

Chapter 3 - IR - Past Questions

1 (2018)

1	(A)	(i)	<p>Frustration An unforeseen event prevents the contract from being completed/ Something happens which makes it impossible to complete the contract. The death of the singer makes it impossible to complete the contract.</p>	(2+2)
1	(A)	(ii)	<p>Breach If one of the parties does not perform his/her side of the bargain/contractual obligation i.e. does not honour the promises made, the contract is said to have been repudiated. The party is in breach of a condition/essential element of the contract. The second party has the right of action in the courts against the first party who caused the breach/entitled to compensation.</p> <p><i>Any appropriate example:</i> A builder employed to build a conservatory/sun room but built a room with only one window. The second party can take the builder to court.</p> <p>Agreement The parties to the contract may agree to end/bring the contract to a conclusion by mutual consent/ whether or not the purpose of the contract has been achieved.</p> <p><i>Any appropriate example:</i> A contract of employment may be ended by agreement if it includes a clause stating for example that the contract can be terminated if one month's notice is given.</p>	3@7 (2+3+2)
			<p>Performance Both parties to the contract carry out their duties as required by the contract/the contract is executed according to the agreed terms.</p> <p><i>Any appropriate example:</i> A band is booked to perform at a wedding. They perform as agreed.</p>	

1	(B)	<p>Possible responses include:</p> <p><u>Employees</u> 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.</p> <p>Any appropriate example:</p> <p><u>Customers/consumers</u> 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.</p> <p>Any appropriate example:</p> <p><u>Investors</u> 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.</p> <p>Any appropriate example:</p>	3@5(2+3)
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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.

Any appropriate example:

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.

Any appropriate example:

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.

OR

Government agencies such as the Workplace Relations Commission may get involved to bring the dispute to a timely solution. This involves resources and time.

Any appropriate example:

Entrepreneur

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

Any appropriate example:

1	(C)	<p><u>Incapability</u> 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</p> <p><u>Incompetence</u> 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.</p> <p>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.</p> <p><u>Qualifications</u> (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.</p>	2@7(4+3) 1@6(3+3)
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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 be 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.

2.	<p>(a) Define the term Trade Dispute 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 (example of any condition of employment).</p> <p>(b) Outline two types of official industrial action available to employees involved in an industrial dispute with employers:</p> <ul style="list-style-type: none"> • Official Strike (complete withdrawal of labour). This involves workers picketing outside the premises of their employer to highlight the industrial dispute taking place. Employees hold a secret ballot, receive union approval and give their employer one week's notice of strike action. Secondary picketing where employees picket another premises if that other business is assisting their employer to complete work, thereby frustrating the industrial action. • Work-To-Rule/ Go Slow where employees do their work as per their employment contract and will not complete any extra duties outside of those stated in the contract. Action in which employees protest against an employer by doing their job as per the contract but doing it at such a slow pace that it frustrates the employer. • Overtime ban where workers refuse to do overtime. This can cause major disruption, leading to lost orders and lost sales, especially at peak trading times e.g. an airline during holiday season. • Token stoppage which involves a brief stoppage of work to highlight their frustration, and intended to carry the threat of further more serious action if agreement is not reached. 	10
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9	<p>Distinguish between <i>Primary Picketing</i> and <i>Secondary Picketing</i> as types of industrial action available to employees.</p> <p><i>Primary picketing.</i> According to the Industrial Relations Act 1990 it is lawful for worker to walk up and down with placards at a place where their employer works or carries on business provided the picketing is for the purpose of peacefully communicating information.</p> <p><i>Secondary picketing.</i> The act provides that secondary picketing (i.e. picketing of an employer, other than the primary employer involved in the dispute) is lawful only in situations where it is reasonable for those workers picketing to believe that the second employer was acting to frustrate the industrial action by directly assisting their employer.</p>	10
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1	A	<p>i Outline three factors that can lead to industrial disputes in business.</p> <p><u>Disputes over pay</u> 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. There have been disputes recently in the ESB and Aer Lingus over pension funds and pension entitlements.</p> <p><u>Disputes over working conditions/duties</u> Workers are motivated by different needs. Safety is a fundamental need for employees. Failure by management to provide safe working conditions, safe equipment, proper hygiene and adequate heating can lead to industrial disputes. Aer Lingus-Cabin Crew seeking roster changes.</p> <p><u>Redundancy</u> Disputes may occur over redundancy if workers feel that unfair procedures for selection are being used or if redundancy payments are not adequate e.g. employers may wish to 'cherry pick' employees for redundancy while a trade union representing the employees may favour a LIFO system.</p> <p><u>New Technology</u> Workers may resist the introduction of new technology if they believe that the employer has not provided adequate training or financial reward for their increased productivity.</p> <p><u>Demarcation</u> Differences in pay and conditions of work between similar groups of workers.</p> <p><u>Trade Union Recognition/ Unfair Dismissal/ Discrimination</u></p>	25
		<p>ii Discuss two types of official industrial action available to employees involved in an industrial dispute with their employers.</p> <p>Official Strike where the employees do not enter their workplace and do not do their work. An official strike involves a secret ballot, proper notification to the employer (i.e. one week's notice) and sanction by ICTU.</p> <p>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'.</p> <p>Overtime ban where workers refuse to do overtime. This can cause major disruption, leading to lost orders and lost sales, especially at peak trading times e.g. a toy shop at Christmas, an airline during holiday time.</p> <p>Token Stoppage A brief stoppage of work intended to carry the threat of further, more serious action if agreement is not reached.</p>	

7.	6 marks + 4 marks	10
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7. Explain the term 'Constructive Dismissal'.

- Constructive dismissal arises where **you the employee terminate your contract of employment**, with or without prior notice, **due to the conduct of your employer**.
- Even though the employee has not actually been dismissed he can claim unfair dismissal against his employer, under the terms of the Unfair Dismissals Act of 2007.
- In a constructive dismissal situation it is up to the **employee** to prove that the resignation was justified.
- Your employer's conduct, however, must be such that it would have been reasonable for you to terminate your contract without giving notice.

6 (2012)

(A) *Outline the procedures an employer should follow before dismissing an employee, under the terms of the Unfair Dismissals Act of 1977-2007.*

All dismissals are presumed to be unfair unless the employer can prove otherwise. The burden of proof lies with the employer. The employer must show that there were substantial grounds for justifying the dismissal, e.g. misconduct such as theft or assault caught on CCTV.

- 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.

- 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. 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 oral warning. A copy will be given to the employee's representative.

This may be followed by a final written warning, suspension without pay, transfer to another task, or section of the enterprise, 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.

- Employer Duties/Responsibilities

The employer must recognise the employees right to representation at a hearing into the dismissal and the hearing itself must be impartial.

Other points: The employer is required to give the Procedure for Dismissals (i.e. Handbook for Employees) to all employees/Written copy of the reasons for dismissal must be forwarded to the employees within 14 days of the dismissal.

(20 marks)

(B) A legal contract can be terminated by breach, frustration or agreement.

Illustrate your understanding of the underlined terms.

A contract may be terminated:

By Breach

If one of the parties does not perform his/her side of the bargain/contractual obligation i.e. does not honour the promises made, the contract is said to have been repudiated. The party is in breach of a condition/essential element agreed. The second party has the right of action in the courts against the first party who caused the breach/compensation.

Example: A condition of the contract states that the furniture is to be black leather. When it is delivered it is red and polyester. This is a fundamental breach of a condition of the contract and the buyer is entitled to seek redress (i.e. rescind, seek damages, seek specific performance).

By Frustration

An unforeseen event prevents the contract from being completed. Something happens which makes it impossible to complete the contract

Example: The death or bankruptcy of one of the parties to the contract.

By Agreement

The parties to the contract may agree to end/cancel a contract by mutual consent whether or not the purpose of the contract has been achieved.

Example: A contract of employment may be ended by agreement if it includes a clause stating the contract can be terminated if one month's notice is given.

(20 marks)

(C) Evaluate the role and functions of the National Consumer Agency (NCA) in protecting consumers.

The main functions of the National Consumer Agency (NCA) in protecting and promoting the interests and welfare of consumers are:

	<p>The main role/functions of the NCA are:</p> <ul style="list-style-type: none">• To promote and protect the interests and welfare of consumers. To inform consumers of their rights/publish shopper's rights leaflets/ provide a consumer phone service/website.• To enforce the relevant consumer law. Enforcement tools include prohibition notices, undertakings from traders, compliance notices, on the spot fines for offences relating to price display, and the ability to "name and shame" with the publication of non-compliant trader names. These powers include the right to enter premises, get documentation and other evidence in relation to any trade or business which is being investigated. <p>Enforcement role in relation to pricing and price displays and a product safety role when it comes to items such as personal protective equipment- like GAA helmets or toys. Prohibits false pricing, e.g. goods advertised as being reduced in a sale must have been on sale at the higher price for twenty eight consecutive days (in a row) sometime in the last three months.</p> <ul style="list-style-type: none">• To encourage compliance with the relevant law/ to investigate suspected offences under any of the relevant laws.• To refer cases to the Director of Public Prosecutions where appropriate.• To conduct research into consumer issues/attitudes. Responsibility for market surveillance of non-food consumer products. It enforces product safety legislation, investigates complaints about unsafe products, alerts consumers and advises manufacturers, suppliers and retailers.• To conduct pricing surveys to raise awareness of price differences.• To advise the government of the impact of laws on consumers and make recommendations on legislation or policy, which concerns or is likely to impact on consumer protection and welfare.
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Evaluation The NCA is very effective because it is a statutory body, is an advocate for the consumer and has enforcement powers for example:

-The NCA can serve a compliance notice on a trader whom it considers to have engaged in a prohibited activity. The NCA has the power to enter premises to gather evidence, with the support of the Gardaí if necessary. The trader has 14 days in which to appeal the notice. If the trader fails to comply, the NCA may take criminal proceedings.

-Publication of a Consumer Protection List; a list of traders convicted of criminal offences, subject to court orders, bound by an undertaking, served with a compliance notice, or subject to a fixed payment notice.

-The National Consumer Agency may also apply to the court for an order that requires a business to pay compensation for any loss or damage to the consumer resulting from an offence.

(20 marks)

(60 marks)

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

A Non-legislative approach should be the first strategy in a conflict resolution process between employees and employer.

It means that the parties involved are not using any law or body set up under a law to resolve the conflict.

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). Employee may seek help from the union head office and the employer may seek help from IBEC.

Negotiation/agreement

Discussion occurs between the disputants who are trying to work out a solution to their problem. The employer and the employee make a series of offers and counter offers intended to aim at a compromise. Both need to be aware of their bottom line and their ideal outcome. They need to be prepared to make **concessions/compromises**. A timetable for the conclusion of the negotiations process needs to be put in place.

Independent Third Party Intervention:

- Conciliation. 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.
- Mediation. The mediator presents his/her own proposals/recommendations to resolve the conflict. It is a useful form of intervention if both parties are in 'lock-jam' and are not prepared to listen any longer to each other. However, the parties themselves must solve the dispute.
- Arbitration. 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.

(15 marks)

1. Official Strike where the employees do not enter their workplace and do not do their work. An official strike involves a secret ballot, proper notification to the employer (i.e. one week's notice) and sanction by ICTU. Work stoppage or token strike is where the employees stop work for a short period of time to highlight their concerns.
2. Work to rule where employees only undertake the exact jobs written in their job description/contract. No flexibility is provided by staff to meet urgent/unforeseen requirements.
3. Overtime ban where workers refuse to do overtime. This can cause major disruption, especially at peak trading times e.g. A toy shop at Christmas..

The main provisions (any 3 required):

1. **Trade Dispute** as defined by the **Industrial Relations Act 1990** is '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'.

The following issues may give rise to a legitimate trade dispute: dismissal, employment policy, range of duties, trade union membership, pay and conditions, health and safety at work.

2. **Secret Ballots**

Under the provisions of the **Industrial Relations Act 1990** no strike or other industrial action can take place without a secret ballot.

All members are given a fair opportunity of voting.

The act also provides that the union should not organise or participate in industrial action without a majority of votes having been cast in favour of industrial action.

The union must make known to the members (entitled to vote) the results of a secret ballot as soon as practicable after the vote.

One week's notice of action must be given to the employer involved in a dispute.

3. **Official disputes unofficial disputes and Injunctions**

Official dispute is one where a union has received approval from workers in a secret ballot and is confirmed by ICTU.

Unofficial disputes have no ICTU or union approval and workers receive no strike pay.

According to the **Industrial Relations Act 1990** organisers of unofficial disputes do not have legal protection against being sued by their employer.

If trade union members engage in an illegal dispute then an employer can get an **injunction** (a court order restricting certain activities) against the workers involved.

4. **Picketing**

Primary picketing. According to the **Industrial Relations Act 1990** it is lawful for workers to picket peacefully at a place where their employer works or carries on business provided the picketing is for the purpose of peacefully communicating information.

Secondary picketing. The act provides that secondary picketing (i.e. picketing of an employer other than the primary employer involved in the dispute) is lawful only in situations where it is reasonable for those workers picketing to believe that the second employer was acting to frustrate the industrial action by directly assisting their employer.

5. Immunity

The **Industrial Relations Act 1990** states the trade unions and workers are immune from legal action/prosecution for damages or losses suffered by the employer as a result of a trade dispute. This means an employer cannot sue a trade union and its members for losses suffered as a result of a strike (provided it is an official trade dispute) and a secret ballot (members must have voted in favour of the industrial action) was held by the trade union before the strike action.

A (ii) Describe two types of official Industrial action a trade union can undertake as part of a trade dispute.

1. Work to Rule/ Overtime Ban:
 - They only work as per their contract.
 - They follow the rules of their employment contracts to the 'letter of the law'.
2. 'Go Slow'
 - They stay on their jobs but drastically slow down the operations, sometimes making it impossible for the business to operate.
 - As they are still at work they are entitled to get paid.
3. Official Strike is organised, by unions, so as to comply with the law. It is a complete withdrawal of labour. Workers are entitled to strike pay. Certain conditions must be met in advance of any strike taking place.

(B) Evaluate the role of each of the following in protecting consumers.

(i) Small Claims Court: www.courts.ie

Deals with consumer complaints relating to goods or services purchased, for private use from somebody selling them in the course of business. Maximum damages are €2,000.

(Since January 11, 2010 the Small Claims Court Service is available to businesses pursuing claims against other businesses).

Deals with consumer claims such as faulty goods, bad workmanship and minor damage to privately owned property.

- Both sides get to make their case and are encouraged to reach an agreed settlement.
- Decision made by the registrar of the court is not legally binding but is usually accepted.
- It is possible to pursue small claims through this service against product and service providers in any EU state, except Denmark.
- Appeals can be made through the District Court and heard before a judge.

9. Grounds for fair dismissal.

- (i) **Incompetence on the part of the employee.** The employee lacks ability to carry out required duties (poor work performance; failure to meet set targets).
- (ii) **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.
- (iii) **Misconduct by the employee.** Improper /unacceptable behaviour by the employee e.g. theft, substance abuse, violence at work.
- (iv) **Redundancy.** Due to closure, competition, decline in demand, cutbacks (fair procedures applied).
- (v) **Incapability** refers to employee's attendance i.e. persistent lateness, absenteeism or extended sick leave
- (vi) **Legal Reasons.** If continuation of the job was to break the law in some way e.g. if an employee's work visa expired etc.

(C)The role of Labour Court (evaluate):

- The Labour Court investigates industrial dispute and issues recommendations for their settlement.
- The Labour Court must only investigate a dispute if it receives a report from the LRC that nothing more can be done to solve the dispute.
- If the LRC is unwilling to investigate the dispute or if the Labour Court and the LRC agree that exceptional circumstances warrant its intervention.
- Investigates, at the request of the Minister for Enterprise Trade and Employment, trade disputes affecting the public interest, or conducts an enquiry into a trade dispute of special importance and reports on its findings.
- If both sides to a dispute request the intervention of the Labour Court and agree to be bound by its recommendations then the Labour Court recommendation is binding on both sides.
- Establishes Joint Labour Committees which produce employment regulation orders enforceable in law.
- Registers, varies and interprets employment agreements.
- Registers Joint Industrial Councils.
- Interprets codes of practice.
- Acts as a court of appeal.

Evaluation/judgement on role of Labour Court

- Very effective dispute resolution mechanism. The Labour Court has intervened and solved seemingly intractable disputes e.g. public transport disputes
- The Labour Court has resolved disputes that the LRC has failed to resolve
- Draws its authority from its voluntary participation of the parties involved in a dispute. Less formal than a court of law.
- The Labour Court has the respect and confidence of all parties in IR. Its recommendations are not binding on either party but carry the moral authority.

9. Employment Discrimination

Any 5 of the 9 grounds as follows:

- 1 Gender
- 2 Marital Status
- 3 Family Status
- 4 Sexual orientation
- 5 Religious Belief
- 6 Age
- 7 Disability
- 8 Race
- 9 Membership of the Travelling community

(i) Legitimate trade dispute (define):

A trade dispute means any dispute between employers and workers that is connected with the employment or non-employment, or the terms or conditions of (or affecting) the employment of any person.

A legitimate trade dispute can result from any of the following issues:

- Pay and conditions of employment
- Physical conditions of work
- Employee dismissal
- The employment policy of an employer
- The range of duties required of employees
- Trade union recognition in the work place
- Improvement on statutory conditions, redundancy, etc.

(ii) Role of Labour Relations Commission (explain):

The role of the Labour Relations Commission (LRC) is to have general responsibility for promoting the improvement of industrial relations through the provision of a range of services to employers, trade unions and employees. These include:

- Conciliation service
- Rights Commissioner service
- Industrial relations advisory service
- Appointment of equality officers and the provision of staff and facilities for them
- Assisting Joint Labour Committees and Joint Industrial Councils in the exercise of their functions
- Reviewing and monitoring developments in the area of industrial relations.

(B) Unfair Dismissals Act 1977/1993

- (i) Grounds for fair dismissal (explain)
- Incompetence on the part of the employee
 - Qualifications (misrepresentation by the employee)
 - Misconduct by the employee, e.g. theft, etc.
 - Redundancy.
- (ii) Redress for unfair dismissal (describe and illustrate)
The redress awarded can be of three types:
- Reinstatement of the employee
 - Re-engagement of the employee
 - Monetary compensation up to a maximum of two years' salary.

Appeals for redress are dealt with by a Rights Commissioner or the Employment Appeals Tribunal (EAT).

SECTION 1 – SHORT ANSWER QUESTIONS – 50 MARKS**1. Arbitration**

Arbitration is where the settlement of a dispute (conflict) is sent before one or a group of independent (impartial) persons for adjudication.

The parties to the dispute agree in advance to the arbitration process and that the arbitration decision will be binding on them.

The main type of disputes dealt with by arbitration are ones that concern:

- The conditions of general contracts. e.g. travel agents with customers for holidays, building contracts for houses, etc.
- Industrial relations agreements between (employees) trade unions and employers.

