

CHAPTER ONE

BACKGROUND OF THE STUDY

1.0 Introduction

This chapter provides an introduction to the study. It states the reasons for conducting this research, the objectives of the study, the rationale for conducting a genre-based study and the reasons for choosing dismissal cases as the basis of the study. A brief description of the Malaysian legal system is also included in this chapter. Since the focus of this study is on dismissal cases of the Industrial Court, this chapter subsequently looks at the Industrial Court and provides information on the role, structure and functions of the Industrial Court. The chapter ends with a description on the organization of the thesis.

1.1 Purpose of the Study

In the field of legal discourse, legal cases and reports are of vital importance for reference to court's decisions. They form an important form of reference as courts of law normally follow precedents set by previous cases. Legal cases and reports are tools used by the professionals to guide them in their legal reasoning, argumentation and decision-making. However, legal language is unique with regards to its lexical features and discourse structures. It is also renowned for its complexity, obscurity, archaic expressions, redundancy, technical vocabulary, etc. which causes problems in comprehension especially for the lay audience. To understand legal language better, one needs to understand the genre or the role of the legal cases in the discourse

community. Through genre analysis, one can recognize and familiarize oneself with the standard texts patterns and devices employed in a particular discourse community and understand why members of specific discourse communities use the language the way they do (Bhatia, 1993).

The purpose of this study is to define the genre of the *Industrial Law Reports (ILR)* through its discourse structures and linguistic features. This study focuses primarily on the dismissal cases of the reports and explores the discourse structures and the linguistic features of the report using Bhatia's (1993) framework as a model. This study will look at all the sections of the reports and analyze the obligatory and optional moves found in the reports. The communicative purposes of the Industrial Law Reports will also be described. In addition, this study also looks at the salient linguistic features found in the report. The Giving of Award move which is the most important part of this report is discussed in detail as the judgment/decisions of the case is/are found in this section of the report. This study does not intend to teach how such a report is to be written but aims to provide insights and details on the conventions of the ILR genre. A knowledge of the ILR genre and an awareness of the discourse conventions can help a reader, writer or learner understand the text better and to function more effectively within the genre knowing which discourse characteristics are vital and which are optional. This study also hopes to assist those who have to understand how industrial law reports are constructed, read and interpreted or to clarify them for Human Resource practitioner, teachers teaching the legal language, new students of law or the ordinary lay audience. Furthermore, studies of legal cases and reports are still insufficient despite their importance to the discourse community. This study attempts to fill the gap and enhance one's knowledge in the field of legal

discourse by looking at the genre of the ILR and shedding some light on the rhetorical structures and linguistic features as used by the discourse members of this community.

The 'move' approach in genre studies which is akin to that in Swales (1981, 1990) and Bhatia (1993) is used as a guide to identify the structural conventions and to discover the salient linguistic features of the industrial law reports.

1.2 Background of the Study

My interest in the study of the ILR genre came about after reading Bhatia's (1993) book on *'Analysing Genre – Language Use in Professional Settings'*. At the same time (late 2000 and early 2001) the role of the Industrial Court was in the limelight in the dailies due to the number of backlog cases and economic downturn. A picket held on Thursday, October 12th 2000 with more than 800 people from over 170 unions affiliated to the Malaysian Trades Union Congress (MTUC) in front of the Human Resources Ministry brought back a familiar scenario of 1967 where picket was a common thing among workers. MTUC's decision to use this approach instead of trying to resolve the matter through discussion has highlighted the need for a more effective and efficient role of the Government in handling and solving problems faced by the union and the workers. As I have always been fascinated by legal language, I could not help but start to read more on cases of the Industrial Court from the Industrial Law Reports, a monthly publication which disseminates to the public and related professional all awards and decisions of the Industrial Court. I noticed there was a similarity in the discourse organization of the dismissal cases and the legal cases done by Bhatia except that the language was much simpler and less legalese. However, for

those uninitiated in the legal domains, any legal text is often associated with verbosity, incomprehensibility and beyond the reach of a normal lay person. After some researching, I decided to proceed with the study as I found the reports are a source of reference to the workers and professionals in this area and to my best of knowledge no research has been done on it.

Every year in Malaysia there are numerous cases of trade disputes to be settled. On average, the Ministry receives between 300 and 400 industrial dispute pleadings every month. The process of handling and settling these disputes may take days, weeks, months or even years. As of December 2007, (Industrial Court Malaysia) there are still 4612 cases pending hearing by the Industrial Court (see Table1) and these numbers keep on increasing. According to Justice Dato Harun M. Hashim, former President of the Industrial Court of Malaysia (1980 to 1984), some of these cases could have been avoided if only the management had known what could have be done at an early stage. In some cases, perhaps advice could have been obtained before referring the case to a court or an understanding of the case was all that was needed to save the company time and expense. At times, inexperienced personnel or human resource managers were largely to be blame for getting the company into a mess with the trade union (Syed Ahmad Idid, 1988). There are also times when inexperienced trade union leader embarked on lost causes for the welfare of the workers. All these could have been avoided if an understanding or reference to a case has been carefully studied before the case was referred and taken up to the Industrial Court. The following table illustrates the number of cases reported to the Industrial Court during the period 2000 to 2007. As can be seen, the cases that are reported to Industrial Court has been increasingly twofold and more.

Table 1: No. of Cases Reported to Industrial Court (2000 – 2007)

SUBJECT	YEARS							
	2000	2001	2002	2003	2004	2005	2006	2007
Total Cases Carried Forward	1524	2017	2074	2098	2331	4143	3723	4566
Total Cases Referred	1050	1056	1092	1085	3406	1859	2990	2346
Total Cases Heard / Given Award	726	1026	1081	1026	1911	2403	2432	2599
Total Cases Pending	1788	1881	2015	2212	3830	3652	4566	4612

Source: <http://www.mp.gov.my/> (The official Website of Industrial Court Malaysia)

And from these total number of cases reported to the Industrial Court, only half of the cases have been settled and awarded. Table 2 further shows the number of Industrial Court award on dismissal cases which is quite a worrying trend too. There is a need to expedite the Industrial Court cases to further reduce the number of backlog cases which is still on the increase. Current economic situation and inflation will further results into some work organization going for retrenchment, lay offs and downsizing their workforces which could spell further burden of the Industrial Court.

Table 2: No. of Awards of Dismissal Cases (2000 - 2007)

TYPES OF TERMINATION	2000	2001	2002	2003	2004	2005	2006	2007
Constructive	20	26	35	40	34	22	42	97
Misconduct	479	726	810	763	1638	2144	2051	1200
Retrenchment	21	41	52	61	61	16	32	422
SUB-TOTAL	520	793	897	864	1733	2182	2125	2121
Others	-	-	-	-	-	-	-	402
TOTAL	520	793	897	864	864	2182	2125	2121
() CONSENT AWARD								

Source: <http://www.mp.gov.my/> (The official Website of Industrial Court Malaysia)

Industrial dispute cases are brought to the court when other methods of settlement have failed. The Industrial Court function is to arbitrate these disputes. It is to provide a peaceful and unbiased means of settling disputes that arise between employers and employees. Decisions made by the Court are called awards, and are not only binding but final on the parties involved. The decisions and awards handed down by the court will also set the precedent to be followed in the practice of the labour law and the industrial relation system of the country.

1.3 Objectives of the Study

To achieve the goals of this study, the following research questions have been formulated:

Question 1: What are the **communicative purposes** of the Industrial Law Reports?

Question 2: What is the **generic structure** of the Industrial Law Reports?

Question 3: What are the **obligatory** and **optional** moves in the Industrial Law Reports?

Question 4: What are the salient **linguistic features** of the Industrial Law Reports?

Given the above research questions, this study will seek answers to such questions which forms the focus of the current research. However, it should be noted that the legal language in the ILR is not as legalese and rigid as those found in legal judgments since the texts are written more for the ordinary people while maintaining its role as a source of reference in this specific discourse community.

1.4 Rationale for Studying Industrial Law Reports

In Malaysia, the most prominent and only journal related to industrial, labour and employment law is the Industrial Law Report (ILR). This journal which is available in English is published by a private company. It is imperative to those who are involved in industrial relations to take the time to read and understand the decisions or awards of the Court. Awards and decisions of trade disputes cases are reported in this journal and it is referred to by professionals be they managers, lawyers, trade union

leaders and officers and executives in human resource and industrial relations departments. The need to read and understand these cases is important to these professionals before they decide to take any course of action. Time is of the essence to these professionals. Being busy people, the need to resolve any conflict at the workplace and whether it is unproductivity, dispute or dissatisfaction it is of utmost importance to them. In matters regarding dismissal, the need is even higher. When a worker is dismissed, the need to settle such cases is vital. Both the employer and the employee have the right to make this decision. Whether a dismissal case is worth pursuing will depend on the ability of the parties to argue, prove and negotiate based on whatever evidence they have. Precedents are usually followed, thus it will be easier for these professionals if the cases they are to deal with have similarities to previous cases. Arguments and line of reasoning can be presented with reference to previous cases and decisions which had been awarded.

It is also essential to refer to and read this journal as society expectations, attitudes and values are dynamic and constantly changing. Even though precedents are usually followed in a court of law, decisions or awards made by the Court ten or twenty years ago may no longer be good guidelines to understanding the current thinking of the Court. Thus, it is important for these people to constantly upgrade their knowledge on the legal aspects of industrial relations and also remain up to date in this area. To do this, they must know English. They must become proficient in the English used in their legal communities, especially in relation to industrial law. The Industrial Law Reports are written in English and only some cases in Bahasa Malaysia (the national language). About 85% of the cases of the Industrial Court (quoted from Industrial Court) are heard in English. Even reports written in Bahasa Malaysia have the

headnotes translated in English. Precedents and references of cases are also quoted in English. Thus, the need to be proficient in the language is essential.

With the standard of English declining, this task becomes more daunting. Not only students but even professionals are having difficulties coming to grips with certain terms and contents in English. Even though Bahasa Malaysia which is the national language of the country has been officially implemented in the lower and higher courts in 1981 and 1990 respectively, the use of English is widespread and still practiced amongst members of the legal community. In fact, in the High Courts and the Supreme Courts, up to eighty per cent of the proceedings is in English (Juneidah Ibrahim, et. al., 1991). Such widespread use of English means that one must have sufficient competence in the language. Thus, the need to learn English and to use it for references as well as to read and understand a case is important in the legal field.

1.5 Rationale for a Genre Analysis Study

The incredible growth of academic disciplines has caused a growth in genre development and modifications, and the way one discipline uses a genre is not the same as the way a different discipline uses a similar genre. Furthermore, knowledge is becoming more fragmented and specialized, especially in academia and the business world. Each field, each discipline, and each area of specialty has its acknowledged experts and special organizations that are the gatekeepers and guardians of their special interests (Stein, 1997). With all the areas of specialty that exist and with all the different types of specialized discourses that are around us, we need to draw a better and more accurate map of the universe of discourse. Genre analysis is an effective

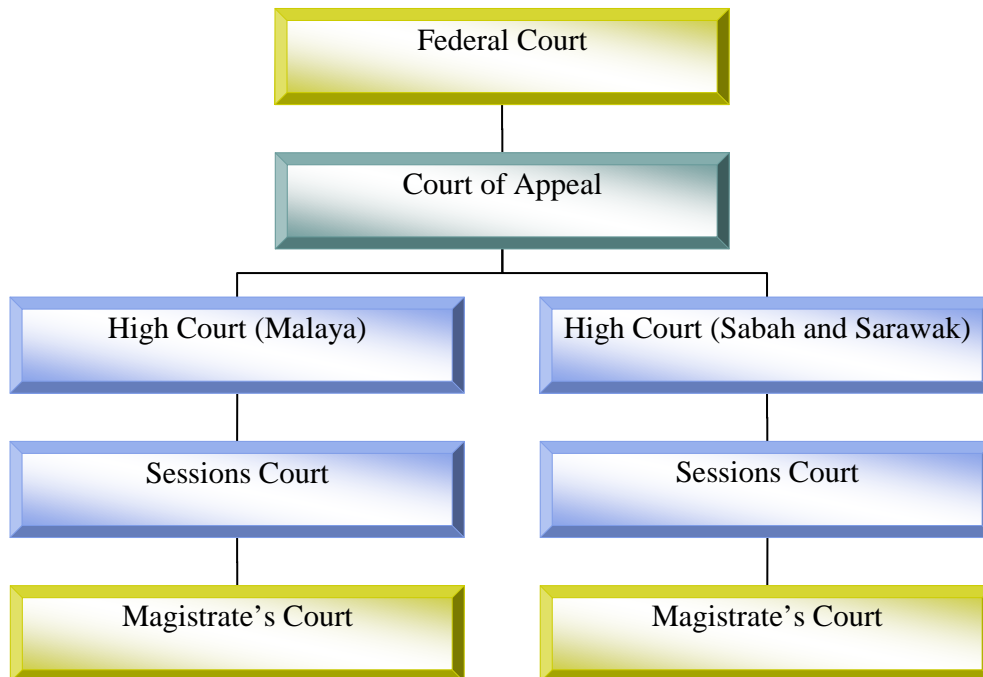
manner of mapping out the universe of discourse. And, this study, a genre analysis of the ILR, is an attempt to draw a more accurate map of legal discourse.

To understand a case well enough, one must take into account the context and situation that occurs within the discourse community. The study of these factors is important in genre analysis. Genre analysis allows one to understand why the rules and conventions of a particular discourse community most often reflect the language and the shape of the rhetoric that are characteristics of that genre. This study of genre analysis is important to the professionals and people involved in industrial relations as understanding the details and knowing how industrial dispute cases are written, read, interpreted and awards given make understanding the text or case better. This knowledge and understanding can help guide them towards taking an appropriate course of action or decision that will help in reducing the number of disputes between employer and employees and in referring the cases to the Industrial Court.

1.6 Malaysian Legal System

Before going into the history and background of the Industrial Court, it is important to know the Malaysian legal system so as understand the role and position of the Industrial Court better. The present hierarchy of courts in Malaysia is as follows:

Diagram 1: Hierarchy of Courts in Malaysia

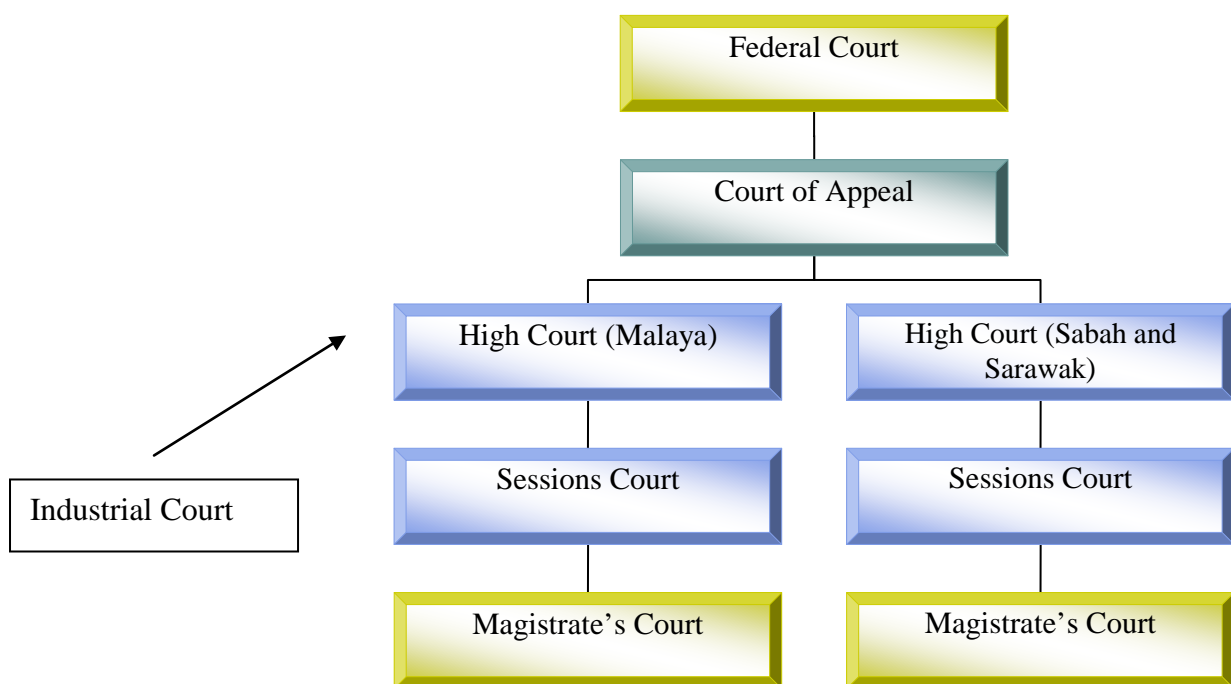


Source: Malaysian Legal System, Sharifah Suhana Ahmad, 1999

In the Malaysian legal system, the court structure is greatly influenced by the English Court system a legacy from the colonial period. The courts are divided into the Subordinate Courts and the Superior Courts. The Superior Courts are the High Court, the Court of Appeal and the Federal Court, which is the highest court in Malaysia. The Subordinate Courts comprise the Sessions Court, the Magistrate's Court and the Penghulu's Court. In addition to these courts, there are other courts established for specific purposes and under specific statutes, among them, the Labour Court, the Syariah Court, the Tribunal for Consumer Claims and the Industrial Court. The Industrial Court is "the most important in terms of substantive adjudication as well as number of cases" (Sharifah Suhana Ahmad, 1999). The Industrial Court is established under section 21 of the Industrial Relations Act, 1967 and hears cases related to unfair

dismissal of workmen and trade disputes. The decision of the Court which is known as the Award is final and conclusive. It can only be reviewed, appealed or quashed by the High Court on the grounds of denial of natural justice or if the Industrial Court has acted in excess of its jurisdiction of what is stated in the Industrial Relations Act 1967. The position of the Industrial Court is shown in the following diagram:

Diagram 2: Position of the Industrial Court in the Malaysian Legal System



Source: Malaysian Legal System, Sharifah Suhana Ahmad, 1999

1.7 The History and Background of the Industrial Court

Unlike the ordinary law courts, the Industrial Court is a specialized body that has been established for a purpose. Its main purpose is to adjudicate on matters relating to trade disputes. The Industrial Court was first established in 1940 under the Industrial Court of Inquiry Rules. However, it did not function due to the Japanese Occupation in

Malaysia. In 1948, the Industrial Court Ordinance was introduced which allowed a tribunal to hear disputes at the request of the parties involved. It was a voluntary arbitration body and between 1948 to 1964 only 4 disputes were heard. This is because the Awards (decisions) handed down by the Court were not legally binding and therefore the Court was limited in its effectiveness.

This voluntary arbitration system was later amended with the introduction of the Industrial Arbitration Tribunal, 1965. This tribunal deals with disputes in certain essential services which prohibits any industrial action in the industrial sectors which are classified as essential services. Thus, exists a dual system of voluntary arbitration and compulsory arbitration at the same time. With the two systems existing side by side, the Government found compulsory arbitration to be a very effective method of reducing the incidence of strike.

In 1967 with the enactment of the Industrial Relations Act, 1967 the concept of compulsory arbitration was introduced. Any industrial disputes not settled through mediation and conciliation as provided in the Act would be referred to the Industrial Court for arbitration. The present Industrial Court is instituted under the Industrial Relations Act, 1967. The Act has been amended several times in 1969, 1971, 1975, 1976, 1977, 1980, and in 1990.

However, all these amendments did not affect the existing basic provisions that is:

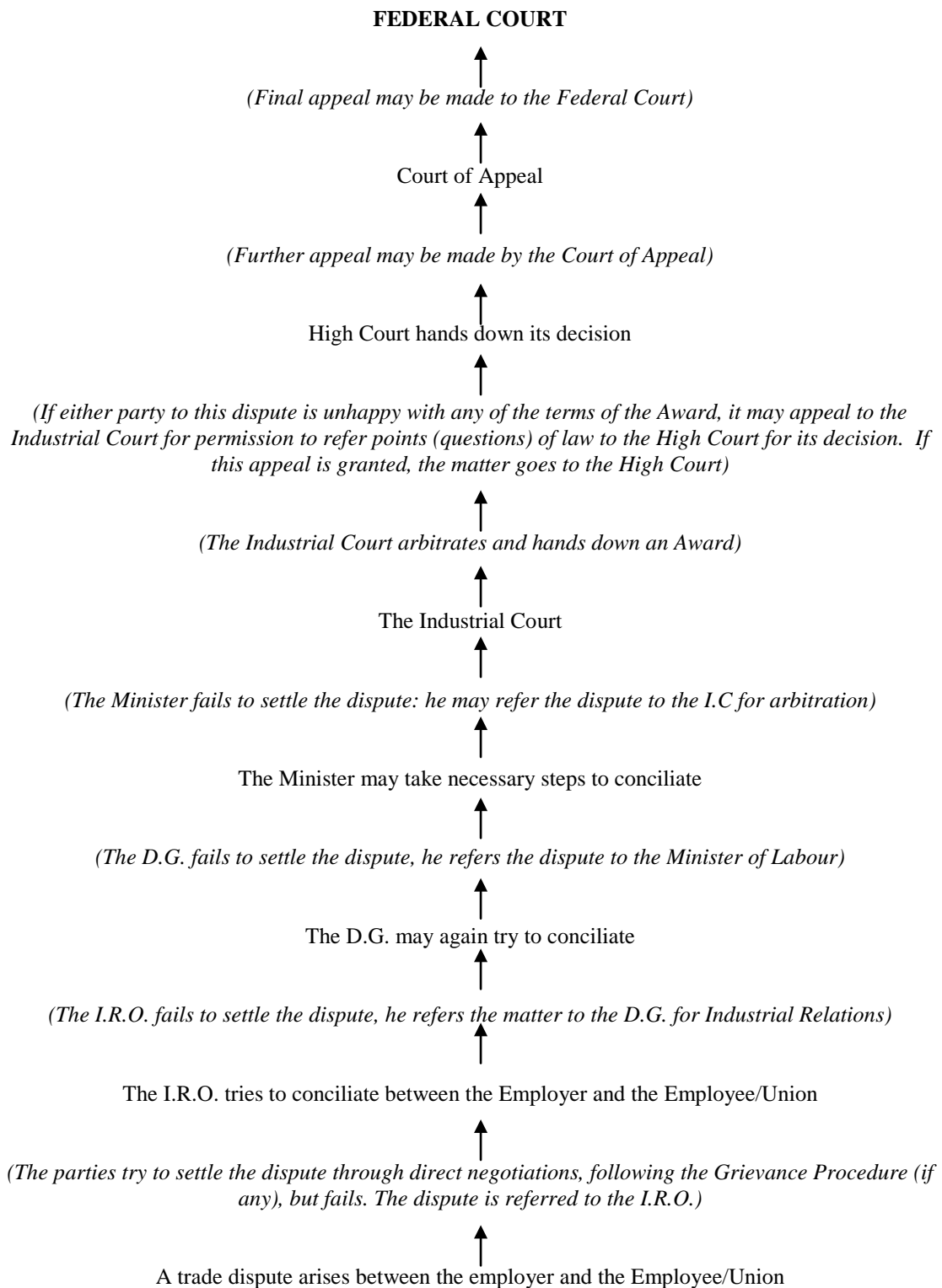
An Act to provide for the regulations of the relations between employers and workmen and their trade unions and the prevention and settlement of any differences or disputes arising from their relationship and generally to deal with trade disputes and matters arising therefrom.

(Industrial Relations Act, 1967)

1.7.1 The Objectives and Roles of the Industrial Court

The main objective of the Industrial Court is to settle trade disputes. It is to provide a peaceful and unbiased means of settling disputes between employers and employees when other methods to resolve the disputes have failed (see Diagram 3).

Diagram 3: Various Stages in Settling Trade Disputes



A trade dispute means any dispute between an employer and his workmen which is connected with the employment or non-employment or the terms of employment or the conditions of work of any such workmen.

(Sec. 2, I.R.1967)

The Industrial Court also sets up principles and guidelines for labor law and all the parties involved in industrial relations practice. Through its decisions and awards, it has set precedents that are to be followed in the practice of the labor law and the industrial relation system.

Aside from setting important principles and guidelines, the Court is to issue decisions or grant awards arising from industrial disputes speedily and economically, taking into considerations “*the public interest, the financial implications and the effect of such award on the economy of the country, and on the industry concerned, and also to the probable effect in related or similar industries.*” (Section 30(4), Industrial Relations Act, 1967).

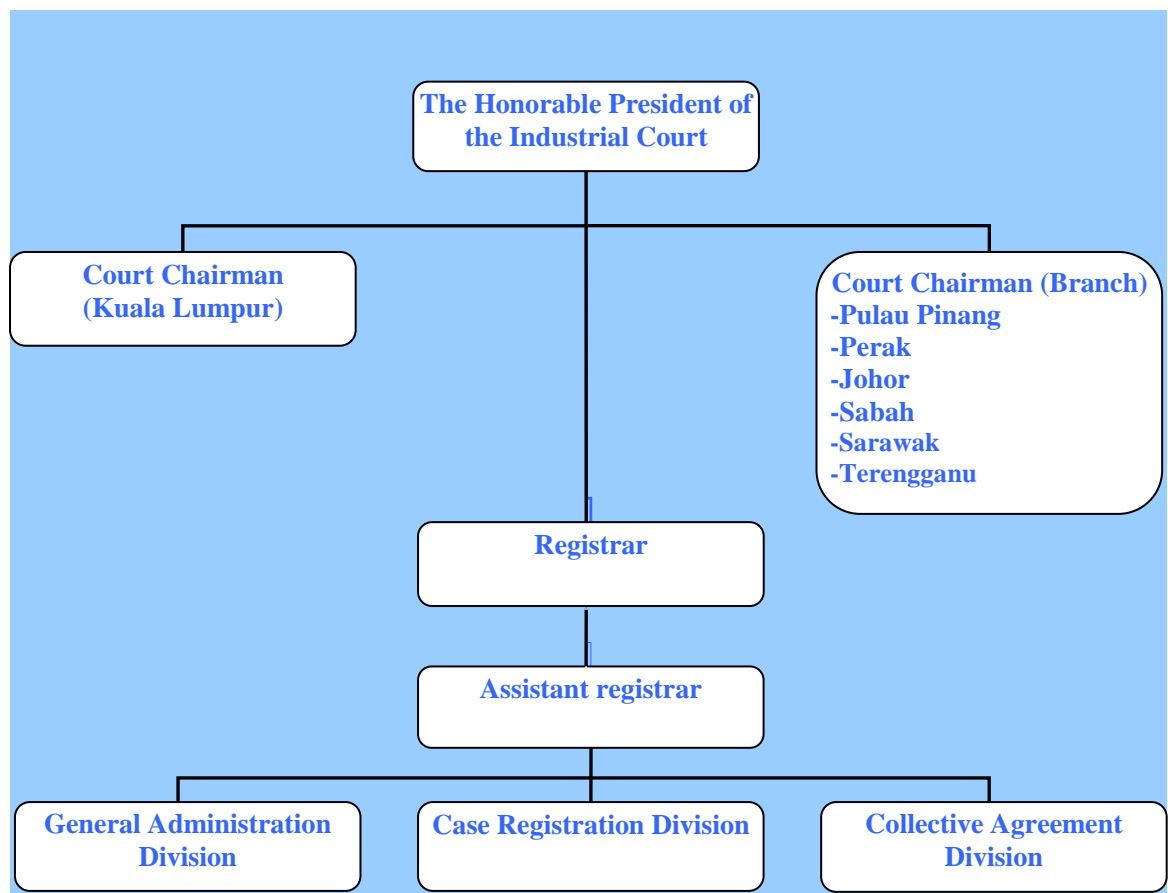
Finally, another important role of the Industrial Court is to register and give cognizance to collective agreements. Collective agreements deposited with it are checked to see that they fulfill all the legal requirements and are enforceable under the law. This is to ensure that the workers’ rights are provided and protected so that a harmonious industrial environment could be created and maintained in line with national industrialization and investment policy of the country.

1.7.2 Structure and Proceedings of the Industrial Court

The Industrial Court is headed by the president. He is appointed by the Yang di-Pertuan Agong (The King) and has a number of chairmen to assist him. The President is responsible for the whole function and activities of the court. Under the Industrial

Regulation Act, the President is required to have at least seven years of experience as a lawyer before his appointment or he must be a member of the judicial service. There is a total of thirty chairmen for the Industrial Court with twenty-one Chairmen in Kuala Lumpur, 2 in Penang, 2 in Perak and 2 each in Sarawak and Sabah and 1 in Trengganu, the latest branch addition of the Industrial Court (Diagram 3).

Diagram 4: Organisation Chart of the Industrial Court of Malaysia



Source: <http://www.mp.gov.my/> (The official Website of Industrial Court Malaysia)
Translated into English from the original Malay version

The proceedings of the Court are similar to a court of law but less formal. For cases of trade disputes, the hearing will consist of the President and a two member panel: one person representing employers and one person representing employees. However, if it was a case of unfair dismissal the President or Chairman can sit alone without a panel.

The proceedings of the Industrial Court is similar to any court of law. Once a pleading is called for hearing at the Court, a party to any dispute may choose to represent himself or be represented by any official of a trade union or a union of employers. In the case of the employer, he may choose one of his officers to represent the company. If the company is a member of a trade union of employers, the Company can be represented by an officer or an employee of the union. The Company can also be represented by an official of the Malaysian Employers Federation (MEF). In the case of the employee, he/she may choose to represent himself/herself or be represented by an official or employee of the Malaysia Trades Union Congress (MTUC). For the Union, they can appoint an officer or an employee of the union or an official of the MTUC to represent them at the hearing. If any of these parties is to be represented by a lawyer, permission must be obtained from the President or Chairman of the Court. The table below illustrates the representation of parties at the Industrial Court hearings:

Table 3: The Representation of Parties at the Industrial Court Hearings

Employers	Employee	Union
1. Company officer	1. Himself	1. Union officer of Employee
2. Employers Association Officer	2. MTUC (Malaysian Trades Union Congress) or Union official	2. MTUC official or Employee
3. MEF Official	3. Lawyer	3. Lawyer
4. Lawyer		

Source: Malaysian Industrial Relations and Employment Law, Sixth Edition, Maimunah Aminuddin, 2007.

Once a dispute is referred to the Industrial Court, no industrial actions such as a strike can take place. The Court has the power to call on witnesses and documents when necessary for the hearing. Before the hearing, the parties to a dispute are required to submit a written summary of their arguments. These are called ‘pleadings’. The ‘pleadings’ are important because when the Court makes its decision, it will only consider whatever is asked and included in these pleadings. Other matters brought up during the Court hearing but not in the pleadings will normally not be considered. During the hearing of the dispute, each party is given the opportunity to present his/her case and the events leading to the dispute. Witnesses and documents can be presented to support and prove their case. Each party can cross-examine the other’s witnesses. The Court President or the Chairman may also ask questions from both parties from time to time. Once all arguments are presented and completed, the Court will adjourn. It will make its decision which will be written up and is called an Award.

An ex-parte hearing is sometimes held when one of the parties to a dispute does not turn up in court. If the court is satisfied that the party concerned was already aware of the date of the court hearing, the case will be heard without the party's presence. In cases of unfair dismissal, it is important that both parties attend the hearing. If one of the party does not turn up, the advantage is on the party who is present. The party present will usually win the case as there is no one to rebut the arguments and evidence offered.

1.7.3 Awards of the Court

The decision handed down by the Court is referred to as an award. It is legally binding on the parties involved and cannot be challenged or appealed. Once an award granted; it is final. Section 33 of the Industrial Relation Acts states that the awards of the Industrial Court:

“shall be final and conclusive, and no such decision shall be challenged, appealed against, reviewed, quashed or called in question in any other court or before any other authority, judicial or otherwise, whatsoever.”

However, if a party is dissatisfied and questions of law are raised, the High Court in exercising its supervisory function may review an award on the grounds of denial of natural justice or whether the court was acting in excess of its jurisdiction. Thus, even though the decision of the Industrial Court is final and binding, it is possible for a party who is dissatisfied with the Industrial Court's decision to file for a *writ of certiorari* (an order of the court to quash or annul an Industrial Court award). A High

Court decision can, in turn be appealed against in the Court of Appeals and the Federal Court. In this higher level court, it does not re-hear the case but decides whether the Industrial Court had jurisdiction to hear the case and make an award and if it did whether it had properly applied the law.

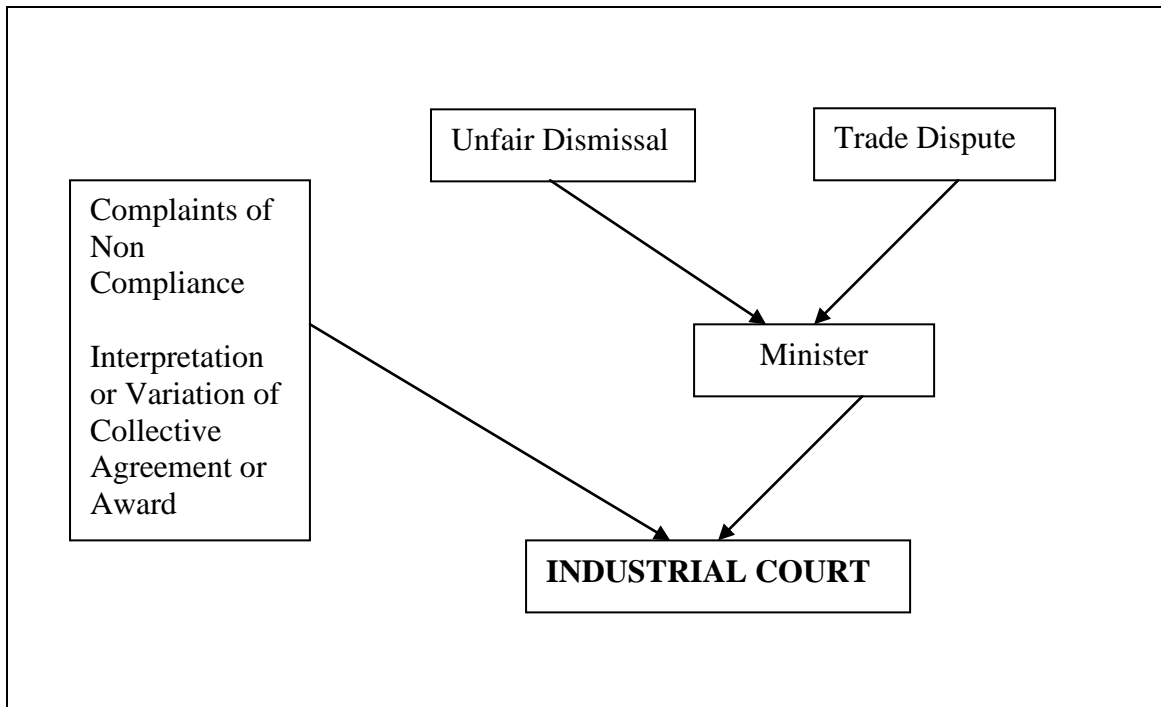
1.7.4 Jurisdiction of the Court

The Industrial Court deals with four types of cases and is also responsible for giving cognizance to collective agreements. The four types of cases handled by the Industrial Court are:

1. Unfair dismissal and retrenchment
2. Trade disputes
3. Interpretation of collective agreements or awards
4. Complaints of non-compliance

Cases of complaints of non-compliance and interpretation of collective agreements or awards are brought to the Industrial Court through direct reference to the Court whereas cases of unfair dismissal and trade dispute are brought to the court through the recommendation of the Minister of Human Resources. Diagram 4 below illustrates how cases are brought to the Industrial Court.

Diagram 5: Reference of Cases to the Industrial Court



Source: Malaysian Industrial Relations and Employment Law, Sixth Edition, Maimunah Aminuddin, 2007.

1.7.4.1 Unfair Dismissal Claims

Dismissal cases make up most of the Court's cases. An employee who has been dismissed from work can file a complaint of unfair dismissal and a request for reinstatement with the Director-General of Industrial Relations within 60 days of his dismissal. Usually claims of unfair dismissal are settled by conciliation but if the Director-General of Industrial Relations is unable to reach a settlement, the dispute will be referred to the Minister. The Minister who has been notified will refer the case to the Industrial Court.

(i) The Court's Power in Respect of Unfair Dismissal

Upon receiving a complaint of unfair dismissal, the Court will decide whether or not the dismissal was without just cause and excuse or whether the employee was properly and fairly dismissed. If the Court is satisfied that the employer has followed the proper procedures for dismissal and the employee deserved to be dismissed, the Court will uphold the dismissal. However, if the Court finds that the dismissal was unfair, the Court can make an order for the reinstatement of the employee. The employee will be given his job back with all the benefits he had at the time of his dismissal.

In most dismissal cases, reinstatement is relatively rare. This is because by the time the dispute is settled, a two year period has elapsed. By that time the employee would usually have found another job. Sometimes reinstatement is also not the best solution because the relationship between the employee and the employer have become too strained during the course of the dispute. In this case, the Court will usually award the employee compensation. The company will pay the employee compensation in lieu of reinstatement and back wages. This is usually calculated from the date of dismissal to the last day of hearing up to a maximum of two years and one month's wages for every year of service. However, if the employee has been gainfully employed elsewhere, the Court may reduce the amount of compensation accordingly.

(ii) Unfair Dismissal and Retrenchment

In the mid 1980s termination of service due to redundancy was quite common. Even though retrenchment is a management prerogative, it can cause a dispute if the employee has been unfairly dismissed. An employee can file a complaint under

Section 20 of the Industrial Relations Act, for reinstatement, if he thinks he has been unfairly dismissed. The Court on receiving this case has to first determine whether the retrenchment was the real reason for termination and whether it was justified and procedurally fair. If the employer can justify the retrenchment exercise, and the Court is satisfied, the right of the employer in retrenching his workers is no longer a question.

(iii) The Code of Conduct for Industrial Harmony

To ensure that every trade dispute case be it dismissal or retrenchment is carried out fairly and properly, the Court can refer to the Code of Conduct for Industrial Harmony. This Code lays down guidelines in areas of industrial relations practice. It is to be noted that the code guidelines on retrenchment closely correspond to the international labour standards. The attitude of the Industrial Court in taking into account the code guidelines in making their decision has been well articulated by the Chairman of the Industrial Court in Behn Meyer's case:

“I am mindful the code of conduct for industrial harmony is not a piece of legislation with legal binding. Nevertheless it is an agreed document with endorsement by both the employers and the employees to observe and comply with its provisions to protect their separate interests. The industrial court had, in various past awards, given recognition to the philosophy of the code by seeking assistance from its provisions in adjudicating disputes before it.”

<http://www.mtuc.org.my/Terminationanantaraman.htm>

Thus any divergence from the Code can lead to unfair dismissal or retrenchment of a worker.

1.7.4.2 Trade Disputes

Industrial Relations Act 1967 states that trade dispute is any dispute between an employer and his workmen which is connected with the employment or non-employment or the terms of employment or conditions of work of any such workmen. When other methods of settling a trade dispute have failed, the case is usually referred to the Industrial Court. This is done by reference from the Minister or at the request and in writing of both disputing parties. Cases of this nature are usually a dispute where an individual worker has a grievance against his employer and he is represented by his union. Most of these cases are claims of unfair dismissal although there are also cases where a worker claims that unfair disciplinary action has been taken against him by the employer. Another case of trade dispute handled by the Court is a dispute over terms of conditions of service or collective bargaining. A union representing the workers in a particular company is not in agreement with the employer over some terms and conditions of service. The Court handles this dispute when other methods of conciliation have failed.

1.7.4.3 Interpretation of Collective Agreements or Awards

This case can be brought directly to the Court by the parties concerned. The Court's responsibility is to interpret any part of the collective agreement or award which is disputed by the party. Parties may have come to an agreement over the meaning of a particular clause or section in the Collective Agreement or Award during the time but at the time of implementation, disagreement over interpretation may arise. Thus, the Court should decide on the correct interpretation of the particular clause or section and the way it should be implemented.

1.7.4.4 Complaints of Non-Compliance

Complaints of non-compliance with a Collective Agreement or a Court Award can also be brought directly to the Court. A union or the person bound by the Award or agreement may lodge a complaint to the Court if any term of the Award or of the collective agreement which has been taken cognizance of by the Court has not been complied with in writing. The Court upon receiving the complaints may order the company which fails to comply with the court award or collective agreement to do so.

1.7.5 Cognizance of Collective Agreement

The final jurisdiction of the Court is to grant cognizance to collective agreements. All collective agreements must be signed and deposited with the Court. The Court will check that they fulfill all the legal requirements and are not contrary to the law to render them invalid. It is then accepted by the Court and are thus enforceable by it. The Court also has the power to require the signatory parties to amend any part of the agreement where necessary.

1.8 The Function of the Human Resource Department

In any work organization, the Human Resource Department (HRD) is the backbone of the organization. Known in the old days as the Personnel Department, it is now called the Human Resource department. The change to Human Resource department is not just a cosmetic change (Kinicki and Williams, 2006). According to Kinicki and Williams (2006) the change is intended to suggest the importance of staffing to a company's success.

Human Resource department (HRD) is responsible for planning, attracting, developing, and retaining an effective workforce. Human Resource has to consider the overall company strategy, how to evaluate current and future employee needs, and how to recruit and select qualified people. HR management includes orientation, training and development; how to assess employee performance and give feedback. The most important of all its functions is HRD must consider how to manage compensation and benefits, promotions and discipline, and workplace performance problem. In managing an effective workforce, HRD must oversee as well as also solve organizational problems like poor performance and dismissal. In carrying out these duties effectively, HR management needs to know the legal rights of the employer and also the employees and the laws concerning industrial relations. In summary, the function of the HR management is to get optimum work performance that will help realize company's mission and vision.

Legal issues are so central to all HR activities. Proficient and able human resources managers are therefore vital in running and managing the HR department effectively. Thus ILR as a source of reference and information is essential in helping the HR management whose role is gradually becoming broader and broader with globalization.

1.9 Chapter Overview/Outline of the Thesis

There are seven chapters in the thesis and each chapter and its content are described briefly below:

Chapter One begins with an introduction to the study followed by the objectives of the study and the research questions. The importance of Industrial Law Reports is mentioned and why a genre-based study is important in studying the Industrial law Reports. Since the focus of this study is on dismissal cases of the Industrial Court, a brief background of the Malaysian legal system is presented and included before the roles and functions of the Industrial Court are discussed. The chapter ends with a brief discussion on the functions of the Human Resource management in particular its role in handling disputes at the workplace.

Chapter Two provides a review of literature relevant to the research undertaken. The review discusses the three approaches to genre analysis namely the English for Specific Purposes theory, the Australian educational linguistic theory, and the North American New Rhetoric theory.

Chapter Three focuses on the review of literature on legal discourse. Studies on legal discourse are discussed in this chapter. This review attempts to show that the lack of research on legal genres in Malaysia warrants the current study to be undertaken.

Chapter Four describes the methodology used in this study. Data collection, choice of genre and methods of analysis are discussed in this chapter. Bhatia's move analysis which is akin to that of Swales was found to be the most suitable and is used as a guide in this study.

The main analysis of this study will be in Chapter Five and Chapter Six respectively. Chapter Five focuses on the moves analysis of this study. The results and the findings of the “moves” analysis are discussed in this chapter and a model of the structure of the Industrial Law Report is presented.

Chapter Six presents some of the salient linguistic features found in the dismissal cases of the ILR. Although the ILR is not as legalese as other law cases, the linguistic realizations which appear to be pertinent to this genre are highlighted and discussed in this section.

Chapter Seven which is the final chapter discusses the findings of the study. All the research questions are dealt with and discussed in this chapter. This chapter also highlights the conclusion and implications of this study. It ends with further suggestions and recommendations for future work in this area.

1.10 Conclusion

This chapter has provided the background of the study, the objectives and the rationale for studying the Industrial Law Reports and the reasons for and importance of conducting a genre-based study. A brief introduction to the Malaysian legal system has been discussed to understand the position and role of the Industrial Court. Since the dismissal cases of the Industrial Court is the focus of this study, the roles, composition, jurisdiction and powers of the Industrial Court have also been discussed. A section on the Human Resource (HR) management' function is also included as HR is so central in dealing with workers' disputes and cases in the work organization before they are

taken up to the Industrial Court. In the next chapter, a literature review of genre analysis is presented and discussed.