

**LANGUAGE CHOICE AND USE AMONG  
MALAYSIAN LEGAL PROFESSIONALS**

**AIN NADZIMAH ABDULLAH**

**FACULTY OF LANGUAGES AND LINGUISTICS  
UNIVERSITI OF MALAYA  
KUALA LUMPUR**

**DECEMBER 2008**

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**FACULTY OF LANGUAGES AND LINGUISTICS  
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ORIGINAL LITERARY WORK DECLARATION

Name of Candidate: **Ain Nadzimah Abdullah**

I.C/Passport No: **590418-10-6252**

Registration/Matric No: **THA 99006**

Name of Degree: **Ph.D**

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## ABSTRACT

Theories which have been used in the study of language choice have anchored primarily on sociolinguistic approaches. These approaches are linked to Fishman's (1972) concepts of *who speaks what language to whom and when*. Another group of theories draw upon the psychological factors to explain language choice. From the literature in this field of study, each approach has shown limitations in its use. The stand taken in this study is that sociolinguistic and psychological approaches can be combined into a single category of approaches that can theorize language choice. This study examines language choice through this combined interpretative framework to account for a more accurate explanation of language choice and use. A number of alternatives in environment allow investigation into language choice and use. In this study the legal workplace is identified as a significant and unique linguistic ecology where language choice is exercised. The legal domain is linked to the operations of justice which governs law and order. The National Language policy clearly dictates that Bahasa Malaysia be used in the administration of justice in the legal context. However, findings of the study suggest that pragmatics directs the language user in the legal workplace to exercise a language choice. Using an interpretative framework of combined approaches helped to explain language choice in this significant domain. The research approach employed in the study used three methods which are the questionnaire, interview and observation to gather data to elucidate the theory. Findings of the study also suggest that language plays an important role in the legal work domain in Malaysia not only because legal professionals regard mastery of both Bahasa Malaysia and English as critical languages for the performance of legal professional tasks but also because in a special sense there is the realization that language in the legal work domain can have enormous implications for the administration and dispensing of justice. Lastly, implications for the

study indicate that language practices in the Malaysian courtroom are often contrary to Malaysian language policy.

## ABSTRAK

Teori yang diterima guna untuk kajian pemilihan bahasa seringkali dihubungkan dengan pendekatan sociolinguistik. Pendekatan ini dihubungkan dengan konsep Fishman (1972) yang berlandaskan *siapa yang bertutur dengan bahasa apa kepada siapa dan bila*. Kumpulan teori yang lain dibangunkan dengan berdasarkan faktor psikologi untuk menerangkan corak pemilihan bahasa. Dengan berdasarkan literatur dalam bidang kajian ini, setiap pendekatan terbukti mempunyai batasan tertentu dari segi penerapannya. Kajian ini berpegang kepada hakikat bahawa pendekatan sociolinguistik dan psikologi dapat digabungkan dalam satu kategori untuk membina teori pemilihan bahasa. Kajian ini meneliti pemilihan bahasa melalui kerangka interpretatif yang digabungkan ini sebagai wahana untuk menjelaskan pemilihan dan penggunaan bahasa dengan lebih tepat. Beberapa alternatif sekitaran membuka ruang untuk penelitian penggunaan dan pemilihan bahasa. Dalam kajian ini, tempat kerja yang berkaitan dengan perundang-undangan telah dikenal pasti sebagai ekologi linguistik yang signifikan dan unik dari segi amalan pemilihan bahasa. Mandala perundang-undangan dikaitkan dengan pelaksanaan keadilan yang diurus tadbir dengan undang-undang dan perintah. Dasar Bahasa Kebangsaan dengan jelas menyatakan bahawa Bahasa Malaysia hendaklah digunakan dalam urusan pengadil dalam konteks perundang-undangan. Walau bagaimanapun, faktor pragmatik menuntut agar pengguna bahasa di tempat kerja perundang-undangan mengamalkan pemilihan bahasa. Justeru, penggunaan kerangka interpretatif pendekatan gabungan ini dapat menjelaskan faktor pemilihan bahasa dalam mandala yang signifikan ini. Pendekatan kajian ini menggunakan tiga kaedah penelitian dalam pengumpulan data untuk memahami teori ini, iaitu soal selidik, temu bual, dan pemerhatian. Dapatan kajian menunjukkan bahawa bahasa memainkan peranan penting dalam bidang kerja perundang-undangan di Malaysia. Hal ini demikian bukan sahaja kerana para profesional perundang-undangan

menyedari kepentingan penguasaan kedua-dua bahasa, iaitu bahasa Malaysia dan bahasa Inggeris sebagai bahasa utama dalam melaksanakan tugas peundang-undangan mereka, tetapi juga kerana dalam keadaan tertentu penggunaan bahasa dalam bidang kerja peundang-undangan boleh menimbulkan pelbagai implikasi terhadap urusan dan tataran pengadilan.

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## **DEDICATION**

I wish to dedicate this thesis to my late father, Abdullah Yunus. He taught me perseverance and prepared me to face life's challenges with faith and humility. He is my constant source of inspiration. Although he is no longer physically here to lend me his strength and support, his spiritual presence is enough to drive me to achieve the goals I have set in life.

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## CHAPTER ONE

### INTRODUCTION

#### 1.0 Background to the Study

Monolinguals have only one language in their linguistic repertoire while bilingual speakers have at least two. Kachru (1991) states that in monolinguals, the code repertoire contains only a single language but they may be of different varieties. On the other hand, a bilingual's repertoire consists of two languages. This implies that in a certain language situation, a bilingual has a choice of which language he can employ and decide to use. Bilinguals 'code switch', that is, they switch from one language or 'code' to another.

In a multilingual speech community a whole range of languages, or codes, are available to speakers. Speakers in these communities may choose to use the languages in their linguistic repertoires in interactions to perform specific social and functional roles. A person's linguistic repertoire is the set of linguistic codes (varieties) that she or he uses. Language is a tool. Depending on what we are trying to achieve, one may use a different part of our repertoire. Repertoire applies at two different levels, to both the community and the individual. However, a speaker 'does not usually control the whole range of the codes of a community's repertoire continuum but only a number of these' (Hamers and Blanc, 1989: 172-173). Often, it is the shared language in the repertoire of the speakers that is chosen for communication.

The use of one language/code, or dialect of it, rather than another in a given instance, is known as language choice (Fasold, 1984:180). A person's language choice decision can reveal an array of linguistic dimensions, which may then serve as a gauge for the function, and use of language among language users within communities. People

constantly (subconsciously or unconsciously) make code selections when communicating. Therefore, the study of language choice is of obvious relevance in multilingual settings similar to that found in Malaysia.

Speakers of languages are constantly comparing and evaluating language in terms of its usefulness for a given communicative act. Even though there is no basis for considering a language 'better' or 'worse' than another, nevertheless, attempts to favour one language over another are always present and may be reflected in the language choice of speakers.

Language choice may also be used to signal solidarity or distance between individuals or groups. This may also be seen as the actual content of the verbalisation (Côté and Clément, 1994:237). The choice to use a certain language over another can function as a mark of group identification and solidarity. Thus, within the Malaysian context where multilingualism is the norm, language choice within specific domains may also reflect the participant's intention to maintain solidarity with other participants or to keep a distance from them.

Speakers' perceptions and attitudes towards a language or languages are also recognised as factors that may influence language choice and use. A person's language attitude is his/her disposition to respond positively or negatively to a language and/or to its speakers. According to Baker (1992:10), attitude is a hypothetical construct used to explain the direction and persistence of human behaviour. The choice of one language over another therefore reflects a wide array of linguistic attitudes that serve as a gauge for the function and use of languages within communities.

Language choice decisions are never made in a vacuum. They are, instead, influenced consciously or unconsciously by a number of factors among which some are social and others economic. According to Gumperz,

Choice of styles or languages is seen as a strategy on the part of speakers trying, for instance, to present themselves as individuals with particular socially defined qualities, or, as another example, trying to convey a particular attitude or impression concerning a topic of conversation

(Gumperz in Gal, 1979:91)

The fundamental uses of a language are also important for understanding why a person chooses one language over another in a specific situation. According to Fishman (2000:2), multilingualism - where each language is assigned its own distinctive societal functions - may be the wave of the future. He pointed out that as long as two languages compete for the same functions, a linguistic division of labour between the languages may emerge and that this may be both amicable and long-standing.

Thus in a language contact situation, when choosing one language over another, a speaker makes a tacit statement about his interpretation of the situation. Since language may be used to express one's identity, the identity derived from group membership may be a crucial factor in explaining language choice.

Effective communication is also not the only mitigating factor for language choice. As stated by Cargile, Ryan, Giles and Bradac (1994:211),

Language is a powerful social force that does more than convey intended referential information. Our views of others, their supposed capabilities, beliefs and attributes are determined, in part by inferences we make from the language features they adopt.

In fact, more than twenty years earlier, Fishman (1971:1) noted that

Language is not merely a carrier of content, whether latent or manifest. Language itself is content, a referent for loyalties and animosities, an indicator of social statuses and personal relationships, a marker of situations and topics as well as of the societal goals and the large-scale value-laden arenas of interaction that typify every speech community.

In other words, language is an important social marker. The language in which the communication takes place is as important as the verbal content. Certain social factors

(who you are talking to, the social context of the talk, the function and topic of discussion) become important in accounting for language choice. Research in this area focusing on this functional view has been undertaken in Malaysia (Ahmad Mohd Yusof et al., 1992; Asmah Omar, 1992; Morais, 1994; Nair-Venugopal, 2000; Ting, 2001).

### **1.1 Statement of the Problem**

The current situation in Malaysia shows that Bahasa Malaysia (hereafter referred to as BM) is the national and official language and English, its second most important language. According to Asmah Omar (1994), English as second most important language is still very much in use in various professions such as the medical, dental and legal professions. The Chief Justice of Malaya noted that members of the legal profession should remain bilingual in accordance with our national language policy (New Straits Times, 1990). In other words, they are expected to be fluent in both BM and English.

In view of the country's political stability and its expanding economic opportunities, in line with modernisation, international recognition, and the desire for progress, the English language has been the logical choice for use as a second language. As a result, societal bilingualism (multilingualism in reality) exists in Malaysia with a large portion of the population being bilingual speaking both BM and English. It is a well-known fact that in the code repertoire of most Malaysians, these two languages co-exist. This is a consequence of a specific language plan to promote linguistic duality without consciously undermining the status, role and allegiance to BM, the national and official language.

However, the dominant-subordinate relationship that exists between BM and English engenders linguistic conflict. This notion of a linguistic conflict is not a new one. The

conflict manifests itself in the desire to establish a ‘true’ Malaysian nation, with the mode of communication being BM. The present study will investigate the existence of the conflict while attempting to explain it, as little is known about the distribution of BM and English use at the community level in general and within the legal profession specifically.

There are policies to maintain and promote allegiance to BM. Even though the need for the general population to be proficient in English is apparent, the government does not plan to accord official language status to English and the use of English is regarded as complementary to the national language. BM is to be used consistently at all levels of government transactions.

As stated in the Federal Constitution, Article 152 (1):

The national language shall be the Malay language and shall be in such script as Parliament may by law provide:

Provided that: (a) no person shall be prohibited or prevented from using (otherwise than for official purposes), or from teaching or learning, any other language; and (b) nothing in this clause shall prejudice the right of the Federal Government or of any State Government to preserve and sustain the use and study of the language of any other community in the Federation.

(Federal Constitution, 2000:133)

Nevertheless, the presence of English in the country has been construed by national language loyalists to be disruptive to the Malaysian linguistic ecology. BM and English are traditionally seen as rivals, and the elevation of one is seen to mean the suppression of the other. Even though English has achieved ‘global language’ status, being a first, second or foreign language for an estimated 1.5 billion people as noted by Crystal (1997), there are often feelings of negativity towards English among Malay language loyalists in Malaysia. Their belief is that English has become the language of many crucial domains in Malaysia while the national language, although retained, finds itself

in a 'precarious' state.

Graddol (1997:58) predicts a consolidation of English as the first choice of a second language for much of the world's population. Kachru (1997:68), for instance, mentions that the increase in the use of English in Asia is 'overwhelming'. He estimates the English speaking population in Asia to be around 350 million. Cheshire (1996:6) points out that the spread of English has often been associated with the death of indigenous languages in certain countries. This is not the case in Malaysia. Fishman (2000:42) stresses the point that, "Whether we consider English a 'killer language' or not, and whether we regard its spread as benign globalisation or linguistic imperialism, the expansive reach of English is undeniable and, for the time being, unstoppable."

The concerns of the intrusiveness of English among legal professionals and within the legal work domain in Malaysia, and the effects it may have on the wider use of BM has been an issue long dealt with by national language loyalists. At times, the widespread use of English among legal professionals receives resistance as it is considered to be the language of the colonialists. National language loyalists feel that the widespread use of English in the legal domain possesses the power of re-orientating the people of Malaysia towards the culture and thinking of their former colonial masters.

This study takes a functional or domain related view of language choice and use whilst attempting to examine the socio-cultural factors which influence this choice. The statement of the problem of this research can best be stated in Fishman's (1972) words: *who speaks what language to whom and when*. The first part of the question (who?) is answered in this study by limiting the subjects of the study to legal professionals in the geographical region of the Klang valley. The other two parts of Fishman's question are left open. They are *when* and *to whom* BM and English are used. These questions shall be investigated and discussed in this study.

The bilingual has to possess adequate communicative competence that should enable him 'to select the appropriate code and mode for a specific setting and activities' (Bell 1976: 92). The concept of communicative competence requires bilingual individuals to use a language or language variety appropriately and demands not only the traditional linguistic competence but also the awareness of when, where and how to use a certain language or language variety available in their repertoire. Being aware of when, where and how to use a certain language or language variety is an indication that one possesses sociolinguistic competence. In other words, a bilingual's communicative competence should include not only the traditional communicative competence as outlined by Hymes (1972) but also the ability to select the right language in a specific context of use.

Fishman (1992) suggests that a certain language is more likely to be appropriate in some specific contexts than in others. In his view, "proper usage indicates that only one of the theoretically co-available languages or varieties will be chosen by particular classes or interlocutors on particular kinds of occasions to discuss particular kinds of topics" (ibid: 15).

In addition, Hamers and Blanc (1989:175) mentioned that,

In stable diglossia, a multilingual community maintains its different languages by reserving each of them for certain domains, roles and functions with little encroachment of one language upon the domains, roles and functions of another.

The legal community in the Klang valley is linked both to BM and English. Sociolinguistics focuses on the study of the relationship between language and society and language functions in given contexts. It is these contexts or domains that will be examined as they relate to language choice, language use and language attitudes in the context of this study.

Research into the study of language(s) used in the Malaysian courtroom setting has been conducted in Malaysia. Ahmad Mohd Yusof et. al. (1992) and Nik Safiah Karim and Faiza Thamby Chik (1994) investigated the use of the national language within the Malaysian legal system. Baskaran (1995) examined unwritten rules which are totally context dependent and case oriented in Malaysian courtrooms. David (2003) illustrates the role and functions of code switching in Malaysian courtrooms. She stresses that the analysis of the use of a mixed discourse in the legal setting is important and cannot be assumed to arise as a result of differing language proficiencies of the interlocutors.

The underlying question of importance in this study, relative to language choice and use asks: Is there sufficient use of the national language, BM, within the legal profession when dealing with legal matters as required by the law? Essentially, the more sub-domains (as indicated in Chapter 3) within the legal domain in which BM is used will indicate the choice and use of the language for legal matters. Fishman (1991) speaking on the requirements for reversal of language shift and Dorian (1986), speaking on the mechanisms of language death, both address the issue of the need of a core of fluent speakers for the continued use of a language.

In essence, this study aims at investigating a bilingual's preference of one language over another in an interaction within the legal domain. The research is designed to shed light on the role and functions of BM and English among members of the legal profession. Furthermore, the status relationship that exists between BM and English, which has been a source of linguistic conflict, is examined.

## **1.2 Research Objectives**

The general objective of the study is to provide for a synchronic analysis of the linguistic environment among legal professionals in the geographical region of the



Klang Valley. The research aims to investigate language choice, use and attitudes among this group of professionals. Their language choice decisions are a result of contact between BM and English, that is languages belonging to separate language groups and families will be observed and investigated.

The study will explore the multi-faceted impact of the need to use English within the legal profession in Malaysia in relation to the use and need for BM.

The specific objectives of the study are listed as follows:

- (i) to describe patterns of use of BM and English among legal professionals
- (ii) to investigate factors that influence language choice, and
- (iii) to describe attitude of legal professionals toward BM and English and the way this is reflected in actual discourse

In light of these objectives, the study will take note of BM and English language use in communication among legal professionals in the legal workplace domain.

### **1.3 Theoretical Considerations**

Language choice and use is a dynamic issue involving many factors, and many theoretical perspectives are useful in studying the various aspects of language choice and use. However, it is difficult to approach researching the concerns of language choice and use, by using just one theoretical viewpoint. A theoretical framework based mainly in the concept of Fishman's (1972) words: *who speaks what language to whom and when*, with elaboration from other theories, is being used for the purposes of this study. The other theories also being used lay importance on socio-structural and socio-psychological factors. These are further discussed in Chapter 2.

Individuals understand the value of their linguistic variety as well as the value of other languages present in their environments, and based on this awareness, individuals make

decisions as to which languages to know and which languages to use in various situations. Within this, there are smaller sociolinguistic networks (Gal, 1979; Milroy, 1980), to which individuals belong and which influence individuals more directly. A speaker may wish to change networks either permanently or temporarily in relationship to one's social identity (Tajfel, 1974), and this may be associated with changes in linguistic behaviors as well.

Achieving linguistic mobility involves the speaker's desired identity and linguistic choices (see Bourhis and Giles, 1977; Giles et al., 1977; Giles and Smith, 1979; Giles and Johnson, 1987), access to the desired group and also recognition by others to confirm that the individual can be accepted as a legitimate speaker in that situation (Bourdieu, 1991; Austin, 1962). It would be expected that individuals would adopt profitable behaviors that enhance their well being (Homans, 1958) and that contribute positively to their social identity (Tajfel, 1974). Not everyone applies the same value to the involved languages and not everyone follows the trends. In the case of Malaysian legal professionals; on a large scale, BM and English are used in the legal work domain. However, there is a great variation in individual bilingualism and in the amount of each of the two languages in an individual's sociolinguistic network. BM and English can each be viewed as having both dominant and minority characteristics, as such language choice and use could be expected in either direction.

Legal professionals who are able to use both BM and English, even with varying degrees of skill, have options to use either language in the legal workplace. By choosing BM instead of English or English instead of BM, the legal professional indicates that he has linguistic mobility. A comprehensive view of language choice and use also realizes that a prerequisite to actual use of any is ability. A number of studies address knowledge and ability of a language as a prerequisite of choice and use among adults (see Báez de

Aguilar González, 1997; Reixach et al., 1997; Simmons, 1998). Although knowledge and ability in a language create the potential for use, it is actual use that allows an individual to participate in communication.

For monolinguals, use of a language is 100 per cent; but for multilinguals living in a multilingual social environment like Malaysia, they have to allocate some of their linguistic time and space to other languages. So, for multilingual individuals it is important to know how much linguistic territory is allocated to each language in the individual's daily life. Change in the amounts of use of each language over time may indicate changes in the speakers' sociolinguistic environment or changes in the speakers' expression of their desired social identity. It may also indicate changes in access to the use of a particular language. For example, among legal professionals in Malaysia, government legislation attempted to restrict the use of English in the legal work domain from the 1990's to the present.

When a bilingual and a monolingual are conversing, it is necessary for the bilingual interlocutor to speak the language of the monolingual. However, when both speakers are having at least two similar languages in their repertoires, one language is often favored over another. Sometimes, a speaker's shift is a result of a change in the main language of an individual's daily life from one language to another. This type of shift is in effect a self reclassification. The reasons may include changes in the individual's sociolinguistic environment, such as the language used in the work place, or maybe related to the individual's preferences regarding language.

The study using the above theoretical considerations aims to describe (1) patterns of language choice, (2) reasons for such patterns, and (3) attitudes of legal professionals that are reflected in their language choice and use.

#### **1.4 Scope of the Study**

The language choice of legal professionals in the Klang Valley in specific sub-domains within the major legal domain and the instances and reasons for such choice will be the subject of investigation in this study. Language choices are often different in transactional and family domains, but the goal of the study is not to compare language choices across domains. The purpose of the study is to enable broad descriptions and generalisations of patterns of language choice within the broad legal domain to be made.

#### **1.5 Limitations of the Study**

The study is limited to the examination of documents, courtroom observations and the examination of self-reported language choice, use, proficiency and attitude among legal professionals in the Klang Valley. The Klang Valley was chosen because it was deemed to be representative of most legal work done in the nation as a whole. The study is also confined to language choice and use relevant to only the subordinate and superior courts within the Malaysian court system. The *Syariah* and *Penghulu* courts are outside the scope of this study. The language used in these two courts is BM.

#### **1.6 Significance of the Study**

The goal of this sociolinguistic inquiry is to research the various factors that affect and influence language choice and use among legal professionals in the context of legal matters. The study aims to document the reality of language choice and use in the legal community. It is always the hope of sociolinguists that the results of their research are taken into account by political and educational leaders and policy makers who intend to have community-wide language use equally accessible to all (Eastman, 1991).

Studying language choice, use and attitude in a multilingual community is important because it will provide valuable insights into the complex nature of language choice, use

and attitude. An understanding of the reasons for and patterns of language choice are also important in understanding the social and linguistic conditions in which they occur. This would also allow for a better perspective on the larger question of whether in multilingual situation (as that found in Malaysia), is one of language maintenance, bilingualism or shift. It is hoped that the findings obtained could contribute to the knowledge base for language planners and help in the formulation of a language policy for the legal sector in the country. The findings could also help language planners and policy makers make informed decisions with regard to the implementation of these language policies.

After all, language does not exist in a vacuum and language users are part of a linguistic or language community. Language choice, language use and language attitude therefore reflects complex realities of the community.

## **1.7 Structure of Study**

This study has been constructed along the following lines:

Chapter 1 identifies a gap in empirical findings on language choice in the legal multilingual workplace setting, and explains why the study has significant implications for language planning. Chapter 2 spells out the differences between the sociolinguistic and socio-psychological research to show why the language choice phenomenon in the Malaysian legal multilingual setting cannot be understood from merely an extrapolation of these findings. The chapter also provides a combined sociolinguistic and social psychological perspective on language choice in bilingual and multilingual settings, by showing how situational and interpersonal factors interact to determine language choice. The review of the related literature also points to the need to take socio-structural norms into account.

Chapter 3 outlines the Malaysian legal system through an overview of the history of Malaya (later Malaysia) in order to make clear the language issues related to the legal workplace. Besides tracing local and foreign influences that have shaped the legal system as it is today, the chapter aimed to help the reader to place this study in its proper context of investigation. The heavy dependence on the English language is better understood by tracing the history of Malaysian law. The Malaysian legal system is also described in detail so that the situations (domains and sub-domains) being investigated are clearly defined.

Chapter 4 presents the methodology undertaken to carry out the study. It explains the need for using interviews, substantiated by observation, a method used by Fitch and Hopper (1983) with considerable success, for gaining access to the participants' perspective of their language choice reasons. The rationales for using questionnaires to examine language choice patterns and language attitudes are also explained. The chapter describes how these data collection methods were applied to suit the Malaysian multilingual legal setting, so as to obtain data of better quality.

Chapters 5 and 6 present the results of the study in the context of four research questions. Chapter 5 describes the examination of court documents related to language use in the Malaysian legal setting and investigates patterns of use of BM and English among legal professionals through court observations. Chapter 6 investigates respondent reasons for their language choices, factors which influence this choice and describes the attitudes of Malaysian legal professionals within the multilingual legal context. The chapter was also able to elucidate the respondents' attitudes towards the use of English and BM, in an attempt to ascertain their perception of the socio-structural status of the two languages which compete for dominance in the legal workplace setting. It explains how the participants negotiated between compliance with socio-structural and

situational norms, and their interpersonal motivations for making language choices and all these resulted in a sociolinguistic profile of the respondents being obtained.

Chapter 7 highlights several implications about the results obtained in the study. It will also integrate prospects for the future role and status of BM and English in the Malaysian legal setting.

## **CHAPTER TWO**

### **REVIEW OF RELATED LITERATURE**

#### **2.0 Introduction**

To set this study in its proper framework, it is necessary to examine fundamental concepts related to the study of language choice, use and attitude. This is to enable a better understanding of the approaches used in the study of language choice and use. It is also essential to review research directly relevant to the development of the sociolinguistic and social psychological approaches in language choice emphasising studies conducted in multilingual settings.

This study is sociolinguistic in nature. In sociolinguistics, sociolinguists attempt to explain why people speak differently in different social contexts. They also attempt to identify the social functions of language and the way language is used to convey social meaning. Sociolinguistics, therefore, in a broad sense, can be defined as the study of the relationship between language and society. This study, being a sociolinguistic inquiry examines language choice and use within the speech community of legal professionals.

#### **2.1 Fundamental Concepts**

Before reviewing the literature and the approaches to the study of language choice and use, it is necessary to define some concepts often involved in studies of this nature.

##### **2.1.1 Speech Community**

In the literature of sociolinguistics, the term ‘speech community’ is a recurrent one. For ‘functional’ sociolinguistics, the speech community is the basis of analysis. Fishman (1971:28) defines the speech community as “one all of whose members share at least a single speech variety and the norms for its appropriate use”. Hymes (1972:54) definition



is very similar, “a speech community is defined as a community sharing rules for the conduct and interpretation of speech, and rules for the interpretation of at least one linguistic variety”. For Gumperz (1972:16), a speech community is regarded as a situation where “speakers who share knowledge of the communicative constraints and options governing a significant number of social situations, can be said to be members of the same speech community”.

All of these definitions centre on a common point: a shared knowledge of the norms of language use by a group of speakers. Among other researchers who have used the term speech community to mean more or less the same thing, it is worth mentioning Holmes (2001), Milroy (1980), Romaine (1989), and Saville-Troike (1982). Fasold (1984:44) introduces the term ‘diglossic community’ to refer to “a social unit which shares the same High (H) and Low (L) varieties” (also refer to Section 2.1.3). While his definition takes into account varieties (or codes) of unequal status, it needs to be broadened to refer also to the sharing of the appropriate rules of use of the H and L varieties by that social unit.

For purposes of this study, the speech community being investigated are legal professionals in the Klang Valley. This community constitutes a single speech community or social group in the sense that all members have mastery of the same two languages, i.e. BM and English, and, in addition are perceived to know the rules of their alternate use.

### **2.1.2 Bilingualism**

Since the legal professionals studied have mastery of both BM and English, the notion of bilingualism is an important one to define. The popular view of bilingualism stems from the definitions proposed by Haugen (1956) and by Weinreich (1968). The former defines bilingualism as ‘the knowledge of two languages’, and the latter as ‘the practice

of alternately using two languages'. Within these definitions, the problem is that bilinguals differ widely both in their knowledge and their use of the two languages. Beaten Beardsmore (1982), who recognises this problem establishes a minimalist standpoint which defines the onset of bilingualism, different degrees and types of bilingual ability, and a maximalist standpoint which equates bilingualism with "equal native-like mastery of two or more languages". So defined, the concept of bilingualism remains a relative one. As noted by Fantini (1986), "it constitutes a continuum rather than an absolute phenomenon and persons may have varying degrees of skills or abilities in the two languages involved".

In addition to the disagreement that still exists with regards to what constitutes a bilingual, the issue of the conditions under which the two languages, BM and English, are used within the legal domain is yet to be adequately addressed and is therefore relevant as an area of study.

### 2.1.3 Diglossia

The term 'diglossia' is used to explain the relationship between two or more varieties of the same language which are used in a community in different functions. The two varieties are characterized as H(igh) and L(ow).

#### Examples of Diglossia

Greece (pre-1975) :	Katharevousa (H)	Dhimotiki (L)
Switzerland :	High German (H)	Swiss German (L)
Haiti :	French (H)	Haitian Creole (L)
Egypt :	Classical Arabic (H)	Colloquial Arabic (L)

Ferguson (1959) studied language choice as it is made in response to the functions of languages. He termed this 'diglossia'. The formal variety of a language is termed H (high), and the vernacular or popular variety of the language is termed L (low). Later,

Ferguson (1964) called H the ‘superposed’ variety, meaning that “the variety in question is not the primary, ‘native’ variety for the speakers in question but may be learned in addition to this”. It is assumed that language users make their language choices based on their cultural knowledge of the respective functions of H and L in their speech community.

Ferguson also states that the L variety is most often used for informal interactions such as with family and friends, and the more grammatically complex H variety is for formal use such as with speakers of other dialects or on public occasions. He goes on to say that the use of H for religious and literary functions leads to relations showing prestige. From this, we can see the distinction Ferguson made between the H and L varieties. He differentiates the H variety as the standardised one, compared to the L variety which is usually not a written language. Then, Fasold (1984), drawing upon language typologies developed by Ferguson (1966) and Stewart (1968), was able to identify eight functions of languages: official, nationalistic, group, educational, wider communication, international communication, school subject, and religious.

However, it is important to note that Ferguson’s concept of diglossia can only be applied within the framework he specified. His belief is that in bilingual speech communities, the prestige and vernacular varieties of a language exist alongside each other, such as in Morocco where the traditional and international Classic Arabic is spoken alongside Moroccan Arabic. He does not deal with analogous situations, where two distinct (related or unrelated) languages are used side by side throughout a speech community, each with its clearly defined role, such as Spanish and Guaraní in Paraguay. Thus, Ferguson’s notion of diglossia is not fully applicable in multilingual communities (like that found in Malaysia) in its original form, where there is usually a more complex language situation.

Ferguson's concept of diglossia also has its drawbacks though this concept has been extended by Fishman (1967) to include linguistic situations where the varieties might be of totally independent languages and where both varieties are of linguistically comparable complexities. However, Fishman's explanation still fails to capture a linguistic situation where the L variety is not necessarily the one learned at home as a first language (L1) or used for daily purposes.

Sure (1991) in a study on language attitudes among Kenyan students, found that a language could be both the H and L. This would depend on the situation. On the higher end of the continuum of formality, English was considered the H for formal use, and Kiswahili the L for non-official use. Fasold (1984) calls this phenomenon double overlapping diglossia. Giles and Coupland (1991) also state that in many multilingual communities a simple dichotomy into H and L varieties is insufficient.

As a result, in order to describe the speech community in Malaysia, the notions of 'polyglossia' (Platt, 1980) and 'triglossia' (Asmah, 1992) have been used. According to Platt, the Malaysian Chinese have a speech repertoire that includes six varieties for use in particular sub-domains. Asmah Omar (ibid.), on the other hand, views the functional differentiation of languages into H (BM), M (English) and L (ethnic languages). Although English is generally a prestige language in Malaysia, sub-varieties ranging from the educated Malaysian English variety to the basilectal Malaysian English have developed to fulfil high and low functions respectively. This study does not aim to examine sociolectal variations in language choice (see Morais, 1998; Nair-Venugopal, 1997).

#### **2.1.4 Domains of Language Use**

People often make language choice decisions based on norms governing appropriate language choice in various domains. A domain is an abstraction which summarizes a

sphere of activity for specific participants in specific times, settings and role relationships. The term was popularised by Fishman (1971). Fishman identified five types of domains. They are the family, friendship, religion, employment and education.

Further, the notion of domain is defined as:

A socio-cultural construct abstracted from topics of communication, relationships between communicators, and locales of communication, in accord with the institutions of a society and the spheres of activity of a speech community, in such a way that individual behaviour and social patterns can be distinguished from each other and yet are related to each other. The domain is a higher order summarisation which is arrived at from a detailed study of the face-to-face interactions in which language choice is embedded.

(Fishman, 1972:442)

The concept of domain is useful for explaining language choice in situations governed entirely by sociolinguistic norms of communicative appropriateness. Fishman suggests five general situational domains: the family, the neighbourhood, religion, education, and employment. He adds that in bilingual Mexican Americans, Spanish might be used in the context of the family, neighbourhood or religion but English would be used at work or in the classroom. According to Fishman (1972), Spanish and English, fulfil separate social functions in their different domains.

In the Malaysian multilingual setting, Platt and Weber (1980) were able to categorise nine domains of language use. They examined language choice in face-to-face interactions. The domains identified were the family, friendship, transaction, employment, education, media, government, law, and religion.

Fishman (1972) also states that the associations of languages with particular domains will make members of a speech community have certain views concerning their languages. This would also result in languages being shown to reflect values and relationships within the speech community (ibid:451). Social meanings associated with

the use of languages in their social context are reflected this way. Fishman also believes that linguistic structures, such as, grammatical structures and vocabulary represent situational differentiation of language choice. However, this is not a concern of this present study.

Fishman restricts the application of his notion of domains to speech communities where mastery of a linguistic repertoire is not a limitation. Fishman's domain analysis deals:

...primarily with 'within-group (or intra-group) multilingualism' rather than 'between-group (or inter-group) multilingualism', i.e., it focuses upon those multilingual settings in which a single population makes use of two (or more) 'languages' or varieties of the 'same language' for internal communicative purposes. As a result of this limitation, mastery or control of mother tongue and other tongue (or, more generally, of the various languages or varieties constituting the speech community's linguistic repertoire) may be ruled out as a crucial variable since the members of many speech networks could communicate with each other quite easily in any of their available codes or sub-codes.

(Fishman, 1972:437)

Since Fishman rules out limitation in language proficiency as a variable, his notion of domains seems to be limited in its applicability in a multilingual setting where language repertoire is a factor in language choice. Nevertheless, the social psychological framework can account for language choices due to personal factors, as discussed in Section 2.2.2.

### **2.1.5 Dialects**

A dialect is a subordinate variety of a language. It is a variety of a language that is used by one group of persons and has features of vocabulary, grammar, or pronunciation distinguishing it from other varieties of the same language that are used by other groups. The two main types of dialects are the geographic dialect, spoken by people of the same area or locality, and the social dialect, used by people of the same social class, educational level, or occupational group. Dialects are historically related to a *super-*

*ordinate* language, but may differ from it on three linguistic levels (phonology, syntax and lexicon). Dialects are also regionally or socially bounded.

## **2.2 Approaches in the Study of Language Choice**

The process of language choice takes place when the linguistic repertoire shared by the speaker and the interlocutor contains more than one language or code. The decisions of which language or code to use are made after considering the complexities of the speech events. The study of language choice, based on the consideration of these processes, can be methodically classified into two different approaches, the sociolinguistic and the social psychological.

Giles and Coupland (1991) distinguish these two approaches, that is, the sociolinguistic and the social psychological as the ‘language reflects context’ and the ‘language determines context’ approaches respectively. From this, it is clear that the locus of control in language choice is significantly different in each approach. Situational factors influence language choice in the sociolinguistic perspective and in the social psychological perspective; the interlocutor’s motivations often determine language choice.

### **2.2.1 The Sociolinguistic Approach**

From the sociolinguistic approach, research following the lead of Labov (1966) has focused on one main problem: understanding the association between specific linguistic features, for example, phonological variants, lexical patterns, grammatical contrasts and the social characteristics of the different social groups whose speech contain these features, as well as the contexts in which they occur.

### **2.2.1.1 Variationists**

Labovian sociolinguists are known as ‘variationists’. Their goal is to describe the correlation between linguistic variables in a broad sense, and the social characteristics of the speakers. The Labovian method is based on the principle that in every linguistic community there exist sociolinguistic variables and these variables are units of analysis. A sociolinguistic variable is a linguistic element (phonological, syntactic, or lexical) which co-varies not only with other linguistic elements but also with a number of independent (non-linguistic) variables such as social class, age, sex, ethnic group, as well as with contextual style.

Research inspired by Labov has focussed on the problem of linguistic variation and change. The researcher selects the linguistic features which are subject to variation, selects a particular population, stratifies it according to a set of social parameters, and finally tries to identify the contexts of the occurrence of these variables across a range of speech styles.

The Labovian model deals primarily with the description of linguistic features and their distribution, and characteristics of stratified social groups. It does not address the problems of the norms governing the choice of one variant over another by the same speaker in the same social situation and stylistic context, nor does it address the question of the social consequences of knowing these norms. As Gumperz (1972:209) states,

Even after the material has been recorded, it is sometimes impossible to evaluate its social significance in the absence of ethnographic knowledge about social norms governing linguistic choice in the situation recorded.

Gumperz argues that the variants or ‘alternants’ of a linguistic feature employed are only significant only because speakers share a common set of values about the social



meanings of these alternants. Without the knowledge of these values, one could not understand the social implications of linguistic behaviour.

#### **2.2.1.2 Social Constraints**

Romaine (1999) has expressed reservations about the exclusive study of phonological variables and Labov's quantitative approach. First, she criticised this type of sociolinguistics because it has placed "too much emphasis on analytical innovations and devices for dealing with linguistic constraints on variation" (ibid: 5). She suggested a refinement in the concept of linguistic variable, which entails those social constraints on linguistic variables, be considered on an equal footing with linguistic ones. Further, she argues that by not taking into account social constraints, one runs the risk of presenting a "lopsided view of a speech community as a whole" (ibid.). Therefore, she proposed the integration of social factors into linguistic description.

Romaine (1989) also states that "a viable theory of language must present a coherent account of how particular uses, functions and kinds of language develop within particular speech communities". This is an attempt to develop a more coherent and integrated accounts of the manner in which communities of speakers use language in a socially meaningful way. It is the belief among some sociolinguists that one cannot fully understand the function and the use of variation in speech communities solely through 'formalism' (variant, structure), and the use of 'over quantifying sociolinguistic data'. It is therefore recommended that a qualitative approach be used as well.

It is believed that "these two approaches, quantitative and qualitative, go hand in hand and represent two different perspectives of the same sociolinguistic phenomenon" (Romaine, 1982). Therefore, sociolinguistic phenomena should be looked at from several different vantage points: individuals, social networks, social groups, and speech communities.

### **2.2.1.3 Situational Demands**

From the sociolinguistic perspective, interlocutors make their respective language choice decisions to meet the demands of the situation (Giles and Coupland, 1991:3). Earlier, following this perspective, rules of language choice were examined from the viewpoint of situations (Fishman, 1972) or functions (Ferguson, 1964). Sankoff (1972) extends on these two viewpoints by taking into account the norms which govern language choice for various functions and situations (see Section 2.4).

Fishman's (1972) and Ferguson's (1964) studies, which respectively are based on the concepts of domains and diglossia, follow the sociolinguistic perspective and are considered deterministic because they emphasise the social norms rather than the speaker's perception about the interaction. Such norms, however, can lead to the necessity of considering practically an unlimited number of situations.

Fishman's concept of domain radically simplifies the possible situations. In a domain, it is possible to find congruous components of situations: the speech participants, the setting, and the topic, which altogether will determine the language choice. Similarly, Ferguson's concept of diglossia simplifies the socially-sanctioned functions of the existing varieties: some are H(high) and the others are L(low). Some speech events will automatically require the H code, while some others will require the L code.

These deterministic approaches may have some limitations. Though the complexities of factors of language choice have been simplified by the concept of domain presented by Fishman, identifying domains of use would still be relevant in determining domains of language choice. However, it has to be noted that the street and home are obviously different domains for people in Britain and Germany but not necessarily so in the Caribbean (Appel and Muysken, 1987).

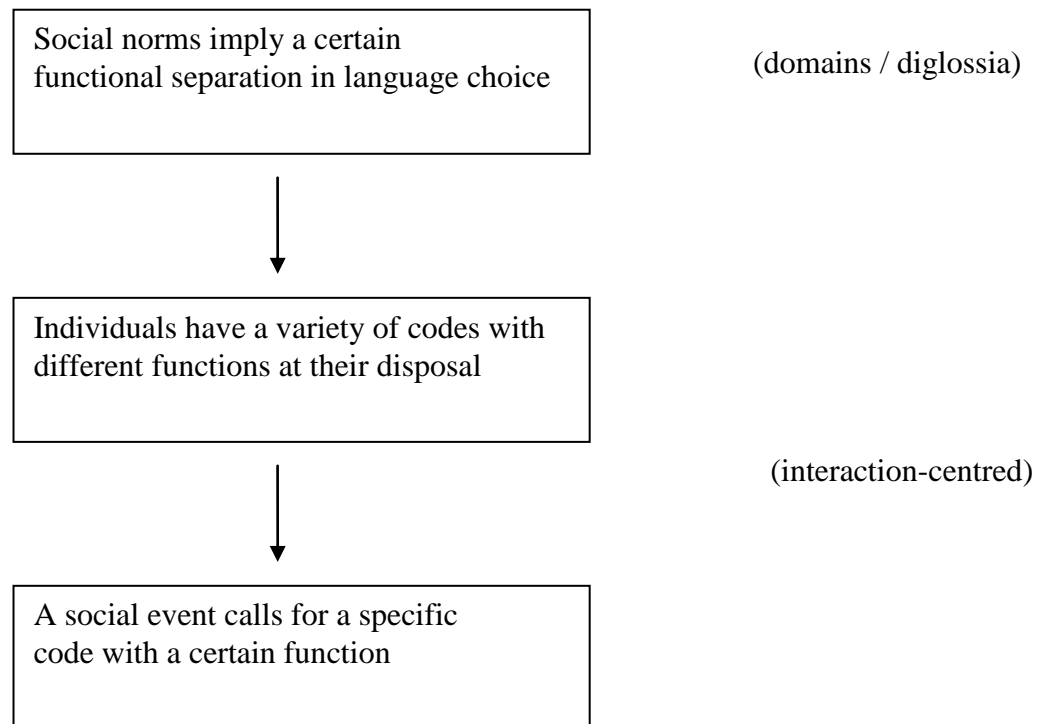
#### **2.2.1.4 Person-Oriented**

Appel and Muysken (1987) investigate language choice more microscopically. Their approach is considered person-oriented because the emphasis is on the speaker, who goes through a series of decision-making processes in determining the right code in a certain speech event. The decision process structure is binary in nature and the hierarchical structure varies from culture to culture. For example, the one among Paraguayans is not the same as the one among Papuans.

Basically, Appel and Muysken (ibid.:29) proposed a functional specialisation approach to the study of language choice. They examined language choice of bilingual speakers in terms of language functions. The above researchers draw upon Mulh user's (1981) differentiation of language use into six functions. This formed the basis for integrating the domain and functional perspectives on language choice.

Based on Mulh user's (1981) inventory of language uses (which is not very different from the one presented by Hymes (1968), Appel and Muysken (1987:30) argue that "different languages may fulfil different functions in the lives of bilingual speakers". Thus the choice for a certain language indicates the primary function of the language used at that moment. Appel and Muysken (ibid.) believe that this functional model has the potential to relate the deterministic with the interaction-centred approaches. Such a relation can be seen in the Figure 2.1.

**Figure 2.1 A Functional Specialisation Model of Language Choice  
(Appel and Muysken 1987:31)**



As can be seen in Figure 1, this model relates the deterministic approaches, where language choice is taken into consideration and analysed from the viewpoint of ‘overall social norms’ (Appel and Muysken, 1987:27), to the interaction-centred approach, where the choice is determined by individual functional specialisation and one’s perception of the on-going speech event. In the model, Appel and Muysken (ibid.) do not explicitly show where the person-oriented approaches are. It seems that they are lumped together with the interaction-centred approaches, which also employ a microscopic perspective. These two different approaches are not identical. The former places more emphasis on the speech participants, whereas the latter focuses attention on the interaction itself.

The assumption made in the functional specialisation model is that bilingual speakers know the social norms regarding the functional separation of languages (first

component). Relying on their cultural knowledge, they make binary language choices based on the different functions of the languages (second component). The choice of language depends on their definition of the social event (third component). The concept of social event is based on Blom and Gumperz (1972), who argue that social meanings of languages are the result of negotiations between the speaker and hearer. It is also the case that meanings are established and reinterpreted in the course of each conversation. The social event is the lowest level in Blom and Gumperz's interpretive process, the other two includes setting and social situation.

The functional specialisation model according to Appel and Muysken (1987) has integrative potential. They believe that language choice is not only determined by social norms, but also by the bilingual speakers' definition of social events. Blom and Gumperz use the example of buying stamps (social situation) at the post office (setting). Here the social event can be defined as official or informal (where the postal officer may be a friend), in which case H and L varieties are used respectively.

Other studies using the functional specialisation model, for example Vedder, Kook and Muysken (1996) do not directly address the issue of whether this model can effectively incorporate the deterministic and interaction-centred approaches. Findings of these studies are presented mostly in terms of functions of languages as a result of their associations with various domains of language use. Appel and Muysken (1987:31), have also stated that this model is "an abstract representation of the way in which language choices is made" so the specific relevance of this model to language choice remains to be worked out.

### **2.2.1.5 Ethnography of Communication**

Critiquing the above approach to language choice, Sankoff (1972) indicates that the opposite bottom-up interpretation, from language use to the on-going social interaction,

does not always work either. It cannot accommodate a linguistic situation where more than one code is acceptable and unmarked like those found in her research in Papua New Guinea, where two languages (*Buang* and *New-Melanesian*) are used interchangeably in public.

Several suggestions have been put forward to account for the justification of the choice of a certain language or variety in a speech event from the sociolinguistic perspective. Fishman (1972) attempted to place addressee, topic, and setting together under one concept, that is, the domain. Hymes (1967; 1972) on the other hand, identified components of a situation that are likely to influence language variation.

Hymes (1967) elaborately presents situational components of interpersonal communication, which he puts together under the acronym SPEAKING. These components are:

- (i) **S**etting and scene, which refer to the general physical make-up of the speech event, such as the time, location and atmosphere;
- (ii) **P**articipants, which consist of the speaker, the addressee(s) and the hearer(s) in the speech event;
- (iii) **E**nds, which refer to the speaker's and the addressee's goals in participating in the speech event as well as the real outcome of such participation, which might turn out different from the targeted goals;
- (iv) **A**ct sequence, which consists of how and what is said in the speech event;
- (v) **K**ey, which represents the manner and mood of the communication in progress;
- (vi) **I**nstrumentalities, which include the channels of communication (spoken or written) and the speaker's language variety, which will surely influence the listener's and/or hearer's variety in case they have to produce their own utterance;
- (vii) **N**orms, which include the standard procedure of the interaction in the speech event (e.g. is interruption permitted or not?); and

- (viii) **Genres**, which stand for the linguistic forms of that particular speech event (e.g. a sermon requires a linguistic genre different from what a lecture does).

From the above components, only (i) and (ii) are referred in the study.

While communicative purposes or functions are already included in the third component (Ends), they can also be classified in a more elaborate way. Hymes (1972) categorises communicative functions as follows:

- (i) expressive (when conveying a strong feeling)
- (ii) directive (when asking that something is done, to include connative, pragmatic rhetorical, and persuasive functions)
- (iii) poetic (when focussing on the form of the message)
- (iv) contact (when checking the transfer of the message)
- (v) metalinguistic (when concerned with the code underlying the communication, such as in making language corrections)
- (vi) referential (when focussing on the topic or point of reference)
- (vii) contextual (when relying on the speech context for the interpretation)

Hymes has repeatedly emphasised that what language is cannot be separated from how and why it is used, and that considerations of use are often prerequisite to recognising and understanding variation in linguistic forms.

If for Labov the sociolinguistic variable is the unit of analysis, for Hymes the speech community is the unit of study. Linguists interested in doing ethnography of speaking aim to understand how language lives in the minds and on the tongues of its users. Research based on Hymes's ethnography of communication approach sets as its objective the understanding and the description of the communicative functions of language.

### 2.2.2 The Social Psychological Approach

The social psychological approach stresses that 'language determines context' (Giles and Coupland, 1991:20). The sociolinguistic approach views language choice as being determined by the situation. The social psychological approach, on the other hand, views language choice as being shaped by the interlocutor's moods, motives, feelings and attitude.

Social psychologists began language research when they felt that there seemed to be an over-emphasis on how social norms dictate language behaviour. Giles (1973b) and his colleagues' pioneering work on interpersonal accommodation in language variation has laid the foundation for the current social psychological approach to language choice specifically in multilingual communities. Lafontaine (1986:46) has argued that if one does not take into consideration the social characteristics of the respondents, the validity and reliability of evaluations made by the study can be questionable.

If we are going to understand why individuals acquire, use and react to language and its variety in the way they do, we require a greater understanding of the dynamics of attitudes, motivations, identities and intentions, that is, social-psychological phenomena.

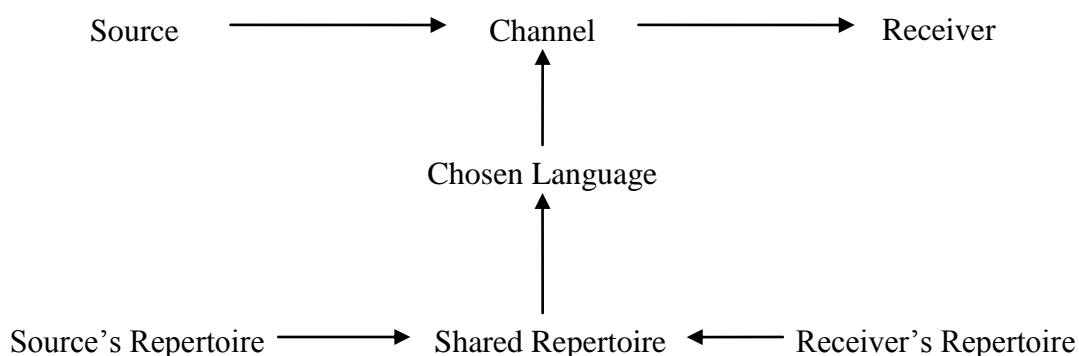
(Giles, 1975:2)

At the community level, language serves many functions. It creates, reinforces boundaries, and unifies its speakers as members of a single speech community. Language can also exclude outsiders from intra-group communication. Some languages also serve a social identification function within a particular society by providing linguistic indicators that can be used to enforce social stratification. Linguistic codes and features are often used by people, consciously and unconsciously, to identify themselves as belonging to a social group, and perhaps mark and maintain social categories and divisions.



When two people decide to communicate with each other, they will try to find a means which will enable them to understand each other's message. For this purpose, they will choose a language that their respective repertoires have in common. The model of this communication can be represented in Figure 2.2.

**Figure 2.2 A Model of Bilingual Communication (Bell, 1976:62)**



Language choice is crucial in communication because it carries not only the cognitive information (the factual content or the proposition of the utterance, (Bell, 1976:72)) but also the indexical information (the psychological make-up and social status of the speaker). When somebody decides to choose a certain language or language variety while talking with the interlocutor, consideration about, for example, their mutual status relations, must be made first. One decides to use the 'high' speech-level or the 'low' level only after knowing what the relation with the interlocutor is. If the latter is a well-acquainted friend of the same age, the 'low' level is chosen because it shows solidarity and friendship. If one is talking to a superior, the 'high' level is chosen. The same applies when the interlocutor is a stranger.

In a more concise manner, Bell (1976) presents his categorisation of language functions performed in a speech event as follows:

- (i) cognitive function, where language is used to express ideas, concepts and thoughts
- (ii) evaluative function, where language is used to convey attitudes and values
- (iii) affective function, where language is used to transmit emotions and feelings

In relation to the earlier specification of situational components, one's communicative end in talking to another might be for channelling information like when one is gossiping. However, a remark on someone else's behaviour is often meant for expressing an attitude or a value judgement toward the behaviour. A complaint about one's difficult or painful life need not always be interpreted as information but rather as an expression of an unhappy feeling whose information value is probably zero.

Bell's audience design model shows how sociolinguistic studies on language choice move towards the incorporation of the social psychological emphasis on the role of the interlocutors in determining language choice. Bell's model shows that it is necessary to "account for bilingual or bi-dialectal code choices" (Bell, 1984:145). Therefore, it would be possible to extend Bell's model to account for multilingual language choices.

#### **2.2.2.1 Accommodation**

Brown and Fraser (1979) claim that the purpose of an interaction has greater determining power than participant characteristics. Bell (1984), on the other hand, asserts that speakers accommodate primarily to their addressee. In his audience design model, the importance of non-audience factors like topic and setting is minimised, as they are viewed as deriving their effect on language choice and variation by association with addressee types (ibid.:197) argues that "at all levels of language variability, people are responding primarily to other people. Speakers are designing their style for their audience". Furthermore, in Bell's audience design model, the speaker is the main

player, and the “primary participant at the moment of speech” (ibid.:195). Bell proposes that speakers draw upon their knowledge of inter-speaker speech variation in order to vary their style:

A sociolinguistic variable which is differentiated by certain speaker characteristics (e.g., by class or gender or age) tends to be differentiated in speech to addressees with those same characteristics. That is, if an old person uses a given linguistic variable differently than a young person, then individuals will use that variable differently when speaking to an old person than to a young person.

(Bell, 1984:167)

Bell goes further to describe how style shifts respond to participants’ social characteristics. He explains how speakers can use style to redefine an existing situation. In the revised *Audience Design* model, Bell draws upon the *Accommodation Theory* to account for the causes of style shifting, by interpreting “audience as at least the three roles of addressee, auditor, and over hearer, and accommodation as any style shift which occurs in response to these persons” (ibid.:162).

Bell distinguishes and ranks audience roles according to whether or not the persons are known, ratified, or addressed by the speaker. By proposing that style can also be initiative, instead of only responsive, Bell is moving away from the sociolinguists’ passive view of style, which focuses on identifying linguistic variation and factors which might cause it. In terms of the reasons for language choice in multilingual settings, Bell’s findings are relevant in pointing out that the audience factors have greater influence on language choice than non-audience factors such as topic and setting.

Ladegaard (1995) commends Bell for adding an explanatory dimension to the study of sociolinguistic variation. According to Ladegaard, Bell has combined “the careful work of sociolinguistics with the broader insights of psychological theory” (ibid.:91). This

integration is needed if we are to gain a deeper understanding of the complexity of style shifting (Milroy, 1987:183). However, based on his analysis of the use of standard and non-standard speech in dialogues, Ladegaard (1995) concludes that the relationship between speaker, addressee and auditor(s) is not as straightforward and static as suggested by Bell's audience design. Ladegaard proposes that the power relations between interlocutors in speech situations should be taken note of. In the context of the present study, Ladegaard's results are significant in illustrating that power relations are often seen as a reason for language choice.

#### **2.2.2.2 Ethnicity**

Ethnicity is an important aspect in the study of language choice and use especially in multilingual speech communities where different ethnic groups live together. Although there are other social categorical groupings (e.g., age, occupation, geographical origin) which make interlocutors psychologically distinct from one another, ethnic group membership is an important basis for social comparisons especially in multilingual communities.

Ethnic identity is a particularly salient social identity in multiethnic communities where there is inter-group tension. For example, the highly volatile inter-group conflict in Israel means that "social behaviour will generally be more dependent on ethnic group identification and less on personal characteristics" (Kraemer and Birenbaum, 1993:440). Malaysia has been described as one of the countries with clear in-group and out-group divisions (Clammer, 1982). Ethnic differences are accentuated by the official practice of categorising people along ethnic lines. The all-important indigenous/non-indigenous (*Bumiputra/Non-Bumiputra*) dichotomy is perpetuated in the life of every Malaysian (Muzaffar, 1983). Language choice and use may be influenced by this dichotomy as well.

### **2.3 Approach used in this Study**

It would not be accurate to study language choice and use from one perspective only. As described and discussed earlier, each approach has its limitations. The sociolinguistic and the socio psychological approaches seem to complement each other. Therefore, integrating both perspectives in the study of language choice and use would result in a more comprehensive understanding of the phenomenon. This study is an attempt to examine language choice and use using an integrative approach. It combines the sociolinguistic and social psychological approaches.

#### **2.3.1 Socio-Structural Factors**

Giles and Hewstone (1982), and McKirnan and Hamayan (1984b) state that we should pay attention to how interlocutors subjectively define the dimensions of the situation they are in, including its goal structure and the salience of their own identities at that time. Realising this, the interview technique has been used in this study to gain access to the interlocutors' conceptualisation of situational norms and the salience of roles and identities for them. This made it possible to investigate the determinants of language choice from the perspective of the participant and not that of the researcher and in this way demonstrate that socio-structural factors have a bearing on language behaviour.

The ethnolinguistic vitality construct, includes socio-structural factors, namely group numbers, power and status (Genesee and Bourhis, 1988). Socio-structural factors may also influence patterns of language use between speakers of contrastive ethnolinguistic groups (Bourhis, 1979; Bourhis and Genesee, 1980). These factors influence interlocutors' self-perception of their social and personal identity, which in turn influences whether they would use their in-group language for cross-cultural communication. "Bilingual and multilingual communication cannot be assumed to occur in a socio-structural vacuum" (Sachdev and Bourhis, 1990:299).

Several scholars were instrumental in stating the importance of situational and socio-structural factors. Herman (1961:494) claims that the influence of socio-structural factors is often conceived as ‘background situational forces’. He asserts that it is often the case that groups in the wider social milieu that are not directly involved in the immediate situation may influence behaviour. In Herman’s study on a case history of immigrants in Israel, background situational forces compete with personal language needs and immediate situational forces in influencing language choice. Following the lead of Herman, Genesee and Bourhis (1982) also attempted to differentiate between socio-structural factors (background situational forces) and situational factors (immediate situational forces).

A socio-structural norm is differentiated from situational norm. A situational norm applies to an immediate situation. A socio-structural norm, on the other hand, is defined as a wider societal norm resulting from the influence of ethnolinguistic vitality (socio-structural factors).

### **2.3.2 Ethnolinguistic Vitality**

Ethnolinguistic vitality has a part to play on the social psychology of interethnic relations and cross-cultural communication. This is often termed socio-structural factors. The vitality of an ethnolinguistic group is ‘that which makes a group likely to behave as a distinctive and active collective entity in inter-group situations’, and can be assessed from available sociological and demographic information on three structural factors (Giles, Bourhis and Taylor, 1977:308), namely, demographic, status and institutional support.

Demographic variables refer to the numerical dominance and the distribution of the ethnic groups. Status variables refer to the ethnic group’s socio-historical prestige,

social and economic status, as well as the status of the languages used by speakers locally and internationally. Institutional support refers to the extent to which an ethnic group is formally and informally represented in educational, political, religious, economic, cultural and mass media institutions. With the divisions stated above, speech communities can be said to have high, medium or low ethnolinguistic vitality.

Giles (1977) define the language contact situation using the concept of 'vitality'. This concept encompasses group members' perceptions of group boundaries, group vitality, and ethnic self-identification. The degree of support for the use of a language within the group, is said to be dependent on how the group as a whole is viewed and how the chances for survival of the language are predicted by its members, or conversely, how immediate the threat of loss of the language seems to affect the group and how the group members react to that.

This belief builds on two theoretical constructs. Firstly, the perception of the group members' social identity as borrowed from Tajfel (1973:63), a "self-concept which derives from his membership in a social group (or groups) together with the values and emotional significance attached to that membership". Secondly, the notion of speech accommodation, according to which, people will adapt their language patterns to the group they wish to be identified with (Giles and Powesland, 1975).

According to Tollefson (2002), vitality of a group cannot be viewed independently, but has to be part of the historical relationship between the majority and minority group. In Tollefson's view, it is not necessarily the way the group views itself internally which determines its language maintenance efforts, but rather the historical dependencies between the minority and majority group.

Allard and Landry's (1992) work combines societal and individual factors affecting language attitudes. They posit a relationship between the individual network of linguistic contacts (which is a link between the larger society and the individual) and the competence in L1/L2, on the one hand, and the beliefs, attitudes, and values, on the other. This approach suggests that the phenomenological experience of the individual has to be taken into account more strongly than it, perhaps, has been so far. It is this experience which will shape present and future actions with regard to language use. Language attitude and competencies, and the cognitive-affective disposition toward ethnolinguistic aspects will have an impact upon language use and behavior.

In her study on the vernacular in three different areas of Belfast, Ireland, Milroy (1987) isolates the factor of social network as one which correlates with language use. Milroy's study shows how social networks can exert pressures on its individuals. She points to the interdependencies between the group demands and the linguistic behavior of its group members. In contrast to Allard and Landry (1992), Milroy (1987) also stresses the fact that the pressures are of a non-institutional kind, that is, it is not necessarily the larger society which exerts the pressure, but independently, the smaller-scale unit of the social network.

### **2.3.3 Language Attitudes**

Researchers are not certain as to exactly how language attitudes can determine language choice. However, it has generally been seen that language choice and attitudes are related. Sure (1991) found that despite the government declaration of Kiswahili and English as official languages, English is still considered the H language for formal use, and Kiswahili the L language for non-official use in his study of language attitudes among Kenyan students. Findings from this study indicate that the impact of public policy decisions (language planning) does not seem to have changed the people's



perception towards the functions of Kiswahili. Even though we cannot claim a causal link, the association between language attitudes and language choice is too strong to ignore.

Social psychology is primarily concerned with the study of attitudes. This goal is stated in Giles and Coupland (1991:77):

If we are going to understand why individuals acquire, use and react to language and its variety in the way they do, we require a greater understanding of the dynamics of attitudes, motivations, identities and intentions, that is, social-psychological phenomena.

From a social psychological perspective, emphasis has been traditionally placed upon the individual and his display of attitudes toward different languages or different varieties of the same language. The study of languages attitudes is concerned with “the distinctive social meanings of contrasting language varieties” (Ryan, 1980:193). Language attitudes are “evaluative judgements about others’ speech language patterns” (Fitch and Hopper, 1983:115).

Micro-sociolinguistic (situational) factors are those “traditionally described by sociolinguists who study speech behaviour using a taxonomic approach. These include the topic, setting and purpose of conversation as well as characteristics of the interlocutors” (Bourhis, 1979:119). Bourhis describes the influence of situational factors as that found in two types of code-switching strategies. Speakers use metaphorical switching, interspersing the conversation with the out-group languages, in order to express a particular thought or feeling more vividly (Blom and Gumperz, 1972). On the other hand, speakers use situational switching to comply with social norms in particular situations and settings (Fishman, 1972).

Macro-sociolinguistic factors refer to socio-structural factors which may affect an individual's speech strategies in ethnic interaction. In his description of this, Bourhis includes the description of the inter-group relation situation in terms of diglossia and bilingualism (Fishman, 1967), ethnic cleavage, linguistic territories, language planning, and language legislation (Rubin and Jernudd, 1975). Bourhis also states that this may also refer to the description of individual speakers as group members in terms of their sex, socioeconomic status, regional origin, and the 'vitality' of the ethnolinguistic group to which they belong (Giles, Bourhis and Taylor, 1977). It can be seen then that the influence of macro-sociolinguistic factors on code-switching is mediated by social psychological factors.

Social psychological factors consist of 'speakers' moods, motives, feelings, beliefs, and loyalties in ethnic interaction, as well as their perception of the inter-group relation situation and their awareness of existing sociolinguistic norms. By linking micro-sociolinguistic factors with social psychological factors, Bourhis (1979) shows how speakers encode code-switching strategies based on their cultural knowledge of social norms. Then by linking macro-sociolinguistic factors with social psychological factors, Bourhis shows how speakers encode code-switching strategies based on their ethnolinguistic identity and vitality, which are linked at a macro-collective level to ethnic relations and diglossia respectively. Since both micro- and macro-sociolinguistic factors are mediated by social psychological factors, Bourhis claims the speaker's motivations for code-switching are the deciding factor.

#### **2.4 Studies of Language Choice**

This section focuses on discussions of related research in the area of language choice. Theoretical and methodological issues are discussed in terms of past research conducted in Western, Asian and in the Malaysian settings.

### 2.4.1 Western Setting

Ethnographers of speaking are concerned with capturing the social significance of meaning attached to the use of a particular linguistic feature or code. Blom and Gumperz (1972) did a study of code switching in Norway. They were interested in discovering the specific situation under which speakers shifted from one linguistic code to another. To accomplish this, they found it necessary to focus their attention on the relationship between the use of the two codes and the local social system. The major contribution of their study was to describe the intimate manner in which the choice of code is linked to an integrated system of local values and is used to convey social meaning.

Blom and Gumperz (ibid.) reports language use among inhabitants of a small town in Norway. At the time of the study, the town of Hemnesberget had a population of 1,300, consisting mostly of craftsmen, merchant middlemen and service personnel, such as government officials. The town is quite separate from other parts of the country though not isolated. Some people commuted to a nearby bigger town for work, but most of the inhabitants spent their time and worked locally. Due to their intensive interactions, people knew each other and developed a kind of team spirit and solidarity.

The language varieties under investigation were not independent languages but dialects of the same language. The local dialect of Hemnesberget is called *Ranamal*, which is one of the dialects in Northern Norway. This dialect enjoys great respect among its speakers, a common phenomenon throughout Norway, where distinct local characteristics are always respected. Being able to speak *Ranamal* is part of the membership identity of Hemnesberget community. The language of education is not *Ranamal* but the standard *Bokmal* (or officially called *Riksmal*), and people master this standard dialect too. Being varieties of the same language, these two dialects do not

show significant linguistic differences. The local people alternate between these two dialects to suit their communicative needs. Non-members of the local community, however, consider the local dialect as a sign of lack of education and lack of sophistication. The local people also reject this perception and those who do not want to speak the local dialect are seen as creating a social distance. They appear to be seen as showing disloyalty to and contempt for local values and the community. If local people speak the standard dialect to fellow members, they will be considered conceited.

From the above study, we may conclude that a language variety, either a dialect or an independent language, is loaded with value judgment. The choice of a certain language or variety brings certain consequences though different groups within the same community might perceive these consequences differently. For local members of Hennesberget, the adoption of the local dialect in a certain speech event is a symbol of solidarity and intimacy. For non-members, such adoption reflects the speaker's lack of education and sophistication.

It is the consensus among ethnographers of communication that community interactional patterns cannot be understood without a long period of observation to establish the general values and norms of the community. The crucial role of observation in the study of language use has been shown in some depth by researchers who have followed the Hymes model such as Milroy (1980) and Saviile-Troike (1982). These researchers as noted by Baugh (1983) recognise the vital role of 'ethno-sensitive fieldwork'. Ethno-sensitive fieldwork takes into account the values and cultural orientations of the informants.

Hymes's argument has a strong linguistic bias with rules of speaking expressed as formal statements and speech acts. However, this is not relevant to the focus of the present study. For purposes of this study, his argument is significant in showing that

setting and purposes of interaction are stronger determinants of language choice than the participants themselves, who are merely seen as static individuals.

Hymes regards the setting and purpose as distinctive situational components. Brown and Fraser (1979) group these together as 'scene', and describe how scenes may be arranged along the bipolar dimension of formal versus informal. Even though Brown and Fraser have presented an extension of Hymes's taxonomy to account for speech variation, there are major differences between them. To Hymes, scenes are settings imbued with cultural import and associated activities. Brown and Fraser feel that purpose is the most important situational component. They state that the "purpose is the motor which sets the chassis of setting and participants going" (ibid.:34). They also say that purpose determines the type of activity happening in a physical setting, as well as the subject matter and topic of the interaction. They cite the example of how different the speech pattern for sermons and the conversation of builders repairing the sound system in a church are. There are differences even when both take place in the same physical setting.

Brown and Fraser's taxonomy also looks at participants. Brown and Fraser distinguish between speech as a marker of various characteristics of the individual speakers, and as a marker of relationships between participants. Personal characteristics of speakers are not the focus of Brown and Fraser's taxonomy. Instead, they emphasise how social relationships can be described in terms of social or cultural roles (social-institutional level, for instances, staff-client role, in-group – out-group) or in terms of personally negotiated relations dependent on personal and interpersonal attitudes (individual/interpersonal level, such as, liking).

However, Brown and Fraser caution that certain features which are generally attributed to participants, such as social distance, social status and social roles, are in fact not

always stable attributes of individuals, or of relationships between individuals. They say that these features shift depending on the purpose of the interaction. An example would be when a doctor consulting a lawyer on a legal question may express deference in formulating his query, whereas the lawyer when consulting the doctor about his heart condition would be the one to express deference. Therefore, it is quite obvious that the purpose of interaction determines the social roles. This is in contrast to the social psychological approach where ‘a person’s social identity determines the kinds of social roles he will take up, the kinds of activities he will indulge in and the kinds of settings he will frequent’ (Brown and Fraser, 1979:56).

In the framework used by Brown and Fraser (1979), the scene is also considered in attributing social distance (personal liking), as shown by this example: Two Australian strangers meeting on the streets of Melbourne would consider each other to be socially distant, but they would be likely to consider one another socially close as compared with the even stranger strangers around them if they met at a hotel in Kuala Lumpur. Therefore, the situational components should never be considered in isolation. The method of choosing a preferred strategy to resolve the ambiguities resulting from the confounding of situational components is also discussed in the work of Gumperz (1976, 1977, 1978) on conversational inferences, or seeking the actor’s eye-view of the situation.

Brown and Fraser (1979) also stress the value of looking both at the individuals who interact in the situation and at the structure of the society which encloses the interaction. They assert that “for any society we are studying, we need an understanding of socio-structural considerations which help determine the features of a situation” (ibid: 58). Sociolinguists therefore are conscious of the importance of socio-structural factors and how they may influence perceptions of the situation.

Rubin (1968) and Sankoff (1972) use the person-oriented approach in sociolinguistics to show how speakers take note of norms on situational determinants of language behavior to make binary language choices at different hierarchical levels. This is shown with the use of the decision tree model. Rubin (1968:526) uses a decision tree in her analysis of language choice in Paraguay. She discusses bilingual usage in Paraguay. Unlike in many other Latin American countries, the population in Paraguay uses Guarani, a local Indian language, extensively. The population that uses the language Guarani are made up of both the indigenous and migrant descendants. Guarani and Spanish are used side by side.

Rubin (*ibid.*) also studied the bilingual usage in Itapuami, which is a rural area, and Luque, which is urban. In her analysis, she concludes that the most important variable that determines language choice among the population is the location. When an interaction takes place in the countryside, it is conducted in Guarani. She also mentions, however, that an external pressure can alternate this tendency. Students, when speaking to their teachers even though the speech event takes place in a rural area, use Spanish. This is a result of teachers' insistence on always using Spanish even in the rural areas. In general, the community discourages the use of Spanish in rural areas and anybody who uses it in this environment is considered to be showing off or 'putting on the dog' (Rubin, 1968:521). Even between the same friends, language choice in an urban area is different from what takes place in a rural area.

Next to the location of the speech event, the formality level of the interaction is the second variable to be considered in language choice. Rubin concludes that this variable is a continuum. There is no clear-cut boundary between the formal interaction and the informal one. Predictably, Spanish occupies the upper end of the continuum, which is

the formal occasion. The actual choice, however, might be influenced by other variables or might be free from such influence.

The degree of intimacy among speech participants is the third variable. Interestingly, this variable is applicable only in urban areas because “rural and formal discourse is fairly clearly defined” (Rubin, 1968:523). Between intimate friends, Guaraní is the choice, while between mere acquaintances Spanish is preferred. Guaraní is also a bearer of solidarity and identity symbols and tends to be used among Paraguayans overseas. In Paraguay; however, they might make greater use of Spanish. Another variable that is applicable only in an informal urban speech event is the degree of seriousness of the discourse. Guaraní is the language of humour, while Spanish is associated with seriousness.

Other than social setting, factors which might influence language choice include the following: school pressure (which requires the choice of Spanish despite its possible incongruence with other variables, as mentioned earlier), estimate of the linguistic proficiency of the interlocutor (or, in other words, linguistic accommodation), the trend towards bilingualism (alternate use of both languages is preferable, or bilingualism is preferred to monolingualism), first language acquisition (L1 is preferred over L2), and the gender of both the speaker and the interlocutor (Guaraní among men, Spanish by men to intimate women, and Spanish by women to both male and female friends). Basically, Rubin found out that speakers take note of norms on situational determinants of language behaviour to make binary language choices at different hierarchical levels.

However, Fasold (1990) states that Rubin’s binary decision tree is unable to account for language choice in multilingual communities. This is because in multilingual communities, the choice may involve more than two languages. Sankoff (1980:36) also researched language choice using the decision tree model. However, Sankoff noted that



the decision tree model had its limitations in accounting for occurrences of code-switching. Sankoff then combined the deterministic tree model with a more interpretive model, along the lines developed by Gumperz and Hernández-Chavez (1972). In this study, Sankoff (1980) attempted to account for the choice made among three languages spoken in New Guinea: *Buang*, the language of the tribe, *Tok Pisin*, the lingua franca, and *Yabem*, a language introduced by missionaries. This was an ethnographic study in which observations were made of communication situations, both informal and formal, as well as normative statements about language use.

Eventually Sankoff's decision tree model resulted in an analysis of the sociolinguistic rules governing appropriate language choice for various conditions. Primary importance was given to interlocutors, especially whether they were in-group or out-group members. Situation-defining variables were considered as having to do with setting and topic, followed by variables involving tone and channel.

An extensive report about language choice among Puerto Rican migrants in New Jersey is presented by Hoffman (1971) as part of the study done by Fishman et. al. (1971). The subjects were mostly below the age of twenty-five, of limited formal education and low occupational status. Half were born in the United States and had grown up with enough exposure to English. This study investigated how the subjects communicated in different domains of life: home, neighbourhood, school, church, and working place. According to this study, language choice also depends on the participants and the topic. The choice between English and Spanish could not be determined only by the setting. Whereas parents, particularly mothers, spoke Spanish with the children and among themselves, English was sometimes used in discussing schoolwork. Grandparents were always addressed in Spanish by their grandchildren who used both English and Spanish in speaking to their parents. However, among themselves, children spoke English.

Spanish was chosen for marked purposes, such as to joke or to tease, or to exclude a non-Spanish speaker.

Variation of language choice was observed between different age groups. Young people preferred to have more English at church, while the elders preferred to attend Spanish services. Within the younger age group, English was also preferred.

Gal (1979) elaborately describes the process of language shift in a Hungarian-speaking enclave in Austria, where she extensively discusses the pattern of language choice among the inhabitants of Hungarian-descent. Oberwart (Felsőor) used to be a part of Hungary and has been settled by Hungarians since about 1000A.D. and Hungarian has been spoken there ever since. Surrounded by Croatian and German speaking communities, most Oberwart peasants were bilinguals. The population of the enclave became more heterogeneous when wealthier German-speaking migrants moved into the area. As a result, German was the language of the local elite, while the peasants spoke both German and Hungarian. Hungarian was the minority language because it was confined to the Hungarian peasants. Not only was German the elite language, but it also became the national language when the area was made part of Austria.

Another study of language choice was conducted by Heye (1989). Pomerade is a town in the state of Catarina, Brazil. At the time of the study, its population was 23,000, consisting overwhelmingly of descendants of German migrants'. Most subjects' mother tongue was German and they began learning Portuguese only at school. Almost half of the respondents stated that they spoke both German and Portuguese equally well. Approximately a third claimed that their German was better, while the majority claimed that their Portuguese was better.

Since Portuguese is the national and official language of the country and also the medium of instruction at school, the respondents reported that their reading and writing skills were better in Portuguese than in German. Both languages were used equally in most daily activities: at work and for shopping. German was the language at church while Portuguese was used in clubs and sports. With their neighbours, the local people communicated in German, while with strangers and government officials they used Portuguese. This functional distribution seems to fit what we expect to find in a migrant community in a Portuguese-speaking country. No age-group tendency of language use is reported, but we might justifiably expect that in the future, the roles of German will be assumed by Portuguese, particularly because, unlike Spanish in the United States, there is no substantial number of German speakers in Brazil and, practically, there is no neighbouring German-speaking country. The process, though, might be slowed down as long as German is still used in church and the local people still go to church.

A more complicated pattern of language choice was studied by Barber (1983) among the Yaqui Indian community. The languages under study were Yaqui, an American Indian dialect, Spanish (because there are a large number of Mexican Americans in the region), and English. Though Yaqui is definitely the home language, interestingly Spanish is spoken within the family circle. What is intriguing here is the adoption of another 'minority' language to be used at home rather than English. English is used only at school and at work but never at home. It is therefore clear that the 'force' of a certain language does not always depend on the national majority. A significant local majority is enough to boost the force of the local language. This fact certainly makes language planning more complicated.

### **2.4.2 Asian Setting**

Closer in Asia, Pandit (1979) describes language choice among students in a prestigious women's college in New Delhi. The students, though linguistically heterogeneous, were socially homogenous: they belonged to upper middle class or middle class families. In the nineteenth century, Punjabi used to be the language in the domestic domain. However, since the introduction of Hindi as a medium of instruction in Delhi, the role of Punjabi as mother tongue has been decreasing. English, not Hindi, has been gaining more ground even at the domestic domain, except when speaking to servants.

In the neighbourhood, Hindu students use English, Hindi or a mixed language. On the other hand, Sikh students use mainly English or a mixed language. Hindi is still used in the school domain, and Punjabi is practically never used except perhaps when mixed with other languages. Punjabi Hindus seem to have shifted from using Punjabi so that they will not be identified with the Sikhs. In addition, Punjabi used to be the language of the peasants and craftsmen (the have-nots). In India, Punjabi is no longer identified with the have-nots but with Sikhism. In Pakistan, Punjabi is an expression of Punjabi Muslims as opposed to other Pakistanis. A similar phenomenon can be observed in Malaysia. Malay in Malaysia is identified with Islam, while in Rote, an Eastern Indonesian isle, one's proficiency in Malay is associated with the speaker being Christian (Fox, 1980).

Pascasio et. al. (1979) reported the language use among 150 first-year undergraduates in three colleges in Manila, the Philippines. The result of the study is not radically different from the studies conducted in India, where English is also the official language of the country: Filipino is the dominant language at home, English is dominant at school, and both are equally used for social gatherings. Pascasio et. al. (ibid.) observed that the interlocutor in the speech event also influences language choice. English is

more likely to be used when speaking to out-group members, such as professors and older people. In this study, the speech situation, a common component in language choice, does not have much effect on language choice. It seems that the interlocutors override the role of the speech situation.

Another study among Indians was conducted by Parasher (1980). The subjects were 350 educated bilinguals in Hyderabad and Secunderabad. In the family domain, where interactions are less formal, the mother tongue is always the dominant language followed by English. However, English is the most dominant language followed by the mother tongue in the domains of friendship, neighbourhood, transactions, education, government and employment. A slight difference is found when the mode is not spoken but written language. The mother tongue is still the most dominant in the family domain, but English is more likely to be used in writing to one's children, brothers, sisters, or cousins. Thus, increasingly English has infiltrated the home domain. The likelihood of using English is even greater when the topic is about education, science or technology. Outside the family one may speak to somebody who might not share the same mother tongue and this explains why English is used.

Sridhar (1996) discusses the role of English and other Indian languages in South Indian urban areas. The subjects were students and employees in government and private services in Karnataka. The study clearly shows the complementary distribution of the language used in the speech community. The languages under study were English, Hindi / Urdu, the state language and respondents' mother tongue. Interesting findings in the study are, among others, that the state language and Hindi / Urdu (the national language of India) are reported to have very little value in terms of job prospects and that not all respondents are proficient in Hindi / Urdu. English, on the other hand, commands high respect in terms of job prospects.

Similar to Parasher's findings, English is dominant in students' oral communication in domains related to education, politics and technology. It is also the most preferred language in public places and most likely to be used when students are visiting another state. The mother tongue is dominant in the home and neighbourhood domains. This seems to be the domain where the interlocutors feel close to each other. The national language is always the least preferred choice. Though it is used by a substantially larger percentage of students when they are visiting another state, the percentage is still below that of the mother tongue and English. Among employees, English is dominant in speaking to colleagues and superiors. When customers do not speak the employees' mother tongue, the preferred choice is also English, followed by Hindi / Urdu. The mother tongue is dominant in talking to friends, subordinates and customers. Though higher than the percentages among students, the percentages of the use of Hindi / Urdu by employees are always the lowest except in talking to customers who have different mother tongues.

### **2.4.3 Malaysian Setting**

Research on language choice and use in the work environment has been conducted in Malaysia (Ahmad Mohd. Yusof et al., 1992; Anie Atan, 1998; Baskaran, 1995; David, 2003; Mead, 2000; Morais, 1990, 1998; Nair-Venugopal, 1997; Nik Safiah and Faiza, 1994; Ting, 2001). Mention of some of these studies has been made in Chapter 1 to show how the present study would be helpful in extending the empirical base of research on language choice and use in Malaysia. A review of the studies and their findings shows that linguistic skills, ethnicity and hierarchical status have influenced language choice.

Anie Atan's (1998) study was of an ethnographic nature. It focussed on language choice in two multinational electronics manufacturing plants in West Malaysia. She

used observation, interview, text analysis and the survey techniques. The findings of her study indicated that code switching was a feature of interactions in the organisation and that language choice varied with the profession of the speakers.

Morais (1990) investigated the role of code switching in the management of conflict in a Swedish multinational company in West Malaysia. She audio taped naturally occurring language use in the organisation. Findings of her study showed that there was frequent alternation between Malay and English at the middle hierarchical level to facilitate communication. The study also noted that Malay was used by the Malays at all levels in the hierarchy to signal identification within the group. The non-Malays, on the other hand, use Malay as “a deliberate gesture of goodwill and accommodation in recognition of its status as the national language and the native language of the majority group” (ibid: 10). Morais’s study also showed that both Malay and non-Malay managers and supervisory staff resorted to using Malay with the middle and lower-level staff. This seemed to be a strategy employed to close the status gap between administrative and factory personnel. However, when spoken to, the Malay subordinates seemed to prefer to reply in English rather in Malay despite their limited proficiency in the English language. Results of Morais’s study indicate that Malay was used for ‘equalising’ differences in status and for establishing solidarity. Code switching, on the other hand, seemed to be motivated by concerns regarding communicative efficiency.

Morais’s (1998) study affirmed her earlier findings. The later study showed that hierarchical status was indeed a determinant of language choice. Among top level employees, English was mainly used. Middle-level employees alternated between Malay and English. Finally, Malay was the dominant language among lower level employees. Morais’s later study also showed that language choice varied with the type of verbal interaction that took place. English was favoured for conversation at all levels

with different varieties of English being used in these interactions. Whenever staff from the three hierarchical levels was present together at a meeting, there was considerable evidence of code switching between Malay and English. At interviews, when recruiting lower level staff, the main medium of communication was colloquial Malay. The study concluded that the choice of varieties of English and Malay reflected the interlocutor's membership of different socioeconomic and ethnic networks.

Nair-Venugopal (1997) investigated social meanings which underlie code and style choice of discourse in two business organisations in West Malaysia. Her study investigated style shifting with regards to the use of English. The study showed that English was the normative code in the organisational settings examined. Malay was only used for formal purposes. The results of the study also indicated that code-switching is a common feature of language use at seminars and presentations.

Following the key determinants of language choice examined by Bourhis (1989; 1991; 1994), Nair-Venogopal's results showed that ethnicity, linguistic skills, and the work environment were salient factors for bilinguals in the settings investigated. The influence of socio-structural factors on language choice was treated as a background variable in her study. Therefore, there seems to be a need to examine how language choice in multilingual organisational settings might be influenced by socio-structural factors, in addition to normative and interpersonal factors.

Ting (2001), when studying the phenomenon of language choice in a two organisations in Sarawak, suggests that language choices are influenced less by situational norms than by interpersonal motivations. She adds that language choice is likely to be influenced by socio-structural factors in relation to the interlocutor's personal or social characteristics. In her view, further research is needed in the perception of participants as to the reasons for specific language choices in different social situations. It is with this in mind that



this present study aims to investigate the influence of socio-structural factors on the language choice and use of legal professionals.

A number of studies have been conducted where the focus has been on language and the courtroom. Nik Safiah and Faiza Tamby Chik (1994) investigated the implementation of BM, the national language, in the courts. Findings of the studies highlighted certain constraints faced by legal professionals and the courts in implementing BM. Some of the constraints cited were the lack of legal precedents to be referred to in BM and the medium of instruction for legal training having been in English.

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 BM and English being used in the courts at that time. Baskaran (1995:168), also using authentic data from the courts, examines 'unwritten rules which are totally context dependent and case oriented'. David (2003) studied code switching in the Malaysian courtroom. 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, metaphorical and pragmatic factors.

## **2.5 Factors Influencing Language Choice**

With different emphasis, Hymes's SPEAKING components have been categorised in different terms. Preston (1989) lists the following factors in language or variety choice: (i) setting (the time, place and the length of the speech event and the number of participants), (ii) content (topic), (iii) relations (between participants), (iv) functions of the language (purpose and outcome of the speech event), (v) tenor (the tone and mood of the interaction), and (vi) participation.

Ervin-Tripp (1987) suggests four main factors which influence the change of variety or code: (i) setting (time, place and situation), (ii) participants of the interaction, (iii) topic of the interaction, and (iv) function of the interaction. She understands function as 'effect on the sender of his actions' (Ervin-Tripp, 1968:196), which is not always explicit. However, this latent function can be discovered from the sender's reaction to various outcomes of his speech act.

Grosjean (1982) also elaborately discusses factors influencing language choice. Language proficiency, language preference, socio-economic status, age, sex, occupation, education, ethnic background and relationship are influential in deciding the choice of host language in a certain speech event. The second factor is situation, which consists of the location or the setting, the degree of formality and intimacy and the presence of monolinguals. The third factor is the content of the discourse, which includes topic and style of vocabulary. The last one is the function of the interaction (to raise status, to create social distance, to exclude someone and to command). He also suggests that language choice is rarely determined by a single factor. From culture to culture, the weighting of the factors also varies. In one culture, the participant's age might be important; while in another the topic is more important.

As discussed earlier, Fishman (1965) after observing the predictability of language choice in recurring situations, invented the term 'domain', which is "a clustering of characteristic situations or settings around a prototypical theme that structures the speaker's perceptions of these situations" (Appel and Muysken, 1987). The components of a domain in most situations are congruous with one another. If the domain is the home, it is to be expected that the participants will be parents and children, and the language chosen is normally the mother tongue. If the domain is the school, the

participants will be teachers and students, the topic will be schoolwork, and the language chosen will be the language used as the medium of instruction.

Herman (1968) argues that other than the demands of the particular conversation there are other determining factors for the choice of language. He states that language choice is determined by an overlapping situation where personal needs, background norms and immediate situations play a role. Based on these considerations, Herman (ibid.) hypothesises conditions under which each of the three factors will be dominant. He believes that background norms will have the most impact when the language is used in a public setting and when it is being spoken signifies group identification or conformity. Such identification or conformity takes place when there is a different level of prestige between the languages in the speaker's repertoire and when there is only limited tolerance to a certain language. Thus, during World War II, the use of Japanese and German languages was not encouraged by the America public (Heath, 1997). If one were looking for a job in a multinational organisation in Kuala Lumpur, for example, one would probably not use the northern dialect of BM or even the Kelantanese dialect during the interview. Group identification or norm conformity is always sought when the speaker is a marginal person. Strong loyalty to a language will also bring about group identification. e.g. Malaysians abroad often use BM when speaking to each other as sign to signal solidarity.

Personal needs are understood by Herman (1968) as personal variables, such as one's attitude toward a particular language and one's aspiration in language use. These variables will have a stronger impact than other factors whenever the speech takes place in a private setting or the speaker feels insecure, or frustrated, or under high tension. The immediate situation of a speech event will be the most influential when the speaker

does not bother with any group identification and when the speech event is more task-oriented, and the relationship between the participants is already well established.

Code choice has also been analysed as a negotiation process as presented by Scotton (1983). She argues that code choice is the result of interactive negotiation between the speech participants. Participants in multilingual communities with sufficient communicative competence are able to identify which codes are unmarked. The markedness of each code is designated by the community's norms. The choice of a certain code is associated with the set of rights and obligations interactively negotiated between the interlocutors.

From the set of rights and obligations (RO), the implicature of a particular speech event can be figured out. The choice of a certain code within a certain speech community reveals the speaker's intention to maintain the set of rights and obligations sanctioned by the speech community. If another code is chosen, it implies that the speaker intends to alter the RO set. Any speech event is started with a negotiation of the set of rights and obligations. Between new acquaintances, such a negotiation will establish the RO set between them. Among old friends, the negotiation will affirm the existing set or readjust it whenever necessary. It is also possible that one speaker intentionally alters the established RO set, which will produce a marked choice.

Code choices might be conventionalised or non-conventionalised. The conventionalised choice is the one that is identified by the consensus of the speech community as the unmarked. The unmarked code chosen for interaction between a lawyer and client in Malaysia is English. If a lawyer were to choose BM, this choice is non-conventionalised and, thus, marked; and it implies that the RO set normally present between a lawyer and a client will change. The unmarkedness of a certain code in a particular RO set can be

identified empirically. If a code is used chosen in most similar speech events, it is the unmarked code choice for that type of speech event.

For effective communication, it is necessary that speech participants obey the following negotiation maxims: make the unmarked code choice when you wish to establish or affirm the unmarked RO set associated with a conventionalised exchange:

- (i) show deference in your code choice to those from whom you desire something
- (ii) make an otherwise marked choice whenever the linguistic ability of whether S (speaker) or A (addressee) makes the unmarked choice for the unmarked RO set in a conventionalised exchange infelicitous
- (iii) make an exploratory choice as a candidate for an unmarked choice in a non-conventionalised exchange
- (iv) optionally make more than one exploratory choice as metaphors for multiple RO sets, thereby implicating multiple identities for oneself

(Scotton, 1983:120-126)

The idea of unmarked code choice assumes that among the speech community the RO sets are agreed upon. However, it is possible that such sets are not very clear or not accepted by every member of the speech community. In such a case, the markedness or unmarkedness of code choice is not readily identified.

Based on the speech components and their familiarity within the domain configuration, or, in Scotton's terms, the result of the interactive negotiation, speech participants must be able to select the appropriate language out of their linguistic repertoires for communicating their ideas. There are occasions where participants have ample time to decide which language in their linguistic repertoire to use. However, it is also possible that such decisions may need to be done in a split second. Thus, a proficient language user should be able to not only select which language to use but also to decide it quickly when the situation requires.

From the viewpoint of this negotiation model, the present research is crucial in that it attempts to identify the unmarked code choice for the specified RO sets represented in the questionnaire. As mentioned by Scotton, the unmarked code choice for a certain RO set can be identified empirically by finding out the code most frequently chosen in similar speech events.

## **2.6 Summary**

The foregoing review indicates that the factors influencing language choice are: the functions of languages (Ferguson, 1959), the domains of language use (Fishman, 1972), the purpose of the interaction (Brown and Fraser, 1979), and both the purpose and setting of the interaction (Hymes, 1972). The sociolinguistic approach has considered language switching largely in terms of normative demands related to the topic, setting and purpose of the conversation as well as various characteristics of the interlocutors (Saville-Troike, 1982).

There is also a contention that participant characteristics have greater potency in determining language choice, for example, Rubin (1968) and Sankoff (1980) show the active role played by speakers in weighing up the salience of various situational factors. In addition, Bell (1984) also argues that speakers make a language choice to accommodate their audience, rather than to non-audience factors such as topic and setting. Ladegaard (1995) points out that the role and power relations of the audience have to be taken into consideration. These normative, self-presentational and negotiative influences on shifts in codes are normally what sociolinguists would study.

Giles (1973b) states that sociolinguistics can be enhanced by using current social psychological knowledge. Giles and his colleagues were aware of other forms of speech modifications in interpersonal situations (normative and divergent language variations).

They began to study this phenomenon with an understanding of accommodation. The *Interpersonal Speech Accommodation Theory*, presented by Giles (1973b) argues that language choice is determined not only by the situational factors but also by the interpersonal relation between the speaker and the interlocutor. Through the strategy of accommodation a speaker tries to win the speaker's favour by reducing dissimilarities. The adoption of the shared code is the realisation of this strategy. In practice, accommodation is not only a process of convergence, where the shared behaviours are performed, but it can also be that of divergence, where the speaker tries to distance himself or herself from the interlocutor by maximising their behavioural differences (Appel and Muysken, 1987).

Appel and Muysken (1987) also suggested that language proficiency would emerge as an important determinant of language choice in multilingual communities. It would be important to note how interlocutors decide between their language proficiency and accommodation tendencies in their language choices. With this, it would seem that the importance of socio-structural factors was recognised.

The above review of literature has shown a need to adopt a combined sociolinguistic and social psychological perspective in the investigation of the language choice and use. This is especially true for studies conducted in multilingual settings. The emergence of socio-structural factors as an important determinant of language choice is seen. In addition, earlier work examining the theoretical basis of how situational norms, interpersonal motivations and socio-structural factors interact to influence language choice has been conducted in Western settings. Thus, there is a need for more empirical studies in other cultural settings, such as Malaysia to enhance the explanatory power of these theoretical frameworks.

## CHAPTER THREE

### THE MALAYSIAN LEGAL SYSTEM AND THE LANGUAGE IN THE LEGAL CONTEXT

#### 3.0 Introduction

Legal systems do not emerge out of nothing; they possess a history, and reflect ideas, and make use of institutions, which have developed over time, and been moulded by cultural and political forces.

(Simpson in Wu Min Aun, 1999: xvii)

To better comprehend the phenomenon of language choice and use in the Malaysian legal domain, a description of the Malaysian legal system and language in the legal context must be described .

#### 3.1 History of the Nation

In order to understand the Malaysian legal system, an overview of the history of Malaya (later Malaysia) is necessary. Besides enabling us to trace local and foreign influences that have shaped the legal system as it is today, it would also help the reader to place this study in its proper context of investigation. The heavy dependence on the English language is better understood by tracing the history of Malaysian law. The Malaysian legal system is also described in detail so that the situations (domains and sub-domains) being investigated can be clearly defined.

##### 3.1.1 Early Malaya

Sultan Iskandar Shah ruled Malaya in the fourteenth century and this marked the beginning of the Malacca Sultanate. The legal system of the Malacca Sultanate in the two centuries following Sultan Iskandar Shah proved to be well organised and was codified. At the time, according to the *Sejarah Melayu* (Malay History), the ruler was the source of law and the fountain of justice. Concepts of crime and punishment, the power to set an offender free, or penalise him, rested entirely on the ruler, and was



largely arbitrary. The Sultan was assisted in the administration of his empire by a group of Chieftains, who administered justice.

Two law digests governed the Malacca Sultanate. One was the *Undang-undang Melaka* (Laws of Malacca, also known as *Hukum Kanun Melaka*). This digest had forty-four chapters and provided jurisdiction over issues related to the land and its people. It also covered a wide range of criminal and civil matters. The digest spelt out penalties according to Islamic as well as customary law. The second digest, the *Undang-Undang Laut Melaka* (Maritime Laws of Malacca), comprised twenty-five chapters, and jurisdiction was related to maritime matters, that is, rules and regulations to be observed at sea.

Both digests were based on the patriarchal law of *Adat Temenggong*, and Islamic Laws belonging to the Shafii tribe. Islamic law visibly influenced the *Undang-Undang Melaka*. It had eighteen sections referring directly to Islamic laws. The *Undang-Undang Laut Melaka*, on the other hand, showed very little influence from Islam.

Both the digests served to codify the patriarchal law of the *Adat Temenggong* for the first time, and were instrumental in influencing the legal history of some states:

- (i) Laws of Pahang (1595)
- (ii) Laws of Kedah (1605)
- (iii) Laws of Johore (1789)
- (iv) Ninety-nine Laws of Perak (1878)

From 1511 until 1641, Malacca was a thriving port of trade. It was occupied by the Portuguese and was governed by a Governor, or Captain of the Fortress. Whilst the administration of justice pertaining to Portuguese nationals came under the jurisdiction

of Portuguese judges, non-Christian Asian subjects were subject to their respective community leaders. As a result, Portuguese law was not introduced in Malacca.

After the Portuguese, the Dutch occupied Malacca from 1641 to 1795. As there is no evidence to the contrary, it can be assumed that the Dutch treated the subjects of Malacca much as they did with the people of Java who were left to their own native customs and laws. Dutch laws, based on Colonial Statutes, were applied only to Dutch nationals. Presumably, both the Portuguese and Dutch governments were only interested in Malacca for its commercial value.

Later, the British (from 1795 to 1801) occupied Malacca. From 1801 to 1807, the Dutch once again occupied Malacca. In 1824, the British took over once again and this time, they started leaving their mark on the administrative and legislative system.

### **3.1.2 The British Period**

When the British took permanent possession of Malacca in 1825, they started a regular administration of law. In 1826, Malacca became part of the Straits Settlements, and came under the jurisdiction of English Law. When Penang was leased to the British, the island was regarded as ‘terra nullius’, an uninhabited land. But in actuality, it had been settled by a relatively large Malay population, who observed Kedah laws. This was because Penang had belonged to the Sultanate of Kedah.

Nonetheless, the British employed the Royal Charter of Justice of 1807 in Penang. This is probably “the most significant event in modern Malaysian legal history as it marked the first statutory introduction of English law into the country” (Wu Min Aun, 1999:14). In 1872, the Privy Council declared English Law applicable because the occupancy of the island was by the British.

In the meantime, the rest of Malaya slowly came under British administration. In 1874, Perak became a British protectorate state, followed by Sungai Ujong (a district of present day Negeri Sembilan), and Selangor. This was later followed by Pahang in 1887 and the whole of Negeri Sembilan in 1889. These four British protectorates became known as the Federated Malay States.

A British Residential System was established in the Federated Malay States. Whilst the Malay Rulers held sovereign power, the actual governance was within the domain of the British Residents. These residents proceeded to establish a bureaucracy modelled on the British Civil Service. The British Resident was consulted and his approval was sought on all legal matters. Only matters that concerned religion and customs were referred to the Rulers. The rulers seemed to play the role of a puppet, and the British Residents as puppet-masters. This historical event has probably led to the present day system of administration where the constitutional monarch is merely a token, and it is the civil service that handles all administrative matters.

Later, in 1909, the Siamese transferred rights of sovereignty, protection, administration, and control of Kedah, Perlis, Kelantan, and Terengganu to Great Britain. In 1914, Johore agreed to receive a British adviser, and so, together with the four states of Kedah, Perlis, Kelantan and Terengganu, became known as the Unfederated Malay States.

Johore was unlike the other Unfederated Malay States in that it had had greater exposure to British influence by virtue of its geographical proximity to Singapore. Under the rule of Sultan Abu Bakar, Johore formulated a written constitution in 1895, so, even before the British took over, Johore had already established a modern administrative structure.

Meanwhile, in Borneo, James Brooke obtained Sarawak by cession from the Sultan of Brunei in 1841. In 1865, North Borneo (later known as Sabah) came under the control of British companies by cessions from the Sultans of Brunei and Sulu. By 1882, the cessions of Sarawak and North Borneo were transferred to the British North Borneo Company, and in 1888, Sarawak and Borneo became protected states.

By the time of the Japanese invasion during World War II in 1941, British control of Malaya comprised:

- (i) Sarawak and North Borneo as protected states
- (ii) nine protected states: four Federated Malay States and five Unfederated Malay States
- (iii) the Straits Settlements

After World War II, Malaya comprised:

- (i) Sarawak and North Borneo as crown colonies
- (ii) The Malayan Union - the Straits Settlements was dissolved and Malacca and Penang joined the nine Malay States to form the Malayan Union
- (iii) Singapore as a separate colony

### **3.1.3 The Nation of Malaysia**

However, the Malayan Union proved unpopular and was abolished. Instead, in that same year, the Federation of Malaya was established. In July 1955, the nation's first federal elections were held, with the Alliance party winning fifty-one of the fifty-two contested seats. The following year, the Reid Commission was set up to formulate a constitution for self-governance. On August 31<sup>st</sup> 1957, the Federation of Malaya became a self-governing country. Later, on 9 July 1963, under the Malaysia Agreement, North Borneo, Sarawak, and Singapore joined the Federation of Malaya to become Malaysia. However, two years later, on 9 August 1965, Singapore separated from

Malaysia. The basic composition of Malaysia has remained the same since then, with the inclusion of the three Federal Territories of Kuala Lumpur, Labuan, and Putrajaya.

### **3.2 Law and the Nation**

Contemporary Malaysian Law is a hybrid law, drawn from many sources. It is a blend of western, eastern, and indigenous laws. Whilst large sections of current codified law can be traced to British Law; Islamic and Customary laws have also influenced Malaysian Law.

Customary Law consists of customs and traditions of the Malays, which in the course of time acquired the character of law. Being the living law at a certain time in a certain place, customary law is adaptable to changing social needs. With such characteristics, they are not suitable for codification.

(Ahmad and Ahilemah, 1987: 33)

#### **3.2.1 Pre-Independence British, Islamic and Customary Law**

Prior to the British occupation, customary law in the Malay States could generally be divided into (i) the matrilineal system of the *adat perpatih* which was (and still is) observed in Negeri Sembilan and parts of Malacca; and (ii) the patrilineal system of the *adat Temenggong* which was (and still is) observed in the other parts of the peninsula. With the exception of Perak, whose laws were partly written in three digests, most of these customary laws were unwritten.

Initially, Hinduism influenced customs, but after the advent of Islam and the embracing of the faith by the rulers (and subsequently their subjects), Islamic law was used to modify the customary laws to make them conform to Islam. Before the British occupation, Islamic law was the law of the land although these Islamic laws were in actuality a hybrid; a blend of Islamic, customary, and Hindu laws.

When the British took over, Islamic law was referred to when referring to religious aspects of life. This was eventually expanded to other aspects of life where British law

was thought to be insufficient or inappropriate for application to the native populace. As a result, a Council of Religion and Malay Customs was established in all states, to assist the Ruler in matters of religion and custom. The British also made use of the *kadi* (religious official), whenever they needed to refer to customary law. The *kadi* often misrepresented customary law as Islamic law. Presumably, this was done to add weight to the customary law, since anything that was declared religious law was generally seen as having greater legitimacy. Ultimately though, this practice of consulting Malay jury consults resulted in a tendency to observe Muslim law rather than customary laws in these matters.

In the meantime, customary law was slowly being whittled away indirectly by the British Residents. Even though the Malay States were only British protectorates and as English law was not formally introduced by legislature, the states had to act on the advice of the British Residents. The Residents favoured and introduced English law into the system. The Residents also played a role in the setting up of courts of justice. It was mostly an English and English-educated judiciary that brought the principles of English Law into the land. This often happened whenever matters that were not provided for by local laws arose. Subsequently, the Sultans were persuaded to adopt the Indian codification of the principles of English Law. As a result, various parts of the Indian Penal Code were adopted. The Malaysian Penal Code was established with reference to the Indian Penal Code.

The transition into the formal inception of British law can further be traced in the appeals system. Before 1896, all appeals in the Federated Malay States went to the Resident's Court. The final appeal went to the Sultan in Council. However, in 1896, the Judicial Commissioner's Regulations and Orders came into effect, and this abolished both the Courts of Residents and Sultans in Council. In its place was the Judicial

Commissioner as the final Court of Appeal. Though the Sultans with the consent of the Residents appointed the Judicial Commissioner, it effectively removed the Sultans from playing an active role in the appeals process. In 1905, the Courts Enactment Act was enacted, creating the Supreme Court, abolishing the Judicial Commissioner's Court and Senior Magistrates' Court. The judges in these new courts were all trained in the English system of law. Naturally then, they referred to, and applied English law to matters where there was no written local law to refer to.

In 1893, Selangor state regulations provided that, with exception of local laws and established customs, all other matters arising in any of the courts of the state were to be dealt with and determined according to the principle, procedure and practices of the Straits Settlement's Penal Code and Evidence Ordinance, and of the Indian Civil Procedure Code, Specific Relief Act and Court Fees Act (Ahmad and Ahilemah, 1987). The same events took place in the other states. In 1937, the Federated Malay States Civil Law Enactment, allowed the use of English law. This Enactment was extended to the other Malay States in 1951 and to the entire Federation of Malaya in 1956 through the Civil Law Ordinance.

Consequently, English law replaced Islamic and Malay customary law in many matters. This even resulted in the power of the *Syariah* Court being restricted and made 'inferior' to the civil courts. Until 1948, the Court of the *Kadi* had been part of the civil court, but in 1948, the Courts Ordinance established a judicial system for the Federation, and left the *Syariah* Court out of the Federal Court system. This has remained to this day, with the *Syariah* Court jurisdiction being applicable to certain facets of life for Muslims only. With respect to customary law, only issues related to family law and inheritance were retained. Where there were no other provisions made in

the written law, English common law and rules of equity would apply. From this, it is obvious that there was dependence on the English language.

### **3.2.2 Post-Independence British Law and Malaysian Law**

With the independence of Malaya from the British, certain parts of the Malaysian legal system also sought independence. There was a move at one time to refer to other models of legislation other than those of England. One of the models referred to was that of Australia. However, the reliance on English Law is still very evident.

Today, the judiciary is exclusively made up of Malaysians. Previously, all appeals on decisions made by the Malaysian Courts went to the Judicial Committee of the Privy Council in England. In 1978, this practice was stopped. However, most aspects of English law could not be removed. In a large part, this was due to the concept of the Hierarchy of Precedents.

When a judge applies or extends an established principle of law to new facts, or decides that the principle does not apply in a certain situation, he is making or changing the law. But a judge does not have the liberty to do just any of these, as he is subject to the rule of *stare decisis*, that is, to stand by cases already decided. In this situation, a judge follows principles which have already been in existence in previously decided cases -- decided by courts superior to, or by that court itself.

(Ahmad and Ahilemah, 1987: 113)

This means that each court is bound to the decisions made in its own courts, and to those set by the courts above it in hierarchy. Where no decision had previously been made on a new matter, then issue would be deliberated upon by the court highest in the hierarchy, and a decision made there, sets the precedent. However, wherever possible, the courts would also refer to precedents set by other courts in other nations. As such, the cases and decisions of the English courts and those in the Commonwealth continue to be of persuasive value. The judgements of Lord Denning in England, for instance, continue to have huge influence in the way legal professionals and judges in Malaysia



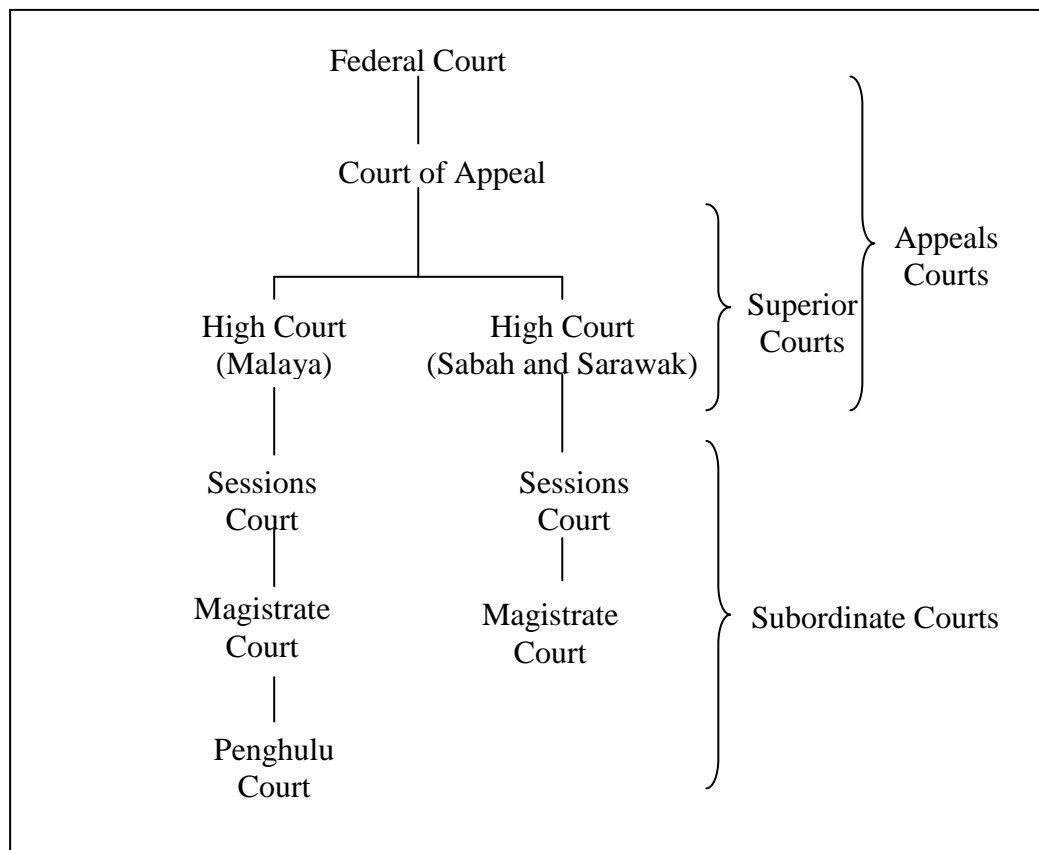
read their cases. All these factors contributed to the dependence on the English language in the legal workplace.

This flow-on effect creates a culture of second-handedness in the Malaysian legislature as a result of the system being largely English in origin. This second-handedness stems from the fact that much of the local legislation is based on English models, and the courts continue to make decisions more often than not on the basis of English precedents (Wu Min Aun, 1999: xvii). The debate over which law, Malaysian, Customary, or English, takes precedence, continues in the courts till today. Considering all that has been mentioned earlier, dependence on the English language within the legal profession is so very clear.

### **3.3 Malaysian Courts of Law**

This study examines language choice and use among legal professions and is situated in the Malaysian legal system. As a result, it is necessary to describe the Courts of Law in Malaysia and the processes involved in legal proceedings in each court. The Malaysian courts of law consist of the appeals courts, superior courts, and the subordinate courts. Before the reformation of the Judicial System in 1994, the superior courts comprised the Supreme Court and the High Court (see Figure 3.1).

**Figure 3.1 The Hierarchy of the Courts of Law in Malaysia**



Today, the Malaysian Courts of Law comprises the Federal Court, the Court of Appeal, and the High Court. The subordinate courts comprise the Sessions Court, the Magistrate Court, as well as the *Penghulu* (Tribal) Court in West Malaysia.

### **3.3.1 Composition of a Court of Law**

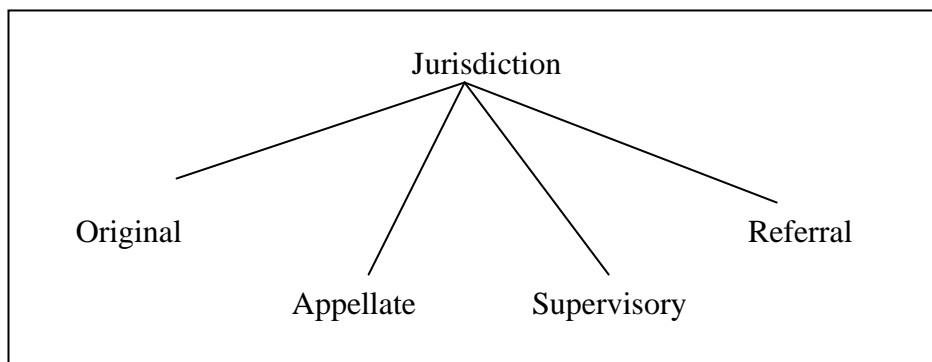
In a court of law, there is the judge, the plaintiff, and the defendant. The judge represents the court, whose duty it is to examine and decide on a matter of law, brought up by the plaintiff and the defendant. According to the Malaysian legal system, a trial is based on the adversarial principle, in that there are two opposing forces or parties that attempt to prove their case by putting forward arguments and providing evidence. In this, then, the judge plays a role much like that of an umpire, who sees that the players play by the rules of the game. As for the judge, this means ensuring that the rules of

procedure and evidence are complied with. When all issues have been raised, the judge makes a decision as to which party wins. Language therefore plays a very important role as it is only through the medium of language, both in its written and oral form that justice is met and served.

### 3.3.2 Courts of Law and their Jurisdiction

In the instance of the legal system, the playing field is the courts of law. What and which cases are heard and in which court the case is to be heard, depends largely on the jurisdiction of the court. Jurisdiction refers to the right to decide, that is, the rights and power of the court to try a case. There are four types of jurisdiction: original, appellate, supervisory, and referral (see Figure 3.2).

**Figure 3.2 Types of Jurisdiction**



Original jurisdiction refers to the right and power to try a case in the first instance; that is, to hear a case for the first time. Appellate jurisdiction refers to the right and power to hear and grant appeals. Supervisory jurisdiction refers to a courts power to supervise, oversee and control the activities of another court below it in hierarchy. Finally, referral jurisdiction refers to the power to determine or decide on an issue that has been referred to the court by a court below it in hierarchy.

### **3.3.2.1 The Federal Court**

The Federal Court is the highest in hierarchy of all the courts. Previously, the Supreme Court was the highest in court hierarchy. However, the Supreme Court was renamed the Federal Court in 1994. The head of the Federal Court was originally the Lord President (pre-1994). Today, the head of the Federal Court is the Chief Justice. The Chief Justice is appointed by the *Seri Paduka Baginda Yang di-Pertuan Agong* (King), at the recommendation of the Prime Minister and after consulting the Conference of Rulers. The candidate must be a person who is qualified to be a Federal judge. The Chief Justice is joined by the President of the Court of Appeal, the two Chief Judges of the High Court, and four other judges, this accounting for the seven Federal Court judges. At any one time, a case or trial is presided over by a minimum of three judges, or more, depending on the importance of the case. But the number is always no less than three, and an odd combination (3, 5, or 7), since decisions are based on a majority vote.

One of the main functions of the Federal Court in its original jurisdiction ‘to the exclusion of any other court’ is to determine whether a law made by Parliament or a State Legislature is invalid. This is based on the ground that it makes provision to a matter with respect to which Parliament or, as the case may be. The State Legislature has no power to make the law. The Federal Court has exclusive jurisdiction to determine disputes between States or between the Federation and any State.

In addition, the High Court may also refer to the Federal Court any constitutional question, which arises in any proceedings before it and may stay the proceedings to await the decision of the Federal Court. The Federal Court evidently is the absolute interpreter of the Constitution and the final arbiter of disputes arising from it.

Finally, the Federal Court also makes final judgments on legal matters, which come before it on appeal from the Court of Appeal. It is the ultimate court in civil, criminal

and constitutional matters. Article 121 (1) of the Federal Constitution provides that the Federal Court shall have appellate, original, consultative or advisory, and referral jurisdiction but it does not cover those matters under the jurisdiction of the Syariah Court.

### **3.3.2.2 The Court of Appeal**

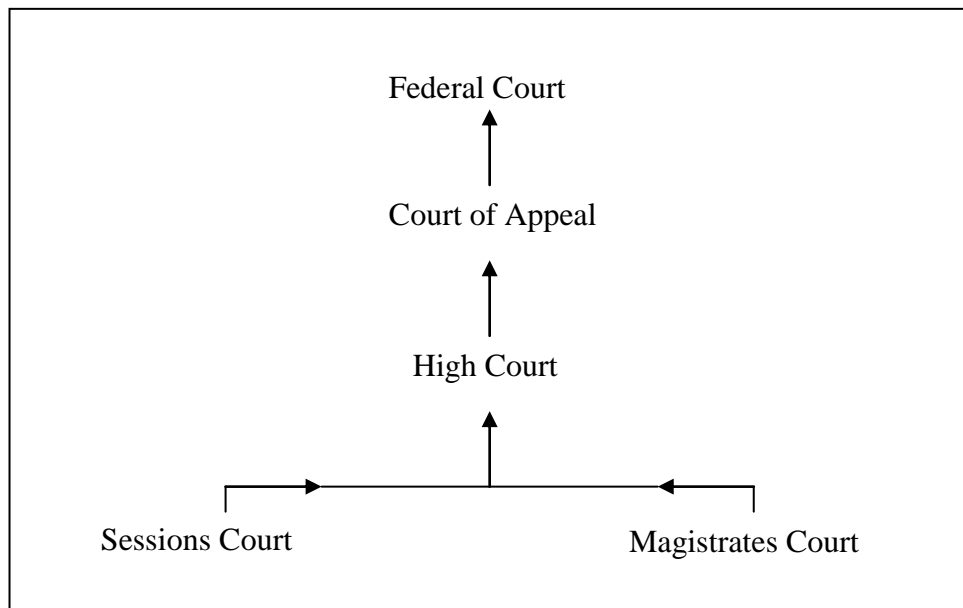
Next in hierarchy is the Court of Appeal. Any party that is dissatisfied with the outcome of a case has the right to appeal, and the court that rehears the case is called the appellate court. Article 121(1B) of the Federal Constitution provides the Court of Appeal with appellate jurisdiction to hear both civil and criminal matters originating from the High Court or the Sessions Court (criminal cases only).

The head of the Court of Appeal is the President of the Court of Appeal, who is appointed in a similar fashion to that of the Chief Justice. Ten other judges join him. As with the Federal Court, a case or trial is presided over by at least three judges, and decisions are based on a majority vote.

The Court of Appeals has original, appellate, and supervisory jurisdiction, although, with regards to civil cases, the court may not hear a case where the award is less than RM250,000 (US\$1 = RM 3.80).

Each court in Figure 3.3 the Federal Court has a right to transfer appeals to a court above it in the hierarchy.

**Figure 3.3 Hierarchy of Court Structure**



### **3.3.2.3 The High Court**

The High Court is also a superior court. In Malaysia, there are two high courts: The High Court of Malaya in West Malaysia, and The High Court of Sabah and Sarawak in East Malaysia. All cases are disposed of, or heard by, a single judge.

Although the high court has an unlimited jurisdiction over civil and criminal cases, it deals only with cases that are outside the jurisdiction of the subordinate courts. As such, a person who is tried in the high court usually has satisfied one of these three pre-requisites:

- (i) been committed for trial after a preliminary inquiry,
- (ii) his case has been transferred up from a subordinate court,
- (iii) has been charged under a security offence, or the Dangerous Drugs Act, 1952

The High Court has the jurisdiction to hear criminal cases, which carry the death penalty. Specifically, the jurisdiction of the High Court in criminal cases is provided in Sections 22, 26, 31 and 35 of the Courts of Judicature Act, 1964.

The High Court has the jurisdiction to hear civil cases in respect of:

- (i) divorce and matrimonial causes
- (ii) admiralty
- (iii) bankruptcy and company cases
- (iv) appointment and control of guardians of infants and their property
- (v) appointment and control of guardians of disabled persons and their estate
- (vi) grant of probates of wills and letters of administration

Together with bearing the burdens of serious cases, the high court has the power to advise the subordinate courts regarding any questions that arise relating to the provisions of the constitution, review decisions made by quasi-judicial bodies, and issue writs of *habeas corpus*, *mandamus*, *quo warranto*, and *certiorari*, and also to direct sale of land that has been charged or mortgaged.

In addition to the original and supervisory jurisdiction, the High Court also has appellate jurisdiction. In the instance of criminal cases, the high court is empowered to hear appeals from the subordinate courts, if the case involves a fine of not less than RM25; the accused has not pleaded guilty and been convicted; or the accused was acquitted. In the instance of civil cases, the case must not involve a settlement more than RM10,000 excepting maintenance of spouse and children.

#### **3.3.2.4 The Sessions Court**

The Sessions Court is the top most court in the hierarchy of subordinate courts. This court has jurisdiction over both civil as well as criminal cases, and can try all criminal offences other than those that are punishable by death. As for civil cases, the Sessions Court has unlimited jurisdiction to hear suits where the amount in dispute does not exceed RM250,000 and with the consent of the parties involved, try cases exceeding RM250,000 but the award is limited to the statutory limit of RM250,000 only.

In keeping with its position at the top of the Subordinate Courts hierarchy, the Subordinate Courts Acts also gives the Sessions Court judges supervisory powers. That is, the judges may call for and examine the record of any civil proceedings before a Magistrates or *Penghulu* Court within the local limits of jurisdiction of the Sessions Court of which he is a judge (Ahmed and Ahilemah, 1987:286). The purpose of this is to check on the correctness, legality and propriety of any decision recorded or passed, as well as to ensure the regularity of the proceedings. If the judge finds any illegalities, improprieties, or irregularities, then he has the powers to forward the record for the attention of the High Court, accompanied by any necessary remarks. The High Court will then give such orders that are necessary to secure that substantial justice is done.

Sessions Court judges are members of the Judicial and Legal Service of the Federation who have been appointed by the King on the recommendation of the Chief Justice.

### **3.3.2.5 The Magistrates Court**

Second in hierarchy of the Subordinate Court is the Magistrates Court. The Magistrates court has the jurisdiction to try civil and criminal cases, as well as issue summonses and warrants. Further jurisdiction then depends on the class of the magistrate. There are two classes of magistrates:

- (i) a First Class Magistrate which is appointed at the recommendation of the Chief Justice, and
- (ii) a Second Class Magistrate which is appointed by the Ruler or Yang di-Pertua Negeri.

A First Class Magistrate has the jurisdiction to try all offences where the maximum term of imprisonment provided by law does not exceed ten years or which are punishable with a fine only or cases involving robbery or housebreaking. Generally, a First Class Magistrate may pass any sentence allowed by law not exceeding:



- (i) five years imprisonment
- (ii) a fine of RM10,00
- (iii) whipping up to twelve strokes
- (iv) any sentence combining any of the sentences mentioned earlier

However, in some cases, for example, the Dangerous Drugs Act 1952, Customs Act 1967 and Betting Act 1953, the Magistrate may impose a fine higher than RM10,000.

In contrast, the jurisdiction of a Second Class Magistrate's jurisdiction is much smaller. He may try any offence where the maximum penalty is 12 months' imprisonment, or punishable only with a fine. In sentencing, a Second Class Magistrate may award a prison sentence of not more than 6 months' imprisonment, or a fine not exceeding RM1,000 or a combination of both. In civil disputes, the magistrate is also limited to actions or suits for the recovery of debt amounting to not more than RM3,000.

#### **3.3.2.6 The *Penghulu* Court**

Established under the Subordinate Courts Act, 1948, the *Penghulu* Court can be found only in West Malaysia. The court is limited to the *mukim* (district) where the *Penghulu* resides, and as such, the *Penghulu* is appointed by the Ruler of the specific state in which that *mukim* is situated.

The civil jurisdiction of the court is provided under Section 94 of the Subordinate Courts Act, which states that a *Penghulu* Court may hear and determine original proceedings of a civil nature in which the plaintiff seeks to recover a debt or liquidated demand in money, with or without interest, not exceeding RM50 and in which all the parties to the proceedings are persons of an Asian race, who speak and understand the Malay language. The criminal jurisdiction of the *Penghulu* is limited to the trial of offences of a minor nature. This is normally specified in his letter of authority, and for

which the punishment is a fine not exceeding RM25. As with civil cases, penalty may only be applied to persons of an Asian race. In the event that a lawful order by the *Penghulu* is not obeyed, the issue may be brought up to a Magistrates Court.

A person who is charged in a *Penghulu* Court, has a right to choose to be tried in a Magistrates' Court. In the event that this option is taken up, the case shall be transferred from the *Penghulu* Court to the Magistrates Court.

### **3.3.2.7 Courts with Specific Jurisdiction**

Other than the courts of law mentioned earlier, there are four other courts that deal with a and limited jurisdiction. They are as follows:

(i) **Juvenile Court (West Malaysia and Sabah)**

This court tries offenders who are below 18 years of age. It is presided over by a First Class Magistrate who is assisted by two assessors. The court is not open to the public, as a measure to safeguard the privacy of minors. If the offender is found guilty, a conviction is not recorded against him, and he will not be put in prison. Instead, the offender is placed in the custody of an approved school until the age of 21 years.

(ii) **Court-Martial (Military Court)**

This court tries offenders who are members of the armed forces, and is presided over by the President of the Court-Martial, and two or more officers. The court rules similar to a civil court.

(iii) **Syariah Court**

The Syariah Court is a Muslim court, whose main function is to enforce religious observance and to apply family law, especially in matrimonial practice.

(iv) **Native Court (Sabah and Sarawak)**

The jurisdiction of the court is the native laws of the specific ethnic groups in the states.

### **3.3.2.8 Tribunals other than Courts of Law**

In addition to the courts of law, there are quasi-judicial bodies as discussed in the following:

- (i) **Special Commission for Income Tax**  
To hear appeals from taxpayers who are not satisfied with the assessments made by the assessment officers.
- (ii) **Public Services Disciplinary Board**  
The board's main function is to maintain discipline among members of the general public services of the Federation, and to decide on matters of dismissal, reduction of rank, salary, and deferment of increment.
- (iii) **Industrial Court**  
The purpose of this court is to decide on trade disputes, and come up with solutions, so that industrial peace can be achieved quickly.
- (iv) **Professional Disciplinary Bodies**  
The objective of these bodies is to maintain professional standards, ethics, and discipline amongst the practitioners of the specific profession. An example of this type of body is the Bar Council.

### **3.4 The Legal Profession**

The Judicial Services, the Legal Services, and Legal Practitioners make up the legal profession.

#### **3.4.1 The Judicial Services**

The Judicial Services comprises members of the judiciary; that is, the judges, the registrars and other officers of the court. In the administration of duty, judges are not liable for words spoken during the conduct of judicial proceedings, under Section 14 of the Courts of Judicature Act, 1964, provided that they are said in good faith at the time of utterance. The same immunity applies to officers of the court acting on the orders of the judge, or in the administration of court business.

#### **3.4.2 The Legal Services**

The Legal Services comprises the Attorney General, the Solicitor General and Parliamentary Draftsman, the Judicial and Legal Commission, and the Legal Aid Bureau.

(i) **Attorney General**

The Attorney General is a civil servant who is qualified to be a judge of the Federal Court appointed by the *Seri Paduka Baginda Yang di-Pertuan Agong* (the King) at the advice of the Prime Minister. The duty of the Attorney General is to advise the *Seri Paduka Baginda Yang di-Pertuan Agong* or Cabinet or any Minister on legal matters. In sum, he is the Legal Adviser to the Executive.

The Attorney General has the power to institute, conduct, or discontinue any proceedings, although this jurisdiction does not extend to that of the Syariah Court, Native Courts, or Court-Martial. He also functions as the Public Prosecutor, with full powers to commence and carry out prosecutions in criminal proceedings.

(ii) **The Solicitor General and The Parliamentary Draftsman**

The Solicitor General assists the Attorney General in his duties. He stands in the Attorney General's stead when he is unable to do his duties. The Parliamentary Draftsman prepares drafts on Bills that are to be introduced in Parliament by Ministers.

(iii) **Judicial and Legal Commission**

The Judicial and Legal Commission is responsible for overseeing the appointment, transfer, and promotion of officers in the public services who are required to have legal qualifications. The commission consists of the Chairman of the Public Services Commission, the Attorney General, and one or more members appointed by the *Seri Paduka Baginda Yang di-Pertuan Agong* in consultation with the Chief Justice. The persons who are qualified to serve the commission are persons who are or have been judges of the superior courts, or a judge of the Supreme Court (before independence).

(iv) **Legal Aid Bureau**

The Legal Aid Bureau is a body that provides legal counsel for persons who are not represented in court because they cannot afford to pay for counsel.

### **3.4.3 Legal Practitioners**

Legal practitioners comprise Advocates and Solicitors. In Britain, advocates are referred to as Barristers, who deal with all matters of litigation. Their main function is to go to court and argue cases. The Solicitor, on the other hand, handles all the preparatory stages of a court action, in addition to other non-litigious matters like contracts, wills, and conveyance. Although a solicitor needs to have a current practicing certificate, he is not qualified to represent clients in court.

Though these two roles are fairly distinct in Britain, there is no division between them in Malaysia. A practicing lawyer in Malaysia is called both an advocate as well as a solicitor. In order to go into practice, legal professionals need to be members of the Bar. For this, they need to be ‘called to the Bar’, that is, to be admitted as members.

There are two Bars in Malaysia; one for West Malaysia, and one for East Malaysia. A member of the West Malaysian Bar is not entitled to practice in East Malaysia without a license to practice in that specific state, and vice-versa. In addition, whilst the members of the West Malaysian Bar are allowed to practice inter-state on the peninsula, Sabah members of the East Malaysian Bar are not allowed to practice in Sarawak, and vice-versa.

### **3.5 The Legal Process**

A client never just walks into the office of a legal firm. Usually, he will come on referral. Since the advertising of legal services is not allowed, then the potential-client will usually have heard of the firm or legal professional by word-of-mouth. As a result, when the client first enters the office, he will already have the name of a specific lawyer to refer to. Which language will be used greatly depends on the situation at the time. When the client approaches the receptionist and makes his request, the receptionist will respond in the language initiated by the client. Subsequently, the receptionist will introduce the lawyer to the client in that established language, and any further discussion will probably take place in that language.

After the issue of contention has been established, it is usual for the client to leave the matter in the lawyer’s hands, since legal matters are generally too complex for the common man to understand. In any case, the client’s interest in the whole matter is usually to get compensation for damages incurred or for aid in defence of the charge.

Further communication then usually takes place between the legal professionals of both sides that is, lawyer to lawyer.

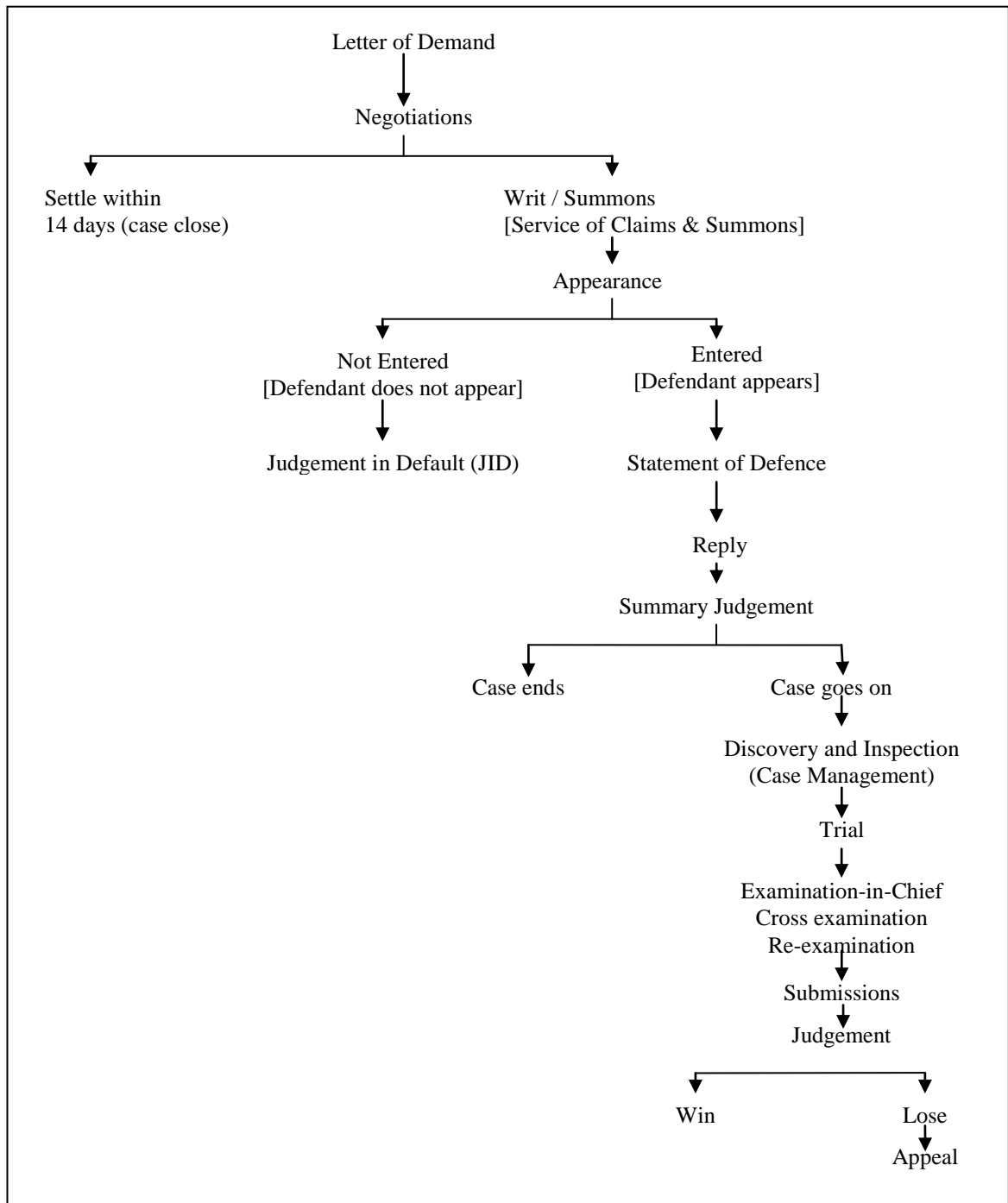
### **3.5.1 Case Process**

This study aims to examine language choice and use at each step of the way in a civil or criminal matter. Therefore, it is important to understand the different processes that are part of a civil matter or criminal matter. It would also be necessary to see what happens in the chronology of the processes. Language is an integral part in each of these processes. The following sections discuss these processes in detail.

### 3.5.1.1 Civil Matter

The processes involved in a civil matter are attached in Figure 3.4.

**Figure 3.4 Civil Matter Process**



#### (i) Letter of Demand

The first process in any civil case must be the Letter of Demand. This is absolutely essential, since it sets the scene for the whole case. Essentially, the Letter of Demand

will inform the defendant that such-and-such matter has occurred, resulting in damages to the plaintiff. Blame is apportioned to the defendant, and payment of damages demanded. The defendant will be given fourteen days to respond to the demand otherwise the matter will be taken to court.

The most important thing in the Letter of Demand is the sum that is being demanded. This sum must be fixed, and cannot be changed after the letter has been sent out. The final settlement can be less than sum demanded, but not more.

Usually, the average law-abiding man will, upon receipt of the Letter of Demand, feel reasonably pressured to settle the sum without incurring the inconvenience of trying to settle the matter in court. In which case, negotiations will take place between both parties, and a sum will be negotiated upon. Parties are strongly encouraged to settle outside of court.

## **(ii) Negotiation**

The process of negotiation will result in letters going back and forth between the legal professionals, and these letters are usually written in English. These letters are confidential, and carry the seal of confidentiality in the term **WITHOUT PREJUDICE**, which is typed in bold at the top of the letter. This means that nothing that is brought up in the letter can be used as evidence in court. For instance, the defendant may accept blame, for the purposes of going ahead with negotiation, but if the matter is not to be settled in an amicable manner and is taken to court, this admission of fault cannot be used against him, or even be brought up in court.

If, after negotiation, the matter cannot be settled, then the case will go to court. The same will also happen if the defendant has not responded to the Letter of Demand. Nonetheless, even if the case goes to court, the process of negotiation still can, and



does, continue, and both parties can reach a settlement at any time of the legal proceedings. This can even take place up to the last minute prior to the judge pronouncing judgement.

Usually, in cases that involve banking loans, only 20 per cent of cases are settled outside of court, with 80 per cent going straight to court because there was no response to the Letter of Demand. In personal injury cases, a greater proportion will be settled out of court, since there is potential in these cases for negotiation.

### **(iii) Writ/Summons**

The first process once both parties decide to go to court is the Writ/Summons. The Writ (for Superior Courts) and Summons (for Subordinate Courts) is basically a letter of notice to the defendant, stating that action is being taken against him. It is the court version of the Letter of Demand. With the Writ/Summons is appended the Statement of Claims, which states the case at hand, that is, what the whole issue is about. Both the Writ and Statement of Claims are referred to collectively as the Summons. The Summons is filed with the court, and a copy is served on the defendant, with notice that the defendant has to enter an appearance in court within 14 days of the Summons being served upon him.

As proof of having served the Writ, an Affidavit of Service (AOS) is later filed with the court. The AOS is basically a declaration to the fact that something has been served, and is prepared after anything has been served. It consists of a statement attesting to the fact that something, in this case the Summons, has been served, and includes the testament of the server, as well as any evidence of postage, for example, registered mail confirmation. The AOS is affirmed by a Commissioner of Oaths, and becomes a legally binding document.

The plaintiff will then send an additional reminder to the defendant regarding the court date.

**(iv) Appearance**

On the date stated in the Summons, the defendant is supposed to enter an Appearance. The defendant does not have to appear in person, but his counsel/lawyer must at least be there to represent him. If an appearance is not entered, that is, if neither the defendant, nor his lawyer is at the court at the appointed time and place, then the appearance is recorded as not entered.

**(v) Judgement in Default**

If appearance was not entered, then the case goes straight into a Judgement in Default (JID). The JID takes place when there has been no challenge to the case (since the defendant did not respond). The judge will then give judgement *in absentia* and that requires the defendant to pay the amount demanded by the plaintiff. The JID in effect, serves to move blame to the defendant.

**(vi) Statement of Claim/Statement of Defence**

If, however, the defendant or his lawyer is present at court, an appearance is entered. The defendant then puts up a challenge to the plaintiff's Statement of Claim, by serving a Statement of Defence upon the plaintiff. The Statement of Defence must answer each and every issue brought up by the Statement of Claim in numerical order. The plaintiff must Reply to the Statement of Defence within 14 days of it being served. These last two steps may be repeated several times, as claims and defence are argued.

**(vii) Summary Judgement**

If the civil matter is still not settled, and if the judge feels that there is sufficient cause to proceed with the case, then the judge will give a *Summary Judgement*, under Order 26A of the Lower Courts, or Order 14 of the Higher Courts, for the case revise.

### **(viii) Pleadings**

The Statement of Claim, Statement of Defence, and Reply are known as Pleadings. Whatever either party intends to bring up in court must be entered in the Plea; otherwise it will be inadmissible in court. Therefore, the contents of the Pleadings are very important and this process is often repeated several times.

### **(ix) Discovery and Inspection**

Before the trial commences, both parties get together for the Discovery and Inspection session. This gives both sides the opportunity to see and inspect all non-privileged documents. After this inspection, no new evidence may be brought in.

### **(x) Trial**

There are three steps that occur and recur within the trial in the course of questioning a witness. These steps include the following:

#### **(a) Examination-in-Chief / Cross-Examination / Re-examination**

- (i) Examination in Chief (EIC), which is conducted by the counsel for the plaintiff.
- (ii) Cross-Examination, which is conducted by the counsel for the defence
- (iii) Re-examination, which is conducted by the counsel for the plaintiff.

This process is repeated for each and every witness for each case.

### **(xi) Closing Arguments**

After all the witnesses have been examined/ questioned, then both parties present their closing arguments.

### **(xii) Judgement**

The judge will normally choose to *Reserve Judgement*; that is, to delay judgement, in order to review the facts of the case. Later, the judge will give his *Judgement*, in which he apportions blame and damages if necessary.

### **(xiii) Appeals**

If either party is dissatisfied with the judgement, then they may appeal. An 'Intention' to 'Appeal' is served and filed in the court higher than the court in which the case took place. For instance, a Magistrate's Court case would be appealed to the High Court. This notice of appeal must contain valid reasons for an appeal. For instance, it may be based on the matter of a finding of law; that is, where the judge is thought to have wrongly applied the law. Or, the appeal may be based on a finding of fact, where the evidence or reaction of a witness is considered suspect. Whatever the reason, however, no new evidence may be brought into play in the appeal.

#### **3.5.1.2 Criminal Matter**

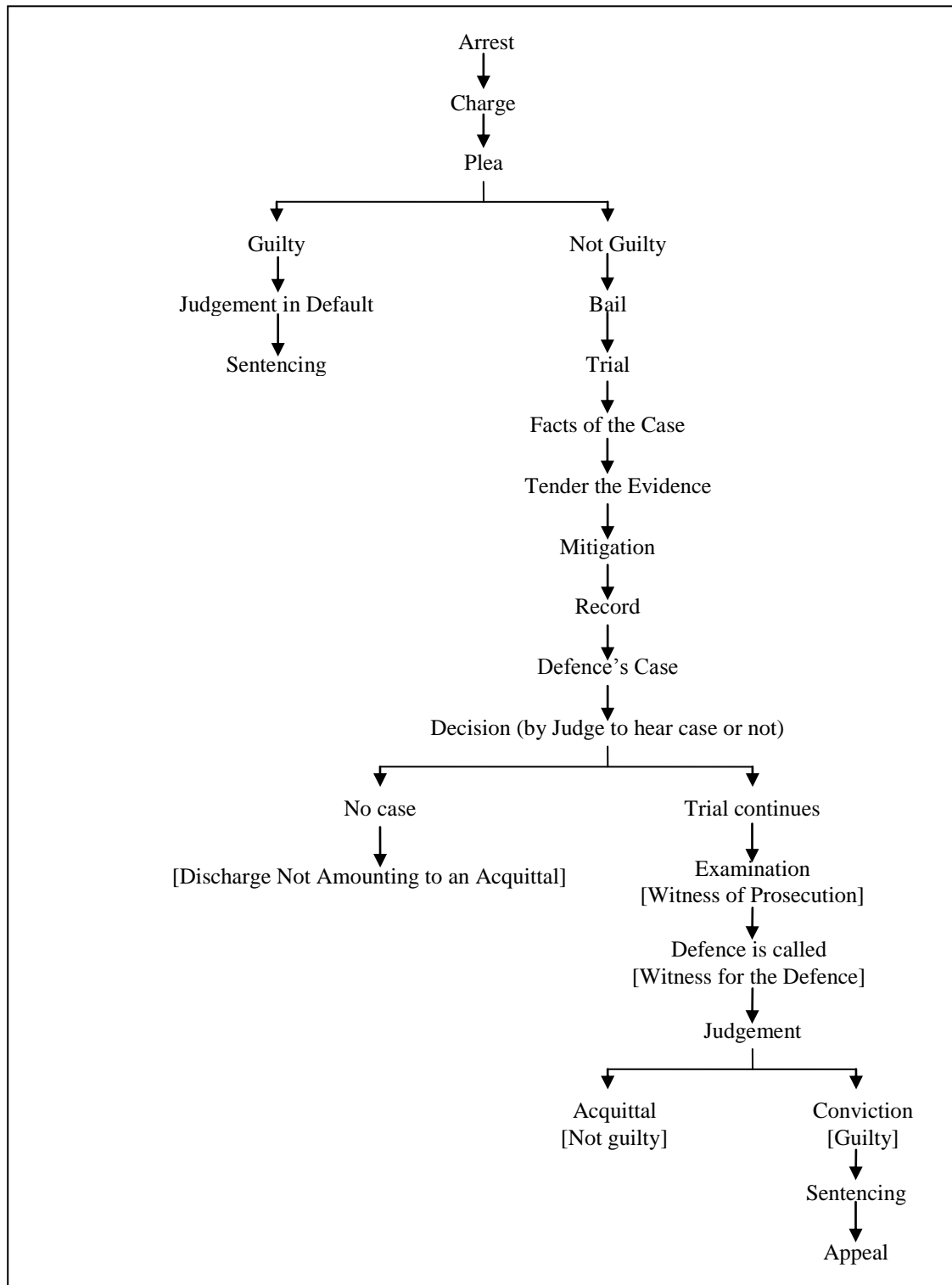
There are a number of ways in which a person may find himself involved in a criminal case. One example is when he is caught in the act of stealing, and is arrested. This person is then taken to the police station of the area where the crime occurred, and he will be cautioned. This means that he will be told that anything that he says may be used as evidence against him. If the person chooses to say anything after this caution, it is taken down and considered as a cautioned statement.

Another way a person may find himself involved in a criminal case is when a warrant of arrest or summons is issued against him. This is done when the State feels that it has sufficient evidence against him to warrant an arrest. The State can also request a suspect to come to a police station for questioning. At this stage, the suspect has not as yet been charged with an offence. Under Section 112 of the Criminal Procedure Code, a warning is issued to the suspect, stating that anything he says may be used to incriminate him. If he so chooses to say anything it could incriminate him and provide the State with sufficient evidence to arrest him. He could then be charged with a criminal offence.

Thereafter, his status changes from suspect to accused, and, under Section 113, he is given a caution.

The processes involved in a criminal matter are attached in Figure 3.5.

**Figure 3.5 Criminal Matter Process**



**(i) Arrest**

The first step with the arrest then in a criminal case is when the State institutes a charge against a person. The State/government are the ones who can institute a charge against a person. This is different from a civil matter. In a civil matter the adversaries are the Plaintiff and Defendant. In a criminal matter, the adversaries are the State (represented by the Public Prosecutor) and the Accused. Criminal cases can also be differentiated from Civil ones by their labelling: for example, Civil: *Adam and Eve*; Criminal: *State vs. Adam*.

**(ii) Plea**

The accused replies to this charge in the court, in what is known as the Plea. All charges for whatever crime is read in the court. The nature of the crime will decide as to whether the matter will be heard in a subordinate or superior court. The location of the court the accused goes to depends on the jurisdiction of the arresting police station, that is, the area in which the crime has taken place. At the court, the charge will be read, and the judge will ask the accused how he pleads. There are two ways in which an accused may respond: *Guilty*, or *Not Guilty*.

**(a) Plea of Guilty**

If the accused pleads guilty, that is, that he enters an admission of guilt, then a 'Judgement' in 'Default' (JID) will be made. If, at this time the accused has still not obtained the services of a lawyer because he cannot afford to, then the Legal Aid bureau will provide him with one. This voluntary or *pro bono* service is only applicable to an accused if, and only if, he has pleaded guilty to the crime. The duty of that lawyer is to ensure that the accused gets a reasonable sentence.

During sentencing, it is the duty of the court to ensure that the accused *understands the nature and consequences of his plea* (UNCP). This means that the accused knows what

he is being accused of, understands the crime, and the punishment that will ensue. In order to ensure that the accused understands this, an interpreter is often called to assist. If it turns out that the accused had a reason for committing the crime, then he cannot plead guilty. For instance, if the crime was for the theft of a vehicle and the accused says that he took it to rush a friend to hospital, then there are extenuating circumstances that require his reasons be examined at a trial. Therefore, he cannot plead guilt, and the court cannot sentence him based on those facts. In this case then, the accused will go to trial.

**(b) Plea of Not Guilty**

If, however, the accused does not plead guilty, then the case goes to ‘Trial’. However, an accused need not be detained in jail whilst he awaits his trial. He may be released on bail or a good behaviour bond, that is, a promissory that he will not abscond.

**(iii) Facts of the Case/Tender the Evidence**

At the time the accused is charged and tenders his plea, the Prosecuting Officer (PO), who is the Chief Inspector of the police station under which the jurisdiction of the crime falls, will present the facts of the case, which is the chronological story of the crime. Together with this, the PO will tender the evidence, that is, the item that has been stolen. This is necessary, since the accused must see the evidence involved before he enters his plea.

**(iv) Mitigation/Record**

The counsel for the accused will then provide mitigation, that is, reasons for why bail should be granted, for example, the good character of the accused. The magistrate will then ask the Prosecuting Officer for a record of the accused. This is an account of all the accused’s previous convictions. The record will be tendered, and then a decision will be given by the magistrate as to whether to grant or refuse bail.

There are some differences with murder cases. In a murder case, the plea is not tendered. Instead, when the charge is read to the accused, the only requirement is that the accused understands the charge. After the charge has been read, the Prosecuting Officer will bring the case up to the High Court, where then the plea is taken, and the other usual processes continued.

#### **(v) Trial**

The premise in every criminal trial is to prove beyond all reasonable doubt. This means that it is the duty of the state, represented by the Public Prosecutor is to prove that there is a very strong case that the accused committed the crime. The duty of the defence is to cast a doubt onto the case. Unlike civil cases, there is no discovery and inspection session, and new evidence may be brought in during the case.

#### **(a) Examination/Cross Examination/Re-examination**

The first stage of the trial consists of the Examination. At this stage, only the witnesses for the prosecution are called. As with civil cases, the processes of examination, cross-examination, and re-examination are taken with each witness. During the examination of the witnesses, it is the duty of the prosecution to prove the worthiness of the witness. It is the duty of the Defence Counsel to create doubt on the character, honesty, or statement of the witness.

#### **(b) Judgement**

After all the witnesses for the prosecution have been examined, a Judgement will be given. In this judgement, the judge will determine whether or not to allow the prosecution to proceed with the case. He determines whether or not there is a *prima facie* case - that is, whether or not there is a high probability ('more probable than not') that the accused did commit the crime and that the prosecution does have a case. The judge will then either rule that there is either no case, or that there is one. If the judge



rules that there is no case, then he will give the accused a Discharge Not Amounting to an Acquittal (DNAA). The DNAA is not the same as a finding of Not Guilty. It basically rules that the case and the accused have been discharged. Therefore, the accused may still be arrested at a further date, as and when the prosecution obtains further or better evidence. If the accused has not been given a DNAA, then the trial continues. After all the witnesses for the defence have been called, the judge will reserve judgement to review the facts of the case. Later, judgement will be given. There are two possible outcomes to the judgement, (i) an acquittal, in which the accused is found Not Guilty and set free, or (ii) a conviction, in which the accused is found Guilty.

**(c) Witness for the Defence**

It is at this stage then that the defence is called. This is the stage at which the witnesses for the Defence are produced and examined, cross-examined, and re-examined.

**(d) Sentencing**

If the accused is found Guilty, then Sentencing will be passed unto him. At the sentencing, the same steps as at a bail-hearing are taken. The steps include mitigation, previous conviction (record), and then passing of a sentence.

**(vi) Appeal**

An Appeal may be made against a sentence. In cases where the sentence is the death penalty, the appeal is automatically processed, without the defence having to request for it.

**3.6 Language Policies and Legal Education**

A true appreciation of the language choice and use patterns of legal professionals will require some understanding of past and present language policies. This would also include the legal training these lawyers have received and information including the

medium of instruction in the institutions where they received their training both locally and abroad.

### **3.6.1 Pre-Independence Language Policies**

Before the colonisation of Malaya by the British, Malaya was a relatively homogenous society, with a single language of communication, BM. In the late nineteenth century and early twentieth century, the British brought in migrant workers from China and India to work in the tin mines and plantations. The number of these immigrant workers was considerable. This resulted in the birth of multicultural and multilingual Malaya. The society thus consisted of peoples of various religions, ethnic backgrounds, and languages.

Prior to British rule, the education system of the Malays consisted of non-formal education, focusing mainly on teachings of the Quran, good behaviour and morality, spiritual knowledge and martial arts. It also included instruction in the rudiments of handicraft, and apprenticeship in agriculture, fishing, and hunting. The more formal system of religious studies was centred on '*pondok*' (hut) schools, and was presided over by an '*ulamak*' (religious teacher).

During the period of British rule, a more formal system of education was established. The British brought in a modern secular education system, which resulted in some schools using English as the medium of instruction and others, the Malay language. At the same time, Malay-medium schools were also established. Education in the Malay-medium (MM) began in 1821 at a branch school of the Penang Free School. By the year 1938, seven hundred and eighty-eight Malay-medium schools had been established in the Straits Settlements and the Federated Malay States. Initially, education in these Malay schools varied little from the '*pondok*' schools with its focus on religious studies.

They placed strong emphasis on religious instruction. This was a strategic manoeuvre on the part of the British to gain the trust of parents, as the curriculum of the MM school appealed to many parents and prompted them to send their children to these schools instead of the '*pondok*' schools. Later, the focus of education in the MM schools shifted to the 3R's; reading, writing, and mathematics.

These MM schools only provided education up to the elementary level. English-medium (EM) schools on the other hand, provided education from elementary, through secondary, and went on to the tertiary level as well. Because the EM-educated had more opportunities to further their education, they were able to enter occupations that were considered important in society, whilst the MM-educated in the main became trainee teachers. This created a cultural and economic gap between the MM-educated and the EM-educated. This socio-economic gap also served to make English important in the eyes of the masses, since it was seen to be the language of the urban elite and the intellectuals.

In 1938, there were 46 government, 59 government-assisted, and 106 private English schools in the Malay Peninsula. These schools were targeted at the urban young, with the objective of training and producing junior administrative officers to support the British administration. Schools like the Malay College at Kuala Kangsar (MCKK), which initially took in sons of royalty and noblemen, used the English language as a medium of instruction. The issue of whether one was educated in English or in Malay at times caused an economic and social divide among the people.

The status and importance accorded to the Malay language declined a little during the British occupation. Besides the EM and the MM education system, the Chinese and Tamils were also allowed to establish their own schools, with the native language in each case, as medium of instruction. Malay was no longer the sole medium of

communication amongst the races. It was, however, the colloquial form of the language which was used by members of all major ethnic groups.

Though it was the government that formulated these policies, it was private individuals and societies set up by the people that promoted the use of the national language. Societies like ASAS 50 (*Angkatan Sasterawan*) in 1950, and the Malay Language Society (*Persatuan Bahasa Melayu*) of University of Malaya in 1955, were established to promote and expand the use of BM. It is the establishment of societies such as these, whose membership was drawn from Malay intellectuals, that played a major role in raising the status of Malay as the national language.

### **3.6.2 Post-Independence Language Policies**

When Malaya achieved independence in 1957, BM (Malay) became enshrined as the national language, as stipulated by Article 152 of the Federal Constitution. Article 152 of the Federal Constitution is as follows:

152. (1) The national language shall be the Malay language and shall be in such script as Parliament may by law provide:

Provided that-

- (a) no person shall be prohibited or prevented from using (otherwise than for official purposes), or from teaching or learning, any other language; and
  - (b) nothing in this Clause shall prejudice the right of the Federal Government or of any State Government to preserve and sustain the use and study of the language of any other community in the Federation.
- (2) Notwithstanding the provisions of Clause (1), for a period of ten years after Merdeka Day, and thereafter until Parliament otherwise provides, the English language may be used in both Houses of Parliament, in the Legislative Assembly of every State, and for all other purposes.
- (3) Notwithstanding the provisions of Clause (1), for a period of ten years after Merdeka Day, and thereafter until Parliament otherwise provides, the authoritative texts –

- (a) of all Bills to be introduced or amendments thereto to be moved in either House of Parliament; and
  - (b) of all Acts of Parliament and all subsidiary legislation issued by the Federal Government, shall be in the English language.
- (4) Notwithstanding the provisions of Clause (1), for a period of ten years after Merdeka Day, and thereafter until Parliament otherwise provides, all proceedings in the Federal Court, the Court of Appeal, or the High Court shall be in the English language:
- Provided that, if the Court and counsel on both sides agree, evidence taken in the language spoken by the witness need not be translated into or recorded in English.
- (5) Notwithstanding the provisions of Clause (1), until Parliament otherwise provides, all proceedings in subordinate courts, other than the taking of evidence, shall be in the English language.
- (6) In this Article, 'official purpose' means any purpose of the Government, whether Federal or State, and includes any purpose of a public authority.

(Federal Constitution, 2000:133)

As set by the laws of parliament, BM was required to be the written language in official communication. However, outside of official communication, no one was hindered or prevented from learning, teaching, or using, any other language. Thus, this article safeguarded the rights of other ethnic groups to maintain their language and culture, whilst at the same time promoting the use of the national language.

The Malays have always had a sentimental attachment to BM, insisting that it be the national language. Politicians supported their cause, as the Malays were the largest voting majority. But eventually, as the other races gained political ground, they began to call for the use of Chinese, Tamil and English. This issue generated some friction amongst the three major races, and was one possible cause of the racial riot of May 13<sup>th</sup> 1969. The riot highlighted the urgent need for unity, harmony, and stability amongst the people. As a result, the government enacted a law, which stated that "the status of BM

as the national language may no longer be questioned [the issue to] forever be removed from the arena of public discussion” (Constitution Amendment Act, 1971).

However, 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. In order to further promote the use of BM as the national language, and from there, expand its common use amongst the masses, the government established the *Dewan Bahasa dan Pustaka* in 1956. The government also made BM the medium of instruction in schools and the medium of communication in the administration of the nation.

In 1957, the ASAS 50 sent a memorandum to the government regarding the Education Report of 1956, calling for a single schooling system, one that used only BM as the medium of instruction from the primary up till the tertiary level.

Working in tandem with the new nation’s national aspirations, the Report of The Education Committee, 1956, was the result of a committee that was set up under the then Honourable Minister of Education, Dato’ Abdul Razak bin Dato’ Hussein, to study the existing education systems. This committee proposed a new national educational policy that made BM the national language and the medium of instruction. This report is more commonly known as the *Razak Report*, and was enacted in parliament as the Education Ordinance of 1957.

This report recommended that the teaching of BM and the learning of BM by all pupils shall be a condition of government-assisted schools. In order that this recommendation was followed, the government had to ensure that there would be enough teachers qualified to teach BM. For this reason, the report also recommended that a Language College (*Maktab Perguruan Bahasa*) be set up to train teachers to teach BM. The institute would have a dual function of not only training BM language teachers, but also

that of conducting research into languages found in Malaya and the teaching of these languages.

It also recommended that qualifications in BM were necessary. The first of these was a requirement that teachers exhibit a certain level of proficiency in the BM language as a requirement for teaching in government secondary schools. The second was that BM be a compulsory subject at the Lower Certificate and National Certificate of Education national examinations.

Besides these stringent requirements, the report also recommended a way of promoting the learning of the national language (BM), by way of providing incentives and rewards for the attainment of adequate proficiency in the language. This required that proficiency in BM be a:

- (a) necessary qualification at the various levels of entry into the government service;
- (b) factor to be taken into consideration in the selection of pupils to secondary schools, and be made compulsory in all examinations that are organised by the government;
- (c) requirement for anyone aspiring for a scholarship from public funds;
- (d) compulsory requirement in teacher-training courses and examinations.

In order to implement BM as the national language successfully in the shortest period of time, the report recommended that immediate steps be taken to ensure that the standards of BM language teaching in secondary schools be raised. It was also recommended that the BM language be made a 'principal' subject in the Higher School Certificate examination. In addition, for the study of BM, special bursaries were provided for students studying BM at universities. Specialised courses in BM language were also introduced in teacher training colleges.

Whilst the implementation of the national language at the administrative and adult levels had been set, it was felt that the biggest challenge would come from the education of the young. For that purpose, the report defined the levels and types of schooling, plus their medium of instruction.

There would basically be two levels of schooling: primary, and secondary. The first level, the primary level, would consist of six years of education, for children aged six to thirteen years, and be divided into two types, Independent Primary Schools, and Assisted Primary Schools. Assisted Primary Schools are different from Independent Primary Schools in that they receive aid from public funds. However, both are subject to inspection and to the general rules relating to schools as laid down by legislation.

Primary-level education is further divided into two types; national-type, which has BM as the medium of instruction, and vernacular-type primary, which has vernacular languages as the medium of instruction. Despite the variety in the medium of instruction, BM would be a compulsory subject. The same requirement was made of English, as it was felt that the lack of proficiency in the English language would be a disadvantage to students at higher levels of education, as well as for employment.

Secondary-level education was also divided into two sections, independent secondary schools, and direct grant secondary schools. Direct grant secondary schools would come under the control and direction of the Minister for Education, and like the primary schools, both would come under the inspection of the government.

The secondary schools are further divided into two types, vocational education, and full secondary education. The vocational school is designed to prepare students for specific employment, and provides education in fields such as agriculture, animal husbandry,



and domestic science. Full secondary education, on the other hand, is designed for a variety of employment, and also as preparation for further education at the tertiary level.

The non-vocational secondary education system, which takes five to six years of study, is further divided into two sections, a lower secondary level of three years, followed by two years of upper secondary. At the lower secondary level, students are required to sit for, and pass, the Lower Certificate of Education (LCE), in order to advance to the upper level. Students, who are unable to advance, leave for employment or for teacher training colleges to train as primary school teachers. Those who are able to continue their studies to the upper level receive either an academic education tailored for university entrance examinations, or a vocational education, which is tailored towards specific skills for employment.

At the end of the secondary education, all who complete this level is required to sit for an examination, the National Certificate of Education, known as the Federation of Malaya Certificate of Education (MCE) (presently known as *Sijil Pelajaran Malaysia* (SPM)). This examination would contain a compulsory BM paper. To strengthen the position of BM even further, ASAS 50 recommended that an economic value be attached to the language, by requiring that an emphasis be given to having a Pass in the subject as a requirement for employment.

With the system of education stipulated by the *Razak Report (1956)*, the next move was to implement the use of the national language as the medium of instruction. For this, the Ministry of Education undertook a conversion plan. Steady and transitory measures were undertaken in stages. The conversion of Malaysian schools from EM to MM began in 1970. The *Rahman Talib Report, 1960*, reviewed the *Razak Report* and, recommended that the conversion begin at 1962. However, this did not take place until

nearly 10 years later, after the racial riots of 1969. This delay was due to the lack of qualified teachers who could teach in BM.

At the initial phase, all standard one classes of EM schools in the peninsula were converted into MM. This conversion was conducted in stages, with the conversion at every level occurring as the class of 1970 primary progressed up the rungs of primary education. By 1983, the conversion was complete up until the tertiary level, with all instruction in BM. In Sabah and Sarawak, the conversion process started in 1977, and was completed by 1990.

Until 1977, the Lower Certificate of Education could be taken in either BM or English. In 1978, students from Peninsular Malaysia and Sabah sitting for the LCE exam had to take it in Malay. The only exception was in Sarawak where the conversion took place a few years later.

After 1980, the SPM and the PMR examinations were conducted only in BM. The effect of converting all the examinations, including the major ones, into solely BM ensured that BM was learned. It was now an important language to learn and knowledge in BM was essential for the advancement to higher levels of education. Students in EM schools taking the SPM were required to pass BM.

If students wanted to gain admission to universities, students had to sit for the Higher School Certificate (HSC) or the equivalent *Sijil Tinggi Persekolahan Malaysia* (STPM) examination. This school-leaving examination could be taken in English or BM depending on whether one takes the HSC or STPM. In 1982, the HSC could only be taken by candidates in Sarawak, effectively reducing access to alternatives.

But whilst the entire conversion process was relatively successful, it was deemed in 1960 by the *Rahman Talib Report* that for the process to be fully effective, the entire

system needed to be drastically implemented. The building of more secondary schools was recommended to provide more opportunities for students with a MM background to achieve a higher level of education. Further, the use of the BM exclusively as the medium of instruction was recommended, so that the transitional stage would become uniform in the fastest possible time. The use of BM in the training of teachers, as well as in textbooks, was also recommended.

Some recommendations made by the report had been followed. This resulted in the establishment of 363 Malay secondary schools in 1974. In 1968, all Arts subjects taught in Year One at the lower secondary level was taught in Malay. Finally, all EM schools had been converted to MM by 1975.

With the completion of the conversion at the primary and secondary school levels, it was expected that the conversion at the tertiary level would be relatively smooth. This did not necessarily prove to be the case, for even though the students were adept, the teaching staff had not been brought up line with the new system. As a result, the conversion of the process from English to BM at the university level had to be done gradually.

By 1983, all universities were required to use BM as the medium of instruction, because by that time, the intake of students was from MM schools. This did not quite take effect though, as in the case of University of Malaya (UM). In 1965, students had to undergo intensive English classes, in order to follow lectures that were conducted in English at tertiary level. The teaching staff were unable to keep up with the change in medium of instruction. Even today, this may be true as there is nothing in the offer of employment which stipulates fluency in BM as a requirement.

Nonetheless, Malaysian universities did contribute to the use of the national language. Four other universities were established, and together with University of Malaya, became the founding machinery that produced the new educated classes. The four universities are as famous:

- Universiti Sains Malaysia (USM) (established in 1969),
- Universiti Kebangsaan Malaysia (UKM) (established in 1970),
- Universiti Pertanian Malaysia (UPM) (in 1971), and
- Universiti Teknologi Malaysia (UTM) (established in 1972).

Universiti Kebangsaan Malaysia was established because University of Malaya was unable to solely use BM as a medium of instruction. As a result, Universiti Kebangsaan Malaysia was the only university that from its establishment incorporated BM as the medium of instruction. Today, most government universities have incorporated BM as a medium of instruction, with a few exceptions being where the lecturer is a foreigner or when the field of study is in the field of science and technology. However, there are privately funded universities in Malaysia who use the English language as a medium of instruction.

### **3.7 Language Use in the Legal Sector**

The legal history of Malaysia is based on the Indian penal code, which itself was taken from the British legal system. Thus, its principles were set in the English language. This applied not only to the legal system, but also to that of the government and the administration, founded upon the system of parliamentary democracy and civil service, as practised in England.

Contemporary Malaysian law....is a hybrid....More often than not it also expresses itself in a foreign language, including the terminology. In the case of Malaysia, the language is English, with the Malay language increasingly developed to express and accommodate the law.

(Wu Min Aun, 1999: 168)

Effectively, the use of English in the legal workplace should have ended, yet to a certain extent, it still prevails nearly thirty-five years. Nonetheless, efforts have been made to formalise legal terms, in an effort to encourage and support its use in the courts of law.

Currently, all legal professionals are required to use BM in the Courts. The use of English is limited to the use of certain terms only. Submissions and judgments are required to be written and delivered in BM in courts. The use of English is only permissible after an oral application has been made to the judge. However, in the interests of justice, witnesses are allowed to use a language other than BM (Article 152, Subsection 4, Federal Constitution, 2000:133). Article 152 of the Constitution, Section 4 states that for a period of 10 years after independence, and thereafter unless otherwise determined by parliament, all cases (with the exception of evidence given by witnesses) in the Federal Courts, High Courts, and Subordinate Courts, are to be in BM.

Initially, the move to use BM in the courts was viewed with scepticism. Indeed, a former Bar Council president urged caution in this respect and said that we must be cautious and not be hasty, because English has been in use for a long time. He further stated that the process of conversion must be implemented in stages, more through the form of an evolution than that of a revolution, because there is still a paucity of reference material available in BM.

The result of hesitations such as the one stated has resulted in the following situation:

Four decades have passed since independence, yet the national language has still not been fully enforced in the law courts. Independence was the start-off point for the regaining of a nation's pride and honour – of sovereignty-yet this should not be the start and end of it. Other things too, should be extensions of sovereignty-like the use of language.

(Zaid Ibrahim, 1989)

History has shown that BM was used extensively in the states of Kedah, Perlis, Kelantan, Terengganu, and Johor in all matters official; meetings, correspondence, law,

as well as judicial proceedings. It is also worth noting that the Malacca law and administration were in the Malay language as far back as 600 years ago. This is evidence that the language has the ability to support and meet the requirements of the legal sector.

In the years 1963 and 1967, the National Language Act was amended. Section 8 of the National Language Act 1963-1967 reads as follows:

All proceedings (other than the giving of evidence by a witness) in the Supreme Court, the high court or any subordinate court shall be in the national language or in the English language or partly in the national language and partly in the English language:

Provided that the court may either of its own motion or on the application of any party to any proceedings and after consideration the interests of justice those proceedings, order that the proceedings (other than the giving of evidence by a witness) shall be either wholly in the national language or wholly in the English language.

(Federal Constitution, 2000:134)

This section was repealed and substituted with effect from 30 March 1990 with the following:

All proceedings (other than the giving of evidence by a witness) in the Supreme Court, the high court or any subordinate court shall be in the national language.

Provided that the court may either on its own motion or on the application of any party to any proceedings and after considering the interests of justice in those proceedings, order that the proceedings (other than the giving of evidence by a witness) shall be partly in the national language and partly in the English language.

(Federal Constitution, 2000:134)

This act allows for an alternative, that is, the use of either BM or English. By giving this alternative, the less fluent parties will resort to using the alternative language that is permitted. The original Act gave a transitional time period of 10 years, but this amendment has added another transitional stage upon the initial one, and it does not

have a use-by period. After over 40 years of independence, we still seem to be in the transitional stage.

### **3.7.1 Implementation of BM in the Legal Community**

In 1989, the legal fraternity of Malaysia held a National Law Seminar, which was organised by the Institute of Policy Studies (*Institut Kajian Dasar*), *Dewan Bahasa dan Pustaka* (DBP), and a local Malay language newspaper, *Utusan Melayu*. The main issue of that seminar was language and the law; namely, that of the implementation of the national language (BM) as the language of the law. During the seminar, the problem of the slow implementation of the National Language Act was discussed. At this seminar, many suggestions were made. Contributors of these suggestions were respected academics, as well as legal luminaries.

One of them was Zaid Ibrahim, a prominent lawyer. He was of the view that Malay judges should play a role, by taking the initiative to increase the use of BM in their judgements. He added that precise and speedy translations needed to be made, and this required dedicated translators. His ideas were supported by Shaik Mohd. Noor Alam, who in his paper, *Strategy and Preparations towards Implementing BM as a Language of the Law* said that the lack of reference material in Malay was a contributory factor to the slow process of conversion.

A seminar on legal publishing was held in 1982, but since then only a few books have been produced. Shaik Mohd. Noor Alam urged Malay intellectuals to be the driving force behind the effort to make the national language the language of law. Towards achieving this, he suggested that a few main branches of the law could be selected, and the reference material translated. In addition, acts, enactments, and other subsidiary laws needed to be prepared in the national language, and then translated into English,

and not the other way around as was the current practice. In his view, only texts in the national language should be referred to, and used, in court. Further, he pointed out that journals and law reports were still being published in English. An example of this is the *Malaysian Law Journal*. Shaik Mohd. Noor Alam felt that for as long as members of the Judiciary continue to preside over cases and write judgments in English, using English instead of BM for legal purposes may take a while to be fully implemented.

The legal community cannot depend on commercial publishers, because up till now, reports in BM have not gained a wide market, and these publishers may not be driven by economic reasons to publish. Therefore, this responsibility needs to be borne by the government, DBP, and the like. DBP needs to form a translation unit, or a unit that reports the cases that are decided by the courts. Finally, a law dictionary needs to be published in the national language, where the use and reference of legal terms and meanings would remain consistent.

Shaik Mohd. Noor Alam was also of the opinion that the strategy of enforcing the national language as the language of the law depended greatly upon the linguistic and legal expertise of members of the legal community. In his seminar paper he identified four groups of people; academics, the legal practitioners, corporate legal professional and the legal professional who are involved in the legal and judicial machinery.

He believed that academics play the biggest role as in the dictum 'teach the teachers, and the teachers will teach the students'. He added that language problems of the locally-educated academics were solved through the full conversion of the national education system. The problem of foreign-educated academic staff would be solved through the exposure to the legal terminology in the national language. These efforts are intended to produce academic staff who are capable of handling lectures, and producing reading as well as reference materials in the national language. Given time,



this group of academics would produce a second generation of legal professionals who are proficient in the national language.

As with the *Razak Report* (1956), it was suggested that these efforts should be supportive and provide incentives:

- (a) sabbatical for those who require time to write original articles, or translate legal articles
- (b) publications to be taken into consideration for the granting of a raise or promotion.
- (c) government sponsored Masters or Ph.D. students who read law will be required to publish their thesis. The publication of the thesis would result in a few years being deducted from their bond of mandatory government service. For those who were given study loans, the publication of at least three legal articles of quality will be taken as settlement of the loan.

The second and third categories are the legal practitioners and corporate legal professionals. Currently, the Bar Council arranges national language courses for its members, and this is considered good, but it does not ensure the effectiveness of its members' ability to use the national language. Therefore, the government needs to consider whether a Pass in the national language (BM) at the SPM level should be made one of the conditions for practising law in Malaysia.

Finally, the fourth category refers to the legal professionals who are involved in the legal and judicial machinery (including lawmakers, magistrates, and judges). The formulation of laws in the national language or English, and then its translation is actively being pursued, and we have every reason to believe that it will be successful. But law making must take into account the interpretation of the law. Interpretation touches on issues of rights between individuals in relation to an authoritative body. Therefore, interpretations are of interest to many people, and not just to the legal community. As interpretation draws a lot of attention, the language that is used is also

likely to gain prominence. If English is used, it is English that will get prominence, and will continue to be the favoured language of the community. The same logic would apply to the national language.

Plans like these are likely to be effective, so long as there is effective follow-up action. The setting up of the Legal Department of Malaysia has played an important role in the implementation of the use of Malay since 1963. This department has established a national language department for the purpose of translating into BM all legal documents and all other document related to the law. In 1979, the department was revamped, and two special units were established. Unit A was responsible for the translation of all laws passed after 1 September 1967, and Unit B was responsible for all laws passed before that date. These units were extremely successful. All laws that passed after 1 September 1967 are available in BM as well as in English. It was also the case that a majority of the laws that were passed before 1 September 1967 that was composed in English have already been translated into BM.

Other than the translation unit, the department also set up a committee to look into the question of terminology. The committee comprises senior officers of the national language department, the officers responsible for translating the laws, and officers to supervise the translation. This committee has the task of coining new terms and expanding the legal terminology in BM for the Legal Department of Malaysia.

Notwithstanding the government's efforts, the Bar Council too has contributed to playing its part by establishing a committee that would take steps to, from time-to-time, to disseminate translations of terminology from English to BM, for the purpose of increasing the precision of BM language use among legal professionals. This committee also arranges to have BM language classes for legal professionals.

Since the National Law Seminar that was held in June 1989, a law journal in BM, and the requirement of a Pass in BM language for employment for members of legal community have materialised. On 4 December 1989, the publication of a journal entitled *Kanun: Jurnal Undang-Undang Bahasa Melayu* [*Kanun* = Law (Arabic): BM Law Journal] was launched. This journal, published by the Dewan Bahasa dan Pustaka, was the result of a co-operative effort by the Dewan Bahasa dan Pustaka, the Supreme Court, and the Society of Muslim Legal professionals. The journal provided the legal community with an arena where issues of terminology could be debated upon as well as other issues related to language and the law. As observed by Tan Sri Datuk Hashim bin Yeop Sani (a High Court judge), “it cannot be denied that this law journal, God permitting, will play an important role in the implementation of Malay in this nation’s courts” (Shaik Mohd Noor Alam, 1982: 22).

Also, after the full conversion of schools into MM, the Legal Professions Act 1976, the act that supervises the legal profession in Malaysia, included one more requirement for one to be accepted into, and registered as, an advocate and solicitor in this country. That requirement stated that, after fulfilling the requirements of (1) reaching the age of 18, (2) good behaviour and not having been convicted of any criminal offence or been declared a bankrupt, (3) is a citizen of the Federation or a permanent resident of Malaysia, and (4) has undergone chambering satisfactorily, as of 1 January 1984, a person deemed to be eligible is required to pass, or be in a position to be exempted from, the Malay language qualifying examination (ibid.:34).

On 12 May 1992, a report on the survey of the use of Malay in the area of legal work and study was presented to the Minister of Justice. The survey was conducted by Dewan Bahasa dan Pustaka (Ahmad Mohd Yusof et.al.: 1992). The survey involved 1,403 respondents from a cross-section of the following groups:

- (a) judges, magistrates, and court registrars
- (b) advocates, solicitors, and prosecutors
- (c) law-makers and legal advisers
- (d) academics and students

The survey found that, in the instance of the use of BM between groups (a) and (d), the percentage of the respondents who were proficient in BM was generally good, and higher than the percentage of those who were proficient in English. For judicial officers and academics, the percentage of proficiency in English was at least equivalent to that of Malay. However for groups (b) and (c), the percentage of those proficient in English was higher than that of Malay.

### **3.7.2 Use of *Bahasa Malaysia* among Academics**

Respondents from groups (a), (b), (c), and academics had undergone tertiary education in English. A large portion too, had experienced bilingual tertiary education in BM and English. Overall, all the respondents had passed their BM exams at the secondary school level, but when they progressed to the tertiary level, the medium of instruction was in English. Members from groups (a), (b), and (c) were proficient in BM as a language of communication, though their thought process and language structures were greatly influenced by English.

### **3.7.3 Use of *Bahasa Malaysia* among Judges, Magistrates and Prosecutors**

Almost all judges, magistrates, and prosecutors have used BM in the courts, but this is less so with the advocates and solicitors. However, even though there have been instances of the use of BM in civil and criminal cases, the majority of instances of the use of BM are confined to the Subordinate Courts, and few prosecutors or advocates have used Malay in trials at the Supreme and High Courts. Further, not all prosecutors

and advocates are able to use BM in the presentation of submissions fluently. According to the survey, only 61 per cent are able to present submissions in BM fluently. The percentage of advocates and solicitors who can present submissions in BM even lower, and in the case of non-Malay advocates and solicitors, the percentage who is fluent is only 39 per cent.

In the instance of the use of BM in the Supreme, High, and Subordinate Courts, the survey shows that, even though a large portion of the judicial and legal community had used BM in the courts, the frequency of such use was low, and tended to vary according the type of court or case. On the whole, the largest showing of the use of BM is in the Subordinate Courts, with 21.1 per cent to 66.7 per cent of the members of the court using BM 75 per cent of the time. The percentage of those who use BM the least (less than 25 per cent of the time) is between 18.1 per cent and 56.7 per cent. This statistic shows that both languages are used in the courts, and that, in the case of the Subordinate Courts, at least, BM is equal to English in its use. Unlike the Subordinate Courts, the High Courts record a lower degree of the use of BM. At its highest, the use of BM is only between 7 per cent and 15 per cent. Therefore, in the High Courts, it is English that is widely used. Similarly, at the Supreme Courts, the use of BM is very low. At the very best, the use of BM is only 2 per cent, which means that English is used in the Supreme Courts most extensively, if not almost exclusively.

#### **3.7.4 Legal Education and Training**

On the whole, it is factors such as ethnicity, medium of instruction at tertiary level, position, age, and language of employment in the legal profession that influences the use or choice of BM in legal proceedings. The medium of instruction of the degree is probably the single-most important factor that influences the use of BM. All of the judicial and legal members who received a bilingual education in local tertiary

institutions tended to use BM, at a high level. This group was also found to be fluent in the use of BM, and the percentage of those who used BM to a high level was greater than those who were educated in English. It is obvious that local tertiary institutions that implement bilingual study have influenced the use of BM in the courts. Local graduates who have been educated in the MM have a greater tendency to use BM in the practice of their profession.

In general, BM is used as the medium of instruction by local tertiary institutions for lectures and tutorials. However, English is also used. The survey found that more than half (59.2%) of academics use BM fully in the delivery of lectures, whilst 38.6 per cent present lectures in both languages. More Malay academics taught in BM, compared to non-Malay academics. The use of BM was lowest in tutorials and this applied to both students (5.4%) and academics (21.3%). For report writing, academics from UKM and Institut Teknologi MARA (ITM) tended to use BM (85.7% and 88.9% respectively), whilst academics from UM tended to use English. Amongst the students, there was equal use of BM and English. Forty-two percent wrote reports in BM, and 49.1 per cent in English. This pattern was also seen in moot trials where 46.8 per cent used BM fully, whilst 43.4 per cent used English fully. The rest (91.3%) of the academics said that they encouraged the students to use BM in moot trials, and noted that students use the BM language effectively for this purpose.

At the time the survey was conducted, around 400 to 500 English-educated people were graduating in law from foreign universities every year, in addition to the 300 English-educated graduates from the International Islamic University (IIU). This number of seven hundred or so students is over and above those doing their Certificate of Legal Practice (CLP) in the four private colleges that offered the course in the English-

medium only. The numbers then, were far larger than those graduating from the local universities using BM as the medium of instruction.

Little has changed since that survey was done as far as the medium of instruction is concerned. Local universities such as UKM and UM are still practising their BM - for-lectures, English-for-tutorials, policy. However, the number of students reading Law in the English-medium system may have changed. With the economic downturn after 1997, fewer Malaysian students have been able to go abroad to further their studies. Instead, local tertiary institutions have had to increase their student intake, sometimes three, or four-fold, as in the case of UKM (pre-1997:50 and post-1997:150–200), in order to absorb the growing numbers seeking a place in a local institutions. Whether the students who would have gone overseas but now have to seek places locally will be divided equally between the local public institutions or the private institutions remains to be seen. What is certain is that this change could affect the extent to which the BM language and English are used in the legal domain.

### **3.8 Summary**

Based on earlier studies (see Chapter Two) there is a general disposition towards the use of English in written and oral communication among those in the legal profession when dealing with legal matters. Whatever the frequency of use may be for BM and English, language has an important role in all legal proceedings and in the Malaysian legal workplace.

## CHAPTER FOUR

### METHODOLOGY

#### 4.0 Introduction

This study identifies and examines factors which influence language choice and use within the legal domain. The Klang Valley was chosen as the research site because it was deemed to be representative of most legal work done in the nation as a whole. The respondents' reasons for these language choice decisions have also been investigated. The assumption made is that situational and socio-cultural factors are often key elements in contributing to the language choice decision. The research aimed to be a multi-organizational study and the methods and procedures constitute both qualitative and quantitative methods. The research methods used aimed to describe rather than merely explain a set of linguistic behaviors, which help point to the linguistic characteristics or attributes of the sample of legal professionals. The main purpose of the study was to collect detailed, factual information that describes existing phenomena.

The conceptual framework employed for the study was informed by two considerations. Firstly, it was informed by the findings in respect of the key themes and issues of the literature review. Secondly, it was guided by the outcomes of the preliminary observations of the research site. The conceptual framework served to inform the research design, methodology and instruments that were used in the research process. A is often seen as a set of broad ideas and principles taken from relevant fields of enquiry and used to structure a subsequent presentation (Reichel & Ramey, 1987). A conceptual framework has potential usefulness as a tool to scaffold research and, therefore, to assist a researcher to make meaning of subsequent findings. Such a framework should be intended as a starting point for reflection about the research and its



context. The framework is a research tool intended to assist a researcher to develop awareness and understanding of the situation under scrutiny. As with all investigation in the social world, the framework itself forms part of the agenda for negotiation to be scrutinised and tested, reviewed and reformed as a result of investigation (Guba & Lincoln, 1989).

#### **4.1 The Fieldwork: Stages of Data Collection**

This section describes how data for the study is collected and analyzed. The discovery process can be divided into two main stages—data collection and data processing. The data collection process is further divided into five stages which are as follows:

- (i) gaining access to the target group
- (ii) designing and distributing the questionnaire
- (iii) making observations
- (iv) conducting interviews
- (v) document analysis

A summary of the data sources can be seen in table 4.1 below.

**Table 4.1 Data Sources Used to Investigate Language Choice, Use and Attitude in the Legal Domain**

<p><b>Language Proficiency</b> Survey questionnaire - Self-reported data of language proficiency Interview</p> <p><b>Language Choice</b> Survey questionnaire - Self-reported data of language choice and use in the legal domain Interview Court observations (as reported in Chapter 5) Document Analysis (as reported in Chapter 5)</p> <p><b>Language Attitudes</b> Survey questionnaire - Self-reported data of language attitudes towards English and BM Interview</p>
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The data processing stage involved studying and making sense of data and information obtained from the data collection stage. The data was analyzed, interpreted and processed by the researcher. The culmination of the data processing stage is the discussion of findings (see Chapters 5 and 6).

#### **4.1.1 Gaining Access to the Target Group**

The researcher had to situate herself in the target group of legal professional in order to participate as equal partners in all stages of the data collection. Initially, this was something that was difficult to do. Legal professionals value confidentiality when they have to discuss a legal issue or matter with someone who is not directly related to the issue or matter. Also, legal professionals adhere very rigidly to their code of ethics where they are expected to preserve client confidentiality.

Three months after commencing this present study, the researcher was fortunate to be allowed to be part of the office personnel of a medium-sized lawyer's office in Kuala Lumpur. The researcher spent many days with a notepad taking field notes of events and the language(s) used when legal professionals deal with different legal matters and the different people involved in the legal process.

This also enabled the researcher to carry out an informal pilot study. A small group of stakeholders personally known to the researcher was approached and asked for their comments on the questionnaires' structure and suitability. Drafts of the questionnaires were distributed to this small number of individuals with legal and management experience. They were asked to complete the questionnaire, note the time it took them to do so, and to record any comments or criticisms. They were also asked to critique its structure, language, and general suitability. They were also asked to critique the questionnaire themselves paying particular attention to areas that they felt may be

misunderstood by their peers. Feedback from this informal pilot exercise involving expert judgment was used to modify the research instruments (questionnaire and interview). The aim of the survey and interview was to test a number of ‘traditional’ and emerging assumptions about language choice and use patterns against the various views of language choice and use discussed in the literature review section of the thesis.

In court, it was even more difficult to gain access to proposed respondents. The higher up they were in the hierarchy of the legal process, the more difficult it became to make contact. It was only through family contacts and friendships made that the researcher was able to gain a little access to these respondents. The court observations and the accessing of court documents took a period longer than the researcher had initially anticipated due to the impenetrability of the research site and research sample. This period stretched for over a year and a half. However, these problems were later overcome.

The confidentiality of data was also assured during the fieldwork, whether in interviews or in daily interactions. Respondents of the study were assured that their responses would remain private and be used only for purposes of research. Thus, any information extraneous to the topic of the study was omitted from the records.

#### **4.1.2 Designing and Distributing the Questionnaire**

The questionnaire was adapted from questionnaires designed by:

- (i) Baker (1992) on attitudes towards the use of English versus Welsh in Wales
- (ii) Ahmad Mohd. Yusof et. al. (1992) on the use of the national language within the Malaysian legal system

Baker’s questionnaire was based on the additive and subtractive notions of bilingualism. Additive bilingualism means that two languages can co-exist with perhaps a separation

of language functions. On the other hand, subtractive bilingualism means that the rise in the popularity of use in one language leads to a decline in the other. The questionnaire was adapted to suit the language situation in Malaysia.

Ahmad Mohd. Yusof et. al. (1992) designed their questionnaire to investigate and determine the use of the national language in the Malaysian legal system. This questionnaire was adapted to ask relevant questions on the use of English within the legal system. The researcher included further questions into the use of the two languages, BM and English, with specific reference to the different courts and the different parts of the legal process for criminal and civil matters (see Chapter 3 for a full description of the process in a civil or criminal matter). The research instrument used to obtain data from stakeholders, for example, was adapted and adopted and further developed in keeping with normal quantitative research criteria.

Since it was difficult to gain access to legal professionals, it was important that the researcher took careful steps to identifying respondents for the study. The help of the Malaysian Bar Council, Court Registrars and Public Prosecutors was sought in selecting suitable legal professionals in practice. Also, when designing the questionnaire, steps were taken to ensure a good response rate. One way this was achieved was by personally delivering and collecting the questionnaires from the respondents.

The researcher was, however, unable to limit the number of items in the questionnaire to a minimum. This was because of the complexity of the legal process and the details which needed attention. The questionnaire was eventually limited to twenty-five pages. The researcher reduced the font size used and comb-bound the questionnaire into a booklet.

The questionnaires were distributed six months after the researcher began the fieldwork. Such a length of time was required because the researcher needed to familiarise herself with the respondents. Many days were spent walking the corridors of the various courtrooms and in the cafeteria making and establishing friendships with legal professionals. Often the researcher asked journalists who were reporting legal matters to introduce her to their contacts.

#### **4.1.3 Making Observations**

Observation as a technique was used to validate or corroborate the data obtained in interviews and questionnaires. It was carried out to enable the researcher to get a feel of the legal workplace environment and the language used in that setting.

The public have restricted access to criminal and civil cases. The researcher experienced waiting for court sessions to take place, only to be told later that they would be conducted in Chambers and only the relevant parties would be admitted. Another experience involved certain high profile cases where admission could only be obtained if one knew the court policeman or any other official involved in the case. In attempting to overcome this problem, the researcher establishes contacts with court policemen in order to secure a seat for her in the courtroom. Another possible avenue is to work very closely with journalists and occupy seats designated for them. If this had not been done, the researcher would have had to sit in the public gallery which is the furthest from the courtroom action, thus making any recordings of the courtroom sessions impossible.

When conducting the observations, the researcher basically used paper and pencil. It was often very tiring and difficult to take down conversations in verbatim. It was especially difficult to follow proceedings in the subordinate courts as they were located next to a busy city main road in Kuala Lumpur. It was also difficult to follow

proceedings where the presiding member of the Judiciary spoke very softly and did not use the microphone.

In the lawyer's office where the researcher stationed herself, she was never allowed to sit in when the lawyer was in conference with a client. All the researcher was able to do was to ask the lawyer questions after the session with his client about the general details of the matter and the language(s) used in their discussion. With the other personnel in the lawyer's office, the researcher spent many hours just observing the work that they do and making note of the language(s) used.

An important consideration in the context of the mixed method approach utilized in this study is the extent to which data drawn from various sources might be determined to be true when contradictions and anomalies occur. The perceptions of stakeholders may differ from those of policy makers. The latter may claim that problematic issues have been addressed through a change of policy. Stakeholders, on the other hand, may perceive that the conditions they are experiencing contradict such claims. While both parties may be sincere in their respective beliefs, and even be able to produce evidence to substantiate them, it is only after a careful consideration of all data in relation to one another and personal observations by the researcher that a less contradictory picture may begin to emerge.

#### **4.1.4 Conducting Interviews**

In conducting interviews, the semi-structured interview format was used. This allowed the researcher to be flexible and provided room for the researcher to react to the participants' ideas and to prod them for more information when necessary. The semi-structured interview format provided flexibility in questioning, making the situation more relaxed for the respondents and the researcher.

The guideline in the semi-structured interview included open-ended questions and possible lead-on questions on the topic of the interview. Cohen and Manion (1989:313) believe that using open-ended questions enables the researcher to “make a truer assessment of what the respondent really believes. Open-ended situations can also result in unexpected or unanticipated answers which may suggest hitherto unthought-of relationships or hypotheses”.

The respondents selected had to reflect the range of respondents selected earlier for the questionnaire survey. The number of interviewees was aimed at 10 per cent of the total number of respondents for the questionnaire survey (n=122). A common goal of survey research is to collect data representative of a population. The researcher uses information gathered from the survey to generalize findings from a drawn sample back to a population, within the limits of random error. Within a quantitative survey design, determining sample size and dealing with non-response bias is essential. “One of the real advantages of quantitative methods is their ability to use smaller groups of people to make inferences about larger groups that would be prohibitively expensive to study” (Holton & Burnett, 1997:71). Although it is not unusual for researchers to have different opinions as to how sample size should be calculated, the procedures used in this process should always be reported, allowing the reader to make his or her own judgments as to whether they accept the researcher’s assumptions and procedures. Considerations of age, ethnicity, gender, and job designation within the legal profession had to be taken into account. However, some respondents for the interview had to be approached for consent to be interviewed. This group of respondents, though small, was mostly from the Judiciary.

The language used for the interview depended on the language preference indicated by the interviewee (respondent). Using only the English language would have been an

indication of cultural insensitivity in a multilingual nation like Malaysia. Even though the researcher was limited to the languages in her limited linguistic repertoire, this did not pose a problem. The legal professionals chose to be interviewed either in BM or English. The researcher felt that if she had limited the respondents to only English, it may have adversely affected her rapport with them and might have made them unwilling to disclose certain information.

In order to avoid conducting the interview in a non-conducive environment, a specific time and location was specified to the respondents for the interview. The respondents were interviewed at a place and time which they had specified earlier to the researcher. This was also to avoid conducting interviews in stressful situations. The interviews were held on a purely voluntary basis. Subject bias, was minimised by asking participants to provide opinions which were true of their language use regardless of what was thought to be a 'correct' opinion.

A few interview strategies outlined by Robson (1993:232) were used to encourage the respondents to talk:

- (i) Listen more than you speak
- (ii) Put questions in a straightforward, clear and non-threatening way
- (iii) Eliminate cues which lead interviewees to respond in a particular way

All respondents did not agree to the interview being audio-recorded. As some of the interviewees were prominent legal professionals conducting some high profile political cases, they insisted on anonymity. Field notes, therefore, became very important. As soon as the interview was over, the researcher immediately filled in the gaps of her notes so as not to forget any details which were relevant to the study. The researcher also noted down her overall impression at the end of each interview.



#### **4.1.5 Document Analysis**

Document analysis is a highly specialized area of research which helps in uncovering evidential facts buried deep beneath the surface. Document analysis can provide the true dates and time of document creation, modification, printing and names of authors. This extracted and decoded data can identify overarching principles that underlie the development of the documents. For this study, the researcher analyzed documents that were related to language use in the Malaysian legal system. Document analysis was employed in this study so that adequate evidence could be provided to justify the results and conclusions. Also, reports of empirical research should be transparent; that is, reporting should make explicit the logic of inquiry and activities that led from the development of the initial interest, topic, problem, or research question; through the definition, collection, and analysis of data or empirical evidence; to the articulated outcomes of the study.

#### **4.1.6 Conducting Closure to the Fieldwork**

Initially the researcher had estimated and planned to spend a year in the field. However, owing to the fact that legal professionals were often unavailable and cases were often delayed or postponed, the fieldwork stage had to be extended for an additional eight months. A proper end to fieldwork is important as there may be a need to return to the site if the need arises. Robson (1993:301) noted that it can be difficult to leave, particularly when things have gone well and the researcher is an accepted part of the scene, and there will almost always be more data to collect. Some of the staff at the lawyer's office where the researcher had been stationed threw a farewell party for the researcher. She was also told that she was welcome to return whenever she felt the need.

## **4.2 Method Applied to the Study of Language Choice**

This study investigates the social motivations of language choice. Emphasis is placed on reported language choice patterns reflecting respondents' reasons for their language choice decisions. The review of the literature in Chapter Three identified two major approaches to the study of language choice: the sociolinguistic, and the social psychological. Giles and Coupland (1991:20) refer to these approaches as the 'language reflects context' and the 'language determines context' positions respectively. The methodologies for the study of language choice and use differ in these two approaches. The sociolinguists use observation and ethnography, and the social psychologists use surveys and experimental methods.

The use of several different research methods to test the same finding is called triangulation. It is regarded as a valuable research strategy. According to (Babbie, 1979:110) since each research method has its particular strengths and weaknesses, there is always a danger that research findings will reflect, at least in part, the method of inquiry. He adds, "In the best of all worlds, your own research design should bring more than one research method to bear on the topic" (ibid.).

A combined methodology reflecting the influence of both sociolinguistic and social psychological approaches is used in this study. It is said that a combined approach increases the validity of the results as it is able to look for a similar pattern of results across different methodologies (Judd, Smith, and Kidder, 1991).

## **4.3 Instruments of Investigation**

This study uses three instruments of investigation. A questionnaire survey on reported language choice and use, language proficiency and language attitudes was used. Interviews were also conducted to identify the reasons for respondents' language choice

decisions. Finally, observations of language choice and use and a study of relevant documents in the legal setting were carried out. All of the above provide the context for situating the findings for the study.

A large scale questionnaire was chosen in preference to the conducting of face-to-face interviews to a large group of respondents. I did not have the resources needed to conduct a large number of interviews. I wanted to gather primary data that could be used to identify overall trends. It was envisaged that a 50 per cent response rate from each of the 122 respondents representing different stakeholder interests would provide a relatively unambiguous means of measuring both the strength and direction of language choice and use. While in-depth or semi-structured interviews have allowed a more thorough and flexible exploration of the issue under consideration, the research design prioritized the gathering of data that could be seen to scope the views of stakeholders with regard to language choice and use in the legal work domain. It was anticipated that aggregated data would best lend itself to comparative analysis alongside the findings of the literature review and the critical analysis of policy documents and interviews outlined in Chapters 5 and 6.

Through this process of triangulation it was envisaged that the subsequent use of both qualitative and quantitative data analysis, alongside textual analyses, would lend greater credibility to the research and make it possible ‘to get a fix on a phenomenon by approaching it from more than one independently based route’

#### **4.3.1 The Questionnaire**

A four-part survey questionnaire adapted from Baker (1992) and Ahmad Mohd. Yusof et al. (1992) was used for this present study. Questionnaires are often used in studies of

this nature as they have been shown to be useful in discriminating patterns of connection between demographic characteristics with profiles of language use for a sample group. The questionnaire gathered information on the following set of variables:

- (i) background data, including age, gender, place of birth, educational background, and occupational background
- (ii) self-assessment of proficiency in BM and English
- (iii) attitudes toward BM and English
- (iv) domains in which BM and English are most commonly used in the legal work place

A cover letter was attached to the questionnaire. Respondents were given a brief description of the study and their co-operation was sought. Appreciation was also expressed in other ways. The cover page showed researcher identification details and the approximate time to complete the questionnaire. The identification details included the title of the survey, and the researcher's name. A stamped self-addressed envelope was included together with the questionnaire. Respondents were asked to return the completed questionnaires within a two-week period and they were also told that they may also have to be interviewed. The time and place of the interview would be at their convenience. However, the interview was optional. They were also asked to indicate their willingness to be interviewed.

#### **4.3.1.1 Background Information**

Part One of the questionnaire elicited background information of the respondents. The questions required respondents to state their job designation, ethnic group, gender, age bracket, medium of education from primary to tertiary level and their qualifications (see Chapter 6). These demographic variables are treated as 'independent variables' and language attitudes and behaviour as 'dependent variables' in the statistical analysis described in Chapter 6.

#### **4.3.1.2 Proficiency in Bahasa Malaysia and English**

Part Two of the questionnaire required that respondents self-rate themselves on their proficiency levels in both *Bahasa Malaysia* (BM) and English. A series of statements were given as the stem and respondents had to indicate their choice (see Appendix II).

Respondents' proficiencies in BM and English were reported using ten items on which respondents indicate their proficiency levels using a six-point Likert-type response as follows: 0 (No knowledge), 1 (Poor), 2 (Fair), 3 (Average), 4 (Good), or 5 (Excellent). For each language, that is BM and English, there are separate assessments for understanding each of the four language skills – listening, speaking, reading, and writing. Respondents who indicated that they did not know the language at all will receive a score of '0' on all 10 items.

#### **4.3.1.3 Attitudes toward Bahasa Malaysia and English**

In Part Three of the questionnaire, respondents were asked a series of questions which later enabled the researcher to identify their language attitude toward both BM and English. Cargile, Giles, Ryan, and Bradac (1994:212) state that the direct method of measuring language attitude is advantageous in that "information about specific attitudes can be obtained". Generally, this part of the questionnaire investigated attitudes towards the use of English and BM in Malaysia, and specifically investigated respondents' feelings towards the use of both the languages for the legal profession (see Appendix I).

Respondents were also asked questions on the relationship of use between BM and English. In the study of bilingualism, the 'additive notion' is that the two languages can co-exist with perhaps a differentiation of functions. On the other hand, in 'subtractive bilingualism', an increase in the importance of one language leads to a decrease in the importance of the other language (Baker, 1992).

Responses given in this section, indicating general attitudes towards both BM and English, were valuable in making inferences as to why one language is chosen over another in an interaction.

Language attitude was assessed using a ten-item scale on which BM and English were given separate assessments. Each item had a stem, for instance, ‘A beautiful language to speak’, on which each language was separately rated using a five-point Likert-type scale scored as follows: 1=Strongly Disagree, 2=Disagree, 3=Not Sure, 4=Agree, and 5=Strongly Agree. The middle category was included so that participants were not forced to give an opinion if they have none in the first place. Converse and Presser (1986:37) advocate omitting a middle category so as to avoid loss of information about the direction in which some people lean.

Subscribing to the belief that language attitude can influence language choice, the researcher saw that it was important to investigate attitude. This is consistent with the mentalist view that “if we know a person’s attitudes, we would be able to make predictions about [their] behaviour related to those attitudes, with some degree of accuracy” (Fasold, 1984:148). Appel and Muysken, (1987:16) state that many researchers investigating language attitudes adhere to the mentalist approach. Following the mentalist tradition, attitude is a state of readiness, an intervening variable between a stimulus affecting a person and that person’s response (Agheyisi and Fishman, 1970:138; Cooper and Fishman, 1974:7). Therefore, since attitude is a mental state, we must depend on the person’s reports of what their attitudes are, or infer attitudes indirectly from behaviour patterns (Fasold, 1984:147).

The measurement of language attitudes by means of questionnaires is also based on the mentalist conception of language attitudes. As a result, it is necessary to use the

questionnaire because it elicits the respondents' perception of their attitudes. Nevertheless, some researchers are of the belief that respondents may provide desirable responses, or those which they think may please the researcher, rather than honest responses.

Often, no causal link can be established between language attitudes and language choice through a questionnaire study. However, a co-relational link can be investigated to understand these aspects of the language choice phenomenon. It is sometimes the flexibility, complexity and interplay between the person, their relationship to others in the situation, and to the language choices themselves which are too complex to be studied via the questionnaire technique alone (Ting Su-Hie, 2002). In view of the above, questionnaires were used together with interviews and observations in this study.

#### **4.3.1.4 Language Use within the Legal Domain**

Part Four of the questionnaire included items related to the legal domain. These items required respondents' to identify the language(s) they most likely used under several situations within the legal workplace and in dealing with legal matters specifically (see Appendix I to view the questionnaire). For example, in the courtroom, respondents were asked which language they would use with the judge, client, and fellow legal fraternity members. For each situation, respondents had to indicate which language(s) they were most likely to use according to the following scale: BM (BM), E (English), or B (Both).

Earlier items in this section required respondents' to state the languages they used for various daily situations within the legal work arena. Dillman et al. (1995) suggested that it would be better if initial questions have clear social importance and relevance to the

stated research objectives to capture the participants' interest. This would also motivate them to complete the questionnaire.

The domain analysis was used to describe language use within the legal domain. Fishman (1964; 1991) and Fishman et. al. (1971) introduced the domain analysis. Fishman defines domain as 'institutionally relevant spheres of social interaction in which certain value clusters are behaviorally implemented' (ibid., 1971). Fishman's study was motivated by the insight that bilingualism is more likely to be stable if the two languages used, serve different functions. In other words, if each language is used in predictable domains, it is likely to be maintained. Fishman's study is meaningful for this study. It renders a way to access the degree of use of both the languages being studied by asking respondents which language they most frequently use in each domain.

#### **4.3.2 Interview**

Interviews are among the most challenging and rewarding forms of measurement and collection of data. They require a personal sensitivity and adaptability as well as the ability to stay within the bounds of the designed protocol. The researcher acted as the interviewer in the present study. Interviews may be costly to conduct (Judd, Smith, and Kidder, 1991), but they are useful for studying the multi-dimensional notion of language attitudes in relation to language choice and use. This is especially true when substantiated by observational data.

The researcher had to locate and enlist the cooperation of the respondents. It was also necessary for the researcher to be motivated in order to communicate that motivation to the respondent. The researcher had to be prepared for issues and objections which respondents may raise or even concerns that were not anticipated. It was also the role of the researcher to respond candidly and informatively.



An interview is an important research tool. The strength of the interview lies in its ability to elicit personal opinions, knowledge, and, attitudes. In conducting the interview for this study, the researcher used an interview card. The card had all the questions listed on it. There was also space to write the background information of the respondent. The order of questions prepared for the interview was followed and adhered to as far as possible. The researcher tried as far as possible not to change the order and questions prepared so as to maintain standardisation across respondents. The sequence of questions was based on the researcher's perception of what seemed important and relevant in the context of the present study.

Interview data offers information on how participants subjectively define the dimensions of the situation they are in, including its goal structure and the salience of their own identities at that time (Giles and Hewstone, 1982). Also, the interview is able to provide access to the context of people's behaviour, thereby allowing researchers to understand the meaning of that behaviour (Seidman, 1991). In this study, the interview technique is used in combination with a questionnaire and observations. This is because interviews are often said to have the same shortcomings as questionnaires. This is because the interview and the questionnaire technique both rely on self-report. However, the flexibility of interviews, particularly unguided and semi-structured interviews, allows the researcher to probe discrepancies:

Face-to-face interviews offer the possibility of modifying one's line of enquiry, following up interesting responses and investigating underlying motives in a way that postal and other self-administered questionnaires cannot. Non-verbal cues may give messages which help in understanding the verbal response, possibly changing or even, in extreme cases, reversing its meaning.

(Robson, 1993: 229)

### 4.3.3 Observation

It is sometimes appropriate to base your measurements on direct observations. One can learn a lot by just looking and listening to what is going on. Social scientists often learn about life by observing what goes on in the natural course of things and then observing what happens. When observation is used to substantiate interview data, meaningful insights into language choice considerations are obtained (Fitch and Hopper, 1983). Nonetheless, relying solely on observation may provide accurate data on language choice patterns, but not reasons for these patterns. In order to hypothesise possible reasons, the researcher may have to make inferences based on the observed language choice patterns. Further, if the aim is to obtain data on actual language choice patterns, conducting observations is better than employing the segmented dialogue technique. In the segmented dialogue technique, patterns are inferred from participants' evaluative reactions to other people's language choices.

In carrying out the observations, the researcher took on the role of observer-as-participant. This means that the status of the researcher is known to the participants (respondents) but she took no part in the activity. Allowing the respondents to know the status of the researcher has its advantages. Being privy to this information would ensure that the participants would not be surprised when questioned by the researcher on aspects of language use. The observer-as-participant role is less taxing compared to the participant-as-observer role because the researcher does not have work obligations.

The other advantage of the minimal participation of the observer-as-participant role is that it minimises observer effects. The participant-as-observer role has more of a disturbing effect on the phenomenon observed, as has been documented by several experienced participant observers (Whyte, 1981; 1984). 'The two main strategies to minimise 'observer effects' are minimal interaction with the group, and habituation of

the group to the observer's presence" (Robson, 1993: 208), and this was carefully adhered to in this study.

All observations made were in the form of field notes and in courtroom proceedings, verbatim transcription of conversations, both formal and informal in nature were undertaken. No audio recordings were allowed in the courtroom. Observation was not a major research strategy in this study. Instead, it was a supplementary technique to obtain data to situate data collected via interviews and questionnaires.

#### **4.4 Data Analysis and Interpretation**

Data for this study had to be analysed and interpreted in a few different ways. First, the data had to go through a process of classification and labelling. The questionnaire had to have its responses coded, before they could be entered into statistical programmes for analyses. The interview notes had to be interpreted through careful reading and generalisations had to be made after patterns were observed.

#### **4.5 Ethics**

In most dictionaries and in common usage, ethics is typically associated with morality, and its concerns are with what is right and what is wrong. In social scientific research, the researcher must be aware and sensitive to the general agreements shared by researchers as to what is proper and improper in the conduct of scientific inquiry. Social research often represents an intrusion into the lives of people. It also often requires that people reveal personal information about themselves.

Respondents had to be assured that confidentiality would be maintained at all times. The data and findings would only be used for research purposes.

## **4.6 Summary**

A research problem is an issue, topic, or question that motivates a study. Such problems may be theoretical, practical, or a combination thereof. The problem formulation answers the question of why the results of the investigation would be of interest to the research community and how an investigation is linked to prior knowledge and research. Problem formulation can vary in scope and inclusiveness of questions and issues. Researcher therefore must make clear how their formulation defines the limits of what can be addressed and the extent to which it is inclusive of diverse populations or circumstances.

A thorough formulation of the problem typically includes a clear statement of the topic, issue, or question; a review of what others have written that bears directly on the problem; a rationale for the conceptual, methodological, and theoretical choices made in addressing the problem; and a consideration of how the study contributes to knowledge or understanding about the problem. Most important of these choices is the methodological consideration. The method employed in a research study can have a significant influence on what generalizations can be made, and the extent to which a work can contribute to addressing significant issues. Reporting on research therefore requires the researcher to provide as comprehensive a picture as possible of what methodological concerns were and the exact method applied to approach the research.

## CHAPTER FIVE

### ANALYSIS AND DISCUSSION: DOCUMENT ANALYSIS AND COURT OBSERVATIONS

#### 5.0 Introduction

It can be said that one often studies the obvious in social science research. Data collected and obtained are often not inherently quantitative, and can be of almost anything. Data may not necessarily be expressed in numbers, frequency distributions and nor in the form of probability tables. Data can come in the form of words, images, even impressions which represent real events or reality as it is seen semiotically or sociologically relevant. Qualitative research uses logic to get at what is really real -- the quality, meaning, context of what people actually do.

The qualitative research approach is used to analyze documents that are relevant to this study. Admittedly, qualitative research is sometimes difficult to define since it does not involve the same terminology as ordinary science. The simplest definition involves methods of data collection and analysis that are non-quantitative (Lofland & Lofland, 1984). Another way of defining it is to indicate that it focuses on "quality", a term referring to the essence or ambience of something (Berg, 1989). Others would say it involves a subjective methodology and the researcher as the research instrument (Adler, 1987).

This chapter reports on the analysis of documents related to language use in the Malaysian legal system. The analysis of the documents was aimed at finding out what was in the text that stated rules or regulations about language use in the Malaysian legal system. The chapter also discusses court observations made at the different courts. The observations were made in order to allow the researcher to immerse herself in the day-to-day activities of the people who are being studied. In contrast to testing ideas

(deductive), the discussion which follows these observations is inductive. The court observation did not merely involve the researcher to be just looking and listening to court proceedings. It actually involved the generally experiencing and recording of the court happenings. However, the researcher did find observing and recording of court proceedings as most personally demanding and an analytically difficult method of social research to undertake. It required the researcher to spend ample time in unfamiliar grounds and to establishing and maintaining relationships with people with whom the researcher had little personal affinity with (e.g., criminals) (also see Chapter 4 for a detailed discussion of the data collection stages).

## **5.1 Discussion**

In Malaysia, BM is the national and official language and English, its second most important language. The languages used in the legal domain in Malaysia are linked to both BM and English. The dominant-subordinate relationship that exists between BM and English engenders linguistic conflict. The conflict arises in part, as a result of the desire to establish a 'true' Malaysian nation, in which BM is the mode of expression. According to Asmah (1994), English as the second most important language, is still very much in use in various professions such as the medical, dental and legal. The Chief Justice of Malaya suggested that members of the legal profession should remain bilingual in accordance with our national language policy – BM, as the official language and English as a second language (New Straits Times, 1990:6).

The concerns of the intrusiveness of English within the legal work domain, and the effects it may have on the wider use of BM is an issue among national language loyalists. At times, the widespread use of English among legal professionals receives resistance as the language is considered to belong to the colonialists. It also is viewed to possess the power of re-orientating the people of the country towards the culture and

thinking of the former colonial masters. Whenever language policy is mentioned with regard to Malaysian language planning, it is always linked to schools and to education policy and this in turn is always linked to national integration and harmony. Language issues in Malaysia are integrally tied to the maintenance of national and ethnic identity.

Research into the study of language(s) used in the Malaysian courtroom by Ahmad Mohd Yusof et al. (1992), and Nik Safiah Karim and Faiza Tamby Chik (1994) investigated the frequency of use of the national language within the Malaysian legal system. Baskaran (1995: 68) examined ‘unwritten rules’ which are totally context dependent and case oriented in Malaysian courtrooms, while David (2003) looked at the roles and functions of code switching in Malaysian courtrooms. She stressed that the analysis of the use of a mixed discourse in the legal setting is important to show the conscious language choice that is exercised. This, she pointed out, arose not only as a result of differing language proficiencies of the interlocutors, but rather as a result of other sociolinguistic factors that impinge on language choice.

## **5.2 Legislations and Circulars Referring to Language Use in the Malaysian Legal Context**

In accordance with the law enshrined in the Federal Constitution, National Language Act, Rules of Courts, and circulars issued by the Malaysian Judiciary, our courts have to function in the national language. The following section discusses some landmark legislations which refer to national language use in the legal domain.

### **5.2.1 The Federal Constitution Article 152(1)**

The Constitution of the Federation of Malaya became the supreme law of the land with the attainment of independence of Malaya on 31 August 1957. The constitution contained fundamental provisions that were enacted, *inter alia*, the law governing the National Language.

On 16 September 1963, the Federation of Malaya, the states of Sabah, Sarawak and Singapore merged to become the Federation of Malaysia (discussed in Chapter 3). Singapore subsequently separated from the Federation of Malaysia on 9 August 1965 to become an independent nation. With the formation of Malaysia, the Constitution of the Federation of Malaya was introduced as Malaysia's Constitution. Article 152(1) of the Constitution proclaims that the National Language shall be the Malay Language. The Malaysian Constitution, Article 152 (1) states:

The national language shall be the Malay Language and shall be in such script as Parliament may by law provide:  
Provided that: (a) no person shall be prohibited or prevented from using (otherwise than for official purposes), or from teaching or learning, any other language; and (b) nothing in this clause shall prejudice the right of the Federal Government or of any State Government to preserve and sustain the use and study of the language of any other community in the Federation.

(Federal Constitution, 2000: 186)

### **5.2.2 National Language Acts 1963/67 s.8**

On 31 March 1967, Subsection 8 (s.8) of the National Language Acts 1963/67 (Act 32) received Royal Assent and was implemented on 1 September 1967. This section specifically provided for the language of the Courts to be as follows:

“Language of Courts	8. All proceedings (other than the giving of evidence by a witness) in the Federal Court, the High Court or any subordinate court shall be in the national language or in the English language or partly in the national language and partly in the English language: Provided that the Court may, either of its own motion or on the application of any party to any proceedings and after considering the interests of justice in those proceedings, order that the proceedings (other than the giving of evidence by a witness) shall be either wholly in the national language or wholly in the English language.”
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(Federal Constitution, 2000: 187)

Under s.8, the general rule was that all proceedings in the hierarchy of the courts in Malaysia were required to wholly use the National Language or the English language or



a combination of these two languages. Exceptions to the general rule above were allowed in: (a) the giving of evidence by a witness; (b) the interests of justice, which would be duly considered by the Court: (i) of its own motion; or (ii) on the application of any party to any proceedings. In exceptional circumstances, the court may exercise the discretion and order that the proceedings shall be either wholly in the National Language or wholly in the English language.

### **5.2.3 National Language Acts 1963/67, amended s.8**

On 29 March 1990, *vide* Act A765, the aforesaid s.8 was amended. The amendment which came into force on 30 March 1990 reads as follows:

“Language Courts  
[Act A 765]

8. All proceedings (other than of giving of evidence by a witness) in the Supreme Court, the High Court or any Subordinate Court shall be in the national language: Provided that the Court may either of its own motion or on the application of any party to any proceedings and after considering the interests of justice in those proceedings, order that the proceedings (other than the giving of evidence by a witness) shall be partly in the national language and partly in the English language”

(Federal Constitution , 2000:187)

Unlike the original s.8, the amendment makes it a general rule that all proceedings in our courts shall be in the National Language, while the exceptions created in the proviso to the section remain the same as in the original provision.

### **5.2.4 Rules of Court**

There are four sets of Rules of Court to regulate the conduct of proceedings and the use of documents in courts. Special equipollent provisions have been enacted to provide for the language of documents required for use in courts.

These provisions are contained in:

- (1) O.53 r5 of the Subordinate Courts Rules 1980 with effect from 30 March 1990;
- (2) O.92 r1 of the Rules of the High Court 1980 with effect from 30 March 1990;
- (3) Rule 101 of the Rules of the Court of Appeal 1994 with effect from 1 August 1994; and
- (4) Rule 133 of the Federal Court Rules 1995 with effect from 6 September 1995.

Note: O refers to *Order* and r refers to *rule*

All these provisions are in *pari materia* (of equal standing) and enacted in the following words:

“Language of document

Any document required for use in pursuance of these Rules shall be in the national language, and may be accompanied by a translation thereof in the English language:

Provided that any document in the English language may be used as an exhibit, with or without a translation thereof in the national language.”

(Rules of Court, 2003)

### **5.2.5 Amendment to Rules of Courts**

With effect from 22 September 2000, Order.92 rule 1 of the Rules of the High Court 1980 was amended to read as follows:

“Language of documents (O.92 r1)

Any document required for use in pursuance of these rules shall be in the national language and may be accompanied by a translation thereof in the English language except that the translation for the purpose of Order 11 rule 6(4) and rule 7(1) must be prepared in accordance with rule 6(5) of that Order:

Provided that any document in the English language may be used as an exhibit with or without a translation thereof in the national language.”

(Rules of Court, 2003)

This amendment is intended to facilitate the service of process of court out of jurisdiction, in which case, consistent with Order 11 rule 6(5), the translation is

specifically regulated in that it must be certified by a translator in order for it to be a correct translation. The certificate must contain a statement of the translator's full name, address and qualifications.

Order 92 rule 1 has been further amended with effect from 16 May 2002 as follows:

“Language of document 8 (O. 92 r1)

1. (1) Subject to sub-rule 2, any document required for use in pursuance of these rules shall be in the national language and may be accompanied by a translation thereof in the English language except that the translation for the purpose of Order 11 rule 6(4) and rule 7(1) must be prepared in accordance with rule 6(5) of that Order:

Provided that any document in the English language may be used as an exhibit with or without a translation thereof in the national language.

(2) For Sabah and Sarawak any document required for use in pursuance of these rules shall be in the English language and it may be accompanied by a translation thereof in the national language except that the translation for the purpose of Order 1, rule 6(4) and rule 7(1) must be prepared in accordance with rule 6(5) of that Order:

Provided that any document in the national language may be used as an exhibit, with or without a translation thereof in the English language.”

(Rules of Court, 2003)

As a result of the latest amendment any document required for use in the High Court of Malaya must be in the National Language, an exception arises in the case of an exhibit in the English language, which may be tendered in its original version, with or without a translation in the National Language.

There were also circulars sent out by the Judiciary which made reference to language use in courts. They are as follows:

1. High Court Registrar's circular No. 7 of 1969 dated 20 November 1969

(1) Correspondence

Pursuant to this circular issued to all subordinate courts viz. Sessions and magistrate's courts, all correspondence with the courts shall be in the National Language.

(2) Judicial proceedings

In addition, judicial proceedings shall also be conducted in the National Language, but the court may in the exercise of discretion allow a counsel to make an application for leave to use the English language on grounds

of non proficiency or where technical words are used. Such application shall be recorded in the proceedings.

2. Chief Registrar circular (u) No. 12 of 1981 dated 21 September 1981

(1) Guidelines to all courts

This circular was issued to all levels of the courts in Malaysia, setting out comprehensive guidelines pertaining to the use of the National Language in specific areas.

(2) Administrative and judicial matters

Pursuant to this circular, all documents and correspondence pertaining to administrative and judicial matters in all courts have been dealt with in the National Language, while all Judicial proceedings including the compilation of appeal records in the sessions courts and the magistrate's courts have been conducted in the National Language.

Charges in criminal proceedings have been drafted principally in the National Language and the translation in the English Language may be allowed where necessary. Criminal proceedings including evidence, submissions and judgments have also been conducted and delivered in the National Language.

(3) Chief Registrar's circulars dated 28 March 1985 and 28 April 1985

These circulars to the Bar Council required the mandatory use of the National Language by advocates and solicitors in all their correspondence with the courts.

### **5.3 Court Observations**

This section discusses observations of court proceedings in various courts. It aims to discuss the question of when and to whom are BM and English used?

In a court of law, there is the judge, who represents the court, the plaintiff, and the defendant. The duty of the judge is to examine and decide on a matter of law, brought up by the plaintiff and the defendant. According to the Malaysian legal system, a trial is based on the adversarial principle, that is two opposing forces or parties attempt to prove their cases by putting forward arguments and providing evidence. In this, the

judge plays a role much like that of an umpire, who sees that the players play by the rules of the game. As for the judge, he ensures that the rules of procedure and evidence are complied with. When all issues have been raised, the judge makes a decision as to which party wins. Language plays a very important role in all court matters, as it is only through the medium of language, both in its written and oral form, that justice is met and served.

Listed below are three observations that were made in a Subordinate or a Superior Court of Malaya. The notes preceding each observation provide some details of the case and the proceedings at the time of observation. The dialogues given for each case were recorded in *verbatim* and were attempts to show language choice and use in court.

### 5.3.1 Observation One

Setting: The accused is charged for treason. The offence is of a very serious nature and could carry the mandatory life-sentence. The court proceedings begin and almost immediately the accused starts to behave aggressively. He mutters to himself, turns around and spits at the co-accused. Everyone in the courtroom is shocked and reporters start to take down notes furiously. The Judge carries on with the proceedings by reading several lines from the previous day's recordings. The Judge, Deputy Public Prosecutor (DPP) and Defence Counsel (DC) then confer with each other.

- 1 Judge : He is of unsound mind. If he is in court and in hearing, it is dangerous. DPP is of the opinion that even if he was of unsound mind and not present, the court can still proceed. I record that everyday that he is of odd behavior.
- 2 DPP : I do not think that he should be brought here anymore. So far as counsel is here
- 3 Judge : We suspend him for two weeks and then let him come back, yes Shopna?
- 4 DC : We would like to discuss the matter, *Yang Arif*. \* (Your Honor)
- 5 Judge : Even if you discuss with him it is still the court that decides
- 6 DC : Yes.
- 7 Judge : Take him out. *Bawa dia keluar*. \* (Take him out)

Note: Expressions given in brackets are translations from BM.

The conversation between the Judge, Defence Counsel and Deputy Public Prosecutor took place in English. The only Malay word used between them was *Yang Arif*. When the Judge asked that the accused be taken out of the courtroom, he first said it in English. This was probably for the benefit of the Defence Counsel and the Deputy Public Prosecutor. The Judge then repeated the same instruction in BM, this time for the benefit of the courtroom policeman. The language choice decision could be an example of ‘accommodation’ in language use. In line with Meyerhoff’s (2006) suggestion, the accommodation theory should be used in the context of an underlying attitude or social identification of the speaker. It is observed that the language choice decision is dependent on the Judge’s belief that the court policeman would understand the message better if it was said in BM. This supports Meyerhoff’s assertion that meaningful claims about accommodation processes cannot be made without considering social psychological notions such as social identity and language attitudes. Communicative efficiency is also a motivating factor in language choice decisions.

### 5.3.2 Observation Two

Setting: Proceeding continues with Defence Witness (DW) 12

- 1 DC : Bila tiba di Bukit Jenbalik pada anggaran kamu itu pukul berapa? Apabila sampai?
- 2 DW : Lima pagi Yang Arif.
- 3 Judge : *Pada hari?*
- 4 Accused : *30 Jun 2000*
- 5 DC : *Bila sampai apa kamu buat?*
- 6 Accused : *Keluarkan barang dan terus naik.*
- 7 Judge : *Keluarkan barang dari kereta?*
- 8 Accused : *Ya, Yang Arif.*
- 9 Judge : *Dan?*
- 10 Accused : *Terus mendaki.*
- 11 Judge : *Terus mendaki bukit?*
- 12 DC : *Sampai di sana mesti ada perbincangan. Mana tahu untuk mengangkat barang?*
- 13 Accused : *Di arah oleh OKT\*.*
- 14 DC : *Sejurus sampai terus naik?*
- 15 Accused : *Ya Yang Arif.*

[\*OKT – *Orang kena tuduh* (the accused)]

## Translation

- 1 DC : At what time approximately did you arrive at Bukit Jenbalik?  
When you arrived?
- 2 DW : At five your honor.
- 3 Judge : On what day?
- 4 Accused : 30<sup>th</sup> June 2000.
- 5 DC : What did you do when you arrive?
- 6 Accused : Remove the goods and go up.
- 7 Judge : Got the stuff out of the car and alight from the car?
- 8 Accused : Yes, Your Honor.
- 9 Judge : And?
- 10 Accused : I went directly up the hill.
- 11 Judge : Directly up the hill?
- 12 DC : You must have had discussions when you arrived? How did you  
know to bring the goods up?
- 13 Accused : I was ordered to by the accused.
- 14 DC : You went up directly?
- 15 Accused : Yes, Your Honor

The proceeding was conducted in BM. This case was tried in the High Court. Since the charge was a very serious one – treason, and in order that the witness understood everything that was asked and was said, the Judge, and the Defense Counsel used BM throughout the questioning. BM is the native language of the accused. The interlocutors used strategic language choices to establish rapport with each other. The law allows testimony to be given in a language that the accused feels comfortable in. There was also indication that the interlocutors used the accused's native language in order to establish a better working relationship. This is particularly important for interlocutors at higher hierarchical levels, who often take the initiative to narrow the status gap with subordinates through strategic language choice decisions.

### **5.3.3 Observation Three**

Setting : The accused is charged in the High Court under Section 417 of the Penal Code for cheating. If he were found guilty, the accused would be punished with imprisonment. The term of punishment may extend to a maximum of five years or with fine or both. The facts of the case are that the accused has opened a clinic and has ordered a supply of goods/medicines to be delivered. He is not a doctor or anyone related to the medical profession. The dispute was that the venue of the clinic does not exist. This case,

however, is an appeal where the first court that gave judgment was the Sessions Court. The Judge in the Sessions Court had held that the accused be punished with imprisonment for 18 months.

- 1 Court : *Kes sambung bicara. OKT dituduh bawah Section 417, Kanun*  
Interpreter *Keseksaan.*
- 2 Judge : So, that's the charge?
- 3 PP : Yes, *Yang Arif.*
- 4 Judge : So you agree that the other two charges are correct?
- 5 PP : The facts of the appeal have been presented earlier.
- 6 Judge : So...that means since the clinic was to exist. The records were there?
- 7 Accused : Yes, *Yang Ariff.*
- 8 Judge : Hmmphhh. I think I better buy some medicine from this clinic.  
*Bagi itu kelinik punya nama*
- 9 Accused : *Kelinik Bersatu*
- 10 Judge : So why does this charge state *tak wujud lagi*? Is there any evidence to show that he didn't know?
- 11 PP : SP1 evidence is regards to the 1<sup>st</sup> and 2<sup>nd</sup> charges.
- 12 Judge : So *tulis* evidence refers to what charge?
- 13 PP : 1<sup>st</sup> charge *Yang Arif.*
- 14 Judge : Who was the SP7?
- 15 PP : The medicine distributor.
- 16 Judge : He said on 17<sup>th</sup> June 1996...hah? Hmphhh...
- 17 PP : Another company used the premises.
- 18 Judge : Another company for that premise?  
Hmmpphhh... what about the knowledge of the accused?
- 19 PP : Tiada knowledge. *Yang Ariff.*
- 20 Judge : Hmmpphhh... What does it say? The same matter?
- 21 PP : Yes, *Yang Arif.*
- 22 Judge : What's your answer?
- 23 PP : SP7 said that he didn't visit the premises in question.
- 24 Judge : What's your point?
- 25 PP : To make the statement clear *Yang Arif.*
- 26 Judge : Why didn't they call somebody from the enterprise?
- 27 PP : Don't know *Yang Arif.*
- 28 Judge : Why is this case brought here?
- 29 PP : Please refer to page 32 of appeal *Yang Arif.*
- 30 Judge : Page what? According to SP7, his evidence on the Supermarket is *mengikut rekod pada 17 Mac '96*. Who is SP7?
- 31 PP : : They were there, *Yang Arif.*
- 32 Judge : I am not sure I will allow the appeal. Cheating people is not right.  
Make sure that you do not bring shame to any family or friend.  
He is the cause for all this.
- 33 PP : : He was my classmate, *Yang Arif.*
- 34 Judge : Oh, I see. Why do you have such classmate? I will decide at a later date. Please check court register for new date. *Ada tarikh lain? Cuba bulan hadapan.*
- 35 Court : *Bulan depan sudah penuh Yang Arif.*  
Interpreter
- 36 Judge : Counsel, what do you think?



- 37 PP : I will be out of the country for a week in two months time, Your Honour.
- 38 Judge : *Oklah. Bulan Jun boleh tak?*
- 39 Court : Yes, *Yang Arif*.
- Interpreter
- 40 Judge : OK.

Court adjourns.

\*PP- Public Prosecutor

### Translation

- 1 Court : A continuation of the proceedings. The accused has been charged  
Interpreter under Section 417 of the Penal Code.
- 2 Judge : So, that's the charge?
- 3 PP : Yes, Your Honour.
- 4 Judge : So you agree that the other two charges are correct?
- 5 PP : The facts of the appeal have been presented earlier.
- 6 Judge : So...that means since the clinic was to exist. The records were there?
- 7 Accused : Yes, Your Honour
- 8 Judge : Hmmphhh. I think I better buy some medicine from this clinic. Please furnish me with the name of the clinic.
- 9 Accused : *Klinik Bersatu*
- 10 Judge : So why does this charge state *tak wujud lagi?* Is there any evidence to show that he didn't know?
- 11 PP : Prosecution witness 1
- 12 Judge : So the written evidence refers to what charge?
- 13 PP : 1<sup>st</sup> charge Your Honour.
- 14 Judge : Who was the prosecution witness 7?
- 15 PP : The medicine distributor.
- 16 Judge : He said on 17<sup>th</sup> June 1996...hah? Hmphhh...
- 17 PP : Another company used the premises.
- 18 Judge : Another company for that premise?  
Hmmpphhh... what about the knowledge of the accused?
- 19 PP : No knowledge. Your Honour.
- 20 Judge : Hmpphhh... What does it say? The same matter?
- 21 PP : Yes, Your Honour.
- 22 Judge : What's your answer?
- 23 PP : Prosecution witness 7 said that he didn't visit the premises in question.
- 24 Judge : What's your point?
- 25 PP : To make the statement clear Your Honour.
- 26 Judge : Why didn't they call somebody from the enterprise?
- 27 PP : Don't know Your Honour.
- 28 Judge : Why is this case brought here?
- 29 PP : Please refer to page 32 of appeal Your Honour.
- 30 Judge : Page what? According to prosecution witness 7, his evidence on the Supermarket is according to the records on the 17 March '96. Who is prosecution witness 7?

- 31 PP : They were there, Your Honour.  
 32 Judge : I am not sure I will allow the appeal. Cheating people is not right. Make sure that you do not bring shame to any family or friend. He is the cause for all this.  
 33 PP : He was my classmate, Your Honour.  
 34 Judge : Oh, I see. Why do you have such classmate? I will decide at a later date. Please check court register for new date. Is there another date?  
 Try next month.  
 35 Court : Next months dates are filled.  
 Interpreter  
 36 Judge : Counsel, what do you think?  
 37 PP : I will be out of the country for a week in two months time, Your Honour.  
 38 Judge : Okay how about June?  
 39 Court : Yes, Your Honour.  
 Interpreter  
 40 Judge : OK.

This observation was made at the High Court. It was a criminal matter. The Judge and the accused were ethnic Indians. The Public Prosecutor was Malay. Basically, English was used throughout except in instances where standard legal expressions/phrases were required. In these instances, standard legal expressions in BM were preferred, e.g. *tak wujud lagi* (line 10), *kes sambung bicara*, *OKT dituduh bawah Seksyen 417*, *Kanun Keseksaan* (line 1). However, the communication which took place between the Judge and the Court Interpreter was consistently in BM. An interesting point noted was that even though the Judge and the Court Interpreter were Indians, they both used BM when communicating with each other during the case. The situational norm of using the court official language (BM) was violated only when communicative efficiency was at stake.

#### 5.3.4 Observation Four

Setting: Accused is charged with destroying public property under Section 186 of the Penal Code. He is also charged with resisting arrest and throwing his shoes at a police officer. Accused tenders his own defence.

- 1 Court : *Kamu telah dituduh dibawah Seksyen 186, Kanun Keseksaan.*  
 Interpreter *Faham?*  
 2 Accused : *Faham.*  
 3 Judge : *Kamu boleh dikenakan hukuman denda maksimum RM1,000 atau dua tahun penjara. Kamu faham?*

- 4 Accused : *:Faham.*  
 5 Judge : *:Apa alasan untuk rayuan kamu?*  
 6 Accused : *:Saya tidak berniat untuk merosakkan harta awam.*  
 7 Judge : *Baiklah, kamu didenda RM 400.*

#### Translation

- 1 Court Interpreter : You have been charged under Section 186 of the Penal Code. Do you understand?  
 2 Accused : Understood.  
 3 Judge : You understand that you can be fined up to RM 1,000 or given up to 2 years imprisonment. Do you understand?  
 4 Accused : Yes, understand  
 5 Judge : On what grounds are you appealing?  
 6 Accused : I did not intend to destroy public property  
 7 Judge : OK I will fine you RM400.

This observation was made at the Magistrates Court. It was a criminal matter. The accused was an unemployed youth of Chinese origin. The relevant parties used BM when they had to communicate with the accused. It can be inferred that the youth went to school, where BM was the medium of instruction as he was very comfortable using the language. He is 22 years old and definitely a product of the post-independence national school curriculum where BM is the medium of instruction. The Judge, of Malay ethnicity, the Court interpreter, an Indian, and the accused, a Chinese, chose BM as the language of communication. This shows that BM is often the language of choice in inter-racial communication today. However, it is felt that BM is often used inter-racially by those from the lower socio-economic strata of society. Often language choice decisions are also prompted by the interlocutors' limitations in language proficiency. In this matter, the accused could not communicate with the others in a language other than BM.

#### **5.4 Summary**

The existence of legislations governing language choice, as indicated by the law enshrined in the Federal Constitution, National Language Act, Rules of Courts, and

circulars issued by the Malaysian Judiciary, stipulate language choice in the legal domain. However, situational and socio-cultural norms, had greater potency in determining language choice and use as illustrated in the court observations made.

A consideration in language choice for legal professionals was the formality of the setting. Since the courtroom setting was formal, the official language of courts i.e. BM was often used. The consistency in which BM was used showed that there was a strong norm governing language choice in courtroom situations. The use of other languages for legal matters was often interpersonally motivated. This indicated the existence of a socio-cultural norm of deferring to the language choice of interlocutors for ease of communicative efficiency.

For interethnic communication, convergence in language choice was common, unless there was a mismatch of language repertoires. The influence of socio-cultural factors on language choice was most clearly seen in the widespread use of English, when compared to BM for High court matters. This showed the strong socio-cultural status of English. BM was the preferred language only in the Magistrates courts. It is apparent that English had derived its socio-cultural strength from past institutional support in the legal domain which has helped establish it as a prominent language used in the legal workplace today.

## CHAPTER SIX

### DATA ANALYSIS AND FINDINGS

#### 6.0 Introduction

This chapter is divided into four broad sections. The first three sections discuss the results of the questionnaire and the last section discusses the interview responses. In particular, the first section discusses key demographic characteristics of respondents involved in the study. The second section discusses respondents' general feelings about *BM* (BM) and English and provides a detailed self-reporting of their language proficiency skills. In the third section, language use in a given legal context is discussed.

The discussion in these four broad sections provides answers to research questions (posed in Chapter 1, Section 1.4) that the present research is designed to address; namely, the language chosen i.e. BM or English in a given legal context, the factors that dictate this choice and attitudes of legal professionals toward BM and English and the way this is reflected in actual discourse. The fourth and final section in this chapter discusses the interview held with legal professionals.

#### 6.1 Identifying Key Demographic Characteristics of Respondents

Both qualitative and quantitative approaches were employed to capture different aspects of the participants' bilingualism. Table 6.1 below provides a summary of the data collection strategies used to investigate language choice and use in the legal domain at the levels of language proficiency, language choice, and language attitudes. In most research thus far, surveys and interviews have been the primary data sources used to investigate language choice and attitude. In this study, the survey questionnaire was

administered to 122 legal professionals in the Klang Valley. They were asked to state their general feelings about BM and English and provide a detailed self-reporting of their language proficiency skills. They were also asked to state their language use in the various legal sub-domains. The survey questionnaire was followed by interviews with the legal professionals. The interviews focused on language choice in greater depth and on their attitudes toward English and BM (see Appendix I for a list of interview questions).

**Table 6.1 A Summary of Data Sources Used to Investigate Language Choice, Use and Attitude in the Legal Domain**

<p><b>Language Proficiency</b>            Survey questionnaire - Self-reported data of language proficiency            Interview</p>
<p><b>Language Choice</b>            Survey questionnaire - Self-reported data of language choice and use in the legal domain            Interview            Court observations (as reported in Chapter 5)            Document Analysis (as reported in Chapter 5)</p>
<p><b>Language Attitudes</b>            Survey questionnaire - Self-reported data of language attitudes towards English and BM            Interview</p>

In the language use questionnaire, the participants were asked to provide information on fifteen demographic characteristics which were felt to be relevant to their language choice and use in the legal domain. These variables were thought to be important after observing this speech community in their daily duties. At this juncture it is important to note that preliminary observations took place in two separate legal firms and in the subordinate and superior Courts in Kuala Lumpur. The duration of the preliminary investigation was for a period of four weeks.

The fifteen demographic characteristics were as follows:

- (i) name (optional)
- (ii) job designation
- (iii) home address (optional)
- (iv) office address
- (v) gender
- (vi) telephone contact
- (vii) fax number
- (viii) email address
- (ix) age
- (x) race
- (xi) mother tongue
- (xii) knowledge of another language (other than mother tongue)
- (xiii) educational background (medium of instruction)
- (xiv) proficiency in English
- (xv) proficiency in BM

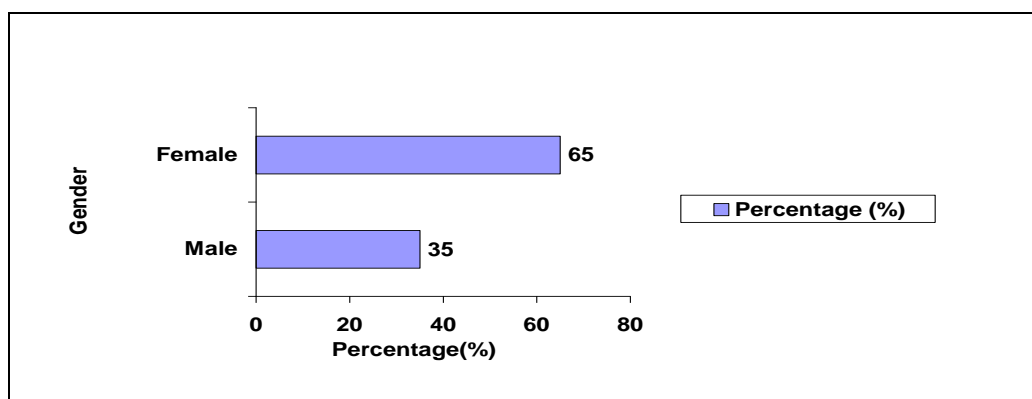
Some of the information obtained is tabulated and discussed in the following sections. Some others e.g. name, home address, office address, telephone and fax numbers have been left out for reasons of anonymity.

**Table 6.2 Legal Professionals According to Job Category**

<b>Job Designation</b>	<b>(%)</b>
Judiciary	6
Public Prosecutor	48
Defense Lawyer	46

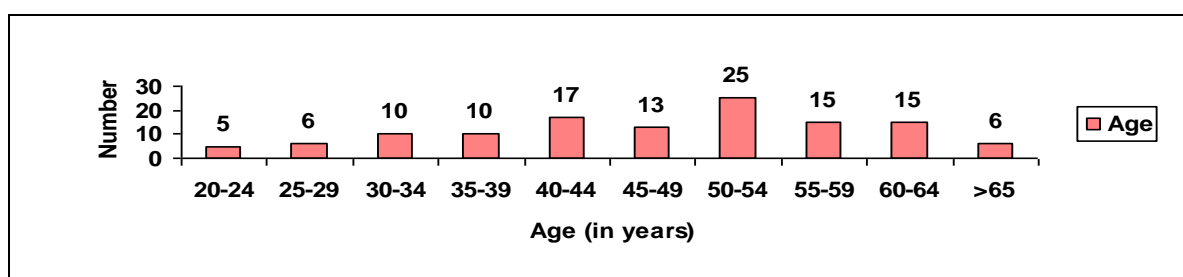
The respondents were all grouped into one category of legal professionals. Within this large category, they were asked to identify which category of legal professional they belonged to. For purposes of this study, legal professionals are made up of those in the judicial services, legal services (public prosecutors) and legal practitioners (defence lawyers) (see Chapter 3 for a detailed description of the legal profession).

**Figure 6.1 Gender of Respondents**



A total number of 122 participants were respondents for this study (n=122). The percentage of male (65%) and female (35%) respondents in this study was indicative of the imbalance of the two genders in the legal profession.

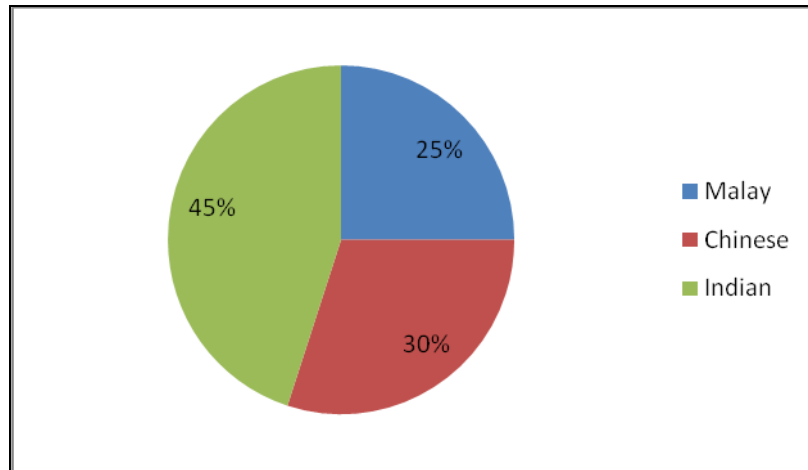
**Figure 6.2 Age Group of Respondents**



The participants ranged in age from 20 to 64 years. For members of the judiciary, the compulsory age for retirement is 65. As for the defense lawyers, there was no compulsory retirement age as they were from the private sector. Those who are public prosecutors are bound by the government compulsory retirement age of 56. The largest group of legal professionals (n=25) was found to be in the 50-54 years age group. The lowest number of legal professionals (n=5) was reported to be in the 20-24 years age group. Generally, the legal professionals surveyed were mostly above the age of forty. Of the total number of 122 legal professionals surveyed, a total number of 91 respondents were above the age of 40 years.

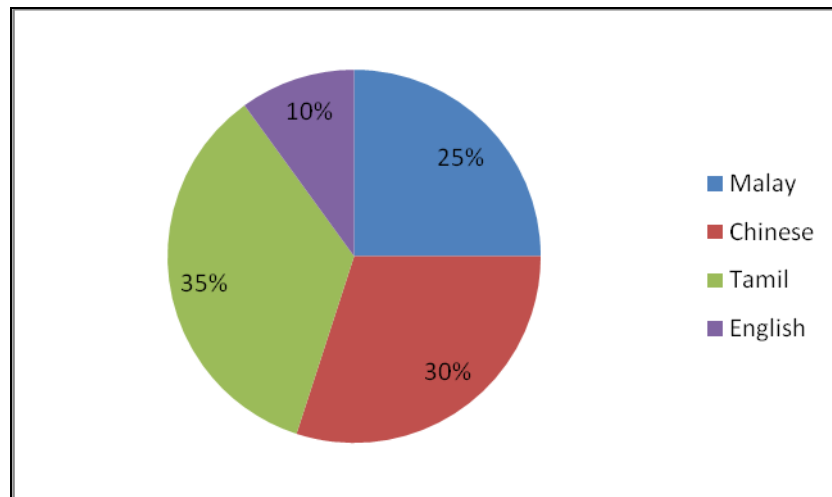


**Figure 6.3 Respondents by Ethnic Group**



As for ethnicity, the respondents were categorized according to those of Malay, Chinese, Indian and others ethnic origin. Figure 6.3 show that the majority of participants were Indians (45%) with a smaller number of Malays (25%) and Chinese (30%).

**Figure 6.4: Mother Tongue of Respondents**



**Table 6.3 Knowledge of a Language (Other than Mother Tongue): Malay, Chinese, Indian, English**

<b>Ethnicity of Respondent</b>	<b>Knowledge of a Language Other than Mother Tongue</b>	<b>%</b>
Malay	English	100
	Tamil	6
	Chinese	14
	Other	16
Chinese	English	100
	Tamil	4
	BM	100
	Other	15
Indian	English	100
	BM	100
	Chinese	15
	Other	12

Figure 6.4 presents data on the mother tongue of the respondents. As can be seen in figure 6.4, thirty-five percent (35%) of the respondents in this study reported Tamil as their mother tongue. A smaller number (10%) listed English as their mother tongue. All the Malay respondents (25%) stated BM as their mother tongue. The Chinese respondents (30%) listed the following languages as their mother tongue: Cantonese, Hokkien and Hakka. On the other hand, Table 6.3 presents data on respondents' knowledge of a language other than their mother tongue. The Indian and Chinese respondents reported that they all had a working knowledge of BM (100%). This is probably because it is a requirement that all legal professionals who want to be registered with the Malaysian Bar Council either have a credit pass in the Malaysian school-leaving examination or pass the Malaysian Bar Council Qualifying BM Language Proficiency examination. All the respondents (Malay 100%, Chinese 100%, and Indian 100%) irrespective of their ethnic origin stated that they had knowledge of English other than the knowledge they had of their mother tongue. There were also respondents of Malay ethnic origin who stated that they could speak Tamil (6%) and Chinese (14%). There were Chinese respondents who stated that they could speak Tamil (4%), and Indian respondents who stated that they could speak Chinese (15%). Some

respondents affirmed that they were able to speak other languages too. 16% of the Malay respondents stated that they could speak another language other than BM, English, Chinese or Tamil. This other language could be a foreign language like Arabic, a language closely linked to the Malays in Malaysian and to Islam. 15% of the Chinese respondents and 12% of the Indian respondents also stated that they had knowledge of a language other than those presented in table 6.3.

**Table 6.4 Medium of Instruction for Education**

<b>Level of Education</b>	<b>BM</b>	<b>Chinese</b>	<b>Tamil</b>	<b>English</b>	<b>BM and English</b>
Primary	45	10	5	25	15
Secondary	60	-	-	25	15
Tertiary	15	-	-	70	15
Post-Tertiary	5	-	-	90	5

The respondents of the study were asked to provide information with regard to the medium of instruction they received for their primary, secondary, tertiary and post-tertiary education. Responses to this question (as seen in Table 6.4) indicated that 45% of the respondents received their primary schooling using BM as the medium of instruction. There were 10% of the respondents who went to Chinese-medium primary schools and 5% who went to Tamil-medium primary schools. A slightly higher number of the respondents (25%) went to English-medium primary schools and another 15% to primary schools where education was provided in both BM and English. However, the figure was different for secondary education. For secondary schooling, 60% of the respondents reported that they went to schools where BM was the medium of instruction. Another 25% went to English-medium schools, and 15% of the respondents went to secondary schools which used BM and English. The converse was true for

tertiary and post-tertiary education. Only 15% of the respondents stated that they received tertiary education in BM. A large majority (70%) received their tertiary education in English and another 15% stated that they received tertiary education in BM and English. Very few respondents (5%) reported receiving post-tertiary education in BM (5%) and BM and English (5%). A very large majority (90%) of the respondents who had post tertiary education reported receiving their tertiary education in English.

All this points to the heavy dependence on the English language within the area of legal education and this has impacted the use of the language within the current Malaysian legal workplace setting. It could also mean that most respondents born in the post-independence (after 1957) period were either educated in BM or English. Those respondents who were older and born in the pre-independence period were all educated in English. This is a result of educational language planning and policy decisions that have taken place in the country (see Chapter 3 for a detailed discussion of language planning and legal education in Malaysia).

Many Malaysian legal professionals have received their legal education overseas in countries like the England, Wales, Northern Ireland, Australia and New Zealand. This explains the large number of respondents (70%) reporting that their tertiary education had been in English. Even those who had graduated from local institutions of higher education in the country reported that they had received their legal training in English. Most respondents reported that they had received post-tertiary qualifications, for example the bar qualifications in English. The respondents who received their legal education at University Malaya and Universiti Teknologi MARA reported that they had received their legal education in both BM and English. These two tertiary institutions in Malaysia have always provided legal education in English.

**Table 6.5 Proficiency in BM and English**

	Ethnic Group	%			
		Excellent	Good	Fair	Poor
Proficiency in English	Malay	65	15	10	10
	Chinese	80	20	-	-
	Indian	85	10	5	-
Proficiency in Bahasa Malaysia	Malay	85	15	-	-
	Chinese	45	20	20	15
	Indian	40	25	35	-

Table 6.5 shows that respondents' proficiency in English and BM varied with their ethnicity. Respondents were asked to self-rate their proficiency in these two languages ranging from excellent to poor. Given that most participants reported "good" and "excellent" proficiency in both languages, the link between proficiency in English and BM was examined. Malays tended to have a better command of BM than non-Malays. Non-Malays on the other hand, seemed to have a better command of English than Malays (Chinese, 80% of respondents reported having excellent proficiency in English; Indians, 85% of respondents reported having excellent proficiency in English, as compared to the Malays with only 65% of the respondents reporting to have excellent proficiency in the English language). These characteristics were important in providing background information of the respondents and in establishing the links between demographic characteristics and the participants' language choice and use patterns.

## **6.2 General Feelings about Ability in BM and English and Self-reports of Language Proficiency Skills**

This section begins with the discussion of the respondents' ability to understand English and BM and their self reports of the individual language skills in BM and English. Since these issues are closely related, the quantitative results are often presented prior to a collective discussion of the results obtained in these situations.

### 6.2.1 Ability in BM and English

**Table 6.6 Understanding and Speaking English and BM**

Ability to understand and speak BM and English		%				
		Excellent	Good	Average	With Difficulty	Not at All
Understanding BM and English	BM	60	35	5	0	0
	English	55	40	5	0	0
Speak BM and English	BM	40	40	20	0	0
	English	45	20	35	0	0

The results (in Table 6.6) indicate that the respondents' ability to understand and speak both BM and English ranged from good to excellent. A closer look at these claims, however indicate that they claim to understand both languages better (BM, 95%; English 95%) than they speak it (BM 80%; English 65%). This claim is useful in explaining the varying amounts of BM and English used among the respondents in the legal domain. The different levels of understanding and speaking BM and English claimed by the respondents are also consistent with the language planning decisions which have been made where the legal domain is concerned (see Chapter 3).

The role and place of the English language and BM have changed in use and importance in the legal domain before and after independence. National language policy and planning and policy decisions with regards to education in Malaysia have had the effect of effect of relegating English to only a school subject. This was a response to the urgency to establish a national identity. With these language policy implementations it is understandable that the general English language ability of most Malaysians would be lower than their ability in the national language. The national language policy has established primacy somewhat in schools. However, for legal education at the tertiary

level, English still plays an important role and is often the main medium of instruction for legal tertiary level degree programs.

**Table 6.7 Reading and Writing in English and BM in the Legal Domain**

Frequency of Reading and Writing in BM and English		%			
		Daily	Weekly	Monthly	Less Often
Reading in BM and English	Bahasa Malaysia	65	10	15	20
	English	100	0	0	0
Writing in BM and English	Bahasa Malaysia	55	20	5	20
	English	100	0	0	0

As can be seen in Table 6.7, there is a greater tendency for legal professionals to read and write daily in English (read, 100%; write, 100%) compared to BM (read, 65%; write 55%). The primary factor that influences the respondents' lesser reported frequency for reading and writing in BM compared to their greater reported frequency for reading and writing in English is that most of the reading and writing that legal professionals do are in English in the Malaysian legal workplace setting. The fact that they also report that they do read and write in BM suggests that they could also be bilingually comfortable in both BM and English. This could also suggest that they recognize the importance of being bilingual and being able to handle the higher reading and writing demands of the legal domain. It is probably also true that reading materials in the field of law are mostly in English and in order to keep abreast of current local and international legal issues reading in English is a necessity. Outside the legal domain, the reverse maybe true in Malaysia but that is not the focus of this study.

**Table 6.8 The Maintenance of English in Malaysia**

Opinion	%			
	Yes	No	Don't know	Neutral
Do you think it is important for English to be maintained in Malaysia?	95	0	0	5
I can expect from a born and raised Malaysian that he will speak BM as much as possible	65	30	0	5

As reflected in Table 6.8, the respondents in the study almost unanimously (95%) prefer the maintenance of English in Malaysia. This view among Malaysian legal professionals can be explained by the fact that the importance of the English language in the legal domain is recognized. Certainly too, because of the nature of the legal profession, the respondents are aware of the advantages of knowing the English language when it comes to legal matters. This enhanced the legal professionals' preference for maintaining English. It does not seem that the respondents relate the English language to often perceived western 'decadent' values such as promiscuity and an excessive concern for material wealth.

The results also show that the respondents expect a born and raised Malaysian to speak BM as much as possible (Table 6.8). This is not surprising considering the fact that BM is a powerful instrument of Malaysian social and cultural unity. Indeed, a Malaysian's commitment to the Malaysian kinship and solidarity is suspect if he or she does not know much BM. Furthermore, studies by Lambert, et al. (1960), Lambert and Anisfield (1964), and Lambert and Tucker (1969) all indicate that judgements about a speaker's personality are often made based on the language used which in this case may also influence language choice.



**Table 6.9 Tendency to Code-switch**

<b>If, during a conversation in BM, you forget or do not know a word you need, which would you do?</b>	<b>(%)</b>
Ask someone for the word	10
Search for it in my mind and use a roughly equivalent BM word?	30
Use the English word without searching for the BM one?	60

Table 6.9 reports on responses on the tendency to code-switch. A majority (60%) of the respondents reported that they would switch from BM and use an English word if they did not know the equivalent word in BM. Only 10% of the respondents said that they would ask someone else for the word and only 30% of them reported that they would search for the word in their mind and use an equivalent word in BM. This confirms their earlier responses that they did understand BM well but they were more comfortable to use English when dealing with legal matters in the legal work domain. The data does point to the presence of a bilingual workforce in the Malaysian legal work domain.

**Table 6.10 General Feelings about BM and English**

<b>General opinion about English Language</b>	<b>Agree %</b>	<b>Disagree %</b>	<b>Don't Know %</b>
Learning English is boring but necessary	20	80	0
English will take you further than BM	<b>95</b>	0	5
English can express most things better than BM can	70	25	5
It is better not to speak English at all than to speak badly	20	80	0
It is better to speak only BM than to mix English and BM	50	50	0
It is better to speak pure English than to mix English and BM	65	25	10

The tendency for the majority of the respondents (95%) to agree that English will take them further than BM is probably influenced by the fact that the importance of English is currently being stressed in Malaysia. Furthermore, it also seems that proficiency in English is of great currency value for employability and creates the impression that English is a prerequisite for future social and economic growth. This has created awareness among legal professionals in this study of the vital role of English in their ambition to advance socially and economically.

Although the data in table 6.10 shows that many legal professionals (70%) believed that English can express most things better than BM can, a quarter of the respondents (25%) disagreed with this statement. Unfortunately, the question in this situation does not specify what 'things' English can express better than BM can. Respondents were probably relating this to topics in the legal domain. Thus, considering topics such as these may have prompted the respondents to disagree that BM is a better mode of expression compared to English in the legal work domain.

Table 6.10 also indicates that the respondents overwhelmingly did not agree (80%) to the statement that it is better not to speak English at all than to speak it badly. This is possibly due to the fact that any form or variety of English can be used in a Malaysian court of law. There are no rules or regulations that stipulate that the English used in a court of law must be spoken in its 'pure' and standard form. However, it is important to note that written legal documents and judgments do require Standard English to be used.

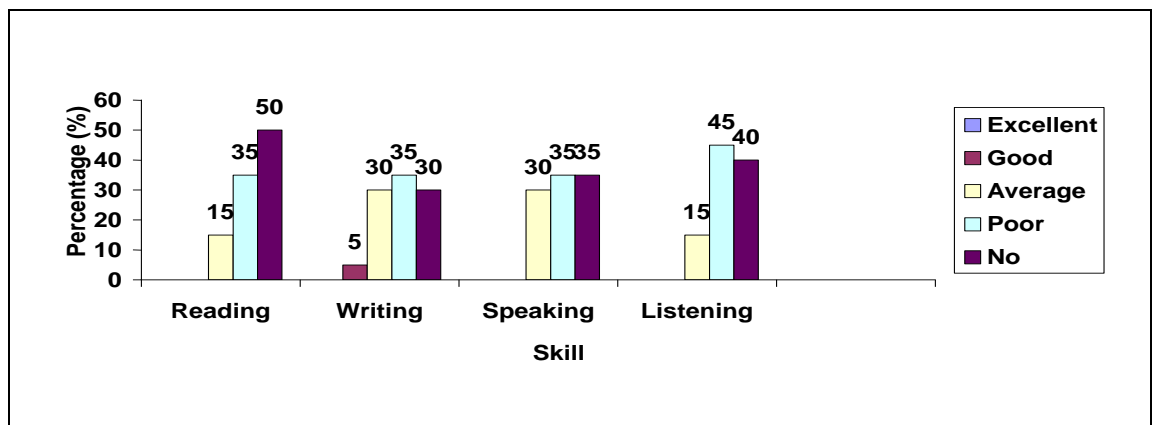
Responses obtained from the respondents for the two earlier situations have interesting findings. When asked whether it was better to speak only BM than to mix English and BM, their responses were equally divided (50%). However, when asked whether it was better to speak pure English than to mix English and BM, more than half of the

respondents (65%) agreed that pure English should be used and code-mixing should not take place.

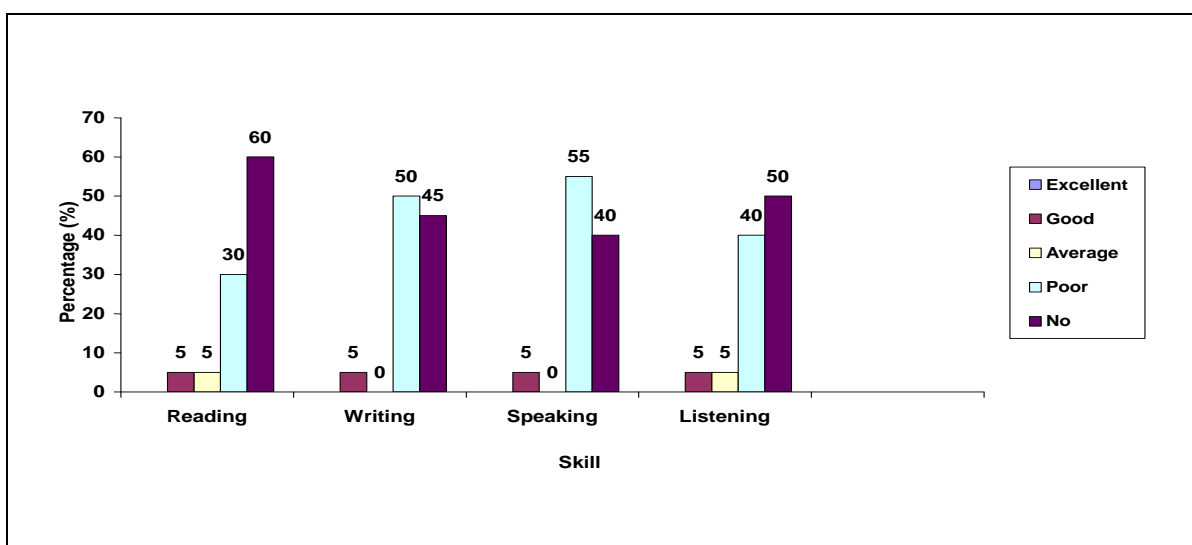
Thus far, this study has provided some insights into the different levels of English/BM bilingualism thought to be relevant to an understanding of language choice and use in the legal domain. These have also been shown to pertain to the area of language proficiency normally reading, writing, speaking and listening. It is always necessary to remember that laws and the process of ‘lawyering’ are expressed and realized through language and it could be said that the two notions are correlated and can not be separated. Thus the need to understand the language choice and use patterns in the legal domain.

### 6.2.2 Self-reports of Language Proficiency Skills

**Figure 6.5 Rating of BM Language Proficiency Skills**



**Figure 6.6 Rating of English Language Proficiency Skills**



When asked to rate their general proficiency skills in BM and English, the respondents demonstrated that they were bilingual. The data obtained in Figures 6.6 and 6.7 indicate that the legal professionals surveyed reported that they had a reasonably good level of proficiency in all the sub-skills of language for BM and English. For purposes of discussion of this set of data, a reasonable level in the sub-skills was a self-report of good and above. Interestingly however, was the self-report of their proficiency in English which was higher than the self report of their proficiency in BM. For English, the respondents reported that they possessed a good level of proficiency for reading (60%), writing (45%), speaking (40%) and listening (50%). On the other hand, for BM, they also reported good levels of proficiency for reading (50%), writing (30%), speaking (35%) and listening (40%). In effect, the desire of mastering two languages has always been promoted by the educational policy planners and decision makers in Malaysia and ample opportunities have been given to students to acquire a second language.

In fact, Malaysia's educational infrastructure has planned for this kind of second language learning so that Malaysians might broaden their contacts with people in other

parts of the world. That is the reason why the situation here in Malaysia encourages the use of two languages, the use of BM for intra-national needs and the use of English at the international level. However, in the legal workplace setting, it seems that there is a reasonable amount of English being used for intra-national purposes thus actually promoting and allowing for a bilingual environment in the Malaysian legal workplace.

**Table 6.11 Proficiency in BM (Language Sub-Skills)**

Proficiency in Sub-skills	%				
	Excellent	Good	Average	Fair	Poor
Understand questions in BM	35	55	5	5	0
Understand conversations in BM	50	40	5	6	0
Understanding BM without translating	40	30	20	10	0
Speak BM fluently	40	30	25	5	0
Speak BM without an English accent	30	50	20	0	0
Speak BM without translating	30	35	25	10	0
Read BM aloud	50	30	20	0	0
Understand reading in BM	40	45	10	5	0
Use correct grammar when writing in BM	20	50	20	10	0
Use correct spelling when writing in BM	30	55	10	5	0
Use correct grammar when speaking in BM	25	45	25	5	0

Although most of the legal professionals surveyed report that they are excellent in the following BM sub-skills (understand questions in BM 35%, understand conversations in BM 50%, understand BM without translating 40%, speak BM fluently 40%, speak BM without an English accent 30%, speak BM without translating 30%, read BM aloud

50%, and understand reading in BM 40%), there is a decrease in their reported proficiency (excellent) across depths e.g. use correct spelling in BM (use correct grammar when writing in BM 20%, use correct spelling when writing in BM 30%, use correct grammar when speaking in BM 25%) (see Table 6.11).

**Table 6.12 Proficiency in English (Language Sub-Skills)**

Sub-skills	%				
	Excellence	Good	Average	Fair	Poor
Understand questions in English	50	40	5	5	0
Understand conversations in English	55	40	0	5	0
Understanding English without translating	50	40	5	5	0
Speak English fluently	30	40	5	5	0
Speak English without a Malaysian accent.	45	45	5	5	0
Speak English without translating	40	50	5	5	0
Read English aloud	60	30	5	5	0
Understand reading in English	50	40	5	5	0
Correct grammar when writing in English	45	45	5	5	0
Use correct spelling when writing in English	40	45	10	5	0
Correct grammar when speaking in English	40	45	10	5	0

In contrast, self-reported English proficiency increases steadily with increasing depth and some respondents even reported being excellent in English (understand questions in English 50%, understand conversations in English 55%, understanding English without translating 50%, speak English fluently 30%, speak English without a Malaysian accent. 45%, Speak English without translating 40%, Read English aloud 60%, understand reading in English 50%, correct grammar when writing in English 45%, use correct spelling when writing in English 40%, correct grammar when speaking in English 40%) (see Table 6.12). This suggests that respondents could have overestimated their

language proficiency in English or that they base their judgment on different aspects of language proficiency than those measured by the questionnaire.

Thus far, the data on language proficiency reveal that many of the legal professionals surveyed have an additive view of bilingualism. They want to be proficient in both BM and English. For them, it seems that English does not infringe on BM. The goal is to know both languages well. Overall, the picture is of a speech community with a strong commitment to bilingualism, despite some evidence of a shift toward English at the level of usage and language proficiency in the legal work domain.

The use of language in the legal domain, that is, in law and the judiciary requires accuracy more than that needed in other fields. This is because inaccuracies will only create doubts and conflicts which can jeopardize the smooth running of the legal system, maybe even jeopardize justice itself. Therefore, those who are involved in the law must not only be fluent in BM and English, but also be familiar with the language used in legal matters. This fluency is not limited to just the oral aspects of the language but also to the written form. This is because the main activities in the legal and judicial sectors are not just limited to the courtroom. Legal activities also include enacting acts and legal documentation, drafting of code of accounts, legal advice and agreements.

The findings of the study all seem to point that the ability to use BM and English does not in itself guarantee the skilful usage of the two languages in law and judicial matters. Many legal professionals report themselves to more fluent in English compared with BM. This could be a result of the fact that many legal professionals surveyed are English-educated except for the younger ones who are locally-trained and received their education in a bilingual environment, BM and English. This situation understandably influences their willingness to accept BM as the sole language for use in the legal workplace domain or setting.

### 6.3 Language Use in a Given Legal Context

The discussion in this section is gathered from two sets of information asked in the questionnaire. The first is about respondents' general feelings about the use of BM and English in the legal domain and the second is about actual language use in the legal domain.

The law is expressed and realized through language and it could be said that the two notions are correlated and could not be separated. It is of major concern in Malaysia that the law is expressed and that legal proceedings are conducted in a language that the general public or the parties involved could understand (see Article 152, Malaysian Constitution).

#### **Article 152**

1. The national language shall be the Malay language and shall be in such script as Parliament may by law provide: Provided that-
  - (a) no person shall be prohibited or prevented from using (otherwise than for official purposes), or from teaching or learning, any other language; and
  - (b) nothing in this Clause shall prejudice the right of the Federal Government or of any State Government to preserve and sustain the use and study of the language of any other community in the Federation.
2. Notwithstanding the provisions of Clause (1), for a period of ten years after Merdeka Day, and thereafter until Parliament otherwise provides, the English language may be used in both Houses of Parliament, in the Legislative Assembly of every State, and for all other official purposes.
3. Notwithstanding the provisions of Clause (1), for a period of ten years after Merdeka Day, and thereafter until Parliament otherwise provides, the authoritative texts-
  - (a) of all Bills to be introduced or amendments thereto to be moved in either House of Parliament, and
  - (b) of all Acts of Parliament and all subsidiary legislation issued by the Federal Government, shall be in the English language.
4. Notwithstanding the provisions of Clause (1), for a period of ten years after Merdeka Day, and thereafter until Parliament otherwise provides, all proceedings in the Supreme Court or a High Court shall be in the English language: Provided that, if the Court and counsel on both sides agree, evidence taken in language spoken by the witness need not be translated into or recorded in English.
5. Notwithstanding the provisions of Clause (1), until Parliament otherwise provides, all proceedings in subordinate courts, other than the taking of evidence, shall be in the English language.
6. In this Article, "official purpose" means any purpose of the Government, whether Federal or State, and includes any purpose of a public authority.
- 7.

(Federal Constitution, 2000:186)

This provision in the Malaysian Constitution provides for instances when an individual appears before a court in which the legal proceedings is conducted in a language that he



or she does not comprehend, that person will have an opportunity to know what evidence has been adduced in the proceedings, whether he or she has been fairly judged and on what grounds his or her case has been decided. However, it is not the policy of the Malaysian government to adopt a bilingual legal system. It has been argued that language has become the 'primary medium of social control and power' (Fairclough 1989:3). Further, it could be argued that the clearest demonstration of the use of language to control an individual can be found in the structure and function of language use in the legal domain.

### 6.3.1 The Use of BM and English in Legal Context

**Table 6.13 Use of BM and English for Reading and Writing in the Legal Domain**

Activity	Language	Percentage of Occurrences of Use			
		Daily	Weekly	Monthly	Less Often
Read	BM	40	10	15	35
	English	100	0	0	0
Write	BM	55	10	0	35
	English	100	0	0	0

As can be seen in Table 6.13, all the respondents' (100%) reported that they read and write in English daily in response to the question about reading in English for legal purposes. However, slightly less than half (40%) reported that they read in BM and 55% reported that they write in BM for legal purposes daily. Workplace preference for reading material for legal purposes seemed to be for the most part driven by utility. The respondents expressed a preference for the language in which he or she felt most comfortable, or the one used in most legal material. When probed in the interview about this point, a few of the respondents' comments can be summarized as follows:

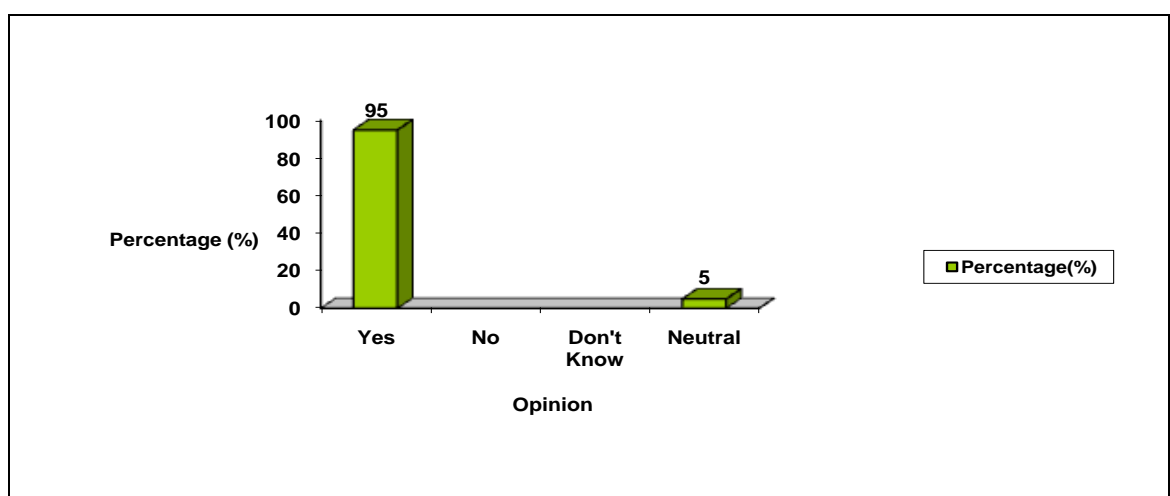
- Malaysia adopts a common law system and nearly all precedents of the common law system are in English.

- Since Malaysia still follows English case law and many judgments are written in English, it is more efficient to read in English especially when doing research for case precedents.
- Since I studied law in English, I find it easier to read in English for legal purposes.

It seems that the respondents in this study recognized the advantages of using English to read and write for legal purposes. After all, common law cases in Malaysia originate from various jurisdictions and most of them are written in English. The respondents realized that using English in their legal work allowed them to refer to the applicable common law cases directly and conveniently without the need for translation. Since it was also reported by all the respondents (100%) (as seen in table 6.12) that they wrote in English everyday, this shows that English still has an important role to play in Malaysia for legal matters (see Table 6.13).

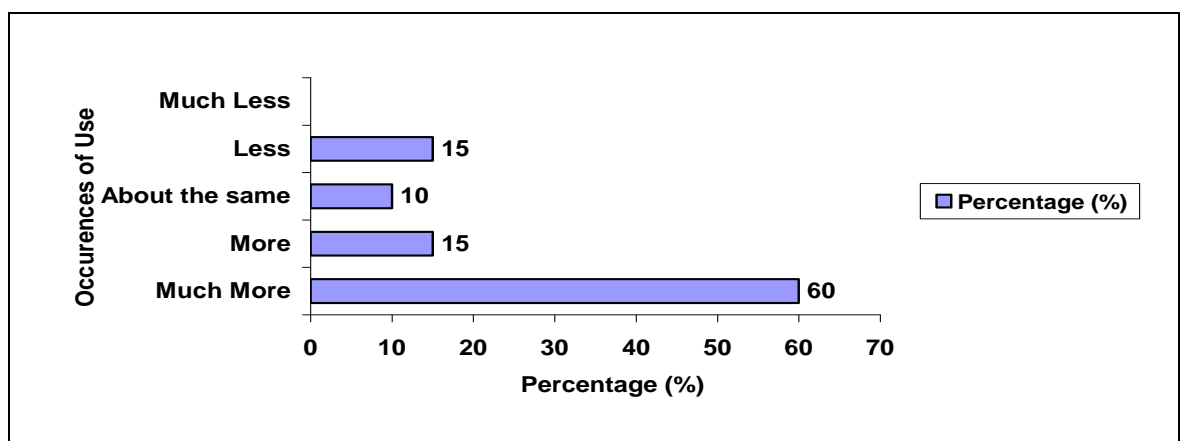
Some respondents during the interview expressed that legal professionals who received their legal training in English often preferred to use the language more than they used BM. They indicated that they were able to express themselves better using legal terms in English and had become accustomed to English as their working language in the legal domain.

**Figure 6.7 The Use of English for Legal Purposes in Malaysia**



A large majority of the respondents (95%) reported that it is important for English to be maintained and used in the Malaysian legal system. This result indicated that the continued use of English is desired in order to maintain a continuous and long-term relationship with other common law jurisdictions. Also, as translation in legal matters may lengthen the duration of the court proceedings, the use of English is preferred when the need to refer to English common law is required. It may be possible to concur that legal professionals are able to see the need for a workable compromise between both the pragmatic and non-pragmatic language considerations when dealing with dealing matters.

**Figure 6.8 Frequency of Speaking English more than BM for Legal Purposes**



It appears from the questionnaire survey that a large number of respondents (60%) speak more English than BM for legal purposes. Some respondents (discussed in section 6.3.2) indicated that this was especially the case in the higher level courts where parties are mostly represented by legal professionals and not plaintiffs. They felt that it would take more time for proceedings if they had to speak in BM. This seems somewhat contrary to localization and also contrary to bilingualism. They felt that legal professionals would have to take more time and legal proceedings could be disrupted case since translation of documents and case facts would be required.

It is somewhat evident that legal professionals believe that they need more English in the Malaysian legal setting and they speak more in English as they feel that BM may not be adequate to address the practical and pragmatic needs of the legal work domain. The predominant use of English may also indicate respondents' preference for a bilingual policy to be adopted for legal matters. The allowance to use both BM and English would point to a bilingual legal system that is practical, effective and flexible.

**Table 6.14 Language Used when Speaking and Thinking about Legal Matters**

Activity	%		
	BM all the Time	English all the Time	Both BM and English
Language you use when speaking about legal matters	15	40	45
Language you think in when dealing with legal matters	10	60	30

Data obtained in table 6.14 indicates the need to think about institutionalizing a bilingual legal system in Malaysia. As the majority of Malaysians speak both BM and English when speaking about legal matters (45%), a bilingual legal system would, on the one hand, maintain the flexibility for using BM to conduct legal proceedings in the national language. On the other hand, allowing the use of English would help legal professionals use the language they feel most comfortable in. Often, this flexibility of language use can aid in the administering of justice. However, it must be cautioned that, if a bilingual legal system is to be put into place, some preparatory work must be done. Firstly, all legal materials must be translated into BM. Secondly, the codification of common law in a bilingual form is necessary. Lastly, all legal professionals will need bilingual legal training, irrespective of whether they received their legal training and education in Malaysia or overseas.

**Table 6.15 Effort Made with English Compared to BM**

Activity	%		
	More Conscious	About the Same	Less Conscious
Effort made with English compared to BM when dealing with legal matters	30	55	15

**Table 6.16 Self Report of Bilingual Proficiency for Dealing with Legal Matters**

Activity	%		
	More Conscious	About the Same	Less Conscious
English BM proficiency when dealing with legal matters	55	30	15

Tables 6.15 and 6.16 both indicate that respondents wanted to have bilingual ability in English and BM as they made equally conscious efforts when using both the languages in mention. The data shows that the legal professionals surveyed generally responded that they were nearly as conscious (55%) with their efforts made with the two languages. Respondents also stated that they were more conscious of their English and BM proficiency when dealing with legal matters (55%). It is evident that Malaysians should know how to speak both BM (the national language), regardless of their ethnicity, and English. This is after all the aim of all language policy and planning for Malaysia.

Language choice is also triggered by an effort to conform. According to Asmah Omar (1998), conformity is not confined to the positive attitude of the speaker towards her interlocutor, but also encompasses the effort to be in the good books of a greater power, i.e. the authorities, through observing the official language policy. In the formal legal domain, it is therefore natural for speakers to conform to one another and to echo each other's choice and style.

Further, in an official setting consciousness of one's own ethnic membership has a role in determining whether the language policy is adhered to. For example, it was observed by this researcher that members of the Judiciary who were non-Malays felt more compelled to conduct the legal proceedings in the national language, as compared to the member of the judiciary who of Malay ethnicity. After all, the language policy in Malaysia does state that BM is the official language and should be used for all official purposes in the legal domain. It could be that the non-Malay member of the judiciary feels very much obliged to conform, for fear of being construed as showing non-compliance to the policy. A breakaway from this conformity would not start with him/her but with other participants in the legal proceeding; when they start using English or use code-switching, the non-Malay member of the judiciary feels safe to depart from the stated policy.

### **6.3.2 Attitudes toward BM and English for the Legal Domain**

Attitude is an important notion in the study of bilingualism and multilingualism. Attitude may be defined as the sum total of a person's psychological construct towards certain objects, institution, persons, ideas, etc. Attitude owes its origin to the collective behavior of the members of a social group. It plays a crucial role in the social behavior of an individual as it defines and promotes certain behavior. According to Baker (1988), attitudes are learned predispositions, and are not inherited. They are relatively stable and are affected by experiences. Attitudes are therefore complex constructs. Choudhry (1993:22) emphasizes the factors like motivation, prestige, identity, language loyalty and the importance of their relationship to attitude. Linguistic attitudes may be positive or negative, as well as neutral feeling attached to a particular language situation. Fasold (1984: 148) further suggests that the attitude towards a language is often the reflection of the attitudes towards the members of that speech community. People's reaction

towards a language variety reveals their perception regarding the speakers of that variety -- their social, political and economic backdrop. Edward (1982: 20) discusses the major dimensions along which the views about language can vary. They are social status and group solidarity.

Thus, the concept of language attitude automatically brings into consideration the concept of motivation -- the instrumental motive and the integrative motive. When the knowledge of a language is considered to be a prestige marker, the acquisition of that language is said to be instrumental. On the other hand, if a learner wishes to learn a language in order to identify himself with members of the speech community, the motive is called an integrative one. However, motivation may also arise from a sense of academic success or from a sense of communicative success. All these motivate one's attitude to learn and speak a foreign language or a second language.

**Table 6.17 Use of BM and English Necessary for Legal Matters**

Activity	%		
	Agree	Disagree	Don't Know
BM necessary for legal matters	20	60	20
English necessary for legal matters	95	5	0
English will take you further than BM when dealing with legal matters	85	15	0
English can express most things better than BM for legal matters	85	10	5
It is better to speak only BM when dealing with legal matters rather than mix English and BM	20	75	5
It is better to speak only English when dealing with legal matters rather than mix English and BM	60	35	5

Table 6.17 presents data on legal professionals' perceived attitudes towards the use of BM and English in the legal work domain. It is important to study and understand these attitudes in order to implement pro-active strategies that will help legal professionals positively rather than negatively adjust to the new challenges of a linguistically diverse legal workplace setting. The attitudinal questions in the survey questionnaire used in this study aimed to investigate whether legal professionals' attitudes can facilitate or be a barrier to using BM and English in the legal workplace setting. It is also important to understand these attitudes to language if work toward constructive change of language use in the legal workplace setting is to take place.

With all the determinants of attitude in mind, it is obvious that investigating and analyzing the motivation behind language choice and use, and the language attitude as a whole in the legal domain is important. As can be seen in Table 6.17, the respondents in the study felt that English was more necessary when dealing with legal matters (95%). The need to use BM was not significant. Their responses seemed to indicate that they wanted English to remain as important as BM, and that they also supported the co-existence of these two languages (75%). This was seen in their response that it was alright to speak both BM and English when dealing with legal matters. It was obvious that the same attitude towards the use of English and BM for legal matters was not shared by a majority of the participants (60%). The participants were not positive that these two languages could co-exist in a positive and mutually reciprocating beneficial manner in the legal domain. The interview data presented later in this chapter (see Section 6.4) indicated that there was functional separation of use for these two languages, within the legal domain being dominated by English. These results do not provide evidence for the presence of the additive notion of bilingualism in the legal domain.



Table 6.17 also indicates that in the Malaysian legal bilingual setting, legal professional constantly have to make decisions regarding the choice of appropriate code. As bilingual speakers have access to two linguistic codes, speech patterns involving both codes occur frequently. It seems that 60% of the respondents in this study do not generally accept code-switching when it is English-BM code switching. However, when it is BM-English code switching, they did not seem too concerned (20%). Clearly, this is seen from the table when respondents reported that it is generally better to speak only English than to mix English and BM. More than half of the respondents (60%) reported this. A large majority of the respondents (75%) felt that it is not better to speak only BM than to mix English and BM when dealing with legal matters. This is contrary to the idea that code-switching is an important strategy for vibrant communication. Therefore, it may be inferred that the use of the mixing of English and BM is looked down upon as a sign of the lack of language proficiency in the Malaysian legal domain.

**Table 6.18 General Attitudes toward BM**

<b>Bahasa Malaysia</b>	<b>Strongly Disagree</b>	<b>Disagree</b>	<b>Not Sure</b>	<b>Agree</b>	<b>Strongly Agree</b>
A beautiful language to speak	0	0	20	60	20
A worthwhile language to learn to read	0	0	20	50	30
A worthwhile language to learn to write	0	0	10	60	20
A language that I would like my children to speak	0	0	30	70	10
An important language to know to be able to get ahead in the world	0	0	40	40	20
A language Malaysian schools/ universities should use as the sole medium of instruction	70	20	10	0	0

Responses obtained displayed in Table 6.18 show that respondents generally had a positive attitude towards BM. It is evident from the data that respondents agree that BM

is a beautiful language to speak (80%), a worthwhile language to learn (80%), a worthwhile language to learn to write in (80%), a language that they would want their children to speak (80%), and an important language to know to be able to get ahead in the world (60%). These responses do not indicate any underlying racist or prejudicial beliefs that the respondents may have had towards the national language. However, when asked whether Malaysian schools/ universities should use BM as the sole medium of instruction, a large majority of the respondents (90%) did not agree that this should be so. The extent and nature of the legal professionals' attitudes towards BM as sole medium of instruction for education were not a total surprise. This information provides an understanding of the complex factors contributing to the pervasiveness of the negative attitude towards BM as medium of instruction. It points to the fact that when it comes to language for education, English is still the preferred language. English is often seen as a lingua franca which allows one to keep up with technological developments and economics of business. English is also seen by many Malaysians to have a mostly instrumental function in education. Many Malaysians learn English for instrumental reasons of education and better career opportunities. Today, English is not just a compulsory school subject, but also a must for most jobs in Malaysia.

**Table 6.19 General Attitudes toward English**

<b>English</b>	<b>Strongly Disagree</b>	<b>Disagree</b>	<b>Not Sure</b>	<b>Agree</b>	<b>Strongly Agree</b>
A beautiful language to speak	0	0	0	50	50
A worthwhile language to learn to read	0	0	0	10	90
A worthwhile language to learn to write	0	0	0	60	40
A language that I would like my children to speak	0	0	0	0	100
An important language to know to be able to get ahead in the world	0	0	0	0	100
A language Malaysian schools/ universities should use as the sole medium of instruction	0	0	20	40	40

The results of the questionnaire, as seen in table 6.19, show that Malaysian legal professionals believe that English is able to allow one to get ahead in the world (100%) and a language Malaysian schools and universities should use as the sole medium of instruction (80%). It seems that the respondents are aware that English is an important vehicle for achieving success and it can pave the road exhibit a positive attitude towards the English language. They possess favorable attitudes towards English as a beautiful language to speak (100%), a worthwhile language to learn (100%), a worthwhile language to learn to write in (100%), a language that they would want their children to speak (100%), an important language to know to achieve economic and social development. The benefits of English are also shared by most of the respondents the students in the study. It seems that Malaysian do not deny the fact that English is currently very dominant in the education and business environments. Given this general atmosphere in which the attitudes towards English is positive especially for formal education, and in view of the international significance of the language, it should not be surprising that the current situation is highly laden with confusion. The Malaysian government is placed in a difficult situation of having to appease to national language

loyalists and nationalists that the role and status of the national language, BM, would never be undermined.

### **6.3.3 Language Use in Malaysian Courts**

A picture on the use of BM and English in Malaysian courts is obtained from respondents' responses in the questionnaire. The aim of the analysis in this sub-section is to shed light on the following:

- (i) use of BM and English in the process of law in and out of the courtroom.
- (ii) problems related to the use of BM in the process of law.

Court procedures and legal workplace practices involve many parties; however, in the context of language use, three parties play important roles, the judge/magistrate, the prosecution and defense. Court procedures also involve several different activities from the mention of a case until the delivery of the verdict and written judgment (see Chapter 3).

The use of languages being observed in this section focuses on two levels of the practice of law, which is in the courtroom and outside the courtroom. Activities outside the courtroom include legislation, official correspondence, references and the drafting of bills. Each activity may require the use of different languages. The situation of use in the courtroom is also presented in this section, e.g. subordinate court or superior court. The discussion is organized according to the main activities in court and outside the court.

The first choice that legal professionals face in the legal workplace is that of the choice of the medium: in which language (or languages) is the interaction going to be conducted? So, what language choices do legal professionals make and what are their motivations for these choices? Based on introspection, research in this area have

identified the following factors as those that might influence language choice: the choice of the more prestigious language, the choice of the non-native or less prestigious language for reasons of solidarity, and choice based on topic being discussed.

In the following section, the discussion is based on the linguistic choices made by legal professionals and the reasons they give for their choices. One might argue that the preferred language choice of any legal professional in Malaysia should be the national language (BM), and that those who use the national language can be conceived to be in a powerful position while the use of the English language always entails a certain amount of relinquishing of control. The findings of the study will show something to the contrary.

At this juncture, it is essential to note that this study was carried out among legal professionals in the geographical region of the Klang Valley. They are indeed not representative of the overall Malaysian legal professional population but their language practices do symbolize some of the language practices of legal professionals in Malaysia. The legal professionals in this study were selected through personal contacts. 'Legal professionals' are defined people engaged in positions involving legal matters and the judiciary (see Chapter 4). All 122 of the people in the sample had at least a bachelor's degree. The sample was not evenly balanced for gender, with 65% male and 35% female.

**Table 6.20 Legal Professionals Proficiency in BM and English**

<b>Legal Professionals</b>	<b>%</b>	
	<b>Fluency in BM</b>	<b>Fluency in English</b>
Judiciary	45	95
Defence Attorneys	35	80
Public Prosecutors	90	55

In the earlier part of this chapter, where key demographic variables of the respondents was discussed, their proficiency in both English and BM was discussed in general (see Sections 6.1 and 6.2). In table 6.20, the language proficiency issue is discussed according to their job description. From the data obtained, it seems that respondents in the judiciary are more fluent in the English language (95%) than they are in BM (45%). This is probably a result of them being in the legal profession longer than those who are defense attorneys and public prosecutors. The judiciary is made up of legal professionals who are much older and those who received their legal education in English.

Table 6.20 also shows that public prosecutors stated that they were more fluent in BM (90%). The reason for this is that public prosecutors work in the government sector where adherence to the use of the national language is often a must. The more frequent use of BM would then help in making them more proficient in the language. On the other hand, the defense attorneys surveyed work in the private sector where English is still the more dominant language used. It seems that in the private sector, defense attorneys mostly use the national language in official correspondence with the courts. This was revealed during interviews between the researcher and this group of legal professionals. Also revealed during the interviews was the fact that the effective use of BM and English among legal professionals seems to depend on the language ability of

those involved to use the languages, their readiness to use BM and English in all affairs related to the law and the availability of legal materials and support services.

**Table 6.21 Language Use in the Different Courts**

Type of Court	%	
	BM	English
Federal Court	15	85
Court of Appeal	10	90
High Court	25	75
Sessions Court	80	20
Magistrate Court	95	5

Legal professionals can influence the use of language in the courts of law. To look further into the use of language in Malaysian courts of law within this group, information on the conduct of cases by these legal professionals (judiciary, defense attorneys and public prosecutors) was gathered. Table 6.21 presents data on the language most frequently reported to be used by the respondents in the different courts of law. The courts of law listed are based on the hierarchical structure of the courts in the Malaysian legal system (see Chapter 3). In table 6.21, the data shows that respondents used both BM and English in the courts. What differed was the frequency of use of BM for the different courts. There was greater use of BM in the lower courts (Magistrates (BM, 95%) and Sessions (80%)) compared to in the Superior courts (High Court, 25%; Court of Appeal, 10%; Federal Court (15%). Respondents surveyed reported a high percentage of English language use in the superior courts. This could be a result of the fact that legal professionals who work in the higher courts or deal with matters in the higher courts are more senior legal professionals. They would be those legal professionals who had received their tertiary and secondary school education in the medium of only English.

According to Table 6.21, it seems that the respondents have held or been part of trials which used both BM and English. It somewhat provides a key to reflect the position of the use of BM and English in Malaysian courts of law. This finding suggests that the implementation of the use of BM as a language of law in Malaysian courts is still weak. The finding could also be attributed to the fact that Malaysian law is based on English common law and that the law, being a self-referential system of meanings with its own internal conventions and using its own jargon, easier be used in the language it originated in. Actually, legal language can be considered to be a specific language ('langue'). The different languages that are used in the Malaysian courts may be considered by some legal professionals (as reported in the interviews) as a complicating factor. The legal professionals interviewed said that they often resorted to English as they found it difficult to find similar or exactly the same form of the English legal term in BM. The fact is that the form and usage of legal language is often not very similar to that of everyday language. To legal professionals this can be misleading. The conventions of a specific legal language system which has developed in slightly different ways within language and country borders throughout history, should be acknowledged in order to satisfy the logical preconditions that will facilitate concrete litigation and the dispensation of justice (the 'discours' of justice) within a legal system.

It was also found that legal professionals' language use in a court of law often depended on the presiding judge. In the lower courts, the presiding judge is not a very senior member of the legal profession and is often a person who has just joined the public legal system. This would mean that this person was young, received his legal education in BM and was comfortable using that language in court. The superior courts are currently being presided by senior members of the legal profession and logically are older. They therefore would be those who received their legal education and training in English.



This data can be seen in section 6.1 which reports on legal professionals' legal education and the medium of instruction of the education.

Another interesting finding by the researcher from court observations was that legal matters being discussed in the lower courts mostly involved petty crimes and the accused were often from the lower strata of society and was unable to use the English language. Matters being presided on in the higher courts were of a different nature and legal professionals use more English for these matters. It could also be that legal precedence for these matters were often written in English and not BM. It can be said that legal language is obviously an artificial system of codes, which are bound by specific legal conventions: sometimes an everyday language code is stretched in its usage, at other times a very narrow meaning widely accepted by lawyers is attached to a code. A text is not, or almost never, what it seems to be. For example, speaking about 'the presumption of innocence' has a very specific, judicial meaning and implication, far removed from common sense assumptions. Saying that a suspect, even one caught with a gun or drugs, has to be presumed innocent until proven guilty according to Malaysian law, is for the legal professional probably a routine expression; for the layman, however, this could mean the crux of the legal matter and an obstruction of justice through language use.

**Table 6.22 Arguing Cases in BM and English According to Court Hierarchy**

<b>Arguing a Case</b>	<b>%</b>	
	<b>BM</b>	<b>English</b>
Superior Court	15	85
Subordinate Court	90	10

**Table 6.23 Languages Frequently Used According to Court/Case Matters**

Court/Case Matter		%	
		BM	English
Superior	Civil	25	75
	Criminal	90	10
Subordinate	Civil	75	25
	Criminal	90	10

The data obtained in Tables 6.21, 6.22 and 6.23 all suggest that the majority of legal professionals surveyed have used BM and English in court trials. They reported that they have used the two languages in subordinate and superior courts for both Civil and Criminal matters. The use of BM and English in these contexts was assessed by requesting each respondent to state the frequency of use of the two languages according to court and according to trial matter. The frequency of use of BM and English posed to the respondents of use of BM was fixed as below 25%, between 25% and 50%, between 50% and 75% and more than 75%. The researcher then grouped these responses. For example, if the use is gauged as below 25%, it means that BM or English is seldom or never used. This also means that the other language is used most frequently. If the frequency of use of BM was gauged as more than 75%, it means that the language is used more frequently compared to English and may even be always.

What is evident from Tables 6.22 and 6.23 is that the English language is used more often than BM in the Superior courts. This is similar to the data obtained in table 6.22. Table 6.23 presents data that show that respondents mostly used BM (90%) for arguing a case in the subordinate courts and English for arguing a case in the Superior courts (85%). However, as reported in table 6.23, a total of 95% of the respondents reported that they used English in the Superior courts for civil matters and 85% of the respondents reported that they used English for criminal matters in the Superior courts. The distinction does not seem to be made according to civil or criminal matter. The

difference in language use, whether it is BM or English lies in the distinction between courts that is, whether it is a subordinate or superior court.

According to Hakuta (1986) and Romaine (1989), bilingualism is encouraged and maintained when different functions of language are assigned to different languages. Their observation is consistent with Fishman's suggestion that bilinguals may be better at talking about home life in the language they use at home and better at talking about school life in the language used at school, precisely because language is the product of varied experience. Thus, a complementary distribution often emerges with respect to a bilingual's facility in different topics. In the case of Malaysian legal professionals, it seems that bilingualism is the norm practiced; however, the distribution of language use is according to the courts.

It can be concluded (see Tables 6.21, 6.22 and 6.23 that BM is most frequently used in legal matters related to a trial in subordinate courts and English is more frequently use for superior court proceedings. What is evident is that the frequency of use both BM and English differs between the superior and subordinate courts and also between Criminal and Civil matters. Further research should attempt to determine if the difference in the frequency of use of BM and English between courts and between court matters is influenced by the demographics of the prosecutors and defense attorneys.

From court observations, the researcher was able to generalize that those public prosecutors and defense attorneys who are Malay by ethnic origin have a greater tendency to use BM as compared to their non-Malay counterparts. This applies for all stages in the legal process from the mention of cases till the plea of mitigation. Also, the younger legal professionals are more likely to use BM compared to those who have been in the profession for a long time (at least 15 years). This could stem from the fact that the younger legal professionals received their education and legal training in BM

and are therefore more likely to use BM in the court proceedings. However, in the open ended section of the questionnaire, some of the respondents gave reasons as to why they used more English than BM. Some common reasons include reference materials are still in the English language, relevant laws are still in English and that the English Language is more accurate and suitable to be used in the legal domain especially in court proceedings. There were some who responded that they are more comfortable using the English language than BM and that it is easier to understand.

**Table 6.24 Written Language Use in Legal System**

Activity	%	
	BM	English
Letter of demand	30	70
Charge sheet for civil matter	100	0
Charge sheet for criminal matter	100	0
Statement of claim	50	50
Judgment	20	80

Court proceedings bring together people of different social classes with very divergent views of the world. The main legal participants in any court procedure are the judge, the defense and public prosecutors. The judge is not supposed to act as an evaluator but takes on the role of a mediator who is neutral and supports the two sides (Pascual & Poblet 1999). Some Spanish judges have defined themselves as arbitrators (Thaman 1998: 349). Judges in the Malaysian courtroom act as regulators of behavior and have the ultimate word in the courtroom. This allows them for instance to use the future tense instead of the imperative for commands (Lyons 1977). They set the ‘tone’ of the trial, and therefore, their verbal and nonverbal behavior in court can have an impact on the outcome of the trial (Blanck et al. 1985). The main lay participants in any court proceeding are the accused, and the witnesses called by the prosecution and the defense.

This means that any written document used in a court proceeding should be for the benefit of all involved in the trial.

However, as seen in the Table 6.24, some written documents used in the Malaysian courts are mostly written in English (letter of demand (70%), judgment (80%)) and upon inspection by the researchers are in a style of language which is difficult for the layman to read and understand. The data also suggests that there are legal documents that were mostly written in BM (charge sheet for civil matter (100%), charge sheet for criminal matter (100%)). The statement of claim whether it was for a civil or criminal matter was found to be often written in either BM or English (BM, 50%; English, 50%).

#### 6.3.4 The Use of Reference Materials in Trials

**Table 6.25 Reference to Acts in BM**

<b>Reasons</b>	<b>(%)</b>
It is easier to understand Acts in English	75
There were no relevant Acts in BM	5
It was not necessary, because the trial was not in BM	20

**Table 6.26 Use Reference Materials in BM and English in a Trial**

<b>Reference</b>	<b>%</b>
BM	30
English	70

**Table 6.27 Type of Reference Material Referred to**

<b>Type of reference material referred to</b>	<b>%</b>	
	<b>BM</b>	<b>English</b>
Acts	30	70
Law Reports	20	80
Law Journals	10	90
Court Documents	60	40

Table 6.25 suggests that the preferred language of the reference materials referred to is still English for Malaysian legal practitioners (75%). The first question posed to the

practitioners under this heading is with regards to reference to the acts in BM or English. All acts after 1967 were published bilingually, in both BM and English. Prior to that, the acts were available only in the English Language and translated versions of them were made available in BM. The information in Table 6.26 indicates that a large majority of the respondents (70%) in this study do not refer to acts in BM. Instead, they seemed to prefer referring to Acts in the English language. The logical reason for this is that the respondents find it easier to understand Acts in English. Another reason cited by the respondents is the unavailability of certain Acts in BM. Other reference materials besides the Acts are also used by the respondents to assist them in conducting trials. They mainly referred to journals and reports. These materials are the main sources of law. There is an indication from this data (see Table 6.27) that reference materials in BM are lacking (Acts 30%, Law Reports 20%, and Law Journals 10%) and that translation efforts need to be speeded up if BM is to be the language in the legal work domain in Malaysia. If efforts towards this direction are not available, then there needs to be recognition that BM and English should be officially recognized as the language of law for Malaysia.

### **6.3.5 The Use of BM and English in the Trial Process**

The discussion so far shows that most judges, magistrates and registrars in the courts of law, regardless of age and duration of judiciary service have conducted trials in BM and English. The next section looks at the frequency of the use of BM and English in the mention of cases when the respondents conduct cases in the courtrooms. A trial consists of many stages of events whereby each level could pose a different demand on the use of language (see Chapter 3).

**Table 6.28 Language Use in Criminal Matter Proceedings**

Activity	Courts	%	
		BM	English
Mention of Case	Subordinate	90	10
	Superior	25	75
Examination of witnesses	Subordinate	95	5
	Superior	40	60
Submission	Subordinate	100	0
	Superior	30	70
Mitigation	Subordinate	90	10
	Superior	20	80

**Table 6.29 Language Use in Civil Matter Proceedings**

Activity	Courts	%	
		BM	English
Mention of Case	Subordinate	95	5
	Superior	30	70
Examination of witnesses	Subordinate	100	0
	Superior	15	85
Submission	Subordinate	100	0
	Superior	30	70
Decision	Subordinate	100	0
	Superior	40	60

Tables 6.28 and 6.29 show that BM is the language most often used for processes in both criminal and civil trials in the subordinate or lower courts. English on the other hand is more often used for both civil and criminal matters in the superior or higher courts. At a closer look, data from Tables 6.28 and 6.29 suggest that the language used for the different stages of a trial are similar irrespective of whether it is a civil or criminal matter proceeding. The difference in language use is only seen when the civil or criminal matter is heard in a subordinate or superior court.

As seen from Table 6.28, BM is the language mostly use in the subordinate courts for the mention of case (90%), examination of witness (95%), submission (100%) and mitigation (90%) for criminal matter proceedings. These figures are somewhat similar to those obtained in Table 6.29 which investigates language use in criminal matter

proceedings in the subordinate courts such as in the mention of case (95%), examination of witness (100%), submission (100%) and mitigation (100%).

As for criminal matter and civil proceedings in the superior courts, the trend towards language use is also somewhat the same with each other. The similarity is that English is used more than BM for the different activities within the proceedings. In a criminal matter proceeding in the superior courts, English is reported to be used more than BM for mention of case (75%), examination of witness (60%), submission (70%) and mitigation (80%). For civil matter proceedings, English is also reported to be used more than BM in the superior courts. The data reads that for mention of case (70%), examination of witness (85%), submission (70%) and mitigation (60%), English is the preferred language of use. All of these suggest that English still plays a very dominant role in the Malaysian legal system, especially in superior court matters.

Subsequently, upon further observation made in the different courts by the researcher, it seems that respondents, who received their legal education in both BM and English and had pursued their degree locally, use BM more frequently as compared to those who obtained their degree from overseas institutions using English language alone. It could probably be assumed that the group with a higher proficiency in BM uses the language more frequently. Having to be part of a trial using a language one is not proficient in could be very inconvenient and, worse still, inaccurate interpretation may lead to miscarriage of justice. There also seems to be advantages to using the national language in examining witnesses in the subordinate courts for defense lawyers or public prosecutors to put questions to witnesses and the accused in a language the witnesses and accused are more comfortable in. Second, some of the force and effects of cross-examination are not lost through interpretation (one respondent of the survey also pointed out that the use of English in cross-examination might not have an impact on a



BM-speaking defendant). As seen from Tables 6.28 and 6.29 the preferred use of BM in the conduct of legal proceedings in the subordinate courts could be a result of the fact that most accused and witnesses in these courts are from the lower socio-economic group and most likely only educated in the national language. It is also often the case that language interpreters are used in these subordinate court trials as witnesses and accused are allowed to give testimony in a language they are most comfortable in (as provided by the law, see chapter 3).

**Table 6.30 Language use in Judgment**

Activity	Courts	%	
		BM	English
Judgment	Oral	65	35
	Written	30	70

The judgment process involves both oral and written delivery of the judgment (see Table 6.30). The written judgment is probably more important in the context of language use because the written judgment is formally recorded and can be used as a valid reference and precedent material in a court of law. Therefore, the use language in judgment has to be extremely accurate. Respondents in this study responded that they wrote their judgments mostly in the English language (70%). Often, their judgments are translated into the national language by court authorities. Based on the information seen in Table 6.30, oral judgments are mostly given in BM (65%) and written judgments (70%) in English. As for oral judgments, this can be seen as an attempt by those who deliver judgments to comply with national language oral use in the courts of law. However, for written judgments, the English language is still used on quite a large scale by those who deliver oral and written judgments. This would have an effect on the provision of reference materials in BM. This dependence on the English language could actually hamper the process of using solely BM in court judgments.

**Table 6.31 Reasons for Not Using BM in Court Judgment**

<b>Reasons BM not Used</b>	<b>(%)</b>
Reference materials are still in English	85
Relevant laws are still in English	55
English is more appropriate / accurate	10
Feel more comfortable using English	10
English is easier to understand	35

Respondents in the study reported that they used English because reference materials are still in English (85%) and that some relevant laws being referred to are still in English (55%) (see table 6.31). However, it is interesting to note that respondents did not report in the positive that English is more appropriate and accurate. Only 10% of the respondents felt so. Also, only 10% reported that they felt more comfortable using English while 35% felt that English was easier to understand in oral judgments and in the writing of judgments.

From court observations, it was also found that ethnic origin could influence the language used in the written judgment, but not the oral judgment. Those who are Malay by ethnic origin are more likely to write the judgment in BM as opposed to their non-Malay counterparts who are more inclined towards the use the English language. However, all respondents are equally likely to use BM when passing the judgment orally. Another observation made by the researcher was that the use of language in the process of judgment is also influenced by the post held by the respondent in the legal system. The superior court judges and registrars are more likely to use English in their judgment, oral or written. The use of BM is more evident among the subordinate court judges and magistrates. Besides the factors mentioned above, the ability to write and speak in BM influences the use of language in the process of judgment. Judges, magistrates and registrars in the courts of law with better mastery of spoken BM are more likely to use the language for oral judgment.

### 6.3.6 Language use in Applications or Appeals

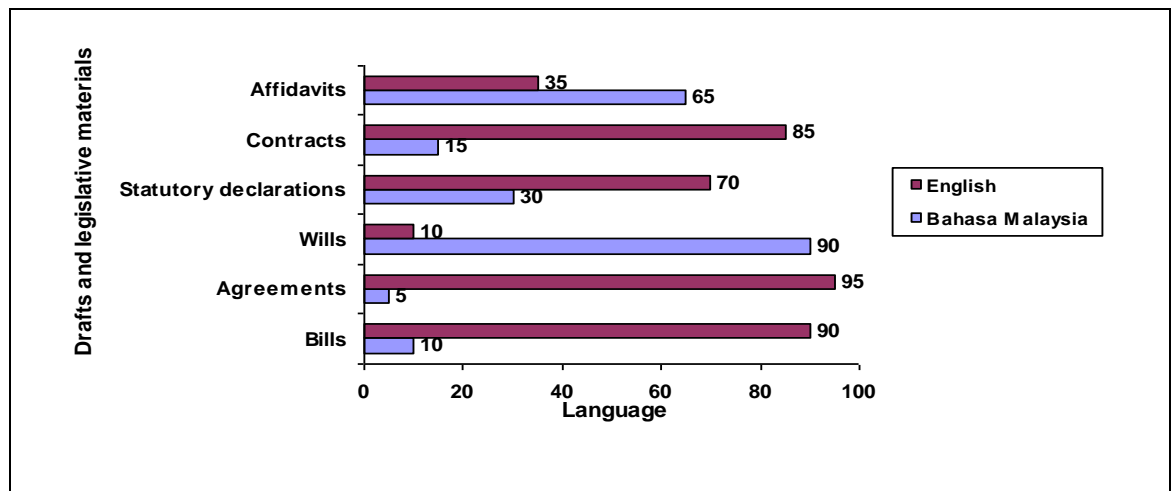
**Table 6.32 BM and English Language Use for Applications and Appeals**

<b>BM and English Language Use for Applications and Appeals</b>	<b>%</b>
English is most appropriate than BM in applications and appeals	20
Prosecutor / Defence Attorney is not fluent in BM	5
English is easier to understand than BM in applications and appeals	10
Terms in BM are available	65

This data shown in Table 6.32 reflects that the respondents used BM more than the English language when writing applications and appeals. Only 20% of the respondents felt that English was the more appropriate language for applications and appeals. If compared with language use for mention of cases and judgments, the percentage of English language use for applications and appeals have reduced. This is probably due to the fact that applications and appeals deal with the written language and BM is the official language in the legal domain. There does not seem to be a compromise of language use in this sub-domain. A detailed analysis on the information in Table 6.32 reveals that the increased use of BM is influenced by the fact that respondents felt that BM is more appropriate in applications and appeals (20%). The respondents also believed that lack of proficiency in BM is not an imposing factor as only 5% of the respondents reported that prosecutors and defense attorneys are not proficient in BM. A small number of the respondents (10%) reported that English is easier to understand than BM in applications and appeals. More than half of the respondents (65%) reported that terms in BM are available for applications and appeals. It seems that BM has achieved primacy of use in this sub-domain.

### 6.3.7 The Use of BM and English in Preparing Drafts and Legislative Materials

**Figure 6.9 Language Used Most Often in Preparing Drafts and Legislative Materials**



Another aspect of work in the legal domain that could influence the use of the BM and the English language in the legal workplace is the drafting of legislative materials, writing legislation and communication among legal professionals in the field of law. Drafting and legislation is an important component in the legal workplace. This is because the process of law involves drafting and legislation of materials such as bills, agreements, wills, statutory declarations, contracts and affidavits. Figure 6.11 show the findings of the pattern of use of languages in preparation of drafts and legislative bills. The overall use of BM in this sub-domain is at a low level when compared to English language use. Only a small portion of them (Contracts 15%, Statutory declarations 30%, Agreements 5%, Bills 10%) frequently use BM for drafts and legislative materials. It can be seen from the data that BM is used more than English only for the drafting of affidavits (65%) and wills (90%). It is clear that English is used more than BM in contracts (85%), statutory declarations (70%), agreements (95%) and bills (90%).

Those who do not use BM very frequently in drafting and legislating bills provided some reasons for their act. The main reason is the lack of demand from clients for the

material to be drafted and legislated in BM. The other reason is that there it is not compulsory to draft and write all legal materials in BM.

**Table 6.33 Reasons Why BM is Less Frequently Used**

<b>Reasons Why BM is Less Frequently Used</b>	<b>%</b>
Client did not require contract to be prepared in BM	65
There is no law that requires the preparation of contracts and agreements to be in BM	75
Examples of contracts and statutory declarations are easily available in English	80

Table 6.33 reports that quite a few of the respondents (65%) reported that there is often no request from clients for them to draft a contract in BM. The data also shows that 75% of the respondents reported that there is no law that requires all contracts to be written in BM. The question which arises then is, if it were made compulsory by law to have all contracts drafted in BM, would legal professionals be able to do this? To assess this question further, a question pertaining to the process of drafting bills was asked to respondents and their responses recorded (see Table 6.34). As seen from the data, only 15% of the respondents prepare their contract drafts in BM, while 55% of the respondents reported that they prepare their contract drafts in English and translate it to BM. Those who prepare the draft in the English Language are probably unable to draft in BM efficiently and effectively. This is further supported by their proficiency in BM as reported earlier in this chapter.

**Table 6.34 Steps Taken in Preparation of Drafts and Bills**

<b>Steps Taken in Preparation of Drafts and Bills</b>	<b>%</b>
Preparing the draft directly in Bahasa Malaysia	15
Preparing the draft in English, and then translating it to BM	55

Further probing (during the interview sessions) showed that the choice of language use in drafts and legislative materials differs by working sector and ethnicity. The Malay

respondents are more likely to use BM to draft legislative materials compared to the Chinese, Indian and other ethnic groups. It was also found that those respondents working in the public sector and statutory bodies are more likely to draft these materials in BM compared to those in the private sector. Drafting involves preparation of memoranda and company articles as well. This activity mainly involves mainly legal professionals in the private sector. The use of language in this context is therefore dependent on requests from clients. Some of the reasons given for the predominant use of English language for drafting is request from companies for the memoranda and company articles be prepared in English Language; and secondly there is no law that requires the use of BM for drafting memoranda and company articles.

### **6.3.8 The Use of BM and English in Administrative Affairs in the Private and Public Sector Legal Workplace**

**Table 6.35 BM and English Language Use at the Private and Public Sector Legal Office**

<b>Activity</b>		<b>BM</b>	<b>% English</b>
Conversing with Colleagues	Private	10	90
	Public	70	30
Conversing with Superiors	Private	5	95
	Public	75	25
Conversing with subordinates	Private	50	50
	Public	95	5
Writing office Memos	Private	5	95
	Public	95	5
Answering phone Calls	Private	5	95
	Public	100	0
Writing to clients	Private	10	90
	Public	100	0
Talking to clients	Private	10	90
	Public	80	20
Writing reports	Private	20	80
	Public	100	0
Giving presentation to clients	Private	5	95
	Public	100	0
Giving training	Private	0	100
	Public	100	0

Table 6.35 presents data which investigates two main aspects of the use of BM and English in the private and public sector legal workplace. Firstly, the use of the languages in administrative affairs is investigated. This involves language choice and use for official matters such as communicating with other organizations, dealing with the courts of law or dealing with public on matters related to law. The second aspect is the use of the language in public relations, focusing on the language used among employees in the legal workplace, that is language choice and use during work and during discussion with other law professionals.

In the legal domain, administrative affairs include oral and written matters. Administrative affairs may differ from one legal organization to another. Information used in this section was also obtained from observations of language choice and use among legal professionals. Observations of legal professionals language choice and use in the public sector and the private sector differed.

In the public sector legal workplace, BM was the predominant language used in most administrative affairs. The data (Table 6.35) show that BM is used more often than English in the following instances: conversing with colleagues (70%), conversing with superiors (75%), conversing with subordinates (95%), writing office memos (95%), answering phone calls (100%), writing to clients (90%), talking to clients (80%), writing reports (100%), giving presentations to clients (100%) and giving training (100%).

On the other hand, English was the more predominant language used compared to BM in the private sector workplace. The data (Table 6.35) is as follows: conversing with colleagues (90%), conversing with superiors (95%), conversing with subordinates (50%), writing office memos (95%), answering phone calls (95%), writing to clients

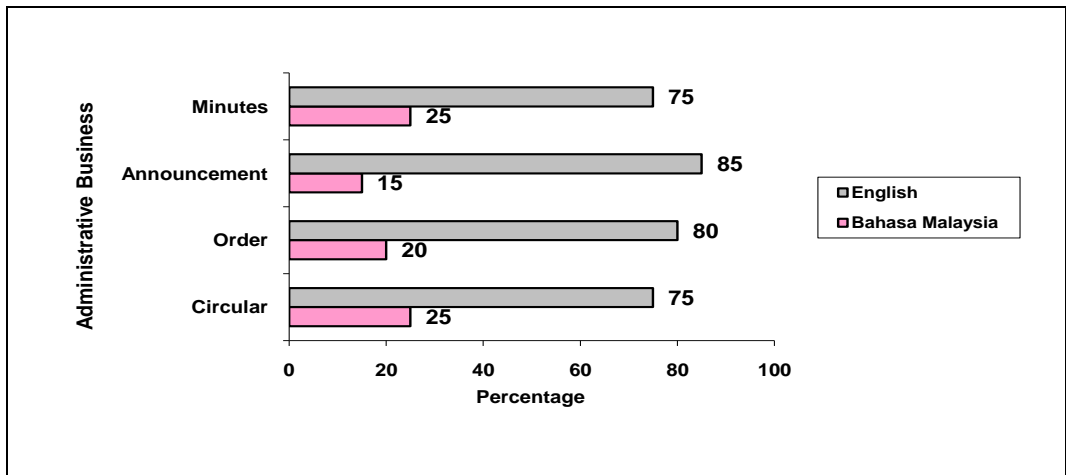
(90%), talking to clients (80%), writing reports (80%), giving presentations to clients (95%) and giving training (100%).

Generally, BM is widely used in administrative affairs in the public sector. The general impression obtained is that the level of use of BM is high in the public sector compared to the use of BM in the private sector legal workplace. It was observed that the English language was the more predominant language used for nearly all work related talk in the private sector. In fact, it was also observed that the preparation of legal documents, giving of legal advice, advertisements, circulars, notices and legal notices were almost always in the English language in the private sector legal workplace. The opposite was true for the public sector legal workplace. It seems that BM is not perceived to be an important tool of communication in the private sector workplace.

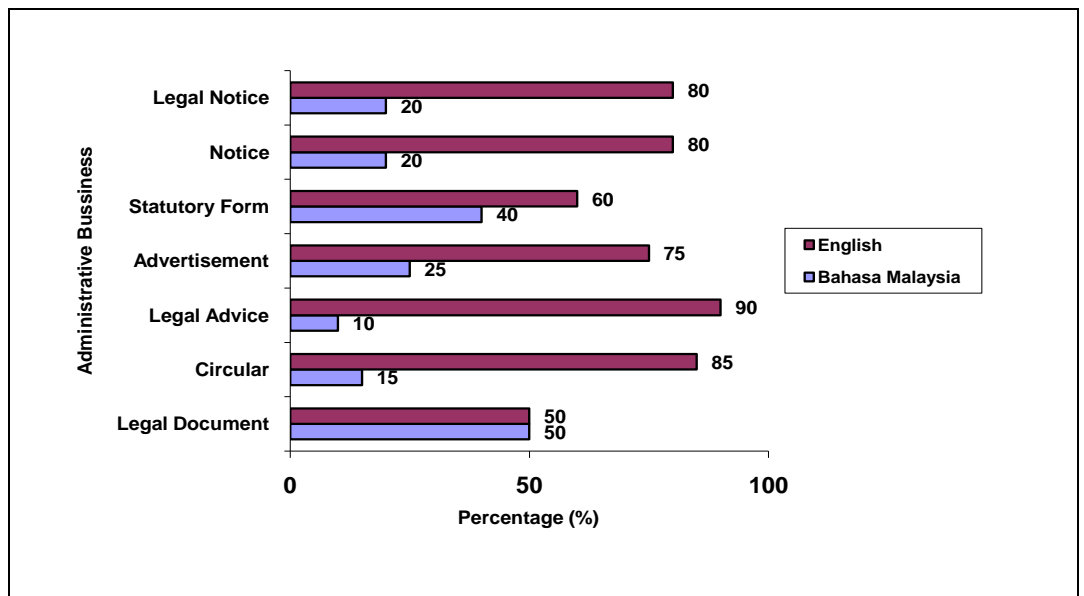
In communication with colleagues, it was observed that BM was the predominant language used in the public sector legal workplace when legal professionals discuss issues and give instructions related to legal work with their subordinates. This was the opposite in the private sector workplace. English is the dominant language used among colleagues and with subordinates. This indicates the proficiency in the English language is important in the private sector legal workplace. There did not seem to be any specific language use patterns along ethnic lines. This indicates that communicative efficiency is a priority and not much else. In fact, it was also observed that English was well understood and the English language was used effectively in the private sector legal workplace.



**Figure 6.10 Language Most Often Used in Administrative Business**



**Figure 6.11 Language Most Often Used in Legal Administrative Business in the Private Sector**



**Table 6.36 Language Training**

	Activity	Public sector	Private sector
Encourage Language Use	BM	✓	✓
	English	✓	✓
Provide language Training	BM	✓	X
	English	✓	X
Provide reference materials in	BM	✓	✓
	English	✓	✓

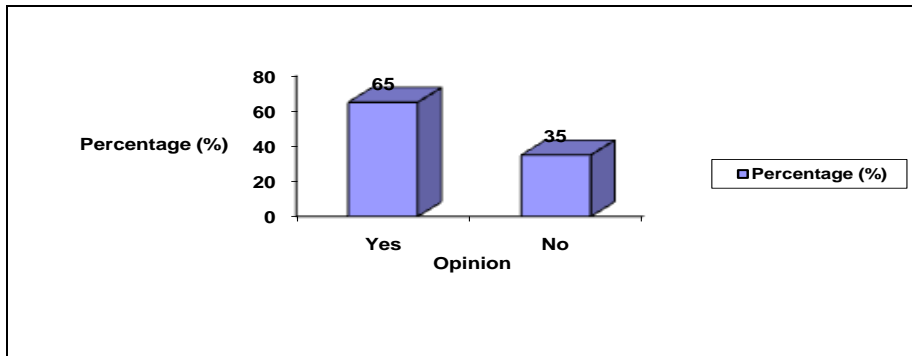
Although the public and private sector legal workplace encourage the use of BM and English, the forms of support vary a little (see Table 6.36). The public sector legal workplace seems to organize and encourage more language training activities compared to the private sector. It could be that the private sector workplace tends to organize and support activities which are easy to implement and less costly to do. Also, the private sector is more money-driven any expenses which do not directly bring and show monetary benefit are not given much importance.

#### **6.4 Interview**

The interview data on the participants' reasons for language choice showed how situational and motivational factors interact to determine language choice. Some information on the participants' perception of the socio-structural status of BM and English was gleaned from the interviews. However, the influence of socio-structural factors on language choice could only be explained in terms of the participants' perception of the status of these two languages within the legal context.

Twenty respondents were selected for the interview. Their answers represented a cross-section of language use patterns among legal professionals in the legal workplace. The interviews were conducted using a semi-structured approach, that is, a set of interview questions were planned ahead of time related to language practices but the interviews diverged as appropriate to explore interesting points that came up. The interviews lasted from 60 to 90 minutes. Finally, it is important to point out the limitations of this study. The sample size for the interviews is small and interviewees were selected through personal contacts and are thus non-random. The interview data made it clear that the prominence of English in the legal workplace stem from a variety of social, economic, and pragmatic factors that are closely related to the more general role of BM and English in Malaysian society.

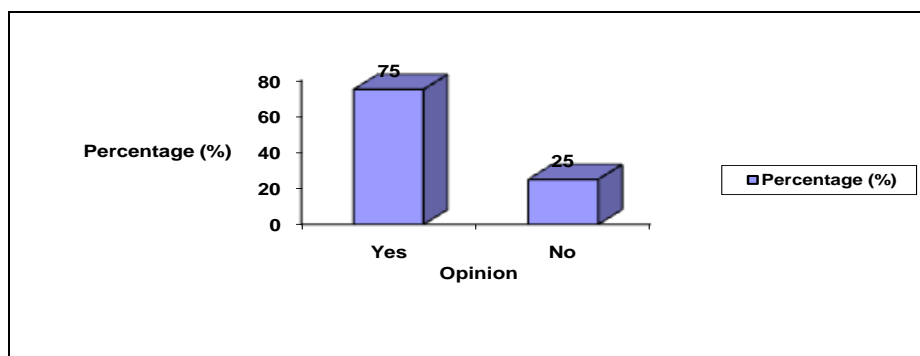
**Figure 6.12 Use of BM and English in Malaysian Courts**



Question posed to interviewee: Would you say that you could use either BM or English irrespective of the situation in Malaysian courts?

The respondents interviewed (65%) generally felt that they could use either BM or English irrespective of the situation in Malaysian courts. Of course, seen from the point of view of the legal system, this view seems to show disregard for the use of the national language for all legal matters. However, it does seem to indicate that legal professionals interviewed may perceive language choice matters as one of pragmatic advantage. They choose the language which enables them to function effectively in court. So, at least in theory, it also indicates that Malaysian legal professionals see that they are actually afforded equal opportunities to use either BM or English in a Malaysian courtroom.

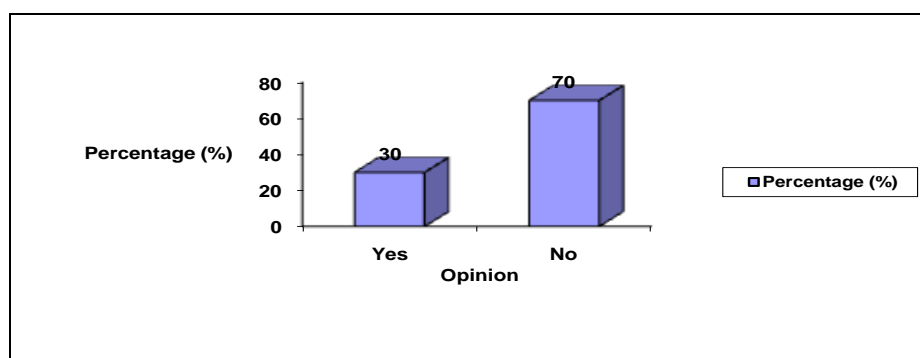
**Figure 6.13 Point of Duty to Use BM in Malaysian Courts**



Question posed to interviewee: In certain situations that you can identify, would you say that you make it a point of duty to use BM in Malaysian courts?

The respondents responses to this question shows that there is no apparent absolute disregard for issues related to national language use as suggested in their response to the earlier question. There is the assumption that there are situations in the courtroom where there is actually no compromise on national language use. This is strongly indicated in the responses by 75% of the respondents interviewed. In other words, there are situations in which legal professionals will hesitate to use the English language in the courtroom.

**Figure 6.14 Not Proper to Use English in Certain Contexts**

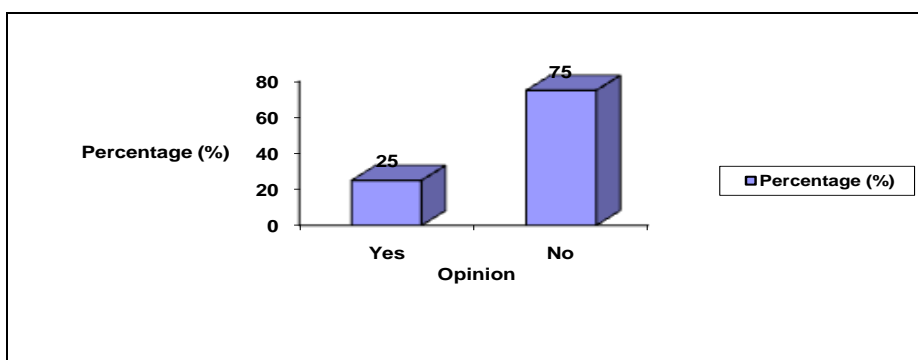


Question posed to interviewee: In the Malaysian 'official' situation, would you say that it is improper to use English in certain contexts?

The results showed clearly that English has maintained a strong socio-structural position although it is now the second important language in Malaysia, after BM. The respondents still accorded an official language status to English although government support for this role of English has been withdrawn. The socio-structural strength of English is partly derived from its past role as the official language during the British rule and the language of English common law. This is seen in the respondents' favorable attitudes towards the dual use of English and BM for official communication. Although this was a hypothetical question in the sense that Malaysia is unlikely to revert

to using English as an official language in the legal workplace, the interview results revealed that the respondents' language attitudes are not necessarily in tandem with government language policies. The continued use of English in the legal domain in the may therefore enable the legal community to maintain a continuous and long-term relationship with the other common law jurisdictions. Even though it is considered to be desirable and advantageous to use English in legal proceedings, the use of BM to conduct legal proceedings is also supported for a number of reasons. The results of the interview also reveal that the use of BM is considered to be more appropriate when laymen are involved. In those instances, the use of BM would allow the public to reasonably understand the procedures of the legal proceedings and what is being said in the proceedings. This is important in a sense that the interested parties will be given a fair opportunity to hear their cases.

**Figure 6.15 Not Proper to use BM in Certain Contexts**

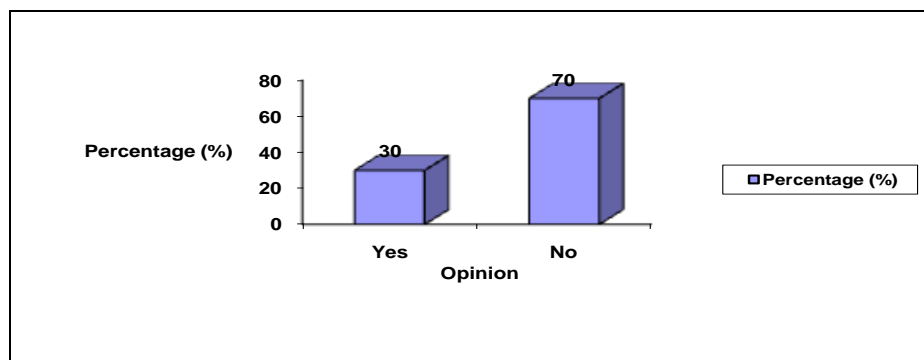


Question posed to interviewee: In the Malaysian 'official' situation, would you say that it is improper to use BM in certain contexts?

Language planning in favor of BM has upgraded the socio-structural status of BM, because it has taken over from English in the domains of education and government, and to some extent in the domains of law and media (cf. Platt & Weber, 1980). The respondents in the interview stated that they did not only want to be proficient in

English and BM themselves, but also felt that all Malaysians should have functional competence in these languages. However, it seemed that the socio-structural status of BM was not gained at the expense of English. The role of English in the legal workplace was unaffected by the growth of the socio-structural status of BM, as only 25% of the respondents stated that it is not improper to use BM in certain contexts.

**Figure 6.16 Not Proper to Use BM in Certain Social Contexts**



Question posed to interviewee: In the Malaysian 'social' situation would you say that it is improper to use BM in certain context?

It seems that BM has a strong socio-structural status, partly because of the institutional support from the government. A large majority of the respondents (70%) felt that BM can be used in most social contexts. This is an indication of the primacy of BM in social contexts for most Malaysian legal professionals. At the same time, the Malaysian government has also made a special provision for the important role of English in economic development (see Ozog, 1993). Socially, there are signs to indicate that Malaysia's language policies are moving further away from what was a formerly largely internally defined ethnic and national identity issue to a basis even more firmly rooted in an information technology world, a world that only highlights the external orientation of Malaysia's new layer of action and identity.

The directions of current language planning and policy in Malaysia towards the use of the national and official language BM, and second most important language, English are important as the country aims to fulfill national goals in the globalized age. Malaysians therefore, should not continue to view the socio-structural status of English as a threat to the national language. This has resulted in a scenario where there are efforts to revive the diminished socio-structural status of English causing the tide to swing around and make English come back in educational, business and certain international social roles. If the respondents' language attitudes could be taken as an indication of prevailing language attitudes in Malaysia, then it is likely that English will continue to be an important language in Malaysia for a long time -- although it would be used always alongside BM.

## **6.5 Summary**

All legal information is fundamental to the legal system. Accordingly, members of the judiciary and legal professionals must use and have access to this information in the form of reference materials related to the law. This legal information is information that acts as a cultural and knowledge edifice. It has long been known that the language of the legal profession is different from ordinary speech. To some extent, those differences can be accounted for by the fact that legal documents tend to be drafted in formal literary English. In recent years, this knowledge base of written information has multiplied tremendously in Malaysia resulting in a legal landscape that requires its users to access this knowledge base in two languages, i.e. BM and English. This has somewhat stressed the legal system and legal professionals alike. From the point of legal professionals, they must embrace creative approaches to grappling with knowledge management in two languages. Failure to do so will severely hamper the legal profession's ability to meaningfully retrieve and process legal knowledge especially evidence. From the point of the Malaysian legal system, it is a revolution for

the practice of law and the dispensing of justice. What it means is that the Malaysian legal system will need to change rapidly in the years to come in order to accept the evolving bilingual landscape in terms of knowledge bases in the field of law. The vast quantity of legal information found in the English language poses a challenge to the legal profession to exercise novel skills. This means people in the legal profession must become more collaborative and that these professional must co-evolve with information that is in a language other than the national language of Malaysia.

Chomsky's (1965: 4; 1995:14) definition of language has at its core the distinction that he draws between *competence*, that is, the innate ability speakers possess in using the language of their choice and *performance*, the overt production and use of that innate capability when encoding phonemes, morphemes and syntactic units of the language. This linguistic interpretation of language can be translated into the concept of bilingualism by doubling the language input in the sense that bilinguality reflects the speaker's capability of having two sets of (language-specific) competence and two sets of performance enabling him/her to encode and produce well-formed sentences in two languages. Jacobovits (1970), in turn, defines bilingualism in socio-psychological and cultural terms. He argues for bilingualism to have a number of serious implications for both the speaker's personal adjustment and the wider socio-cultural character of a given nation.

Whichever approach the person selects will mostly depend on his/her preference of a strictly linguistic or a more socio-psychological interpretation of the phenomenon. Regardless of one's theoretical inclination to viewing bilingualism as strict linguistic or a socio-psychological phenomenon, he/she will define it, basically, as the ability of communicating in two languages with the possibility of showing greater skills in one of the two languages.



As a corollary, in order to master the two linguistic systems and to be able to move rapidly and effortlessly from one linguistic system to the other when circumstances change is often a more ideal than real situation in life. In effect, most individuals fall short of this ideal. This shortcoming has motivated people to give bilingualism a number of varying interpretations. They envision it to refer to the faculty of using the two languages with different degrees of competency, ranging from a minimal degree of competency in each language to a high degree of competency in both languages. More often than not, bilinguals are found to possess a high level of proficiency in the mother tongue and a low level of proficiency in the second language, the middle position on the continuum. This greater leniency in defining a bilingual or bilingualism allows people to select the interpretation that best meets their expectations.

## CHAPTER 7

### CONCLUSIONS AND IMPLICATIONS

#### 7.0 Introduction

The purpose of this study has been to investigate the language choice phenomenon among Malaysian legal professionals from a combined sociolinguistic and social psychological approach, with a focus on language choice in the multilingual legal workplace setting. This chapter will highlight several implications about the results obtained in this study. It will also integrate prospects for the future role and status of BM and English in the Malaysian legal setting.

#### 7.1 Research Questions: Conclusions

The implications of the results on the body of knowledge and agreement or disagreement of these findings with prior research will be made clear in the following sections. This is to demonstrate how this study contributes to the wider body of knowledge on language choice. It is considered an important contribution to existing research on Malaysian legal professionals since no other study has included a detailed focus on Malaysian legal professional language choice, both from a quantitative and qualitative point of view.

##### 7.1.1 Patterns of Language Choice and Factors that Influence Language Choice

Empirical studies in both sociolinguistics and social psychology point to the formality of the situation taking precedence over interlocutor characteristics in language choice decisions (e.g., Rubin, 1968; Sankoff, 1972 in sociolinguistics; Bourhis, 1985; Genesee & Bourhis, 1982; 1988 in social psychology). In Rubin's decision tree, the minor factors are the speaker's first language and the interlocutor's language proficiency and

gender (see Chapter 2). In Genesee and Bourhis's studies, situational factors were found to influence language choice in the initial turn of an interaction, with accommodation having effect in later turns (see Chapter 2).

The present study has conclusive results which show that situational norms are strong for interactions taking place in formal settings, or when the purpose of the interactions is formal, for example, in the courtroom, in the legal private sector office. In the face of a narrow range of acceptable language choices in formal situations, norm compliance is high. This norm compliant language choice behavior can be described, using Herman's (1961) social psychological ideas, as the immediate situation taking precedence over social group and personal language needs. The language choice for the legal workplace in Malaysia is characterized by the use of English and BM. According to Ferguson's (1959) framework on the functional differentiation of languages, these two standard languages are H languages. BM is the present official language in Malaysia. Although BM has taken over this role from English, it is still accorded a *de facto* operational official status in the multilingual legal setting by the respondents in this study (see Chapters 5 and 6).

The present results on the adherence to situational norms shed some light on the contention in the sociolinguistic literature over whether the participant characteristics or the impersonal aspects (setting, purpose) of the situation are strong determinants of language choice. It seems that for the participants in the Malaysian legal setting, both personal and impersonal aspects of the situation influence language choice, but in different conditions of formality.

The finding that language choice does not take into consideration the interlocutors' personal or social characteristics in formal situations provides support for Hymes's (1972), and Brown and Fraser's (1979) contention that setting and purpose have greater

potency in determining language choice. Hymes considers participants as static individuals in his taxonomy. Brown and Fraser argue that certain features which are generally attributed to participants, such as social distance and social status or power, are not always stable attributes of individuals, or of relationships between individuals, but are context-dependent assessments which may be shifted depending on the setting and activity type (Brown & Levinson, 1979). However, in the Malaysian legal context, the impersonal aspects of the situation have greater potency in determining language choice.

The results of the study also indicate that in the Malaysian multilingual legal workplace, setting, participant characteristics are important. This supports Bell (1984) and Ladegaard (1995) on the importance of the personal aspect of the situation. In examining language style as audience design, Bell advocates that non-audience factors like topic and setting derive their effect by association with addressee types. In other words, interactants tailor their language style (including language choices) to participant characteristics. The participants of the present study attended to their interlocutors' ethnicity, hierarchical status, age, and educational level (see Chapter 5). Of these, ethnicity and hierarchical status are more salient social identities for the participants, as shown by the frequency with which language choices are made in response to these two social categorical membership cues.

Results of the study point to the fact that the respondents' reasons for language choice reveal that convergence is the main language choice strategy, with communicative efficiency being the basic consideration, and positive intergroup relations being a higher level of motivation for using this strategy. Thakerar, Giles and Cheshire (1982) emphasize the importance of comprehension and intelligibility (referred to as cognitive

organization) as an outcome of speech accommodation, as opposed to identity maintenance. This study concurs with this view.

More often than not, the respondents in this study seek to achieve effective communication, rather than emphasize identity maintenance, through converging to their interlocutors' ethnic language or the national language. Often it was found that the respondents are even willing to speak their less proficient language to achieve these interpersonal outcomes (see Chapter 6).

In Fishman's (1972) notion of domain, prestige languages tend to be used in the employment domain. However, the results of this study are inconsistent with this notion because both English and BM account for only most of the total number of language choices reported in the legal workplace setting. The reason for this exception to Fishman's notion of domain is probably related to communicative efficiency.

The interview results showed that complementary language choices are common in the legal work setting (see Chapter 6). These findings concur with studies conducted by Morais (1990; 1998) and Tiong (1996) in West Malaysia, where senior managerial and supervisory staff used a combination of English and Malay for communicative efficiency, and for closing the status gap. Thakerar, Giles and Cheshire (1982) found that complementary relationships between superiors and subordinates are reflected in language choices which seek to maintain the status quo, in that the superiors converge downwards to promote comprehension. It seems therefore that both BM and English are perceived as languages of authority and prestige in the Malaysian legal workplace setting. The evidence obtained in this study somewhat dispels general observations concerning English as an intrusive language in Malaysia. Basically, the overall high use of English in the workplace indicates that English has a strong position as the language of work together with BM.

Some broad comparisons can be made with the findings of Bourhis (1989; 1991, 1994), bearing in mind that different socio-structural factors operate in the Quebec and Malaysian legal workplace settings. Bourhis found that ethnicity and hierarchical status significantly affect the Anglophones' and Francophones' use of their first and second language, with the latter being more accommodative in their language choices. Bourhis attributes this to both English being the language of work, and to Anglophones being the traditionally dominant group. It seems that Bill 101 has only caused the Anglophones to report a positive attitude towards the use of French, but has not influenced their actual use of French. The Charter of the French Language (also known as Bill 101 and *Loi 101*) is a law in the province of Quebec in Canada defining French, the language of the majority of the population, as the only official language of Quebec and framing fundamental language rights of all Quebecers. It is the central legislative piece in Quebec's language policy.) Points of comparison of the present study with Bourhis's studies include the prominence of English as the language of work, despite legislation to support the use of BM, similar to the situation with Bill 101.

### **7.1.2 Language Attitudes**

The results of this study on language attitudes make a significant contribution to our understanding of how language choices can relate to larger societal patterns and sociolinguistic norms of the multilingual legal setting. The results indicate that work-related discussions tend to be in English in the private sector legal workplace. It is a convenient language for discussions on work matters because the work (legal) jargon is often in English. Thus, English has become associated with workplace communication alongside BM. This seems to indicate that English is sometimes considered more suitable than BM for coping with legal related work. These findings show how individual language choices are linked to relatively stable patterns of choice that exist in

the multilingual legal setting as a whole. It is also evident that the attitudes towards English and BM are generally positive. In their personal use of English, more than half of the respondents stated that they very often speak and write in English, but not for prestigious reasons. There also seems to be consensus among the participants for the dual usage of English and BM in the Malaysian legal work setting.

The results of this study point to some indication that there are some reasons for language choice which are more linked to individual differences resulting from attitudinal differences towards BM and English. However, a direct causal link between language attitudes and language choice is difficult to establish. Results of the study indicate that respondents did favour English in some instances (see Chapter 6) and explained their choice of English in terms of English being a language of wider communication.

They perceive a continued role for English alongside BM as the language for official work and as the gateway to information. This indicates that the participants are for a diglossic situation, whereby each language is given fair official and public support in its domains. The respondents do not seem to regard the two languages as existing in conflict, but rather as co-existing in a diglossic relationship. There is no indication that the participants would like to see the official function of English removed, since they are in favour of both languages being used in the legal workplace setting. In fact, there is evidence that they would like to see the status quo remain, as they continue to use English extensively. The functions for English and BM are not clearly delineated by the participants in the domain of official communication.

As for the influence of socio-structural factors on language choice in the Malaysian legal workplace setting, the results show that, in addition to English, BM is also a language of choice. Situational norms alone therefore cannot account for language

choice patterns in the legal domain. From the speech accommodation perspective, this convergence in language choice can be explained by a desire to achieve social integration, since language use can also signal work group membership.

The interaction of the factors which could influence language choice can best be summarized as resulting from the aim to achieve communicative efficiency and positive work related outcomes. What can be distinctively seen is that English is many a time favored over BM for many things in the legal workplace. Contrary to the aim of language planning and policy in Malaysia, BM is often not the favored choice for communication in the legal workplace setting. However, this move does not seem to have removed the association of BM as the official and national language for Malaysia.

## **7.2 Links between Reasons for Language Choice, Language Attitudes, and Language Choice Patterns**

The links between the three aspects of language choice examined in this study: language choice patterns, reasons for language choice, and attitudes to the use of English and BM are presented in this section.

The results presented in Chapters 5 and 6 show that the reasons for language choice and the reported language choice patterns are closely associated. Communicative efficiency and the availability of legal materials are the two most frequently mentioned reasons for language choice.

Interpersonal-motivated goals through strategic language choices is a convenient cue used to gauge communicative efficiency. It is also used to determine what the respondents' language preferences might be in order to achieve, for example, emphasizing in-group identity with other legal professionals or for reducing divergence. The purpose of highlighting the language choice patterns among Malaysian legal



professionals is to show that the reasons for language choice and the reported language choice patterns are closely related. As for other reasons for language choice, such as the formality of a situation or relationship, the purpose of the interaction, and the desire for reducing or increasing the social distance between interactants, the resulting language choice patterns are also regular. The consistency in the participants' language choice patterns and their reasons for these choices can be attributed to the existence of strong societal and situational norms governing language use in the Malaysian legal workplace setting. As an example, in the Malaysian courtroom, BM is often used – in the order of BM and then English.

However, there are some reasons for language choice which are more subject to individual differences. For language choices motivated by language learning purposes, it may not be possible to predict the specific languages that the participants may want to practice speaking. Nevertheless, we can guess with a great deal of certainty that they would not choose their own ethnic languages or standard languages which they are proficient in. From the interview results presented in Chapter 6, it is also evident that an associated reason for the participants to speak languages that they do not have a good command of is to attempt to keep to national language policy in the legal domain. . These examples show the presence of close links between the participants' reasons for language choice and their reported language choices, so much so that it is possible to make broad predictions of possible language choices when contextual information such as the formality of the situation and the purpose of the interactions is available.

To sum up, the findings of this study point out that there are no reported language attitudes which are inconsistent with the language choice patterns or the reasons for language choice. A close association between these facets of language choice definitely exists.

### **7.3 Contributions of the Study**

The contributions of this study to the body of knowledge on the language choice phenomenon are as follows:

- (1) This study has mapped out the hitherto unexplored language choice phenomenon in the Malaysian legal workplace setting. The study has also uncovered language choice dynamics in the legal workplace setting, in an area where the colonial language has been maintained in public use for much longer than in other work domains. These findings were obtained in a comprehensive study encompassing language choice patterns, reasons for language choice, and language attitudes.
- (2) In terms of the methodology, this study has attested to the usefulness of using interviews and observations in tandem with a survey questionnaire as a means of accessing the respondents' perspective of language choice. The results revealed socio-structural, socio-psychological and situational norms which were important to the respondents. In this way, the language choice phenomenon, as experienced by the respondents can be better understood.
- (3) In the context of research on language contact in multilingual settings, this study has contributed by showing how BM and English with seemingly different prestige and functions compete for dominance in a common arena (the legal workplace). The findings of the study are able to advance our understanding of language choice in the legal workplace setting in Malaysia.

### **7.4 Implications for Policy**

The results obtained in the study on professed language attitudes and self-reports of language choice patterns help us to understand how the role of language policies is changing the language behavior of Malaysian legal professionals. In this study, the participants expressed a positive attitude to the use of English together with BM, for public use in the legal workplace. This suggests that the national language policy has succeeded in instilling awareness of the importance of BM in the lives of Malaysians.

These findings do have important implications for language planning in Malaysia. In a wider perspective, Crystal (2000: 12) sets out the demise of many languages, often linked with a rapid increase in the use of English as a language of wider communication. In his general discussion, Crystal (2000: 14) reflects on the fact that while there may be around 7000 languages worldwide, in a world population of more

than 6 billion, eight languages have over 100 million speakers each (Mandarin, Spanish, English, Bengali, Hindi, Portuguese, Russian, and Japanese). Indeed, these eight languages have over 2.4 billion speakers between them. Crystal also laments that just 4% of the world's languages are spoken by 96% of the world's population – or to put it another way: 96% of the world's languages are spoken by just 4% of the total population, with a quarter of the world's languages being spoken by less than 1000 people; and nearly 500 languages have fewer than 100 speakers. These trends are summarized by Crystal (2003:20) as in language use (and death) that at least 50% of the current stock of languages look to disappear within the next century. How may all this affect Malaysia and her national language, BM?

Bruthiaux's (2002) asserts that, for the foreseeable future, English has all the key characteristics that make it likely to remain the dominant worldwide language. There are some reasons for caution for Malaysia's language planners. One immediate issue is whether widespread use of English could actually debase BM in the legal domain. Another pressure factor is that it seems possible that legal professionals who are exposed to so much English in the legal domain could result in a group of professionals who have varying competencies in both the national language and English. Could this then result in a diglossic pattern of language use for the Malaysian legal domain?

In May 2003, Gill from Universiti Kebangsaan Malaysia was quoted as urging widespread English-language competence for Malaysians. She states that ...

The national language policy had been adopted in the past because it was a natural process of the post-independence era, and if not done, would have had major negative repercussions for the political stability of the nation . . . However, in the present global economic climate, Malaysia's about turn with regard to English has become a necessity in order to compete and survive . . . We may be left out of the international loop . . .

*(The Star, 20 May 2003)*

In the same report, she further pointed out that over the 39-year period i.e.1956–95, the Translation Section of Dewan Bahasa dan Pustaka (Literary and Language Agency of Malaysia) had only translated and published 374 books, while public universities had published 168 books within the same period. Further, in order to emphasize this measure of having to keep up with ever-exploding knowledge, she pointed out that there are 100,000 scientific journals worldwide with around 5,000 new articles appearing every day – and this is on top of the 30 million existing journal articles. Of course, not all of these are in English, but, as Ammon (2001) demonstrates, there is increasing pressure on researchers to publish in languages of wider communication, particularly English. This could result in researchers making conscious decisions to publish in English rather than their first language.

The participants' self-reports of their language choice patterns in the legal workplace setting confirm that they tend to speak both BM and English. BM is not the sole language used for official purposes of communication. However, the reported language choice patterns still reflect patterns favoring English in the legal context in the legal workplace, as less BM is used in the higher courts. Given the results of this study, the government should consider the implementation of a bilingual legal system using both BM as the official and national language and English as a working language in the domain of law. However, what may be apparent is that the current national language policy has not achieved its goal of making BM a common language of use for the legal work domain.

## **7.5 Implications of Study for Further Research**

As shown in the preceding sections of this study, it is important to exercise caution when studying language matters. With proper caution, studies of this nature can, however, be helpful interpretive tools to analyze language planning and policy

decisions. Any language planning and policy implication is far from simple and can be far-reaching. If a language policy appears to fail, the diagnosis of the causes of failure can be made more obvious by examining if the policy is overwhelmingly (or even exclusively) for the benefit of only a few. Findings of this study imply that any language planning and policy decision in the area of the Malaysian legal system should devote more attention to the design of successful language policies which are able to provide stimulating opportunities for language development and use within the legal work domain.

This kind of research endeavor could also be enriched by co-triangulating data on the participants' perceptions towards their reasons for using two languages, their reported use of this strategy, and the actual occurrences of these two languages in the workplace setting. The scope of study can be extended to include varieties of Malaysian English, and there is already an extensive database to use as a starting point (e.g., Baskaran, 1987; Lowenberg, 1985; Platt, 1980).

It may also be worthwhile to examine how language choice decisions can provide insights into language planning and policy decisions and considerations. The study has also shown how combined sociolinguistic and social psychological approach can better account for the dynamics of language choice in multilingual settings, and in particular, allowing the influence of socio-structural norms to be understood separately from those of situational norms and interpersonal motivations. It is hoped that this combined approach, with a focus on the participants' perspective of the language choice phenomenon, will provide a rich theoretical context for the collection of empirical data in other multilingual workplace settings.

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DATE: \_\_\_\_\_

DEAR SIR//MADAM,

I AM A DOCTORAL STUDENT AT UNIVERSITI MALAYA. PART OF MY DOCTORAL RESEARCH IS INVESTIGATING LANGUAGE CHOICE AND USE AMONG MALAYSIAN LEGAL PRACTITIONERS. MY DISSERTATION INVOLVES DISTRIBUTING QUESTIONNAIRES AND THEN CONDUCTING FOLLOW-UP INTERVIEWS WITH VOLUNTEERS TO FURTHER EXAMINE THE QUESTIONS POSED.

YOUR PARTICIPATION IN THE STUDY INVOLVES ANSWERING A QUESTIONNAIRE AND MAYBE ONE INTERVIEW. THE INTERVIEW SHOULD LAST ABOUT 20 MINUTES EACH AND WILL BE HELD AT A PLACE CONVENIENT TO YOU.

I HOPE YOU WILL BE ABLE TO ANSWER THE QUESTIONNAIRE AND RETURN IT TO ME WITHIN A WEEK. ANSWERING THE QUESTIONS SHOULD TAKE YOU ABOUT 30 MINUTES. A STAMPED SELF-ADDRESSED ENVELOPE IS ATTACHED.

YOUR COMMENTS MAY BECOME PART OF THE STUDY. IN THE ANALYSES OF THE DATA I WILL NOT MENTION YOUR NAME OR NAMES OF ANY OTHER PEOPLE YOU MENTION DURING THE COURSE OF THE INTERVIEW OR IN THE QUESTIONNAIRE. NEITHER WILL I DISCLOSE NAMES OF PLACES WHERE YOU STUDIED, WORKED, OR LIVED. THE RESULTS OF THE ANALYSES WILL, HOWEVER, BE READ AND DISCUSSED BY FELLOW RESEARCHERS.

THANK YOU FOR CONSIDERING BEING A RESPONDENT IN THIS STUDY.

YOURS SINCERELY,

**(AIN NADZIMAH ABDULLAH)**

DEAR RESPONDENT,

PLEASE ANSWER THE FOLLOWING QUESTIONS. FILL IN THE NECESSARY DETAILS AND MARK (X) WHERE YOUR RESPONSES ARE REQUIRED.

ALL ANSWERS WILL BE REGARDED AS **STRICTLY CONFIDENTIAL**.

THANK YOU.

*AIN NADZIMAH*

**PART ONE**

1. NAME:(OPTIONAL) \_\_\_\_\_

2.JOB DESIGNATION:(E.G. PUBLIC PROSECUTOR, LEGAL ADVISOR)

\_\_\_\_\_

3. ADDRESS: (HOME)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

4. ADDRESS: (OFFICE)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

5. GENDER:

MALE	<input type="checkbox"/>
FEMALE	<input type="checkbox"/>

6. TELEPHONE:

---

7. FAX:

---

8. E-MAIL:

---

9. AGE:

20 – 24	
25 – 29	
30 – 34	
35 – 39	
40 – 44	
45 – 49	
50 – 54	
55 – 59	
60 – 64	
> 65	

10. RACE:

MALAY	
CHINESE	
INDIAN	
OTHER	

11. MOTHER TONGUE/ NATIVE LANGUAGE:

---

12. KNOWLEDGE OF OTHER LANGUAGE (PLEASE LIST LANGUAGE(S)):

---

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13. EDUCATIONAL BACKGROUND:

A. PRIMARY EDUCATION :

I. NAME OF INSTITUTION

---

II. MEDIUM OF INSTRUCTION

---

B. SECONDARY EDUCATION:

I. NAME OF INSTITUTION

---

II. MEDIUM OF INSTRUCTION

---

III. MEDIUM OF INSTRUCTION

---

C. TERTIARY EDUCATION:

I. NAME OF INSTITUTION

---

II. MEDIUM OF INSTRUCTION

---

D.OTHER QUALIFICATIONS:

I. NAME OF INSTITUTION

\_\_\_\_\_

II. MEDIUM OF INSTRUCTION

\_\_\_\_\_

14. PROFICIENCY IN ENGLISH:

EXCELLENT	
GOOD	
FAIR	
POOR	

15. PROFICIENCY IN BAHASA MALAYSIA:

EXCELLENT	
GOOD	
FAIR	
POOR	

**PART TWO:**

1. HOW WELL DO YOU UNDERSTAND ENGLISH?

EXCELLENT	
GOOD	
AVERAGE	
WITH DIFFICULTY	
NOT AT ALL	

2. HOW WELL DO YOU UNDERSTAND BAHASA MALAYSIA?

EXCELLENT	
GOOD	
AVERAGE	
WITH DIFFICULTY	
NOT AT ALL	

3. HOW WELL DO YOU SPEAK ENGLISH?

EXCELLENT	
GOOD	
AVERAGE	
WITH DIFFICULTY	
NOT AT ALL	

4. HOW WELL DO YOU SPEAK BAHASA MALAYSIA?

EXCELLENT	
GOOD	
AVERAGE	
WITH DIFFICULTY	
NOT AT ALL	

5. HOW OFTEN DO YOU READ SOMETHING IN ENGLISH?

DAILY	
WEEKLY	
MONTHLY	
LESS OFTEN	

6. HOW OFTEN DO YOU READ SOMETHING IN BAHASA MALAYSIA?

DAILY	
WEEKLY	
MONTHLY	
LESS OFTEN	

7. HOW OFTEN DO YOU WRITE SOMETHING IN BAHASA MALAYSIA?

DAILY	
WEEKLY	
MONTHLY	
LESS OFTEN	

8. HOW OFTEN DO YOU WRITE SOMETHING IN ENGLISH?

DAILY	
WEEKLY	
MONTHLY	
LESS OFTEN	

9. DO YOU THINK IT IS IMPORTANT FOR ENGLISH TO BE MAINTAINED IN MALAYSIA?

YES	
NO	
DON'T KNOW	
NEUTRAL	

10. I CAN EXPECT FROM A BORN AND RAISED MALAYSIAN THAT HE WILL SPEAK BAHASA MALAYSIA AS MUCH AS POSSIBLE

YES	
NO	
DON'T KNOW	
NEUTRAL	

11. IF, DURING A CONVERSATION IN BAHASA MALAYSIA, YOU FORGET OR DO NOT KNOW A WORD YOU NEED, WHICH WOULD YOU DO?

ASK SOMEONE FOR THE WORD	
SEARCH FOR IT IN MY MIND AND USE A ROUGHLY EQUIVALENT <u>BM</u> WORD?	
USE THE <u>ENGLISH</u> WORD WITHOUT SEARCHING FOR THE BM ONE?	

12. LEARNING ENGLISH IS BORING BUT NECESSARY

AGREE	
DISAGREE	
DON'T KNOW	

13. ENGLISH WILL TAKE YOU FURTHER THAN BAHASA MALAYSIA

AGREE	
DISAGREE	
DON'T KNOW	

14. ENGLISH CAN EXPRESS MOST THINGS BETTER THAN BAHASA MALAYSIA CAN

AGREE	
DISAGREE	
DON'T KNOW	



15. IT IS BETTER NOT TO SPEAK ENGLISH AT ALL THAN TO SPEAK IT BADLY

AGREE	
DISAGREE	
DON'T KNOW	

16. IT IS BETTER TO SPEAK only BAHASA MALAYSIA THAN TO MIX ENGLISH AND BAHASA MALAYSIA

AGREE	
DISAGREE	
DON'T KNOW	

17. IT IS BETTER TO SPEAK PURE ENGLISH THAN TO MIX ENGLISH AND BAHASA MALAYSIA

AGREE	
DISAGREE	
DON'T KNOW	

**PART THREE:**

1. PLEASE RATE YOUR **BAHASA MALAYSIA** SKILLS FOR EACH SKILL LISTED. CIRCLE THE NUMBER WHICH CORRESPONDS TO YOUR RESPONSE. THE NUMBERS INDICATE:

5 - EXCELLENT PROFICIENCY

4 - GOOD PROFICIENCY

3 - AVERAGE PROFICIENCY

2 - POOR PROFICIENCY

1 - NO PROFICIENCY

READING 5 4 3 2 1

WRITING 5 4 3 2 1

SPEAKING 5 4 3 2 1

LISTENING COMPREHENSION 5 4 3 2 1

2. PLEASE RATE YOUR **ENGLISH** SKILLS FOR EACH SKILL LISTED. CIRCLE THE NUMBER WHICH CORRESPONDS TO YOUR RESPONSE. THE NUMBERS INDICATE:

5 - EXCELLENT PROFICIENCY

4 - GOOD PROFICIENCY

3 - AVERAGE PROFICIENCY

2 - POOR PROFICIENCY

1 - NO PROFICIENCY

READING 5 4 3 2 1

WRITING 5 4 3 2 1

SPEAKING 5 4 3 2 1

LISTENING COMPREHENSION 5 4 3 2 1

LISTED BELOW ARE ELEVEN (11) QUESTIONS CONCERNING YOUR **PROFICIENCY IN BAHASA MALAYSIA (BM)**. PLEASE ANSWER EACH QUESTION BY ESTIMATING YOUR ABILITY ACCORDING TO THE CODING SYSTEM BELOW. CIRCLE YOUR RESPONSES. PLEASE RESPOND TO ALL ITEMS.

---

POOR	FAIR	AVERAGE	GOOD	EXCELLENT
1	2	3	4	5

---

**HOW DO YOU RATE YOUR ABILITY TO:**

1. UNDERSTAND QUESTIONS ADDRESSED TO YOU IN BM

1 2 3 4 5

2. UNDERSTAND CONVERSATIONS IN BM?

1 2 3 4 5

3. UNDERSTAND BM WITHOUT TRANSLATING IN YOUR MIND?

1 2 3 4 5

4. SPEAK BM FLUENTLY?

1 2 3 4 5

5. SPEAK BM WITHOUT AN ENGLISH ACCENT ATTACHED TO IT?

1 2 3 4 5

6. SPEAK BM WITHOUT TRANSLATING IN YOUR MIND?

1 2 3 4 5

7. READ BM ALOUD?

1 2 3 4 5

8. UNDERSTAND WHAT YOU READ IN BM?

1 2 3 4 5

9. USE CORRECT GRAMMAR WHEN WRITING IN BM?

1 2 3 4 5

10. USE CORRECT SPELLING WHEN WRITING IN BM?

1 2 3 4 5

11. USE CORRECT GRAMMAR WHEN SPEAKING IN BM?

1 2 3 4 5

LISTED BELOW ARE ELEVEN (11) QUESTIONS CONCERNING YOUR **PROFICIENCY IN THE ENGLISH LANGUAGE**. PLEASE ANSWER EACH QUESTION BY ESTIMATING YOUR ABILITY ACCORDING TO THE CODING SYSTEM BELOW. CIRCLE YOUR RESPONSES. PLEASE RESPOND TO ALL ITEMS.

---

POOR	FAIR	AVERAGE	GOOD	EXCELLENT
1	2	3	4	5

---

**HOW DO YOU RATE YOUR ABILITY TO:**

1. UNDERSTAND QUESTIONS ADDRESSED TO YOU IN ENGLISH?

1 2 3 4 5

2. UNDERSTAND CONVERSATIONS IN ENGLISH?

1 2 3 4 5

3. UNDERSTAND ENGLISH WITHOUT TRANSLATING IN YOUR MIND?

1 2 3 4 5

4. SPEAK ENGLISH FLUENTLY?

1 2 3 4 5

5. SPEAK ENGLISH WITHOUT A MALAYSIAN ACCENT ATTACHED TO IT?

1 2 3 4 5

6. SPEAK ENGLISH WITHOUT TRANSLATING IN YOUR MIND?

1 2 3 4 5

7. READ ENGLISH ALOUD?

1 2 3 4 5

8. UNDERSTAND WHAT YOU READ IN ENGLISH?

1 2 3 4 5

9. USE CORRECT GRAMMAR WHEN WRITING IN ENGLISH?

1 2 3 4 5

10. USE CORRECT SPELLING WHEN WRITING IN ENGLISH?

1 2 3 4 5

11. USE CORRECT GRAMMAR WHEN SPEAKING IN ENGLISH?

1 2 3 4 5

**PART FOUR:**

DEAR RESPONDENT,

LISTED BELOW ARE SEVERAL STATEMENTS ABOUT BAHASA MALAYSIA AND THE ENGLISH LANGUAGE. FOR EACH STATEMENT, INDICATE WHETHER YOU **STRONGLY DISAGREE**, **DISAGREE**, **ARE NOT SURE**, **AGREE** OR **STRONGLY AGREE** WITH THE STATEMENT BY CIRCLING THE APPROPRIATE NUMBER USING THE CODING BELOW.

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STRONGLY DISAGREE	DISAGREE	NOT SURE	AGREE	STRONGLY AGREE
1	2	3	4	5

---

**A. BAHASA MALAYSIA IS**

1. A BEAUTIFUL LANGUAGE TO SPEAK

1 2 3 4 5

2. A WORTHWHILE LANGUAGE TO LEARN TO READ

1 2 3 4 5

3. A WORTHWHILE LANGUAGE TO LEARN TO WRITE

1 2 3 4 5

4. A LANGUAGE THAT I WOULD LIKE MY CHILDREN TO SPEAK

1 2 3 4 5

5. A LANGUAGE THAT IS GOOD FOR EXPRESSING EMOTIONS

1 2 3 4 5



6. AN IMPORTANT LANGUAGE TO KNOW TO GET AHEAD IN THE LEGAL PROFESSION

1 2 3 4 5

7. AN IMPORTANT LANGUAGE TO KNOW TO BE ABLE TO GET AHEAD IN THE WORLD

1 2 3 4 5

8. A LANGUAGE THAT EXPRESSES MY CULTURE

1 2 3 4 5

9. A LANGUAGE NECESSARY FOR THE LEGAL PROFESSION

1 2 3 4 5

10. A LANGUAGE MALAYSIAN SCHOOLS/UNIVERSITIES SHOULD USE AS THE SOLE MEDIUM OF INSTRUCTION

1 2 3 4 5

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STRONGLY DISAGREE	DISAGREE	NOT SURE	AGREE	STRONGLY AGREE
1	2	3	4	5

---

## **B. ENGLISH IS**

1. A BEAUTIFUL LANGUAGE TO SPEAK

1 2 3 4 5

2. A WORTHWHILE LANGUAGE TO LEARN TO READ

1 2 3 4 5

3. A WORTHWHILE LANGUAGE TO LEARN TO WRITE

1 2 3 4 5

4. A LANGUAGE THAT I WOULD LIKE MY CHILDREN TO SPEAK

1 2 3 4 5

5. A LANGUAGE THAT IS GOOD FOR EXPRESSING EMOTIONS

1 2 3 4 5

6. AN IMPORTANT LANGUAGE TO KNOW TO GET AHEAD IN THE LEGAL  
PROFESSION

1 2 3 4 5

7. AN IMPORTANT LANGUAGE TO KNOW TO BE ABLE TO GET AHEAD IN  
THE WORLD

1 2 3 4 5

8. A LANGUAGE THAT EXPRESSES MY CULTURE

1 2 3 4 5

9. A LANGUAGE NECESSARY FOR THE LEGAL PROFESSION

1 2 3 4 5

10. A LANGUAGE MALAYSIAN SCHOOLS/UNIVERSITIES SHOULD USE AS  
THE SOLE MEDIUM OF INSTRUCTION

1 2 3 4 5

**PART FIVE:**

1. HOW OFTEN DO YOU READ SOMETHING IN ENGLISH FOR LEGAL PURPOSES?

DAILY	
WEEKLY	
MONTHLY	
LESS OFTEN	

2. HOW OFTEN DO YOU READ SOMETHING IN BAHASA MALAYSIA FOR LEGAL PURPOSES?

DAILY	
WEEKLY	
MONTHLY	
LESS OFTEN	

3. HOW OFTEN DO YOU WRITE SOMETHING IN BAHASA MALAYSIA FOR LEGAL PURPOSES?

DAILY	
WEEKLY	
MONTHLY	
LESS OFTEN	

4. HOW OFTEN DO YOU WRITE SOMETHING IN ENGLISH FOR LEGAL PURPOSES?

DAILY	
WEEKLY	
MONTHLY	
LESS OFTEN	

5. DO YOU THINK IT IS IMPORTANT FOR ENGLISH TO BE MAINTAINED AND USED FOR LEGAL PURPOSES IN MALAYSIA?

YES	
NO	
DON'T KNOW	
NEUTRAL	

6. DO YOU SPEAK MORE ENGLISH THAN BAHASA MALAYSIA FOR LEGAL PURPOSES?

MUCH MORE	
MORE	
ABOUT THE SAME	
LESS	
MUCH LESS	

7. WHAT LANGUAGE DO YOU THINK IN WHEN YOU ARE SPEAKING ABOUT LEGAL MATTERS?

BM ALL THE TIME	
ENGLISH ALL THE TIME	
WHATEVER LANGUAGE I AM SPEAKING AT THE TIME	

8. WHAT LANGUAGE DO YOU THINK IN FOR LEGAL PURPOSES?

BM ALL THE TIME	
ENGLISH ALL THE TIME	
BM MORE THAN ENGLISH	
ENGLISH AND BM	
ANOTHER LANGUAGE	

9. DO YOU MAKE AS CONSCIOUS AN EFFORT WITH YOUR ENGLISH AS WELL AS YOUR BAHASA MALAYSIA WHEN DEALING WITH LEGAL MATTERS?

MORE CONSCIOUS	
ABOUT THE SAME	
LESS CONSCIOUS	

10. DO YOU MAKE A CONSCIOUS AN EFFORT ABOUT YOUR ENGLISH PROFICIENCY WHEN DEALING WITH LEGAL MATTERS

MORE CONSCIOUS	
ABOUT THE SAME	
LESS CONSCIOUS	

11. USING BM FOR LEGAL MATTERS IS NECESSARY

AGREE	
DISAGREE	
DON'T KNOW	

12. USING ENGLISH FOR LEGAL MATTERS IS NECESSARY

AGREE	
DISAGREE	
DON'T KNOW	

13. ENGLISH WILL TAKE YOU FURTHER THAN BAHASA MALAYSIA WHEN DEALING WITH LEGAL MATTERS

AGREE	
DISAGREE	
DON'T KNOW	

14. ENGLISH CAN EXPRESS MOST THINGS BETTER THAN BAHASA MALAYSIA CAN FOR LEGAL MATTERS

AGREE	
DISAGREE	
DON'T KNOW	

15. IT IS BETTER TO SPEAK ONLY BAHASA MALAYSIA THAN TO MIX ENGLISH AND BAHASA MALAYSIA WHEN DEALING WITH LEGAL MATTERS

AGREE	
DISAGREE	
DON'T KNOW	

16. IT IS BETTER TO SPEAK ONLY ENGLISH THAN TO MIX ENGLISH AND BAHASA MALAYSIA WHEN DEALING WITH LEGAL MATTERS

AGREE	
DISAGREE	
DON'T KNOW	

**PART SIX:**

1. IN YOUR OPINION, HOW FLUENT IS THE USE OF ENGLISH BY:

	FLUENT	NOT FLUENT
JUDGES		
DEFENCE ATTORNEYS		
PROSECUTORS		

2. IN YOUR OPINION, HOW FLUENT IS THE USE OF BAHASA MALAYSIA BY:

	FLUENT	NOT FLUENT
JUDGES		
DEFENCE ATTORNEYS		
PROSECUTORS		

3. LANGUAGE MOST FREQUENTLY USED ACCORDING TO TYPE OF COURT:

TYPE OF COURT	BAHASA MALAYSIA	ENGLISH
MAGISTRATES		
SESSIONS		
HIGH		
COURT OF APPEAL		
FEDERAL		

4. LANGUAGE MOST FREQUENTLY USED IN ARGUING CASES:

TYPE OF CASE	BAHASA MALAYSIA	ENGLISH
SUPERIOR COURT		
SUBORDINATE COURT		



5. LANGUAGE MOST FREQUENTLY USED ACCORDING TO TYPE OF CASE:

TYPE OF CASE	BAHASA MALAYSIA		ENGLISH	
	SUBORDINATE	SUPERIOR	SUBORDINATE	SUPERIOR
CRIMINAL				
CIVIL				

6. IS THE LETTER OF DEMAND ALWAYS WRITTEN IN

BM

ENGLISH

7. IS THE CHARGE FOR A CIVIL MATTER ALWAYS WRITTEN IN

BM

ENGLISH

8. IS THE CHARGE FOR A CRIMINAL MATTER ALWAYS WRITTEN IN

BM

ENGLISH

9. IS THE STATEMENT OF CLAIM ALWAYS WRITTEN IN

BM

ENGLISH

10. IS THE JUDGMENT ALWAYS WRITTEN IN

BM

ENGLISH

11. HAVE YOU EVER REFERED TO ACTS IN BAHASA MALAYSIA?

YES

NO

IF NO, WHAT ARE THE REASONS?

IT IS EASIER TO UNDERSTAND ACTS IN ENGLISH.

THERE WERE NO RELEVANT ACTS IN BAHASA MALAYSIA.

IT WAS NOT NECESSARY, BECAUSE THE TRIAL WAS NOT IN  
BAHASA MALAYSIA.

OTHER REASONS : \_\_\_\_\_

12. HAVE YOU EVER USED REFERENCE MATERIALS IN BAHASA MALAYSIA IN A TRIAL?

YES

NO

PLEASE TICK THE TYPE/S OF REFERENCE MATERIAL:

ACTS

LAW REPORTS

LAW JOURNAL

COURT DOCUMENTS

OTHER: \_\_\_\_\_

13. WHAT PERCENTAGE OF BAHASA MALAYSIA DO YOU USE FOR CRIMINAL MATTER (SUBORDINATE COURTS) :

PERCENTAGE OF BAHASA MALAYSIA USED				
	< 25 %	25% - 50%	50% - 75%	> 75 %
MENTION OF CASE				
EXAMINATION OF WITNESS				
SUBMISSION				
PLEA OF MITIGATION				

14. WHAT PERCENTAGE OF ENGLISH DO YOU USE FOR CRIMINAL MATTER (SUBORDINATE COURTS) :

PERCENTAGE OF ENGLISH USED				
	< 25 %	25% - 50%	50% - 75%	> 75 %
MENTION OF CASE				
EXAMINATION OF WITNESS				
SUBMISSION				
PLEA OF MITIGATION				

15. WHAT PERCENTAGE OF BAHASA MALAYSIA DO YOU USE FOR CIVIL MATTER (SUBORDINATE COURTS):

PERCENTAGE OF BAHASA MALAYSIA USED				
	< 25 %	25% - 50%	50% - 75%	> 75 %
MENTION OF CASE				
EXAMINATION OF WITNESS				
SUBMISSION				
PLEA OF MITIGATION				

16. WHAT PERCENTAGE OF ENGLISH DO YOU USE FOR CIVIL MATTER (SUBORDINATE COURTS):

PERCENTAGE OF ENGLISH USED				
	< 25 %	25% - 50%	50% - 75%	> 75 %
MENTION OF CASE				
EXAMINATION OF WITNESS				
SUBMISSION				
PLEA OF MITIGATION				

17. PERCENTAGE OF BAHASA MALAYSIA DO YOU USE FOR CRIMINAL MATTER (SUPERIOR COURTS):

PERCENTAGE OF BAHASA MALAYSIA USED				
	< 25 %	25% - 50%	50% - 75%	> 75 %
MENTION OF CASE				
EXAMINATION OF WITNESS				
SUBMISSION				
PLEA OF MITIGATION				

18. WHAT PERCENTAGE OF ENGLISH DO YOU USE FOR CRIMINAL MATTER (SUPERIOR COURTS):

PERCENTAGE OF ENGLISH USED				
	< 25 %	25% - 50%	50% - 75%	> 75 %
MENTION OF CASE				
EXAMINATION OF WITNESS				
SUBMISSION				
PLEA OF MITIGATION				

19. WHAT PERCENTAGE OF BAHASA MALAYSIA DO YOU USE FOR CIVIL MATTER (SUPERIOR COURTS) :

PERCENTAGE OF BAHASA MALAYSIA USED				
	< 25 %	25% - 50%	50% - 75%	> 75 %
MENTION OF CASE				
EXAMINATION OF WITNESS				
SUBMISSION				
PLEA OF MITIGATION				

20. WHAT PERCENTAGE OF ENGLISH DO YOU USE FOR CIVIL MATTER (SUPERIOR COURTS):

PERCENTAGE OF ENGLISH USED				
	< 25 %	25% - 50%	50% - 75%	> 75 %
MENTION OF CASE				
EXAMINATION OF WITNESS				
SUBMISSION				
PLEA OF MITIGATION				

21. WHICH LANGUAGE DO YOU USE MOST WHEN DEALING WITH THE JUDICIARY?

<b>JUDICIARY</b>	BAHASA MALAYSIA	ENGLISH
ORAL		
WRITTEN		

IF BAHASA MALAYSIA IS NOT USED, WHAT ARE THE REASONS?

REFERENCE MATERIALS ARE STILL IN ENGLISH.

RELEVANT LAWS ARE STILL IN ENGLISH.

ENGLISH IS MORE APPROPRIATE / ACCURATE.

FEEL MORE COMFORTABLE USING ENGLISH.

ENGLISH IS EASIER TO UNDERSTAND.

OTHER REASONS

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22. WHAT ARE SOME REASONS FOR GRANTING THE USE OF BAHASA MALAYSIA AND ENGLISH IN APPLICATIONS?

ENGLISH IS MOST APPROPRIATE.

PROSECUTOR / DEFENCE ATTORNEY IS NOT FLUENT IN  
BAHASA MALAYSIA

ENGLISH IS EASIER TO UNDERSTAND.

TERMS IN BAHASA MALAYSIA IS STILL INCOMPLETE.

OTHER REASONS

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23. WHICH LANGUAGE DO YOU MOST OFTEN USE IN PREPARING DRAFTS AND LEGISLATIVE BILLS?

DRAFTS & LEGISLATIVE MATERIALS	<b>LANGUAGE MOST FREQUENTLY USED</b>	
	BAHASA MALAYSIA	ENGLISH
BILLS		
AGREEMENTS		
WILLS		
STATUTORY DECLARATIONS		
CONTRACTS		
AFFIDAVITS		

24. IF IN THE ABOVE INSTANCES BAHASA MALAYSIA IS LESS FREQUENTLY USED, WHAT ARE THE REASONS FOR THIS?

CLIENT DID NOT REQUIRE DRAFT TO BE PREPARED IN BAHASA MALAYSIA.

THERE IS NO LAW THAT REQUIRES THE PREPARATION OF DRAFTS TO BE IN BAHASA MALAYSIA.

EXAMPLES OF CONTRACTS AND STATUTORY DECLARATIONS ARE EASILY AVAILABLE IN ENGLISH

OTHER REASONS

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25. WHAT STEPS DO YOU TAKE IN PREPARING DRAFTS AND BILLS?

PREPARING THE DRAFT DIRECTLY IN BAHASA MALAYSIA.

PREPARING THE DRAFT IN ENGLISH, AND THEN TRANSLATING IT TO BAHASA MALAYSIA.

NOT SURE.

26. HOW MUCH **BAHASA MALAYSIA** DO YOU USE IN ADMINISTRATIVE AFFAIRS IN **PRIVATE SECTOR** LEGAL WORKPLACE?

PERCENTAGE OF BAHASA MALAYSIA USED				
	< 25 %	25% - 50%	50% - 75%	> 75 %
CONVERSING WITH COLLEGUES				
CONVERSING WITH SUPERIORS				
CONVERSING WITH SUBORDINATES				
WRITING OFFICE MEMOS				
ANSWERING PHONE CALLS				
WRITING TO CLIENTS				
TALKING O CLIENTS				
WRITING REPORTS				
GIVING PRESENTATION TO CLIENTS				
GIVING TRAINING				



**27. HOW MUCH ENGLISH DO YOU USE IN ADMINISTRATIVE AFFAIRS IN PRIVATE SECTOR LEGAL WORKPLACE?**

PERCENTAGE OF BAHASA MALAYSIA USED				
	< 25 %	25% - 50%	50% - 75%	> 75 %
CONVERSING WITH COLLEGUES				
CONVERSING WITH SUPERIORS				
CONVERSING WITH SUBORDINATES				
WRITING OFFICE MEMOS				
ANSWERING PHONE CALLS				
WRITING TO CLIENTS				
TALKING O CLIENTS				
WRITING REPORTS				
GIVING PRESENTATION TO CLIENTS				
GIVING TRAINING				

28.HOW MUCH **BAHASA MALAYSIA** DO YOU USE IN ADMINISTRATIVE AFFAIRS IN **PUBLIC SECTOR** LEGAL WORKPLACE?

PERCENTAGE OF BAHASA MALAYSIA USED				
	< 25 %	25% - 50%	50% - 75%	> 75 %
CONVERSING WITH COLLEGUES				
CONVERSING WITH SUPERIORS				
CONVERSING WITH SUBORDINATES				
WRITING OFFICE MEMOS				
ANSWERING PHONE CALLS				
WRITING TO CLIENTS				
TALKING O CLIENTS				
WRITING REPORTS				
GIVING PRESENTATION TO CLIENTS				
GIVING TRAINING				

29. HOW MUCH **ENGLISH** DO YOU USE IN ADMINISTRATIVE AFFAIRS IN **PUBLIC SECTOR** LEGAL WORKPLACE?

PERCENTAGE OF BAHASA MALAYSIA USED				
	< 25 %	25% - 50%	50% - 75%	> 75 %
CONVERSING WITH COLLEGUES				
CONVERSING WITH SUPERIORS				
CONVERSING WITH SUBORDINATES				
WRITING OFFICE MEMOS				
ANSWERING PHONE CALLS				
WRITING TO CLIENTS				
TALKING O CLIENTS				
WRITING REPORTS				
GIVING PRESENTATION TO CLIENTS				
GIVING TRAINING				

30. WHAT IS THE LANGUAGE MOST OFTEN USED IN ADMINISTRATIVE BUSINESS?

ADMINISTRATIVE BUSINESS	<b>LANGUAGE MOST OFTEN USED</b>	
	BAHASA MALAYSIA	ENGLISH
CIRCULAR		
ORDER		
ANNOUNCEMENT		
MINUTES		

31. WHAT LANGUAGE IS MOST OFTEN USED IN ADMINISTRATIVE BUSINESS?

ADMINISTRATIVE BUSINESS	<i>LANGUAGE</i>	
	BAHASA MALAYSIA	ENGLISH
LEGAL DOCUMENT		
CIRCULAR		
LEGAL ADVICE		
ADVERTISEMENT		
STATUTORY FORM		
NOTICE		
Legal notice		

32. WHAT TYPES OF ENCOURAGEMENT IS PROVIDED BY THE DEPARTMENT / ORGANISATION / FIRM IN PUBLIC SECTOR?

ENCOURAGE THE USE OF BAHASA MALAYSIA

LANGAUGE TRAINING IN BAHASA MALAYSIA

PROVIDING REFERENCE MATERIALS IN BAHASA MALAYSIA.

OTHERS: \_\_\_\_\_

33. WHAT TYPES OF ENCOURAGEMENT IS PROVIDED BY THE DEPARTMENT / ORGANISATION / FIRM IN PUBLIC SECTOR?

ENCOURAGE THE USE OF ENGLISH

LANGAUGE TRAINING IN ENGLISH

PROVIDING REFERENCE MATERIALS IN ENGLISH

OTHERS: \_\_\_\_\_

34. WHAT TYPES OF ENCOURAGEMENT IS PROVIDED BY THE DEPARTMENT / ORGANISATION / FIRM IN PRIVATE SECTOR?

ENCOURAGE THE USE OF BAHASA MALAYSIA

LANGAUGE TRAINING IN BAHASA MALAYSIA

PROVIDING REFERENCE MATERIALS IN BAHASA MALAYSIA.

OTHERS: \_\_\_\_\_

35. WHAT TYPES OF ENCOURAGEMENT IS PROVIDED BY THE DEPARTMENT / ORGANISATION / FIRM IN PRIVATE SECTOR?

ENCOURAGE THE USE OF ENGLISH

LANGAUGE TRAINING IN ENGLISH

PROVIDING REFERENCE MATERIALS IN ENGLISH

OTHERS: \_\_\_\_\_

**INTERVIEW TRANSCRIPT**

1. WOULD YOU SAY THAT YOU COULD USE EITHER BM OR ENGLISH IRRESPECTIVE OF THE SITUATION IN MALAYSIAN COURTS?

YES	
NO	

WHY? \_\_\_\_\_  
\_\_\_\_\_

2. IN CERTAIN SITUATIONS THAT YOU CAN IDENTIFY, WOULD YOU SAY THAT YOU MAKE IT A POINT OF DUTY TO USE BM IN MALAYSIAN COURTS?

YES	
NO	

SITUATIONS? (PLEASE LIST)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

WHY/WHY NOT?

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

3. IN THE MALAYSIAN 'OFFICIAL' SITUATION, WOULD YOU SAY THAT IT IS IMPROPER TO USE ENGLISH IN CERTAIN CONTEXTS?

YES	
NO	

PLEASE IDENTIFY CONTEXTS WHICH YOU CONSIDER INAPPROPRIATE FOR THE USE OF ENGLISH IN THE MALAYSIAN 'OFFICIAL' SITUATION

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4. IN THE MALAYSIAN 'OFFICIAL' SITUATION, WOULD YOU SAY THAT IT IS IMPROPER TO USE BM IN CERTAIN CONTEXTS?

YES	
NO	

PLEASE IDENTIFY CONTEXTS WHICH YOU CONSIDER INAPPROPRIATE FOR THE USE OF bm IN THE MALAYSIAN 'OFFICIAL' SITUATION

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5. IN THE MALAYSIAN 'SOCIAL' SITUATION WOULD YOU SAY THAT IT IS IMPROPER TO USE BM IN CERTAIN CONTEXTS?

YES	
NO	

PLEASE IDENTIFY CONTEXTS WHICH YOU CONSIDER INAPPROPRIATE FOR THE USE OF BM IN THE MALAYSIAN 'SOCIAL' SITUATION

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