

AGENCY

Law and Principles

THIRD EDITION

RODERICK MUNDAY



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PREFACE TO THE THIRD EDITION

The French have a more or less counter-intuitive adage: *jamais deux sans trois*. Its roots are claimed to lie in mediaeval procedure: *tierce fois c'est droit*. Whatever the truth, the encouraging reception accorded to its predecessors lent a certain inevitability to the appearance of a third edition of *Agency: Law and Principles*.

The text of the present volume has been updated, revised and expanded. Most considerably, soon after the proofs of the book hit my desk, the Supreme Court handed down judgment in *Bailey and another v Angove's Pty Ltd* [2016] UKSC 47, treating of the unaccustomed subject of irrevocable agencies. At the eleventh hour the case has been integrated into the text, which is intended to represent the law as at August 2016.

In an address, delivered on the occasion of the call to the Bar and Bench of the Inner Temple of the Prince of Wales, Lord Coleridge declared himself fully satisfied that His Royal Highness had "assimilated all those gay and giddy text-books which add such zest to the perusal of the law" (*This for Remembrance*, 1925, London: T Fisher Unwin, p. 241). The present work may not rise to that dizzying level of authorship. I have tried nonetheless to ease the reader's burden and to make the text of the third edition as readable as possible.

The number three carries many connotations. Hoping that it will not evoke the opening of the witches' spell, "Thrice the brindled cat hath mew'd," I prefer to imagine that readers may make out just the very faintest echo of Ulysses' words to Ajax:

"Famed be thy tutor, and thy parts of nature

Thrice-famed, beyond all erudition."

(*Troilus and Cressida*, act ii, sc. 3, l. 253.)

Manosque, Alpes de Haute-Provence

9 August 2016

PREFACE TO THE SECOND EDITION

In a celebrated interview reported in *The Paris Review* in 1956 Ernest Hemingway was asked why, according to his own account, he had re-written the final section of *A Farewell to Arms* thirty-nine times. ‘Was there some technical problem there? What was it that had stumped you?’ the interviewer probed. With malign simplicity, Hemingway responded: ‘Getting the words right’. If getting the words right first time round is tough, returning to the task for a fresh edition is not appreciably easier. Following the kind reception accorded to its predecessor, this second edition pursues an objective identical to that which propelled the first: namely, to supply a text setting forth the principles of the law of agency in as clear, rational and orderly a manner as can be managed.

No chapter has escaped amendment. Some have indeed undergone considerable reconstruction. Amongst the major new material, one could highlight two decisions of English judges sitting in cases litigated before foreign courts—Lord Neuberger of Abbotbury’s judgment in the Singapore Court of Appeal in *Skandinaviska Enskilda Banken AB (Publ) v Asia Pacific Breweries (Singapore) Pte Ltd* [2009] SGCA 22 and Lord Sumption’s opinion in the Judicial Committee in an appeal from Jamaica in *Kelly v Fraser* [2012] 3 WLR 1008—that go a considerable way towards clarifying the notion of apparent authority and, more particularly, the caliginous decision delivered by the Court of Appeal in *First Energy (UK) Ltd v Hungarian International Bank Ltd* [1993] 2 Lloyd’s LR 194. In a similar way, *Knight Frank LLP v du Haney* [2011] EWCA Civ 404 might be said to have identified more exactly the extent of an agent’s warranty of authority. The text also takes account of what the author, along with others, would consider the retrograde decision of the Court of Appeal in *Sinclair Investments (UK) Ltd v Versailles Trade Finance Ltd* [2012] Ch 453. *Sinclair Investments* has unexpectedly given *Lister v Stubbs* (1890) LR 45 ChD 1 a fresh lease of life, supporting the proposition that a beneficiary can have no proprietary interest in a bribe or secret commission unless it is, or has been, beneficially the property of the beneficiary or unless the fiduciary acquired the asset by taking advantage of an opportunity or right which was properly that of the beneficiary (see further *Cadogan Petroleum plc v Tolley* [2012] 1 P & CR DG5).

Revision of this text took place under difficult circumstances. I would like to express my appreciation to Rachel Alban and Rachel Mullaly for their understanding and patience. However, to my wife, Jasmine, go my greatest thanks.

Roderick Munday
Cambridge, 22 July 2013

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