Article 149(1) of the Federal Constitution reads:</p> <p>“Legislation against subversion, action prejudicial to public order, etc.</p> <p>149. (1) If an Act of Parliament recites that action has been taken or threatened by any substantial body of persons, whether inside or outside the Federation –</p> <ul style="list-style-type: none"> (a) to cause, or to cause a substantial number of citizens to fear, organized violence against persons or property; or (b) to excite disaffection against the Yang di-Pertuan Agong or any Government in the Federation; or (c) to promote feelings of ill-will and hostility between different races or other classes of the population likely to cause violence; or (d) to procure the alteration, otherwise than by lawful means, of anything by law established; or (e) which is prejudicial to the maintenance or the functioning of any supply or service to the public or any class of the public in the Federation or any part thereof; or (f) which is prejudicial to public order in, or the security of, the Federation or any part thereof, ... <p>... (Para 4) Sections 12 and 13(1) of SOSMA provide that all security offences shall be tried by the High Court and that bail shall not be granted to a person who has been charged with a</p> |

security offence. Section 3 of SOSMA defined “security offences” as the offences specified in the First

Schedule. One of the offences specified in the First Schedule is an offence under section 124L of the Penal Code which provides:

“Attempt to commit sabotage

124L. Whoever attempts to commit sabotage or does any act preparatory thereto shall be punished with imprisonment for a term which may extend to fifteen years.”.

The final Step realizes a different content from the first three Steps. While the first three Steps typically represent the facts in a narrative form which include sequences of events leading to the criminal actions from different eye-witnesses, the fourth Step summarizes the law as a fact contested. In the fourth example, the facts are rows and rows of statutes or Parliamentary legal rules concerning Malaysia Security Offences (Special Measures) Act 2012, which spans 4 paragraphs.

4.5.4 Move 4: Arguing the Case

This fourth Move of the judgment genre is highly complex and unique from the other Moves in that it specifies Sub-Moves (Bhatia, 1993). Bhatia’s 1993 schema characterizes three Sub-Moves within this Move. It is within this Move and its Sub-Moves that the roles of the common law judges. or in this study, the functions of the appellate judge are most important. Particularly, this Move characterizes what Kahn (2016) views the combining of the command of law to the persuasion of the judge’s reasonings. It is with this Move that Kahn differentiates the legal judgments genre to other legal genres, particularly the legislation genre which only prescribes but lack the persuasion of arguments.

It is also the function of this Move that the second force that shapes the legal judgments in general is identified. Previously, it is mentioned that there are two general forces that pull and shape the legal judgments. At one end, the legal judgments report the

legal disputes between individuals. This is what Wan Arfah (2009) describes how a decision is *inter partes* for the disputing parties. But a decision also contains rules of law that binds like cases alike. This is the second force that shape the nature of legal judgments. In other words, Move 4 is particularly important because it contains sources of law that are developed by common law judges.

The graph in figure 4.2 compares the occurrences of Sub-Moves between Malaysia and English Court of Appeal legal judgements. The first and the second Sub-Moves for both Malaysia and English occur at a 100 percent rate. Variation occurs for the final Sub-Move in which the Sub-Move distributes below a 100 percent. This Sub-Move occur in the Malaysia cases at a rate of twenty percent and eighty percent for England and Wales cases.

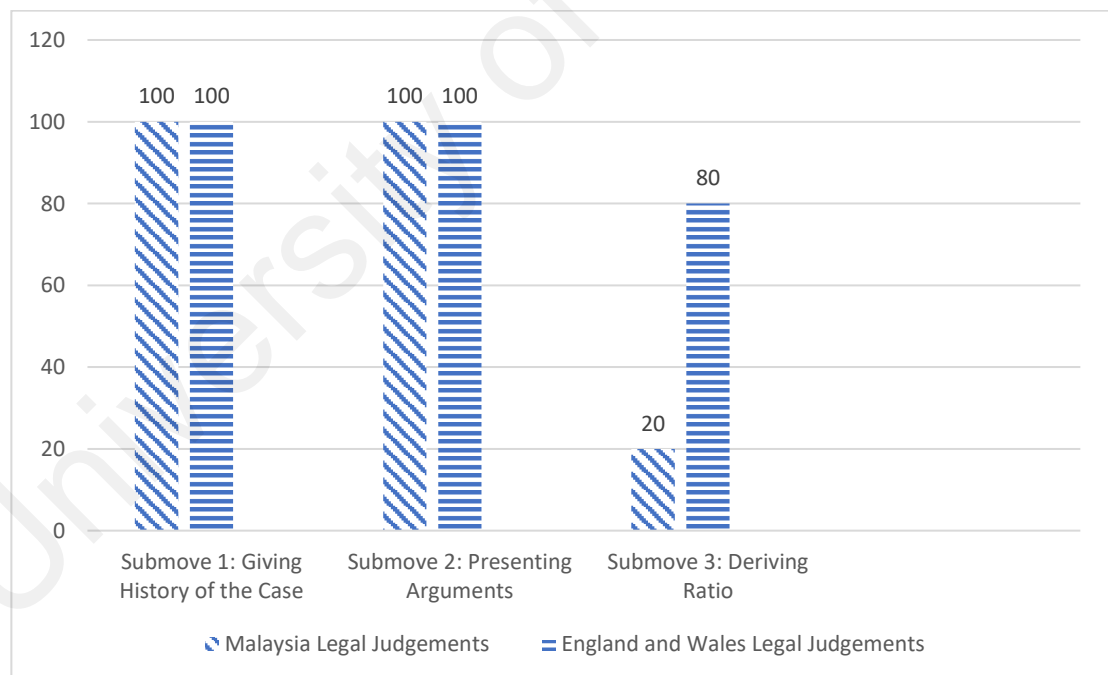


Figure 4.2: Percentage of Sub-Moves of Move 4 in Malaysia and England and Wales legal judgements

The two Tables 4.9 and 4.10 enumerate the occurrences of Sub-Moves between Malaysian and English judgements. The Table 4.9 reiterates the enumerations from the

graph but in table form. Sub-Move 1 and 2 occur at a 100 percent rate. For the third Move, MC3 and MC4 were the only two identified to distribute Sub-Move 3.

Table 4.9: Occurrences of Sub-Moves in Move 4: Arguing the Case of Malaysian Court of Appeal legal judgments

| Steps | M4sb1: Giving History of the Case | M4sb2: Presenting Arguments | M4sb3: Deriving Ratio Decidendi |
|------------------|-----------------------------------|-----------------------------|---------------------------------|
| MC1 | √ | √ | - |
| MC2 | √ | √ | - |
| MC3 | √ | √ | √ |
| MC4 | √ | √ | √ |
| MC5 | √ | √ | - |
| MC6 | √ | √ | - |
| MC7 | √ | √ | - |
| MC8 | √ | √ | - |
| MC9 | √ | √ | - |
| MC10 | √ | √ | - |
| Total: 10 | 10 | 10 | 2 |
| % | 100 | 100 | 20 |

The Table 4.10 represents the occurrences of the three Sub-Move of English cases to each ten legal judgements. The first two Sub-Moves occur for all ten judgements. It is only in EWC5 and EWC10 that Sub-Move 3, Deriving ratio decidendi does not occur making the distribution of Sub-Move 3 at only eighty percent.

Table 4.10: Occurrences of Sub-Moves in Move 4: Arguing the Case of England and Wales Court of Appeal legal judgments:

| Steps | M4sb1: Giving a History of the Case | M4sb2: Presenting Arguments | M4sb3: Deriving Ratio Decidendi |
|-------|-------------------------------------|-----------------------------|---------------------------------|
| EWC1 | √ | √ | √ |
| EWC2 | √ | √ | √ |
| EWC3 | √ | √ | √ |
| EWC4 | √ | √ | √ |
| EWC5 | √ | √ | - |
| EWC6 | √ | √ | √ |
| EWC7 | √ | √ | √ |
| EWC8 | √ | √ | √ |
| EWC9 | √ | √ | √ |

Table 4.10 continued

| Steps | M4sb1: Giving a History of the Case | M4sb2: Presenting Arguments | M4sb3: Deriving Ratio Decidendi |
|------------------|--|-----------------------------------|------------------------------------|
| EWC10 | √ | √ | - |
| Total: 10 | 10 | 10 | 8 |
| % | 100 | 100 | 80 |

Table 4.11 presents the occurrences of eight Steps of Malaysian judgements in the first Sub-Move of Move 4. Firstly, there's no distribution of Step 1, 7, 8 in all ten judgements with a rate of zero percent. The only Step that has a 100 percent rate is Step 6, summarizing basis of appeal. The other Steps that occur below 100 percent are Step 2, 3, 4, and 5.

Table 4.11: Occurrences of Steps in Sub-Move 1 of Move 4: Giving History of the Case of Malaysian Court of Appeal legal judgements

| Steps | M C 1 | M C 2 | M C 3 | M C 4 | M C 5 | M C 6 | M C 7 | M C 8 | M C 9 | M C 10 | Total % |
|--|-------------|-------------|-------------|-------------|-------------|-------------|-------------|-------------|-------------|--------------|------------|
| M4sb1s1: Stating Background of Findings | - | - | - | - | - | - | - | - | - | - | 0 |
| M4sb1s2: Stating Findings of Prosecution Case | √ | √ | √ | √ | √ | - | √ | √ | - | √ | 80 |
| M4sb1s3: Stating Findings of Defence Case | √ | √ | √ | - | √ | √ | √ | √ | √ | √ | 90 |
| M4sb1s4: Stating Verdict(s) of Earlier Trial | √ | √ | √ | √ | √ | √ | √ | √ | - | √ | 90 |
| M4sb1s5: Reporting Permission to Appeal | - | - | - | - | - | - | - | √ | √ | - | 20 |

Table 4.11 continued

| Steps | M C 1 | M C 2 | M C 3 | M C 4 | M C 5 | M C 6 | M C 7 | M C 8 | M C 9 | M C 1 0 | Total % |
|--|-------------|-------------|-------------|-------------|-------------|-------------|-------------|-------------|-------------|------------------|------------|
| M4sb1s6: Summarizing Basis of Appeal | √ | √ | √ | √ | √ | √ | √ | √ | √ | √ | 100 |
| M4sb1s7: Stating Background of Appeal | - | - | - | - | - | - | - | - | - | - | 0 |
| M4sb1s8: Stating Background of Appellant(s) | - | - | - | - | - | - | - | - | - | - | 0 |

The Table 4.12 displays the occurrences of eight Steps of England and Wales judgements for Sub-Move 1 of Move 4. Unlike the Malaysian judgments, there is only one Step that does not occur: Step 2. The only Step with a 100 percent rate is Step 6 which is similar to the occurrence of Step 6 in Malaysia judgements. The Steps that occur lower than the 100 percent rate are Step 1, 3, 4, 5, 7 and 8.

Table 4.12: Occurrences of Steps in Sub-Move 1 of Move 4: Giving History of the Case of England and Wales Court of Appeal legal judgements

| Steps | E W C 1 | E W C 2 | E W C 3 | E W C 4 | E W C 5 | E W C 6 | E W C 7 | E W C 8 | E W C 9 | E W C 1 0 | Total % |
|--|------------------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|-----------------------|------------|
| M4sb1s1: Stating Background of Findings | √ | - | - | - | - | - | - | - | - | - | 10 |
| M4sb1s2: Stating Findings of Prosecution Case | - | - | - | - | - | - | - | - | - | - | 0 |
| M4sb1s3: Stating Findings of Defence Case | √ | √ | √ | √ | - | √ | √ | √ | √ | - | 80 |

Table 4.12 continued

| Steps | E W C 1 | E W C 2 | E W C 3 | E W C 4 | E W C 5 | E W C 6 | E W C 7 | E W C 8 | E W C 9 | E W C 10 | Total % |
|---|------------------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|-------------------|------------|
| M4sb1s4: Stating Verdict(s) of Earlier Trial | √ | √ | √ | √ | - | - | √ | - | √ | √ | 70 |
| M4sb1s5: Reporting Permission to Appeal | - | - | - | √ | - | - | - | - | - | - | 10 |
| M4sb1s6: Summarizing Basis of Appeal | √ | √ | √ | √ | √ | √ | √ | √ | √ | √ | 100 |
| M4sb1s7: Stating Background of Appeal | - | √ | - | √ | - | - | - | - | - | - | 20 |
| M4sb1s8: Stating Background of Appellant(s) | - | - | - | √ | - | - | - | - | - | - | 10 |

The following subsection contains a brief explanation, examples and discussion of Steps in Sub-Move 1 of Move 4: Arguing the Case.

Among all Moves or Sub-Moves, Sub-Move 1 of Move 4 contains an array of variety of different Steps. This Sub-Move contains eight Steps. It is in this Sub-Move where the judges' activities are most prominent. However, the judge could not begin deciding without taking account of the decisions of the judges from the lower courts. From reading the contents of twenty legal judgements, this Sub-Move represent elements of intertextuality between the decisions of the hierarchically lower High Court and the re-examination of this decisions through the hierarchically higher Appeal Court. Thus, this Sub-Moves contains history of findings and verdicts from the trials of the lower courts.

Another important element to this Sub-Move is the basis of appeal that appellant pursue in order to negate the decision of the lower courts. It is this element that particularly differentiates the appellate legal judgement from the other legal judgements. One clear example that differentiates the two legal systems in the realization of Steps is that for the England and Wales CA judgements, there is no explicit reporting about the decisions or findings made on the prosecution case. The examples of all eight Steps for both legal systems are as follows:

Step 1: Stating Background of Findings

Example 1:

| Step 1 | Legal Judgements: EWC1 |
|---------------------------------------|--|
| Stating Background of Findings | <p><u>The Course of the Proceedings at Lewes Crown Court</u></p> <p>(Para 20) The position regarding Mula is more complex, leading to the adjournment of this appeal on 29th November 2016. Following that hearing, transcripts have been obtained of the proceedings before HHJ Kemp on 22nd January 2016, as well as of the Crown’s opening and Mr Heaton-Armstrong’s plea in mitigation on 28th January...</p> <p>... (Para 30) It is noteworthy that Mr Heaton-Armstrong did not expressly contradict any aspects of Miss Beckett’s opening to the Judge: i.e. did not expressly complain about the “full facts” opening, including the enforced confession and the reasons for it. By the same token, Miss Beckett did not expressly contradict Mr Heaton-Armstrong’s mitigation.</p> |

The findings refer to the brief summary of reasonings made by the judges of the lower court in order to decide on a particular case. However, there are findings that appears rather complex which require a background or context to elucidate the matter. In Example 1, the appellate judge recounted and summarized the proceedings of a lower court, the

proceedings at Lewes Crown Court, to provide the background for the Crown Court findings.

In paragraph 20 of example 1, the appellate judge described the content of the transcripts which contain Crown’s opening and defendant’s legal representatives. Finally, in paragraph 30, the appellate judge ended the Step with an observation of the two legal representatives did not contradict each other: one concerning an opening and the other concerning a issue of mitigation.

Step 2: Stating Findings of Prosecution Case

Example 2:

| Step 2 | Legal Judgements: MC1 |
|---|---|
| Stating Findings of Prosecution Case | <p>The findings by the trial judge at the close of the prosecution’s case</p> <p>(Para 15) The facts of the case disclosed there were 25 injuries found on the deceased body and 16 injuries were caused by a sharp object such as a knife of about 5cm long. The stab wound on the neck was a complete cut of the right carotid artery which caused a Hypovolemic shock. The injuries on the deceased’s neck had resulted in massive bleeding which was sufficient in the ordinary course of nature to cause death. Such injuries were not accidental or unintentional. This crucial evidence was not challenged by the defence in cross-examination...</p> <p>... (Para 21) The evidence of PW3 showed that the deceased’s relationship with the appellant was no longer cordial. Their relationship had turned sour and she wanted to sever the relationship.</p> <p>(Para 22) The trial judge found that the prosecution had succeeded in proving its case under section 300(c) of the Penal Code against the appellant. Thus a prima facie case had been made out as charged. The trial judge had therefore ordered the appellant to enter his defence as charged.</p> |

A trial generally moves in sequences starting with the prosecution case which is followed by the defendant’s case. In each case, the judge will decide, reason and

conclude. This reasoning and concluding process is the judge’s finding which either agrees or disagree with the legal representatives. Step 2 is a summary of the lower court judge’s findings on the prosecution case which part of the general function of stating the history of the case.

In example 2, the Step begins with paragraph fifteen, stating an overview of the 25 injuries found on the body of the victim explaining the cause of death. The findings continue with other observations on the evidence which ends in paragraph 21 concerning the motivation behind the murder: the deceased’s relationship with the appellant is no longer cordial. This Step finally ends in paragraph 22, with the trial judge found the prosecution had been successful in proving a case beyond reasonable doubts.

Step 3: Stating Findings of Defence Case

Example 3:

| Step 3 | Legal Judgements: EWC1 |
|---|--|
| Stating Findings of Defence Case | <p>(Para 31) In his sentencing remarks, the Judge observed that all three appellants were effectively of good character. He also observed, in relation to Mula, that “the basis upon which I deal with you today has been embraced by you at a relatively late stage”. At page 3 of the transcript, there is some confusion as to which of the appellants was denying that Murataj worked for him in the drugs trade, although the Judge made clear that “I am not actually sentencing you for any drugs offences”. Crucially, the Judge said in terms that in his view all three appellants were equally involved in this conspiracy. He listed the aggravating features in these terms:</p> <p>“In my view, this was a serious offence: it was clearly and carefully planned, you were mob-handed, you abducted this young man in broad daylight, in a very public place, you used violence to suborn him, and although in the event he was detained for a relatively short time, two to three hours, during that time you subjected him to violence and threats of further violence; and, in effect, in that film he was blackmailed to keep working for you and if he didn’t he was threatened with violence. The fact that “he”, like “you” – with the exception of Mr Hasa – was involved in the supply of class A drugs does not assist at all; indeed, if anything, it tends to aggravate the background to this case”.</p> |

Similar to Step 2, example 3 contains the findings of the lower court judge on the defendant’s case. In example 3, the Crown Court judge states three points of arguments in order to come to his conclusion. In paragraph 31, the judge declared that all three appellants were of good character. Secondly, the judge admitted how the reasoning made on Mula is rather late on the trial process: “the basis upon which I deal with you today has been embraced by you at a relatively late stage”. Thirdly, the judge decided that all three appellants are equally guilty of the conspiracy of kidnapping in which his verbal opinion is quoted on the matter

Step 4: Stating Verdict(s) of Earlier Trial

Example 4:

| | |
|--|---|
| Step 4 | Legal Judgements: EWC1 |
| Stating Verdict(s) of Earlier Trial | (Para 20) As we have said, Hasa and Nejaz were both convicted after a trial on 22nd December 2015. |

Step 4 represents the reporting of verdict made the judge of the lower court. Example 4 contains a restatement of the verdict verbalizing the conviction of the two defendants, Hasa and Nejaz of an earlier trial by the Crown Court.

Step 5: Reporting Permission to Appeal

Example 5:

| | |
|---------------------------------------|---|
| Step 5 | Legal Judgements: EWC4 |
| Reporting Permission to Appeal | (Para 44) There are two grounds on the first of which the appellant has leave. |

Step 5 contains a brief statement of the appellate court procedure in which that grounds appeal was made only with permission of the appellate court. In example 5, the appellate judge mentioned that only the first grounds of two grounds of appeal are given permission to be argued by the appellants.

Step 6: Summarizing Basis of Appeal

Example 6:

| Step 6 | Legal Judgements: EWC1 |
|------------------------------------|---|
| Summarizing Basis of Appeal | <p>Grounds of Appeal</p> <p>(Para 32) Hasa’s grounds of appeal are that a starting-point of 8 years’ imprisonment was manifestly excessive, given the limited violence exerted and the relatively short period of detention. Mr Hossain drew our attention to the decision of this Court in R v Syed Ahmed [2010] EWCA Crim 3133, where sentences in the range of 9-11 years’ imprisonment were imposed for what he submitted were far more serious offences of this nature. It is contended that the appropriate sentence should have been 5-6 years’ imprisonment...</p> <p>... (Para 34) Mula also adopts Hasa’s grounds. He contended in writing that the total sentence of 10 years’ imprisonment involved an element of double counting and disregarded totality, but as we have said that submission was not pressed in oral argument. Mr Mula’s main point on appeal is that the Judge was wrong in principle to sentence him on the basis of facts which he continued to dispute notwithstanding his withdrawal of his basis of plea. Mula was continuing to dispute (a) that any drug dealing formed the background to his involvement in the conspiracy, and (b) that he was involved in the enforced confession of the victim and/or that his intention was to compel Murataj to continue to work in the drugs world. Further, to sentence him on that basis (at least as regards item (a)) would entail sentencing him for further offences in respect of which he had not been indicted. Overall, it is said that Mula should have been treated differently from the other appellants.</p> |

With an occurrence rate of a 100 percent for both Malaysian and English judgements, Step 6 is, arguably, of utmost significance among all Steps. It is after all, the Step that

contains the basis of arguments that are brought by appellant to challenge the verdict of the lower court. It is with this Step, that the appellate court will consider, reason, and conclude. Example 6 summarizes the grounds of appeal for all three appellants spanning three paragraphs.

In paragraph thirty-two, Hasa, the appellant, grounds of appeal are summarized in which he argued that his eight years imprisonment is excessive. In supporting his argument, Hasa's legal representative cites an authority: Court in *R v Syed Ahmed* [2010] EWCA Crim 3133, in which the range of 9-11 years of imprisonment were imposed on more serious offence. The Step ended with paragraph 34, in which third appellant, Mula, also emulated Hasa's grounds of appeal.

Step 7: Stating Background of Appeal

Example 7:

| Step 7 | Legal Judgements: EWC4 |
|-------------------------------------|---|
| Stating Background of Appeal | (Para 14) At the hearing of the appeal, Mr Webster abandoned his argument that there is a conflict. He recognised that the issues in <i>Stewart</i> and <i>Jenkin</i> were different. He reformulated his ground of appeal in this way: the courts now have a far greater understanding of mental illness and should be prepared to adopt a more nuanced approach to it. Someone with paranoid schizophrenia, who kills whilst suffering a florid psychotic episode, should not be debarred from relying upon the partial defence of diminished responsibility on the basis of their voluntary intoxication. The judge wrongly excluded from the jury's consideration the possibility that the appellant was suffering from an abnormality of mental functioning (a psychotic state) which arose from a medical condition (schizophrenia) and which, in combination with voluntary intoxication, substantially impaired his responsibility for his actions. The jury was effectively left with a stark binary choice: schizophrenia and dependency syndrome equals guilty of manslaughter, schizophrenia and voluntary intoxication equals guilty of murder. |

Step 7 is related to Step 6 in which it brings facts and events that are related to the appeal. Example 7 provides a background of appeal concerning the nature schizophrenia.

In paragraph 14, the appellate judge discussed how the legal representative, Mr. Webster, reformulated the grounds of appeal which he argued that the contemporary courts have better understanding on schizophrenia. In effect, the legal representative argued the Crown Court judge had wrongly excluded the jury of any consideration of how the appellant’s mental illness had impaired his sense of responsibility.

Step 8: Stating Background of Appellant(s)

Example 8:

| Step 8 | |
|---|---|
| Legal Judgements: EWC4 | |
| Stating Background of Appellant(s) | (Para 21) The appellant was aged thirty at the time of sentence. He was brought up in a stable family unit and had a “normal happy childhood”. He started smoking cannabis at the age of fifteen and moved onto smoking skunk which he described as making him ‘paranoid’. In his late teens and early twenties he abused a wide variety of class A drugs including heroin and crack cocaine. He has been in contact with drugs services since the age of eighteen or twenty and was prescribed methadone as a substitute for heroin. He continued to take illegal drugs despite suffering from drugs induced psychotic episodes. At the age of twenty five he was diagnosed as a paranoid schizophrenic. In the months before the killing his condition deteriorated and his behaviour became increasingly paranoid and unpredictable. There were incidents of aggression. A psychiatric assessment at the end of October 2015 suggested he posed a significant risk of harm to others. |

The final Step, Step 8, is also similar to Step 7, in which it contains facts that are related appeal. However, the facts or events presented are directly related to the appellant. In example 8, summarizes the biographical account of the appellant struggle with the use of drugs. This seems to relate to the nature of appellant having mental illness which relates to his crimes and appeal.

The following subsection explains, discusses and provides examples of the Steps within Sub-Move 2 of Move 4.

Sub-Move 2 of Move 4 realizes the judge’s main activity of judging the case which is to form arguments. The Steps represent the different facets of reasoning, citing authority and position and taking different position to agree and disagree with the appeal.

The content in Table 4.13 indicates that all Steps occur at a hundred percent rate with the exception of the fifth Step. In the Malaysian case, there are no Step that occur with zero percent rate.

Table 4.13: Occurrences of Steps in Sub-Move 2 of Move 4: Arguing the Case from Malaysian CA legal judgements

| Steps | M | M | M | M | M | M | M | M | M | M | Total % |
|---|---|---|---|---|---|---|---|---|---|----|---------|
| | C | C | C | C | C | C | C | C | C | C | |
| | 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 | |
| M4sb2s1: Identifying the Issue | √ | √ | √ | √ | √ | √ | √ | √ | √ | √ | 100 |
| M4sb2s2: Determining Position | √ | √ | √ | √ | √ | √ | √ | √ | √ | √ | 100 |
| M4sb2s3: Stating Legal Authority | √ | √ | √ | √ | √ | √ | √ | √ | √ | √ | 100 |
| M4sb2s4: Providing Reasons | √ | √ | √ | √ | √ | √ | √ | √ | √ | √ | 100 |
| M4sb2s5: Saying Gratitude | - | - | - | - | - | - | - | - | - | - | 0 |

The content in Table 4.14 indicates that there are similarities between the Malaysian judgements and English judgements. Similar to the Malaysian judgements, Step 1, 2, 3, and 4 occurs with a 100 percent rate. Unlike the Malaysian judgements, however, there are two realization of Step five with 20 percent rate among the ten judgments.

Table 4.14: Occurrences of Steps in Sub-Move 2 of Move 4: Presenting Arguments from the England and Wales CA legal judgements

| Steps | E | E | E | E | E | E | E | E | E | E | Total % |
|---|---|---|---|---|---|---|---|---|---|----|------------|
| | W | W | W | W | W | W | W | W | W | W | |
| | C | C | C | C | C | C | C | C | C | C | |
| | 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 | |
| M4sb2s1: Identifying the Issue | √ | √ | √ | √ | √ | √ | √ | √ | √ | √ | 100 |
| M4sb2s2: Determining Position | √ | √ | √ | √ | √ | √ | √ | √ | √ | √ | 100 |
| M4sb2s3: Stating Legal Authority | √ | √ | √ | √ | √ | √ | √ | √ | √ | √ | 100 |
| M4sb2s4: Providing Reasons | √ | √ | √ | √ | √ | √ | √ | √ | √ | √ | 100 |
| M4sb2s5: Saying Gratitude | - | √ | - | - | - | - | √ | - | - | - | 20 |

One Step that must be highlighted is the Step ‘Stating Authority’. This Step represents the textualization of the practice of *stare decisis* between the judges. Following Wan Arfah (2009), the practice of *stare decisis* determines that the relevant precedents found in the previous judgments are binding. This practice of citing and referring to other precedent of other judges that is textualized by the Step, Stating Authority, renders the arguments legal and consistent rather than arbitrary.

Clearly, from the Table of occurrences above, both legal systems mix different combinations of Step but there are no salient differences that would distinguish the strategies of the judges from Malaysia and England. However, there is one particular interesting use of Step in which that there two instances that English judges explicitly

declare gratitude in the judgments. The examples from the Malaysian and English judgements are represented in the following:

Step 1: Identifying the Issue

Example 1

| Step 1 | Legal Judgements: MC1 |
|------------------------------|--|
| Identifying the Issue | (Para 42) Further, by saying “On the issue of the accused pointing at a place where the knife was retrieved is also irrelevant the information which led to the discovery was disclosed at the same time i.e. the information given to the I.O (PW14) and the retrieval of the knife was in continuous transaction”,... |

Step 1 concerns the identification of issue that is argued by the judges. In example 1, the judges identified and highlighted one of the legal issues being the relevance of the accused pointing to the place of retrieving the knife.

Step 2: Determining Position

Example 2:

| Step 2 | Legal Judgements: MC1 |
|-----------------------------|---|
| Determining Position | ... (Para 42) Her Ladyship had treated the appellant’s conduct of pointing to the bushes where the knife was discovered and the prior or antecedent information given by the appellant to PW14 was a continuous transaction is confusing and misleading, though in the next breath Her Ladyship said that “pointing to the knife, with no caution was admissible under section 8 of EA.” |

Step 2 typically continues or is related to the first Step. In this Step, from example 2, the appellate judge commented on the lower court’s judge reasoning about the discovery of the knife as a continuous transaction are “confusing and misleading”. In effect, the

appellate judge has determined the position on the argument by disagreeing with lower court's judge's reasonings.

Step 3: Stating Authority

Example 3:

| Step 3 | Legal Judgements: MC1 |
|--------------------------|---|
| Stating Authority | <p>... (Para 42) In the Federal Court case of Amathevelli P. Ramasamy v PP [2009] 3 CLJ 109, Arifin Zakaria CJ (Malaya)(as he then was) said:</p> <p>“The admissibility of the information supplied by the appellant does not affect the admissibility of the evidence of her subsequent conduct under section 8 of the Evidence Act irrespective of section 27. As Chinnapa Reddy J said in Prakash Chand v State AIR SC 400 at p.404:</p> <p>The evidence of the circumstances, simpliciter, that an accused person led a police officer and pointed out the place where stolen articles or weapon which might have been used in the commission of the offence were found hidden, would be admissible as conduct, under section 8 of the Evidence Act, irrespective of whether any statement by the accused contemporaneously will or antecedent to such conduct falls within the purview of section 27 of the Evidence Act (vide Himachal Pradesh Administration v Om Prakash AIR [1972] SC 975.”</p> |

The third Step represents the practice of binding precedent that characterize the common law judges. By citing past authorities, the appellate judges showed that understanding and reasoning of law is not arbitrary but follow legal precedents. In example 3, the appellate judge cites a case from the superior Malaysian Federal Courts which contains more reasonings and citations.

Step 4: Providing Reasons

Example 4:

| | |
|--------------------------|---|
| Step 4 | Legal Judgments: MC1 |
| Providing Reasons | ... (Para 42) It would appear that the trial judge treated or lumped up the information given by the appellant and his subsequent conduct as one and the same thing to justify her refusal to expunge the information. Both provisions are separate and distinct. They are relating to admissibility of evidence. The disclosure statement is governed by s.27 of EA, whilst evidence of subsequent conduct is covered by section 8 of EA. If the disclosure information or statement is inadmissible under section 27, the prosecution may pray in aid the evidence of subsequent conduct under section 8 of EA... |

Step 4 represents the last Step that are argumentative in nature. In this Step the judges provide their reasons on why they choose and decide on a position. In example 4, the judge declares that the relevant legal provision is “separate and distinct.” Continuing after this statement, the judge provides reasons by saying that the legal provision relates to the admissibility of evidence which the judge then expands on the relevant law.

Step 5: Saying Gratitude

Example 5:

| | |
|-------------------------|---|
| Step 5 | Legal Judgements: EWC2 |
| Saying Gratitude | ... (Para 12) The court is greatly indebted to counsel for their written submissions on these issues submitted to the court on 16 December 2016. They have, as throughout, conducted the matter with the greatest skill, courtesy and learning. |

Step 5 although found in Move 4 is not directly related to the arguments of the judgements. This Step indicates the rare moments where judges express their gratitude to the legal representatives. This Step is not found in the selected ten Malaysian judgements. Example 5 is found in one of the English cases.

The following subsection briefly explains, discusses and provides examples concerning the Steps of Sub-Move 3 of Move 4.

Sub-Move 3 of Move 4 contains a single but important Step that expresses legal opinions of the precedents or rules of law. The content of Table 4.15 indicates that there are two judgements, MC3 and MC4, that distribute Step 1: Expressing Ratio making the occurrences of the Step at 20 percent.

Table 4.15: Occurrences of Step 1 in Sub-Move 3 of Move 4: Deriving Ratio Decidendi from Malaysia CA legal judgement

| Step | M4sb3s1: Expressing Ratio |
|------------------|---------------------------|
| MC1 | - |
| MC2 | - |
| MC3 | √ |
| MC4 | √ |
| MC5 | - |
| MC6 | - |
| MC7 | - |
| MC8 | - |
| MC9 | - |
| MC10 | - |
| Total: 10 | 2 |
| % | 20 |

The content in Table 4.16 indicates that Step 1 realizes itself in eight judgements making the occurrences of the Step at eighty percent. Two judgements that did not realize this single Step are EWC5 and EWC10.

Table 4.16: Occurrences of Step 1 in Sub-Move 3 of Move 4: Deriving Ratio Decidendi from England and Wales CA legal judgements

| Step | M4sb3s1: Expressing Ratio |
|------|---------------------------|
| EWC1 | √ |
| EWC2 | √ |
| EWC3 | √ |
| EWC4 | √ |
| EWC5 | - |
| EWC6 | √ |
| EWC7 | √ |
| EWC8 | √ |

Table 4.16 continued

| Step | M4sb3s1: Expressing Ratio |
|------------------|---------------------------|
| EWC9 | √ |
| EWC10 | - |
| Total: 10 | 8 |

Based upon Bhatia's example of this Sub-Move in his 1993 work, he argues and categorizes the ratio to be a new concluded rules or principles of law derived from the reasoning and arguments containing in the second Sub-Move: presenting the arguments. However, after cross-referencing with legal literature of on the topic of precedents and ratio, the nature of this third and last Sub-Move is not so straightforward. Particularly, the identification of this particular Sub-Move and its Step present a complex analytical problem.

Firstly, the number of occurrences stated in Tables 4.15 and 4.16 above may not represent the actual ratios or rules of law presented in the selected twenty legal judgements. Going through the analysis, this study on ratio encountered one large issue: what if the ratio is available in all twenty cases but it is not expressed textually but inferred from interpreting the texts? Furthermore, even if the ratio is expressed textually, there is still an issue of multiple interpretations which is equally problematic since Holland and Webb (2013) argue that there is not a single test for defining what is meant by ratio. Consequently, what is expressed in the Tables above is a heuristic analytical choice to include ratios that are expressed textually. In other words, the numbers in the Tables above do not include the possibility of ratios that could be inferred but not expressed textually.

Additionally, the ratios determined for this study is also a matter of interpretation in which other researches may interpret and argue differently. Harris (1997) states that the ratio is not something once and for all. Specifically, Harris describes how the ratio is

understood by how cases depend on cases which means that the law is a process of construction over time. The complexity of the ratio impacts the nature of the Step within this Sub-Move. The last Sub-Move by itself is a complex discourse. Consequently, there are possibility that it realizes a set of Steps rather than a single one presented here. Unfortunately, after consulting the legal literature on ratio in which there is no agreement or clear definition of ratio (Holland and Webb 2013), the analysis of reconstructing the Moves into multiple Steps prove to be too difficult for the scope of this study. Because of this issue, there is no possibility of bringing and comparing different realization of Steps between the two legal systems. Thus, the example of a single Step of the final Sub-Move presented below is necessarily a simplification.

Step 1: Expressing Ratio

Example 1:

| No. | Steps | Legal Judgements: EWC9 |
|-----|-------------------------|---|
| 1 | Expressing Ratio | <p>(Para 34) As is evident from the judgment in <i>Keane</i>, the words “disproportionate” and “unreasonable” can in some contexts be regarded as synonymous, albeit, as we have explained, in s.76(5A) and (6) they are not. It will nevertheless very rarely be helpful for judges to attempt explicitly in a summing up to distinguish between what is “disproportionate” and what is “unreasonable”. The focus of the jury in the context of a householder case ultimately should be on what is reasonable or unreasonable in the particular circumstances. In the overwhelming majority of cases it therefore should neither be necessary nor helpful in a summing up to use language referring expressly to the contrast between disproportionate and unreasonable force; because once the jury have concluded that the degree of force used was not grossly disproportionate the sole issue is whether the degree of force used was unreasonable in the circumstances. That should be the focus for the jury. That was the approach taken in the judgment of the President in <i>Denby Collins</i> at paragraph 20, which we endorse...</p> <p>... (Para 38) Another useful illustration may be the question of retreat. S. 76(6A) makes clear that there is no duty to retreat; the possibility of retreat is but a factor in determining whether the degree of force used was reasonable. If there is a threat of confrontation in the street,</p> |

| | | |
|--|--|---|
| | | then the option to retreat may be important in determining whether the use of any force was reasonable. In the case of an intruder in the home, however, the option of retreat is unlikely to arise in many cases and therefore the degree of force used, although otherwise appearing to be disproportionate, might nonetheless be assessed as reasonable. |
|--|--|---|

As argued earlier, the analysis of this Sub-Move encounters both conceptual and methodical problems. The lengthy example 1, spanning 5 paragraphs indicates that the Step is essentially an answer of the judge to the situation at hand. In paragraph 34, the issue concerns the meaning of disproportionate and unreasonable. From the continuous reading, it appears that this legal solution is combination of reasoning, opinions and examples.

4.5.5 Move 5: Pronouncing Judgments

The final move is a legal conclusion that declares the nature of the case and its parties of disputes. There are two Steps available. The content in Table 4.17 indicates that the occurrences of Step 1 is at a 100 percent rate. Oppositely, there is no single occurrence of Step 2 making the realization of Step 2 at zero percent.

Table 4.17: Occurrences of Steps in Move 5: Pronouncing Judgments of Malaysian CA legal judgements

| Steps | M5s1: Expressing Verdict(s) | M5s2: Expressing Guideline(s) |
|------------------|-----------------------------|-------------------------------|
| MC1 | √ | - |
| MC2 | √ | - |
| MC3 | √ | - |
| MC4 | √ | - |
| MC5 | √ | - |
| MC6 | √ | - |
| MC7 | √ | - |
| MC8 | √ | - |
| MC9 | √ | - |
| MC10 | √ | - |
| Total: 10 | 10 | 0 |
| % | 100 | 0 |

The enumeration Step 1 in Table 4.18 indicates that eight judgements realize Step 1 making the rate of occurrences at eight percent. There is however a single occurrence of Step 2 in case EWC2 making the rate of occurrence of Step 2 at 10 percent.

Table 4.18: Occurrences of Steps in Move 5: Pronouncing Judgments of England and Wales CA legal judgements

| Steps | M5s1: Expressing Verdict(s) | M5s1: Expressing Guideline(s) |
|------------------|-----------------------------|-------------------------------|
| EWC1 | √ | - |
| EWC2 | - | √ |
| EWC3 | √ | - |
| EWC4 | - | - |
| EWC5 | √ | - |
| EWC6 | √ | - |
| EWC7 | √ | - |
| EWC8 | √ | - |
| EWC9 | √ | - |
| EWC10 | √ | - |
| Total: 10 | 8 | 1 |
| % | 80 | 10 |

The basic function of this final Move is to give the verdict that determines the fate of the parties of dispute. At the level of the Court of Appeal, the verdict determines whether the appeal is allowed or not. Depending on the case, the Court of Appeal may affirm the decision of the lower court or disagree. Conceptually speaking, this Move is comparable to one of Austin's speech acts (2009). When the appeal judge pronounces the verdict, it is a declaration that changes the state of affairs of the parties of the dispute (Schane, 2012).

A different Step found for this study is the Step: Expressing the Guideline. In this particular Step, there is no clear expression that the Step permits an appeal or affirms the decision of a lower. Reading the Step and its relation to previous Sub-Moves and Moves seems to indicate that the Step provides a guideline rather than a verdict. This is the only Step that is found in the English CA judgements and is not found in any of the Malaysian judgements. Unfortunately, there is only a single occurrence of this Step from the twenty

cases to test the reliability of this Step. The examples of the Steps that realizes the final Move, Pronouncing Judgments, is in the following:

Step 1: Expressing Verdict(s)

Example 1:

| Step 1 | MC1 |
|------------------------------|---|
| Expressing Verdict(s) | Having considered the facts and the totality of the evidence, we found the conviction of the appellant was safe. We unanimously affirmed the conviction for murder under section 302 of the Penal Code and the sentence of death imposed by the High Court. |

Step 1 represents the conclusion of the appellate judges whether to allow or disallow the appeal. In example 1, the judges affirmed the conviction of the appellant which indirectly is a rejection of the appeal of the appellant.

Step 2: Expressing Guideline(s)

Example 2:

| Step 2 | EWC2 |
|--------------------------------|---|
| Expressing Guideline(s) | <p>In this case it is understood that the Single Judge will be part of the constitution hearing the appeal. Given the experience and seniority of the Single Judge to whom the Full Court will direct that the applications will be made, namely Holroyde J, we are sure that the circumstances in which the Full Court will be required to exercise the powers in place of the Single Judge, if any ever occur, will be very rare.</p> <p>The process set out in McDonald involved a very different position as it provided specifically for cases where the Court is invited to review and, potentially, overrule the determination of a Crown Court judge. Where no PII application was made at the Crown Court, and the exercise is being conducted for the first time in relation to post-trial disclosure, the procedure we have outlined is entirely appropriate and provides the necessary safeguards and flexibility</p> |

This exceptional Step 2 is unlike Step 1. It does possess the characteristics of a verdict that affects the destiny of the appellant. From reading the judgement which leads to example 2, it appears that the judgement is more of a guideline of a way forward to the issue of hearing of a single judge.

4.6 Communicative Purposes

From the examples and discussions in the previous sections, it is clear that the legal judgements from Malaysia and English legal systems possess common characteristics and identical at the level of Moves. The combination of a bottom-up analysis and the application of Bhatia's framework (1993) to the collected data indicates that the main difference between the two legal systems is predominantly at the level of Steps.

If at a higher level of Moves the legal judgments of Malaysian and English legal systems are similar, it is not a controversy to conclude that the general communicative purposes of the legal judgments are similar as well. This is from the consideration that the general purposes and the usage of non-discriminative strategies of both legal systems at a higher abstract are rather similar. Adapting from Bhatia's framework and adding a new purpose that is specific to the sub-genre of court of appeal legal judgements, the five-part Move realizes three general communicative purposes.

4.6.1 Communicative Purpose 1: Recording the Case

In Table 4.19 and 4.20, the communicative purpose, Recording the Case, is being realized by all five Moves. For the Malaysian legal judgements, this purpose is realized with a hundred percent rate. However, due to two missing Moves in the English judgements from judgements EWC2 and EWC4 the overall percentage of this communicative purpose realized is ninety eighty percent.

Table 4.19: Realizations of communicative purpose 1 in Moves 1,2 and 3

| Communicative Purpose | Recording the Case | Recording the Case | Recording the Case |
|-----------------------|--------------------|--------------------|--------------------|
| | Move 1 | *Move 2 | Move 3 |
| MC1 | / | / | / |
| MC2 | / | / | / |
| MC3 | / | / | / |
| MC4 | / | / | / |
| MC5 | / | / | / |
| MC6 | / | / | / |
| MC7 | / | / | / |
| MC8 | / | / | / |
| MC9 | / | / | / |
| MC10 | / | / | / |
| EWC1 | / | / | / |
| EWC2 | / | - | / |
| EWC3 | / | / | / |
| EWC4 | / | / | / |
| EWC5 | / | / | / |
| EWC6 | / | / | / |
| EWC7 | / | / | / |
| EWC8 | / | / | / |
| EWC9 | / | / | / |
| EWC10 | / | / | / |
| Total | 20 | 19 | 20 |
| % | 100 | 95 | 100 |
| Overall Total | | | 295 |

Table 4.20: Realizations of communicative purpose 1 in Moves 4 and 5

| Communicative Purpose | Recording the Case | Recording the Case |
|-----------------------|--------------------|--------------------|
| | Move 4 | Move 5 |
| MC1 | / | / |
| MC2 | / | / |
| MC3 | / | / |
| MC4 | / | / |
| MC5 | / | / |
| MC6 | / | / |
| MC7 | / | / |
| MC8 | / | / |
| MC9 | / | / |
| MC10 | / | / |

Table 4.20 continued

| Communicative Purpose | Recording the Case | Recording the Case |
|-----------------------|--------------------|--------------------|
| | Move 4 | Move 5 |
| EWC1 | / | / |
| EWC2 | / | / |
| EWC3 | / | / |
| EWC4 | / | - |
| EWC5 | / | / |
| EWC6 | / | / |
| EWC7 | / | / |
| EWC8 | / | / |
| EWC9 | / | / |
| EWC10 | / | / |
| Total | 20 | 19 |
| % | 100 | 95 |
| Overall Total | | 490 |
| Overall | | 490/5 =98% |

4.6.2 Communicative Purpose 2: Serving as Precedents

Table 4.21 presents the overall percentages of the second communicative purpose realized in Move 3 and Move 4. The content of the Table indicates that the Serving as Precedents are realized at a hundred percent rate.

Table 4.21: Realizations of communicative purpose 2 in Moves

| Communicative Purpose | Serving as Precedents | Serving as Precedents |
|-----------------------|-----------------------|-----------------------|
| | Move 3 | Move 4 |
| MC1 | / | / |
| MC2 | / | / |
| MC3 | / | / |
| MC4 | / | / |
| MC5 | / | / |
| MC6 | / | / |
| MC7 | / | / |
| MC8 | / | / |
| MC9 | / | / |
| MC10 | / | / |

Table 4.21 continued

| Communicative Purpose | Serving as Precedents | Serving as Precedents |
|-----------------------|-----------------------|-----------------------|
| | Move 3 | Move 4 |
| EWC1 | / | / |
| EWC2 | / | / |
| EWC3 | / | / |
| EWC4 | / | / |
| EWC5 | / | / |
| EWC6 | / | / |
| EWC7 | / | / |
| EWC8 | / | / |
| EWC9 | / | / |
| EWC10 | / | / |
| Total | 20 | 20 |
| % | 100 | 100 |
| Overall Total | | 200 |
| Overall | | 200/2=100% |

4.6.3 Communicative Purpose 3: Grounding Basis of Appeal

A specific communicative purpose for the Appeal judgements subgenre, the final and third purpose is realized in Move 4. The Table 4.22 indicates that third communicative purpose occurs at a hundred percent rate.

Table 4.22: Realizations of communicative purpose 3 in Moves

| Communicative Purpose | *Grounding Basis of Appeal |
|-----------------------|----------------------------|
| | Move 4 |
| MC1 | / |
| MC2 | / |
| MC3 | / |
| MC4 | / |
| MC5 | / |
| MC6 | / |
| MC7 | / |
| MC8 | / |
| MC9 | / |
| MC10 | / |

Table 4.22 continued

| Communicative Purpose | *Grounding Basis of Appeal |
|------------------------------|-----------------------------------|
| | Move 4 |
| EWC1 | / |
| EWC2 | / |
| EWC3 | / |
| EWC4 | / |
| EWC5 | / |
| EWC6 | / |
| EWC7 | / |
| EWC8 | / |
| EWC9 | / |
| EWC10 | / |
| Total | 20 |
| % | 100 |
| Overall Total | 100 |
| Overall | 100% |

***New Communicative Purpose**

The two communicative purposes of this genre are not mutually exclusive or are in competition to each other. Both represents a complementing strategical purpose. The first purpose, *Recording the Case*, covers almost if not all aspect of this legal text and the second communicative purpose, *Serving as Precedent*, is not only recorded by the first communicative purpose but established as the core function of the legal judgments. Consequently, a case is recorded not only as a historical content but the content would be potentially applied to future legal disputes. This understanding is in agreement with the legal scholars, Holland and Webb (2013) emphasise that for law students to appreciate case law and the practice of precedents, it is not enough to know the facts of earlier case, but how the judges have applied the law in relation to these facts. As one of the main sources of law in the common law system, recorded judgments affirmed the significance of written discourse in the common law legal system.

While the previous two communicative purposes are general purposes that could explain the motivations of any legal judgments, this third communicative purpose

Grounding Basis of Appeal could be considered specific to the appeal judgements and it is arguably what defines these legal judgments as a subgenre and separates this subgenre from other legal judgments that is not reported from an appeal case.

Part 2

4.7 Introduction on Functions of Reporting Verbs

Previously, it has been argued in chapter 2, that there is a need to examine the rhetorical structures of Moves and Steps at the micro level. Mazzi (2007), for example asserts that a genre analysis is sounder if the study relates the lexicogrammar features to the Move. His findings of the use of reporting verbs indicate that the reporting verbs textualizes the practice of binding precedents among common law judges. Although the judgements by itself represent the authoritative voice of the common law judges, the judgements additionally record, summarize, and report other participants and their activities to the legal disputes. The legal judgements create a complex but a specific relationship between the particular of individuals, the events of the legal proceedings and as a general source of law. These twin forces of the judicial decisions firstly concern the *inter partes* decision or the decision of the particular parties of disputes and secondly the judicial decision containing the *ratio decidendi* which transform a case into a source of law (Wan Arfah, 2009). Thus, arguably, the functions of the reporting verbs in legal judgements must at least represent these two basic forces. Thus, this analysis is an attempt to present the recorded purposeful interactions between the participants of discourse of the legal judgements through the use of reporting verbs.

The main challenge of finding how the reporting verbs function in the legal judgments for this study is to adapt a framework that categorizes the functions to the whole of the texts and at the same the framework must have a basis for legal genre. The challenges of these two conditions have been noted in chapter 2. Hyland's taxonomy

provides a way to the first condition but the taxonomy of reporting verbs given is not based on legal genre. Alternatively, Mazzi (2007) affirms the specific functions of reporting verbs in the legal judgements' genre but Mazzi's study is limited. Mazzi analysis of reporting verbs are limited to Move 4, Arguing the Case which means that the functional categories presented are limited. Extending from Mazzi's work, this study attempts to provide a set of categories that describes how the reporting verbs function in the legal judgements genre that covers all five rhetorical structures.

The reporting verbs that are realized in the five-part Move of the legal judgements are categorized and function differently according to the nature of the Moves. The taxonomy in Figure 4.3 presents the functional categories of reporting verbs:

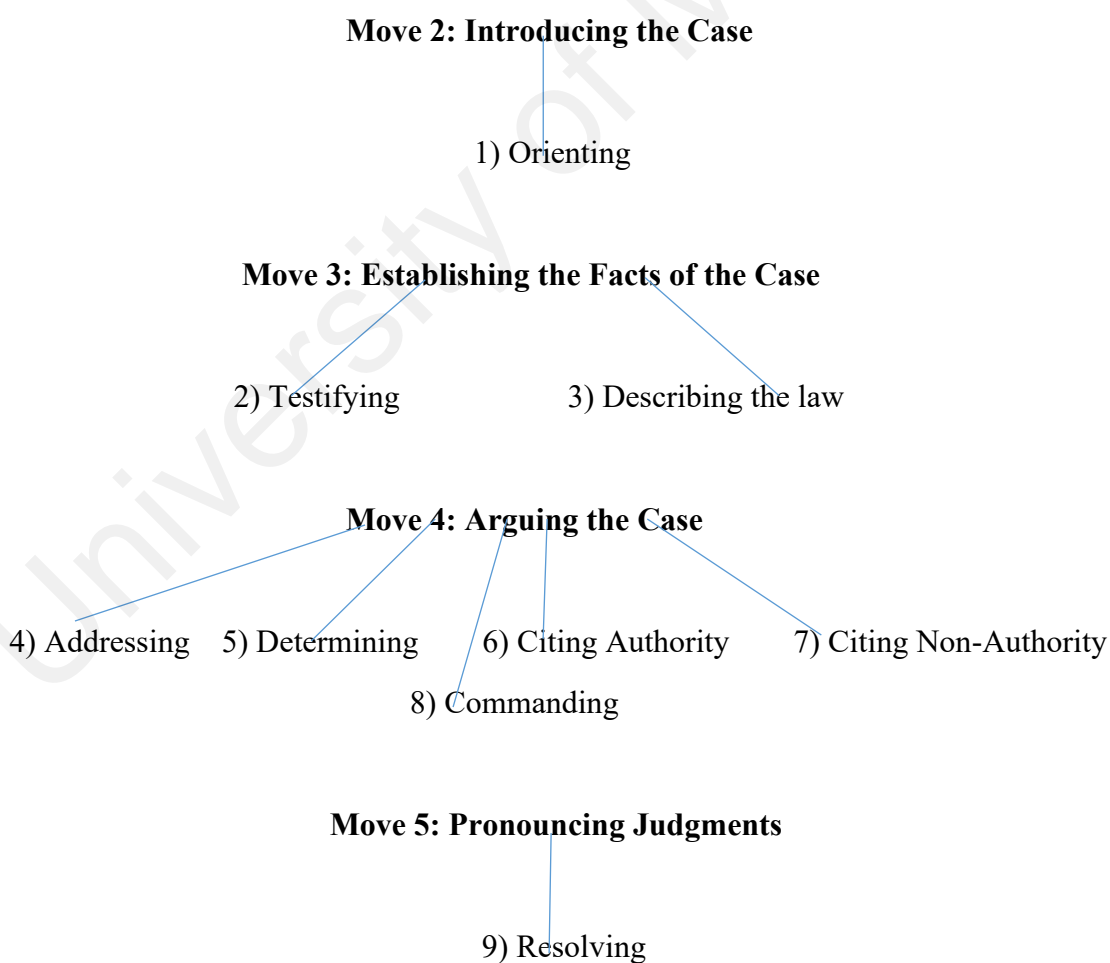


Figure 4.3: Taxonomy of Functional Categories of Reporting Verbs

The content in Table 4.23 displays the overall distributions of the eleven categories function in the five Moves of both Malaysian and England and Wales Court of Appeal legal judgements. Firstly, there is no occurrence of reporting verbs in the first Move, Identifying the case, for both the Malaysian and English judgements. Thus, in this Move the occurrence of reporting verbs are at a zero percent rate. Secondly, there are occurrences of a single category of reporting verbs, *Orienting*, in the second Move, Introducing the case. In this second Move, the reporting verbs occurs at 42.86 percent for the Malaysian judgements and 57.14 for the English judgments. Thirdly, four types of reporting verbs are distributed in the third Move: Establishing facts of the case. The four categories distributed in the third Move are *testifying for prosecution*, *testifying for defence*, *testifying for case*, and *describing the law*.

The four categories occur in the Malaysian judgements at the rate of 61.14 percent while they occur in the English judgements at the rate of 38.85 percent. Fourthly, there are five categories that are distributed in the fourth Move. Four of *these categories*, *addressing*, *determining*, *citing authority* and *citing-non authority* are distributed in three Sub-Moves, Giving history of the case, Arguing the case, and Deriving ratio decidendi. These five categories have the highest frequency among all reporting verbs which 418 verbs occur in the Malaysian cases and 339 verbs occur in the English cases. The percentages of distribution between the Malaysian cases and English cases are of 55.21 percent and 44.78 percent respectively. Lastly, there is a single reporting category in the last and fifth Move: Pronouncing judgments. The eleventh and last category of reporting verbs, *resolving*, occurs at 56.95 percent for Malaysian judgments and at 43.04 for English judgments.

Table 4.23: Frequency of functional categories of reporting verbs in Malaysia and England and Wales Court of Appeal legal judgements

| No | Moves | Functional Categories of Reporting Verbs | Malaysia Legal Judgements | English Legal Judgements | Total |
|----|--|--|---------------------------|--------------------------|-------|
| 1 | Move 1: Identifying the Case | - | - | - | - |
| | | Total | 0 | 0 | 0 |
| | | % | 0 | 0 | 0 |
| 2 | Move 2: Introducing the Case | Orienting | 6 | 8 | 14 |
| | | Total | 6 | 8 | 14 |
| | | % | 42.86 | 57.14 | 100 |
| 3 | Move 3: Establishing the Case | Testifying for Prosecution | 108 | 35 | 143 |
| 4 | Move 3: Establishing the Case | Testifying for Defence | 61 | 0 | 61 |
| 5 | Move 3: Establishing the Case | Testifying for Case | 0 | 72 | 72 |
| 6 | Move 3: Establishing the Case | Describing the Law | 6 | 0 | 6 |
| | | Total | 181 | 115 | 296 |
| | | % | 61.14 | 38.85 | 100 |
| | Move 4: Arguing the Case | | | | |
| 7 | Sub-Move 1 of Move 4: Giving History of the Case | Addressing | 39 | 48 | 87 |
| 8 | Sub-Move 2 of Move 4: Presenting Arguments | Addressing | 38 | 10 | 48 |
| 9 | Sub-Move 3 of Move 4: Deriving Ratio Decidendi | Addressing | 0 | 0 | 0 |

Table 4.23 continued

| No | Moves | Functional Categories of Reporting Verbs | Malaysia Legal Judgements | English Legal Judgements | Total |
|----|--|--|---------------------------|--------------------------|-------|
| 10 | Sub-Move 1 of Move 4: Giving History of the Case | Determining | 63 | 40 | 103 |
| 11 | Sub-Move 2 of Move 4: Presenting Arguments | Determining | 66 | 38 | 104 |
| 12 | Sub-Move 3 of Move 4: Deriving Ratio Decidendi | Determining | 0 | 1 | 1 |
| 13 | Sub-Move 1 of Move 4: Giving History of the Case | Citing Authority | 7 | 11 | 18 |
| 14 | Sub-Move 2 of Move 4: Presenting Arguments | Citing Authority | 70 | 47 | 117 |
| 15 | Sub-Move 3 of Move 4: Deriving Ratio Decidendi | Citing Authority | 0 | 0 | 0 |
| 16 | Sub-Move 1 of Move 4: Giving History of the Case | Citing Non-Authority | 34 | 77 | 111 |
| 17 | Sub-Move 2 of Move 4: Presenting Arguments | Citing Non-Authority | 99 | 67 | 166 |
| 18 | Sub-Move 3 of Move 4: Deriving Ratio Decidendi | Citing Non-Authority | 0 | 0 | 0 |

Table 4.23 continued

| No | Moves | Functional Categories of Reporting Verbs | Malaysia Legal Judgements | English Legal Judgements | Total |
|----|--------------------------|--|---------------------------|--------------------------|-------|
| 19 | Move 4: Arguing the Case | Commanding | 2 | 0 | 2 |
| | | Total | 418 | 339 | 757 |
| | | % | 55.21 | 44.78 | 100 |
| 20 | Pronouncing Judgments | Resolving | 3 | 1 | 4 |
| | | Total | 3 | 1 | 4 |
| | | % | 75 | 25 | 100 |
| | | Overall Total | 602 | 455 | 1,057 |
| | | % | 56.95 | 43.04 | 100 |

4.7.1 Discussions on Functions of Reporting Verbs

The reporting verbs in the rhetorical structures of judgments primarily function to represent the reported discourse activities of the participants in the legal disputes. These functions could represent firstly the recording or the particular events from the hearing or trial. Secondly, it represents the persuasive role of the judgments (Kahn 2012) which includes the presentation of arguments, reasonings and conclusions. These reporting verbs were either spoken or thoughts that are spoken (Downing 2015) which contributed to the goals of legal disputes. In the Moves, the verbs and their discourse activities of the participants could be distinguished and categorized according to the basic function of the rhetorical structures. Because both Malaysia and English legal judgements share similar functions of the five-part structures of Moves, the categorization of reporting verbs and its functions are generally similar despite the verbs originated from two different jurisdictions.

4.7.2 Functions of Reporting Verbs in Move 1: Identifying the Case

There is no occurrence of reporting verbs in Move because Move 1 simply acts to name persons, abstract identities, locations and relations. These words are typically realized as noun groups or phrases. The content in Table 4.24 indicates that there are no occurrences of reporting verbs, making the percentage of any possible categories at zero percent.

Table 4.24: Frequency of reporting verbs of Move 1 in Malaysia and English CA legal judgements

| No | Moves | Functional Categories of Reporting Verbs | Malaysian Legal Judgments | English Legal Judgments | Total |
|----|------------------------------|--|---------------------------|-------------------------|-------|
| 1 | Move 1: Identifying the Case | / | 0 | 0 | 0 |
| | | Total | 0 | 0 | 0 |
| | | % | 0 | 0 | 0 |

4.7.3 Functions of Reporting Verbs in Move 2: Introducing the Case

The first category of reporting verbs, *orienting*, is constructed from the general meaning and purpose of Move 2: Introducing the Case. The verbs that were identified served a purpose to orient the readers to the legal issues in the introduction.

Table 4.25 displays the distribution of the first category of reporting, *orienting*, in Move 1 of both Malaysian and English cases. In sum 14 verbs are found making the distribution between Malaysian cases at 42.86 percent and English case at 57.14 percent respectively.

Table 4.25: Frequency of reporting verbs of Move 2 in Malaysia and English CA legal judgements

| No | Moves | Functional Categories of Reporting Verbs | Malaysian Legal Judgements | English Legal Judgements | Total |
|----|------------------------------|--|----------------------------|--------------------------|-------|
| 1 | Move 2: Introducing the Case | Orienting | 6 | 8 | 14 |
| | | Total | 6 | 8 | 14 |
| | | % | 42.86 | 57.14 | 100 |

Reporting verb in Move 2: Orienting

Example 1: Legal Judgement EWC1

| No. | Subject | Verb | Reporting clause | Reported clause | Descriptions |
|-----|-----------------|------------|--|---|--------------|
| 1 | Appellate judge | considered | We have carefully considered the prosecution's detailed opening as well as the factual narrations | (that is) set out in the three advices of appeal. | Preparations |

Example 1 indicates how the verbs functions in Move 2. The verb 'considered' is used to by authoring appellate judge in the introduction to declare their commitment to the legal issues at hand and that their fully prepared to resolve the appeal. As part of the introductory function of Move 2, the verb reports the activities of the judges which orients the reader to the core legal issues relevant to the case.

4.7.4 Functions of Reporting Verbs in Move 3: Establishing Facts of the Case

The second category, *Testifying*, relates to the testimonial and evidential elements of Move 3: Establishing Facts of the Case.

Table 4.26 displays the distribution of types of reporting verbs in Move 3: Establishing facts of the case for both Malaysia and English legal judgements. The total sum of first type, *testifying for prosecution*, for the both Malaysian and English judgements are 143 verbs. There were more verbs found in the Malaysian judgements amounting to 108 verbs against 35 verbs for the English judgements making the percentage of the Malaysian reporting verbs at 75.52 percent against the English judgements at 24.48 percent. Alternatively, there is no occurrence of second type of reporting verb, *testifying for defendant*, for the English judgements which occurs at zero percent. All of the reporting for second type occurs in the Malaysian judgements making the rate at 100 percent. At this stage it is unknown why there is no distribution of reporting verbs although the English cases do make a distinction between facts of prosecution and defendants (see Table 4.26).

The third category, *testifying the case*, is a category that is similar to the first and second category in which it is verb that testifies the witnesses account of the fact of a case. The different between the three is that this third type of testifying is not realized in a statement of facts that distinguish between the facts of the prosecution or the defendants. Thus, in this sense, the facts are ambiguous or general in its character. All of the reporting for this third are found only by the English judgements which occurs at 100 percent. This lack of distribution by the Malaysian judgements could be explained through the clear distinction made by the Malaysian judgements on the prosecution facts and defendant facts (see Table 4.26). In other words, based from the selected ten cases, the Malaysian judgements do no summarize the facts generally. The distinction made requires that the functions of reporting verbs of the Malaysian judgements to be specified into the first and second type.

The fourth type of reporting verbs reflects a special occurrence of Move 3 that do not report events but the law itself.

In the third rhetorical structure, Establishing the facts of the case, the main participants of the discourse activities are the witnesses, the victims and the defendants of a trial. Each of these participants contributed to the facts of the case by giving their testimony to piece in to each relevant parts of the facts. The primary purpose of this Move is to secure and contrast all the material facts that are gathered from witnesses and other forms of evidence in order to established a disputable case. In effect, the reporting verbs in this Move function to realize the reported speech whether it is direct or indirect. It is the category of this reporting verbs that showed salient differences between the Malaysian and English judgments in which the Malaysia reporting verbs could be sub-categorized into Testifying for Prosecution and Defense.

The other category that is manifested in Move 3 is Describing the Law. Although this third category occurs rarely, in fact, it occurs only in 1 case of the collected, the characteristics of this category distinguished itself from the second category. Instead of reporting events of peoples and harmful acts that leads to the disputed events, the legal issue could alternatively be about the law. In other words what is contested as facts is the meaning of law itself. The verbs in this category function to describe the law presented in the legal judgments. It describes the law and occurs six times in a single judgement MC9 (see Table 4.26). In sum, the total of all four types occurs at 61.14 percent for Malaysian judgements and at 38.85 percent for English judgements.

Table 4.26: Frequency of reporting verbs of Move 3 in Malaysia and English CA legal judgements

| No | Moves | Functional Categories of Reporting Verbs | Malaysian Legal Judgments | English Legal Judgments | Total |
|----|-------------------------------|--|---------------------------|-------------------------|------------|
| 1 | Move 3: Establishing the Case | Testifying for Prosecution | 108 | 35 | 143 |
| | | Total | 108 | 35 | 143 |
| | | % | 75.52 | 24.48 | 100 |
| 2 | Move 3: Establishing the Case | Testifying for Defence | 61 | 0 | 61 |
| | | Total | 61 | 0 | 61 |
| | | % | 100 | 0 | 100 |
| 3 | Move 3: Establishing the Case | Testifying for Case | 0 | 72 | 72 |
| | | Total | 0 | 72 | 72 |
| | | % | 0 | 100 | 100 |
| 4 | Move 3: Establishing the Case | Describing the Law | 6 | 0 | 6 |
| | | Total | 6 | 0 | 6 |
| | | % | 100 | 0 | 100 |
| | | Overall Total | 181 | 115 | 296 |
| | | % | 61.14 | 38.85 | 100 |

Reporting Verbs in Move 3: Testifying for Prosecution

Example 2: Legal Judgement MC1

| No. | Subject | Verb | Reporting clause | Reported clause | Descriptions |
|-----|---------|------|------------------|--|-------------------------------|
| 1 | Witness | Said | PW3 said | that normally the appellant would send the deceased for work at the bus stop, which was not far from their house | Facts of the prosecution case |

In example 2, the reporting verb ‘said’ records the activity of giving evidence by the prosecution witness in which the person testified a fact concerning a habit of the appellant in the reported clause.

Reporting Verbs in Move 3: Testifying for Defence

Example 3: Legal Judgement MC1

| No. | Subject | Verb | Reporting clause | Reported clause | Descriptions |
|-----|---------|---------|-------------------|---|---------------------------|
| 1 | Accused | Claimed | He claimed | that the place where he resided was not safe. | Facts of the defence case |

In example 3, the reporting verb ‘claimed’ records the activity of giving evidence by the accused in the which he defended himself. Particularly, the accused claimed in the reported clause that place he resided is not safe.

Reporting Verbs in Move 3: Testifying for the Case

Example 4: Legal Judgement ECW1

| No. | Subject | Verb | Reporting clause | Reported clause | Descriptions |
|-----|---------|------|---|--|--------------|
| 1 | Victim | Told | At the beginning of April 2015 he told his employers | that he no longer wished to work in the ‘dirty’ world of drug dealing. | Facts |

In example 4, the reporting verb ‘told’ records the activity of giving evidence by the victim in which he describes his predicament of wanting leave the drug dealing world in the reporting clause.

Reporting Verbs in Move 3: Example of Describing the Law

Example 5: Legal Judgement

| No. | Subject | Verb | Reporting clause | Reported clause | Descriptions |
|-----|-------------------|---------|--|---|---------------------------------------|
| 1 | Act of Parliament | Recites | If an Act of Parliament recites | that action has been taken or threatened by any substantial body of persons, whether inside or outside the Federation – (a) to cause, or to cause a substantial number of citizens to fear, organized violence against persons or property; or | The fact is about a Parliamentary Act |

The example of reporting verb ‘recites’ above records an abstract or a metaphorical activity in the Parliamentary Act states and enumerate a legal provision.

4.7.5 Functions of Reporting Verbs in Move 4: Arguing the Case

Move 4: Arguing the case contains an array of reporting verbs designated with different functions. The different functions of the system were constructed from the two central strands of arguments that defines the adversarial nature of the common law system which is distributed among the legal practitioners. Arguing is the central discourse activity of this rhetorical structure.

The content in Table 4.27 displays the overall distribution of the five types of reporting verbs that occur in all of the Sub-Moves of Move 4: Arguing the Case. The repeated patterns of types of reporting verbs in each of the Sub-Moves indicate that the first four categories of reporting verbs, *Addressing*, *Determining*, *Citing-Authority* and

Citing Non-Authorities occur in all Sub-Moves of Move 4. The fifth category of reporting verb, *Commanding*, however is not specified to any particular Sub-Move.

The total sum of the first type of reporting verbs, *Addressing*, amounts to 135 verbs which is distributed between 57.04 percent for the Malaysian judgements and at 42.96 percent for the English judgements. The second type of reporting verbs, *Determining*, amounts 208 verbs which is distributed between 62.01 for the Malaysian judgements and at 37.98 percent for the English judgements. The occurrences of the third type of reporting verbs, *Citing Authority*, for the Malaysian judgements equals to 57.01 percent and equals to 42.96 for the English judgements which resulted from the total sum of 135 reporting verbs. The fourth type of reporting, *Citing Non-Authority*, has the highest frequency of occurrences of among all reporting verbs amounting to 277 verbs. The distribution between Malaysian and English judgements for verbs of *Citing Non-Authority* is at 48.01 percent and at 51.99 percent respectively. The final and fifth type of reporting verbs in move has the smallest frequency of occurrences with only two verbs originating from Malaysian judgements. The overall sum of reporting verbs for in this move equals to 757 verbs which is distributed at 55.21 percent for Malaysian judgements and 44.78 percent for English judgements.

Table 4.27: Frequency of reporting verbs of Move 4 in Malaysia and English CA legal judgements

| No | Moves | Functional Categories of Reporting Verbs | Malaysian Legal Judgements | English Legal Judgements | Total |
|----|--|--|----------------------------|--------------------------|-------|
| 1 | Sub-Move 1 of Move 4: Giving History of the Case | Addressing | 39 | 48 | 87 |

Table 4.27 continued

| No | Moves | Functional Categories of Reporting Verbs | Malaysian Legal Judgements | English Legal Judgements | Total |
|----|--|--|----------------------------|--------------------------|------------|
| 2 | Sub-Move 2 of Move 4: Presenting Arguments | Addressing | 38 | 10 | 48 |
| 3 | Sub-Move 3 of Move 4: Deriving Ratio Decidendi | Addressing | 0 | 0 | 0 |
| | | Total | 77 | 58 | 135 |
| | | % | 57.04 | 42.96 | 100 |
| 4 | Sub-Move 1 of Move 4: Giving History of the Case | Determining | 63 | 40 | 103 |
| 5 | Sub-Move 2 of Move 4: Presenting Arguments | Determining | 66 | 38 | 104 |
| 6 | Sub-Move 3 of Move 4: Deriving Ratio Decidendi | Determining | 0 | 1 | 1 |
| | | Total | 129 | 79 | 208 |
| | | % | 62.01 | 37.98 | 100 |
| 7 | Sub-Move 1 of Move 4: Giving History of the Case | Citing Authority | 7 | 11 | 18 |
| 8 | Sub-Move 2 of Move 4: Presenting Arguments | Citing Authority | 70 | 47 | 117 |
| 9 | Sub-Move 3 of Move 4: Deriving Ratio Decidendi | Citing Authority | 0 | 0 | 0 |
| | | Total | 77 | 58 | 135 |
| | | % | 57.01 | 42.96 | 100 |

Table 4.27 continued

| No | Moves | Functional Categories of Reporting Verbs | Malaysian Legal Judgements | English Legal Judgements | Total |
|----|--|--|----------------------------|--------------------------|------------|
| 10 | Sub-Move 1 of Move 4: Giving History of the Case | Citing Non-Authority | 34 | 77 | 111 |
| 11 | Sub-Move 2 of Move 4: Presenting Arguments | Citing Non-Authority | 99 | 67 | 166 |
| 12 | Sub-Move 3 of Move 4: Deriving Ratio Decidendi | Citing Non-Authority | 0 | 0 | 0 |
| | | Total | 133 | 144 | 277 |
| | | % | 48.01 | 51.99 | 100 |
| 13 | Move 4: Arguing the Case | Commanding | 2 | 0 | 2 |
| | | Total | 2 | 0 | 2 |
| | | % | 100 | 0 | 100 |
| | | Overall Total | 418 | 339 | 757 |
| | | % | 55.21 | 44.78 | 100 |

The first strand of arguments is put forth by legal counsels or representatives of the disputed parties while the second strand of arguments is represented by the judges or the court system. Accordingly, these two strands of arguments would reflect the trial process to an extent. The first two of the reporting verbs in this Move structures, *Addressing* and *Determining*, are constructed to reflect and represent the arguments that are brought by the prosecutor or the lawyers and the judges respectively. The first category of Move 4, *Addressing*, classifies any reporting verbs that are brought forth by the legal counsels to serve as arguments. The second category of Move 4, *Determining*, reflects the basic role of the judges, which require them to decide or determine the validity and relevance of the

arguments and reasons that are brought forth by the lawyers and prosecutors. Generally, it is the judge's duty to decide in favour of one of the disputed parties.

The other two categories, *Citing Authority* and *Citing Non-Authority*, are categories of verbs that complement the previous two categories. These two categories of verbs are manifested through clauses that provide the necessary information and context to justify the two central strands of arguments in Move 4. The third category of Move 4, *Citing Authority*, represent the verbs that cites any legal authority especially Case laws and Parliamentary Acts. It is an obligation for both the judges and legal representatives to use these legal authorities to validate their arguments.

The fourth category of Move 4, *Citing Non-Authority* signifies the other half of the information and context that are used by lawyers and judges to enhance and specify their arguments. This information would include the facts presented in the Move 3 and any other non-authoritative information that are required to reason and justify the arguments. Although it is possible to find statements by witnesses or parties to the dispute to be reiterated in this Move, these verbs and their clauses do not possess similar function to the previous rhetorical structure. These verbs and their statements were not restated by the judges to establish facts but were restated to be applied with law or related legal principles to resolve the case. As such, the reporting verbs in this category are used to cite this non-authority but important information.

The fifth and final category of Move 4, *Commanding*, represents any reported order that are issued by the judges to operate the trial process. This category is distinguished from the other categories of this Move in that it does not represent or central to argumentative element of Move 4. Examples of Functions of reporting verbs in move 4 are found below:

Reporting Verbs of Move 4: Addressing

Example 6: Legal Judgement MC8

| No. | Subject | Verb | Reporting clauses | Reported clauses | Descriptions |
|------------|---|-------------|------------------------------------|---|---------------------|
| 1 | DPP (Deputy Public Prosecutor) | Argued | Learned Deputy argued | that there are strong facts to proved custody and control of Room 01, Hotel Liintel Inn against the accused. | Basis of appeal |

In example 6, the reporting verb 'argued' records the argument that is brought by the deputy public prosecutor as part as the basis of appeal.

Reporting Verbs of Move 4: Determining

Example 7: Legal Judgement MC8

| No. | Subject | Verb | Reporting clauses | Reported clauses | Descriptions |
|------------|----------------|-------------|--------------------------------|---|--|
| 1 | Trial Judge | Held | His Lordship held | that the accused's defence in respect of the 2nd charge were mere denial. | Findings of trial judge: defence |

In example 7, the reporting verb 'held' records the conclusion or determination of a judge concerning the accused defence arguments in which his lordship disagreed.

Reporting Verbs of Move 4: Citing Authority

Example 8: Legal Judgement MC8

| No. | Subject | Verb | Reporting clauses | Reported clauses | Descriptions |
|------------|---|-------------|--|--|---------------------|
| 1 | DPP (Deputy Public Prosecutor) | Cited | Learned Deputy further cited | the case of Tunde Apatira & Ors v. PP [2001] 1 CLJ 381, which decided that based on strong and overwhelming | Basis of appeal |

evidence such as in the present case where the drugs were found in the accused's abdomen, the conviction should be maintained despite a misdirection by the trial judge.

In example 8, the reporting verb 'cited' records the authority referred by the deputy public prosecutor as part of the basis of appeal.

Reporting Verbs of Move 4: Citing Non-Authority

Example 9: Legal Judgement MC8

| No. | Subject | Verb | Reporting clauses | Reported clauses | Descriptions |
|-----|---------|-------|-------------------|--|-----------------|
| 1 | Accused | Asked | and he was asked | to swallowed them believing they contains gold dust; | Basis of appeal |

In example 9, the reporting verb 'asked' above records the accused verbal activity that relates to the facts of the case. This fact is cited as part of basis of appeal.

Reporting Verbs of Move 4: Example of Commanding

Example 10: Legal Judgement MC8

| No. | Subject | Verb | Reporting clauses | Reported clauses | Descriptions |
|-----|-----------------|---------|---|---|----------------------|
| 1 | Appellate Court | Ordered | A subsequent appeal by the prosecution to the Court of Appeal was allowed and the accused | to enter upon his defence on both the charges | Permission to appeal |

was
ordered

In example 10, the reporting verb ‘ordered’ records a command made by the appellate court to the accused to enter his defence on both the charges. The order is part of the permission of appeal.

4.7.6 Functions of Reporting Verb in Move 5: Pronouncing Judgments

The final category of reporting verbs, *Resolving*, is exclusive to the last rhetorical structures of legal judgements genre: Pronouncing Judgments. The reporting verbs in this Move manifested the verdict that decides the legal dispute.

In total there are four reporting verbs that are found from twenty judgements from Malaysia and England and Wales which constitute, *Resolving* the final type of reporting verbs. In Table 4.27, the distribution of these reporting verbs is divided into 75 percent for Malaysian legal judgments and 25 percent for English legal judgments.

Table 4.28: Frequency of reporting verbs of Move 5 in Malaysia and English CA legal judgements

| No | Moves | Functional Categories of Reporting Verbs | Malaysian Legal Judgments | English Legal Judgments | Total |
|----|-----------------------|--|---------------------------|-------------------------|------------|
| 1 | Pronouncing Judgments | Resolving | 3 | 1 | 4 |
| | | Total | 3 | 1 | 4 |
| | | % | 75 | 25 | 100 |

Reporting Verbs of Move 5: Resolving

Example 11: Legal Judgment MC6

| No. | Subject | Verb | Reporting clauses | Reported clauses | Descriptions |
|-----|------------------|-------|---|--|--------------|
| 1 | Appellate Judges | Found | For the reasons stated above, we found no reason | to disagree with the learned High Court Judge. | Verdict |

In example 11, the reporting verb ‘found’ records and declare the appellate judges’ verdict or conclusion on the judgments. In this case, the appellate judges agreed with the verdict of the High Court Judge.

By modifying Hyland’s taxonomy and extending Mazzi’s analysis of reporting verbs beyond move 4: Arguing the Case, this research classifies and specifies a new taxonomy of reporting verbs of legal judgements. Therefore, the functions of each category of reporting verbs depend on the combination of two criteria:

- 1) The discourse activity of the participants from the legal trial.
- 2) The specific functions of rhetorical structures.

Consequently, the functions of each category of reporting verbs generally reflect either one or both criteria. In Move 2: Introducing the Case, the reporting verbs in this Move are found to orient or introduces the reader to the legal situation of the accused or charged. In Move 3: Establishing Facts of the Case, the reporting verbs report the testimonies of witnesses who testified in the trial. In Move 4: Arguing the Case, the reporting verbs reflect the adversarial nature of a trial and the roles of the judges and legal representative. The reporting verbs also cite legal authorities which represent the practice of precedent and “Judge Made Law”. Finally, in Move 5: Pronouncing Judgments, the reporting verbs in this Move declares and resolves the legal dispute.

The primary distinction between the above categories and Hyland’s (2002) taxonomy is that the nine categories of reporting verb for this research derived its characteristics and validity from the content and function of the rhetorical structures. Its classification is specific or exclusive to the rhetorical structures of legal judgments genre which limits its

usage to a particular kind of analysis which entails a particular kind of advantages and disadvantages.

4.8 Summary

The findings of the rhetorical structures from the twenty legal judgements between Malaysia and England and Wales Court of Appeal indicate there is similarity at the level Moves. Furthermore, it is discovered that there is an additional Move: *Introducing the Case*, that is not described in the Bhatia's (1993) original schema. Arguably, there are relative differences between Malaysia and English judgements at the lower level of Steps.

However, the differences of the use of Steps depend on the particular Moves and there is no consistent pattern found on all Moves. The communicative purposes between the two legal systems found in the data are also generally similar. The conceptualization of communicative purposes based on Bhatia's (1993) framework are set at the general level that encompasses all species of legal cases. In this aspect, the communicative is at a highest level of abstraction or generalization. Alternatively, it can be also be claimed that each species of legal cases contains its specific communicative purposes.

Consequently, this study suggests that *Grounding the basis of appeal* is a specific communicative purpose for the appeal legal judgments. Finally, nine different basic functions of reporting verbs categories realizing in different Moves are found. These functional categories are generally based on two forces: i) reporting the discourse activities of individuals to the legal dispute and ii) textualizes the legal rules or the practice of binding precedents.

CHAPTER 5: CONCLUSION

5.1 Introduction

This chapter recapitulates the comparative study of the genre of legal judgements concerning its problem statements, research objectives and particularly the findings for its three research questions. The chapter begins with a summary of the overall study which is followed by the addressing of the research questions and their respective answers or findings. This is followed by the limitation of the study discussing the constraints on the general conclusion of the study. Finally, the chapter finalizes with a section on possible recommendations for future study and closes off with the conclusion.

5.2 Summary of the Overall Study

It was the former judge, Dato' Ahmad Syed Idid and Umar A. Oseni (2011) and particularly their book that triggered the study. The book represents the legal community continuous needs for a practical guide to improve the writing of legal judgements. As it was mentioned many times in the study, a legal judgement is not simply a text that resolve the disputes of the particular individuals but it is also one of the authoritative sources of law that characterized the common law judges. Undoubtedly, the legal judgement is an important legal genre. The judges' practical needs, however, are guided by a prescriptive world-view which generally frames the legal judgements in terms of dos and don'ts. From a discourse analysis point of view and, specifically, a genre analysis framework, the legal judgements could be described in a different frame. Thus, it becomes the objective of the study to describe legal judgements, particularly, Court of Appeal judgements, according to their discursive and lexico-grammatical features.

The book also present itself with a comparative analysis, being that the legal writers' desires to present a guide of writing legal judgements that could cross different legal systems. Unable to compare more than twenty legal judgements from two legal systems,

the study finds it appropriate to compare the judge's, Dato' Ahmad Syed Idid, jurisdiction of Malaysia common law legal system to its originator, the English legal system. Thus, that is how the study is shaped by its descriptive and comparative motivations.

During the course of the study, twenty legal judgements are selected with ten of each belonging to either the Malaysian Court of Appeal or to the England and Wales Court of Appeal respectively. Applying Bhatia's framework on legal case genre, the description of the texts is centered on the appellate judges' functions. From a genre analysis, it is the discourse community's set of purposes which realizes the rhetorical structures: the Moves and Steps. That being the case, the analysis can go deeper and smaller because the goals of the judges are also realized at the level of words and sentences. Among the salient lexico-grammatical features found, it is the reporting verbs that are analyzed and categorized into their specific functions in the rhetorical structures.

5.3 Addressing the Research Questions

The research questions are shaped by the study's two main motivations: description and comparison. The description is based of a genre framework which means that the twenty texts of legal judgements from Malaysia and England and Wales Court of Appeal are described by their rhetorical structures. Rather than being examined as merely written texts, the legal judgments is viewed as communicative events realizing sequences of rhetorical structures of Moves and Steps to fulfil their communicative purposes. Following this genre-based description and with the consideration of the comparative aspect on every sequence and at every level of descriptions, the study proposes three essential questions. The first question describes the rhetorical structures of the legal judgments which leads to the second question that centers on the judges' communicative purposes. The final and third question asks about the functions of reporting verbs that realize in the rhetorical structures. All of these questions are interrelated to each other

which argues that one could not appreciate or even understand one aspect of the legal judgments genre without appreciating another one. It must be reminded again that in each question, the issue of comparison between the legal judgments originating from Malaysia and England and Wales remains effective throughout. In a way, there is an implicit fourth question that asks: what are the similarities and differences between the two legal judgments in all of the three research questions presented below.

5.3.1 Research Question 1

The first research question asks: what are the rhetorical structures for the legal judgements of both Malaysia and England and Wales Court of Appeal? Answering this question involves the application of Bhatia's 1993 four-part structure of the legal case genre which, from this study's analysis, results into a five-part structure. The new Move: Introducing the Case, is found between Bhatia's original first Move and the second Move. Consequently, the general findings of the first question are as the following:

- 1) Move 1: Identifying the case
- 2) Move 2: Introducing the case
- 3) Move 3: Establishing the facts of the case
- 4) Move 4: Arguing the case
- 5) Move 5: Pronouncing judgments

From the description above which is based on the twenty cases, the legal judgements of both legal systems, Malaysia and England and Wales, are generally similar at the higher level of rhetorical structures. The differences are found at the lower rhetorical level in which each legal system mix and match different strategies of using Steps.

5.3.2 Research Question 2

The second research question asks: what are the communicative purposes for Malaysia and England and Wales Court of Appeal legal judgements? The answer to this question is interrelated to the first question. The communicative purposes are the overarching privilege factor that determines the nature of the rhetorical structures of Moves and Steps. Seeking the communicative purposes of a genre require looking at outside the text and inside the text. For this study, the general communicative purposes have been suggested by Bhatia's 1993 framework in which he outlines four basic communicative purposes for the legal case genre. Bhatia's communicative purposes serve to facilitate the analysis of communicative, however, his conception of the purposes is arguably at the highest level of abstraction concerning the legal cases genre. Consequently, his set of purposes serve as the outside element that guides the analysis but at the same time the study suggests that the Court of Appeal judgements is its own subspecies of the legal case. In other words, the study also examines the communicative purposes from a bottom-up analysis that derives its purposes from within the twenty legal judgements.

The findings for the study propose a third communicative purpose that is specific for the legal judgements' subgenre:

- 1) Recording the case
- 2) Serving as precedent
- 3) Grounding basis of appeal

At this general level of abstraction, the findings of the study could not state any significant differences concerning the communicative purposes of the Court of Appeal judgements of both legal systems. From the analysis of the twenty cases, the communicative purposes of the legal judgements are generally similar.

5.3.3 Research Question 3

The final research question concerns the functions of reporting verbs in the rhetorical structures. The analysis of this question goes at the micro level of words and sentences but the identification and categorization of functions of the reporting verbs are constrained by the communicative purposes and rhetorical strategies at the macro level. Consequently, the research question of how the reporting verbs functions is dependent on how the rhetorical structures function. Following from this perspective, the categorization of reporting verbs is constrained by the relationship of the legal judgements have with the trial or legal proceedings in general. In other words, the interpretation of the reporting verbs must recognize that the general function of the legal judgements not only records and reports the facts, events and facts of the individuals to a particular legal dispute but also function as a source of law.

The findings of this question conclude in a set taxonomy containing nine functional categories of reporting verbs. These categories are:

- 1) Orienting
- 2) Testifying
- 3) Describing the law
- 4) Addressing
- 5) Determining
- 6) Citing Authority
- 7) Citing Non-Authority
- 8) Commanding
- 9) Resolving

Comparatively, it must be acknowledged that it is because that both the Malaysian and English legal judgements are similar enough that it is possible to generalize a

taxonomy of reporting verbs that reflects the general discourse activity of legal dispute of its participants which is reported in the legal judgements.

5.4 Limitations of the Study

Being a research, the findings containing the examples and discussions are inherently limited by its methodologies and theoretical frameworks. Firstly, the study does not assert any claim similar to how a prescriptive study does. The objective of the study is to describe and possibly accompany Dato' Syed Ahmad Idid's and Umar A. Oseni's perspective and practical account of the legal judgements. In other words, the study does not make any claim of how a Court of Appeal judgements should be.

The descriptiveness of the study is equally limited by the choice of its theoretical framework. It was mentioned and briefly discussed in chapter 2 that there are other genre theory and analysis that could be adapted to describe the twenty legal judgements. Thus, the findings of this study are confined by Bhatia's (1993) particular framework of rhetorical structures. Another reason for limitation is the methodologies that are used for the study. Despite a minimal assistance from a corpus software, the methodologies of the study remain qualitative. Consequently, the conclusions of the study are subjected to the limits of a qualitative study.

The major issue resulting from this methodological choice is generalization. This is because that the selection of data is not randomized and the sampling of data is rather small for a conclusive generalization. Another equal limitation is the lack of a specialist informant from the discourse community to add opinions and perspectives on the findings. Due to limited time and resources, it is not possible for this study to find judges from both Malaysia and England and Wales to provide their insights. Because of these factors, it must be declared that the study's findings are limited.

5.5 Recommendations for Future Study

There are possible recommendations for future study. One of the recommendations concerns the findings of the study while the other concerns the limits of methodologies that are applied to the study. There are issues with the findings. A major issue is the nature of Sub-Move 3 of Move 4: Deriving Ratio Decidendi. The analysis of this Sub-Move particularly its possible Steps must be reconsidered again. Due to the elusiveness of definition of ratio from the legal literature and practices, it is recommended that the analysis of this final Sub-Move of Move 4 must reconsider its complexity and create a set of specific methods for this particular Move.

The second recommendation derives from the choices of methodology itself. It is the highest aim of a research to produce a work that could generalize consistently but also produce findings based on reliable methods. Thus, it is recommended that a future comparative study like this would include quantitative methods that taps the corpus methods completely and the future study will also be able to bring important feeds and insights from the compared discourse communities.

5.6 Conclusion

These findings recognize a set of coherent functions and structures at the micro and macro level that to an extent complement the normative view of the judges that “the effective writing of judgments necessitates a proper composition” (p. 60) as how Dato’ Syed Ahmad Idid and Umar A. Oseni (2011) express it. In other words, although from a different framing, this study agrees with the writers’ view that there is a convention for legal judgments. Additionally, the comparative elements of this research found that there is a continuity of practices of “judge-made law” and legal judgements between the Malaysia legal system and its originator the English legal system.

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