Value Logistics Personnel Services (Pty) Ltd v Killian 2025 ZALCJHB 554 Statutory intervention in transfer of rights and obligations in employment contracts

Judith Geldenhuys
LLB LLM (UP) LLD (Unisa)
Senior research associate, University of Johannesburg
ORCID ID: https://orcid.org/0000-0001-9956-7071

SUMMARY

South African labour law, through the Labour Relations Act 66 of 1995 (the LRA) and case law, allows employment contracts and related rights to be transferred between employers, sometimes overriding the consent requirement in contract law. Provisions such as section 197 and the LRA's deeming provisions facilitate these transfers, often without employee approval.

Courts have also permitted rights and obligations to move from old employers to new employers, balancing commercial interests and the interests of employees. This contradicts the privity principle in contract law.

However, *Value Logistics Personnel Services (Pty) Ltd v Killian* 2025 ZALCJHB 554 shows the limitations of the Labour Court's powers to interfere in the contract law arena and reaffirms the boundaries of statutory intervention in employment contracts. The court held that a subsidiary cannot enforce a restraint of trade against an employee, because a subsidiary and its holding company are separate legal persons and the subsidiary was not an original party to the contracts.

1 Introduction

The ordinary law of contract emphasises sanctity of the agreement between the original parties and generally requires consent for the transfer of contractual rights and particularly obligations (Van Huyssteen, Lubbe, Reinecke and Du Plessis *Contract: General Principles* 6 ed (2020) 502–503, 582, 586). South African labour law, particularly through the Labour Relations Act 66 of 1995 (the LRA) and case law facilitates the transfer of employment contracts, rights, and obligations, sometimes overriding traditional contract law principles. This case note highlights specific provisions of the LRA (section 198(2), 198A(3)(b), 198B(5), and 198C(3)(a) and 197) and key cases that shape how rights and obligations are transferred between employers.

The deeming provisions in the LRA can result in a party being regarded as an employer even where the original contract was concluded with a

How to cite: Geldenhuys '*Value Logistics Personnel Services (Pty) Ltd v Killian* 2025 ZALCJHB 554 Statutory intervention in transfer of rights and obligations in employment contracts' 2026 *De Jure Law Journal* 134-148
http://dx.doi.org/10.29053/2225-7160/2026/v59a10

different individual or corporation (*Assign Services (Pty) Ltd v NUMSA* 2018 9 BLLR 837 (CC)). Similarly, section 197 of the LRA enables the transfer of employment contracts and associated rights and obligations when a business is transferred as a going concern, without the express consent typically required under contract law (s 197(1) of the LRA).

Furthermore, courts have recognised that restraints of trade may also transfer to a new employer in the context of business restructuring, reflecting a pragmatic approach to protecting commercial interests while balancing employee rights.

First, the facts, legal questions, and the decision in *Value Logistics Personnel Services (Pty) Ltd* are briefly summarised. In the discussion, a brief exposé of the traditional contract law principles governing the transfer of rights and obligations in employment relationships is provided. Then, the case note examines the statutory deviations from the ordinary contract law principles introduced by the LRA, with particular emphasis on section 197 and the deeming provisions. Next, it considers judicial developments that have extended these statutory mechanisms to restraints of trade in the context of business transfers.

Finally, it analyses how *Value Logistics Personnel Services (Pty) Ltd* is a turning point. This case reaffirms the resilience of privity, marking a boundary line against statutory encroachment by refusing to extend statutory transfer to restraints of trade within a corporate group. The conclusion summarises the discussion and synthesises the findings.

2 The salient facts in *Value Logistics Personnel Services (Pty) Ltd*

In this matter, Value Logistics Personnel Services (Pty) Ltd (Value Personnel) and Value Logistics (Pty) Ltd (Value Logistics) (the applicants) both part of the Value Group, sought to enforce a restraint of trade clause and confidentiality agreement against their former employee, Killian (*Value Logistics Personnel Services (Pty) Ltd* paras 2-4). Although Killian's employment contract was with Value Personnel, he primarily worked for Value Logistics until his resignation (*Value Logistics Personnel Services (Pty) Ltd* paras 6-7). The applicants requested the court to prevent Killian for 24 months post-employment, from joining or associating with Value Group's competitor, and from soliciting business from or providing services to 'Restricted Customers,' as well as from working for a competing business (*Value Logistics Personnel Services (Pty) Ltd* paras 1, 9). They also sought to bar him from disclosing any confidential information acquired during his employment (*Value Logistics Personnel Services (Pty) Ltd* paras 1, 9).

Killian's employment contract defined 'Group Company' expansively to protect the proprietary interests within the Value Group (*Value Logistics Personnel Services (Pty) Ltd* para 9).

The key question was whether the Labour Court had jurisdiction over Value Logistics' application against Killian, given the lack of a direct employment contract between them (*Value Logistics Personnel Services (Pty) Ltd* para 23).

The applicants argued that, based on Killian's employment contract and associated confidentiality policy, he agreed to obligations benefiting both Value Personnel and Value Group companies, including Value Logistics (*Value Logistics Personnel Services (Pty) Ltd* paras 16, 18).

They claimed that the Labour Court had jurisdiction under section 77(3) of the Basic Conditions of Employment Act 75 of 1997 (BCEA) to entertain the dispute (*Value Logistics Personnel Services (Pty) Ltd* para 18).

Killian, however, maintained that his contract was only with Value Personnel and that there was no separate agreement with Value Logistics and that, consequently, the Labour Court lacked jurisdiction over the claims of Value Logistics (*Value Logistics Personnel Services (Pty) Ltd* para 19).

In summary, *Value Logistics Personnel Services (Pty) Ltd* centred on the transfer of employees and the enforceability of restraint of trade undertakings in groups of companies. The key question for the Labour Court was whether these restraints could be enforced by Value Logistics (Pty) Ltd, given that Value Logistics was not the original contracting party.

2 1 Legal questions

The questions that the court was required to consider were:

1 Does the Labour Court have jurisdiction to hear a dispute to enforce a contractual right when the referring party is not originally party to the contract?
2 Was the employment contract concluded by Killian a contract to the benefit of a third party (*stipulatio alteri*)?
3 Can a subsidiary company enforce a restraint of trade concluded between an employee and its holding company?

2 2 Decision

2 2 1 Jurisdiction of the Labour Court

The Labour Court reaffirmed that its powers are defined by statute (*Value Logistics Personnel Services (Pty) Ltd* paras 20-22). Section 157 of the LRA confines the Labour Court's jurisdiction to matters assigned to it by law, with concurrent jurisdiction alongside the High Court for certain constitutional issues arising from employment (*Value Logistics Personnel Services (Pty) Ltd* para 21). For contractual disputes, section 77 of the BCEA grants the Labour Court authority to hear cases related to contracts of employment (*Value Logistics Personnel Services (Pty) Ltd* para 21).

With reference to *Passenger Rail Agency of South Africa & others v Ngoye* 2024 45 *ILJ* 1228 (LAC), the Labour Court clarified that its jurisdiction is derived from the LRA and BCEA, specifically concerning contracts of employment between the parties (*Passenger Rail Agency of South Africa* para 5; *Value Logistics Personnel Services (Pty) Ltd* para 22). The Labour Court cannot consider claims involving third parties not party to the employment contract referenced in the dispute, as this would exceed its statutory mandate (*Value Logistics Personnel Services (Pty) Ltd* para 23).

The court distinguished between the jurisdiction of the Labour Court and the High Court's jurisdiction (*Value Logistics Personnel Services (Pty) Ltd* paras 20, 27). Whereas the High Court enjoys general jurisdiction, and whether or not someone qualifies as an 'employee' is not a jurisdictional issue that needs to be considered, this is not the same in the Labour Court where it is crucial (*Value Logistics Personnel Services (Pty) Ltd* para 27).

Therefore, the Labour Court concluded that Value Logistics lacked standing against Killian due to the absence of an employment relationship, and resultantly the Labour Court had no jurisdiction over its claim (*Value Logistics Personnel Services (Pty) Ltd* para 28).

2 2 2 Was the contract concluded between Value Personnel and Killian a contract to the benefit of a third party (Value Logistics)?

As to the applicants' argument that there was a *stipulatio alteri* (contract for the benefit of a third party) at play, the court declined to make a finding (*Value Logistics Personnel Services (Pty) Ltd* para 38).

But the court was unconvinced that this was the case, as no evidence had been presented of an intention to benefit Value Logistics or that Value Logistics accepted the benefit (*Value Logistics Personnel Services (Pty) Ltd* para 36-38). The court's reluctance to find a *stipulatio alteri* underscores the resilience of the privity principle.

With reference to *Crookes v Watson* 1956 1 SA 277 (A), the court noted that a *stipulatio alteri* is not merely a contract intended to benefit a third party, but one that allows the third party to become a party to the contract by notifying one of the original contracting parties (*Value Logistics Personnel Services (Pty) Ltd* para 35; *Crookes* 291B-C).

The Labour Court noted that this insistence on clear intention and acceptance was reaffirmed in *Total South Africa (Pty) Ltd v Bekker* 1992 1 SA 617 (AD), where the court held that contractual rights and obligations cannot be imposed on outsiders without their consent, reinforcing the privity principle (*Total South Africa (Pty) Ltd* paras 15-18).

The court reiterated that for a *stipulatio alteri* to exist, the contract must clearly show the intention to benefit a specific third party, and that

party must accept the benefit, either expressly or by implication, thereby gaining the right to enforce the contract (*Total South Africa (Pty) Ltd* paras 16-18; see also *Melamed and Hurwitz v Cleveland Estates (Pty) Ltd* 1984 3 SA 155 (A) para 55).

Nevertheless, the court said that even if the *stipulatio alteri* had been established, that does not amount to a transfer of the contract of employment from Value Personnel to Value Logistics (*Value Logistics Personnel Services (Pty) Ltd* paras 30, 32-33, 38).

There was no sign that the employment relationship was arranged in this way and that Killian had agreed to this (*Value Logistics Personnel Services (Pty) Ltd* para 38). The court held that finding otherwise, (i.e., that Killian was employed by Value Logistics) would amount to an irregular interference in the rights and freedom of the parties to contract (*Value Logistics Personnel Services (Pty) Ltd* para 38).

Absent a finding that a *stipulatio alteri* was present, the court did not have jurisdiction. On the facts, Killian, though rendering services at Value Logistics, remained an employee of Value Personnel (*Value Logistics Personnel Services (Pty) Ltd* para 39). The court held that, even if it was found that a benefit was created in favour of and accepted by Value Logistics (Pty) Ltd, that benefit on the applicants' pleaded case is limited to the restraint of trade clause, not the whole contract of employment, because Killian remained an employee of Value Personnel (*Value Logistics Personnel Services (Pty) Ltd* para 40).

Clause 19 of Killian's employment contract allowed for the possibility of transferring employees within the Value Group, including to different companies or divisions, without consent from the employee. The applicants argued that this meant that Killian's employment contract could have been transferred to Value Logistics without his agreement or knowledge, referencing *Value Logistics (Pty) Limited v Oosthuizen* [2022] ZAGPJHC 626 (5 September 2022) to support their position (*Value Logistics Personnel Services (Pty) Ltd* para 25; *Oosthuizen* paras 12-17, 26-30, 42 and 47). However, the court disagreed, finding that unlike in *Oosthuizen*, Killian's employment contract was never transferred from Value Personnel to Value Logistics (*Value Logistics Personnel Services (Pty) Ltd* para 34).

What can be gleaned from these cases is that, even where labour law is allowed to override contract law doctrines, the judiciary insists that third-party benefits must be clearly intended and accepted.

2 2 3 Can a subsidiary company enforce a restraint of trade concluded between an employee and its holding company?

The applicants argued that Value Personnel could enforce the restraint of trade against Killian even if Value Logistics could not (*Value Logistics Personnel Services (Pty) Ltd* para 41). The court agreed (*Value Logistics*

Personnel Services (Pty) Ltd para 42). However, the court held that this did not mean that Value Logistics could simply assume the role of Value Personnel as an employer and approach the court to enforce the contract of employment.

A subsidiary is not merely an extension of its holding company (*Value Logistics Personnel Services (Pty) Ltd* para 45). It is a distinct juristic person with its own rights and obligations (*Value Logistics Personnel Services (Pty) Ltd* para 45). The principle of privity of contract dictates that contracts entered into by a subsidiary company will not bind the holding company, unless this is expressly agreed upon (Bradfield *Christie's The Law of Contract in South Africa* 8 ed (2021) 317).

This legal separation between holding companies and subsidiary companies is crucial for ensuring that employment rights and obligations are not automatically imposed on corporations that have not expressly accepted them.

3 Discussion

The facts in *Value Logistics Personnel Services (Pty) Ltd* highlight the complexities that can arise when employment contracts and their associated rights and obligations are considered for transfer or enforcement between different companies within a group.

These complexities are especially pronounced where employees have not expressly consented to the substitution of parties. They also arise when employees have not agreed to the extension of obligations to a new employer.

Notably, an obligation is a legal relationship that is created between contracting parties that confers enforceable personal rights (Schulze, Manamela, Stoop, Manamela, Hurter, Masuku, Stoop and Tuba *General Principles of Commercial Law* (2024) 47).

Importantly, *Value Logistics Personnel Services (Pty) Ltd* did not concern a merger or acquisition where section 197 of the LRA would be triggered and the rights and obligations would automatically be transferred from the old employer to the new employer.

Instead, it addressed whether rights and obligations under an employment contract could be transferred or enforced across separate legal persons within a corporate group, absent clear consent, or statutory intervention. The case tested the reach of statutory mechanisms under the LRA, reaffirming that contractual autonomy and privity remain resilient when employment relationships are restructured within corporate groups.

To appreciate the statutory deviations evaluated in *Value Logistics Personnel Services (Pty) Ltd*, it is necessary to first consider the contract

law principles that ordinarily govern the transfer of rights and obligations. This is done next.

3 1 Contract law principles

At common law, the transfer of contractual rights and obligations is governed by principles that emphasise privity of contracts and consent. The privity principle dictates that obligations are binding only on the parties who concluded the agreement (Bradfield (2021) 317). Any substitution of a party to the contract, or a transfer, particularly of any contractual obligation, ordinarily requires express approval of the person to whom the obligations are transferred or who is acquiring the obligation (Schulze et al (2024) 150).

Whereas cession of rights without consent may be permissible in certain circumstances, the delegation of obligations without consent is generally prohibited (Schulze et al (2024) 149-50).

A contract to the benefit of a third party or *stipulatio alteri* appears to be an exception to the concept of privity of contract. A *stipulatio alteri*, is an agreement where two parties make a contract that is intended to give rights or benefits to someone who is not originally a party to the contract. The third party can accept the benefit, and once they do, they can enforce the contract as if they were an original party (Van Huyssteen et al (2020) 308).

For example, in the context of *Value Logistics Personnel Services (Pty) Ltd*, imagine that Value Personnel (the original employer) and Killian agreed in Killian's employment contract that a restraint of trade will not only benefit Value Personnel but also extend to Value Logistics, a subsidiary company within the same group. If Killian leaves and attempts to join a competitor, and Value Logistics accepts the benefit of the restraint of trade clause, Value Logistics could seek to enforce the restraint against Killian, even though Killian's contract was originally only with Value Personnel. This illustrates that, upon acceptance of the benefit, a related company may invoke the restraint clause despite not being the original contracting party. The Labour Court held that even an expansive definition of 'Group Company' was insufficient, underscoring that broad drafting alone does not secure enforceability (*Value Logistics Personnel Services (Pty) Ltd* para 9).

In order to rely on a contractual provision and enforce it, the party must have been intended to be a party to the agreement with one of the other two parties (Van Huyssteen et al (2020) 308-309). Therefore, a third party may enforce a contractual clause either if it was intended to benefit them or if they have accepted the benefit of the stipulation (Bradfield (2021) 319).

3 1 1 Cession, delegation, and novation in restraints of trade

The legal framework governing the transfer and enforcement of employment rights is intricate and evolving. When companies restructure or shift responsibilities among subsidiaries and holding companies, questions arise regarding the extent to which employment obligations and rights may be transferred or enforced across different juristic persons. This discussion explores the foundational contract law principles, as highlighted in *Value Logistics Personnel Services (Pty) Ltd*.

Under the ordinary contract law rules, a restraint of trade, which is a personal right, is only enforceable by the original contracting party unless a valid cession or novation occurs (Schulze et al (2024) 145-146, 149–150). A cession occurs where contractual rights are transferred from one person, whether a natural person or a juristic person, to another (Schulze et al (2024) 145). Usually a cession of rights can be effected freely, and no specific formalities are required. However, the parties must have the intention to cede (Schulze et al (2024) 145).

Cession only applies to the transfer of rights. Where obligations are transferred, it would qualify as delegation, a type of novation where a new party is introduced to the contract who will take over the contractual obligations (Schulze et al (2024) 150). Unlike cession, all three of the parties must consent and cooperate to transfer personal obligations (Schulze et al (2024) 150).

Novation occurs when the parties agree that an old contractual agreement is extinguished and replaced by a new obligation in its place. Here consent of both parties is required. (Schulze et al (2024) 149-150).

The following examples illustrate how cession, delegation, and novation operate in the context of a restraint of trade within an employment contract:

Assume that in *Value Logistics Personnel Services (Pty) Ltd*, Killian signed an employment contract with Value Personnel (the original employer) which contained a restraint of trade clause prohibiting him from joining competitors for one year post termination of his employment. If Value Personnel were to cede its rights under the restraint clause to Value Logistics, a subsidiary company, as part of a business sale or restructuring, then Value Logistics could seek to enforce the restraint against Killian, even though Killian's original contract was only with Value Personnel. This would constitute a cession of rights.

Suppose Value Personnel was acquired by Value Logistics Ltd, and as part of the acquisition, Value Logistics agreed to assume all of Value Personnel's obligations towards its employees, including the enforcement of restraint of trade clauses. For this delegation of obligations to be valid, Value Personnel (the original employer), Value Logistics (the new employer), and Killian (the employee) would all need to consent to the transfer. Only then would Value Logistics assume the

obligation to enforce and uphold the restraint of trade clause. This qualifies as delegation.

Novation would occur if all the parties agreed to terminate the original contract between Killian and Value Personnel and replace it with a new contract between Killian and Value Logistics. The new contract could include a revised restraint of trade clause. In this case, the original agreement is extinguished and replaced by a new one, requiring the consent of both Killian and Value Logistics. The restraint of trade would then operate under the terms of the new contract.

In *Value Logistics Personnel Services (Pty) Ltd*, the employer's representative did not base their argument on traditional contract law principles such as cession, delegation, or novation. Instead, they contended either that the contract was drafted broadly enough to include the group company (thus allowing Value Logistics to enforce the restraint of trade), or that Value Logistics had, through its actions, accepted the restraint clause and was, therefore, entitled to enforce it.

The interplay between the common law principles of privity and statutory interventions in labour law is illustrated by *Value Logistics Personnel Services (Pty) Ltd*. The case highlights that privity remains a cornerstone of contract law.

3 1 2 Acceptance and privity in contract law

The privity principle not only governs employment relationships but also underpins the general enforceability of contracts. Acceptance, as a cornerstone of contractual formation, further delineates who may be bound by or benefit from contractual rights and obligations (Schulze et al (2024) 55-57).

Total South Africa (Pty) Ltd illustrates that acceptance must be communicated to the correct party in order to bind them (see Schulze et al (2024) 72) where the authors emphasise that an offer can only be accepted by the person or corporation with whom the offeror intended to contract. It reinforces that contractual rights and obligations cannot be imposed on or extended to third parties without their consent, and that acceptance must be unequivocal and directed to the offeror. This protects contractual autonomy: parties cannot be forced into obligations without their consent.

Melamed and Hurwitz clarified that a person may contract with themselves in different capacities, and although it had not been established in that case, that acceptance can even be inferred tacitly from conduct rather than requiring express communication. Where a tacit term is at play, the intention of the parties is imputed by law. In this regard see Schulze et al (2024) 106-107.

In terms of the privity principle, only parties to a contract can enforce rights or obligations (Bradfield (2021) 317). However, this case

demonstrated that the principle is not rigid. Dual capacity contracting means that privity does not prevent a person from being on 'both sides' of a contract, provided they act in distinct legal capacities. In contract law, substance matters more than form. The courts will look at the realities of the relationship and conduct to determine whether a binding agreement exists.

Having established the common law baseline of privity, consent, and the limited exception of *stipulatio alteri*, the discussion now turns to how labour legislation deliberately unsettles these principles.

3 2 Statutory deviations in labour law

The LRA's deeming provisions and section 197 are not mere technical adjustments. They represent a conscious statutory departure designed to protect employees, even at the expense of contractual autonomy. These statutory deviations from ordinary contract law principles are discussed under separate headings below.

3 2 1 The deeming provisions

The deeming provisions in the LRA in sections 198(2), 198A(3)(b), 198B(5), and 198C(3)(a) are prime examples of statutory deviation from contract law.

Section 198(2) of the LRA determines that someone employed by a temporary employment service (TES) is deemed to be the employee of the TES, and the TES is deemed to be the employer. The point of departure is therefore that the TES, and not the client for whom the work is performed, is the employer.

Section 198A of the LRA was introduced by the 2014 amendments to the LRA. This provision applies to employees earning below the earnings threshold set in the BCEA. The threshold amount is currently set at R269 600.90 per annum, or R22 466.74 per month (GN 7384 GG 54544 of 17 April 2026).

Section 198A(3)(b) of the LRA applies to 'vulnerable employees' earning below the income threshold determined by the BCEA. These are employees that are considered to be more exposed to exploitation who require statutory safeguards. The provision shifts employer status from the TES to the client. Where an employee is placed with a client by a TES for a period of less than three months, or to perform a genuinely temporary service, the TES remains the employer. However, where an employee is placed with a client for a period exceeding three months and is not performing a genuinely temporary service, the client is deemed to be the employer for the purposes of the LRA (s 198A(3)(b) of the LRA; *Assign Services (Pty) Ltd* para 91).

In other words, this provision in effect shifts the employment relationship from one employer to another, who did not conclude the

original contract of employment. The client becomes the sole employer for purposes of the LRA and assumes responsibility for the payment of the employee's wages, benefits and to treat them fairly (*Assign Services (Pty) Ltd* paras 80, 84).

Section 198B(5) of the LRA deems employees on fixed-term contracts to be employed on an indefinite basis if certain conditions are not met, including the absence of a justifiable reason for a fixed-term arrangement.

Section 198C(3)(a) of the LRA provides that fixed-time employees who are treated less favourably than comparable full-time employees may be deemed to be employed on the same terms as permanently appointed employees unless different treatment is justifiable.

At the heart of these statutory interventions is the recognition that workers are often in an unequal bargaining position when negotiating employment contracts (See for example *Makhothokho v Pick n Pay Supply Chain (Pty) Ltd* 2022 ZALCJHB 114 paras 78, 80-81, *Motor Industry Staff Association v Great South Autobody CC t/a Great South Panelbeaters* 2025 4 BLLR 337 (CC) para 62).

Without regulatory oversight, workers risk being paid less, receiving fewer benefits, and losing vital protections. To counter these risks, the legislature has used the LRA to impose minimum standards and redefine parties to the employment relationship. This approach prioritises public interest and the welfare of employees by ensuring that legal protections are not easily circumvented by contractual or commercial manoeuvres.

3 2 2 The court's interpretation of statutory reassignment of employment

In *Assign Services (Pty) Ltd*, the Constitutional Court held that under section 198A(3)(b) of the LRA, workers placed by a TES with a client for more than three months are deemed to be employees of the client alone, creating a sole employment relationship rather than a dual one (*Assign Services (Pty) Ltd* para 84; Du Toit et al *Labour Relations Law: A Comprehensive Guide* 7 ed (2023) 52 fn 249).

The apex court held that section 198A(3)(b) of the LRA must be read purposively, in light of section 23 of the Constitution of the Republic of South Africa, 1996 (the right to fair labour practices) (*Assign Services (Pty) Ltd* paras 65-70). Section 198A(3)(b) of the LRA was designed to protect vulnerable workers and regulate labour broking (*Assign Services (Pty) Ltd* para 66; Du Toit et al (2023) 115). Once the three-month threshold is crossed, the client becomes the sole employer for purposes of the LRA (Du Toit et al (2023) 45). This interpretation best promotes fairness, job security, and equality (*Assign Services (Pty) Ltd* para 84; Du Toit et al (2023) 114-115). This case reinforces the LRA's protective purpose and marks a strong statutory deviation from contract law's privity principle (Du Toit et al (2023) 114-115).

The highest court's decision in *Assign Services (Pty) Ltd* established a strong precedent for statutory intervention in employment relationships. The court reinforced the protective purpose of the LRA and demonstrated how labour law can override contract law's insistence on privity and consent.

The apex court's decision in *Assign Services (Pty) Ltd* is the most authoritative and clearest example of the effect of statutory intervention in employment relationships, especially in relation to the transfer and creation of employment rights and obligations.

3 2 3 Automatic transfer of employment contracts

Whereas the deeming provisions reassign employment relationships, section 197 of the LRA goes even further. Section 197 does more than redefine who the employer is. It transfers the entire employment contract, including its rights and obligations, to a new employer without the employee's consent. This provided the foundation for the argument in *Value Logistics Personnel Services (Pty) Ltd*: if the law permits a contract to be transferred to a new employer that was not an original party to it, why should an associated company not be allowed to enforce a restraint of trade to which it was not a party? The court rejected that argument and held that, absent a statutory transfer such as that contemplated by section 197, consent remains necessary. The case thus marks the boundary between statutory exceptions to privity and the continued operation of the privity principle in restraint disputes.

Section 197 of the LRA offers a statutory mechanism that overrides contract law's insistence on privity and consent. Where a company or part of a company is sold or otherwise transferred as a going concern, all employees automatically become employees of the new owner on the same terms and conditions. This transfer includes all rights, duties, benefits, and liabilities. Section 197 aims to provide broad protection to employees during business transfers by ensuring their employment contracts move over to the new employer (*Laser Junction (Pty) Ltd v Fick* 2017 38 ILJ 2675 (KZD) paras 11, 20, 29). Consent from employees is not required, and the new employer cannot selectively choose which contracts to honour (s 197(1) of the LRA; *NEHAWU v University of Cape Town* 2003 3 SA 1 (CC) paras 44-46).

This provision safeguards job security, continuity, and accrued benefits, ensuring workers are not disadvantaged by changes in ownership of businesses (*NEHAWU* paras 45-53). Unlike the deeming provisions regulating TES, which redefine the identity of the employer, section 197 preserves the substance of existing contracts.

Both the deeming provisions in the LRA and section 197 reflect a deliberate legislative choice to prioritise fairness and worker protection over strict contract law doctrines. Whereas cession, delegation, and novation in contract law each require varying degrees of consent to transfer rights or obligations, section 197 of the LRA operates on a

fundamentally different plane. Cession allows rights to be transferred without the debtor's consent; delegation requires the cooperation of all three parties to shift obligations; and novation extinguishes the old contract and replaces it with a new one, demanding mutual assent. By contrast, section 197 does not merely redefine who the employer is, as the deeming provisions do. It transfers entire contracts of employment intact, including all rights and obligations, to the new employer automatically, without any need for employee or employer consent. This statutory mechanism deliberately overrides the privity principle and the consensual foundation of contract law, reflecting a legislative choice to prioritise job security and continuity of employment over contractual autonomy. In this way, section 197 represents a decisive statutory departure from the ordinary doctrines of cession, delegation, and novation, underscoring the protective purpose of labour law.

3 2 4 Judicial interpretation of transferability of restraint of trade agreements under section 197 of the LRA

National Health Laboratory Service v Lloyd-Jansen van Vuuren 2015 5 SA 426 (SCA) concerned the novation of successive employment contracts: the question was whether a later contract novated a training-cost repayment obligation created by an earlier one. The court held that the intention to novate a contract cannot be presumed (*National Health Laboratory Service* para 15). An obligation created by the earlier contract endures unless it is cancelled or novated (*National Health Laboratory Service* paras 20 and 22).

But does this mean that all restraints of trade agreements are transferred under section 197 of the LRA, even if it would be detrimental to employees? In *Laser Junction (Pty) Ltd* the court questioned whether the agreements, specifically the restraint agreement, could transfer by law under section 197 of the LRA. While contracts of employment are transferred by section 197, the court was not convinced that the same applies to restraint agreements (*Laser Junction (Pty) Ltd* para 19). The court clarified that only employment contracts are transferrable under section 197. If a restraint is less favourable to employees, it cannot count as an 'employment contract' and thus cannot be transferred (*Laser Junction (Pty) Ltd* para 21). Whether a restraint is 'less favourable' must be decided in each case (*Laser Junction (Pty) Ltd* para 21). The court found the restraint in question to be unfavourable and ruled it could not be transferred, (*Laser Junction (Pty) Ltd* para 23) setting an important limitation on the transferability of restraints of trade.

In *Waco Africa (Pty) Ltd t/a Form Scaff v Sack* 2020 41 ILJ 1771 (LC) the Labour Court held that a restraint of trade survives a transfer of a business as a going concern and remains enforceable by the new employer, except if the restraint is expressly extinguished (*Waco Africa (Pty) Ltd t/a Form Scaff* paras 19, 25 and 30). *Waco Africa (Pty) Ltd t/a Form Scaff* and *National Health Laboratory Service* underpin the principle that restraints remain binding unless displaced.

Canize Trading (Pty) Ltd v Theron 2025 ZALCJHB 183 set another boundary. The Labour Court refused to extend restraint agreements to protect a related company, Transmart Express, where employees had only contracted with Canize Trading (*Canize Trading (Pty) Ltd* paras 4, 16). Despite overlapping directors and operations, the court held that restraints must clearly identify the contracting parties and cannot automatically bind or benefit associated corporations (*Canize Trading (Pty) Ltd* para 16). This judgment aligns with the privity principle and echoes the caution expressed in *Value Logistics Personnel Services (Pty) Ltd*.

In *Slo-Jo Innovation (Pty) Ltd v Beedle* 2022 ZALCJHB 212 and subsequently on appeal in *Beedle v Slo-Jo Innovations Hub (Pty) Ltd* 2023 44 ILJ 2493 (LAC), Beedle was employed by Slo-Jo Trading, whose contract included a restraint of trade clause (*Slo-Jo Innovation (Pty) Ltd* paras 1-2; *Beedle* paras 2, 7). After an internal restructuring, her employment was transferred to Slo-Jo Innovation under section 197 of the LRA (*Beedle* paras 3-5). Beedle later resigned and joined a competitor, prompting the new employer to enforce the restraint (*Beedle* para 7). In these recent cases the Labour Court and, on appeal, the Labour Appeal Court confirmed that restraints of trade are part of the rights and obligations that transfer with the contract when a business is transferred as a going concern (*Slo-Jo Innovation (Pty) Ltd* paras 28–29, *Beedle* para 33). These cases solidified that restraints of trade are not merely personal undertakings but form part of the employment contract that transfers under section 197 of the LRA. This means that employers acquiring a business can rely on existing restraint clauses to protect commercial interests, while employees remain bound unless the restraint is otherwise unenforceable.

These findings are difficult to reconcile with the High Court's approach in *Laser Junction (Pty) Ltd*. In that case, the court held that section 197 of the LRA transfers only contracts of employment and that a restraint clause cannot be transferred if it places the employee in a less favourable position (*Laser Junction (Pty) Ltd* paras 19, 21). By contrast, in *Slo-Jo Innovation (Pty) Ltd* and *Beedle*, the courts treated the restraint as part of the employment contract that transferred automatically, without first considering whether its terms were less favourable to the employee (*Slo-Jo Innovation (Pty) Ltd* paras 28-29; *Beedle* para 33).

The different outcomes can be explained as follows. *Laser Junction (Pty) Ltd* is a High Court decision, while *Beedle* was decided by the Labour Appeal Court, whose interpretation of section 197 carries greater authority. The cases address two separate issues: whether a restraint transfers with the contract and whether that restraint is reasonable and enforceable after transfer. To the extent that *Laser Junction (Pty) Ltd* makes transferability depend on the terms of the restraint itself, it merges these two enquiries.

The better view, consistent with *Beedle* and *Waco Africa (Pty) Ltd t/a Form Scaff*, is that transferability and enforceability are distinct enquiries: the restraint passes to the new employer as part of the rights and obligations under the transferred contract unless it is novated, waived or cancelled, and its reasonableness falls to be determined separately thereafter (*Beedle* para 33; *Waco Africa (Pty) Ltd t/a Form Scaff* paras 19, 25 and 30 on the transfer of the restraint, and paras 32, 42 and 46 on its reasonableness; on the presumption against novation see *National Health Laboratory Service* paras 15 and 20).

The jurisprudence on restraints of trade reveals both flexibility and caution: courts have upheld their transfer under section 197 of the LRA, but only where they remain part of the employment contract. *Value Logistics Personnel Services (Pty) Ltd* reasserts the decision in *Canize Trading (Pty) Ltd* that privity is the outer boundary of statutory intervention in groups of companies.

4 Conclusion

Courts have championed the rights of employees, securing continuity and fairness in the workplace. Yet, they have also drawn firm lines, refusing to let statutory intervention overshadow the foundational principles of contract law.

Cases such as *Total South Africa (Pty) Ltd*, *Melamed and Hurwitz*, and *Canize Trading (Pty) Ltd* demonstrate that while statutory mechanisms under the LRA can override privity to protect employees, courts remain firm that contractual autonomy sets the outer boundary. *Value Logistics Personnel Services (Pty) Ltd* crystallises this balance: statutory fairness is robust, but it cannot create obligations where no employment relationship exists. The jurisprudence thus reflects a careful equilibrium between worker protection and respect for the foundational principles of contract law.

The jurisprudence on transfers of employment contracts demonstrates a careful equilibrium. On the one hand, statutory mechanisms such as section 197 and the deeming provisions sweep aside traditional contract law doctrines to protect vulnerable workers and ensure continuity of employment. On the other hand, courts have consistently drawn boundaries, refusing to extend these mechanisms to situations where no employment relationship exists. *Value Logistics Personnel Services (Pty) Ltd* crystallises this balance. It underscores that while labour law can override privity to secure fairness, it cannot impose obligations on outsiders or confer jurisdiction where none exists. For future labour jurisprudence, this delicate equilibrium must be maintained to protect employees without eroding the foundational principles of contract law.