Mental Illness and Employment Termination in Malaysia: Legal Gaps, Doctrinal Uncertainty and the Need for Reasonable Accommodation

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ABSTRACT

The increasing prevalence of mental illness in modern workplaces has exposed significant shortcomings in employment law frameworks that were historically designed around physical incapacity, misconduct, and traditional contractual doctrines. In Malaysia, the legal treatment of employees experiencing mental illness remains fragmented, with no dedicated statutory framework governing termination arising from psychiatric incapacity. Instead, employers and courts rely primarily on general doctrines such as "just cause or excuse" under the Industrial Relations Act 1967 and frustration of contract under the Contracts Act 1950. While these doctrines may provide limited mechanisms for addressing incapacity-related dismissals, they are doctrinally ill-suited to the fluctuating, episodic, and often non-visible nature of mental illness. This article critically examines the legality of terminating employees with mental illness under Malaysian employment law through doctrinal and legal analysis. It evaluates statutory provisions, judicial authorities, and industrial jurisprudence, including Malaysian decisions on medical incapacity. The article argues that Malaysian law inadequately protects employees with mental illness due to conceptual ambiguity, doctrinal uncertainty, limited psychiatric-specific judicial guidance, the absence of statutory accommodation duties, and the failure to integrate psychiatric disability into employment protection frameworks. It further contends that the continued reliance on doctrines originally developed for physical incapacity creates doctrinal incoherence and practical injustice. This article proposes a reform-oriented framework for Malaysia that incorporates statutory recognition of mental illness, reasonable accommodation obligations, structured incapacity assessment, and enhanced procedural safeguards in employment termination disputes.

Keywords: Mental Illness; Employment Termination; Malaysian Employment Law; Unfair Dismissal; Frustration of Contract; Psychiatric Disability; Workplace Mental Health; Comparative Employment Law; Reasonable Accommodation; Industrial Relations

INTRODUCTION

Mental illness has become an increasingly significant workplace issue, affecting employee performance, attendance, workplace relationships, and organisational productivity. As awareness of workplace mental health continues to grow, employment law faces increasing pressure to respond to the unique challenges posed by psychiatric conditions within the employment relationship. While several jurisdictions have progressively modernised employment protections to address psychiatric disability and mental health-related workplace challenges, Malaysian employment law remains fragmented and underdeveloped in this area.

This article critically examines the legality of employment termination involving employees with mental illness under Malaysian employment law. Its primary objectives are threefold: first, to analyse the adequacy of the current Malaysian statutory and judicial framework governing termination arising from mental illness; second, to evaluate whether traditional legal doctrines such as frustration of contract and unfair dismissal principles are conceptually suitable for psychiatric incapacity cases; and third, to examine whether the existing legal framework adequately reflects contemporary understandings of mental illness and workplace capacity.

Existing Malaysian scholarship has examined workplace mental health, disability rights, and employment protection largely as separate areas of inquiry. However, limited attention has been devoted to the specific legal challenges arising from employment termination involving employees with mental illness. Furthermore, the suitability of traditional employment law doctrines in addressing the fluctuating, episodic, and often non-visible nature of psychiatric conditions remains insufficiently explored. This article seeks to address that gap by providing a focused doctrinal analysis of mental illness-related employment termination within the Malaysian legal framework.

The article further contributes to existing scholarship by adopting an interdisciplinary perspective that incorporates insights from psychiatry and human factors engineering. While legal analysis traditionally focuses on statutory interpretation and judicial reasoning, questions relating to workplace capacity, functional impairment, and accommodation frequently extend beyond purely legal considerations. The incorporation of these perspectives enables a more comprehensive evaluation of whether existing legal doctrines adequately reflect the practical realities of mental illness in contemporary workplaces.

This article argues that Malaysian employment law remains structurally ill-equipped to address termination involving mental illness because it continues to rely on general unfair dismissal principles, physical incapacity authorities and contractual doctrines that were not developed for psychiatric impairment. The central weakness is not the existence of a settled line of conflicting psychiatric-specific cases, but the absence of clear statutory and judicial guidance on how mental illness should be assessed in employment termination disputes. This creates doctrinal uncertainty, risks inconsistent outcomes, and leaves both employers and employees without a coherent framework for medical assessment, reasonable accommodation and fair termination decision-making. Consequently, legal reform is necessary to establish a clearer, fairer, and more contemporary employment framework that better reflects modern understandings of psychiatric incapacity, workplace inclusion, and employment justice.

RESEARCH METHODOLOGY AND SCOPE OF STUDY

This article adopts a doctrinal legal research methodology, which remains the principal approach for analysing legal rules, statutory provisions, judicial decisions, and legal principles within a particular legal system. Doctrinal legal research seeks to identify, interpret, evaluate, and synthesise existing legal norms through systematic examination of primary legal sources, including legislation and case law, together with relevant secondary authorities. The methodology is particularly suitable where the objective is to ascertain the current state of the law, identify doctrinal uncertainty, evaluate legal adequacy, and formulate recommendations for legal reform.

The scope of this study is confined to the Malaysian legal framework governing employment termination involving employees with mental illness. Particular attention is given to the Industrial Relations Act 1967, Employment Act 1955, Contracts Act 1950, Persons with Disabilities Act 2008, Mental Health Act 2001, and relevant judicial authorities concerning medical incapacity, unfair dismissal, industrial justice, and contractual frustration. The study critically evaluates the extent to which these legal instruments provide adequate protection for employees experiencing mental illness and examines whether existing legal doctrines are capable of addressing the unique characteristics of psychiatric incapacity within the employment relationship.

In addition to doctrinal analysis, this article adopts an interdisciplinary analytical approach by incorporating relevant psychiatric literature and human factors engineering principles relating to workplace capacity assessment. These interdisciplinary perspectives are not utilised as empirical evidence but rather as analytical frameworks for evaluating whether existing legal doctrines adequately reflect the functional realities of mental illness in contemporary workplaces. Such an approach recognises that mental illness presents challenges that

extend beyond conventional legal classifications and frequently involve complex interactions between medical conditions, workplace demands, cognitive functioning, and organisational environments.

While reference is made, where appropriate, to emerging international developments in workplace mental health protection and disability-inclusive employment practices, the primary focus of this article remains Malaysian law. A detailed comparative analysis of foreign jurisdictions falls beyond the scope of this study and is reserved for future research. Through this doctrinal and interdisciplinary approach, the article seeks to identify conceptual and regulatory gaps within the current Malaysian framework and to develop recommendations for a more coherent legal approach to mental illness-related employment termination.

Conceptualising Mental Illness in Employment Law

A clear understanding of the manifestation and course of mental illnesses is fundamental before discussing conceptualising mental illness in employment law. Mental illnesses or psychiatric disorders are medical conditions that disrupt one's way of thinking, regulating emotions, and manifesting behaviour, leading to disturbed intra- and interpersonal interaction as well as daily functioning. Whilst clinical diagnoses of mental illnesses focus on criteria that are derived from a 'constellation of symptoms', employment law often categorizes mental health conditions as disabilities when they predominantly hinder major life activities, including an individual's ability to perform job functions. As in physical diseases, there are many types of mental illnesses, and the classification follows a constellation of symptoms recommended by the Diagnostic and Statistical Manual of Mental Disorders (DSM) of the American Psychiatric Association or the International Classification of Diseases (ICD) by the World Health Organization. Mental illnesses come in different severities; neurotic diagnoses (including anxiety disorders such as panic disorders and phobias, and psychosomatic disorders, such as somatic symptoms and illness anxiety disorders) are less severe compared to severe mental illnesses or SMI (such as schizophrenia, substance-induced psychosis, and bipolar disorders). Given the different types and levels of severity of symptoms of mental illnesses, legal provisions related to the work functions of individuals with mental illnesses should consider these two variables before amending the act.

Severe Mental Illness manifests with debilitating symptoms such as major mood changes, psychosis, poor executive functions, and cognitive deterioration, preventing them from working. Prominent mood changes not only cause emotional dysregulation but also actual physiological fluctuations that interfere with physical condition. For example, presenteeism occurs when individuals with a depressive mood physically show up to work but are mentally absent. These unproductive conditions occur due to the manifestation of mood symptoms such as sleep disturbances, chronic fatigue, generalised body discomfort, and avolition or lack of motivation. Moreover, disrupted executive and cognitive functions commonly associated with severe mental illness interfere significantly with workplace performance. Working memory, cognitive flexibility in responding to changing operational requirements, inhibitory control to resist distractions, and the ability to plan and prioritise work tasks are examples of executive functions essential for effective job performance. Similarly, sustained attention, information-processing speed, and long-term memory are critical cognitive abilities required for many forms of employment. In certain cases, severe mental illness may also present with psychotic symptoms, including hallucinations and delusions, or behavioural manifestations such as self-harm, aggression, or violent conduct, which may further affect workplace functioning and safety.

Given the diverse manifestations and varying severity of mental illness, a comprehensive understanding of behavioural, emotional, cognitive, and functional impairments is essential when formulating legal and employment policies relating to workplace mental health. Mental illness does not manifest uniformly across individuals, and any legal framework governing employment rights, workplace accommodations, incapacity management, or employment termination must adequately reflect these differing functional realities in order to provide fair and effective protection for both employees and employers.

Mental illnesses are not rigid but fluid conditions. Mental illness may come intermittently as an acute attack, such as panic disorder, dissociative states, or hysterical attack. In contrast, between the attacks, the person is free from any symptoms and able to function well. The advances in current treatment allow for total remission of symptoms even for SMIs. During the symptom-free period and remission state, an individual with mental illness can work as usual and continue his or her daily functioning. However, job stress, financial issues, and personal

problems may cause a relapse of the symptoms. Nevertheless, there is a proportion of SMIs who are difficult to treat and resistant to treatment and harbour persistent hindering symptoms that disturb their routine functioning. Nonetheless, the advances in neurotropic medications and treatment plans for mental illness may reduce those debilitating symptoms. New neurotropic medications (such as vortioxetine, cariprazine, and lurasidone) protect and improve executive and cognitive function by directly altering brain structure, clearing toxic proteins, or optimizing neurotransmitter pathways. Advances in medications supplemented by psychotherapy and rehabilitation may provide remission and improve the functioning of SMIs, allowing them to continue working. Hence, conceptualising mental illness in employment law requires a comprehensive understanding of the manifestation of illness and its treatment, as well as balancing views on a functional, rights-based framework that addresses workplace impacts.

Moreover, mental illness is viewed with strong stigma. Public stigma may influence prejudiced and biased employers to provide a negative evaluation against workers who have a mental illness. Structural stigma may occur in any organisation when individuals in power lack mental health literacy and ignore input or opinions from mental health professionals. Acting in concert, societal-level stigma and cultural discrimination result in the development of institutional policies, rules, regulations, and legal provisions that intentionally or unintentionally violate the employment rights of individuals with mental illness and limit their opportunities, resources, well-being, and quality of life. Examples are clear where there is limited insurance coverage for individuals with mental illness, lower funding, and poorer infrastructure for mental health care and services, and a lack of workplace accommodations and strict, penalizing leave policies. Poor support systems from immediate caregivers and families worsened the symptoms of those with mental illness. Hence, a comprehensive, transparent, and in-depth understanding of mental illness and its surrounding psychosocial risks is fundamental for further discussion on employment law related to these debilitating conditions.

Global advancements, including in Malaysia, on comprehensive treatment for SMIs, have changed the landscape of work ability and competency of SMIs. Advances in neurotropic and psychotropic agents directly target the neurological underpinnings of Severe Mental Illnesses (SMIs) such as schizophrenia, bipolar disorder, and treatment-resistant depression, making sustained employment achievable. Moreover, an increase in awareness of economic security as a fundamental right and a crucial element of recovery for individuals with mental illness has led the Ministry of Health and the Social Security Organisation (SOCSO) to introduce a few programs, such as the MENTARI Community Mental Health Centre and the Return-to-Work program, respectively. MENTARI, through its Individual Placement and Support (IPS) program, helps individuals with mental illness to obtain suitable and competitive jobs and financial independence. Recently, the IPS program has been upgraded to a more structured employment-support initiative known as RESTART. Furthermore, the Department of Social Welfare plays a pivotal role in promoting economic independence by providing financial assistance and social protection to individuals with mental illness who are registered as Orang Kurang Upaya (OKU).

These developments demonstrate that mental illness should no longer be viewed solely through a lens of incapacity or unemployability. Advances in treatment, rehabilitation, workplace support mechanisms, and flexible work arrangements increasingly enable many individuals with mental illness to participate meaningfully in the workforce. Accordingly, employment related laws and workplace policies should evolve in tandem with these developments to ensure that legal frameworks governing workplace accommodation, incapacity management, and employment termination accurately reflect contemporary understandings of mental illness and recovery.

This legal conceptualisation creates a tripartite obligation for employers: a general duty of care to ensure a safe psychological environment, a requirement to provide reasonable accommodations, such as flexible hours or modified duties that reduce stressors for relapses, and a strict prohibition against discrimination or unfair dismissal based on merely an employee's mental state. The law often struggles to distinguish between situational job stress and chronic psychiatric injury, making opinions from mental health professionals, such as psychiatrists or clinical psychologists, one of the critical factors in determining liability and the necessity for intervention. Ultimately, modern legal frameworks increasingly emphasize rehabilitation over termination, though a lack of explicit statutory guidance in some regions can still leave employees vulnerable to performance-based dismissals.

Mental Illness as a Legal and Employment Concept

Mental illness occupies a uniquely complex position within employment law because it intersects medicine, disability rights, labour regulation, contractual obligations, and workplace governance. Unlike traditional employment disputes involving misconduct, redundancy, or clearly observable physical incapacity, psychiatric conditions challenge conventional legal assumptions about employee capability, responsibility, predictability, and employer obligations.

From a clinical perspective, mental illness encompasses a broad spectrum of psychiatric conditions affecting cognition, emotional regulation, behaviour, and psychological functioning. Common workplace-relevant disorders include major depressive disorder, generalised anxiety disorder, bipolar disorder, obsessive-compulsive disorder, schizophrenia spectrum disorders, adjustment disorders, trauma-related conditions, and burnout-associated psychiatric impairment. However, employment law is not primarily concerned with diagnosis alone. Rather, its concern lies in how such conditions affect contractual performance, workplace participation, functional capacity, and the legal rights of both employer and employee.

The Mental Health Act 2001 defines "mental disorder" broadly in Malaysian law, including mental illness, arrested or incomplete development of the mind, psychiatric disorders, and other disorders or disabilities of the mind. Yet this statutory recognition is primarily directed toward healthcare regulation rather than employment protection. The Act provides no meaningful framework governing workplace incapacity, termination, accommodation, or employer obligations. This reveals an important structural problem within Malaysian law: mental illness is recognised medically but not operationally integrated into employment rights jurisprudence.

Employment law requires a more functionally grounded understanding of mental illness. The legally relevant issue is not merely whether an employee carries a psychiatric diagnosis, but whether—and to what extent—the condition affects their ability to perform essential employment functions, interact safely in the workplace, comply with workplace expectations, or sustain continued participation in employment.

This immediately raises conceptual difficulty. Mental illness rarely maps neatly onto traditional binary legal categories of "fit" versus "unfit," "capable" versus "incapable," or "performing" versus "non-performing." Psychiatric conditions often exist along functional continua rather than absolute incapacity.

Why Mental Illness Challenges Traditional Employment Law

Traditional employment law frameworks were largely developed around assumptions associated with physical incapacity, where illness can generally be objectively verified, medically quantified, externally observed, and assessed through relatively predictable recovery trajectories (Collins et al., 2019; Freedland et al., 2016). These assumptions underpin many established employment doctrines concerning incapacity, misconduct, contractual frustration, and lawful termination. However, mental illness frequently disrupts these conventional legal assumptions, creating significant doctrinal challenges for employment law.

One of the most distinctive characteristics of mental illness is its episodic and fluctuating nature. Unlike many forms of physical incapacity that may result in relatively stable or permanent functional limitations, psychiatric conditions often involve periods of deterioration and recovery (World Health Organization [WHO], 2022). Employees suffering from major depressive disorder, for instance, may experience temporary but severe impairment over several months before eventually regaining sufficient functional capacity to resume productive employment. Similarly, bipolar disorder is characterised by cyclical phases of depression and mania rather than continuous incapacity (American Psychiatric Association, 2022). This creates a fundamental tension with traditional contractual doctrines such as frustration, which typically presuppose permanent or radical impossibility of contractual performance rather than temporary or variable incapacity (Ashgar Ali Ali Mohamed, 2014).

Mental illness also presents evidentiary and legal difficulties because psychiatric impairments are often non-visible. Unlike physical injuries, which may be externally apparent or readily supported by objective diagnostic findings, mental illness frequently manifests through internal psychological symptoms that are less immediately

observable (Brohan et al., 2012). Conditions such as anxiety disorders, depressive illness, trauma-related disorders, or obsessive-compulsive disorder may significantly impair concentration, emotional regulation, cognitive functioning, decision-making capacity, or interpersonal interaction without outward physical indicators (WHO, 2022). This invisibility may foster employer scepticism, increase evidentiary uncertainty, and create a greater risk of discriminatory assumptions in workplace decision-making (Hassan et al., 2018).

A further challenge lies in the functional variability associated with psychiatric conditions. Mental illness does not necessarily render an employee wholly incapable of performing all contractual obligations. Rather, impairment may be partial, task-specific, or context-dependent (Mishiba, 2020). An employee experiencing anxiety-related disorders may struggle with public-facing responsibilities while remaining fully capable of research or administrative functions. Likewise, an employee suffering from depressive illness may temporarily lose leadership effectiveness while retaining technical or analytical competence. This variability complicates the application of traditional incapacity doctrines, which often assume a binary distinction between fitness and unfitness for work (Wong, 2019).

The potential for treatment and workplace accommodation further distinguishes psychiatric illness from traditional incapacity models. Many mental health conditions are treatable or manageable through medication, psychotherapy, structured workplace support, flexible scheduling, temporary reassignment, modified workloads, or remote working arrangements (WHO, 2022; International Labour Organization [ILO], 2022). Consequently, dismissal may not necessarily reflect genuine impossibility of continued employment, but rather a failure to explore reasonable accommodations that could preserve the employment relationship (Morris, 2025). This raises broader questions concerning employer obligations, workplace inclusion, and legal fairness.

Mental illness is also uniquely shaped by stigma, which creates additional legal complications in employment relationships. Employees may hesitate to disclose psychiatric conditions due to fears of reputational damage, workplace discrimination, career stagnation, or employer distrust (Brohan et al., 2012; Hassan et al., 2018). Delayed disclosure may affect employer awareness, complicate procedural fairness analysis, and influence judicial evaluation of whether appropriate accommodations could realistically have been considered.

Mental Illness, Disability, and Employment Rights

A major conceptual development in comparative employment law has been the transition from viewing mental illness solely through the lens of incapacity toward recognising psychiatric conditions as disabilities that may require accommodation and anti-discrimination protection (Bell, 2020; Mishiba, 2020). This shift reflects a broader move away from purely contractual approaches focused on performance failure and dismissal justification, toward rights-based employment models grounded in equality, workplace inclusion, and continued labour participation.

Under traditional incapacity models, the legal inquiry centres on whether the employee remains capable of fulfilling contractual obligations, with termination often treated as a legitimate response to prolonged inability (Freedland et al., 2016). By contrast, disability accommodation models recognise that functional limitations do not necessarily preclude continued employment if reasonable workplace adjustments are made (Bell, 2020). The legal emphasis therefore shifts from incapacity and contractual failure toward accommodation, equality, and preservation of employment where feasible.

This transformation is particularly evident in jurisdictions such as the United Kingdom and Australia. Under the Equality Act 2010 in the United Kingdom, mental impairments may constitute legally protected disabilities where they substantially and long-term affect normal day-to-day activities (Lockton, 2019). Similarly, Australian employment law recognises psychiatric disability under anti-discrimination and Fair Work protections, imposing legal constraints on termination based solely on disability-related incapacity (Stewart et al., 2021).

Malaysia, however, has not fully embraced this conceptual transition. Although disability legislation exists through the Persons with Disabilities Act 2008, its integration into employment termination law remains limited, and mentally ill employees continue to be assessed primarily through traditional incapacity doctrines rather than

accommodation-based frameworks (Ruzita Azmi et al., 2021). This conceptual lag contributes significantly to the doctrinal incoherence presently observed in Malaysian dismissal jurisprudence.

Mental Illness and Legal Responsibility in Employment

Mental illness further complicates employment law because it challenges conventional assumptions concerning employee responsibility and workplace misconduct. Where performance deteriorates, attendance becomes irregular, communication breaks down, or workplace conflicts emerge, legal systems must determine whether the conduct in question reflects wilful misconduct, incapacity, illness manifestation, or employer failure to accommodate (Wong, 2019).

This distinction becomes especially important where psychiatric symptoms manifest behaviourally. Emotional outbursts, absenteeism, impaired communication, reduced performance, non-compliance with workplace instructions, or interpersonal difficulties may be interpreted by employers as disciplinary misconduct rather than symptoms of underlying mental illness (Mishiba, 2020). Without clear legal guidance, there is a risk that psychiatric manifestations may be mischaracterised as culpable misconduct, thereby exposing employees to dismissal without appropriate medical evaluation or accommodation consideration (Bell, 2020).

Comparative jurisprudence increasingly acknowledges this complexity, particularly in jurisdictions where mental health conditions are explicitly recognised within disability or employment protection frameworks (Stewart et al., 2021). Malaysian employment law, however, remains comparatively underdeveloped in addressing this distinction, leaving considerable uncertainty in cases where psychiatric illness intersects with performance or bhavioural concerns (Ruzita Azmi et al., 2021).

Conceptual Implications for Malaysian Employment Law

These conceptual challenges have significant implications for Malaysian employment law. A legal framework constructed primarily around physical incapacity, contractual impossibility, and conventional misconduct models is poorly suited to addressing the realities of psychiatric illness in the workplace (Ashgar Ali Ali Mohamed, 2014; Mishiba, 2020).

For employees, this creates heightened vulnerability to premature termination, stigma-driven decision-making, evidentiary disadvantage, and lack of meaningful accommodation (Hassan et al., 2018). For employers, the absence of clear statutory guidance generates legal uncertainty, inconsistent judicial outcomes, and ambiguity regarding procedural obligations when managing mental health-related incapacity (Ruzita Azmi et al., 2021). For courts, reliance on traditional doctrines risks doctrinal distortion, conceptual inconsistency, and unpredictable outcomes (Bell, 2020).

Mental illness therefore cannot be adequately addressed through a simple extension of legal principles originally designed for physical incapacity. Rather, it requires a more distinct and conceptually coherent employment law framework that reflects the unique nature of psychiatric conditions, contemporary workplace realities, and evolving comparative legal standards.

Engineering-Based Assessment of Mental Illness and Workplace Capacity

Human Factors, Functional Capacity, and Employment Law

The legal assessment of mental illness in employment disputes has traditionally focused on medical diagnosis, contractual performance, and employer justification for dismissal. However, contemporary workplace research increasingly recognises that an employee's ability to perform work cannot be evaluated solely through medical or legal frameworks. Rather, work performance emerges from a complex interaction between individual capability, task requirements, workplace environment, organisational systems, and psychosocial conditions (Dul et al., 2012). Consequently, engineering disciplines such as human factors engineering, ergonomics, occupational safety, and work systems design offer valuable perspectives for understanding how mental illness affects workplace capacity and employment sustainability.

Human factors engineering examines the interaction between individuals and the systems within which they operate, with the objective of optimising safety, performance, productivity, and wellbeing (Salvendy, 2012). Unlike traditional legal approaches that frequently categorise employees as either fit or unfit for work, human factors engineering recognises that work ability exists along a continuum and is influenced by multiple physical, cognitive, and environmental factors. From this perspective, mental illness should not automatically be equated with incapacity. Instead, assessment should focus on the extent to which specific symptoms affect an individual's ability to perform essential job functions under particular workplace conditions.

This distinction is especially important because many psychiatric conditions affect cognitive performance rather than physical capability. Mental illnesses such as major depressive disorder, anxiety disorders, bipolar disorder, and schizophrenia may impair concentration, working memory, decision-making, situational awareness, information processing, emotional regulation, and executive functioning (American Psychiatric Association, 2022). These cognitive and behavioural impairments may reduce workplace performance while leaving certain skills and competencies intact. Consequently, employees experiencing mental illness may remain capable of performing some job functions even where difficulties arise in others. A binary legal framework that assumes total incapacity may therefore fail to accurately reflect the realities of workplace functioning.

Work Ability and Functional Capacity Assessment

A significant limitation within current Malaysian employment law is the absence of structured methods for evaluating mental-health-related work capacity. Existing dismissal decisions frequently rely upon general medical opinions, employer observations, or broad assessments of fitness for work. However, engineering and occupational health disciplines increasingly utilise systematic assessment tools to evaluate an individual's functional capacity in relation to specific job demands.

One such approach is the Work Ability Index (WAI), developed by the Finnish Institute of Occupational Health. The WAI evaluates the relationship between an employee's physical and psychological resources and the demands of their occupation, allowing employers and occupational health professionals to identify areas requiring intervention before incapacity becomes permanent (Ilmarinen, 2009). Similarly, Functional Capacity Evaluation (FCE) systems assess an individual's ability to perform specific work-related tasks under controlled conditions, providing a more objective basis for employment decisions (Soer et al., 2008).

These approaches are particularly relevant in cases involving mental illness because psychiatric conditions often produce partial rather than total incapacity. An employee experiencing anxiety may struggle with customer-facing responsibilities while remaining fully capable of administrative, analytical, or technical tasks. Likewise, a worker suffering from depression may experience reduced leadership effectiveness while retaining the ability to perform structured and routine functions. Engineering-based assessment therefore encourages a more nuanced evaluation of workplace capacity, recognising that incapacity may be task-specific rather than universal.

The absence of such structured assessment mechanisms within Malaysian employment law creates a risk that employers may prematurely conclude that continued employment is impossible without adequately examining the employee's remaining functional abilities. Consequently, dismissal decisions may be based upon assumptions regarding diagnosis rather than objective analysis of workplace performance.

Workplace Accommodation Through Engineering Controls

Modern occupational health and ergonomics literature increasingly emphasises that workplace performance is shaped not only by individual characteristics but also by the design of work systems themselves (Dul et al., 2012). Accordingly, engineering approaches focus not merely on identifying worker limitations but also on modifying workplace conditions to reduce barriers to performance.

In occupational safety and ergonomics, interventions are commonly implemented through engineering controls, administrative controls, and work redesign measures. Examples include flexible scheduling arrangements, modified workloads, altered task allocation, hybrid working arrangements, phased return-to-work programmes, workload balancing, and environmental modifications designed to reduce cognitive stressors (International

Labour Organization, 2022). Such measures are particularly relevant for employees experiencing mental illness because many psychiatric symptoms are sensitive to workplace stress, workload intensity, shift patterns, interpersonal conflict, and organisational demands.

This perspective aligns with emerging international approaches to disability accommodation. Rather than viewing mental illness solely as an individual deficiency, contemporary workplace models recognise that organisational structures may contribute to functional impairment and that reasonable modifications can often enable continued employment (Bell, 2020). Consequently, employers should consider whether workplace redesign or accommodation measures could address performance concerns before resorting to dismissal.

The relevance of this approach is particularly evident in modern knowledge-based industries, where productivity often depends more upon cognitive performance and flexibility than physical labour. In such environments, relatively modest adjustments to work arrangements may significantly improve employee functioning while preserving organisational productivity.

Occupational Safety and Risk-Based Decision-Making

Mental illness also raises important occupational safety considerations, particularly in safety-sensitive industries such as manufacturing, transportation, aviation, construction, healthcare, and energy production. Certain psychiatric symptoms may affect concentration, vigilance, reaction time, hazard perception, and decision-making, thereby increasing the risk of workplace accidents under specific circumstances (Reason, 1990).

However, safety concerns should not automatically justify employment termination. Human reliability and risk assessment methodologies commonly used in engineering recognise that risk management should be proportionate, evidence-based, and responsive to the specific nature of the hazard (Kirwan, 1994). Rather than assuming that psychiatric illness necessarily renders an employee incapable of safe work, employers should assess the relationship between the individual's functional limitations and the requirements of the specific role.

For example, an employee experiencing severe anxiety may encounter difficulties performing high-pressure customer service functions while remaining capable of undertaking lower-risk administrative tasks. Similarly, a worker recovering from depression may require temporary reassignment rather than permanent exclusion from employment. Engineering-based risk assessment therefore encourages a more balanced approach that distinguishes genuine safety risks from assumptions based on stigma or misunderstanding.

Such an approach is particularly important given the continuing social stigma associated with mental illness. Research consistently demonstrates that misconceptions regarding psychiatric conditions often lead employers to overestimate risk and underestimate the capacity of affected individuals to contribute productively within the workplace (Brohan et al., 2012).

Implications for Malaysian Employment Law

The integration of engineering-based work capacity assessment into employment law would provide a more objective and evidence-based framework for addressing mental illness-related termination disputes. Rather than relying solely upon broad medical diagnoses or traditional incapacity doctrines, decision-makers could evaluate the specific relationship between psychiatric symptoms, workplace demands, functional limitations, and accommodation possibilities.

A multidisciplinary assessment framework involving psychiatrists, occupational health specialists, human resource professionals, ergonomists, and human factors engineers may therefore provide a more balanced basis for determining whether dismissal is genuinely necessary. Such an approach would better reflect the realities of modern workplaces, align with contemporary understandings of mental illness, and reduce the risk of premature or unjustified termination. Ultimately, recognising the role of engineering principles in assessing workplace capacity reinforces the broader objective of employment law: to balance legitimate employer interests with fairness, dignity, and continued participation in work wherever reasonably possible.

Human Resource Management Perspective on Mental Illness, Workplace Accommodation, and Pre-Termination Safeguards The preceding clinical, engineering, and legal discussions establish that mental illness-related employment termination requires careful assessment of diagnosis, functional capacity, workplace demands, accommodation, and procedural fairness. From a human resource management ("HR") perspective, the practical question is how these principles should be operationalised before the employer concludes that continued employment is no longer possible. HR therefore functions as the organisational bridge between medical evidence, workplace performance, reasonable accommodation, and lawful termination.

This perspective is important because mental illness-related workplace issues often first appear as attendance problems, performance decline, communication difficulties, interpersonal conflict, or behavioural concerns. Without a structured HR process, these issues may be prematurely treated as misconduct or poor performance, rather than as possible indicators of psychiatric incapacity or work-related psychological distress. HR practice should therefore provide preventive systems, accommodation pathways, and pre-termination safeguards that support both organisational needs and industrial justice.

The Organisational Cost of Mental Illness

Mental illness in the workplace has significant organisational consequences. These consequences are commonly reflected through absenteeism, presenteeism, staff turnover, reduced productivity, workplace disruption, and potential legal exposure. In Malaysia, workplace mental health issues have been estimated to cost employers approximately RM14.46 billion in 2018, comprising RM3.28 billion from absenteeism, RM9.84 billion from presenteeism, and RM1.34 billion from staff turnover (Chua, 2020a; Chua, 2020b). The cost was further estimated at approximately RM946 per employee per annum (Chua, 2020b).

These figures are significant because they show that mental illness is not only an individual medical concern, but also an organisational risk requiring early intervention. Psychological distress among Malaysian employees has been associated with poorer health, increased sickness leave, absenteeism, presenteeism, and reduced work engagement (Chan et al., 2021). Occupational stress literature in Malaysia also identifies excessive workload, unrealistic deadlines, insufficient staffing, poor supervisory support, unfair treatment, and unrealistic key performance indicators as contributors to workplace stress (Mallow, 2018a). Accordingly, before HR treats repeated absence or declining performance as a disciplinary issue, it should consider whether workplace stressors or psychosocial risks have contributed to the employee's condition.

The HR significance is practical. Early support, proper documentation, reasonable accommodation, and structured incapacity management may reduce productivity loss and legal risk. Conversely, abrupt termination, forced resignation, or disciplinary action without adequate inquiry may convert a manageable workplace health issue into an unfair dismissal dispute or a workplace liability concern (Ashgar Ali Ali Mohamed et al., 2019).

Workplace Mental Health Policies and Managerial Literacy

A workplace mental health policy is necessary because mental illness is often non-visible, episodic, and affected by stigma. Employees may hesitate to disclose psychiatric conditions due to fear of discrimination, reputational harm, career stagnation, or dismissal. In Malaysia, stigma of mental illness has been found to manifest through labelling, rejection, social exclusion, and employment-related discrimination, including discriminatory attitudes by key actors in workplace settings (Hanafiah & Van Bortel, 2015). This is relevant to employment management because non-disclosure may not indicate absence of illness, but fear of adverse workplace consequences.

HR policies should therefore establish clear procedures for voluntary disclosure, confidentiality, referral, support, and accommodation requests. Psychiatric diagnoses, medical certificates, treatment records, psychiatrist reports, clinical psychologist reports, Employee Assistance Programme ("EAP") records, and accommodation requests should be treated as confidential employee medical information. Where such information involves personal data processing, HR practices should be aligned with the Personal Data Protection Act 2010.

Managerial mental health literacy is equally important. Line managers are often the first persons to observe changes in attendance, behaviour, communication, or performance. Without adequate training, psychiatric

symptoms may be misinterpreted as laziness, indiscipline, poor attitude, or insubordination. Awareness and utilisation of certain workplace mental health resources have been associated with lower psychological distress among Malaysian employees, although such resources remain underutilised and employee awareness remains limited. This supports the need for workplace support systems to be made more visible, accessible, and reinforced through managerial mental health literacy (Chan et al., 2021). EAPs may form part of this framework by providing counselling, psychoeducation, workplace conflict support, stress management, and career guidance (Chua, 2020b). However, EAPs should complement, not replace, proper HR decision-making.

HR Implementation of Reasonable Accommodation

Reasonable accommodation must be translated into a clear HR process. In mental illness cases, the key question is not merely whether the employee is medically diagnosed, but whether continued employment remains possible through proportionate workplace adjustment. HR should therefore assess the employee's functional limitations, the essential requirements of the job, available medical evidence, operational feasibility, and review mechanisms before termination is considered.

Although Malaysian employment law does not presently impose a comprehensive statutory duty of reasonable accommodation, sections 60P and 60Q of the Employment Act 1955 provide a practical mechanism for flexible working arrangement requests. Where such requests are connected to mental health difficulties, HR should consider whether the arrangement may preserve work capacity, reduce relapse risk, and support continued employment. This should be approached as part of incapacity management, rather than merely as an ordinary preference for flexibility.

The accommodation process should be structured. First, HR should obtain sufficient information on the employee's functional limitations and the relevant job requirements. Secondly, HR should consult the employee on possible adjustments. Thirdly, HR should consider medical or occupational health input where necessary. Fourthly, any agreed adjustment should be documented, time-bound where appropriate, and periodically reviewed. Workplace mental health literature identifies practical adjustments such as flexible working hours, shorter and more frequent breaks, increased workload support, and time to attend psychotherapy or preventive appointments (Chua, 2020b). Work-life balance policies have also been linked to employee retention, reduced absenteeism, and improved organisational productivity (Mallow, 2018b).

Where internal accommodation is insufficient, HR may consider referral or coordination with external support mechanisms such as SOCSO's Return-to-Work Programme, MENTARI, or RESTART. Such mechanisms may assist where the employee requires rehabilitation, community mental health support, or structured reintegration into employment. However, accommodation should not be used to stigmatise, isolate, demote, or penalise the employee. Its purpose is to determine whether continued employment remains reasonably practicable.

Pre-Termination HR Safeguards

The most important HR safeguard is the distinction between misconduct and psychiatric incapacity. Misconduct implies blameworthiness or wilful breach of workplace obligations, whereas psychiatric incapacity may arise from a medical condition affecting the employee's ability to perform work or regulate behaviour. Where psychiatric symptoms are misclassified as misconduct, the employee may be dismissed without proper medical assessment, accommodation, or procedural fairness.

Before disciplinary action or termination is pursued, HR should conduct a preliminary assessment of whether the issue involves misconduct, poor performance, absenteeism, or possible psychiatric incapacity. The employee should be given an opportunity to explain the situation and to indicate whether medical or workplace factors are involved. Where mental illness is disclosed or reasonably indicated, HR should consider obtaining appropriate medical evidence, including a psychiatrist report, clinical psychologist report, occupational health assessment, fitness-to-work opinion, prognosis, or recommendations on workplace adjustment.

HR should also document the process carefully. Relevant records may include attendance concerns, performance issues, medical certificates, medical reports, meeting notes, employee explanations, accommodations

considered, accommodations implemented, review periods, supervisor feedback, and reasons why continued employment is or is not practicable. This documentation is not merely defensive. It demonstrates that the employer has approached the matter through fair inquiry, medical evidence, accommodation consideration, and proportionate decision-making.

Termination should therefore remain a measure of last resort where the evidence shows that continued employment is genuinely impracticable despite reasonable steps. This approach is consistent with the requirement that dismissal must be supported by just cause or excuse and with the broader principles of industrial justice. It does not prevent employers from acting where employment has become untenable. Rather, it ensures that mental illness-related termination is preceded by a fair, structured, and evidence-based HR process.

Malaysian Legal Framework Governing Mental Illness and Employment Termination

Overview of the Malaysian Legal Position

The Malaysian legal framework governing employment termination involving employees with mental illness remains fragmented, conceptually underdeveloped, and structurally inadequate. Unlike jurisdictions that have progressively integrated mental health protections into employment and disability law, Malaysia does not provide a dedicated statutory regime specifically addressing psychiatric incapacity in employment relationships. Instead, legal disputes involving mentally ill employees are governed indirectly through a patchwork of employment statutes, general contract law principles, occupational safety obligations, disability legislation, and constitutional norms. This fragmented regulatory architecture produces significant uncertainty regarding employer obligations, employee protections, and judicial standards for lawful termination.

At present, the principal legal sources relevant to termination involving mental illness include the Industrial Relations Act 1967, Employment Act 1955, Contracts Act 1950, Persons with Disabilities Act 2008, Mental Health Act 2001, Occupational Safety and Health Act 1994 (as amended), and broader constitutional principles relating to equality and dignity. However, none of these instruments explicitly establish a coherent legal framework governing dismissal arising from psychiatric illness.

This absence is significant because employment termination involving mental illness raises legal questions that differ materially from ordinary misconduct or physical incapacity disputes. These include the adequacy of medical assessment, the duty to investigate accommodation possibilities, procedural fairness where psychiatric impairment affects communication or conduct, the legal classification of episodic incapacity, and whether dismissal based on psychiatric illness constitutes disability discrimination. Malaysian law currently addresses these issues only indirectly and inconsistently.

A critical examination of the relevant legislative framework reveals not merely isolated regulatory gaps, but a broader conceptual failure to integrate contemporary understandings of mental health into employment law governance.

Industrial Relations Act 1967

The Industrial Relations Act 1967 (IRA) constitutes the primary statutory mechanism governing dismissal disputes in Malaysia. Section 20(1) provides that where a workman considers that he has been dismissed without just cause or excuse, he may make representations for reinstatement. Although the provision does not specifically address mental illness, it forms the central legal basis through which termination disputes involving psychiatric incapacity are likely to be litigated.

At first glance, section 20 appears broad enough to accommodate illness-related dismissal claims. The statutory language of "just cause or excuse" is intentionally flexible and has enabled courts to evaluate a wide range of dismissal circumstances, including misconduct, redundancy, performance failure, and incapacity (Goon Kwee Phoy v J & P Coats (M) Bhd, 1981). However, this flexibility is also a source of doctrinal uncertainty, particularly where mental illness is concerned.

The Act neither define "just cause or excuse," nor does it establish specific criteria governing dismissal for medical incapacity. Consequently, judicial interpretation becomes determinative. Malaysian courts have generally recognised that incapacity may constitute legitimate grounds for termination, but jurisprudence remains predominantly shaped by cases involving physical illness rather than psychiatric impairment.

This creates an important legal difficulty. The industrial justice framework assumes that courts can assess fairness by evaluating employer conduct against established employment norms. Yet where mental illness is concerned, the relevant normative framework itself remains unclear. Questions such as whether employers must obtain independent psychiatric assessments, whether temporary psychiatric incapacity justifies termination, whether redeployment must be considered, or whether behavioural manifestations of illness should be treated as misconduct remain largely unresolved.

The flexibility of section 20 therefore produces both opportunity and instability. While its open-textured nature allows judicial innovation, it simultaneously exposes mentally ill employees to unpredictable outcomes due to the absence of structured statutory guidance.

A further limitation lies in the retrospective nature of the remedy. Section 20 primarily provides post-dismissal adjudication rather than proactive regulation of employer obligations. Unlike modern disability employment regimes, it does not impose pre-dismissal duties of accommodation, consultation, medical reassessment, or alternative placement exploration.

Thus, while the IRA offers a procedural mechanism for challenging dismissal, it does not itself establish substantive mental health employment protections.

Employment Act 1955

The Employment Act 1955 constitutes the principal statutory framework regulating minimum employment standards in Malaysia. While the Act was not originally designed to address mental illness as a distinct employment law issue, recent legislative developments have expanded its relevance to workplace wellbeing and employment flexibility. Nevertheless, its capacity to address employment termination arising from mental illness remains limited and fragmented.

Historically, the Employment Act was restricted to specific categories of employees based on wage thresholds and occupational classifications, reflecting its origins as protective labour legislation aimed at safeguarding vulnerable workers rather than establishing a comprehensive employment rights regime. Although subsequent legislative amendments have significantly expanded its coverage and modernised several aspects of employment protection, the Act remains primarily concerned with minimum labour standards, contractual protections, and workplace welfare. It does not provide a dedicated framework governing psychiatric disability, reasonable accommodation, or mental health-related employment protection, nor does it impose a positive duty upon employers to implement workplace adjustments for employees experiencing mental illness.

From the perspective of employees experiencing mental illness, the Act provides several forms of indirect protection. Its provisions relating to sick leave, hospitalisation leave, wage protection, and termination procedures may apply where psychiatric conditions require medical treatment, temporary absence from work, or periods of recovery. Furthermore, the Employment (Amendment) Act 2022, which came into force on 1 January 2023, introduced Flexible Working Arrangements (FWA) through Sections 60P and 60Q, allowing employees to apply for variations to their hours of work, days of work, or place of work. Employers are required to consider such applications and communicate their decision in writing, including reasons for refusal where applicable. These provisions represent an important development in recognising workplace flexibility within Malaysian employment law and may provide practical support for certain employees experiencing mental health difficulties.

However, the protection afforded by the Act remains indirect and incomplete. The FWA provisions establish a procedural right to request flexibility rather than a substantive right to accommodation. Employers retain considerable discretion in determining whether an application should be approved, and the legislation does not

specifically recognise mental illness as a basis requiring workplace adjustment. Consequently, employees experiencing psychiatric conditions are not guaranteed access to modified duties, hybrid work arrangements, phased return-to-work programmes, reduced workloads, or other accommodations that may facilitate continued employment.

This omission is doctrinally significant. Mental illness frequently differs from ordinary temporary illness in that psychiatric impairment may be episodic, fluctuating, partially disabling, and potentially manageable through workplace intervention rather than necessitating prolonged absence or termination. While the introduction of FWA reflects a gradual movement towards greater workplace flexibility, the Employment Act does not establish a structured framework for managing psychiatric incapacity within the employment relationship.

A further limitation lies in the absence of a statutory duty of reasonable accommodation. Malaysian law imposes no obligation upon employers to explore workplace modifications, temporary reassignment, workload adjustments, alternative work arrangements, or other accommodations before considering dismissal. Although the FWA provisions may facilitate some degree of workplace adaptation, they fall short of creating a comprehensive accommodation regime for employees experiencing mental illness.

Additionally, the Act does not establish procedural safeguards specifically addressing mental-health-related incapacity management. There is no statutory framework governing psychiatric fitness-to-work assessments, independent medical evaluation, return-to-work planning, or structured consultation between employer and employee where mental health conditions affect workplace performance. The absence of such mechanisms leaves employers without clear guidance while simultaneously exposing employees to inconsistent and potentially arbitrary employment outcomes.

Accordingly, while the 2022 amendments have modernised aspects of the Employment Act by introducing greater workplace flexibility, the legislation continues to address mental illness primarily through general employment welfare and sickness-related protections rather than through a dedicated framework for psychiatric incapacity, workplace accommodation, and mental health-related employment protection. As a result, the Act remains only partially equipped to address the complex realities of mental illness-related employment termination.

Contracts Act 1950 and the Doctrine of Frustration

One of the most legally problematic doctrines affecting employees with mental illness under Malaysian law is the doctrine of contractual frustration under section 57 of the Contracts Act 1950. Although frustration is a general contract law doctrine rather than an employment-specific mechanism, its occasional invocation in employment relationships involving prolonged incapacity raises important doctrinal concerns.

Section 57(2) of the Contracts Act 1950 provides that:

"A contract to do an act which, after the contract is made, becomes impossible, or by reason of some event which the promisor could not prevent, unlawful, becomes void when the act becomes impossible or unlawful."

The doctrine traditionally applies where an unforeseen supervening event fundamentally transforms the nature of contractual obligations, rendering performance impossible or radically different from what was originally contemplated by the parties (Vita Food Products Inc v Unus Shipping Co Ltd, 1939; National Carriers Ltd v Panalpina (Northern) Ltd, 1981). In employment law, frustration has historically been invoked where prolonged incapacity is said to make continued performance impossible.

However, the application of frustration to psychiatric illness presents serious conceptual and doctrinal difficulties.

First, the doctrine assumes a threshold of impossibility or radical contractual transformation. This assumption sits uneasily with the nature of mental illness. Psychiatric conditions frequently involve temporary deterioration, fluctuating symptoms, partial incapacity, or recoverable dysfunction rather than permanent inability to perform

employment obligations (American Psychiatric Association, 2022). Employees suffering from depression, anxiety disorders, bipolar disorder, or trauma-related conditions may experience periods of severe impairment followed by substantial recovery. The rigid contractual logic of frustration is therefore poorly suited to psychiatric incapacity, which rarely aligns neatly with notions of permanent impossibility.

Second, frustration operates automatically by operation of law rather than through an employer's discretionary decision-making process. Once frustration is established, the contract is treated as discharged without the procedural protections typically associated with employment termination. This creates a direct tension with industrial justice principles, which emphasise procedural fairness, just cause, and employer accountability in dismissal decisions (Goon Kwee Phoy v J & P Coats (M) Bhd, 1981). If frustration is accepted too readily in mental illness cases, employers may effectively bypass safeguards intended to protect vulnerable employees.

Third, frustration lacks any accommodation-oriented analysis. The doctrine asks a narrow contractual question: whether performance has become impossible. It does not inquire whether reasonable workplace adjustments, temporary reassignment, modified duties, medical leave, flexible scheduling, or rehabilitation support could preserve the employment relationship. This omission reflects the doctrine's nineteenth-century contractual origins rather than modern employment law's growing recognition of disability accommodation and workplace inclusion (Freedland et al., 2016).

Fourth, psychiatric prognosis is often uncertain, dynamic, and clinically difficult to predict. Determining whether mental illness renders performance genuinely impossible, as opposed to temporarily impaired, is far more complex than traditional frustration doctrine assumes. Applying definitive contractual discharge to medically uncertain psychiatric conditions therefore risk serious legal injustice.

Comparative employment jurisprudence has increasingly approached frustration in incapacity cases with caution, particularly where illness may be temporary or manageable through accommodation (Collins et al., 2019). Malaysia's continued doctrinal reliance on frustration, without a more sophisticated employment law framework governing psychiatric incapacity, warrants substantial critical scrutiny.

Persons with Disabilities Act 2008

The Persons with Disabilities Act 2008 (PWDA) represents Malaysia's principal disability rights legislation and is potentially relevant to employment termination involving mental illness. Section 2 adopts a broad definition of disability, encompassing individuals with long-term physical, mental, intellectual, or sensory impairments which, in interaction with various barriers, may hinder full and effective participation in society.

On its face, this definition appears sufficiently broad to encompass certain psychiatric conditions, particularly where mental illness produces long-term functional impairment. This is an important conceptual development because it suggests that mental illness may be recognised not merely as a medical condition, but as a disability issue engaging broader equality and participation concerns.

However, the practical legal impact of the PWDA within employment termination disputes remains severely limited.

Unlike disability legislation in jurisdictions such as the United Kingdom or Australia, the PWDA does not establish robust enforceable anti-discrimination remedies specifically applicable to employment dismissal. Nor does it impose a clear statutory duty of reasonable accommodation requiring employers to adjust workplace conditions to facilitate continued employment for disabled workers (Ruzita Azmi et al., 2021).

This legislative weakness significantly reduces the Act's practical utility for mentally ill employees facing dismissal. While the statute symbolically recognises disability inclusion, its enforcement mechanisms remain comparatively weak, and Malaysian courts have not meaningfully integrated its principles into mainstream employment dismissal jurisprudence.

A further difficulty lies in conceptual ambiguity. Because the Act refers to long-term impairment, questions may arise regarding episodic psychiatric conditions such as depression, anxiety disorders, or bipolar disorder, where impairment may fluctuate over time. Without judicial clarification, uncertainty persists regarding the extent to which mentally ill employees fall within meaningful statutory protection.

Consequently, although the PWDA represents an important normative acknowledgement of disability rights, it remains largely ineffective as a practical employment protection mechanism for employees dismissed due to mental illness.

Mental Health Act 2001

The Mental Health Act 2001 provides statutory recognition of psychiatric illness within Malaysian law, yet its relevance to employment termination remains largely indirect and conceptually limited.

The Act was enacted primarily to regulate mental healthcare administration, psychiatric treatment, detention procedures, and the governance of mental health facilities. Its legislative focus lies in healthcare management rather than employment protection. Although the statute recognises mental disorders within the legal framework, it does not address the employment consequences of psychiatric illness.

This omission is significant. The Act contains no provisions governing dismissal, workplace accommodation, psychiatric fitness-to-work assessment, confidentiality in employment contexts, reintegration support, or anti-discrimination protection for mentally ill employees.

Thus, while the statute acknowledges mental illness medically, it remains silent on employment rights implications. This institutional separation between mental healthcare regulation and employment protection contributes to the broader fragmentation of Malaysian workplace mental health governance.

Preliminary Structural Critique

The principal weakness of the Malaysian legal framework is not the complete absence of legal instruments, but the absence of a coherent legal architecture specifically designed to regulate employment termination involving psychiatric illness.

The current framework remains characterised by fragmented statutory coverage, conceptual mismatch between legal doctrine and psychiatric realities, the absence of accommodation obligations, weak disability rights integration, and excessive reliance on retrospective dismissal litigation rather than proactive regulatory safeguards.

As a result, mentally ill employees remain positioned within a legal grey zone—recognised medically, acknowledged symbolically within disability discourse, yet inadequately protected within the practical realities of employment termination. This structural deficiency becomes even more apparent when Malaysian judicial treatment of incapacity-related dismissal is examined.

Judicial Foundations of Unfair Dismissal and Industrial Justice

In the absence of a dedicated statutory framework specifically regulating employment termination arising from mental illness, Malaysian courts play a critical role in shaping the legal principles governing incapacity-related dismissals. However, Malaysian employment jurisprudence has historically evolved around general industrial justice principles, disciplinary fairness, and contractual employment obligations rather than psychiatric incapacity. As a result, the judicial framework applicable to mentally ill employees remains indirect, fragmented, and conceptually underdeveloped.

The starting point is section 20(1) of the Industrial Relations Act 1967, which permits a workman who considers that he has been dismissed without just cause or excuse to seek reinstatement. Although the provision is framed broadly, Malaysian courts have consistently emphasised that the burden lies on the employer to establish lawful justification for dismissal.

In *Goon Kwee Phoy v J & P Coats (M) Bhd* [1981] 2 MLJ 129, the Federal Court firmly established that the central question in unfair dismissal litigation is whether the employer had just cause or excuse for the termination, rather than whether procedural formalities alone were observed. Raja Azlan Shah CJ emphasised that the Industrial Court must examine the substantive merits of dismissal and determine whether the alleged justification genuinely existed. This principle remains foundational in incapacity-related dismissal cases because termination arising from illness, whether physical or psychiatric, must still satisfy substantive fairness requirements.

Similarly, in *Wong Chee Hong v Cathay Organisation (M) Sdn Bhd* [1988] 1 MLJ 92, the Federal Court reaffirmed that industrial jurisprudence is grounded not in rigid contractual formalism, but in principles of equity, good conscience, and substantial justice. This doctrinal orientation is particularly significant in mental illness disputes, where purely contractual reasoning may inadequately reflect workplace vulnerability, medical uncertainty, and accommodation possibilities.

Procedural fairness principles were further reinforced in *Dreamland Corporation (M) Sdn Bhd v Choong Chin Sooi & Anor* [1988] 1 MLJ 111, where the court emphasised the importance of fair inquiry and procedural propriety in employment termination decisions. Likewise, in *Great Eastern Life Assurance Co Ltd v Industrial Court Malaysia & Anor* [1988] 2 MLJ 210, the Supreme Court reiterated that dismissal decisions are subject to judicial scrutiny for substantive fairness and proper industrial justice standards.

It must be acknowledged, however, that these leading authorities do not specifically concern psychiatric incapacity or mental illness-related dismissal. Their relevance lies in establishing the general framework of just cause or excuse, substantive fairness, procedural fairness and industrial justice. The difficulty is that, in the absence of a developed body of Malaysian psychiatric incapacity jurisprudence, these general principles are often left to perform work for which they were not specifically designed. This creates doctrinal uncertainty rather than a settled mental health employment doctrine.

This absence of tailored judicial principles creates a structural problem: courts are required to adjudicate mental illness-related dismissals using doctrines developed for fundamentally different employment disputes.

Medical Incapacity as a Ground for Lawful Termination

Malaysian courts have long recognised that genuine medical incapacity may constitute a lawful ground for employment termination where an employee becomes unable to perform contractual duties. This reflects the practical reality that employment relationships presuppose an employee's capacity to provide labour, and where such capacity is materially compromised, continuation of employment may become commercially or operationally untenable.

Nevertheless, the judicial treatment of incapacity remains overwhelmingly grounded in physical illness jurisprudence, with limited consideration of the distinct legal complexities presented by psychiatric conditions.

A frequently cited authority is *Sathiaval Maruthamuthu v Shell Oilfield Services (Malaysia) Sdn Bhd* [1998] 1 MLJ 883, where the court recognised that prolonged incapacity may, in appropriate circumstances, justify termination of employment. The reasoning reflects traditional employment law assumptions that sustained inability to work may fundamentally undermine the employment relationship.

However, the conceptual difficulty arises when this reasoning is extended to psychiatric illness. Physical incapacity cases typically involve comparatively clearer medical assessment, observable impairment, and more stable prognosis. Mental illness, by contrast, is often episodic, fluctuating, partially disabling, and clinically responsive to intervention. The reliance on physical incapacity authorities such as Sathiaval Maruthamuthu illustrates a broader limitation in Malaysian employment law. These cases are useful for establishing that genuine incapacity may justify termination in appropriate circumstances. However, they do not provide sufficient guidance for psychiatric incapacity, where impairment may be episodic, fluctuating, partially disabling and responsive to treatment or workplace adjustment. The issue, therefore, is not that the Malaysian courts have

produced a clear line of conflicting psychiatric-specific decisions, but that the available jurisprudence remains insufficiently tailored to mental illness.

This distinction is legally significant. A worker recovering from major depressive disorder may experience severe temporary incapacity without permanent inability to perform contractual obligations. Similarly, anxiety disorders or trauma-related psychiatric conditions may impair specific job functions without rendering the employee wholly incapable of productive work.

Thus, while incapacity may legitimately justify termination in principle, the uncritical extension of physical incapacity jurisprudence to psychiatric illness risks conceptual overreach.

A further issue concerns the binary judicial framing of incapacity. Traditional case law tends to approach incapacity in absolute terms: either the employee remains fit for work, or continued performance has become untenable. This framework inadequately captures the nuanced functional variability characteristic of psychiatric illness.

The absence of judicial recognition of partial capacity, workplace adjustment, or rehabilitation potential significantly weakens the adequacy of existing doctrine for mental health-related disputes.

Frustration of Contract and Incapacity in Employment Law

A more controversial doctrinal route in incapacity-related employment disputes is the doctrine of contractual frustration.

Under section 57(2) of the Contracts Act 1950, contracts become void where performance becomes impossible due to supervening events beyond the promisor's control. Although originally developed within general contract law, the doctrine has occasionally been invoked in employment relationships involving prolonged incapacity.

The common law doctrine was classically articulated in *Taylor v Caldwell* (1863) 3 B & S 826, where contractual obligations were discharged following destruction of the subject matter, and subsequently refined in *National Carriers Ltd v Panalpina (Northern) Ltd* [1981] AC 675, where the House of Lords emphasised that frustration applies only where circumstances fundamentally transform contractual obligations.

In employment law, however, frustration must be approached with caution.

The first difficulty is conceptual. Frustration presupposes impossibility or radical contractual transformation. Psychiatric illness rarely fits neatly within this framework because mental health conditions often involve temporary deterioration, partial incapacity, uncertain prognosis, or recoverability.

An employee suffering severe depressive illness may be temporarily incapable of functioning but capable of later recovery with treatment. Likewise, bipolar disorder involves episodic fluctuations rather than permanent impossibility. Applying frustration to such cases risks premature contractual discharge based on transient impairment.

The second difficulty concerns procedural fairness. Frustration terminates contracts automatically by operation of law, bypassing employer decision-making processes and, consequently, industrial justice safeguards associated with dismissal review.

This creates direct tension with the philosophy of section 20 of the Industrial Relations Act 1967, which assumes employer accountability for termination decisions.

The third difficulty lies in the absence of accommodation analysis. Frustration asks whether performance has become impossible—not whether reasonable workplace intervention could preserve the employment relationship.

Modern comparative employment law increasingly recognises this limitation.

In *Notcutt v Universal Equipment Co (London) Ltd* [1986] ICR 414, the English Court of Appeal accepted frustration following severe permanent incapacity. However, later jurisprudence has approached frustration more cautiously where recovery or accommodation remains plausible.

Thus, while frustration may be conceptually defensible in exceptional cases involving permanent incapacity, its application to psychiatric illness remains highly problematic.

Malaysia's continued doctrinal reliance on traditional frustration principles without mental health-specific safeguards exposes vulnerable employees to significant legal risk.

Psychiatric Illness and the Misclassification of Symptoms as Misconduct

One of the most legally underexamined risks within Malaysian employment law is the potential mischaracterisation of psychiatric symptoms as disciplinary misconduct rather than manifestations of medical incapacity. This issue is particularly significant because mental illness frequently manifests behaviourally in ways that may superficially resemble poor workplace conduct, including absenteeism, emotional dysregulation, reduced concentration, impaired communication, workplace conflict, diminished productivity, or failure to comply with managerial instructions (Brohan et al., 2012; Mishiba, 2020).

Unlike physical illness, where incapacity may be more visibly apparent and therefore more readily understood within workplace management structures, psychiatric conditions often remain invisible, misunderstood, or insufficiently disclosed due to stigma and fear of discrimination (Hassan et al., 2018; World Health Organization [WHO], 2022). Consequently, employers may interpret illness-related behavioural manifestations through conventional disciplinary frameworks rather than recognising their potential medical origin.

This distinction carries significant legal implications. Misconduct-based dismissal is premised upon employee culpability, wilful non-compliance, or breach of workplace obligations, whereas incapacity-based dismissal concerns an employee's diminished ability to perform work due to factors beyond their control (Freedland et al., 2016). Where psychiatric illness underlies workplace behaviour, the legal classification of such conduct becomes considerably more complex.

For example, repeated absenteeism associated with major depressive disorder may be viewed as attendance misconduct rather than illness-related incapacity. Similarly, emotional outbursts linked to anxiety disorders or trauma-related psychiatric conditions may be treated as insubordination or behavioural misconduct rather than manifestations of impaired mental functioning. This risks exposing mentally ill employees to disciplinary sanctions in circumstances where medical intervention or accommodation may be more legally appropriate.

Comparative jurisprudence has increasingly recognised this distinction. In *J v DLA Piper UK LLP* [2010] IRLR 936, the Employment Appeal Tribunal acknowledged the complexity of psychiatric impairment within employment disputes, particularly where mental illness affects workplace behaviour, decision-making, and employee interaction. Similar developments in disability discrimination jurisprudence emphasise the importance of distinguishing culpable misconduct from disability-related manifestations requiring accommodation (Bell, 2020; Lockton, 2019).

By contrast, Malaysian employment jurisprudence remains comparatively silent on this issue. Existing case law provides limited judicial guidance on how psychiatric symptoms should be assessed where workplace conduct deteriorates, creating uncertainty for both employers and adjudicators. This doctrinal silence is problematic because failure to recognise psychiatric causation may result in legally inappropriate dismissal, particularly where employers proceed without medical inquiry or adequate assessment of underlying mental health conditions.

The stigma surrounding mental illness further exacerbates this problem. Employees frequently avoid disclosure due to fears of reputational damage, discrimination, or adverse career consequences (Brohan et al., 2012). In such circumstances, employers may remain unaware of underlying psychiatric conditions, increasing the likelihood that illness manifestations are incorrectly treated as ordinary disciplinary matters.

The absence of clear judicial principles governing this distinction represents a significant weakness within Malaysian employment law, particularly as workplace mental health concerns become increasingly prevalent.

Procedural Fairness, Medical Evidence, and Employer Duties in Mental Illness-Related Termination

Procedural fairness constitutes a foundational principle of Malaysian industrial jurisprudence. Employment termination must not only be substantively justified, but must also comply with principles of fairness, proper inquiry, and evidentiary sufficiency (*Dreamland Corporation (M) Sdn Bhd v Choong Chin Sooi & Anor* [1988] 1 MLJ 111; *Great Eastern Life Assurance Co Ltd v Industrial Court Malaysia & Anor* [1988] 2 MLJ 210). However, the application of these traditional fairness principles becomes significantly more complex in cases involving psychiatric illness.

Mental illness raises evidentiary and procedural questions that differ materially from conventional disciplinary disputes or even physical incapacity cases. Psychiatric conditions may impair an employee's communication, concentration, judgment, emotional regulation, or ability to meaningfully participate in workplace investigations or disciplinary processes (American Psychiatric Association, 2022). As a result, ordinary procedural safeguards may prove insufficient where mental illness affects the employee's capacity to defend themselves or engage with workplace proceedings.

A critical unresolved issue concerns the evidentiary standards required before terminating employment on mental health-related grounds. Malaysian employment law provides limited guidance on whether employers must obtain formal psychiatric assessment, seek independent medical opinion, consider prognosis, or evaluate rehabilitation potential before proceeding with dismissal. This creates substantial uncertainty regarding the threshold of medical evidence necessary to justify termination.

This uncertainty is particularly problematic because psychiatric diagnosis and prognosis often involve greater clinical complexity than physical illness. Mental health conditions are frequently dynamic, episodic, and responsive to treatment, making definitive conclusions regarding incapacity inherently more difficult (WHO, 2022; International Labour Organization [ILO], 2022). A dismissal decision based solely on superficial behavioural observations or incomplete medical understanding risks serious procedural injustice.

Comparative employment law increasingly imposes structured procedural expectations in incapacity-related dismissal cases. Employers are often expected to obtain appropriate medical evidence, consult the affected employee, assess the feasibility of workplace adjustments, and consider whether continued employment remains possible through accommodation (Collins et al., 2019; Stewart et al., 2021). These procedural safeguards reflect recognition that incapacity-related dismissal should not be approached as an ordinary disciplinary matter.

Malaysia's current judicial framework does not clearly articulate equivalent obligations. There is little doctrinal guidance regarding whether employers must explore redeployment, temporary reassignment, reduced duties, flexible working arrangements, or phased return-to-work measures before termination. Nor is there meaningful judicial clarification regarding how fairness should be assessed where psychiatric illness impairs the employee's ability to respond effectively during disciplinary or incapacity proceedings.

This procedural gap leaves mentally ill employees particularly vulnerable. A worker experiencing severe anxiety, depression, or trauma-related impairment may be disadvantaged not only by their medical condition, but also by procedural mechanisms insufficiently adapted to psychiatric realities.

Consequently, although procedural fairness remains a recognised principle within Malaysian employment law, its application to mental illness-related termination remains inadequately developed.

Structural Judicial Limitations and the Absence of Psychiatric-Specific Guidance in Malaysian Employment Law

The judicial treatment of incapacity-related dismissal in Malaysia reveals broader structural limitations that undermine the adequacy of existing legal protection for mentally ill employees.

The first limitation is the overwhelming dominance of physical incapacity assumptions within judicial reasoning. Malaysian employment jurisprudence concerning incapacity has largely developed through cases involving observable physical illness, prolonged medical absence, or conventional incapacity scenarios. While these cases establish general principles concerning fitness for work and employer justification, they do not adequately account for the episodic, partially disabling, and clinically variable nature of psychiatric illness (Mishiba, 2020).

The second limitation lies in the continued influence of traditional contract law concepts, particularly frustration doctrine. As discussed earlier, contractual frustration is grounded in notions of impossibility and radical contractual transformation rather than accommodation, rehabilitation, or continued participation (Freedland et al., 2016). The persistence of such reasoning within employment disputes reflects a doctrinal framework insufficiently aligned with modern employment rights jurisprudence.

A third limitation is the absence of accommodation-oriented judicial reasoning. Existing judicial analysis tends to focus on whether the employee remains capable of performing contractual duties, rather than whether workplace intervention could preserve employment (Bell, 2020). This reflects a traditional incapacity model rather than a rights-based approach informed by disability inclusion principles.

The fourth limitation concerns the weak integration of disability rights jurisprudence into employment law. Although the Persons with Disabilities Act 2008 theoretically recognises mental impairment within broader disability discourse, Malaysian courts have not meaningfully incorporated disability accommodation principles into termination analysis (Ruzita Azmi et al., 2021). This creates a significant divergence from jurisdictions where disability law plays a central role in regulating psychiatric dismissal.

Finally, judicial doctrine remains procedurally underdeveloped in relation to psychiatric illness. Courts have not established coherent standards governing medical evidence, psychiatric assessment, employer consultation, accommodation inquiry, or fairness in incapacity management. This creates uncertainty for employers while simultaneously exposing vulnerable employees to inconsistent protection.

Taken collectively, these structural limitations reveal that Malaysian judicial doctrine remains insufficiently adapted to contemporary workplace mental health challenges. The concern is therefore better characterised as a lack of psychiatric-specific judicial development and doctrinal uncertainty, rather than as a fully demonstrated pattern of conflicting psychiatric case law.

Doctrinal Evaluation

The current Malaysian judicial approach to incapacity-related employment termination reflects an incomplete and conceptually inconsistent legal response to mental illness in the workplace. While the courts have recognised that incapacity may constitute lawful grounds for dismissal, the doctrinal framework remains overwhelmingly derived from traditional employment and contract law principles that were not designed to address psychiatric impairment.

The principal conceptual weakness lies in the legal treatment of mental illness as merely an extension of conventional incapacity. Psychiatric conditions differ materially from many physical incapacity scenarios because they are often fluctuating, partially disabling, treatable, and capable of accommodation rather than necessarily resulting in permanent inability to work (WHO, 2022). A doctrinal framework that relies primarily on binary notions of fitness versus incapacity therefore fails to capture the nuanced realities of mental health-related employment disputes.

Moreover, the absence of structured accommodation reasoning reflects a broader normative gap within Malaysian employment law. Modern comparative employment systems increasingly recognise that disability and mental illness should not automatically justify exclusion from employment where workplace adjustment remains possible (Bell, 2020; Stewart et al., 2021). Malaysian judicial doctrine has yet to meaningfully embrace this transition.

The judiciary's continued reliance on traditional contract-based reasoning, particularly frustration principles, further compounds this inadequacy. Contract law doctrines designed around impossibility are conceptually ill-suited to employment relationships increasingly governed by industrial justice, workplace equality, and disability inclusion (Freedland et al., 2016).

From a broader policy perspective, this doctrinal incompleteness creates uncertainty for all stakeholders. Employers lack clear legal guidance regarding their obligations when managing psychiatric incapacity, while employees face unpredictable protection depending on judicial interpretation rather than structured statutory safeguards.

Accordingly, the present judicial framework should be understood not as a coherent mental health employment doctrine, but as an improvised adaptation of older legal principles to emerging psychiatric workplace challenges. While functional in certain physical incapacity contexts, it remains insufficiently sophisticated to govern modern employment termination involving mental illness.

Accordingly, the central problem in Malaysia is not merely inconsistency in outcome, but the absence of a dedicated analytical framework for psychiatric incapacity. Courts are required to reason from general unfair dismissal principles, physical incapacity authorities and contractual doctrines such as frustration. This produces uncertainty because mental illness-related termination disputes require questions that existing doctrine does not directly answer whether psychiatric symptoms should be treated as misconduct or incapacity, what medical evidence is required, whether accommodation must be explored, and how temporary or fluctuating impairment should be assessed. This inadequacy becomes particularly apparent when compared with jurisdictions that have expressly integrated psychiatric disability protection, accommodation duties, and structured incapacity procedures into employment law governance.

Emerging International Trends in Mental Health Employment Protection

Recent developments in comparative employment law indicate a gradual shift away from traditional incapacity-based approaches towards accommodation-oriented and disability-inclusive models of employment protection. Increasingly, jurisdictions recognise that mental illness should not automatically justify exclusion from employment where continued participation remains possible through reasonable workplace adjustments, medical support, or structured return-to-work arrangements.

This trend reflects a broader movement towards viewing mental illness not solely as a question of contractual performance, but also as an issue involving equality, workplace inclusion, and disability rights. International policy frameworks developed by organisations such as the International Labour Organization and the World Health Organization likewise emphasise the importance of promoting workplace mental health, reducing stigma, and facilitating continued employment wherever reasonably practicable.

While a detailed comparative analysis falls beyond the scope of this article, these developments demonstrate that contemporary employment law increasingly recognises the limitations of traditional incapacity doctrines when applied to psychiatric conditions. They also provide useful context for evaluating the adequacy of the current Malaysian legal framework and for considering future legal reform initiatives.

Proposed Legal Reform Framework for Malaysia

The analysis undertaken in this article demonstrates that the current Malaysian framework governing employment termination involving mental illness remains fragmented and conceptually inadequate. Legal reform is therefore necessary to provide greater certainty for employers while ensuring fair treatment and protection for employees experiencing psychiatric conditions.

First, statutory recognition of mental illness within employment legislation should be strengthened. Existing legislation recognises mental illness primarily within healthcare and disability contexts but does not adequately address its implications for employment termination. Clear statutory provisions governing psychiatric incapacity

would assist both employers and courts in distinguishing genuine incapacity from ordinary performance or disciplinary concerns.

Second, Malaysian law should introduce a structured obligation requiring employers to consider reasonable workplace accommodations before proceeding with termination. Such measures may include modified duties, flexible working arrangements, temporary reassignment, phased return-to-work programmes, or other interventions capable of preserving employment relationships where practicable.

Third, termination decisions involving mental illness should be supported by appropriate psychiatric assessment and medical evidence. Given the fluctuating and often treatable nature of many psychiatric conditions, dismissal should not be based solely upon employer perceptions, behavioural observations, or assumptions regarding future incapacity.

Fourth, greater integration between employment law and disability rights principles should be encouraged. Although the Persons with Disabilities Act 2008 provides a degree of recognition for mental impairment, its influence on employment termination disputes remains limited. Future reform should seek to ensure that mental illness is assessed not merely through incapacity doctrines but also through principles of workplace inclusion, dignity, and equal participation.

Collectively, these reforms would move Malaysian employment law towards a more coherent framework capable of balancing legitimate employer interests with the rights, dignity, and rehabilitation prospects of employees experiencing mental illness.

CONCLUSION

The increasing prevalence of mental illness in contemporary workplaces presents significant challenges for employment law, particularly in jurisdictions where legal frameworks remain rooted in traditional concepts of physical incapacity and contractual performance. This article has demonstrated that the Malaysian legal framework governing employment termination involving mental illness remains fragmented, conceptually underdeveloped, and insufficiently responsive to the realities of psychiatric incapacity.

The analysis reveals that while Malaysian law provides general mechanisms through the Industrial Relations Act 1967, Employment Act 1955, Contracts Act 1950, Persons with Disabilities Act 2008, and Mental Health Act 2001, these instruments do not collectively establish a coherent legal regime specifically addressing mental illness in employment termination. The legal treatment of mentally ill employees is instead shaped indirectly through general employment doctrines, contract law principles, and limited disability recognition, resulting in uncertainty regarding both employer obligations and employee protections.

A central weakness identified in this article is the continued reliance on legal concepts developed primarily for physical incapacity or ordinary contractual impossibility. Psychiatric illness presents fundamentally different legal challenges. Unlike many physical conditions, mental illness is often episodic, fluctuating, partially disabling, non-visible, and potentially responsive to treatment or workplace accommodation. Traditional incapacity models based on binary notions of fitness or incapacity therefore fail to adequately capture the functional complexity of psychiatric impairment.

The judicial analysis further demonstrates that Malaysian employment jurisprudence remains insufficiently adapted to mental illness-related disputes. While the courts have consistently upheld the principle that dismissal must be supported by just cause or excuse and must satisfy standards of industrial justice, existing case law does not provide a dedicated analytical framework for psychiatric incapacity. Judicial reasoning remains heavily influenced by physical incapacity assumptions, conventional misconduct analysis, and, in some circumstances, contractual frustration doctrine. These doctrinal approaches may be workable in certain traditional incapacity contexts, but they are conceptually ill-suited to employment disputes involving mental illness.

Particularly concerning is the risk that psychiatric symptoms may be mischaracterised as disciplinary misconduct rather than recognised as manifestations of illness. Similarly, the absence of clear procedural standards regarding

psychiatric assessment, medical evidence, employer consultation, accommodation consideration, or structured incapacity management exposes mentally ill employees to inconsistent and potentially unfair treatment.

The article therefore concludes that Malaysian employment law does not presently offer a sufficiently coherent or principled legal response to employment termination involving mental illness. Rather than constituting a distinct body of mental health employment protection, the current framework represents an improvised extension of older legal doctrines to modern psychiatric workplace challenges.

As workplace mental health becomes an increasingly prominent issue in labour governance, the continued reliance on outdated incapacity and contractual models risks undermining both industrial justice and employee dignity. A more conceptually coherent legal framework is therefore necessary to ensure that employment law reflects contemporary understandings of psychiatric illness and the evolving realities of modern workplaces.

REFERENCES

1. American Psychiatric Association. (2022). Diagnostic and statistical manual of mental disorders (5th ed., text rev.). American Psychiatric Publishing.
2. Archibald, J. (2004). Archibald v Fife Council [2004] UKHL 32.
3. Ashgar Ali Ali Mohamed, Farheen Baig Sardar Baig, & Arun Kasi. (2019). Workplace stress: The employer's liability. [2019] 2 MLJ cxxxiv.
4. Brohan, E., Henderson, C., Wheat, K., Malcolm, E., Clement, S., Barley, E. A., Slade, M., & Thornicroft, G. (2012). Systematic review of beliefs, behaviours and influencing factors associated with disclosure of a mental health problem in the workplace. BMC Psychiatry, 12, 11. https://doi.org/10.1186/1471-244X-12-11
5. Chan, C. M. H., Ng, S. L., In, S., Wee, L. H., & Siau, C. S. (2021). Predictors of psychological distress and mental health resource utilization among employees in Malaysia. International Journal of Environmental Research and Public Health, 18(1), 314. https://doi.org/10.3390/ijerph18010314
6. Chua, S. N. (2020a). The economic cost of mental disorders in Malaysia. The Lancet Psychiatry, 7(4), e23.
7. Chua, S. N. (2020b). Workplace mental health: The business costs. Relate Mental Health Malaysia.
8. Collins, H., Ewing, K. D., & McColgan, A. (2019). Labour law (2nd ed.). Cambridge University Press.
9. Dreamland Corporation (M) Sdn Bhd v Choong Chin Sooi & Anor [1988] 1 MLJ 111.
10. Dul, J., Bruder, R., Buckle, P., Carayon, P., Falzon, P., Marras, W. S., Wilson, J. R., & Van Der Doelen, B. (2012). A strategy for human factors/ergonomics: Developing the discipline and profession. Ergonomics, 55(4), 377–395. https://doi.org/10.1080/00140139.2012.661087
11. East Lindsey District Council v Daubney [1977] ICR 566.
12. Freedland, M., Bogg, A., Davies, A. C. L., Countouris, N., & Prassl, J. (2016). The contract of employment. Oxford University Press.
13. Goon Kwee Phoy v J & P Coats (M) Bhd [1981] 2 MLJ 129.
14. Great Eastern Life Assurance Co Ltd v Industrial Court Malaysia & Anor [1988] 2 MLJ 210.
15. Hanafiah, A. N., & Van Bortel, T. (2015). A qualitative exploration of the perspectives of mental health professionals on stigma and discrimination of mental illness in Malaysia. International Journal of Mental Health Systems, 9, 10. https://doi.org/10.1186/s13033-015-0002-1
16. Hassan, M. F., Hassan, N. M., Kassim, E. S., & Hamzah, M. I. (2018). Issues and challenges of mental health in Malaysia. International Journal of Academic Research in Business and Social Sciences, 8(12), 1685–1696. https://doi.org/10.6007/IJARBSS/v8-i12/5288
17. Ilmarinen, J. (2009). Work ability—A comprehensive concept for occupational health research and prevention. Scandinavian Journal of Work, Environment & Health, 35(1), 1–5.
18. International Labour Organization. (2022). Mental health at work: Policy brief. International Labour Organization.
19. J v DLA Piper UK LLP [2010] IRLR 936.
20. Kirwan, B. (1994). A guide to practical human reliability assessment. Taylor & Francis.
21. Mallow, M. S. (2018a). Occupational stress in Malaysia: Causes, effects and possible solutions. [2018] 2 ILJ c.

22. Mallow, M. S. (2018b). Work life balance policy in Malaysia: The current position and the way forward. [2018] 3 ILJ cxxxvi.
23. National Carriers Ltd v Panalpina (Northern) Ltd [1981] AC 675.
24. Notcutt v Universal Equipment Co (London) Ltd [1986] ICR 414.
25. Reason, J. (1990). Human error. Cambridge University Press.
26. Ruzita Azmi, Ahmad, S. N. S., & Mustafa Kamil, B. A. (2021). Mental health issues at workplace: An overview of law and policy in Malaysia and the United Kingdom. International Journal of Law, Government and Communication, 6(22), 95–108. https://doi.org/10.35631/IJLGC.622009
27. Salvendy, G. (Ed.). (2012). Handbook of human factors and ergonomics (4th ed.). John Wiley & Sons.
28. Sathiaval Maruthamuthu v Shell Oilfield Services (Malaysia) Sdn Bhd [1998] 1 MLJ 883.
29. Soer, R., Van Der Schans, C. P., Geertzen, J. H. B., Groothoff, J. W., Reneman, M. F., Brouwer, S., & Dijkstra, P. U. (2008). Normative values for a functional capacity evaluation. Archives of Physical Medicine and Rehabilitation, 89(9), 1785–1794. https://doi.org/10.1016/j.apmr.2008.02.015
30. Stewart, A., Stanford, J., & Hardy, T. (2021). Creighton & Stewart's labour law (7th ed.). Federation Press.
31. Taylor v Caldwell (1863) 3 B & S 826.
32. Vita Food Products Inc v Unus Shipping Co Ltd [1939] AC 277.
33. Wong Chee Hong v Cathay Organisation (M) Sdn Bhd [1988] 1 MLJ 92.
34. World Health Organization. (2022). World mental health report: Transforming mental health for all. World Health Organization.