

**SEMESTER II EXAMINATIONS - SUMMER 1998/99**

**LL.B. - SECOND, THIRD & FOURTH YEAR  
BACHELOR OF CORPORATE LAW - THIRD YEAR  
OCCASIONAL STUDENTS**

**ALTERNATIVE DISPUTE RESOLUTION (LW371)**

**Professor W. Duncan  
Mr. R. Murphy**

Time allowed: **TWO** Hours, ERASMUS students have **2½** Hours.

Answer **THREE** Questions.

1. *"Mediation differs from arbitration in that the role of the neutral third party in arbitration is to consider the issues and then to make a decision which determines the issues and is binding on the parties. The neutral third party in mediation does not have any authority to make any decision for the parties, nor is that the mediators role or function"* (Brown and Marriott). Discuss
2. The plaintiff hired the defendant to carry out construction work at his factory. The defendant accepted the contract on the basis that the terms of the Royal Institute of Architects (RIAI) of Ireland standard contract would apply. The letter of acceptance was not formally acknowledged, but the work went ahead as agreed. A dispute arose between the parties and the plaintiff has instituted proceedings in the High Court for breach of contract and negligence. The defendant is aware that the RIAI standard form contract contains an arbitration clause. Advise the defendant.
3. *"The problem solving approach to negotiation is very helpful to ADR practice, which seeks effective consensual approaches. Roger Fisher and William Ury developed their particular form of principled, problem solving negotiation in their now almost classic book, Getting to Yes: Negotiating Agreement Without Giving In, which proposes certain negotiation principles."* (Brown and Marriott). Discuss.
4. In the course of a long and protracted property arbitration between Galway Corporation and Murphy, Murphy requested that the arbitrator refer a question of law in relation to the assessment of compulsory property acquisitions to the High Court under Section 35 of the Arbitration Act, 1954. The arbitrator refused on the basis that there were adequate precedents that he could follow, and it did not concern a real and substantial issue. Murphy applied to the High Court for an order pursuant to Section 35 directing the arbitrator to state a question of law in the form of a special case for the decision of the court. Advise the arbitrator
5. *"In recent years, the courts have demonstrated a marked reluctance to interfere with the arbitration awards where it is alleged that the conclusions of fact or of law in them are wrong or are unsustainable."* (Ford). Discuss.