5 The authority of an agent

- Actual authority
- Apparent authority
- Usual authority

INTRODUCTION

Throughout the previous chapters, repeated mention has been made of an agent's ability to enter into legally binding agreements on behalf of his principal. The general rationale behind holding such agreements as binding is that the principal has consented to the agent acting in such a way by bestowing authority upon the agent to act on his behalf. It follows that the authority of an agent is a central concept of the law of agency, with two principal types of authority being identifiable, namely actual authority and apparent authority. There is a third form of authority, known as usual authority, but, as is discussed, the reasoning behind the cases that established this form of authority is highly suspect. All three forms of authority will be discussed in this chapter, with Figure 5.1 highlighting the various forms of authority.

Determining the existence and type of authority is vital as the legal consequences of an agent breaching his authority can be severe. The principal may not be bound by the agent's actions, and the agent may instead be personally liable (or both may be liable). In addition, the agent may lose the commission/remuneration to which he was entitled and may be found liable for breach of contract and/or breach of warranty of authority.

The consequences of an agent breaching his authority are discussed in Chapters 6 and 8

Actual authority

The classic definition of actual authority was provided by Diplock LJ, who stated that:

[a]n actual authority is a legal relationship between the principal and agent created by a consensual agreement to which they alone are parties. Its scope is to be ascertained by

1. *Freeman & Lockyer v Buckhurst Park Properties (Mangal) Ltd* [1964] 2 QB 480 (CA) 503 (Diplock LJ).
2. Ibid.
3. Usual authority here refers to the form of usual authority that is independent from actual and apparent authority.
4. *Watteau v Fenwick* [1893] 1 QB 346 (QB) 348–49 (Wills J).
5. Ibid.
6. Peter G Watts, Bowstead & Reynolds on Agency (20th edn, Sweet & Maxwell 2014) [3-019].

FIGURE 5.3 The authority of an agent

applying ordinary principles of construction of contracts, including any proper implications from the express words used, the usages of the trade, or the course of business between the parties.[1]

This definition indicates that there are two types of actual authority that need to be discussed:

1. express actual authority, which refers to the authority that the principal has expressly bestowed upon the agent, either orally or in writing;
2. implied actual authority, which refers to authority that the law deems to have been bestowed by the principal upon the agent as a result of their dealings, circumstances, or relationship.

Express actual authority

Lord Denning MR defined express actual authority as 'authority given by express words, such as when a board of directors pass a resolution which authorises two of their number to sign cheques'.[2] Express actual authority is the most straightforward form of authority and refers to that authority that has been expressly conferred upon the agent by the principal. It arises most commonly where the agency relationship has been created by agreement and, in such a case, the agreement will delineate the express actual authority of the agent.

Agency by agreement is discussed at p 62

Express actual authority can be bestowed upon an agent through the creation of a formal document (such as a contract or a deed), or informally (e.g. through spoken words). It is important to know the method through which express actual authority has been conferred, as this can have a significant impact upon the construction of the agent's authority. In particular, the courts have adopted different approaches depending on whether or not express actual authority was conferred upon the agent via a deed.

Authority granted by deed

Where the principal confers authority upon the agent by deed (e.g. via a power of attorney),[3] then, when determining the extent of the agent's express actual authority, the courts' approach is to construe the deed strictly and to limit the agent's powers to those found 'within the four corners of the instrument'.[4] The strictness of this approach can be seen in the following case.

1. *Freeman & Lockyer v Buckhurst Park Properties (Mangal) Ltd* [1964] 2 QB 480 (CA) 503.
2. *Hely-Hutchinson v Brayhead Ltd* [1968] 1 QB 549 (CA) 583.
3. Section 1(1) of the Powers of Attorney Act 1971 specifies that a power of attorney can be executed only via deed.
4. *Bryant, Powis and Bryant Ltd v La Banque du Peuple* [1893] AC 170 (PC) 177 (Lord MacNaghten).

Jacobs v Morris [1902] 1 Ch 816 (CA)

FACTS: Louis Jacobs (the principal) executed a power of attorney that conferred upon his brother, Leslie Jacobs (the agent), the power to purchase and make any contract for the purchase of any goods and, in connection with Louis Jacobs' business, to make, draw, sign, accept, or indorse bills of exchange or promissory notes. Leslie Jacobs, purporting to act under the power of attorney, borrowed £4,000 from Morris. Morris eventually sought to recover the sum from Louis Jacobs, who contended that his brother had no authority to borrow the money.

HELD: The power of attorney conferred no express power upon Leslie Jacobs to borrow, and so he lacked the authority to borrow the £4,000. Further, as Morris had constructive notice that Leslie Jacobs had no authority to borrow the money[5] (and did so without his brother's knowledge), the Court held that Morris was estopped from recovering the £4,000 from Louis Jacobs.

Bowstead & Reynolds justify the strictness of this approach by noting that 'in the commercial sphere, powers of attorney tend to be drawn by lawyers and use technical wording which may be assumed to have been carefully chosen'.[6] They go on to note that such an approach is also justifiable in non-commercial cases (e.g. to protect an incapacitated principal who has executed a power of attorney to allow an agent to handle his financial affairs).

Authority not granted by deed

This strict approach to determining the scope of an agent's express actual authority does not apply where the authority is not conferred upon the agent by a deed (e.g. through a document not under seal, or orally). In such a case, a much more liberal approach is adopted under which the scope of the agent's express actual authority 'must be determined by inference from the whole circumstances',[7] as the following case demonstrates.

Johnston v Kershaw (1866–67) LR 2 Ex 82

FACTS: Kershaw (the Liverpool-based principal) instructed Johnston (the agent, who was based in Pernambuco in Brazil) to purchase 100 bales of cotton. Johnston only purchased ninety-four bales, claiming that this was the maximum number that could be obtained at the time. Kershaw refused to pay for the bales on the ground that Johnston had not acted in accordance with the express authority conferred upon him (i.e. to purchase 100 bales). Johnston sued.

HELD: Johnston was acting within his express actual authority. The court was influenced heavily by the fact that 'the state of the market [in Pernambuco] was not such as to admit of the whole 100 bales being purchased at one and the same time'.[8] Taking this into account, it was within Johnston's express actual authority to 'buy as many bales as they could get, and make up the total number as soon as practicable'.[9]

5. This constructive notice arose due to the fact that, had Morris read the terms of the power of attorney, he would have known that the agent lacked the authority to borrow.
6. Peter G Watts, *Bowstead & Reynolds on Agency* (20th edn, Sweet & Maxwell 2014) [3-012].
7. *Ashford Shire Council v Dependable Motors Pty Ltd* [1961] AC 336 (PC) 349 (Lord Reid).
8. (1866–67) LR 2 Ex 82, 86 (Kelly CB). 9. ibid.

The operation of this liberal approach is demonstrated most clearly in cases where the authority bestowed upon the agent by the principal contains some form of ambiguity.

Ireland v Livingston (1871–72) LR 5 HL 395 (HL)

FACTS: Livingston (the Liverpool-based principal) wrote to Ireland (his agent based in Mauritius), instructing him to purchase 500 tonnes of sugar (or 50 tonnes more or less) in Mauritius and ship it to Britain. The instructions also stated that Livingston would prefer the option of deciding whether the vessel delivering the sugar should go to London, Liverpool, or the Clyde, but that if this was not possible, the sugar could be shipped to London or Liverpool. Ireland could only obtain just under 400 tonnes and arranged for this amount to be shipped to Liverpool in one vessel, which also contained goods belonging to other people. Upon arrival in Liverpool, Livingston refused to take delivery of the sugar and Ireland sued. Livingston contended that his instructions indicated that the vessel's destination should be determinable by Ireland but, by placing the sugar on a ship that contained other people's goods, Ireland would be unable to determine the vessel's destination. Ireland contended that the instruction indicating that the sugar could be shipped to London or Liverpool authorized him to ship the sugar on a single vessel containing cargo belonging to other people.

HELD: The House noted that Livingston's instructions were ambiguous and established the approach that should be adopted when confronted by an ambiguity in the agent's express actual authority:

> [I]f a principal gives an order to an agent in such uncertain terms as to be susceptible of two different meanings, and the agent *bonâ fide* adopts one of them and acts upon it, it is not competent to the principal to repudiate the act as unauthorized because he meant the order to be read in the other sense of which it is equally capable. It is a fair answer to such an attempt to disown the agents' authority to tell the principal that the departure from his intention was occasioned by his own fault, and that he should have given his order in clear and unambiguous terms.[10]

Accordingly, as Ireland had acted based upon a bona fide interpretation of Livingston's instructions, his actions were within the scope of his express actual authority and his claim succeeded.

Ireland was decided prior to the telecommunications revolution and, today, it is likely that an agent cannot simply rely on his own interpretation of the principal's instructions. Speaking of the principle established in *Ireland*, Robert Goff LJ has stated that:

> there must be some limit to the operation of this principle. Obviously it cannot be open to every contracting party to act on a bona fide, but mistaken, interpretation of a contractual document prepared by the other, and to hold the other party to that interpretation ... [A] party relying on his own interpretation of the relevant document must have acted reasonably in all the circumstances in so doing. If instructions are given to an agent, it is understandable that he should expect to act on those instructions without more; but if, for example, the ambiguity is patent on the face of the document it may well be right (especially with the facilities of modern communications available to him) to have his instructions clarified by his principal, if time permits, before acting on them.[11]

10. (1871–72) LR 5 HL 395 (HL) 416 (Lord Chelmsford).
11. *European Asian Bank AG v Punjab & Sind Bank (No 2)* [1983] 1 WLR 642 (CA) 656.

Implied actual authority

The actual authority of the agent can also be implied based on the relationship between the principal and agent, or based on their conduct, as seen in the following example.

Eg COMCORP LTD

ComCorp is looking to purchase a piece of machinery. OmniTech Ltd produces the machinery in question and enters into negotiations with Greg, one of ComCorp's directors. Greg tells the board of OmniTech that he acts as ComCorp's purchasing director and has full authority to enter into contracts of sale on behalf of ComCorp. In fact, Greg has never been appointed as the company's purchasing director, although he has undertaken this role on several occasions with the consent of ComCorp's board. A price is agreed for the purchase of the machinery and Greg signs the contract on behalf of ComCorp. However, the board of ComCorp believes that the purchase price is too high and refuses to honour the sale, contending that Greg lacked authority to enter into the contract on ComCorp's behalf.

Does Greg have actual authority to enter into the contract of sale with OmniTech? He almost certainly does not have express actual authority, but actual authority may also be implied based on the circumstances of the case and, as will be seen, it is likely that Greg does have implied actual authority to enter into contracts of sale on ComCorp's behalf. Where an agent has implied actual authority, this will usually serve to increase the agent's actual authority by operating alongside his existing express actual authority. However, the implication of actual authority can also result in the creation of an agency relationship where none previously existed.

Implied actual authority can arise in numerous ways, but there is no universally accepted categorization of implied actual authority. In this text, implied actual authority is divided into three types, namely:

1. incidental authority;
2. usual authority; and
3. customary authority.

Incidental authority

The first type of implied actual authority can be classified as incidental authority and provides that '[a]n agent has implied authority to do whatever is necessary for, or ordinarily incidental to, the effective execution of his express [actual] authority in the usual way'.[12] An agent who is expressly authorized to enter into a transaction on behalf of his principal might need to undertake ancillary acts in order to enter into that transaction—the agent will have express authority to enter into the transaction and implied authority to undertake the relevant ancillary acts. Examples of incidental authority include the following:

- An agent engaged to purchase or sell goods on behalf of a principal has incidental authority to negotiate with third parties regarding the price for which the goods will be bought or sold.

12. Peter G Watts, *Bowstead & Reynolds on Agency* (20th edn, Sweet & Maxwell 2014) [3-019].

- An agent engaged to act as a project manager for the development of a piece of land has incidental authority to appoint and agree remuneration for planning consultants and property managers.[13]
- An agent engaged to sell a piece of real estate has incidental authority to enter into a binding contract of sale and complete the formalities relating to the sale.[14]

It should, however, be noted that the concept of incidental authority is limited to those activities that are necessary and incidental to the execution of the agent's express actual authority. From this it follows that:

- an agent engaged to deliver goods to a third party does not have incidental authority to make warranties relating to the quality of those goods;[15]
- an estate agent engaged to locate a purchaser for a piece of land does not have incidental authority to enter into a contract for the sale of that piece of land;[16]
- an agent authorized to deliver goods to a specified person does not have incidental authority to sell those goods to someone else.[17]

Usual authority

Often a person will be appointed to a particular role or occupation, or engaged within a particular trade or business, but his authority will not be specified in detail. In such cases, the concept of usual authority[18] will be particularly important, as it will provide that an agent has authority to do such things that a person in that agent's position usually has. The leading case in this area provides a clear example of this type of implied actual authority in practice.

Hely-Hutchinson v Brayhead Ltd [1968] 1 QB 549 (CA)

FACTS: Richards (the agent) was chairman of Brayhead Ltd (the principal) and, although he was not appointed formally as the managing director of the company, he acted as such with the board's acquiescence. Richards, purporting to act on behalf of Brayhead, agreed to indemnify Hely-Hutchinson[19] for any loss in relation to a company named Perdio Electronics Ltd. When Perdio went into liquidation, Hely-Hutchinson sought to enforce the indemnity against Brayhead but, unsurprisingly, it refused to honour the indemnity, contending that Richards had no authority to enter into the indemnity agreement with Hely-Hutchinson. Hely-Hutchinson commenced proceedings against Brayhead.

HELD: Lord Denning MR stated:

> It is plain that ... Richards had no express authority to enter into these ... contracts on behalf of the company: nor had he any such authority implied from the nature of his office. He had been duly appointed chairman of the company but that office in itself did not carry with it authority to enter into these contracts without the sanction of the board. But I think he had authority implied from the conduct of the parties and the circumstances of the case.[20]

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13. *Norwich Union Life & Pensions Ltd v Strand Street Properties Ltd* [2009] EWHC 1109 (Ch), affirmed [2010] EWCA Civ 444.
14. *Rosenbaum v Belson* [1900] 2 Ch 267 (Ch).
15. *Woodin v Burford* (1834) 2 C&M 391.
16. *Hamer v Sharp* (1874–75) LR 19 Eq 108.
17. *Whittaker v Forshaw* [1919] 2 KB 419 (DC).
18. As is discussed on pp 96 and 100, usual authority can also refer to a form of apparent authority, and a type of authority in its own right.
19. In the case itself, Hely-Hutchinson is referred to by his commonly known title, Viscount Suirdale.
20. [1968] 1 QB 549 (CA) 584.

The conduct Lord Denning MR referred to was the fact that 'the board by their conduct over many months had acquiesced in [Richards] acting as their chief executive and committing Brayhead Ltd to contracts without the necessity of sanction from the board'.[21] Accordingly, the indemnity was valid and Hely-Hutchinson's claim succeeded.

The task of the court is to determine whether or not the activities of the agent are usually incidental to the role, occupation, or trade being undertaken. This will be a question of fact in each case, with the following providing examples of when usual authority has been held to arise:

- The manager of a railway company has usual authority to bind the company to pay for medical assistance that is provided to an employee of the company following a workplace accident.[22]
- The master of a grounded ship has usual authority to enter into a contract for the salvage of the ship.[23]
- A ship's agent has usual authority to arrange for the stowage of cargo.[24]
- An auctioneer has usual authority to sell goods and to sign a contract of sale for both the seller and purchaser.[25]
- A horse dealer has usual authority to warrant as to the quality of a horse being sold.[26]

As is the case with incidental authority, the courts will not find usual authority to be conferred where it is not necessary or incidental to the agent's express actual authority. From this, it follows that usual authority will not be present where it would conflict with an express limitation or prohibition imposed by the principal.

Customary authority

Certain markets, trades, or locations may have their own customs, and the courts may give effect to such customs by holding that an agent has customary authority to act in accordance with the custom in question, as occurred in the following case.

Cropper v Cook (1867–68) LR 3 CP 194

FACTS: Cook (the Liverpool-based agent) was instructed to purchase wool by Hodgson, Mather & Co ('HMC', the principal). Cook did so, but purchased the wool in his own name and not in the name of HMC. HMC contended that, whilst it was the custom of the Liverpool wool-market that brokers were authorized to purchase wool either in their own name, or in the name of their principal, they could only purchase wool in their own name with the principal's consent, which had not been provided in this case. Accordingly, HMC refused to pay for the wool.

HELD: Cook was authorized to purchase the wool in his own name. Whilst Cook did not have express authority to do this, there was strong evidence provided indicating that it was a custom of the Liverpool wool-market that brokers were authorized to purchase wool either in their own name, or in the name of their principal, without providing the principal with notice of whether the purchase was made in the agent's name.

21. ibid. 22. *Walker v The Great Western Railway Co* (1866–67) LR 2 Ex 228.
23. *The Unique Mariner* [1978] 1 Lloyd's Rep 438 (QB).
24. *Blandy Bros & Co v Nello Simoni* [1963] 2 Lloyd's Rep 393 (CA).
25. *Emmerson v Heelis* (1809) 2 Taunt 38.
26. *Howard v Sheward* (1866) LR 2 CP 148.

It should be noted at the outset that the usefulness of customary authority is limited, as it is difficult to establish the existence of customary authority (or as Devlin J stated, 'it is a bold task to endeavour to establish custom').[27] The requirements to establish customary authority were laid out by Ungoed-Thomas J, who stated that the custom:

> must be certain, in the sense that the practice is clearly established; it must be notorious, in the sense that it is so well known, in the market in which it is alleged to exist, that those who conduct business in the market contract with the usage as an implied term; and it must be reasonable.[28]

This passage indicates that the custom must be certain, notorious, and reasonable. Whether a custom is reasonable or not will depend heavily upon the circumstances of the case (although whether it is reasonable or not is ultimately a question of law), with the following case providing an example of a custom that was held to be unreasonable.

***Robinson v Mollett, Bull & Unsworth* (1874–75) LR 7 HL 802 (HL)**

FACTS: Robinson (the Liverpool-based principal) instructed Mollett, Bull & Unsworth ('MBU', the agent), a London-based broker, to purchase fifty tonnes of tallow from the London tallow market. MBU purchased several hundred tonnes of tallow in its own name, which was then parcelled out to fulfil the orders of numerous principals, including that of Robinson. Robinson discovered this and refused to accept the tallow. MBU resold it at a loss and commenced proceedings against Robinson to recover the shortfall.

HELD: It was clear that there was a custom in the London tallow trade that permitted brokers to make contracts in their own name for amounts of tallow greater than required by a single principal, and then to parcel the tallow out to numerous principals. However, the House held that the custom was unreasonable, as its effect was to convert the broker into a principal seller, who would then sell the tallow on for a profit. This would place the broker in a position that conflicted with that of his principal and would deprive the principal of what he bargained for, namely an agent who exerted effort solely on the principal's behalf. A custom that so radically altered the nature of an agency relationship could not be enforced, unless the principal had knowledge of the custom at the time he bestowed authority upon the agent. Accordingly, MBU's claim failed.

Two further requirements have subsequently been added, namely that (i) the custom must not be unlawful;[29] and (ii) it must not conflict with, or be excluded by, the terms of the contract between the parties. Providing that the various requirements have been satisfied, the custom will 'be considered as part of the agreement: and if the agreement be in writing, though the custom is not written it is to be treated exactly

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27. *Stag Line Ltd v Board of Trade* (1949–50) 83 Ll L Rep 356 (KB) 360.
28. *Cunliffe-Owen v Teather & Greenwood* [1967] 1 WLR 1421 (Ch) 1438.
29. Peter G Watts, *Bowstead & Reynolds on Agency* (20th edn, Sweet & Maxwell 2014) [3-036] states that older cases appear to indicate that an unlawful custom can be enforced providing that the principal has knowledge of it and assents to it, but it is contended by most commentators (including Bowstead & Reynolds themselves) that it is difficult to envisage the courts upholding an unlawful custom.

as if that unwritten clause had been written out at length'.[30] This will be so even if the principal was not aware of the custom.[31] However, as noted, an unreasonable custom will only form part of the agency agreement if the principal knew of it at the time when he bestowed authority upon the agent.

Apparent authority

Consider the following example.

Eg **COMCORP LTD**

ComCorp is being sued for negligence by MultiTech Ltd. ComCorp engages a solicitor, Milly, to act on its behalf. The directors of ComCorp instruct Milly to make contact with MultiTech and sound them out about a possible settlement, and so Milly arranges a meeting with MultiTech's solicitor. During the meeting, the directors of ComCorp try to contact Milly to tell her that she should not agree to any settlement before ComCorp's board has discussed it. Unfortunately, Milly's phone is on silent and so she does not take the call. She proposes a settlement agreement, which is accepted by MultiTech's solicitor (MultiTech's solicitor is expressly authorized to accept any suitable offers of settlement). ComCorp contends that it is not bound by the terms of the settlement, as Milly had no authority to make it.

It is clear that Milly does not have express actual authority to settle on ComCorp's behalf, as she was instructed only to sound out MultiTech about the possibility of a settlement. Depending on the facts, it may be the case that she has implied actual authority to propose a settlement, but this is unlikely.[32] However, it would be unfair if principals were only bound to transactions entered into by agents who act within their actual authority, as third parties who deal with agents are unlikely to know what the agent is actually authorized to do. Accordingly, a second form of authority exists which is based on the authority that, from the third party's point of view, the agent appears to have, namely apparent authority (in older cases, apparent authority is also known as ostensible authority). Thus, in this example, Milly does not have actual authority to propose a settlement but, from the point of view of MultiTech's solicitor, what matters is the authority that she appears to have, and she does appear to have authority to make a settlement offer,[33] and so ComCorp could be bound by the terms of the settlement. From this, it can be seen that '[a]pparent authority is really equivalent to the phrase "appearance of authority". There may be an appearance of authority whether in fact or not there

30. *Tucker v Linger* (1882–83) LR 8 App Cas 508 (HL) 511 (Lord Blackburn).
31. *Bayliffe v Butterworth* (1847) 17 LJ Ex 78.
32. See *Waugh v HB Clifford & Sons Ltd* [1982] Ch 374 (CA) 387 (Brightman LJ).
33. ibid. It should, however, be noted that it is unlikely that a solicitor would enter into an agreement of this type without first consulting the principal.

is authority',[34] or, to put it more simply, 'apparent authority is the authority of an agent as it appears to others'.[35]

Apparent authority can serve to extend the scope of an agent's authority beyond that agreed to by the principal (as occurred in the ComCorp example), or it can even result in the creation of an agency relationship where none previously existed.

Actual authority, apparent authority, and estoppel

In the example just discussed, the agent (Milly) lacked actual authority, but did have apparent authority. In many cases, however, the actual authority and apparent authority of an agent will generally coincide and so the difference between the two forms of authority may not be important in practice.[36] Lord Denning MR provides an example of this:

> [A]pparent authority . . . often coincides with actual authority. Thus, when the board appoints one of their number to be managing director, they invest him not only with implied [actual] authority, but also with ostensible authority to do all such things as fall within the usual scope of that office. Other people who see him acting as managing director are entitled to assume that he has the usual authority of a managing director.[37]

However, as Diplock LJ correctly noted, 'either may exist without the other and their respective scopes may be different'.[38] For example, a principal may terminate the agency agreement, in which case the agent's actual authority is also likely to be terminated, but the agent's apparent authority may continue. Even if both forms of authority co-exist, it may be the case that the agent's apparent authority exceeds his actual authority. Given this, it is vital to understand how actual and apparent authority differ and to be able to determine the scope of each.

Actual authority relates to the relationship between the principal and the agent, and is concerned with the authority that the principal has, expressly or impliedly, bestowed upon the agent. Conversely, according to Diplock LJ, apparent authority refers to:

> a legal relationship between the principal and the contractor [i.e. a third party] created by a representation, made by the principal to the contractor, intended to be and in fact acted upon by the contractor, that the agent has authority to enter on behalf of the principal into a contract of a kind within the scope of the 'apparent' authority, so as to render the principal liable to perform any obligations imposed upon him by such contract. To the relationship so created the agent is a stranger. He need not be (although he generally is) aware of the existence of the representation but he must not purport to make the agreement as principal himself. The representation, when acted upon by the contractor by entering into a contract with the agent, operates as an estoppel, preventing the principal from asserting that he is not bound by the contract. It is irrelevant whether the agent had actual authority to enter into the contract.[39]

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34. James L Montrose, 'The Basis of the Power of the Agent in Cases of Actual and Apparent Authority' (1932) 16 Can Bar Rev 756, 764.
35. *Hely-Hutchinson v Brayhead Ltd* [1968] 1 QB 549 (CA) 583 (Lord Denning MR).
36. Indeed, as Peter G Watts, *Bowstead & Reynolds on Agency* (20th edn, Sweet & Maxwell 2014) [3-004] notes, '[i]n many nineteenth century cases, it is not possible to tell upon which doctrine the court bases its decision'.
37. *Hely-Hutchinson v Brayhead Ltd* [1968] 1 QB 549 (CA) 583.
38. *Freeman & Lockyer v Buckhurst Park (Mangal) Properties Ltd* [1964] 2 QB 480 (CA) 502.
39. ibid 503.

When will apparent authority arise?

The quote of Diplock LJ in the previous paragraph indicates that, where an agent has apparent authority, then the principal will be estopped from denying that he is bound by the contract. This indicates a commonly stated premise, namely that the theoretical basis for apparent authority lies in the doctrine of estoppel. To quote Slade J 'apparent authority . . . is merely a form of estoppel, indeed, it has been termed agency by estoppel'.[40] It will be remembered that estoppel applies where a person (*A*) makes a promise to another (*B*), and *B* then relies on that promise. In such a case, it might then be inequitable to allow *A* to go back on his promise, and so he will be estopped from doing so. Accordingly, if the principal represents that an agent has authority to act in a certain way, and a third party relies on that representation, the principal can be estopped from denying the existence of such authority.

Whilst this basis for apparent authority is not universally accepted by academics,[41] it does appear to be generally accepted by the courts.[42] It follows that, in order for apparent authority to arise, the requirements for estoppel must also be present. Again, quoting Slade J, 'you cannot call in aid an estoppel unless you have three ingredients: (i) a representation, (ii) a reliance on the representation, and (iii) an alteration of your position resulting from such reliance'.[43]

Each of these three ingredients will now be discussed, but it should be noted that, in order to accommodate agency cases within the concept of estoppel, the courts have had to apply the law relating to estoppel in a somewhat liberal manner, leading to the conclusion that apparent authority is a form of estoppel 'with weak requirements, special to agency'.[44] This is especially noticeable in relation to the requirement for a representation, where the courts will accept a representation that is 'very general indeed',[45] and the requirement for an alteration of position, where the alteration need only be small.

Representation

It will be remembered that, in explaining how apparent authority differs from actual authority, Diplock LJ stated that apparent authority is 'a legal relationship between the principal and the contractor created by *a representation, made by the principal to the contractor*'.[46] From this, it follows that, in order for apparent authority to arise, there must be a representation. In order to fully understand this requirement, four issues need to be discussed:

1. What must this representation indicate?
2. From whom must this representation derive?
3. How must the representation be made?
4. When must the representation be made?

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40. *Rama Corporation Ltd v Proved Tin and General Investments Ltd* [1952] 2 QB 147 (QB) 149.
41. See e.g. Peter G Watts, *Bowstead & Reynolds on Agency* (20th edn, Sweet & Maxwell 2014) [8-028].
42. See e.g. *Garner v Beaton* [1993] 2 Lloyd's Rep 369 (CA) 379 (Neill LJ).
43. *Rama Corporation Ltd v Proved Tin and General Investments Ltd* [1952] 2 QB 147 (QB) 150.
44. Peter G Watts, *Bowstead & Reynolds on Agency* (20th edn, Sweet & Maxwell 2014) [2-100]. See also Roderick Munday, *Agency: Law and Principles* (2nd edn, OUP 2013) 63, who states that 'in the context of agency, estoppel wears a meaning different from its customary common-law usage'.
45. Peter G Watts, *Bowstead & Reynolds on Agency* (20th edn, Sweet & Maxwell 2014) [8-028].
46. *Freeman & Lockyer v Buckhurst Park (Mangal) Properties Ltd* [1964] 2 QB 480 (CA) 503 (emphasis added).

The first issue is unproblematic and requires little discussion. Again quoting Diplock LJ, the representation must indicate that 'the agent has authority to enter on behalf of the principal into a contract of a kind within the scope of the "apparent" authority, so as to render the principal liable to perform any obligations imposed upon him by such contract'.[47] In other words, the representation must indicate that the agent has the authority to act on behalf of the principal. Historically, the courts have stated that the representation had to be one of fact,[48] but this limitation should be reconsidered in light of recent case law, which has abolished the distinction between mistakes of fact and law[49] and of misrepresentations based on statement of fact and law.[50]

The second issue (namely from whom must the representation derive) is generally straightforward but has been complicated in some unusual cases. As discussed, the basis for the apparent authority of an agent is that the agent appears to have authority to act on behalf of the principal because the principal has in some way acted to create that appearance. It follows from this that apparent authority will not generally be created where the representation comes from the agent himself—to allow otherwise would be to permit the agent to self-authorize or, as Lord Donaldson MR stated, 'to pull himself up by his own shoe laces'.[51] It does not follow, however, that the representation must come from the principal personally (although in the majority of cases concerning apparent authority, it will)—another agent authorized to act on behalf of the principal can also make the representation.[52]

However, a number of academics have contended that this rule cannot be absolute and that '[q]ualifications, and perhaps exceptions, can be said to eat into such an apparently clear principle'.[53] For example, Reynolds states that:

> [t]here may be cases where the agent only has authority in certain circumstances; only the agent knows whether they have arisen. The third party may be entitled to rely on the agent's statement, express or implied, that they have.[54]

But there are limits to this—in *Armagas Ltd v Mundogas SA (The Ocean Frost)*,[55] the House of Lords stated clearly that, where the third party knows that an agent lacks authority, a principal will not be bound where such an agent wrongly claims to have obtained such authority. However, the following case distinguished *The Ocean Frost* and held that apparent authority was present.

First Energy (UK) Ltd v Hungarian International Bank Ltd [1993] BCC 533 (CA)

FACTS: First Energy (UK) Ltd ('FE') sought to obtain credit facilities from Hungarian International Bank Ltd ('HIB', the principal), with the request being handled by Jamison (the agent), the senior manager of HIB's Manchester branch. FE had dealt with Jamison before and knew that he did not

47. ibid. 48. *Chapleo v Brunswick Permanent Building Society (No 2)* (1880–81) LR 6 QBD 696 (CA).
49. *Kleinwort Benson Ltd v Lincoln CC* [1999] 2 AC 349 (HL).
50. *Pankhania v Hackney LBC* [2002] EWHC 2441 (Ch), [2002] NPC 123.
51. *United Bank of Kuwait v Hammoud* [1988] 1 WLR 1051 (CA) 1066.
52. *Attorney General of Ceylon v Silva* [1953] AC 461 (PC); *Armagas Ltd v Mundogas SA (The Ocean Frost)* [1986] AC 717 (HL).
53. Peter G Watts, *Bowstead & Reynolds on Agency* (20th edn, Sweet & Maxwell 2014) [8-021].
54. FMB Reynolds, 'The Ultimate Apparent Authority' (1994) 110 LQR 21, 23.
55. [1986] AC 717 (HL).

have actual authority to sanction a credit facility (indeed Jamison himself made this clear to FE), and that any letter offering such a facility would need to be signed by two of the bank's officials. Jamison wrote to FE informing it that HIB had approved the credit facility. The letter was not signed by two of the bank's officials and HIB had not approved the credit facility. Accordingly, HIB claimed that Jamison lacked the authority to offer the facility and therefore refused to offer it to FE. FE commenced proceedings.

HELD: Jamison had apparent authority to inform FE that the facility had been approved. The Court distinguished *The Ocean Frost* on the ground that the agent in that case did not have authority to claim that he was authorized. Conversely, in *First Energy*, 'Jamison's position as senior manager in Manchester was such that he was clothed with ostensible authority to communicate that head office approval had been given for the facility'.[56] Accordingly, whilst Jamison lacked authority to sanction the credit facility, he did have authority to inform FE the his head office had authorized the facility, or, as Steyn LJ stated, 'the law recognises that in modern commerce an agent who has no apparent authority to conclude a particular transaction may sometimes be clothed with apparent authority to make representations of fact'.[57]

COMMENT: In upholding the agreement and finding for FE, it is clear that the Court's decision was 'heavily based on the desirability of third parties in commercial situations being able to rely on letters such as that written'.[58] Steyn LJ admitted this when stating that 'the principal moulding force of our law of contract . . . [is] . . . that the reasonable expectations of honest men must be protected'.[59] Despite the fact that the case does not fit easily with orthodox agency principles, it has been welcomed by a number of commentators[60] who agree with Evans LJ's conclusion that the decision is merely giving effect to 'the commercial realities of the situation'.[61] Despite this, the consensus does appear to be that the case is best 'regarded as exceptional on the facts',[62] but there can be no doubt that the principle established by Steyn LJ does have the potential to radically affect the doctrine of apparent authority should future courts decide to embrace it.

See Ian Brown, 'Agent's Apparent Authority: Paradigm or Paradox?' [1995] JBL 360

The third issue (namely, how can the representation be made) can be problematic, as the courts have confirmed that the representation can be made in a number of different ways, some of which are not easy to identify in practice. The most straightforward form of representation is one made orally or in writing,[63] but the most common form of representation is one made by conduct. The most common form of representation by conduct occurs where the principal places the agent in a position that usually provides the agent with authority to engage in certain acts,[64] as the following case demonstrates.

56. [1993] BCC 533 (CA) 544 (Steyn LJ). 57. ibid 543.
58. FMB Reynolds, 'The Ultimate Apparent Authority' (1994) 110 LQR 21, 24.
59. [1993] BCC 533 (CA) 533. He went on to state (at p 544) that 'third parties who deal with companies in good faith ought to be protected'.
60. See e.g. Ian Brown, 'The Agent's Apparent Authority: Paradigm or Paradox?' [1995] JBL 360, 364–5.
61. [1993] BCC 533 (CA) 544.
62. FMB Reynolds, 'The Ultimate Apparent Authority' (1994) 110 LQR 21, 24.
63. *Trickett v Tomlinson* (1863) 13 CB (NS) 663.
64. Confusingly, this specific form of apparent authority is known as 'usual authority'. As is discussed on p 89, usual authority can also refer to a form of implied actual authority and, as discussed on p 100, it can also refer to a form of authority independent from actual and apparent authority.

Freeman & Lockyer v Buckhurst Park (Mangal) Properties Ltd [1964] 2 QB 480 (CA)

FACTS: Kapoor (the agent) and another person formed Buckhurst Park (Mangal) Properties Ltd ('Buckhurst', the principal), the purpose of which was to purchase and resell a large estate. Kapoor was a director of Buckhurst, along with a number of other persons. Kapoor acted as managing director with the board's acquiescence, although he had never been formally appointed to the role. He engaged a firm of architects (Freeman & Lockyer) on Buckhurst's behalf. The architects completed the work required of them and sought payment of their fees from Buckhurst. Buckhurst refused to pay, alleging that Kapoor lacked authority to engage the architects. The architects sued for payment.

HELD: The claim succeeded and Buckhurst was liable to pay the architects for the work they completed. Diplock LJ stated:

> The representation which creates 'apparent' authority may take a variety of forms of which the commonest is representation by conduct, that is, by permitting the agent to act in some way in the conduct of the principal's business with other persons. By so doing the principal represents to anyone who becomes aware that the agent is so acting that the agent has authority to enter on behalf of the principal into contracts with other persons of the kind which an agent so acting in the conduct of his principal's business has usually 'actual' authority to enter into.[65]

By acquiescing to Kapoor acting as managing director, Buckhurst had represented to the architects that Kapoor had the authority to engage in activities that a managing director would usually be authorized to undertake, including entering into contracts on behalf of the company.

See JL Montrose, 'The Apparent Authority of an Agent of a Company' (1965) 7 Malaya L Rev 253

A representation can also be implied from a previous course of dealing, as occurred in the following case.

Summers v Solomon (1857) E&B 879

FACTS: Samuel Solomon ('Samuel', the principal) owned a jewellers shop and employed his nephew, Abraham Solomon ('Abraham', the agent), to manage it. Samuel had authorized Abraham to order jewellery for sale in the shop and, on this basis, Abraham had regularly ordered jewellery from Summers, which Samuel had then paid for. Abraham left Samuel's employment and moved to London, where he ordered goods from Summers and absconded with them. Summers commenced proceedings against Samuel for the cost of the jewellery. Samuel contended that Abraham no longer had authority to purchase jewellery on his behalf and so he was not liable.

HELD: Summers succeeded and Sanuel was required to pay for the jewellery ordered by Abraham. Coleridge J stated:

> The question is, not what was the actual relation between the defendant and his nephew, but whether the defendant had not so conducted himself as to make the plaintiff suppose the nephew to be the defendant's general agent. What passes between the defendant and his nephew cannot limit the defendant's liability to the plaintiff.[66]

65. [1964] 2 QB 480 (CA) 503–4. 66. (1857) E&B 879, 884.

Accordingly, the court held that the previous conduct of Samuel constituted a representation indicating that Abraham had apparent authority to order the jewellery. If Samuel wished to avoid liability, he should have informed Summers that Abraham's authority had been terminated.

The fourth and final issue to discuss is when the representation must be made. In the majority of cases, the representation will be made prior to the agent engaging in the act in question. However, the law does not require that this be the case and, as demonstrated in the following case, apparent authority can arise based on a subsequent representation.

Spiro v Lintern [1973] 1 WLR 1002 (CA)

FACTS: John Lintern ('John', the principal) wished to sell his house and instructed his wife, Gena Lintern ('Gena', the agent), to put the house in the hands of an estate agent, but not to sell the property. The estate agent located a buyer (Spiro) and Gena entered into a contract of sale. John took no steps to articulate that Gena lacked authority to enter into the contract, even when Spiro visited him. John also allowed Spiro to incur related expenses and to commence building work on the house without dispute. Before going abroad, John executed a power of attorney empowering Gena to complete the sale. However, she instead transferred the property to a third party. Spiro sought to enforce the contract via an order for specific performance. John argued that the contract was not valid, as Gena lacked the authority to enter into it on his behalf.

HELD: The Court held that John's failure to disclose to Spiro that Gena lacked the authority to enter into the contract of sale constituted a representation that she did, in fact, have authority to sell the property. Accordingly, John was estopped from denying that Gena lacked authority and the order for specific performance was granted.

Reliance

Reliance is a key component of estoppel and, as apparent authority is based upon the doctrine of estoppel, it follows that the third party must rely on the principal's representation in order for apparent authority to arise. Accordingly, apparent authority will not exist where the third party did not know of the principal's existence (i.e. the principal was undisclosed),[67] or did not know of the representation. As the following case demonstrates, apparent authority will also not arise where the third party knew, or ought to have known, that the agent lacked authority.

Overbrooke Estates Ltd v Glencombe Properties Ltd [1974] 1 WLR 1335 (Ch)

FACTS: Overbrooke Estates Ltd (the principal) put up a piece of property for sale by auction. Prior to the auction, Glencombe Properties Ltd was sent a copy of the auctioneer's general conditions of sale, which stated that '[t]he vendors do not make or give and neither the auctioneers

67. *A.L. Underwood Ltd v Bank of Liverpool* [1924] 1 KB 775 (CA).

nor any person in the employment of the auctioneers has any authority to make or give any representation or warranty in relation to these properties'. At the auction, the auctioneer (the agent) told Glencombe that neither the local authority nor Greater London Council had plans for the property and were not interested in compulsorily purchasing it. Glencombe bought the property, but subsequently discovered from the local authority that the property was within an area that would be subject to a slum clearance programme. Upon discovering this, Glencombe stopped the payment and refused to honour the contract. Overbrooke sought specific performance, and Glencombe alleged that the auctioneer had apparent authority to make the statement and, given that it was inaccurate, it amounted to a misrepresentation, allowing Glencombe to rescind the contract of sale.

HELD: The Court found for Overbrooke and ordered specific performance. Brightman J stated:

> It seems to me that it must be open to a principal to draw the attention of the public to the limits which he places upon the authority of his agent and that this must be so whether the agent is a person who has or has not any ostensible authority. If an agent has prima facie some ostensible authority, that authority is inevitably diminished to the extent of the publicised limits that are placed upon it.[68]

Applying this, the Court held that Glencombe knew, or ought to have known, that the auctioneer lacked the authority to make the representation and, as such, could not have been said to have relied on the representation.

Determining whether or not a third party knew, or ought to have known that an agent lacks authority can be difficult in practice, but the courts have established certain presumptive indicators:

- Where a transaction is clearly not in the commercial interests of the principal, the third party will be put on notice that the agent is unlikely to have the requisite authority. In such a case, it will be 'very difficult for the [third party] to assert with any credibility that he believed the agent did have actual authority. Lack of such a belief would be fatal to a claim.'[69]
- Where an agent is engaged in a manner of business that an agent of that type would not normally engage in, then the third party will be put on notice that the agent may lack authority and the third party should ascertain whether or not the agent is authorized to conduct that business.[70]

Bowstead & Reynolds[71] contend that the following *dictum*, made in relation to the imposition of a constructive trust, is relevant to determining whether or not a third party has notice of an agent's lack of authority:

> In deciding whether a person . . . had actual notice, (a) the court will apply an objective test and look at all the circumstances; (b) if by an objective test clear notice was given liability cannot be avoided by proof merely of the absence of actual knowledge; (c) a person will be deemed to have had notice of any fact to which it can be shown that he deliberately turned a blind eye . . . ; (d) on the other hand, the court will not expect the recipient of goods to scrutinise commercial documents such as delivery notes with great care; (e) there is no general duty on the buyer of goods in an ordinary commercial transaction to make inquiries as to the right of the seller to dispose of the goods; (f) the question becomes, looking objectively at

68. [1974] 1 WLR 1335 (Ch) 1341.
69. *Criterion Properties plc v Stratford UK Properties LLC* [2004] UKHL 28, [2004] 1 WLR 1846 [31] (Lord Scott).
70. *Midland Bank Ltd v Reckitt* [1933] AC 1 (HL).
71. Peter G Watts, *Bowstead & Reynolds on Agency* (20th edn, Sweet & Maxwell 2014) [8-048].

the circumstances which are alleged to constitute notice, do those circumstances constitute notice? This must be a matter of fact and degree to be determined in the particular circumstances of the case.[72]

In practice, it is reasonably straightforward for a third party to establish reliance and it may even be the case that reliance on the principal's representation will be presumed, unless it can be established that the third party actually knew of the agent's lack of authority, or the third party's belief in the agent's authority was dishonest or irrational.[73]

Alteration of position

The third requirement laid down by Slade J is that the third party must have altered his position as a result of relying on the representation, but whether this is, in fact, enough is not entirely clear. In estoppel cases not involving the law of agency, not only must the person relying on the representation alter his position, he must do so to his detriment. In a number of agency cases, the courts have required that 'the person to whom the representation was made has suffered loss by acting upon it; or, to put it in another way, has altered his position to his detriment by acting on the representation'.[74] However, the majority of cases favour the view that a detriment is not required and all that need occur is that the third party altered his position as a result of the representation.[75] Further, this alteration of position need only amount to the third party entering into a contract with the principal,[76] which has resulted in several commentators questioning 'whether alteration of position in fact constitutes a separate requirement from reliance'.[77]

Usual authority

As has been discussed earlier in this chapter, the phrase 'usual authority' can refer to a specific form of implied actual authority, and a specific form of apparent authority. A small cluster of troublesome cases have established a third meaning, namely that usual authority also constitutes a type of authority distinct from actual and apparent authority. The leading case is *Watteau v Fenwick*, a seemingly straightforward case that is a little over a page long, which has nevertheless been described as 'the most difficult and controversial decision' in the law of agency.[78]

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72. *Feuer Leather Corp v Johnstone & Sons* [1981] Com LR 251 (QB) (Neill J).
73. *Thanakharn Kasikorn Thai Chamkat (Mahachon) v Akai Holdings Ltd* [2010] HKCFA 64 (Hong Kong Final Court of Appeal).
74. *George Whitechurch Ltd v Cavanagh* [1902] AC 117 (HL) 135 (Lord Robertson).
75. See e.g. *Pickard v Sears* (1837) 6 A&E 469; *Freeman v Cooke* (1848) 2 Exch 654; *Rama Corporation Ltd v Proved Tin and General Investments Ltd* [1952] 2 QB 147 (QB); *Freeman & Lockyer v Buckhurst Park (Mangal) Properties Ltd* [1964] 2 QB 480 (CA).
76. See e.g. *Freeman & Lockyer v Buckhurst Park (Mangal) Properties Ltd* [1964] 2 QB 480 (CA); *Polish Steamship Co v AJ Williams Fuels (Overseas Sales) (The Suwalki)* [1989] 1 Lloyd's Rep 511 (QB); *Arctic Shipping Co Ltd v Mobilia AB (The Tatra)* [1990] 2 Lloyd's Rep 51 (QB).
77. Roderick Munday, *Agency: Law and Principles* (2nd edn, OUP 2013) 90.
78. GHL Fridman, 'The Demise of *Watteau v Fenwick*: Sign-O-Lite Ltd v Metropolitan Life Insurance Co' (1991) 70 Can Bar Rev 329, 329.

Watteau v Fenwick [1893] 1 QB 346 (QB)

FACTS: Fenwick (the principal) appointed the former owner of a beerhouse, Humble (the agent), to act as the manager of that beerhouse. The liquor licence was taken out in Humble's name and his name appeared over the door of the beerhouse. Fenwick prohibited Humble from purchasing goods for the beerhouse, except bottled ales and water. In contravention of this, Humble purchased on credit a consignment of cigars and other items from Watteau, who mistakenly believed that Humble still owned the beerhouse. Upon discovering that Fenwick was the true owner of the beerhouse, Watteau issued proceedings against Fenwick for the price of the items that Humble had obtained on credit.

HELD: Watteau could recover from Fenwick the cost of the cigars. Humble had authority to purchase the cigars and so a binding contract existed between Fenwick and Watteau. Wills J stated that:

> the principal is liable for all the acts of the agent which are within the authority usually confided to an agent of that character, notwithstanding limitations, as between the principal and the agent, put upon that authority. It is said that it is only so where there has been a holding out of authority—which cannot be said of a case where the person supplying the goods knew nothing of the existence of a principal. But I do not think so.[79]

COMMENT: It is important to understand why this was not a case involving actual or apparent authority. Humble clearly lacked actual authority, as Fenwick had prohibited him from purchasing the goods in question. It is equally clear that Humble lacked apparent authority,[80] as Fenwick made no representation to Watteau (indeed, Watteau did not know of Fenwick's existence until after the goods had been supplied).

It has been contended that the result in *Watteau* is 'eminently just'[81] in that '[b]y placing [Humble] in a position where third parties would assume that [Humble] was the owner of the business, it is wholly appropriate that [Fenwick] can be held liable for purchases that typically would be made by someone managing his own business'.[82] The problem with this argument is that it ignores the fact that Fenwick could not enforce the contract against Watteau (because an undisclosed principal cannot ratify a contract). It is difficult to argue that, in such cases, a third party should be able to enforce the contract against the principal, but the principal cannot enforce the contract against the third party.

The law relating to the ratification of an agent's actions is discussed at p 64

Irrespective of whether or not the result is just, the most significant problem that arises is that the Court in *Watteau* failed to articulate a satisfactory rationale for the decision, with the result that the case has been almost universally criticized. Academics have branded it as 'dubious'[83] and have stated that Wills J's statement 'is supported neither by the previous cases nor by his own reasoning'.[84] The case has also garnered

79. [1893] 1 QB 346 (QB) 348–9.
80. However, see AL Goodhart and CJ Hamson, 'Undisclosed Principals in Contract' [1931] CLJ 320, 336, who contend that Humble did indeed have apparent authority.
81. JG Collier 'Authority of an Agent—*Watteau v Fenwick* Revisited' (1985) 44 CLJ 363, 364.
82. Roderick Munday, *Agency: Law and Principles* (2nd edn, OUP 2013) 278.
83. Peter G Watts, *Bowstead & Reynolds on Agency* (20th edn, Sweet & Maxwell 2014) [3-005].
84. JA Hornby, 'The Usual Authority of an Agent' [1961] CLJ 239, 246.

judicial criticism, with Bingham J describing *Watteau* as 'a somewhat puzzling case',[85] before going on to doubt whether it was correctly decided. Overseas judges have gone further, with one Canadian judge stating that he found it astonishing that 'an authority of such doubtful origin and of such unanimously unfavourable reputation should still be exhibiting signs of life and disturbing the peace of mind of trial judges'.[86]

Given these criticisms, the question to ask is to what extent *Watteau* remains good law. It is clear that the case has not spawned a body of authority—the case has been distinguished on numerous occasions and has been followed only once[87] (and that decision was reversed on appeal).[88] It does, however, remain good law, albeit law that appears unlikely to be followed in future cases. Even if a court were to wish to follow *Watteau*, it is clear that, in certain cases, the principle established by Wills J cannot be applied (e.g. where the third party knows, or ought reasonably to know, of the restriction on the agent's authority).[89]

Despite the criticism surrounding *Watteau* and the fact that it is unlikely to be followed, there does appear to be a tacit acknowledgement amongst a number of academics that *Watteau* might be a useful case if only a convincing justification can be found—this is evidenced by the numerous attempts to devise what the true basis of *Watteau* is. Many academics have tried to justify *Watteau* on agency principles, but none of these explanations have been sufficiently satisfactory. Accordingly, perhaps the most convincing argument is that the decision in *Watteau* is not actually based on the law of agency at all, but is instead an example of estoppel by conduct, as follows:

> By putting someone in charge of their business in such a way that he seemed to be the proprietor of it, [Fenwick] gave [Watteau] the impression that they, as owners of the hotel, were not a distinct legal entity from the person [Watteau] did business with . . . There is no doubt that this representation was relied on (since it is inconceivable that [Watteau] would have contracted with [Humble] personally had they known he was a mere manager). If so, [Fenwick] should not later have been allowed to resile from it and assert their separate identity, and hence were rightly held liable on the contract.[90]

CONCLUSION

In many legal disputes, the rights, obligations, and liability of the parties can only be determined once the scope of the agent's authority has been determined. It is therefore fundamental to have a clear understating of the various forms of authority in order to understand the relationships that exist between the persons who are party to an agency agreement and the validity of any contracts that are created as a result of such an agreement. Having discussed the authority of an agent in this chapter, Chapters 6, 7, and 8 discuss the relationships that exist between the relevant parties, beginning with the relationship between the principal and the agent.

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85. *Rhodian River Shipping Co SA v Halla Maritime Corp (The Rhodian River and The Rhodian Sailor)* [1984] 1 Lloyd's Rep 373 (QB) 378.

86. *Sign-O-Lite Plastics Ltd v Metropolitan Life Insurance Co* (1990) 73 DLR (4th) 541, 548 (Wood JA).

87. *Kinahan & Co Ltd v Parry* [1910] 2 KB 389 (QB).

88. *Kinahan & Co Ltd v Parry* [1911] 1 KB 459 (CA). In this case, the Court [illegible] in *Watteau* will not apply where the agent is acting on his [illegible]