

HANDBOOK  
OF THE LAW OF  
PRINCIPAL AND AGENT

By FRANCIS B. TIFFANY  
AUTHOR OF DEATH BY WRONGFUL ACT, LAW OF SALES, ETC.

SECOND EDITION

BY  
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## PREFACE TO SECOND EDITION

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IN THE preparation of the second edition, substantial changes in arrangement and content have been made. Approximately half of the text has been entirely rewritten, and the footnotes of the entire book have been revised. The changes in the text have been made in an effort to make the statements thereof more exact and comprehensive formulations of the law as it now is, and to present the material in an order which is better suited to pedagogic requirements. The cases cited in the footnotes have been re-examined, and those retained which are most valuable. To these have been added the important cases of the last twenty years, and citations to decisions, notes, and articles in law periodicals which will furnish guidance to students or practitioners desiring to investigate topics more thoroughly. To each case cited has been added the date of the decision. This the reviser believes desirable, because the significance of a case so often depends upon the date of its decision.

The reviser is deeply indebted to his associates, Professors Underhill Moore and Young B. Smith, for suggestions embodied in the new parts of the book dealing with the entrepreneur theory and the questions of scope. Any persons inclined to differ with these suggestions should blame the reviser, however, rather than those whose ideas may have been expressed imperfectly.

RICHARD R. B. POWELL.

NEW YORK CITY, May 19, 1924.

## PREFACE

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THE object of this book, as has been explained more fully in the introductory chapter, is to present the general rules and principles of that part of the law of Agency which may conveniently be classed under the head of Principal and Agent. Topics which are commonly classed under the head of Master and Servant have been largely excluded, or have been discussed only incidentally. The scope of the book has been thus limited both because it was the desire of the writer to treat the matters considered with greater fullness of illustration in text and notes than would have been possible had its scope been enlarged, and because the matters excluded have been covered by other books in the Hornbook Series.

The subject presents many difficult points as to which there is conflict of opinion, sometimes in respect to the rules, sometimes in respect to the reasons for the rules. It has been the aim to discuss these questions briefly and, when possible within the limited compass of an elementary book, to give expression to the views of the judges in leading cases; and on all points treated to cite, in addition to the leading cases, a sufficient number of the later cases to make the book serviceable to the practitioner as well as to the student.

The author desires to express his obligation to the many writers who have contributed to formulate and classify this branch of the law,—and particularly to Story, whose Commentaries are still indispensable to the student; to Prof. Floyd R. Mechem, whose great treatise deservedly ranks as a standard of authority; to Prof. Ernest W. Huffcut, whose recent book has done so much to clarify and illuminate the subject; to William Bowstead, Esquire, whose Digest of the Law of Agency admirably fulfills its object of reducing the English law to a concise statement of definite rules and principles; and to Prof. Eugene Wambaugh, whose full and discriminating Selection of Cases forms a basis for the study of Agency.

F. B. T.

ST. PAUL, June 1, 1903.

(vi)

# TABLE OF CONTENTS

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## CHAPTER I

### INTRODUCTORY

Section	Page
1. Scope of Law Treated Herein.....	1-4
2. Arrangement of Material.....	4-5
3. General Characteristics of This Field of Law.....	5-6

## CHAPTER II

### AUTHORITY OF AN AGENT TO BIND HIS PRINCIPAL IN CONTRACT

4. Purpose of the Law of Agency.....	7-8
Appointment—	
5. By Contract.....	9-11
6. By Entering upon Gratuitous Service.....	11-12
Formalities—	
7. General Rule .....	12-15
8. To Execute Sealed Instrument .....	15-21
9. By Corporation .....	21-22
10. Implied .....	22-25
Construction—	
11. Power of Attorney .....	25-30
Informal Express Authority—	
12. General Rule .....	30-31
13. Ambiguity .....	31
14. Incidental Powers Implied .....	32-34
15. Implications from Usage .....	34-36

## CHAPTER III

### POWER OF AN AGENT TO BIND HIS PRINCIPAL IN CONTRACT

16. Estoppel or Contract Found in Expressed Agreement..	37-45
17. Ability of A., by His Own Conduct, to Enlarge His Power to Bind P. to T.....	45-49
18. Special Instructions .....	49-52

Section	Page
19. Notice to T. of Limitations upon A.'s Authority.....	53-54
20. Authority and Power of a Public Agent.....	54-55
21. Significance of Manner in Which A. Exercises His Authority or Power .....	55-56
22. Agency from Necessity .....	56-62

## CHAPTER IV

### SCOPE OF PARTICULAR AGENCIES

23. Principles Governing Ascertainment .....	63
24. Agents to Sell Personalty, Including Factors and Brokers .....	64-75
25. Agents to Sell Realty .....	75-76
26. Agents to Sell at Auction .....	76-79
27. Agents to Purchase .....	79-80
28. Agents to Collect .....	80-83
29. Agents to Execute Commercial Paper.....	83-84
30. Agents to Manage a Business .....	85-86
31. Insurance Agents .....	87-89
32. Bank Cashiers .....	89-90
33. Attorneys at Law .....	91-92

## CHAPTER V

### AUTHORITY AND POWER OF AN AGENT TO BIND HIS PRINCIPAL BY TORTS OTHER THAN FRAUD

34. Divisions of Liability for Torts .....	93-96
35. Requisites for Actual Authority .....	96-98
36. Respondeat Superior .....	99-100
37. Entrepreneur Theory .....	100-105
38. Tests for Determining Scope of Employment.....	105-110

## CHAPTER VI

### AUTHORITY AND POWER OF AN AGENT TO BIND HIS PRINCIPAL BY FRAUD

39. Recapitulation of Tort Rules as to Fraud.....	111-113
40. Scienter and Vicarious Liability in Fraud .....	113-116
41. Scope in Fraud .....	116-118
42. Fraud Not for the Principal's Benefit .....	118-122

## CHAPTER VII

THE AUTHORITY AND POWER OF AN AGENT TO IMPOSE  
UPON HIS PRINCIPAL RESPONSIBILITY FOR CRIME

Section	Page
43. Authority .....	123-124
44. Power .....	124-127

## CHAPTER VIII

## RATIFICATION

45. Ratification—General Function .....	128-130
What Acts May be Ratified—	
46. General .....	130-132
47. Criminal Acts .....	132-135
Conditions Precedent to Ratification—	
48. Assumption of Agency .....	135-137
49. Existence of P. When Act was Done .....	137-139
50. Who May Ratify .....	139-141
51. Knowledge of Facts .....	142-144
52. Is Communication Necessary?.....	145
How an Act May be Ratified—	
53. General .....	146-148
54. Deed .....	148-149
55. Writing Not under Seal.....	150
56. Accepting Benefits .....	151-153
57. Bringing Suit .....	153-154
58. Acquiescence or Silence .....	154-157
Effects of Ratification—	
59. General .....	158-159
60. Intervening Rights of Third Persons .....	159-161
61. When the Unauthorized Act, if Authorized, Would Have Required Action Thereon by T.....	161-163
62. Necessity for New Assent .....	164-166
63. Power of T. to Withdraw Prior to Ratification ..	166-168
64. On Liabilities of the Agent for His Unauthorized Act .....	169-172

## CHAPTER IX

## ACTS AND PARTIES

Acts Which Can be Performed Through an Agent—	
65. General .....	173-174
66. Illegal Object .....	175-177
Capacity to be Principal—	
67. General .....	177-178



Section		Page
68.	Infants .....	178-180
69.	Persons Non Compos Mentis .....	180-184
70.	Married Women .....	184-187
71.	Aliens, Corporations, and Associations .....	187-188
	Capacity to be Agent—	
72.	General .....	188-189
73.	Infants .....	189
74.	Persons Non Compos Mentis .....	189-190
75.	Married Women .....	190-191
76.	Adverse Interest .....	191-193
77.	Licensing Statutes .....	193-194
78.	Multiple Principals .....	194-197
79.	Multiple Agents .....	197-200

## **CHAPTER X**

### **DELEGATION**

	Delegation of Authority—	
80.	General Rule .....	201-202
81.	When Allowed .....	203-208
82.	Legal Consequences When Unauthorized.....	208
83.	Legal Consequences When Authorized .....	209-217

## **CHAPTER XI**

### **TERMINATION**

84.	Significance of Termination .....	218-219
85.	Termination by Natural Expiration .....	219-221
86.	Termination by Withdrawal of Either P. or A.....	221-229
87.	Termination by Disability of Either P. or A.....	229-237
88.	Nonterminable Authority .....	237-248
89.	Authority Coupled with an Obligation .....	248-250

## **CHAPTER XII**

### **UNDISCLOSED PRINCIPAL**

90.	Introduction and Definition of Terms.....	251-252
	Action by T. against P.—	
91.	General Rule .....	253-257
92.	Ratification by Undisclosed Principal .....	257
93.	Exceptions to Liability .....	258-260
94.	Defense of Payment by P. to A.....	261-264
95.	Defense of Election .....	264-266
	Action by P. against T.—	
96.	General Rule .....	267

## TABLE OF CONTENTS

xi

Section		Page
97.	Exceptions to Liability .....	268-270
98.	Defenses .....	270-272
	Action by T. against A.—	
99.	General Rule .....	273-274
100.	Defenses .....	275-276
	Action by A. against T.—	
101.	General Rule .....	276-278
102.	Defenses .....	278-279

## CHAPTER XIII

### OTHER RIGHTS OF PRINCIPAL AND THIRD PERSON INTER SESE

103.	Scope of Chapter .....	280-281
	Statement by Agent—	
104.	Admissibility as Admission .....	281-285
105.	Inadmissible to Establish Agency .....	286-287
106.	Admissibility as Part of Res Gestæ .....	287-291
	Notice to Agent—	
107.	Function .....	291-292
108.	General Rule .....	292-295
109.	Acquired in Other Transactions .....	295-299
110.	Exceptions to Imputation .....	299-301
111.	Notice to Subagent .....	302-303
112.	Collusion Between A. and T. ....	303-306
	Recovery of P.'s Property from T.—	
113.	Quasi Contract .....	306-307
114.	Replevin and Trover .....	307-308
115.	Exceptions .....	308-309
116.	Following Trust Funds .....	309-311
117.	Recovery by P. from T. for Loss of Services of A. ....	312-313

## CHAPTER XIV

### DETERMINATION OF CONTRACTING PARTIES—RIGHTS AND LIABILITIES OF A. AND T. INTER SESE

118.	Significance of Form in Which Contract is Embodied..	314-316
	Determination of Contracting Parties—	
119.	Sealed Instruments .....	316-320
	Negotiable Instruments—	
120.	General rule .....	320-321
121.	Rules of Interpretation .....	321-324
122.	Extrinsic Evidence .....	324-327
123.	Parties Other than Maker .....	328-332
	Written Contracts—	
124.	General Rule .....	333-336

Section	Page
125. Extrinsic Evidence .....	336-338
126. Oral Contracts .....	338-339
127. Foreign Principal .....	339-341
128. Public Agents .....	341-342
Liability of A. to T. for Unauthorized Acts—	
129. On the Contract .....	342-344
Warranty of Authority—	
130. General Rule .....	344-347
131. Exception .....	347-349
132. Measure of Damages .....	350-351
Liability of A. to T. on Quasi Contract—	
133. Money Received in Good Faith .....	352-353
134. Money Obtained Wrongfully .....	354
Liability of A. to T.—	
135. Money Received from P. for T.....	355
Torts—	
136. Misfeasance .....	355-358
137. Nonfeasance .....	358-361
Liability of T. to A.—	
138. When A. has Interest in Subject-Matter .....	361-362
139. When Professed Agent is Real Principal .....	362-364
140. Money Had and Received .....	365
141. Torts .....	365-366

## CHAPTER XV

### DUTIES OF AGENT TO PRINCIPAL

Duties Owed by Agent to Principal—	
142. Implications in Contract .....	367-368
To Obey Instructions—	
143. General Rule .....	368-373
144. Exceptions .....	374-376
145. To Exercise Skill, Care, and Diligence .....	377-386
146. To Act in Good Faith .....	386-398
147. To Account .....	399-409

## CHAPTER XVI

### DUTIES OF PRINCIPAL TO AGENT

Duties of Principal to Agent—	
148. Classification .....	410-411
Duty of Principal to Remunerate Agent—	
149. Origin in Contract .....	411-415
150. Performance by Agent as a Condition Precedent..	415-417
151. Performance Prevented by Lawful Revocation ...	417-418

## TABLE OF CONTENTS

xiii

Section	Page
152. Performance Prevented by Unlawful Revocation..	419-422
153. Termination Without Fault of Either Principal or Agent .....	422-423
154. Termination by Agent's Renunciation.....	424-425
155. Agent's Misconduct or Breach of Duty.....	425-426
156. Duty of Principal to Reimburse and Indemnify Agent..	427-429
Machinery for Enforcement of Above Duties—	
157. Rights in Litigation .....	429-430
Lien—	
158. Extent .....	430-433
159. Conditions Precedent .....	433-437
160. End and Enforcement .....	438-440
161. Stoppage in Transitu .....	440-441
Restrictions on Enforcement of Above Duties—	
162. Illegal Transactions .....	441-444
163. By Subagent .....	444-446

## APPENDIX

(Page 447)

## INDEX

(Page 451)

**HANDBOOK**  
**ON THE**  
**LAW OF AGENCY**  
**SECOND EDITION**

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**CHAPTER I**  
**INTRODUCTORY**

1. Scope of Law Treated Herein.
2. Arrangement of Material.
3. General Characteristics of This Field of Law.

**SCOPE OF LAW TREATED HEREIN**

1. The law of principal and agent deals with the imposition upon one of legal consequences for an act done, in whole or in part, by another, excluding detailed treatment of the rules applied to artificial entities, such as partnerships and corporations, and treating briefly such imposition of responsibility in tort and crime.

In the evolution of social institutions, the transaction of business has become more and more complex. This has resulted in an increasing utilization of others in the execution of business enterprises. Law, as an instrument of social control, has found it useful, for various reasons, to impose upon persons who so utilize others, certain legal conse-

quences for acts done, in whole or in part, by such others.<sup>1</sup> Thus, if an individual engages in business and associates with himself various helpers, to divide the task and more efficiently carry on the business, the acts of these associates may impose liabilities or confer rights upon the individual heading the enterprise. So, also, if A., B., and C. form the relationship known as a partnership, the acts of A. may alter the rights and obligations of B. and C. If the group of associates have formed a corporation, the acts of the representatives of the corporation may increase or charge the assets of the corporation, and even the assets of the individual stockholders therein.

The entire law governing the imposition of such legal consequences upon one for acts done wholly or in part by another would be too great a task for one short treatise. Hence the discussion covered by this book will be confined, for the most part, to the principles governing the imposition of legal consequences upon an *individual* for acts done, in whole or in part, by another *individual*. This will leave for treatment elsewhere the specialized rules governing partnerships, corporations and the participants in a Massachusetts Trust.<sup>2</sup> But even within the field thus limited, further restrictions are necessary.

In carrying on a business enterprise the persons hired generally fall into two groups: First, those whose tasks are primarily manual or mechanical, such as chauffeurs, truck drivers, workmen engaged in production; and, second, those whose tasks involve primarily the creation of new legal relations between the hirer and third persons, such as insurance agents, traveling salesmen, and men in executive positions.<sup>3</sup> In the pigeonholing process of text-

<sup>1</sup> Holmes, 4 Harv. Law Rev. 347; Baty, Vicarious Liability (1916) chapter 9.

<sup>2</sup> Gilmore, Partnership; Mechem, Elements of Partnership; Clark, Private Corporations; Morawetz, Private Corporations.

<sup>3</sup> Wright, Principal and Agent, 2; Huffcut, Agency (2d Ed.) 17;

book construction the rules governing the relations of hirer and the representatives of the first type have come to be called the "law of master and servant," while the body of rules governing the relations between the hirer and the second type are known as the "law of principal and agent."<sup>4</sup>

It is apparent that one individual may be both a "servant" and an "agent," using the words in this restricted sense.<sup>5</sup> Because of the large number of instances, however, in which an individual is clearly of one type rather than of the other, and because of widely different considerations of policy involved, the law in the two fields has developed along different lines. Our task will concern itself with the field of principal and agent thus defined, discussing only briefly the authority and power<sup>6</sup> of an agent to bind his

Dwight, Pers. & P. P. 323. Cal. Civil Code, § 2009, defines servant as one employed to render personal services to his employer, and section 2295 defines an agent as one who represents another in dealings with third persons. The difficulties into which courts are led by such definitions is well shown in *Sumner v. Nevin*, 4 Cal. App. 347, 87 Pac. 1105 (1906).

Cf. *Burkhalter v. Ford Motor Co.*, 29 Ga. App. 592, 116 S. E. 333 (1923).

<sup>4</sup> "It is to be regretted that the word 'agency' should be used to cover the whole field of representation, and that the word 'agent' should at the same time be used as the name of the representative in one branch of it. If there were another word for agency (e. g., 'representation'), or another word for agent (e. g., 'deputy'), many tedious circumlocutions might be avoided. It might be better still if the whole field were called the 'Law of Representation,' while the branch known as the 'Law of Principal and Agent' were called the 'Law of Agency,' and that known as the 'Law of Master and Servant' were called the 'Law of Service.'" Huffcut, *Agency* (2d Ed.) 10, note 5; Clark and Skyles, *Agency*, § 5; Mechem, *Agency* (1914 Ed.) §§ 36 and 39.

<sup>5</sup> *Singer Mfg. Co. v. Bohn*, 132 U. S. 518, 10 Sup. Ct. 175, 33 L. Ed. 440 (1889); *Prowd v. Gore*, 57 Cal. App. 458, 207 Pac. 490 (1922).

<sup>6</sup> The authority of an agent should be carefully distinguished from the power of an agent. These expressions have been used with great carelessness. An act is within the authority of an agent if the agent is privileged to do that act by the principal; that is, if the agent's doing of the act is not a violation of the agent's duty to his principal. An act is within the power of an agent if the agent has the legal ability to bind the principal to a third person thereby, even

hirer otherwise than by contract. Another and more accurate way of stating the limitations upon the field covered by this book is to say that we shall discuss rather completely the authority and power of a representative to bind his constituent in contract and briefly the authority and power of a representative to bind his constituent in tort. The important distinction between the two fields lies in the type of liability sought to be imposed and not in the name affixed to either the hirer or the hired.<sup>7</sup>

## ARRANGEMENT OF MATERIAL

### 2. The subject-matter has been arranged according to the principles or policies involved.

In our field there are three generalized characters, the principal, the agent, and the third person. Frequently it will be convenient to refer to them as P., A., and T., respectively. It can readily be seen that rights and liabilities may exist between the principal and the third person, or between the principal and the agent, or between the agent and the third person. In some text-books, therefore, the subject has been divided into three parts, corresponding to these sets of rights and liabilities. But many principles and policies determine and influence more than one set of rights and liabilities. For instance, the concept "scope of authority" determines rights and liabilities in all three sets. Thus T. acquires rights against P., if A.'s act was within his scope;<sup>8</sup> A. is entitled to remuneration from P., if his act was within his scope;<sup>9</sup> and T. is entitled to

though the act constitutes a violation of the agent's duty to the principal. For further amplification of this distinction, see *infra*, sections 16, 34, 84, and 86.

<sup>7</sup> *MERRITT v. HUBER*, 137 Iowa, 135, 114 N. W. 627, Powell, Cas. Agency, 293 (1908).

<sup>8</sup> *Hadley Milling Co. v. Kelley*, 117 Ark. 173, 174 S. W. 227 (1915). See, also, chapters II to VI, inclusive.

<sup>9</sup> See chapter XVI.



recover damages from A., if A.'s act was not within his scope.<sup>10</sup> Because of the very evident artificiality of the threefold division, an effort has been made to treat the subject according to the principles or policies involved, rather than according to the parties whose claims are under consideration. Thus chapters II to VII seek to clarify the different significances of "scope"; chapters VIII to XII, inclusive, treat subjects affecting more than one of the three sets of rights and liabilities; and the last four chapters deal with those more localized principles, which control in only one of the three relations.

### GENERAL CHARACTERISTICS OF THIS FIELD OF LAW

3. The law of principal and agent is modern in origin, provides the background for the law of partnerships and corporations, is instructive as to the close interrelation of business and law, and presents a fertile field for constructive work.

The law of principal and agent is relatively modern in origin, and hence its study need not concern itself with a mass of historical material, so necessary to the understanding of many other branches of law. This enables the student to concentrate his energy upon the more recent decisions in the field. Despite these facts, its principles form the background and much of the substance of the modern law of partnerships and corporations. It was but natural that, as the forms of business organization became more complex, the rules developed governing the imposition of legal consequences upon one individual for acts done in whole or in part by another individual should have been extended to the newer and more complex business entities. Thus a knowledge of the law in this field is of great assist-

<sup>10</sup> See sections 129 and 130, *infra*.