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**Contracts of Employment:  
A Preliminary Study of the Interaction  
between Relational Norms and Formal  
Agreements**

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## **Contracts of Employment: A Preliminary Study of the Interaction between Relational Norms and Formal Agreements**

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### **Abstract**

This paper presents a preliminary study to investigate the interaction between the written contract of employment and other informal factors that encompass the obligations established ex ante and evolve ex post the formation of the employment relationship. The will develop the programmes EPSRC/ industry funded team at the University of Warwick (LoTISS 2000-2003; ECLOS 1998-2000) in extending Macneil's original concept of relational contracting (Macneil, 1974-2001) to the employment relationship.

This assessment of employment contracts primarily focuses on branches of socio-legal and institutional economic research regarding the combination of human traits and formal contracts on the employment relationship. The review of the informal and formal factors that bind the employment relationship presents a perspective of transaction cost economics (Williamson, 1973-96; Battu, McMaster and White, 2002) that Campbell and Picciotto differentiate from the classical "old institutional economics" (Campbell and Picciotto, 1998; 273) and the relational contracting school (Macaulay, 1963; Macneil, 1974a, 1974b; Beale and Dugdale, 1975; Lyons, 1995; Campbell, 2001).

The analysis refers to empirical data that was gathered to initiate the groundwork for future research regarding the influence of relational contracting in employment contracts. Future research will develop the contractual aspects of seconding employees into extended enterprises (Cullen, 2000; Hickman, 2009) and network forms (Adams and Brownsword, 1990) of inter-firm relations. This examination of employment contracting will continue the analysis of relational norms in terms of their nexus with the nature and role of trust in employment contracts. Significantly this direction will follow the recommendations of and Campbell and Picciotto (1998) and Lyons and Mehta (1997) that trust should be evaluated as a relational text between the lines and how it acts as a bond between contracting parties.

**Keywords:**

## **Introduction**

This paper presents the results from an initial study on the combination of informal influences that have a profound effect on the working relationship outside of the formal written contract of employment. We propose that these informal factors combine to establish the effectiveness of the working relationships and ultimately the efficiency of the organisation. The employment relationship can be considered as a collection of obligations and understandings that are established between the parties *ex ante*, at say the job interview, and subsequently evolve *ex post* over the duration of the relationship.

The legal focus of both these branches of research is that of the Common Law of Contract. The nexus between the formal legal factors and the informal elements acknowledge the work of Macneil (1974a), who challenges the classical, *laissez-faire* perspective and the universal foundation of both commercial and employment contracting. However, there are informal influences on which relationships are conducted; it is proposed that this is appropriate basis to found the methodology of this paper and for the future work that the authors are developing in a wider workplace perspective. In extending this theme, we suggest that although relational contracting has developed extensively in the field of inter-firm relationships, it has been overlooked to a great extent in the area of the employment relationship.

The review of employment relationships considers the informal and formal factors that influence such relationships from a transaction cost economics perspective of Williamson (1973) and Battu, McMaster and White (2002). According to Campbell and Picciotto (1998: 273) transaction cost economics is differentiated from the classical “old institutional economics”; a theme that is followed by the relational contracting school of Macaulay (1963), Macneil (1974a and 1974b), Beale and Dugdale (1975), Lyons (1996) and Macneil and Campbell (2001).

The paper refers to empirical data taken from two similar organisations, with comparable employment conditions. The data was obtained through a series of semi-structured interviews with key members of personnel in both human resources and operations personnel. Therefore, the methodology of the paper is based on establishing the inter-action of the formal employment contract, the informal factors and the resultant effectiveness of the employment relationship.

## **Literature Review**

In establishing the context whereby formal and informal elements constitute the real world phenomena in which contracts of employment operate, this paper also acknowledges the contribution of the legal realist school. This empirically grounded perspective is encapsulated in Llewellyn’s (1931, 736-37) proposition that “the major importance of legal contract is to provide a framework for well-nigh every type of group organization and for

well-nigh every type of passing or permanent relation between individuals and groups ... a framework highly adjustable, a framework which almost never accurately indicates real working relations but will afford a rough indication around which such relations carry, an occasional guide in cases of doubt, and a norm of ultimate appeal when the relations cease in fact to work”.

Hence, in expanding Hickman’s (2009) recent study of contractual relationships in industry the contract of employment needs to be all things to all people; in this context, the contractual relations must be both legally certain whilst accommodating the flexibility that Guest (2004) suggests must be endemic in relationships between the employer and employee. In this vein, the literature review reflects this conundrum in its focus on the formal factors promoted by transaction cost economics and the considered flexibility proposed by the relational contracting school.

### **Relational Contracting**

Classical and relational contracting schools of thought concur with Ellickson’s (1989) proposal that classical law and economics scholars generally presume that contracting parties understand and honour legal rules. Ellickson’s (1991) challenge to classical legal theories is supported in his later findings that suggest parties also rely on quasi-legal or non-legal measures to solve disagreements. Ellickson (1989, 40-2), also proposes that informal rules reduce the transaction-related costs of resolving disputes in his challenge to “... the ability of Law and Economics to usefully predict the effect that the legal change will have on legal actions”. He pursues his line of reasoning to assess that law and economics research would be enriched by concentrating on how psychological and sociological factors influence human behaviour. In this context Ellickson (1989) asserts that future research should challenge his original presumption that parties understand and will honour legal rules.

In this vein this paper acknowledges Macaulay’s (2000: 776) assertion that “... people should not attempt to write about contracts until they have studied Macneil”. More recently, Macneil and Campbell (2001) and Vincent-Jones (2001) reinforced Macaulay’s proposition. The basis for Macaulay’s (1963, 2003 and 2005) recommendations are his seminal studies that span four industrial decades. In essence he proposes that formal terms of a contract are explicitly linked to the established relational norms.

Furthermore, Macneil’s (1974a and 1981) socio-legally grounded perspective of contractual relations extends beyond a classical legal study of “black-letter” or as Duhaime (2013) describes as “written law” to consider other aspects of commercial relationships. Macneil concurs with Coase’s (1937) and Williamson’s (1973 and 1996) contrary approach to classical, “blackboard” (theoretical and not grounded empirically hypothesis) [sic Coase 1991] theory, which they state as bearing scant resemblance to real world phenomena of how inter-firm transactions actually exist.

In formulating his framework, Macneil (1974a, and 1981) established that contracting parties' behavioural traits co-exist with formal legal rules. In essence, he proposes that when the parties involved in complicated, long-term transactions, the written agreement fails to reflect their entire arrangements or expectations. He expands his theme to suggest that in addition to the legal arrangements, contractual relations also enclose Macneil's, (1974a, and 1974b) concept of "relational norms". Macneil considers these "norms" as forms of conduct that maintain complex contractual relations that are incomplete at inception and long-term in duration; he cites trust and reciprocity as examples of such traits and the importance as such in maintaining efficiency in inter-firm relationships.

Relational contracting has been assessed in the UK engineering industry by Beale and Dugdale (1975) and Lyons (1995). In a more recent context, Macneil and Campbell (2001) and Vincent-Jones (2001) concur with those earlier studies and that Macneil's original theory on the influence of unwritten rules of conduct continues to be empirically valid. Furthermore, they also agree that informal methods of dispute dissolution are used prior to resorting to litigation, thus suggesting that relational traits are relied on prior to pursuing formal legal remedies.

Therefore, a clear pattern emerges that the formal government structure of the contract can act merely as a format for future negotiations or dispute resolution. In addition, there is clearly a collection of protocols and a pattern of informal dialogue that plays an important role in contractual relationships almost regardless of the written contract. The outcome of these iterations between law and norms creates costs that are significant elements in the transaction cost economics school.

### **Transaction Costs**

In contemporary business relations, the focus on risk averse practices has spawned a plethora of processes that surround each and every transaction, thus adding to the administrative costs the organisation.

In terms of the costs of transactions, a common foundation of Coase's (1937) and Williamson's (1985) economic theories is their focus on the "make or buy" decisions in manufacturing. These assessments involve firms in deriving an effective manner to achieve cost savings and efficiencies, however the "buy" options also require the firm to manage, or as Williamson (1973) describes as "govern" the transactions with suppliers. Williamson refers to a "governance structure" in the form of rules, protocols and contracts that parties adopt to safeguard the transaction. Therefore, poorly conceived or framed governance structures can "leak" efficiency in the form of additional transaction costs at the points of contact between the parties. For example, ambiguous or prescriptive contact conditions can add to the costs of the transaction through unnecessary administration procedures, protracted correspondence or even to litigation.



Williamson develops the theme further through a series of dimensions that factor the levels and importance of bilateral assets to the transaction. First, Williamson examines the effects of uncertainty on business relationships. Uncertainty, exists when, at the time that the contract is agreed, the parties cannot predict all the circumstances that could arise during the life of the transaction. He sub-divides uncertainty into two headings, vagaries of the natural world and the manipulation of communications. Williamson's term "external vagaries" refers to the legal term of term "force majeure" or special events that describes events that might affect the transaction that are completely outside the control of the parties. However, Williamson (1985) considers that the parties' behaviour through manipulation of communications can create uncertainty, particularly in terms of the transfer of information. Therefore he considers that form and attitude to inter-firm communications to be significant in the analysis of transaction costs. He argues that not only are there risks of inaccuracies in transmission and interpretation, but information can be manipulated in order to achieve some form of perceived advantage.

Williamson (1985) also emphasises the changes that occur in relationships when the transaction is in a period of uncertainty or continued on a regular or frequent basis. He also considers the economic implications on the transaction from the level of assets firms have to commit to the exchange. The degree of specificity of an asset in a transaction relates to the extent that it can be sold on in the market to others than the original party within the particular transaction. The varying degrees of importance of these assets to both firms are measured though out the period of the transaction. The asset therefore assumes a high level of importance as the financial investment for the organisation who commits to the asset.

Asset specificity was re-examined by Battu, McMaster and White (2002) in an employment context. Their results challenge Williamson's (1985) findings regarding the significance of specific assets; citing particular skills as an example of transaction-embedded properties. Battu et. al. expand their theme to suggest that although asset specificity is an element in employment transactions, the extent of its significant its role varies considerably from those in a commercial context.

In terms of identifying and managing the assets in contracts that complex to the extent that they are highly relational having endemic uncertainty, the EPSRC-funded industry funded team at the University of Warwick (ECLOS 1998-2000 and LoTISS 2000-2003) extended the original concepts of transaction dimensions to a contemporary requirement to acquire a "capability", such as both supplying and maintaining complex equipment that must remain operational over the long-term. The relevance of this dimension is clearly important in inter-firm relationships; however, its synergy to the employment relationship is somewhat tenuous. Therefore Williamson's dimensions of a transaction scope the features of business relationships to give a form and understanding of commercial risks and the influence that changes relationships and thus affecting the efficiency of the exchange.

Human traits in a transaction cost economics perspective was extended by Lyons (1996), Lyons and Mehta (1997) and Campbell and Picciotto (1998) who concur that future research should investigate the intangible influences in contractual relationships. They collectively cite that these are the:

- role of trust and its classifications
- conceptual nature exists in “text between the lines” that bonds relationships

This body of research extends into investigating the formation and effectiveness of trust in the contracting environment. Therefore, it is logical to propose that these elements and influences are also conditions that are relevant to employment contracts and relationships. It is in this vein that we have conducted our first study into relational contracting in employment.

### **Case Law that Supports Relational Contracting Principles**

The recent decision of the English Supreme Court (SC) in Autoclenz Ltd v Belcher & Ors [2011] UKSC 31 analysed the role played by informal elements in reflecting the reality of the a contract of employment. In assessing the true nature of the contractual relations, the SC extended its ambit to assess to extent whereby the written terms can be disregarded in favour of what the parties agreed in reality.

In reaching its decision, the SC concurred with the Court of Appeal (CA) that the terms of the written documents could be disregarded insofar as they were inconsistent with what was actually agreed between the parties. The SC cited the judgment of Aiken LJ that,

*“In cases . . . where one party alleges that the written contract terms do not accurately reflect the true agreement of the parties . . . the question the court has to answer is: what contractual terms did the parties actually agree?”*

In expanding its analysis of the interaction between written agreements and the parties’ relationship in reality, the SC distinguished between what the parties each privately intended and expected in contrast to what they actually agreed. The court held that these facets are either evidenced by the written terms of the contract or, if these are alleged to be inaccurate, by what is proved to be their actual agreement.

The importance of the Autoclenz decision is the SC’s validation of the principles established by a triad of cases that cumulatively recognised that the formal contract may not always reflect the totality of the agreement; these cases are:

- Consistent Group Ltd v Kalwak [2007] IRLR 560 (EAT)

- Firthglow Ltd (t/a Protectacoat) v Szilagyi [2009] EWCA Civ 98
- Cyf v Barratt [2010] UKSC 41

The Autoclenz decision referred to the Kalwak case, wherein the Employment Appeal Tribunal (EAT) emphasised the importance of comparing the parties' intentions in contrast to what they have recorded in the written agreement. In discerning the parties' intentions the EAT held that these should be discerned by reference to both the written contract and the factual reality of their relationship.

In the later case of Firthglow v Szilagyi [2009] the CA also focused on the intention of the parties in an employment relationship, through contrasting the balance of power between the parties in commercial and employment contracts. In analysing the differences, Smith LJ stated that:

*"...In a commercial agreement, usually both parties will be in a position to require that the terms should reflect the nature of the agreement. They may agree on a form of words which does not represent their true intentions. However, in the field of work, it is sometimes one party and only one which dictates the terms of the 'agreement'. The reality may well be that the principal/employer dictates what the written agreement will say and the contractor/employee must take it or leave it.... "* (para. 52)

In formulating her opinion, Smith LJ referred to the cautionary note in the earlier Consistent Group Ltd v Kalwak [2007] IRLR 560 case, that:

*"The concern to which tribunals must be alive is that armies of lawyers will simply place substitution clauses or clauses denying any obligation to accept or provide work in employment contracts, as a matter of form, even where such terms do not begin to reflect the real relationship."* (Elias J, para 57).

Elias J extended his reasoning to state that in such circumstances, the court must consider all of the relevant evidence, including the written terms, how the parties conducted themselves in practice and their mutual expectations. This judgement highlights the overriding theme that permeates the Kalwak decision. This principle states that the reality of the circumstances, rather than any express contractual provisions, should prevail if the latter contain unrealistic factors that neither reflect nor are wholly consistent with the actual nature of a relationship. The common thread in the contemporary Kalwak and Firthglow cases was whether according to the facts and circumstances of the case the written agreement described or represented the true intentions and expectations of the parties.

In this vein, the CA also investigated whether the mutually expected arrangements was different from those described in the document. The court expanded its theme to conclude that it was that relationship rather than the

document alone that defines the contract<sup>1</sup>. In reaching its decision, the court disregarded whether there was any actual intention to deceive a party.

In a similar vein to the earlier cases, the more recent decision in Cyf v Barratt [2010] developed the nexus between the formal agreement and the parties' mutually intended relationship to emphasise the endemic imbalance of power between the employer and employee. The SC continued its line of reasoning to declare that an employee is potentially vulnerable to abuses of authority exerted by an employer. In such circumstances, the court stated that the general law of contract should neither be the preliminary guide nor the determinative issue in the proper interpretation of the employment dispute.<sup>2</sup>

Thus, in Autoclenz the SC clarified the importance of the parties' relationship through the doctrine of implied contractual terms that rebalance power relations by reflecting the true nature of the particular employment relationship. In emphasising this theme, in concurrence with Smith LJ in Firthglow, Lord Clarke specifically referred to the opinion of Elias J in Kalwak that, in a dispute regarding the genuineness of a written term in a contract, the focus of the enquiry must be to discover the actual legal obligations. This focus of the real world phenomena of the agreement was extended in the Barrett case, which highlighted the imbalance of power in employment relationships.

The common ground between the Kalwak, Firthglow and Barratt cases was validated by the SC in Autoclenz through the contract law principle that terms may be express or implied. In this vein, whereas the SC did not actually use the term "relational contracting" (Macneil, 1974), it referred to the Common Law doctrine of implying a term that was so obvious to the parties that they did not need to express it<sup>3</sup>. In evaluating the implication that forms the basis of dispute, the court must consider all the facts and circumstances before implying a term into a contract. Therefore, when examining the employment relationship, the court must assess the manner in which the parties performed the contract since its formation and imply a term provided that the parties' understanding of the matter was not as vague or unpredictable that it would undermine the fundamental principle of legal certainty<sup>4</sup>.

Therefore the Supreme Court's purposive ruling in Autoclenz confirms and clarifies the premise developed in the sequence of cases that precede it; that the true nature of the relationship must be considered when analysing the real life phenomena of the contract of employment. The SC distinguished this principle of employment law from the role of commercial agreements, where the balance of power tends towards equilibrium; thus there is a presumption in favour of the written contract rather than implied Common Law terms.

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<sup>1</sup>Passim, the Court of Appeal also expressly disregarded whether there was any actual intention to deceive a party.

<sup>2</sup>Passim; SC referred to both statute law (specifically S97 Employment Relations Act {1996}) and the Common Law q.v Johnson v Unysis Limited [2001] UKHL, 13

<sup>3</sup>qv. Mears v Safety Cars Limited [1983] QB 54

<sup>4</sup>qv Lake v Essex County Council [2008] IRLR 182 EAT

## **Methodology**

The contribution of Macneil's relational contracting theory and that of transaction cost economics (Coase, 1937; Williamson, 1973-1996) are acknowledged in the development of the methodology of this paper. This purposive methodology concurs with Vincent-Jones (2001, 67; in Macneil and Campbell, 2001) that a robust analysis of the role of contracts is founded on an understanding of how social exchange behaviour both gives rise to and is supported by Macneil's (1981) "ten common contract norms". These will introduce in an analysis of our respondent companies.

It is acknowledged that relational contracting is the fulcrum of the methodology, with the dimensions of transaction cost economics fulfilling a lesser element.

In applying this theme, the methodology developed as Yin (2008 and 2011) proposes through a comparative design approach to analyse two case industrial studies. The common elements to the respondent organisations were their similar turn-over, UK headquarters, engineering base, global markets and formal employment terms. The data was gathered from a series of semi structured interviews and corporate documents. This qualitative approach brought forward a several observations on the employment and employer relationships that formed the case studies. These interviews were conducted in person and through the use of telephone appointments with senior human resources managers and operations personnel.

To provide another facet to the case studies, standard terms of employment and other documents, such as company newsletters were provided by the respondents to collate specific information.

The data was analysed in tabular form to assess the dimensions and norms of the transactions to propose the conclusions and recommendations for future research.

## **Case Studies**

Two companies were selected on the basis that they similar histories and a common focus on engineering. They are classified in this research as "Company 1" and "Company 2".

### **Company 1**

The organisation results from a merger between two established engineering companies that are in the private sector. Both companies had operated under a succession of different owners before being taken under the umbrella of its current owner. Their products retain their original market focus and their brand names.

The employment policy of Company 1 relied on a core of highly skilled employees, who were supported by teams of workers who held short-term contracts. The company's commitment to the continuity of long-term and short-term relations was underpinned by training and development programmes. When certain skills of members of the short-term workforce were not required by the organisation, the short-term workers were seconded into local community-based programmes. The recent owners of Company 1 are actively supporting consensual union-management relations.

## **Company 2**

This organisation was founded in the 1940's to manufacture and test engineering products. The British government requisitioned the company during the Second World War and successive governments invested in the organisation in order to meet the further demand and technical developments in the sector. Recently the company was purchased by a private corporation based in the European Union that services global markets for a wide range of engineering facilities.

In contrast, Company 2 inherited an entrenched ethos of conflictual employee-employer and union-management stances that Deakin and Morris, (2001) propose has endured from it belonging to a nationalised entity during the 1960's and 1970's, when union-management relations were conflictual and strife-ridden.

## **Results**

The results suggest that both organisations have common historical developments. In particular, both organisations were original privately owned and managed, both nationalised for two-three decades but have now reverted to private ownership. However, Company 1 is now owned by an international engineering corporation; Company 2 is currently owned by a construction and engineering organisation that operates globally.

In terms of their differences in employment relationships, Company 1 relies on relational traits to bind employment relations in contrast to the practice of both its previous owners. In contrast, since its nationalisation and throughout the succession of proprietors, Company 2 continues to apply a transactional mode of governing employment relationships, with more reliance on formal contract terms and arms length negotiations.

In supporting the relational contracting and transaction cost economics research findings, Company 1's greater emphasis on relational qualities has fosters traits of reciprocity and cooperation in contrast to the conflictual stance regarding labour and employment relationships in Company 2. Conversely, Company 1's employment environment suggests that it promotes harmonious

relations and conflict avoidance. In contrast Company 2 experiences regular employment-based conflicts.

Whereas Company 1 recognises that an element of conflict is inevitable and therefore, has established norms for dispute dissolution and proactively planned flexibility in supporting continuing relations with their employees.

In both companies, the interviewees stated that the employer/employee contracting in terms of the relationships was significantly influenced by the relative transactional or relational stances of their respective companies. In the company newsletters, the owner of Company 1 expressed support for mutual cooperation and reciprocity between management and the workforce and appeared to ensure that this policy was practiced; similar elements were not found in terms of Company 2.

One common element between the Companies was the categorical statements that the attitudes of line management had percolated down from the senior management to the extent that it had a profound effect on the attitude of individual employee to the employer. In this vein, in Company 1, there had been a paradigm shift, from the past conflictual to collaborative relations between the employer and its employees. This expressed support for consensual working relationships had had been actively developed since the company's most recent change of ownership.

In contrast to the evolution of the real world phenomena of how contractual relations operated in Company 1, the results from the data gathered from Company 2 indicated that workplace relations remained rooted in past conflictual attitudes of nationalised industries. Despite its acquisition by an European proprietor, Company 2 still retained its historical arms length contractual relations with employees. The interviews and documents suggested that the attitude of Company 2's current owners did not support collaborative relationships and thus, although it had moved from public to private ownership, the conflictual ethos has endured. In another study, Hickman's (2009) research into Company 2's relationships with its contractors in a major construction project also confirms the adoption of an autocratic form of authority.

Having assessed the relative relational and transactional norms and their influence on the relationship, the dimensions of asset specificity and transaction costs were considered. Whereas in Company 1, those employees with asset specific, high qualifications and core skills that were fundamental to the organisation held long-term contracts however, those with less asset-specific skills were contracted on a short-term basis. Nevertheless, Company 1 conserved the set up costs of future recruitment and retraining by providing the ancillary workers with opportunities to work on local community projects, with a commitment to re-employ them should there be a demand. In contrast, Company 2 managed the vagaries of external demand by subcontracting specific core skills and monitoring these workers' performance through in-house procedures.

**Analysis**

In terms of relational contracting theory, the Table 1 (Macneil’s Contract Norms related to the Respondent Companies” illustrates common contract norms relate to the results of our scoping study:

**Table 1. Macneil’s Contract Norms related to the Respondent Companies**

	<b>Contract Norms</b>	<b>Company 1</b> Harmonisation of conflict Strains inevitable so plan for flexibility	<b>Company 2</b> Supra contract norms (internal and external)
<b>1</b>	<b>Role integrity (consistency)</b>	Owners, senior management and practical commitment to harmonious long-term relations with core and peripheral Union-management harmony Social engineering: link with the wider community Harmonisation of conflict Strains inevitable so plan for flexibility	Influence of owner’s preservation of long-term relations, albeit through union-management relations percolates through the system; can become disgruntled External responses – legislation and corporate Customs, especially union-management arrangements
<b>2</b>	<b>Reciprocity</b>	Cooperative labour and employment relations; support to the external social community	Less cooperation; especially with regard to shifts. More rigid and traditional labour and thus employment relations
<b>3</b>	<b>Planning (implementation)</b>	Proactive and long-term	Proactive and long-term
<b>4</b>	<b>Consent</b>	Consensual labour and employment relations	Less consensual labour relations generally; employment relations vary
<b>5</b>	<b>Flexibility</b>	Accommodation to changing market demands	Labour negotiations tend to be more rigid
<b>6</b>	<b>Solidarity</b>	High	Medium
<b>7</b>	<b>Procedural justice (restitution reliance/ expectation interest)</b>	Tends to be based on mutual trust between employer and both core and workers	Conflict expected in certain areas of employment
<b>8</b>	<b>Power (Creation/restraint)</b>	Owner sets overall employment strategy and focuses on communicating this at employees	Owner influences over all labour and employment strategy, which is imposed on employees
<b>9</b>	<b>Propriety of means</b>	Strong influence from the holding company	Strong influence from the holding company
<b>10</b>	<b>Harmonisation with social matrix</b>	Strong: market governance with support to local community projects (e.g. support when adverse weather conditions threatened infrastructure and emergency services)	Weak: Market-forces are the determinant rather than supporting local community Required to have strong links with national government policy



The table indicates that the common contract norms are more heavily embodied into employment governance in Company 1 than in Company 2, which relies more heavily on formal, transactional governance structures.

In a contemporary commercial context, these behavioural traits are acknowledged by Vincent-Jones (2001), in his assessment of the original relational contracting theory. According to Vincent-Jones's analysis, if any of these contract norms are absent, the underlying, formal contract cannot be performed. Vincent-Jones's commercial perspective accords with the context of the employment relationships that were investigated for this paper. In this vein, it is suggested that over the duration of the contract, the dynamics between relational norms and formal contract terms related to the uncertainty that is endemic in long-term, transactions. From the employers' perspectives, Company 1's more relational approach fulfilled the parties' mutual objective of completing the contract to the benefit of both parties, more so than in the case of the more intransient legacy that underlined labour and employment relations in Company 2.

In considering how transaction cost economic dimensions of asset specificity, uncertainty and frequency influence the employment contracts, whilst both respondent companies recognised the importance of retaining workers who had skills that were fundamental to the particular organisation. Consequently, uncertainty and unforeseen contingencies were managed by Company 1, whilst it maintained a commitment to the workers when they were not required to work in the organisation; whereas, Company 2 focused on managing its skills demands through outsourcing and formal procedures.

In both relational contracting and transaction cost economic terms, Company 1 was more relational and adopted in-house governance procedures. In contrast, Company 2 outsourced many of their service operations and relied on formalised labour relations to govern their employment transactions.

## **Conclusions and Future Research**

The findings concur with the propositions of relational contracting school (Macaulay,1963; Macneil,1974a,1974b; Beale and Dugdale, 1975). The common theme proposes the real world phenomenon of contracting inexorably combines formal rules with specific behavioural norms.

In terms of the role of relational contracting theory and the jurisprudence of employment law, the empirically-grounded socio-legal school of thought founded by Macneil (1974) is borne out as being the real world phenomena by recent decisions that established the precedent that the true employment contract encompasses the mutual intentions of the parties in addition to their formal agreement. In this vein, the Supreme Court's decision in Autoclenz v Belcher [2011], clarified the law that previously had been enunciated in Consistent Group Ltd v Kalwak [2007]; Firthglow Ltd (t/a Protectacoat) v Szilagyi [2009] and Cyf v Barratt [2010].

As a preliminary study, the proposition of this paper is that the behaviour traits of self-interest, tempered by bounded rationality still continue to hold sway in contemporary employment relations. In extending this line of reasoning, our future research will examine the asset specificity of workers with regard to employment contracting.

In pursuing the synergy between transaction cost economics and relational contracting, this paper acknowledges Williamson's (1996) recommendation that future research should focus on the real world phenomena of inter-firm relations in twenty-first century. We intend to extend Williamson's proposition to focus on employer-employee transactions within contemporary forms of network relations. This research will extend the work of the ECLOS and LoTISS programmes of study with their focus on co-located teams.

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### **Funded Research Programmes**

- EPSRC *Effective Contractual and Other Legal Relations in the Aerospace Industry* (ECLOS 1998-2000) University of Warwick, England. P.A Cullen, Principal Investigator
- EPSRC *Long Term in Service Support* (LoTISS 2000-2003) EPSRC Funded Programme, University of Warwick, England. P.A Cullen, Principal Investigator

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- Firthglow Ltd (t/a Protectacoat) v Szilagyi* [2009] EWCA Civ 98