Chapter 15: Wrongful dismissal
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1. Consider the attractions of a legal regime that enables an employer to terminate an employee's contract of employment by providing the employee with (a) reasonable notice or (b) summary notice.

   Author's answer: First, it would be a regime that was favourable to employers. Some economists argue that this will result in lower unemployment because individuals who are summarily fired or fired on reasonable notice will find an alternative job very quickly. In other words, the labour market will be bigger with more labour and vacant posts available at any one time. Of course, the counterargument is that such an expanded labour market will simply depress wages, since a greater pool of available labour will drive down earnings. Another attraction of such a flexible legal regime would be that employees would have to continually up-skill and re-skill, owing to the constant threat of losing their job. Moreover, they are likely to expend greater effort in their work. On the other hand, studies show that workers in flexible labour markets with little job security tend to be less innovative, since they have no incentive to invest in firm-specific skills and innovation where the benefits accrue entirely to their employers.

2. Now list the disadvantages of such legal regimes. Which of the two options do you prefer and why?

   Author's answer: The main advantage of laws regulating dismissals based on employment-at-will (i.e. a summary notice dismissal regime) and wrongful dismissal (i.e. a reasonable notice dismissal regime) is the economic flexibility that it offers to both employers and employees. Not only are employees entitled to quit with no or few restrictions, but so are employers. Moreover, the labour market becomes elastic, leading to better rates of supply and demand for labour in the economy. In this way, the main benefits of such regimes are said to be economic. On the other hand, the main deficiencies are social, political and also economic to the extent that liberal dismissal regimes can lead to social exclusion with the growth of an underclass of unemployed, which leads to political difficulties. There are also the economic arguments that the absence of job security impacts on worker innovation and firm-specific investment: if workers feel that their employment is precarious and at risk at any time, they will not invest in firm-specific investments or engage in innovative processes to the benefit of their employers. Of course, which of these arguments one prefers is dependent on one's attitude to economics, politics, social, etc. issues. The net effect is that there is no 'right' answer to this question.

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3. Why is the 'automatic' versus 'elective' debate of any practical relevance?

   Author's answer: The question whether the 'automatic' or 'elective' theory of termination applies is not a dry or arid debate that is completely irrelevant, or divorced from, practice. Instead, it is of central importance to all workplace disputes regarding the timing of the termination of a contract of employment. If the automatic theory applies, the date of termination of an employment contract will fall on a date earlier than if the elective theory is applicable. This is an inevitable by-product of the application of the automatic theory. The issue will be significant where it is crucial that an employee is in employment at a particular date in order to be eligible for the payment of a particular sum of money, or to be entitled to receive a contractual benefit. A key example is supplied by the facts of the *Geys*

decision itself: if the elective theory applied, the employee's termination date would be later in time, thus permitting him to benefit from a particular contractual payment. However, if the automatic theory applied, termination would have occurred earlier, leading to the denial of the contractual benefit.