The liability of the Agent of an Undisclosed or Partially Disclosed Principal

Gary K. Sambol
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by

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Introduction

When an agent, acting within the scope of his authority on behalf of a principal, enters into a contract with a third party, the agent is usually not liable to the third party for the contract's performance. However, under certain circumstances, an agent may be liable as a party to the contract. The purpose of this article is to discuss the rules of agency law which determine the liability of an agent who acts within the scope of his authority. In the first part of this article, I present the general rules in the abstract. Next, I discuss the theoretical justifications for and the theoretical difficulties with these rules. Specifically, I attempt to point out the theoretical difficulties which arise when these rules are applied to cases where an agent negotiates a contract on behalf of a business which, unbeknownst to the third party, is owned by someone other than the agent, or if owned by the agent, is incorporated. I suggest that, in such cases, agent liability may result even where it is not a fair conclusion that the third party or the agent manifested an intent for the agent to be liable or that the third party relied on the liability of the agent. Finally, I discuss an approach found in a few cases which denies agent liability where it is not a fair conclusion that the third party dealt with the agent as an individual, rather than as an agent, or relied on his individual liability.

General Rules

whether an agent is liable as a party to a contract made

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on behalf of a principal essentially depends upon the agreement between the agent and the third party. However, in determining whether the third party intended for the agent to be liable, courts apply certain rules of agency law which are as follows. While the third party has the initial burden of showing that the agent made a contractual promise, the agent, to avoid liability, must establish that, at the time the contract was made, the third party had notice that the agent was acting in a representative capacity as well as notice of the principal's identity. Where the third party has notice of the fact of agency and of the identity of the principal, the principal is said to be "disclosed." In such a case, the agent is personally liable unless, of course, the third party can establish that there was nonetheless an agreement for the agent to be liable. Where the third party is without notice of the fact of agency, the principal is said to be "undisclosed." In this situation, the agent is liable as a party to the contract. Where the third party has notice that the agent is or may be acting in a representative capacity, but is without notice of the identity of the principal, the principal is said to be "partially disclosed." The agent of a partially disclosed principal is presumptively liable as a party to the contract. That is, the agent is liable unless he can establish that there was a mutual intention that he not be liable.

To illustrate these rules, consider the hypothetical case of Arnold Agent, an interior decorator who is hired by his client, Polly Principal, to purchase an oriental rug on her behalf. First, suppose that Arnold orders the rug and that, at the time of the order, he tells the seller that he is acting as an agent on behalf of Polly Principal. Because the seller has notice of the fact of agency as well as notice of the identity of the principal, the principal is disclosed and Arnold is presumptively not liable for the contract. Suppose now that Arnold orders the rug in his own name without indicating that he is purchasing the rug as an agent of another. Because in this case, the seller is without notice that Arnold is acting in a representative capacity, the principal is undisclosed and Arnold is liable as a party to the contract. Finally, suppose that Arnold tells the seller that he is purchasing the rug for "a client" without informing her of the name of the client. Because he is not disclosing the identity of the principal, the principal is only partially disclosed, Arnold is presumptively liable as an agent to the contract.

Theoretical Considerations

Underlying the liability of the agent of an undisclosed principal is the assumption that, without notice of the existence of the principal, the third party obviously intends to deal with the agent as an individual, not as an agent.

In other words, the third party intends for the agent to be liable as the ostensible principal. Underlying the presumptive liability of the agent of a partially disclosed principal is the assumption that, without notice of the identity of the principal, the third party is probably unwilling to rely solely on the credit of the unknown principal and therefore intends for the agent to be personally liable as well. Moreover, it has been explained that it may also be presumed that the agent agrees to be liable. Finally, the liability of the agent of an undisclosed or partially disclosed principal has been justified on the basis that an agent can easily avoid liability simply by disclosing, at the time of the contract, the existence and identity of the principal.

In the above hypothetical examples involving an undisclosed and a partially disclosed principal, the liability of the agent makes sense in terms of the probable intent of the parties. That is, in the example where Arnold's principal is undisclosed, the seller has no reason to believe that Arnold is acting on behalf of anyone but himself and thus obviously intends for Arnold to be liable as the ostensible principal. In the example where Arnold simply indicates that he is purchasing the rug for "a client," it is also a fair inference that, without notice of the name of the client, the seller is relying on Arnold as a party to the contract. In addition, in either example, it is probably a fair conclusion that Arnold agrees to be liable.

While in the above hypothetical examples, the rules determining the liability of an authorized agent are rather straightforward, they present a number of theoretical difficulties in certain cases. To illustrate, consider the cases of Saco Dairy Co. v. Norton and Judith Garden, Inc. v. Mapol. In Saco Dairy, the manager of the "Breakwater Court," a hotel owned by his mother, was held liable for dairy goods that he had ordered for the hotel even though all bills were in the name of the hotel and the plaintiff never charged the manager personally until the hotel failed to make payment. On appeal, the manager argued that his use of the hotel's name in ordering the goods was notice of the fact of agency and of the identity of the principal to relieve him of personal liability for the contract. In rejecting the manager's argument, the court explained that the manager was operating the business of a hotel under the name of 'Breakwater Court' was at least as consistent with the fact that he was the proprietor as that he was the manager for another. Therefore, the court refused to disturb the lower court's finding that the manager acted as the agent of an undisclosed principal.

In Judith Garden, the court held the operator of "The Gazebo," an incorporated retail store, liable for an oral contract that she had negotiated to purchase certain
merchandise for the store. Even though the plaintiff itself was an incorporated retail store similar to Gazebo, it is clear that the defendant acted as the agent of an undisclosed principal because, at the time of the contract, she did not make the plaintiff aware that "The Gazebo" was a trade name used by a corporation rather than a sole proprietorship under which she did business as an individual proprietor.32 The court explained that it is the burden of the party seeking to avoid personal liability to disclose the fact of agency and the name of the principal and that "[i]t is not a defense to urge that the other party had the means to discover this."33 The significance of the corporate status of the business is, of course, that a corporation is generally recognized as an entity which is legally distinct from its owners, the shareholders.33 Thus, unlike a sole proprietor who is personally liable for contractual obligations incurred in operating her business,32 or a general partner who is personally liable for the contractual obligations of the partnership,33 a shareholder, as a general rule, is not personally liable for the contractual obligations of the corporation.34 However, as illustrated by Judith Garden, a shareholder who negotiates a contract on behalf of a corporation acts as an agent of the corporation and thus, may become a party to the contract under agency law.35

Saco Dairy and Judith Garden are typical of cases where the third party was aware that the agent was acting on account of some business, but the agent could not show that, at the time that the contract was made, the third party had reason to know that the business was owned by someone other than the agent,36 or if owned by the agent, was incorporated.37 In such cases, most courts have held, as in Saco Dairy and Judith Garden, that an agent's use of the principal's trade name in negotiating a contract is not, at least as a matter of law, sufficient notice of the fact of agency and of the identity of the principal to relieve the agent of liability.38 Thus, in cases like Saco Dairy and Judith Garden, where the principal's trade name and other circumstances surrounding the contract are consistent with the possibility that the agent is the real principal in interest, the agent must make known, at the time of the contract, who the actual proprietor of the business is, and in the case of an incorporated business, that the business is incorporated.33 If the principal is thus made known, then the agent may be deemed unknown, and the agent liable as the ostensible principal.39 Alternatively, the agent may be liable as the agent of a partially disclosed principal on the theory that although the third party has notice that the agent is or may be acting in a representative capacity, the "true" principal is not disclosed or, at least, not sufficiently disclosed.40 It is important to note that, under the specific circumstances of a case, the use of the principal's trade name may be sufficient notice of the existence and identity of the principal.41 However, where the third party has no reason to know that the business on whose account the agent is acting is something other than a sole proprietorship owned by the agent or perhaps, a partnership in which the agent is a partner, the agent may be liable as a matter of law.42

Where the third party knows that the agent is acting on an incorporated retail business, it is really a fair inference that the plaintiff's president, who negotiated the contract, assumed that "The Gazebo" was not incorporated? Isn't it more likely that she simply did not know one way or the other how "The Gazebo" was organized? Moreover, in a case like Judith Garden, where a third party enters into a contract with a business without any reason to know and without inquiring into the status of the business or that of the agent, doesn't she really agree to a contract with the business, whoever the owner of the business is and whether the business is incorporated or not, and not with the agent as an individual?

The second theoretical difficulty concerns the intent of the agent. Under traditional contract principles, the basis for contract liability is one's subjective manifestations of assent.43 However, can it be said that, in a case like Saco Dairy or Judith Garden, the agent manifests his assent to be liable? That is, informal contracts negotiated by agents using only the principal's trade name are commonplace, if not ubiquitous, and it cannot be said that the defendant's contract to supply dairy goods in the name of the "Breakwater Court" or in purchasing merchandise in the name of "The Gazebo", the defendants in Saco Dairy and Judith Garden, respectively, manifested their assent to be liable. In that case, the plaintiff was able to recover against the defendant.

The third theoretical difficulty involves the concern that, under the approach taken in Saco Dairy and Judith Garden, a third party may recover against the agent even where it is unlikely that she relied on the individual liability of
the agent. In *Saco Dairy*, for example, it is hardly likely
that the ownership of the "breakwater Court" was in any way
material to the plaintiff's agreement to supply dairy goods to
the hotel. The plaintiff made all bills out to the hotel and
never charged the defendant personally until the hotel failed
to make payment. In *Judith Garden*, where the plaintiff
was an incorporated retail business similar to "The Gazebo"
and whose president thus had good reason to suspect that "The
Gazebo" might also be incorporated, it is unlikely that, in
agreeing to sell the merchandise to "The Gazebo", the
plaintiff relied on the individual liability of the defendant.
Yet, in each case, the plaintiff was able to recover against
the defendant. 29

An Alternative Approach

Although most courts have followed the approach
illustrated by *Saco Dairy* and *Judith Garden*, a few courts have
denied agent liability even though the circumstances
surrounding the contract were consistent with the possibility
that the agent was the real principal in interest. Consider,
for example, the cases of *Hess v. Kennedy*, 30 *Rabinowitz v.
Zell* and *Switzer v. Whitehead*. 31 In *Hess*, the plaintiff
bought a dress from a department store owned by the sons of
the defendant under the family name "Kennedy". The sale was
made by a sales clerk, but in the presence of the defendant
who apparently helped negotiate the contract. Subsequent to
the sale, the plaintiff tried to return the dress at which
time the defendant approved an exchange and directed an
employee to take the dress back. After the plaintiff was
unable to find another dress to her liking, she brought suit
against the defendant for the return of the purchase price.
The trial court concluded that the defendant held herself out
as the principal and was therefore liable to the plaintiff. 32
In reversing the trial court, the appellate court pointed out
that there was nothing in the record which showed that the
defendant "aid anything which was calculated to cause the
plaintiff to believe that she owned the store, other than to
exercise the authority which is usually intrusted to the head
of the sales department." 33 The court also stated that
[undoubtedly, when the plaintiff entered this
store for the purchase of the dress, she understood
that she was dealing with the proprietor of the
store, whoever that might be. ... [and that] it
certainly cannot be contended that the purchaser
... can hold the salesmen, or even the
superintendent of the store ... as a party to the
contract of sale, upon the theory that it is the
duty of one left in charge of a store to disclose
that he is an agent, and not the proprietor of the
store."

In *Rabinowitz*, the same court that decided *Hess* refused
to hold an agent liable for a written contract that he had
signed using only the trade name of his employer. In this
case, the plaintiff had addressed a written offer to sell
certain goods to "Eastern Leather Goods". The defendant Zell,
an employee of an individual doing business under the trade
name "Eastern Leather Specialty Company", then accepted
the offer by signing the plaintiff's offer to sell "Eastern
Leather Specialty Company, D. H. Zell". In reversing the
trial court's judgment holding the defendant personally
liable, the appellate court explained that it [was] evident
that his signature was intended to show who the person was who
signed for the person or persons operating under the trade
name. The court further explained that
[t]he plaintiff was dealing with the business house
using the trade name referred to .... [and that]
it is of no importance in this action against
the defendant for goods sold that the plaintiff
did not know who was trading under the trade name.
His agreement was with the person or persons so
trading. If I agree with "Billy, the Oyster Man",
and do not know his name, my contract is
nonetheless with the person, whoever he is,
conducting business under that name. 34

Finally, consider the case of *Switzer v. Whitehead* in
which the Pennsylvania Supreme Court refused to hold two
officers of a corporation liable for a contract that they had
negotiated even though, at the time of the contract, the
plaintiffs were not aware of the corporate status of the
defendants' business and during negotiations, one defendant
referred to the other as its "partner". In this case, the
defendants, Land and Whitehead, entered into a contract on
behalf of "Land-Whitehead Equipment Company" to sell on a
commission basis certain equipment owned by the plaintiffs.
After the equipment went unclaimed and the plaintiffs discovered
that some of the equipment was missing and the rest damaged,
the plaintiffs brought suit against the defendants
individually as well as their corporate principals. The jury
returned a verdict for the plaintiffs and the defendants moved
for judgment n.o.v. In denying the defendants' motion, the
lower court explained that "whether they acted as principals
or agents for a disclosed principal was ... prima facie
question for a jury and that there was sufficient evidence to
sustain the jury's finding that the defendants did act as
and were understood by [the plaintiffs] to be acting as
principals rather than agents." 35 On appeal, the Pennsylvania
Supreme Court held that judgment n.o.v. should have been
entered in favor of the defendants because the plaintiffs had
notice that the defendants were acting in a representative
capacity as well as notice of the principal's identity. 36

While purporting to apply agency law, the court supported
its decision largely on the basis that the plaintiffs did not
deal with the defendants as individuals or rely on their
individual liability. In this regard, the court noted that the plaintiffs had entrusted the defendant with their equipment without investigating the status of the defendants or that of "Land-Whitehead Equipment Company", and that apart from the reference to Land as Whitehead's partner and the absence of an indication that there was a corporation, there was no evidence which could justify the assumption that the plaintiffs dealt with the defendants as individuals rather than as agents of "Land-Whitehead Equipment Company". Thus, the court concluded that "[t]he premise of individual liability on the quantum of proof adduced by [the plaintiffs] would substitute conjecture and surmise for proof."

In each of these three cases, even though the circumstances surrounding the contract were consistent with the possibility that the agent was the real principal in interest, the agent was able to avoid personal liability. In terms of agency principles, perhaps the approach in these cases may be stated as follows. Where the third party knows that the agent is acting on account of a business and the business is identified by some name, although a trade name, the principal is disclosed and the agent, at least presumptively, not liable. This approach is a sensible one because it recognizes that in many informally arranged contracts, where a third party enters into the contract without sufficient reason to know and without inquiring into the status of the agent or that of the business on whose account the agent is acting, the agent essentially agrees to a contract with the business, whoever its owner is and whether or not it is incorporated, and not with the agent as an individual. Conversely, it is usually not a fair inference that an agent, who uses the trade name of a business without indicating the name of the proprietor or of the corporate status of the business, agrees to be personally liable. Thus, under such circumstances, the third party should not be able to recover against the agent as an individual. Presumably, even under this alternative approach, where the third party can show that she dealt with the agent as an individual or relied on his individual liability, she may recover against the agent. However, in the absence of any prior dealings between the third party and the agent as an individual or by any representations or conduct unequivocally indicating that he is the real principal in interest, it is difficult to see how the third party can satisfy this burden. For example, in Switzer, the court concluded that evidence that the plaintiffs were not made aware of the corporate status of the defendants' business and that one defendant referred to the other as his "partner" was simply not sufficient to raise a question of fact as to whether reliance was placed on the individuals as such rather than the entity. Even assuming that the third party can show that she dealt with the agent as an individual, must her failure to inquire into the status of the agent and that of the business have been reasonable? That is, are there circumstances under which a third party has a duty to inquire? Thus, while the alternative approach avoids the theoretical difficulties arising under the approach taken in Saco Dairy and Judith Garden, the approach is not without its own practical and theoretical difficulties.

Summary

While, in the abstract, the rules imposing liability on the agent of an undisclosed or partially disclosed principal are fairly straightforward, they present a number of theoretical difficulties in cases where an agent negotiates a contract in the name of a business, which unbeknownst to the third party, is owned by someone else or is incorporated. Under the approach followed by most courts, the agent, in such cases, may be held liable as the agent of an undisclosed or partially disclosed principal. However, this approach is theoretically problematic because agent liability may result even though it is not a fair conclusion that the third party or the agent manifested an intent for the agent to be liable or that the third party relied on the individual liability of the agent. Under an alternative approach, the third party is unable to recover against the agent where it is not a fair conclusion that the third party dealt with the agent as an individual or relied on his individual liability. Although this alternative approach avoids the theoretical difficulties arising under the majority approach, it is not without its own practical and theoretical difficulties.

Endnotes

1. See, e.g., 1 Floyd R. Meker, LAW OF AGENCY § 1406, at 1387 (2d ed. 1914) ("[I]f the agent makes a full disclosure of the fact of his agency and of the name of his principal, and contracts only as the agent of the named principal, he incurs no personal responsibility.").

2. This article deals only with the liability of an agent who acts within the scope of his authority. When an agent acts without actual authority, he may be liable to the third party on a breach of warranty theory. Specifically, when an agent executes a contract on behalf of a principal, it is impliedly warrant that he has actual authority to enter into the contract in question. If he does not have actual authority and as a result, the principal is not bound to the third party, the agent is liable to the third party for breach of an implied warranty of authority. E.g., RESTATEMENT (SECOND) OF AGENCY § 229 (1957).
3. **Restatement (Second) of Agency § 320 comment a (1957).**

4. See, e.g., **Restatement (Second) of Agency § 320 comment b (1957)** (stating that the agent is a party to a contract and that this "burden is satisfied if the [third party] proves that the [agent] has made a promise, the form of which does not indicate that it was given as an agent.").

5. **Restatement (Second) of Agency § 320 comment b (1957).** Whether the third party had notice of the fact of agency and the identity of the principal is generally a question for the trier of fact. E.g., Myer-Leiber Sign Co. v. Weirich, 410 P.2d 491, 493 (Ariz. Ct. App. 1966). Under the Restatement, the third party "has notice of the existence or identity of the principal if he knows, has reason to know, or should know of it, or has been given notification of the fact." **Restatement (Second) of Agency § 4 comment a (1957).** However, some cases have stated that the third party must have actual knowledge of the existence and identity of the principal. See, e.g., Cobb v. Knapp, 72 N.E.2d 346, 352 (1947) ("It is not sufficient that the seller [third party] may have the means of ascertaining the name of the principal ... He must have actual knowledge."); Vander Wagen Bros. v. Barnes, 304 N.E.2d 663, 665 (Ill. App. Ct. 1973) ("It is not sufficient that the third party has knowledge of facts and circumstances which would, if followed by reasonable inquiry, disclose the identity of the principal."). For a discussion of the subjective and objective standards for notice, as applied in Louisiana cases, see John C. Geyer, Note, Let the Agent Spare: Wilkinson v. Sweeney and Undisclosed Corporate Status, 50 La. L. Rev. 1183, 1190-1193 (1990).

6. **Restatement (Second) of Agency § 4 (1) (1957).**

7. **Restatement (Second) of Agency § 320 (1957).**

8. **Restatement (Second) of Agency § 4 (3) (1957).**

9. **Restatement (Second) of Agency § 322 (1957).**

10. **Restatement (Second) of Agency § 4 (2) (1957).**

11. **Restatement (Second) of Agency § 321 (1957).** That the agent may be liable under the foregoing rules does not preclude the liability of the principal as well. If the agent has actual authority to act on behalf of the principal, the principal, whether disclosed, partially disclosed or undisclosed, is generally liable. See **Restatement (Second) of Agency §§ 144, 147, 186 (1957).** Under the traditional rule, the liability of the agent and the principal is in the alternative and the third party must elect whether to pursue the agent or the principal. See, e.g., Vander Wagen Bros. v. Barnes, 304 N.E.2d 663, 665 (Ill. App. Ct. 1973). Many modern courts have rejected the application of the doctrine of election of remedies in this context and have held the liability of the agent and the principal to be joint and several. See, e.g., Crown Controls, Inc. v. Smiley, 756 P.2d 717 (Wash. 1988). For a theoretical discussion of, among other things, the liability of the principal in the undisclosed principal situation, see Randy E. Barnett, Squaring Undisclosed Agency Law with Contract Theory, 75 Cal. L. Rev. 1969 (1987).

12. It has been pointed out that it is sometimes to the principal's advantage for the agent to intentionally conceal the existence and/or identity of the principal because the third party might charge the principal more or pay him less than she would the agent, or might not deal with the principal at all. However, with certain exceptions, the third party is generally liable to the partially disclosed and even undisclosed principal on the terms negotiated by the agent. Thus, a principal may instruct his agent not to disclose the existence or identity of the principal. See Martin Schiff, The Problem of the Undisclosed Principal and How It Affects Agent and Third Party, 1984 Det. C.L. Rev. 47, 47-49.


14. See, e.g., **McKee, supra note 1, § 1410, at 1039-40** ("An agent who conceals the fact of agency and contracts as the ostensible principal is liable in the same manner and to the same extent as though he were the real principal in interest."); **Warren A. Seward, Law of Agency 211 (1964)** ("Obviously, if the existence of the principal is unknown, the agent makes a personal promise.").

15. James G. Smith & Assoc. v. Everett, 439 N.E.2d 932, 935 (Ohio Ct. App. 1981). See also **Benton v. Campbell Parker & Co., (1925) 2 K.B. 430, 434** ("It is presumed that the other party is unwilling to contract solely with an unknown man, and is willing to contract with an unknown man, and does so, but only if the will make himself personally liable ... ").

16. See, e.g., **Cobb v. Knapp, 71 N.Y.3d 348, 352-53 (1877)** (stating that when agents fail to indicate the name of their principal, "it must be presumed that they intend to be liable").

17. See, e.g., **Id. at 352** ("There is no hardship in the rule of liability against agents. They always have it in their power to relieve themselves ... ").

18. 35 A.2d 857 (Me. 1944).

20. 35 A.2d at 858.
21. Id. at 859.
22. 342 N.Y.S.2d at 487.
23. Id. at 488.
24. Id.
27. E.g., Id. at 73-75.
28. E.g., id. at 348. However, under certain circumstances, such as where the corporate form has been used to protect fraud, a court may "pierce the corporate veil" and hold individual shareholders personally liable. E.g., 1 WILLIAM M. FLETCHER, FLETCHER CYCLOPEDIA OF THE LAW OF PRIVATE CORPORATIONS § 41 (perm. ed. rev. vol. 1990).
32. E.g., Lachmann v. Houston Chronicle Publishing Co., 375 S.W.2d 783 (Tex. Civ. App. 1964) (holding party must show use of tradename in connection with contract executed by agent as sufficient disclosure of agency or principal to protect agent against personal liability, 150 A.L.R. 1303 (1944)).
33. See, e.g., Como v. Rhine, 645 F.2d 948 (Mont. 1982) (holding president of "Sound West, Inc." liable for breach of an employment contract where he could not show that, at time of hiring, plaintiff was not intended to be "Sound West, Inc.", a corporation, rather than by an individual doing business as "Sound West"); African Bio-Botanica, Inc. v. Leiner, 624 A.2d 1003 (N.J. Super. Ct. App. Div. 1993) (holding sole shareholder/president of "Ecco Bella Incorporated" liable for merchandise ordered on behalf of "Ecco Bella" where she could not show that plaintiff had notice that her business was a corporation); Howell v. Smith, 134 S.E.2d 381 (N.C. 1964) (holding owner of "Atlantic Block Company" liable for purchase of petroleum products where he failed to make known that Atlantic Block Company was actually "Atlantic Block Co., Inc.", a corporation); Givner v. United States Hoffman Machinery Corp., 197 N.E. 354 (Ohio Ct. App. 1935) (holding defendant liable for equipment he ordered in the name of "Givner's Dry Cleaning", a business actually owned by his wife, because the name "Givner's Dry Cleaning" did not indicate that it was something other than a trade name under which defendant himself did business); Crown Controls, Inc. v. Smiley, 756 F.2d 717 (Wash. 1988) (holding president of corporation liable for equipment he ordered for his business "Industrial Associates" because seller was unaware of corporate status and corporate name of defendant's business and trade name "Industrial Associates" signified partnership).
34. See RESTATEMENT (SECOND) OF AGENCY § 321 comment a (1957) ("The inference of an understanding that the agent is a party to the contract exists unless the agent gives such complete information concerning his principal's identity that he can be readily distinguished."). For cases holding an agent liable on the basis that the principal was only partially disclosed, see, e.g., Van D. Costas, Inc. v. Rosenberg, 432 So. 2d 656 (Fla. Dist. Ct. App. 1983) (finding principal partially disclosed where officer/one-third owner of "Seascapes, Inc." contracted for construction services using the corporation's trade name "The Magic Moment Restaurant"); Alco Iowa, Inc. v. Jackson, 118 N.W.2d 565 (Iowa 1962) (finding principal, at best, partially disclosed where majority shareholder of "Soo Corporation" negotiated contract for the purchase of goods using the corporation's trade name, "American Insulation & Supply"); David v. Shippy, 684 S.W.2d 586 (Mo. Ct. App. 1985) (finding principal partially disclosed where officer/one-half owner of "Captain W.T. Walkers, Inc." incorporated restaurant business, contracted for advertising services using the trade name of the restaurant - "Captain W.T. Walkers").
35. E.g., Saco Dairy, 35 A.2d at 659. See, e.g., Myers-Leiber Sign Co. v. Weilrich, 410 P.2d 451 (Ariz. App. 1966) (holding the agent's principal was not liable to a firm that the principal knew the agent was acting as an agent of a corporation when he signed the contract as president of "American Communication Co.", but nonetheless remained liable to the contracting party when the corporation was later dissolved). See also Western Seeds, Inc. v. Barta, 704 P.2d 974 (Idaho Ct. App. 1985) (stating that trial court erroneously assumed the partial disclosure of the defendant's business was sufficient to relieve from liability the defendant who used the trade name "Farmers Feed and Seed" rather than the corporate name "Pocatello Cold Storage, Inc."); Detroit Pure Milk Co. v. Patterson, 350 N.W.2d 221 (Mich. Ct. App. 1984) (holding reliance is insufficient to relieve defendant of liability as the corporate status of the principal was not disclosed to the contracting party where plaintiff did not know principal's corporate name); James G. Smith & Assoc. v. Everett, 439 N.E.2d 932 (Ohio Ct. App. 1981) (holding defendant, who contracted for advertising services for a corporation, was not liable where the registered trade name of "Dale F. Everett Company, Inc.", was not known by the contracting party under the estoppel doctrine). See, e.g., Rhimes, supra note 6, 549 N.W.2d 948 (Mont. 1990) (holding a creditor's liability was not avoided where there was no showing that plaintiff understood that defendant was acting for a corporation rather than an individual doing business as "Sound West"); New England Marine Contractors v. Martin, 549 N.Y.S.2d 515 (App. Div. 1989) (holding that summary judgment was properly granted where documentary evidence did not indicate that the contracting party was dealing with a corporation rather than an individual doing business as "Jim Martin Chevrolet").

36. See, e.g., Rhimes, supra note 6, 549 N.W.2d 948 (Mont. 1990) (holding the estoppel doctrine did not apply in a case where the defendant owner of "Sound West, Inc." liable as a matter of law for his principal's liability). See, e.g., Rhimes, supra note 6, 549 N.W.2d 948 (Mont. 1990) (holding the estoppel doctrine did not apply in a case where the defendant owner of "Sound West, Inc." liable as a matter of law for his principal's liability). See, e.g., Rhimes, supra note 6, 549 N.W.2d 948 (Mont. 1990) (holding the estoppel doctrine did not apply in a case where the defendant owner of "Sound West, Inc." liable as a matter of law for his principal's liability).

37. From the appellate courts' opinion in Saco Dairy, it cannot be determined whether there was any evidence presented at the trial level which showed that the plaintiff was led to believe that the hotel was owned by the defendant. The point being made is simply that the plaintiff could not have recovered against the defendant simply because the defendant could show that the plaintiff had notice that the hotel was owned by the defendant's mother rather than by the defendant.

38. E.g., E. ALLAN FARNSWORTH, CONTRACTS §§ 3.1, 3.6 (2d ed. 1990).
the cases which have been analyzed under agency law could have been resolved under the partnership by estoppel doctrine. See, e.g., McCluney Commissary, Inc. v. Sullivan, 524 P.2d 1063 (Idaho 1974) (noting trial court finding that plaintiff, who supplied goods to defendants' incorporated business, was led to believe that the business was a partnership or joint venture, but nonetheless affirming the trial court on the basis of agency law). Yet, under agency law, at least under the approach illustrated in Saco Dairy and Judith Garden, a third party can recover against an agent even where the third party did not rely on the individual liability of the agent.

40. 171 N.Y.S. 51 (App. Term 1918).
41. 191 N.Y.S. 720 (App. Term 1922).
43. 171 N.Y.S. at 52.
44. Id.
45. Id.
46. 191 N.Y.S. at 721.
47. Id.
48. 173 A.2d at 119.
49. Id. at 119.
50. Id. at 118-19.
51. Id. at 119.
52. Id.

THE SECRETS OF TEACHING INTERNATIONAL LAW IN AN EXISTING UNDERGRADUATE BUSINESS LAW COURSE

by

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For most undergraduate law professors, the inclusion of international business law on their syllabi has yet to be accomplished. Many professors confess they know little about the subject and would not, in any event, know how to include this material in their current courses. This paper will attempt to show that international business is a very significant and timely topic and that, consequently, international business law is a very important and relevant subject. This paper will provide a format for bringing international business law into the undergraduate law curriculum so that even the most uninitiated professors in this area can successfully bring this topic in from "left field" and include it in their course coverage.

Before World War II, the United States was a country consistently trying to improve its national economy with little regard economically towards the rest of the world. As the last fifty years have passed, this country and other nations have developed a complex web of international trading patterns for goods and services that has created the global marketplace that exists today. Whether it be singular export or import transactions or the mass movements of goods, services, capital or technology across country borders, businesses around the world derive an ever-increasing percentage of their revenues from international transactions.

Recognizing this state of affairs, universities, first gradually and now with an unprecedented fervor, are internationalizing their curricula. While management, marketing, accounting and other traditional business courses have been the main beneficiaries of this infusion of international material, undergraduate law courses seem to have been modified only minimally in this direction. Yet the need and rewards of covering this material in greater depth is ever present.

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