

---

# CONTENTS

---

<i>Preface</i>	v
<i>Table of Cases</i>	xiii
<i>Tables of Legislation</i>	xxxv
<b>1 Agency: A Flexible Institution</b>	<b>1</b>
Introduction	1
Definition; a Variable Nexus of Relationships	2
Disclosed and Undisclosed Agency	3
Authority, Consent, and Power: Principles of Attribution	4
Agency and Contract	6
Attribution and Legal Personality	7
Attribution and Context	8
Remuneration	10
Intermediaries as Agents or Principals: Optional Relationship Structures	11
Simultaneously Agent and Principal	14
<b>2 Commercial Agency</b>	<b>15</b>
Commercial Background	15
The European Directive	16
The Commercial Agents (Council Directive) Regulations 1993	19
The Definition of 'Commercial Agent'	20
The Basic Definition	20
' <i>Self-employed</i> '	20
' <i>Continuing Authority</i> '	22
' <i>Sale or Purchase of Goods</i> '	23
' <i>Negotiate</i> ' or ' <i>Negotiate and Conclude</i> '	26
' <i>On Behalf of Another Person ("The Principal"), or . . . on Behalf of and in the Name of that Principal</i> '	27
No Further Requirement Imposed or Permitted	28
Agents Specifically Excluded from Commercial Agency	29
Sub-agents	29
Secondary Activities	30
' <i>Secondary</i> ': <i>The Essential Enquiry</i>	30
<i>Indicators of a Paragraph 2 Purpose</i>	35
<i>Commercial Agents Presumed to Act as such in a Secondary Capacity</i>	36

	Burden of Proof	36
	Territorial Applicability	36
	The General Rule	37
	The Exceptions	37
	<i>Commercial Agency in Great Britain but Choice of Law of Another Member State</i>	37
	<i>Commercial Agency Outside Great Britain but Choice of English Law</i>	38
<b>3</b>	<b>Actual Authority</b>	<b>39</b>
	Scope of Actual Authority	39
	Necessity	42
	Delegation	44
	Whether Delegation Authorised	44
	Consequences of Authorised Delegation	45
	Formalities	49
<b>4</b>	<b>Apparent Authority</b>	<b>50</b>
	Juridical Nature of Apparent Authority	50
	Apparent Authority Within the External Aspect of Agency	52
	The Basic Requirements for Apparent Authority	52
	A Representation of Authority	53
	Reliance	54
	Fraud and Forgeries	57
	Representation by or on Behalf of the Principal	57
	Undisclosed Principals	64
<b>5</b>	<b>Ratification</b>	<b>67</b>
	The Nature of Ratification	67
	Ratifiable Acts	68
	Ascertainability of the Principal	70
	Competence of the Principal	72
	Existence of the Principal	72
	Knowledge of the Principal	73
	How Ratification is Effected	75
	The Retrospectivity of Ratification	76
	Principal and Third Party	77
	Principal and Agent	77
	Unfair Prejudice	79
	Loss of the Right to Ratify	84

<b>6</b>	<b>Agents' Obligations</b>	85
	Performance Obligations	85
	Fiduciary Obligations	89
	The Content of Agents' Fiduciary Obligations	90
	Monitoring and Challenging an Agent's Conduct	96
	Remedies Arising out of Breach of Fiduciary Obligation	97
	<i>Remedies in Respect of the Agency Relationship</i>	97
	<i>Remedies in Respect of a Transaction Induced in Breach of         Fiduciary Duty</i>	98
	<i>Consequential Financial Remedies against the Agent</i>	99
	Account of Profits	100
	Money Had and Received	101
	Equitable Allowance	101
	Equitable Compensation	102
	No Double Recovery	103
	Sale by Agent to Principal	103
	<i>Proprietary Remedies</i>	104
	<i>Third Party Accessory Liability for Breach of Fiduciary Duty</i>	109
	Accessory Liability at Common Law in Tort	109
	Accessory Liability in Equity for Assistance	110
	<i>Third Party Liability for Receipt</i>	111
<b>7</b>	<b>Mutual Obligations in Commercial Agency</b>	113
	The Import of the Obligations	113
	Remedies for Breach	116
<b>8</b>	<b>An Agent's Financial Rights Against the Principal</b>	117
	Remuneration: Entitlement and Discretion	117
	Earning Remuneration	118
	Entitlement to Earn Commission	123
	Exclusivity Clauses	123
	Implied Terms not to Inhibit the Earning of Remuneration	124
	Commercial Agency	126
	Remuneration by Commission	127
	Entitlement to Commission (1): Transactions Concluded during the Agency	127
	Entitlement to Commission (2): Transactions Concluded after the Agency	129
	<i>Causation and Timing</i>	129
	<i>Pre-termination Orders</i>	131

When Commission Due and Payable	131
Loss of the Right to Commission	131
Whether Non-Derogable	132
Indemnity	133
Agent's Lien	133
<b>9 Agency and Contract</b>	<b>136</b>
Disclosed and Undisclosed Agency	136
Undisclosed Agency, the Doctrine of the Undisclosed Principal, and Commission Agency	137
Disclosed Agency	138
Contract Between Principal and Third Party; Agent No Standing	138
Contract Attracting Personal Engagement of the Agent	139
Unidentified Principals	141
The Doctrine of the Undisclosed Principal	143
Origins, Justification, and Theoretical Analysis	143
Exclusion of Undisclosed Agency	145
Insurance Contracts and Undisclosed Agency	147
Protection of the Third Party	149
Discharge of Payment Obligations	151
Alternative Liability	153
An Agent's Warranty of Authority	154
<b>10 Agency and Tort</b>	<b>158</b>
An Agent's Liability in Tort	158
A Principal's Personal Liability in Tort	159
Liability of a Principal for the Torts of an Agent	161
Vicarious Liability	161
Vicarious Liability for Torts of Misstatement	164
Independent Contractors	165
<i>Non-Delegable Obligations</i>	166
' <i>Representative Agency</i> '	166
Primary vs Vicarious Liability	168
<b>11 Termination of Authority</b>	<b>169</b>
Termination of Actual Authority	169
Termination in Accordance with the Agency Agreement	169
Discharge of Agency Contract	172
Revocation and Renunciation of Authority	173
Termination by Operation of Law	174
<i>Lasting Powers of Attorney</i>	174

Irrevocable Authority	176
Termination of Apparent Authority	177
Financial Reparation on Termination of Authority (1): at Common Law	178
Financial Reparation on Termination of Authority (2): Under the Commercial Agents Regulations	179
Commercial Agents' Entitlement to Compensation or Indemnity 'Termination of the Agency Contract'	180
Indemnity	181
Compensation	182
When no Entitlement to Compensation or Indemnity	185
<i>Agent Default</i>	185
<i>Agent Termination</i>	186
<i>Agent Assignment</i>	187
<i>Index</i>	189