Questioning and Answering Strategies in Malaysian Criminal Proceedings:

A corpus-based forensic discourse analysis

Nurshafawati Binti Ahmad Sani

Submitted in accordance with the requirements for the degree of Doctor of Philosophy

The University of Leeds

School of English

Declaration

The candidate confirms that the work submitted is her own and that appropriate credit has been given where reference has been made to the work of others.

This copy has been supplied on the understanding that it is copyright material and that no quotation from the thesis may be published without proper acknowledgement

© 2019 The University of Leeds and Nurshafawati Binti Ahmad Sani

The right of Nurshafawati Binti Ahmad Sani to be identified as Author of this work has been asserted by her in accordance with the Copyright, Designs and Patents Act 1988.

Acknowledgement

"There are hidden blessings in every single struggle you go through"

First and foremost, I would like to express my gratitude to Allah SWT for His continuous blessings and guidance for me to complete this thesis. My deepest thanks go to my loving and wonderful parents; abah Ahmad Sani Darus and mama Norsham Abd Aziz. I could not have embarked on this degree without their unwavering support and encouragement. To my husband, Ahmad Baihaqi Mahamud, this is for our first anniversary. Thank you for being patient, listening to my rant and keeping me sane. To my brother Ahmad Elfalani and sister, Syarifah Rozali, thank you for your UK visits and big hugs to my cheerleaders: Aizzat and Fatin. Thank you for being there.

There is no word to describe how indebted I am to Dr Alison Johnson for tirelessly walking this long journey with me. She has been very supportive, encouraging and a great mentor. This PhD would not have been possible without her exceptional supervisions. To her unsurpassed knowledge, insightful advice and her ability to calm me when I am doubtful, I can only say I am extremely grateful to you.

Special thanks also go to the following people who helped me at various stages of my work: Ministry of Higher Education of Malaysia, The Chief Registrar Federal Court of Malaysia, Faculty of Languages and Communication, UNISZA, Puan Sitarunisa Abd Aziz and Puan Aida Montong. To Makcik Haslina Hashim and Pakcik Azizi, thank you for your endless encouragement and supportive messages. Not to forget, to mama Khalijah and baba Mahamud for your endless prayers and motivation. Many thanks also to all colleague PhD students in the School of English, University of Leeds.

Last but definitely not least, I will always be grateful to my sister in Leeds, Shazana Hilda, my writing buddy, for giving me a home when I needed it, and the countless nights and days spent to complete our PhD journey. To my other sisters, Zaima, Kamla, Deng Hafizah, and Kak Zalina, thank you for being there. Special thanks go to Neveen, my Egyptian sister and my conference partner for encouraging me all through my PhD journey. I dedicate this work to all of you.

Abstract

Courtroom discourse is widely studied (Matoesian, 1993; Cotterill, 2003; Heffer, 2005; Shuy, 2006; Eades, 2008) in the forensic linguistics and law and language fields. This investigation extends existing research on courtroom questioning in a new setting, that is, Malaysia's adversarial criminal courts. While Malaysia has a hybrid trial system, which is based on the Anglo-American system due to British colonialism, in 1995 it moved to a non-jury system with judges giving verdicts, providing an opportunity to examine continuing effects of a post-colonial context for lawyers' discourse. This study examines courtroom questioning strategies used to convince the judge(s) to accept lawyers' versions of events and also the power of answers to resists barristers' power and control. A corpus-based forensic discourse analysis approach is used to investigate a pilot corpus (the Shipman trial) and then to investigate 16 criminal cases. These feature Bahasa Malaysia, Malaysian English and mixed codes, constituting a small, specialised Malaysian criminal trial corpus, the MAYCRIM corpus, collected from the Sessions and High Courts of Malaysia. The corpus-based analysis reveals interesting patterns of lawyer questioning and witness resistance. Probing questions, that is wh-questions and indirect can you questions paired with material and verbal 'process types' (Halliday, 1985; Halliday and Matthiessen, 2004) maximise witnesses' productivity, while challenge questions, such as SAY-questions and invariant tag questions, coerce through personalisation and quoting strategies that face-threaten witnesses in cross-examination. Despite lacking polarity, invariant tag questions with do you agree, correct/betul, agree/setuju, particle tak/not, and do you know have the same potential to perform control and power as canonical tag questions. In response, witnesses demonstrate resistance via disagreement, correction, evasion and challenge, demonstrating that witnesses are able to overcome the power asymmetry that is particularly pronounced in cross-examination, though not without costs. A continuum of witnesses' resistance is suggested for legal practitioners to understand how their questions affect witnesses and at the same time help to prepare their witnesses for courtroom examination. This study makes three original contributions to theory, methodology and practice: 1) to enhance the field of courtroom questioning and pragmatics 2) to propose a range of corpus search terms that are useful for investigating courtroom questioning and 3) with implications for legal practitioners in general, and for Malaysian legal counsels in particular, and where the findings can be a point of reference for legal counsels and legal educators.

Table of Contents

Declai	ratio	n	i
Ackno	wled	lgement	ii
Abstra	act		. iii
Table	of C	ontents	. iv
List of	f Fig	ures	vii
List of	f Tab	oles	. ix
Chapt	er 1	Introduction	1
1	.1	Motivation for this study	1
1	.2	Language and law	3
1	3	Corpus-based forensic discourse analysis	5
1	.4	Research objectives	6
1	.5	Research questions	7
1	.6	Justifying the current study	8
1	.7	Significance and rationale for the research	. 10
1	.8	Synopsis of the thesis	. 11
Chapt	er 2	Literature review	. 13
2	2.1	Introduction	. 13
2	2.2	Courtroom interaction as an institutional discourse	. 13
		2.2.1 Malaysian courtroom discourse - The Malaysian legal system and the Malaysia Criminal Procedure Code	. 14
		2.2.2 Trial phases	. 18
2	2.3	Sociolinguistic context of Malaysian law	. 20
2	2.4	Questioning in legal settings and in the courtroom	. 23
		2.4.1 Questions and control	. 26
2	2.5	The power of answers to control information	. 27
2	2.6	A Corpus Linguistic approach	. 30
2	2.7	Conclusion	. 33
Chapt	er 3	Methodology	34
3	3.1	Introduction	. 34
3	3.2	The MAYCRIM corpus	. 35
		3.2.1 Data	. 35
		3.2.2 Data preparation	. 39
		3.2.3 Data transcription	43
3	3.3	The Shipman trial – the pilot study to refine methodology	. 44
3	3.4	Specialised corpora	. 47

3	3.5	Reference corpora	. 51
3	3.6	Corpus linguistic tools and automated and manual searching	. 53
3	3.7	Triangulation Method	. 68
3	3.8	Ethical considerations	.71
3	3.9	Conclusion	. 75
Chap		· · · · · · · · · · · · · · · · · · ·	
		mise witnesses' productivity and as a combative device to challengesses	
		Introduction	
			. 70
2	4.2	The extraction of pronoun <i>you/kamu</i> and its distribution across direct and cross-examination activities	. 80
2	4.3	Probing questions to maximise witnesses' productivity	. 89
		4.3.1 <i>wh</i> -prompt + <i>you</i> + <i>material/mental/verbal process</i> invites witness to collaborate with lawyers	. 89
		4.3.2 <i>modal can</i> + <i>you</i> + <i>material/verbal process</i> to present witnesses as helpfully productive in direct examination or lacking knowledge and credibility in cross-examination	. 99
۷	4.4	Challenge questions to control and coerce witnesses	110
		4.4.1 Declarative, tag, <i>so</i> -prefaced and <i>SAY</i> questions to control and coerce witnesses' responses	110
		4.4.2 <i>So</i> -prefaced questions as a strategic device to re-structure events and make speculation on witnesses in cross-examination	113
		4.4.3 SAY-questions to imply witnesses' answers are problematic	119
۷	4.5	Conclusion	123
Chap		~ <u>-</u>	
_		matic functions in cross-examination	
	5.1	Introduction	126
-	5.2	The extraction of tag questions and their distribution across direct and cross-examination activities	127
4	5.3	Variant tag isn't it to express lawyers' epistemic stances	132
-	5.4	Invariant tag questions as discursive strategies for defence lawyers in cross-examination	136
		5.4.1 Declarative + <i>agree/setuju</i> to control and entice affirmative responses from witnesses	138
		5.4.2 Declarative + <i>correct/betul</i> to check for inconsistencies in witnesses' answers	147
		5.4.3 Declarative + do you agree to challenge and make accusations against witnesses	152

3	examination activities	. 160
5.6	6 Conclusion	. 163
Chapter	e e e e e e e e e e e e e e e e e e e	
qu	estions in cross-examination	. 165
6.1	Introduction	165
6.2	The extraction and distribution of witnesses' resistance in cross-examination in the MAYCRIM corpus	. 169
6.3	Challenging the presuppositions in lawyers' questions as a defensive strategy to mitigate the lawyer's dominant status	. 177
6.4	Correction as a witness negotiation strategy to open up linguistic negotiation with defence lawyers	. 183
6.5	Evasion as a witness's diversion strategy to prevent allocation of blame	. 192
	6.5.1 First person + relational verb (+ negative) + adjective expressions	. 194
	6.5.2 First person + negative + mental verb negative expressions	. 199
6.6	5 Disagreement as contest	203
	6.6.1 Stand-alone No or I disagree answers	. 203
	6.6.2 Disagreement with supplementary information to justify the event or blame conveyed by the defence lawyers	. 209
6.7	A continuum of witnesses' resistance	. 213
6.8	3 Conclusion	. 215
Chapter	7 Conclusion	. 217
7.1	Introduction	217
7.2	Responding to the research objectives	. 217
	7.2.1 Barristers' discursive practices in direct and cross-examination activities.	. 218
	7.2.2 Witnesses' resistance to barristers' power and control in cross-examination activities	. 223
7.3	3 Implications of the research	. 226
	7.3.1 Theoretical and methodological contributions	226
	7.3.2 Social, practice-focused and professional implications	. 229
7.4	Limitations of the research	. 229
7.5	Future recommendations	. 230
7.6	6 Closing remarks	233
Bibliog	-aphy	234
Append	ices	. 245

List of Figures

Figure 1. Map of Malaysia with Penang, Sabah and Sarawak High Courts	2
Figure 2. Hierarchy of courts in Malaysia	16
Figure 3. Timeline of language changes in Malaysia's language policies and legal system	21
Figure 4. Interpersonal dynamics of courtroom interaction in the Malaysian criminal court	
Figure 5. Continuum of control by Archer (2005: 79)	27
Figure 6. Coding system for answer length	30
Figure 7. A short sample header from Statutory Rape (Case 10)	40
Figure 8. A short example of cleaned data from Human Trafficking (Case 11)	42
Figure 9. Key word lists of English corpus from direct and cross-examination	54
Figure 10. Steps to determine frequency of questions	57
Figure 11. Concordance of tag questions with 'isn't it' operator (Mr. Henriques' cross-examination) (18 of 180 occurrences)	59
Figure 12. How <i>yes/no</i> , tag, declarative and <i>wh</i> -questions are manually sorted and labelled (Source: Henri_Exam_D26)	60
Figure 13. Concordance of questions with <i>do</i> operator in MAYCRIM corpus	62
Figure 14. The most relevant responses from oral interviewees	70
Figure 15. Top 25 words in a Wordsmith key-word list (MAYCRIM compared with SE and Malay Reference corpora) and their keyness	
Figure 16. Word clusters associated with pronoun you in direct and cross-examination	on84
Figure 17. Concordance lines of <i>do you agree with me</i> string from cross-examination (25 occurrences of 1,197) with [Set] column	
Figure 18. The frequencies of questions formed with pronouns <i>you/kamu</i> in direct an cross-examination	
Figure 19. Concordance lines of how did/do you + material process (18 of 134 occurrences)	91
Figure 20. Concordance lines of what happened questions in direct examination (25 of 55 occurrences)	96
Figure 21. The percentage of can you indirect questions in the direct and cross-examination	99
Figure 22. Two-word clouds of R1 (Right 1) collocates with can you phrase in direct and cross-examination	
Figure 23. Concordance lines of material and mental process verbs which collocate with can you questions in direct examination (20 of 285 occurrences)	102

with can you in cross-examination (15 of 55 occurrences)	
Figure 25. Concordance lines of <i>so</i> -prefaced questions in cross-examination (24 of 38 occurrences)	
Figure 26. Concordance lines of SAY-questions in cross-examination (15 occurrence from 15)	
Figure 27. The percentages of variant and invariant tag questions in the direct and cross-examination activities	131
Figure 28. Concordance lines of variant tag <i>isn't it</i> and <i>is it</i> in cross-examination activities	133
Figure 29. Percentages of invariant tag questions across legal-pragmatic functional categories in cross-examination	139
Figure 30. Concordance lines of invariant tag <i>agree/setuju</i> in cross-examination (19 of 50 occurrences)	140
Figure 31. Concordance lines of invariant tag <i>correct</i> from cross-examination (12 of 39 occurrences)	149
Figure 32. Percentages of witnesses' responses across patterns of invariant tag questions in cross-examination activities	161
Figure 33. Witnesses' answer lengths across legal-pragmatic functions	162
Figure 34. Concordance lines of <i>No</i> and <i>I disagree</i> in cross-examination (20 of 293 occurrences)	171
Figure 35. Concordance lines of 'I don't know' and 'Saya tidak tahu' in cross-examination	172
Figure 36. Breakdown of resistance by witnesses and defendants in cross-examinatio activities	
Figure 37. Distribution of resistance across invariant tag, declarative, <i>yes/no</i> and <i>wh</i> -questions	
Figure 38. Witnesses' answer length across types of resistance	176
Figure 39. Concordance lines of <i>but</i> (18 occurrences)	187
Figure 40. Distribution of lexical patterns that show evasion in cross-examination	193
Figure 41. Concordance lines of <i>I am not sure</i> from cross-examination (22 of 45 occurrences). Blue underlining indicates <i>wh</i> -questions and black underlining indicates <i>yes/no</i> , declarative and invariant tag questions	197
Figure 42. Concordance lines of stand-alone <i>No/Tidak</i> , and <i>I disagree/Saya tidak</i> setuju from questions that invite agreement	204
Figure 43. Concordance lines of <i>I disagree</i> generated from declarative, SAY-questions and <i>and</i> -prefaced questions.	208
Figure 44. Concordance lines of disagreement with supplementary information to disagree with barristers' questions but justify that response	210
Figure 45. Continuum of resistance	214

List of Tables

Table 1. Formal categories of questions
Table 2. Classification of witnesses' responses
Table 3. MAYCRIM corpus description
Table 4. Transcription key
Table 5. Pilot corpus: dataset of Mr. Henriques and Miss Davies
Table 6. Parameters for defining specialised corpora, adapted from Flowerdew (2004)50
Table 7. Examples of search words to determine the frequency (SHIPMAN) 58
Table 8. Examples of search words to determine frequency of questions (MAYCRIM)
Table 9. General rules of tag questions (Quirk et. al, 1985)
Table 10. Classification of pragmatic categories of canonical tag questions (adapted from Tottie and Hoffman, 2006; 2009)
Table 11. Frequencies and keyness of <i>you</i> and <i>kamu</i> in direct and cross-examination of the MAYCRIM corpus
Table 12. The commonest collocations of $you/kamu$ in direct and cross-examination 82
Table 13. Process types and their frequencies in direct and cross-examination (<i>wh</i> -prompt)
Table 14. Process types and their frequencies and percentages in direct and cross-examination
Table 15. Patterns of <i>yes/no</i> question in direct and cross-examination
Table 16. Search words to determine the frequency of variant and invariant tag questions
Table 17. Classification of pragmatic categories of tag questions
Table 18. Examples of invariant tag questions found in the cross-examination 137
Table 19. Pragmatic categories of witnesses' resistance
Table 20. Search-words to determine lexical patterns of evasion
Table 21. Search-words for automated extraction of correction
Table 22. Potential search-words in English and Bahasa Malaysia for specific variation in question and answers

Chapter 1 Introduction

1.1 Motivation for this study

"Our law students are obliged to attend specific courses on legal research method, advocacy skills and practical skills such as moot. We offer Bahasa Malaysia Undang-Undang (i.e. Malay language and law). However the syntax is not there. The essence of pragmatic functions is not there. Those are the problems that we need to tackle"

(Musa, 2017)

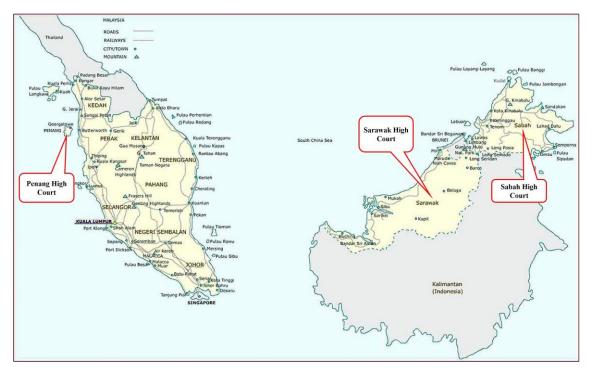
Growing up in Malaysia (see Figure 1), a beautiful country that possesses a diversity of culture, language, ethnicity and especially cuisine has gradually shaped my interest in language. Being surrounded by a variety of people, cultures and languages has made me understand that language can express much more than our thinking. This is because it carries information about ourselves and reflects the way we categorise the world. When I embarked on my doctoral research, I decided that I would like to bring an impactful study to my diverse community, and thus I ventured into Forensic Linguistics, specifically Forensic Discourse Analysis. This area concerns itself with language in the legal system and "specific institutional functions and uses of language" (Coulthard and Johnson, 2007: 7), in this case courtroom discourse and accompanying uses of language.

Because Malaysia is a postcolonial country, it joins the group of countries, such as Australia, India, and many African countries, that Eades (2008) is concerned with in her book on the social consequences of postcolonialism for participants in the legal system, in her case, the Aboriginal people of Australia. For example, she found that in court Aboriginal witnesses "are silenced in examination-in-chief, both by their own lawyer and by the judge" (Eades, 2000: 161) due to the counsel's inability to understand aspects of Aboriginal culture and as a form of control by the neocolonial power on the aborigines. The issue of how questioning in direct and cross-examination exercises neocolonial power and control over witnesses is a highlighted topic in Eades' work and raises awareness of this issue in the postcolonial world. Malaysia's long history of British colonisation has produced a system that is based on adversarial common law,

but which "operates bilingually" (Powell and Hashim, 2011: 92), in the national language Malay, and English, though, as we will see, English is still the dominant language. The linguistic impact of colonialism (Eades, 2008; Powell, 2008) is therefore an important dimension of Malaysian courtroom talk. Unlike in Australia, where Eades has worked to provide a guide for lawyers to help them in interaction with Aboriginal witnesses, Malaysia has yet to tackle the question of whether there need to be guidelines to help participants in the lawyer's handbook.

Figure 1. Map of Malaysia with Penang, Sabah and Sarawak High Courts

Adapted from: http://www.orangesmile.com/common/img_country_maps/malaysia-map-2.jpg)



Whether the language used in court by lawyers is English or Malay, it is important for them to have an understanding of the power of their own language. During my doctoral research, I made it a priority and was given the chance to interview academics, lawyers and judges to get a better understanding of their training in institutional legal communication. From the interviews, I found that in Malaysia there is no robust structure for teaching the pragmatics of legal language, specifically the pragmatics of questions and answers to law students due to a lack of experts in language and law. As Musa (2017) says in the epigraph to this introduction, although most law

schools in Malaysia offer a subject that in name concerns language and law, she admitted that the subject lacks exposing law students to actual linguistic knowledge, let alone the pragmatics of language in courtrooms. Musa (2017) also claimed that a rule of thumb for advocacy skills is that lawyers learn their advocacy skills from experience, by observing real trials and learning from senior practitioners. While this kind of learning is important, exposure to linguistics in their training would complement experiential learning. Based on my observations of criminal trials, I also noticed that lay-people who are called to courts as witnesses or defendants face language disadvantage because of the complexities of courtroom interaction. I have spoken to and sought opinion from His Lordship Dr H, one of Malaysia's Court of Appeal judges, where he agreed that there is a need to educate lay-people too, aside from legal practitioners, in relation to the language of the law and the legal process. This is supported by Rahman (2017) who asserts that the whole judicial process is managed or developed by language as well as by material exhibits and evidence.

The issues or problems mentioned above indicate that there is inadequacy in current language practices in the Malaysian criminal courtroom. Thus, the motivation for this thesis is to try to overcome these problems by understanding how language and discourse is significant for law. This study has been designed to move beyond the mere description of linguistic variation in the courtroom to examine the range of linguistic phenomena that can have social consequences, specifically within the Malaysian legal system. The main concern of this project is to examine the variety of questioning and answering practices in the criminal courtroom to reveal the effects of such variation on the lawyers' and witnesses' discourse and to disseminate this knowledge.

1.2 Language and law

Danet (1980: 448) declares that "law would not exist without language" because the essential mechanism that expresses the power of law is through language (Conley and O'Barr, 2005). Language has a central role in realising and exercising power in law as well as facilitating human interaction. The study of language and law, that is forensic linguistics, has developed considerably over the last few decades and has now "come of age as a discipline" (Johnson and Coulthard, 2010: 1). Forensic linguistics brings linguistic insights, techniques and understanding to legal practice: police investigations, courtroom discourse, judicial procedures, authorship analysis, plagiarism and to

forensic phonetics (Coulthard and Johnson, 2007; Coulthard, Johnson and Wright, 2016). The overarching objective of forensic linguistics is to provide solutions to problems and issues related to crimes and law for different audiences.

As a profession we are working towards a utopian future where anyone who is arrested both understands and is able to claim their rights; where anyone who needs the help of an interpreter is able to have one and where the prejudicial effect of interpreting on the legal process is reduced to an absolute minimum; where all legally significant interactions are audio- or video-recorded; and where all expert opinions, whether on the origin of an asylum speaker, the authorship of a disputed text, the comprehensibility of a text or the confusability or two trademarks, are reliable and reproducible.

(Coulthard and Johnson, 2010: 614)

Forensic linguistics demonstrates that language and linguistics entail "subtle power where most people are unaware of it" (Cao, 2011: xv) and lay people are manipulated in different circumstances and contexts for institutional purposes and goals. The power of the law is tangible and overt while the power of language is more covert. Nevertheless, language has the power to "reveal and conceal, to inform and enlighten as well as misinform and mislead" (Cao, 2011: xv). Extensive studies on the relations between law and language have been conducted in the forensic linguistic domain, and investigation of courtroom witness examination is an example of it.

Courtroom discourse is a "complex genre" (Heffer, 2005: 71) that is made up of "a number of key events formed from sequential speech acts" (Coulthard and Johnson, 2007: 96), among which are examination and cross-examination. In courtroom examinations by lawyers, questions play a central role in eliciting narrative from lay witnesses, but their questions also often allow them to offer their own narrative and retell events from a legal perspective. In recent years, there have been an increasing number of studies (e.g. Cotterill, 2003; Archer, 2005; Heffer, 2005; Matoesian, 2008; Freed and Ehrlich, 2010; Tkačuková, 2010; Eades, 2012; Catoto, 2017; Zydervelt *et al.*, 2017) on legal discourse that investigate the nature and function of questions and answers in the courtroom. Past studies have revealed that the linguistic manipulation of questions in courtroom discourse has various functions such as apologising, complaining, challenging, signalling surprise and disbelief, ascribing blame and others (Matoesian, 1993). Questions have also been treated as having a focal role in courtroom

activity, because the "discourse properties involved in the definition of a question are subject to the nature of the activities in which questions are used" (Levinson, 1992: 81). Thus, we expect to find that different questions are asked in cross-examination from those in direct-examination. To situate the present investigation in the literature, questions will be treated as having an important role in the speech events between lawyers and recipients, because it will reveal linguistic manipulation employed to achieve a range of legal goals and objectives.

The present study hypothesises that barristers' linguistic choices in questions will affect the language used in witnesses' responses because word choices in questions produce pragmatic effects that lead and coerce recipients such as in cross-examination or inviting witnesses' narratives in examination-in-chief. Therefore, this study is conducted to investigate the use of questions by lawyers and their pragmatic effects on witnesses' responses in Malaysian criminal trials, in a compilation of sixteen criminal trials that took place between 2001 and 2015 throughout Malaysia.

1.3 Corpus-based forensic discourse analysis

The key ideas and theories that shape corpus-based forensic discourse analysis are derived from the cutting-edge work of a transformed descriptive linguistics over the past 40 years, starting with the pioneering work of Shuy (1993, 1995) where Shuy pieced together a conversation from a deaf man and Coulthard (1992), who worked on the famous disputed Evans statement with his work contributing to a posthumous pardon. The potential of forensic discourse analysis has encouraged increasing work on forensic corpus linguistics in courtroom discourse such as Archer (2005, 2006, 2014) who examines the linguistic strategies in the early English historical courtroom. Other linguists (Harris, 1984; Woodbury, 1984; Berk-Seligson, 1999; Tkačuková, 2010) discovered functions of courtroom questions as controlling tools to limit the amount of information delivered to the jury or judge and as a 'conceptual framework' to weaken witnesses' testimony (Aldridge and Luchjenbroers, 2007). On the micro-level, questions in the courtroom are also analysed in terms of their formal properties (Gibbons and Turell, 2008), illocutionary forces (Cotterill, 2003; Heffer, 2005) and even to the smallest unit of language such as discourse markers that accompany them (Hale, 1999).

Forensic discourse analysis, as a sub-domain of discourse analysis, is an approach that can be seen as "a combination of insights from different linguistic fields,

including speech act theory, corpus linguistics, register and even psycholinguistics" (Olsson, 2008: 20). Commenting on the forensic corpus-based method, Cotterill (2010: 578) notes "the use of corpora in many types of forensic linguistic analysis is becoming increasingly commonplace". This is because the use of corpora in forensic linguistics sheds light on the "the prototypical language patterns and functions of various professional domains" (Flowerdew, 2004: 23) such as questioning in the courtroom.

Therefore, the dataset that I developed for this study draws upon the Malaysian criminal proceedings corpus, known as MAYCRIM, which is a compilation of criminal trials from the Sessions and High Courts of Malaysia. MAYCRIM is a specialised corpus with a size of 326,785 words, and consists of a range of criminal offences such as murder, drug trafficking, human trafficking, robbery, statutory rape, corruption, cheating, lodging a false report, outrage modesty, theft, in possession of obscene compact discs, and breach of trust. I have also drawn upon parts of the Shipman trial to develop the SHIPMAN dataset for methodological purposes, that is to test the validity and appropriateness of the methodology used. A detailed explanation of the MAYCRIM and SHIPMAN datasets can be found in Section 3.2.

1.4 Research objectives

In this investigation, I have adopted a corpus-based forensic discourse analysis approach in order to meet the research objectives. There are several reasons that drive me to investigate Malaysian criminal trials. First, courtroom discourse is a central concern among forensic linguists in general and Malaysian legal discourse has received little treatment to date. In fact, forensic linguistic research is significant in bringing the most relevant research results to the attention of judges and making it comprehensible to judges and to the courts (Rajamanickam and Rahim, 2013). Although forensic linguistic research is in its infancy in Malaysia, linguistic knowledge could play a significant role in the Malaysian judicial system, an adversarial one that is based on the Anglo-American tradition, due to colonialism. Secondly, extensive studies have been conducted on English and American courtroom discourse (e.g. Woodbury, 1984; Harris, 1984; Buckingham, 1986; Philips, 1987; Matoesian, 1993; Berk-Seligson, 1999; Cotterill, 2003; Heffer, 2005; Eades, 2008; Tkačuková, 2010; Ehrlich, 2011; Johnson, 2014) but very few studies have been conducted on Malaysian legal discourse. Exceptions to this are Ibrahim (2007, 2011) who investigated narratives in Malaysian

criminal trials, Powell and Hashim, (2011) on language disadvantage in Malaysian litigation and arbitration and also language alternation in a bilingual courtroom (Powell and David, 2011). It is observed that up to the present date there is no investigation on linguistic variation in questioning and answering strategies in Malaysian criminal courts, hence, driving the direction of this study. Moreover, forensic discourse analysis provides the theoretical and pragmatic foundations for examining legal discourse; thus, it can be a point of reference for legal professionals and highlight the disadvantaged position of lay-people when they are in courtrooms.

1.5 Research questions

The SHIPMAN dataset is used to refine the methodology of this investigation; therefore it is best to describe the descriptive research question that I used for the SHIPMAN dataset: What are the types of interrogatives utilised by lawyers in examination-in-chief and cross-examination in the Shipman trial and their frequencies. The pilot study which utilised a corpus-based method is not a full-scale pilot study; rather it is used to refine the forensic corpus-based method for this investigation. The main study aims to use a forensic corpus-based method to examine the language of the criminal courtroom as illustrated in the Malaysian criminal corpus, henceforth the MAYCRIM corpus.

The investigation focuses on the forms and discourse-pragmatic functions of questioning and responses in the Malaysian criminal courtroom and barristers' rhetorical strategies when constructing narratives of events in front of judge(s) (I explain in section 2.2.1, the history of the Malaysian court system and the move from a jury system to a non-jury system, where judges are now deliberating on cases and giving verdicts). I argue that questions are not only used by barristers to obtain information or confirmation; rather, the semantic and discourse-pragmatic properties of questions have the purpose of convincing judge(s) to accept their version of events. In addition, witnesses or defendants' responses can also indicate barristers' power and control in courtroom discourse and perform resistance to that power. Since the spoken discourse between Malaysian legal professionals (i.e. barristers and judges) and laypeople (i.e. witnesses and defendants) is still under-researched, this study seeks to extend the knowledge and literature on Malaysian courtroom discourse and corpus-

based methodology. In general, this study seeks to answer the following research questions:

- 1) What are the discursive practices used by barristers and witnesses in Malaysian criminal trials? and
- 2) What is the relationship between question types and responses?

The following are more specific sub-questions for the MAYCRIM corpus that structure the analysis chapters of this investigation, with questions 1 and 2 developed in Chapter 4, 3 and 4 in Chapter 5, and 5 and 6 in Chapter 6:

- 1. What are the formal categories of interrogative that contain *you/kamu* utilised by barristers in direct and cross-examination in the Malaysian criminal trials and their frequencies?
- 2. What are the pragmatic functions of questions that contain pronouns *you/kamu* in direct and cross-examination in the Malaysian criminal trials?
- 3. What are the formal properties and the legal discourse-pragmatic functions of coercive tag questions in the direct and cross-examination activities?
- 4. How are the legal discourse-pragmatic functions of tag questions in the cross-examination used by the defence barristers in constructing a defence and implying blame?
- 5. What types of witnesses' resistance appear in cross-examination activities?
- 6. How does witnesses' resistance challenge barristers' discursive power in crossexamination activities?

1.6 Justifying the current study

This thesis has been developed under two premises: dearth of literature on courtroom discourse in Malaysia and a meagre amount of work on the quantitative analysis of questions in the Malaysian courtroom. The studies mentioned above that

focus on courtroom discourse in Malaysia, do not specifically focus on questioning and answering strategies and the bilingual courtroom situation also deserves some attention, building on work done by scholars in other countries such as England and America. One of the reasons for the scarcity of research is that there are many difficulties in accessing natural data due to the judiciary's unwillingness to allow recording for research purposes. In my case, I was fortunate, after some diligent work, to be given access to the data of 16 Malaysian criminal trials (see Table 3, Section 3.2) in the higher courts that form the basis of this study. Against this backdrop, the specific research question that I focus on is the influence of linguistic variation by barristers (i.e. prosecutors and defence lawyers') in their questioning on the answering strategies of witnesses. Therefore, this investigation contributes to research on courtroom discourse in general, and to Malaysian courtroom discourse, in particular.

On the second premise, until recently, there has been little quantitative analysis of questions in the courtroom. From a methodological point of view, most of the previous studies on questioning in the courtroom were conducted in a qualitative and descriptive manner and are mostly based on discourse analysis and pragmatic approaches (Woodbury, 1984; Harris, 1984; Philips, 1987; Berk-Seligson, 1999; Gibbons, 1999; Hale, 1999; Aldridge and Luchjenbroers, 2007; Tkačuková, 2010; Ehrlich, 2011). In recent years, there has been an increasing interest among linguists to use a corpus-based approach (e.g. Cotterill, 2003; Archer, 2005; Heffer, 2005; Johnson, 2014, 2015; Tkačuková, 2015) for the macro and micro analysis of courtroom interaction. Despite this encouraging phenomenon, there has been very little quantitative work conducted on questions in courtroom interaction, due to the methodological challenges, such as inaccessibility of sufficiently large amounts of data and technology (e.g. computer software) for analysis (Cotterill, 2010a). Therefore, this investigation is conducted to contribute to increasing knowledge in corpus-based quantitative methods, using, initially, the Shipman trial as a pilot study and then the Malaysian corpus which contains a variety of offences such as corruption, murder, drug trafficking and even human trafficking. Furthermore, the application of a corpus-based method on a bigger dataset reveals significant quantitative and qualitative observations.

The search for a statistical frequency of questions types is not an end in itself; it needs interpretation through a discussion of the legal-pragmatic functions. In the research context, what is not clear is the extent to which questions are treated by

barristers as a strategy "to seek information and confirmation" (Gibbons 2003: 95) because these questions might be designed strategically not only to seek information or obtain confirmation, but to play other legal-pragmatic functions as well. Therefore, with quantitative data to hand, it will be helpful to explain and justify the extent to which questions are strategically designed by barristers in their institutional interaction. Quantitative data reveals unique patterns of different types of questions used by barristers from which then a discussion of their legal-pragmatic values and lawyers' individual linguistic styles can be developed. The unique patterns revealed from a quantitative analysis indicates a need to understand the various legal-pragmatic functions of questions that exist in "legal-lay discourse" (Heffer 2005: 10). In addition, a quantitative approach through a corpus-based analysis can also inform a noteworthy qualitative observation of the rhetoric of barristers' linguistic variation when persuading judge(s). Hence, these are the gaps that this study set out to fill.

1.7 Significance and rationale for the research

The rationale of this investigation is to highlight the culture of courtroom examination in Malaysian criminal trials and to contribute to research on courtroom examination globally. This study is intended to have two original contributions to linguistic knowledge. First, findings of this study will have theoretical and pragmatic implications for legal practitioners in general, and for Malaysian legal counsels particularly, where the findings can be a point of reference for legal counsels and legal educators, enabling them to consult a literature that is part of their culture. Since the data of this study is 16 courtroom transcripts from Malaysian criminal proceedings that includes some bilingual and mixed language use (i.e. Bahasa Malaysia and English), the study represents current courtroom interaction in Malaysia. Thus the findings are expected to contribute to the existing body of knowledge in courtroom discourse and also issues pertaining to bilingual courtrooms. This study also highlights the disadvantaged position of lay-people in the courtroom, shedding light on linguistic disadvantage in postcolonial settings and proposing solutions.

Secondly, it will extend the literature on forensic discourse analysis and corpus linguistics because the methodology of this study is designed based on these two approaches. The strength of this investigation lies in the multi-layered approach employed, where it is designed according to a corpus-based forensic discourse analysis

approach that combines both quantitative and qualitative methods. The justification for using a corpus method is because I have access to a body of electronic courtroom proceedings that form a small but specialised corpus (i.e. MAYCRIM) that is exclusively focused on courtroom questioning as an activity. It is therefore a moderate-sized corpus of this genre of talk and the first one of its kind to study the Malaysian criminal court setting. It can help determine the distribution of the types of questions that frequently occur. Then, a discourse-pragmatic approach is applied to explain the barristers' questioning and witnesses' answering strategies. This multi-layered approach allows for multilevel contextual analysis (Adolphs 2008: 4), namely corpus-assisted, discourse analysis and pragmatics. Combining these with an ethnographic approach that includes courtroom observation and interviews with judges, lawyers and legal academics, adds to the methodological rigour.

1.8 Synopsis of the thesis

This thesis consists of seven chapters, this introduction, followed by further six chapters.

Chapter 2 reviews the relevant literature, concerning issues of institutional discourse, power imbalance in the courtroom, the Malaysian courtroom setting and the sociolinguistic context of Malaysian law, along with a discussion of past studies on courtroom interaction. The key ideas and theories from corpus approaches to discourse analysis, forensic corpus-based discourse analysis and pragmatics of questions are also presented in this chapter so that they set out the current state of knowledge on courtroom discourse.

Chapter 3 discusses the research design, the data used in the pilot study and in the main study for the thesis, the pilot study's findings, the triangulation method, and the procedure for data collection and analysis. In section 3.6 and 3.7, I also introduce the multi-layered approach (i.e. corpus linguistics, discourse analysis, pragmatics, and interviews) that I used as operational tools to answer the research questions. This chapter also presents the ethical considerations and some benefits and limitations of adopting corpus based and discourse-pragmatic approaches in the present study.

Chapter 4 is the first analysis chapter that examines the pragmatic aspects of questions that include the pronouns *you/kamu* in the MAYCRIM corpus, since

you/kamu were among the highest frequency words in the corpus. A corpus approach is used to extract types of questions formed with pronouns you and kamu and their distributions are presented to illustrate the advantages of a combined approach of quantitative and qualitative analysis. The chapter sheds light on the pragmatic forces of each category of questions used by barristers to realise their goals. Chapter 5 highlights the formal properties of tag questions that are used by Malaysian barristers in courtroom discourse. Tag questions, which are one of the types of coercive and controlling questions, are worthy of mention in this investigation because of their recognised importance in cross-examination. For example, they put pressure on witnesses to agree" (Gibbons and Turell, 2008: 122). Since not many studies, particularly in Malaysian language settings, discuss tag questions from a discourse-pragmatic angle, this makes them worthy of study. This chapter looks at the functions of variant and invariant tag questions, with an emphasis on the latter, as these are found to be dominant in the data.

Chapter 6 is the final chapter of analysis, which critically investigates cross-examination in Malaysian criminal courtrooms in order to investigate witnesses' resistance to barristers' controlling and coercive questions. Specifically, this chapter examines types of resistance produced by witnesses and demonstrates some strategies that are employed by witnesses to counter the power asymmetry that is particularly pronounced in cross-examination activities.

Chapter 7, which is the general conclusion chapter, serves to summarise and to bring together the whole thesis as one and to provide the final claims. This section includes the suggestions for improvement and future directions for forensic corpusbased discourse analysis work.

Chapter 2 Literature review

2.1 Introduction

The objective of this chapter is to situate this study within the relevant conceptual and theoretical contexts and present the literature in a systematic way. I begin this chapter with a discussion of courtroom discourse, introducing the Malaysian legal system and the different "activity types" (Levinson, 1992) involved in courtroom interaction. Next, a systemic review of trial phases, and the sociolinguistic context of Malaysian law are presented. Then, previous studies on courtroom discourse are explained. Next is the discussion of coercive and controlling questioning and a synthesis of material on the pragmatic strategies in questioning is explicated to direct the discussion in this investigation. The power of answers to control information is also presented to indicate how witnesses take special measures to resist lawyers' power and control. Finally, the corpus linguistic approach that informs this study is presented, as this thesis provides an opportunity to advance the understanding of forensic corpusbased analysis.

2.2 Courtroom interaction as an institutional discourse

Institutions are the "public organs of the state", and they are "inextricably linked to power and serving the interests of certain powerful groups" (Mayr, 2008:4), such as the media, the government or the law. Discourse, on the other hand, is "language in use" (Brown and Yule, 1983: 1) and a discourse is seen as a "culturally and socially organised way of speaking" (Mayr, 2008: 7). Institutional discourse is such that the analysis of language cannot be divided from the analysis of the purpose and functions of that language in the specific interaction it entails. Therefore, the study of language used in institutional discourse, such as legal discourse, requires us to understand the social factors that influence the formation of identities or sets of beliefs in that particular group. The "recurring theme" (Ehrlich and Sidnell, 2006: 655) in the study of institutional discourse is power and control, and this is particularly salient in the study of courtroom talk, as we need to understand the power imbalance and control among participants in the talk. This helps us determine the various linguistic strategies utilised by lawyers and witnesses to control the flow of talk in courtroom interaction.

Courtroom talk has a particularly "rigid and explicitly stated structure" (Woodbury 1984: 2). In courtroom examination, for example, there are systematic rules that assign positions for participants to speak and control what sorts of things they may talk about (Woodbury, 1984; Thornborrow, 2002). For example, in a criminal trial in an adversarial system, a prosecuting barrister's goal is to bring information that establishes the burden of proof to the attention of jury or judge(s). Therefore, barristers are bound by a set of conventions that determines their use of questions in activities such as direct and cross-examination. All questions can be said to be controlling, but some questions such as tag questions (that I examine in Chapter 5) are conducive, that is when the respondents are required "to conform to the underlying presupposition of the question" (Shuy, 1995: 208). Tag questions are also leading and almost completely confined to cross-examination.

Courtroom discourse is, therefore, a type of institutional discourse that is different from the other non-institutional discourses, because there is power imbalance in the courtroom where institutional members can control the conversation. This circumstance is in relation to the structure of proceedings whereby "ordinary conversational turn-taking" (Stygall 2012: 369) ceases. In Malaysian criminal trials, as in all courtrooms, lawyers and judges control the topic choice in examinations, but a key difference is that in Malaysian trials lawyers and witnesses present the evidence to judge(s) (rather than a jury) to establish or demolish the case depending on the lawyer's goals. Malaysian courtroom discourse is influenced by its history and that is discussed in the next section.

2.2.1 Malaysian courtroom discourse - The Malaysian legal system and the Malaysia Criminal Procedure Code

This section presents a panoramic view of the background of the Malaysian legal system and the trial phases that made up the "complex genre" (Heffer 2005:71) of courtroom discourse. I begin this part with an introduction to the Malaysian adversarial legal system and the Malaysia Criminal Code Procedure and then discuss the sociolinguistic context of Malaysian law, to illustrate the language reforms that have been undertaken in Malaysia's legal system.

Ainsworth (2014) describes two major legal systems that are adhered to in the world, namely the adversarial and inquisitorial systems. Adversarial systems are

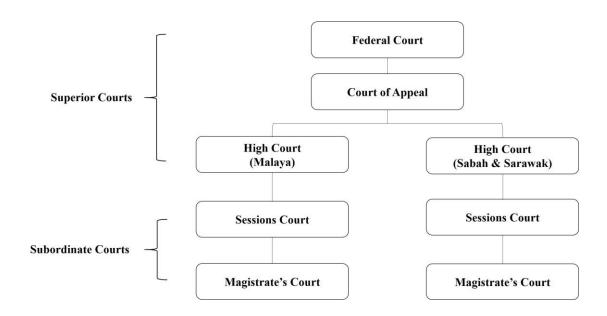
commonly practised in the United Kingdom, the USA, Australia and some other Commonwealth countries such as Malaysia, and they are the focus of this work, while inquisitorial systems are adhered to in many European and South American countries. The trials found in the MAYCRIM corpus are situated within the adversarial system but with a unique variation that, in 1995, reform in Malaysia's legal system moved the country from trial by jury to a non-jury system. All courtrooms, however, depend on oral evidence; therefore, lawyers' interactions with witnesses are vital to examine, being made up of the "cultural and cognitive practices" of legal professionals (Drew and Heritage, 1992: 3; Heffer, 2005: 36), such as the particular ways they interact in the courtroom due to the institutional and professional rituals they have to adhere to.

To say that the Malaysian legal system is simply an adversarial one is an oversimplification; rather it is a plural legal system in which coexist two or more legal traditions that reflect the heterogenous society of Malaysia. This society was influenced and shaped by external and indigenous cultures, that is, an integration of the English common law, *Shari'ah* law and customary traditions known as the *Adat* law. The English common law uses an "adversarial system" (Gibbons, 2003: 5) and this was inherited from British colonisation of Malaysia in the mid-20th century and shaped both the constitutional government and the common law, whereas the *Shari'ah* law or Islamic law is only applicable to Muslims as enacted in the Malaysia Federal Constitution. This law is administered by a separate court, that is *Syariah* courts (*Syariah* is the Malay spelling of *Shari'ah*.). The customary or *Adat* law is "established to settle disputes pertaining to native customs and customary law of the different tribes" (Ahmad Syed and Rajasingham, 2001: 16) and this law existed in Malaysia before colonisation.

The core to the Malaysian legal system is the Malaysian Federal Constitution, that is a written constitution based upon the Westminster model (Sharifah Suhanah and Rajasingham, 2001). The jurisdiction and powers of Superior Courts (i.e. the Federal court, the court of Appeal and the High Court) are laid down in the Courts of Judicature Act 1964 (Act 91) while Subordinate courts such as the Sessions Court and the Magistrates' Courts are explained in the Subordinate Courts Act 1948 (Act 92). There are two separates regional jurisdictions, namely, the High Court in Malaya and the High Court in Sabah and Sarawak and this is mentioned in Article 21 of the Malaysian Federal Constitution. In this investigation, the MAYCRIM corpus is a compilation of

criminal trials heard in the Sessions and High Courts of Malaysia. It is important to acknowledge the origins of the trials because it involves the sociolinguistic context of the proceedings, which I will explain further in the next section. Figure 2 illustrates the hierarchy of courts in Malaysia (adapted from Ahmad Syed and Rajasingham, 2001).

Figure 2. Hierarchy of courts in Malaysia



In the exercise of jurisdiction, the Federal court, or *Mahkamah Persekutuan*, the highest court, is empowered to hear appeals made by the Court of Appeal for civil decisions or High Court for criminal appeals. The Court of Appeal is the second highest court in the system and has power to hear appeals from both civil and criminal matters. However, with respect to criminal trials, the Court of Appeal has the jurisdiction to revise any decision made by the High Court. The power to hear all offences committed for both civil and criminal matters lies within the High Court other than the matters involving the *Shari'ah* law or Islamic law. Finally, the subordinate courts that consist of the Sessions and the Magistrates' courts have the jurisdiction to try all civil and criminal offences other than offences punishable with death or a maximum term of imprisonment that does not exceed 10 years (Fook, Mansoor and Hassan, 2014).

Though the system is modelled on the English common law, in Malaysia, the jury system was abolished in 1995 due to many reasons, including the risk of lay-people untrained in the legal profession delivering verdicts grounded in emotions or popular

perceptions. In addition, the jury system is considered slow and quite costly to administer by the Malaysian government. Also, based on my interviews with academics, I found that there are beliefs that the jury system has more weaknesses than advantages (see Figure 14 in section 3.7). One of the interviewees, Prof X¹ believes that the jury system is considered unpredictable or uncertain because it is very vulnerable to jurors. There was one incident in Malaysia where a group of jurors were intimidated by the suspects in the case because they lived in the same area. Therefore, a non-jury system can overcome this safety issue. The move from jury to the non-jury system has shifted the responsibilities in delivering verdicts to judges, meaning they now play two important roles: to ensure that a fair trial is conducted and to deliver verdicts. Judges listen to evidence and respective arguments, and pass judgements. This move made it interesting for me to look at how the lawyer's discourse is affected because the jury system allows lawyers to bring all sorts of linguistic choices (e.g. sensitive words to certain groups of people) in their questions to persuade jurors. However, we might hypothesise that in the non-jury system, lawyers will need to be more careful in their word choices when persuading the judge (see Section 4.3).

The rules of general criminal procedure in Malaysia are found primarily in the Criminal Procedure Code (CPC) Act 593. It has applied throughout Malaysia since 10 January 1979, was revised in 1999 and amended several times, most recently in 2006. (Act 593 - Criminal Procedure Code (CPC), 2012). All criminal trials are heard in the Magistrates' Courts, Sessions Courts and High Courts. If there is an appeal made by the appellant, the Court of Appeal will revise the appeal and then refer it to the apex court that is the Federal Court. There are three main stages in the CPC that begin with pretrial. In this stage, a number of enforcement agencies such as the Royal Malaysia Police or Polis Diraja Malaysia (PDRM), the Anti-Corruption Agency (ACA), the Royal Customs and Excise Department, and the Immigration Department have the power to receive reports and begin investigations. Once a first information report is made, then the report will be forwarded to the Public Prosecutor under the Attorney General's Chamber (AGC) to determine whether to prosecute or not. The second stage is trial where a person suspected of committing an offence may be brought to the court and s/he undergoes hearings in front of judge(s). During the trial stage, judge(s) is/are

¹ Prof X is an anonymisation that I used to refer to one of my interview participants.

empowered to sentence the accused by imposing fines, imprisonment or both. In the post-trial stage, a party incriminated by a court has the right to either appeal or request a revision from the Court of Appeal. The appointment of a High Courts Judge is governed by the Constitution of Malaysia, with the approval from the respective Chief Judges. Usually, trials before the High Court are heard by one judge except in certain cases such those involving capital punishment (Abdul Hamid Omar, 1987). For example, in the MAYCRIM corpus, the drug trafficking cases were heard by at least one judge with two assessors. Whilst in the Session Courts, a "President who is legally qualified and a member of the Judicial and Legal Service of the Federation" (Abdul Hamid Omar, 1987: 17) hears any civil or criminal cases within the local limits of its jurisdiction.

Gibbons (2003) lists three characteristics of an adversarial proceeding, which are reflected in Malaysian criminal trials. First, Malaysia's criminal law holds to the "presumption of innocence until proven guilty" (Gibbons 2003: 6); thus it is the prosecution's task to establish a *prima facie* case in courtrooms. Secondly, the prosecution and the defence present their evidence during the main trial phases, which are explained in section 2.2.2, but with the exception of the verdict which is delivered by judge(s). A third characteristic is that judges' decisions are recorded and referred to as precedent where it can be a point of reference for another case.

2.2.2 Trial phases

Courtroom discourse is described as a "complex genre" (Heffer 2005: 71) that is made up of "a number of key events formed from sequential speech acts" (Coulthard & Johnson 2007: 96). In the Crown Court of England and Wales, widely different events such as "jury selection, reading the indictment, opening speech, prosecution and defence evidence, closing speeches, summing-up and deliberation, judgement and sentencing" (Coulthard & Johnson 2007: 96) are events that make courtroom discourse complex. In addition, there are two speech modes: "monologic where one speaker is addressing the court and *dialogic* where two speakers are interacting" (Cotterill 2003: 94) adding to the complexity. Gibbons, (2003: 134) provides the generic structure of one of these speech events, a witness appearance, that follows the structure below:

- 1. Opening
 - Calling in by court officer/usher
 - Swearing in with court officer/usher
- 2. Examination-in-chief by friendly counsel
- 3. Cross-examination by opposing counsel
- 4. Re-examination by friendly counsel optional
- 5. Dismissal by judge

Gibbons (2003) explains, that in the English adversarial system, the questioning of a witness falls into three stages: examination-in-chief, cross-examination and reexamination (optional) and this structure has been adopted in Malaysia. Each stage has specific functional objectives and involves different arrangements of interacting speakers and hearers (Buckingham, 1986). In examination-in-chief, "friendly counsel" (Coulthard & Johnson 2007: 96) establishes evidence from their witnesses to the jury or judges. Archer (2005: 74) asserts that in this primary stage, the witnesses are given a chance to narrate their own events (i.e. adhere to evidence given in the police statement) and thus "establish facts to the jury". Cross-examination follows examination-in-chief and is conducted by "opposing counsel" (Coulthard & Johnson 2007: 96) to solicit and test the accuracy of information and sometimes undermine the evidence presented by witnesses earlier (Archer, 2005). The final, optional stage is re-examination, which is usually used to confirm or clarify evidence communicated in examination or crossexamination. In the contemporary Malaysian courtroom context, the trial phases are almost identical to the English courtroom with the exception of summing up and jury deliberation, since there has been no jury since 1995.

Courtroom discourse is informed by tradition and respect; thus researchers who study courtroom interaction deal with a predetermined structure where power and ideology is noticeable (Bulow-Moller, 1990). The "gladiatorial adversarial legal system" (Kiguru, 2014: 16) makes the courtroom a remarkable place for sociolinguistic study. This is because the adversarial system has a great impact on the way language is used, for example questioning and answering sequences are strategically structured in a "combative nature" (Buckingham 1986: 5) because both parties (i.e. prosecution and defence) wish to assert their own facts and events. Thus, it is important to introduce the sociolinguistic context of the Malaysian legal system to have a better understanding of the relationship between language, culture and the law in lawyer-witness interaction.

2.3 Sociolinguistic context of Malaysian law

The Malaysian legal system has undergone a series of language reforms since independence in 1957 until the 1980s, to allow the national language (i.e. Malay) to be used in courtrooms, though English remains a privileged language in Malaysian courtrooms today. To assist readers, I have illustrated the timeline of language changes in Malaysian language policies and legal systems, as can be seen in Figure 3. During colonisation, English had been the national language, but, in 1957, Malay was reintroduced as the national language, with English remaining as the main medium of communication in government, law and education matters. This period of transition from colonisation to an independent country required years for the national cultures and languages to be assimilated in government and education matters. According to Asmah Haji Omar (1983), English is only given an official status after 1967 by the Malaysian Constitution. In the 1980s, Malay was installed to be used officially in the legal domain with the continuation of English where its use is necessary, but as we will see in this thesis, English can still be considered the dominant language. This is due to the fact that the Courts of Law are allowed by the Constitution to "phase out their use of English at a much slower rate" (Asmah Haji Omar, 1983: 229-230) in the interest of justice. Malaysia, which is made up of Peninsular and East Malaysia (i.e. Sabah and Sarawak) (see Figure 1) received full independence from British rule after 1963. The peninsular part (or also known as Malaya) first received independence in 1957, then six years after that, East Malaysia (i.e. Sabah and Sarawak) was released from British rule. Therefore, Sabah and Sarawak phasing out of English as an official language was ten years after the Independence (i.e. 1963). It was only in 1990 that Malay was voted to be extended to East Malaysia which explains the mixed language and the dominance of English in the MAYCRIM data (see section 3.2.1, Table 3). At present, Malay and English coexists in the courtroom, with Malay being mostly used in the lower courts, whereas, English is frequently used in the Superior Courts (i.e. High Courts, Appeal Courts and Federal Courts).

Figure 3. Timeline of language changes in Malaysia's language policies and legal system

1957

Malay as National Language, English remained the main medium of government and education (Powell & David, 2011)

1967

Official status is given to English in Peninsular Malaysia (Asmah Haji Omar, 1983)

1980s

Malay is introduced in the legal domain with the continuation of English where it is deemed (Constitution, Art. 152, Rules of High Court)

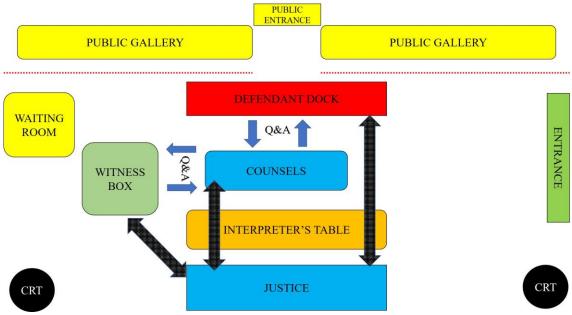
1990

These changes were extended to East Malaysia (i.e. Sabah & Sarawak) (Powell & Hashim, 2011)

Today

Most discussion in lower courts is in Malay. English is frequently used in the High Court and dominates the court of Appeal and Federal Court (Powell, 2008) It is worth illustrating (Figure 4) the standard layout of the Malaysian criminal courtroom. In 2017, I carried out ethnographical study through observation in the courts and in interviews with judges, lawyers and legal academics, to understand the "interactional rules of courtroom interaction" (Cotterill, 2010b: 354) and understand the interpersonal hierarchy that exists in courtroom talk.

Figure 4. Interpersonal dynamics of courtroom interaction in the Malaysian criminal court



The layout in Figure 4 is based on my observations when I attended hearings conducted in Penang High Court, Malaysia. To help readers visualise the layout, the justice's bench is raised higher, to signal the power of justice (i.e. judge, magistrate). Then, the interpreter's table is where the court's clerks, stenographers and interpreters are stationed. During my stay, I was given the chance to sit at the interpreter's table, so that I could observe how the computer that operates the Case Recording and Transcribing (CRT) system is used. I had the chance to watch how the criminal case was put into the record. The CRT recording tool is stationed at both corners so that they can record the proceedings. The witness box is located near the interpreter's table to help both witness and interpreter to communicate, while the prosecution and defence counsel are located closer to the defendant's dock for ease of examination. However, counsels are not rigidly confined and can move around between the witness box and

defendant's dock. The waiting room is used by police officers and the arrested suspect waiting to be called by the court's clerk. The public galleries are usually filled with family members, media or others who have an interest in the hearings. The arrangement of the Malaysian criminal courtroom is, therefore, slightly different from the typical criminal courtroom in the adversarial system, because it lacks the jury benches, since the Malaysian system moved to the non-jury system, and there is a specific place for interpreters to sit, since they are an important part of the system due to Malaysia's bi/multi-lingualism. In relation to "interpresonal dynamics" (Cotterill, 2010b: 354). The judge, who is the "most powerful participant" (Cotterill, 2010b: 354), is given the privilege to address any of the individuals in the courtroom, which includes the public when it is necessary. When counsels address the judge, they need to exercise a certain level of politeness (see Chapter 4), while the witness is 'linguistically and legally restricted in hierarchy' (Cotterill, 2010b: 355) and stands at the bottom. The next section deals with the interaction between counsels and witnesses through questions and answers.

2.4 Questioning in legal settings and in the courtroom

Research on the "interactional dynamic" (Cotterill, 2003: 4) of the pragmatic function and properties of questions and answers in legal settings is very compelling. Participants can/may identify the language strategy, yet they are incompetent to understand the mechanism due to lack of linguistic knowledge. This study, which presents some of the successful tactics used by participants (i.e. lawyers and lay-people) in Malaysian criminal trials, demonstrates that participants know successful strategies and rules that benefit them during courtroom examination. Because questioning takes on 'culture-specific forms and has culture-specific functions' (Chang 2004: 705), questions are not only used by barristers to obtain information; rather, questions have the purpose of convincing factfinders, in this case judge(s) to accept barristers' versions of events.

In recent years, there have been an increasing number of studies (Danet and Bogoch, 1980a; Woodbury, 1984; Harris, 1984; Cotterill, 2003; Archer, 2005; Heffer, 2005; Newbury and Johnson, 2006; Eades, 2008; Tkačuková, 2010; Ehrlich, 2011; Johnson, 2015; Zydervelt *et al.*, 2017; Al Saeed, 2018) on legal discourse that investigate the sequence of questions and answers in the judicial process and in the

courtroom. From these studies, I have developed the knowledge and understanding of courtroom interaction which I found helpful to shape and mould this investigation.

First, Danet and Bogoch (1980) categorised examination questions according to their typologies and functions, with the declarative as the most coercive question type, because its form and function limits the response, while the *wh*-question is the least coercive (Danet, 1980). However, Danet and Bogoch's study has been heavily criticised by Dunstan (1980), arguing that the coerciveness of a question should be determined with reference to "a larger linguistic context" (Berk-Seligson, 1999: 52) in an attempt to measure the "combativeness" (Danet and Bogoch, 1980a; Dunstan, 1980a; Ehrlich, 2011). Therefore, with this information, I have categorised questions in the Malaysian criminal corpus carefully, considering each question in a larger context rather than relying on their syntactic form only.

Then, Woodbury (1984) and Harris (1984) developed a 'taxonomy of question types' (see also Archer, 2005; Ehrlich, 2011) that classifies which questions could constrain and control responses or impose a speaker's words on the hearer. Woodbury (1984) classifies the prosodic yes/no question (or declarative) as the most controlling because it functions to impose a lawyer's interpretations of evidence on witnesses. Woodbury's taxonomy influences Archer to improvise and introduce a "continuum of control" (Archer, 2005: 79) of coercive and controlling questioning in courtroom interaction (which I explain in detail in section 2.4.1). From Woodbury and Archer's work I developed my idea of a continuum of coercive and controlling invariant tag questions (see Chapter 5). Harris (1984) found that "disjunctive wh-questions of the type what, how much and how many produced minimal responses while how and why questions required more than a minimal response" (Thornborrow, 2002: 24-26). From reading Harris's analysis, it gave me the idea to investigate probing questions in my data (see Chapter 4). Such questioning performs a powerful means of control over the witnesses/defendants; thus questions are treated as having a focal role in courtroom activity because they are subject to the nature of the activities (Levinson, 1992) being carried out. Therefore, we expect to find that different questions are asked in crossexamination from those in examination-in-chief.

On the micro level, various studies look at the illocutionary force (Cotterill, 2003), discourse markers (Hale, 1999; Tkačuková, 2015) and metalinguistic markers (Heffer, 2005) that accompany questions. Although these markers may or may not carry "propositional content" (Hale, 1999: 59), they are important to express a speaker's intention in their utterance. The advantage of conducting micro-level analysis also reveals that sequences of questions are used by lawyers as a "conceptual framework" to weaken witnesses' testimony (Aldridge and Luchjenbroers, 2007: 85). Johnson (2015) discovers that quoted speech (i.e. prisoner/defendant's testimony) in lawyer's questions is powerful to construct a defence lawyer's version of events in persuading the jury. This information gives an insight to the present investigation to also look at reported or quoted speech (see chapter 4).

Moving to the research on interpreting and the bilingual courtroom, studies by Berk-Seligson (1999), Eades (2000; 2008; 2012), Gibbons and Turell (2008), Powell (2008), Leung and Gibbons (2009), Powell and David (2011) guide the direction of this thesis because the Malaysian criminal corpus is made of both Malay and English. Last but not the least, the previous studies on responses to questions, such as Newbury and Johnson (2006) and Al-Saeed (2018) on witnesses' resistance to coercive and controlling questions are also helpful, forming a basis to the analysis on witnesses' resistance as discussed in Chapter 6 of this thesis.

To summarise, these studies are not only helpful to advance my understanding on courtroom questioning and witnesses' resistance, but they are very useful for the methodological design and the discourse-pragmatic approaches for this investigation. First, studies by Archer (2005), Heffer (2005), Johnson (2015) and Tkačuková (2015) that employed a corpus-based approach shaped the methodological design of the present investigation, which is a corpus-based forensic discourse analysis. Secondly, previous studies on the classification of courtroom questions by Woodbury, (1984); Harris (1991); and Archer (2005) give the direction to classify questions found in the MAYCRIM and SHIPMAN trials. On the micro-level, past studies such as quoted speech by Johnson (2015), guided the micro-analysis on the reported or quoted speech that accompany lawyers' invariant tag questions in the MAYCRIM corpus (see section 5.4.2). Meanwhile, studies on resistance give the framework to approach witnesses' responses and their pragmatic functions in courtrooms.

2.4.1 Questions and control

In courtroom discourse, a question is not "an object *per se*, recognisable on its own merits" (Stenström, 1984: 38); instead, it has to be treated with "the study of meaning in relation to speech situations" (Leech, 1983: 6). This is where pragmatics enters the discussion, in what a number of writers have called the elicitative force and conduciveness of questions (Harris, 1984; Stenstrom, 1984; Woodbury, 1984; Quirk *et al.*, 1985a; Berk-Seligson, 1999; Gibbons, 1999; Hale, 1999; Archer, 2005; Koshik, 2005) as explained in Table 1 below.

In everyday conversation, which usually involves a much more symmetrical relationship between the speakers, then any "questions are less likely to exhibit the same amount of control" (Archer, 2005: 79) that they do in courtroom discourse. In this investigation questions are categorised according to six formal categories of questions (Quirk *et al.*, 1985a; Biber *et al.*, 1999) and discussed according to their elicitative force and conduciveness, according to Archer's "continuum of control" (2005: 79). Table 1 illustrates the six formal categories of questions and examples extracted from the MAYCRIM corpus.

Table 1. Formal categories of questions

No	Category of Questions	Examples
1.	Yes/no	<u>Do</u> you have the duplicate keys for the said room?
		(Case 12_Direct)
2.	Declarative	You were in fact very dependent on the accused to manage the school's budget effectively so that the allocations could be utilized in the best possible way.
		(Case 7_Cross)
<i>3</i> .	Wh-	<u>Why</u> did you ask one passenger XX nationality to scan his luggage?
		(Case 14_Direct)
<i>4</i> .	Tag	You carry on the examination until 12 something at night, <u>agree?</u> (Case 14_Cross)
<i>5</i> .	Alternative	Do you still remember the colour of the car <u>or</u> the registration number of the car?
		(Case 11_Direct)
<i>6</i> .	Non-sentence	Correct? (Case 14_Cross)

According to Stenström, "not all questions elicit responses" (1984: 45), because their discourse properties (i.e. context) determine the functions of questions. Elicitative force or "control" (Archer, 2005: 78) is related to the force of the questions imposed on the recipients. Similarly, a conducive question "indicates that the speaker is predisposed to the kind of answer he has wanted or expected" (Quirk *et al.*, 1985: 808). Archer (2005: 79) summarises control and level of conduciveness, as shown in Figure 5.

Figure 5. Continuum of control by Archer (2005: 79)

Type of Questions	Amount of control	Conducivity	Type of response question-type typically expects
1. Broad wh-	Least	Low	Open range
2. Narrow wh-	1	1	Naming of specific variable
3. Alternative			Choice of answers restricted to 1 or 2 provided by questioner
4. Grammatical yes/no			Yes/No
5. Negative grammatical <i>yes/no</i>			Anticipated response, whether Affirmative or Negative
6. Declarative	•	•	
7. Tagged declarative	Most	High	Confirmation of proposition

However, it is worth noting that this continuum of control is only applicable if there is a power asymmetry relationship between the questioners and answerers, as in this context, a courtroom interaction.

2.5 The power of answers to control information

It is not only questions that are powerful and controlling, though. Answers have the power to control the discourse too. This investigation builds on Eades's conclusion that "witnesses are not necessarily constrained or controlled by question-type" (Eades 2000: 189) because answers have the power to control information and answers can also determine the pragmatic force of future questions. Previous studies on answers in courtrooms demonstrate possible forms of resistance developed by witnesses in their answering strategies. For example, Drew's (1992: 516) study found that witnesses produce "contrasting versions" as their strategy to challenge lawyers' versions of events

while another study (Ehrlich & Sidnell 2006: 674) discovered that witnesses "take special measures to resist presuppositions", such as directly challenging the presupposition of questions as an attempt to resist the lawyer's control of his responses. Zajac et.al (2003) examined children's responses in sexual abuse trials and found that children are much less able to resist lawyer control, since their responses are largely influenced by the type of questions asked. Thus, they suggest that cross-examination should be more child friendly by changing the types of questions asked to child witnesses.

Since I seek to examine the power of witnesses' answers to control information delivered in the courtroom, I have adapted a classification of witnesses' responses and answer lengths based upon the frameworks proposed by Stivers and Hayashi (2010), Zajac et.al (2003) and Eades (2000). While for the resistance categories I have adapted Newbury and Johnson, (2006) and Harris, (1991) categories of resistance answers. This system will be explained in detail in Chapter 6 (see Table 19, section 6.2). This system has been adapted and modified because the categorisation is solely decided by the context of each response found in this corpus. In the present study, the coding of witnesses' responses and answer length was done on both Malaysian English and Malay. Five categories of responses and four coding systems for answer length were used, as illustrated in Table 2 and Figure 6.

Table 2 explicates the categories of witnesses' responses found in the MAYCRIM data, where each witness's response to a barrister's question was individually coded into the categories. Agreement and resistance were further subcategorised into respective micro-categories because the categorisations were fine-tuned at each stage of the process, rather than forcing the responses to fit into an established classification developed from previous studies.

Table 2. Classification of witnesses' responses

(Adapted from Harris, 1991; Zajac, Gross and Hayne, 2003; Newbury and Johnson, 2006; Stivers and Hayashi, 2010)

Categories of	Coding systems	Explanation
responses		
1. Agreement		
 Agreement 	COM	Direct agreement with single 'yes'
• Agreement ++	COM++	Direct agreement with supplementary information
2. Resistance		
• Disagreement	DISAGREE	Direct answers that include 'NO' or 'I
• Disagreement ++	DISAGREE ++	DISAGREE' Direct answers with supplementary information
Evasion	EVADE	Evade giving the required information
• Correction	CORRECT	Making correction to barrister's questions
• Challenge	CHALLENGE	Challenge lawyer's propositions
3. Misunderstanding	MIS	Inappropriate responses
4. Baulk	HESITATE	Hesitation
5. No response	NOR	Remain silent

To strengthen my analysis on witness control, I have shifted to investigate broader chunks of discourse, to reveal that the syntactic structure of questions does not necessarily control witnesses. Therefore, this investigation also adapted Eades's measurement on answer length (Eades 2000: 178), because it can be a key sign of the degree to which witnesses get an opportunity to tell their version of events using their own words. In the present study, the measurement has been modified according to the number of words. This is because I found it difficult to follow Eades's coding system (i.e. 1 word, between 1 word & 1 line, between 1 line & 3 lines, more than 3 lines) due to the concept of a line, which is imprecise. Figure 6 demonstrates the coding system for answer length.

Figure 6. Coding system for answer length

(Adapted from Eades, 2000)

Answer length	Coding system
1 word	1W
Less than 10 words	<10
Less than 20 words	<20
More than 20 words	>20

The coding measurement is adapted from Eades (2000) and has been modified with reference to the number of words. The present study changed the former categories to more precise word length intervals, rather than lines. I proceeded with the hypothesis that the greater the length of the witness's answer, the more the witness gets the chance to tell their own account.

2.6 A Corpus Linguistic approach

Corpus linguistics can be thought of as both a theory and a methodology. As a theory it conceives of large collections of language as having the power to transform linguistics, since in the past theories of language were formed on the basis of "degenerate data" and linguists have relied "heavily on speculation" (Sinclair, 2004: 9). With the aid of computers to investigate large bodies of data, Sinclair (2004: 10-17) suggests we can "harness the power of the computer" to "help the text reveal itself to us" with all its patterns of meaning, thereby compiling statements about language "which are firmly compatible with the data". Corpus linguistics as a methodology can be described as "a set of procedures" (McEnery & Hardie 2012:1) to investigate how speakers and writers use language in the real world. Corpus linguistics therefore studies "the actual language used in naturally occurring texts" (Biber et al. 1998:1) and involves

the examination of (usually) very large "machine-readable" collections of texts (Baker, 2010b; McEnery and Hardie, 2012:1). This approach, which investigates trends and patterns in corpora through examination of wordlists, concordances, collocations, keywords and frequency information (e.g. Sinclair, 1991; Archer, 2009), allows linguists to "confirm or refute hypotheses about language use" (Baker 2010: 94) and develop and debate theories about language. In addition, corpus linguistics allows linguists to "quantify linguistic patterns, providing more solid conclusions to be reached" (Baker 2010:94), because it allows researchers to produce significant findings from multiple examples of a phenomenon, in this case questions. On the criticisms and limitations of corpus linguistics, Widdowson (2000: 10) mentions that "text recognition is not the same as text realization" because texts that are collected for corpus analysis have a "reflected reality: they are only real because of the presupposed reality of the discourses of which they are a trace" (Widdowson, 2000: 7). In other words, corpus linguistics approaches a text as "decontextualized language". However, these notions were counter-argued by Stubbs, (2001: 151); that corpus linguistics offers "possible, attested and probable data" and in relation to context, corpus linguistic is "essentially a theory of context" (Stubbs, 2001: 157). One good example is through concordance analysis that makes repetition visible thus aiding potential interpretation. I used corpus linguistics, to be specific, corpus-based and corpus-driven approaches to study a specific set of research questions deemed useful to investigate trends in Malaysian criminal proceedings in the MAYCRIM corpus. A corpus-based approach "uses a corpus as a source for examples, to check researcher intuition or to examine the frequency and/or plausibility of the language contained within a smaller data set" (Baker, 2010b: 7) combined with the qualitative approach, "measuring the extent to which features and variants are associated with contextual factors" (Baker, 2006: 2). For example, a corpus-based approach is used in the specialised dataset of questions (i.e. MAYCRIM and SHIPMAN) to explore questioning strategies in the courtroom (Corpus linguistics as a methodology is explored further in Chapter 3). Meanwhile, a corpusdriven approach views the text in "a more inductive way – the corpus itself is the data and the patterns in it are noted as a way of expressing regularities (and exceptions) in language" (Baker, 2006: 2-3). For example, lexical bundles are used as a method to understand how lexical items are used by lawyers to construct and establish facts in the courtroom (see Chapter 4).

There are a number of reasons why I decided to use a "corpus-based" and in some ways "corpus-driven" (Tognini-Bonelli, 2001: 84-85) approach in this investigation. It is corpus-driven to the extent that I am using the corpus to drive the creation of ideas about questions and it is corpus-based in that I am exploring existing theories about and categories of questions using the corpus as data. Firstly, using corpus linguistics to investigate the MAYCRIM corpus I can produce "empirical" results, as these are compiled from the "actual patterns of use in natural texts" (Biber, Conrad and Reppen, 1998: 4), that is, the spoken discourse of questioning and answering strategies used by the legal counsels. Secondly, the MAYCRIM dataset is a large collection of questions with the size of 326,785 words. Though it is a small corpus, it is a large set of questions and this requires the use of computer analysis. Finally, this study is a corpus-based study because it uses both computationally-derived quantitative (i.e. automated search) and qualitative (i.e. discourse pragmatic approach) techniques. In addition, corpus linguistics, which is referred to as "a tool" (Cotterill 2012:578) of analysis in forensic linguistics, has the ability to retrieve particular pragmatic items such as discourse markers, modality or even diectics, which are significant elements when discussing pragmatic functions.

Combining corpus linguistics with discourse analysis (O'Keeffe and McCarthy, 2010) is important to determine the functions of language patterns, in particular patterns of questions, in Malaysian criminal trials. A recent development in corpus linguistics is the move to incorporate discourse and pragmatic analysis through what is called corpus-assisted discourse analysis (CADS). Partington et.al (2013: 216) point out that language in adversarial situations, such as interaction in courtroom examination, is interesting to investigate because "participants have conflicting aims, are under pressure and, above all, are accountable to authority". Corpus-assisted discourse analysis has benefits for the investigation of all discourse, but for legal discourse in particular, because it provides significant insights to the "non-obvious meaning" (Partington et al. 2013: 11) of the discourse. Secondly, I can reduce researcher bias in data analysis because I am making decisions based on "hundreds of texts" (Baker 2006: 12), instead of basing interpretations on a single text. Thirdly, the findings from this study can provide significant insights and a body of knowledge about courtroom discourse because of the "incremental effect of discourse" analysis (Baker 2006: 13), as a result of cumulative examples from that particular genre. Finally, corpus-based discourse analysis triangulates and validates the findings and discourse interpretation by looking at examples from different perspectives (Triangulation is discussed further in Chapter 3).

2.7 Conclusion

This chapter reviews the literature on issues that concern this thesis. Courtroom interaction as an institutional discourse is defined and grounded in the present study to outline how institutions are shaped by discourse. This chapter also reviews the history and setting of the Malaysian legal system and its move from a jury to a non-jury system. It also outlines the trial phases of the Malaysian adversarial legal system. I illustrate the sociolinguistic context of Malaysian law that has undergone language reform, to situate the existence of both Malay and English in the MAYCRIM data. Past studies of courtroom discourse mould the knowledge and understanding of courtroom interaction that becomes the basis for the linguistic analysis carried out in Chapter 4, 5 and 6. The chapter presented the semantic and pragmatic properties of questions and answers that are strategically exploited by lawyers and lay-persons as a means of achieving their goals. Corpus-based and corpus-driven approaches that inform this study are also discussed, though this will be further developed in the next chapter, Chapter 3, when I discuss corpus linguistics as a methodology.

Chapter 3 Methodology

3.1 Introduction

This chapter contributes to our understanding of the methods used in the present research in relation to the Malaysian adversarial courtroom data: corpus-based forensic discourse analysis. Using both computational and qualitative methods I reveal linguistic frequencies and patterns from the questioning and answering turns by lawyers and witnesses to investigate the following specific research questions:

- 1. What are the formal categories of interrogative that contain *you/kamu* utilised by barristers in direct and cross-examination in the Malaysian criminal trials and their frequencies?
- 2. What are the pragmatic functions of questions that contain pronouns *you/kamu* in direct and cross-examination in the Malaysian criminal trials?
- 3. What are the formal properties and the legal discourse-pragmatic functions of coercive tag questions in the direct and cross-examination activities?
- 4. How are the legal discourse-pragmatic functions of tag questions in the cross-examination used by the defence barristers in constructing a defence and implying blame?
- 5. What types of witnesses' resistance appear in cross-examination activities?
- 6. How do witnesses' resistance challenge barristers' discursive power in crossexamination activities?

The primary aim of the study is to extend existing research on questioning and answering strategies in a new setting, Malaysia's adversarial system, which fulfils the need for research on the culture of criminal proceedings in the Malaysian system. As noted earlier (see Section 1.7), the findings will have theoretical and pragmatic implications for Malaysian legal counsels where it can be a point of reference for legal professionals and legal educators. Moreover, it will help raise awareness in legal and lay-people of the practices taking place in questioning and help improve the system being used by highlighting the complexities of language used in a bilingual courtroom.

First, I introduce the MAYCRIM corpus; the data nature, data preparation, and its transcription methods with some of the challenges of working with court transcripts. The pilot study, that is the Shipman trial, is introduced and the findings discussed to explain how it influenced the larger study. The discussion on specialised corpus and how I developed two specialised corpora: The SHIPMAN and the MAYCRIM corpus are discussed. I also present the advantages of working with specialised corpora for this investigation. The reference corpus used for this investigation is also discussed to reveal what is evident in the specialised corpus. The corpus linguistic tool, *Wordsmith Tools 6.0* is highlighted to demonstrate the potential of doing automated and manual searching with respect to the analysis to explicate the advantages of this computational software. I also highlight the triangulation method employed to allow for "confident interpretation" (Litosseliti, 2010: 34) of the data. Or in other words, the triangulation method with a multi-layered design elicits rich findings, thus strengthening the results and conclusions for this study. The chapter also describes ethical considerations and its challenges when conducting this investigation.

3.2 The MAYCRIM corpus

This section introduces the Malaysian criminal trial corpus (MAYCRIM) and its transcription methods. The MAYCRIM corpus consists of 16 criminal trials collected from the Malaysia Palace of Justice in summer 2015, whereas, the pilot study data used one English criminal trial, the Harold Shipman trial, which is publicly available.

3.2.1 Data

As mentioned above, the MAYCRIM corpus is a compilation of official courtroom transcripts from various criminal offences which was collected in the summer of 2015 from the Registrar of the Malaysian Court during a personal visit by me. Only closed and non-appeal cases were released, meaning that they will not be subjected to disagreement or rebuke by the person involved with the cases during the duration of this study or in the future. This matter is further explained in the ethical considerations section (Section 3.8). The total size of the data is 326,785 words. The trials took place between 2001 and 2015 in a range of High and Session Courts in different states of Malaysia (i.e. Sabah and Sarawak and the Peninsular of Malaysia). Table 3 (see page 38) displays the size and nature of each trial that makes up the

MAYCRIM corpus. The data is presented in eight columns that begin with the codes and range of offences codified as criminal offences under the Malaysia Penal Code or Kanun Keseksaan Malaysia. The corpus ranges from a minor criminal offence of cheating money to the major offence of murder. In the second column I give the year (i.e. from 2001 to 2015), the number of days for each trial and the condition of the transcripts. The longest trial is 27 days, while the shortest is 5 days. The transcripts are mostly full and complete; however, an exception is Case 13 (Drug Trafficking 2), which is partial, meaning I could not determine the verdict for this case. Nevertheless, there is still much that can be learned from the lawyer-witness interaction, so it is still included. Due to the sensitive nature of court transcripts and because of the access and collection time available I had to make use of what I was able to obtain from the court registrar.

The fourth column shows the language used: English/Malay. 10 trials were conducted fully in Malaysian English, despite a policy to shift from English to Malay in the Malaysian legal system. English is still perceived as a high-status language in the courtroom, although British rule ceased in 1957. These trials are from the Sabah and Sarawak courts, where English is common and still widely practiced in formal institutions, including the Malaysian legal system. Four trials were conducted in a mixture of English and Malay, as the court gives discretion for this in the interests of justice, and it is therefore common to find that both languages are used in the same trial (Powell and David, 2011). This is an effect of language reformation and language shift from English to Malay. Interestingly, although Malay is the national language of Malaysia, the MAYCRIM corpus consists of only one case (i.e. Murder) that was conducted fully in Malay. This trial took place in Peninsular Malaysia; thus the proceedings were conducted in the national language. The language used in the MAYCRIM corpus reflects and represents (see section 3.4 on the definition of a specialised corpus) the multilingual setting of Malaysian criminal courtrooms, and also the language politics of Malaysia.

Column five shows the participants involved in the proceedings, showing the range of contributors to the proceedings. Each group is labelled accordingly, where C stands for counsels, that is, prosecuting and defence counsel, while W refers to witness and D is the defendant or accused. A verdict column is also added so that I can show the judicial decisions for each case (with the exception of Case 13). Table 3 indicates six cases where the defendants were discharged and acquitted because the prosecutions

failed to establish prima facie cases against the accused. In the other nine cases the accused are found guilty. There are two cases where I cannot determine the pair of turns because they were not recorded in the transcripts as both defendants admitted guilt to the said charges. The seventh and eight columns indicate the total number of question and answer pairs and the number of words in each case. Altogether this corpus is made of 5,574 pairs of turns and 326,785 words, making this a small, but specialised corpus (Specialisation is discussed further in section 3.4).

There are both advantages and disadvantages of using these court transcripts. Most court cases are routinely transcribed by a stenotype operator or court stenographer. Interestingly, Malaysia is equipped with the case recording and transcribing (CRT) system, that produces a digital database of court proceedings which allows the researcher to obtain and investigate a huge variety of transcripts quickly, once access is agreed. In addition, studying court transcripts helps the researcher to overcome geographical and temporal constraints as it is impossible to attend and collect data for each individual case. However, there are also some immediate drawbacks to using these official transcripts for sociolinguistic and pragmatic study of legal language, such as the elimination of "emotional features" (Heffer 2005: 56), pauses (i.e. ah, er, erm, uh, um), or non-existence of non-verbal features that are "fundamental in transcriptions for sociolinguistic research" (Eades 2010: 36). Therefore, it is not possible to study the effects of prosody or body language on the dyadic interaction that occurred during the trials. In some cases, not all parts of the trials are transcribed such as the opening and closing statements found in the MAYCRIM collection. One of the main reasons behind this is that prosecutors and defence lawyers are required to make submissions at the close of prosecution case in oral or written form to the judge(s). This partly determined my focus on the question and answer interaction.

Furthermore, the most common problem that I encountered in the 16 court transcripts is the level or variety of English that is used by the transcriber and my knowledge of legal terms that add difficulties to the analysis. In addition, court transcribers are trained to present verbal interaction in the courtroom as a readable report; thus it "may not be completely verbatim" (Walker 1993: 60). I could not therefore tell the extent to which the stenographer corrected or created speech errors in the interaction. While these issues do not rule out sociolinguistic research, the research questions need to be designed to take into account into these limitations.

Table 3. MAYCRIM corpus description

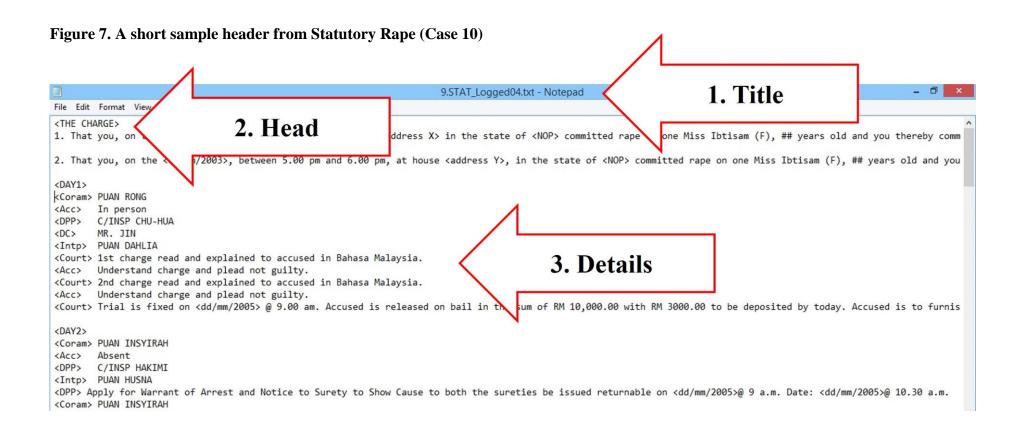
No	Codes and offences	Details	Language	Participants	Verdicts	Pairs of turns	No. of words
1.	FR	2011, 5 days	Mixed	C (4), W (6), D (1)	Discharged and acquitted	261	8,222
	Lodging false report	Full transcript					
2.	OB	2003, 9 days	Mixed	C (5), W (5), D (1)	Discharged and acquitted	122	14,022
	Possession of obscene CDs	Full transcript					
3.	OM	2006, 8 days	Mixed	C (7), W (5), D (1)	Guilty	107	12,758
	Outrage modesty	Full transcript			-		
4.	СН	2001, 12 days	Mixed	C (7), W (3), D (1)	Discharged and acquitted	45	9,998
	Voluntarily causing hurt	Full transcript					
5.	ROB	2005, 11 days	English	C (6), W (9), D (1)	Discharged and acquitted	28	14,191
	Robbery	Full transcript					
6.	THEFT	2011, 5 days	English	C (4), W (5), D (1)	Guilty	93	7,761
	Theft	Full transcript					
7.	COR1	2004, 5 days	English	C (6), W (13), D (1)	Guilty	51	34,885
	Corruption 1	Full transcript			-		
8.	COR2	2006, 27 days	English	C (8), W (8), D (2)	Guilty	316	67,072
	Corruption 2	Full transcript					
9.	BOT	2006, 8 days	English	C (5), W (0), D (1)	Guilty	NIL	10,779
	Breach of trust	Full transcript			-		
10.	SR	2006, 5 days	English	C (5), W (1), D (1)	Guilty	NIL	6,409
	Statutory rape	Full transcript					
11.	HT	2012, 11 days	English	C (7), W (9), D (1)	Guilty	236	9,399
	Human trafficking	Full transcript			-		
12.	DT1	2015, 16 days	English	C (4), W (13), D (2)	Guilty	2245	57,002
	Drug trafficking 1	Full transcript	_		-		
13.	DT2	2014, 6 days	English	C (4), W (2), D (2)	NIL	251	6,766
	Drug trafficking 2	Partial transcript					
14.	DT3	2013, 11 days	English	C 4), W (7), D (1)	Guilty	846	33,453
	Drug trafficking 3	Full transcript	-		·		
15.	CHEAT	2011, 6 days	Mixed	C (6), W (6), D (1)	Discharged and acquitted	475	18,800
	Cheating	Full transcript					
16.	MURDER	2013, 5 days	Malay	C (5), W (14), D (1)	Discharged and acquitted	498	15,268
	Murder	Full transcript	-				
			TOTAL			5,574	326,785

3.2.2 Data preparation

When I received the courtroom transcripts from the Court Registrar, four of the documents were in electronic form while the rest were paper documents. I therefore had to convert all paper documents to electronic ones by running them through a scanner with Optical Character Recognition (OCR) software (i.e. SmartOCR software). This is quicker than manually typing the documents into computers. However, one major drawback of scanning and OCR software is that the output is not 100 percent accurate. For example, I had to spell-check and correct the errors and sometimes because my data consists of Malay language, the software was unable to recognise some of the characters. Although this action was time consuming, indirectly I had the opportunity to read the documents which is a prerequisite in discourse analysis. Then, all 16 electronic documents were saved into Microsoft Word 2016 document (.doc) files.

Once the files were saved as .doc files, they became an editable document. At this stage I annotated all the trials with titles, headings and details of participants (i.e. Table 3) to aid my analysis and at the same time monitor the structure of my corpus and sub-corpus. I used the Standard Generalized Markup Language (SGML) coding system, where the "codes are enclosed between less than and greater than symbols: <....>" (Baker 2006: 39) so that it gives reference information for a particular file as can be seen in Figure 7 and so that *Wordsmith* would ignore this metadata in the analysis of the questions and answers. It is important to prepare the corpus carefully in advance because computers have no intelligence (Scott, 2012). In this case, once all 16 files were cleaned, glossed and annotated they were then saved as Plain Text (.txt) and Unicode format to allow *Wordsmith Tools 6.0* (Scott 2011) to read and process all the characters, SGML coding is convenient because *Wordsmith* can handle SGML codes (Baker 2006).

I named each file according to type of offence. In the example below, the filename: STAT_Logged04.txt stands for the statutory rape case that had been cleaned of sensitive information such as names, dates, addresses, or even citizenships whereby pseudonyms were used instead to avoid third party cross-referencing. I also included the charge, which is a formal accusation made against the accused at the beginning of each file, as a header. Then, all details and information of the proceedings are included in the files because by keeping this meta-information within the MAYCRIM corpus, they can be used at the analytical stage.



The 'clean-up' process is also important to remove 'noise' or sensitive information (see section 3.8 on ethical considerations for information on anonymisation) from the data. This noise, such as interruption from the judge or a question from the court translator were 'excluded' by inserting them between less than and greater than symbols, because such interruptions affected the frequency calculations of the talk by the counsels and witnesses that are the focus of this study. The raw data that I received also include judge's judgments and submission writings by counsels; these elements are also removed from the corpus because they will interfere with the statistical analysis of the question and answer data. However, although these interruptions were excluded from the computer analysis, they remain in the data because they could be important discourse features for the discourse pragmatic discussion or for future research. Figure 8 shows a short example of a .txt file that has been cleaned from unwanted elements and personal information.

In this example, all participant names were in pseudonyms and information about the offences such as crime scenes, dates, ages or identification numbers have been removed and replaced to make sure their confidentiality is assured.

Figure 8. A short example of cleaned data from Human Trafficking (Case 11)

```
3.HT_Logged05.txt - Notepad
File Edit Format View Help
<Court> And you required two more days?
<DPP> Yes. Two more days would be sufficient your Honour.
<Court> Accused do you have defence counsel? and you still plea of not guilty?
<Acc> I was asked to carry those immigrants.
<Court> Read again the charge and take his plea.
<Court> Charge is read and explained by Miss Aida court interpreter in Bahasa Malaysia,
<Acc> Understand the charge and still maintain plea of not guilty as per charge the accused is unrepresented and do not wish to be represented by defence counsel for to
<DPP> If I may Your Honour to call the first witness that is Sergeant Graham.
<EXAM PW1>
<PW1> Name: Graham
<PW1> NRIC: ######-##-####
<PW1> Age: ## years old.
<PW1> Occupation: Police officer (Sergeant)
<PW1> Address: Unit MPV cawangan Balai Polis Kapit.
<A> Oath states and affirm in Bahasa Malaysia
<EXAMINATION IN CHIEF>
<Q> How long have you been with the police force?
<A> I have been in service for more than 30 years with the police force
<O> How long have you been in the MPV unit of Kapit?
<A> About two years since 16.9.2010.
<Q> What is your role in this case?
<A> I am the arresting officer.
<0> When was the arrest done?
<A> The arrest was made on the <dd/mm/2012> @ 1530 hours.
<Q> Where was the arrest made?
<A> The arrest was made at km 9 Jalan Kapit/Tuaran.
<Q> Who were with you at that time of the arrest?
<A> I was with Cpl Nyatoh, Cpl Eloy and Sgt Bilun.
<Q> Can you identify all those police officers that you have mentioned.
<A> Yes.
<Q> Pray to call all the names listed above Cpl Nyatoh, Cpl Eloy and Sgt Bilun.
<Q>> Sergeant, boleh cam siapa mereka?
<A> Boleh
<Q> Siapa ini?
<A> Sgt Bilun and Cpl Eloy.
<Court> PWI identified Sgt Bilun and Cpl Eloy,
```

3.2.3 Data transcription

Since the MAYCRIM corpus contains Malay as well as English, I need to make the data readable and accessible to non-Malay speakers by adopting the Leipzig Glossing Rules (Max Planck Institute, 2008). To gloss the Malay data into English, I have provided a transliteration, word-for-word gloss and an idiomatic translation as demonstrated in Example A below. First, a transcription key is also provided in Table 4 below to help the reader.

Table 4. Transcription key

Codes	Explanation
1	Line numbers (Only the idiomatic English line)
J	Justice (Judge, Magistrate or Court)
P	Prosecuting counsel
DC	Defence counsel
$\overline{\mathbf{W}}$	Witness or Complainant
D	Defendant
\rightarrow	To indicate highlighted questions or answers

Example A. Source: Direct examination, Case 16

	J:	Dibawah seksyen apa?
		Under section what?
1		Under what section?
	P:	Dibawah seksyen 90A 1950 Akta Keterangan
		Under section 90A 1950 Act Evidence
2		Under section 90A 1950 of the Evidence Act.

This example is an extract of a question asked by a judge to prosecuting counsel in a murder case. On top of each example, I introduced the source of the excerpt, whether it is taken from a direct or cross-examination, since the analysis concerns the complex adversarial phase of witness examinations and counsels' argumentation (Heffer, 2005); thus every choice made by the participants such as in direct and cross-examination might influence the outcome of the trial. For instance, the above example seeks clarification from the prosecuting counsel in respect to the evidence presented by the witness in direct examination.

When producing the idiomatic translation, one major challenge that I faced was familiarisation with legal and criminal terms, as I do not have a legal background. Another challenge was that some of the words in Malay do not have specific English translations, such as the particle-lah. This is because the Malay language has "shallow orthography-phonology mappings, transparent morphology and simple and short syllabic structures" (Yap et al., 2010: 992); thus some words used in Malay and English do not have "direct one to one mapping" or "the use of adjectives in English language and Malay language is different" (Hong, 2013: 775). Unfortunately, I did not manage to find any academics that have background in Malay language at the University of Leeds or within my radius of study that I can work closely with. Thus, I sought help from court interpreters in Malaysia who are familiar with Malaysia's legal system and who received linguistic and translation training. First, when I contacted the court personnel, I was advised to find a compatible translator because not every translator has a good command of English. Once I had located the interpreters, I personally contacted them and sought their advice. I received constructive feedback on my translations which minimised misinterpretations or mistranslations.

In the following section, I introduce the pilot study, its findings and how it influenced the main study (i.e. the SHIPMAN corpus was used to refine methodology rather than a full-scale pilot study) because the MAYCRIM corpus was built from scratch.

3.3 The Shipman trial – the pilot study to refine methodology

When building a corpus from scratch, it is important to conduct a pilot study to test the validity or appropriateness of the methodology used, because a feasibility study provides valuable insights for the researcher in preparation for a wider study. Therefore, in my case, a pilot study which utilised a corpus-based method was conducted to investigate the use of questions by lawyers in the Shipman trial (The Shipman Inquiry, 2001). A second reason for carrying out a pilot study of witness examination data was because of the non-availability of Malaysian data in my first year and the need to use publicly available data. Courtroom transcripts are not usually made available for public access, but The Shipman Inquiry website made the trial transcript available. It is a 58-day criminal trial (available online from: http://webarchive.nationalarchives.gov.uk) that commenced in October 1999 and continued until January 2000 at Preston Crown Court.

All 58 days of the transcript were downloaded, and a "specialised corpus" (Flowerdew, 2004: 11) of questions and answers was designed from days 4 to 39, containing 500,000 words of questions and answers. Although small and only one trial, it was "best suited" (Flowerdew, 2004: 15) to understand specific linguistic patterns in questions and has the advantage of enabling the detailed study of questions, but particularly tag questions, in courtroom talk. The data was taken from the lead counsels (i.e. Mr. Henriques and Miss Davies) and any examination and cross-examination done by their assistants (i.e. Mr. Winter, Mr. Wright and Miss Blackwell) was removed. Table 5 presents the pilot corpus data. In the pilot study all the files were in an ANSI code which is fine for the SHIPMAN corpus because the language of the corpus is English (Scott, 2018). However, I learnt that since the MAYCRIM corpus has Malay language, it is best and safer to convert the files into Unicode (Scott, 2018) so that the machine can recognise the encoded text.

The pilot study asked a descriptive research question: What are the types of interrogative utilised by lawyers in examination-in-chief and cross-examination in the Shipman trial and their frequencies? To answer this, 15,647 tokens of questions were extracted from the examination-in-chief and cross-examination activities by lead counsels (i.e. Mr. Henriques and Miss Davies) that took place between Day 4 and Day 39. These questions were extracted through convenience sampling (Rasinger, 2013) on the basis of data availability. Thus, the findings cannot be generalised to all courtroom discourse. However, all the questions formed by the two counsels were extracted, so this case study gave me an indication of larger trends and pointed me to the importance of tag questions. The available transcripts had already been transcribed from the official recording by a company of professional court transcribers. As in the MAYCRIM corpus, some of the speech features such as hesitation or non-verbal modes are not found in this data. The trial begins with an opening speech by Mr. Henriques (lead prosecutor) from Day 2 to Day 3, which I did not examine (as it is monologic). The trial then continues with the prosecution witness examinations and the defence witness examinations from Day 4 to Day 39 as can be seen in Table 5 below. Almost 160 witnesses were called upon to give evidence in the trial, 89 for the prosecution and 71 for the defence, including Harold Shipman who faced 10 days in the witness box as a defence witness. Closing speeches (which were not analysed, as they are monologic) come on Day 40 to Day 42 where the lead barristers from the prosecution and defence

summarised their arguments. Day 43 onwards to Day 58 is where Mr. Justice Forbes summed up the case and, following the guilty verdicts, sentenced Dr. Shipman.

Table 5. Pilot corpus: dataset of Mr. Henriques and Miss Davies

Description	Mr. Henriques	Miss Davies			
Examination-in-chief	Day 4 to Day 26	Day 27 to Day 38			
	153,227 words	142,916 words			
	4416 questions asked	3614 questions asked			
Cross-examination	Day 32 to Day 38	Day 4 to Day 27			
	141,107 words	156,080 words			
	3894 questions asked	3723 questions asked			
Number of witnesses	89 in examination-in-chief,	Harold Shipman and one,			
examined	Harold Shipman in cross-	Mr. David Mycock, in			
	examination.	examination-in-chief			
		71 in cross-examination			
Total questions	8310	7337			

There is a difference in the number of witnesses examined by each barrister because some witnesses (i.e. expert witnesses and police officers such as Dr. John Rutherford or Detective Sergeant O'Brien) were not cross-examined by Miss Davies, but by her assistant.

The pilot study aimed to test the appropriateness of a corpus-based method to examine the ways in which questions, and, in particular, tag questions are used by lawyers in the UK. The results revealed important quantitative and qualitative findings in relation to the analysis of courtroom transcripts.

The research design and analysis conducted in the pilot study informed the thesis data collection (i.e. Malaysian criminal trials) and the focus on how questions are used by legal counsels in the examination and cross-examination activities. In addition, this pilot study also assisted the researcher to consider the existence of coercive and conducive questioning and their legal pragmatic functions in Malaysian criminal courtrooms. The pilot study also highlighted the limitations with officially transcribed data, as the transcription of the trial was not carried out by linguists; thus, the transcripts do not have hedges, pauses, and multimodal elements such as gesture, gaze etcetera. Multimodal elements that co-exist with the spoken language are interesting to study because they "open up a more microcosmic direction" (Matoesian, 2010: 556) to explore communication in the courtroom. My experiences in developing the Shipman

corpus for the pilot study also brought advantages to processing the raw data of the 16 criminal trial transcripts in relation to cleaning and preparing the data using the Standard Generalized Markup Language (SGML) coding system. My experience also led me to slice the MAYCRIM corpus into trial activities (i.e. examination-in-chief, cross-examination and re-examination) so that it can be used to answer overarching questions: to examine the variety of questioning and answering strategies practices in the criminal courtroom.

In the pilot study my focus was on tag questions, because I found them to be particularly frequent in cross-examination and this has pragmatic implications for courtroom talk. Prior study of tag questions using a corpus-based approach in forensic linguistics found that tag questions have various communicative functions such as "building rapport and exerting influence" (Rubin, 2017: 46) in crisis negotiations. There are a number of researchers who investigated the polarities in tag questions (Berk-Seligson, 1999; Gibbons and Turell, 2008) in forensic settings, such as in police interrogation or courtroom examination. They found that tag questions are highly coercive because "a tag is specifically intended to prompt a respondent to confirm or deny a version of events presented in the question" (Newbury and Johnson, 2006: 221). Tag questions, which are leading questions, project anticipated answers and have potential "to stimulate a monologue and control the trajectory of the talk" (Hobbs, 2003: 477). Despite the promising research on tag questions in courtroom discourse, until recently there has been no robust study conducted on tag questions using a corpus-based approach. Thus, the pilot study attempted to demonstrate the potential of the corpusbased approach to reveal interesting and significant patterns of tag questions in courtroom discourse.

3.4 Specialised corpora

Corpus construction and data collection is one of several critical issues in corpus linguistics (McEnery and Hardie, 2012). Thus, how can I ensure that my dataset is good enough to match my research questions? McEnery and Hardie (2012) discuss that there are two broad approaches in developing data for analysis: the monitor corpus approach and the balanced or sample corpus approach. The first approach aims to build a dataset that expands over time and contains a range of text collections. A good example of the monitor corpus approach is the development of a reference corpus such as The Bank of

English (BoE) or the Corpus of Contemporary American English (COCA). A monitor corpus is also used as one of the methods to build dictionaries. On the other hand, the balanced or sample corpus is built to "try to represent a particular type of language over a specific span of time" (McEnery & Hardie 2012: 8, Baker 2012) such as the British National Corpus known as the BNC. This approach seeks to develop a corpus that can represent a specific type of language over a defined sampling frame. An example of the balanced or sample approach is a diachronic corpus which has been built to represent a language variety over a period that can be used "to track linguistic changes" (Baker 2012: 26) in a particular language.

I built two specialised corpora for this study: the SHIPMAN corpus for the pilot study and the MAYCRIM corpus for the main study. Each of these corpora is specialised in that it is a compilation of spoken texts, that is, official courtroom transcriptions. A specialist corpus such as the MAYCRIM corpus is collected to yield insights into the use of language in courtrooms, particularly in Malaysian criminal trials, and "to answer specific research questions" (Koester 2012: 71). Baker (2012: 26) mentions that a specialised corpus is of great significance for discourse analysis because it is built to study specific aspects of language and made up from a defined set of "criteria, time, place, genre and sampling".

For this study, there are few important considerations that I need to think carefully about so that the content of the MAYCRIM corpus is balanced with issues of quantity. First, the most important consideration in building a corpus is, it must be designed to fit the objective of the research. In this study, I collected 16 spoken texts from Malaysian criminal trials because the objective of this study is to investigate questioning and answering strategies used by the legal counsels and lay-people. Thus, I specifically requested official transcripts from the criminal courts rather than civil proceedings, because the discourse features under investigation are specific to criminal proceedings. Secondly, I need to make sure that the samples are "situational" and "linguistically" representative (Biber 1993: 243) of the population, that is language in courtrooms. Situational representativeness refers to the "range of registers and genres" (Koester 2012: 69) that I need to include in my dataset. In the MAYCRIM corpus, I included all the examination and cross-examination from the 16 trials and sliced the raw data into the generic structure of witness appearance (Gibbons, 2003): opening, examination-in-chief, cross-examination, re-examination, and dismissal by judge. I

excluded police statements and monologic speeches by lawyers, because these are not part of the generic structure under investigation. Linguistic representativeness also relates to "the range of linguistic distributions" (Koester 2012: 69) found in the targeted text types or speech situation. The linguistic situation in the Malaysian courtroom typically consists of code-mixing and code-switching between two or more languages. In Malaysia, English, Malay, Mandarin, Tamil or indigenous languages (usually in Sabah and Sarawak) are accepted in the courtrooms because witnesses have the right to testify in the language that they are most comfortable with. Therefore, MAYCRIM, though small, is linguistically representative because it reflects the two main languages (i.e. Malay and English) spoken by Malaysians.

A specialised corpus is very handy in the study of discourse analysis, in this case, forensic discourse analysis. They are a few advantages of working with a small corpus as I found in developing the corpus. Firstly, I found that a small and specialised corpus is fitting for the study of recurrent grammatical items (Koester, 2012; Reppen, 2012). One of the research questions in this study is to seek types and the frequency of questions articulated by the lawyers, so by working with a small corpus it allows the researcher to analyse the grammatical structure of all the questions such as the negative grammatical yes/no questions in the dataset. Secondly, a small corpus allows a "much closer link between the corpus and the contexts" (Koester 2012: 67), for example, the pattern of questions used in cross-examination with their legal-pragmatic functions. It also gives insights to the researcher of patterns of language used in criminal proceedings, highlighting the hybrid trial system (based on the Anglo-American system) in Malaysia that is still under-researched. Another advantage of a small corpus is that all high frequency items that materialise from the corpus can be examined. Finally, I also found that when working with a small corpus I have the chance to "familiarise" (Partington et al. 2013: 259) myself with the corpus and the contexts of language in courtrooms because of having to read and select which texts should go in the corpus, obtaining permission, converting paper documents into electronic format, editing and annotating files.

Table 6 describes the parameters of defining the MAYCRIM corpus as a specialised corpus adapted from the work of Flowerdew (2004).

Table 6. Parameters for defining specialised corpora, adapted from Flowerdew (2004)

Parameters	Details/Examples	Specialised corpus built for this study		
Specific purpose for compilation:	To investigate particular grammatical, lexicogrammatical, discoursal or rhetorical features.	To investigate types of questions and discoursal features used by counsels in the examination activities and to investigate how lay-people use language as answering strategies during courtroom questioning.		
Contextualisation:	Setting, Participants, Communicative purpose	Setting: Courtroom interaction Participants: lawyers/judges witnesses/defendants Communicative purpose: dialogic interaction to form sequential questions and speech acts		
Size:	20,000-250,000 words	Small-scale corpus: MAYCRIM: 326,785 words SHIPMAN corpus: 541,778 words		
Genre:	Promotional	Legal-genre		
Type of text/discourse:	Biology textbooks, casual conversation	Courtroom interaction		
Subject matter/topic:	Economics, the weather	Criminal trials of various offences: corruption, breach of trust, statutory rape, murder, human trafficking, drug trafficking, robbery, in possession of obscene compact discs, outrage modesty, voluntarily causing hurt, lodging false reports, theft and cheating.		
Variety of English and language.	Learner, non-standard (e.g. Indian, Singaporean)	British and Malaysian spoken English, Malay.		

Table 6 illustrates the MAYCRIM corpus as a specialised corpus; it is designed to investigate courtroom discourse, that is, the questioning and answering strategies used by legal counsels and lay-persons in criminal trials. The MAYCRIM dataset is built with a specific focus on dialogic interaction between lawyers/judges with witnesses/defendants. In this dataset 118 legal counsels (i.e. judge(s), prosecutor(s) and defence lawyer(s)) are involved in the interaction with 111 witnesses who were called to

give evidence to the courts. A total of 20 accused were charged with various criminal offences as can be seen in the table above. The size of this corpus is 326,785 words and contains a variety of English (i.e. Malaysian English) and Malay. Although both the pilot and MAYCRIM corpora are small, due to "judgement" [and] "convenience" (Meyer, 2002: 44 as cited in Flowerdew: 2004: 18), the size for this investigation is convenient because it suits the objective, which is to investigate the statistical value of types of questions in examination and cross-examination activities and this is quite a large amount of data devoted to questioning activities. In addition, the pragmatic factors of data accessibility and the time needed to prepare the MAYCRIM corpus to allow sufficient time for analysis are those that determined the size of these specialised corpora. Nevertheless, I examined all the questions asked by the counsels in the trials. To conclude, I found that a small specialised corpus is the best corpus for this forensic discourse analysis as I have access to the background information of the social and cultural context that surrounds the dataset, which aids data interpretation.

3.5 Reference corpora

A reference corpus is usually a large corpus from a wide range of material to represent a specific language variety (Baker 2006). It is essential to use a reference corpus because the MAYCRIM corpus is representative of a specific "genre of language", so reference corpora can be used to reveal "evidence of particular discourses" (Baker 2006: 43). The International English Corpus (ICE) and Singapore corpus were used as reference corpora for this study because the ICE corpora are representative of World Englishes and the Singapore one is relevant for my data. I can compare my MAYCRIM dataset with the two corpora to investigate pragmatic features found in Malaysian criminal trials, because, they act as "a good benchmark of what is normal in language" (Baker 2006:43). Finally, reference corpora are useful in this study because I can test my hypotheses that certain words are used by legal practitioners to achieve certain communicative goals in courtroom interaction. For example, I can investigate conspicuous terms found in examination-in-chief, cross-examination and reexamination by looking at the frequency of such terms in a reference corpus, then providing evidence that lawyers strategically designed their "institutional interaction" (Drew & Heritage 1992: 3) to achieve specific goals. Thus, it is evident that a reference corpus is best to be used in discourse analysis.

The International Corpus of English or ICE is a comprehensive project launched in 1990 with the focus of collecting material for comparative studies of English worldwide. Although ICE follows the Brown/LOB format, what makes it different is that ICE includes a high proportion of spoken texts "making up 60 percent of the one-million-word total" (Lee 2012: 109). The ICE project involves 23 countries or regions, including Malaysia and Singapore, in compiling a one-million-word corpus of each national or regional variety of English. Each ICE team follows a standardised corpus design and annotation scheme to make sure that all components are parallel (Nelson 1996). In addition, each English corpus sample is collected from adults of 18 years old and above who have used the medium of English to at least the end of secondary schooling.

In this thesis, I used the Singapore English spoken corpus extracted from the ICE website in February 2016 with the permission of the ICE coordinator. The Malaysian ICE corpus, specifically the spoken corpus, was not available at the time of extraction. Despite the advancement of language corpora and corpus-based studies in Malaysia (Joharry and Rahim, 2014), only a small amount of the spoken corpus is already compiled by the local linguists. To date, the Malaysia ICE spoken corpus is being compiled and not ready to be used as a reference corpus yet. Singapore and Malaysian English share similar linguistic features, so this is not too much of a compromise and is better than having no geographically similar reference corpus. This corpus was compiled by members of the Department of English Language & Literature from the National University of Singapore (NUS). The corpus is divided into two categories: spoken and written texts. For this investigation, I downloaded and used the spoken texts, which is made up of 500 texts from dialogue and monologue categories. The two categories are further divided into private, public, scripted and unscripted texts. I compiled all 500 spoken texts and saved them into .txt files in Unicode format so that they can be read by Wordsmith Tools 6.0. Then, Wordsmith converted all 500 texts of Singapore ICE into a single wordlist file, namely SE2_Reference_wordlist.lst. that I used as the reference corpus for my investigation. This is done "by processing the words and looking at the most frequent of them" (Scott 2012: 148) with Wordsmith Tools 6.0 so that a keyword analysis can be conducted using the Singapore ICE corpus with the MAYCRIM corpus.

In the case of the Malay reference corpus, the texts were compiled with the help of David Woolls. The Malay reference corpus is a monolingual corpus, which was derived from Malaysian Wikipedia, as downloaded on 1st of July 2016. The corpus is representative of spoken and written Malay and, since I have limited access to spoken corpora, this is the only available corpus that can be used for this investigation. The texts were harvested from the web, and then compiled into a wordlist. However, this file contains some words from Chinese, Arabic, Greek and other, therefore editing is needed to make sure that the reference corpus is reliable to be used in this investigation. The use of Singapore ICE and the Malay reference corpus are further discussed in the analysis chapters.

3.6 Corpus linguistic tools and automated and manual searching

Wordsmith Tools 6.0, "a software package intended for lexical analysis" (Scott 2008: 96) is the main corpus tool used in this study. Since its launch in 1996 it received various developments and improvements for language analysis and is suitable for this investigation because it allows an automated analysis to be conducted. It has a feature that allows the researcher to look at the most frequent words (i.e. wordlist) that exist in the corpus, and I can determine "unusual frequency" (Scott 2012: 149) of particular words, that is, a key word analysis in the MAYCRIM corpus.

A keywords analysis "gives a measure of saliency, whereas a simple word list only provides frequency" (Baker, 2006: 125). The justification for conducting a keyword analysis is to reveal the "main foci of a corpus in terms of indicating words or phrases" (Baker, 2010b: 133-134) that are worthy of our attention. In this case, keyword analysis is a sophisticated way to characterise the direct and cross-examination activities in the MAYCRIM corpus. A keyword analysis can be conducted by creating wordlists of targeted items (e.g. wordlist of cross-examination) to determine the unusual frequency of words by comparing the wordlists with a reference corpus or with other wordlists. Singapore ICE and a Malay reference corpus are used to generate keyword lists from the MAYCRIM corpus. Figure 9 shows an example of a keyword analysis that compares two pre-existing word-lists, from direct and cross-examination of the Malaysian English sub-corpus, that is, a compilation of wordlists from 10 trials conducted fully in English (see Table 3).

Figure 9. Key word lists of English corpus from direct and cross-examination

N	Key word	Freq.	%	Texts	RC. Freq.	RC. %	Keyness	^	N	Kaymand	Freq.	%	Texts	RC. Freq.	RC. %	Keyness
1	#	4,982	6.70	1	10,611	0.96	9,632.12	-1	1	AGREE	316	1.15	1	135	0.01	1,808.21
2	EVHIDIT	1,098	1.48	1	14		5,939.26	,	2	PHOTOGRAPH	175	0.63	1	9		1,230.29
3	MARKED	999	1.34	1	56		5,107.01	,	3	EXHIBITS	165	0.60	1	4		1,189.62
4	EXHIBITS	488	0.66	1	4		2,655.95		4	BOX	180	0.65	1	112	0.01	955.61
5	PLASTIC	427	0.57	1	38		2,105.60	,	5	#	914	3.31	1	10,611	0.96	944.43
6	YES	751	1.01	1	1,162	0.11	1,747.29		6	YES	317	1.15	1	1,162	0.11	879.09
7	DACKET	301	0.40	1	15		1,547.06		7	ACCUSED	152	0.55	1	68		861.76
8	REFER	363	0.49	1	106		1,521.68		8	YOU	1,197	4.34	1	18,175	1.64	828.33
9	ACCUSED	335	0.45	1	68		1,497.12	,	9		121	0.44	1	14		810.55
10	ENVELOPE	268	0.36	1	15		1,367.72	,	10	DISAGREE	100	0.36	1	19		640.00
11	PHOTOGRAPHS	267	0.36	1	38		1,253.13		11	DRUGS	102	0.37	1	24		636.93
12	IDENTIFY	274	0.37	1	56		1,223.00	,	12	PHOTOGRAPHS	105	0.38	1	38		617.05
13	PRAT	207	0.28	1	17		1,027.22		13	CUCTOM	91	0.33	1	12		603.07
14	PILLS	182	0.24	1	0		1,006.97	,	14	DO	394	1.43	1	3,257	0.29	593.94
.5	PACKETS	175	0.24	1	1		956.02		15	CORP	76	0.28	1	0		565.05
.6	POY	245	0.33	1	112	0.01	926.11		16	PAC	84	0.30	1	24		511.32
7	DID	485	0.65	1	1,080	0.10	887.37	,	17	DID	214	0.78	1	1,080	0.10	484.26
.8	WITNESS	191	0.26	1	39		852.46		18	MG	63	0.23	1	4		438.26
.9	PHOTOGRAPH	159	0.21	1	9		810.65	,	19	ROOM	127	0.46	1	333	0.03	418.7
20	RECEIVED	214	0.29	1	101		801.98		20	WEIGHT	80	0.29	1	61		404.90
21	BAG	170	0.23	1	24		798.46	,	21	PAK	56	0.20	1	2		399.0
22	INSPECTOR	170	0.23	1	24		798.46	,	22	REFER	87	0.32	1	106		386.39
23	SIGNATURE	153	0.21	1	7		789.87		23	SAMPLE	68	0.25	1	35		375.25
24	CONTAINING	158	0.21	1	23		739.28		24	NO	320	1.16	1	3,396	0.31	366.61
25	SUBSTANCES	135	0.18	1	3		718.33		25	STAUQI	48	0.17	1	0		356.83
26	INSIDE	210	0.28	1	145	0.01	700.61		26	DON	52	0.19	1	6		348.28

Note that, the MAYCRIM corpus is a complex corpus due to the languages that existed in the trials as shown in Table 3. Therefore, I have compiled the wordlists according to the trial language so that they are ready for keyword analysis. The following six wordlists have been created for this study:

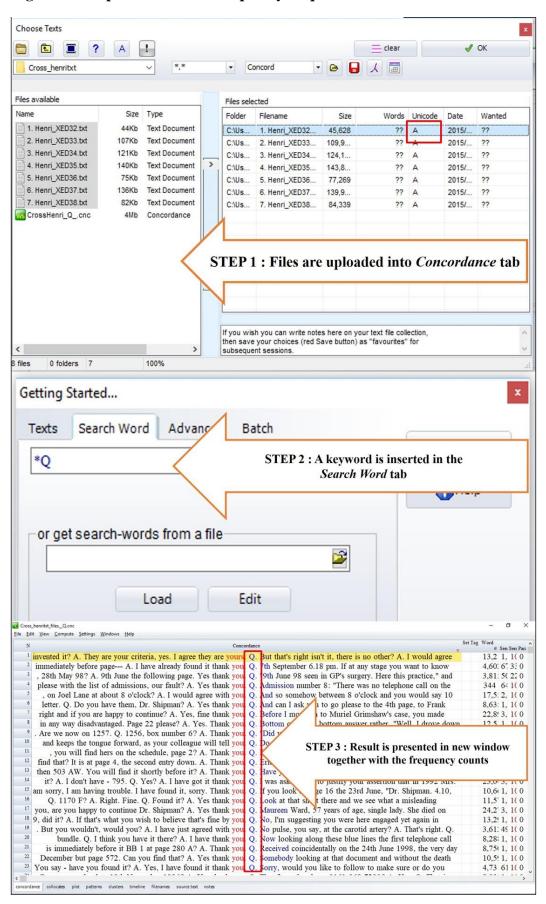
- 1. ENGLISH_ALL_EXAM_lst. (10 trials conducted in full English from Direct examination)
- 2. ENGLISH_ALL_CROSS.lst, (10 trials conducted in full English from Cross-examination)
- 3. MALAY_MURDER_EXAM.lst (1 trial conducted in full Malay from Direct examination)
- 4. MALAY_MURDER_CROSS.lst. (1 trial conducted in full Malay from Cross-examination)
- 5. MIXED_ALL_EXAM.lst (5 trials conducted in code-mixing of Malay and English from Direct examination)
- 6. MIXED_ALL_CROSS_lst. (5 trials conducted in code-mixing of Malay and English from Cross-examination)

In this study, Wordsmith is set with a p (or probability) value of 0.00001 to give confidence that the results did not occur by chance, but as a result of the lawyers' choice to use that word repeatedly in direct and cross-examination activities. Figure 9 presents the top 26 key words ordered in terms of keyword strength in direct and crossexamination activities. The keyness column assigns a keyness value to each word, where the higher the score, the stronger the keyness of that word. For example, statistically speaking, the auxiliary verb did accounts for 0.65 and 0.78% respectively of the direct and cross-examination in the MAYCRIM and for only 0.10% of the words in the SE (i.e. Singapore English) reference corpus, further indicating their keyness in cross-examination activities. As Figure 9 indicates, the keyword analysis characterised the English corpus with different and significant words that are worthy of our attention. The top 26 words in direct examination are dominated by material process verbs, which indicates that direct examination is the place where a narrative of events is created for factfinders. In cross-examination, the top 26 words are collocates of the pronoun you, a deictic marker that personalises the questions used by lawyers to witnesses (see Chapter 4). In addition, there is also negation of no and disagree that potentially

describe resistance from witnesses. Then from these distinct words, concordance analysis is conducted to reveal the repeated patterns found in both trial activities.

As well as wordlists, concordance searches are important. A concordance is defined as "a list of all occurrences of a particular search term in a corpus" (Baker 2006: 71) and is one of the most effective techniques to allow researchers to conduct a close examination of the target discourse. In this investigation, I used concordance analysis to categorise and determine types of questions used by the Malaysian legal practitioners in the MAYCRIM corpus. My work with the pilot corpus enabled me to develop corpus linguistic methods for searching for questions. I developed a three-part procedure, beginning by uploading only relevant files, such as cross-examination files in the case of the Shipman corpus. The second step involved a keyword which was inserted in the Search Word tab as shown in Figure 10 below. In this example I used an asterisk (*) as search word syntax (Scott, 2018) to extract all questions in the cross-examination activities so that the frequency of questions can be determined. The search word syntax is very helpful for the MAYCRIM corpus because I can easily retrieve concordance lines. The final step is where the results are presented as a concordance in a new window, together with the frequency counts. One of the many advantages of a concordance search is that it allows the user to sort and classify the entries. These two functions are very useful for my investigation because the concordance produces repeated patterns while the Set tab allows the researcher to classify the entries accordingly. This will be further explained in the following discussion.

Figure 10. Steps to determine frequency of questions



In the pilot study, all the data were run through the same steps for both counsels and activities (i.e. examination and cross-examination) because we expect to find that different questions are asked in different activities. This is because the two activities in the trial have different scopes; in examination-in-chief, witnesses are given the opportunity to present their stories because lawyers intend to display relevant evidence to factfinders (Westera et al., 2017). Therefore, open questions are favourable in examination-in-chief. However, in cross-examination, where lawyers incline to challenge and discredit witnesses as "being non-responsive or behaving inappropriately" (Galatolo and Drew, 2006: 662), more coercive questions (Danet and Bogoch, 1980b; Woodbury, 1984; Gibbons and Turell, 2008) are used to lead and control witnesses' answers.

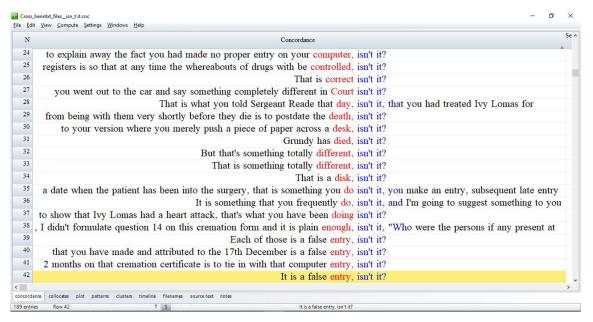
The frequency of questions is, therefore, first determined using an automated search, which is then followed by a manual search. One of the advantages of an automated search in *Wordsmith Tools 6.0* is it can determine listings with specific words (Reppen, 2001). In other words, it is very useful to determine questions with specific formal properties such as negative *yes/no*, tag, and *wh*-questions. For the automation stage, a set of search terms that reflects the formal properties of *yes/no*, declarative, *wh*-, tag, alternative and non-sentence questions is built so that concordance listings can be generated. Table 7 provides some examples of search words used to generate the frequency count.

Table 7. Examples of search words to determine the frequency (SHIPMAN)

Category of questions	Label	Manual	Automated	Search words
Yes/no	1	V		Is, do, isn't,
Tag	2		$\sqrt{}$	Isn't he, didn't he, isn't she, wouldn't she, would you not?
Declarative	3	V		-
Wh-	4	$\sqrt{}$	V	Who, what, who, how, which, when, why
Alternative	5	V		-
Non-sentence	6	V		-

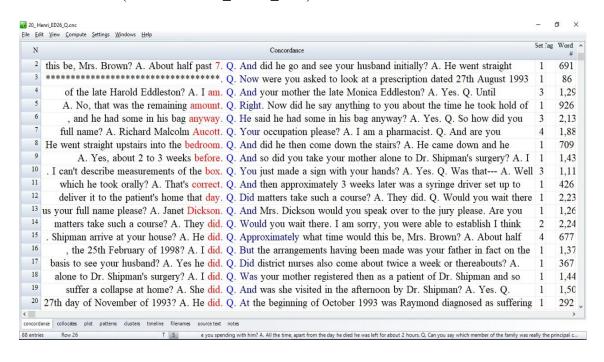
Some categories of questions such as alternative, non-sentence and declarative are determined manually because they do not have specific grammatical properties to help *Wordsmith Tools* find them. However, this automated search brings the advantages of determining most of the *yes/no*, *wh* and tag questions, because they possess specific grammatical properties that differentiate them from the others. As an example, a specific search term of *isn't it* is entered to determine the frequency of tag questions that have this as the operator from Mr. Henriques's cross-examination activity in the Shipman trial. The procedure from Figure 10 is repeated with different search words, and the concordance reveals that 189 tag questions with the *isn't it* operator occurred in the search. Figure 11 illustrates the concordance of tag questions with *isn't it* as the operator.

Figure 11. Concordance of tag questions with 'isn't it' operator (Mr. Henriques' cross-examination) (18 of 180 occurrences)



The manual categorisation is carried out by numbering each category accordingly, as shown in Table 7. *Wordsmith's* [Sort] column allows the user to sort and label questions accordingly, and this made it easier to see patterns in the data. This feature is available in the concordance interface that can be seen in Figure 12 (see column 2). It should be noted that the labels 1, 2, 3 and 4 indicate *yes/no*, tag, declarative and *wh*-questions, respectively.

Figure 12. How yes/no, tag, declarative and wh-questions are manually sorted and labelled (Source: Henri Exam D26)



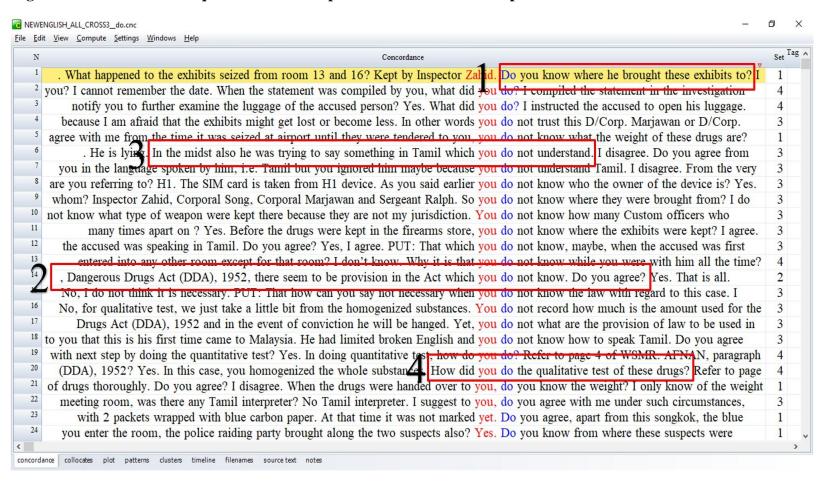
Having developed this procedure in the pilot study it was replicated in the main study. I used an automated search to extract a list of concordances and this was then followed by a manual search. Table 8 shows an extended set of search terms to determine the frequency of questions in MAYCRIM (adding Malay equivalents of the English terms).

Table 8. Examples of search words to determine frequency of questions (MAYCRIM)

Category of questions	Label	Manual	Automated	Search Words
Yes/No	1	V		Is, do, isn't, adakah, bolehkah,
Tag	2		$\sqrt{}$	Isn't he, didn't he, isn't she, wouldn't she, is that right? betul tak?
Declarative	3	V		-
Wh-	4	V	$\sqrt{}$	Who, what, how, which, when, why, siapa, siapakah, apa, apakah, bagaimana, bagaimanakah
Alternative	5	V		Or/atau
Non-sentence	6	V		-

Figure 13 is an example of concordance lines for *yes/no* questions with *do* operators generated by *Wordsmith*. The automated search reveals that there are 394 questions that are formed by the *do* operator. Then, the manual categorisation is carried out by numbering each category accordingly as can be seen in the Set column. There are four types of questions found in the cross-examination sub-corpus with the automated search of *do*-operator; that is: *yes/no*, declarative, *wh*- and tag questions. The concordance analysis reveals repeated patterns with *do*-operator that is helpful for quantitative distribution.

Figure 13. Concordance of questions with do operator in MAYCRIM corpus



The concordance lines give access to information on the types of questions found in the cross-examination. From the do-operator, a cluster analysis can be conducted so that all potential patterns can be extracted that are worth discourse pragmatic analysis to discover their pragmatic functions in courtroom talk. Cluster analysis is another potential way to spot which words may be used by lawyers differently across direct and cross-examination. Wordsmith Tools 6.0 allows two lists to be compared against each other, in order to determine "which combination of words occurs more frequently in one text or corpus" (Baker, 2006: 140). Wordsmith's users also can manipulate and specify the cluster size that they want. For example in this investigation, I have specified the size of the cluster within four to five words to the left and right with the minimum frequency set to 1 (see section 4.2, pages 83-84 for a detailed example of word clusters). To demonstrate here, taking a cluster size of three with a minimum frequency of five, a list of key clusters was obtained by comparing the do-operator in direct examination with those in cross-examination activities. I found that clusters of how do you that made a wh-question, are more apparent in direct examination than cross-examination (i.e. 112 in direct, 2 in cross). However, in crossexamination one of the interesting key clusters is the do you agree (i.e. 215 in cross, 0 in direct) which highlights that cross-examination activities are dominated with yes/no questions. This observation might suggest that, from a discourse-pragmatic perspective, one aspect of the language of the cross-examiners is to exercise their power and control over witnesses through a controlling yes/no question which usually requires a minimal response of either yes or no only. Cluster analysis is not only a "useful supplementary form of analysis" (Baker, 2004: 346) but also "useful in helping researchers understand how individual keywords are used in context" (Baker, 2004: 356). Seeing the potential of cluster analysis, this investigation also conducted cluster analysis as can be seen in Chapter 4.

From the procedure explained above it is observed that the corpus method provides possibilities of accuracy and impartiality in the analysis (Archer, 2009); however, it also has some limitations for language analysis because its "context" (Flowerdew, 2004: 16) is taken out. Thus, this investigation combines qualitative analysis with the corpus approach to allow context to be taken account of, as demonstrated for example in Baker *et al.* (2008) and Partington, Duguid and Taylor (2013).

The statistical values collected also need an explanation from a pragmatic perspective because they need "interpretation through contextualisation" (Archer, 2009: 34). Thus, in my pilot study I devised a procedure to determine the formal properties of tag questions and their legal-pragmatic functions in the examination-in-chief and cross-examination. First, the formal properties of tag questions are determined through looking at the polarity types and their modal and auxiliary verbs. The canonical types of tag questions with constant or reversed polarity are: positive-positive (+/+), negative-negative (-/-) and positive-negative (+/-), negative-positive (-/+) (Quirk *et al.*, 1985; Koshik, 2005; Tottie and Hoffmann, 2006, 2009; Tkačuková, 2010), as shown in Table 9. The polarity is determined from the observation of the "general rules" (Quirk et.al, 1985: 810) of tag questions. The rules are:

- (1) the tag question consisting of operator and subject in that order (enclitic n't), if present, is attached to the operator,
- (2) the operator is generally the same as the operator of the preceding statement,
- (3) a dummy operator of auxiliary DO is used if there is no operator,
- (4) the subject of the tag must be a pronoun, or is in co-reference with the subject of the statement, agreeing with it in number, person and gender and,
- (5) if the statement is positive, the tag is generally negative and vice versa (i.e. reversed polarity) or both statement and question are positive (i.e. constant polarity). Table 9 explicates these rules.

Table 9. General rules of tag questions (Quirk et. al, 1985)

Rules	Operator	Subject	Polarity	Source
(1) & (2)	You have read it	haven't you?	+/-	Davies_cross_D21
(3)	That, Dr. Shipman, is why these two false entries appear on this document,	aren't they?	+/-	Henriques_cross_D38
(4)	It is about that time	isn't it , July?	+/-	Davies_cross_D21
(5)	You cannot,	can you?	-/+	Henriques_cross_D38

Constant polarity tag questions have both statements and tags in the same polarity while reversed polarity tag questions have either positive or negative statements with opposite polarity in their tags. In determining the polarity, a manual analysis is conducted on the tag questions by looking at the 'anchor' (Quirk *et al.*, 1985b) and question tag of each tag question. For example, Clause (1) shows a positive-negative (+/-) polarity where the primary auxiliary verb in the anchor is in a positive form (i.e. *hasn't*).

Clause (1)

ringing your surgery,

Anchor Question Tag Polarity

(1) It has been able to demonstrate that you have hasn't it? Positivelied, lied and lied again about patients Negative (+/-)

Next, an automated search is conducted to determine the auxiliaries, modal verbs and pronouns (e.g. isn't it?, haven't you?, don't you?, wouldn't you?, couldn't they?, mustn't she?) that formed tag questions. Prior to this procedure, a set of search words of auxiliaries: BE, HAVE, DO, and modals: will, can, and other modals is designed. The lists of words are then keyed into the Wordsmith Tools search word tab to reveal the frequency counts which is then plotted as a graph. Having established this procedure in the pilot study, I employed the same process with the MAYCRIM corpus to reveal the distribution of tag questions in the Malaysian criminal courtroom discourse. In addition, from the pilot study I have learnt to extract other potential interesting patterns from lawyers' questions and witnesses' resistances. For example, in Chapter 4, I combined key word and concordance analysis to characterise the direct and cross-examination activities. Then, I used a concordance analysis to generate patterns of word clusters to extract probing questions with pronouns you/kamu in the two trial phases. In the following chapters 5 and 6, concordance analysis was conducted based on specific search words (see Table 16 in Chapter 5 and Table 20 and 21 in Chapter 6).

The legal-pragmatic functions of tag questions are determined through the discourse analysis approach. This is because, it is necessary to take their meaning and function in courtroom discourse into account (Algeo, 1988, 1990, 2006; Holmes, 1995; Archer, 2005; Tottie and Hoffmann, 2006, 2009; Gibbons, 2008). To do this, the tag questions in the pilot corpus are classified according to the classification of pragmatic

categories adapted from Tottie & Hoffman (2009: 141), which consists of three macrocategories of epistemic modal, affective and hortatory functions as explained in Table 10 below. What I have learnt from this classification is that this framework is devised for canonical or variant tag questions (see section 5.3); however in the MAYCRIM corpus, this classification is further developed to suit the existence of invariant tag (see section 5.4) questions that occurred frequently in the Malaysian criminal trial discourse (see Figure 27 in Chapter 5).

The classification of canonical tag questions in Table 10 below indicates three macro-category functions which are epistemic modal, affective and hortatory. Confirmatory tag questions that are under the macro-category of epistemic modal are about making facts certain, as can be seen in the example of cross-examination between the prosecuting counsel, Mr. Henriques with the defendant, Dr Shipman. Note that they refers to the ambulance. Prior to this question, the prosecutor attempts to discredit Shipman's existing evidence of his excuse of not calling any ambulance for his patients. Mr Henriques expresses the theoretical possibility that the ambulance will be there in less than 7 minutes through the modal auxiliary may. In this context, the confirmatory tag question is not only looking for confirmation but also to control Shipman's answer, in which Shipman accepts the prosecutor's proposition as true. The affective macrocategory that consists of attitudinal and challenging functions has the potential to impose speaker's attitudes, opinions or version of events, as can be seen in the two examples above. The prosecuting counsel used reversed polarity tags weren't you and is she not to place strong force for agreement from Dr Shipman. In this case, he showed resistance or disagreement for both propositions through stand-alone No and silence. Finally, hortatory tag questions (i.e. softening and facilitative) can be a prodding tool to encourage the hearer to "contribute to the discourse" (Holmes, 1995: 81). Counsels can attend to politeness through facilitative tag questions. The example in a softening tag question indicates how a reversed polarity tag question can become a softener in a highly controlled and constrained environment.

Table 10. Classification of pragmatic categories of canonical tag questions (adapted from Tottie and Hoffman, 2006; 2009)

Macro- category	Micro- category		Explanation		Examples
Epistemic modal	Confirmatory	•	Tag questions that clearly seek and receive answers and which do not have strong affective function. It expresses theoretical possibility of propositions being true or not true	H:	They <i>may</i> come in a minute if they happen to go going by, <i>may they not?</i>
		•		S:	Yes. (Henriques_cross_Shipman)
Affective			H:	You were terrified of post-mortem examination, weren't you?	
					No (Henriques_cross_Shipman)
	Challenging •	•	A confrontational tag that challenge or expresses speaker's disbelief in the stated view	H:	Mrs. Brown is a lady of truth, is she not?
				S:	(No reply) (Henriques_cross_Shipman)
Hortatory	Softening		Tag questions that mitigate speech for the purpose of influencing the hearer's	MD:	Let's take it in stages because we can see the diagram there, can't we?
			behaviour.	O:	Yes (Davies_cross_Dr. John Brian O'Driscoll)
Facilitative		٠	 Tag questions that express directive function that encourages hearer to contribute. 		When he was describing it to you it wasn't so much that she was leaving the money to him but to the patients' fund in the surgery, <i>that's right</i> , <i>isn't it?</i>
					He said that he thought there would be a donation to the patients' fund. (Davies_cross_Mrs Gilchrist)

In terms of research design, that is, corpus-based forensic discourse analysis, through the pilot study I learned to use the automated search of *Wordsmith Tools 6.0* (Scott, 2011) to aid the extraction of significant and potential patterns in the MAYCRIM corpus. The effect of this exploration has shaped my understanding of the corpus-based approach that I applied in the main study. I also learned the downside of machine search that is unable to extract certain linguistic categories such as declarative questions. Thus, to troubleshoot this I developed some search words that can be used to generate repeated patterns of certain types of questions. At this stage I have become more critical and creative to develop potential search words that can be used for specific investigations, for example to locate probing questions (see Chapter 4) or even to determine types of resistances (see Chapter 6). Finally, with regards to the discourse pragmatic approach, I learned to develop a suitable framework and classification that can be used for the main study.

3.7 Triangulation Method

In this study, I have used a mixed method or a triangulation method to allow for "confident interpretation" [and] "strengthen the researcher's conclusion" (Litosseliti, 2010: 34). To reiterate, the multi-layered design of the methodology provides rich datasets and enhances my understanding of the complexities of courtroom talk. This study draws upon quantitative and qualitative approaches on the same research questions, that is corpus analysis and discourse pragmatic analysis along with interviews and participant observation of the discourse community. I have conducted face to face semi-structured interviews with six participants (i.e. Malaysian legal practitioners and legal academics) in January 2017 to have a better understanding of the non-jury system in Malaysia, a system that has been in operation since 1995, since it became apparent in my analysis that this was an important dimension of my study. The interview is based on the following questions to get the discourse community's opinions and perceptions about jury and non-jury systems in Malaysia.

- 1. What are the benefits and disadvantages of the non-jury system versus the jury system?
- 2. In the jury system, lawyers design questions to persuade the jury; with no jury how is lawyer's discourse affected?

The integration of both quantitative and qualitative methods yielded different types of results (see analysis chapters). This is because a corpus study reveals a pattern of questions found in the MAYCRIM corpus, while a discourse pragmatic analysis is needed to understand the legal-pragmatic functions of these questions. Then, the semi-structured interviews helped to get opinions from the discourse community which then validate and clarify findings specifically on the legal pragmatic functions. The mixed methods also have a role to overcome challenges in conducting research in the courtroom, such as a non-specialist analysing professional legal discourse, by combining linguistic research with interviews with practitioners. Triangulation methods or mixed methods designs are more "versatile and address more holistic perspectives" (Litosseliti, 2010: 40) that provide rich perspectives to my study thus enhancing my understanding of courtroom questioning.

In addition, I conducted linguistic ethnography of courtroom observations in January 2017 to further understand the discourse. Two sessions of observations were conducted in two hearings: corruption and in possession of illegal weapons in Butterworth Session Court, Pulau Pinang, Malaysia. I wrote fieldnotes of these observations manually by hand because it is illegal to conduct audio or video recordings during a trial without permission. There are two major contributions from the ethnographical courtroom observations. First, I mapped the standard layout of the Malaysian criminal courtroom (see Figure 4 in section 2.3) and secondly the oral interviews helped to increase my understanding of Malaysian legal systems and the effects of the non-jury system on Malaysian lawyers' discourse. The following Figure 14 indicates relevant answers from interviewees.

Figure 14. The most relevant responses from oral interviewees

	Relevant responses						
Questions	Advantages	Disadvantages					
Q1. What are the benefits and disadvantages of the non-jury system versus the jury system?	The jurisdiction of judge is more reliable as the judges have gone through vigorous training of law of evidence and know how to determine the material facts. Whereas, it will be unpredictable and uncertain on how much the jurors who are being picked from the society understand the complexities of the case. Ordinary case will be vulnerable to all possibilities and then there will be the question of indecisiveness and fear among the jury.	The jury system is good in a sense of an ordinary person addresses the fact of the case, so that common people can understand what is in the mind of the accused when making the crime. The non-jury system depends on one man who makes decision while the jury system depends on the seven jurors to decide.					
Q2. In the jury system, lawyers design questions to persuade the jury, with no jury how is lawyer's discourse affected?	To bring the attention of the judge, lawyers reasonination lawyers have to be very tactical and At the end of the cross-examination, lawyer discrepancies towards the opposite witnesses. The is that, it has to be not a hostility but a persual language unless its really necessary. The idea is that he has been changed, yet to the judge the witnesses that he judge, the man of law. It is a difficult and years of training.	d discreetly selective in managing their words. It is try to create doubt or contradictions or the language that the lawyers have to construct the lawyers are not necessarily use hostile to change the witnesses without him realising itness has been changed. The difficult part is to					

In Figure 14, all responses were collected and compiled from six respondents that range from practising lawyers, judges and legal educators. I extracted main themes from each respondent and compiled them into main arguments, as can be seen in the red highlighted sentences. Most participants agree that the non-jury system is better than the jury system because the jurisdiction of judge is more reliable, because judges have more exposure and experience of the law of evidence and know how to determine the material facts. However, the downside of the non-jury system is that the risk of prejudiced and biased decisions because the non-jury system depends on a one-person decision, whereas the jury system depends on seven jurors. With regards to Q2, all participants suggest that the lawyers' discourse is affected in relation to word choice. In the jury system lawyers can bring all sorts of things to persuade jurors, for example, a particular sensitive word that sounds offensive, whereas when submitting their case to the judge, they need to be more careful in their word choices. Therefore, I hypothesised that barristers' linguistic choices in questions will affect the language used in witnesses' responses, because word choices in questions force corresponding pragmatic functions on witnesses.

3.8 Ethical considerations

This study deals with sensitive data which is taken from real courtroom proceedings in Malaysian criminal trials; therefore there were ethical issues arising from this research that need to be solved by the researcher. This section reports the issues and procedure taken to resolve the ethical issues.

In Malaysia, when giving evidence to the court all statements made by the parties involved with the facts and circumstances of the case under investigation (whether police personnel, witnesses, or suspects) are recorded and they each signed a consent form at the end of their written or oral evidence to give the court the right to use this information. This is because they are bound by Act 56: Evidence Act 1950 which states that their oral or written statements are recorded because the court refers to the evidence tendered by witnesses verbatim. The evidence is then transcribed into notes of the proceedings and the parties involved are aware that every piece of information testified by them conclusively belongs to the judicial system. In other words, individual participants in the proceedings have already signed their rights off to the Malaysian judicial system to use the data with whatever future purpose. Then these documents

become public documents which are available for the use of researchers or for other purposes. However, any person wanting a copy of it must write to the court for permission to obtain it. In this study, I wrote a formal application to gain access to these documents and for the purpose of the present study, data was collected from the court registrar who has given an informed consent (see Appendix B) to use such data.

In the Malaysian context, each court has a Chief Registrar who is responsible for the administration of the courts, and part of his authority is approving the collection of data by researchers. Given the official authority of court registrars, I submitted a request for permission to the Office of the Chief Registrar in Putrajaya, Malaysia to be allowed to use the data from Malaysian courts. I was granted permission to collect the courtroom transcriptions for closed cases where a verdict was reached. All the data collected is in the form of written records from the Sabah, Sarawak and Penang High Courts. In the consent form, I included details about my research, such as the purpose of the study, reason for the registrar taking part in the research, confidentiality of the data and so forth. After reading such information, the registrars (Sabah, Sarawak and Penang districts) signed the consent form. They are the Senior Assistant Registrar and responsible for the documentation and administration of cases and their reference to court.

The case recording and transcribing (CRT) system was introduced in 2004 in selected courts in Malaysia and in 2011 the system was fully utilised all over Malaysia. This system is used to overcome problems such as missing court files, long waits for trial or appeal dates, long trials, long waits for grounds of judgment and case backlogs at all levels of courts. One of the objectives of the CRT system is also to set out transparency between the courts and the public in case management, specifically in criminal cases. In addition, it would be 'desirable to make databases available to outside researchers, but this may require cleaning it of any information that could be used to identify parties' (Malaysia Court Backlog and Delay Reduction Program: A Progress Report, August 2011). I applied for permission to access these data and it was granted by the Registrar. In respect to data publication the registrar signed a consent form to allow the researcher to quote from these proceedings in the writing and to publish such data in academic journals. The registrar was also informed that the PhD project will take place over the period of three years and the data will also be used in future research. In relation to if any of the transcripts can be returned to contention, that is subjected to

disagreement by the person involved, this would only be applicable to cases that are still open for appeal. However, as all the 16 cases provided for this doctoral study are closed and non-appeal cases, there is no danger of contention and the data can be used for research purposes.

Because the trial transcripts include personal details of defendants, witnesses and victims, I anonymised all the names and removed any of the details that could lead to their identification. All dates that directly related to the cases were also removed and they were grouped into years and types of offences. To make sure that all personal data are anonymised, the researcher used 'search and replace' techniques carefully so that any personal details are not missed. Pseudonyms are used, as can be seen in my anonymisation log system to replace all personal information of the individuals involved in the trials to avoid their identification. The nature of my data means that it includes names, addresses, citizenship, and ID numbers; thus I anonymised all the direct and indirect identifiers. All names, addresses, citizenships etcetera were stripped from the data to reduce individuals being identified directly or through third party crossreferencing. Only pseudonyms and abbreviated forms of occupations (e.g. Magistrate – MAG, Judge –J, Public Prosecutor-P) of the participants are revealed in the data. In the original transcripts, the participants are referred to by their full names and in my pseudonyms only one name is used to refer to each participant. This reduces the likelihood of participants being identified directly. Please note that (other names*) refer to names that were mentioned in the trials, but who were not involved as participants. In addition, all IDs such as registration plate numbers, identification numbers and others are anonymised too. Only title, ranks, honorific address, and gender are retained, because if these are stripped off from the data, it will distort the content from a discourse analysis perspective. For the interview, anonymisation methods which are already in place in relation to the main data are used to transfer the interview data for secondary use. The reason is to ensure there are no clues to participants' real identity in the thesis. I have also anonymised the interview location, addresses and personal details. Finally, any quotes from the respondents are entirely anonymous. I am also planning to use the same pseudonyms throughout the project, follow-up research and in publications so that individuals cannot easily be identified by third party crossreferencing.

Then to keep the data confidential and safe, all the data are stored on my own computer (as I need to run the data using *Wordsmith Tools* software that I bought and installed in my own computer). The data is stored in the University M drive as suggested by the ethics committee and I have access to them via the Citrix application on the university system. In addition, for the safety of the data storage the computer is also encrypted with a password. I have installed a password and firewall system into my computer. I also protected my anonymization log with a password so that only authorised users (i.e. the researcher and supervisor) can access the log system. The hard copies of the transcripts are kept in a briefcase which is locked with a password.

The interviews that I conducted with practitioners, which have the potential to impact on the pedagogy of lawyers' communication skills, required an amendment to the ethics application, as these interviews were decided upon after the initial ethical permission was granted. The respondents were asked about their opinions on the effects of the change from a jury system to a non-jury system in Malaysia. Thus, I also included a new information sheet and participant consent form for potential participants (i.e. government officers such as public prosecutors, lawyers and judges, private legal practitioners and academics) for data collection. In addition, a risk assessment form was filled in for the data collection which was conducted from 01/12/2016 until 01/02/2017 in Malaysia. The potential risk of participating in this study is minimal. Even though participants are giving their opinions on governmental regulations (i.e. the effects of the change to the non-jury system in Malaysian legal system), this study ensures anonymity of participants. Both participants and the researcher are protected by Article 10 of the Constitution of Malaysia which guarantees Malaysian citizens the right to freedom of speech.

Throughout the process I learned how to ensure the quality and integrity of my research. My application underwent a rigorous review from the University of Leeds Research Ethics Committee due to the sensitive and personal information in the data. I found that it is important to seek consent and respect the confidentiality and anonymity of my research respondents. This is because it is important to conduct an independent and impartial research that will not harm both participants and the researcher. The favourable review from the Research Ethics Committee is attached in this thesis as Appendix A.

3.9 Conclusion

There are some immediate conclusions that can be drawn from the use of this combined quantitative, qualitative, and ethnographical method. There is no doubt that quantitative values provide interesting insights and hypotheses to investigate in the qualitative data. From the quantitative data, the corpus-method requires a micro-analysis on different types of questions used by barristers. The pilot study also offered significant insights to me in relation to the research design and data collection for my thesis. First, I have developed my knowledge and foundations particularly in corpus linguistics, forensic discourse analysis, and the pragmatics of questioning. I found that my thesis data will offer original and interesting findings because of the non-jury system in Malaysia. I also developed my skills in computational linguistics and learnt to cut the corpus in different ways to suit my research objectives. The comments that I received from the assessment panel during my first year helped me to focus my direction on criminal cases in Malaysia and assess the amount of Malay-based data I could deal with, in order to control my workload in this period of candidature. It also gave me ideas on what to expect in the Malaysian dataset, but at the same time encouraged me to be open-minded with what the thesis data can offer to the study. I also found that there is a need to do observation in the Malaysian courtroom because the contexts that shape the Malaysian legal system have an impact on the linguistic activities. Finally, the ethical review ensured that my data are responsibly collected and the resulting corpus is suitable for future research.

The following analysis chapters (i.e. Chapters 4, 5 and 6) engage with the exploration of a corpus-based forensic discourse analysis of lawyers' questions and witnesses' answers in direct and cross-examination of the MAYCRIM trials. Chapter 4 examines the personalisation of pronouns *you/kamu* in lawyers' questions, while Chapter 5 highlights the formal properties of tag questions, which are one of the types of coercive and controlling questions, while, Chapter 6 critically examines witnesses' resistance to lawyers' controlling and coercive questions.

Chapter 4 Questions with pronouns *you/kamu* as probing questions to maximise witnesses' productivity and as a combative device to challenge witnesses

4.1 Introduction

Drawing on Brown and Levinson's (1978, 1987) work that suggests that avoiding personalisation using pronouns is a negative politeness strategy, it is interesting that in courtroom discourse personalisation is an overt strategy and therefore represents a potential face threat. Kryk-Kastovsky (2006: 222) mentions that questions are not only used by barristers to control or coerce witnesses and defendants, but also to perform "face threatening acts" that put pressure on witnesses and defendants to accept their version of facts. We expect cross-examination to be face-threatening in this way due to the nature of the activity, what Archer (2008: 181) calls "verbal aggression", but we do not expect face-threats to be heightened in direct examination due to strategic purposes.

This chapter focuses on the pragmatics of questions that contain the personal pronouns you/kamu (kamu is cognate with you singular in English) in direct and crossexamination activities by prosecutors and defence lawyers in Malaysian criminal trial discourse. Pronouns such as you/kamu are deictic expressions that personalise questions and make them specifically about the witness, constituting a face-threat. Since you/kamu are frequent in both examination and cross-examination, personalisation must be doing different things, because we know that lawyers' goals in these activities are different. Therefore, the aim of this investigation is to get a better understanding of the various discourse pragmatic functions that questions containing personal pronoun you/kamu can have in lawyer-witness interactions in a criminal courtroom. This is because the participants (i.e. legal counsels and witnesses) in courtroom trials are far from having symmetrical power in their roles and status. Specifically, this investigation critically examines the formal properties and legal-pragmatic functions of questions with pronouns you/kamu in direct and cross-examination activities as a strategic device for lawyers to achieve their specific goals. These questions are found to be a discursive device for lawyers to develop a narrative of events, as prompts to maximise witnesses'

productivity, or even to display lawyers' stances and challenge witnesses during crossexamination.

This chapter aims to provide legal-pragmatic explanations of the choice and function of these questions, addressing the following research questions:

- 1. What are the formal categories of interrogative that contain *you/kamu* utilised by barristers in direct and cross-examination in the Malaysian criminal trials and their frequencies?
- 2. What are the pragmatic functions of questions that contain *you/kamu* in direct and cross-examination in the Malaysian criminal trials?

Previous research on courtroom discourse indicates that there is linguistic manipulation by participants, be it barristers or witnesses to serve manifold legalpragmatic functions such as apologizing, complaining, challenging, signalling surprise and disbelief, ascribing blame and others (Matoesian, 1993). One of the resources that legal participants in the courtroom may use to serve their purposes and goals is the choice of pronouns. Although pronouns as function words do not mark content, they can be very useful in a conversation because they (especially pronouns I and you) refer directly to the participants. Brown and Levinson (1978, 1987: 190) inform us that one of the negative politeness strategies is to 'impersonalise S and H by avoiding the use of pronouns I and you'. However, courtroom discourse and Malaysian courtroom discourse in particular does not follow this rule, because pronouns you/kamu, quantitatively show a key distribution in both direct and cross-examination activities. Other studies such as Danet (1980) show that the first-person plural pronoun we is used by an Israeli defence lawyer to construct a shared identity among lawyers, or positions lawyers and the jurors as part of a collective group (Stygall, 1994), whereas secondperson pronoun you is found to group the jurors as a single entity (Stygall, 1994: 1980).

There are two justifications for selecting pronouns in this investigation. First, the quantitative analysis indicates that pronouns, specifically *you* and *kamu* occurred as the most frequent words in the lists. *Wordsmith* creates a key word list, with the most frequent key words listed at the top of the list. Figure 15 illustrates the top 25 key words in the MAYCRIM corpus from the English and Malay datasets. To reiterate, the reference corpora used were Singapore English (i.e. SE) for the English dataset and a Malay reference corpus for the Malay dataset. From the English dataset, *you* is listed as

23rd in a frequency list of 3,064 types, and *kamu* is listed as 12th in a frequency list of 180 types. Pronoun *you* shows a positive keyness with 846.41 (i.e. based on the log-likelihood test) when compared with the reference corpus (i.e. Singapore English), whereas pronoun *kamu* indicates a positive keyness of 1520.99 when compared to a Malay reference corpus. The justification of choosing the log-likelihood test is because I was interested to obtain a mixture of function and content words in the MAYCRIM dataset, and the log-likelihood test is the best technique to use (Baker, 2006). The keyness values indicate that pronouns *you* and *kamu* are significant and worth our attention. Statistically speaking, these scores may play some role in courtroom talk because they appear as keywords in the reference corpus too. Figure 15 also shows other important keywords (i.e. *did*, *identify*, *agree*, *tidak/no*) that will become the basis for the following analysis chapters (i.e. Chapter 5 and 6).

Secondly, previous studies (Atkinson and Drew, 1979; Drew, 1992; Cotterill, 2003; Eades, 2008) indicate that lexical items can be used to construct and establish facts in the courtroom (Ehrlich, 2011). For example, in English, a *yes/no* question is associated with auxiliaries or modal verbs as part of the structure, such as in *Did you examine the box?* which is a controlling question that requires either a "yes' or "no" from the addressee. This short example indicates that there is relationship between word choices and their functions in questions and answers. The observation also applies to pronouns because the choice of pronouns can determine the force of a question on the addressee. Therefore, this investigation is conducted to shed light on the pragmatic forces of questions with pronouns *you/kamu* used by Malaysian barristers to realise their goals in direct and cross-examination activities.

Figure 15. Top 25 words in a Wordsmith key-word list (MAYCRIM compared with SE and Malay Reference corpora) and their keyness

	ENGLISH_ALL									
N	Key word	Freq.	%	RC. Freq.	RC. %	Keyness				
1	#	5896	5.79	10611	0.96	9734.20				
2	EXHIBIT	1219	1.20	14		5891.13				
3	MARKED	1031	1.01	56		4676.89				
4	EXHIBITS	653	0.64	4		3185.14				
5	YES	1068	1.05	1162	0.11	2407.41				
6	PLASTIC	462	0.45	38		2024.50				
7	ACCUSED	487	0.48	68		2009.67				
8	REFER	450	0.44	106		1704.16				
9	PHOTOGRAPHS	372	0.37	38		1594.49				
10	BOX	425	0.42	112	0.01	1573.16				
11	PHOTOGRAPH	334	0.33	9		1571.08				
12	PACKET	320	0.31	15		1463.60				
13	DID	699	0.69	1080	0.10	1266.48				
14	ENVELOPE	278	0.27	15		1259.79				
15	BAG	254	0.25	24		1097.50				
16	IDENTIFY	275	0.27	56		1069.59				
17	AGREE	320	0.31	135	0.01	1053.87				
18	INSPECTOR	230	0.23	24		983.25				
19	PRAY	211	0.21	17		925.91				
20	PACKETS	189	0.19	1		922.70				
21	PILLS	184	0.18	0		910.27				
22	THE	7841	7.69	59181	5.35	887.95				
23	YOU	3064	3.01	18175	1.64	846.41				
24	WITNESS	205	0.20	39		806.63				
25	RECEIVED	242	0.24	101		799.31				

		3.7.1	¥ 1¥7 1¥	_					
	MALAY_ALL								
N	Key word	Freq.	%	RC. Freq.	RC. %	Keyness			
1	#	530	3.55	0		7124.94			
2	SAYA	466	3.13	443		5004.02			
3	DAN	360	2.41	1		4821.62			
4	PADA	292	1.96	2		3896.75			
5	TELAH	285	1.91	247		3092.37			
6	YANG	389	2.61	4501	0.04	2520.84			
7	KAIRAV	174	1.17	0		2334.91			
8	ADA	169	1.13	2		2246.00			
9	ITU	168	1.13	1		2242.08			
10	DALAM	170	1.14	52		2039.63			
11	ASP	142	0.95	29		1749.58			
12	KAMU	180	1.21	710		1520.99			
13	KE	113	0.76	33		1359.91			
14	TIDAK	107	0.72	14		1348.69			
15	POHON	115	0.77	88		1265.13			
16	PARAG	77	0.52	0		1032.76			
17	GAMBAR	102	0.68	160		1018.38			
18	JUGA	77	0.52	3		1007.18			
19	PEMERIKSAAN	69	0.46	1		914.95			
20	AAKASH	64	0.43	0		858.34			
21	IAITU	73	0.49	51		811.24			
22	FADLIN	55	0.37	1		727.58			
23	BANDHU	53	0.36	0		710.78			
24	DI	216	1.45	13772	0.11	702.08			
25	TERSEBUT	216	1.45	14552	0.12	680.35			

4.2 The extraction of pronoun *you/kamu* and its distribution across direct and cross-examination activities

The analysis draws upon the prosecuting and defence barristers' questions in direct and cross-examination activities in all sixteen Malaysian criminal proceedings in my corpus. Combining key word and concordance analysis provides helpful indications of the respective words that characterise direct and cross-examination activities. Specifically, a key word analysis was carried out to characterise the direct and cross-examination activities in the MAYCRIM corpus, in order to find those words which are distinctive in direct and cross-examination activities in Malaysian criminal trials. Then a concordance analysis was conducted to generate patterns of repeated phraseology, known as collocates and word clusters (Scott, 2018), which allows them to be categorised accordingly.

A keyword analysis compares two pre-existing word-lists, in this case, wordlists for question and answer sequences from both direct and cross-examination in the sixteen trials. As mentioned in the Methodology chapter (section 3.2), the MAYCRIM corpus is a complex corpus due to various languages that exist in the proceedings. For the English corpus it is compiled with ten trials conducted fully in English, while for the Malay corpus, it is made of one trial conducted fully in Malay (i.e. Murder), while five trials consist of code-mixing between English and Malay. Due to the unavailability of a reference corpus that consists of code-mixing between English and Malay languages, the keyword analysis is conducted on the English and Malay files only. The wordlists created are labelled respectively as:

- ENGLISH_ALL_EXAM_lst,
- ENGLISH_ALL_CROSS.lst,
- MALAY_MURDER_EXAM.lst and,
- MALAY_MURDER_CROSS.lst.

Then, they are compared to the reference corpora (RC) which is Singapore English for the English and Malay for the Malay. The varying positive keyness value of *you/kamu* in direct and cross-examination activities and across both languages (Table 11) in lawyers' questions suggests that personalisation is doing different things in direct examination and cross-examination. I hypothesised that personal pronouns *you/kamu*

are used to stimulate the witnesses to give information in direct examination thus maximising witnesses' productivity, whereas, in cross-examination, barristers face-threaten and challenge witnesses to accept their version of facts.

Table 11. Frequencies and keyness of *you* and *kamu* in direct and cross-examination of the MAYCRIM corpus

Keyword		Freq.	%	RC	RC	Keyness
You				Freq.	%	
ENGLISH_ALL_EXAM	80	1,867	2.51	18,175	1.64	277.59
ENGLISH_ALL_CROSS	8	1,197	4.34	18,175	1.64	828.33
MALAY_MURDER_EXAM	41	55	0.54	710	-	386.10
MALAY_MURDER_CROSS	8	99	2.37	710	-	980.49

Table 11 indicates that pronouns *you/kamu* differ in frequency and placement on the keyword list according to activity (direct and cross-examination activities) with cross-examination being much more likely to feature you/kamu (you/kamu is nearly three times more frequent). As shown in Figure 15, when a keyword analysis is conducted on the English and Malay datasets, without dividing them according to activity, pronouns you and kamu are listed in the top 25 most frequent words. When the datasets are divided according to direct and cross-examination, you and kamu are ranked 8th in both languages for cross-examination, compared with 80th and 41st for English and Malay for direct examination. The frequency of you almost doubled in crossexamination for English and quadrupled for cross-examination, making them particularly important in cross-examination. The positive keyness of you (828.33) and kamu (980.49) in cross-examination when compared to their respective reference corpora suggests that pronouns you/kamu are an integral part of "dialogic" legal language, thereby making the MAYCRIM corpus an important corpus of dialogic interaction (Cotterill, 2003: 94). In addition, it suggests that barristers perform facethreatening acts or "verbal aggression" (Archer, 2008: 181) via pronouns you/kamu to coerce and undermine witnesses in cross-examination. In direct examination, although pronouns you and kamu are much less frequent, they are still positive keywords, suggesting that an investigation of you/kamu should not be restricted to crossexamination. I should note, however, that the Malay corpus is small because it only consists of one case (i.e. Murder), thus making comparisons difficult. This also

explained the lack of value in the reference corpus percentage. Nevertheless, keyword analysis helps direct our attention to the activities of direct and cross-examination in the MAYCRIM corpus.

This chapter's focus is on the pronouns *you/kamu* helps us to understand the way these words are used by barristers in question design. Qualitative analysis is needed and this is achieved via collocation and concordance analysis. These processes are able to expose "common categories" (Baker *et al.*, 2008: 273) that represent question design in direct and cross-examination. From the keyword list, concordance lines for *you/kamu* have been generated to give access to information about words that collocate with the pronouns *you/kamu* and allow cluster analysis to be conducted.

The collocation and word-clusters provide a useful analysis of pronouns you/kamu because they tell us more about them in direct and cross-examination activities. For example, Stygall (1994) shows the use of verb tenses and pronouns by barristers create different representations of reality. Therefore, I hypothesised that if pronouns you/kamu mark a face-threatening action in cross-examination, we need to link it up with identified linguistic features such as presuppositions in barristers' questions, or in leading questions (i.e. declarative, tag questions).

The following (see Table 12) are the commonest collocations of *you* and *kamu* reflecting potential patterns of how pronouns *you/kamu* are used.

Table 12. The commonest collocations of you/kamu in direct and cross-examination

Parts of speech	Direct examination	Cross-examination
1. Interrogative words	how, what, when, apa/what,	when, siapa/who
2. Modal auxiliary	can/boleh	-
3. Primary auxiliary verbs	did, do, is/ada, have, were, are	did, do, are, is/ada, were, have/telah, was,
4. that-clauses	yang/that	yang/that
5. Lexical words	identify, mentioned, confirm, tell, informed, tahu/know	agree, know, put, said, tahu/know, setuju/agree, ingat/remember, katakan/said

As a function word, *you/kamu* is free to collocate with a wide range of words, as observed in Table 12. What is immediately apparent is that it contains words that mark certain parts of speech such as interrogatives, modal and primary auxiliaries, *that*-clauses and lexical words that are associated with Halliday's process types (Halliday, 1985, 1994), particularly verbal (*agree, inform, mention, say, tell*) and mental processes (*know, remember*).

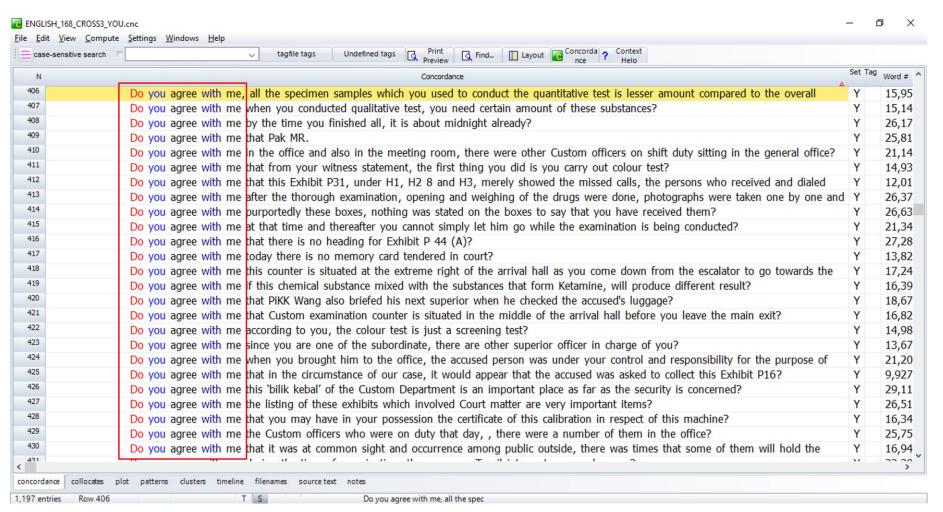
Wordsmith computes clusters automatically; clusters are sought within four to five words to the left and right of the search word. The minimum frequency has been set to 1 so that I can make sure all potential patterns are extracted from the specialised corpus. Figure 16 demonstrates the most frequent clusters extracted from the direct and cross-examination datasets. This figure shows wider associations that emerge with pronoun you from direct and cross-examination activities. The five-word clusters produce frequent strings of question-types in both activities. In direct examination, clusters include how do you identify, can you still identify, what did you do, do you identify, and how long have you, indicating wh-, yes/no and indirect questions that facilitate building witness cooperation. However, in cross-examination activities, the clusters do you agree with me, do you agree that, can you tell the court indicate patterns of yes/no and indirect questions that coerce agreement and put pressure on the witness. This points to very different questions associated with the different activities. It is also observed that in cross-examination, the cluster I put it to you indicates a particular function of cross-examination and that is for the lawyer to make problematic assertions that challenge witnesses/defendants to respond. In relation to similarities, clusters of *just* now you mentioned, in direct examination, and you told the court and you said you are, in cross-examination, indicate that reported speech is equally important in both activities.

Figure 16. Word clusters associated with pronoun *you* in direct and cross-examination

	DIRECT EXAMINATION		CROSS-EXAMINATION					
100000000000000000000000000000000000000	H_168_EXAM3_YOU.cnc		Carlo San Carlo Ca	168_CROSS3_YOU.cnc				
<u>File</u> <u>E</u> dit	<u>V</u> iew <u>C</u> ompute <u>S</u> ettings <u>W</u> indows <u>H</u> elp		<u>File Edit \</u>	<u>/iew Compute Settings Windows H</u> elp				
N	Cluster	Freq.	N	Cluster	Freq.			
1	HOW DO YOU IDENTIFY	102	1	YOU AGREE WITH ME	65			
2	YES HOW DO YOU	89	2	DO YOU AGREE WITH	64			
3	YES HOW DO YOU IDENTIFY	86	3	DO YOU AGREE WITH ME	63			
4	YOU YES HOW DO	80	4	DO YOU AGREE I	56			
5	CAN YOU STILL IDENTIFY	65	5	DO YOU AGREE YES	39			
6	DO YOU IDENTIFY THE	58	6	YOU AGREE I DISAGREE	34			
7	HOW DO YOU IDENTIFY THE	58	7	DO YOU AGREE I DISAGREE	33			
8	WHAT DID YOU DO	47	8	DO YOU AGREE THAT	23			
9	YOU MENTIONED THAT YOU	46	9	YOU TOLD THE COURT	23			
10	BY YOU YES HOW	42	10	IT TO YOU THAT	22			
11	BY YOU YES HOW DO	40	11	YES DO YOU AGREE	19			
12	REFER YOU TO EXHIBIT	40	12	I PUT IT TO YOU	18			
13	YOU YES HOW DO YOU	40	13	I PUT IT TO	18			
14	YOU IDENTIFY THE EXHIBIT	34	14	PUT IT TO YOU	18			
15	DO YOU IDENTIFY THE EXHIBIT	34	15	PUT IT TO YOU THAT	16			
16	YOU STILL IDENTIFY THE	33	16	YES DO YOU AGREE WITH	14			
17	CAN YOU STILL IDENTIFY THE	33	17	I AGREE DO YOU	13			
18	JUST NOW YOU MENTIONED	32	18	AGREE DO YOU AGREE	13			
19	NOW YOU MENTIONED THAT	30	19	I AGREE DO YOU AGREE	12			
20	HOW LONG HAVE YOU	28	20	YOU AGREE I AGREE	12			
21	DO YOU IDENTIFY IT	27	21	IT TO YOU THAT YOU	12			
22	LONG HAVE YOU BEEN	27	22	TO YOU THAT YOU	12			
23	HOW DO YOU IDENTIFY IT	27	23	CAN YOU TELL THE COURT	11			
24	HOW LONG HAVE YOU BEEN	27	24	DO YOU AGREE I AGREE	11			
25	IF I SHOW YOU	26	25	CAN YOU TELL THE	11			
26	SEIZED BY YOU YES	25	26	YOU TELL THE COURT	11			
27	YES REFER YOU TO	24	27	YOU SAID YOU ARE	10			
	TESTILITED TO	21		TOO SAID TOO AILE	10			

These clusters or 'lexical bundles' (Biber *et al.*, 1999) are useful in understanding how pronouns *you/kamu* are used in context, but, to fully understand this, a concordance analysis was conducted to determine patterns of phrases associated with pronouns *you* and *kamu* and these are exemplified in Figure 17. The concordance lines were extracted through the *do you agree with me* string that formed *yes/no* questions in cross-examination. To aid readers, I have presented the concordance lines in sentence view so that I can demonstrate examples of questions containing *do you agree with me*. A [Set] column is also included to aid in sorting and labelling my data, and this made it easier to see patterns in the corpus. Here [Y] refers to *yes/no* questions.

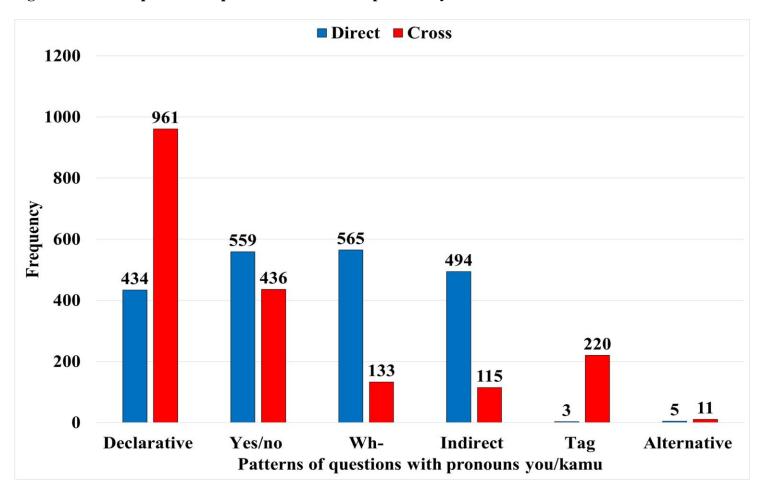
Figure 17. Concordance lines of do you agree with me string from cross-examination (25 occurrences of 1,197) with [Set] column



An advantage of an automated search is that it allows users to classify entries in their own way, and this is done through the [Set] column, which I used to classify the patterns of questions according to six formal categories of questions (Quirk *et al.*, 1985a; Biber *et al.*, 1999), that is *yes/no*, *wh-*, declarative, tag, alternative and nonsentence (see section 2.4.1). However, there were no non-sentence questions. I have also added a new category for the purpose of this investigation, which is indirect question (e.g. *Can you tell the court what happened?*), where *can you* produces a *yes/no* question, but the core question is a *wh-*question. Note that I have also extended indirect question to include questions with long prefaces that produce dependencies such as *after/before you + wh-* or *yes/no* question. Figure 18 demonstrates the frequencies of these six categories of questions generated from the concordance analysis of pronouns *you/kamu* in both the English and Malay sets.

Figure 18 indicates the distribution across direct (blue bars) and cross-examination (red bars) activities. By observing the distribution across direct and cross-examination, we can make observations about the potential pragmatic strategies used by Malaysian barristers as they construct a trial narrative through questions and confront witnesses. First, the graph illustrates that declarative questions and tag questions are the most frequently used questions in cross-examination, indicating the coercive nature of this activity. To present the findings, normalised figures are used rather than percentages due to the different sizes of the direct examination and cross-examination datasets.

Figure 18. The frequencies of questions formed with pronouns you/kamu in direct and cross-examination



Direct examination accounts for only 434 of the declarative questions, whereas that figure more than doubled to 961 in cross-examination. Tag-questions show the greatest difference in distribution with cross-examination amounting to 220 of the questions, while only 3 existed in the direct examination. Yes/no questions are almost equally distributed between the two activities, with 559 found in direct, while 436 occurred in cross-examination activities. This distribution indicates that yes/no questions are equally important for lawyers to get confirmation or affirmation from witnesses in both activities. Thirdly, wh-questions are found to dominate the direct examination with 565 of the questions made up of this type and only 133 in crossexamination, indicating that barristers want to show their own side's witnesses as being able to provide information. Wh-questions are favoured in direct-examination because they are generally considered "probing questions" (Griffiths and Milne, 2006: 182), that is a type of question that invites respondents to explain in specific detail. Two frequent patterns that are found in the concordance and cluster analysis are the patterns: can you + verbal process and an after/before clause + wh-question or yes/no question, indicating indirect questions, which occurred 494 in direct and 115 in cross-examination activities. This suggests that indirect questions, particularly those with can you, are important in direct examination, because they show the witness as capable and therefore reliable. Alternative questions are the least frequent in the corpus with 5 and 11 respectively in direct and cross-examination, indicating that these are very rarely useful.

This section presented keyword, collocation and cluster analysis and showed that these are useful automated tools to indicate overall patterns which can inform my qualitative analysis and close reading. While they are useful to extract patterns of frequency and occurrence, they do not, however, produce a full interpretation of the data. In the introduction, I argued that pronouns *you/kamu* are deictic expressions that personalise the question and make it specifically about the witness, constituting a facethreat. In section 4.1, I identify how pronouns *you/kamu* are used by barristers in a variety of questions in direct and cross-examination and how they have different pragmatic forces on witnesses. These questions with pronouns *you/kamu* or personalisation are used as discursive devices for barristers to probe and maximise witnesses' productivity (in direct examination) or as combative devices to challenge witnesses (in cross-examination). To make these conclusions, a close analysis of the corpus has been carried out. The following sections present a detailed discourse-pragmatic analysis of the patterns of questions with pronouns *you/kamu* and their

pragmatic forces on witnesses in the MAYCRIM corpus. I divided the discussion into two major sections: probing questions and challenge questions. Probing questions are questions that ask witnesses to explain (Griffiths and Milne, 2006), which maximises witnesses' productivity, whereas challenge questions accuse or undermine the information (Ehrlich, 2011) in witnesses' answers.

4.3 Probing questions to maximise witnesses' productivity

The probing question is an "appropriate type of question because it asked witnesses to explain" (Catoto, 2017: 71). Probing questions are not only used by barristers to ask witnesses to explain; they also can be used to require witnesses to clarify and give detailed explanations and, sometimes, as a reminder to get witnesses to recall memories. Barristers use probing questions as a supportive tool for them to build a credible and believable narrative to factfinders. The discourse-pragmatic analysis reveals two patterns of probing questions as follows:

- 1. wh-prompt + you + material/mental/verbal process
 - (e.g. Where did you stay in Malaysia?)
- 2. modal can + you + material/verbal process

(e.g. Can you identify your wife?)

4.3.1 wh-prompt + you + material/mental/verbal process invites witness to collaborate with lawyers

While acknowledging that *wh*-questions have the least "control" (Archer, 2005: 78) imposed on recipients, they are nevertheless found to exercise considerable power if compared with *yes/no* questions (Wang, 2006). It is worth highlighting that different types of *wh*-interrogatives are associated with different levels of control. Lawyers favour *wh*-questions in direct-examination because they pragmatically invite witnesses to collaborate with lawyers to build a credible and believable narrative for factfinders, thus making the lawyer's and the witness's narrative more credible.

First, wh-questions can be used to prompt and control witnesses to recall and then elaborate on specific details of events or processes. This is achieved through a combination of wh-prompt + you + material/mental/verbal process such as identify,

know, and confirm. A material process construes a process of "doing and happening" that describes the 'notion that some entity "does" something' (Halliday, 1994: 102; Halliday and Matoesian, 2004: 207), whereas a mental process describes "states of mind or psychological events" (Bloor and Bloor, 2013: 118) that reflect the process of consciousness or inner experience (Halliday, 1994). Verbal processes are processes of saying and communicating (Halliday and Matthiessen, 2004) in which one participant is the *Sayer* and what is communicated is the *Said* (Bloor and Bloor, 2013). The cluster analysis conducted on the *wh*-questions in direct and cross-examination generates the following frequencies of Halliday's process types. Note that the frequencies (see Table 13) are only counted from *wh*-prompt + *you* patterns to show that personalisation enhances involvement from witnesses. The actual patterns of the *wh*-prompt + *you* are shown in the first column of Table 13.

Table 13. Process types and their frequencies in direct and cross-examination (whprompt)

Wh-prompt + you	+ Process	Direct		Cross	
		Frequency	%	Frequency	%
how did you	(i) Material	223	95	14	100
when did you	(ii) Mental	8	3	0	0
where are/were you	(iii) Verbal	4	2	0	0
what do you	TOTAL	235	100	14	100

The distribution in Table 13 shows that material processes are the most frequent and occur across direct and cross-examination to prompt witnesses to elaborate on specific kinds of actions performed by them in circumstances or events. The concordance lines in Figure 19 are examples of *how did/do you + material process* from direct examination. The blue part indicates the *how*-prompt while the red parts are material processes.

The concordance lines show some material processes (i.e. *get*, *weigh*, *perform*, *bring*, *come*, *send*, *receive*, *pack*, *enter*, *differentiate* and *identify*) used by barristers in direct examination. The witnesses' responses indicate that they elaborate and give details of events to the barrister, demonstrating that the *how did/do you* + *material process* interrogative helps barristers to develop their narrative to factfinders. The pronoun *you* is used to directly address the witness and encourages involvement and sharing of facts in the first person (note responses containing *I* and *my* in lines 74, 80, 82, 85, 87, 88, 89, 90 and 91).

Figure 19. Concordance lines of how did/do you + material process (18 of 134 occurrences)

Concordance N 74 s marked E1-E9? The net weight was 16.6622 gram. How did you get the net weight? I get the net weigh 75 rent plastic packets? Yes. Refer to paragraph D. How did you weigh the exhibits? For the 5 transpare 76 four SIM cards and one memory card in this case. How did you perform the analysis on each of the phones, 77 a lot of exhibits you received from Pak MR. HAN, how did you bring all these exhibits and kept safe 78 imetazepam. < What is the purpose of GC test and how did you perform the test? GC test is also a tes 79 en did you come to Malaysia? End of August 2011. How did you come to Malaysia? Through agent. Do you sent i.e. three hand phones and four SIM cards. How did you send the exhibits to <place>? I 81 the information from Digi, is that correct? Yes. How did you receive the information? From e-mail. Y 82 ding them to the Chemist Department? Yes, I did. How did you pack them? I put the following exhibits 83 ne person with motorcycle, male or female? Male. How did you enter the house? The gate was locked, t 84 e two exhibits for two cases were kept together, how did you differentiate the exhibits? The exhibit this the newspaper wrapping seized by you? Yes. How do you identify the exhibit? It bears my signat 86 . Is this the hand phone that you received? Yes. How do you identify it? I marked as H3. What about 87 . Is this the plastic packet seized by you? Yes. How do you identify the exhibit? It bears my signat 88 e small Brand InnerShine box seized by you? Yes. How do you identify the box? It bears my signature 89 as seized from the master bedroom marked Z? Yes. How do you identify the box? My signature and the d 90 is the document that you mentioned earlier? Yes. How do you identify this agreement? My signature is this the newspaper wrapping seized by you? Yes. How do you identify the exhibit? It bears my signat

Example 1 (in two parts: lines 1-13 and 14-31) demonstrates how the *wh*-prompt + *you* in combination with *material* and *mental* processes is used by barristers to get witnesses to collaborate with them to construct a narrative of evidence. The exchange is between the prosecuting lawyer and prosecution witness 7 (PW7) from the direct-examination of a human trafficking case. It illustrates how *wh*-prompt + *you* + *material/mental process* questions are used by barristers to help them build a credible and believable narrative of events. In this trial, the victims are called as prosecution witnesses to testify against the defendant, thus the following exchanges indicate the pragmatic force of *wh*-questions used by the prosecution lawyer on PW7, one of the victims. First, (lines 1-13) a series of direct and indirect *wh*-questions leads up to the questions we focus on.

Example 1. Source: Direct-examination, Case 11 (P is Prosecutor, PW7 is Prosecution Witness 7)

- 1. P: Can you tell us your background and where you are from?
- 2. PW7: I came from X country
- 3. P: From which part?
- 4. PW7: X place
- 5. P: *Are you married?*
- 6. PW7: Yes, I am married
- 7. P: Where is your wife?
- 8. PW7: She [is] present here.
- 9. P: What is the name of your wife?
- 10. PW7: My wife name is Halili.
- 11. P: Can you identify your wife?
- 12. PW7: Yes
- 13. P: Pray for later identification

The prosecuting lawyer, who is conducting a friendly examination (Coulthard, Johnson and Wright, 2016), uses the *wh*-prompts of *where* and *what* in "routinised questions" (Philips, 1987: 98) to establish good rapport with the victim so that his witness feels comfortable to testify in the court. Pragmatically, these *wh*-prompts not only help to create friendly examination but also to direct PW7's focus to the details of the events such as PW7's home country and his wife's name. Then (lines 14-31 below), once PW7 feels comfortable, the prosecutor uses *wh*-prompt + *you* + *material process* (i.e. *enter, entering,* indicated with underlining) questions that seek specific and short answers to provide the details of the prosecution story. The pronoun *you* in lines 14 and

16 speaks directly to PW7, inviting the witness to share his information with the lawyer and the court to develop a narrative of facts. Here, personalisation increases the witness's involvement because it increases the extent to which the witness relates the message in the barrister's question to his own self.

Continued from Example 1

→ P: When did you enter Malaysia?

15. PW7: August 2011

→ P: *How did you enter Malaysia?*

17. PW7: [I] was bring by agent

→ P: What was your purpose of entering Malaysia?

19. PW7: For job purposes

20. P: After you have entered Malaysia did you work?

21. PW7: Yes.

22. P: *Where?*

23. PW7: Kudat.

24. P: Working as what?

25. PW7: Planting the palm oil trees

26. P: Do you recall the name of the company that you working at?

27. PW7: Anggerik

→ P: *How long have you been working* at that company?

29. PW7: For me, 3 months 30. P: Since when?

31. PW7: Since September 2011

In lines 14-30 the prosecutor uses wh-prompt + $material\ process$ questions that pragmatically direct PW7 to explain specific actions conducted by him when entering Malaysia. For example, in line 14 PW7 is asked to tell the court the time he entered Malaysia, which was in August 2011. Then, the prosecutor uses a $how\ did\ you\ + enter$ structure asking about the method or procedure taken by him to enter Malaysia. PW7 clarifies that he was brought into Malaysia by an agent. These kinds of wh-prompts are known as dynamic wh-prompts (Andrews $et\ al.$, 2016), because they ask for specific actions. The pragmatic effects of these questions are that they allow recipients to explain short and specific answers to the court and establish details of events to help factfinders understand the story. In addition, the prosecutor exercises his power to control how much information is being shared in the courtroom via specific questions that produce short and specific answers. The wh-prompt + $you\ + mental\ process\ (i.e.$

know) performs a reminder function, so that the witness can give detailed explanations to factfinders.

The narrative from lines 55 to 72 indicates the climax of the examination-inchief with PW7 because the prosecutor uses the wh-prompt + you + material process (line 55) and wh-prompt + you + mental process structure (line 59 and 69) as probing questions that function as a reminder for the witness to recall his memory of the events.

Continued from Example 1

- → P: *How did you <u>hire</u> a taxi from Kudat?*
- 56. PW7: I called up my friend and he assisted me to find and hired a taxi
- 57. P: What is the name of your friend?
- 58. PW7: His name is Pak Ajis
- → P: *How did you know* that Pak Ajis managed to find taxi for you?
- 60. PW7: Pak Ajis contacted me and told me to wait at Simpang Gedung
- → P: <u>What happened</u> after he told you to wait at Simpang Gedung?
- 62. PW7: The taxi came and we entered the taxi. The taxi driver demanded
- payment of RM 700 and we negotiated the fare. After the
- 64. negotiation I paid RM 550 and the driver took us to Kapit and at
- 65. Kapit we were arrested.
- 66. P: Was there any negotiation of the fare between you and Pak Ajis
- 67. *before the taxi came?*
- 68. PW7 Yes
- \rightarrow P **How did you know** you have to pay RM 700?
- 70. PW7 Pak Ajis told me
- 71. P Can you still identify the driver of the taxi?
- 72. PW7 Yes.

The prosecutor is not only asking PW7 to collaborate with him to establish evidence against the accused (i.e. Pak Ajis), but also to present first person evidence to the judge. Note the use of I and me that is prompted by the you questions (lines 56, 60, 64, 70). The pragmatic force of this structure on the witness is that it encourages him to narrate and explicitly transmit personal information about the events, in this case the details that describe how the accused carried out human trafficking with PW7 and the other victims. Lines 55 and 59 require the witness to describe the actions taken by him to enter Malaysia. The *how-prompt* + *material/mental process* questions pragmatically ask PW7 to make an evaluation using his judgement; thus, in response, PW7 retells the narrative with details of the place and persons involved in the trafficking. Then, in line 61 a wh-prompt + happen question is used by the prosecution lawyer to produce

coherence and topic development in the narrative. The material process, *happen*, makes the *wh*-question open, thus encouraging the witness to share more information. However, it contains no *you*; the *you* is supplied in the subordinate clause that is added to the *happen* question. Biber *et al.* (1999: 109) categorise *happen* as a verb "of occurrence" that reports events that occur without an actor. *Happen* questions are important and extensively used by barristers in witness examination (see Figure 20) and this question (line 61) prompts PW7 to share with the audience the sequence of events that took place after he met the accused at the promised site in a long answer with details of the amount he had paid to the accused. The prosecutor's goal is to establish evidence against the accused as a human trafficker because the accused received payment from his victims. The prosecutor successfully extracted information from his witness to prove that the prosecution has a *prima facie* case against the accused.

In Figure 20 the blue part refers to the *what happened* structure while the red parts refer to witnesses' answers. Sometimes barristers attached the *what happened* structure to indirect questions as can be seen in lines 15, 16, 21, 24 and 25.

Figure 20. Concordance lines of what happened questions in direct examination (25 of 55 occurrences)

N Concordance

What was your instruction to Lim? I asked him to do detail examination. What happened next? At first the accused was not willing to take out the good 9 that time I was near the scanner. Upon the information told by Lim, then what happened? I instructed Pik MR. LIM to do further examination in the meet 10 the room? Yes. Where were you at that time? I was in the same room. Then what happened? After the search, D/Corp. Marjawan found drugs on the floor in 11 ? Small size person, is to 16 years old. I don't know his race. On 1630, what happened? A police brought me to police station. For ID parade. During t 12 om Pak MR. HAN? I was at the office of UKPP International Airport. Then, what happened? I was waiting for further instruction from Pak MR. HAN. Then w 13 rked Eha: Exhibit P14 Eh 13 empty plastic packets: Exhibit P14 Eh(1-13). What happened to the crystalline substances in these plastic packets? The rem 14 k? He asked for RM600 but we only paid him RM550. Was payment made? Yes. What happened next? Then we were arrested in Kapit. Can you still identify th 15 ey were MR. PING and Pik MR. RAYMOND. After you packed all the exhibits, what happened next? After I finished packing, I sent the exhibits to Chemistr 16 my office at Custom Department, Enforcement unit. Can you tell the Court what happened on ? At about 5 p.m., I was called by my section head and I was 17 l services, and courier services i.e. places of import of goods. EXPLAIN/What happened on ? On that day I received a call from PaK MR. FARID the offic 18 did Pak Ghani fetch you? He fetch us at junction of Anggerik plantation. What happened next after he have fetch you? He arrived and we entered into hi 19 t that time? He was outside the meeting room at the general office. Then what happened? Then after that PaK MR. FARID instructed me and Lim to look af 20 Zahid. Where did you hand over to Inspector Zahid? Inside the room. Then what happened? D/Kpl. Song also found an InnerShine box purple colour. Inside 21 ter all the exhibits were found and handed over to Inspector Zahid, then what happened? We went back to the office. What time did you go to the office 22 e identification to be dispensed with. MR. WEN-LIANG: No objection. Then what happened at that house? I made a raid and a search and I made an arrest 23 1st accused. Did you find anything illegal in the 1st accused? No. Then, what happened? Inspector Zahid then asked the 1st accused whether he kept any 24 e exhibit, I went to the crime scene. Before you went to the crime scene what happened to the exhibit? I put the exhibit in the bonnet of the police c 25 but his eyes were red. After the caution had administered to the accused what happened next? The accused was asked to leave his bag on the trolley and 26 you mentioned before? Yes, the same cabinet which I mentioned earlier. < What happened after you have conducted all the test, HPLC, GCMS and GC, what 27 on the mattress, while the male suspect was peeking through the window. What happened in the room? Inspector Zahid introduced himself as a police off 28 the said address. What is the purpose you went there? To conduct a raid. What happened at the said address? When we arrived at about 12.30 p.m., we fo 29 5 minutes' journey from the place I waited to the suspect's house. Then what happened? At about 2.20 p.m. I was with D/Corp. Marjawan, Sqt. Ralph D/C 30 ke photograph. < What time did you receive the instruction? 11.30 a.m. < What happened after you received the instruction? Insp. Syaugi brought me to 31 Detention Operation)? To perform operation. On , were you on duty? Yes. What happened on ? On , at 10.30 a.m., I, together with the personnel from na 32 instructed to become the Investigating Officer, Upon instruction given, what happened next? About 11.00 p.m., the raiding officer, Pak MR. HAN had co 33 k with all the exhibits found by D/Corp. Marjawan and D/Corp. Song? Yes. What happened with the exhibits found by D/Corp. Marjawan and D/Corp. Song? I Pragmatically, the *what happened* structure is used by barristers asking witnesses to collaborate to report the evidentiary facts. It encourages witnesses to report at length events that have taken place and give clarification on the details of the case. It is observed that witnesses respond mostly using more than 10 words (see section 2.5) in their response, indicating that the *what happened* question is a super-probing question.

In cross-examination, however, *wh*-questions are less evident (i.e. 7.1% as illustrated in Figure 18) because they are the least controlling questions (Danet and Bogoch, 1980a; Woodbury, 1984; Archer, 2005) and lawyers want to limit free responses. Despite that, they still function as probing questions where they seek further explanation from witnesses, as exemplified in Example 2 below.

Example 2. Source: Cross-examination, Case 11

- 1. P: I will do my cross examination in Malay Your Honour
 - P: Tadi pakcik cakap yang tiga orang itu
 Just you told that three person that
 yang akan bayar makan dan minyak saya.
 that will pay food and gas I
 Berapakah jumlah yang dijanjikan oleh mereka?
 How much that promised by them?
- 2. P: <u>Just now you mentioned that</u> the three victims will pay your food and gas. How much have they promised you?
- 4. D: My friend asked me how much I am asking for if I send them to Papar.
- 5. I replied RM 700 and these three told me that they can only pay me
- 6. RM 500. They paid RM 500 and the balance of RM 200 they will pay
- 7. me upon arriving at Papar. They will look for their friends at Papar
- 8. and will pay the balance of RM 200 there.
 - P: Jadi setuju tak dengan saya
 So agree not with me
 yang pakcik mengenakan bayaran
 that you charged fee
 untuk menghantar mereka ke Papar?
 to send them to Papar?
- 9. P: So, do you agree or not with me that you charged a fee to send
- 10. them to Papar?
- 11. D: Agree

Example 2, from the same Human Trafficking case, begins with the crossexamination of the defendant by the prosecution lawyer. The prosecution lawyer crossexamines in Malay, so I have glossed and translated the interactions into English. In this example, wh-questions have a different function when compared with direct examination. Here, probing wh-questions are used, but the how-prompt (line 2-3) seeks clarification from the defendant to explain the amount of money charged by him to the victims. Notice that the wh-question is attached after a declarative statement that asked the defendant to recall his previous statement in direct-examination. The combination of declarative and wh-question reinforces the pragmatic force on the defendant to explain the sum of money received by him as an illegal trafficker. The defendant gives a lengthy answer with specific details, as required by the prosecution lawyer, and this answer produces details that contribute to establishing his guilt. The prosecution goal is to develop a blame narrative in relation to the defendant; this is reinforced in the following question (lines 9-10), a so-prefaced question that is attached to a yes/no question to control and restrict the defendant's answer. This type of question will be discussed in detail in section 4.4.2.

So far, the micro-analysis of Example 1 and 2 indicates that wh-prompt + you + material/mental process is used by barristers requesting witnesses to collaborate to develop narrative and establish evidential facts to the court. In the case of direct examination this information shows the witness to be reliable and in cross-examination the information incriminates the witness. This micro-analysis shows that: first, whquestions can be used as routine questions to help barristers establish good rapport with witnesses and this is usually done at the beginning of direct examination. Second, whquestions can be used as a request to witnesses to provide details of events, which is achieved via wh-prompt + you + material/mental processes. When witnesses are able to provide the details of events, it establishes the witnesses as competent and credible. In Example 1, PW7 has a good memory of details and therefore is shown to be a reliable witness. Finally, the what happened questions are super-probing questions which require witnesses to clarify and give detailed explanations. Apart from presenting the witnesses as "social actors" that the judge can "sympathize" with (Rosulek, 2009: 2), personalisation in barristers' questions helps to elicit witnesses' involvement, as they can relate the question to their own self. As a consequence, barristers strategically manipulate linguistic choice to make witnesses collaborate with them to build evidentiary facts. In cross-examination, this forced collaboration is not in the witness's

interests and is used against them, while in direct examination witnesses can be said to truly collaborate.

4.3.2 modal can + you + material/verbal process to present witnesses as helpfully productive in direct examination or lacking knowledge and credibility in cross-examination

The most frequent pattern found in the concordance and cluster analysis was the pattern: can you +material/verbal processes which I have categorised as indirect questions. (The percentage of indirect questions as a percentage of all questions is 24% in direct examination and 6.1% in cross-examination - see Figure 18). Figure 21 is further divided across the examination and cross-examination to illustrate which activity is dominant with the can you indirect question.

Figure 21. The percentage of can you indirect questions in the direct and cross-examination

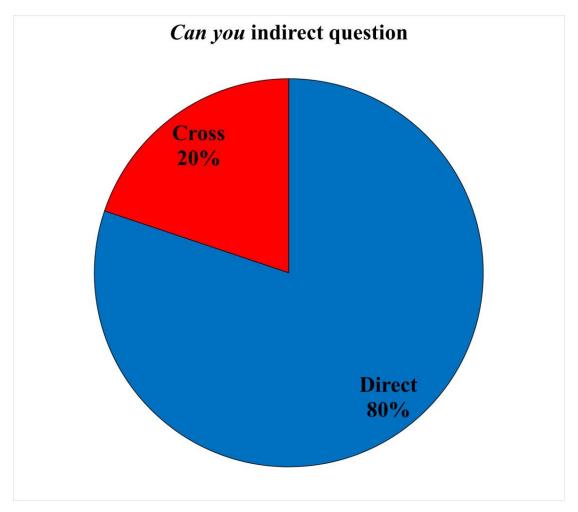
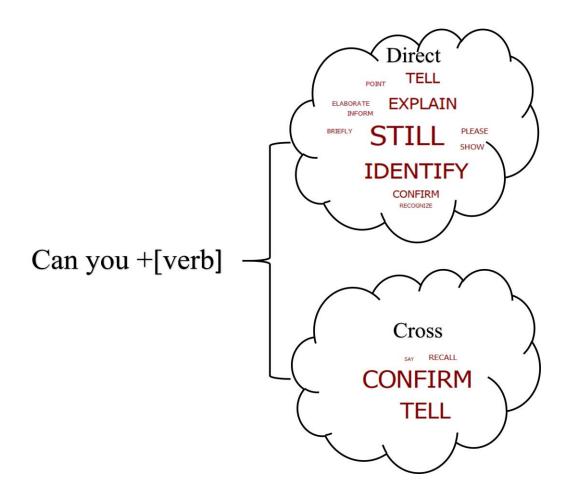


Figure 21 indicates that indirect questions are dominated by the *can you* + *material/verbal process* structure and when they are separated across activities, they appear more in the direct-examination. Barristers prefer the indirect *can you* + *material/verbal process* questions because they allow for a full range of responses from witnesses, whilst also displaying their ability to the court. Pragmatically, this type of structure invites witnesses to elaborate, particularly if it is a verbal process such as *tell* or *explain*. When a word cluster analysis is conducted on the concordance in the direct-examination dataset, it is found that a more diverse repeated phraseology of *can you* + *material/verbal process* structure is produced compared to cross-examination activities. Figure 22 illustrates the diversity of vocabulary associated with *can you* in direct and cross-examination activities. This word cloud is generated with concord clusters on the *can you* phrase with words on the nearest right (i.e. R1) in direct and cross-examination. The size of word in a word cloud indicates their frequency of occurrence.

Figure 22. Two-word clouds of R1 (Right 1) collocates with can you phrase in direct and cross-examination



In direct-examination we see a great diversity of verbal and material processes: identify, explain, tell, confirm, inform, paired with lawyers' can you questions. The adverbs still and please are also frequent, underlining the witness's reliability. In comparison, cross-examination is dominated by the verb confirm and other verbal processes. The idea of a word cloud is to promote pattern-noticing and it is observed that the can you phrase in direct examination collocates with more words, and with both material processes (i.e. identify, show, point, recognise) and verbal processes (explain, tell, confirm, inform, elaborate, and recognise), whereas cross-examination demands information through verbal processes only.

Figure 23 demonstrates a sample of concordance lines form direct examination with the material verbs *identify, read,* and mental verbs, *tell, explain* and *confirm* that collocate with *can you* questions. The underlined words denote material and verbal processes where barristers are asking for those actions to be taken. Note that, according to Halliday (1985, 1984), *identify* is a bit tricky to classify because it could be material process in terms of being an action or mental process in terms of the sense of seeing.

Figure 23. Concordance lines of material and mental process verbs which collocate with can you questions in direct examination (20 of 285 occurrences)

N Concordance

Exhibit P13(1-23), photographs no.13, 14, 15, 16 and 17. Can you explain to the court what appeared on each of the photo formed the court that it was added bracket 5 at item 18. Can you explain to the court? I also apologize, the bracket 5 w s information can be seen on which page? Exhibit P37(2). Can you tell the court what is the ICCID for telephone number # s information can be seen on which page? Exhibit P37(2). Can you tell the court what is the ICCID for telephone number # rt that you received 20 foils marked as 18 Fc(1)-Fc(20), can you explain to the court? I apologize, the marking should b 10 ntioned by you, especially photographs no.13-16 & 19-20. Can you explain about all the photographs, what are the exhibit 11 n these exhibits? Yes. Refer to Exhibit P 48 (1 to 226). Can you confirm all of these photographs are the same with the 12 photographs as in this exhibit filed, i.e. ID 48(1-226). Can you tell the Court what type of camera you used to take the 13 otograph that the marking can be seen? Photograph no.27. Can you read the date on photograph no.27? 26/03/2013. Were any 14 road entering the said Taman. Refer to Exhibit P6(1-3). Can you confirm whether the location that you waited for the su 15 ###########. Refer to page 16 of 16. Rows no.1, 2 and 3. Can you explain about these three rows? A. It is the same like 16 between my gross weight and what is stated in Pol.31. < Can you explain to the court why there is a discrepancy in term 17 ed by Polis Diraja Malaysia 396. I also received Pol.31. Can you identify Pol.31 if it was shown to you? Yes. Refer to P 18 8 of 16 at row 6 and page 9 of 16 at rows 1, 2, 3 and 4. Can you explain about these five rows? All these rows show that 19 d as exhibit. CD: Exhibit P8. Refer to Exhibit P7(1-42). Can you inform the court about these pictures, where is the cri 20 photograph shows the box? Photographs no.46, 47 and 48. Can you identify on which photograph shows the exhibit found in The following Table 14 tabulated the frequency and the percentages of the actual patterns of $can\ you + material/verbal/mental$ process in direct and cross-examination activities. This distribution supports the claim that lawyers manipulate language as their strategic tools to narrate or re-structure the events through process types in indirect questions.

Table 14. Process types and their frequencies and percentages in direct and crossexamination

Processes	Direct	Cross	Freq.	%
Material	identify (55), show (9), point (7), recognise (3), produce (2), name (2), mark (2)	-	80	35%
Verbal	explain (37), tell (33), confirm (18), inform (8), elaborate (6),	confirm (15), tell (17), say (3)	137	60%
Mental	-	recall (11),	11	5%
		Total	228	100%

This table shows that verbal processes that collocate with *can you* are dominant (60%) and found in both direct and cross-examination, whereas material processes are more frequent in direct examination with all the appearances coming from direct examination. In cross-examination, barristers collocate the *can you* question with verbal processes and the mental process *recall*. In general, the prominent appearance of verbal processes confirms that examination is about telling and confirming. The *can you* + *verbal/material process* is a powerful tool for barristers to put their witness in a good light, especially in direct examination, because the question often indirectly provides the answer for witnesses. In cross-examination, however, it can be used to present the witness as lacking knowledge and credibility.

The aim of direct examination is for the lawyers to present all the relevant evidence in a way that factfinders, in this case judge(s), are able to understand, accept and rely on when reaching a verdict at the end of examination process. It is known that open-ended and non-leading questions are encouraged to be asked in direct-examination (Griffiths and Milne, 2006; Westera *et al.*, 2017; Dodier and Denault, 2018), because they allow witnesses to explain events in their own words, thus maximising their productivity in presenting a narrative to persuade and inform factfinders. The following extracts vividly demonstrate how indirect questions with *can you* are designed by

lawyers with specific material processes as a request for witnesses to perform specific speech acts.

Example 3 is extracted from a direct-examination between a prosecution witness (PW1) and a prosecutor (P) in a human trafficking case. PW1 who is attached to the mobile patrol vehicle (MPV) unit acted as the arresting officer for this case. The topic for this exchange is about a police report made by PW1 on the defendant.

Example 3. Source: Direct-examination, Case 11 (J is the judge and D the defendant)

- 1. P: Did you lodge the report?
- 2. PW1: I lodged the report on the same date at 1751 hours.
- \rightarrow P: Can you still <u>identify</u> the report that you have lodged?
- 4. PW1: Yes.
- → P: Pray to show one report to PWI. Can you identify this report?
- 6. *Is that the report that you have lodged?*
- 7. PW1: Yes.
- 8. P: *Pray to mark* the police report as exhibit Your Honour.
- 9. J: Court interpreter explained the police report to the accused in
- 10. Bahasa Malaysia.
- 11. D: Understand the police report and have no objection

First, a yes/no question is used by the prosecutor to get confirmation from PW1 about the police report made by the witness. The controlling yes/no question pragmatically leads PW1 to confirm the report was made by him with additional information that it was made on the same day of the arrest. In line (3), the prosecutor uses an indirect request formatted as question can you + material process identify which requests PW1 to take such action. PW1 who is the Actor performing the action, confirms the prosecutor's request. In the following turn, the prosecutor requests the judge to be allowed to show the report to PW1. This action is achieved through a most polite and least face-threatening request (Kryk-Kastovsky, 2006) verb pray, that is used at the beginning of the prosecutor's request to mark politeness. Then, the prosecutor uses an indirect request of can you + material process identify as a request to PW1 to validate the police report (line 5). Notice that a reformulation is adopted with the yes/no question that follows (line 6), in an attempt to maximise the delivery of the prosecutor's message to the witness. Reformulation does not only simplify the message but it allows the prosecutor to highlight the importance of PW1 acknowledging the police report. In reply to this request, PW1 validates the report. After the report is confirmed and

acknowledged as a genuine report, the prosecutor submits the police report as one of the pieces of evidence for this case. He begins with a formulaic marker of *pray to mark* (line 8) when addressing the court to accept the report as the prosecution's evidence, and ends his request with 'Your Honour' as a term of respect to the Judge. Before accepting the report as evidence, the judge instructed the court interpreter to read and explain the police report in Bahasa Malaysia so that the defendant understood the content of the report. In line (11) the defendant agrees and has no objection. Example 3 demonstrates that the indirect questions with *can you* + specific material verbs can be a strategic tool for lawyers to request witnesses to perform specific speech acts. The material verb *identify* is widely used by lawyers in direct examination because it allows the actor to validate the evidence, thus persuading and informing factfinders to agree with the prosecution's evidence, thereby establishing a *prima facie* case against the accused.

Lawyers also perform a requesting speech act with witnesses via *can you* + *verbal process* questions to help them build the narrative of evidence. This is because the *verbal process* "covers any kind of symbolic exchange of meaning" (Halliday, 1994: 140) that allows barristers and witnesses to exchange information during the examination. The *you* personalisation that directly addresses witnesses either invites the witness to share information (Example 4 demonstrates this observation) or face-threatens witnesses in cross-examination.

Example 4. Source: Direct-examination, Case 12

- \rightarrow P: Can you briefly <u>tell</u> the court your scope of job in narcotics
- 2. *Sabah?*
- 3. PW4: As intelligence officer, operation and arrest
- 4. P: On < dd/mm/2013 > were you on duty?
- 5. PW4: Yes
- \rightarrow P: Can you <u>tell</u> the court what happened on <dd/mm/2013>?
- 7. PW4: I made a raid in connection with a drug case.
- 8. P: Where did you make the raid?
- 9. PW4: At one house at Taman Midway Tabuan Jaya, Jalan Bunga Raya,
- 10. P: When did you arrive at the house?
- 11. PW4: I arrived at the said house at about 2.30 p.m.
- 12. P: *How* many of you involved in the raid?
- 13. PW4: Those involved in the raid were Sgt. Ralph, D/Corp. Song,
- 14. D/Corp. Amali, D/Corp. Damien, D/Corp. Marjawan, D/L/Corp.
- 15. Anaqi, L/Corp. Haziq and Const. Umar.

This example shows the indirect can you + tell questions used by the prosecutor as a request for PW4 to narrate the circumstances of the raid so that the prosecutor can establish points to develop his evidence in front of the judge. In line (1), the prosecutor establishes rapport with his witness and, in the following turn (line 3), he uses a yes/no question to get confirmation from PW4. Simultaneously the prosecutor establishes the topic of the exchange which is about the raid conducted by PW4 and his team. In the following line (6), the indirect can you + tell question is used as a request to PW4 to specify the events that took place on the said date. PW4 explains that he conducted a raid in connection with a drug trafficking case. The prosecutor then builds the narrative of events from PW4's answers through specific Wh-questions that seek information about the place and time of the seizure. PW4 informs the court by supplying the information needed by the prosecutor. The prosecutor then asks a probing Wh-question with how to allow PW4 to give a vivid picture of the specific details so that it can be used as evidence to support his narrative of events. So far, the two examples explained here demonstrate that the legal-pragmatics of the indirect questions can you + material/verbal process in direct-examination indicates that they can be used as a strategic invitation tool for lawyers to invite witnesses to elaborate and make confirmation, thus boosting witnesses' production. Pragmatically, indirect questions help lawyers to build their narrative of events in direct-examination. However, in crossexamination they can be used as a linguistic marker to check for inaccuracies and inconsistencies in witnesses' answers.

In cross-examination where lawyers have different goals, that is to highlight the inaccuracies and inconsistencies in witness' answers and ultimately challenge and discredit witnesses (Ehrlich, 2011; Zydervelt *et al.*, 2017), questions, including indirect *can you + verbal process*, are designed differently from direct-examination. Cross-examination is dominated by three verbal processes, which are *confirm*, *tell* and *say*, as exemplified in Figure 24 and, noticeably, the material process, *identify*, is absent.

Figure 24. Concordance lines of verbal processes (i.e. confirm, tell, say) that collocate with can you in cross-examination (15 of 55 occurrences)

N Concordance

```
device? No. Entry no.3, name Syq, the telephone number is ###-######. Can you confirm that, do you know the owner of the device? That number is conf
31 efer to photograph no.18. Do you know who broke the door? I don't know. Can you confirm that the pictures shown in photographs no.19, 20 and 21 show n
32 or Zahid. Do you know where he brought these exhibits to? I don't know. Can you confirm that is it your evidence that Inspector Zahid took one big box
33 raph? It was already opened. Do you know who opened them? I don't know. Can you please confirm that you have no idea at all whether Inspector SYAUQI w
34 at say you? I cannot remember That is all. Case stand down. @ 5.15 p.m. Can you tell the court how many years have you been in the Custom Department?
35 ave never been to that particular place before, do you agree? Yes. On , can you tell the Court when was the first time the accused seen by you? After
36 no.14 and 15. What about photograph no.16? I also took this photograph. Can you confirm for certain that none of the doors were opened by you or the r
37 awan were there? Inspector SYAUQI, D/Corp. Marjawan and Sergeant Ralph. Can you confirm that all these officers were with you at the crime scene when
38 inq briefed and the preliminary test. Refer Exhibit P46- police report. Can you confirm to the court nothing was mention that the accused before you c
39 p. Marjawan? Only one room. The team never went into the 3 other rooms, can you confirm? When I was taking photographs only one room was entered. When
40 ome were on the floor and some from the Skynet box. When you said some, can you explain what do you mean some? I need to refer to the chemist report,
41 ed as in the photograph? No. Only 1 songkok and 2 packets on the table. Can you tell the court when did all the exhibits as seen in photograph 23 of I
42 eed to explain. Then, the next step is to conduct the qualitative test. Can you tell the Court what is this qualitative test for? The 1st test is the
43 vidence that he looks scared and shivering? Two times. These two times, can you say again what you have said? He looks scared and shivering. This act
44 er to Dangerous Drugs Act (DDA), 1952. This is the only Act I refer to. Can you confirm to the Court throughout your investigation in this case, you o
45 you mentioned the name Mr. Zuhri. Is he the recipient of this box? Yes. Can you confirm that this one Mr. Zuhri was the person who collected this part
```

The concordance lines in Figure 24 demonstrate that defence lawyers limit their choice of processes to the verbal process (i.e. *confirm*, *tell*, *say*) because they require witnesses to retell the events that favour their clients (i.e. defendants) or to confirm their propositions. Example 5 demonstrates how the indirect question *can you* + *verbal process* is designed to seek confirmation and undermine the truth in witnesses' testimony, so that the questions pragmatically force witnesses to produce numerous changes in their testimony, indicating their unreliability.

Example 5. Source: Cross-examination, Case 14

- 1. DC: Refer to the first information report by Pegawai Kastam
- \rightarrow (Custom Officer) MR. HAN. Can you confirm to the Court in the
- 3. report was there any mentioning whatsoever in regard to the accused
- 4. <u>looks scared and shivering in the report?</u>
- 5. PW2: No.
- 6. DC: Was there in the report mentioned his lips were pale and eyes
- 7. *were red?*
- 8. PW2: No

Continued...

- \rightarrow DC: Can you <u>tell</u> the court <u>how</u> long was he in the meeting room?
- 22. PW2: I am not sure.
- 23. DC: PUT: While in the meeting room, there were a lot of shows by the
- 24. *Custom, they called the photographer and asked him to take*
- 25. photographs of the accused pushing the trolley and then they took
- 26. photographs as though he just opened the padlock and so on.
- 27. PW2: I do not know.

In this exchange, the defence lawyer demonstrates that *can you + verbal process* can be used to raise potential inaccuracies and then restructure the prosecution's narrative so that the factfinder sees the flaws in the prosecution's evidence. Firstly, in line (1) the defence lawyer directs PW2's attention to the content of the report made by Mr. Han. The defence lawyer's goal is to discredit Mr. Han's evidence on the accused's condition, that is, the defendant looked scared and shivering, which suggests that the accused was intimidated and badly treated. The *can you + confirm* indirect question (line 2) is used as a request to get validation from PW2 regarding the matter. This structure is attached to a closed *yes/no* question that pragmatically forces PW2 to provide a conclusive remark of *yes* or *no*. It is worth highlighting that the position of *can you confirm* is located at the beginning of the question so that it offers PW2 an

opportunity to either agree or disagree with the defence lawyer's question, though there is a preference for agreement. PW2 disagrees using *stand-alone No* to indicate disagreement, producing a dispreferred answer and thereby falling into argument with the defence. In the following line, the defence lawyer reformulates his question from the least coercive indirect question into a more coercive *yes/no* question so that pragmatically it controls PW2's response. The reformulation strategy from the least coercive to a more coercive question provides little opportunity for PW2 to give a complete account of the alleged events. The pronoun *you* here puts the focus on the witness and does verbal aggression, where the barrister articulates his intention in the question that follows after the *can you*. By designing this kind of question, the barrister permits the witness to speak for himself yet expresses his power and control over the witness. In response to this controlling *yes/no* question, PW2 shows resistance to the defence lawyer's questions with another *stand-alone No*. This type of resistance will be dealt with in the final analysis chapter (Chapter 6). Suffice it to say, resistance implies that witnesses are not necessarily controlled by barrister's questions.

Moving to line 19, the indirect question *can you* + *tell* is used as a request to PW2 to provide specific information needed by the defence lawyer, in this case the precharge detention period of his client by the investigation team. The defence combines the *can you* + *verbal process* structure with the probing *how-prompt* to seek specific answers from the witness. The pragmatic function of this question is that it prompts PW2 to give details about the interrogation conducted with the accused. PW2 is observed to show evasion, another type of witness resistance that will be discussed in detail in Chapter 6. The *I am not sure* answer expresses PW2's state of knowledge about the detention period and indicates that it is lacking, thereby undermining his credibility. In line 23, the defence uses a declaration that consists of damaging propositions in relation to PW2's investigation team. The defence lawyer retells the events through a declarative statement so that it can bring advantage to his clients, while at the same time discrediting the investigation team. The witness recognises the defence's actions; thus, he resists with a *stand-alone I don't know* to indicate lack of commitment to his answer, but this is just as damaging to the prosecution case.

So far, the qualitative analysis demonstrates that indirect questions with *can you* + *material/verbal process* are favoured by Malaysian barristers because, as these are less coercive (Conza *et al.*, 2012), they can be manipulated by lawyers to present

witnesses as either helpfully productive (in direct) and lacking knowledge and credibility (in cross-examination), thereby achieving their goals in direct and cross-examination. Firstly, it is used as a supportive tool for lawyers to obtain and boost witnesses' productivity in direct-examination, and secondly, it can be used as a linguistic marker to check for any inconsistency and inaccuracies in witnesses' answers in cross-examination.

4.4 Challenge questions to control and coerce witnesses

So far, the discussion mentions questions that are used by barristers as probing questions that maximise witnesses' productivity. This section presents the microanalysis of challenge questions that accuse or undermine the truth in witnesses' answers. As mentioned before, personalisation constitutes a face-threat and this has been demonstrated in the *can you* structure in cross-examination above. This section presents the coercive questions with pronouns *you/kamu* (i.e. declarative, invariant tag, *so*-prefaced and *SAY* questions) that are used to expose inaccuracies or inconsistencies in witnesses' testimony in cross-examination.

4.4.1 Declarative, tag, so-prefaced and SAY questions to control and coerce witnesses' responses

Previous studies on declarative-questions (Kimps, 2007; Seuren and Huiskes, 2017) and tag-questions (Berk-Seligson, 1999; Archer, 2005; Gibbons and Turell, 2008; Kimps and Davidse, 2008; Tkačuková, 2010) indicate that these types of questions are very powerful resources for barristers in cross-examination. This is because they already contain "pragmatic presuppositions" (Aijmer, 1972: 33) that are associated with certain speech acts. Declarative and tag-questions are considered leading questions because they can be suggestive; therefore they are only allowed in cross-examination. Declarative and tag questions are used by barristers to express their stance and challenge witnesses in a way that brings about damaging consequences for them.

Example 6 demonstrates how variant tag questions combined with the pronoun *you* are used to put pressure on the witness and are treated as a "vehicle for assertions" (Heritage, 2002: 1427). The tag questions (lines 1, 15 and 20) are used to invite an affirmative response from witnesses that confirms the truth presented in their answers during direct examination.

Example 6. Source: Cross-examination, Case 12

→ DC: We were referring to parcel arriving in Sarawak.

2. This parcel according to Exhibit P20 is sent from Johor, isn't it?

3. PW13: Yes

4. DC: If it had been sent from Johor, would **your** office in Sarawak

5. *checked* the items before it was sent from Johor?

6. PW13: No

7. DC: *In Exhibit P20, the shipment declaration form,*

8. *there are certain items which are not supposed to be sent.*

9. items to be shipped through this service must not contained items

10. like firearms, livestock, etc.

11. <u>How did your</u> company ensure that the box sent to Sarawak

12. *does not include* all these prohibited items?

13. PW13: Normally we asked the customers what were the contents

14. and we accepted what they told us.

→ DC: Before it is sent, you also weighed the box, isn't it?

16. PW13: Yes

17. DC: According to this shipment declaration form,

18. *what is the* **weigh**t *of the box?*

19. PW13: 4 kg

→ DC: This weight has been confirmed by **your** company at Sarawak

21. before it was sent from Johor, isn't it?

22. PW13: Yes

PW13 has been interviewed by the defence barrister concerning the parcel that contained drugs, which was sent to the suspect's house via PW13's courier company. Note that pronoun *you* and possessive determiner *your* deictically refer to PW13 and his company to create a pattern of accusation on the witness. All the variant tag questions of *isn't it* in this example receive positive affirmative 'yes' answers from PW13 (i.e. lines 3, 16 and 22). The anchor part of the variant tag questions in this example consists of statement of facts or reported statements which were gathered by the defence lawyer from the direct examination of PW13. The reversed polarity tag that is attached to the statement of fact imposes the truth of the fact and coerces PW13 to produce a positive answer that helps the defence barrister to establish his argument. In this case, the defence barrister attempts to question the prosecution's material evidence (i.e. a parcel containing drugs) to prove that the defendant is not guilty. To strengthen this claim, the defence barrister is seen to question the courier company's standard operating procedure

or the SOP in handling delivery parcels. Material verbs such as *checked* (line 5), *ensure* (line 11) and *include* (line 12) were used by the defence barrister to check whether PW13 performed the correct SOP when handling the items. In line 20 and 21 he gets confirmation about the weight from PW13 so that he can use that as an argument to mitigate the charge on his client.

Apart from face-threats, declarative and tag questions are also used by defence lawyers to get positive responses from witnesses that bring advantages to the defence side. This is achieved via declarative and tag questions that contain inferences or reported statements that express their stances to get positive responses from witnesses. Example 7 illustrates this observation.

Example 7. Source: Cross-examination, Case 14

- 1. DC: I put it to you while **you** are doing this,
- 2. there are a lot of other passengers waiting for their luggage
- 3. *to be examined and scanned?*
- 4. PW3: Yes
- 5. DC: And also, some to be directed to the scanning machine, agree?
- 6. PW3: Yes
- \rightarrow DC: Any passenger who came,
- 8. *they had* to go to the scanning machine, do they?
- 9. PW3: Yes
- 10. DC: During that time, I suggest to you there will be a lot of people
- 11. at the scanning machine with the bags to be scanned
- 12. *at the same time as the accused?*
- 13. PW3: Yes
- 14. And that time when the passengers have their luggage
- 15. being scanned at the machine,
- 16. passengers were basically under the control
- 17. and responsibility of the scanner and the examiner,
- 18. *i.e. Custom officer Lim and Irsyad?*
- 19. PW3: No

Case 14 involves an exchange between a defence lawyer and PW3, a senior customs officer who had apprehended the accused in the possession of drugs while entering Malaysia via Kuala Lumpur International Airport. The defence lawyer intends to check any inconsistencies in PW3's answers so that he can undermine the truth of what PW3 had reported in the direct examination. Line 1 begins with a declarative

question with the "metalinguistic marker of assertion" (Heffer, 2005: 138), that is I put it to you, that projects the lawyer's proposition. In this case, the defence lawyer asserts his version of events that coerces PW3 to give a positive response (line 4). Then, in line 5, an and-prefaced question is used by the defence lawyer to invite the witness's confirmation. Interestingly, an invariant tag of agree is attached at the end of the question to invite agreement from PW3. The mental verb agree is used to coerce the witness to accept the defence lawyer's proposition. Johnson (2002: 107) suggests that the and-prefaced question is not only a tool to construct a narrative sequence but also expects agreement. This type of invariant tag will be discussed in depth in Chapter 5. The question that I would like to highlight is the constant polarity tag question in lines 7-8 that seeks verification and is conducive towards a positive response from PW3. The positive anchor and tag in this question does not express the lawyer's viewpoint or stance; instead, it is used to perform inference. In response to this question, PW3 gives a positive response that makes PW3 in agreement with the defence lawyer. The defence lawyer further probes PW3 with a declarative question in line 10 that offers the lawyer's version of events to get confirmation from the witness. However, in line 14, an andprefaced question is used to challenge PW3 because it introduces an inferential claim. The multifunctionality of the and-prefaced question in this line is not only to use it to construct the lawyer's narrative sequence but also to damage PW3's testimony, because it challenges PW3 through the declarative that contains presupposition (i.e. passengers and their belongings were under the control and responsibility of the custom officer). PW3 recognises the lawyer's attempt to reduce his accuracy and discredit him as a reliable prosecution witness and, therefore, in response designs his answer as a rebuttal to the lawyer's claim with disagreement 'No'.

4.4.2 So-prefaced questions as a strategic device to re-structure events and make speculation on witnesses in cross-examination

A quantitative analysis reveals that *so*-prefaced questions are used predominantly in cross-examination with 79.2% of occurrences, whereas only 20.8% are found in the direct-examination. Figure 25 shows concordance lines of *so*-prefaced questions extracted from cross-examination activities.

Figure 25. Concordance lines of so-prefaced questions in cross-examination (24 of 38 occurrences)

Concordance

to open; are you aware? Yes. So how was the string untied? I don't know. So, do you agree with me that you did not really know what happened during arked as Exhibit P16. Do you know the Skynet is the courier company? Yes. So the box, Exhibit P16 was sent by courier services, do you agree? I don't th him? Yes. Did you take photograph of the contents of this big box? No. So you have no idea of the contents of the big box? Yes. Did you see Inspect ger exhibits put inside the brown box when you 6 carried them around? No. So how did you carry them? I placed the Brand InnerShine box on top of the S the bag tightly which makes it is difficult to open; are you aware? Yes. So how was the string untied? I don't know. So, were agree with me that you were in the meeting room under the conduct of Lim, you were the superior so whatever happened while in the midst of examination in respect of the bag you ever heard about this section? I ever heard but I do not understand. So, before you grind the homogenized crystal substances, you did not fulfil e room? Yes, D/Corp. Marjawan and Sergeant Ralph also went into the room. So 4 persons entered into the room? Yes. Any exhibits found in that room? Wh ow many years have you been in the Custom Department? More than 37 years. So do you agree with me that you were very familiar with Custom Act, CPC and 10 exhibits, did you receive various songkok together with the exhibits? No. So, I believe you also did not receive the bag in which all these items were 11 ur office? 5.30 p.m. And the search was conducted at what time? 2.30 p.m. So it was almost three hours later that you prepared the Senarai Bongkar, do 12 om? Inspector Zahid, Corporal Song, Corporal Marjawan and Sergeant Ralph. So you do not know where they were brought from? I do not know. Your evidence 13 graph was taken by the Investigation Officer after the report was lodged. So there was nothing criminating found in accused's room in paragraph no.19, 14 flected in P13. Which photograph in P13? Photograph no.13 of Exhibit P13. So are you saying that these are the exhibits found by Detective D/Kpl. Song 15 nce previously in investigating any alleged offences being committed? No. So this is your first time you ever involved in investigating cases involvin 16 you used to do the testing is only for methamphetamine and ketamine? Yes. So after being confirmed by PaK MR. FARID as regard to the circumstances and 17 find that? On the floor. As shown in photograph no.13, do you agree? Yes. So the actual scenario is D/Corp. Song found the Brand InnerShine box on the 18 rapher took the photograph upon instruction by the Investigation Officer. So your answer to 01438 is wrong. Yes, what I meant is the photographer. The 19 e box on the top and you carried all the drugs exhibits in your hand. No. So how did you carry them? Items in paragraph A of Exhibit P15, I held in my 20 ? I cannot remember. PUT: That you are giving selective answers. I agree. So do you agree during the briefing, you were there taking notes and name? Y 21 AN entered the meeting room before he made a police report? Yes, I agree. So, during that time before he went to lodge police report, he never adminis 22 rol to be arrested? I do not have the power; my duty is only supervising. So one-day people involved in smuggling under your care detained by you? I w 23 ughly. I disagree. PUT: Since he was found moving the bag at the airport, so he has knowledge what are inside the bag. This is what you think. Yes, I 24 the door, are you saying that you did not open any of the doors? Correct. So all the 4 doors remain shut? Yes. Did you take photograph of the 4 doors?

The concordance analysis in Figure 25 shows that *so*-prefaced questions come in various syntactic forms. From a micro-analysis of the dataset four classes of *so*-prefaced questions are found with their pragmatic functions. The classes and functions are exemplified below.

Classes	Examples	Pragmatic functions
So + wh-prompt	So, <u>how</u> did you carry them?	Dynamic
	(4 occurrences)	trigger
So + yes/no	So, <u>do you</u> agree during the briefing, you were there taking notes and name? (7 occurrences)	Confirmation
So + declarative	So, you have no idea of the content of the big box? (12 occurrences)	Summarisation for confirmation
So + invariant tag	So, there was nothing criminating found in accused's room in paragraph no.19, do you agree? (14 occurrences)	Inferential claim

So-prefaced questions that have been researched in English (Johnson, 2002), have a counterpart in Bahasa Malaysia: the *jadi*-prefaced question. Examples 8 and 9 are instances of so-prefaced questions in English and Bahasa Malaysia.

Example 8. So-prefaced summarisation question from English dataset

 \rightarrow DC: So, this is your first time you ever involved in investigating cases

2. *involving drug?*

3. PW4: Yes.

Example 9. Jadi-prefaced summarisation question from Malay dataset

DC: <u>Jadi</u>, apabila diberitahu oleh IO tadi, <u>So</u>, when told by IO just, ini adalah complainant this is complainant barulah kamu tengok muka dia. Betul?

then you looked face him. Correct?

So, when the investigation officer told you this is the complainant,

2. then you looked at his face. Correct?

PW2: Betul *Correct*

3.

A frequency analysis indicates that cross-examination is dominated by the most coercive type, that is the so + invariant tag structure with 14 occurrences and so + declarative structure with 12 occurrences. The controlled so + yes/no structure (i.e. 7 occurrences) also known as "so with a polar question" (Johnson, 2002: 95) is mostly used to get confirmation from witnesses and it attempts to restrict witnesses' responses to polar answers of "yes' or 'no'. The pragmatic function of so + wh-prompt is to elicit information from witnesses and act as a dynamic trigger, where it invites witnesses to elaborate on specific kinds of actions or processes.

First, the so + wh-prompt question is used by defence lawyers to elicit specific kinds of actions that help lawyers to restructure the circumstances of the alleged events so that it brings advantage to their client (i.e. the defendant). Example 10 below illustrates this observation.

Example 10. Source: Cross-examination, Case 12

- 1. DC: Earlier description you carried the Skynet box together with the
- 2. Brand Inner Shine box on the top and you carried all the drugs
- 3. *exhibits in your hand*
- 4. PW4: No.
- \rightarrow DC: So how did you carry them?
- 6. PW4: Items in paragraph A of Exhibit P15, I held in my hand. 25 stripes
- 7. of Erimin-5 and 20 stripes of Erimin-5 in 11 paragraph B of Exhibit
- 8. P15, I held in my hand. Items in paragraph C i.e. 2 transparent
- 9. plastic packets inside the yellow MAMEE packet I also held in my
- 10. hand. Items in paragraph D were inside the Brand InnerShine box
- 11. that I put on top of the brown Skynet box. Items in paragraph E, F,
- 12. G, H, I are inside the brown Skynet box that I carried.

In line (1) the defence counsel presupposes that all exhibits were carried by hand by PW4 via a declarative question. The pragmatic function of this assertion is to expose errors when PW4 handled the evidence. The defence counsel's goal is to discredit PW4 as a reliable witness, specifically as a reliable investigation officer for this case. PW4 is aware of the defence lawyer's strategy; thus he resists the presupposition with *standalone 'No'* to indicate his disagreement. In line 5, a *so* + *wh-prompt* structure is used by the defence lawyer as a dynamic trigger that pragmatically asks PW4 to elaborate on the specific actions taken by him in handling the substances. Pronoun *you* directly addresses PW4 to inform the court about his action in handling the drugs. PW4 takes the opportunity to give a detailed and long explanation on the way he had handled the drugs

so that he can transform the malign structure (i.e. declarative question in line 1) into a benign one in front of factfinders. The dynamic trigger type of question can bring advantages to defence lawyers because it allows them to trap the witnesses by exposing errors or inaccuracies in witnesses' previous answers. However, if the witnesses recognise this action is being performed, they can design their answers as rebuttals, as exemplified in Example 10.

Secondly, the controlling and coercive *so*-prefaced questions are designed by defence lawyers to challenge and make inferential claims on witnesses' answers so that it brings benefits to their clients. Example 11 is an extract from the cross-examination of PW9 from the same drug trafficking case, case 12, by the defence counsel. The following exchange demonstrates how the defence lawyer uses a series of *so*-prefaced questions to restructure the circumstances of the alleged events by checking for inconsistencies in PW9's answers.

Example 11. Source: Cross-examination, Case 12

- 1. DC: Photograph no.19 does not show any drugs?
- 2. PW9: No. The photograph was taken by the Investigation Officer after the
- 3. report was lodged.
- → DC: So, there was nothing criminating found in accused's room in
- 4. paragraph no.19, <u>do you agree</u>?
- 5. PW9: I agree because the photograph was taken by the Investigation
- 6. Officer. The exhibit had already been handed over to the
- 7. Investigation Officer
- 8. DC: Are you sure the photograph was taken by the
- 9. *Investigation Officer?*
- 10. PW9: It was taken by the Investigation Officer and the photographer from
- 11. the Narcotic Sarawak.
- 12. DC: Who took the photograph?
- 13. PW9: The photographer
- 14. DC: You also mentioned that the Investigation Officer also took the
- 15. photograph. Did the Investigation Officer also take the
- 16. *photograph?*
- 17. PW9: No, the photographer took the photograph upon instruction by the
- 18. Investigation Officer.
- \rightarrow DC: So, <u>your</u> answer to Q5 is wrong
- 20. PW9: Yes, what I meant is the photographer.
- 21. DC: There is no photograph taken of the Exhibit alleged found by
- 22. Detective Corporal Song, do you agree?
- 23. PW9 I disagree.
- 24. DC *Why?*

- 25. PW9 There are reflected in P13
- 26. DC Which photograph in P13?
- 27. PW9 Photograph no.13 of Exhibit P13.
- → DC So are you saying that these are the exhibits found by Detective
- 29. *D/Kpl. Song?*
- 30. PW9 Only item marked [4].

Example 11 shows linguistic manipulation by the defence lawyer to attempt to restructure the circumstances by exposing errors and inconsistencies in the witness's answers. The exchange begins with a declarative question that tests the reliability of Photograph 19 as prosecution evidence. PW9 shows partial cooperation with the defence lawyer by first confirming the lawyer's proposition, then making clarification to lessen the damage by explaining that Photograph 19 was taken after the report was lodged and not when the arrest was made. Then, an inferential claim is made by the defence lawyer that pragmatically has an accusatory effect (line 4) through the so + invariant tag structure, to expose the difficulty that Photograph 19 is not credible evidence against the accused, because it does not incriminate him as being in possession of illegal substances. The use of so here adds more weight to the lawyer's presupposition and the pronoun you in the invariant tag, do you agree, transforms the barrister's proposition into a more coercive one, since it challenges the witness with the inferential claim. PW9 partially agrees with this claim by making a correction. This is achieved through the use of the subordinating conjunction, because, to signal the causeand-effect relationship. This type of partial resistance will be further explored in Chapter 6.

In line 8, a *yes/no* question is asked to check PW9's answer because the defence lawyer detects inconsistency. In the following lines, the defence lawyer pressurises PW9 with *Wh*- and declarative questions to highlight the inconsistencies in PW9's testimony. As can be seen in line 17, PW9 resists and makes a correction that the photo is taken by the photographer not by the investigation officer. In line 19, the *so* + *declarative* structure is used as a summarisation. The possessive determiner *your* refers to PW5's previous answer (line 10-11). The role of this *so*-prefaced question is to rearrange the pieces of information into a conclusive fact for confirmation. In this case, the summarisation *so*-prefaced question is used to rearrange PW9's inconsistent responses into a conclusive fact, that is, PW9 made a mistake in Question 8. It also marks a topic "transformation" (Johnson, 2008: 327) because the defence lawyer

concludes that there is no photograph taken by Detective Corporal Song through the declarative question in line 21. The defence lawyer negotiates his version of facts in an attempt to change the "reality" (Johnson, 2008: 327). This question tries to coerce PW9 to agree with the defence lawyer to discredit Detective Corporal Song, who is the investigation officer for this case. PW9 shows disagreement with the defence lawyer's proposition. Consequently, the defence lawyer uses another strategic use of a *so*-prefacing attached to s 'SAY-question' (Johnson, forthcoming) (i.e. *are you saying*) that seeks confirmation from PW9 (line 28), which simplifies details for overhearing audiences. The 'SAY-question' will be dealt with in the following section.

This micro-analysis indicates that *so*-prefaced questions have various pragmatic functions and they are highly dependent on the speaker's goal. In this case, in cross-examination, they serve to restructure events through discrediting and making speculation on witnesses' credibility and reliability. It is also observed that defence lawyers conduct personalisation in cross-examination not only to directly address the witness but also to challenge and control information, where verbal aggression is achieved via the invariant tag *do you agree* and via SAY by "(re) focusing" witnesses (Johnson, forthcoming: 384) implying their version of evidence is problematic.

4.4.3 SAY-questions to imply witnesses' answers are problematic

If wh-questions are used to help barristers to probe and develop a convincing narrative to factfinders by allowing witnesses to present the details of stories themselves, yes/no questions which are equally important for lawyers to get confirmation or affirmation from witnesses in both direct (27.1%) and cross-examination (23.2%) activities can also perform a probing function. This is because yes/no questions are sometimes pragmatically used to request specific information from witnesses. However, the high frequency of yes/no questions indicates that it performs different functions because barristers design their yes/no questions differently in cross-examination from direct examination. The cluster analysis produces patterns of yes/no questions as listed in Table 15.

Table 15. Patterns of yes/no question in direct and cross-examination

No.	Direct examination	Cross-examination	
1.	Have you ever	Do you agree	
2.	Do you bring	Do you know	
3.	Do you confirm	Are you saying	
4.	Do you have	Are you talking	
5.	Do you know	Are you telling	
6.	Do you recall		
7.	Do you remember		

Though these lexical bundles share the same form of "operator followed by the subject" (Biber et al., 1999: 251), they perform different pragmatic functions across activities as exemplified in the following analysis. The yes/no question in direct examination is pragmatically used to request specific information, thus it can be classified as an "information question" (Kiefer, 1980: 115). However, in cross-examination the yes/no question can be used to do "verbal aggression" (Archer, 2008: 181) through the SAY-question, are you saying/talking/telling, which is not frequent in direct examination. My focus for this section is on the SAY-question used by barristers to indicate that witnesses' answers are problematic.

Johnson (forthcoming: 357) defines SAY-interrogatives as made of a "metadiscursive *you say/are you saying* (occasionally *tell/telling*), within a *yes/no* or declarative question that summarises a narrative segment from the suspect's prior talk". Figure 26 shows concordance lines of *are you saying* and *are you telling* found in the cross-examination activities.

Figure 26 shows SAY-questions in cross-examination with metadiscursive *are* you saying and are you telling embedded in declarative questions (i.e. lines 3, 6 and 9) and yes/no questions. This concordance also demonstrates that SAY-questions 'summarise prior talk' (Johnson, forthcoming) as can be seen on the left side that consists of barrister-witness prior turns. I found that SAY-questions are used by defence barristers in a sarcastic way to show that witnesses' existing evidence is problematic as exemplified in Example 12 (This relates to the instance in line 1 of Figure 26).

Figure 26. Concordance lines of SAY-questions in cross-examination (15 occurrences from 15)

N Concordance

Who is he? All the chemists and other staffs in the narcotics section. < Are you saying that the head of the department is not responsible for the ma ee with me that Exhibit P16 does not belong to the accused? I don't know. Are you saying it belong to the accused? I don't know because during the rai (Interrupted) Who was the photographer in this case? D/L/Corp. Anaqi. You are now saying that he did not take the photograph properly? Not that it was ted in P13. Which photograph in P13? Photograph no.13 of Exhibit P13. So are you saying that these are the exhibits found by Detective D/Kpl. Song? O It didn't occur to me to take the photograph of the content of this box. Are you saying there is mistake you did not take the photograph? It is not sexty in the house, you did not take photograph of the content of the box, are you saying that? Yes. Put:— no photograph of the content of the box was exhibits found? I don't know. What about photograph no.30? I don't know. Are you saying that all these photographs showing the various exhibits you he ger items that you are referring to? Skynet box and Brand InnerShine box. Are you saying that these are the bigger exhibits that you are carrying with garty? I did not open the door. When you say you did not open the door, are you saying that these are the bigger exhibits that you are carrying with garty? I did not open the door. When you say you did not open the door, are you saying that the time of the seizure they acknowledged the discove 1 the testing were done by me. < Alone? Yes. < Nobody assisted you? No. < Are you saying that at the time of the seizure they acknowledged the discove 1 noel in order to procure conviction against the accused, do you agree? No are you telling the court when his hands were shaking officer, Insp. 14 re found, nobody instructed you to take any photograph, correct? Correct. Are you telling us that you have absolute no idea as to where all these exhi 15 D/Corp. Marjawan? The drugs cannot be seen as they were all in the boxes. Are you telling us th

Example 12. Source: Cross-examination, Case 12

- 1. DC: Who is responsible for the maintenance of the weighing scale?
- 2. PW1: The person who is responsible for the maintenance is the person who
- 3. is inside the laboratory which is narcotics section staff
- 4. DC: Who is he?
- 5. PW1: All the chemists and other staffs in the narcotics section
- → DC: <u>Are you saying</u> that the head of the department is not responsible for
- 7. the maintenance of the weighing scale?
- 8. PW1: No, but we always inform the head of the department if anything
- 9. regarding the maintenance.
- 10. DC: Your evidence is that nobody was responsible for the maintenance of
- 11. the weighing scales?
- 12. PW1: As I mentioned earlier the chemist and other staff respectively is
- 13. responsible for the maintenance of the weighing scale.

Continued...

- 20. DC: As far as the testing of the exhibits are concerned, do you have
- 21. anybody to help you to do the testing?
- 22. PW1: All the testing was done by me
- 23. DC: Alone?
- 24. PW1: Yes
- 25. DC: Nobody assisted you?
- 26. PW1: No.
- → DC: <u>Are you saying</u> that the testing regarding the colour were done by
- 28. you solely?
- 29. PW1: Yes
- 30. DC: Did anybody help you to take down notes of your testing?
- 31. PW1: No.
- 32. DC: I suggest to you, in light of the numerous exhibits, it was not possible
- 33. *for you to do all the testing by yourself*
- 34. PW1: I disagree.

In Example 12 which is taken from cross-examination of the same case we see a very different function of SAY-question. Here the *yes/no* question, which is the SAY-question is not only used to try to get confirmation but to impose a blame structure on PW1. This is realised through a specific closed *yes/no* question which consists of the defence lawyer's presupposition that sounds doubtful (line 6). In this question, the defence lawyer imposes his opinion about the lack of maintenance of the weighing scale by PW1's head of department. The pragmatic force of this *yes/no* question is not only to

get confirmation or disconfirmation from PW1 but to discredit the witness in front of judge(s). The SAY-question contests PW1's response with a metadiscursive are you saying to imply that PW1 claimed her head of department is not responsible for the maintenance. PW1 resisted the SAY-question (line 8), where she adamantly disagrees with stand-alone No and at the same time corrects what the defence lawyer is proposing with the adversative conjunction 'but' (Halliday, 1985) in an attempt to dismiss this line of questioning. This *denial* + *correction* type of resistance will be discussed in depth in Chapter 6. In reaction to PW1's resistance, the defence lawyer uses a declarativequestion which is pragmatically coercive to restate the question but in a declarative form to pressurise PW1 to agree. Note that possessive determiner your is used at the beginning of the declarative-question (line 10) to refer to PW1's previous statement in direct examination. The defence barrister's intention is to discredit the credibility of PW1 by revealing inconsistencies in her answers. PW1 shows her resistance by quoting her previous statement through pronouns I and the verbal process of mentioned to emphasise her argument with the defence barrister. This example suggests that yes/no questions have a different level of pragmatic force on witnesses in cross-examination because barristers can combine presuppositions with conducive yes/no questions to impose their versions on witnesses.

The exchange that comes later indicates the lawyer's attempt to discredit PW1's credibility. The SAY-question in line 27 marks the lawyer's disbelief, thus transforming and contesting PW1's evidence. The SAY-question in this example indicates the lawyer's manipulation of word choice through exaggeration in their attempt to discredit the witness. These findings show that the word choices in questions have a strong effect on the barrister's positioning and the witnesses' responses.

4.5 Conclusion

This chapter has examined courtroom questions characterised by pronouns you/kamu in direct and cross-examination activities of the Malaysian criminal trials. The corpus-analysis, that is keyword and concordance analysis, informed us that pronouns you and kamu are positive keywords in direct and cross-examination in the MAYCRIM corpus. Then, the examination of the pronouns you and kamu in the two sub-corpora (i.e. English and Malay sets) combined with concordance analysis, provides a direction on the patterns of questions designed by barristers with pronouns you and kamu. The

concordance and cluster analysis of pronouns *you/kamu* generated six formal categories of questions used and designed by barristers, which are alternative questions, *wh*-questions, indirect questions, *yes/no* questions, declarative questions and tag questions.

A discourse-pragmatic analysis conducted on the data indicates two types of questions with pronouns you/kamu in direct and cross-examination in Malaysian criminal trial discourse. Firstly, probing questions that are used by barristers to maximise witnesses' productivity produced two important patterns: (1) wh-prompt + you + material/mental/verbal processes and (2) modal can + you + material/verbal processes. The wh-prompt makes the prosecution narrative and the witness more credible because it can be used to probe and control witnesses to recall and elaborate specific details of events. Barristers prefer to use this type of question in direct examination because the material processes such as get and identify paired with personalisation of you invite witnesses to share information with lawyers. It also allows witnesses to present first person evidence to the judge, thus making the witness appear credible and reliable. In cross-examination, though, wh-questions are less evident, but lawyers use them to limit free range responses from witnesses. I also found that the what happened-questions can be transformed into super-probing questions which require witnesses to clarify and give detailed explanations. Moving to the second type of probing question, which is the can you indirect question, lawyers are able to present witnesses as either helpfully productive in direct or lacking knowledge and credibility in cross-examination, by pairing the can you part with verbal processes such as explain, tell, confirm, inform, elaborate. The can you indirect question can be a powerful tool for barristers to put their witnesses in a good light or it can be used to limit witnesses' choice in cross-examination by confirming the lawyer's proposition that favoured their client.

We expect barristers to perform "verbal aggression" (Archer, 2008: 181) in cross-examination and from close analysis I found that Malaysian barristers perform face-threats via a variety of challenge questions: (1) declarative, (2) tag questions, (3) so-prefaced questions, and (4) SAY-questions. These questions which consist of pronouns you/kamu can be used as coercive questions to check inaccuracies and challenge witnesses. Declarative and tag questions tend to have the illocutionary force of statements rather than of questions and are therefore highly suggestive. This is because, barristers are allowed to impose their own, or their client's version that

proposes or presupposes the circumstances of events. Personalisation in declarative and tag questions puts pressure on the witness to accept the barrister's proposition or version of facts. I also found that pronoun *you* collocates with the *agree* verb which transforms a declarative question into the invariant tag *do you agree*. This finding is important as a basis for Chapter 5 which specifically investigates invariant tag questions and their pragmatic force in cross-examination.

A finding that distinguishes cross-examination from direct-examination is the use of so-prefaced questions. The discourse-pragmatic analysis conducted on so-prefaced questions found that they serve manifold functions depending on their structure. The so + wh-prompt is used by lawyers as a dynamic trigger, which invites witnesses to elaborate specific kinds of actions and processes. Lawyers also use the so + yes/no question to get confirmation from witnesses, as it attempts to restrict witnesses to polar answers. This investigation also found that coercive so-prefaced questions (i.e. so + declarative or so + invariant tag) are helpful to reveal inconsistencies and express lawyers' inferential claims or stances.

Finally, the SAY-question is another combative tool used by barristers in cross-examination to indicate that witnesses' existing answers are problematic. The most common patterns of SAY-questions found in this analysis are *are you saying* and *are you telling*. The SAY-question which is embedded in *yes/no* and declarative questions is not only used to limit a witness's response but as a linguistic device to imply witnesses' answers are problematic. In addition, it also marks the lawyer's affective stance towards witnesses, such as disbelief, thus discrediting the witness's credibility.

Chapter 5 Variant and Invariant tag questions and their legalpragmatic functions in cross-examination

5.1 Introduction

When I decided to begin a systematic study of tag questions in the MAYCRIM corpus, I found that I was not alone in being fascinated by them. Tottie and Hoffman (2006: 284) argue that the tag question is a very 'conspicuous phenomenon' that fascinates linguists; thus an extensive literature is written on their pragmatics (Algeo 1988, 1990, 2006; Stenström 1984, 1997, 2005; Koshik 2005; Tottie & Hoffmann 2006, 2009), polarity properties (Koshik, 2005; Kimps, 2007; Kim and Ann, 2008) and even their discourse functions (González 2014). Despite this, there have been few legal studies of tag questions (Berk-Seligson, 1999; Archer, 2005; Gibbons, 2008; Rubin, 2017) and little has been said about their uses from a legal-pragmatic perspective.

Takahashi (2014) conducted a study of tag questions in four Asian Englishes, namely Hong Kong English, Philippine English, Indian English and Singaporean English. However, there is a dearth of research literature on tag questions in Malaysian English or Malay, except for a few works done by Malaysian scholars (Razali, 1995; Govindan and Pillai, 2009; Deli and Alias, 2013; Gut and Pillai, 2015) who have investigated the form of tag questions (Govindan and Pillai, 2009; Deli and Alias, 2013; Gut and Pillai, 2015) and their pedagogical implications for English language teaching in Malaysia (Razali, 1995). Despite the promising research on tag questions in a Malaysian educational context, until recently there has been no robust study conducted on the forms of tag questions and their functions in courtroom examination. The present study addresses this gap and highlights the forms and functions of tag questions in Malaysian legal discourse.

In the previous chapter, I introduced categories of questions used by Malaysian barristers in the MAYCRIM corpus and showed that tag questions have a much higher distribution in cross-examination than in direct examination (see Figure 18 in section 4.2) with 0.1% in direct examination, but 11.7% in cross-examination, making them almost completely absent from direct examination. The frequency of tag questions in cross-examination is so different that it will be argued in this chapter that the tag question is one of the most prominent features in barristers' "dialogic mode" (Cotterill

2003: 94), that is a lawyer-witness interaction in cross-examination. Tag questions, which are a type of leading question and have a high degree of coerciveness in the courtroom, are, therefore, worthy of investigation and thus this investigation critically examines the formal properties of tag questions that are used by Malaysian legal practitioners in courtroom discourse.

This chapter aims to give a detailed analysis of the use of tag questions in the MAYCRIM corpus. It also aims to investigate and discuss the legal-discourse pragmatic functions of tag questions, how they are used by barristers to express attitudes, and their effects on courtroom questioning. The method of analysis employed in this chapter is a multilevel contextual analysis (Adolphs, 2008), since the explanations of the functions of tag questions are expressed through corpus-assisted discourse analysis and pragmatics. In order to meet the aim of investigating the function of tag questions in Malaysian criminal trial discourse, this chapter deals with the following specific research questions:

- 1. What are the formal properties of tag questions in direct and cross-examination?
- 2. Which question tags appear in direct and cross-examination in both Malaysian English and Malay?
- 3. What are the legal discourse-pragmatic functions of tag questions in cross-examination?
- 4. How are the legal discourse-pragmatic functions of tag questions in cross-examination used by defence barristers in constructing a defence and implying blame?
- 5. How do witnesses respond to tag questions in cross-examination?

5.2 The extraction of tag questions and their distribution across direct and cross-examination activities

Extraction of the variant and invariant tags was conducted using *Wordsmith Tools 6.0* (Scott, 2011). The exploration was conducted in two stages; I first built the search terms and then used them to collect concordance lines to show frequency. Table 16 provides the search words used to generate the frequency count and the patterns of

variant and invariant tag questions in the MAYCRIM corpus. Note that the search words include tags from Malay too, because the MAYCRIM corpus includes code mixing and code switching as common practice (Powell and David, 2011), though it is observed that, both in direct and cross-examination, Malaysian English is preferred as a medium of communication. The participants are inclined to use English because sometimes there is a need to use precise words "in order to convey the exact shade of meaning" (Powell & David 2011: 241) or sometimes even for coercion (Powell, 2008), apart from the fact that it is a habit in the Malaysian courtroom (Ibrahim, 2007; Powell, 2008). As explained in Chapter 2 section 2.3, legal English is preferred "due to the interests of justice" and "not all legal precedents relevant to Malaysia have been translated into Malay" (Asmah Haji Omar, 1983: 234-235).

Table 16. Search words to determine the frequency of variant and invariant tag questions

Category of tag question	Search words	
Variant	is it?	
	isn't it?	
	do they?	
	did you not?	
	is he/is she?	
Invariant	right/benar?	
	correct/betul?	
	agree/setuju?	
	particle <i>tak/not?</i>	
	do you agree/adakah anda bersetuju?	
	do you know/ adakah anda tahu?	

In Table 16, I have listed search words that were used to extract the variant and invariant tag questions from the data. Each search word is used to produce a concordance, until concordance lines and distributions are extracted for all the words. 5,961 tokens of questions were extracted from the examination-in-chief, cross-examination and re-examination activities led by barristers (i.e. prosecutors and defence lawyers) in my corpus.

In elucidating the legal-discourse pragmatic functions of tag questions found in MAYCRIM, there are several methods that I have used to interpret lawyers' attitudes and stances. First, the formal properties of tag questions are determined by looking at their forms (i.e. variant or invariant) and their polarity. Then, they are classified and

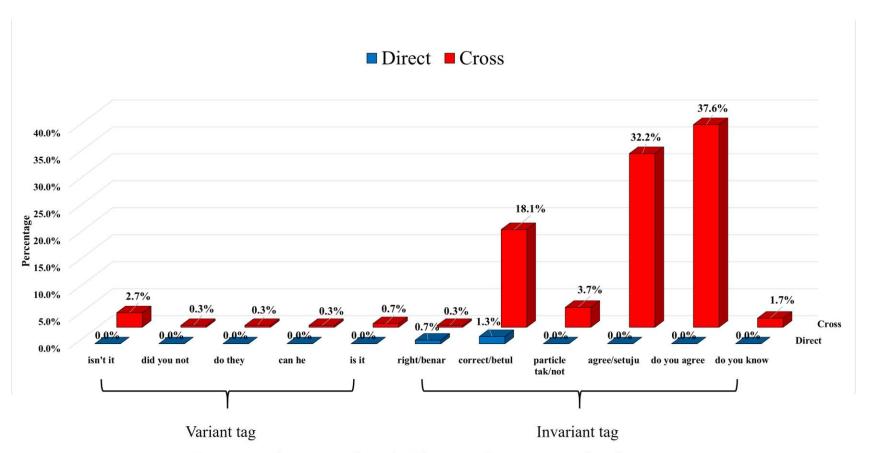
discussed according to the classification of pragmatic categories, as illustrated in Figure 29. The coding system is adapted from the classification of variant (Algeo, 1988; Holmes, 1995; Tottie and Hoffmann, 2006) and invariant tag questions (Columbus, 2010; Takahashi, 2014). The invariant tags and their categories identified by Columbus (2010) and Takahashi (2014) were built from Asian Englishes. Therefore, I found that it was important to consider their definitions and functions as a basis for my investigation, as the MAYCRIM corpus consists of Malaysian English and Malay. Seven microcategories (i.e. informational, affirmatory/confirmatory, facilitative, softening, peremptory, attitudinal and challenging) were found in readings; however, only three micro-categories (i.e. affirmatory/confirmatory, attitudinal and challenging) are present in the data. This system consists of two macro-categories: epistemic and affective functions. Table 17 exemplifies the criteria for each functional category and examples of each are provided to explicate their functions. Further investigation on the reactions (i.e. witnesses' answers) is also conducted because it gives a clue to the attitude expressed by barristers in the question and answer sequences.

Most of the tag questions follow the general rules described in previous studies (Algeo, 1988; Holmes, 1995; Tottie and Hoffmann, 2006); however, the MAYCRIM corpus reveals much more variation. Figure 27 illustrates the quantitative distributions of tag questions in the MAYCRIM corpus across direct and cross-examination activities. It is observed that there are twelve patterns of tag questions found in the direct and cross-examination activities: five variant tags and seven invariant ones. Though there are five variant tags, they only occurred in cross-examination activities, with a preference for: isn't it (2.7%) and is it (0.7%). The distribution of variant tag questions in the MAYCRIM corpus contrasts greatly with the results from the pilot study on the Shipman trial (see section 3.3), where variant tag questions were dominant, which indicates that Malaysian barristers are using different kinds of tag questions when compared with barristers in England and Wales. Despite the distribution of variant tag questions in the MAYCRIM being low, I found that variant tag questions can express a variety of pragmatic forces on witnesses. For example, pragmatically they are found to entice confirmation or affirmation from witnesses and to express a lawyer's epistemic stance.

Table 17. Classification of pragmatic categories of tag questions

Macro- category	Micro-category	Explanation	Examples
Epistemic modal	Affirmatory/ Confirmatory		DC: You are the investigation officer to investigate the true fact of the complainant by Sergeant Terry, is that correct? PW6: Yes
Affective	Attitudinal	Tag questions that express a speaker's opinion or attitude.	DC: According to Custom Act, in the midst of you making examination on the items presented by any subject in which you have reasonable suspicion there were infringed goods/items were hidden from the view of any Custom officer, you are given authority to give him caution according to the law. Do you know? PW1: I do not know
	Challenging	A confrontational tag question that challenges or expresses a speaker's disbelief in the stated view of reality.	DC: I put it to you, that you said 'no' to the accused and he tried to explain to you in Tamil about this, but still, you said 'no', do you agree? PW2: I disagree

Figure 27. The percentages of variant and invariant tag questions in the direct and cross-examination activities



Patterns of tag questions in direct and cross-examination

While variant tag questions are not frequently used by Malaysian counsels, invariant ones are. Figure 27 highlights the important role of invariant tag questions, which are on the right of the figure. It is interesting that invariant tag questions are so dominant, which contradicts with Anglo-American courtrooms that favour canonical or variant tag questions. The distribution shows that invariant tags with *agree*, such as *do you agree* (37.6%) and *agree/setuju* (32.2%) are the most frequent, followed by *correct/betul* (18.1%). Interestingly, invariant tag *correct/betul* is also used in direct examination, though much less frequently (1.3%). The unique structure of tag questions in Malay and Malaysian English with particle *tak* (*not*) are noteworthy too in cross-examination activities, though much less frequent.

The distribution of variant and invariant tag questions in Figure 27 points to the fact that Malaysian barristers are not exploiting canonical tag questions, which are prominent in British and American English. The big question is: are Malaysian barristers missing tricks in not using canonical tag questions? Do invariant tag questions perform similar pragmatic functions to canonical tag questions? I argue that although invariant tag questions do not have the same polarity structure, they do perform similar pragmatic functions to variant tag questions. Also, this investigation reveals that the invariant tag questions in the MAYCRIM corpus are multifunctional. The analysis starts, however, with a look at the most frequent variant tag, *isn't it*.

5.3 Variant tag isn't it to express lawyers' epistemic stances

In relation to variant tag questions, the *isn't it* tag is the most prominent (see Figure 27) in the MAYCRIM corpus. This is in contrast with the pilot study of the Shipman trial (see section 3.3) where the English courtroom is dominated with a range of variant tag questions with reversed (e.g. *hadn't it, didn't he, wasn't she, wouldn't you*) and constant polarities (e.g. *had you, did you, is it*) for agreement. Figure 28 shows the use of the *isn't it* tag, which has been simplified from the "more complex system of standard formal English to a more simplified version" (Wong, 1983: 135).

Figure 28. Concordance lines of variant tag isn't it and is it in cross-examination activities

```
N Concordance
2 o Melayu #### relating to the time. These are records show that this number had been dialed, isn't it? Yes.
3 4 kg. This weight has been confirmed by your company at Johor before it was sent from Johor, isn't it? Yes.
4 the contents and we accepted what they told us. Before it is sent, you also weighed the box, isn't it? Yes.
5 referring to parcel arriving in . This parcel according to Exhibit P20 was sent from Johor, isn't it? Yes.
6 otographs of the exhibits. These are the items found in the said box. That is what you said, isn't it? Yes and I signed and dated them.
7 Exhibit P25? I based on the form handed by DSP Fahmi. You yourself had never seen the exhibits, is it? Correct.
8 ed by whom, do you know? I don't know. All these photographs were taken during the day time, isn't it? Yes.
9 use is. I thought you knew his house. You are telling us you are not even sure of his house, isn't it? I disagree.
```

The examples in Figure 28 (in lines 2-6 and 8-9) all use the *isn't it* tag, whereas only line 6 would contain this in British English. The other lines would have *hadn't it*, *wasn't it*, *didn't you*, *had you*, *weren't they*, *aren't you/are you* in British English, and line 7 would have *have you*, showing that a much simpler system of tags has been employed with one tag functioning in the way that a large variety do in British English. Tags are employed in Malaysian English irrespective of the pronoun, modal verb and polarity in the preceding clause. Nevertheless, I argue that the meaning remains intact, despite the reduction, as can be seen in Example 13 that also serves to express the lawyer's epistemic stance. An epistemic stance refers to "a person's expression of their relationship to their talk (e.g., how certain they are about their assertions)" (Kiesling, 2009: 172) or expresses "a speaker's judgments about the information in a proposition" (Biber *et al.*, 1999: 382). In other words, epistemic stance is how speakers position themselves in relation to knowledge in their speech.

Example 13. Source: Cross-examination, Case 12

- 1. DC: <u>Why</u> you did not stop him there
- 2. and then find out the content of the box?
- 3. PW4: If I were to stop him there,
- 4. he *might* not tell me where his house is.
- \rightarrow DC: I thought you knew his house.
- 6. You are telling us you are not even sure of his house, **isn't it**?
- 7. PW4: I disagree.

In Example 13 the *isn't it* tag question is used to make assertions that cast doubt on the witness's credibility. In lines 1 and 2, the defence lawyer tries to discredit PW4's credibility by posing a "wh-causality" (Andrews et al., 2016: 344) question loaded with a particular proposition (line 2) as an accusation. In response to this question, PW4 shows that he is not to be persuaded by the defence lawyer's accusation, which is demonstrated with the conditional "if" (line 3) followed by epistemic modality: "might" (line 4). A variant *isn't it* tag question (line 6) expresses the defence lawyer's epistemic stance that indicates his belief that PW4 does not know the location of the accused's house, thus criticising the way the arrest was conducted by PW4. The declarative statement in line 5 contains two epistemic stance markers (*I thought* and *you knew*) that index the certainty of the defence lawyer in relation to PW4's evidence. They

mark the defence lawyer's commitment to the likelihood that his assertion about PW4 is true. In line 6 the anchor part of the tag question consists of an assumption that PW4 was not sure about the exact location of the accused's house and the tag isn't it conveys the epistemic stance of the defence lawyer. This assertion attempts to damage PW4's evidence in direct examination and discredits his credibility as a reliable investigation officer. This analysis shows that the so-called simplified version of the variant tag (the isn't it tag) can place a strong request for agreement and still be highly coercive to control the witness, while also attacking the witness's credibility. The prosecution witness is aware that the defence barrister is pressing him to agree and making a damaging assertion on his credibility, and he uses a disagreement (I disagree, line 7) to indicate his resistance to the lawyer's power and control (This kind of resistance will be further explored in Chapter 6). Pragmatically, these so-called simplified variant tag questions can be used by defence lawyers to express their epistemic stance, to make assertions, and to gradually cast doubt on witnesses' credibility in front of the factfinders. Lawyers have the ability to express their beliefs about the witnesses' versions of events and these questions have the potential to damage witnesses' credibility and reliability. The qualitative analysis indicates that these variant tag questions bring linguistic advantages to barristers in cross-examination, even though, when looking at their frequency in the MAYCRIM corpus, they are of secondary importance when compared with invariant tag questions. It will be interesting to further develop the discussion on variant tag questions; however due to limitations of space, I concentrate here on the more frequent invariant tag questions and will save further discussion of the *isn't* it tag for a post-doctoral paper.

Despite the advantages of variant tag questions, Figure 27 illustrates that invariant tag questions are dominant in the MAYCRIM corpus. I cannot determine whether it is a result of second language issues, an unconscious choice, or a conscious choice of lawyers, because I have not interviewed lawyers about this, but it is a consistent finding across the lawyers in my corpus. There are possibilities that the invariant tag question occurs in lawyers' spoken discourse as a result of second language issues, due to fossilisation in speech that contributes to the persistence of syntactic and lexical errors (Razali, 1995). In addition, the interference of mother tongue at the grammatical level may also contribute to the unvarying use of the tag (Deli and Alias, 2013). Nevertheless, the discourse-pragmatic analysis conducted on

invariant tag questions in the MAYCRIM corpus reveals that the invariant tag question is a valuable tool for defence barristers in cross-examination.

5.4 Invariant tag questions as discursive strategies for defence lawyers in cross-examination

The literature on variant tag questions suggests that "differences in polarity are often correlated with pragmatic functions" (Tottie & Hoffmann 2006: 137) whereby the proposition in the declarative or anchor is "evidentially modified" (Kimps & Davidse 2008: 719). Gibbons (2003) states that question tags with reversed polarity elicit a strong force for agreement and are highly coercive, while constant polarity also expresses "a number of attitudes towards the proposition" (Kimps 2007: 270). Since invariant tag questions lack polarity properties (as do the variant *isn't it* tags), the question is: (how) do Malaysian barristers carry out these functions through invariant tag questions? In my investigation, I found that invariant tag questions perform a variety of valuable functions for defence lawyers in cross-examination. They (1) control and entice affirmative responses from witnesses, (2) check for inconsistencies and inaccuracies in witnesses' answers, (3) make accusations or challenge witnesses and also (4) express lawyers' stances. These pragmatic functions reflect the ability of invariant tag questions to perform similar functions to variant or canonical tag questions which are favoured by lawyers in Anglo-American courtrooms.

As we saw in Figure 27 above, three invariant tags accounted for 85% of the occurrences: *do you agree* (37.6%), *agree/setuju* (32.2%) and *correct/betul* (18.1%), with the other three forms making up the minority: *right/benar*, particle-*tak/not*, and *do you know*. Table 18 shows an example of each of the invariant tags found in the cross-examination.

Table 18. Examples of invariant tag questions found in the cross-examination

No.	Invariant tags	Examples
1.	right/benar	Q: The alleged drugs found by Detective Song and Detective Marjawan according to the documentary evidence, it was found on the floor, is that right? A: On the floor in the master bedroom.
2.	correct/betul	Q: In another word, it had been moved away, correct? A: Yes, it has been moved by Inspector Zahid.
3.	particle tak/not	Q: Ada diberitahu pada ASP, <i>tak</i> ? →: You have informed the ASP (Assistant superintendent), (<i>have you</i>) <i>not</i> ? A: Ada →: Yes, I have
4.	agree/setuju	Q: They need to be marked because there shall be finger print evidence to be adduced in court. Agree? A: No
5.	do you agree	Q: I put it to you that the accused looked nervous and his hands shaking are all made up stories instructed by the overzealous personnel in order to procure conviction against the accused, do you agree? A: No
6.	do you know	Q: You knew that he is from India for the first time to Malaysia, do you know? A: No. His passport shows he has entered Malaysia and Dubai.

I began by investigating the quantitative distributions of the invariant tag questions across the functional categories identified in the literature and adapted for my study through observation of the data, as explained in section 5.2 and Table 17 above. Using the three categories of confirmatory/affirmatory, attitudinal and challenging functions, I assigned each invariant tag question to a category. Results are shown in Figure 29 below. While we might expect that the three invariant tags containing *agree* or *correct/betul* might only perform the confirmatory/affirmatory function, the results suggest that all invariant tag questions can be multifunctional across the three categories. In fact, in the case of *do you agree*, the attitudinal and challenging functions appear more important than the affirmation/confirmation one, suggesting that, rather than seeking agreement, these questions are designed to provoke argument. On the other hand *correct/betul* tags seem primarily designed to seek affirmation/confirmation. This suggests that invariant tag questions can serve coercive functions in cross-examination, in spite of their lack of polarity. I now explore these tags qualitatively to fully investigate these functions, starting first with *agree/setuju*.

5.4.1 Declarative + agree/setuju to control and entice affirmative responses from witnesses

I begin my discussion with invariant tag agree/setuju that is the tag that has the highest confirmatory/affirmatory function with 32.7% of usage across types of invariant tags. From the discourse-pragmatic analysis, I found that declarative + agree/setuju is the tag that is used the most to control witnesses and invite witnesses' agreement in both English and Malay. To support this argument, I present the concordance lines of agree/setuju that are extracted from the English, Malay and mixed languages datasets, as can be seen in Figure 30 below. Note that, the lines are numbered continuously for the purpose of referencing. The italicised part is the invariant tag question with the agree/setuju tag, while the red and blue highlights refer to witnesses' answers. As mentioned in the literature review (see section 2.5), answers have the power to contest, resist or (re)negotiate the pragmatic force of questions. Therefore in this investigation, I also considered witnesses' answers when categorising them into functions, whilst, the underlined lines refer to barristers' questions to mark the linguistic turn that transforms the pragmatic force of the questions.

Figure 29. Percentages of invariant tag questions across legal-pragmatic functional categories in cross-examination

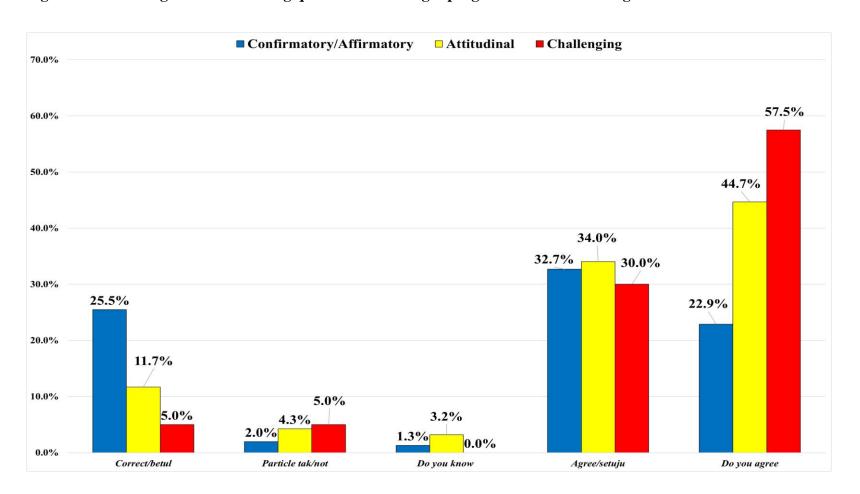


Figure 30. Concordance lines of invariant tag *agree/setuju* in cross-examination (19 of 50 occurrences)

N Concordance (ENGLISH-AGREE)

1 kok, your men had to cut it properly and then you have to weigh the 2 packets inside the songkok, agree? Yes. After you weighed the packets, the songkok had to be 2 r. After you hand over to Pak MR. FARID, you and Custom officer JS was still in the meeting room, agree? Yes. During that time what did Pak MR. FARID do with the bag? 3 se also in photograph 11 and 12 of ID48, you ordered him to open the bag and took the photograph, agree? Yes. Refer photograph 13 of ID 48. You order him to put 4 fter the things referred to Narcotic Unit. Refer photograph 13; he was asked to open the padlock, agree? Seems to be. That is all. I have received instruction from 5 ed was very hungry? No. Definitely not. You carry on the examination until 12 something at night, agree? Yes. Refer Exhibit P44A- original search list. Who prepare 6 defecto authority in the Custom Department when dealing with any offences involving drug matter, agree? Yes. It is not wrong for me so say you and your personnel 7 ir luggage to be examined and scanned? Yes. And also some to be directed to the scanning machine, agree? Yes. Any passenger who came, they had to go to the scanning 8 e and after the screening test by your personnel on one packet had shown to be positive ketamine, agree? I make the report after being briefed and the preliminary test. 9 Yes. After you weighed the packets, the songkok had to be distinguished and properly identified, agree? Yes. You have to do that for the rest of the exhibit? Yes. N Concordance (MALAY-SETUJU) 10 an kamu boleh dikatakan tak begitu sedar sebab telah mengambil licker sejak jam dari 5.30 petang setuju? Saya setuju pada masa tersebut saya dalam keadaan tidak sedar 11 ng yang member masalah itu datang bersama-sama dengan keluarga dan pergi untuk melihat perarakan setuju? Semasa dalam perjalanan ke Taman Orkid Kairay telah melihat 12 nya melihat orang memberikan masalah itu duduk di atas motosikal bersama dengan Kairav dan Parag setuju? Saya setuju selepas itu saya lihat orang tersebut duduk di 13 di PYC Mini Market kamu telah bertolak dan Kairav telah mengajak kamu semua pergi ke Taman Orkid setuju? Benar selepas minum Kairav telah mengajak kami untuk pergi N Concordance (MIXED-AGREE) 14 Kamu tak berminatlah, macamana dia pergi It's up to them to arrange the participant. Agree? Ya hanya berdiri sahaja. That time when they brought the participant upstair, 15 nduct, the way of selecting the public participant you leave everything to your man. Agree? Cari peserta? Yalah, Kamu serahkan kepada orang kamu untuk Cari peserta. 16 bali, when you told the Court that you arrested this person, di perkarangan Mahkamah. Agree? Setuju. When you arrest him was he during that time is a free man or he had

17 at akan dibawa ke Mahkamah dan kamu juga menentukan supaya kes itu mendapat kejayaan. Agree? Setuju. In this case, you told the Court that Pegawai Pos yang mengelurkan duit
18 Do you agree with me? Ya I put it to you, as an IO you don't care the consequences. Agree? Kamu tidak peduli akibatnya, kamu tak lihat laporan ID Parade? Saya ada lihat.

19 to you, di bilik rehat dia juga nampak when you bring all the participant naik atas. Agree? Tidak bersetuju sebab bilik rehat tertutup. Jadi masa itu, Kamu di mana?

Figure 30 indicates that invariant tag agree/setuju mostly received agreement or setuju from witnesses as can be seen from the red highlighted lines (i.e. lines 1-14, and lines 16 and 17). Barristers design the anchor part in their invariant tag with reported existing evidence such as material evidence (i.e. see line 4, photograph 13) or witnesses' previous testimony (see line 5) to control and restrict witnesses' responses. The yes or saya setuju shows that witnesses confirm barristers' propositions. Agree/setuju are also used nearly as much to express attitude (34%) and challenge (30%). In line 18, the barrister expressed an attitudinal stance via his accusation in the anchor part with the metalinguistic marker of assertion, I put it to you, followed by the verbally aggressive as an investigation officer, you don't care the consequence and then ended with an affirmative agree tag. Then, he code-switched to Malay which indicates a coercion strategy by "repeating or rephrasing the preceding utterance" (Powell, 2008: 153). An idiomatic translation of the lawyer's assertion is: you don't care about the consequence, you don't bother to see the identification parade report? This strategy transforms the agree tag question into an attitudinal function that expresses the lawyer's antagonistic stance towards the witness who is an investigation officer for this case. In response to this, the witness disagrees with saya ada lihat which means I have seen to indicate resistance. Meanwhile, the challenge function is expressed in line 15. The facethreat that comes before the agree tag in you leave everything to your man. Agree? contains personalisation that challenges the witness as an irresponsible police officer. Interestingly, the witness challenges the barrister by questioning back: find the suspect? The barrister code-switches in his response to add illocutionary force to his answer; Yes! You had instructed your officer to find the suspect! to sanction the witness as being uncooperative. Of course, from the concordance lines I could not come to a conclusion because it is important to do close-analysis. Therefore, Example 14 elucidates how invariant tag setuju is used to get affirmation from a witness in cross-examination in a murder case.

Example 14. Source: Cross-examination, Case 16

DC: Pada masa itu juga <u>kamu</u> masih
At time that also you still
berada dalam keadaan mabuk, <u>setuju?</u>
state in state intoxication *agree?*

1. \rightarrow At that time, you were also still in a state of intoxication, agree?

PW5: Benar pada masa itu juga saya dalam keadaan mabuk.

Agree at time that also I in state intoxication

2. *I agree* that at that time I was also in a state of intoxication.

DC: <u>Kamu</u> seorang keadaan <u>tidak tahu</u> apa You are state <u>not know</u> what sedang berlaku disana, <u>setuju?</u> ongoing happen there, <u>agree?</u>

3. \rightarrow With your state, <u>you did not know</u> what was going on there, **agree?**

PW5: Saya setuju pada masa itu saya tidak tahu apa yang sedang I agree at time that I not know what that is berlaku di sana.

happening there.

4. *I agree* at that time *I* did not know what is happening there.

In Example 14 the defence barrister cross-examines PW5 to discredit the witness as a credible and reliable prosecution witness in front of factfinders. In line 1, invariant tag setuju/agree entices an affirmative response from PW5. This question imposes the proposition that PW5 was in intoxicated state, therefore affecting his faculties and behaviour as a reliable and credible prosecution witness. Pronoun kamu/you is used by the defence lawyer to directly address the witness and to highlight PW5 as the actor; therefore PW5 is expected to give information about himself. As a response to the lawyer's question, PW5 affirms with agreement of benar or agree that he was drunk during the incident. Based on the witness's answer, the defence lawyer builds his discrediting narrative with another invariant tag setuju in the following line to propose that because of intoxication PW5 is unaware of his surroundings. The declarative part that precedes the invariant tag consists of a factive proposition that presupposes PW5's state of mind. This is achieved via the mental verb tahu/know that expresses the state of knowledge of the witness. The tag setuju/agree is used as a request for agreement and this is successful (line 4). PW5 agrees with the lawyer's proposition, indicated by saya setuju (I agree). In addition, PW5 also shows evasion in his answer via saya tidak tahu (I do not know) to lessen his responsibility as an eyewitness due to the fact that the accused is his friend. So far, the invariant tag setuju/agree is used by the lawyer to coerce agreement in order to have a detrimental effect on the witness's credibility as a reliable prosecution witness.

In the following questions, the defence lawyer shifts the topic to establish facts on the murder weapons: two motorcycle helmets. PW5 told the court that he did not wear any helmet on the said day, nor did the accused. In line 7, another agreement tag that ends with -*kan* or *right* is used by the defence lawyer. The lawyer's main goal is to

shift the blame to other suspects (i.e. Kairav and Parag) who were still at large during this trial. In order to coerce PW5 to agree with him, the defence lawyer uses a declarative question (line 10) that proposes that other suspects were the ones with helmets. Then, in lines 11 to 13, the defence lawyer uses a projection question to include his version of events. The projection question is a question that includes "a large volume of information" and places a "high level of pressure for agreement upon witnesses" (Gibbons, 2008: 125). This projection question (Gibbons and Turell, 2008) consists of verbal projections of in your statement, you said which refer to reported speech taken from the witness's statement, and, a mental projection (line 13), that refers to the lawyer's reported thought. In this case, a declarative question is used to quote PW5's statement on the two helmets that were brought by Kairav and Parag. In line 13, the defence lawyer presumes that the two helmets were used as murder weapons. According to Gibbons and Turell (2008), projection questions are very coercive; here they coerce PW5 to accept the lawyer's proposition (line 14). The lawyer successfully establishes that the murder weapons were not brought by his client and PW5 confirms this.

They are a particularly effective way of including a large volume of information from the lawyer's version of events, and, depending on their structure, may place high levels of pressure for agreement upon witnesses.

DC: Encik Bandhu pada hari itu kamu tak pakai helmet?

Mr Bandhu on day that you not wear helmet?

5. *Mr Bandhu, on that day you are not wearing a helmet?*

PW5: Pada tarikh kejadian saya tidak memakai helmet On date incident I not wear helmet

6. On the incident date I did not wear a helmet.

DC: Aakash pun tidak memakai helmet-*kan*?

Aakash also not wear helmet, *right*?

7. \rightarrow Aakash is also not wearing a helmet, **right?**

PW5: Begitu juga dengan OKT Likewise also with accused

8. *Likewise, the accused.*

DC: Yang memakai helmet Kairav dan Parag?
That wear helmet Kairav and Parag?

9. *Kairav and Parag are wearing helmets?*

PW5: Kairav dan Parag yang memakai helmet. Kairav and Parag that wear helmets.

- 10. Kairav and Parag are wearing helmets.
 - DC: Dalam keterangan kamu, kamu menyatakan Kairav dan Parag In statement your, you said Kairav and Parag telah membawa helmet untuk pukul mangsa. had bring helmet to hit victim.

 Maksudnya dua helmet telah dibawa untuk memukul mangsa Means two helmets had brought to hit victim?
- 11. <u>In your statement, you said</u> that Kairav and Parag had brought
- 12. *helmets to hit the victim.*
- 13. *This means that two helmets were brought to hit the victim?*
 - PW5: Saya setuju dua helmet digunakan untuk pukul orang tersebut. I agree two helmets used to hit person that.
- 14. *I agree that two helmets were used to hit that person.*

In the following questions, the defence lawyer's narrative now shifts to strengthen his discrediting of PW5 though "open-ended cued recall" (Andrews *et al.*, 2016: 344) in a *wh*-question that refocuses PW5 on details of the allegation.

- DC: Jarak semasa Kairav dan Parag mengejar mangsa.
 Distance when Kairav and Parag chase victim.
 Berapakah jarak mangsa dengan kamu dan Aakash?
 How distance victim with you and Aakash?
- 15. The distance when Kairav and Parag chased the victim.
- 16. <u>How much</u> is the distance between you, the victim, and Aakash?
 - PW5: Jauh juga tetapi saya tidak pasti jarak
 Far also but I not sure distance
 antara saya dengan OKT berdiri dan mangsa
 between I with accused stand and victim
- 17. Its quite far, but <u>I am not sure</u> of the distance between where I
- 18. *stand with the accused and the victim.*
 - DC: Encik Bandhu setujukah dengan saya dalam keadaan jauh Mr Bandhu agree with me in condition far keadaan gelap memang sukar kamu melihat condition dark certainly hard you see apakah yang sedang berlaku disana, setuju? what that is happening there, agree?
- 19. \rightarrow Mr Bandhu, <u>do you agree</u> with me, your distance was far
- 20. and it was dark, it was <u>certainly</u> hard for <u>you</u> to see what
- 21. is happening there, agree?
 - PW5: Saya setuju dalam keadaan gelap serta jarak yang jauh

I agree in state dark and distance that far agak sukar untuk saya melihat apa yang berlaku. quite difficult for me see what that happened

- 22. I agree that it was dark and far, it was quite difficult for me to see
- 23. *what happened there.*
 - DC: Encik Bandhu <u>saya cadangkan</u> semasa OKT lari Mr Bandhu I suggest when accused run ke arah Kairav dan Parag dia <u>sebenarnya</u> towards Kairav and Parag he actually tidak membawa sebarang helmet, <u>setuju?</u> not bring any helmet, <u>agree?</u>
- 24. \rightarrow Mr Bandhu, I suggest that when the accused ran towards
- 25. Kairav and Parag, he actually did not bring any helmet, agree?
 - PW5: Saya setuju semasa OKT lari ke arah Kairav dan Parag I agree when accused run towards Kairav and Parag OKT tidak membawa helmet.

 accused not bring helmet.
- 26. I agree that when the accused ran towards Kairav and Parag,
- 27. the accused did not bring any helmet.
 - DC: Setuju dengan saya Encik Bandhu kamu juga tidak dapat dilihat Agree with me Mr Bandhu you also not can see dalam keadaan yang gelap dan jauh sama ada tertuduh Aakash in condition that dark and far whether accused Aakash ada memukul mangsa di bahu mahupun di leher had hit victim at shoulder or at neck dengan helmet, setuju?

 with helmet, agree?
- 28. \rightarrow Do you agree with me, Mr Bandhu you also cannot see
- 29. in the dark and at your distance whether the accused Aakash, hit
- 30. the victim at his shoulder or at his neck with a helmet, agree?
 - PW5: Saya setuju dalam keadaan gelap dan jarak yang jauh
 I agree in condition dark and distance that far
 saya tidak dapat pastikan samada OKT ada pukul mangsa
 I not can determine whether accused had hit victim
 dibahagian bahu ataupun leher.
 at shoulder or neck.
- 31. <u>I agree</u> that it was dark and at my distance I cannot determine
- 32. *whether the accused hit the victim at the shoulder or neck.*

The topic shift begins with the "what/how-static" (Andrews *et al.*, 2016: 344) question (line 16) that seeks information from PW5 to explain the distance between his

and the accused's standing point in relation to the victim. PW5 expresses his uncertainty about the exact distance through his answer in line 17 with Saya tidak pasti (I am not sure). He also shows evasion in his response through I am not sure (I will explain in detail about this type of resistance in Chapter 6). Then, in the following question, the defence lawyer uses the invariant tag setuju to express his judgement and get affirmation from the witness. Notice that the defence lawyer uses multiple questions (lines 19 to 21) –conducive yes/no and do you agree with me forms – combined with a declarative statement that expresses his judgement of PW5 and then, an invariant tag setuju is used to invite the witness's agreement. In the declarative statement, the defence lawyer conveys uncertainty about PW5 as a reliable eyewitness through the "epistemic adverbial" (Biber et al., 1999: 382) memang (certainly) that expresses doubt about PW5's evidence in direct examination. Then, he finishes up with the setuju tag to get agreement. The multiple questions are highly conducive and coercive to control PW5's response, in this case causing difficulties for the witness to answer the questions. PW5 is coerced to agree with the defence lawyer (line 22). Then, in the following question, invariant tag setuju is used to offer the defence lawyer's version of events that invalidates the prosecution's evidence on the accused. The defence lawyer begins with the metalinguistic marker for assertion (Heffer, 2005), saya cadangkan (I suggest), to assert his proposition, reinforcing it with the epistemic adverbial that shows "actuality and reality" (Biber et al., 1999: 383), sebenarnya (actually). This proposes a defence version of events that contrasts with the prosecution's evidence. Again, PW5 agrees with the defence lawyer's proposition. In the following question, it is observed that multiple conducive yes/no questions and invariant tag setuju are used to get affirmative answers from the witness. The lawyer offers a version that differs from the prosecution's evidence, making PW5's testimony unreliable in front of factfinders. In response to the lawyer's questions, PW5 accepts the defence version which brings damage to his testimony in direct examination.

This analysis of invariant tag *agree* has proven that it is highly affirmatory/confirmatory, and is thus favoured by Malaysian barristers in cross-examination, as indicated in Figure 29 with 32.7% of occurrences, because it controls and invites witnesses to give affirmative responses that coerce the witness to agree with the lawyer's propositions. This analysis also demonstrates that lawyers covertly exercise power to control and constrain witnesses through the declarative + *setuju/agree* structure rather than using the polarities in tag questions to do this.

5.4.2 Declarative + *correct/betul* to check for inconsistencies in witnesses' answers

In cross-examination activities, it is observed that defence lawyers refute the prosecution's evidence by revealing inconsistencies or inaccuracies in prosecution witnesses' answers, so that they can expose whether that witness is credible or not to factfinders. The quantitative distribution in Figure 29 indicates that invariant tag *correct/betul* is highly utilised to check for inaccuracies with its dominant confirmatory/affirmatory pragmatic function (25.5%) (though it is also used to express stance 11.7%). Qualitative analysis reveals that the use of invariant tag *correct/betul* to check for inconsistencies in witnesses' answers is not connected to an individual lawyer's style, as the same pattern is observed over different barristers in different cases. Example 15 shows two invariant tags *correct/betul* extracted from Case 1 and 15.

Example 15. Invariant tags of *correct* and *betul* in cross-examination activities

Case 1 False report

- 1. DC: Sergeant Terry, in the report by Mr Huang, he reported that
- 2. a person by the name of Chanjae approached and threatened
- → to hit him at Wonderful Centre Route 86, is that correct?
- 4. PW6: Yes

Case 15 Cheating

DC: Kamu telah mengatakan kamu telah mencatat,

You have said you have wrote,

merakamkan statement, betul?

recorded statement, correct?

1. \rightarrow <u>You have said</u> that you have written a recorded statement,

correct?

PW4: Betul

2. Correct

A general structure that I found with invariant tag *correct/betul* is that the declarative part consists of reported speech or projection of "locutions" that are a "representation of the content of a verbal clause" (Halliday and Matthiessen, 2004: 443), and the tag *correct/betul* is attached at the end of the declarative sentence. The following is the general structure of the invariant tag that seeks inconsistency in hearers' answers:

Declarative (reported speech/writing) + correct/betul?

In the two examples above, the defence lawyers design the declarative part with reported speech, as indicated by the underlined phrases of *he reported* (line 1 in Case 1_False report) and *kamu telah mengatakan* (*you have said*) (line 1 in Case 15_Cheating) that enacts prior evidence testified by prosecution witnesses in direct examination or police statements. Most of the time, the reported speech will be followed with the *that*-complementiser that is "syntactically marked for an indirect quote trajectory" (Matoesian, 2008: 212). Biber et al (1999) state that the *that-clause* typically presents speech and thought. In the two examples, the *that-clause* is used by defence barristers to present accepted facts to witnesses so that they can expose any inconsistency in the witnesses' answers. Then, a *correct/betul* tag is attached at the end of the declarative part to seek confirmation from witnesses. In the two cases above, both defence lawyers seek confirmation from witnesses on the evidence they had testified earlier and both witnesses confirm the defence barristers' propositions.

Figure 31 illustrates concordance lines of invariant tag *correct* in the cross-examination of the Malaysian criminal trial corpus. The red underlined words mark reported speech or writing in the anchor part. Note that in these lines, witnesses answered single *yes* to show agreement with barristers. This suggests that the invariant tag *correct/betul*, along with a witness's prior quoted testimony highlighted by the pronoun *you* and a reporting verb, is a powerful controlling question that limits witnesses' responses and successfully achieves confirmation.

Figure 31. Concordance lines of invariant tag correct from cross-examination (12 of 39 occurrences)

N Concordance

ox found in picture no.13. Those were the contents in the box, do you agree? I disagree. Look at photograph no.13, the brown box was already open, correct? Yes 23 (a.3.0 p.m. For continuation of trial. Parties are as before. MR. LIM is reminded that he is still under oath. You said that you were on duty on , correct? Yes u have a missed call from ##-###### Mr. Kang, correct? Yes. On 5th entry, the first line is to #########, Melayu and the message is ######### Mr. Kang, correct? Yes re of the accused to his address and to his name? No. Referring to the declaration form Exhibit P20. The declaration form contains name, Mr. Kang, correct? Yes a different number to dial. Same page, 2nd entry. The first line from is ###-###### and the message read you have a missed call from ##-######, correct? Yes om ##-######, correct? Yes. Same page, 3rd entry. The first line from is ###-###### and the message read you have a missed call from ##-######, correct? Yes n't know. Refer you to page 15 of 16, entry no.3. The first line from is ###-###### and the message read you have a missed call from ##-######, correct? Yes eting room, was there other officer in the general office? I cannot remember. You said you brief PiKK Wang and then he also briefed Pak MR. FARID, correct? Yes ed in Tamil to the accused by MISS NAINA.) Apart from these exhibits, you told the court there were other exhibits which were seized in this case, correct? Yes interpreter to assist in the investigation. Do you agree? I agree. You told the court that you had identified all the exhibits from Z 1 to Z 32. Correct? Yes interpreter to assist in the investigation. Do you agree? I agree.

When I conducted a close analysis of these concordance lines, I found that reported writing is used by barristers as well as reported speech to report witnesses' previous testimony. Example 16 shows where reported writing is used in the anchor part. I have also considered reported writing as a verbal projection because it is "reporting the literal words" (Van Der Houwen, 2013: 749) and that is a "highly selective and powerful resource for institutional meaning-making" (Johnson, 2013: 148). Example 16 (which accounts for several of the lines in Figure 31) shows the invariant tag correct/betul used with reported writing, where the defence barrister appears to be reading from a reported statement made by PW11, a forensic senior analyst who had analysed the suspect's telephone communication. The underlined lines indicate reported writing that is being referred to by the defence lawyer to reconstruct the telephone records and hence get confirmation from prosecution witness 11. They form sequential fragments that the defence lawyer uses to read out loud in the crossexamination, eventually checking for inaccuracies and weighing the evidence from Pronoun you is used early in the turn to get PW11's attention. Then, confirmatory tag correct is used at the end to get confirmation from PW11, where the witness mostly confirms the lawyer's questions.

Example 16. Source: Cross-examination, Case 12

- 1. DC: Refer you to page 15 of 16, entry no.3.
- \rightarrow The first line is from [phone number 1] and the message read
- 3. you have a missed call from [phone number 2], **correct?**
- 4. PW11: Yes
- 5. Refer you to page 15 of 16, entry no.4.
- \rightarrow The first line is from [phone number 1] and the message read
- 7. you have a missed call from [phone number 2]
- 8. *and the date and time shown there, correct?*
- 9. PW11: Yes
- 10. DC: Refer you to page 15 of 16, entry no.5.
- \rightarrow The first line is from [phone number 1] and the message read
- 12. you have a missed call from [phone number 3]
- 13. *and the date is <dd/mm/2013> at 12.17 a.m., correct?*
- 14. PW11: Yes
- 15. DC: Page 15 of 16 is record of SMS messages?
- 16. PW11: Yes
- 17. DC: *Refer you to page 16 of 16.*
- \rightarrow The first line is from [phone number 1] and the message read
- 19. a voice message from [phone number 4], correct?

- 20. PW11: Yes.
- 21. DC: <u>There is indication, please dial 1313</u>. Normally you will be asked
- 22. to dial 1313 in order to retrieve voice message?
- 23. PW11: The specific message shows that the service provider asked
- 24. to dial 1313 to retrieve the voice message. Different service
- 25. provider has a different number to dial.
- 26. DC: <u>Same page, 2nd entry</u>. The first line is from [phone number 1]
- → and the message read you have a missed call
- 28. from [phone number 5], correct?
- 29. PW11: Yes
- 30. DC: <u>Same page, 3rd entry</u>. The first line is from [phone number 1]
- → and the message read you have a missed call
- *from* [phone number 6], correct?
- 33 PW11: Yes
- 34. DC: On 5th entry, the first line is to [phone number 7], MALAY
- \rightarrow and the message is ######### Mr. Kang, correct?
- 36. PW11: Yes.
- 37. DC: The last entry, from [phone number 8], TALL,
- 38. *message is ######## Mr. Kang, correct?*
- 39. PW11: Yes.
- 40. DC: Refer you to H3 page 4 of 42. The first entry is MYLOVE2 the
- 41. *telephone number is [phone number 9], which device is this?*
- 42. PW11: H3 device
- 43. DC: **Do you know** the owner of the device?
- 44. PW11: No.
- 45. DC: <u>Entry no.3, name MYLOVE1</u>, the telephone number is
- 46. [phone number 10]. Can you confirm that,
- 47. **do you know** the owner of the device?
- 48. PW11: That number is confirmed saved as MYLOVE1,
- 49. but I don't know the owner.
- 50. DC: <u>Entry no.7 named MYLOVE3</u>. The telephone number
- \rightarrow [phone number 1], these entries are saved as the contacts stored
- 52. in the device on the SIM card, correct?
- 53. PW11: It is saved and stored on the device and not in the SIM card.
- 54. I don't know the owner of the device.
- 55. DC: Do you agree with me that this Exhibit P31, under H1, H2 and
- 56. H3, merely showed the missed calls, the persons who received?
- 57. and dialled certain numbers, e.g. MALAY, TALL and MYLOVE
- 58. and it does not show the contents of the conversation at all.
- 59. PW11: I agree.
- 60. DC: Refer you to Exhibit P25 signed by yourself and Inspector Anas.

- → This exhibit shows that Inspector Anas has received certain
- 62. *exhibit from you*, *correct?*
- 63. PW11: Yes.

The exchange between the defence lawyer and PW11 in Example 16 demonstrates how specific fragments from written documents are selected and transformed by the lawyer into "written voices" (Van Der Houwen, 2013: 758) whereby these specific fragments are subjected to evaluation and checking. After checking the accuracy of PW11's evidence, the defence lawyer also tests the witness's accuracy, veracity or credibility as can be seen in line 43 onwards where PW11 is questioned on whether he can determine who the owner of the mobile phone was. This is because the defence lawyer tries to elicit any evidence that can support his version of events to factfinders. In lines 43 and 47, the *do you know* phrase is used to indicate an invitation from the defence lawyer to PW11 to elaborate about the owner of the device. This question has two functions; the first function is to seek the real owner of the device who might be a potential suspect apart from the accused, and the second function is to frame PW11 as an unreliable prosecution witness.

The examples discussed above indicate that invariant tag *correct/betul* can be used to check accuracy, and expose inaccuracies or inconsistencies in witnesses' answers. To be specific, invariant tag *correct/betul* that consists of an anchor clause with reported speech or writing can be used to re-enact prior evidence testified by a witness that subtly (and sometimes not subtly) persuades witnesses to agree with defence lawyers in cross-examination.

5.4.3 Declarative + do you agree to challenge and make accusations against witnesses

We know that reversed polarity tag questions have a strong force for agreement and are highly coercive (Gibbons, 2003; Heffer, 2005) and they can also be used to control the information or the recipient in courtrooms. However, in the MAYCRIM corpus, I found that invariant tag questions *do you agree* are used by barristers to make accusations and attack or deconstruct existing narratives. The distribution of functional categories also indicates that invariant tag *do you agree* is strongly preferred by Malaysian barristers to challenge and express their attitudinal stance to hearers (see

Figure 29). From the discourse-pragmatic analysis I found that invariant tag questions with *do you agree* can be used by lawyers to develop an antagonistic questioning structure that challenges witnesses to accept their version of events and simultaneously tarnishes witnesses' credibility in front of factfinders, that is judges. Example 17 illustrates how a series of invariant *do you agree* tags are used by the defence lawyer to develop this antagonistic structure with prosecution witness 9. First, though, the defence lawyer casts doubt upon PW9's existing evidence via declarative assertions (lines 1-10. Line 1 begins with a *yes/no* question that consists of time adverbial *yesterday* and a reported speech of *you told us* to quote PW9's previous evidence in direct examination. This quote becomes the basis for the defence lawyer challenging PW9's testimony of the accused's behaviour, that is, banging his head on the wall, crying and shouting 'I am dead'. In lines 4, 6 and 8, the defence lawyer makes propositions to assert his client's version of facts through the metalinguistic marker *I put it to you* combined with declarative statements. However, these assertions are resisted by PW9 through standalone *I disagree*.

Example 17. Source: Cross-examination, Case 12

- 1. DC: Yesterday, you told us that the accused bang his head on the wall,
- 2. did you say that?
- 3. PW9: Yes.
- 4. DC: *I put it to you* that the accused never bang his head on the wall.
- 5. PW9: I disagree.
- 6. DC: I put it to you that the accused never cried as you testified.
- 7. PW9: I disagree.
- 8. DC: <u>I put it to you</u> that the accused never repeatedly uttered the word
- 9. *'dead'*.
- 10. PW9: I disagree.

Seeing that his casting doubt on PW9's existing evidence is unsuccessful, the defence lawyer shifts to a new topic as can be seen in lines 11 and 14 to elicit evidence that supports the defence lawyer's version of facts.

- 11. DC: According to your testimony, you found certain exhibit on the floor
- 12. *of the accused's room, correct?*
- 13. PW9: Yes.
- 14. DC: And also, Detective Corporal Song also found certain exhibit

- 15. *on the floor of the accused's room.*
- 16. PW9: Yes.
- 17. DC: Were you carrying out the search simultaneously together?
- 18. PW9: Yes.
- 19. DC: <u>Did you</u> make a report on your search?
- 20. PW9: No, I did not, only the raiding officer lodged the report.
- 21. DC: <u>Did you</u> make a note of the item that you found on the floor?
- 22. PW9: No.
- → DC: Do you agree with me, that in the circumstance of our case,
- 24. there are no records or whatsoever of the item found by you?
- 25. PW9: I disagree.
- 26. DC: Why do you disagree?
- 27. PW9: Because it was recorded in the report about the exhibits
- 28. that were found by me.
- 29. DC: Is there a report made by you?
- 30. PW9: No.
- → DC: <u>I put it to you</u> there was no report because you did not
- 32. discover anything, do you agree?
- 33. PW9: I disagree.
- 34. DC: There was no record to show your discovery because
- 35. you did not discover anything at all.
- 36. PW9: I disagree.

In line 11, reported speech based on PW9's previous evidence is used to establish a new argument, that is, a certain exhibit was found in the accused's room. An invariant tag *correct* is attached at the end of the question to check consistency in PW9's answer, which PW9 confirms. In line 14, the *and*-prefaced question is used as a marker to construct a narrative sequence (Johnson, 2002), whereby this question also proposes that another person found the exhibit. In both questions, the defence lawyer uses an unspecific adjective *certain* that indicates his doubt about the said exhibit. This covertly expresses his epistemic stance on PW9's existing testimony. Then, PW9 is requested to provide specific information through conducive *yes/no* questions (lines 17 to 21) so that the defence lawyer can control the information and reveal weaknesses in PW9's investigation. In line 23, he uses a *yes/no* question that invites opinion from the witness and simultaneously expresses the lawyer's assertion. This "do-operator *yes/no* interrogative with mental process" (Sarfo, 2016: 157) *agree* seeks PW9's opinion on his embedded presupposition that nothing was found in the search. Despite the fact that this

question is 'more coercive when constructed as an assertion' (Sarfo, 2016), the witness resists with stand-alone I disagree. In reaction to PW9's response, a "what/how causality" (Andrews et al., 2016:344) why-question is used to seek a reason for the witness's disagreement. In line 27, PW9 provides the reason; however when the defence lawyer pressurises with a yes/no question the witness responds with a standalone 'No' to boldly disagree with the defence lawyer. So far, the witness has used a series of repetitive disagreements of stand-alone No or I disagree to strongly resist the lawyer's power and control. From lines 31 onwards, a series of coercive questions are used by the lawyer to accuse and challenge the witness as a credible prosecution witness, because his attempts to establish his version of the facts have not been successful. Lines 31 to 32 demonstrate the lawyer's assertion, as indicated by the metalinguistic marker I put it to you combined with the tag do you agree to seek agreement from the witness. The witness boldly disagrees with stand-alone I disagree and, in reaction to PW9's answer, the defence lawyer reformulates his question (lines 34-35). This "reformulation" (Heritage, 1985: 108) emphasising the defence lawyer's assertion is rejected because the witness disagrees with his assertion.

So far, we observed that the defence lawyer uses the invariant tag question do you agree in combination with other resources to make assertions and destroy the witness's credibility and prosecution evidence in front of factfinders. The following exchange (continuing Example 17) indicates how invariant tag do you agree is multifunctional, where it can be used as a tool to challenge or even as a confirmatory tag.

- 37. DC: We come to the box with the Skynet marked as Exhibit P16.
- 38. Do you <u>know</u> the Skynet is the courier company?
- 39. PW9: Yes.
- → DC: So, the box Exhibit P16 was sent by courier services,
- 41. do you agree?
- 42. PW9: I don't know.
- 43. DC: <u>Do you</u> have any evidence to show it was sent, care of the accused
- 44. *to his address and to his name?*
- 45. PW9: No.
- 46. DC: Referring to the declaration form Exhibit P20.
- 47. The declaration form contains name Mr Kang, correct?
- 48. PW9: Yes.
- → DC: <u>And</u> it also contains telephone number, **do you agree?**

- 50. PW9: Yes.
- 51. DC: <u>Do you agree</u> with me that in the circumstance of our case,
- 52. it would appear that the accused was asked to collect
- 53. this Exhibit P16?
- 54. PW9: I don't know.
- 55. DC: Would you agree with me that Exhibit P16 does not belong
- 56. *to the accused?*
- 57. PW9: I don't know.
- 58. DC: <u>Are you saying</u> it belong to the accused?
- 59. PW9: I don't know because during the raid, the box was in his room.

Line 37 begins with a new topic established with a yes/no question that seeks confirmation from the witness regarding Exhibit P16. In line 40, a so-prefaced question that makes an inferential claim is used to reformulate the previous question so that the defence lawyer can highlight his new argumentation to tarnish PW9's evidence. A do you agree tag is attached at the end of the so-prefaced question to challenge PW9, to which the witness responds with "strategic avoidance" (Drew, 1992: 481) of I don't know (This type of resistance will be further explored in Chapter 6). In line 43, a yes/no question is used to elicit evidence that supports the defence's version to which PW9 replies that there is none. Lines 46 to 49 consist of invariant tags correct and do you agree which are used by the lawyer to check for confirmation from the witness so that the lawyer can test the consistency in witness's answers. Invariant tag do you agree in line 49 is an example of a confirmatory tag. What follows after that are conducive yes/no questions that are used to assert the defence barrister's version of the facts (i.e. lines 51-53 and lines 55-56) and also a SAY-question (line 58) that challenges PW9. Notice that the witness uses strategic evasion of *I don't know* to indicate his resistance to the defence barrister's accusations.

Up to this point, we have seen that invariant *do you agree* tag questions are used by defence barristers to make accusations, challenge or seek confirmation from witnesses. The discourse-pragmatic analysis of Example 17 indicates that, despite the non-existence of polarities, barristers can still adopt invariant tag questions in their cross-examination as one of the many linguistic strategies to pressurise or even to tarnish witnesses' credibility in front of factfinders.

5.4.4 Declarative + do you know and particle tak (not) to express lawyers' stances

In cross-examination activities coercive stances are adopted by Malaysian barristers via invariant tag questions despite the lack of polarity that places strong control over witnesses. Stance refers to an "overt expression of author or speaker's attitudes, feelings, judgments or commitment concerning the message" (Finegan and Biber, 1988: 240) and is expressed via questions that include the invariant tags *do you know* and particle *tak/not* in lawyers' questions. This investigation reveals two types of lawyer's stance expressed by invariant tags, that is, to express (1) epistemic stance and (2) attitudinal stance. As illustrated in Figure 29, there are other tags that express stance too, that is, *do you agree* (44.7%), *agree/setuju* (34%), and *correct/betul* (11.7%). In section 5.4.1, I have shown how invariant tag *agree/setuju* expresses stance to witnesses, where I point out that the barrister code-switches in his attempt to express his attitude.

First, I found that barristers encode their firm conviction through a strong epistemic stance via combining invariant tag *do you know* with other words that indicate stance, as exemplified through underlining and bold font in Example 18.

Example 18. Source: Cross-examination, Case 14

- 1. DC: By asking him to open the items in this bag,
- 2. <u>by touching</u> the exhibits, by showing him to open the padlock to
- → the bag, you have caused prejudice against him, do you know?
- 4. PW4: No. It is not.
- 5. DC: Refer to photographs 14, 15 and 16. You asked him to push the
- 6. *trolley in which Exhibit 39 and Exhibit 38 plus all the exhibits in*
- 7. this case to show that all these items was with him?
- 8. PW4: It's just to show that there is no break of chain of exhibits before
- 9. going to the Custom headquarters.
- 10. DC: By doing so you had caused prejudice and you had caused wrong
- 11. *visual impression about the accused?*
- 12. PW4: I do not agree.

In Example 18 the defence barrister combines the preposition by with a gerund (i.e. asking, touching and showing) to express his opinions or stances on PW4's actions. Pronoun you that refers to PW4 as the agent is then paired with the material verb caused

(+ prejudice) to indicate the damage caused to his client, the accused. Then, the *do you know* tag is attached at the end of the declarative statement, which pragmatically behaves to implicitly impart information of the defence lawyer's belief or epistemic stance in relation to the witness. The invariant tag is also used as an interjection to express the lawyer's certainty and position. In response to this accusation, the witness strongly resists the claim. In the following question (line 5), in a declarative question that refers to a list of photographs, the defence lawyer proposes that PW4 manipulated the situation. The witness disagrees by giving justification that his actions are due to the standard procedure that needs to be taken by him and his team. Then, in line 10, the defence lawyer makes damaging assertions (i.e. *caused prejudice* and *caused wrong visual impression*) about the witness, injuring his character as a credible customs officer, and in response to this PW4 disagrees with the proposition. This example indicates that invariant tag *do you know* has the potential to express barristers' epistemic stance or certainty about their assertions in relation to witnesses.

Invariant tags can also be used to express lawyers' attitudinal stances, whereby they can communicate feelings, moods or even attitudes (Field, 1997) to the hearers. In the next example, the defence lawyer communicates his interpersonal stance to control and dominate the conversation. Example 19 shows how the invariant tag *tak/not* is used by a defence lawyer to express his attitudinal stance to PW5 from a cheating offence (i.e. Case 15).

Example 19. Source: Cross-examination, Case 15

DC: Kamu datang ke mahkamah ini, kamu tembak sahaja.

You came to court this you shoot only.

(I put it to you, you are not telling the truth)

Kamu main tembak sahaja. Kalau kamu tak tahu cakap tak tahu.

You simply shoot only. If you not know say not know.

Kalau tidak ingat cakap tidak ingat.

If not remember say not remember.

((Don't try to substantiate your statement in this case.))

Saya katakan kepada kamu Inspektor Farhad,

I put to you Inspector Farhad,

kalau kamu tidak ingat, cakap tidak ingat. Faham tak?

if you not remember, say not remember. Understand not?

- 1. You came to this court and shoot your answers only.
- 2. ((I put it to you, you are not telling the truth.)) You simply shoot
- 3. *your answers. If you don't know* the answers, say that you

- 4. don't know.
- 5. *If you cannot remember then, say that you cannot remember.*
- 6. *((Don't try to substantiate your statement in this case.))*
- → <u>I put it to you</u> Inspector Farhad, if you cannot remember,
- 8. say that you cannot remember. You do understand, **not?**

PW5: Faham

Understand

- 9. I understand.
 - DC: <u>Jadi saya katakan kamu tidak tahu</u>

So, I put you not know

siapa yang memberi arahan ini. Betul?

who that give order this. Correct?

- \rightarrow So, I put it to you that you do not know who gives this order?
- 11. Correct

PW5: Saya tahu.

12. I know.

The question containing particle tak (not) is also used by the defence barrister to express a superior and dominating stance because he asserts that PW5 is a dishonest witness for this case. The defence lawyer begins his accusation through declarative questions that are loaded with the lawyer's propositions that reveal inconsistencies in the witness's evidence. The lawyer's assertions are further strengthened with the metalinguistic marker I put it to you (line 2) and I put it to you/saya katakan kepada kamu (line 7) that express assertions (Heffer, 2005). Code-switching (i.e. in double brackets) also indicates that the barrister attempts to coerce and adds illocutionary force to his utterance by reasserting his preceding proposition. In line 2, the SAY-question (Johnson, forthcoming) of you are not telling is combined with the metalinguistic marker to challenge the witness's evidence. The SAY-question, which summarises PW5's prior testimony, is used by the defence lawyer to make a negative assertion about the witness. The don't know phrases (lines 3 and 10) also mark epistemic stance where they index the lawyer's uncertainty towards the witness's knowledge. The particle tak (not) is not only used to offer the lawyer's assertions, but concurrently persuades the witness to agree with him, as the witness agrees (line 9). To further discredit PW5, the defence lawyer uses a so-prefaced question (line 10) to summarise the witness's state of knowledge. He ends with a confirmation tag of betul/correct to check PW5's answer, to which he receives resistance.

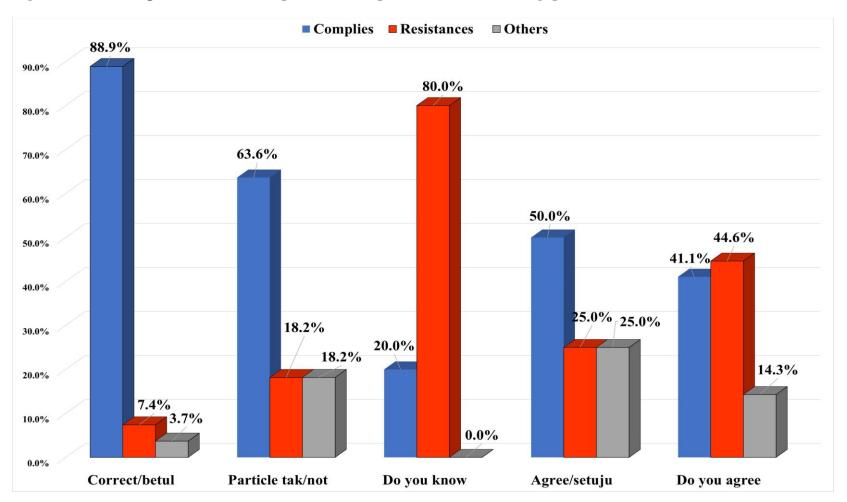
Contextualising specific examples of stance-taking in cross-examination activities between defence lawyers and prosecution witnesses though invariant tag questions gives us the chance to expose how power and control are expressed through linguistic choice and manipulation. In this case, lawyers express attitudinal stance through invariant tags that are combined with personal pronouns *you* or *kamu* that indicate elements of attitudes (Tottie and Hoffmann, 2006; Kimps, 2007). So far, the discourse-pragmatic analysis indicates that invariant tag questions have the same potential as canonical tag questions to achieve specific pragmatic functions.

Overall, it can be concluded that Malaysian barristers do not only rely on the polarities in canonical tag questions to control or coerce witnesses; instead they manipulate their linguistic choice through invariant tag questions which are found to be dominant in the Malaysian criminal trial discourse. However, the discourse-pragmatic analysis conducted on the usage of invariant tag questions in the witnesses' examination reveals various legal-pragmatic functional categories performed by these invariant tags. They become valuable discursive strategies for controlling and enticing affirmative responses through the *agree/setuju* tag. They can also check inconsistencies in witnesses' answers through the *correct/betul* invariant tag or mark accusations through the *do you agree* tag. They can also replace polarities in canonical tag questions to express lawyers' stances through particle-tak/not or do you know tags.

5.5 Witnesses' responses to invariant tag questions in the crossexamination activities

The preceding quantitative distributions (see Figure 27) indicate that Malaysian barristers use invariant tag questions as discursive tools to control and coerce witnesses' responses. However, to what extent are witnesses "constrained and controlled" (Eades, 2000: 189) by invariant tag questions? The witnesses' responses are determined based on their classification in five categories: agreement, resistance, misunderstanding, baulk and no response (see section 2.5). However, most of the responses were found in the first two categories, so Figure 32 describes the percentages of complies (blue bars), resistance (red bars) and other types of answers (grey bars) across invariant tags in the cross-examination activities. The types of response in the grey bars are those such as baulk, uncertainty, misunderstanding or seeking clarification from lawyers.

Figure 32. Percentages of witnesses' responses across patterns of invariant tag questions in cross-examination activities



This graph indicates types of responses received by each pattern of invariant tag question found in the MAYCRIM corpus. The blue bars indicate a genuine compliance where the witness agrees and cooperates with barristers, showing that invariant tag questions usually serve their coercive function, while the red bars represent resistance from a witness. We can see that two of the question types are dominated by resistance: do you know and do you agree, showing that tag questions do not always coerce and witnesses can and do resist them. We expect invariant tags with affective functions, that display challenging and attitudinal stances to be highly controlling because lawyers can impose their version of events and force witnesses to accept them. However, the quantitative data in Figure 32 shows that when asked do you agree (and these questions were found to have high challenging and attitude functions of 56.1 and 44.7% respectively) witnesses strongly resist. This suggests that although a question can be a leading question and be designed to be highly coercive, it can fail to coerce. This observation also suggests an insight that is applicable to lawyers' training where they can be made aware of the impact of particular questions on witnesses' responses.

The present study also measures the length of witnesses' answers because it can be a key sign of the degree of opportunity taken by witnesses to impart their version of events. Figure 33 illustrates the answer lengths across the most salient legal-pragmatic functions of tag questions found in MAYCRIM corpus.

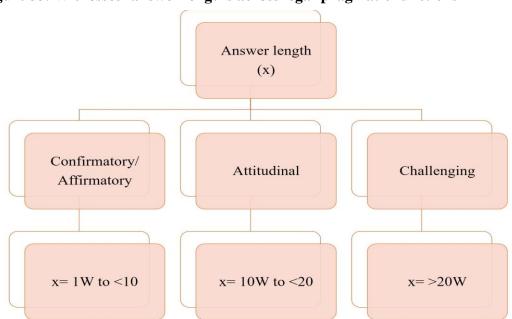


Figure 33. Witnesses' answer lengths across legal-pragmatic functions

The answer length (i.e. x) indicates that epistemic modal tags mostly generate short and precise answers from witnesses which are between one to ten words, whereas, affective functions such as attitudinal and challenging tags prompt witnesses to speak more because their answer is between ten and twenty words and sometimes we get more than twenty words. This figure is an indicator of the extent of control a coercive invariant tag question can have on witnesses in cross-examination. The *agree/setuju* and *correct/betul* questions have a confirmatory/affirmatory function that produce more short answers from witnesses (i.e. between one to ten words) thus do not invite narrative, whereas the *do you agree* and *do you know* that received medium to long answers invite narrative and might promote resistance from witnesses. This will be dealt in depth in the following Chapter 6 on witnesses' resistance to barrister's controlling and coercive questions.

5.6 Conclusion

The combined quantitative and corpus-based method produces interesting patterns to investigate in the qualitative analysis. First, discourse-pragmatic analysis of the variant tag questions found that the MAYCRIM corpus is dominated by a form that is not found in Anglo-American courtrooms, the *isn't it* tag. This simplified tag, however, seems to perform the same kinds of functions as all the variant tags found in Anglo-American courtrooms: making assertions and prompting affirmative answers from witnesses. However, the quantitative distribution of variant and invariant tags indicates that the MAYCRIM corpus is dominated by invariant tag questions, rather than variant ones, as found in the pilot SHIPMAN corpus.

The finding that invariant tag questions are dominant might suggest that Malaysian barristers are less able to perform power and control with witnesses in cross-examination. However, I found that invariant tag questions have the same potential as canonical tag questions. The declarative + agree/setuju with the highest affirmatory function was mostly used by lawyers to get affirmative answers from witnesses. The linguistic marker to achieve this function is via a factive sentence with tag agree/setuju that can be used as a request for agreement from the hearers. Secondly, declarative + correct/betul is used by defence lawyers to refute prosecution evidence by exposing inconsistencies and inaccuracies in witnesses' answers. Lawyers perform the illocutionary force of checking, through a combination of reported speech or writing

with the *correct/betul* tag, that enacts prior evidence testified or reported by witnesses. I also found that both the invariant tags *agree/setuju* and *correct/betul* are very conducive because they make inferences based on existing evidence. Thirdly, we know that a reversed polarity tag question has a strong force for agreement and is highly coercive; however in the MAYCRIM corpus, I found that declarative + *do you agree* is also highly coercive. This is because it allows lawyers to impose their version of facts or presuppositions to coerce hearers to accept their assertion. In addition, the *you/kamu* pronouns in the tag put more pressure on witnesses. The same observation is found in invariant tag *do you know* that pragmatically behaves to impart information about the lawyers' stance to witnesses.

Finally, I have demonstrated that tag questions do not always coerce. Challenging and attitudinal tag questions such as *do you agree* and *do you know* are expected to control witnesses because barristers can impose their version and force witnesses to accept them. Interestingly, they received more disagreement than agreement from witnesses and these questions produce narrative responses. This observation is supported by Eades (2000: 171) who says that coercive or controlling questions are often interpreted as "an invitation to explain some situation or present a narrative account". It would be tempting to propose a continuum of coercive and controlling invariant tag questions; however it is not easy due to the complexities of the multifunctional pragmatic forces that invariant tags can serve, as I explained in section 5.4. For example, invariant tag *correct/betul* can challenge witnesses or express a lawyer's stance in some context. Last but not the least, this investigation suggests an insight into lawyers' training. Although a question can be designed to lead and be highly coercive in cross-examination, it does not necessarily have the effect of controlling and coercing witnesses.

Chapter 6 Witnesses' resistance to barristers' controlling and coercive questions in cross-examination

6.1 Introduction

When witnesses are called to testify in a court, they are required to speak the truth and those who are found to be lying under oath can have legal action taken against them. The power of courtroom interaction requires witnesses to respond to questions and to give responses that fulfil the oath's requirements. Nevertheless, based on close examination of the MAYCRIM corpus, it is found that witnesses can violate the oath in legally and linguistically sanctioned ways (Cotterill, 2010b), through resistance and evasion in cross-examination. This observation motivates the investigation of witness resistance strategies in cross-examination activities.

There is a healthy body of literature (e.g. Eades, 2000; Gibbons, 2003; Archer, 2005; Ehrlich and Sidnell, 2006), on coercive and controlling questions in crossexamination activities, including tag questions, as we saw in Chapter 5. However, far less attention has been paid to witnesses' resistance. In cross-examination, one of barristers' multiple goals is to challenge witnesses through restricting witnesses' answers and demonstrating to the judges that witnesses are not reliable through inconsistencies in their answers. Consequently, witnesses need to be careful not to reveal too much information that might damage their case. The previous chapter on tag questions reveals that affective tag questions (i.e. those with attitudinal and challenging functions) such as declarative + do you know, declarative + agree/setuju? and declarative + do you agree? do not always produce barristers' preferred responses (see Figure 32, section 5.5). Witnesses show resistance to the propositions and presuppositions contained in the questions. Coercive and controlling questions are often responded to by witnesses as 'an invitation to explain some situation or present a narrative account' (Eades 2000: 171), which suggests that resistance and evasiveness can be used as powerful tools by witnesses to avoid being constrained and controlled by question-types. Providing narrative accounts in response to controlling questions also suggests that resistance and evasion is not simply a matter of a minimal response.

Symon (2005: 1648) summarises resistance from a psychological point of view as an "individual attitude or reaction", whereas from a rhetorical perspective, resistance

is the "the production of counter-arguments". Harris (1991) views resistance as an evasive technique, outlining three kinds of response to questions by politicians in political interviews (direct, indirect, challenge); Al Saeed, building on Harris's work defines evasion as the "degree of evasiveness of the suspect or how she/he tries to avoid answering questions" (Al Saeed, 2018: 158) in her research on Egyptian inquisitorial interrogations. The present study views resistance as a choice that a speaker makes to express disagreement. Categories of resistance are outlined in section 6.1.

In cross-examination, defence barristers utilise a range of questions from open *wh*-questions to closed tagged declarative questions that exercise varying degrees of coerciveness and control over the answers. Example 20 demonstrates the range of questions used by a prosecutor (P) in his cross-examination of the defendant, Miss Najihah (D) from a theft case. The prosecutor's goal is to establish a prima facie case against the defendant as guilty of stealing from XY Pharmacy.

Example 20. Source: Cross-examination, Case 6

- 1. P: When you were at the police station, was your statement recorded
- 2. by the police?
- 3. D: *Yes*
- 4. P: Who was the recording officer?
- 5. D: Inspector Vinesh
- 6. P: If I show you your s.112CPC statement would you be able to
- 7. identify it.
- 8. D: Yes. This is my statement
- 9. P: Is your signature on that statement?
- 10. D: Yes at 2nd page bottom left.
- 11. P: What you told Inspector Vinesh was made voluntarily
- 12. D: *Yes*
- 13. P: Pray for the s.112 CPC statement of the accused be tendered as
- 14. exhibit as prosecution's exhibit
- \rightarrow D: <u>I object</u> to its tendering <u>because</u> when I gave the statement, I was
- 16. stressful and cannot stands being inside the lock-up.

The prosecutor begins the cross-examination of the defendant with open and closed questions such as *wh*- and *yes/no* questions to get agreement from the witness that her statement to police was voluntarily given (lines 1-11). The defendant at first confirms this, but when the prosecution proposes to the court that the accused's statement should be tendered as the prosecution's evidence, the defendant strongly resists the proposition (line 15) by challenging the proposal. First, it is observed that the

defendant strategically designs her resistance with a combination of a bold response by making a correction to her earlier acceptance of the prosecutor's declarative question (line 11). The defendant boldly states her objection through the first-person singular pronoun *I* with the action verb *object* that represents strong resistance to the course of action proposed by the prosecution. Simultaneously she uses a correction device (see section 6.4) signalled with *because* to assert her reasoning. She provides a long answer (more than twenty words) (see Figure 7, section 2.5) to allow herself to tell her own version of events, that is, she was physically and psychologically disturbed when interrogated by the police and, therefore, the statement should not be used as evidence against her. The defendant also portrays her resistance through repetitive disagreements as can be seen in in the following excerpt which is extracted from the same case.

Continued from Example 20

- 17. P: <u>Do you agree</u> that you gave your statement not in a stressful
- 18. situation as it was given voluntarily?
- \rightarrow D: I disagree
- 20. P: You took all the cosmetics items as per charge from
- 21. the XY Pharmacy?
- 22. D: *I agree*
- 23. P: You stole the items as you did not pay for it
- \rightarrow D: I disagree.
- 25. P: Why you did not go to the toilet first and then come back
- 26. for the items?
- \rightarrow D: My period suddenly come when I was inside the pharmacy.
- 28. P: You could have put the items back to the counter instead of putting
- 29. them in your hand bag
- \rightarrow D: I disagree. I was not aware that I was putting the items
- 30. inside my bag
- 31. P: You said you were not aware holding and putting the items in your
- 32. handbag but you were aware that you having your period
- 33. D: *I agree*
- 34. P: You stole the items from the XY Pharmacy?
- \rightarrow D: I disagree
- 36. P: That's all

The defendant's answers in lines (19), (24) and (30) indicate that the defendant is going on record as completely disagreeing and rejecting the prosecution position. This repetitive disagreement is what I term *stand-alone I disagree* (see section 6.6) not only because it displays strong disagreement but because it also resists the prosecutor's

dominant status. In addition, the defendant also corrects the barrister and avoids responding to his question, as can be seen in lines (27) and (30) to defend herself from the impact of the blame structure that is devised by the prosecution. In line (27) the defendant develops her correction to minimise the potential damage done by the prosecution's 'why' question on her unacceptable explanation that she forgot to leave all the items on the shelf before going to the restroom. Instead, she gives an alternative description of 'suddenly her menstrual cycle is on' in order to justify her behaviour. Then, (lines 28-29) the prosecution sees the opportunity to debunk the defendant's justification by offering a better option for the defendant, that is, to leave unpaid items on the pharmacy's shelf rather than in her bag. In response to this proposition, the defendant constructs her resistance through disagreement with supplementary information (see section 6.6.2) as her response, to justify that she had absent-mindedly put the items inside her bag while deciding to go to the restroom. This response can be seen as strategic disagreement to disconfirm the prosecution's preceding statement. The prosecution builds his next proposition (lines 32-33) by repeating the defendant's answers to get confirmation from the accused before moving on (line 35). The prosecution ends with a declarative statement that discredits the accused, which the accused denies with a *stand-alone I disagree* to strongly reject this proposition.

Example 20 demonstrates that the defendant diverts the prosecution's discursive sequencing through multiple types of responses and resistance which indicates that witnesses or defendants do not necessarily conform to the restrictions imposed by the barristers' questions in cross-examination. Therefore, this chapter presents a comprehensive discussion of the dynamics of witness answers as they resist controlling and coercive questions in cross-examination.

To investigate witnesses' resistance to barristers' controlling and coercive questions, this chapter deals with the following research questions:

- 1. What types of witness resistance appear in cross-examination activities?
- 2. How does witnesses' resistance challenge barristers' discursive power in crossexamination activities?

This chapter not only demonstrates that witnesses resist the pragmatic presuppositions in barristers' questions by offering alternative explanations or evading

the topic, but also reveals witnesses' attempts to take control of the interaction, so that they can reverse or transpose the negative impact on them.

6.2 The extraction and distribution of witnesses' resistance in crossexamination in the MAYCRIM corpus

Witnesses' responses to cross-examination activities are determined through resistance found in the least conducive *wh*-questions, controlling *yes/no* questions and the coercive declarative and invariant tag questions introduced in previous chapters. Resistance is classified according to the four pragmatic categories of resistance seen in Table 19.

The coding system is adapted by combining the resistance strategies outlined by Newbury and Johnson (2006) in their work on police interviews and Harris's (1991) categories of evasive responses to questions by politicians in political interviews. First, the investigation integrates Harris's concept of the most evasive kind of answer, the concept of challenge: "responses which challenge one or more of the presuppositions of a question" or "the illocutionary force of a question" (Harris, 1991: 85-86). I found this concept relevant to witnesses who boldly resist and violate Grice's Maxim of Manner, whereby a witness is required to "be orderly" (Cotterill, 2010: 364). Then, I modified Harris's concept of direct answers to include direct disagreement and direct disagreement with supplementary information. Secondly, I adopted the concepts of "correction" and "avoidance" proposed by Newbury and Johnson (2006) in relation to police interviews, because they are relevant to courtroom examination. However, I excluded the refusal strategy (suspects are allowed to remain silent in police interviews), because, in a courtroom, if the judge allows the questions to be asked, "a witness shall not be excused from answering any question" (Fook et al. 2014: 155). The pragmatic classification in Table 19 demonstrates four defence strategies of direct disagreement, evasion, correction and challenge used by witnesses or defendants in the MAYCRIM corpus. This model also proposes an inbuilt notion of increasing resistance from top to bottom.

Table 19. Pragmatic categories of witnesses' resistance

Pragmatic categories of resistance	Coding systems	Explanations and examples	Scale of resistance
Disagreement	a. DISAGREE	Direct answers that include 'NO' or 'I DISAGREE'	Direct disagreement
		Q1: By you not marking it together, that evidence Exhibit P 41 is exposed to be abused, agree? A1: <i>No</i>	•
		Q2: Do you agree that you gave your statement not in a stressful situation as it was given voluntarily? A2: <i>I disagree</i>	
	b. DISAGREE++	Direct answers with supplementary information that allow the witness to justify the event or blame conveyed by the interrogators in the questions.	
		Q: Was anything found in that room? A: I did not find anything because I was only taking photographs	
Evasion	EVADE	Resistance that demonstrates the witness does not want to commit to lawyer's questions.	•
		Q: PUT: And then, you used calculator and asked him in simple English "India, tax how much"? A: <i>I cannot remember</i>	
Correction	CORRECT	Resistance with alternative answers to correct the lawyer's proposition or versions.	
		Q: Do you agree when exhibits were handed over to you by the raiding officer, they were not marked Z 1 to Z 32?	
		A: When I received these exhibits, they were not in the envelopes yet.	
Challenge	CHALLENGE	Resistance that challenges the lawyer's propositions through questioning the relevance of questions or face threatening questions asked to lawyers.	
		Q: In spite knowing the content in the orange songkok and other items which prompted Custom officer MR. FARID to refer to the Custom Narcotic, there was no caution according to Dangerous Drugs Act 1952 against the accused person, do you agree?	
		A: No, I think the question should be amended. We told the court that we never open the packet and we do not know the content. Yes, we did not administer caution to the accused.	Most resistanc

Direct answers to leading questions consist of two subcategories: minimal answers of *No/I Disagree* and disagreement with supplementary information to justify their answer or deflect blame conveyed by the interrogators in the examination process. The coding system used is DISAGREE and DISAGREE++ to show the difference. The classification is conducted both automatically and manually through specific search words *No* and *I disagree*, as can be seen in the example of concordance lines in Figure 34.

Figure 34. Concordance lines of *No* and *I disagree* in cross-examination (20 of 293 occurrences)

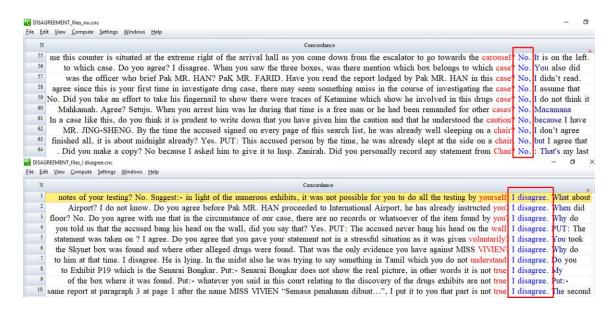


Figure 34 reveals 20 concordance lines (of 293) that indicate direct disagreement by witnesses to the questions asked by barristers in cross-examination across a wide range of offences. This automatic search is repeated on resistance that demonstrates evasion strategies, because it consists of words, such as *know/tahu* (see Table 20) and these words can be used as search-words with *Wordsmith*. This investigation, therefore, proposes a set of search-words, in both English and Malay, that can be used to generate concordances of lexical patterns that demonstrate evasion, as can be seen in Table 20.

Table 20. Search-words to determine lexical patterns of evasion

SEARCH-WORDS	LEXICAL PATTERNS THAT DEMONSTRATE EVASION
KNOW/TAHU	I don't know / Saya tak tahu
	I do not know / Saya tidak tahu
SURE/PASTI	I am not sure / Saya tidak pasti or Saya tak pasti
REMEMBER/INGAT	I can't remember / Saya tak ingat
	I cannot remember / Saya tidak ingat
UNDERSTAND/FAHAM	I don't understand / Saya tak faham
CONFUSED/KELIRU	I am confused / Saya keliru
AWARE/SEDAR	I was not aware / Saya tidak sedar

Table 20 suggests a list of mental verbs (i.e. *know/tahu, remember/ingat, understand/faham*) and adjectives (i.e. *sure/pasti, confused/keliru, aware/sedar*) with their Malay counterparts that are used by witnesses and defendants in the MAYCRIM corpus to express their evasion towards lawyers' questions. It is found that a uniform lexical pattern is produced from the concordance lines based on the automated search, as can be seen in Figure 35.

Figure 35. Concordance lines of 'I don't know' and 'Saya tidak tahu' in cross-examination

N Concordance lines of 'I don't know' (5 of 77 occurrences)	S
it merely opened or was it broken into? I am not sure. Do you know whether that room was locked or not? I don't k	now. A
stored in the device on the SIM card, correct? It is saved and stored on the device and not in the SIM card. I don't k	now A
7 tied on the bag tightly which makes it is difficult to open; are you aware? Yes. So how was the string untied? I don't k	now. A
that photograph show? It shows there is some damage to the door. Do you know who caused the damage? I don't k	now. A
they, big or small? In photograph no.21 the box on the left next to the wall by the window is quite big but I don't k	now A
entered into the master bedroom did you notice the various exhibits were on the floor? I have not check and I didn't k	now A
Concordance lines of 'Saya tidak tahu' (5 of 28 occurrences)	S
Concordance lines of 'Saya tidak tahu' (5 of 28 occurrences) 11 KDN? Ya. Prosedur bertulis saya tak bawa sekarang. Prosedur bertulis ada pada siapa? Saya tak tahu. Setuju, seti	s np A
Control of the Contro	
KDN? Ya. Prosedur bertulis saya tak bawa sekarang. Prosedur bertulis ada pada siapa? Saya tak tahu. Setuju, setia to know who are the people involved, who are the civilian involved, on the parade? Itu saya tak tahu lah. Kamu ta	ak A
KDN? Ya. Prosedur bertulis saya tak bawa sekarang. Prosedur bertulis ada pada siapa? Saya tak tahu. Setuju, setia to know who are the people involved, who are the civilian involved, on the parade? Itu saya tak tahu lah. Kamu ta	ak A

The above lines are extracted from the automated search on *know* and its Malay equivalent, *tahu*. To distinguish *I don't know/Saya tidak tahu* as avoidance from genuinely not knowing, I have analysed the questions used because they "can potentially inform discussion of the mechanism(s)" (Scoboria, Mazzoni and Kirsch, 2008: 256). Some categories of resistance such as direct disagreement with supplementary information, correction and challenge are determined manually, because

they do not have specific lexical patterns to help *Wordsmith*. The extraction of resistance in cross-examination in the MAYCRIM corpus reveals a total of 679 responses; that is 32% show resistance from the 2,121 questions asked in cross-examination activities. All the other responses (i.e. 68% of 2,121 questions) show agreement with the barrister, which indicates that coercive and leading questions are successfully coercive in the majority of cases, but they are also resisted by witnesses in a surprising number of cases in cross-examination. Since agreement is the expected and most frequent response to cross-examination questions, resistance is done in ever more evasive ways, based on perceived costs to the witnesses or defendants. Figure 36 illustrates the breakdown of resistance in cross-examination in the MAYCRIM trials.

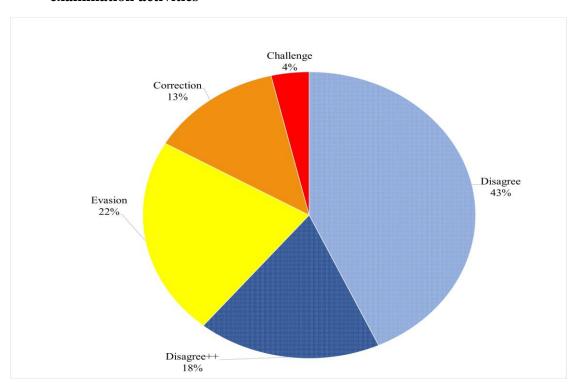


Figure 36. Breakdown of resistance by witnesses and defendants in crossexamination activities

Figure 36 shows that direct disagreement (disagree, 43%; disagree++, 18%) is the most frequent type of resistance performed by witnesses and defendants. Evasion (22%) is the next most frequent category, because it is pragmatically less costly to avoid the question than to correct the lawyer. Correction appeared 13% in the corpus and challenge is the least frequent, with witnesses only raising objections to lawyers' questions in 4% of responses. Pragmatically, challenging the question is the most facethreatening thing a witness can do and may damage their defence, and this is revealed as being used sparingly (see section 6.2).

Looking at the kinds of questions that produce resistance, Figure 37 illustrates the distribution of resistance across invariant tag, declarative, yes/no and wh-questions in cross-examination activities. As indicated in Figure 37, the breakdown of types of resistance across types of questions indicates direct disagreement is most frequent in response to invariant tag questions (55%), declarative (45%) and yes/no questions (48.1%). Witnesses are also found to produce disagreement with supplementary information fairly consistently across all types of questions. Wh-questions are frequently evaded (57.1%) and are also the kind of question that is most often challenged (7.1%), making wh-questions particularly interesting to examine from this point of view, whereas, correction is most frequent in invariant tag (18%) and declarative questions (16.7%) and decreases with yes/no and wh-questions. The quantitative distribution in Figure 37 shows that witnesses and defendants do not necessarily abide by the constraints of the questions, because they can project varieties of resistance as defensive strategies to justify themselves in the courtroom. In the following sections, the study explicates, in more detail, how witnesses and defendants resist the purposes and agendas of questioning through the four pragmatic defensive strategies identified: disagreement, evasion, correction and challenge.

To develop my argument on answers and control, I have measured witnesses' resistance length, because it shows the degree to which witnesses take the opportunity to tell their version of facts. Figure 38 demonstrates witnesses' answer lengths across types of resistance. Note that witnesses' answers when doing challenge fall between 10 to more than 20 words in their response, with most of the responses falling in the longest category (50%). This indicates that witnesses are not controlled and constrained by coercive questions in cross-examination. Evasion is mostly done with answers of less than 10 words, while correction takes between 10 and 20 words. Disagreement (one or two words) and disagreement with supplementary information (less than 10 words) show that disagreement is done with the shortest answers, doing disagreement within the constraints of the controlling question. Nonetheless, disagreement is the most frequent type of resistance because the perceived costs to witnesses' credibility is less than with the other types.

Figure 37. Distribution of resistance across invariant tag, declarative, yes/no and wh-questions

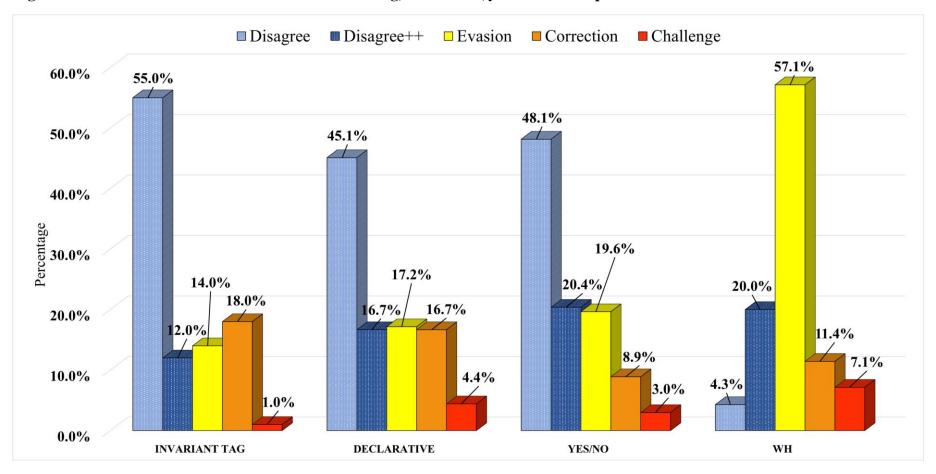
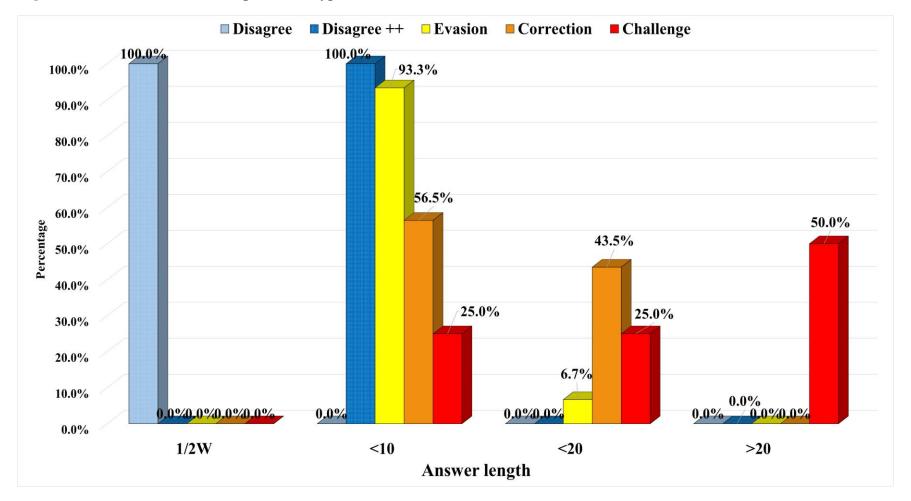


Figure 38. Witnesses' answer length across types of resistance



6.3 Challenging the presuppositions in lawyers' questions as a defensive strategy to mitigate the lawyer's dominant status

The most infrequent, but strategically important, type of resistance produced by witnesses in response to lawyers' presuppositions is making adjustments to the lawyer's questions by challenging them. We might expect lawyers to raise objections to the relevance of the questions posed by the opposing counsel and indeed they do, and even judges sometimes challenge lawyers' questions, as can be seen in the following extract. Note that in this excerpt, the stenographer transcribed the defence lawyer's utterances in the first-person, where the first-person pronouns and determiners such as *I*, *my* and *me* are used to refer to the defendant's narrative in the defence lawyer's question.

Example 21. Source: Cross-examination, Case 4

1. DC: I lodged a report and complain about you.

2. PW2: I do not know

→ J: That is irrelevant

4. DC: You said *I* never co-operate with the police. Do you know *I*

5. lodged 38 police report?

 \rightarrow J: Is it in respect of this case?

7. DC: Do you know *I* have suffered a lot by my neighbour?

8. They scratched my car and threaten to kill me.

9. PW2: I do not know

Here the judge (J), exerts power over his subordinate, the defence lawyer, through challenging the relevance of questions asked to the witness (note the judge has the power to decide whether or not the witnesses are obliged to answer the questions if he does not feel the question is appropriate). While judges have the power to challenge questions asked by lawyers, in the case of the witnesses or defendants, it is interesting that they also exercise their ability to challenge and question the relevance of lawyers' questions, whilst at the same time challenging the lawyer's dominant status. Twenty-five occurrences of resistance that demonstrate pragmatic challenge were found. Fascinatingly, I found that rather than the lawyers' presuppositions being passed over, they were challenged by witnesses, as can be seen in the following extract (Example 22).

Example 22. Source: Cross-examination, Case 14

- 1. DC: During that time what did Officer Farid do with the bag?
- 2. PW3: He didn't do anything to the bag
- 3. DC: Is it true if I was to inform you there and then further examination
- 4. was carried out upon which it was confirmed by Officer Farid the
- 5. powder found in Exhibit P 38 contain crystalline substance?
- → PW3: <u>Actually</u>, <u>we</u> did not open the packets, <u>we</u> just refer to Officer Farid.
- 7. Officer Farid also did not open the packet.
- 8. DC: In spite *knowing* the content in the orange *songkok*
- 9. (i.e. orange headgear) and other items which prompted Officer Farid
- 10. to refer to the Custom Narcotic, there was no caution according
- 11. to Dangerous Drugs Act 1952 against the accused person,
- 12. **do you agree?**
- \rightarrow PW3: No, <u>I think</u> the question should be amended. <u>We</u> told the court that
- 14. <u>we</u> never open the packet and <u>we</u> do not know the content.
- 15. Yes, we did not administer caution to the accused.
- 16. DC: Who was the officer who brief PaK (Custom Officer) MR. HAN?
- 17. PW3: Pegawai Kastam (Custom officer) MR. FARID

In this example, it is obvious that the defence lawyer is solidifying his attempt to discredit PW3 through a series of controlling questions that attempt to coerce PW3 to provide preferred answers for the defence team. However, PW3, who is an experienced customs officer, immediately deflates the defence lawyer's strategy through his resistance via correction (line 6) then boldly challenges (lines 13-15) the defence lawyer's 'positive face' (Brown and Levinson, 1987), via criticism, by pointing out that the defence lawyer needs to amend his question. In this case, positive face refers to "the positive consistent self-image or "personality" (crucially including the desire that this self-image be appreciated and approved of) claimed by interactants" (Brown and Levinson, 1987: 61). First, PW3 clarifies that Officer Farid did not do anything to the accused's bags. Then, he corrects the lawyer's proposition by expressing his contrasting opinion (lines 6 to 7) to the information in the lawyer's question. PW3 uses the actually stance marker at the beginning of his answer, combined with first-person plural pronoun we to indicate his team member. The "actuality" (Biber et al., 1999: 383) stance attributes truth to his version of events, that is, his subordinates never tampered with the material evidence. PW3 then further challenges the relevance of the lawyer's question, signalling that the lawyer falsely accused him through an invariant tag (lines 8-12) that begins with 'In spite knowing the content in the orange...'. This invariant tag consists of a factive verb *know* which presupposes that the witness is aware that there were hidden drugs in the orange songkok (traditional headgear) smuggled by the suspect. For PW3, this proposition is incorrect and falsely accuses the customs officer of poor practice, because he has already emphasised that his enforcement team did not open the packets, so they had no idea about the contents until they referred the case to the Custom Narcotics unit. Therefore, he resisted the damaging presupposition with a direct answer 'no' and problematised the blame presupposition by questioning the relevance of the question asked to him. PW3 uses I think to mark his individual stance and to signal that the defence's question is false. Then, he changes from the first-person singular pronoun I into first-person plural we to indicate a firm stance and solidarity with his team. By doing so, he aligns himself with his team and emphasises facts (i.e. we never open or know the content of the packet). In line 15, PW3 boldly admits that they did not administer the caution to the accused, indicating that at this point he did not suspect wrongdoing. PW3's responses demonstrate that a witness can contest the crossexaminer's version of events by "resisting and transforming the (pseudo)assertions contained in the lawyer's questions" (Drew, 1992: 517), which explains that "witnesses are not necessarily constrained or controlled by question-type" (Eades, 2000: 189). In response to this reaction from PW3, the defence lawyer abandons the topic and starts a new one (line 16) with an open wh-question, so that he can maintain his original agenda, which is to discredit PW3 in front of the judge.

Apart from questioning the relevance of the lawyer's presuppositions, I also found that witnesses directly challenged the lawyer's dominant status in the courtroom through questioning the lawyer in return. The following examples (Example 23 and Example 24) demonstrate witnesses' defensive and diversion strategies through questioning the lawyer's propositions and questions.

Example 23: Interpersonal challenges to the authority of legal principles Source: Cross-examination, Case 1

- DC: My instruction is that on the <dd/mm/2009> at about 3.30pm you
 went to Wonderful Centre Park Route 86 using motorcar XXX ####
 while there you threatened Mr. Huang with the threatening word
 stated in the report ####?
- → PW2: At that time, I was at Tuan Jeffrey room, how can I threatened the
 6. complainant? It is impossible for one ASP
- 7. (Assistant Superintendent Police) to tell a lie.
- 8. DC: My instructions is that you and Mr. Huang having a dispute over a
 9. business at this Wonderful Centre Park, out of this dispute you used
 10. threatening word on Mr. Huang on <dd/mm/2009>, that is why he

- 11. feels threatened and lodge a police report?
- → PW2: Disagree, any eye witness at that place when I threatened him?
- 13. DC: I put it to you Mr. Chan you told the court you were with Tuan Jeffrey
- 14. and other officer were not true because you cannot possibly remember
- 15. the dates and what you do?
- → PW2: *Disagree*.

Challenges, therefore, do not only come from expert or professional witnesses such as forensic pathologists, but they can also come from experienced police officers like Mr Chan (i.e. PW2) who have been cross-examined many times, as in the above example. In this case, the defendant (Mr Huang) is charged with a wilful act of making a false report to the police (i.e. section 182 Malaysia Penal Code) with the intention of causing the police to use their lawful powers to the injury of another person. It all begins when the defendant claims that PW2, who was an ex-business partner, had threatened him due to a dispute between them. However, the police found that the defendant deliberately gave false information to them. The defence counsel states that PW2 threatened his client at the said time and place (lines 1-4) as a strategy to divert the blame onto PW2 instead of his client. However, (lines 5-6) PW2 challenges this preconceived idea by stating that he was with Mr Jeffrey (i.e. the police officer who made the report against the defendant) at the said time, and throws the question back to the defence lawyer. Then, what follows is that PW2 interpersonally challenges the defence lawyer by stating that a police officer will never tell lies. In response to PW2's resistance, the defence lawyer transforms the possible damage to his client into a more benign one by proposing that the defendant's action is due to the threat he received from PW2 (line 8). PW2 transforms the potential damage by direct disagreement with the proposition and questions the legal principles of the defence lawyer. In line (12), PW2 asks the defence lawyer whether there was 'any eyewitness at the place', which also challenges the lawyer's legal authority and simultaneously diminishes the defence lawyer's dominant status during cross-examination.

This investigation also reveals that witnesses use the strategy of questioning back as a request for repetition, because it is difficult for the witness to remember exactly what the barrister asked or in order to delay the question. Here the barrister uses multiple questions "which include numerous sub-questions asked at once" (Catoto, 2017: 66). However, when the barrister is asked to repeat the question, he reformulates his question into a more coercive one, that is invariant *agree*. This extract is taken from

a cross-examination between PW5, who was the investigation officer of this case (i.e. Cheating) and a defence counsel who represented Mr Li Wei, the defendant in this case.

Example 24: Questioning back the lawyer to delay damage Source: Cross-examination, Case 15

- DC: In this case, do you know that the modes, the conduct, cara mengambil kawad cam muka telah tidak mengikut way takes parade identification face was not follow peruntukkan yang ditetapkan oleh standing order dan juga allocate that fixed by standing order and also perundangan? Are you aware of that?
- 1. *In this case, do you know that the modes, or the conduct of the*
- 2. identification parade that was conducted does not follow the fixed
- 3. and allocated standing order and legislation?
- 4. *Are you aware of that?*
 - PW5: Minta ulang soalan? Request repeat question?
- → Request the counsel to repeat that question?
 - DC: Bila kamu semak laporan ID report, yang kamu tahu, when you checked report ID report, that you know, di brief oleh Pegawai itu, 'it is positif'.

 briefed by officer that, 'it is positive'.

 Itu sahaja yang kamu tahu. Lepas itu kamu masuk dalam itu.

 That only that you know. After that you go in there. Setuju?

 Agree?
- 6. When you checked the ID report, the only thing you know is
- 7. you were briefed by your officer who stated that "it is positive".
- 8. *After that, you went inside. Agree?*
 - PW5: Tidak. Saya telah mendapat laporan tersebut, saya telah melihat have received report that, had seen No. I segala kandungan ataupun segala yang diisi oleh pegawai content all that filled by officer or kawad cam. Dan setelah melihat keputusan tersebut, parade identification. And after saw result the. adalah positif.
 - is positif.
- \rightarrow No. I received and read the report and all details filled by the
- 10. officer who was in charge of the identification parade.
- 11. And the report shows a positive result.

Example 24 demonstrates various strategies to challenge the dominant status of the lawyers. Typically, lawyers use the adjacency pairs of questions and answers to build a sequence of questions (Atkinson and Drew, 1979), and in this example, the defence lawyer builds the discredit and blame structure with this prosecution witness through a series of controlling yes/no and coercive invariant tag questions. In lines (1-4) the defence lawyer uses a "type-confirming" (Raymond 2003:946) yes/no question to get a confirmation of either yes or no from PW5. Note that a "type-confirming" question produces responses that contain either a "yes" or a "no" (or equivalent token such as mmmh, uh huh, yep, yeah, nope, nah hah, etc.) (Raymond, 2003). The question is loaded with the defence lawyer's presupposition that the identification parade was not conducted properly by PW5's subordinate, thus suggesting that the identification parade report is invalid because the procedure contravened the law. The first part is built with the epistemic factive predicate (Field, 1997) know, as can be seen in do you know that, a phrase which indicates the lawyer's claim to know the truth that the identification procedure was not conducted properly. Then, he reinforces his conviction with aware as a factive adjective that allocates responsibility onto PW5. Instead, PW5 challenges the defence counsel through asking the lawyer to repeat or rephrase his question, thereby delaying or averting the damaging presupposition. Here, the perceived costs of a challenge are considered worthwhile, because the proposition in the lawyer's questions is particularly damaging to the witness. In response to PW5's answer (line 5), the defence lawyer uses an invariant tag question that is loaded with the assumption that PW5 has not read the report and fabricated his evidence in direct examination. The reformulated question, however, is a more coercive invariant tag which brings more damage to the witness's credibility. PW5's response is to disagree with the presupposition and correct it, to lessen the damage done to him through the lawyer's questions.

Different combinations of linguistic choice in barristers' questions create different kinds of decisions that witnesses need to make. For example, when witnesses find that the propositions in lawyers' questions are detrimental to their existing evidence and credibility, witnesses perceive that doing the challenge is worthwhile to counter the barrister's proposition. The above discussion demonstrates that, rather than resisting through a type-confirming response of *yes* or *no*, the witnesses mitigate the lawyer's dominant status through challenging the presuppositions in the questions asked to them. This observation also demonstrates that witnesses transgress their typical powerless

state, which indicates that witnesses do not necessarily conform to the constraints of courtroom interaction. The following section explains how correction is used by witnesses to try to open up linguistic negotiation with lawyers in cross-examination activities.

6.4 Correction as a witness negotiation strategy to open up linguistic negotiation with defence lawyers

Pragmatically, challenging a lawyer's question may damage a witness's defence or status; thus it is clear why challenging is used sparingly. Moving now to the next most frequent type of resistance, which is making a correction, with 13% of usage (Figure 36), this demonstrates that it can be a defensive strategy for witnesses as an attempt to open up linguistic negotiation with defence barristers. This kind of resistance appears less costly in terms of damaging a witness's defence or status because the attempt at negotiation demonstrates a willingness to engage with the question, but on the witness's terms. The corpus-based method employed an automatic search that can be used to extract correction in answers. This search is developed based on the lexical patterns that are commonly associated with correction as tabulated in Table 21.

The following search-words are compiled as a result of my observations of the uniform patterns formed when witnesses make corrections to the lawyers' questions. Despite using an automatic search via *Wordsmith Tools 6.0*, the search for corrections was also conducted manually, because correction is performed in a variety of ways. There are, therefore, three search-words with their Malay counterparts that this investigation would like to propose as an automated way of extracting resistance in the form of correction. More specifically, these three words are words that link other words or clauses together, namely conjunctions.

Table 21. Search-words for automated extraction of correction

SEARCH- WORDS	FREQ.	EXAMPLES	
BECAUSE	9	Q: PUT: When you arrive at the airport the exhibits have been displayed on the table, do you agree? A: No, <i>because</i> I have no idea about it.	
SEBAB	5	 Q: So, I put it to you, when he was in the restroom, he saw you brought all the participants upstairs. Agree? A: Tidak bersetuju <u>sebab</u> bilik rehat tertutup. A: I disagree, <u>because</u> the restroom was closed. 	
KERANA	1	Q: After you have arrived there, you saw Kairav walked the victim into the jungle? A: Saya tidak setuju <u>kerana</u> setelah Kairav tanyakan kepada orang tersebut dan orang tersebut telah lari ke arah hutan A: I disagree, <u>because</u> after Kairav talked to the victim, the victim immediately ran into the jungle.	
BUT	9	Q: Was there documentary evidence to show that you have shown all the contents to the accused? A: Yes. No documentary evidence <u>but</u> I have my officers as witnesses.	
TETAPI /TAPI	2	Q: Just now you told that the water tank is close to the toilet, the truth is it is closer to the library. A: Tangki itu memang berhampiran dengan library <u>tapi</u> lebih kurang 5 meter hampir dengan tandas A: The water tank is closer to the library, <u>but</u> around 5 meters away from the toilet only.	
AS	6	Q: Your evidence is that nobody was responsible for the maintenance of the weighing scale? A: <u>As</u> I mentioned earlier the chemist and other staff respectively is responsible for the maintenance of the weighing scale	
TOTAL	32		

However, not all conjunctions can be used to extract resistance that demonstrates correction in a corpus-based search; the following are found most useful: because/sebab/kerana, but/tapi, and as. Both because and as are subordinating conjunctions that signal a hypothetical-real relationship (Winter, 1994) between the question (the lawyer's hypothesis) and the answer (the reality), whereas, but/tapi is an adversative conjunction (Halliday, 1985), so it signals an adversarial or contradictory position as can be seen in Figure 39.

Example 25. Correction that signals a hypothetical/real relation

Source: Cross-examination, Case 14

- 1. DC: You never verified and identified the exhibits.
- 2. PW7: <u>I disagree.</u> I <u>did not</u> mark and label the other exhibits in the bag
- → <u>because</u> no drugs were found in the exhibits which I did not mark
- 4. and label

The witness response (lines 2-4) shows a combination of direct disagreement as well as correction which signals the hypothetical/real relation (Winter, 1994: 52). Note that I have counted this kind of appearance as one category of resistance (correction) to avoid double counting. In this case, the defence lawyer attempts to discredit PW7's credibility by making an assertion against the witness (line 1) through the declarative question. The lawyer's action creates a "hypothetical structure" whereby "the hypothetical member presents the statement to be affirmed or denied as true" (Winter, 1994: 62), while PW7 demonstrates a "real structure" (Winter, 1994: 52) by denying the assertion. The real structure is expressed via the "evaluatory word" (Winter, 1994: 52) that shows denial, that is, *I disagree*. Then a correction is signalled by the subordinating conjunction or "lexical signalling" (Hoey, 1994: 37) which is used by PW7 to signal a problem in the lawyer's assertion, thus needing the correction.

On the other hand, the subordinating conjunction *as far as* used, in Example 26, works as an epistemic emphasiser which introduces the correction.

Example 26. Correction that signals hypothetical/real relation

Source: Cross-examination, Case 1

- 1. DC: I put it to you there was no such record supplied to the defence?
- \rightarrow PW1: <u>As far as I know he did</u> make a record in his diary

As far as is used by PW1 to introduce his correction to the defence lawyer's hypothesis, which is presented as a statement of fact. Correction is achieved via the *I know* stance marker that indicates PW1's sufficient knowledge about the said record, combined with the emphatic *did* that marks the real fact that contrasts with the lawyer's hypothesis.

The 'adversative conjunction' (Halliday, 1985) but/tetapi/tapi is also used to correct because it signals adversative reasoning, as exemplified in Figure 39, which shows concordance lines of but. The red highlighted lines convey disagreements with lawyers' questions; then adversative but is used to add reasons that support the

witnesses' disagreements. In the blue highlighted lines *but* is paired with agreement, which indicates partial agreement with the lawyers' questions.

The red lines in Figure 39 (lines 1,3,6,7,9,12,) imply contrast and make corrections to lawyers' coercive declarative and invariant tag questions (i.e. *agree* and *do you agree*). The lines in this concordance quantitatively support previous findings in Chapter 5, section 5.5, that suggests that *do you agree* invariant tag questions produce narrative responses, receiving long answers from witnesses. The blue lines that indicate partial agreement from witnesses show that adversative *but* is used to highlight a contrast to expectations. In both cases adversative *but* sometimes leads barristers to more coercive questions, such as in lines 8 and 16. The word *PUT* here refers to a metalinguistic assertion (Heffer, 2005) that usually is conveyed through a declarative question.

The automated search finds 32 usages of conjunctions (see Table 21) that are used to portray corrections to lawyers' propositions. However, the automated corpus search does not find all the corrections made by witnesses; therefore, manual searching is also conducted using the definitions in Table 19. To do this, I searched for resistance with alternative answers. The automated and manual search conducted on the corpus extracted 88 corrections across different types of questions as illustrated in Figure 37.

Figure 39. Concordance lines of *but* (18 occurrences)

N Concordance

1 ing had been untied and separated from the bag? A96 It is a not separated but just untie Q98 Refer to all the exhibits involving the songkok; you said English, he only spoke limited broken English. A88 Spoken broken English but he does understand English. Q96 Refer to photograph 5, before you came t 3 ound on the floor and some from the Skynet box. Agree? I disagree. I know but I cannot quantify. When the Custom officer conducted detailed examination 4 nversation in this telephone number? A148 From Celcom there was call logs but not the conversation. Q21 Do you agree with me that you never inform you 5 us Drug Act, 1952? A74 I am not very familiar with Criminal Procedure Act but yes with Dangerous Drug Act, 1952. Q76 When you have been called by PaK not take the photograph properly? A63 Not that it was not taken properly but it was not... (Bukan tidak betul, tidak kena pada gambar keseluruhan bara 7 t there was no mention, do you agree? No in the report he did not mention but when I go to the crime scene I found out the distance. Apart from this P 8 arrival at International Airport on at about 1030 hrs. Do you agree? Yes, but he did not arrive at 1030 hrs at International Airport. PUT: When you are 9 used person by the time, he was already slept at the side on a chair. No, but I agree that he was seated against the wall. At that time he was also lo 10 sion the certificate of this calibration in respect of this machine? Yes, but I did not bring it to the Court with me now. When you conducted the anal 11 ing, do you agree with me, the 1st screening test is not conclusive? Yes, but I need to explain. Then, the next step is to conduct the qualitative tes 12 ound on the floor and some from the Skynet box. Agree? I disagree. I know but I cannot quantify. In your investigation of this case, were you made awa 13 1952. Do you know or have you ever heard about this section? I ever heard but I do not understand. So, before you grind the homogenized crystal substa 14 aph no.21 the box on the left next to the wall by the window is quite big but I don't know the exact measurement. The box on top of the green rubbish 15 t Insp. Zanirah who else was there? There was 2 other male police officer but I am not sure their names, but I still can identify their face. You mean 16 have shown all the contents to the accused? Yes. No documentary evidence but I have my officers as witnesses. PUT: There was no documentary evidence 17 o you know the owner of the device? That number is confirmed saved as Syg but I don't know the owner. Entry no.7 named Syg3. The telephone number ###-

The pragmatic effect of corrections to what the barristers are proposing is an attempt by the witness to change the judges' minds by providing an alternative explanation. Examples 27, taken from a drug trafficking case, demonstrates how PW3, makes corrections to the lawyer's version through his defensive attempts to resist the lawyer's asymmetrical control.

Example 27. Source: Cross-examination, Case 14

- 1. DC: That is why during that time you have the power to put anybody under
- 2. your control to be arrested?
- → PW3: <u>I do not have the power;</u> my duty is only supervising
- 4. DC: So, one-day people involved in smuggling under your care detained
- 5. by you?
- 6. PW3: I will refer my case to my senior officer, my senior officer will make
- 7. a decision
- 8. DC: When the Custom officer conducted detailed examination, do you
- 9. <u>agree with</u> me it is also your duty to initiate the examination by
- 10. takeout whatever been displayed, <u>agree?</u>
- → PW3: No, the examination is done by the examination officer
- 12. DC: Who was the examination officer?
- 13. PW3: **Mr Lim**

PW3 is the senior customs officer who had supervised his team to search and question the suspect regarding hidden drugs in the suspect's luggage. The lawyer's questions potentially threaten PW3's credibility as a customs officer. In lines (1-2), the defence uses a declarative question loaded with a presupposition, that is, that PW3 has the individual power to put the accused in custody. The lawyer seems to challenge PW3 with "positive face-threats" (Brown and Levinson, 1978: 70-72) through his declarative statement. Since PW3 is obliged to answer the question, he linguistically builds his defensive strategy through explicit disagreement with correction, which emphasises that he does not possess absolute power contrary to the defence's claim. The defence uses a so-prefaced declarative question to challenge PW3 (lines 4-5), and the witness uses correction to curb the negative impact of this question on his credibility through an assertion that he refers the case to his seniors who have more authority to make decisions on whether to detain or release a suspect.

The mental verb, *agree*, is widely used in barristers' cross-examination questions to follow up an opinion and form an argumentative question. As mentioned in Chapter 4, a keyword analysis of 'agree', as in 'Do X agree that...?' or 'Declarative +

do you agree/agree?', indicates a positive keyness value (+1,808.21) in cross-examination, but a zero keyness value in direct-examination. In the data here (lines 8-10) the defence lawyer designs a *yes/no* question and finishes it with an invariant tag of 'agree', first to promote an argument that transfers responsibility for the investigation solely to PW3, and second, to try to put PW3 in a negative light in front of the judge. Alert to the defence strategy, PW3 responds by directly disagreeing and correcting the lawyer's assertion that the examination was conducted by the examination officer. This example demonstrates that a series of corrections can be used by the witnesses or defendants to try to open up linguistic negotiation that debunks a lawyer's propositions and consequently transforms a potentially malign structure into a benign one.

Apart from being a defensive resource to open up linguistic negotiation with the defence lawyer, corrections are also used by witnesses as a form of resistance to divert lawyers' discursive sequencing in cross-examination. Example 28 exemplifies how the lawyer's intentional face-threat structure is diverted by PW4 through corrections.

Example 28. Source: Cross-examination, Case 12

- 1. DC: <u>Look</u> at photograph no.13, the brown box was already open,
- 2. **correct?**
- 3. PW4: **Yes**
- 4. DC: <u>But</u> nothing was shown in the brown box, in other words the
- 5. contents of the brown box are not shown any where?
- 6. PW4: This photograph was taken after the search
- 7. DC: Surely you must have some photographs to show the contents of
- 8 the box after the search. **Do you agree?**
- → PW4: I disagree. In photograph no.13, the contents of the Skynet box
- 10. cannot be seen.
- 11. DC: Why do you not agree that there is no photograph to show the
- 12. contents of the Skynet box?
- → PW4: Because it only shows the actual position of the box where it was
- 14. *found.*
- 15. DC: Put:- whatever you said in this court relating to the discovery of the
- 16. drugs exhibits are not true.
- 17. PW4: I disagree
- 18. DC: Put:- whatever you said in evidence regarding the discovery of the
- 19. drugs exhibits are not supported by any of the evidence adduced.
- 20. PW4: I disagree
- 21. DC: That is all

The sequence of questions and answers begins with imperative + declarative + invariant tag correct, which is highly coercive, using the lawyer's asymmetrical power to try to coerce confirmation from the witness. An imperative verb look is used as an order to refer to Photograph 13 as important evidence. The defence lawyer then emphasises that the brown box that is suspected to have drugs in it is already open, and he finishes his proposition with a confirmation tag, correct? PW4 confirms the lawyer's proposition. In line (4) a but-prefaced declarative question is used to propose that the photograph does not exhibit the material evidence (i.e. drugs). PW4 clarifies that the photograph is taken after the search, which means that the content inside the box (i.e. drugs) has been removed by the investigation officers during the raid. In the following question (line 7), the defence lawyer proposes that the investigation team must have documented the contents of the brown box, which consequently highlights the weakness in the investigation, that is the non-existence of documents to prove that there are drugs inside the brown box. The defence intentionally mentions this photograph to the court so that the judge will consider whether to decide that the prosecution has established a prima facie case or not. Predicting the potential damage of this question, PW4 resists and makes a correction to divert the defence's proposition into a more benign one, by insisting that Photograph 13 shows the unopened brown box with drugs inside it but it is not visible in the photograph. Seeing the opportunity to frame and pressurise PW4, a wh-question is used to highlight the weaknesses in his investigation, that is the lack of photograph to show that the brown box contains drugs. In response to this, PW4 immediately clarifies and makes a correction to the lawyer's proposition about the box retrieved from the defendant's house. The defence tries to suggest that the evidence is concocted by PW4's team so that it can be used against his clients. Knowing that the witness now disagrees with the defence argument, the defence barrister moves to close the cross-examination producing declarative questions (in lines 15 and 18) so that he can end the questioning by putting the witness in a negative light. Both questions receive direct disagreement responses from PW4 that demonstrate PW4's disagreement with the defence's goal to discredit him in front of the judge.

Witnesses also use a series of corrections to deflect blame and shift it to the defendant as exemplified in Example 29 below.

Example 29. Source: Cross-examination, Case 14

He was under your control, supervision and arrest, do you agree DC:

- 2. with me there was no concrete evidence as regards to show the
- 3. caution has been administered?
- → PW4: After the police report, I caution him and he nodded his head
- 5. DC: PUT: The accused person never understands English, he only
- 6. spoke limited broken English
- → PW4: Spoken broken English but he does understand English.
- 8. DC: PUT: He told me that you had never administered caution to
- 9. him at that time.
- 10. PW4: I disagree. He is lying

In this extract, PW4 uses a series of complex resistances in the form of denials and corrections to debunk the defence lawyer's assertions (lines 4, 7 and 10). PW4's answers trigger further coercive questioning from the barrister to control the information needed by the defence to put the suspect in the victim role rather than as a guilty drug trafficker. In line (1), the defence uses the mental verb, agree, in his question, to ask PW4 for his opinion about his proposition that the defendant was under duress during customs custody. Notice that the defence emphasises the undelivered police caution and communication barrier that the accused has to face during his arrest so that the hearing judge will consider these points in his verdict. This is because in Malaysia, drug trafficking is an offence that can lead to capital punishment. Through correction, PW4 disconfirms the defence's version by informing the court that the caution was read to the accused after the police report was made. PW4 also asserts that the accused understood the caution because he can speak and understand basic English. The series of complex resistances is as follows; in line 4 we have correction. In line 7 we have an agreement with the second part of lawyer's questions (i.e. he only spoke limited broken English) but a correction to the first part (i.e. The accused person never understands English). In lines 8-9, the declarative question tells the court the client's version of events, which is boldly disagreed with by the witness and then corrected (line 10). PW4 asserts that the defendant is lying, which is an attempt for the witness to shift the blame back to the defence lawyer's client. Thus the denial and correction is used to assert a contrary position to try to negotiate a position with the lawyer and the court and each is trying to influence the judge. The quantitative findings indicate that corrections were mostly used in response to coercive questioning in an attempt to debunk lawyers' propositions and consequently transform potential damage done to their evidence.

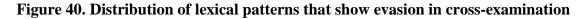
This section demonstrates that a corpus-based analysis can be used to generate potential search-words that can be used for automatic search in a corpus study, proposing *because*, *as* and *but* as the most useful search-words to extract resistance that shows correction. The pragmatic effects of witnesses correcting lawyers' questions are that correction can be used as a defensive strategy for witnesses to open up linguistic negotiation with the lawyers by making correction to lawyers' damaging propositions, simultaneously putting their view on record with the judge. This linguistic negotiation attempts to debunk lawyers' propositions and transform a malign blame structure into a benign one. A series of corrections also can be used to divert and close a lawyer's discursive sequencing of intentional face-threat, as can be seen in Example 29. In addition, a series of corrections also has the ability to shift the blame structure designed by lawyers for witnesses from the opposing side back to their clients. In the following section I will demonstrate how evasion is used by witnesses as a diversion strategy to disrupt a lawyer's blaming flow.

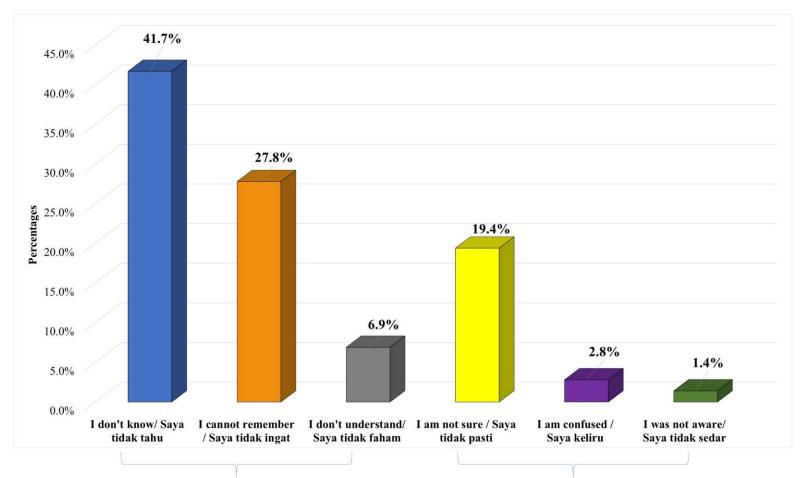
6.5 Evasion as a witness's diversion strategy to prevent allocation of blame

Evasion is a type of resistance that demonstrates that witnesses do not want to commit to lawyers' questions. This investigation reveals 22% of resistance is made through evasion (see Figure 36) and when the data is broken into types of questions, surprisingly, *wh*-questions are the question type that is most frequently responded to with evasion (57.1%). As explained in section 6.1, an automated search was used to extract evasion through mental verbs and adjectives that describe a negative state of mind. The analysis divides the lexical patterns into two structures, namely:

- 1. $first\ person + negative + mental\ verbs \rightarrow e.g.\ I\ don't\ know$
- 2. first person + relational verb (+ negative) + adjectives → e.g. I am not sure

Interestingly, the quantitative results reveal that witnesses favour both structures to produce "strategic avoidance" (Drew, 1992: 481) as a defensive device. Figure 40 shows the distribution across the two structures. The first three bars on the left show pattern 1 and bars four to six show pattern 2. The mental verbs *know* and *remember* and the negated adjective *sure* are the most frequent patterns.





1. First person + negative + mental verbs 2. First person + relational verb+ negative + adjectives

6.5.1 First person + relational verb (+ negative) + adjective expressions

I begin the discussion with the second structure because, although I am confused patterns are quantitatively less distributed, they are pragmatically important as witnesses' defensive strategies. I am confused is used to make correction on selfinflicted damage done by witnesses, as can be seen in Example 30.

Example 30. Source: Cross-examination, Case 12

- 1. DC: After having come across these exhibits as you said by 2. Detective Corporal Marjawan and Detective Corporal Song, 3. do you know that any of these two officers made any report 4. about they discovered the exhibits on the floor of the master 5. bedroom? 6. PW4: Yes, they did 7. DC: Where is the report? 8. PW4: No, they did not 9. DC: Your answer is Detective Corporal Marjawan and 10. Detective Corporal Song never made any report about the discovery of the exhibits on the floor. Do you agree? 11. 12. PW4: I disagree 13. DC: Why you disagree? \rightarrow PW4: I am confused. They did not make the report. 14. DC: Did you see the discovery of these exhibits on the floor? 15. PW4: Yes continued 26. DC: Are you telling us that the drugs found by D/Corp. Marjawan and D/Corp. Song were also in the boxes?

- 27.
- 28. PW4: Some were found in the plastic packet and some were also found
- 29. in the MAMEE plastic packet.
- 30. DC: What about the items found by D/Corp. Marjawan and D/Corp.
- 31. Song? Were they found in the big brown box shown in
- 32. photograph no.13?
- \rightarrow PW4: I am confused. I don't understand the question.
- 34. DC: My question is very simple, you focus on the exhibits found by
- D/Corp. Marjawan or D/Corp. Song, were these exhibits in the box 35.
- 36. shown in photograph no.13?
- 37. D/Corp. Song found the Brand Inner Shine box. PW4:

continued

- 28. DC: Place on the record that the witness cannot answer my question.
- 29. Put: Whatever you said in this court relating to the discovery of
- 30. the drugs exhibits are not true.
- 31. PW4: I disagree

Seeing the opportunity to damage PW4's credibility, the defence lawyer uses a yes/no question (lines 1-5) establishing doubt regarding a purported police report made by other officers who discovered the drugs on the floor of the master bedroom. A yes/no question is not only used to seek confirmation from PW4, but it can also be used to confront the witness through the factive verb, know, in a do you know phrase, which presupposes that PW4 can confirm the existence of the said report. In response to this, PW4 confirms that the report is made by the two officers which gets him into trouble, because, when he was asked to prove the existence of that alleged report, PW4 disagrees (line 8). His resistance contradicts his previous answer (line 6), which develops inconsistency in his answers. The defence immediately grasp the opportunity to discredit PW4 with an invariant tag of do you agree which promotes argumentation from the witness. The prosecution witness disagrees to close the conversation. However, the defence continues to pressure PW4 through a why-question to prompt "causality" (Andrews et al. 2016: 344). This question is designed not only to prompt an answer but pragmatically has the potential to be used as framing question that tricks the witness to elicit the truth. Conscious of his self-inflicted inconsistencies in answering, PW4 uses first person + relational verb + adjective to portray his confused state. This is a diversion strategy by PW4 to account for his inconsistencies. In the intervening lines (line 16 to 25), the barrister probes the exact location of the drugs. In line 26, a SAYquestion is used to indicate that PW4's answers are problematic. In line 30, multiple wh- and yes/no questions are asked, first to ask him to provide information about the item found by the other officers, and second, in the yes/no question, to limit PW4's response. PW4 avoids the probing wh-question (see section 4.3.1) via evasion with I am confused. Then he indicates that he lacks the ability to provide the answer through I don't understand to open up linguistic negotiation with barrister. Thus, in the following lines (34-36), the barrister reformulates his question and gets information from PW4. In the following lines the barrister probes and concludes that PW4 is unresponsive. As a consequence, the defence lawyer successfully achieves his goal to damage PW4's credibility (line 28), where the barrister records that PW4 has been unresponsive, which is a negative point against PW4's credibility in front of the judge. The defence ends his cross-examination by inflicting more damage through a declarative question, categorising PW4 as an unreliable witness in this case.

Moving now to the *I am not sure* structure with 19.4% of occurrences, it shows that, though it does not provide an answer to the question, it can be a form of resistance

that expresses the witnesses' attitudes to defence lawyers' questions. Pragmatically it helps the witness to avoid accountability and simultaneously displays resistance to the lawyer's questions. The concordance lines in Figure 41 exemplify how the *I am not sure* response is used by witnesses to express uncertainty with lawyers' propositions.

In the examples in Figure 41 the "predicative or evaluative adjective" (Biber et al., 1999: 142) of negated *sure* allows witnesses to express uncertainty to lawyers' propositions. The concordance lines are made of *wh-*, *yes/no*, declarative and invariant tag questions used by defence barristers to refocus witnesses on existing evidence and/or to impose lawyers' versions of events on witnesses. In this case, the *wh*-questions (lines 21, 24, 27, 33, 36, 40), shown in blue, which are pragmatically used in cross-examination as prompts to refocus witnesses on previously mentioned evidence, are resisted via evasion of *I am not sure* to express witnesses' uncertain knowledge. This action pragmatically indicates that witnesses avoiding supply information in relation to *wh*-questions to disrupt lawyers' blaming flow on them.

Figure 41. Concordance lines of *I am not sure* from cross-examination (22 of 45 occurrences). Blue underlining indicates *wh*-questions and black underlining indicates *yes/no*, declarative and invariant tag questions

N Concordance 21 t that time? No. Did D/Corp. Marjawan take down any notes? No. I am not sure What about the Chinese D/Corp. Song? I am not sure. How long were they inside the room? I am not sure. 22 d you get into this particular room? The door to the room was opened. Was it merely opened or was it broken into? I am not sure. Do you know whether that room was locked or not? 23 ned? Yes, I agree. This weapon store is subjected to strict protocol and standing order of the Custom Department? I am not sure. How many Custom officers in are allowed to carry 24 and standing order of the Custom Department? I am not sure. How many Custom officers in are allowed to carry arm? I am not sure, I do not carry arm. Do you know how many weapon 25 e with me according to Custom Act you would not be able to know what the content required in the search list are? I am not sure. You said you are trained in investigation, can you 26 ge to be scanned on the scanning machine, he was normal, he obeyed the order by the Custom officer. Do you agree? I am not sure because I did not see him then. Who was the first 27 of the doors. Personally you were there at that time, how many doors were opened, not by you but by other people? I am not sure about other people. Were you there alone or with 28 gree. Can you find in this Dangerous Drugs Act (DDA), 1952 which could assist you to make use of the search list? I am not sure but every time in our investigation the search list 29 exhibits? Which Inspector? Inspector Zahid? Yes. Did he take contemporaneous notes when he seized these exhibits? I am not sure. Did you see him taking any notes? Not sure. 30 nts of that box? I don't know. Did Inspector Zahid look into the box? Yes. Did he take anything out from the box? I am not sure. Did you see him writing anything as he looked 31 outcome of cases related to him. Did you find out from ASP Jeffrey whether any records was made that Chan met them? Am not sure. Why? I put it to you, you did not find out from 32 ith section 119 of the Criminal Procedure Code or do you know what section 119 of the Criminal Procedure Code is? I am not sure. Note: Section 119 of Criminal Procedure Code shown 33 Tuan Jeffrey at IPD. You said you met Insp. Zanirah who else was there? There was 2 other male police officer but I am not sure their names, but I still can identify their face. 34 ferent room. If that the case, would you agree the IO of this case do not know about the meeting you had with Chan? Am not sure. My instructions is this, this Chan operating a 35 vering. Do you agree with me that PiKK Wang also briefed his next superior when he checked the accused's luggage? I am not sure of that. You said when you opened the bag, you 36 k of lies from you in order to implicate. I disagree. Can you tell the Court how long was he in the meeting room? I am not sure. PUT: While in the meeting room, there were a 37 Yes. Did he take contemporaneous notes when he seized these exhibits? I am not sure. Did you see him taking any notes? Not sure. Refer to photograph no.13, showing a box. 38 Did he take anything out from the box? I am not sure. Did you see him writing anything as he looked into the box? I am not sure. When you arrived at the scene during the day time 39 s nearby? I think no. The incident was at the back of the shop and nobody at the scene of the crime, the front part am not sure. It happened at the back that's mean there is 40 notes? No. I am not sure What about the Chinese D/Corp. Song? I am not sure. How long were they inside the room? I am not sure. Is it true to say that when you enter the room, 41 with his inability to understand the language, I put it to you that he has every reason to be tensed and worried. I am not sure. This string, Exhibit P 38 B, before the accused 42 sted by whom? Inspector Zahid. Was the I.O. there at that time? No. Did D/Corp. Marjawan take down any notes? No. I am not sure What about the Chinese D/Corp. Song? I am not sure. 43 sed reaction is because he was worry about the dutiable goods for which import duty has to be paid. Do you agree? I am not sure. When you asked him to untie the string on the bag,

When lawyers use *wh*-questions, witnesses are expected to supply the required information and knowledge. When witnesses evade answering the questions, from a witness's perspective they might disrupt the lawyer's flow; however evasion can make witnesses appear unresponsive and lacking knowledge in front of judge(s), so has costs attached.

Example 31. Source: Cross-examination, Case 14

- DC: PUT: That when you said the accused took out one songkok only
 and put on the table and then he refused to take other songkok is a
 pack of lies from you in order to implicate.
- 4. PW2: I disagree
- 5. DC: Can you tell the Court how long was he in the meeting room?
- \rightarrow PW2: I am not sure.
- 7. DC: PUT: While in the meeting room, there were a lot of shows by the
- 8. Custom, they called the photographer and asked him to take
- 9. photographs of the accused pushing the trolley and then they
- 10. took photographs as though he just opened the padlock and so on.
- 11. PW2: I do not know.

In line 5, in the first part of the indirect wh-question, can you tell the court, the lawyer designs the question to expect a yes or no response. The wh-part, how long was he in the meeting room? expects the witness to provide information. However, PW2 evades answering the wh-part with I am not sure, which expresses lack of knowledge by not giving the relevant information to the barrister but simultaneously shows that the witness is lacking in ability. Pragmatically, it can be a form of resistance that helps the witness to avoid accountability for the potential blame allocated by barrister, whilst at the same time indicating that witnesses are lacking in ability to provide needed information. In line (7) the barrister reformulates his question to a declarative question that presents his client's version of events in an attempt to disestablish the prosecution's evidence.

So far, the discussion reveals that a *first person* + *relational verb* (+ *negative*) + *adjective* pattern can be used to make a correction on self-inflicted damage or express a state of knowledge which displays resistance to a lawyer's questions. We can see this from two perspectives; first, witnesses perceive evasion as form of disagreement to lawyers' questions, such as avoiding supplying information to probing *wh*-questions in their attempt to stop the blame allocation on them. Secondly, from a lawyer's perspective (i.e. in cross-examination) evasion brings advantages because it indicates

witnesses' lack of ability to answer their questions in front of judges. The following section presents the second pattern of evasion to signify the speaker's epistemic stance, which is achieved through a *first person* + negative + $mental\ verb$ structure.

6.5.2 First person + negative + mental verb negative expressions

The second structure consists of the mental verbs *know*, *remember*, and *understand*, which are verbs that describe "states of mind or psychological events" (Bloor and Bloor, 2013: 118). These verbs reflecting witnesses' cognitive states represent one way for them to evade responding to barristers' questions due to lack of confidence in being able to supply the required information.

Figure 40 shows that the highest frequency pattern is the *I don't know* expression with 41.7% of usage. The high usage of *I don't know (IDK)* can be accounted for because of its multidimensional pragmatic effect, that is, not only to show lack of commitment because of insufficient knowledge, but also as a diversion strategy to mitigate the impact of damage done to prosecution evidence and witness credibility in cross-examination.

The *stand-alone IDK* response is found to have a number of pragmatic functions, such as to express a defensive move to block the lawyer's sequential flow or to produce an emphatic answer to disrupt the blame allocation, as can be seen in the following examples. Example 32 indicates the pragmatic function of *stand-alone IDK* as "strategic avoidance" (Drew, 1992: 481) for witnesses to close a particular line of questioning.

Example 32. Source: Cross-examination, Case 14

- 1. DC: I put it to you that Chan had a stall at Wonderful Centre Park and he
- 2. have a dispute with my client and that's why he came and threatened
- 3. my client.
- 4. PW1: I have no idea of that.
- 5. DC: Did you not find out at that time, at year 2009 where was Chan
- 6. working?
- → PW1: I don't know
- 8. DC: You did not find out?
- 9. PW1: **No**
- 10. DC: My instruction is that he was working there at the date and time of the
- 11. incident, he was selling chicken curry?
- \rightarrow PW1: *I don't know*
- 13. DC: That's all.

Example 32 demonstrates how stand-alone IDK answers can be used as an evasion strategy for witnesses to close a particular line of questioning, thus disrupting the lawyer's blaming flow. In line (1), the defence counsel proposes that PW2, Mr Chan, had a dispute and threatened his client, which resulted in the action of making a false police report. The *I put it to you* combined with a declarative statement imposes his client's version of events. The defence lawyer's intention is to inform PW1 (i.e. who was the investigation officer who made the report against his client) that PW1 had wrongly charged his client. The witness expresses his lack of knowledge which signifies his unaccountability stance. The defence then uses a wh-question (lines 5 to 6) that demonstrates cued-recall to get PW1's attention on the details of Mr Chan's whereabouts in 2009. In response to this a *stand-alone IDK* is used to not only express PW1's lack of knowledge about the issue, but also to begin his defensive move towards the interaction. The stand-alone IDK response in line 7 requires the barrister to reformulate his question as a more coercive question. A declarative question (line 8) is used to exert more pressure on the witness. Not surprisingly, PW1 responds with an emphatic 'no' that boldly shows his disagreement and rejection of the defence position. To exert more pressure on the witness, the defence barrister embeds his version of the facts through a that-clause to challenge PW1 (lines 10 to 11). In response, PW1 uses a stand-alone IDK to express his defensive move to block the lawyer's antagonistic questions. Given that PW1 contradicts himself, first stating I don't know and then no to the defence lawyer's question as to whether he found out where Chan was working, consequently, the lawyer ends the cross-examination because his attempts to discredit PW1 are successful. This analysis shows that PW1 flouts the Maxim of Quantity because he does not contribute to the cross-examination in a way that is "as informative as necessary" (Cotterill 2010: 364) and his answers are not substantial based on what is required by the questions.

Stand-alone IDK can also be used as an emphatic answer to disrupt or delay the lawyer's sequential blame, as exemplified in Example 33. This extract, taken from a drug trafficking case, shows that a combination of evasion, direct disagreement and correction can be used to disrupt the lawyer's flow.

Example 33. Source: Cross-examination, Case 14

- 1. DC: On <dd/mm/2013>, after the accused and other passengers took out
- 2. their luggage from carousel D, they moved towards the exit, who was

- 3. the Custom officer that diverted him to go to the scanning machine?
- 4. PW2: PiKK (Senior custom officer) Wang.
- 5. DC: PUT: When the accused was called by the Custom officer to have
- 6. the luggage scanned, the accused looks normal like ordinary person.
- 7. <u>Do you agree?</u>
- \rightarrow PW2: I did not see him then.
- 9. DC: At the time the accused brought his luggage to be scanned on the
- 10. scanning machine, he was normal, he obeyed the order by the
- 11. Custom officer. <u>Do you agree?</u>
- → PW2: <u>I am not sure</u> because I did not see him then

Continued...

- 29. DC: When you talked to him, did you speak in Tamil or in English?
- 30. PW2: I spoke to him in English.
- 31. DC: PUT: That the accused speaks purely Tamil and speaks a little bit of
- 32. English. <u>Do you agree?</u>
- \rightarrow PW2: <u>I do not know</u>
- 34. DC: PUT: That in the midst of having conversation with the accused,
- 35. there bound to be break of communication between you and him
- 36. in which event that the accused person will not be able to understand
- 37. you fully. <u>Do you agree?</u>
- 38. PW2: I disagree

In the above example, the barrister casts doubt upon PW2's existing evidence with a probing wh-question (line 2) to seek contextual information from the witness. Then (lines 5 to 7) a do you agree invariant tag is used to offer the lawyer's version of the facts. Pragmatically, this question establishes the focus of discussion which is on the suspect's physical and psychological condition when he was apprehended by the customs officer. In response to the barrister's accusation, PW2 directly disagrees by justifying that he did not see the accused at that time. In lines 9 to 11 a do you agree invariant tag question is used to offer the barrister's version: the suspect is normal and calm like any ordinary person. Pragmatically, the defence lawyer intends to portray that his client is not nervous and does not appear guilty, as described by the prosecution witnesses during examination-in-chief. The witness expresses uncertainty and supports with reasoning (line 12) that he is not aware of the suspect's condition because he has not seen him during the scanning process. In this response, PW2 defies the Gricean Maxim of Manner with an obscure answer, not only to show disagreement, but in an attempt to project a lack of commitment to the defence lawyer's proposition.

Despite receiving dispreferred answers from the witness, it is observed that in the following question (line 29), the barrister attacks PW2 with a constrained *yes/no*

question that propels the witness into a new topic that focuses on the communication barrier. Although PW2 clarifies that he uses English to communicate with the suspect, the defence lawyer uses an invariant tag (lines 31-32) to insist that there is a communication barrier. The defence lawyer deliberately puts this question to the overhearing audience, that is the judge. Aware of this condition, PW2 chooses to resist with a *stand-alone IDK* response to avoid answering yes or no to the *do you agree* invariant tag. The defence then uses an invariant tag question to coerce PW2 to agree that the investigation was not conducted fairly, and consequently puts PW2 in a negative light in front of the judge. The defence lawyer's propositions are strongly rejected by PW2; he first avoids answering and then boldly disagrees when coerced by the barrister.

There are three conclusions that have arisen from this section on evasion strategies. First, resistance that indicates evasion can be retrieved via an automated search through adjectives that describe doubt or certainty and mental verbs that describe a negative state of mind. Two types of lexical pattern represent evasion, namely (1) first person + negative + mental verb and (2) first person + relational verb (+ negative) + adjective. The first pattern is expressed via I don't know, I cannot remember and I don't understand that are used by witnesses to indicate their cognitive states of mind, while the second pattern is expressed via, I am confused, I was not aware and I am not sure that expresses witnesses' levels of certainty or doubt to propositions in lawyers' questions. Secondly, I found that pattern 1 is used to express witnesses' states of knowledge and uncertain attitudes towards lawyers' propositions through I don't know answers. A series of I don't know answers forms a 'strategic avoidance' (Drew, 1992) as a defensive move to block lawyers' blame allocation. Witnesses also flout the Maxim of Quantity via I don't know answers. The analysis reveals that I cannot remember is used by witnesses to avoid any accountability by not confirming barristers' questions, whilst the I don't understand negative expression is used by witnesses to critically convey their stance towards barristers, prompting barristers to reformulate questions. Thirdly, the second pattern of I am not aware, I am confused and I am not sure can form multiple pragmatic defensive strategies that function to make a correction to a selfinflicted mistake, or to genuinely express their uncertainty. This finding further strengthens the notion that witnesses do not necessarily conform to the constraints of courtroom questions. In relation to perceived costs to witnesses when doing evasion in their answers, it brings more damage to their credibility as truthful and credible

witnesses, because it shows that they are lacking in ability and knowledge to supply the required information. At the same time lawyers achieve their goals of injuring and shaking witnesses' credibility, characters and existing evidence thorough eliciting these responses from witnesses. In the following final section, I examine direct disagreement, which also has multifunctional pragmatic effects on witnesses' resistance.

6.6 Disagreement as contest

Disagreement is the most frequent type of resistance in the corpus (see Figure 36 i.e. disagree 43%, disagree ++, 18%) that is used to contest the lawyer's version of events in cross-examination. Direct disagreement is less costly than the other types of resistance because the witness is often invited to agree or disagree (*Do you agree with me...?*), so this is sanctioned by lawyers' questions. Two types of disagreement are produced by witnesses in the MAYCRIM corpus, namely: a direct response that includes *no* or *I disagree* only (i.e. *stand-alone no/ I disagree*) and disagreement with supplementary information. The analysis identifies three specific pragmatic functions of disagreement. First it can be used to mitigate the potential damage done by lawyers' propositions, secondly it can be used as a diversion strategy to interrupt lawyers' blaming sequences, and thirdly it is used to justify or to explain the relevance of questions (i.e. via disagreement with supplementary information) asked by the defence lawyers.

6.6.1 Stand-alone No or I disagree answers

While conducting corpus analysis of the invariant tag questions *do you agree*, I noticed a uniform pattern of disagreement where witnesses resist with stand-alone *No* or *I disagree*. The following concordance lines (Figure 42) which are extracted from the English and Malay subsets produce a uniform pattern of disagreement when barristers use invariant tag *do you agree/ adakah anda bersetuju* and *agree/setuju* questions. In section 5.4.1 (Chapter 5) I argued that the *agree/setuju* invariant tag questions are highly affirmatory to control and entice affirmative answers from witnesses, while the *do you agree* invariant tag is used to challenge and accuse witnesses. Both questions are coercive and for witnesses disagreement is as an attempt to avoid any accountability. However their disagreement injures their credibility as cooperative and responsive witnesses.

Figure 42. Concordance lines of stand-alone No/Tidak, and I disagree/Saya tidak setuju from questions that invite agreement

```
Concordance (Stand-alone No)
    ee? No. By you not marking it together, that evidence Exhibit P 41 in exposed to be abused, agree? No. That is all. Can you tell the Court where actually you were stationed on ? I was stationed at the
    glish surrounded by Custom officers in foreign country, he has reason to be nervous; do you agree? No. That time on , do you agree there were a lot of people outside the arrival hall? Yes. During that
    he time when the luggage of the passenger had been put through the scanning machine, do you agree? No. In this case whatever transpired before you were referred to by Mr. Lim, you don't know happened
    g room, he had never seen you and he had never spoken to you and neither you to him, do you agree? No, I disagree. That is all. Do you agree you tend you have experience previously in investigating an
    t the accused was nervous there were duties to be paid for the goods inside the bag, do you agree? No. I put it to you that this is his first time came to Malaysia. He had limited broken English and v
    itizen of Malaysia when you put such caution to them they won't be fully understand, do you agree? No. Caution according to the law is very important provision in drug case, agree? Yes. You knew that
    They need to be marked because there shall be finger print evidence to be adduced in court. Agree? No. By you not marking it together, that evidence Exhibit P 41 in exposed to be abused, agree? No. They need to be marked because there shall be finger print evidence to be adduced in court.
    ted by the overzealous personnel in order to procure conviction against the accused, do you agree? No Are you telling the court when his hands were shaking was it violently shaking? No, of course not.
    Concordance (Stand-alone I disagree)
   at none of the exhibits were found on the floor of the accused's master bedroom. Do you agree? I disagree. Can you pinpoint any particular photograph to show any of the exhibits that on the floor of t
    apartment, the master bedroom of the male suspect nothing was seen on the floor. Do you agree? I disagree. Do you agree that no photograph was taken of the drugs allegedly found by D/Corp. Song or D/C
    in which event that the accused person will not be able to understand you fully. Do you agree? I disagree. Do you agree before the accused opened the Exhibit P 38 A, there was yellow nylon string tied
60 ed and he tried to explain to you in Tamil about this, but still, you said "no". Do you agree? I disagree. He explained to you in Tamil that this bag was given by a friend in India for his family in
61 you must have some photographs to show the contents of the box after the search. Do you agree? I disagree. In photograph no.13, the contents of the Skynet box cannot be seen. Why do you not agree that
62 the square small box found in picture no.13. Those were the contents in the box, do you agree? I disagree. Look at photograph no.13, the brown box was already open, correct? Yes. But nothing was shown
63 e contents? He never opened. But he said he never saw. Actually what you said is wrong, agree? I disagree. MR. WEN-LIANG: That is all. Stand down. - 11.20 a.m. Court resume @ 11.45 a.m. Parties as bef
64 t in the bag were taken out, laid out by the Custom officer in the meeting room. Do you agree? I disagree. PUT: In the meeting room, before the Narcotic Unit came all the content of the bag were taken
65 content of the bag were taken out and laid out on the table in the meeting room. Do you agree? I disagree. PUT: When you asked him to take out the content from the bag, the accused only took out one b
66 made by you? No. PUT: There was no report because you did not discover anything, do you agree? I disagree. PUT: There was no record to show your discovery because you did not discover anything at all.
N Concordance (Stand alone Tidak/No and Saya tidak setuju/I disagree)
194 ava kamu menunggu di luar Mahkamah sebab kemungkinan dia telah direman di dalam Mahkamah. Setuju? Tidak. Habis macamana kamu tahu dia berada di dalam Mahkamah? Berdasarkan maklumat yang diterima, susp
195 ada tunjuk samada VCD kepunyaan saya? Ada Saya katakan kamu tak beritahu perkara sebenar? Setuju? Tidak setuju, semua orang boleh keluar masuk kedai saya? Ya, setuju. Sesiapa sahaja boleh ting
196 ebelum membuat perbarisan pengenalan muka, telah ditunjuk gambar-gambar merupakan suspek. Setuju? Tidak ada. Tapi Tuan Haji mengatakan ada ditunjuk gambar-gambar? Waktu bila tu? Sebelum kawad perbaris
197 g ditetap oleh KDN. Prosedur ini saya tak ingat. Kamu siasat kes ini tanpa ikut prosedur? Setuju? Tidak. Then, apa prosedur KDN secara teliti dalam menyiasat kes seperti ini? Setelah terima fail kes,
198 leh Pegawai itu, 'it is positif' Itu sahaja yang kamu tahu. Lepas tu kamu masuk dalam tu. Setuju? Tidak. Saya telah mendapat laporan tersebut, saya telah melihat segala kandungan ataupun segala yang d
199 ration in this case. Saya katakan kamu cakap sedemikian bagi menyenangkan kes pendakwaan. Setuju? Tidak setuju. Saya katakan bagi menunjukkan gambar-gambar album penjenayah yangmempunyai rekod yang bu
```

Stand-alone no/ I disagree is not only used by witnesses to directly disconfirm defence lawyers' propositions, but also to resist the lawyer's dominant status through a series of repetitive disagreements. Example 34, from a cross-examination of PW3 by the defence counsel in drug trafficking case 3, demonstrates this observation.

Example 34. Source: Cross-examination, Case 14

- 1. DC: Lim admitted in court that there were dutiable goods in the bag;
- 2. do you agree with me that the accused was nervous there were duties to
- 3. be paid for the goods inside the bag, do you agree?
- \rightarrow PW3: **No**
- 5. DC: I put it to you that this is his first time came to Malaysia. He had limited
- 6. broken English and you do not know how to speak Tamil. <u>Do you agree</u>
- 7. that there was break communication between the accused and the Custom
- 8. officers?
- → PW3: *No*
- 10. DC: In this case MR. LIM <u>admitted</u> that due the fact that he only speaks
- 11. Tamil and broken English, there is break communication between the
- 12. accused and the Custom officers?
- 13. PW3: *No*
- 14. DC: I put it to you that the accused looked nervous and his hands shaking are
- 15. all made up stories instructed by the overzealous personnel in order to
- 16. procure conviction against the accused, <u>do you agree?</u>
- \rightarrow PW3: *No*
- 18. DC: Are you telling the court when his hands were shaking was it violently
- 19. shaking?
- \rightarrow PW3: No, of course not

In this example, the defence lawyer designs a hostile structure through a series of controlling *yes/no* and coercive declarative and invariant tag questions to portray PW3 in a negative light, as an unsympathetic customs officer who neglected the suspect's rights during the arrest. The controlling *yes/no* question (lines 1-3) that consists of a non-factive verb *agree* in a *do you agree* phrase produces a *stand-alone no* response to boldly disagree with the lawyer's question. Then, in the following question, the defence lawyer tries to get PW3 to confirm that there is a communication problem between the customs officer and his client because the defendant has limited English, prefacing the restrictive *yes/no* question with *do you agree* (lines 5-8). While asking this question, the defence lawyer also strategically informs the court to consider his point in an attempt to benefit his client. In response PW3 rejects the presupposition with *stand-alone no*. Consequently, the defence counsel uses a declarative question that is loaded

with information to support his proposition. Again, a minimal response of *no* is used by PW3 to reject this idea. The defence counsel then attempts to produce argumentation through an invariant tag (lines 14-16) that is loaded with his accusation in relation to the investigation team, which is strongly resisted by PW3. As PW3 responds without agreement to his questioning, the defence lawyer changes his approach to a constraining *yes/no* question that focuses on the defendant's condition, in order to try again to get agreement. PW3 strongly disagrees, however, through an emphatic negative answer (line 20). On a surface level, the prosecution witness seems to be controlled and constrained by the questions; however, the dispreferred answers of *stand-alone no*, which produce sustained and repeated disagreement with the lawyer's propositions strategically weaken the defence lawyer's assertions and accusations. In addition, the repeated disagreement is used as an attempt by the witness to close down the questionanswer sequence. PW3's response (line 10) concludes and debunks the unsympathetic officer structure developed by the defence counsel and he also use the emphatic disagreement of *no*, *of course not* to debunk the 'hostile officer' structure (line 20).

Repetition of the *stand-alone no/ I disagree* structure is common among witnesses because it is also used by PW4 when cross-examined by controlling and coercive questions. This observation justifies why the distribution of disagreement dominates *yes/no*, declarative and invariant tag questions (see Figure 37). Example 35 explains the universality observation in a different drug trafficking case with a different participant. Apart from mitigating the lawyer's version of events, repetitive *stand-alone no / I disagree* answers can become a diversion strategy for a witness to interrupt a lawyer's damaging sequence of questions.

Example 35. Source: Cross-examination, Case 12

- 1. DC: During your Examination-In-Chief you told the court that the male
- 2. accused uttered "C" [sic: /si:/] repeatedly.
- 3. (*The Chinese word /si:/ means dead. So the male accused repetitively cursed himself with "I'm dead")
- 4. PW4: Yes
- 5. DC: My instruction is that he never uttered the word "C" [sic: /si:/] at any
- 6. time. <u>Do you agree?</u>
- → PW4: *I disagree*
- 8. DC: Your evidence is also to the fact that the male accused was shivering
- 9. and wanted to cry.
- 10. PW4: Yes
- 11. DC: My instruction was that he was never shivering or wanted to cry at any

- 12. point of time.
- 13. PW4: I disagree
- 14. DC: Refer to Exhibit P15. Exhibit P15 is your report, is that correct?
- 15. PW4: **Yes**
- 16. DC: Refer to the same report at paragraph 3 at page 1 after the name MISS
- 17. VIVIEN "Semasa penahanan dibuat.. (trans. *when the arrest is made...*).
- 18. <u>I put it to you that part is not true</u>.
- → PW4: *I disagree*
- 20. DC: The second page relating to the discovery of exhibits by Detective
- 21. Corporal Marjawan is also not true. <u>Do you agree?</u>
- → PW4: *I disagree*
- 23. DC: Put:- that none of the exhibits were found on the floor of the accused's
- 24. master bedroom. <u>Do you agree?</u>
- → PW4: *I disagree*

In Example 35, Inspector Zahid, PW4, is an investigation officer who apprehended two suspects for drug trafficking offences. Both suspects were arrested at their house in possession of the Nimetazepam hypnotic drug and Ketamine. The defence lawyer strategically designs a sequence of controlling and coercive questions with *do you agree / is that correct* and *I put it to you* phrases to damage and discredit PW4 as a credible investigation officer and witness. Coercive declarative and invariant tag questions are used by the defence counsel to get confirmation from PW4 on the evidence presented earlier in the direct-examination activities. After getting confirmation from PW4, the defence lawyer uses coercive questions (lines 5, 11 and 16) that are loaded with propositions to invite argument and damage PW4's established facts. In response to these accusing questions, PW4 resists with a series of short and repetitive answers of *I disagree*, as a diversion strategy to interrupt the defence counsel. The witness's short responses indicate resistance that attempts to interrupt the lawyer's flow to damage his credibility.

So far, the discussion focusses on the *do you agree* question that produces disagreement. However, a concordance analysis found other types of questions that produce disagreement from witnesses, as can be seen in Figure 43.

Figure 43. Concordance lines of *I disagree* generated from declarative, SAY-questions and *and*-prefaced questions.

N Concordance

m to take out the content from the bag, the accused only took out one bangle and one necklace. I disagree. PUT: That when you said the enance certificate. < Suggest: - the weighing scale that you used were not properly maintained. I disagree. < Regarding the exhibits which done by the passenger. I put it to you that you are trying assumed thing which you don't know. I disagree. From your knowledge the I thought you knew his house. You are telling us you are not even sure of his house, isn't it? I disagree. MR. WEN-LIANG: Can we continue ms as per charge from the XY Pharmacy? I agree. You stole the items as you did not pay for it. I disagree. Why you did not go to the 32 He explained to you in Tamil that this bag was given by a friend in India for his family in ? I disagree. PUT: That he tried to explain le and then he refused to take other songkok is a pack of lies from you in order to implicate. I disagree. Can you tell the Court how to examination of the bangles and the tubes, you never showed the content of the tubes to him? I disagree. Everything has been shown to 35 the accused inside the two packets. PUT: You never showed the contents of the packets to him. I disagree. He is lying, you can see at tax how much"? I cannot remember. And then, he said something in Tamil while shaking his head? I disagree. After you heard he said in - when you entered the master bedroom of the male accused there were no exhibits on the floor. I disagree. I said this because there were graph was taken of the drugs allegedly found by D/Corp. Song or D/Corp. Marjawan on the floor? I disagree. Were photographs taken of the 38 o you that the accused person had never said that the powder was used to make the songkok fit. I disagree. I put it to you that the her words you do not trust this D/Corp. Marjawan or D/Corp. Song to take care of the exhibits? I disagree. Do you agree that the officers re brought to my office for safe keeping. PUT: You never verified and identified the exhibits. I disagree. I did not mark and label the othing about what is at the side of the songkok and inside the other goods, agree or disagree? I disagree. I put it to you that the W1. No cross-examination of PW1. PUT: that you are not the person who apprehended me that day. I disagree. That's all. Cross PW3> At the ormed PiKK Wang. PUT: That you twisted the fact and you lie when giving evidence to the Court. I disagree. You said you have briefed your 44 45 to show his knowledge about the items in this bag and also to procure conviction at all cost. I disagree. In this case, how many times PUT: That how can you say not necessary when you do not know the law with regard to this case. I disagree. PUT: That you did not

The concordance lines above demonstrate that various types of coercive questions produce *I disagree* responses from witnesses. Most of the time it is declarative assertions marked with *suggest* and *put* (lines 28, 29, 35, 41, 43, 44 and 46) that produce this response. Note that *put* is the form used by the stenographer to make the record, which could be a short form of *I put it to you*. Occasionally barristers use SAY-questions (line 30) or *and*-prefaced questions (line 36) which produce *I disagree* responses.

6.6.2 Disagreement with supplementary information to justify the event or blame conveyed by the defence lawyers

Figure 43 also indicates another type of disagreement used by witnesses, that is disagreement with supplementary information (line 35, 37 and 41). What I found from concordance analysis is that if barristers design questions with personalisation *you/kamu*, these questions provoke and invite witnesses to disagree and sometimes justify their disagreement. Figure 44 explicates this observation. The concordance lines indicate *yes/no* questions (lines 209, 210, 212, 214, 215), declarative questions (lines 211, 217 and 24), SAY-questions (line 218) and invariant tag questions (lines 208, 213, 216, 25, 26, 28 and 29) which provoke argument. The personalisation here was interpreted by witnesses as "an invitation to explain some situation or present a narrative account" (Eades, 2000: 189). For witnesses the perceived costs of disagreement in contesting the cross-examiner's version of facts are that they have transgressed the barristers' power. Barristers and judges may see disagreement as witnesses being unresponsive and lacking credibility in the examination processes. To counter this, witnesses provide information to justify their disagreement.

Figure 44. Concordance lines of disagreement with supplementary information to disagree with barristers' questions but justify that response

N Concordance (No with justification) 208 drug case, agree? Yes. You knew that he is from India for the first time to Malaysia, do you know? No. His passport shows he has 209 re you carrying out the search simultaneously together? Yes. Did you make a report on your search? No, I did not, only the raiding d you to put all the exhibits in the firearms strong room? Yes. Was there any written instruction? No, I was given verbal 210 211 the behaviour of the accused show that he has knowledge what is inside the bag is important fact? No, I can't answer this question. 212 ffee shop, you did call to one police. Yes. Who? We called the police Did you call C/Insp. Lungie? No, I called the police line. What 213 ere was no caution according to Dangerous Drugs Act 1952 against the accused person, do you agree? No, I think the question should be 214 lleged that he was involved in the possession of drugs, did you check DNA profile on the exhibits? No, I do not think it is 215 met you in his office? More or less 15 minutes. Did Tuan Jeffrey recorded any statement from you? No, he did not record any 216 know Bahasa Malaysia and know broken English and try to converse in Tamil but nobody care; agree? No, he did speak in English. 217 e any mention by any Custom officers in which caution according to S. 37 (b) (1) was administered? No. He made this report after 218 , do you agree? No Are you telling the court when his hands were shaking was it violently shaking? No, of course not. He is from N Concordance (I disagree with justification) 24 PUT: There was no record to show your discovery because you did not discover anything at all. I disagree We come to the box with the Brand InnerShine box and one yellow plastic bag with the word NDC written on it, do you agree? I disagree. There is a box written 25 26 nt of the box was taken because the box contains only two items outside the box. Do you agree? I disagree. There were content inside 27 itten of Exhibit P 44 (A). Do you agree with me that there is no heading for Exhibit P 44 (A)? I disagree, there is written 'Lampiran 28 he said in Tamil that he do not know, you calculated and said "tax, RM1,200.00". Do you agree? I disagree. Then the accused said "I 29 focus on the name of Mr. Kang and the telephone number stated in the Skynet box, do you agree? I disagree. The owner of the telephone 30 after the name MISS VIVIEN "Semasa penahanan dibuat...", I put it to you that part is not true. I disagree. The second page relatinga

Justification and giving reasons for disagreeing with barristers' questions help the witness mitigate the lawyer's blaming structure, as seen in Example 36.

Example 36. Source: Cross-examination, Case 14

- 1. DC: <u>Do you agree</u> being involving in a case like this, it shall be prudent for
- 2. you to *record* the caution and spell it out to him, <u>do you think so?</u>
- 3. PW4: *No*
- 4. DC: <u>Do you think</u> it is prudent that a caution in a case like this should be in
- 5. black and white?
- 6. PW4: *No*
- 7. DC: In a case like this, <u>do you think</u> it is prudent to write down that you
- 8. have given him the caution and that he understood the caution?
- \rightarrow PW4: No, because I have witnesses with me.
- 10. DC: <u>Do you agree</u> it shall be prudent and reasonable and compulsory to
- 11. *spell out* before giving caution, whether or not he was under duress,
- 12. compulsion, under threat, and promise before you allow him to say
- 13. anything?
- \rightarrow PW4: No, because at the material time I did not threaten him.

Example 36 is an extract taken from a cross-examination between a superintendent custom officer (i.e.PW4) and a defence lawyer. In this extract, the defence counsel attempts to attack PW4 as a reliable enforcement officer, through a series of yes/no and invariant tag questions to provoke argumentation and to coerce the witness to accept their version of events. After starting with a do you agree question (line 1), the defence counsel designs his questions with the mental verb think, to vary the question and seek PW4's view about the importance of delivering the caution to protect the suspect's rights. The defence further designs his questions with the same structure of '...it shall be prudent + to record/ in black and white/ to write down/ to spell out' in his attempts to coerce PW4. The prosecution witness, recognising the defence lawyer's strategy, therefore performs resistance through a series of stand-alone no answers (lines 3 and 6). However, when the defence lawyer keeps on pressurising PW4 with the same point, the prosecution witness disagrees with supplementary information to justify and give reasons for his answers. PW4 uses this disagreement as an attempt to transform the blame structure, making his actions seem more benign and his reputation less damaged in front of the hearing judge.

Interestingly, PW4 also has the opportunity to justify his response in relation to the defence barrister's questions through disagreement with supplementary information, as can be seen in a continuation from the same example.

Continued...

DC: Do you agree that the behaviour, character and disposition of the 25. 26. accused when he was confronted by the Custom officer in the midst of 27. checking the luggage to show he was behaving negatively is important piece of primary fact to be inferred? 28. \rightarrow PW4: No. During the time of first checking the luggage I was not there. 30. Before you make a report, have you been informed to say that he has DC: 31. been behaving in such a way that he looks frighten, scared and his hand 32. was shaking? PW4: No when I saw him he was already calm with his eyes red only \rightarrow Do you agree the behaviour of the accused show that he has 34. DC: 35. knowledge what is inside the bag is important fact? \rightarrow PW4: No, I can't answer this question. There is nothing to inform about 37. his behaviour.

In line (25), the defence barrister uses a yes/no structure that is loaded with information about the state of the defendant during the arrest in order to highlight the weakness that he found in the investigation procedure. The defence lawyer believes that it is important for the investigation team to record the accused's behaviour because it can determine whether the accused is guilty or not. PW4 denies the accusation by affirming that he was not around during the first scanning process. In this response, PW4 disagrees and justifies his response with supplementary information about his whereabouts during the initial investigation of the accused. The supplementary information contests the barrister's version of facts and shows the power of PW4's answer to control the evidence by transforming the lawyer's next question. Seeing this response, in the following question, the defence coerces PW4 with a yes/no question about the suspect's behaviour, but PW4 rebuts by affirming that the accused looked calm with red eyes only when he first met him (line 33). Then, the defence uses a constraining yes/no question (line 34) which PW4 resists by directly contesting the defence lawyer's proposition through his disagreement, suggesting that the lawyer's questions are inappropriate. In addition, PW4 repetitively uses I pronouns in his answers as a self-positioning strategy and to put on record his involvement and responsibility in the case. Pragmatically, the disagreement with supplementary

information or "alternative description" (Drew, 1992: 517) gives power to the witness to control and/or transform the assertions in the lawyer's question, that not only mitigate the lawyer's dominant status but may also influence factfinders.

Disagreement (with *stand-alone No* and *I disagree* and disagreement with supplementary information) is the most frequent kind of resistance in cross-examination and across a variety of question types: *yes/no* and coercive declarative and invariant tag questions. This type of disagreement has fewer costs for witnesses, as agreement is sought, but disagreement is expected due to the nature of the activity. Nevertheless, there are costs, as the lawyer builds logic into his questions that makes disagreement appear impossible. Therefore, disagreement and disagreement with supplementary information can be used to mitigate the potential damage done by lawyers' propositions. It can also create a diversion strategy for witnesses to interrupt the lawyer's blaming sequences through a repetition of disagreements in their answers.

6.7 A continuum of witnesses' resistance

This chapter has critically investigated cross-examination in Malaysian criminal courtrooms in order to investigate witnesses' resistance to lawyers' controlling and coercive questioning. Specifically, the objective was to examine types of resistance by witnesses and demonstrate some of the strategies that are employed by witnesses to overcome the power asymmetry that is particularly pronounced in cross-examination activities. The quantitative results reveal that although resistance only makes up one third of the witnesses' responses, it plays a significant role in understanding cross-examination questioning. In response to the qualitative analysis, I have developed a continuum of witnesses' resistance, as can be seen in Figure 45, which indicates to what extent types of questions induce witnesses to challenge or to agree with lawyers' propositions. This continuum proposes an inbuilt notion of increasing resistance.

I propose that witnesses' resistance to lawyers' questions falls into five categories, that is direct disagreement, direct disagreement with supplementary information as justification, evasion, making a correction and challenge. The least resistant end of the continuum begins with disagreement while challenge is the most resistant response.

Figure 45. Continuum of resistance

Types of resistance	Amount of resistance	Types of questions that typically produce resistance
1. Direct disagreement	Least ↑	Controlling and coercive question
2. Direct disagreement with supplementary information		(Yes/no, Declarative & Tag)
3. Evasion		
4. Correction		
5. Challenge	Most	Least controlling question (wh-)

This figure also maps types of questions and the potential responses they could receive. It is worth highlighting that this continuum of resistance shares some similarities with Archer's continuum of control (Archer, 2005), albeit the latter focuses on question types, while the continuum of resistance focuses on answer types. Firstly, controlling and coercive questions expect less strong forms of resistance from witnesses because their constraining nature inhibits witnesses. Witnesses are not necessarily in agreement or controlled by the lawyer's dominant status in the courtroom, however; the analysis indicates that witnesses use disagreement to signify their resistance to lawyers' questions. In Archer's continuum of control, a broad wh and narrow wh-question typically expect "open range answers and naming of specific variables" for the latter (Archer, 2005: 79). In addition to resistance, I found that the least controlling wh-questions produce more resistance, as witnesses openly challenge some of the questions asked by lawyers.

As the continuum reveals, the amount of resistance correlates with the questiontypes; therefore, we expect question-types that exhibit least control to have a high chance of strong resistance from witnesses. The qualitative analysis demonstrates that answers are powerful opportunities for witnesses to try to manipulate and open up negotiation with lawyers. It is hoped that this continuum will be a useful point of reference for legal practitioners to see some of the ways in which witnesses respond to questions and the various linguistic strategies adopted by witnesses during cross-examination activities.

6.8 Conclusion

In this chapter I have shown that witnesses do not necessarily conform to the restrictions imposed by lawyers, because they have the power to control the amount of information delivered in courtrooms through their responses. I have suggested that a pragmatic framework of witnesses' resistance is a potential tool for lawyers to help them understand how their questions affect witnesses in cross-examination. However, from a lay-person's perspective, this framework helps to give a better insight into the types of lawyers' questions, which allows lawyers to prepare their witnesses when they are called to give testimony.

In addition, this discourse pragmatic analysis demonstrates that a corpus-based analysis is one of the best methods to discover similar patterns in an interaction, specifically in courtroom interaction. The present study proposes some potential searchwords that can be used to find and determine types of resistance used by witnesses. Lexical patterns that demonstrate witness evasion of questions are:

- 1. First person + negative + mental verbs
 - (e.g. I don't know, I cannot remember and I don't understand)
- 2. First person + relational process (+ negative) + adjectives

(e.g. I am not sure, I am confused and I was not aware)

In addition, subordinating conjunctions *because* and *as* signal the 'condition-consequence' (Winter, 1994) relation and 'adversative conjunction' (Halliday, 1985) *but* is a further useful search-word for identifying witnesses' corrections to questions.

The investigation demonstrates that witnesses work against the power imbalance through five categories of resistance, that is direct disagreement with stand-alone *No* or *I disagree*, disagreement with supplementary information to justify the events or their actions, avoiding accountability via evasion strategies, making corrections to the lawyer's questions and the most resistant is to challenge lawyers. The investigation

found that each category has a pragmatic function to help witnesses face controlling and coercive questions in courtrooms. Resistant answers can become a defensive strategy to mitigate lawyers' dominant power, or be used as a diversion strategy to disrupt lawyers' sequences of questions. Interestingly, they can even be used to open up linguistic negotiation between lawyers and witnesses in interactions. However, it is important for barristers to inform their witnesses of the effect of doing resistance because it might damage their credibility as a responsive and knowledgeable witnesses in front factfinders.

Finally, this investigation proposes a continuum of witnesses' resistance developed from quantitative distributions and qualitative analysis of the data. The continuum suggests that when a least controlling question such as a *wh*-question is used, the probability of witnesses resisting is higher compared to controlling and coercive questions such as *yes/no*, declarative and invariant tag questions. The continuum provides a functional framework for lawyers to assess witnesses' answers and can be a point of reference for lawyers to instruct witnesses and/or defendants on what they might encounter when they are called to testify in the courtroom.

Chapter 7 Conclusion

7.1 Introduction

The central aim of this investigation is to advance research on the culture of courtroom examination in Malaysian criminal proceedings. The study's forensic corpusbased discourse-pragmatic analysis of the functions of questions and responses in the Malaysian system holds the assumption that barristers strategically design questions to serve a number of legal-pragmatic functions: to maximise witnesses' productivity in direct examination, or to face-threaten through assertions and prompting affirmative answers from witnesses in cross-examination. Specifically, it investigated what barristers and witnesses seek to accomplish with their questions and responses. My analysis of the linguistic forms and patterns of barristers' questions revealed the variety of legal-pragmatic functions performed by these questions. In Chapters 4 and 5, barristers' questions were examined to identify how they worked as probing devices to maximise witnesses' productivity, particularly in direct examination, and as combative devices to discredit and challenge in cross-examination activities. In Chapter 6, I explored witnesses' responses, specifically the types of resistance performed by witnesses when they were asked coercive and controlling questions in crossexamination activities. This concluding chapter summarises the findings of Chapters 4, 5, and 6, responding to the research questions raised in Chapter 1, and it also presents the theoretical, methodological and practice-focused contributions, recommendations for future research and a closing remark.

7.2 Responding to the research objectives

This study has revealed an array of linguistic forms and pragmatic strategies employed by barristers and witnesses in courtroom discourse in response to the two overarching research questions that this study sought to investigate: (1) the discursive strategies used by barristers and witnesses in Malaysian criminal trials and (2) the relationship between question types and responses. The following section presents barristers' discursive practices in courtroom interaction and section 7.2.2 describes the relationship between coercive questions and witnesses' resistance.

While the quantitative findings reveal wh-questions and yes/no questions as the most favoured forms in direct examination are unsurprising, the finding that indirect questions were utilised by barristers as a supportive linguistic device was more interesting. The indirect question can you is used by barristers to present witnesses as helpfully productive in direct examination and/or lacking knowledge and credibility in cross-examination. Similarly, while, coercive declarative-questions and tag questions are, as expected, more favoured in cross-examination, the importance of so-prefaced and SAY-questions was interesting. So-prefaced questions serve manifold functions depending on their structure: (1) as dynamic triggers that invite witnesses to elaborate, (2) to get confirmation and (3) to reveal inconsistencies. The SAY-question is a combative tool for barristers to indicate witnesses' existing answers are problematic and also to express lawyers' affective stances, such as disbelief. The keyword, cluster and concordance analysis demonstrated the methodological advantages of using a corpusbased approach in forensic discourse analysis, revealing specific linguistic patterns and search words that facilitated forensic discourse analysis, to determine the pragmatic strategies in barristers' questions.

The broad formal categories of questions were considered according to Archer's (2005: 79) continuum of control, where *wh*-questions are the least coercive and tag questions are the most coercive. A discourse-pragmatic analysis was conducted on these patterns of questions to determine their pragmatic implications for lawyer-witness interaction across the activities of direct and cross-examination.

7.2.1 Barristers' discursive practices in direct and cross-examination activities.

The discourse-pragmatic analysis employed in the study explored how barristers and witnesses interact in an examination setting. This approach investigated the pragmatics of speech acts (Searle, Kiefer and Bierwisch, 1980), the transitivity processes (Halliday, 1985) and propositions and presuppositions (Aijmer, 1972) in barristers' questions. This study found two major discursive practices used by barristers through various linguistic choices: probing and challenge questions. First, barristers design their probing questions that maximise witnesses' productivity through personalisation with *you*, with *wh*-prompts and with the *can* modal. These structures are

attached to *material*, *mental* or *verbal* processes that invite witnesses to collaborate with lawyers to build a credible and believable narrative to factfinders. There are two important patterns that made probing questions:

1) wh-prompt + you + material/mental/verbal process

(e.g. *How did you enter the house?*)

2) modal can + you + material/verbal process

(e.g. Can you explain to the court what is Analytical Balance?)

Wh-questions are used by barristers to maximise witnesses' productivity in examination and this is achieved via a combination of wh-prompt material/mental/verbal process that elicited specific kinds of actions from witnesses. Barristers design wh-questions with material/mental/verbal processes because they invite witnesses to collaborate with lawyers to construct a narrative of evidence that is credible and believable to factfinders. They also serve multiple functions and produce different pragmatic forces on witnesses. At the beginning of examination, wh-questions serve as routine questions that help barristers establish rapport with witnesses and they are therefore usually used in "friendly" (Coulthard and Johnson, 2007: 96) examination. For example, a prosecutor employs routine questions with prosecution witnesses to establish their credibility to factfinders. Wh-questions can serve as a request to seek specific details from witnesses, which are designated as "narrow-wh-questions" by Archer (2005: 79). The micro-analysis found that barristers usually paired the whprompts such as what, when, where, with the material processes of get and identify accompanied by personalisation using you, to invite witnesses to share information with lawyers and the court. Therefore, the information shared with the court helps barristers to develop a convincing narrative of events. It also has the advantage that witnesses are able to present first person evidence to the judge, thus making them appear more credible and reliable. I also found that wh-questions, specifically the what-happened questions are transformed into super-probing questions that require witnesses to clarify and give detailed explanations. The pragmatic force of what-happened questions encourages witnesses to report at length events that have taken place (i.e. usually more than 10 words in witnesses' answers). A detailed description of events helps barristers

to enhance their narrative or version of the facts. While *wh*-questions are less evident in cross-examination, lawyers occasionally allow free responses from witnesses, so that the information they receive can be used to incriminate witnesses. I found that *wh*-questions in cross-examination are usually followed up by coercive questions such as declarative questions. Although *wh*-questions give lawyers less control over witnesses' answers, they allow witnesses to provide sufficient information to help barristers to achieve their goals.

Moving to the indirect questions, which are found to be a supportive tool for barristers to present witnesses as helpfully productive in direct examination or lacking knowledge and credibility in cross-examination, I found that indirect questions with *can you + material process* (i.e. *identify, show, point,* and *recognise*) are designed by lawyers to invite witnesses to perform specific speech acts, thus demonstrating that witnesses are responsive and credible. I also found that indirect questions with *can you* are paired with *verbal processes,* such as *explain, tell, confirm, inform,* and *elaborate* to put witnesses in a good light, especially in direct examination, because the question often indirectly provides the answer for witness. On the other hand, in cross-examination, the *can you* questions can be used to check for or highlight inconsistency and inaccuracy in witnesses' answers. If witnesses fail to answer the indirect *can you* questions it presents the witness as lacking knowledge and credibility, making these important questions in cross-examination.

The second discursive practice used by barristers to accuse or undermine the truth in witnesses' answers is what I call challenge questions. I found that barristers do not only depend on the syntax of the questions to face-threaten or perform "verbal aggression" (Archer, 2008: 181) but they also use personalisation through *you/kamu* in their questions. The following questions: (1) SAY-questions, (2) *so*-prefaced questions, (3) declarative, and (4) tag questions include personalisation through the pronouns *you* and *kamu*, giving illocutionary force to these questions.

First, SAY-questions (Johnson, forthcoming) (i.e. are you saying and are you telling) which I found in the MAYCRIM data are a combative tool used by barristers in cross-examination to indicate that witnesses' existing answers are problematic. SAY-questions, which are usually found in yes/no or declarative form, were used to

demonstrate barristers' affective stances of disbelief, and not only to limit witnesses' responses but as a linguistic device to imply that witnesses' answers are problematic, thus casting doubt upon the witnesses' evidence. In Chapter 4 the multifaceted functions of so-prefaced/jadi-prefaced questions were recognised. One of the many benefits of a corpus-based approach is that it allows an investigation to be conducted in other languages other than English. This chapter reveals that so-prefaced questions achieve four major pragmatic functions in cross-examination, depending on their structure. The so + wh-prompt is a dynamic trigger that invites witnesses to elaborate specific kinds of actions or processes. When used in yes/no questions, the so-preface can be used as a further tool to get confirmation, while, the coercive so-prefaced question (i.e. so + declarative or so + invariant tag) helps to reveal inconsistencies and expresses lawyers' inferential claims or stances. The multifaceted functions serve as a strategic tool for barristers, specifically in cross-examination, to restructure events through discrediting and making and marking speculation on witnesses' testimony.

Declarative questions and tag questions consist of barristers' propositions and presuppositions that give them the illocutionary force of statements on behalf of witnesses. Aijmer (1972: 33) states that pragmatic presuppositions are "associated with speech acts and elements of the speech act as well as with other features of the extrasentential context." They give barristers the chance to impose their epistemic stance and to discredit or challenge witnesses in front of judges. For this reason, tag questions are most prominent in cross-examination, where the trial is at its most combative, because barristers' goals and witnesses' goals are in conflict. I found that personalisation exerts more pressure on witnesses to accept lawyers' propositions, because it not only addresses witnesses, but also transforms a declarative question into a more coercive tag question. The corpus-based analysis reveals that pronouns you/kamu, which collocate with agree/setuju verbs, transform a declarative question into the invariant tag do you agree. Chapter 5 specifically describes the tag question types that are found in the MAYCRIM corpus.

While an examination of British courtroom cross-examination in the Shipman trial in my pilot study found a dominance of variant tag questions, both variant and invariant tag questions are found in my Malaysian data, but with a dominance of invariant tags. The corpus-based method produces interesting patterns of variant tag

questions, showing that isn't it is the most used as a simplified pattern that stands in for the large variety that is found in Anglo-American courtrooms. The simplified tag isn't it seems to perform the same kinds of functions as the variant/canonical tag questions in Anglo-American courtrooms, which is to make assertions and prompt affirmative answers from witnesses. Chapter 5 reveals that Malaysian language settings (i.e. Malaysian English and Bahasa Malaysia), are populated with invariant tag questions rather than variant/canonical tag questions, indicating that Malaysian barristers do not exploit the polarities of variant tag questions to achieve their goals. The pilot study conducted on the Shipman trial indicates that polarities in tags display different levels of coerciveness on witnesses with reversed polarity tag questions having a greater impact on recipients than the constant polarity ones. Malaysian barristers could, therefore, be said to be underusing this resource, with implications for training (discussed in section 7.3.2 and 7.5). The dominance of invariant tag questions might suggest that Malaysian barristers are less able to perform power and control with witnesses in crossexamination. However, Malaysian barristers attained a variety of coercive pragmatic functions through invariant agreement tags that are attached to a declarative statement. The concordance analysis disclosed five agreement tags which are: do you agree, agree/setuju, correct/betul, particle tak/not and do you know.

The critical analysis found that Malaysian barristers were inclined to use the invariant tag *do you agree*, because it is highly coercive and powerful to pressurise witnesses, despite lacking polarity. I found that invariant tag *do you agree* occurs in turns where lawyers insert their version of facts or presuppositions in a declarative, to coerce witnesses. The personalisation of *you/kamu* in the tag adds to the pressure on witnesses to respond and thus explains why it is most favoured by barristers in cross-examination to challenge and express their attitudinal stance to witnesses. The *agree/setuju* tag with the highest affirmatory function was used to get affirmation and confirmation from witnesses and this is achieved via factive sentences with the tag *agree/setuju* that performs a requesting speech act. The *correct/betul* tag is used by barristers to refute prosecution evidence by exposing inconsistencies and inaccuracies in witnesses' answers. Barristers perform the illocutionary force of checking through a combination of reported speech or writing that enacts prior evidence testified or reported by witnesses: *declarative* (*reported speech/writing*) + *correct/betul*? The

question containing particle *tak/not* attached to a declarative statement is used by barristers to express a superior and dominating stance that is not only used to offer an assertion but concurrently to persuade witnesses to accept it. Finally, the *do you know* tag is used as an interjection that supports a lawyer's presuppositions about witnesses that pragmatically behaves to impart information about the lawyer's stance to witnesses.

7.2.2 Witnesses' resistance to barristers' power and control in crossexamination activities

Chapter 6 examines the types of resistance produced by witnesses and demonstrates some strategies that are employed by witnesses to counter the power asymmetry that is particularly pronounced in cross-examination activities. This chapter discusses the findings on the relationship between question types and responses, specifically on witnesses' responses to coercive tag questions, as these were found to be disputed by witnesses. In Chapter 5, section 5.5, I demonstrated that tag questions such as do you agree and do you know that are expected to control and coerce witnesses sometimes fail to coerce witnesses. Interestingly, in Chapter 6 I found that these questions received more disagreement than agreement and produce narrative responses. Although most of the responses to tag questions (two thirds of them) show that witnesses are coerced to respond affirmatively, resistance is found in one third of the witnesses' responses. A close-analysis of this resistance provides useful information for both lawyers and witnesses to understand power and control in barristers' questioning. This chapter reveals that witnesses resist the pragmatic propositions in barristers' questions by offering alternative explanations, evading the topic, and also by attempting to take control of the interaction, so that the can reverse or transpose the negative impact of questions on them.

The extracted responses were categorised according to the proposed framework (see Table 19) which combines Newbury and Johnson's (2006) categories of evasion and Harris's categories of evasive action (1991), resulting in five types, namely: direct disagreement, disagreement with supplementary information, correction, evasion, and challenge. The corpus-based analysis found that witnesses' resistance is dominated by direct disagreement, while challenge is found to be the least frequent type of resistance, suggesting that when witnesses resist, they do so directly, rather than indirectly. To get

a better understanding of the relationship between the question type and witness response, Chapter 6 also investigated the types of resistance across wh-questions, yes/no questions, declarative questions and invariant tag questions. As indicated in Figure 36 (section 6.1), direct disagreement (i.e. No and I disagree) is most frequent in response to invariant tag questions (55%), declarative (45%) and yes/no questions (48.1%). This demonstrates that witnesses are not necessarily confirming barristers' presuppositions or accusations. Disagreement with supplementary information, which is used to justify the event or blame conveyed by the defence lawyers, is found to be consistent across all types of questions. The micro-analysis further demonstrates that witnesses counter the power of barristers' wh-questions to impose a blame narrative on the witnesses through evasion (57.1%) and challenge (7.1%), making wh-questions particularly interesting to examine. I suggest that witnesses perceive correction to be less costly in terms of damaging their defence and status, because their attempt to make a correction demonstrates a willingness to engage with the question. Therefore, correction is the most frequent in response to the more controlling invariant tag (18%) and declarative questions (16.7%) and decreases with yes/no and wh-questions.

Although challenge is the most infrequent type of resistance, it is very important as a strategic defensive tool for witnesses to challenge lawyers' presuppositions, thus responding to lawyers' power. I found that witnesses do challenge by making adjustments to lawyers' questions or by questioning lawyers' presuppositions. In this case, witnesses appear to perceive the costs of challenge as worthwhile, because lawyers' questions are detrimental to their existing evidence and credibility. Though doing challenge demonstrates that witnesses transgress their typical powerless state, witnesses can be seen as unresponsive and this might expose them to further more damaging questions. Pragmatically, challenging is used sparingly because it may damage a witness's defence or status; therefore witnesses seem to prefer to do corrections to show that they are engaged and responsive.

A corpus-based analysis conducted on witnesses' resistance proposes the following conjunctions as the most useful search-words to extract resistance that shows correction, that is: *because*, *as* and *but*. The discourse-pragmatic analysis found that correction can be used as a defensive strategy for witnesses to try to open up linguistic negotiation with lawyers and to put their view on record with the judge. A series of

corrections in lawyer-witness exchanges can be used to divert and close a lawyer's discursive sequencing of "verbal aggression" (Archer, 2008: 181) and "strategic ambivalence" (Archer, 2011: 3216) that sits between Goffman's intentional and incidental face threat levels to discredit witnesses' credibility.

A corpus-based analysis is also helpful to retrieve resistance that indicates evasion via an automated search of mental verbs and adjectives that describe a negative state of mind. The two types of lexical patterns that can represent evasion in context are:

(i) First person + negative + mental verb,

(e.g. *I cannot remember*)

(ii) First person +relational verb (+ negative) + adjective.

(e.g. I am confused)

Evasion can perform pragmatic defensive strategies that are to make a correction on a self-inflicted mistake, or to genuinely express their uncertainty. Also, they can be used to avoid accountability and mitigate the impact of a negative threat by the lawyer to their credibility as a reliable witness. Finally, a series of evasive responses, such as repeated *stand-alone I don't know* structures can express a non-cooperative move from the witness to disrupt the lawyer's blaming structure.

Two types of disagreement, that is, the *stand-alone 'No'* or 'I disagree' and disagreement that includes supplementary information are found to be extensively used by witnesses to do resistance. This is because they can mitigate the potential damage done by lawyers' presuppositions or create a diversion strategy for witnesses to interrupt the lawyer's blaming sequences. This analysis of witnesses' resistance indicates that witnesses do transcend their typical powerless state by not conforming to the constraints of courtroom interaction. It is important to point out that the costs for doing resistance on witnesses might bring more damage to their credibility, because they will be seen as unresponsive and lacking in knowledge and credibility.

This chapter ends with a continuum of witnesses' resistance (see Figure 45, section 6.6) that suggests that, when a less coercive question such as a *wh*-question is used, the probability of a witness resisting is higher compared to controlling and

constraining questions such as *yes/no* questions, declarative and tag questions. The framework proposes that witnesses' resistance to lawyers' questions falls into five categories, with the least resistant beginning with disagreement, while challenge is the most resistant response that a lawyer could receive. This framework can be a useful point of reference for legal practitioners to help them understand how their questions affect witnesses in cross-examination and also to allow lawyers to prepare their witnesses/defendants when they are called to give testimony.

7.3 Implications of the research

This work has theoretical, methodological and practical contributions for courtroom examination research both in Malaysia and beyond. The practice-focused implications are important for lawyers and law students and law education, as well as for witnesses.

7.3.1 Theoretical and methodological contributions

As the analysis was conducted on a bilingual courtroom setting, it has global implications for any bilingual adversarial system or postcolonial jurisdiction that uses "more than one language in court" (Powell, 2008: 131). The investigation reveals the complexities of language used in a bilingual courtroom as exemplified in barristers' questioning forms. Chapters 4 and 5 indicate the influence of Bahasa Malaysia and Malaysian English in the construction of questions, for example, the use of invariant tag questions in cross-examination activities. There were some occurrences where barristers reformulated their questions in either Bahasa Malaysia or English in the direct and cross-examination activities. The codeswitching action indicates that barristers manipulate language choice to coerce or seek clarification from witnesses. This supports Powell's claim (2008: 153) that the switch strategy often adds to the illocutionary force of a lawyer's utterance. This is because the language choice is not simply the lawyer's choice to help witnesses or defendants, but rather it is a strategy to express power and control. The bilingual lawyer has the opportunity to exploit both languages. The present study which highlights the complexities of language use in a bilingual courtroom, contributes to the literature on bilingual courtroom discourse contexts because it reveals that bilingualism promotes power asymmetry, particularly while Malaysia is in a process of transition between English medium courtrooms and Bahasa Malaysia only courtrooms.

The corpus-based approach employed in this study is useful in that it helps to highlight specific search-methods to determine the linguistic variation in lawyers' questions and witnesses' answers. This study develops from the keyword and concordance analysis using *Wordsmith Tools* (Scott, 2011) which made it possible to explore the quantitative distributions and patterns of various linguistic features that have been discussed. Table 22 shows the potential search-words in English and Bahasa Malaysia that can be used to seek specific variation in questions and answers. I have also listed whether manual or/and automated searches are needed to determine specific linguistic variation in questions or resistance.

The discourse-pragmatic analysis on specific language variation in the courtroom contributes to expanding the literature on the pragmatics of questioning in courtrooms, specifically controlling and coercive questions, as explained in section 7.2.1. The findings support Archer's continuum of control (Archer, 2005: 75) and expand the literature on the use of invariant tag questions and also types of resistant answers in courtroom discourse.

Table 22. Potential search-words in English and Bahasa Malaysia for specific variation in question and answers

Category of questions	Manual	Automated	Potential search-words
wh-questions	✓	✓	who/siapa, what/apa, when/bila, where/di mana, how/bagaimana, why/kenapa,
Alternative-questions	✓	✓	or/atau
Indirect questions			can you/boleh kamu
yes/no questions	✓	✓	is, are, do, have, (the Malay equivalent is adakah for these search words)
Declarative	✓	×	-
Tag questions	√	✓	isn't it, didn't s/he, wouldn't s/he, would you not, right/benar, correct/betul, agree/setuju, do you agree/adakah kamu setuju, do you know/adakah kamu tahu, particle tak/not
Category of resistances	Manual	Automated	Potential search-words
Disagreement	✓	✓	No/tidak, I disagree/Saya tidak setuju
Evasion	√	✓	not sure/tidak pasti, cannot remember/tidak ingat, don't understand/tidak faham, confused/keliru, not aware/tidak sedar
Correction	✓	✓	because/sebab , but/tetapi/tapi, as
Challenge	✓	×	-

7.3.2 Social, practice-focused and professional implications

The present study also has social, practice-focused and professional implications for legal practitioners in general and Malaysian legal counsels in particular, as this study provides much-needed Malaysian courtroom discourse analysis. The present study proposes a framework that explains a continuum of witnesses' resistance (see Figure 45, section 6.6) providing a functional framework for both lawyers and witnesses. This framework is helpful for lawyers to prepare their witnesses when they are called to give testimony. The present study also has implications for the teaching of the pragmatics of language to law students. I hope I can propose a robust structure to law schools in Malaysia, as a need for this was highlighted in my interviews with legal educators and in the epigraph to the introduction chapter.

7.4 Limitations of the research

At the beginning of my doctoral study, I was promised full access to the courtroom transcription records (CRT), specifically the audio and video records of courtroom interaction by the Registrar of the Malaysian Palace of Justice. However, in my second year of doctoral study, when I went back to Malaysia for data collection, I was denied access to such records despite earlier being granted permission to access such data. I was only given access to the official printed paper court transcript. This has limited my ability to analyse the data multimodally or to carry out my own transcription or modify the official version. In addition, some of the transcriptions have poor quality English which might be because of the stenographer's English or due to the original speakers, or a combination of the two. I also had to handle the record cautiously, because when working with so-called verbatim records there is "scribal or authorial intervention" (Culpeper and Kytö, 2000: 3). I have to accept the limitations of my data and make use of it so that I can raise the awareness of the importance of the need for the best court recordings for linguistic research. Another challenge of this study is the breadth of data analysis. Due to practical and time constraints, this investigation cannot provide a comprehensive review and explanation of code-switching and code-mixing that occurred in the MAYCRIM corpus. However, this is something that would merit further research.

7.5 Future recommendations

Based on the findings of the present study, apart from using the data to examine code-switching and code-mixing, it would be helpful to plan a training programme for barristers and law students to be exposed to linguistic and pragmatic knowledge of questioning in courtrooms, using real data examples. The Conversation Analytic Roleplay Method (CARM) developed by Stokoe (Stokoe, 2014: 255) is a pioneering approach that could be adapted to improve communication skills among barristers and law students. This approach which is based on role-play simulation uses real interaction as the basis for training, which I believe would bring advantages for law students, providing techniques and strategies to bring about professional development. As the introduction chapter's epigraph shows, although most law schools in Malaysia offer a subject that in name concerns language and law, syntactic and pragmatic language awareness is absent. Therefore, a robust introduction to language and law should include these aspects of language and, when it does, the programme will better educate legal professionals on the pragmatics of questioning. The findings also indicate the many specific ways that courtroom questioning can be used to discredit and undermine witnesses. Thus, it is also would be helpful if the programme can make barristers aware of the need to educate their clients before they give their testimony to the courts. For example, prosecutors can educate their clients, that is prosecution witnesses, to make better preparation for cross-examination questions. Such a programme could be a method of mitigating the language challenges that witnesses have to face when they are called to give testimony in the court.

An interesting observation that I made while examining lexical features in my corpus is the use of illocutionary-*lah* in lawyer's questions during cross-examination activities. Particle-*lah*, is an emphatic discourse marker that is found in colloquial Malay and colloquial Malaysian and Singapore English and whose meaning has "proved notoriously difficult to pinpoint" (Goddard, 1994). It can soften or harden requests and indicate both a "light-hearted or an ill-tempered effect" (Goddard, 1994) and in cross-examination discourse means *of course* or *right*. It was surprising to find it in formal discourse, however, but, as it occurred more in cross-examination, it seems worthy of further investigation. I have conducted some preliminary analysis and found

that particle-lah cannot be considered simply a tag, because it is used not just in questions but in responses too. However, it is part of the resources used by lawyers to intimidate or face-threaten witnesses in cross-examination. The following exchange demonstrates how particle-lah is manipulated by lawyers to increase social distance and to emphasise the power imbalance and hostility in cross-examination. Example 37 illustrates the functions of particle-*lah* to first make an emphatic assertion (lines 6-7) and secondly to express the lawyer's irritation with the witness (line 10).

Example 37. Source: Cross-examination, Case 15

DC: Habis macamana kamu tahu dia berada di dalam Mahkamah?

> you know he is inside

1. Then, how do you know that he was inside the court?

Berdasarkan maklumat yang diterima, PW2: According information that received, suspek berada di kawasan Mahkamah.

> suspect seen at compound Court.

- 2. According to the information received, the suspect was seen
- 3. around the Court's compound.

DC: Siapa yang beritahu kamu. Kamu ingat? Who that informed you. You remember?

4. Who informed you of that? Do you remember?

PW2: Saya tidak ingat.

not remember.

- 5. I don't remember.
 - DC: Bermakna orang yang beritahu kamu itu merupakan Mean person that informed you that is polis juga-lah?

police also-right?

It means the person who had informed you is a police officer alsoright?

PW2: Tidak setuju Not agree

- 7. I disagree
 - DC: You don't have to fight the subject. (Code-switching in this turn)

Kalau benar-benar ada, no harm!

If there is.

Kalau dia kena reman, reman-lah!

If he got remand, remand-full stop!

Kalau dia tak direman, tak

If he not remanded never mind.

I put it to you, kamu telah diberitau oleh pegawai penyiasat have informed by officer investigation you berkaitan dengan kes yang kamu hendak tangkap. case that you want arrest. regard to Betul atau tidak? Correct or not? 8. You don't have to fight the subject. If there is, no harm! If he got **remand-full stop!** If he is not remanded, never mind! \longrightarrow I put it to you that you have been informed by investigation officer 10. with regard to the case that you wanted to arrest. Correct or not? 11. PW2: Betul. 12. Correct.

The defence lawyer attempts to elicit evidence to support his version of facts through a series of Wh-questions (lines 1 and 4) in order to raise doubt about the method of arrest and PW2 responds with evasion, I don't remember (line 5). Then the lawyer uses a declarative question that ends with particle-lah (line 6) to emphasise the truth of his assertion and coerce confirmation. Particle-lah, here translated as right, signals a "response getter" (Biber et al., 1999: 451) that not only seeks confirmation but signals that the proposition in the question should be understood and accepted by the witness. Despite the fact that the declarative is already controlling, particle-lah is inserted as a further way to pressurise the witness, expecting confirmation. In this case, the witness disagrees and resists, resulting in the defence lawyer using another lah (line 9) to reemphasise his social distance and increase the power differences between them, thereby expressing irritation or indignation that reprimands PW2 for his bold resistance. In this sense, particle-lah challenges the witness's evidence and the nearest English translation that I can give is full stop as an interjection that expresses the lawyer's attitude to PW2. The defence lawyer continues by using the assertive, I put it to you, to state the lawyer's version of the facts with an alternative or "choice question" (Gibbons and Turell, 2008: 124) of betul atau tidak/correct or not, to place a high level of control and pressure for agreement upon PW2. As a result, the witness accepts the defence version of events which pragmatically shakes his evidence and credibility as a reliable prosecution witness.

This brief analysis and explanation of particle-*lah* indicates its importance in cross-examination and highlights a use that has so far not been investigated. While I have not had space or time to do this in any detail within the thesis, this is something that I will work on in my post-doctoral study. Nevertheless, I can suggest that the unique pattern of particle-*lah* is important for lawyers (and witnesses) and there is much to be discovered about its different pragmatic forces in cross-examination. The same effects might apply in other bilingual courtrooms too, such as those in Singapore and Indonesia that share similar sociolinguistic contexts and, indeed, particle-*lah*.

7.6 Closing remarks

To conclude, the present study has moved beyond the mere description of linguistic variation in the Malaysian legal system to the range of linguistic phenomena that can have social consequences within the legal system. Its key contribution is not just for academic purposes but will hopefully also have significant implications for lawyer/witness interaction and legal training. In the introduction I quoted Coulthard and Johnson (2010) who say that the overarching objective of forensic linguistics is to provide solutions to problems and issues related to crimes and law for different audiences. I believe this study can have a direct impact on the interests of justice and the society it serves.

Bibliography

- Abdul Hamid Omar (1987) 'Administration of Justice in Malaysia', *The Denning Law Journal*, pp. 1–22. doi: 10.1021/cr300475r.
- Act 593 Criminal Procedure Code (CPC) (2012). Kuala Lumpur: The Commissioner of Law Revision, Malaysia.
- Adolphs, S. (2008) *Corpus and context: Investigating pragmatic functions in spoken discourse*. Amsterdam: John Benjamins Publishing Company.
- Ahmad Syed, S. and Rajasingham, R. (2001) *The Malaysian Legal System*, *Legal Practice & Legal Education*, *IDE Asian Law*. Japan.
- Aijmer, K. (1972) *Some aspects of psychological predicates in English.* Sweden: Kungl. Boktryckeriet P.A. Norstedt & Sonner.
- Ainsworth, J. (2014) 'Language, power and the construction of legal narrative: adversarial and inquisitorial models', in *The First African Regional Conference of the International Association of Forensic Linguists*. Sfax-Tunisia.
- Aldridge, M. and Luchjenbroers, J. (2007) 'Linguistic manipulations in legal discourse: Framing questions and "smuggling" information', *International Journal of Speech, Language and the Law*, 14(1), pp. 85–107. doi: 10.1558/ijsll.v14i1.85.
- Algeo, J. (1988) 'The Tag Question in British English: It's Different, i'n'it?', *English World-Wide*, 9(2), pp. 171–191. doi: 10.1075/eww.9.2.03alg.
- Algeo, J. (1990) 'It's a myth, innit? Politeness and the English tag question', in Michaels, L. and Christopher, R. (eds) *The State of the Language*. Berkeley, CA: University of California Press, pp. 443–450.
- Algeo, J. (2006) British or American English? Cambridge: Cambridge University Press.
- Andrews, S. J. *et al.* (2016) 'The Productivity of Wh- Prompts when Children Testify', *Applied Cognitive Psychology*, 30(3), pp. 341–349. doi: 10.1002/acp.3204.
- Archer, D. (2005) *Questions and Answers in the English Courtroom* (1640-1760). Amsterdam: John Benjamins.
- Archer, D. (2006) '(Re)initiating strategies: Judges and defendants in Early Modern English courtrooms', *Journal of Historical Pragmatics*, 7(2), pp. 181–211. doi: DOI 10.1075/jhp.7.2.03arc.
- Archer, D. (2008) 'Verbal aggression and impoliteness: related or synonomous?', in *Impoliteness in language. Studies on its interplay with power in theory and practice*. Berlin: Mouton de Gruyter, pp. 181–207.
- Archer, D. (2009) 'Does frequency really matter?', in Archer, D. (ed.) What's in a wordlist? Investigating word frequency and keyword extraction. Surrey: Ashgate Publishing Ltd, pp. 1–15.
- Archer, D. (2011) 'Cross-examining lawyers, facework and the adversarial courtroom', *Journal of Pragmatics*. Elsevier B.V., 43(13), pp. 3216–3230. doi:

- 10.1016/j.pragma.2011.06.007.
- Archer, D. (2014) 'Historical pragmatics: Evidence from the Old Bailey', *Transactions of the Philological Society*, 112(2), pp. 259–277. doi: 10.1111/1467-968X.12011.
- Asmah Haji Omar (1983) 'The roles of Eglish in Malaysia in the context of national language planning', in Noss, R. (ed.) *Varieties of English in Southeast Asia*. Singapore: Singapore University Press, pp. 229–250.
- Atkinson, J. M. and Drew, P. (1979) *Oder in court: the organization of verbal interaction in judicial settings*. London: Macmillan Press.
- Baker, P. (2004) 'Querying keywords: questions of difference, frequency and sense in keywords analysis.', *English Linguistics*, 32(4), pp. 346–359. doi: 10.1177/0075424204269894.
- Baker, P. (2006) Using corpora in discourse analysis. London: Continuum.
- Baker, P. *et al.* (2008) 'A useful methodlogical synergy? Combining critical discourse analysis and corpus lingustics to examine discourse of refugess and asylum seekers in the UK press', *Discourse & Society*, 19(3), pp. 273–306. doi: 10.1177/0957926508088962.
- Baker, P. (2010a) 'Corpus Methods in Linguistics', in Litosseliti, L. (ed.) *Research Methods in Linguistics*. London: Continuum International Publishing Group, pp. 93–113.
- Baker, P. (2010b) Sociolinguistics and corpus linguistics. Edinburgh University Press.
- Berk-Seligson, S. (1999) 'The impact of court interpreting on the coerciveness of leading questions', *Speech, Language and the Law*, 6(1), pp. 30–56. doi: 10.1558/sll.1999.6.1.30.
- Biber, D. (1993) 'Representativeness in Corpus Design.Pdf', 8(4).
- Biber, D. et al. (1999) Longman grammar of spoken and written English. Harlow: Longman.
- Biber, D., Conrad, S. and Reppen, R. (1998) *Corpus linguistics: investigating language structure and use.* Cambridge Univ. Press.
- Bloor, T. and Bloor, M. (2013) The functional analysis of English. 3rd edn. London: Routledge.
- Brown, G. and Yule, G. (1983) Discourse Analysis. Cambridge: Cambridge University Press.
- Brown, P. and Levinson, S. C. (1978) 'Universals in language usage: Politeness phenomena.', in Goody, E. N. (ed.) *Questions and politeness. Strategies in social interaction*. Cambridge: Cambridge University Press, pp. 56–289.
- Brown, P. and Levinson, S. C. (1987) *Politeness: some universals in language usage*. Edited by CUP. Cambridge.
- Buckingham, K. R. B. (1986) A sociolinguistic study of language in the courtroom. The University of Leeds.
- Bulow-Moller, A. M. (1990) 'The notion of coercion in courtroom questioning', in *Nordic Research on text and discourse*. *NORDTEXT Symposium (Espoo, Finland, May 10-13, 1990)*, pp. 81–90.
- Cao, D. (2011) 'Foreword: Power of and to language in law', in Wagner, A. and Cheng, L. (eds) Exploring Courtroom Discourse. The language of power and control. Surrey: Ashgate

- Publishing Ltd, pp. xv–xvii.
- Catoto, J. S. (2017) 'On Courtroom Questioning: A Forensic Linguistic Analysis', 22(11), pp. 65–97. doi: 10.9790/0837-2211086597.
- Chang, Y. (2004) 'Courtroom Questioning as a Culturally Situated Persuasive Genre of Talk', *Discourse & Society*, 15(6), pp. 705–722. doi: 10.1177/0957926504046501.
- Columbus, G. (2010) 'A comparative analysis of invariant tags in three varieties of English', *English World-Wide*, 31(3), pp. 288–310. doi: 10.1075/eww.31.3.03col.
- Conley, J. . and O'Barr, William, M. (2005) *Just words: law, language and power*. 2nd edn. Chicago: Chicago University Press.
- Conza, A. Di et al. (2012) 'Courtroom Examinations: Reciprocal Effects of Questioning-', 1.
- Cotterill, J. (2003) Language and power in court: a linguistic analysis of the O.J. Simpson trial. Palgrave Macmillan.
- Cotterill, J. (2010a) 'How to use corpus linguistics in forensic linguistics', in O'Keeffe, A. and McCarthy, M. (eds) *The Routledge Handbook of Corpus Linguistics*. Routledge, pp. 578–590.
- Cotterill, J. (2010b) 'Interpersonal issues in court: rebellion, resistance and other ways of behaving badly', in Locher, M. A. and Graham, S. L. (eds) *Interpersonal Pragmatics*. Germany: Walter de Gruyter, pp. 353–379.
- Coulthard, M. (1992) 'Forensic Discourse Analysis', in Coulthard, R. M. (ed.) *Advances in spoken discourse analysis*. London: Routledge, pp. 242–254.
- Coulthard, M. and Johnson, A. (2007) An introduction to forensic linguistics. Language in evidence. Abingdon: Routledge.
- Coulthard, M. and Johnson, A. (2010) 'Future directions in forensic linguistics', in Coulthard, M. and Johnson, A. (eds) *The Routledge Handbook of Forensic Linguistics*. Abingdon, Oxon: Routledge, pp. 602–614.
- Coulthard, M., Johnson, A. and Wright, D. (2016) An introduction to forensic linguistics: language in evidence. Second edi. Routledge.
- Culpeper, J. and Kytö, M. (2000) 'Data in historical pragmatics: Spoken interaction (re)cast as writing', *Journal of Historical Pragmatics*, 1(2), pp. 175–199. doi: 10.1075/jhp.1.2.03cul.
- Danet, B. (1980) 'Language in the legal process', Law and Society, 14(3), p. 447/563.
- Danet, B. and Bogoch, B. (1980a) 'Fixed Fight or Free-for-All? An Empirical Study of Combativeness in the Adversary System of Justice Author (s): Brenda Danet and Bryna Bogoch Source: British Journal of Law and Society, Vol. 7, No. 1 (Summer, 1980), pp. 36-60 Published by: Wi', *British Journal of Law and Society*, 7(1), pp. 36-60.
- Danet, B. and Bogoch, B. (1980b) 'Fixed fight or free-for-all? An empirical study of combativenss in adversary system of justice', *British Journal of Law and Society*, 7(1), pp. 36–60.
- Deli, R. M. and Alias, A. (2013) 'The questions of questions in Malaysian English', *Issues in Language Studies*, 2(2), pp. 82–96. doi: 10.1111/2049-632X.12205.

- Dodier, O. and Denault, V. (2018) 'The Griffiths Question Map: A Forensic Tool For Expert Witnesses' Assessments of Witnesses and Victims' Statements', *Journal of Forensic Sciences*, 63(1), pp. 266–274. doi: 10.1111/1556-4029.13477.
- Drew, P. (1992) 'Contested evidence in courtroom cross-examination: the case of a trial for rape', in Drew, P. and Heritage, J. (eds) *Talk at work. Interaction in institutional settings*. Cambridge: Cambridge University Press, pp. 470–520.
- Drew, P. and Heritage, J. (1992) Talk at work. Cambridge: Cambridge Univ. Press.
- Dunstan, R. (1980a) 'Context for Coercion: Analyzing Properties of Courtroom " Questions " Author (s): R. Dunstan Source: British Journal of Law and Society, Vol. 7, No. 1 (Summer, 1980), pp. 61-77 Published by: Wiley on behalf of Cardiff University Stable URL:', 7(1), pp. 61-77.
- Dunstan, R. (1980b) 'Context for Coercion: Analyzing Properties of Courtroom " Questions "';, British Journal of Law and Society, 7(1), p. 61. doi: 10.2307/1409754.
- Eades, D. (2000) 'I don't think it's an aswer to the question: silencing aboriginal witnesses in court', *Language in Society*, 29(2), pp. 161–195.
- Eades, D. (2008) Courtroom talk and neocolonial control. Berlin: Mouton de Gruyter.
- Eades, D. (2010) Socilinguistics and the legal process. Bristol: Multilingual Matters.
- Eades, D. (2012) 'The social consequences of language ideologies in courtroom cross-examination', *Language in Society*, 41(4), pp. 471–497. doi: 10.1017/S0047404512000474.
- Ehrlich, S. (2011) 'Courtroom Discourse', in Wodak, R., Johnstone, B., and Kerswill, P. (eds) *The SAGE Handbook of Sociolinguistics*. London: SAGE Publications Ltd, pp. 361–374.
- Ehrlich, S. and Sidnell, J. (2006) "I think that's not an assumption you ought to make": Challenging presuppositions in inquiry testimony', *Language in Society*, 35(5), pp. 655–676. doi: 10.1017/S0047404506060313.
- Field, M. (1997) 'The role of factive predicates in the indexicalization of stance: A discourse perspective', *Journal of Pragmatics*, 27(6), pp. 799–814. doi: 10.1016/S0378-2166(96)00047-1.
- Finegan, E. and Biber, D. (1988) 'Adverbial Stance Types in English', *Discourse Processes*, 11(1), pp. 1–34. doi: 10.1080/01638538809544689.
- Flowerdew, L. (2004) 'The argument for using English specialized corpora to understand academic and professional settings', in Connor, U. and Upton, T. A. (eds) *Discourse in the professions: perspectives from corpus linguistics*. Amsterdam: John Benjamins, pp. 11–33.
- Fook, L. C., Mansoor, M. and Hassan, C. A. (2014) *The Process of Criminal Justice: Trial Proceedings, Sentencing and Appeals*. Second Edi. Petaling Jaya: Percetakan Jiwabaru Sdn Bhd.
- Freed, A. F. and Ehrlich, S. (Susan L. (2010) Why do you ask?: the function of questions in institutional discourse. Oxford University Press.

- Galatolo, R. and Drew, P. (2006) 'Narrative expansions as defensive practices in courtroom testimony', *Text and Talk*, 26(6), pp. 661–698. doi: 10.1515/TEXT.2006.028.
- Gibbons, J. (1999) 'Language and Law', pp. 156–173.
- Gibbons, J. (2003) Forensic linguistics: an introduction to language in the justice system. Blackwell Pub.
- Gibbons, J. (2008) 'Questioning in common law criminal courts', in Gibbons, J. and Turell, M. T. (eds) *Dimensions of Forensic Linguistics*. Amsterdam: John Benjamins, pp. 115–130.
- Gibbons, J. and Turell, M. T. (2008) *Dimensions of Forensic Linguistics*. Edited by J. Gibbons and M. T. Turell. Amsterdam: John Benjamins Publishing Company.
- Gonzalez, G. M. de los A. (2014) 'Canonical tag questions in English, Spanish and Portuguese: A discourse-functional study', *Languages in Contrast*, 14(1), pp. 93–126. doi: 10.1075/lic.14.1.06gom.
- Govindan, I. V. P. and Pillai, S. (2009) 'English question forms used by young Malaysian Indians', *The English Teacher*, 38, pp. 74–94.
- Griffiths, A. and Milne, B. (2006) 'Will it all end in tiers? Police interviews with suspects in Britain', in Williamson, T. (ed.) *Investigative interviewing: rights, research, regulation*. Cullompton, U.K.: Willan Publishing, pp. 167–189.
- Gut, U. and Pillai, S. (2015) 'The question intonation of Malay speakers of English', in Delais-Roussarie, E., Avanzi, M., and Herment, S. (eds) *Prosody and Language in Contact: L2 Acquisition, Attrition and Languages in Multilingual Situations*. Berlin, pp. 51–70. doi: 10.1007/978-3-662-45168-7.
- Hale, S. (1999) 'Interpreters' treatment of discourse markersin courtroom questions', *Forensic Linguistics*, 6(1), pp. 57–83. doi: 10.1558/sll.1999.6.1.57.
- Halliday, M. A. . (1985) An introduction to functional grammar. Edited by E. Arnold. London.
- Halliday, M. A. . (1994) An introduction to functional grammar. 2nd edn. London: Arnold.
- Halliday, M. A. . and Matthiessen, C. M. I. M. (2004) *An introduction to functional grammar*. 3rd editio. London: Hodder Arnod.
- Harris, S. (1984) 'Questions as a mode of control in magistrate's courts', *International Journal of the Sociology of Language*, 49, pp. 5–28.
- Harris, S. (1991) 'Evasive action: how politicans respond to questions in political interviews', in Scannell, P. (ed.) *Broadcast Talk*. London: SAGE Publications Ltd, pp. 76–99.
- Heffer, C. (2005) The language of jury trial: a corpus-aided analysis of legal-lay discourse. Palgrave Macmillan.
- Heritage, J. (1985) 'Analyzing news interviews: aspects of the production of talk for an overhearing audience.', in van Dijk, T. A. (ed.) *Handbook of discourse analysis vol. 3*. New York: Academic Press, pp. 95–117.
- Heritage, J. (2002) 'The limits of questioning: Negative interrogatives and hostile question content', *Journal of Pragmatics*, 34(10–11), pp. 1427–1446. doi: 10.1016/S0378-2166(02)00072-3.

- Hobbs, P. (2003) "You must say it for him": Reformulating a witness' testimony on cross-examination at trial*', *Text*, 23(4), pp. 477–511. doi: 10.1515/text.2003.019.
- Hoey, M. (1994) 'Signalling in discourse: a functional analysis of a common discourse pattern in written and spoken English', in Coulthard, M. (ed.) *Advances in written text analysis*. London: Routledge, pp. 26–45.
- Holmes, J. (1995) Women, men and politeness. United States: Longman Publishing.
- Hong, J. L. (2013) 'Malay word net-A novel lexical database for Malay language', Proceedings 2013 10th International Conference on Fuzzy Systems and Knowledge Discovery, FSKD 2013, pp. 773–777. doi: 10.1109/FSKD.2013.6816298.
- Van Der Houwen, F. (2013) 'Reported writing in court: Putting evidence "on record", *Text and Talk*, 33(6), pp. 747–769. doi: 10.1515/text-2013-0032.
- Ibrahim, N. (2007) 'Building a credible and believable narrative: The role of direct examination in expert witness testimony', 13.
- Joharry, S. A. and Rahim, H. A. (2014) 'Corpus research in Malaysia: A bibliographic analysis', *Kajian Malaysia*, 32, pp. 17–43.
- Johnson, A. (2002) 'So...?: Pragmatic implications of So-Prefaced questions in formal police interview', in Cotterill, J. (ed.) *Language in the legal process*. Basingstoke: Palgrave Macmillan, pp. 91–92.
- Johnson, A. (2008) 'From where we're sat ... ': Negotiating narrative transformation through interaction in police interviews with suspects', *Text and Talk*, 28(3), pp. 327–349. doi: 10.1515/TEXT.2008.016.
- Johnson, A. (2013) 'Embedding police interviews in the prosecution case in the Shipman trial', in Heffer, C., Rock, F., and Conley, J. (eds) *Legal-Lay Communication: Textual Travels in the Law*. Oxford: Oxford University Press, pp. 147–167.
- Johnson, A. (2015) Haunting Evidence: Quoting the Prisoner in 19th Century Old Bailey Trial Discourse. The Defences of Cooper (1842) and McNaughten (1843), The Pragmatics of Quoting Now and Then. doi: 10.1515/9783110427561-017.
- Johnson, A. (no date) "Are you saying you were stabbed...?" Multimodality, embodied action, and dramatised formulations in "fixing" the facts in police interviews with suspects', in Mason, M. and Rock, F. (eds) *The Discourse of Police Investigation*. Chicago: Chicago University Press, pp. 355–393.
- Johnson, A. and Coulthard, M. (2010) 'Introduction: Current debates in forensic linguistics', in Coulthard, M. and Johnson, A. (eds) *The Routledge Handbook for Forensic Linguistics*. Abingdon, Oxon: Routledge, pp. 1–15.
- Kiefer, F. (1980) 'Yes-No questions as WH-questions', in Searle, R. J., Kiefer, F., and Bierwisch, M. (eds) *Speech act theory and pragmatics*. London: D. Reidel Publishing Company, pp. 97–119.
- Kiesling, S. (2009) 'Style as stance: Stance as the explanation for patterns of sociolinguistic variation', in jaffe, A. (ed.) *Stance: Sociolinguistic Perspectives*. United States: Oxford University Press, pp. 171–194.
- Kiguru, G. (2014) A critical discourse analysis of language used in selected courts of law in

- Kenya. Kenyatta University.
- Kim, J. and Ann, J. (2008) 'English Tag Questions: Corpus Findings and Theoretical Implications *', K English Language and Linguistics, 25, pp. 103–126.
- Kimps, D. (2007) 'Declarative constant polarity tag questions: A data-driven analysis of their form, meaning and attitudinal uses', *Journal of Pragmatics*, 39(2), pp. 270–291. doi: 10.1016/j.pragma.2006.08.003.
- Kimps, D. and Davidse, K. (2008) 'Illocutionary force and conduciveness in imperative constant polarity tag questions: A typology', *Text and Talk*, 28(6), pp. 699–722. doi: 10.1515/TEXT.2008.036.
- Koester, A. (2012) 'Building small specialised corpus', in O'Keeffe, A. and McCarthy, M. (eds) *The Routledge Handbook of Corpus Linguistics*. Oxon: Routledge, pp. 66–79.
- Koshik, I. (2005) Beyond rhetorical question: assertive questions in everyday interaction. Amsterdam: John Benjamins.
- Kryk-Kastovsky, B. (2006) 'Impoliteness in Early Modern English court trial discourse', *Journal of Historical Pragmatics*, 7(2), pp. 213–245.
- Lee, D. Y. W. (2012) 'What corpora are available?', in O'Keeffe, A. and McCarthy, M. (eds) *The Routledge Handbook of Corpus Linguistics*. Oxon: Routledge, pp. 107–121.
- Leech, G. (1983) Principles of pragmatics. London: Longman.
- Leung, E. and Gibbons, J. (2009) 'Interpreting Cantonese utterance-final particles in bilingual courtroom discourse', *Interpreting*, 11(2), pp. 190–215. doi: 10.1075/intp.11.2.05leu.
- Levinson, S. C. (1992) 'Activity types and language', in Drew, P. and Heritage, J. (eds) *Talk at work. Interaction in institutional settings*. Cambridge: Cambridge University Press, pp. 66–100.
- Litosseliti, L. (2010) Research methods in linguistics. Edited by L. Litosseliti. London: Continuum.
- Matoesian, G. M. (1993) Reproducing rape: Domination through talk in the courtroom. University. Chicago.
- Matoesian, G. M. (2008) 'You Might Win the Battle Extralinguistic Aspects of Witness Resistance', *Journal of English Linguistics*, 36(3), pp. 195–219.
- Matoesian, G. M. (2010) 'Multimodal aspects of victim's narrative in direct examination', in Coulthard, M. and Johnson, A. J. (eds) *The Routledge Handbook for Forensic Linguistics*. London: Routledge, pp. 541–557.
- Max Planck Institute (2008) *The Leipzig Glossing Rules: Conventions for interlinear morpheme-by-morpheme* glosses. Available at: https://www.eva.mpg.de/lingua/resources/glossing-rules.php.
- Mayr, A. (2008) 'Introduction: power, discourse and institutions.', in *Language and Power: An Introduction to Institutional Discourse*. London: Continuum International Publishing Group., pp. 1–26.
- McEnery, T. and Hardie, A. (2012) *Corpus Linguistics: Method, Theory and Practice*. Cambridge: Cambridge University Press.

- Newbury, P. and Johnson, A. (2006) 'Suspects' resistance to constraining and coercive questioning strategies in the police interview', *International Journal of Speech, Language and the Law*, 13(2), pp. 213–240. doi: 10.1558/ijsll.2006.13.2.213.
- O'Keeffe, A. and McCarthy, M. (2010) *The Routledge handbook of corpus linguistics*. Oxon: Routledge.
- Olsson, J. (2008) Forensic Linguistics: An introduction to language, crime and the law. 2nd edn. London: Continuum International Publishing Group.
- Partington, A., Duguid, A. and Taylor, C. (2013) *Patterns and Meanings in Discourse*. Amsterdam: John Benjamins Publishing Company (Studies in Corpus Linguistics). doi: 10.1075/scl.55.
- Philips, S. U. (1987) 'On the use of WH questions in American courtroom discourse: A study of the relation between language form and language function', in Kedar, L. (ed.) *Power through discourse*. Norwood: Ablex Publishing Corporation, pp. 83–111.
- Powell, R. (2008) 'Bilingual Courtrooms. In the interests of justice?', in Gibbons, J. and Turell, M. (eds) *Dimensions of Forensic Linguistics*. Amsterdam: John Benjamins, pp. 131–159.
- Powell, R. and David, M. K. (2011) 'Language Alternation in Kenyan and Malaysian Courts', in Wagner, A. and Cheng, L. (eds) *Exploring Courtroom Discourse*. *The language of power and control*. Surrey: Ashgate Publishing Ltd, pp. 227–249.
- Powell, R. and Hashim, A. (2011) 'Language disadvantage in Malaysian litigation and arbitration', *World Englishes*, 30(1), pp. 92–105. doi: 10.1111/j.1467-971X.2010.01689.x.
- Quirk, R. et al. (1985a) A comprehensive grammar of the English language. London: Longman.
- Quirk, R. et al. (1985b) Comprehensive of the Language, English.
- Rajamanickam, R. and Rahim, A. A. (2013) 'Forensic Linguistic Evidence and its Admissibility in Malaysia', *International Journal of Basic & Applied Sciences IJBAS-IJENS*, 13(04), pp. 51–56.
- Rasinger, S. (2013) *Quantitative research in linguistics: an introduction*. 2nd edi. London: Continuum.
- Raymond, G. (2003) 'Grammar and Social Organization: Yes / No Interrogatives and the Structure of Responding Author (s): Geoffrey Raymond Source: American Sociological Review, Vol. 68, No. 6 (Dec., 2003), pp. 939-967 Published by: American Sociological Associati', 68(6), pp. 939–967.
- Razali, N. (1995) 'Tagging in the Malaysian style', *The English Teacher*, XXIV(October), pp. 1–8.
- Reppen, R. (2001) 'Review of MONOCONC PRO and WORDSMITH TOOLS', *Language Learning & Technology*, 5(3), pp. 32–36. doi: 10.1525/bio.2010.60.10.17.
- Reppen, R. (2012) 'Building a corpus: What are the key considerations?', in O'Keeffe, A. and McCarthy, M. (eds) *The Routledge Handbook of Corpus Linguistics*. Oxon: Routledge, pp. 31–37.
- Rosulek, L. F. (2009) 'The sociolinguistic creation of opposing representations of defendants

- and victims', *International Journal of Speech*, *Language and the Law*, 16(1), pp. 1–30. doi: 10.1558/ijsll.v16i1.1.
- Rubin, G. B. (2017) 'Power, solidarity and tag questions in crisis negotiations', *The International Journal of Speech, Language and the law*, 24.1, pp. 45–65.
- Al Saeed, N. (2018) 'The language of Egyptian interrogations: a study of suspect's resisance to implicatures and pressupositions in prosecution questions', in Kurzon, D. and Kryk-Kastovsky, B. (eds) *Legal Pragmatics*. Amsterdam: John Benjamins Publishing Company, pp. 157–179.
- Sarfo, E. (2016) Questioning and Debating in UK and Ghanaian Parliamentary Discourse.
- Scoboria, A., Mazzoni, G. and Kirsch, I. (2008) "Don't Know" Responding to Answerable and Unanswerable Questions During Misleading and Hypnotic Interviews', *Journal of Experimental Psychology: Applied*, 14(3), pp. 255–265. doi: 10.1037/1076-898X.14.3.255.
- Scott, M. (2008) 'Developing WordSmith', *International Journal of English Studies*, 8(1), pp. 95–106. doi: 10.6018/ijes/8/1/49111.
- Scott, M. (2011) 'WordSmith Tools version 6'. Liverpool: Lexical Analysis Software.
- Scott, M. (2012) 'What can a corpus software do?', in O'Keeffe, A. and McCarthy, M. (eds) *The Routledge Handbook of Corpus Linguistics*. Oxon: Routledge, pp. 136–151.
- Scott, M. (2018) *WordSmith Tools Help, Stroud: Lexical Analysis Software*. Available at: http://www.lexically.net/downloads/version7/HTML/proc_tag_handling.htm (Accessed: 29 August 2018).
- Searle, R. J., Kiefer, F. and Bierwisch, M. (1980) *Speech act theory and pragmatics*. Edited by R. J. Searle, F. Kiefer, and M. Bierwisch. London: D. Reidel Publishing Company.
- Seuren, L. M. and Huiskes, M. (2017) 'Confirmation or Elaboration: What Do Yes/No Declaratives Want?', *Research on Language and Social Interaction*. Routledge, 50(2), pp. 188–205. doi: 10.1080/08351813.2017.1301307.
- Sharifah Suhanah, S. A. and Rajasingham, R. (2001) 'The Malaysian Legal System, Legal Practice & Education/IDE Asian Law Series No. 4 Institute of Developing Economies'. Japan: IDE Asian Law Series. Available at: http://www.ide.go.jp/English/Publish/Download/Als/04.html (Accessed: 17 September 2017).
- Shuy, R. W. (1993) Language crimes. Oxford: Blackwell.
- Shuy, R. W. (1995) 'How a Judge's Voir Dire can Teach a Jury What to Say', *Discourse & Society*, pp. 207–222. doi: 10.1177/0957926595006002004.
- Shuy, R. W. (2006) *Linguistics in the courtroom: the practical guide*. New York: Oxford University Press.
- Sinclair, J. (1991) Corpus, Concordance, Collocation. Oxford: Oxford University Press.
- Sinclair, J. (2004) *Trust the Text: Language, Corpus and Discourse*. Edited by R. Carter. London: Routledge.
- Stenstrom, A. B. (1984) Questions and responses in English conversation. Malmo: Liber

- Forlag.
- Stivers, T. and Hayashi, M. (2010) 'Transformative answers: One way to resist a questions constraints', *Language in Society*, 39(1), pp. 1–25. doi: 10.1017/S0047404509990637.
- Stokoe, E. (2014) 'The Conversation Analytic Role-play Method (CARM): A Method for Training Communication Skills as an Alternative to Simulated Role-play', Research on Language and Social Interaction. Routledge, 47(3), pp. 255–265. doi: 10.1080/08351813.2014.925663.
- Stubbs, M. (2001) 'Texts, corpora, and problems of interpretation: A response to Widdowson', *Applied Linguistics*, 22(2), pp. 149–172. doi: 10.1093/applin/22.2.149.
- Stygall, G. (1994) *Trial language: differential discourse processing and discursive formation*. Amsterdam; Philidelphia: John Benjamins Publishing Company.
- Stygall, G. (2012) 'Discourse in the US courtroom', in Tiersma, P. and Solan, L. (eds). Oxford: Oxford University Press, pp. 369–380.
- Symon, G. (2005) 'Exploring resistance from a rhetorical perspective', *Organization Studies*, 26(11), pp. 1641–1663. doi: 10.1177/0170840605054626.
- Takahashi, M. (2014) 'A comparative study of tag questions in four Asian Englishes from a corpus-based approach', *Asian Englishes*. Routledge, 16(December), pp. 101–124. doi: 10.1080/13488678.2014.908529.
- Thornborrow, J. (2002) *Power talk. Language and interaction in institutional discourse*. Edinburgh: Pearson Education Limited.
- Tkačuková, T. (2010) 'Reprsenting oneself. Cross examination questioning: lay people as cross-examiners', in Coulthard, M. and Johnson, A. (eds) *The Routledge Handbook for Forensic Linguistics*. Abingdon: Routledge, pp. 333–346.
- Tkačuková, T. (2015) 'A corpus-assisted study of the discourse marker well as an indicator of judges' institutional roles in court cases with litigants in person', *Corpora*, 10(2), pp. 145–170. doi: 10.3366/cor.2015.0072.
- Tognini-Bonelli (2001) Corpus Linguistics at Work. Amsterdam: John Benjamins.
- Tottie, G. and Hoffmann, S. (2006) 'Tag Questions in British and American English', *Journal of English Linguistics*, 34(4), pp. 283–311. doi: 10.1177/0075424206294369.
- Tottie, G. and Hoffmann, S. (2009) 'Tag questions in English. The first century.', *Journal of E*, 37(2), pp. 130–161. doi: 10.1177/0075424209332962.
- Walker, A. G. (1993) 'Questioning young children in court A linguistic case study', *Law and Human Behavior*, 17(1), pp. 59–81. doi: 10.1007/BF01044537.
- Wang, J. (2006) 'Questions and the exercise of power', *Discourse and Society*, 17(4), pp. 529–548. doi: 10.1177/0957926506063127.
- Westera, N. *et al.* (2017) 'Sexual assault complainants on the stand: a historical comparison of courtroom questioning', *Psychology, Crime and Law*, 23(1), pp. 15–31. doi: 10.1080/1068316X.2016.1217334.
- Widdowson, H. G. (2000) 'On the limitations of linguistics applied', *Applied Linguistics*, 21(1), pp. 3–25. doi: 10.1093/applin/21.1.3.

- Winter, E. (1994) 'Clause relations as information structure: two basic text structures in English', in Coulthard, M. (ed.) *Advances in written text analysis*. London: Routledge, pp. 46–68.
- Wong, I. F. H. (1983) 'Simplification features in the structure of colloquial Malaysian English', in Noss, R. B. (ed.) *Varieties of English in Southeast Asia*. Singapore: Singapore University Press, pp. 125–149.
- Woodbury, H. (1984) 'The strategic use of questions in court', *Semiotica*, pp. 197–228. doi: 10.1515/semi.1984.48.3-4.197.
- Yap, M. J. *et al.* (2010) 'The malay lexicon project: A database of lexical statistics for 9,592 words', *Behavior Research Methods*, 42(4), pp. 992–1003. doi: 10.3758/BRM.42.4.992.
- Zajac, R., Gross, J. and Hayne, H. (2003) 'Asked and answered: Questioning children in the courtroom', *Psychiatry*, *Psychology and Law*, 10(1), pp. 199–209. doi: 10.1375/pplt.2003.10.1.199.
- Zydervelt, S. *et al.* (2017) 'Lawyers' Strategies for Cross-examining Rape Complainants: Have We Moved beyond the 1950s?', *British Journal of Criminology*, 57(3), pp. 551–569. doi: 10.1093/bjc/azw023.

Appendices

APPENDIX A

Performance, Governance and Operations Research & Innovation Service Charles Thackrah Building 101 Clarendon Road Leeds LS2 9LJ Tel: 0113 343 4873

Leeds LS2 9LJ Tel: 0113 343 4873 Email: ResearchEthics@leeds.ac.uk



Nurshafawati Ahmad Sani School of English University of Leeds Leeds, LS2 9JT

PVAC & Arts joint Faculty Research Ethics Committee University of Leeds

12 October 2016

Dear Nurshafawati

proceedings: a corpus-based forensic discourse analysis.

Ethics reference PVAR 15-018 amendment Sept 2016

I am pleased to inform you that your amendment to the research application listed above has been reviewed by the Chair of the Arts and PVAC (PVAR) Faculty Research Ethics Committee and I can confirm a favourable ethical opinion as of the date of this letter. The following documentation was considered:

Document	Version	Date
PVAR 15-018 amendment Sept 16 4.ShafaAmendment_form AJ.doc	1	29/09/16
PVAR 15-018 amendment Sept 16 1.UoLETHICS_NURSHAFAWATI_SEPT16 AJ.doc	1	29/09/16
PVAR 15-018 amendment Sept 16 3.Shafa_InformedConsent_New.doc	1	29/09/16
PVAR 15-018 1.UoLETHICS_NURSHAFAWATI_ARPIL16.doc	3	06/04/16
PVAR 15-018 2. Permission_PutrajayaAppA.pdf	3	06/04/16
PVAR 15-018 3. InformedConsent_AppB.pdf	3	06/04/16
PVAR 15-018 4. Email_AppC.pdf	1	06/04/16
PVAR 15-018 5.DeclarationForm_AppD.pdf	1	06/04/16
PVAR 15-018 6.AnonLog_NewAppE.pdf	1	06/04/16
Re Ethics Approval for PhD Concerning Malaysian Court Transcripts (PVAR 15-018).txt (email response)	1	04/01/16

The Chair made the following comments

 Please include your supervisor's contact details on the information sheet so that there is an alternative contact. Please notify the committee if you intend to make any further amendments to the original research as submitted at date of this approval as all changes must receive ethical approval prior to implementation. The amendment form is available at http://ris.leeds.ac.uk/EthicsAmendment.

Please note: You are expected to keep a record of all your approved documentation, as well as documents such as sample consent forms, and other documents relating to the study. This should be kept in your study file, which should be readily available for audit purposes. You will be given a two week notice period if your project is to be audited. There is a checklist listing examples of documents to be kept which is available at http://ris.leeds.ac.uk/EthicsAudits.

We welcome feedback on your experience of the ethical review process and suggestions for improvement. Please email any comments to ResearchEthics@leeds.ac.uk.

Yours sincerely

Jennifer Blaikie Senior Research Ethics Administrator, Research & Innovation Service On behalf of Dr Kevin Macnish, Chair, <u>PVAR FREC</u>

CC: Student's supervisor(s)

APPENDIX B

Participant Consent Form

Title of research project: Questioning and answering strategies in Malaysian criminal proceedings: a corpus-based forensic discourse analysis

N	ame of researcher: Nurshafawati Binti Ahmad Sani	
In	nitial the box if you agree with the statement to the left	
1	I confirm that I have read and understand the information sheet dated 26th August 2015 explaining the above research project and I have had the opportunity to ask questions about the project.	/
2	I understand that my participation is voluntary and that I am free to withdraw at any time without giving any reason and without there being any negative consequences up to the point at which the data is anonymised and amalgamated. In addition, should I not wish to answer any particular question or questions, I am free to decline.	/
3	I understand that the data I will give permission to use will be kept strictly confidential. I give permission for Nurshafawati binti Ahmad Sani to have access to the anonymised interrogations. I understand that my name will not be linked with the research materials, and I will not be identified or identifiable in the report or reports that result from the research.	~
4	I agree for the data collected from me to be used in future research	1
5	I agree to take part in the above research project and will inform the principal investigator should my contact details change.	1

Signed.....

CHAPTA BINTI ABBIN BATANTO

Date 08.09.15

SHAFIZA BINTI ABDUL RAZAK TREADY Senior Assistant Registrar High Court 1 . KUCHING