

CHAPTER TWO

LITERATURE REVIEW

2.0 INTRODUCTION

This chapter will define what is language and the language that belongs to a specific discourse community, what is genre and legal genre and the early works of genre analysis, how the system of language is functional in linguistics, the recent development of Swalesian move analytical concepts which gives rise to the CARS model in research articles and introductions. Lastly, Bhatia's formulation on structural interpretations which is based on macro and micro structure analysis of legal texts.

2.1 LANGUAGE AND LEGAL LANGUAGE

Language consists of basic rules of grammar and it is used for a specific use to negotiate text. Halliday (1994:X0) acknowledges that language is the most important tool in written or spoken communication and explains further that it is a system that has its functions in linguistic orientation. How the language is used will inevitably depend on the communicative purpose of the speaker and the hearer. Similarly, writers use language to achieve their purposes and fulfil their aims in the completion of their texts.

The term legal language according to Bhatia (1993:101) encompasses distinguishable genre based on the communicative purposes of the genre, the context or the settings the genre are used and the communicative events these genres are associated with.

2.2 WHAT IS GENRE?

What is genre? Many definitions is given to the term 'genre' and each linguist holds a different perspective on the concept of genre from each other. According to Bakhtin (1986:60) ' genre' is defined as a relatively stable type of utterances' in each sphere in which language is used. Christie (1986:222) defined genre as [a culturally significant way of meaning]. Swales (1981 b, 1985, 1990) defined genre as communicative event shared by a set of communicative purposes identified and

understood by members of professional community. In other words, genre are communicative vehicles to achieve a collection of communicative goals. Genre is constructed for specific community and consumed by members of professional communities. A researcher of legal genre analysis must conform to the conventions and rhetorical expectations of this professional community. Genre is grounded on the basis of rhetorical strategy which applies to professional culture with the aim to organise knowledge adhering to the professional communities' objectives. Therefore genre analysis gives grounded description of linguistic behaviour in professional settings. One may understand the word "genre" to essentially describe how professional communities develop, use and exploit genres to construct professional knowledge in conducting their specific business. Genre are prior knowledge of institutional conventions which are responsible for regulating generic constructs, giving them an identity, internal ordering and as a medium through which specialist members of the community communicate with each other.

Finally, to Fairclough (1995b:14) a genre is a [a socially ratified way of using language in connection with a particular type of social activity.] Fairclough (1992) holds opinion that genre looks beyond text and considers processes of production, distribution and consumption of text. Similar analogy can be made on legislations which was constructed by the legislature, the Executive which comprises of the Ministry (the Prime Minister and the Cabinet Ministers which form the government) will execute such legislations and construe and interpret (consume) the law by the legal practitioners and specialist community.

From the few interpretations from these linguists of what 'genre' is, one is able to conclude that Christie and Fairclough emphasise on the socio-cultural aspect of genre whereas Bakhtin and Swales focused on genre as having formal characteristics and structural patterning. Of interest to Swales is the focus on shared communicative purpose which posed as the defining feature of genre. Biber (1988), Paltridge (1996) and Bhatia (1993) had the *consensus ad idem* (*meetings of the minds*) that genre is determined by the communicative goals and text type with reference to linguistic and structural form.

However, attempts to define genre as structural regularities in text were met with reproaches from Miller (1984) and Threadgold (1989) where they contended that genre

2.2.3 Genre as Reflection

Genre is then seen as reflections of disciplinary practices and the acquisition of generic competence is akin to specialist competence or professional expertise in the knowledge-producing and knowledge-consuming activities of disciplinary professional and workplace culture.

2.2.4 Theory of Genre

Much has been said on the definition and concept of genre ranging from Webster's Third new International dictionary to a liberal approach of today to mean, ["..... distinctive category of discourse of any type, spoken or written, with or without literary aspiration] from Swales GENRE ANALYSIS which Linnaeus supported the claim by asserting that genre is essentially a classificatory category.

2.2.5 An Account of Genre Scholarship

There are 3 approaches to analyse genre. The 3 main approaches are: The Systemic School, New Rhetoric and ESP.

1) The Systemic School

Hallidayan's theory of Systemic functional linguistics (1985a) revolves around the metafunction which ensure success in the use of language. The metafunction is divided into 2 structures i.e. 3 semantic components and 3 contextual components.

a) The 3 metafunction (semantic) components comprise of :

1) Ideational	mental representation of what the producer intends to communicate.
2) Interpersonal	how meaning is exchanged which reflect relationship with the participants. Applying to the present study one will acknowledge the writer-reader relationship.
3) Textual	message that is actually produced through the channel and mode arising out of the situation.

These 3 metafunctions correlate with 3 contextual (register) components :-

1) Field	text generating activity activates ideational. On the present study, how the writer writes is dependant on the intended readers (being the tenor) he is writing for.
2) Tenor	participants role activates interpersonal
3) Mode	rhetorical modes embraced by participants and activates textual

Systemic linguistic on text generic identity is 3 fold.

a) The co-occurrence of its register configuration or what is known as contextual cluster.

b) The text is staged or schematic structure

c) Text realizational patternings

1) Register reconfiguration

The history of how genre was developed, in the words of Berger and Luckman (1966 : 70) as *[any action that is repeated frequently becomes cast into pattern which can then be reproduced with an economy of effort and which ipso facto is apprehended by its performer as that pattern.]*

2) Second approach is the genre based new rhetoric studies adopted by Bazerman (1988), Devitt (1993) and Freedman and Medway (1994)

3) Bizzell (1982) and White (1984; 234) define discursive community as one with shared knowledge and cultural literacy. Swales (1990:ix, 1981a &b, 1986) proposed a genre based approach' with emphasis on discourse community. The concept of genre denote the class of communicative events which are unique to a particular discourse community and these genre type communicative events as processing procedure. These concepts is instrumental in encouraging a holistic approach to teaching and learning. Other linguists such as Dudley-Evans (1986), Flowerdew (1992, 1993) Bhatia (1993) and Thompson (1993) have shown that there is a general pattern of organisation that dominates sections of article of any discipline. In 1981 Swales conducted an analysis of 48 research articles (RA) introductions and concluded that there is a system that these writers employ at certain level of the text. This accounts for communicative intentions of the writers. By the same token, 2 texts of the same genre will be written differently according to the communicative purposes of the writers. Swales (1990/2004) formulated the theory of ESP Genre Analytical framework on research article by following the

CARS paradigm. Some of the works done on genre analysis based on various field of interests were from Tan SH in 1999, a Master's dissertation on Genre Analysis of the Cambridge 'O' level mathematics examination, National University of Singapore, a Ph.D thesis entitled A genre-based analysis of Introductory sections of articles in International and Malaysian Engineering journals were conducted by Sze KF in 2003 from the Faculty of Languages and Linguistics, University of Malaya and interestingly an account of a particular genre which adopted different research methods according to the communicative purposes of these researchers have produced different outcomes from Yong MM in 2001 who conducted a dissertation (MESL) on A genre analysis of advertisements in a local newspaper from the Faculty of Languages and Linguistics, University of Malaya, Faridah bte Jantan in 2006 of the same faculty raised a dissertation (MESL) on the Genre Analysis of Bank Advertisements in local newspapers and a more recent dissertation (MESL) on a Genre Analysis of advertisements of skincare products was produced by Teo LM in 2008.

2.3 THEORETICAL FRAMEWORK

Bhatia in 1993 advocated a three-level analysis approach to highly institutionalized (professional) written genres.

The three-levels are:-

- a) Level 1 - Analysis of lexico-grammatical features
- b) Level 2 - Analysis of text-patterning or textualization.
- c) Level 3 - Structural interpretation of the text structure.

Therefore this study will be conducted using BHATIA's theory on legal genre, adopting Level 3 whereby the focus is placed on structural interpretation via easification and the rhetorical move structure. By the same token, it is fair to say genre analysis on the subject matter would not be complete if Hallidayan systemic functional linguistics is not considered vis-à-vis with Bhatia's structural analysis as it is crucial to understand the correlation between the communicative purpose of these legal writers in drafting a particular introduction chapter.

Bhatia formulated this easification devices to lighten the bulk of information, to indicate legislative intentions, illustrate legislative issues and for pedagogical

convenience

A dissertation study on legal genre has been conducted by Mr Krishnasamy in 1999 which entitles A Genre Analysis of a legal text on Constitutional and Administrative Law in University of Malaya with the Faculty of Languages and Linguistics. By adopting a Create-a-Research-Space (CARS) model advocated by Swales (1990) on RA introductions in his study he was able to interpret the structure of the textbook and arrived at a decision of a three-move structure on the textbook as having a three part division, namely an Introduction, Middle and Conclusion.

Castro C.D (1991) in her Master's dissertation entitled A Linguistic Analysis of Legal cases as a genre has adopted Bhatia's (1993:127-136) four-move structure to interpret legal cases and the rhetorical move strategies has shown relevance on her field of research. Therefore it is justified to say that given any legal cases at hand, its is apparent to one that Bhatia's four-move structure is evident in all case studies.

It is inherent in a legal case to have these characteristics :

- Move 1 – Identifying the case
- Move 2 – Establishing the facts of the case
- Move 3 – Arguing the case
 - Move 3(a) – Stating history of the case
 - Move 3(b) – Presenting arguments
- Move 4 – Pronouncing judgments

Currently, the researcher is at task to apply Bhatia's rhetorical move strategies and to stratify the introduction chapter of several Tort textbooks to validate the existence of a structural pattern in these Tort introductions textbooks.

2.4 CONCLUSION

This chapter has dealt with the definition of genre and how it was developed followed by how genre was seen from different linguists' perspective to the mid 80's where the focus was on the communicative character of discourse (Swales 1990:4). Swales formulated the CARS model for RA. Hallidayan linguistics overlap with Genre Analysis in determining the communicative purpose of the producer. And finally

Bhatia's 3 level analysis approach to professional written genres.