

RECOGNISED GROUNDS FOR DISMISSALS  
UNDER INDUSTRIAL RELATIONS LAW  
A STUDY OF MALAYSIAN DECISIONS

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## PREFACE

With the transition of our country as a mainly agricultural country into a partially industrialised one, peace and harmony between employer and worker has become of great concern not only to the parties but also to the country as a whole, if the successive five year plans are to be successfully implemented to increase the size of the national cake and improve the lot of all Malaysians. No longer should the employer have a free hand as he did for centuries past in Asia to hire and fire as he pleases, nor conversely should the trade union be in a position to hold the country to ransom as is occurring in some countries in the west, though that position is not likely to be reached in Malaysia for a long time to come. Instead there is a growing awareness among Malaysians that just as employers should be given every incentive to invest and develop our country, so equally the worker should be treated fairly and not be subject to the whims and fancies of his employer. Indeed enlightened employers have long known that there is nothing like a happy and contented work force to guarantee not only sustained productivity but when required increased productivity.

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## CHAPTER I

### LOSS OF EMPLOYMENT - MODES

#### A. Resignation

An employee who resigns from his employment cannot then claim that he has been dismissed. The resignation must, however, be a genuine "unforced" resignation (i.e. voluntary). The words expressed (even if said in the heat of the moment) must be clear and unambiguous.<sup>1</sup>

If an employer says to his employee "If you resign today I'll give you six months pay, if you do not accept this, I will dismiss you and you will only be entitled to one month's pay in lieu of notice". If this is done and the employee does "resign", the employee can claim that he has been unfairly dismissed even though he has received six months pay.\*

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1 - GALE LTD. v. GILBERT [1978] IRLR 453  
("I am leaving; I want my cards".)

\* see STANLEY NG PENG HON v. AAF PTE. LTD (1979) 1 MLJ 57

However there are instances where a termination of employment can be made by mutual consent of the parties. This will not render it a dismissal as long as it has been established as genuine and "unforced". It may arise where an employee asks to be made self-employed although the situation will be different where an employer tells his employee he is thinking of closing down part of his business and where the employee then agrees to become a self-employed person continuing to work at the same premises.<sup>2</sup>

In *L. LIPTON LTD. v. MALBOROUGH* (3) the company was involved in take-over negotiations and the employee knew that this would mean that his job would probably come to an end when it was announced that the take-over was effective the employee discussed the matter with the new personnel manager and then wrote a clear letter of resignation, also indicating that he had secured a better offer of employment and asking to be released immediately. It was held that on the basis of the employee's letter it was clear that his contract of employment had come to an end by mutual agreement.

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2. *GLENCROSS v. DYMOKE* [1979] ICR 536.

3. [1979] IRLR 179