Law of Agency

"Agency is the relationship that exists between two persons when one, called the agent, is considered in law to represent the other, called the principal, in such a way as to be able to affect the principal's legal position in respect of strangers to the relationship by the making of contracts or the disposition of property."


- British view of Agency
- Power-Liability theory

"Agency is the fiduciary relationship that arises when one person (a 'principal') manifests assent to another person (an 'agent') that the agent shall act on the principal's behalf and subject to the principal's control, and the agent manifests assent or otherwise consents to act."

*US Restatement (Third) of Agency (Tentative Draft No. 2) (2003), § 1.01*

- American Definition
- Consent Theory

Ministerial functions - functions were the agent or servant merely follows the instructions of the principal precisely and has no choice over what course of action to take on the principal's behalf.

Agency Relationship

An agency relationship is created when one person authorises another to act on that person’s behalf in commercial transactions with others.

- The person who appoints or designates another is called a principal.
- The person who is so appointed is called an agent.
- Third parties are everyone with whom the agent deals on behalf of the principal.
The Law of Agency details and defines relationships between a principal, an agent and third parties.

The agent, is considered in law to represent the principal, and has the power to affect the legal position of the principal with regard to a third party.

This is the essential Feature of Agency – the agent’s capacity to affect their principal's legal position.

Where an agent makes a contract on behalf of their principal the contract is that of the principal, not that of the agent and *prima facie* at common law the only person who can sue and be sued is the principal.

The Common Law Rule on Agency is expressed in the Latin maxim *Qui facit per alium facit per se* - he who acts through another, acts for himself- any person can act through an agent.

**EU Law**

A European Directive on Agents has had a huge effect on Agency law in Britain.


**Agent’s Duties**

An agent owes duties to both the principal and to third parties. This is true of an agent under the Common Law and an agent under the Commercial Agents Regulations. The agent may have express contractual duties towards the principal, if the agency relationship is based on contract.

There is a large body of case law on the duties owed by agents.

The Agent’s first duty is to perform their agency. An agent is under a general duty to carry out the contractual instructions of their principal. Commercial Agents within the definition of the 1993 Regulations must ‘act dutifully and in good faith’.

An agent is also bound by fiduciary duties. (Common Law)

- Duty not to allow their interests to conflict with those of the principal
- Duty to make full disclosure
- Duty not to take advantage of their position
- Duty not to take bribes or secret commissions
• Duty not to delegate their office – sub-agency

• Duty to account


Duties of a commercial agent to his principal

(1) In performing his activities a commercial agent must look after the interests of his principal and act dutifully and in good faith.

(2) In particular, a commercial agent must—

(a) make proper efforts to negotiate and, where appropriate, conclude the transactions he is instructed to take care of;

(b) communicate to his principal all the necessary information available to him;

(c) comply with reasonable instructions given by his principal.

Further Reading


Case law


Armitage Nurse [1998] Ch. 241

Armstrong v. Jackson 1917 2 KB 822
Bristol and West Building Society Mothew [1998] Ch 1

Bulfield v Fournier (1894) 11 T.L.R. 62

Burial Board of the Parish of St Margaret Rochester v Thompson (1871) LR 6 CP 445

Complin v Beggs (1913) 13 DLR 27

Hart and Hodge v. Frame Son & Co. 7 E.R. 670; (1839) 6 Cl. & F. 193

Hippisley v. Knee Brothers [1905] 1 KB 1

Hogan v London Irish Rugby Football Club Ltd Unreported

Humble v. Hunter (1848) 12 Q.B. 310


Keighley, Maxstead & Co. v Durant [1901] AC 240

Kelner v. Baxter (1866) L.R. 2 C.P. 174


Kenny v Ireland ROC Ltd [2005] IEHC 241

Lamb v. Evans 1893 68 L.T. 131

Logicrose Ltd v Southend United Football Club Ltd (No.2) [1988] 1 W.L.R. 1256

Lucifero v. Castel 1887 3 TLR 371

McCann (John) & Co v Pow [1974] 1 WLR 1643, 1647

McPherson v. Watt (1877) 3 App. Cas. 254; (1877) 5 R. (H.L.) 9

Page v Combined Shipping and Trading Co Ltd [1997] 3 ALL E.R. 656


Poseidon Chartering BV v Marianne Zeeschip VOF, Case C-3/04, [2006] [2006] E.C.R. 1-2505

Re J Mitchell (1884) 54 LJCh 342

Rimmer v Knowles 1874 30 L.T. 496

Shipway v Broadwood [1899] 1 QB 369

The Hermione [1922] P. 162

Toulmin v. Millar 1887 58 L.T. 96
**Example of an Exam Question**

Patrick is the owner of a specialised whiskey shop near Hampstead Heath in London. He decided to take a two-week holiday in Ireland in order to carry out some intensive and extensive research into whiskey production and consumption. He asked his friend, Diane to manage the shop whilst he was away.

Before leaving, Patrick expressly instructed Diane not to give discounts on any bottles priced at under 30 pounds and, if buying whisky for the business, not to spend more than 200 pounds on any one bottle.

Shortly after Patrick's departure, Tom, a dealer in Irish whiskies, passed by the shop and asked whether Diane would be interested in purchasing a bottle of vintage whiskey for 250 pounds. In spite of Patrick's instructions, Diane thought that the bottle was a fantastic bargain and so agreed to pay 250 pounds for it.

Patrick has a disastrous relationship with his ex-wife Sondra. He decided that after she deserted him taking the dog Toby with her that he would never have anything to do with her again.

Sondra, aware of Patrick's absence, persuaded her new boyfriend to visit the shop and purchased 6 bottles of her favourite whisky, which was not available in any other shop in London. Sondra's new boyfriend purchased the whisky but when he called over to pick it up Patrick, who had by then returned and discovered Sondra's involvement, refused to hand it over.

Advise Patrick