Chapter 3 - Non Legislative Resolution of Conflict

2011 Q1 (C) Describe how conflict between an employer and an employee could be resolved in a non-legislative manner. (15 marks)
Don’t discuss legal avenues like the LRC or LC in your answer 15 marks (5+5+5) only 3 points required from the 4 given below

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).

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.

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.

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 before hand on whether the arbitration outcome should be binding or non-binding.
Chapter 3 - Industrial Relations Act 1990, Pay Claims and Industrial Action

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)

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 stroke over pay in 2016.

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. E.g. Teachers in dispute over changes to duties attached to correcting the Junior Certificate in 2016.

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.

(ii)
Official Strike
Employees do 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 sanctioned by ICTU. Picketing takes place outside.

Work-to-rule
Where employees only undertake the exact jobs written in their job description or contract of employment. 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’. E.g. Nurses not answering phones on wards as it isn’t specified in their contract.

*See also 2011 Q7 Short for more acceptable responses*
2015 Q9 Short - Distinguish between primary picketing and secondary picketing as types of industrial action available to employees.
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 employers premises.

2011 Q7 Short - Outline two types of industrial action that employees could take in an attempt to get employers to meet their demands 5m x 2 (3m + 2m)

*Official Strike and Work To Rule also acceptable as per 2014 Q1 (A) solution*

**Token Stoppage**

Workers stop working for a **short period** of time to **highlight their concerns** about a dispute. E.g. Bus Drivers all pulling in to the side of the road for 1 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.
Chapter 3 - Labour Relations Commission

The Labour Relations Commission is now the Workplace Relations Commission https://www.workplacerelations.ie/en/

2014 Q8 Short - Outline two functions of the Labour Relations Commission
10m (5m x 2 (3m + 2m))

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.
Chapter 3 - Labour Court

2008 Q1 (C) 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.
Chapter 3 - Unfair Dismissals Act 1977/2007

2013 Q7 Short – Explain the term ‘Constructive Dismissal’ (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 having to offer 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 - 1@ 4 marks (2+2) 2@3 marks (1+2)

Incompetence on the part of the employee.

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

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.

Misconduct by the employee.

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

Others: Redundancy; Incapability; Legal Reasons (Visa/permit)
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.
Chapter 3 - 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)

(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) They decides whether discrimination cases 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.

Refer the complaint to an Equality Mediator, who facilities 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.