

Contents

Preface	vii
Table of Statutes	xxiii
Table of Statutory Instruments	xxvii
Table of cases	xxxi

Chapter I Aim and synopsis of the book 1

Introduction	1
The employee as a source of competition	1
The employer as an obstacle to the employee	2
Types of competitive activity	2
Restraint of trade doctrine	2
1. General structure of this book	3
The employment relationship (Chapter 2)	3
The implied duty of fidelity (Chapter 3)	3
Employee fiduciary duties (Chapter 4)	4
Express terms of the contract of employment (Chapter 5)	4
Confidential information (Chapter 6)	4
Database rights (Chapter 7)	4
Practical steps to protect the employer's interests (Chapter 8)	4
Termination of employment (Chapter 9)	5
Legitimate protection for the ex-employer (Chapter 10)	5
Reasonableness of express covenants (Chapter 11)	5
Drafting restrictive covenants (Chapter 12)	5
Introducing/varying restrictive covenants (Chapter 13)	5
Interim remedies: general (Chapter 14)	6
Specific interim remedies (Chapter 15)	6
Final remedies (Chapter 16)	6
The international element (Chapter 17)	6
Discovering competitive activity: the immediate practical issues (Chapter 18)	6
Team moves (Chapter 19)	7
2. Balancing the interests of employer and employee: an introduction	7
2(a) Implied duty of fidelity/fiduciary duties	7
2(b) Express terms applying during employment	8
3. Balancing the interests of an ex-employer and ex-employee: an introduction	9
3(a) End of implied duty of fidelity/fiduciary duties	9
3(b) Terms applying after employment	9

Chapter 2 The employment relationship 11

Introduction 11

1. Who is an employee? 11
 - 1(a) Contract of employment or contract for services? 12
 - 1(b) The tests 13
 - 1(c) Relevant factors 14
 - 1(d) The power of the parties to dictate the status of the contract 18
 - 1(e) Directors as employees 20
 - 1(f) Members of limited liability partnerships as employees 21
 - 1(g) Ex-employees as independent contractors 22
2. The creation of the contract of employment 24
 - 2(a) Commencement of the employment relationship 24
 - 2(b) The form of the contract 24
 - 2(c) The terms of the contract 25
 - 2(d) Written statement of particulars of employment 26

Chapter 3 The implied duty of fidelity 29

Introduction: the duty of fidelity 29

Impact of duty of fidelity 29

Inter-relationship of duty of fidelity with fiduciary duties 30

Summary: impact of fiduciary duties on employees preparing to compete after employment 31

Duration of duty of fidelity 32

Standard to be applied and contrast with fiduciary duties 33

Ambit of the duty – aspects dealt with in this chapter 34

Ambit of the duty – other aspects 35

1. Competition during employment 36
 - 1(a) Working time 37
 - 1(b) Spare time 37
2. Preparations during employment to compete after employment has ended 39
 - 2(a) Prohibited activities 45
 - 2(b) Permitted activities 49
 - 2(c) Preparatory activity during garden leave 52
3. Duty of disclosure to the employer 53
 - 3(a) Misdeeds/misconduct 54
 - 3(b) Information concerning acts preparatory to competition/answering questions by the employer 58
 - 3(c) Inventions, discoveries and copyright 60

Appendix to Chapter 3 Preparatory activity during employment to compete after employment 65**Chapter 4 Employee fiduciary duties 67**

Introduction 67

1. When does an employee who is not a director owe fiduciary duties? 68
 - 1(a) Duty of fidelity and fiduciary duties contrasted 68
 - 1(b) The Fishel test for fiduciary obligations 69

- 1(c) Circumstances indicative of a fiduciary relationship 73
- 1(d) De facto directors 78
- 1(e) Shadow directors 81
- 1(f) Other workers 82
2. Scope of fiduciary obligations 82
 - 2(a) Overview 82
 - 2(b) Directors' duties: the Companies Act 2006 83
 - 2(c) The duty to act within powers 84
 - 2(d) Good faith and promotion of company's interests 85
 - 2(e) Duty to exercise independent judgment 87
 - 2(f) Duty to exercise reasonable care, skill and diligence 87
 - 2(g) The no conflict and no profit rules 88
 - 2(h) Exploitation of business opportunities during the employment relationship/directorship 93
 - 2(i) Exploitation of business opportunities after ceasing employment/directorship 97
 - 2(j) Fiduciary duty and preparation to compete 104
 - 2(k) Exclusion from management/garden leave 113
 - 2(l) Duty of disclosure 115
 - 2(m) Comparison of the position of bare employee and employee owing relevant fiduciary obligations 124
3. Remedies 126
 - 3(a) Remedies against the fiduciary 126
 - 3(b) Remedies against third parties in connection with breach of fiduciary duty 131

Chapter 5 Express terms of the contract of employment 135

Introduction 135

1. Terms recording/extending obligations included within the duty of fidelity 136
 - 1(a) A general statement of the duty of fidelity 139
 - 1(b) Working hours 140
 - 1(c) Control of outside activities 142
 - 1(d) Non-poaching of employees 145
 - 1(e) Disclosure of information and reporting procedures 146
 - 1(f) Confidentiality and the protection of trade secrets 148
 - 1(g) Patents, copyright and certain other intellectual property 149
2. Terms which define the employee's role 151
 - 2(a) Job title and duties 152
 - 2(b) Joint appointments 153
 - 2(c) Mobility 154
 - 2(d) Interaction with the press/media 155
 - 2(e) Garden leave 156
3. Terms pertaining to termination 156
 - 3(a) What justifies summary dismissal 156
 - 3(b) Notice required to terminate the contract 160
 - 3(c) Garden leave 174
 - 3(d) Return of property 180

- 3(e) Resignation from directorships 183
- 3(f) Miscellaneous Terms 184

Chapter 6 Confidential information 187

Introduction 187

- Different kinds of business information 188
- Practical effect of the distinction between different types of information 188
- When is it necessary to distinguish between trade secrets, confidential information and general skill and knowledge? 189
- Uncertainty in the law 190
- 1. Requirements of confidential information 191
 - 1(a) Quality of confidence 192
 - 1(b) Circumstances importing an obligation of confidence 193
 - 1(c) Detrimental breach 193
 - 1(d) The impact of Articles 8 and 10 European Convention on Human Rights 194
- 2. Distinction between trade secrets, confidential information and skill and knowledge: detail 195
 - 2(a) Definition of trade secrets 196
 - 2(b) Other definitions of trade secrets 198
 - 2(c) Case study on trade secrets: Faccenda in detail 201
 - 2(d) Conclusion regarding the distinction between trade secrets and confidential information 203
 - 2(e) Distinction between general skill/knowledge and confidential information 204
 - 2(f) Non-confidential information 206
 - 2(g) Can (mere) confidential information be protected by express covenant? 207
- 3. Express confidentiality covenants 211
- 4. Confidential information must be properly identified 212
- 5. Restricted shelf life of confidential information 214
- 6. Confidential information in the hands of third parties 214
- 7. Confidentiality injunctions affecting vested rights of third parties 216
- 8. Confidential information disclosed in pre-employment period 217
- 9. Jointly owned confidential information 217
- 10. Defences 218
 - 10(a) Publication 218
 - 10(b) Public interest defence 220
 - 10(c) Effect of repudiatory breach of contract in relation to breach of confidence 226
 - 10(d) Whistleblowing 226

Appendix to Chapter 6 Examples of cases showing the difference between confidential information and skill and knowledge 228

- Non-technical information 228
- Technical information 230

Chapter 7 Database rights 235

Introduction 235

1. Databases qualifying for the database right 236
 - 1(a) Database 236
 - 1(b) Fruit of investment 236
 - 1(c) Territorial qualification 239
2. The nature of the database right 240
3. Duration of the database right 241
4. Ownership of the database 242
5. Remedies 244
6. Allocation of claims 245

Chapter 8 Practical steps to protect the employer's interests 247

Introduction 247

1. Steps designed to ensure the employee is motivated and properly rewarded 247
 - 1(a) Recognise the value of the employee 248
 - 1(b) Recognise the employee's need for leisure time 248
 - 1(c) Recognise the employee's family commitments 249
 - 1(d) Keep the employee challenged 250
 - 1(e) Provide a proper career structure 250
 - 1(f) Review the employee's terms and performance regularly 250
 - 1(g) Consider the use of long-term incentives for the employee 251
 - 1(h) Involving the employee in management 252
2. Steps designed to maximise the possibility of detecting competitive activities 253
 - 2(a) Institute proper reporting procedures 255
 - 2(b) Ensure proper controls are kept on which employees have access to confidential information 256
 - 2(c) Procedures relating to correspondence 257
 - 2(d) E.mail procedures 258
 - 2(e) Telephone protocols 259
 - 2(f) Expense policies 259
 - 2(g) Monitoring the use of photocopiers on business premises 260
 - 2(h) Monitoring removal of the employer's physical property from business premises 262
 - 2(i) Controlling use of computers away from the workplace 262
 - 2(j) Ensuring employees take proper holidays 263
 - 2(k) Ensuring clients/customers deal regularly with a number of employees 263

Appendix to Chapter 8 Guidelines for maintaining confidentiality 265

Chapter 9 Termination of employment 267

Introduction 267

1. When does employment end? 267
 - 1(a) Significance of the date of termination 267

- 1(b) Methods of termination 268
- 1(c) Notice: general principles 269
- 1(d) Date of termination: notice by the employer 271
- 1(e) Date of termination: notice by the employee 273
- 1(f) Date of termination: repudiatory breach 274
- 2. Repudiatory breach 274
 - 2(a) Effect of a repudiatory breach 274
 - 2(b) Repudiatory breach and collateral contracts 278
 - 2(c) What amounts to a repudiatory breach? 280
 - 2(d) Acceptance of repudiatory breach 287

Chapter 10 Legitimate protection for the ex-employer 297

Introduction 297

- 1. Implied duties after termination of employment: trade secrets/confidential information 297
- 2. Express covenants in the contract of employment of the ex-employee 299
 - 2(a) General statement of the doctrine of restraint of trade 299
 - 2(b) Legitimate interests of the ex-employer 302
 - 2(c) Reasonable protection of legitimate interests: introduction 308
 - 2(d) The special position of the vendor-employee 309
- 3. Competition law 312

Appendix to Chapter 10 312

Introduction 312

Article 81/Chapter 1 313

Article 82/Chapter 2 317

Consequences of breach/finding of infringement 317

Merger control 317

Chapter 11 Reasonableness of express covenants 319

Introduction 319

Overview 319

Current trends 320

Ambit of this chapter 321

- 1. Criteria relevant to reasonableness of both non-competition covenants and non-solicitation/dealing covenants 321
 - 1(a) Position of the employee 321
 - 1(b) Nature of the business/activities of employee 322
 - 1(c) Nature of the business/activities of employer 322
 - 1(d) Duration 323
 - 1(e) Whether covenant usual 328
 - 1(f) Period of notice 328
 - 1(g) Consideration for the covenants 329
- 2. Criteria relevant to reasonableness of non-competition covenant 332
 - 2(a) Whether a non-competition covenant is appropriate 332
 - 2(b) Extent of the area 336
 - 2(c) The type of interest sought to be protected 337
 - 2(d) Functional correspondence between restricted area and location of customers 337

- 2(e) Nature of the area 338
- 2(f) Nature of business and the manner in which it is conducted 338
- 2(g) Area of activities of the employee 339
- 2(h) Recent examples of non-competition covenant cases 339
- 3. Covenants against soliciting/dealing with customers/prospective customers 342
 - 3(a) Meaning of 'solicitation' (by an ex-employee) and similar phrases 342
 - 3(b) The preferred type of covenant to protect customer connection 344
 - 3(c) Criteria relevant to reasonableness of non-solicitation/dealing covenants: generally 345
 - 3(d) Who is a customer? 346
 - 3(e) 'Backstop periods' and former customers 349
 - 3(f) Is customer contact a prerequisite? 352
 - 3(g) Is mere contact always enough? 353
 - 3(h) Knowledge of customers short of contact 353
 - 3(i) Cases where the courts do not insist on personal contact/connection 354
 - 3(j) Potential customers 355
 - 3(k) Future customers 357
 - 3(l) Limitation of customers by area 357
 - 3(m) 'The employee's customers' – brought with him to the employer 357
 - 3(n) Non-solicitation of persons who are not customers 359
 - 3(o) Period of non-solicitation/non-dealing covenants 359
- 4. Non-dealing covenants 360
- 5. Covenants against enticing/employing/arranging employment for fellow employees/consultants and anti-team moves and related covenants 362
- 6. Covenants against the disclosure/use of trade secrets and confidential information 367
 - 6(a) Advantages of confidentiality covenants 367
 - 6(b) Requirements of confidentiality covenants 368
- 7. Supplier covenants 369
- 8. Other types of post-termination clauses 370
- 9. Combining different types of covenant 371
 - 9(a) Effect of combining covenants 371
 - 9(b) Combining covenants with 'garden leave' 371
- 10. Indirect covenants and payments made under such covenants 372
 - 10(a) Generally 372
 - 10(b) Forfeiture of benefits 373
 - 10(c) Recovery of payments under an unenforceable covenant 374
- 11. Qualified covenants 375
- 12. Covenants in termination/compromise agreements 375
- 13. Covenants combined with forfeiture/liquidated damages or penalty clauses 376
- 14. Ancillary clauses seeking to strengthen or preserve restrictive covenants 380
- 15. Termination 'howsoever caused' 380

Chapter 12 Drafting restrictive covenants 383

Introduction 383

1. Why are express restrictive covenants important to the ex-employer? 384
2. Drafting the covenants: preparatory steps 384
 - 2(a) Criteria for enforceability 385
 - 2(b) When must the covenant be reasonable? 385
 - 2(c) The courts' approach to the interpretation of restrictive covenants 386
 - 2(d) Rectification of mistakes 399
 - 2(e) Nature of business/role of the employee/likely competitive activity 400
- Information checklist 401
3. Drafting the covenants 403
 - 3(a) Types of covenant 403
 - 3(b) Ambit of the specific covenants 404
 - 3(c) General drafting points 409

Appendix to Chapter 12 Case studies 414

Case study 1: Excel Copiers Limited and Brian Thomas 414

Facts 414

Drafting 417

Rationale for the covenants 419

Case study 2: Smith & Jones HR Services Limited and Ian Simpson 421

Facts 421

Drafting 423

Rationale for the covenants 424

Chapter 13 Introducing/varying restrictive covenants 425

Introduction 425

1. Introducing the covenants 425
 - 1(a) Introduction as part of the offer of employment 425
 - 1(b) Introduction during the currency of the employment 427
 - 1(c) Introduction on termination of employment 439
2. Renewal of covenants in severance agreements 441
3. Variation of covenants 442
4. Reviewing the covenants 443
 - 4(a) Role of employee altered 443
 - 4(b) Acquisition of a business 444
5. TUPE transfers – special problems 444
 - 5(a) Interpretation of covenants 445
 - 5(b) Introduction/variation of covenants 446
 - 5(c) Dismissal 450
 - 5(d) Service provision transfers 451
 - 5(e) Objections to the transfer 452

Appendix to Chapter 13 Guidelines on introducing covenants during employment 454

Deciding whether to introduce covenants 454

Formulating a strategy for introducing covenants 455

- 2(a) Timing 455

- 2(b) Method 456
- 2(c) Consultation/discussion 456
- 2(d) Timescale for acceptance 456
- 2(e) Dealing with objectors 457
- 2(f) Dealing with those who do not respond 457
- 2(g) Collective consultation obligations 458

Chapter 14 Interim remedies: general 459

Introduction 459

1. Jurisdiction 461
2. Exercise of discretion 461
 - 2(a) Good arguable claim 462
 - 2(b) Balance of convenience 462
 - 2(c) The position under the Civil Procedure Rules 464
3. The range of remedies 465
4. Preliminary considerations 466
 - 4(a) Pre-action correspondence/notice to respondent? 466
 - 4(b) The return date 471
 - 4(c) Which court? 471
 - 4(d) Cross-undertaking as to damages 472
 - 4(e) Which respondents? – different causes of action 474
- The evidence: strength of the case 483
 - 5(a) Introduction 483
 - 5(b) Detail 484
 - 5(c) Section 12 Human Rights Act 1998 486
 - 5(d) Practical conclusions 488
6. Obtaining the evidence 490
 - The use of enquiry agents 490
7. Witness statements or other evidence in writing 491
 - 7(a) Form 491
 - 7(b) General contents checklist 491
 - 7(c) Witness statements/statements of case/court records/hearings in breach of confidence cases – maintaining confidence 492
8. Documentation generally 496
 - 8(a) A claim form 497
 - 8(b) An application notice 497
 - 8(c) A witness statement or witness statements (or affidavit, in the case of freezing or search orders) 497
 - 8(d) Draft minute of order 498
 - 8(e) Skeleton arguments/chronologies/cast lists/authorities/time estimates/court bundles 498
 - 8(f) Costs schedules 498
9. Procedure for obtaining interim injunctions 499
 - 9(a) Without notice 499
 - 9(b) On notice 499
10. Undertakings by respondent 499
 - 10(a) Undertakings to the court 499
 - 10(b) Contractual undertakings by respondent 500

11. Order for speedy trial 501
12. Interim declarations 502
13. Summary judgment 502
14. Pre-action disclosure 503
 - 14(a) Pre-action disclosure against the prospective defendant 503
 - 14(b) Pre-action disclosure against third parties 504
 - 14(c) Tactical considerations: pre-action disclosure/questions as against prospective respondent/third parties 504
 - 14(d) Early disclosure in the action 505
 - 14(e) Correspondence seeking pre-action or early disclosure/information 506
15. Stay in favour of mediation 506
16. Serving interim orders 507
17. Committal proceedings 507
18. Trial or settlement 508
19. Costs orders 509
 - 19(a) Costs of interim hearing 509
 - 19(b) Payment on account of costs 510
 - 19(c) Costs at trial 511
 - 19(d) Basis of assessment of costs 511
 - 19(e) Part 36 offers/other offers 511
 - 19(f) Costs liability of third parties 513
20. Appeals 514

Appendix to Chapter 14 Part 25 Civil Procedure Rules 516

Part 1 516

Part 25 516

Interim remedies 516

Chapter 15 Specific interim remedies 527

Introduction 527

1. Prohibitory injunctions to restrain breaches of restrictive covenants 527
2. Garden leave injunctions 528
 - 2(a) Introduction 528
 - 2(b) Bilateral termination of employment contract 529
 - 2(c) Prohibition on specific performance by employee of an employment contract 529
 - 2(d) Disapproval of employees 'snapping their fingers' at the contract 531
 - 2(e) Enforcing the duty of fidelity 531
 - 2(f) Tackling the problem: the garden leave solution 531
 - 2(g) The employee's riposte – the 'right to work' 534
 - 2(h) Negating the right to work – garden leave clauses 536
 - 2(i) Are garden leave clauses always essential? 536
 - 2(j) Debunking the myth of the nature of the 'right to work' 536
 - 2(k) Is a protectable interest required? 538
 - 2(l) When and for how long garden leave will be ordered 538
 - 2(m) Interplay between garden leave and restrictive covenants 539
 - 2(n) Specific enforcement of employment contracts by employees 540

3. Confidentiality injunctions 540
 - 3(a) Confidential information: springboard injunctions 541
4. Orders to recover property of the employer 555
 - 4(a) Different classes of documents of interest to the ex-employer 555
 - 4(b) Property of the ex-employer 555
5. Detention, preservation and inspection orders 556
6. Search orders (formerly 'Anton Piller orders') 558
 - 6(a) Nature of the order 558
 - 6(b) Usual relief – standard form of search order 558
 - 6(c) Requirements for search order 560
 - 6(d) Limits on the use of search orders: proportionality 561
 - 6(e) Safeguards where the search order is granted 562
 - 6(f) Can a respondent refuse to comply? 577
 - 6(g) Applications to discharge 578
 - 6(h) Cross-examination of respondent on his affidavit 580
 - 6(i) Foreign defendants 581

Appendix to Chapter 15 583

Chapter 16 Final remedies 591

Introduction 591

1. Damages for breach of the employment contract 592
 - 1(a) Normal measure 592
 - 1(b) Damages where there is no financial loss: Wrotham Park damages 594
2. Damages for inducing breach of contract and other economic torts 596
 - 2(a) The economic torts: inducement of breach tort compared with conspiracy 596
 - 2(b) Measure of loss for economic torts 597
 - 2(c) Exemplary damages for economic torts 598
3. Damages for breach of confidence 599
 - 3(a) Damages for breach of confidence in a contractual context 599
 - 3(b) Damages for breach of confidence outside contractual context 600
 - 3(c) Claim for loss of profits for breach of confidence 601
 - 3(d) Stage of proceedings at which damages are assessed 602
 - 3(e) Further breaches of confidence not proved at trial 602
 - 3(f) Date at which damages are assessed 602
 - 3(g) Exemplary damages for breach of confidence 602
 - 3(h) Damages in addition or in lieu of an injunction 603
4. Account of profits 603
 - 4(a) When is an account of profits available? 604
 - 4(b) Account of profits for breach of contract 604
 - 4(c) To what profits is the claimant entitled? 605
5. Choice between an account and damages 606
6. Permanent injunctions 608
 - 6(a) Discretion to grant or refuse 608
 - 6(b) Need to frame injunction precisely 611
7. Delivery up/destruction 611
8. Declarations 612

- 9. Receiver 613
- 10. Rectification 613
- 11. Remedies against fiduciaries 613
- 12. Costs 613

Chapter 17 International elements 615

Introduction 615

- 1. Jurisdiction 616
 - 1(a) The Judgments Regulation 617
 - 1(b) Cases outside the Judgments Regulation 627
 - 1(c) Jurisdiction to grant provisional relief 629
- 2. Competing jurisdictions 630
 - 2(a) Cases within the Judgments Regulation 630
 - 2(b) Cases outside the Judgments Regulation 631
- 3. Applicable law 635
 - 3(a) Claims in contract 635
 - 3(b) Claims other than in contract 640
 - 3(c) Concurrent claims 642
 - 3(d) Type of relief claimed 643
- 4. Evidence 644
 - 4(a) Proceedings in England 644
 - 4(b) Overseas proceedings 648
- 5. Recognition and enforcement of judgments 649
 - 5(a) Judgments Regulation states 649
 - 5(b) Recognition and enforcement of judgments where the Judgments Regulation does not apply 650

Chapter 18 Discovering competitive activity: the immediate practical issues 653

Introduction 653

- 1. Reacting to the discovery 654
- 2. Instructing the legal team and other advisers 654
 - 2(a) The legal team 655
 - 2(b) Computer forensic experts and public relations advisers 658
- 3. Allocation of responsibilities to (ex-)employer's management team 659
- 4. Applying the three basic steps: discovery during employment 660
 - 4(a) Gathering information 660
 - 4(b) Taking key decisions 670
 - 4(c) Settling a strategy to reflect the key decisions 682
- 5. Applying the three basic steps: discovery after employment has ended 682
 - 5(a) Gathering information 682
 - 5(b) Taking key decisions 683
 - 5(c) Settling a strategy to reflect the key decisions 684
- 6. Letters before claim 685
 - 6(a) Letters before claim to the (ex-)employee 685
 - 6(b) Letters before claim to the poaching employer 690

- 7. Mediation 691
 - 7(a) Why should the (ex-)employer mediate? 692
 - 7(b) What are the advantages of mediation? 696
 - 7(c) When should we start the mediation process? 697
 - 7(d) What are the cost consequences of mediating the dispute? 698
 - 7(e) What other factors need to be taken into account? 699

Appendix 1 to Chapter 18 Customer/client risk analysis re employee's competitive activity 700

Appendix 2 to Chapter 18 Strategy (1) 701

Case study 1: Excel Copiers Limited and Brian Thomas 701

- 1. Initial discovery 701
- 2. Gathering information 702

Appendix 3 to Chapter 18 Strategy (2) 707

Case study 2: Smith & Jones HR Services Limited and Ian Simpson 707

- 1. Initial discovery 707
- 2. Gathering information 707
- 3. Taking key decisions 708
 - 3(a) Enticing Simpson and/or Neil back? 708

Appendix 4 to Chapter 18 712

Appendix 5 to Chapter 18 Documentation 716

Chapter 19 Team moves 737

Introduction 737

- 1. Composition of the team 737
 - 1(a) Legal considerations where there is a team move 739
 - 1(b) Commercial dimensions 745
- 2. Detection of team moves 745
 - 2(a) Offsite meetings of a group 747
 - 2(b) Unusual absence patterns/travel plans 747
 - 2(c) Creation of e.mail groups 747
 - 2(d) Text messaging 747
 - 2(e) Unusual alliances 748
 - 2(f) Apparently unconnected telephone calls to team members 748
 - 2(g) Sudden interest in employment terms 748
 - 2(h) Furtive behaviour amongst a group of employees 748
 - 2(i) Unexplained changes to previous patterns of behaviour 749
 - 2(j) Resignations of junior employees 749
 - 2(k) Voluntary/'manufactured' resignations as a statutory director 749
 - 2(l) Other unusual behaviour 749
- 3. Strategies of the team 750
 - 3(a) Keeping the number of team members to the minimum 751
 - 3(b) Limiting significant information about the progress of the plan to key team members only 751
 - 3(c) Using a third party to recruit team members 751
 - 3(d) Restrictions on written communications relating to the move 752
- 4. (Ex-)employer's response to a team move 753
 - 4(a) Potential impact on the business 753
 - 4(b) Retaining/splitting the team 754

- 4(c) The (ex-)employer's options 755
- 4(d) Application of TUPE 756
- 5. Key points for the team; the poaching employer/financial backer 758
 - 5(a) The team 758
 - 5(b) The poaching employer 760
 - 5(c) The financial backer 760

Index 763

Table of Statutes

[References are to paragraph number]

Lord Cairns Act <i>see</i> Chancery Amendment Act 1858	
Administration of Justice Act 1920	17.144
Apportionment Act 1870	8.16
Arbitration Act 1996	
s 1, 9	14.107
Chancery Amendment Act 1858 (Lord Cairns' Act)	16.36, 16.63
Children Act 1989	
s 31	14.64
Civil Evidence Act 1968	
s 14	15.117
Civil Evidence Act 1995	16.3
Civil Jurisdiction and Judgments Act 1982	
s 25	17.46, 17.47, 17.48, 17.51, 17.52, 17.147
(1)	17.41
(2)	17.49
(7)	17.48, 17.52
41	17.15
Civil Procedure Act 1997	
s 7	15.84, 15.147
Companies Act 1985	4.40; 12 App
s 303, 304	5.120
319	5.75
727	4.131
(1)	4.131
736	5.10
741(2)	4.39
Companies Act 2006	2.40; 4.2, 4.32, 4.45, 4.46, 4.47, 4.59, 4.77, 4.79, 4.84, 4.89, 4.96
s 168, 169	5.120
Pt 10 Ch 2 (ss 170–181)	4.46
s 170(2)	4.48, 4.49, 4.95, 4.96
(3)	4.45, 4.46
(4)	4.50, 4.78, 4.79, 4.96
(5)	4.42
Companies Act 2006 – <i>contd</i>	
s 171	4.47, 4.53
172	4.47, 4.55, 4.58, 4.59, 4.133
(3)	4.56
173	4.47, 4.60
(3)	4.60
174	4.47, 4.58, 4.61
175	4.47, 4.48, 4.49, 4.62, 4.74, 4.75, 4.76, 4.79, 4.80, 4.83, 4.95
(1)	4.76
(4)(a)	4.78, 4.86, 4.128
(b)	4.83
(6)	4.79
176	4.47, 4.48, 4.49, 4.62, 4.75, 4.81, 4.83, 4.95
(4)	4.78, 4.83, 4.86, 4.128
177	4.47, 4.48, 4.62, 4.75, 4.80
178	4.158
(2)	4.61
180(1)	4.79, 4.80
(3)	4.80
(4)	4.81
(a)	4.52
187	4.43
188, 189	5.77
222(1)	5.77
228	2.44
(1)	2.34, 2.44, 2.45, 2.55
(a)	2.44
229	2.44
(1), (2)	2.45
230	2.44; 4.43
232(4)	4.81
239	4.52, 4.81