Chapter 3

(a) Pay Claims and Industrial Action
(b) Non-Legislative Resolution of Conflict (including Trade Unions)
(c) Industrial Relations Act 1990
(d) Labour Relations Commission and Labour Court (Workplace Relations Commission)
(e) Unfair Dismissals Act 1977/2007
(f) Employment Equality Act 1998 and Director Of Equality Tribunal
Chapter 3

(a) Non-Legislative Resolution of Industrial Conflict

2011 Q1 (C)

Describe how conflict between an employer and an employee could be resolved in a non-legislative manner. (15 marks)

MS: 15 marks (5+5+5). Only 3 points required from the 4 given below. Don’t discuss legal avenues like the LRC or Labour Court in your answer.

1. Meet and talk

This involves having a meeting between the individual employee and his/her employer to try and discuss the situation and clarify any difficulties. Assistance can be sought from the shop steward and/or the Human Resource Manager (grievance procedure).

2. Negotiation/agreement

The employer and the employee make a series of offers and counter offers intended to aim at a compromise in discussions to solve the conflict. They need to be prepared to make concessions/compromises. A timetable for the conclusion of the negotiations process needs to be put in place.

3. Conciliation

This could be a trusted third party that both sides see as unbiased. The conciliator will speak to the employer and the employee separately and then together, highlighting the others point of view. The conciliator encourages the parties to settle the dispute through continued negotiation.

4. Arbitration

This is non-legislative when done outside of the Labour Court with a trusted third party that both sides are happy to have arbitrate for them. With arbitration, both sides in the disagreement agree beforehand to an
independent third party’s intervention, investigation and judgement. They also agree beforehand on whether the arbitration outcome should be binding or non-binding.

2017 Q1 (B)

Evaluate negotiation, conciliation and arbitration as methods to resolve industrial conflict in the workplace.

1. Negotiation/Agreement
The employer and the employee make a series of offers and counter-offers in an attempt to reach a compromise to solve the conflict. (bargaining)
Each party needs to be prepared to make concessions/compromises. A timetable for the conclusion of the negotiation process needs to be put in place.

2. Conciliation
This could involve a trusted third party that both sides see as unbiased. The conciliator will speak to the employer and the employee separately and then together, highlighting the other’s point of view. The conciliator encourages the parties to settle the dispute themselves through continued negotiation. It is not legally binding.

3. Arbitration
This is non-legislative when done outside the Labour Court with a trusted third party that both sides are happy to have arbitrate for them. With arbitration, both sides in the disagreement agree beforehand to an independent third party’s intervention, investigation and judgement. They also agree beforehand on whether the arbitration outcome should be binding or non-binding.

Evaluation: In my opinion, conciliation is the best when solving a dispute as having a third party to encourage both sides to communicate better and listen to each other should bring about an agree decision, leaving both sides happier than arbitration.
(b) Industrial Relations Act 1990: Pay Claims and Industrial Action

2018 Q1 (B)

Illustrate the impact of trade disputes on any three stakeholders in a business. (15 marks)
MS: 3@5(2+3)

Employees
Employees will not be performing their duties resulting in conflict between them and management. They will not receive a wage during an official strike. Prolonged industrial action may result in financial hardship for the employees. Employees may become unmotivated/unproductive.

E.g. teachers didn’t get paid when they went on an official strike with ASTI

Customers/consumers
The disruption to the business caused by a work to rule or official strike will result in consumers being unable to purchase products/services. They may lose faith in the brand/may change to another brand/business.

When Ryanair pilots went on strike, several flights were cancelled.

Investors
Trade disputes are bad publicity for the business. Share price may fall, reducing the market value of the investor’s stake. Prolonged industrial action will reduce profit levels and the chance of a dividend being paid to investors at the end of the year. Investors may sell their shares.
When Ryanair pilots went on strike, Ryanair’s share price dropped.

**Management / Employer**
More management time and effort required to resolve conflict rather than focusing on the goals of the business. Management must follow agreed codes of practice. This distraction may lead to production delays and wastage. It may also reduce their ability to encourage intrapreneurship among employees.

Many people called for Michael O’Leary to stand down as Ryanair chief, following the industrial action his pilots took

**Other:**
**Suppliers/Service Providers**
Suppliers and Service Providers are normally paid after their product or service is sold. This period of time (credit) may be extended due to industrial action. They may not be able to sell their products or have their accounts due paid on time.

**Government**
If the dispute is an official strike, the ceasing of business activity will reduce taxation revenue such as PAYE, VAT, and CPT for government. Business may close down requiring government payment of social welfare.

**Entrepreneur**
The entrepreneur will be less likely to introduce new ideas as there is conflict in the business.

**With appropriate example**
UNIT 1

The Business Guys

2014 Q1 (A)

(i) Outline three factors that can lead to industrial disputes in business.
(ii) Discuss two types of official industrial action available to employees involved in an industrial dispute with their employers. (25 marks)

MS: (i) 3 @ 4 (2+2) (ii) 7(4+3) + 6(4+2).

Part (i)
1. Disputes over pay
Workers may launch a variety of different pay claims, e.g. cost of living claim, comparability claim or relativity claim. If the employer resists or rejects these pay claims it could lead to industrial disputes. E.g. The Luas drivers went on strike over pay in 2016.

2. Disputes over working conditions/duties
Workers may feel that management haven’t provided enough training or pay increases for a change to their working conditions or duties. For example, teachers in dispute over changes to duties attached to correcting the new Junior Cycle examination.

3. Redundancies
Employees may strike if they feel that an employee has been unfairly made redundant. They may also strike if they feel management have picked whichever workers they wanted to get rid of rather than using a fair system to choose employees for redundancy like a Last In, First Out system.

Part (ii)
Employees could carry out an Official Strike where they would not enter their workplace and do not do their work. An official strike involves a secret ballot, one week’s notice to the employer and one that is officially sanctioned by their trade union. Picketing takes place outside.

Employees could only undertake the exact jobs written in their job description or contract of employment, which is called Work-to-rule. No flexibility is provided by staff to meet urgent or unforeseen requirements. Workers follow the rules of their employment contracts to the ‘letter of the law’. For example, nurses not answering phones on wards as it isn’t specified in their contract.
2015 Q9 Short

Distinguish between primary picketing and secondary picketing as types of industrial action available to employees.

**MS:** 6m (3+3) + 4m. Best point is given 6 marks; second is for 4 marks.

**Primary picketing**

Stated in the Industrial Relations Act 1990. Employees walk up and down outside their place of employment holding placards to peacefully protest against their employers.

**Secondary picketing**

If a second employer was assisting the employer that the original dispute was with (frustrating the resolution of the conflict), then employees can peacefully picket at that employer’s premises.

2011 Q7 Short

Outline two types of industrial action that employees could take in an attempt to get employers to meet their demands

**MS:** 5m x 2 (3m + 2m)

**Token Stoppage**

Workers stop working for a short period of time to highlight their concerns about a dispute. For example, bus drivers all pulling in to the side of the road for one minute during rush hour.

**Overtime Ban**

Workers can refuse to work additional hours outside of their contract. This can frustrate employers in times of peak trading, like at Christmas.

(Official Strike and Work To Rule are also acceptable as answers.)
2016 Q2 Short

(a) Define the term Trade Dispute
(b) Outline two types of official industrial action available to employees involved in an industrial dispute with employers:

MS: (a) 4m (2+2) (b) 2 x 3m (2+1)

(a) A Trade Dispute is defined as any dispute between employers and workers which is connected with the employment or non-employment or the terms or conditions of employment of any person.

(b) as above
Outline two functions of the Labour Relations Commission.

Rights Commissioner service

They investigate disputes, grievances and claims that individuals or small groups of workers refer under specific legislation and issue the findings of their investigations in the form of either decisions or non-binding recommendations.

Types of Relations they Investigate

Rights Commissioners can only deal with disputes about unfair dismissal, suspension, maternity leave and disciplinary procedures.

Conciliation Service

Conciliation is a voluntary process in which the parties to a dispute agree to avail of a neutral and impartial third party to assist them in resolving their differences. They get both sides to see each-others opinions and encourage them to partake in the resolution of the problem rather than providing a solution.

Resolution of Conflicts

Solutions are reached only by consensus, whether by negotiation and agreements facilitated between the parties themselves, or by the parties agreeing to settlement terms proposed by the conciliation officer.
Evaluate the role of the Labour Court in dealing with industrial disputes. (20 marks)

MS: 4 x 5m (2m + 3m) – This is more likely to be 3 x 6m (3+3) + 2m evaluation.

Investigates Industrial Disputes

The court, acting as a last resort, asks employer and employees to submit their cases in writing. It can then summon witnesses and make them give evidence under oath, allowing the truth to be told in disputes.

To Hear Appeals against Equality Officer’s Ruling

The Labour Court can hear employee or employer appeals following recommendations from an Equality Officer made on discrimination cases. The Court can hear the matter again and make a binding decision on the matter.

Register Collective Agreements

The Court can register collective agreements made between employers and employees. This makes the agreement legally binding on both sides. This allows referral to the Labour Court by either party if there is a breach in the agreement.

Evaluation

In my opinion, I think the Labour Court does an excellent job because it allows confidence in the agreement as they are registered and made binding by the Court, and also, if you aren’t happy with the outcome of a recommendation, you are able to call witnesses and have your case testified under oath meaning people can’t lie about happenings.
2013 Q7 Short

Explain the term ‘Constructive Dismissal’.

**MS: 10m (6m + 4m)**

Constructive dismissal arises where you, the employee, **terminate your own contract of employment due to the conduct of your employer**.

The employee feels they have been **treated poorly to make them quit**, instead of the employer offering redundancy to the employee. In a constructive dismissal situation, it is up to the employee to prove that the resignation was justified.

2010 Q9 Short

Outline **three** grounds for **fair** dismissal under the terms of Unfair Dismissals Act 1977/93.

**MS: 1@ 4 marks (2+2) 2@3 marks (1+2)**

1. **Incompetence on the part of the employee**

The employee **lacks ability to carry out required duties** (poor work performance; failure to meet set targets).

2. **Qualifications (misrepresentation by the employee)**

Lack of **formal technical or professional qualifications** as appropriate for the work the employee was employed to do/misleading employer in relation to qualifications. Employees must be given adequate time to upskill if a new qualification is introduced while they are employed.

3. **Misconduct by the employee**

Improper/unacceptable behaviour by the employee, e.g. theft, substance abuse, violence at work. Others: redundancy; incapability; legal reasons (e.g. visa/permit expired).
2018 Q1 (C)
Under the terms of the Unfair Dismissals Acts 1977 to 2007, explain the grounds for dismissal that are deemed to be fair (20 marks)

MS: 2@7(4+3) 1@6(3+3)

Incapability
This includes issues such as persistent lateness, and absenteeism either short-term or long-term. The employer will be expected to have documentary proof of this allegation, such as clocking-in records or documented absences on file that are not medically certified. In addition, your employer will also be expected to show that you were made aware of the problem and that you were warned as to the consequences for your continued employment.

Incompetence
Incompetence refers to your inability to do your job (poor work performance/failure to meet sales targets). In the first place, you need to be made aware of the standards that are expected of you, and these must refer to the job you were hired to do. Secondly, if you fall short of the required standard, this must be clearly explained to you. This should be done through a formal set of procedure. Your employer should also specify what improvements are necessary. These should be achievable and a reasonable timeframe must be allowed for the improvement. Ultimately, your employer should give you a final warning setting out the likelihood of dismissal.

Qualifications (misrepresentation by the employee)
Fair dismissal on grounds of qualifications can happen in two ways. One situation is where you misled your employer about qualifications you had when applying for the job. OR The other is where your employer made continued employment conditional upon your obtaining further qualifications and you failed to achieve this, having been given a reasonable opportunity to do so. Driver has a heavy goods license but fails to get a public service license.

Misconduct (improper and unacceptable behaviour)
Gross misconduct may give rise to instant (summary) dismissal without notice or pay in lieu of notice. Examples of gross misconduct include assault, drunkenness, theft, bullying or serious breach of your employer’s policies and practices.
Minor incidents, when taken together, constitute misconduct and are enough to warrant dismissal, although your employer is obliged to give you notice or pay in lieu of notice in this type of situation.

**Redundancy** (due to closure, competition, decline in demand)
In this case your employer needs to show that a redundancy situation exists as your job is no longer required and therefore the dismissal is fair. This means that there is an economic justification for the redundancy; that you will not been replaced. Fair procedures must be applied (e.g. last in and first out).

**Contravening the law**
Your employer may dismiss you if your continued employment would contravene the law. For example, you need a current driving license to work, but you have lost your license on a drunk driving charge. You cannot continue to work without breaking the law and dismissal may be deemed fair. However, your employer might be expected to look at alternatives depending on all the facts of the case. Another example could be if an employee’s work visa expired/work permit.
Outline the procedures an employer should follow under the Unfair Dismissals Acts of 1977/2007, before dismissing an employee. (20 marks).

Counselling/Advice

Counselling (i.e. advice on how to improve) is given by supervisor and recorded on the employee’s personal record. The employer outlines what employee needs to do to rectify the situation. The employee is made aware of the consequences of not improving in their future performance.

Formal Verbal Warning

The employer has to inform the employee of the reasons for the possible dismissal. The evidence for the dismissal must be made known to the employee. This is given in the presence of the employee’s representative, e.g. a shop steward. The employee is given the opportunity to respond fully to any such allegations or complaints. The warning is recorded on the employee’s personal record.

First Written Warning

If there is no change to the situation, a formal written warning follows the verbal warning. This may be followed by a final written warning, suspension without pay, demotion, some other appropriate disciplinary action short of dismissal and, finally, dismissal.

Employee’s Right of Appeal

The employee has the right to a fair and impartial determination of the issues concerned, taking into account any representations made by, or on behalf of, the employee and any other relevant or appropriate evidence, factors or circumstances.
(i) Outline two reasons for fair dismissal, as set out under the Unfair Dismissals Acts 1977-2007.
(ii) Explain the term constructive dismissal, providing an example to support your answer.

MS:

(i)
1. Incompetence on the part of the employee

The employee lacks ability to carry out required duties (poor work performance; failure to meet set targets).

2. Qualifications (misrepresentation by the employee)

If an employee was to mislead a potential or current employer in relation to qualifications they may hold. Employees must be given adequate time to upskill if a new qualification is introduced while they are employed.

3. Misconduct by the employee

Improper/unacceptable behaviour by the employee, e.g. theft, substance abuse, violence at work.

Others: redundancy; incapability; legal reasons (e.g. visa/permit expired).

(ii)
Constructive dismissal refers to a situation where an employer makes it so difficult for an employee that they feel they have no other option but to resign their position.

E.g. If an employee is constantly being harassed by his manager, who blames the employee for all problems in the business. The employee feels she has no option but to resign her position and leave the company rather than continue.
(e) Employment Equality Act 1998 & Director Of Equality Tribunal

2015 Q1 (C)

The Director of the Equality Tribunal (previously known as the Director of Equality Investigations) published 22 decisions during September 2013 in areas of discrimination that included gender and disability.


(ii) List three grounds other than gender and disability on which discrimination is outlawed under this Act.

(iii) Evaluate the role of the Director of the Equality Tribunal in dealing with discrimination under this Act. (30 marks)

**MS:**

(i) **Definition of Discrimination:** 10m (7+3).

(ii) **List three grounds on which discrimination is outlawed:** 9m (3 @ 3m).

(iii) **The role of the Director:** 9m (3 @ 3m) + 2m evaluation.

*A very similar question was asked in 2009.

(i) An employee is said to be discriminated against if he or she is treated in a **less favourable way** than another employee is, has been, or would be treated (in a comparable situation) on any of the nine distinct grounds.

(ii) Civil (marital) status · Family status · Sexual orientation · Religion · Age · Race · Membership of the Traveller community

(iii) The Director **decides** whether discrimination cases should be examined by the **Equality Mediation Officers**, who deal with the case in a conciliatory manner, or by an **Equality Officer**, who follows a more **formal** approach.

The Director makes the **final decision** and it can be appealed to the Labour Court within **42 days**.

The Director **refers** the complaint to an **Equality Mediator**, who facilitates both parties to reach a mutually acceptable agreement.

**Evaluation:** In my opinion, I think their role is very important as they investigate thoroughly but still protect names in sensitive cases which are published afterwards.