

**DEMOTION AS A CONSTRUCTIVE DISMISSAL UNDER THE INDUSTRIAL  
RELATIONS ACT 1967: A COMPARATIVE STUDY BETWEEN THE  
MALAYSIAN LAW AND THE UNITED KINGDOM LAW**

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## ABSTRACT

The Industrial Relation Act 1967 aims to create industrial harmony among the relationship between the employee and the employer. It is noted that trade disputes deem to be in existence when there is a disagreement between the employer and employee in any organization. Basically, the terms of the contract of employment itself always caused conflict of issues which later results in a trade dispute especially when the terms and conditions is regarding dismissal which seldom occurred. Furthermore when it regards to a circumstances of a constructive dismissal, it become worst when it comes to the issue of demotion.

The problem arise due to the provision that is stipulated under the Industrial Relation Act 1967 which only governed the remedy for dismissal 'without just cause and excuse' as to the right of representation or reinstatement. However, it does not specifically express the protection of situation of unfair dismissal as well as constructive dismissal.

Over the years, the Court in deciding cases of demotion have looked at the fact of its circumstances whereby it vary from case to case, however, as for the current position, the Court agreed that the employee who had been constructively dismissed can also invoke **Section 20** of the Industrial Relation Act 1967 if and only the employee can come up with an onus to prove that their dismissal is unfair and is done without 'just cause and excuse'.

An employee who has been demoted can only invoke **Section 20(1)**, if they are able to fulfill the requirement of unfair dismissal. However, up until now, there is an ambiguity exist over the characteristic of a demotion which amounts to constructive dismissal. As it is a matter of facts, the Court has reached the consensus to apply certain types of tests in examining whether demotion amounts to a constructive dismissal or not.

Thus, this research will come up with a discussion over the characteristic and criteria for a demotion to become constructive dismissal, vise versa.

**TABLE OF CONTENTS**

<b>ACKNOWLEDGEMENT</b>	ii
<b>ABSTRACT</b>	iii
<b>TABLE OF CONTENTS</b>	v
<b>LIST OF STATUTES</b>	viii
<b>LIST OF MALAYSIAN CASES</b>	viii
<b>LIST OF ENGLISH CASES</b>	ix
<b>CHAPTER 1: INTRODUCTION</b>	
1.0 INTRODUCTION	1
1.1 BACKGROUND OF THE STUDY	2
1.2 PROBLEM STATEMENTS	4
1.3 OBJECTIVES OF THE STUDY	5
1.4 SCOPE OF THE STUDY	6
1.5 METHODOLOGY	6
1.6 LIMITATIONS	7
1.7 SIGNIFICANCE OF THE STUDY	7
1.8 OUTLINE STRUCTURE OF THE PAPER	8
1.9 CONCLUSION	9
<b>CHAPTER 2: LITERATURE REVIEW</b>	
2.0 INTRODUCTION	10
2.1 DEMOTION AS A CONSTRUCTIVE DISMISSAL	10
2.2 THE LEGAL FRAMEWORK IN MALAYSIA	11

## 1.0 INTRODUCTION

Law that relates to employment has been in existence long before it was enacted. The relationship between an employer with its' employee is contractual in nature. An employer has managerial prerogative over the employee. **Section 13(3)** of the Industrial Relations Act 1967 implicitly recognizes the managerial prerogative of an employer.<sup>1</sup> This section states that :

- (b) The transfer by an employer of a workman within the organization of an employer's profession, business, trade or work provided that such transfer does not entail change to detriment of workman in regard to terms of the employment. An employer may transfer an employee by way of the transfer was done in bona fide.

This provision clearly stipulates that the power to transfer of a workman would be given to an employer provided that such transfer was done in bona fide.

However, problem arises as to whether the transfer made by the employer amounts to a demotion where it was made to punish a workman who is not guilty of misconduct. Another problem arise as when a demotion occurs, can an employee claim that the demotion caused the employee to be constructively dismissed as the employer no longer shows the intention to be bound by the contract of employment.<sup>2</sup>

This research aimed to study on the availability of laws on demotion in Malaysia. Hence, whether or not demotion could be construed as constructive dismissal would be the focus of this research.

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<sup>1</sup> Dunston Ayadurai , *Industrial Relations in Malaysia: Law &Practice*, Third Edition, Malayan Law Journal, Kuala Lumpur, 2003, at 221.

<sup>2</sup> Ibid.