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## Implications of Agency on English Commercial Law: An Analysis from the Legal Perspective

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doi: <https://doi.org/10.37745/gjplr.2013/vol12n32534>

Published May 13, 2024

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**Citation:** Iqbal A.S.M.T. (2024) Implications of Agency on English Commercial Law: An Analysis from the Legal Perspective, *Global Journal of Politics and Law Research*, Vol.12, No.3, pp.25-34

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**ABSTRACT:** *Agency in Commercial Law holds substantial position where commercial transactions are conducted. It is an intricate legal area and disputes frequently arise. There are legal formalities that need to be complied with in setting up an agency. A clear agency agreement can help both parties understand their rights and responsibilities and avoid unnecessary conflict and potential expense. Delving into the intricacies of Agency Law grants valuable insights into the UK's legal system. This paper will explore the major aspects of agency, its magnitude, and the agency relationship configuration. It will also analyze the commercial agency agreements and their underlying principles. Finally, it will expose the basic apparatus and procedure to navigate the complexities of agency and cope with its challenges in the legal framework of English Commercial Law.*

**KEYWORDS:** agency, principal, agent, commercial law.

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### INTRODUCTION

Agency is one of the sensational components of the Commercial Law. Agency refers to the relationship established when one party, known as the agent, is empowered to act on the behalf or to the benefit of another party, known as the principal. Undoubtedly, the agency plays a vital role in commercial law. It allows businesses to function smoothly by enabling the carrying out of large-scale and multifaceted operations. The significance can be seen with the utilisation of agents who can carry out transactions with third parties on behalf of the principal (Sealy & Hooley 2017).

#### Connotation of Agency

According to general rule, whatever a man may legally do himself can also be legally done through an agent. If the agent's activity involves the execution of a contract under seal, the permission to do so must be granted by the execution of an instrument under seal known as a 'power of attorney.' This is a small definition of agent. The most acceptable definition of agency is provided by

Bowstead & Reynolds. According to them “*Agency is the fiduciary relationship which exists between two persons, one of whom expressly or impliedly manifests assent that the other should act on his behalf so as to affect his legal relations with third parties, and the other of whom similarly manifests assent so to act or so acts pursuant to the manifestation. The one on whose behalf the act or acts are to be done is called the principal. The one who is to act is called the agent. Any person other than the principal and the agent may be referred to as a third party.*” (Watts & Reynolds 2022)

### **Creation of Agency**

Agency has been created in many ways. First of all, it may be created by express agreement between principal and agent. The scope of the authority of the Agency is determined either by the stated provisions that grant it or by the circumstances or actions that give rise to the inference that it exists (Watts & Reynolds 2022). If an express authority is granted in writing or in words, and the boundaries established by the writing or the words are identified, the principal is only obligated to act within those boundaries and not beyond them; these boundaries define the extent of the authority (Watts & Reynolds 2022). Secondly impliedly. However, when the authority is to be implied from the conduct of the principal, conduct, that is, conduct that would give rise to any reasonable man to believe that Agent (Watts & Reynolds 2022) was truly the principal's agent, for example, if the principal allows his servant, mistress, or wife to do the shopping at third party shops and then pays the bills without objection, the agency is presumed to continue as far as dealing with Third party until notice to the contrary is given. If a man sends his servant to purchase meat or other items with available money and the servant purchases on credit, the master is not accountable for the transaction. While this may be true, if a servant routinely purchases products for the master upon tick and the servant buys items without the master's direction, the master may be held accountable if the merchant trusted the master, and the master was charged. As a result, the agent has the ability to act above and beyond his authorised authority while yet remaining legally bound to his principal. Agency relationship also arises impliedly. Further agency relationships are created by ratification, estoppel and necessity (Sealy & Hooley 2017).

### **Impact of Agency on English Commercial Law**

The agency is a very vast concept and academic Dewing said that “*The cornerstone of legal personality is agency, which protects against diminishing capacity.*” (Dewing, 2015) Instead of being confined to a subset of contract law, it is important that the agency be given its proper place in this ensemble. Because there is much more to the law of agency than its common (though not always consistent) contractual base, it is important to recognise that agency exists in, and interacts with, other major areas within the contemporary law of duties, such as those derived from tort, property and equity, company and all types of commercial transaction. (Pont, 2018). The law agency has applications in all areas of private law. (Watts & Reynolds 2022)

Further, agency is a cosmic notion. Agency is a pervasive institution that pervades all aspects of human life, both economic and social. Among the many types of business intermediates are auctioneers, mortgage lenders, ship masters, and lead banks, to name a few. The law of agency has an impact on those matters. (Dewing, 2015)

The impact of agency also depends on types of agency. In the context of business intermediary relationships, revealed agency refers to a circumstance in which a third party is aware of the agent's role as a commercial middleman. This is known as a Disclosed agency. Undisclosed agency, on the other hand, refers to a circumstance in which a third party is completely uninformed that there is a principal and believes that the agent is operating in its own right without being informed. In respect of undisclosed agency, a third party or undisclosed principal can sue or be sued as per the case of *Watteau v Fenwick* [1893] 1 QB 346.

#### **Implications of *Watteau v Fenwick* [1893] Case**

When an agent contracts in his own name without the knowledge of the principal, he becomes personally responsible when the principal's identity is revealed and the contract is signed, even though the other contracting party is aware that he is not acting as the principal, but rather as the agent. Upon uncovering the true principle, however, the other contractual party has the option of proceeding against him rather than against the agent. When an agent contracts in such a way that he personally assumes responsibility, he cannot later discharge himself from that duty, regardless of whether his principal was known or not at the time of the transaction. The contract is considered to be that of the principal if, on the other hand the agent fails to disclose the name of his/her/its principal, and the agent is not liable, aside from usage or custom (d); and if the agent disclosed the fact of his/her/its agency but did not state the name of his/her/its principal, which is later discovered, the principal may be charged, and the agent would not be liable, aside from usage or custom (Hetherington, 1966).

The current admiration of concealed agency in the United Kingdom is well-documented. No decision or textbook fails to specifically refer to it as "an oddity in the law of contracts," indicating that it is out of step with fundamental legal principles. The doctrine of the undisclosed principal is peculiar in the context that it allows a person to sue and be sued on a contract that he has not in fact made, as stated by Lord Lindley in *Keighley, Maxsted Co. v. Durant*. Similarly, the general attitude of textbook writers is expressed by Cheshire and Fifoot I: "*The doctrine of the undisclosed principal is anomalous in the sense that it allows a person to sue and be sued on a Every other legal system, with the exception of the English, does not recognise the right of one person to sue another on the basis of a contract that was not actually made with the person suing.*" Oliver Wendell Holmes, has assumed "*that common sense is opposed to allowing a stranger to my overt acts and to my intentions, a man of whom I have never heard, to set up a contract against me which I had assumed I was making with my personal friend.*"

When a written agreement is entered into that purports on the face of it to be made by the defendant and sub-agent scribed by him for the sale and delivery of certain goods by him, the agreement is void "It is permissible to demonstrate that one or both of the contracting parties were acting as agents for other persons in the course of making the contract, so as to receive the benefit of the contract on the one hand to the unnamed principals and charge them with liability on the other; and this is true whether or not the agreement is necessary to be in writing by the Statute of Frauds; and this proof in no way contradicts the written agreement. It does not dispute that the agreement is binding on those to whom it appears to be binding on the surface, but it demonstrates that it also binds another, because the act of the agent, in signing the agreement in furtherance of his authority, is considered to be the act of the principal under the law. However, "*allowing evidence to be shown showing a party who looks on the face of the document to be personally a contracting party is not so would be allowing parol evidence to dispute the written agreement, which is not permitted under the law.*" (Hetherington, 1966).

For the purposes of this Essay, authors will consider the legal rules governing the power of "unauthorised" agents to subject their principals to tort or contract liability in the context of general public policy considerations that are generally considered relevant in the context of the law of commercial transactions. A lot of people are interested in this topic, yet it has received little attention. It is also one that is rife with "rules" and "principles" that are in contradiction with one another. Consequently, the predictive value of legal concepts utilised in unauthorized-agent instances is frequently minimal, if not nonexistent. So in instances "*where the authority of an agent is in question, the judge or jury is free to determine as a matter of fact whether the agent in the given circumstances had or did not have the required "actual" or "apparent" power to bind his putative principal, depending on the facts of the case. Furthermore, in this case, the value of further modifications is debatable.*" (Hetherington, 1966).

When an agent is acting on behalf of an unidentified principal and engages into an unlawful transaction, this is referred to as the second special class of instances. In such circumstances, there is no visible authority since the third party is uninformed of the presence of the primary. Following the landmark decision in *Watteau v. Fenwick*, a number of decisions have held that the concealed principal is liable in this circumstance. That case included the previous proprietor of a tavern who transferred ownership of the business to the defendants, on whose behalf he proceeded to manage the business as if it were still his own. A particular directive prohibited him from purchasing from the plaintiff cigarettes and other things that would otherwise be necessary in the company. A jury found the owners accountable for the purchase price of the products on the grounds that the operator, as general manager, had inherent authority to acquire materials generally associated with running a firm.

The holding out of the agent as owner by the principal, according to one English writer, "creates an appearance of power in the agent to do whatever that a reasonable proprietor of such an

enterprise may lawfully be entitled to." It is his opinion that the correct foundation for the culpability of the genuine owner in *Watteau* is that "the agent was held forth by the principle as possessing the power of a principal and owner of the enterprise." There is a problem with this reasoning in that it provides no logical foundation for restricting what the "apparent" owner may do or for binding his principal in any way. This point of view indicates that the principle should be bound regardless of whether the apparent owner purchases cigars or sells the pub (which the "owner of the company" may undoubtedly do). (Hetherington, 1966).

Certainly, the *Watteau* case should not be applied to any transaction (such as a sale) that is not incidental to either (1) carrying on a particular business in the manner in which it has been carried on in the past or (2) carrying on a business in the manner in which it has traditionally been carried on. Even more restricted, the approach presented in the Restatement...as well as the case law of *Watteau* itself, may limit the responsibility of an undeclared principal to those illegal activities of an agent that are generally ancillary to the office and tasks of a management. When the apparent owner's actions do not fit into this category, functional policy does not necessitate the protection of a third party in all cases. As a result of this limitation, an Ontario court found that, where a manager for a group of undisclosed principals in a newly formed mining syndicate was authorised to conduct only exploratory operations, those members were not liable for any expenses incurred by him in carrying out full-scale mining operations. (Hetherington, 1966).

There is one way in which the position of the undisclosed principle differs from that of other employers. In the *Watteau* case, it appears that the extent of his culpability for illegal acts of his agents that fit within the scope of the case is the extent of his liability for unlawful conduct of his agents. By ratifying the actions of his agent, he may avoid being held accountable for such actions. There is an explanation for this strange regulation in the goal of ratification, which is to repair an original flaw in a transaction in order to provide the third party with the benefit of the contract he or she wanted to make in the first place. In this way, the rules for ratification have the primary function of being transactional in nature. By ratifying, the principal acknowledges and approves the expectations of the third party and the transaction. Therefore, the third party's approval of the transaction does not need to be renewed in order for ratification to take effect. However, in the situation of an undeclared principle, the effect of ratification is different than in the other cases. In this case, it introduces a third party to the transaction who was previously unknown to the other parties. If we look at it from the perspective of contract law, the ability of a hidden principle to bargain through an agent is a very limited and often criticised exemption to the commonly recognised right of a contracting party to choose the parties with whom he conducts business. (Hetherington, 1966).

For the purpose of preventing fraud and deception, the courts have placed restrictions on the use of an undisclosed principal's device: "To permit a previously undisclosed person who was not bound by the agreement at the time of its formation to elect to participate therein constitutes a

significant infringement of the right of the third party to select those with whom he will deal." The absence of the purpose meant to be fulfilled by ratification means that there is no need to expand the unknown-principal exemption to general contract principles by enabling the undisclosed principal to ratify any further in this circumstance. When the principle is disclosed, allowing ratification is permitted; when the principal is not disclosed, rejecting ratification is permitted (Chitty, 2022). This respects the reasonable expectations of the third party in both situations. Furthermore, there are no significant functional policy concerns that necessitate allowing the concealed principal to ratify the agreement. In fact, it seems likely that the interests of normal commercial usage are best served by constraining rather than expanding the role of the concealed principal in this situation. The uncertainty injected into the assessment of business risks as a result of such concealed liabilities is detrimental to the functioning of the market and the planning of company operations.

When the fraudulent agent is acting on behalf of a concealed principal, the rationalisation or reconciliation of these opposing policy objectives becomes more difficult. As evidenced by the Canadian case of *Becherer v. Asher*, the problem can be seen in the following way: Plaintiffs were suppliers of Chinese goods (Chitty, 2022). Initially in Toronto, and then in St. Catharines, Ontario, their agent ran a retail china store under their name. After establishing his firm in Toronto, the agent procured items from suppliers other than the defendant, including the plaintiff; but, after relocating to St. Catharines, he was expressly refused any such permission. In spite of this, he made purchases of items from the plaintiff, who was completely unaware of defendant's involvement in the firm. In St. Catharines, he rented a business and had an auctioneer's licence in his own name, which he used to conduct auctions. The defendants were found accountable for the improper purchases by the lower court, which relied on the case of *Watteau v. Fenwick*. When the case went to appeal, the decision was overturned. *Watteau* was distinguished primarily on the basis that, in the present case, the agent lacked the authority to acquire things, but in *Watteau*, the agent did have such authority, albeit it did not extend to the commodities in question. In *Becherer*, the judges unanimously concluded that the agent lacked apparent authorization to acquire items from the plaintiffs despite the fact that he was in charge of a business that he was licenced to operate under his own name at the time of the transaction (Munday, 2012).

The Court's attempt to differentiate *Watteau* on the basis of apparent authority appears to be inadequate in this regard. To all appearances, the manager's role in both situations appeared to be identical to one another. The products acquired in each case were appropriate for the business that the agent was running at the time of purchase. What divides them is a distinction that was imperceptible to a third-party observer. The goods purchased in *Watteau* were required in the course of the principal's business that the agent was hired to conduct; the goods purchased in *Becherer* were handled by the agent in competition with the goods supplied by the principal; and the goods purchased in *Watteau* were required in the course of the principal's business, which the agent was hired to conduct. Unlike in *Watteau*, their acquisition was not just a breach of a particular

command, but also of the agent's duty of allegiance to the principal. The third party who is restricted to a claim against the apparent proprietor may be considered to have received what he expected in the event that the agent's behaviour is false. To the degree that this is the case, the outcome is compatible with transactional policy and is at the very least neutral in terms of functional policy (Munday, 2012). The claim that the third party receives against the agent, on the other hand, is far less than what he anticipated. The agent with whom he dealt looked to be the owner of the company, and this may have had a role in the decision to provide him credit in the first instance. The third party is left with a claim against an agent, rather than a proprietor, who is almost certainly not a suitable candidate to repay the loan (Hetherington, 1966).

The delicate legalistic distinction that has been established appears to be frail, and its long-term viability is doubtful. In both the *Watteau* and *Becherer* circumstances, functional policy plainly indicates that the hidden principal should be held in both instances. To be sure, there is some merit to the stated differentiation between the two, particularly in terms of the suffering that the principal may be subjected to. The fact that the manager is attempting to serve his principal's interests as he perceives them significantly reduces the principal's vulnerability in the *Watteau* case (Munday, 2012). A guy who has gained the trust of his employer to the point that he can be promoted to manager is unlikely to conduct the firm in a way that exposes his principal to significant financial responsibility. *Watteau* further restricts the amount of culpability to the amount of the normal expenses incurred. It is possible that the fraudulent agent will offer a bigger risk. Example: The dishonest agent in *Becherer* deprives his employer of sales by competing with them and, in addition, imposes the cost of the competing goods on the principle in order to compensate him for his dereliction of duty. In *Watteau*, the fact that the rule provides a benefit to the third party who received something more than he bargained for does not imply that the bonus awarded to the party that dealt with a dishonest manager must be the same (Hetherington, 1966).

As with any detailed and sophisticated analysis, this rationalisation of two circumstances that originally appear to be incompatible results in only a shaky equilibrium (Chitty, 2022). For reasons that are "outside of the legal system," the forces supporting functional policy seem to be more active than those promoting property protection aims, according to the authors. As a result, it is possible that the *Watteau* rule will be expanded to include vicarious culpability for the agent's deceit on the part of the concealed principal as well (Hetherington, 1966).

Further, here it can be said that the idea that a concealed principle may sue and be sued on contracts entered into by his agent, acting as ostensible principal, with third parties is so firmly established in the law of England and Wales, it would be impossible to overturn it in the courts of either country. In spite of this, anytime an established theory disregards fundamental legal principles, as this concept of the undisclosed principal does, it is critical that it be recognised as an oddity, one that should be taken into consideration, but not used as the foundation for analogical reasoning. Unfortunately, the bulk of courts and writers on agency and contracts just recite the rule on the

right and liability of the secret principle without delving into whether or not the rule is valid. Lord Cairns,' in fact, as well as Sir William Anson, regard the validity of the argument as self-evident (Munday, 2012).

If the Courts had identified an appropriate manner of charging an undisclosed principal under the theory of fair executions against the agent's right of disbarment, they would not have been employing a novel and unproven equitable principle, as demonstrated by the cases above. It is obviously too late at this moment to apply this concept to simple contracts entered into by an agent on behalf of an unknown principal at this point in time (Hetherington, 1966). Unlike in cases where the agent contracts under seal, by bill or note, or as an owner of stock in the company, it appears that there is no compelling reason why the same procedure should not be used in cases where the agent executes a single simple contract on behalf of a large number of independent principals. If the agent's misbehaviour persists after the contract with the third party has been terminated, the right of exoneration may also be revoked or forfeited. His misappropriation of the things he had acquired on credit, for example, may be done in order to disguise the undisclosed principal. As a result, the third party would get nothing in the form of equitable execution for the bill that he or she had submitted. However, under the current anomalous rule, the secret principle would be liable on the agent's contract even if the agent had committed fraud or misrepresented himself or herself to the concealed principle. It's possible that the agent's right of exoneration was never claimed in this circumstance, and that the third party will be unable to get a fair execution in this situation as well (Munday, 2012).

As an example, if an agent acting on behalf of an undisclosed principal decided to enter into a contract in violation of his commands, but a contract that would have been within the context of his apparent authority if the agency had been disclosed, a third party would have been unable to obtain remedy against the principal under the theory of equitable execution due to the fact that the principal had not been revealed. Having violated his instructions, the agent would have no recourse against the principal and would be accountable for any repercussions. In the case of *Watteau v. Fenwick*, on the other hand, the undisclosed principal was charged against the agent's contract in exactly this situation (Munday, 2012).

Since its inception, the law of undisclosed agency has been regarded as an aberration in the field of contract theory. Despite the fact that few people disagree with its substance, this body of legislation does not appear to be consistent with our theoretical conception of contractual duty. To explain and critically assess the concept of concealed agency, Professor Barnett employs a "consent theory of contract," which he calls the "consent theory of consent." The author explains why standard contract theories have been unable to explain the established doctrine in this area before delving into the nexus of liabilities arising from the mutually enjoyable "triangular flow of rights" among the three parties to the paradigm undisclosed agency relationship, which is the issue in question (Chitty, 2022). He then goes on to apply his findings to a number of "difficult



scenarios." In his conclusion, Professor Barnett argues that the vast majority of this instantaneously evolved body of law is theoretically sound; that the source of the lengthy apparent anomaly is the predominance of the promise-based theory underpinning the action of assumpsit; and that judges' ability to develop good law despite inadequacies in the prevailing contract theories give valuable insight into the prevailing norms of tradition and reason in the generation of law (Munday, 2012).

As a result of the dominance of will or acquiescence theories over the first several decades, the idea of undisclosed agency emerged in the second half of the twentieth century. The fact that none of these ideas provided a satisfactory explanation for this corpus of legislation was generally acknowledged at the time (Hetherington, 1966). Yet, in spite of this, the idea developed in an amazingly cogent fashion. There is a lesson here for legal theorists to take away. In order for courts to create and rationalise their judgments, it is true that legal theory is required. However, individual judges are generally unqualified to engage in much rigorous theory. The information included in judicial judgments, on the other hand, can be valuable to legal theorists. The innumerable judges who contributed to the development of the law of concealed agency were never exposed to the concept of a consent theory of contract. And it's possible that they would have embraced other beliefs that would have been incompatible with a consent theory. Nonetheless, in spite of their own theoretical understanding, and by the power of their own experience and pure intuition, they developed a body of teaching that can only be completely explained by a consent theory of religion. In other places, I have argued that while developing rules that would both resolve current conflicts and prevent future disagreements, judges should look for a sort of moral knowledge. In other words, they are attempting to establish how a conflict should be settled. Judges have gained this information in two ways: through oral tradition and through rational deliberation. Precedent and business custom are two of the most fundamental sources of tradition. Precedent is generated from the rulings of a plethora of previous judges throughout the course of time. These rulings are made up of both adjudicated outcomes and the judges' reasoning for why they were reached that way. Business etiquette is developed from the "situation sense" or practical wisdom of thousands of merchants in a single business community, as well as their knowledge and experience of other traders' strategic conduct (Munday, 2012).

## CONCLUSION

This concept (agency) solves many problems that arise in the commercial transactions. Through doctrines such as undisclosed principal and reasonable compliance with a principal's instructions, and through devices such as the commission, *del credere* and confirming agent, the law went further in meeting commercial need. In conclusion, commercial agency law has its complexities, but with a firm grasp of its challenges and an understanding of the appropriate tools at one's disposal, one is well-equipped to navigate this vibrant field.

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