
Employment Law And Business Transfers: A Practical Guide

Fraser R. Younson

Sweet & Maxwell

EMPLOYMENT LAW
AND BUSINESS TRANSFERS:
A PRACTICAL GUIDE

Published in 1989 by
Sweet & Maxwell Limited
South Quay Plaza,
183 Marsh Wall, London
Computerset by MFK Graphics,
Hitchin, Herts
Printed by Butler & Tanner,
Frome, Somerset

British Library Cataloguing in Publication Data
Employment law & business transfers: a practical guide.
1. Great Britain. Business firms. Personnel. Rights
344.104' 12596

ISBN 0-421 40530-9

All rights reserved. No part of this publication
may be reproduced or transmitted, in any form or
by any means, electronic, mechanical,
photocopying, recording or otherwise, or stored in
any retrieval system of any nature, without the
written permission of the copyright holder and the
publisher, application for which shall be made to the
publisher.

ACKNOWLEDGEMENTS

The task of writing a book whilst practising as a busy employment lawyer, is not one to be taken lightly. It makes unreasonable demands on others who may have to take some of the strain. The author is therefore indebted to his colleagues in Baker & McKenzie's employment and pensions departments for their comments and suggestions, and in particular to Melanie Tether (also an employment lawyer) for her very helpful suggestions on style and content.

The author also wishes to thank (again) the legal researchers from IDS Brief and Industrial Relations Legal Information Bulletin for their continued accurate and fast reporting of cases, and HMSO for its permission to reproduce various extracts of legislation contained in Appendix C. Thanks is also due to the publishers for their patience and suggestions during the editing and production stages of this book.

Finally, but not least, I thank my wife, Gilly, for her support, patience and understanding during the preparation of this book.

F.R.Y.

PREFACE

In most companies, the workforce is one of its most important assets. So where its control or business is transferred to a third party, it is bound to have widespread repercussions for employees. Prior to 1982, the law provided them with little by way of employment protection. Most certainly there was no obligation upon the transferee of the business to offer them employment or to maintain their existing terms and conditions. However, the EEC "Business Transfer" Directive required the United Kingdom Government to implement its provisions; and this was put into effect by the Transfer of Undertakings (Protection of Employment) Regulations 1981.

The effect of these Regulations has been to introduce into the commercial equation, that makes up a business disposal or acquisition, an employment cost or liability in respect of the vendor's employees. The principle behind the Regulations is to place the purchaser into the vendor's shoes in respect of employment matters—*i.e.* the vendor's employees automatically transfer into the purchaser's employment together with their terms and conditions of employment. The result is a need for the purchaser to recognise the costs and liabilities that it will inherit from the vendor and make provision for the imminent and contingent liabilities that the Regulations create. There are also pitfalls for the vendor—especially where the purchaser requires the vendor to effect changes prior to the completion of the transaction (*e.g.* to make redundancies).

This book is, therefore, a practical guide to the employment law matters which need to be borne in mind in the context of business and share transfers. The first half explains the legal ramifications; and the second half is a practical approach (including sample documentation) indicating how to deal with those employment law problems. This book will therefore be of assistance to vendors and purchasers of companies and businesses, and their legal and financial advisors. It will also be very helpful to senior personnel advisers by pointing them in the direction of potential pitfalls.

It is important to note that this book deals with the employment law issues not only arising out of business transfers but also in respect of share transfers. The former concerns the transfer of business assets in the nature of a "going concern" and the latter with a change of ownership in the controlling shares of a company. Although the employment law ramifications in respect of the former are more pronounced, it should not be forgotten that some of them appear in respect of share transfers. However, this book does not deal with pensions schemes in the context of business or share transfer, except as these form part of employment law rights.

Throughout this book, the terms "vendor" and "purchaser" have been used to represent the transferor and the transferee of a business. This has been done to make the text more readable and because, in most cases, business transfers will be conducted between vendors and purchasers. However, it is important to

note that the principles applied to vendors and purchasers, apply equally to other transferors and transferees. For example, it is now clear that the employment law implications of the Transfer Regulations (*sic*) also apply on the grant and surrender of certain business tenancies or licences, concessions, franchises and the provision of services. In this context, the licensor or landlord may on the surrender of a business franchise or licence be treated as the transferee of the business operated under that licence or franchise.

The Transfer Regulations are not drafted in the simplest of legal language and are designed to be superimposed on existing employment protection and the common law. Whilst the author has tried to deal with some of the more technical and academic issues thrown up by the wording of the Regulations, this book is primarily a practical one. It highlights the problem areas and makes suggestions on how these might be tackled; and in this respect he has drawn on the practical experiences of his own and his colleagues in Baker & McKenzie's employment department. The law is correct as at March 1989.

Fraser Younson

Baker & McKenzie
Aldwych House
Aldwych
London WC 2
March 1989

ABBREVIATIONS

All E.R.	All England Law Reports
C.A.	Court of Appeal
Ch.D.	Chancery Division Law Reports
C.M.L.R.	Common Market Law Reports
C.R.E.	Commission for Racial Equality
C.S.	Court of Session
E.A.T.	Employment Appeal Tribunal
E.C.J.	European Court of Justice
E.O.C.	Equal Opportunities Commission
E.P.A.	Employment Protection Act 1975 (as amended)
E.P.C.A.	Employment Protection (Consolidation) Act 1978
H.C.	High Court
H.L.	House of Lords
I.C.R.	Industrial Cases Reports
I.R.L.R.	Industrial Relations Law Reports
I.T.R.	Industrial Tribunal Reports
K.I.R.	Knights Industrial Reports
N.I.R.C.	National Industrial Relations Court
Q.B.	Queens Bench Law Reports
Transfer Regulations	Transfer of Undertakings (Protection of Employment) Regulations 1981
T.U.L.R.A.	Trade Union and Labour Relations Act 1974
W.L.R.	Weekly Law Reports

TABLE OF CASES

<i>Abels v. The Administrative Board of the Bedrijfsvereniging Voor de Mentaal Industrie en de Electrotechnische Industrie</i> , [1987] 2 C.M.L.R. 405; ECJ.....	76, 84
<i>Adams v. GKN Sankey Ltd.</i> , [1980] I.R.L.R. 416; E.A.T.	130
<i>Air Canada v. Lee</i> , [1978] I.C.R. 1202; [1978] I.R.L.R. 393; E.A.T.	167
<i>Allen & Son v. Coventry</i> , [1979] I.R.L.R. 399, [1980] I.C.R. 9; E.A.T.....	139
<i>Anderson v. Kluwer Publishing Ltd and Buckley Press Ltd</i> , [1985] unreported (COIT 15068/85); IT.....	43, 65
<i>Anderson & McAlonie v. Dalkeith Engineering Ltd</i> , [1985] I.C.R. 66, [1984] I.R.L.R. 429; E.A.T.....	98, 103, 104, 105
<i>Apex Leisure Hire Ltd v. Barrett</i> , [1984] I.C.R. 452, [1984] I.R.L.R. 224, [1984] 3 All E.R. 795; E.A.T.....	54, 70
<i>Applebee v. Joseph Allnatt Centres</i> , [1981] unreported (E.A.T. 292/80); E.A.T.....	16
<i>Armour (Hamish) v. Association of Scientific, Technical and Managerial Staffs</i> , [1979] I.R.L.R. 24; E.A.T.	180
<i>Association of Pattern Makers and Allied Craftsmen v. Curvin Ltd.</i> [1978] I.R.L.R. 318; E.A.T.	177
<i>Association of University Teachers v. University of Newcastle-upon-Tyne</i> , [1987] I.C.R. 317, [1988] I.R.L.R. 10; E.A.T.....	167
<i>Atkins v. Ward, Haines & Watts</i> , [1983] I.C.R. 231, [1983] I.R.L.R. 285, E.A.T... 20, 32	
<i>Avonmouth Construction Co. Ltd. v. Shipway</i> , [1979] I.R.L.R. 14; E.A.T.	173
<i>B.I.F.U. v. Barclays Bank plc & Others</i> , [1987] I.C.R. 496, [1987] I.R.L.R. E.A.T.....	21, 30, 32, 42, 54, 118, 120, 121, 125, 128
<i>Bakers' Union v. Clarks of Hove Ltd.</i> , [1978] I.C.R. 1076, [1978] I.R.L.R. 366, [1979] 1 All E.R. 152, (C.A.).....	180
<i>Bannister & Others v. Brasway plc</i> , [1983] unreported [COIT 1377/49], IT... 60, 105, 177	
<i>Barratt Developments Ltd. v. Union of Construction Allied Trades and Technicians</i> [1978] I.C.R. 319, [1978] I.R.L.R. 408, E.A.T.....	178
<i>Batchelor v. Premier Motors (Romford) Ltd. & Petropolis Ltd.</i> [1982] unreported (COIT 1359/181); IT.....	70, 109, 146
<i>Berg v. Besselsen</i> [1988]; (unreported) E.C.J. Case No. 144/87).....	77
<i>Bonk (P.) International AS v. Foreningen AF Arbejdsledere I Danmark</i> [1989] I.R.L.R. 41; E.C.J.....	21, 22, 24, 35, 36, 56, 57, 106, 107, 109
<i>Botzen v. Rotterdamsche Droogdok Maatschappij BV</i> , [1986] 2 C.M.L.R. 50; E.C.J.	65
<i>Bristol Channel Shiprepairers Ltd. v. O'Keefe</i> , [1978] I.C.R. 691; E.A.T.....	172
<i>British Leyland (U.K.) Ltd. v. McQuilken</i> , [1978] I.R.L.R. 245; E.A.T.	113
<i>British Leyland (U.K.) Ltd. v. Swift</i> , [1981] I.R.L.R. 91, (C.A.).....	102, 170
<i>Bromby & Hoare Ltd. v. Evans & Another</i> , [1972] I.T.R. 76, [1972] I.C.R. 113, N.I.R.C.	167
<i>Brook Lane Finance Co. Ltd. v. Bradley</i> , [1988] I.R.L.R. 283, E.A.T.....	58, 67, 138
<i>Brooks v. The Grays Co-operative Society</i> , [1967] I.T.R. 345; IT	41
<i>Bullard v. Marchant</i> , [1986] I.C.R. 389; E.A.T.....	49, 101
<i>Canning v. Niaz</i> , [1983] I.R.L.R. 431, E.A.T.	102
<i>Carry All Motors Ltd. v. Pennington</i> , [1980] I.C.R. 806, [1980] I.R.L.R. 455; E.A.T.	167
<i>Cartwright v. Norton</i> , [1982] unreported (E.A.T. 91/82); E.A.T.....	26, 34
<i>Chapman & Elkin v. CPS Computer Group</i> , [1987] I.R.L.R. 462, (C.A.)....	68, 134, 167
<i>Chapman v. Wilkinson</i> , [1968] I.T.R. 39; (H.C.).....	20
<i>Chubb Fire Security Ltd. v. Harper</i> , [1983] I.R.L.R. 311; E.A.T.	175
<i>Clarke & Powell v. IMI (Eley) Kinnock</i> [1983] I.C.R. 165.....	91
<i>Cook v. Kingston-upon-Hull City Council</i> , [1983] unreported (E.A.T. 660/83); E.A.T.....	12
<i>Cowen v. Haden Ltd</i> , [1983] I.C.R. 1, [1982] I.R.L.R. 225; E.A.T.....	166
<i>Cox v. Wildt Mellor Bromley Ltd.</i> , [1978] I.C.R. 736, [1978] I.R.L.R. 157; E.A.T.	172
<i>Craggs v. Sutherland Training & Trading Co. Ltd.</i> , [1983] unreported (COIT 1420/84); IT.....	42

Crompton v. Truly Fair (International) Ltd., [1975] I.C.R. 359; (H.C.)	17
Cross International v. Reid & Others, [1985] I.R.L.R. 387; E.A.T.	171
Dabell v. Vale Industrial Services (Nottingham) Ltd. & Others, [1988] I.R.L.R. 439; (C.A.)	12, 34, 60
Daisley v. Leicester Light Transport Ltd., [1986] unreported (COIT 1405); IT	63
Dallow Industrial Properties Ltd. v. Else, [1967] I.T.R. 304, [1967] KIR 253; H.C.	32
Deitman v. London Borough of Barnet, [1988] I.R.L.R. 299; (C.A.)	
Delabole Slate Ltd. v. Berriman, [1985] I.R.L.R. 305; (C.A.)	95, 100, 101, 132, 175
Dishman v. Mansfield Engineering Ltd. & Paterplan Ltd. (Unreported, COIT 1399/10)	32
Direct Radiators Ltd. v. Howse & Shepherd, [1986] unreported (E.A.T. 130/86); E.A.T.	63
Duffen v. Fuzzard & Marist Sisters, [1984] unreported (E.A.T. 352/83); E.A.T.	17
Duke v. GEC Reliance, [1988] I.R.L.R. 188; (H.L.)	9
EC Commission v. Belgium, [1986] 1988 2 C.M.L.R. 865; E.C.J.	8, 44, 80
Edgar v. Robert Elliott Ltd., [1986] unreported (E.A.T. 581/85); E.A.T.	31, 138
Evans & Gardiner v. Tri-R. Ltd. (unreported [1984] COIT 1550/57)	33
Fenton v. Staplegold Ltd., [1986] I.R.L.R. 64; E.A.T.	70, 71
Ferretti v. Southwark & Lambeth Archaeological Digs Ltd., [1984] unreported (COIT 1479/222); IT	42
Fielding (Harold) Ltd. v. Mansi, [1974] I.R.L.R. 79, [1974] I.R.E. 208; N.I.R.C.	139
Foreningen af Arbejdsledere i Danmark v. Daddy's Dance Hall, [1988] I.R.L.R. 315; E.C.J.	35, 38, 47, 59, 79, 133
Forth Estuary Engineering Ltd. v. Litster a, [1986] I.R.L.R. 59; E.A.T. [1988] I.R.L.R. 829; (C.A.)	37, 96, 104
Foster v. British Gas plc, [1988] I.R.L.R. 354; (C.A.)	9
Frazer v. Munroe (Teesside) Ltd. [1985] unreported SCOIT 6809/85; IT	24
Freud v. Bentalls Ltd., [1982] I.R.L.R. 443, [1983] I.C.R. 77; E.A.T.	173
G.D. Ault (Isle of Wight) Ltd. v. Gregory, [1967] I.T.R. 301; (H.C.)	20, 21, 32
GEC Energy Systems Ltd. v. Grufferty, [1988] unreported E.A.T. 590/87; E.A.T.	105
G.K.N. Sankey Ltd v. National Society of Motor Mechanics, [1980] I.C.R. 148; E.A.T.	181
Gateway Hotels Ltd. v. Stewart & Others, [1988] I.R.L.R. 287; E.A.T.	98
Gorietree Ltd. v. Jenkinson, [1984] I.R.L.R. 391, [1985] I.C.R. 51; E.A.T.	102
Green & Sons (Castings) Ltd. v. Association of Scientific, Technical and Managerial Staffs, [1984] I.R.L.R. 135, [1984] I.C.R. 352; E.A.T.	123, 179
Green v. Wavertree Heating & Plumbing Co. Ltd., [1978] I.C.R. 928; E.A.T.	31
Gunton v. Richmond-upon-Thames L.B.C., [1980] I.R.L.R. 321, (C.A.)	
Hadden v. University of Dundee Students Association, [1985] I.R.L.R. 449; E.A.T.	28, 36, 41
Hair Control Consultants v. Mena, [1984] I.C.R. 671, [1984] I.R.L.R. 386; E.A.T.	140
Hansford v. Mumford Ltd. & Evans, [1983] unreported (COIT 1476/49); IT	71
Hardy v. Jirjis, [1984] unreported (COIT 1569/153); IT	25
Harris v. Fiesana Ltd., [1983] unreported (COIT 1474/167); IT	84
Hill v. Parson (C.A.) Ltd., [1972] 1 Ch.D. 305, [1971] 3 All E.R. 1345; (C.A.)	130
Hollister v. National Farmers Union, [1979] I.C.R. 542; (C.A.)	174
Huddersfield Parcels Ltd. v. Sykes, [1981] I.R.L.R. 115; E.A.T.	173
Hyde v. Inebriated Newt Ltd. and Kennedy Brooks plc, [1985] unreported (COIT 1696/204); IT	
I.P.C.S. v. Secretary of State for Defence, [1987] I.R.L.R. 373; (H.C.)	122, 123
Jettle v. Elster, [1985] I.R.L.R. 227, [1985] I.C.R. 389; E.A.T.	19, 139
Johnson v. Notts Combined Police Authority, [1974] 1 W.L.R. 358, [1974] 1 All E.R. 1082, [1974] I.R.L.R. 20, [1974] I.C.R. 170; (C.A.)	167
Johnstone v. Sketchley Contract Cleaning Services Ltd., [1985] unreported (COIT 1674/151); IT	28

Journey's Friend Ltd. v. Hayes & Another, [1985] unreported (E.A.T. 707/84); E.A.T.	23, 24
Jowett (Angus) & Co. Ltd. v. National Union of Tailors and Garment Workers, [1985] I.C.R. 646, [1985] I.R.L.R. 326; E.A.T.	75, 91, 126
Kenmir v. Frizzell & Others, [1968] 1 All E.R. 414, [1968] I.T.R. 159; (H.C.)13, 15, 19, 21, 27, 31	
Kennedy Brookes Hotel & Catering Ltd. v. Reilly & Cook, [1983] unreported (E.A.T. 563/82); E.A.T.	60
Kestongate Ltd. v. Miller, [1986] I.C.R. 672; E.A.T.	58
Land organisation en I Danmark v. Ny Mdle Kro [1989] I.R.L.R. 37; E.C.J... 22, 33, 35	
Litster v. Forth Estuary Engineering Ltd. [1989] unreported, 16.3.89; (H.L.). 10, 11, 20, 38, 50, 51, 55, 56, 66, 70, 84, 97, 98, 99, 105, 107, 108, 109, 132	
Lloyd v. Brassey, [1969] 1 All E.R. 382, [1969] I.T.R. 100, [1969] 2 W.L.R. 310; (C.A.).....	14, 17, 19
Loughran v. Coseley Community Services, [1984] unreported (COIT 1487/134); IT .	42
Lumley Insurance Consultants Ltd. v. Pruddah and TSB Trust Co., [1984] unreported (E.A.T. 150/83); E.A.T.	29
Macarthy's Ltd. v. Smith, [1980] I.R.L.R. 209; (C.A.).....	9
McDonough v. Wigan MBC, [1983] unreported (COIT 1417/196); IT.	42
McGrath v. Rank Leisure Ltd., [1985] I.C.R. 527, [1985] I.R.L.R. 323; E.A.T. ...	96
McLellan v. Cody & Cody, [1986] unreported (E.A.T. 14/86); E.A.T.	20, 27
McLeod v. John Rostron & Sons Ltd., [1972] I.T.R. 144; N.I.R.C.....	29, 31
McNally v. Welltrade International Ltd., [1978] I.R.L.R. 497; H.C.	146
Mannin Management Services Ltd. v. Ward, [1987] unreported (E.A.T. 253/87); E.A.T.	30
Marshall v. Southampton and South-West Hampshire Area Health Authority (Teach- ing) (No. 152/84), [1986] I.R.L.R. 140, [1986] 2 W.L.R. 780; E.C.J. - [1988] I.R.L.R. 325; IT.	9, 111
Martin v. Bond & White Ltd., [1988] unreported (E.A.T. 414/87); E.A.T.	14
May & Hassell (West) Ltd. v. Jansen, [1983] unreported (E.A.T. 525/83); E.A.T. 96, 100	
Meikle v. McPhail, [1983] I.R.L.R. 351; E.A.T.	10, 95, 97, 98
Melon v. Hector Powell Ltd., [1980] I.R.L.R. 477, [1981] I.C.R. 43; (HL)15, 16, 17, 21, 31	
Mikkelsen Danmols Inventar, [1985] C.M.L.R. 316; E.C.J.....	15, 57, 66
Modiwear Ltd. v. Wallis Fashion Group, [1981] unreported (E.A.T. 535/80); E.A.T.17, 19	
Mohammed v. Delaney, [1986] unreported (E.A.T. 606/86); E.A.T.	59
Moon & Others v. Homeworthy Furniture (Northern) Ltd., [1976] I.R.L.R. 298; E.A.T.	166
Murphy v. Epsom College, [1984] I.R.L.R. 271, [1985] I.C.R. 80; (C.A.)	167
N.A.T.T.K.E. v. Andego Enterprises Ltd., [1984] unreported (COIT 1603/80); IT. 125	
N.A.T.T.K.E. v. Rank Leisure Ltd., [1983] unreported (COIT 1388/134); IT120, 123, 124, 125	
N.U.D.B.T.W. v. Bradby (J.) & Co. (Saddleworth) Ltd., [1982] unreported (E.A.T. 557/80); E.A.T.	181
National Coal Board v. National Union of Mineworkers [1986] I.R.L.R. 439; (H.C.)	113
National Union of Gold, Silver and Allied Trades v. Albury Bros. [1979] 1 C.R. 84 .	117
National Union of Tailors & Garment Workers v. Ingram (Charles) & Co. [1977] 1 C.R. 530	117
National Union of Teachers v. Avon County Council, [1978] I.R.L.R. 55, [1978] I.C.R. 626; E.A.T.	178
Nelson v. BBC, [1977] I.C.R. 649, [1977] I.R.L.R. 148; (C.A.).....	166
Newlin Oil Co. Ltd. v. Tratford, [1974] I.R.L.R. 205; N.I.R.C.....	32
Nokes v. Doncaster Amalgamated Collieries, [1940] A.C. 1014, [1940] 3 All E.R. 549; (H.L.).	2, 48, 49, 50, 81
Norris v. Bedwell & Bond, [1984] unreported (E.A.T. 738/83); E.A.T.	18, 20, 24, 35, 37, 59
Oliver v. Brian Reed Ltd., [1983] unreported (COIT 1353/101); IT.	94

Orr v. Vaughan, [1981] I.R.L.R. 36; E.A.T.....	166
Oxley v. Tarmac Roadstone Holdings Ltd, [1975] I.R.L.R. 100; IT	172
Parker & Ginsberg Ltd. v. Parker, [1986] unreported Case no 1986-R-1733; C.A....	87
Pickstone & Others v. Freemans plc, [1988] I.R.L.R. 357; (H.L.).....	10
Plastics Processing I.T.B. v. Norsk Hydro Polymers Ltd., [1984] unreported; (H.C.)	76
Polkey v. Dayton Services (AE) Ltd., [1987] I.R.L.R. 503; (H.L.).....	102, 171
Port Talbot Engineering v. Passmore & Evans, [1975] I.C.R. 234, [1975] I.R.L.R. 156; H.C.....	27
Premier Motors (Medway) Ltd. v. Total Oil (Great Britain) Ltd. & Others, [1983] I.R.L.R. 471, [1984] I.C.R. 58; E.A.T.....	12, 25, 34, 35, 37, 44, 59, 70, 88, 127, 140
Rastill v. Automatic Refreshment Services Ltd., [1978] I.C.R. 289; E.A.T..	27, 28, 31, 32
Redbridge London Borough Council v. Fishman, [1978] I.C.R. 569, [1978] I.R.L.R. 69; E.A.T.	195
Rencoule (H.A.) (Joiners & Shopfitters) Ltd. v. Hunt, [1967] I.T.R. 475; (H.C.)14, 20, 21	
Rex Stewart Jefferies Parker Ginsberg Ltd. v. Parker [1988] I.R.L.R. 483.	136, 146
Richard Precision Engineering Ltd. v. Pearce, [1984] unreported (E.A.T. 148/84); E.A.T.....	95, 101
Robinson v. The Council of the County Borough of Bournemouth, [1970] 5 I.T.R. 100; IT	137
Rolls Royce plc v. Doughty, [1987] I.R.L.R. 447; E.A.T.	9
Royal Ordinance plc v. Pilkington, [1988] I.C.R. 606; E.A.T.	43
S.I. (Systems & Instrumentation) Ltd. v. Grist & Riley, [1983] I.R.L.R. 391; E.A.T.	59
Secretary of State for Employment v. Anchor Hotel (Kippford) Ltd. [1985] I.R.L.R. 452, [1985] I.C.R. 724; E.A.T.	71
Secretary of State for Employment v. Cohen & Beaupress Ltd. [1987] I.R.L.R. 169; E.A.T.....	138
Secretary of State for Employment v. Galbraith & Others, [1987] unreported (E.A.T. 82/87); E.A.T.	58
Secretary of State for Employment v. Globe Elastic Thread Co. Ltd., [1979] I.C.R. 706, [1979] I.R.L.R. 327; (H.L.)	145
Secretary of State for Employment v. Newbold & Another, [1981] I.R.L.R. 305; E.A.T.....	140
Secretary of State for Employment v. Spence & Others, [1986] I.R.L.R. 248, [1986] I.C.R. 651, [1987] Q.B. 179; (C.A.).....	21, 40, 48, 54, 55, 56, 57, 58, 66, 71, 82, 89, 97, 120, 141
Seligman (Robert) Corporation v. Baker, [1983] I.C.R. 770; E.A.T.....	10, 18, 19, 22, 23
Shipp v. Catering (D. J.) Ltd., [1983] unreported (COIT 1348/49); IT	97
Shove v. Downs Surgical plc, [1984] I.R.L.R. 17; H.C.	87
Sibbard v. Fraser, [1987] unreported E.A.T. 298/87; E.A.T.....	38, 39
Smith v. Blanford Gee Cementation Co. Ltd., [1970] 3 All E.R. 154; (C.A.)	146
South West Launderettes Ltd. v. Laidler, [1986] I.C.R. 455, [1986] I.R.L.R. 305; (C.A.)	140
Spijkers v. Gebroeders Benedik Abattoir CV, [1986] 2 C.M.L.R. 296; E.C.J.	14
Spillers-French (Holdings) Ltd. v. Union of Shop, Distributive and Allied Workers, [1979] I.R.L.R. 339, [1890] I.C.R. 31, [1980] 1 All E.R. 231; E.A.T.....	181
Sutton v. Revlon Overseas Corporation Ltd., [1973] I.R.L.R. 173; N.I.R.C.....	167
Teeside Times Ltd. v. Drury, [1980] I.R.L.R. 72, [1980] I.C.R. 338; (C.A.).....	15, 60
Thomas & Betts Manufacturing Co. Ltd. v. Harding, [1980] I.R.L.R. 255; (C.A.)	
Thompson v. ASDA MFI Group plc, [1988] I.R.L.R. 340; H.C.....	69, 74
Thomsons Soft Drinks Ltd. v. Quayle, [1981] unreported (E.A.T. 12/81); E.A.T. ...	20
Tocher v. General Motors Ltd., [1981] I.R.L.R. 55; E.A.T.	132
Union of Shop, Distributive and Allied Workers v. Leancut Bacon Ltd., [1981] I.R.L.R. 295; E.A.T.	180
Van Duyn v. Home Office, [1975] ChD. 358; H.C.	9
Vokes Ltd. v. Bear, [1973] I.R.L.R. 363, [1974] I.C.R. 1; N.I.R.C.....	173

Von Colson & Kamann <i>v.</i> Land Nordrhein-Westfalen (No. 14/83); Harz <i>v.</i> Deutsche Tradax GmbH (No. 79/13) [1984] E.C.R. 1891; [1986] C.M.L.R. 406 European Ct. of Justice.....	107, 111
Vosper Thornycroft <i>v.</i> T.G.W.U. & G.M.B.A.T.U. [1988] I.R.L.R. 233; E.A.T....	181
Watling (N. C.) & Co. Ltd. <i>v.</i> Richardson, [1978] I.C.R. 1049; E.A.T.	172
Wendelboe <i>v.</i> Music (L. J.), [1985] 1 C.M.L.R. 476; E.C.J.....	8, 44, 57, 98, 107
Western Excavating (ECC) Ltd. <i>v.</i> Sharp, [1978] I.C.R. 221, [1978] I.R.L.R. 27, [1978] 1 All E.R. 713; (C.A.).....	4, 78
Wheeler <i>v.</i> Patel & Golding (J.) Group of Companies, [1987] I.R.L.R. 211, [1987] I.C.R. 631; E.A.T.....	58, 97, 98, 99, 103, 105, 120
White & Hunnisett <i>v.</i> Liquidators of Warmwell Bakeries Ltd. & Another, [1979] unreported (E.A.T. 172/79); E.A.T.....	141
Wilson (Joshua) & Bros. <i>v.</i> Unions of Shop, Distributive and Allied Workers [1978] I.C.R. 614; [1978] 3 All E.R.; (1978) B.I.T.R. 229; [1978] I.R.L.R. 120; E.A.T.....	117
Williams <i>v.</i> Compair Maxam Ltd., [1982] I.C.R. 156, [1982] I.R.L.R. 83; E.A.T. 172, 173	
Wood <i>v.</i> McNulty, [1985] unreported (COIT 1700/179); IT	26
Woodcock & Others <i>v.</i> Committee of Friends School & Another, [1987] I.R.L.R. 9841, 43	
Woodhouse <i>v.</i> Peter Brotherhood Ltd., [1972] I.C.R. 186, [1972] I.T.R. 263; (C.A.)	18
Wynne <i>v.</i> Hair Control, [1978] I.C.R. 870; E.A.T.	139
Young <i>v.</i> Daniel Thwaites & Co Ltd., [1977] I.C.R. 877, [1977] I.T.R. 392; E.A.T. 18, 26	
Zarb & Samuels <i>v.</i> British & Brazilian Produce Co. Ltd. [1978] I.R.L.R. 78; E.A.T.	140

TABLE OF STATUTES

1894	Merchant Shipping Act (c. 60)	208	1978	Employment Protection (Consolidation) Act— <i>cont.</i>	
1919	Aliens Restriction (Amendment) Act (c. 92)	211	s. 23		76
1929	Companies Act (19 & 20 Geo. 5, c. 23)	49	(1)(b)		114
1948	Companies Act (c. 38)	209	(2)		114
1960	Companies Act (Northern Ireland) (c. 22) s.144	209	s. 27		114, 116
1965	Contracts of Employment & Redundancy Payments Act (Northern Ireland) (c. 19) s.11	214	s. 28		114, 116
1967	Misrepresentation Act (c. 7)	146	s. 31		169
1970	Merchant Shipping Act (c. 36) s.5	208	s. 33		142
1971	Tribunals & Inquiries Act (c. 62) s.13(1)	214	ss. 45–48		142
1974	Health & Safety at Work Act (c. 37)	72	s. 45(1)		142, 217
	Trade Union and Labour Relations Act (c. 52)	207	s. 55		214
	s. 18	47, 112, 113, 209	(2)		93, 169
	s. 29	113	(5)		60
	(1)	113	s. 56		142
	s. 30	113, 114	s. 57		92
	(3)	142, 143, 217	(1)		92, 170
	(4)	217	(b)		96, 174, 210
1975	Social Security Act (c. 14)	184	(2)		92, 170
	s. 66(1)	72	(3) ...		92, 102, 103, 170, 210
	s. 66	73	s. 58(1)(b)		114
	Social Security Pensions Act (c. 60)	72, 161, 210	(2)		114
	Sex Discrimination Act (c. 65)	10, 91	s. 59		105, 171, 172, 173
	Sex Discrimination Act	111	(a)		92, 171
	Employment Protection Act (c. 71)	207	(b)		92, 105, 114, 171
	Pt. IV	213	s. 60		92
	s. 17	116, 179	s. 62		143
	s. 99	75, 76, 85, 86, 89, 90, 91, 116, 120, 124, 126, 131, 150, 156, 161, 163, 177, 178, 179, 180, 181, 186, 192, 200, 213	(2)		143
	(3)	178	(4)(c)		143
	(5)	90, 179	s. 64(1)(a)		169
	(7)	179	(b)		170
	(8)	90	s. 67		189
	(9)	180	(2)		175
	s. 100	181, 186, 191, 192	s. 69		176
	s. 101(5)	180	s. 70		176
	(6)	180	s. 72		176
	s. 102	181	s. 74(2)		176
	(3)	213	s. 75A		176
	s. 105	181	ss. 81–120		165
1976	Race Relations Act (c. 74)	91	s. 81		214
1978	Employment Protection (Consolidation) Act (c. 44)	96, 111, 207	(2)		88, 166
	Pt. V	210	(4)		165
			s. 82(1)		165
			(2)		169
			(3)–(6)		215
			(3)–(7)		88
			(3)		167
			(4)		167, 215
			(7)		88, 216
			s. 83		165
			s. 84		88, 141, 167, 215
			(7)		216
			s. 85		169
			ss. 87–89		169
			s. 90		141, 215
			(3)		60
			s. 92		169
			s. 94		7, 12, 13, 31, 40, 89,

1978	Employment Protection (Consolidation) Act— <i>cont.</i>	1978	Employment Protection (Consolidation) Act— <i>cont.</i>
	140, 141, 142, 167, 215 , 216		(4) 140
	(2) 12, 141		Sched. 4 168
	(3) 141		Sched. 13 31, 60, 67, 190
	(4) 141		Sched. 13, para. 4 60, 138
s. 129	 213		Sched. 13, para. 9 67, 138
s. 133	 213		Sched. 13, para. 12 89, 142
s. 140	 132		Sched. 13, para. 17 139, 216 , 217
	(1) 14		Sched. 13, para. 17(1) 139
	(2) 165, 169		Sched. 13, para. 17(2) 12, 13,
s. 141(2)	 169		7, 40, 67, 137, 138, 139, 141
	(3) 165		Sched. 13, para. 17(5) 139
	(4) 165		Sched. 13, para. 18 139, 216 , 217
s. 142(1)	 169		Sched. 13, para. 18A 216
	(4) 165		Sched. 13, para. 24(1) 138
ss. 144–145	 165		Sched. 14 125, 214
s. 144	 169	1984	Data Protection Act (c. 34) .. 72
s. 145	 169, 214		1986 Insolvency Act (c. 45)
s. 153	 13		Pt II 82, 208
	(1) 8, 30, 44, 142,		Insolvency Act 83
	165, 169		

TABLE OF RULES

Northern Ireland (Industrial Relations) Order 1976 (S.I. 1976 No. 1043).....		96, 113, 207
pt. IV.....		210
Arts. 20, 41.....		210
Art. 21.....		214
Art. 22(1)(b).....		210
(10).....		210
Art. 49.....		213
Art. 52(3).....		213
Art. 58(2).....		213
Art. 62.....		213
Sched. 2.....		214
Art. 63.....		112, 210
Safety Representatives & Safety Committees Regulations 1977 (S.I. 1977 No. 500).....		116
Transfers of Undertakings (Protection of Employment) Regulations 1981 (S.I. 1981 No. 1794)—. 207, 208, 209, 210, 211, 212, 213, 214		
reg. 2(1).....	13, 41, 42, 43, 45, 46, 53, 184, 185, 202	
(2).....	44, 45	
reg. 3(1).....	40, 43	
(2).....	40, 45	
(a).....	45	
(b).....	45	
(c).....	45	
(4)....	36, 37, 38, 39, 41, 58, 64	
reg. 4.....	82, 83, 84	
(1).....	83	
(b).....	83	
reg. 5.....	45, 46, 47, 48, 52, 53, 58, 63, 71, 72, 73, 75, 76, 81, 84, 85, 86, 87, 91, 94, 98, 99, 108, 113, 115, 121, 126, 127, 129, 132, 135, 138, 144	
(1).....	46, 48, 49, 51, 52, 54, 60, 61, 62, 63, 64, 65, 66, 67, 69, 71, 76, 77, 79, 85, 88, 106, 121, 127, 136	
(2).....	66, 67, 69, 72, 73, 91, 144, 186	
(a)....	67, 68, 70, 71, 75, 76	
(b).....	76, 85	
(3).....	11, 52, 55, 56, 107, 108	
(4).....	71	
(5).....	77, 78, 79, 80	

Transfers of Undertakings (Protection of Employment) Regulations 1981—cont.	
reg. 6.....	47, 72, 112, 113, 114, 115
(a).....	115
(b).....	115
reg. 7.....	47, 72, 73, 74, 75, 81, 115
reg. 8.....	11, 46, 92, 93, 95, 101, 131, 134, 175
(1).....	11, 55, 92, 93, 94, 95, 96, 98, 99, 106, 107, 108, 109, 110, 127, 131, 132, 133
(2).....	92, 95, 96, 97, 98, 99, 100, 101, 102, 103, 105, 174, 185
(3).....	93, 94
reg. 9.....	112, 115, 116, 117
(1).....	116
(2)(b).....	117
reg. 10.....	30, 46, 76, 116, 118, 120, 122, 123, 124, 125, 126, 150, 161, 163, 186
(1).....	119
(2).....	118, 120, 121
(a).....	120
(3).....	121
(4).....	123
(5).....	118
(6).....	123
reg. 11.....	46
(1).....	125
(2).....	124
(3).....	125
(4).....	125
(b).....	125
(5).....	125, 126
(6).....	125
(7)(a).....	126
(b).....	126
(8)(a).....	125
(b).....	125
(10).....	126
(11).....	125
(12).....	125
reg. 12.....	14, 46, 86, 127, 132
Equal pay (Amendment) Regulations 1983 (S.I. 1983 No. 1794).....	
	10

TABLE OF EEC DIRECTIVES

1975	Council Dir. 75/117 "Equal Pay" Directive (O.J. 1975, L45/19).....	10	1977	Council Dir. 77/187 "Business Transfer" Directive— <i>cont.</i>	
1976	Council Dir. 76/207 "Equal treatment" Directive (O.J. 1976, L39/40).....	9, 10		Art. 3.....	204
1977	Council Dir. 77/187 "Business Transfer" Directive (O.J. 1977, L61/26).....	7, 8, 9, 10, 11, 22, 35, 204, 205, 206		(1).....	56, 66, 77, 106, 107, 108, 109
	Art. 1.....	204		Art. 3(2)	57
	(1).....	36, 204, 205, 206		Art. 3(3).....	72, 73, 74
	Art. 2.....	204		Art. 4.....	57, 205
				Art. 4(1).....	56, 92, 98, 106, 107, 108, 109, 110
				Art. 5.....	112, 205
				Art. 6.....	118
				Art. 7.....	206
				Art. 8.....	206

CONTENTS

Acknowledgements v

Preface vii

Abbreviations xiii

Table of Cases xv

Table of Statutes xx

Table of Rules xxii

Table of EEC Directives xxiii

1 SETTING THE SCENE

Common law position 01

Employment protection legislation 05

EEC "business transfer" Directive 07

2 WHAT IS A BUSINESS TRANSFER?

General approach 12

Principal test 13

Substance of the transaction 14

Relevant factors 15

Licences, concessions and franchises 22

Sub-contracting exclusive contracts 27

Parts of businesses 31

Has there been a transfer? 34

De-facto transfers 34

No direct transaction between parties 34

series of transactions 36

contract manufacturing agreements 38

3 WHEN DO THE TRANSFER REGULATIONS APPLY?

Conditions for transfer regulations to apply 40

Scope of the Transfer Regulations 45

meaning of "contract of employment"/

"employee" 45

"Relevant transfer" 46

Contracting-out of the transfer regulations 46

4 THE TRANSFER REGULATIONS—EFFECT ON EMPLOYMENT CONTRACTS

Transfer does not give rise to dismissal 48

The common law position 49

How the common law position fits in with reg. 5(1) 51

which employees are caught by reg. 5(1) 52

whether an employee of the transferor 53

Employed by the transferor immediately before transfer? 54

contract not otherwise terminated by the transfer 61

What is transferred with the employees? 66

Transfer of rights, powers, duties and liabilities 67

What liabilities do not transfer over 71

Transfer of acts and omissions 76