

GX1425

NATIONAL UNIVERSITY OF IRELAND, GALWAY
FACULTY OF LAW

SEMESTER II EXAMINATIONS - SUMMER 1998/99

**BACHELOR OF CORPORATE LAW - THIRD YEAR
OCCASIONAL STUDENTS**

LABOUR LAW II (LW216)

Mr. G. Whyte
Mr. M. O'Connor

Time Allowed: **TWO** Hours. ERASMUS students have **2½** Hours
Answer **THREE** Questions

1. *"It is important to stress that the 48 hour limit is a health and safety measure.... It would be unprecedented to allow an individual employee to opt out of a health and safety requirement.... health and safety legislation is never optional and it would be a retrograde step if we were to import the concept of voluntary acceptance of risk to our health and safety law."* Minister Eithne Fitzgerald, debate at the second stage of the Organisation of the Working Time Bill. Although nobody is allowed opt out of the provisions of the Organisation of Working Time Act 1997 the Act has provided a soft landing pad for employers generally, and is particularly flexible for certain industries. Please discuss.

2. Adam is employed as an editor with a local newspaper and has been for three years. In recent times there have been rumours in the locality that he had developed a serious gambling problem, however there is little evidence to show that this has affected his honesty at work. He has however been frequently late for editorial meetings and on a few occasions other staff have had to carry out his functions in advance of publication. Since January of this year it has become apparent that the newspaper have now transferred most of his functions to another member of staff and Adam has had little to do except make the coffee. He can no longer make a call from his desk and incoming calls are diverted to the other members of staff. He still holds the title of editor but feels that he has effectively been made redundant. He has consulted you to seek your advice on what to do next and has instructed you as follows:
 - (a) the company has failed to train him properly in respect of changing technology and in particular the use of computers;
 - (b) due to cut backs last year secretarial staff have been reduced;
 - (c) targets set by the company for circulation of the paper are excessively and unreasonable high;
 - (d) decisions were taken concerning the future direction of the paper without any references to him;
 - (e) While there has been allegations that Adam has used the company telephone for making overseas calls to racetracks in Melbourne and elsewhere these allegations have not been put directly to Adam and he has only become aware of them through second hand information. The paper has been sued a number of times for libel arising out of editorial decisions made in good faith by Adam;
 - (f) Adam is openly bi-sexual;

Advise Adam in relation of his options from a legal position. In particular consider any difficulties that he may have in establishing a claim under the Unfair Dismissals Act as amended. Outline the various remedies that he may pursue.

PTO

3. Clive is a salesman with Irish Strife Limited. In recent months he has noticed serious changes in his terms and conditions of employment including withdrawal of a petrol allowance, failure to notify him of up-coming conferences, failure to invite him to the company social, and other subtle differences in treatment. In view of the above Clive has decided the time has come to look for greener pastures with some other company and duly resigns without going through any of the established grievance procedures within the company. Some weeks after having left his employment Clive discovers through a former colleague that the company had been in discussions for some time with Irish Temporary PLC and that Irish Temporary PLC were about to take over Irish Strife. Clive feels very aggrieved that his employer failed to disclose this fact to him when he resigned as Clive has a background in mortgage lending and now feels he could have been promoted within the new company given his skills. His solicitor's letter to this effect has been served both on Irish Strife and on Irish Temporary PLC and you are asked to advise both companies as to a position they should adopt. You are instructed by these companies that while discussions had taken place on a proposed transfer at the date of Clive's resignation, in fact no such transfer took place until two weeks after he had resigned. Advise both of the companies, refer to relevant case law.
4. *"The Parental Leave Act 1998 when considered in conjunction with other leave entitlements seriously undermines the contractual obligation of a worker to carry out his or her side of the contract of employment"*. Please discuss.
5. Outline and assess critically the changes made to Unfair Dismissals law by the Unfair Dismissals (Amendment) Act, 1993.
6. The recent proposal by the trade union movement to press for de facto mandatory trade union recognition is a far cry from the legal position as set out in the judgments of the High Court and particularly the Supreme Court in NUR - v - Sullivan [1947] IR. 77. Discuss.
7. Assess the effect of Nolan Transport (Oakland's Limited) vs. Halligan and others, Supreme Court 15th May 1998 on the area of liability of trade unions for industrial action.