

EFFECTIVELY DEALING WITH EMPLOYMENT LAW ISSUES TO MINIMIZE EXPOSURE AND LIABILITY

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Termination of Contract is viewed from the aspect of Contract Law and Industrial Law. Remedy under contract law is damages confined to the notice period save for exceptional cases whilst under the IRA 1967, reinstatement is the primary remedy

Fung Keong Rubber v Lee Eng Kiat [1981] 1 MLJ 238

INDUSTRIAL RELATIONS ACT 1967

- ❖ Primarily concerned in safeguarding the rights, prerogatives and interest of workmen, employers and their trade unions.
- ❖ Ensuring speedy and just settlement of trade disputes.
- ❖ *Syarikat Kenderaan Melayu Kelantan Bhd v Transport Worker Union [1995] 2 MLJ 317*

EMPLOYMENT ACT 1955

- ❖ Primarily covers employees under the First Schedule of the Act who have been employed under a contract of service and earning less than RM1500;
- ❖ DG may inquire into complaints of employees whose wages exceed RM1500 but less than RM5000 (s.69(1)(a))
- ❖ Regulates the employment relationship as well as the terms and conditions under which employers may employ employees (eg: hours of work, wages, notice period).

Employment Act 1955

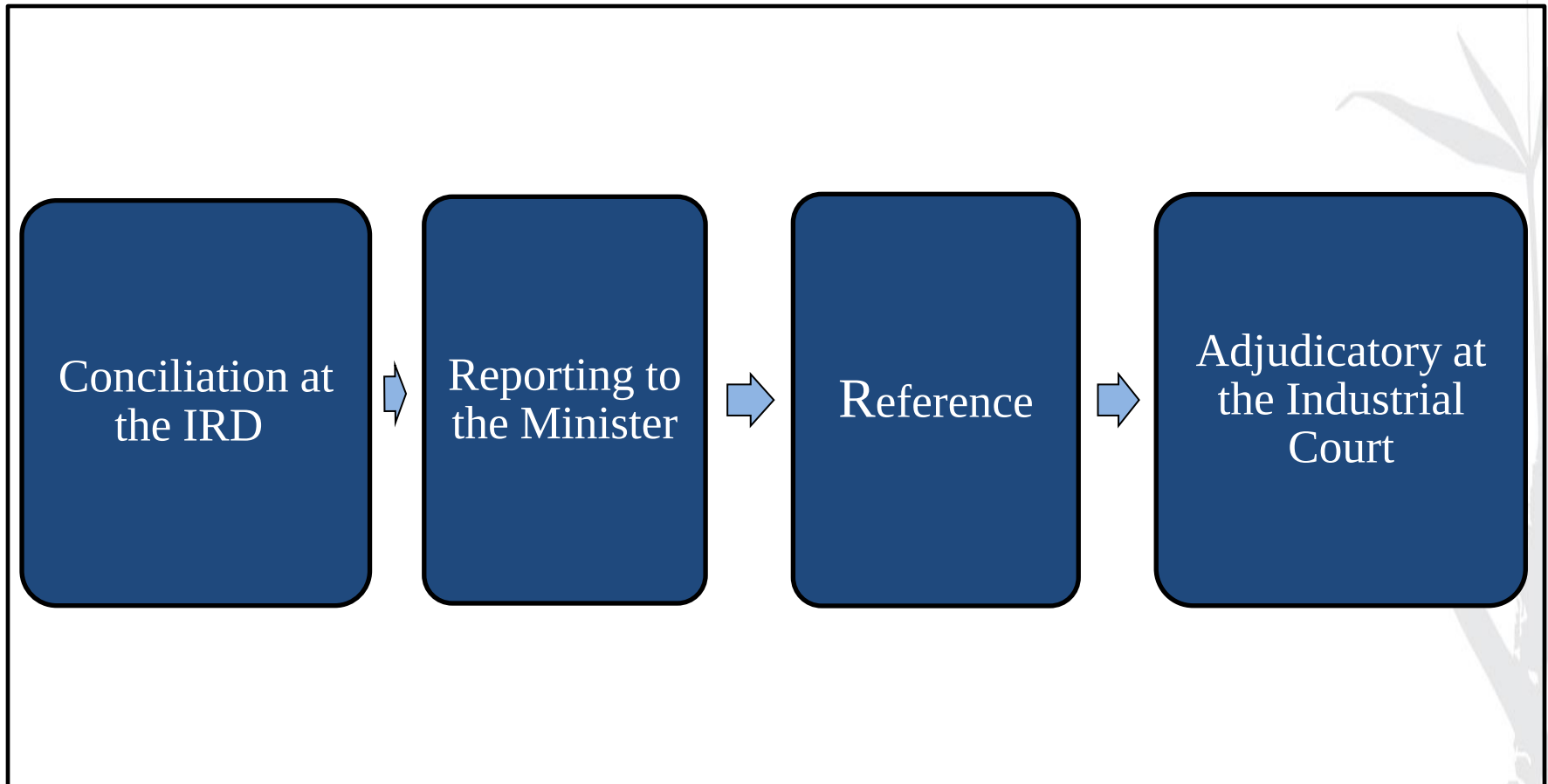
- S.12 - Notice of Termination of Contract
- S.13 - Termination of Contract without Notice
- S.14 - Termination of Contract for Special Reasons
- Civil action- damages/breach of contract

Industrial Relations Act 1967

- S.20 - Representations on Dismissals – Just cause and Excuse
- S.26-Trade Dispute
- S.56-Non-compliance with Award of Industrial Court

STATUTORY PROCESS-IRA 1967

Kathiravelu Ganesan v Kojasa Holdings Bhd
[1997] 2 MLJ 685



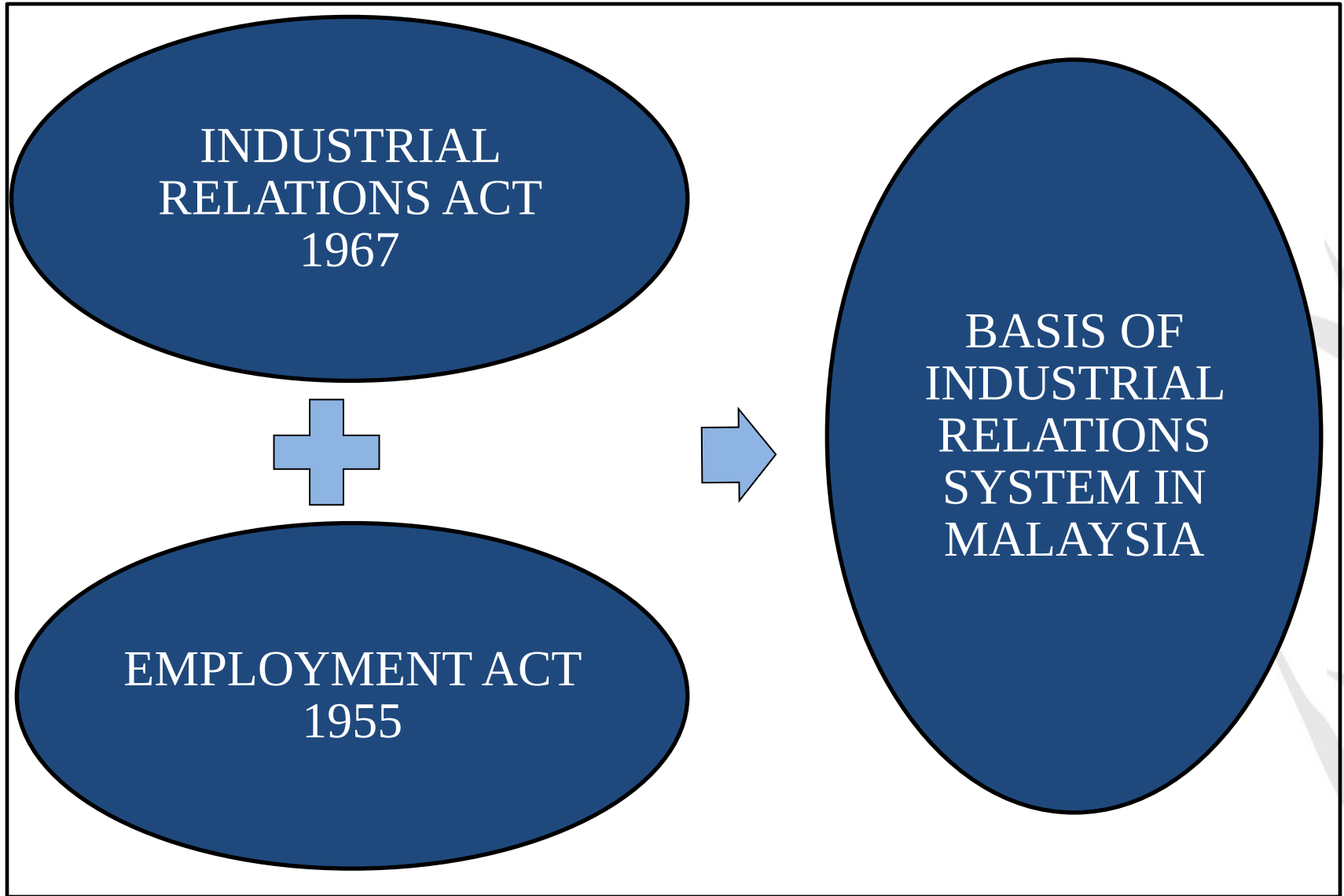
TERMINATION UNDER THE EA 1955

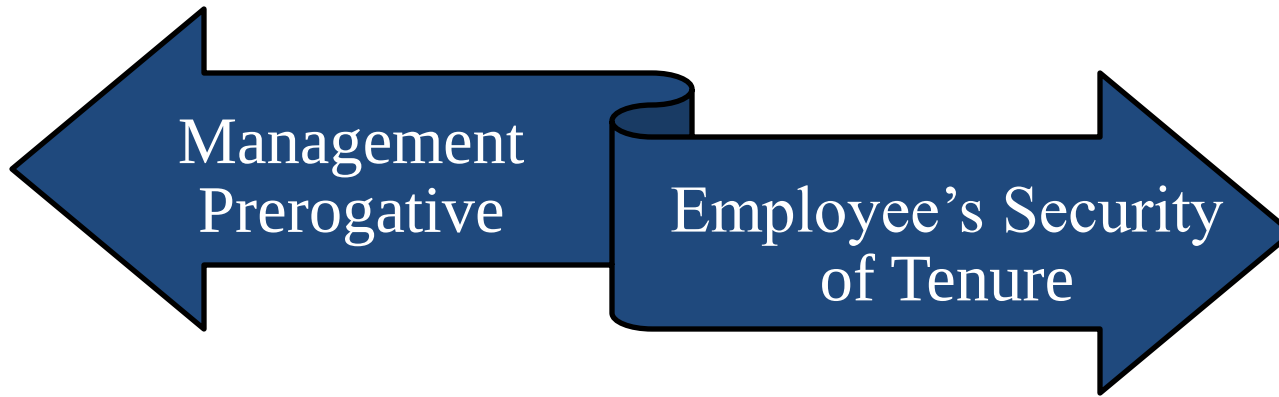
Limitations on DG of Labour's Statutory Power

- Order of payment of “such sum of money as he deems just without limitation of the amount”- S.69
- Blanket prohibition where there is an IR Dispute-S.69A
- Limited remedy under S.69(3) where dismissal under S.14(1) set aside

Execution of DG of Labour's Orders

- Enforce as judgment of the Sessions/Magistrates Court-S.75
- Prohibitory order may be issued against 3rd party- S.73





Chan Soon Lee v. YB Menteri Sumber Manusia Malaysia & Anor

Objective and policy of the Industrial Relations Act 1967 is to strike a balance between the right of a workman to livelihood as against the right of the employer to dismiss his workman upon just cause or excuse.

POSSIBLE STRATEGIES TO AVOID **EMPLOYMENT DISPUTES**

Ensure due compliance with legal procedures, processes and requirements

- Domestic inquiry - Misconduct
- Warnings/Assessments – Poor Performance
- Compliance with Selection Criteria – Retrenchment/Redundancy
- Notice of Termination- Accurately worded

Consultation with Employee/ Union

- Changes in terms of employment contract
- Terms of Collective Agreement

POSSIBLE STRATEGIES TO RESOLVE EMPLOYMENT DISPUTES

Voluntary Separation Scheme (VSS)

- Recognized by the Courts
- Reduction of employees on a voluntary basis
- Package and method of communication crucial

Mutual Separation Scheme (MSS)

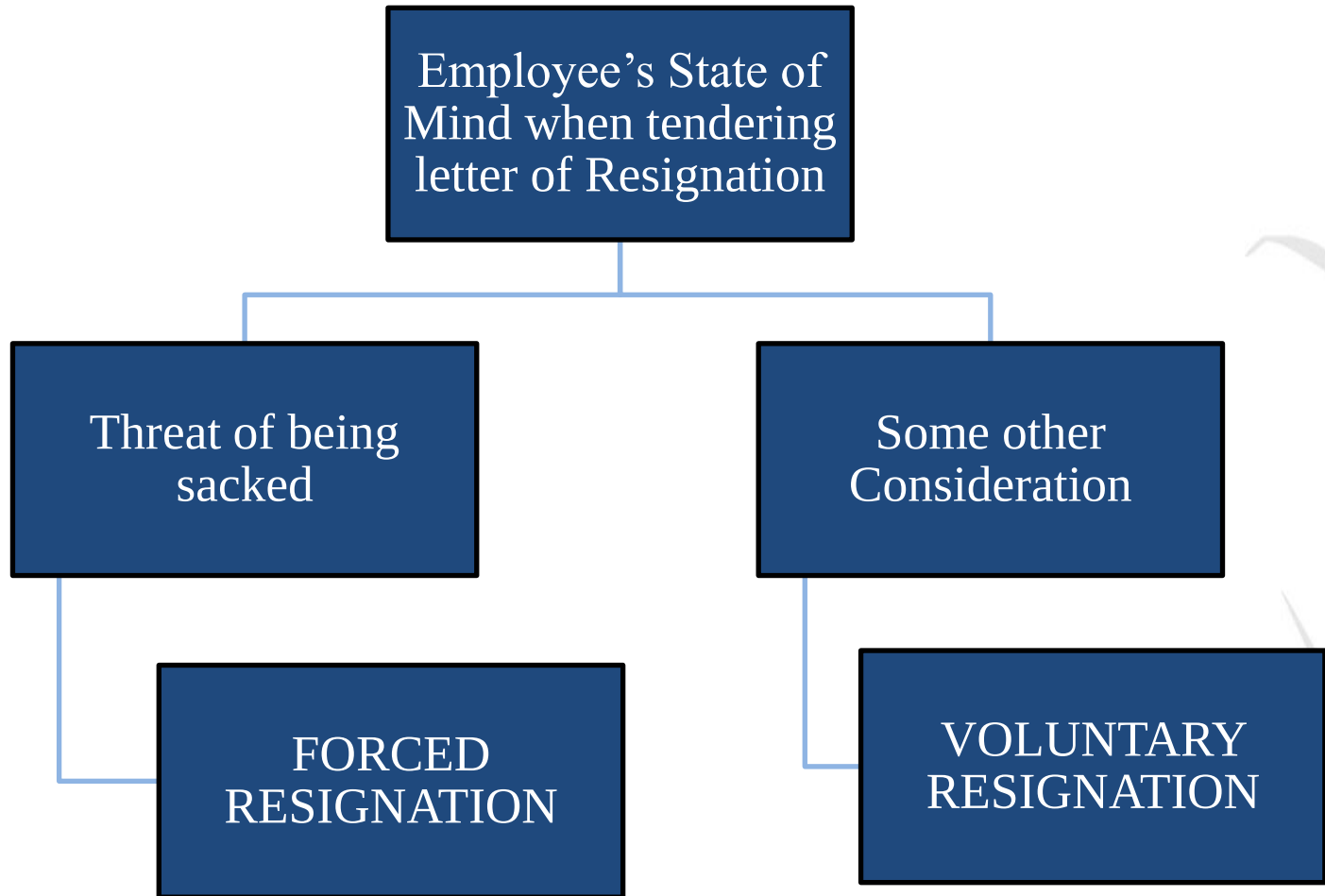
- Recognised by the Courts
- Attractive package
- Consultation
- Voluntary Basis
- Agreement of Release and Discharge

**Harpers Trading (M) Sdn. Bhd. v. Kesatuan Kebangsaan
Pekerja-Pekerja Perdagangan**
[1988] 2 ILR 314

*“It is a well-established principle of industrial law that **if it is proved that an employer offered the employee the alternatives of 'resign or be sacked' and, without anything more, the employee resigned, that would constitute a dismissal.***

*The principle is said to be one of causation - the causation being the threat of the sack. It is the existence of the threat of being sacked which causes the employee to be willing to resign. **But where that willingness is brought about by some other consideration, and the actual causation is not so much the sacking but other accepted considerations in the state of mind of the resigning employee, then it has to be said that he resigned voluntarily** because it was beneficial to him to do so that then there has therefore been no dismissal”.*

Sheffield v. Oxford Controls Co. Ltd. [1979] 1 CR 396



PRESERVING PAPER TRAIL

- ❖ Employee's employment records;
- ❖ Details of nature of misconduct, breach, performance;
- ❖ Warnings, reviews, minutes of consultation;
- ❖ Correspondence between company and employee
–eg: emails, letters;
- ❖ Original evidence – eg: audio, visual media;
- ❖ Statutory Declarations

~**THANK YOU**~



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