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LAW OF DISMISSAL IN MALAYSIA: A STUDY

BY

WONG AH NGEE

**INTERNATIONAL ISLAMIC UNIVERSITY
MALAYSIA**

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**A thesis submitted in fulfilment of the requirement
for the degree of Doctor of Philosophy**

**Ahmad Ibrahim Kulliyah of Laws
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Malaysia**

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ABSTRACT

With reference to Employment Law in Malaysia, an employee's dismissal without just cause or excuse has created some problems in the area of Industrial Law. On most occasions, an employer would generally dismiss an employee on grounds of misconduct, where such an employee has been alleged with the commission of the misconduct, which is notionally a violation of an obligation on the part of the employee by the conditions of service spelt out in the contract of employment. Though there is no specific definition of the word "misconduct" in the statutory law of the country, it is for the courts to decide what misconduct mean, and this is generally based on a case-to-case. This dissertation attempts to assist in the interpretation of the word with explanations by studying relevant cases so as not to constrict the definition, for Employment Law should not be rigid as there should be allowable flexibility to the definition. The dissertation also attempts to enunciate the difference between a "contract of service" and "contract for service" by employing some of the acceptable tests recognised by the courts and law. More importantly, prior to a dismissal, a pre-dismissal inquiry is vital as a safeguard to protect innocent employees from being unfairly dismissed from their employment. The work also explores the question of whether a preliminary inquiry is deemed necessary now in the modern era. It also focuses on how an actual preliminary inquiry is held, taking the organisation of Tenaga Nasional Berhad (TNB) as a case study. Further, the dissertation also describes the manner in which an employee, through a process known as conciliation, attempts to settle employment disputes amicably with his employer. Other methods of conciliation are also enumerated in detail as beneficial assistance to a dismissed employee. The work also focuses on the differences between "compensatory benefits" and "industrial remedies", and the factors which the Industrial Court would take into consideration when awarding industrial reliefs. It is also the focus of this writing to highlight some of the problems that are currently faced by the Industrial Court. The subject-matter of this research work maybe vast, and to deal with each and every aspect of it is a harrowing task. However, it is hoped that the dissertation will cover all the important aspects relevant to the issue of dismissal without just cause or excuse, misconduct, disciplinary proceedings, conciliation as a means of settling employment disputes, compensatory benefits and industrial law remedies. The Islamic principles on employment are also discussed from the Islamic perspectives. It looks at how Islam views work as a form of livelihood and brotherhood, and how the rights of a Muslim employee maybe protected under the Islamic principles.

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APPROVAL PAGE

The thesis of Wong Ah Ngee has been approved by the following:

.....
Nik Ahmad Kamal Nik Mahmood
Supervisor

.....
Anwarul Yaqin
Internal Examiner

.....
Wu Min Aun
External Examiner

.....
Ab. Rahim Hj. Ismail
Chairperson

DECLARATION

I, hereby, declare that this dissertation is the result of my own investigation, except where otherwise stated. I also declare that it has not been previously or concurrently submitted as a whole for any other degrees at IIUM or other institutions.

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This thesis is dedicated to:

- my late mother, Tan Tik, and
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The Workmen Compensation Act 1952

LIST OF ABBREVIATIONS

A.C.	Law reports, Appeal Cases
All E.R.	All England Law Reports
A.I.R.	All Indian Reports
A.L.R.	Australian Law Reports
A. M.R.	All Malaysian Reports
Anor.	Another
CA	Court of Appeal
Ch.D	Law Reports, Chancery Division
C.L.J	Current Law Journal (Malaysia)
D.L.R.	Dominion Law Reports
E.R.	English Reports
E.R.N.Z.	Employment Reports New Zealand
Exch.	Law Reports, Exchequer
FC	Federal Court
Fn.; fn.	Footnote
HLR	House of Lords Reports
Ibid.	(<i>ibidem</i>) in the same place
i.e.	Id est (Lat) that is
I.C.R	Industrial Cases Reports (England)
I.L.R.	Industrial Law Reports
I.T.R.	Industrial Tribunal Reports (England)
I.R.	Industrial Reports (New South Wales)
I.R.L.R.	Industrial Relations Law Reports
K.B.	Law Reports, Kings Bench
Ltd.	Limited
L.T. R.	Law Times Reports
M.L.J.	Malayan Law Journal
N.Z.L.R.	New Zealand Law Reports
Ors	Others
Q.B.	Law Reports, Queens Bench
Q.B.D.	Law Reports, Queens Bench Division
S.C.R.	Canadian Law Reports, Supreme Court
Sy.	Syarikat
T.L.R.	Times Law Reports
TNB.	Tenaga Nasional Bhd.
U.S.	United States Supreme Court Reports
W.L.R.	Weekly Law Reports