

CHAPTER THREE

REVIEW OF LITERATURE ON LEGAL DISCOURSE

3.0 Introduction

This chapter provides a literature review on legal discourse. It starts by looking at the history of Malaysia in order to understand the context of the Malaysian legal system. The national language policies are also discussed to give an overview of the position of English in the education and legal system.

In this chapter studies on courtroom discourse, legal interpreting and textual analysis are reviewed focussing more specifically on the local context. As this is a review on legal discourse, this chapters also discusses in brief about language and the law and forensic linguistics. As Bhatia's model is used as a guide in this study, his definition of legal genre, communicative purposes and linguistic features of legal genre are also discussed. This chapter ends with a review of studies done in legal discourse. The review attempts to show that the lack of research on legal genres in Malaysia warrants the current study to be undertaken.

3.1 History of Malaysia

To understand the Malaysian legal system, one needs to know about the history of Malaya (later known as Malaysia). Malaysia was under the British colony prior to her independence in 1957. Before the British colonial rule, Malaysia was under the Malacca Sultanate at the beginning of the fifteenth century before being occupied by

the Portuguese, the Dutch and later the English. The British colonial rule brings with it the European concepts of constitutional government and the common law.

The Federation of Malaya gained her independence on August 31st 1957. Malaysia was formally Malaya and was formed in 1963 after the joining of Sabah, Sarawak and Singapore into the Federation of Malaya (Singapore later opted out after two years in 1965).

Malaysia has over 26 million population comprising of various multiethnic social groups. The Malays are the predominant group, followed by the Chinese and the Indians respectively. Islam is the national religion and Malay the national language.

3.2 Malaysian Legal System

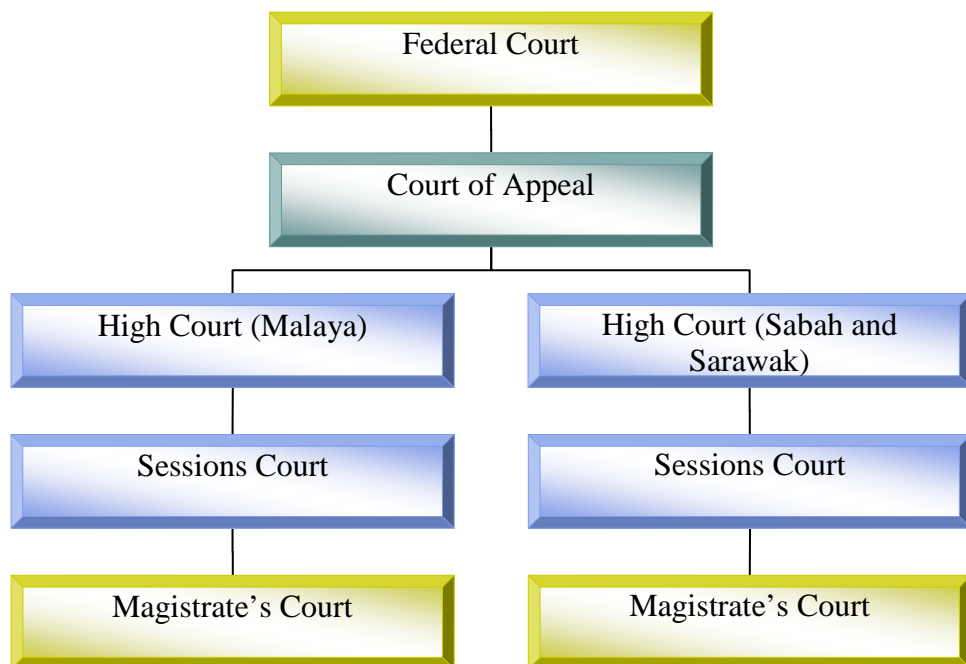
Malaysia is a former British colony. The Malaysian legal system is to a large extent, inspired, influenced and modelled after the English legal system. The court structure is similar to the English Court system. The courts are divided into the Superior Courts and the Subordinate Courts. The Superior Courts are the High Court, the Court of Appeal and the Federal Court. The Federal Court of Malaysia is the highest judicial authority and the final court of appeal in Malaysia. The Subordinate Courts comprises of the Sessions Court and the Magistrate'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. There is no jury system in the Malaysian legal system. The jury

system was abolished in the mid-eighties. Thus, it is the judges' responsibility to hear the evidence and arguments before making and passing judgments.

Although Malay is the national language, it is at the court discretion to allow proceedings to be held in English when counsel and witnesses are unable to speak the national language. This proceedings is allowed in English in the interests of justice. Lawyers must seek permission from the court to conduct the examination in English.

The present hierarchy of courts in Malaysia is as follows:

Diagram 6: Hierarchy of Courts in Malaysia



Source: Malaysian Legal System, Sharifah Suhana Ahmad, 1999

3.3 Language Policies

The national language which is also the official language in Malaysia is Bahasa Malaysia or Malay. Malay was installed as an official language under Article 152 of the Federal Constitution. English which was previously the official language in the country until the end of British rule in 1957 was reversed an official role and the use of English was permitted up to a period of ten years after independence, and allowed in both houses of parliament and, in courts of law. With independence, Malaysia aims to achieve both 'nationalism' and nationism'.

In line with the new nation's national aspirations, the Report of The Education Committee, 1956, came out with the 'Razak Report' to propose a new national educational policy that made Malay the national language and the medium of instruction under the Education Ordinance 1957. This resulted in the Malay-medium national primary schools and English, Chinese and Tamil national type schools. Malay was made a compulsory subject (Government of Malaysia, 2003) and was eventually enforced in all primary and secondary schools by 1982. Tun Mahathir's premiership (1981 – 2003), the longest serving prime Minister of Malaysia saw the Malay language became more dominant in education and government sectors as the result of language planning.

The reversed official role of English as the second most important language and the main medium of law remains for ten years. In 1980, concerted efforts to reform the medium of law was enforced into the courts. Directives were issued to all Court towards the use of Malay in all court documents and hearings and 'the use of English is permitted in the interest of justice'. Malay is now frequently used in the lower court

proceedings and a proficiency of the language is required of lawyers if to be admitted into practice.

Concerns about the declining English standards sees the national language policies switch back from Malay to English as the medium of instruction for maths and science subjects in primary and secondary schools in 2002. Nationism (i.e. state-building) seems to have been a stronger impetus behind the promotion of Malay than nationalism (socioeconomic expansion), which helps to explain the 2002 educational move back to English after 30 years of political stability (Powell, 2005).

3.4 Legal Discourse

Research into legal discourse has not been widespread and remains a rather untapped area until about two decades ago (Swales, 1982). In fact, development in legal discourse was in tandem with the developments in ESP as the need to look at course content and language pedagogy arose. The belief that legal language is convoluted, incomprehensible, fraught with archaic materials and multi clause sentences also contributed to the lack of research done in this particular area. However, some important work has been done in the field of applied linguistics and law and they are worth mentioning like the work of Judith Levi (1982) on courtroom discourse, O'Barr (1982) and Lind and O'Barr (1979) on language variability and the social structure of courtroom and Danet (1976, 1980 as quoted in Noraini, 1997, p. 2) on sentential and lexical semantics.

At the same time, in the 70s there was also another development in the field of legal discourse in the United States that is known as the Plain Language Movement. The movement which is towards 'plain/simple' English looks at the comprehensibility of legal language to lay persons. Research by Redish (1979) and Gunnarsson (1984) became an area of interest during this time. In fact the concept of making legal language simpler and easier to laymen is not a recent one; it has been of concern for a long time. Hager (1959) addresses the question of simplifying the legal language to which he labels the legal profession as 'a service profession'.

For non-native speakers of English Studies, studies on legal discourse have been mainly concentrated within the Commonwealth countries. It was largely initiated in the United Kingdom by the Aston-Birmingham School with reference to the studies by John Swales and Vijay Bhatia.

In Malaysia, studies on legal discourse are still few and varied. There have been studies on language planning, legal terminology, language in legal practice and language in legal education. To date, the most comprehensive treatment of language planning for Malaysia's legal system is Mead's (1988) work. Written following the Attorney-General's most active language initiatives, and based largely on media discourses, it suggests party-political reasons for extending language policy to the legal domain. His study includes early examples of mixed discourse in the law courts. He concludes that by overemphasizing formal aspects of language shifts such as terminology, at the expense of discursive and professional considerations, the language planners underestimated the complexity of substituting Malay for English. This sentiment is further echoed in studies by Zubaidah (2002) and Powell (2004).

Zubaidah (2002) in her study on court interpreting concludes that planners have taken insufficient account of the practical difficulties of switching languages in a specialised field dependent on authorities that remain overwhelmingly in English. She further argues that English is unlikely to be displaced from a legal system that relies heavily on a vast body of case law that has yet to be translated into Malay. Powell (2004) advocating the same sentiment in his study on corpus planning issues finds that even with comprehensive terminological reform, the shift from English to Malay will not take effect without reforms of the legal system and the legal professional themselves. Earlier works by Asmah (1979, 1994, 1996, 2003) on language planning and language policies stresses the importance of having English proficiency and English as the second most important language is still very much in use in various professions such as the medical, dental and legal professions but as with other writers there is greater focus on the governmental and educational roles rather than on the language.

In the area of legal practice, reports on the Malays in the legal profession was not encouraging. The level of Malay proficiency in the legal profession (Mhd. Ariff Yusof, 1993; Faiza, 1993) and a survey of language preferences among law practitioners (Ahmad et. al., 1992) reflects the slow progress of Malay in the judicial system. In the area of legal terminology, study by Zaiton and Ramlah (1994) looked at terminology from the legal translator's point of view. In another work on the same area, Mashudi (1994) evaluates *Istilah Undang-undang* (the prescribed list of Malay law terms), and argues that Malaysian terminologists should not shy away from borrowing English terms for unfamiliar concepts. Further works by Malaysian on legal discourse are studies by Ahmad et. al. (1992) and Nik Ramlah (1993) on the role of language in legal education. They find a growing preference for Malay among law

students and the declining English standards in law faculties without any sign that Malay is ready to take over.

3.4.1 Courtroom Discourse

Malaysia bilingual legal jurisdiction has led to courtrooms dynamic. Malaysian courtrooms are dynamic sites for various patterns of Malay-English language alternation, and written summaries and judgments often reflect the bilingualism of the legal system (Powell, 2005). According to Jacobson (2001), Malaysians are unusual in code-switching even in formal and written registers, a finding shared by McLellan's (2003) study of Brunei-Malay emailing.

Mead (1985) reported on a study conducted on the Universiti Malaya Spoken English Project (UMSEP). The monograph uses authentic courtroom data from the magistrate's court. The data was able to show the amount of Malay and English being used in the courts at that time. Baskaran (1995), also using authentic data from the courts, examines 'unwritten rules which are totally context dependent and case oriented' in Malaysian courtrooms. Confining herself to English discourse, she finds the English used in Malaysian courts is strikingly similar to that found in other common law jurisdiction. David (1993, 2003) studied code switching in the Malaysian courtrooms. In her first study, she finds evidence of proficiency gaps, particularly in the Malay of courtroom practitioners, and sees code-switching as a positive achievement strategy for bridging these gaps. She hypothesised that code switching was commonly used as a strategy and her study aimed to examine the functions of the instances of these switches by key personnel in the case. Her findings suggest that switches are often a result of situational (like who is speaking to whom), metaphorical and pragmatic factors(e.g. to

quote someone, to issue directives, to emphasise a point made, etc). She finds mixed discourse to be a continuing feature of courtroom language in her second study, a decade later. She concludes that this can no longer be attributed merely to proficiency-related factors rather code switching has a range of functions, some of them solidarity-achieving, others divergent and coercive. These studies of code switching and alternation are further taken up with another study by David and Powell (2003) which compares Malay-English code switching in Malaysia with Kiswahili-English code switching in Kenyan courts. Both David and Powell find many similarities between these two nations such as in lexical code mixing and interlocutor code shifting. However compared to Kenya, Malaysian courtrooms have a more varied and frequent language alternation. Powell's (2004) study on the Malaysian legal system finds terminological shift and language alternation to be a common features in Malaysian courtrooms. In another study, Powell (2005) notes that lexical code mixing is the most common form of language alternation in Malaysian courts and code shifting among interlocutors. In a recent study on courtroom discourse, Noraini (2007) documents the process of adducing expert witness testimony of a criminal High Court. She reveals 'a significant albeit indirect finding of the role of the judge' (Noraini, 2007). She concludes that 'the power of the judge was found to be so overwhelming that he had absolute control of the discursive acts and hence the court' (Noraini, 2007).

3.4.2 Legal Interpreting

In a multilingual country like Malaysia, court interpreting is indispensable. In a 1991 study conducted by Zaiton and Ramlah, it was found the quality of such translation works was rather disappointing. Most of the texts were translated literally without an

understanding of their true meaning. There was also no uniformity in the translation of terminology and legal jargon, and this resulted in much confusion. This also means that the translated texts may not be so accurate. The importance of correct interpretation is stressed by Bhatia (1999) in his paper on 'Language and Power in Legislative Expression: Issues in Legal Linguistics'. He illustrates one of the controversial cases involving the interpretation of the Basic Law of Hong Kong SAR - the right of abode, where multiple interpretations has led to a landmark decision allowing millions of mainland people to acquire the right of abode in Hong Kong (Bhatia, 1999). His view is further advocated by Leung and Gibbons' (2003) study of Hong Kong courts which shows how apparently small changes such as an interpreter's omission of tags can transform the illocutionary force of lawyers' questions.

In Malaysia, legal interpreters face a tough task. Two symposiums in Malaysia (2002, 2004) suggest growing awareness of the problems faced by legal interpreters in Malaysia, where Rodziah (2004) and Zubaidah (2004) have drawn attention to underresourcing and underestimation of their work. In another study in this area, Noraini, in a presentation on interpreting (2002) reported in David (2003), offers instances of code-shifting between interlocutors of different social standing.

3.4.3 Textual Analysis

A growing field of research is analysis of the written English legal corpus, several text genres and some specific enactments have been investigated from corpus linguistics, genre analysis or systemic functional perspective. In the area of textual analysis, a few studies of have been carried out by local researchers namely studies done by Noraini

(1997), Suad Awab (1999), Azirah (2002, 2004), Krishnasamy (1999), Sobha de Rani (2000) and Hwang (2004).

Noraini (1997) in her study on the reading of legal cases applied genre analysis and the ethnography method show how crucial understanding the problems that law students are facing in reading legal cases in English is. She finds that without an understanding of the genre or the role of legal cases in the discourse community, hampered by low proficiency, the majority of the students are rather minimal readers. This is really worrying as reading is an integral part of a law student's training. She proposes a well-designed program manned by content and language specialists of the law faculty and the language department respectively.

Suad (1999) examined multimodal units of the MoU, memoranda of understanding and did a corpus analysis of the word frequency and collocation. Multimodal units is the focus of her study since according to her, 'much of language is built upon conventionalized 'building block', that is we use meaning in 'block' of word combination and not single words'. In MoUs, single word limits the scope of interpretation which is required for an accurate description of objectives and functions of MoUs.

Azirah's studies on the structure of legal judgments (2000) and the Malaysian Arbitration Act (2004) find the structural organization of legal judgments and its linguistic features similar to that of legal cases. Applying genre analysis to her study of the 1952 Arbitration Act which has since been replaced by the 2005 Arbitration Act, she finds that the moves, wordings and frequency of words that were drafted in the Act

are in accordance with national and legal concerns to provide for the powers of the High Court in arbitration matters.

In another research, Krishnasamy (1999) analyses the structural patterns found in a selected text, on “Constitutional and Administrative Law”. He finds that the text has three cognitive structures that is the introducing and establishing part, the middle part which details and expand the topic – Constitution and the final part which concludes the text. Krishnasamy (1999) finds cognitive moves and its description not only gives us an insight into the details of the text but informs the reader how the writer wants to describe the details. This understanding of the details will lead to a better understanding of the text. In other words, to understand the discoursal values of sentences or paragraphs, one must analyze the sentences and the kind of restricted values that the writer assigns to various aspects of language use such as lexis or syntax in a particular genre (Bhatia, 1993).

The language of affidavits is studied by Sobha Rani Dev (2000.) She examines drafts and copies of affidavits to determine the writing styles and strategies of lawyers. She finds that the writing styles are determined by the choice and arrangement of words and sentences as well as the ideas conveyed. She reveals the writing strategies in affidavits comprise ‘the recursive nature of writing’ and ‘constant revision’.

A comparison of the English and Malay versions of the Malaysian Constitution is studied by Hwang who finds similar distributions of process-types (verbs) in the same legal texts using the systemic functionalism approach. She concludes that legal texts

are unusual in that they are dominated by material processes rather than the relational processes and provides some explanation for this.

Abdul Rahim and Kanagasabai in a presentation at a recent symposium on Legal Discourse (University of Malaya, 2007) present novel findings on the terminology and language choice in documents and court proceedings related to divorce in the Syariah Courts (Islamic Courts) in Malaysia. Using the move analysis approach, they find similar rhetorical organization between Syariah' cases and the legal cases. Their study reveals that the court proceedings involved several functionally related moves while the linguistic features show that Malay and Arabic terms and concepts are used extensively.

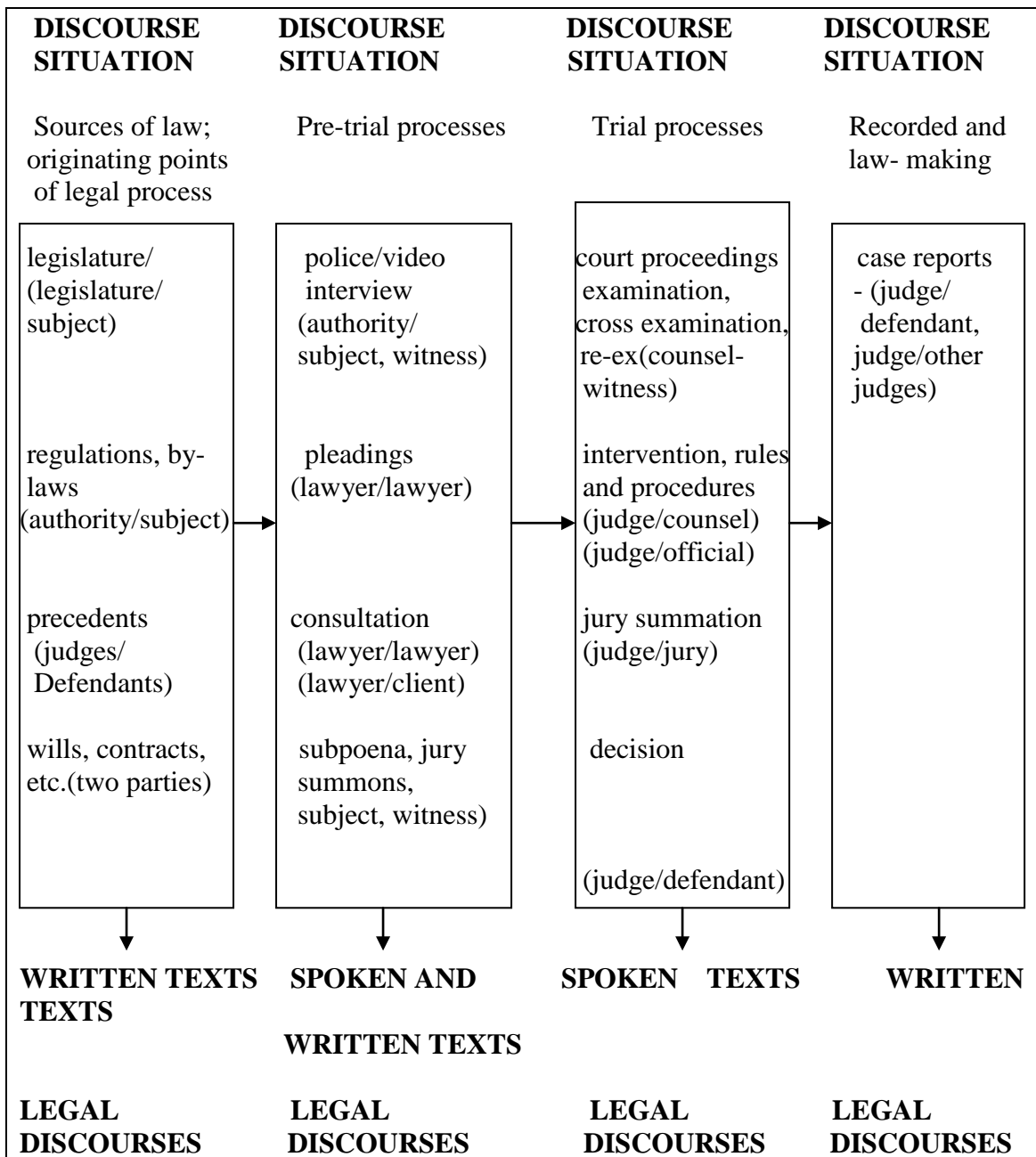
3.5 Language and the Law

Interest in the language of the law not only from ethnographers, discourse analysts, ethnomethodologists, semioticians and even lawyers has seen the need to describe and to a certain extent explain legal language (Maley, 1994). Maley in his article 'Language and the Law' sees legal discourse not as one legal discourse but a set of related legal discourses found in a variety of legal situations. His approach is based on semiotic and functional approach which sees discourse as related to social situation (field, tenor and mode). There are judicial discourse (spoken and written) as in case law, courtroom discourse (used by judges, counsel, court officials, witnesses and other participants), the language of legal documents (documents, contracts, regulations, deeds, wills, Acts of Parliament or statutes) and finally the discourse of legal consultation (between lawyer and lawyer, lawyer and client). He provides a model

(Diagram 7) of the main genres used in the legal process subdivided into four main categories: (1) sources of law and originating points of legal process; (2) pre-trial processes; (3) trial processes; 4) recording of judgment in law reports.

Maley (1994) sees the whole process as sequential where in a typical sequence a conflict might occur (statutory/common law) followed by a lawyer consultation (if the parties decide to take legal action), then appear in court and a trial before the judge and finally the judgment which is the integral part of the trial process itself. The judgment might be significant and thus is reported. It becomes part of the precedents of the already huge volume of precedents that constitute case law. This whole sequence has 'some circularity in the process: once a case is reported and becomes a precedent for later cases, it is then a source of law and potentially an originating point for a new trial process with a new set of parties' (Maley, 1994). According to Maley (1994) these different structural and discourse situations exist, as a potential, where needed, for the regulation and facilitation of social life.

Diagram 7: Genres in the Legal Process



(Yon Maley, 1994, p. 16)

There is also another field of legal discourse which is gaining attention and popularity that is forensic linguistics. Forensic linguistics is concerned with the provision of expert linguistic evidence, usually in court. Works by Gibbons (1994, 2003), Jones (1994) and Coulthard (1994) among others have highlighted the importance of forensic linguistic evidence. Gibbons (1994, 2003) has shown how language used for legal

proceedings are likely to suffer severe disadvantage before the law if a translator is not provided and/or translation does not accurately convey what is said or written. Jones (1994) looks at voice identification and illustrates a few cases to show limitations of voice identification. The reliability of voice identification depends not only on a variability of factors but must be associated by a degree of reliability too. Coulthard (1994) on the other hand carried out a forensic discourse analysis of the infamous 'Birmingham Six' case where the victims were released seventeen years later because the police evidence was dubious. He illustrates how ellipsis of previously mentioned information, terms of address, repetition and normal variation in accounts of events can be used as evidence that a transcript of a spoken text has been invented or tampered with.

3.6 The Legal Genre

In the field of legal genres, apart from Swales(1982), Bhatia's contributions seem most extensive. His analysis of legislative provisions (1983, 1987a,1987b, 1989, 1993) and legal cases (1983, 1989, 1993) not only provides the analysis of the predominant lexico-grammatical features of the legislative documents but also a grammatical rhetorical analysis which attempts to understand the rationale of legislative statements and verification of specialist informants in the writings of the provisions. As stated by Bhatia,

“The term ‘language of law’ encompasses several usefully distinguishable genres depending upon the communicative purposes they tend to fulfill, the settings/contexts in which they are used, the communicative events activities they are associated with, the social of professional relationship between the participants taking part in such activities or events, the background knowledge that such participants bring to the situation in which that particular event is embedded and a number of other factors. The genre distributions are also reflected in lexico-grammar, semantic-pragmatic, and discursal resources that are typically and conventionally employed to achieve successful communication in various legal settings.”

(Bhatia, 1987, p. 227)

Bhatia identifies several genres found in a variety of legal discourse such as contracts, judgments and legal cases which are written and lawyer-client consultation and counsel-witness examination which are spoken. He came up with a model for the structure of legal cases and described features which are prevalent in legal genres such as qualifications, binomials and multinomial and syntactic discontinuities.

In addition to Bhatia, other researchers like Badger (2003) and Feak et. al (2000) have also look at legal genres. Badger (2003) carried out a genre analysis of newspaper law reports and offers a description which links language to the context of culture. He explains how lexico-grammar and structure of text may lead to the identification of ratio-decidenti while Feak, Reinhart and Sinsheimer (2000) studied published student-written legal research papers suggesting a model that can be used for the teaching of seminar paper writing.

3.6.1 Communicative Purpose of Legal Cases

Legal cases are written to serve a definite purpose. According to Bhatia (1993, p. 118)

the four major communicative purposes of legal cases are:

1. To serve as authentic records of past judgments. Also known as legal judgments, they are taken as faithful records of the facts of the case, the arguments of the judge, the reasoning and judgment of the case and how he arrives at it, uses it and distinguishes it from other cases.
2. To serve as precedents for subsequent cases – *ratio decindendi*. The judgment and rule of the law are used as evidence in favour of or against a particular line of argument of decision.
3. To serve as reminders to legal experts who use them in the arguments in the classroom or in the court of law. These are usually very brief and contain only the essential material facts and the decision of the judge.
4. To serve as illustrations of certain points of law. These are carefully selected and generally abridged and form an important part of a law student's bibliography and are also used prominently in law textbooks in support of or against a particular point of view.

3.6.2 The Structure of the Legal Genre

Legal cases also display a typical cognitive structure like any other genre. This typical structuring which accounts for the structural interpretation of the case has a typical four-move structure. They are:

- Move 1 Identifying the case
- Move 2 Establishing facts of the case
- Move 3 Arguing the case
- Move 4 Pronouncing judgment

(Bhatia, 1993, p. 135-136)

The first move 'Identifying the case' identifies the two parties of the dispute. As cases are normally quoted and used as reference and evidence in various legal contexts such as classrooms, courtrooms and texts, the need to identify the case in a consistent manner is essential. This is normally found in Move 1 of legal cases. The second move, 'Establishing facts of the case' is where the legally material facts of the case are provided. The third move, 'Arguing the case' is where the judge is going to argue for or against the case based on the evidence as well as the arguments of the case. The last move, 'Pronouncing Judgment' is where the decision on the case is given. These four moves are more or less obligatory and depending upon the purpose a particular case is meant to serve may have sub moves as well. These moves are discussed in details in Chapter Five of this study.

Based on the discussion above, legal cases can be categorized as a genre since it has a definite communicative purpose that it has to fulfill, it is accepted by the discourse community and furthermore its rhetorical structure is stable.

3.7 Industrial Law Reports

The genre analyzed in this study is the Industrial Law Reports. To the best of my knowledge, no study has been done on this topic in Malaysia using the genre analysis approach. The literature that is available in this area are books written by a few experts limited to industrial relations, handling of dismissals, and the role and functions of the Industrial Court. Maimunah's (2007), "Malaysian Industrial Relations and Employment Law" book gives an overview of the industrial relations in Malaysia, the laws and regulations at the work place, terms and conditions of work, rights and obligations of employers and employees and processes of bringing a case to either the Labour Court or the Industrial Court. Syed Ahmad Idid's (1988), 'The Law of Domestic Inquiries and Dismissal' book concentrates on the preliminary to a dismissal, that is the domestic or due inquiry. An earlier work by Latif Sher Mohamed(1999) gives lengthy quotations from Industrial Court awards on matters pertaining to discipline including dismissals, due inquiry, misconduct, reinstatement, retrenchment and termination.

There are some brief discussions on these issues in books and guides to avoid the pit fall of unjust dismissal but no detailed and systematic study has been done to produce empirical evidence to support the claims. Hew Soon Kiong (2006) in his book, *Dismissal – Salient points to ponder before Industrial Court proceedings in Malaysia* also touches briefly on the subject while Siti Zaharah's (2000) book on '*Pengenalan kepada undang-undang perhubungan perusahaan*' discusses the roles and function of Industrial Court.

Dunston Ayadurai in an unpublished PhD research (1982) carried out a study on Awards of Malaysian Labour Arbitration Courts and Tribunals 1965 – 1975. His primary objective was to discover what issues were involved in the awards made by the Industrial Arbitration Tribunals and the Industrial Courts in the period 1965 -1975 and how these issues were resolved by the awards made by Industrial Arbitration Tribunals and the Industrial Courts in that period.

None of the work described above has look at the genre and language of the Industrial Law Reports cases although the role and function of the Industrial Court has become more prominent in the country as it becomes increasingly more industrialized and globalised.

3.8 The Moves Analysis

As mentioned in the previous chapter, moves analysis has been applied in many areas of research especially in academic genres. However, Bhatia's analysis of professional genres has shown that the move analysis is applicable for both academic and professional genres. In this study, Bhatia's move analysis of legal cases is used as a guide in analyzing the ILR. Although there have been related studies on the structure of law reports and models put forward by Maley (1985), Bowles (1995) and Badger (2003), Bhatia's model has been selected as it appears to be the most applicable to ILR.

Table 9: Bhatia’s Structure of Law Reports

	Main stages	Subordinate stages
1.	Identifying the case	
2.	Establishing facts of the case	
3.	Arguing the case	
3.1		History of the case
3.2		Argument
3.3		<i>Ratio Decidendi</i> (or reason for the decision)
4.	Judgment	

Even though Maley’s (1985) structure is quite similar to Bhatia’s, there are differences in terms of terminology used. Whereas Bhatia has the moves ‘Identifying the case, Establishing facts of the case, Arguing the case and Judgment,’ Maley adopted the labels, ‘Facts, Issues, Reasoning, Conclusion and Order/Finding. In spite of these differences, the stages appear to be quite similar with Bhatia’s label being more specific and clear.

Table 10: Maley’s Structure of Law Reports

Stages	Description
1. Facts	An account of events and/or the relevant history of the case
2. Issues	The issue of either fact or law or both
3. Reasoning	
4. Conclusion	The principle or rule declared applicable for the instance cases
5. Order/finding	

Bowles’ (1995) model is also very similar to Bhatia’s and Maley’s but his structure of the law report consists of additional stages. The terminology used also differs from those used by Bhatia and Maley. Furthermore, Bowles’ model has judgment covering both argument and ratio-decidendi whereas Bhatia’s has the labels ‘Arguing the ‘Case’ and ‘Judgment’ as separate and Maley’s ‘Reasoning’ and ‘Conclusion’.

Table 11: Bowles' Structure of Law Reports

Main stages		Subsidiary stages
1.	Heading	
2.	Description of court	
3.	Keywords	
4.	Description (of the facts)	
4.1		List of cases cited
4.2		Opinion of concurring judges
5.	Judgment (argument of judge and principle of law)	
5.1		Opinion of concurring judges
6.	Decision (of court)	

A more recent study on the structure of newspaper law report has been done by Badger (2003). Compared to the three earlier studies, a larger corpus of twenty-five law reports is examined and a model for this genre created. Badger's model is more detailed than the others but in a way is very similar to Bowles (1995). In this model, some stages appear in bracket indicating that they are optional and do not appear in all report. There are 12 stages in this model and they are listed in the order in which they appear in the reports. 'Lawyers' for example appears twice in the model below, one with bracket and one without showing that it is obligatory only once in any report.

Table 12: Badger's Structure of Newspaper Law Reports

Stage		Description of stage
1.	Headline	
2.	Court	The name of the court hearing the case
3.	Title of Case	
4.	(Judges)	The name of the judges hearing the case
5.	(Date)	The date of the case (rather than the report)
6.	Summary	Normally includes facts, ratio and decision
7.	Lawyers	The names of the lawyers involved in the case
8.	(Facts)	
9.	(Facts and Decision)	
10.	(Legislation)	
11.	(Decision)	
12.	(Lawyers)	The names of the lawyers involved in the case

What is interesting about Badger's model is his inclusion of the 'summary' stage. This is because the newspaper do not differentiate the headnote from the main body of the report as distinctly as official law reports and the fact that the newspaper law reports often do not repeat the decision at the end of the law reports.

The above four models look at the structure of legal cases and legal reports. The structure of the four models are basically similar with certain modifications and the use of different terminology. Although the models may appear distinct, they are actually quite similar because if we look closely all four models share similar rhetorical structures which can be found across the genre of legal cases and reports.

3.9 Linguistic Features of Legal Genres

Bhatia in his analysis of legislative provisions has listed the dominant features of legislative language among them the frequent use of nominal expressions, complex prepositional phrases, adverbial clauses, binominal and multinomial expressions and

the use of qualifications and syntactic discontinuities. The sentence length of legal genres is also highlighted. In a legislative provisions, a single sentence can consist of 271 words compared to 27.6 words in a typical sentence in written scientific English (Barber, 1962). Crystal and Davy (1969) also found a high incidence of nominalizations and complex sequences of prepositional phrases in their analysis of legal language.

Mellinkoff (1963) in his early study of legal language provides a comprehensive description of the characteristics of legal language. He found use of common words with uncommon meanings (e.g. 'party' to mean a person involved in legal a transaction), use of archaic English (e.g. henceforth, thereon), use of formal words and expression (e.g. Your Honor, May it please the court) and attempts at extreme precision of expression (e.g. from any and all manner of action or actions, case and bonds). He also includes the mannerism in which legal language appears. According to Mellinkoff (1963), legal language are wordy, unclear, dull and pompous.

A significant study by Gustaffson (1975) also provides statistical evidence of her findings. She found that the average length of a sentence in legislative writings is 51.11 for law compared to 23.19 for science. Clausal structure in legislative writing indicates that 21% of the sentences in law are simple whereas from Barber (1962) the figures for science are 41%. In addition, she also found relative clauses (47%) and adverbial clauses (31%) far outnumbered the other types 'that'-clauses (10%) and comparative clauses (11%). Tiersma (1999) and Gibbons (2003) find specialised lexis, use of Latin and archaic expressions, long sentences, complex prepositional and

nominal phrases contribute to the difficulty in processing and comprehending legal texts.

The discussions above indicates that legal genres share certain linguistic features and these features are significant in their writings. In this study, the researcher will attempt to discover which linguistic features are peculiar to dismissal cases and whether the ILR shares similar linguistic features with other legal genres.

3.10 Conclusion

This chapter has looked at the history of Malaysia and the legal system as well as the national language policies to understand the context of the Malaysian legal system. Studies on legal discourse and reviews on courtroom discourse, legal interpreting and textual analysis are reviewed focussing more specifically on the local context. Various models and definitions of legal genres and communicative purposes are discussed. This chapter ends with a discussion on the common linguistic features that are found in legal genres.