

**THIRD PARTY RIGHTS UNDER THE DOCTRINE OF UNDISCLOSED
AGENCY: A COMPARATIVE STUDY OF PAKISTAN'S LAW AND
ENGLISH LAW**

*A thesis submitted in the partial fulfillment of the requirement for the degree of
LL.M Trade Law*



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DECLARATION

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LIST OF ABBREVIATIONS

AC	Appeal Case
AJ & K	Azad Jammu and Kashmir
AIR	All India Reporter
CLC	Criminal Law Cases
CPC	Civil Procedure Code
CLJ	Civil Law Journal
PLD	Pakistan Legal Decision
PLJ	Pakistan Legal Journal
QB	Queen's Bench Division
SC	Supreme Court

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DEDICATION

Firstly I am greatly thankful to ALLAH SWT for HIS countless blessings upon me, and to our Prophet PBUH who's teachings are source of immense success for this world and here after.(May ALLAH SWT make us people of QURAN AND SUNNAH Ameen). I dedicate this work to my Parents as I can't payback to them but can just pray for them,(May they are beloved in the eyes of ALLAH SWT Ameen).And then I dedicate my work to Dr. Farhat Hashmi ,learning from her is an absolute honor for me, this work is a tribute to her remarkable contributions to the world of learning and plethora of prayers for my respected supervisor Dr. Samia Maqbool Niazi for her kind gesture of supervision (May ALLAH SWT bless her more and more Ameen.) And last but not the least to my ALHUDA fellows.

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ABSTRACT

The law of agency serves as the cornerstone of modern business transactions, facilitating the delegation of authority(actual and apparent)and responsibility between principals and agents.The law of agency in the context of English and Pakistan’s law governs the legal relationship between principals and agents, enabling individuals and entities to act on behalf of others in a myriad of transactions. This legal framework not only impacts the parties directly involved but also extends its effects to third parties who may unknowingly find themselves entangled in such agency relationships. This abstract delves into the significance and implications of third-party rights within the context of English and Pakistan law of agency.The study begin by exploring the fundamental principles that underpin agency relationships, emphasizing the importance of consent, fiduciary duties, and the scope of authority granted to agents. Special attention is given to how these principles manifest in various types of agency agreements prevalent in Pakistan, including express, implied, and apparent agency relationships.The study sheds light on the consequences of undisclosed agency relationships. The thesis elucidates the circumstances under which a third party can rescind or affirm a contract with a principal when the agent's identity or the agency relationship remains undisclosed.Drawing from precedent and relevant statutory provisions, it also addresses the potential liabilities of third parties who deal with agents acting outside their authority. By examining court decisions and legal precedents, Pakistan and English Law of contract,it identifies the criteria used to determine when an agent, Principal and third party will be held liable when legal issues come forward in agency relationship.

CHAPTER 1

INTRODUCTION TO THE TOPIC

1.1 INTRODUCTION

By the use of doctrine of undisclosed agency, rights of third party are being affected; hence there is a need to cater the issue by introducing relevant laws in Pakistan. Agency is a general phrase used to describe the relationship that develops when someone is chosen to fill in for someone else position or to facilitate them. In an agency contract, the agent is given the power to establish a legal relationship between the principal and a third party.¹ This relationship benefits the agency corporation to gain higher profit, achieve desired goal inter alia increase corporation's share at national and international level. There are three types of Principal ; Disclosed Principal (where a third party is aware of the principal's true identity and that the principal is represented by an agent), Undisclosed Principal (if a third party doesn't know there is an agency in place and believes the agent is the real principal in this instance, the agent is responsible for defending the third party), depending on the extent of their exposure, a Partially Disclosed Principal is one who is aware that they are in communication with the agent but is ignorant of who is the real principal.² On the other hand ,Disclosed Principal occurs when the party has notice that the agent is acting for a principal and has notice of the party's identity. Even if the principal's identity isn't known, but the third party has enough information available to reasonably infer the identity of the principal, the principal is considered disclosed. In this situation, the principal will be entirely liable to the third party, while the agent remains not liable. The courts seek to protect the interests of third parties

¹M.P Furmston ,*Law of Contract*. 11th ed. (Butterworth And Co.Ltd, 1986),456.

² "Principal Agent Relationship".https://www.academia.edu/12714316/Principal_Agent_Relationship (accessed October 30,2022).

that look to the assets of a principal when dealing at arm's length.³ Discussing the Undisclosed Principal, vital concept in contract law's agency principles as it pertains to the rights and obligations of an agent when representing a principal. In certain cases, the agent doesn't disclose the principal's identity and acts on his behalf. In such situations, the agent becomes personally liable for any legal issues or commitments made on behalf of the undisclosed principal.⁴ In order to liable the Undisclosed agency, The Contracts (rights of Third Parties) Act of 1999 established an exemption to the norm of privity of contract, which states that only parties to a contract may exercise their rights thereunder. When a contract provides or claims to bestow a benefit on a third party, the C(RTP)A 1999 establishes an entitlement for a person who is not a party to that contract to enforce a provision of that contract in its own right.⁵ The Contract Act of 1872 contains the general law of contracts in the context of Pakistan. Being a subset of the law of contracts, the law of agency is included in the aforementioned Act by being given its own whole chapter.⁶ Contract Act 1872 ,of Pakistan deals with the Undisclosed agency and third party rights, creation of agency and its rights and duties ,termination ,revocation and other subsequent matters with the relevant sections 182 to 238.⁷

1.2 LITERATURE REVIEW

An article titled as 'Should the Doctrine of Undisclosed Principal be Retained' written by Ibrahim Suel, in which the writer clarified the position of undisclosed principal and third party. Further

³ <https://tremblylaw.com/disclosed-partially-disclosed-and-undisclosed-which-principal-are-you-and-its-implications/> (accessed December 15, 2023).

⁴ Prmit Bhattacharya , ' Contract with an undisclosed principal' (2016) <https://blog.ipleaders.in/contract-undisclosed-principal/> (accessed October 30, 2022).

⁵ Contracts (Right of Third Parties) Act 1999 (UK).

⁶ Munir Ahmad Mughal, "Law of Agency in Paksitan" (May 28, 2012). Available at SSRN: <https://ssrn.com/abstract=2036674> (accessed October 30, 2022).

⁷ Contract Act 1872 of Pakistan.

said that although this doctrine is recognized and accepted in English law but on the other hand ,there is criticism as being uncertain anomalous, unfamiliar to any other system of law which is something significant or noteworthy. But some scholars consider these arguments unfair and stated that ‘doctrine is not as black or as peculiar as it is painted and that case against it is overstated’. This article analyzed some arguments in favor and some against the doctrine of undisclosed principal.⁸

An article titled as ‘Common law cases on liabilities of Undisclosed Principal’ by Rahul Deodhar examined the position of legislation on agency and how significant a role it plays in the ability of businesses to acquire assets through agents as a result of broad globalization. However, there is a potential that they will be subject to separate laws and hence be affected differently if the customer, vendor, and agent are all located in different nations. If the Principal is not disclosed, the complexity increases. Determining the culpability of such an unidentified Principal in such circumstances is crucial.⁹

An article named as ‘Agency Law and Contract Formation’ by Eric Rasmusen, discussed that undisclosed principal problem arises when an agent makes an agreement with a third party who does not realize that the agent is acting as agent rather than on his own behalf. This paved a way for many issues like whether undisclosed principal can be sued, who will satisfy the damage bear by the buyer etc. In agency law principal is answerable however in conventional contract law he is not bound to the contract. Further said that undisclosed principal appears to go against the fundamental rules of contract law.¹⁰

⁸ Ibrahim Sule, “Should the Doctrine of Undisclosed Principal Be Retained?,” March 2010, http://works.bepress.com/ibrahim_suel/7/.Ibrahim, (accessed October 30,2022).

⁹ Rahul Deodhar, “Common Law Cases on Liabilities of Undisclosed Principal,”(accessed October 30,2022).

¹⁰ Eric Rasmusen, “Agency Law and Contract Formation,” February 2004. *American law and Economic Association* (2004).

An article titled as ‘Agency Law in Pakistan’ written by Justice ® Dr Munir Ahmad Mughal , discussed the relevant provisions of agent and principal of contract law 1872 of Pakistan discussed , why there is a need of agent principal relationship , the prudence behind this concept, the related legal maxim ‘*Quai Facit Per Alium Facit per Se*’(He who does an act through another is deemed to be doing it himself) and their obligations, rights.¹¹

‘The Undisclosed Principal: An Anomaly in the Laws of Agency and Contract’ is the title of a research article, addressed the key aspects of the idea of undisclosed principal, which contradicts some of the fundamental principles of agency and contract law. The law of agency deals with the connection that results from the parties' actions demonstrating their agreement for the other party to act on their behalf under their authority. When an agent's transaction involves a principal that isn't disclosed at the moment.¹²

A research paper published by Harvard Law Review Association “Agent’s Liability on Contracts Made for Undisclosed Principal”, threw light on some important aspect that An agent may always evade responsibility by stating in a straightforward contract that he is not to be held accountable. A sly agent is likely to find himself later in court answering personally for non-performance and unable to defend himself by demonstrating that he behaved within the extent of his job if he withholds the name of his principal or the full fact of agency when drafting a contract.¹³

¹¹ Munir Ahmad Mughal, “Law of Agency in Paksitan(May 28, 2012). Available at SSRN: <https://ssrn.com/abstract=2036674> (accessed October 30,2022).

¹² Martin Schiff, "The Undisclosed Principal : An Anomaly in the Laws of Agency And Contract", <https://heinonline.org/HOL/LandingPage?handle=hein.journals/clla88&div=69&id=&page=> (accessed October 30,2022).

¹³ “Agent’s Liability on Contracts Made for Undisclosed Principal,” *Harward Law Review Association* 33, no. 4 (February 1920): 591–95.

Article titled as ‘The Rationalization of third Party rights under the Law of Undisclosed agency’ written by Paridhi Poddar , discussed the position of third party in detail, a comparative analysis with United Kingdom and other two countries. The fact that courts have upheld third parties' right to repudiate contracts when the other party's identity is relevant or when the third party is successful in proving that if they were aware of an undeclared conflict of interest, they would not enter into the deal. Position of Law, scope and jurisdiction in England and with other countries were discussed in detail with the reference of relevant laws and cases. So, in the end established a point that rights of third should be secure at any cost.¹⁴

Article titled as ‘Legal Value of Third Party Right Over a Valid Contract’ by Muhammad Kamran Akbar firstly discussed the historical overview of third party , phases of development , doctrine of privity and its position in the UK, the USA , India and Pakistan .The paper further discussed the position of third party to take benefit by using the doctrine of privity. Relevant provisions, case laws and analysis with other legal system in order to prominent the rights of third party so that it can get their legal rights.¹⁵

In the article titled as “Undisclosed Principal in Contracts” by Goodhart and Hamson in which it was discussed the position of undisclosed principal in detail and explained the reason that why the English law recognized this doctrine of Undisclosed Principal as there is necessary consequences in establishing the law which results are analogous and said that, If this restriction did not exist, anybody might intervene in any contract by deciding to grant and accept a retrospective authority from one of the contractual parties. If permitted, this intervention would greatly broaden the

¹⁴ Paridhi Poddar, “The Rationalisation of Third Party Rights under the Law of Undisclosed Agency,” *NALSAR Stud .L.Rev* 13, no. 1 (2019).

¹⁵ Muhammad Kamran Akbar, “Legal Value of Third Party Right over a Valid Contract,” *Journal of Applied Envirnomental and Biological Sciences* 7, no. 7 (2017): 175–79.

application of the theory of hidden principals. It was thought prudent not to expand the peculiarity of the undisclosed principles, even at the risk of an apparent contradiction.¹⁶

In this article named as ‘Relation of Principal and Third Party on Ratification of Unauthorized Contracts’ published by Columbia Law review in which it was discussed that authorities are united on the proposition that the ratification of contract by unauthorized agent binds the principal by relation from the time of the original transaction. The English courts have always adhere strictly to the maxim that ratification is equal to prior authority and hold the third party even though he withdrew his assent and notified the presumed principal before ratification. They deem him free from the obligation only when he and the unauthorized agent mutually agree to rescind.¹⁷

In an article titled as ‘Vicarious Liability for Agency Contracts by Edward A. Mearns, Jr discussed The position of the undisclosed principal was discussed, and it was stated that the reason the employer should be held liable for the unauthorized promises of his general agent is because he is responsible for having raised reasonable expectations in the minds of innocent third parties dealing with this agent. The agency relationship is one he voluntarily creates, one he consents to, one designed and operated for his benefit, and one over which he has the right of control. He has chosen the agent, and by doing so, he is endorsing his dependability. In a practical sense, the duty imposed on the principle is a duty he himself took on by appointing a representative from his company to act on his behalf

¹⁶ A. L. Goodhart and C.J Amson, “Undisclosed Principals in Contract,” *Cambridge University Press on Behalf of Editorial Committee of the Cambridge Law Journal* 4, no. 3 (1932): 320_356.

¹⁷ “Relation of Principal and Third Party on Ratification of Unauthorized Contracts” *Columbia Law Review* 12, no. 5 (May 1921): 454–55. <https://www.jstor.org/stable/1110189> (accessed July 19,2023).

in the commercial world. You must understand that if the agent were not required to serve the principal, he would not be "promising away" in public.¹⁸

The Supreme Court ruled in *Fazal Dad (dead) via L.R & Others Vs. Adnan Ali* that only a party to the contract or a person directly harmed by a court decision has the right to approach the court to seek redress.¹⁹

In *Porsche Middle East and Africa FZE and another vs. Akbar Adamjee and others*, in which appellant took a plea that since they are foreign entity and have no business connection in Pakistan, not a proper property to the dispute. But court rejected their plea as it was duly noted that respondent is involved in the matter through his duly authorized agent.²⁰

1.3 SIGNIFICANCE OF THE STUDY

The ways of doing business have experienced major modifications and expansions in today's quickly changing corporate environment. Many multinational firms have spread their operations and supply networks to various countries throughout the world as a result of globalization. For this purpose corporations frequently use agents to operate on their behalf in several locations to support their worldwide projects.

A worrying trend, meanwhile, has evolved in which certain agency businesses function as an undisclosed principals for third parties. This might cause complexities and legal problems since the third party might not be aware of the principal they are dealing with's true identity. Unfortunately, because their hardship goes unspoken and unheard in the eyes of the law,

¹⁸ Edward A. Mearns Jr, "Vicarious Liability for Agency Contracts," *Virginia Law Review* 48, no. 1 (January 1962): 50–57.

¹⁹ PLJ 2014 SC(AJ&K) 64.(*Fazal Dad & others vs Adnan Ali*).

²⁰ PLD 2020 Sindh 415.(*Porsche Middle East &Africa FZE &another vs. Akbar Adamjee*).

third party involved in such circumstances frequently suffer in silence. It is possible to give light on the difficulties and obstacles experienced by third parties in undisclosed agency interactions by doing this research work.

This research work intends to be a ray of light for these people by standing up for their rights and looking for methods to give them access to legal defense and remedies in a smooth manner. Although different challenges may come, they can be tackled by legal prudence in order to serve every party in contract concerned.

1.4 RESEARCH OBJECTIVES

1. To examine the Doctrine of undisclosed agency in the Contract Act 1872 of Pakistan.
2. To determine the Position of third party in a contract made with Undisclosed agency.
3. A comparison of Doctrine of undisclosed agency in Pakistan law and English Law.
4. To give recommendations for securing third party rights in Undisclosed agencies?

1.5 RESEARCH QUESTION

1. What are the fundamental components of agency law when it comes to Agent, Principal, and third parties?
2. What is the liability of Undisclosed agency under Pakistan's Contract law 1872?
3. How third party rights can be secured in the contract made with Undisclosed agency?
4. To inquire what are the differences and similarities in English and Pakistan's Law of Undisclosed agency?

1.6 RESEARCH METHODOLOGY

The research methodology used for this research purpose is descriptive in nature, consists of doctrinal analysis, comparative, interpretation of statutes, legal reasoning and analytical research techniques. The Issue,Rule,Application and Conclusion (IRAC) technique is used to analyzing and organizing this research. By this the legal issue will be divided or sub divided further and in the light of law issue will be analyze for a proper conclusion of the topic. Chicago Manual of style is used for citation. The study is mostly dependent upon the investigation of significant writing of the scholars under the title duly expressed.The blended exploration of descriptive techniques is utilized in which the information accessible is to be perused and in the light of information accessible at libraries as books, research articles, journal, case laws, legal maxims and auxiliary information. This study material is used in evaluating the status of undisclosed agency and rights of third party in English and Pakistan law of Contract in the light of related research material.

CHAPTER 2

INTRODUCTION TO THE DOCTRINE OF UNDISCLOSED AGENCY

2.1 INTRODUCTION

The law of agency is an important concept in modern legal system not only in commercial sphere but also in other areas as well.²¹The concept of agency is universally recognized as indispensable in every social order as it performs a variety of duties in both public and private law, arranging the division of labor in the domestic and global economy by facilitating transactions, contracts, and representation, the law of agency enables smooth interactions and efficient functioning across various industries, making it a cornerstone of modern societies in the legal context.²²There are rules which determine a company's liability for contracts, whether through agents or company organs, fall under agency's law. These rules govern legal link between the company and those acting on its behalf, ensuring proper accountability and representation in contractual matters.²³ Authority, which gives the agent the ability to affect the principal's legal position regarding third persons, is the basis of agency.²⁴ Agency's law, is a fundamental cornerstone of business, as agents enable transactions between firms and shape governance relations within firms. It governs both inter-firm transactions and intra-firm governance. A key feature of agency law is the tripartite relationship between the Principal, Agent, and Third party, which forms the core of traditional

²¹ Richard Stone, *Law of Agency* (United Kingdom: Cavendish, 1996).

²² ALEXEY v. KOSTROMOV, "International Unification of the Law of Agency" (Canada, McGill University, Montreal, 1999).

²³ Aharon Barak, "Company Law Doctrines and the Law of Agency in Israel," *International and Comparative Law Quarterly* 18, no. 4 (October 1969): 847–78, <https://doi.org/10.1093/iclqaj/18.4.847>.

²⁴ "Law of Agency : Business Law," <https://masomomsingi.co.ke/law-of-agency-business-law/> (accessed May 19, 2023).

agency arrangements.²⁵The agent facilitates contracts between the principal and a third party (the customer) through introduction, solicitation of orders, or concluding contracts on behalf of the principal.²⁶The law of principal and agent is fundamentally based on the maxim '*Qui facit per alium facit per se* (he who acts through another acts in person.)' This principle underscores the idea that when an agent acts on behalf of a Principal, the actions of the agent are considered as if they were performed by the principal themselves. In essence, the agent's actions bind the Principal, making the legal relationship between them inseparable. This maxim forms a core foundation of the law of agency, clarifying the principal's accountability for the agent's conduct and decisions.²⁷ Agents are agents for businesses whose job it is to create, alter, influence, accept performance from, or cancel contracts between their principal and third parties.²⁸This relationship entails a significant set of legal duties and responsibilities, among other factors.²⁹Although the law of agency permits principal to act through agents, it also assures that doing so does not absolve principal from responsibility or other repercussions of their choices.³⁰The power-liability relation forms the core of the principal-agent relationship.³¹The principal-agent relationship enables the principal to extend business activities beyond their physical presence, thereby expanding potential business opportunities.³²The importance of the Law of Agency is evident as commerce heavily relies on agents like factors, brokers, estate agents, etc. Without them, business operations would

²⁵ George M. Cohen, "The Collusion Problem in Agency Law," *SSRN Electronic Journal*, 1999, <https://doi.org/10.2139/ssrn.198909>.

²⁶ "Agency," [https://uk.practicallaw.thomsonreuters.com/1-1076376?transitionType=Default&contextData=\(sc.Default\)&firstPage=true](https://uk.practicallaw.thomsonreuters.com/1-1076376?transitionType=Default&contextData=(sc.Default)&firstPage=true).(accessed May 18, 2023).

²⁷ Ernst.W Huffcut, *Elements of the Law of Agency* (Boston: Little , Brown and Company, 1895).

²⁸ Floyd.R Mechem, *A Treatise on the Law of Agency* , vol. 2. (Chicago: Callaghan and Company,1914).

²⁹ "What Is the Law of 'Agency', and Why Does It Matter?,"

<https://boisestate.pressbooks.pub/businessethics/chapter/what-is-the-law-of-agency-and-why-does-it-matter/>.(accessed May 19, 2023).

³⁰ Paula J Dalley, "A Theory of Agency Law," *University of Pittsburgh Law Review* 72, no. 3 (2011), <https://doi.org/10.5195/lawreview.2011.164>.

³¹ B.S Markesinis and R.J.C Munday, *An Outline of the Law of Agency* (England: Butter worth and Co ltd 1979).

³² "Agency Relationships: An overview," <https://www.shsu.edu/klett/agency%20et%20al.htm>.(accessed May 18, 2023).

stall. These specialized intermediaries are essential in advanced societies, making agent activities indispensable for a developed economy. As commerce grows in significance, so does the law of agency in terms of volume and complexity. The power of one person to influence another's legal relations notwithstanding its fundamental legal qualities is still difficult to explain.³³ Concept of agency is integral to reducing contracting costs and increasing efficiency in business transactions. It allows individuals to utilize the services of others to achieve more than they could on their own. Contracting through an agent helps to overcome spatial and cultural distances, minimizes the need to acquire specialized expertise, and eases the inconvenience of dealing directly with all parties involved. Additionally, agency fosters internal organization, enabling specialization and optimizing the use of scarce resources like time, energy, and knowledge. Principal and the third party both in agency law benefit from reduced contracting costs and improved contract terms. Furthermore, agents are appointed to represent and act on behalf of individuals who may lack the analytical capacity to enter into a juridical act, such as minors or interdicted individuals. In this way, having an agent is essential to ensure efficient and fair transactions that address the incapacities of certain parties and result in mutual benefits for all involved.³⁴ The agent who is working for an undisclosed principal initially becomes contracting party with the third party and typically remains so until the principal chooses to reveal their identity.³⁵ The idea of Undisclosed agency, a critical component of the law of agency in the context of contract law, is the major topic of discussion. It centers on the duties and responsibilities an agent has when acting for a Principal. The agent may decide not to reveal the identity of the principal in some circumstances, leading to legal issues. In such situations, the agent could be

³³ Venkoba Rao, *Law of Agency*, 2nd ed. (Allahbad: The Law Book Company (P)Ltd ,Allahbad.,1986).

³⁴ Awet Hailezgi and Addisu Damtie, "Ethiopian Law of Agency," 2009, https://www.lawethiopia.com/images/teaching_materials/agency-law.pdf. (accessed March 18,2023).

³⁵ Roderick Munday, *Agency Law and Principles* (United Kingdom: Oxford University, 2010).

accountable for the agreement individually or any legal consequences that arise. This concept underscores the complexities and potential challenges when dealing with undisclosed principals in agency relationships.³⁶

2.2 AGENCY DEFINED

The term 'agent' is derived from the Latin word '*agere*,' which means 'to do' or 'to act.' Accordingly, an agent is a person who acts on behalf of another, either through express or implied consent. The general principle dictates that anything a person can do themselves, they can authorize someone else to do on their behalf, as stated by the maxim "*qui facit per alium facit per se*" - meaning that he who does anything through another does it as if he had done it himself.³⁷

Black's law dictionary defines Agency as:

“A fiduciary relationship is formed through express or implied contract or by law, allowing one party to act on behalf of another and bind that other party through their words or actions.”³⁸

In law, agency refers to the relationship between a principal and an agent. The principal engages the agent to act on their behalf, such as performing tasks, selling goods, or managing business affairs. The law of Agency governs this legal relationship, wherein the agent interacts with third parties on behalf of the Principal.³⁹

³⁶ Primit Bhattacharya, “Contract with an Undisclosed Principal” (2016) <https://blog.iplayers.in/contract-undisclosed-principal/> (accessed October 30, 2022).

³⁷ Venkoba Rao, *Law of Agency*, 2nd ed. (Allahbad: The Law Book Company (P)Ltd ,Allahbad., 1986).

³⁸ Black's Law Dictionary.

³⁹ “Britannica”, https://www.britannica.com/topic/agency-law?utm_source=pj-affiliate&utm_medium=pj&utm_campaign=kids-pj&clickId=4389804768. (accessed May 21, 2023).

Harold F. Lask also defines agency as:

“Agency is a personal relationship that arises through mutual consent between parties. Once established, it activates a well-developed body of law that delineates the rights and liabilities of the parties concerning each other and their interactions with third parties.”⁴⁰

Agency law is a fundamental common law doctrine that governs the relationships between agents and principals. This relationship is established when the agent is authorized to act on behalf of the principal. Any agreements made by the agent are legally binding on the principal, as long as they fall within the scope of the authority granted to the agent or reasonably perceived by a third party.⁴¹

Contract Act 1872, defined Agent and Principal

An "agent" is an individual hired to perform actions on behalf of or represent another person in dealings with third parties. The individual being represented or on whose behalf the actions are performed is referred to as the principal.⁴²

2.3 HISTORICAL ORIGIN OF THE UNDISCLOSED PRINCIPAL DOCTRINE.

The law of agency has its roots in the shipmaster's authority to act as the ship owner's agent in emergencies to protect the ship and her cargo, as well as in the acceptor of a bill of exchange who is entitled to reimbursement from the person for whom he pays. The regulations now include land transporters of commodities in crisis situations, and they also, if less firmly, cover other bailees.⁴³

⁴⁰ “Harold F. Lusk, *Business Law Principles and Cases*, 7th Ed. (1963).333

⁴¹ “Agency,” *Legal Information Institute* <https://www.law.cornell.edu/wex/agency>.(accessed May 21,2023).

⁴²Contract Act 1872, Sec 182.

⁴³ Ian Brown, “Authority and Necessity in the Law of Agency,” *Wiley on Behalf of the Modern Law Review* 55, no. 3 (May 1992): 414_420.

The concept of undisclosed agency first appeared in the Law of Merchant in the 12th century, when the practice of face-to-face bartering, in which international sellers personally transported their goods abroad to be sold, was replaced by a system in which sellers stayed at home and relied on foreign agents to conduct business on their behalf. The "factor:" formed the basis of this new type of global trade , an agent to whom a merchant consigns items for sale who is located overseas or far from the point of sale. The agent often sells the products under his own name without revealing the identity of his Principal. Although there is without a shadow of a doubt that this was the case, it is not immediately evident why it was customary for factors to sell without declaring their Principal.Lord Mansfield is the source of the Undisclosed principal doctrine's first clear legal endorsement.⁴⁴However, appointing agents for this reason was uncommon in the early 13th century, and it would appear that agents who were impliedly or informally designated were barely acknowledged. However, it didn't take long for it to become popular, and the fact that the practice expanded quite quickly during the 13th century is thanks to two linked influences: the need for commerce and canon law. The fair courts' records indicate that some type of commercial agency must function through a recognized agent from the beginning, and throughout the 14th century, the growth of trade companies—which are required to work through agents—aided in this evolution. The role of the broker and factor in business had become well-known by the later half of the 17th century.Late in the 17th century, a parliamentary legislation governed the brokerage industry; yet, brokers, factors, and agents were considered as servants by the courts. They did not understand the difference between the relationships of master and servant ,Principal and agent until the rise of industry and trade in the 18th century.⁴⁵When a factor deals for a principal while hiding

⁴⁴ Finlay Dempster,“The Undisclosed Principal Doctrine: A Consideration of Its Rationalisations, Justifications and Origins” (Wellington ,Newzeland, Victoria University of Wellington, 2021).

⁴⁵ Alemayehu Abdissa, “Ratification of Unauthorized Act of an agent” (Addis Ababa Ethopia ,ST Marry's University College),(accessed February 21, 2023).

that principal and delivers goods in his own name, the person contracting with him has the right to consider him to be the principal in all material respects. And even though the real principal may appear and bring an action on that contract against the purchaser of the goods, that purchaser may set off any claim he may have against the factor in response to the action. This rule was established by Lord Mansfield in *Rabone v. Williams* in 1785. This has long been resolved. Since Lord Mansfield does not cite any authorities as holding this opinion, it is necessary to accept his claim that it is "long settled" at face value.⁴⁶ Before the seventeenth and eighteenth centuries, the term "agent" was not used in common law; rather, the concept of "representation" was combined with other auxiliary 'service' responsibilities. According to maritime law, a ship's master was responsible for both his own wrongdoings and those of his crew. This was justified on the grounds that the masters had the option to select excellent persons and was founded in part on Roman Law about the quasi-delictual obligation of shipmasters, etc. for their employees. It seemed to be a rather stringent responsibility. According to common law, a ship's owners are not responsible for the wrongdoings of the master and crew. However, maritime law ultimately ruled that owners were liable. And in the 1961 decision of *Boson v. Sandford*, Holt, CJ, put this idea into common law, stating that "whoever employs another is answerable for him and undertakes for his care to all that make use of him."⁴⁷ The relationship between a master and a servant was first understood in England, and as a result, the law of agency evolved to meet the demands of the period. There was little to no justification for one individual to assign the transaction business to another given the social and economic relationships at the time. In actuality, the majority of commerce at the period was conducted by merchants in the lovely cities, and with very few exceptions, the law that the merchants used to their transactions and the disputes that resulted from them was decided in the

⁴⁶ *ibid*

⁴⁷ Venkoba Rao, *Law of Agency*, 2nd ed. (Allahbad: The Law Book Company (P)Ltd ,Allahbad., 1986).

merchants' courts. Holdsworth makes the following claims about how the law of agency has evolved in England: "We begin to observe the growth of the agent for the purpose of contract from an early period. These actors were first primarily found in positions of authority and in the field of public law. Since the time of John, the monarch has authorized his representatives to borrow money and make repayment promises in his name by issuing letters of credit. A great bishop will occasionally act in this manner. The concept of procurator was taking hold among the clergy; the elected kings and burgesses were required to provide "full powers" for the representation of the shires and boroughs to parliament.⁴⁸ Unlike the common law idea of agency, the contemporary concept of contractual agency evolved and progressed gradually within the civil law framework. Even though Roman contract law was, of course, highly scientific in nature, it never produced a comprehensive theory of agency. As is typically claimed, "the nature of commercial contract which involves only two persons" was one of the key obstacles that slowed the quick development of the modern agency principles in Roman law. The guiding premise of the old Roman contract law, which forbade the triangle relationships of principal, agent, and third party in economic transactions, was this idea, which placed a rigorous emphasis on a personal bond between the contractual parties.⁴⁹

2.4 CONTRACT ACT 1872 OF PAKISTAN.

The important piece of legislation known as the Contract Act of 1872 contains the fundamental principles and regulations regulating contracts in Pakistan. In several business and legal activities around the nation, it acts as the basis for contractual agreements. The law of agency occupies a

⁴⁸ Alemayehu Abdissa, "Ratification of Unauthorized Act of an agent" (Addis Ababa Ethiopia ,ST Marry's University College),(accessed February 21, 2023).

⁴⁹ "Genesis and Development of the Law of Agency," <https://www.abyssinialaw.com/study-on-line/369-agency/7268-genesis-and-development-of-the-law-of-agency>.(accessed May 19, 2023).

significant position in this extensive Act, receiving its own separate chapter.⁵⁰ The law deals with doctrine of undisclosed agency rights and duties (of agent, principal and third party), creation of agency, termination revocation and other subsequent matters with the relevant sections 182 to 238.⁵¹

2.5 CREATION OF AGENCY

Agency arises whenever one person acquires authority to act as the representative of another⁵² wherein the principal transfers authority to another individual to serve as his agent when interacting with a third party. In this situation, the act carried out by an agent on behalf of the principal binds the principal towards a third party because the agency acted at the principal's instruction.⁵³

The relationship between a principal and an agent can be established by :

- a) By agreement ,whether contractual or not, between principal and agent which may be expressly or implicitly via the action of the parties.
- b) Retroactively, by the principal's later approval of activities performed on his behalf.
- c) By operation of law in accordance with the agency of necessity concept and in certain other cases.⁵⁴
- d) By legal implication when it is urgently required for one man to act on behalf of another;

⁵⁰ Munir Ahmad Mughal, "Law of Agency in Pakistan (May 28, 2012). Available at SSRN: <https://ssrn.com/abstract=2036674> or <http://dx.doi.org/10.2139/ssrn.2036674> (accessed October 30, 2022).

⁵¹ Contract Act 1872 Pakistan.

⁵² F.R Davies, *CONTRACT*, 4th ed. (London: Sweet & Maxwell, 1981).158.

⁵³ Fahad, "Different Modes of Creation of Agency," October 2022, <https://www.lawcolumn.in/different-modes-of-creation-of-agency/>.(accessed May 18, 2023).

⁵⁴ F.M.B Reynolds, *Bowstead on Agency*, 15th ed. (London: Sweet & Maxwell, 1985).

e) By legal presumption where there is cohabitation.

In the first two scenarios, the principal has the right to sue and be sued by a third party, and the principal and agent also have rights and obligations. The principal in the final three instances can be sued, but not always.⁵⁵ There are some situations (given below) when revocation of an agency by the principal is not possible and this is known as irrevocable agency.

1. Where agency is coupled with an interest, and an agent has interest in the subject matter of such agency it does not come to an end even in the case of death or insanity or insolvency of the principal.
2. When an agent has incurred personal liability, then the principal cannot revoke the agency, the agency becomes irrevocable. For Example – P appoints Q as his agent. Q purchases some wheat as per the instructions of P in his personal name. Now, in such a case P cannot revoke the agency.
3. Where the agent has partly exercised the authority, and it is irrevocable with regard to liabilities which arises from the acts performed.⁵⁶
4. If a partner is appointed manager of a partnership in the contract of partnership and his removal from the management is unjustifiable.⁵⁷

⁵⁵ A.G. Guest M.A, *Anson's Law of Contract*, 26th ed. (United States: Clarendon Press .Oxford, 1984) ,529.

⁵⁶ Termination of Agency, available at <https://www.toppr.com/guides/business-laws-cs/indian-contract-act-1872/termination-of-agency/> (accessed December 25, 2023).

⁵⁷ Irrevocable Agency, available at <https://civillawnotes.blogspot.com/2016/04/irrevocable-agency.html> (accessed December 25, 2023).

2.5.1 AGENT’S AUTHORITY

The phrase “actual authority” refers to situations where someone has been expressly granted authority to act as an agent on behalf of a person or firm. Such authority can be granted either verbally or by written contract. This is the most common type of agency which is likely to find. For example, the owner of a contracting firm will have actual authority to tell his employees how construction work should be performed. A contractor may order the timing and scope of services to be performed by a subcontractor as detailed in their contract. Where things become more difficult are situations where actual authority has not been granted, but another party believes it has.⁵⁸ However, “Apparent authority” occurs when a person through their conduct leads another person to reasonably believe that they are authorized to exercise certain authority, even though such authority has not been granted by the apparent agent’s supervisor or firm (“principal”). The focus of this inquiry is not whether the third party believes that the directions provided by the apparent agent would help the third party perform his work, but rather whether the third person reasonably believes that the agent is acting within the ordinary course of his business. Apparent agency will require three elements: 1) an act by the apparent agent or his principal justifying a belief that an agency relationship exists, 2) the principal has knowledge of the general circumstances, and 3) a third party is reasonably relying on his belief in the apparent agency relationship.⁵⁹

⁵⁸ Robert A. Mich, Jr, “ Actual vs Apparent authority” available at <https://www.kayandandersen.com/a46---actual-versus-apparent-authority---itrsquos-easier-to-become-liable-than-you-think.html> (accessed December 29,2023).

⁵⁹ ibid

The agent's authority may be explicit or inferred.⁶⁰In *Commerce Bank v Habib Bakhsh* it was decided that the authority of agent need not to be expressed and can be implied consequently, whenever the plaintiff's representative made a deal with the defendants on the plaintiffs' behalf but never intimated defendants , that did not acknowledge the liability created for them by their said agent as he was not their legally constituted agent on the contrary ratifying his acts, the plaintiff's attitude, clearly showed that the said agent was always considered by them as their agent and plaintiffs had impliedly ratified agent's transaction cannot disown liability created by him.⁶¹

2.5.2 EXPRESS AND IMPLIED AUTHORITY

When power is conveyed verbally or in writing, it is said to be expressed.⁶² When anything is spoken or written in the normal course of business or may be inferred from the facts of the case, it is said or written with implied authority.⁶³ However, the agent is required to take action in both situations.⁶⁴

There are four primary sorts of implied authority in addition.

1. Acting in accordance with incidental authority refers to carrying out express authorization as required.

2. Usual authority: carrying out tasks that are typically performed by someone in the same position.⁶⁵

⁶⁰Contract Act 1872, Sec 186.

⁶¹ *Commerce Bank Ltd v Habib Bakhsh* PLD 1978 Quetta 45.

⁶²Contract Act 1872, Sec 187.

⁶³ *ibid*

⁶⁴ M.A Mannan, *The Contract Act 1872, with an Exhaustive Commentary*, 3rd ed. (Law Publishing Company, 1983).

⁶⁵ "What Is Principal- Agent Relationship?," *Law of Agency*, March 26, 2019, <https://blog.ipleaders.in/law-of-agency-what-is-principal-agent-relationship/>.(accessed May 12, 2023).

3.Performing an action in accordance with a place's long-standing conventions is an example of customary authority.

4.Circumstantial authority is acting in accordance with the facts of the situation.⁶⁶

2.5.3 THE CONTRACT –POWER OF ATTORNEY

The right of agent to represent the principal is called his ‘authority’ or ‘power’ and when this authority is created by adopting formal procedure of writing it is to be said to be conferred by ‘letter of attorney’ or by a ‘power of attorney’.⁶⁷ This can be better understand by a case law which states that the principal bears the risk of any wrongful action of his agent, as demonstrated in *Allen Funt Productions, Inc. v. Chemical Bank*, in which , Funt submitted to his bank through his production company various certificates permitting his accountant to use the company’s checking accounts. Allen Funt (1914–99) was an American television producer, director, and writer, best known as the creator and host of *Candid Camera* from the 1940s to 1980s, which was broadcast as either a regular show or a series of specials. Its most notable run was from 1960 to 1967 on CBS. In fact, for several years the accountant embezzled money from the company by writing checks to himself and depositing them in his own account. The company sued its bank, charging it with negligence, apparently for failing to monitor the amount of money taken by the accountant. But the court dismissed the negligence complaint, citing a state statute based on the common-law agency principal that a third party is entitled to rely on the express authorization given to an agent; in this case, the accountant drew checks on the account within the monetary limits contained in

⁶⁶ *ibid*

⁶⁷ Floyd.R Mechem, *Outlines of Law of Agency* (Chicago: Callaghan and Company,1901).

the signature cards on file with the bank. Further it was held that letters of introduction and work orders are other types of express authority.⁶⁸

2.5.4 APPARENT AUTHORITY (ESTOPPEL)

Agency by estoppel is a legal concept that arises when a person or entity (the principal) leads another person or entity (the third party) to believe that a third person (the agent) has the authority to act on their behalf, even though no formal agency relationship exists. In this situation, the principal is “estopped” or prevented from denying the agent’s authority, and the third party can hold the Principal liable for the agent’s actions. This concept is based on the principle of fairness and is intended to protect innocent third parties who reasonably rely on the representations made by the principal.⁶⁹This agency is not officially appointed and the agent by estoppel is not authorized to represent the person or company they purport themselves to be working for.⁷⁰This view is prevailed in English Law since the decision in Freeman and Lockyer v Buckhurst Properties.⁷¹

This can be further understood by looking at the case Pole vs. Leask, in which it was decided that a quote from Lord Cranworth, "No one can become the agent of another person except by that person's will," and may be used to introduce the topic of agency. The will may be expressed in writing, verbally, or simply by putting another in a predicament where, under the normal course of events, that other is understood to speak for and act on behalf of the person who has been so placed, according to the normal usages of man. This assertion, However, this does not contradict the principle that states that if someone acts in a way that gives the impression that they have

⁶⁸ “Liability of Principal and Agent; Termination of Agency,” <https://2012books.lardbucket.org/books/the-legal-environment-and-business-law-executive-mba-edition/s15-liability-of-principal-and-age.html>.(accessed May 21, 2023).

⁶⁹ Define Agency: by estoppel ,“ <https://dlssolicitors.com/define/agency-by-estoppel>”.(accessed December 29,2023).

⁷⁰ Agency by Estoppel,<https://www.insuranceopedia.com/definition/667/agency-by-estoppel>(accessed December 29,2023).

⁷¹ Freeman and Lockyer v Buckhurst Properties. (Mangal) Ltd.

appointed another person to act on their behalf and they know that person is about to do so, they are generally estopped from contesting the agency even if none actually existed. Another idea to always keep in mind is that the person dealing with anyone as an agent through whom he wishes to charge another as principal bears the burden of evidence. In order to prevent the principal from being excused, he must demonstrate that the agency actually existed and that the agent possessed the authority he claimed to have disputing it.⁷²

Key Elements of Agency by Estoppel: To establish agency by estoppel, several elements must be present:

1. **Representation or Conduct:** The principal must engage in conduct or make statements that lead a third party to believe that an agency relationship exists.
2. **Reliance:** The third party must reasonably rely on the principal's representation or conduct when interacting with the purported agent.
3. **Detrimental Change in Position:** The third party must undergo a detrimental change in their position based on their reliance on the perceived agency relationship.⁷³

2.5.5 RATIFICATION

Ratification of the agency relationship, occurs when the principal recognizes the agent's activities. After the fact, the principal approves the agent's activities. (Only when the principal is completely exposed is agency by ratification conceivable.⁷⁴ Every ratification relates back, and is equivalent to a prior authority, is the second great maxim of agency, and has been said to be as

⁷² Pole vs Leask.

⁷³ Agency by Estoppel (What it means and why it's important). available at <https://amazelaw.com/agency-by-estoppel/> (accessed December 24, 2023).

⁷⁴ Jason Gordon, "Methods of Forming Principal Agent Relationship - Explained," April 5, 2023, https://thebusinessprofessor.com/en_US/agency-law/methods-of-forming-principal-agent-relationship. (accessed May 11, 2023).

well established and as simple of application as the first and fundamental one, qui facit per alium, facit per se. It was as well recognized in the Roman law, as it is in the common law.⁷⁵

• The following requirements must be met in order for a contract to be ratified:

- i) The contract must be purportedly made on behalf of the Principal.
- ii) The principal must be competent at the time of the contract.
- iii) Void contracts cannot be ratified.

Ratification of Agency in the Contract Act of Pakistan

- i) When someone acts on behalf of another without that person's knowledge or consent, that person has the option of ratifying or disowning those actions. If he approves them, the same results will occur as if he had executed them himself.⁷⁶
- ii) The person whose behalf the activities are performed may indicate or imply approval by their actions.⁷⁷
- iii) A person whose understanding of the relevant facts is significantly flawed is ineligible to ratify.⁷⁸
- iv) A person who approves an unauthorized act carried out on his behalf also approves the entirety of the transaction that the act was a part of.⁷⁹
- v) An act performed by one person on behalf of another without that other person's consent and that, if performed with consent, would have the effect of subjecting

⁷⁵ <https://repository.law.umich.edu/articles/863/> (accessed December 23,2023).

⁷⁶ Contract Act 1872,Sec 196.

⁷⁷ Contract Act 1872,Sec 197.

⁷⁸ Contract Act 1872, Sec 198.

⁷⁹ Contract Act 1872,Sec 199.

that third party to damages or of terminating that third party's right or interest, cannot be made to have that effect by ratification.⁸⁰

CASE LAWS

An act carried out by an agent in excess of his authority may be approved by his principal, according to the ruling in *Ghasiram v. Raja Mohn*, but no general power can be granted to an agent to act outside of his authority.⁸¹ In another case named as *Muhammad Azam, Muhammad Fazil and Co. vs. Messers N.A Industries, Karachi*, a case of disagreement presented to arbitration by one partner was held that it could be ratified by the co-partners in order to be binding on the firm. The actions of the parties can serve as evidence of such ratification.⁸²

However, Ratification can be done by:

- i) Only the person whose behalf the act is ostensibly performed has the authority to ratify an act.
- ii) The individual should have been alive when the offense was committed.⁸³
- iii) The person acting as the principal of the person doing the act must be competent both at the time of the act and at the time of ratification.
- iv) It is not essential for the person who committed the crime to have been recognized by a third party at the time, either personally or by name.⁸⁴

⁸⁰Contract Act 1872, Sec 200.

⁸¹ *Ghasiram v. Raja Mohn*

⁸² *M Azam & fazil vs Messers N.A Industries, Karachi* .

⁸³ F.M.B Reynolds, *BOWSTEAD ON AGENCY*, 15th ed. (London: Sweet & Maxwell, 1985).

⁸⁴ *ibid*

2.5.6. NECESSITY

This is by far the most significant instance of a party having authority granted to them through operation of law. In some situations where a person is faced with an emergency where another person's property or interests are in danger, Bowstead states that "Agency of necessity arises by operation of law" and that "it becomes necessary, in order to preserve the property or interests, to act for that person without his authority."⁸⁵ If the prerequisites are met, it can be formed under three conditions. The agent's action is essential, and the agent of necessity has acted in good faith. It must be impossible for the agent to obtain the principal's instructions.⁸⁶

CASE LAW

In *Sachs vs Miklos*, the defendant invoked the doctrine when sued for conversion of goods which he had sold and which belonged to the plaintiff. The circumstances out of which this arose were that the defendant agreed, out of the kindness of his heart, to store some of the plaintiff's furniture. When after a considerable time he needed the space, he tried to get in touch with the plaintiff, but in vain. He then proceeded to sell the goods, purporting to act as the plaintiff's agent. The court of appeal refused to take this view, arguing that there was no emergency to justify the invocation of the doctrine of necessity. However, Lord Goddard CJ did say that the doctrine of necessity had always been invoked in cases of perishable goods or livestock. This is understandable since there is great urgency to dispose of perishable goods. But, in principle, other emergencies might conceivably arise, justifying the invocation of the doctrine even where no perishable goods are involved.⁸⁷

⁸⁵ B.S Markesinis and R.J.C Munday, *An Outline of the Law of Agency* (England: Butter worth and Co ltd 1979).

⁸⁶ *ibid*

⁸⁷ *Sachs vs Miklosp*

In the case of *Prager v. Blatspiel, Stamp & Heacock Ltd.* briefly described how a fur merchant's agent in Bucharest purchased skins for £1,900 during the First World War. The merchant paid for the skins, but the agent was unable to deliver them to the merchant because of the fighting. The agency sold the skins as their value rose. According to the court, there was no agency of need. The skins may be stored properly to preserve them and their worth would not likely decrease.⁸⁸ Recognizing the agent's inability to communicate with the principal is the goal of the law in these situations. In this situation, the agent is required by commercial necessity to operate in everyone's best interests. The legal regulations governing agents of necessity aim to promote common sense in ordinary human affairs.

In the case of *Lapraik v. Burrows*, the ship arrived in the harbor, but the captain discovered that it was not seaworthy and could not be launched. He therefore decided to sell the ship in order to prevent more loss. The ship's owners were held accountable for the captain's actions because he was considered to be their agent of necessity.⁸⁹

2.5.7 PRESUMED AGENCY OR FROM COHABITION

This type of agency includes mistresses and housekeepers, and there is no reason it should be limited to cases involving women. It also includes wives who have been granted the right to pledge their husband's credit for home expenses, cohabitation is condition here. A deserted mistress is held to have no necessity since there is no cohabitation. Equally, a wife living in hotel with her husband had no agency of necessity because there is no household.⁹⁰ What constitutes a necessary depends on circumstance, the situation in life is to be considered. Yet a thing is not actual needs, as food,

⁸⁸ *Prager v Blatspiel. Stamp & Heacock Ltd*

⁸⁹ Mr. Karim G . Mussa, "The Law of Agency in Tanzania," 2020, https://www.academia.edu/43989164/THE_LAW_OF_AGENCY_IN_TANZANIA. (accessed May 18, 2023).

⁹⁰ B.S Markesinis and R.J.C Munday, *An Outline of the Law of Agency* (England: Butter worth and Co ltd 1979), 45.

clothes. fuel, lodging, medicine.etc⁹¹A presumption emerges that the woman has the authority to pledge the husband's credit for necessities appropriate to the style of their living, in respect of those concerns typically left to the management of the wife, when a husband and wife live together and run a home establishment.The presumption is one of fact only and is rebutted by evidence, if he has forbidden her to pledge his credit or that wife was already adequately provided with the necessaries or her husband had already made her a sufficient and agreed allowance for such necessaries.⁹²

CASE LAW

Husband credit can only be pledge for necessaries .Willis J. described necessities in Phillipson v. Hayter as "things that are really necessary and suitable to the style in which the husband chooses to live, in so far as the articles fall fairly within the domestic department which is ordinarily confined to the management of the wife."⁹³

2.6 MERCANTILE AGENT

A mercantile agent is a person who is appointed by those in business to act on their behalf or to represent them in dealing with other persons. The person on whose behalf he acts as an agent is known as the 'Principal'.⁹⁴

Mercantile agents may be classified:

(a) On the basis of rights

⁹¹ Alfred William Bays, *The Law of Agency and the Law of Partnership* (Callaghan and Company, 1912).

⁹² F.M.B Reynolds, *Bowstead on Agency*, 15th ed. (London: Sweet & Maxwell, 1985).

⁹³ Phillipson v Hayter (1870) LR 6 CP at 42 .

⁹⁴ <https://chamanlawfirm.com/who-is-a-mercantile-agent> (accessed December 27.2023).

(i) General Mercantile Agents, i.e. an agent who has full authority to perform all functions relating to the business on behalf of his principal. All such acts shall be binding on the principal. Examples of general mercantile agents are factors, commission agents, branch managers, etc.

(ii) Special/Particular Mercantile Agent, i.e., an agent appointed to perform a special or a particular job for his principal. As soon as the particular work is done, he ceases to be an agent.⁹⁵

(b) On the basis of functions

1. Brokers
2. Factors
3. Commission Agents
4. Del-credere Agents
5. Auctioneers
6. Warehouse keepers.⁹⁶

Factor:

A factor is mercantile agents entrusted with the possession of goods for the purpose of selling them. He has every possible discretionary authority to sell the goods. he sell the goods in his own name as an apparent owner upon such terms as he thinks fit. the price and gives a good to the purchaser.⁹⁷

⁹⁵ Mercantile agent, available at <https://www.yourarticlelibrary.com/business/mercantile-agents-meaning-importance-and-other-details/42071> (accessed December 27, 2023).

⁹⁶ https://www.brainkart.com/article/Kinds-of-Mercantile-Agents-or-Agent-Middlemen_34975/ (accessed December 27, 2023).

⁹⁷ https://www.srdlawnotes.com/2017/08/classification-of-agents.html#google_vignette (accessed December 27, 2023).

Broker:

A broker has been defined as an agent employed to make bargains and contracts in matter of trade, commerce or navigation, between two parties for a compensation, commonly called brokerage. He is person whose main-job is to arrange a buyer for a seller.⁹⁸

Del Credere Agents:

A Del Credere agent is a mercantile agent who is employed to sell goods on behalf of his principal. He undertakes to guarantee the payment of dues in consideration for an extra commission. We can say that besides being a mercantile agent a del credere agent finds himself into the shoes of a guarantor as well.

Auctioneer:

Auction is usually a public sale of goods made in the highest of several bidders. An auctioneer is a mercantile agent who is appointed to sell goods on behalf of principal, compensated in terms of commission.

Commission Agents:

A commission agent is generally, appointed for selling or buying goods on behalf of his principal. Such types of agents belongs to a somewhat indefinite class of agents. He/She tries to secure buyer for a seller of a goods and sellers for a buyer of goods and receives a commission in return for his work on the actual sales price.

⁹⁸ <https://greenvalleykashmir.com/Notes/MERCANTILE%20AGENTS.pdf> (accessed December 27,2023).

Forwarding Agents:

Forwarding agents render services of collecting goods from their principals and forwarding the same to shipping companies. As foreign trade procedures are more complex than the procedures of home trade, the service of forwarding agents hence helps the producers and exporters to a great extent.⁹⁹

2.7 TRIANGULAR RELATIONSHIP

Agency is a triangle of relationships, and it is important to remember that the principal and third party relationships are typically the most important ones.¹⁰⁰The Principal (P), Agent (A), and Third party (T) are all involved. This leads to a variety of issues, particularly when trying to apply the rules of contract law to the relationships brought about through agency like can a third party cancel a transaction before the principal ratifies an agent's unauthorized conduct, for instance, if the agent acts without the principal's consent? It was decided in the case of *Bolton Partners v. Lambert* that an offer accepted by the principal through the agent could not be revoked.¹⁰¹However, because third parties are frequently injured, government involvement can help with efficiency. The way the law handles this is important because it determines who is responsible for damage when the agent makes a mistake, whether it be the principal, the agent, or a third party.¹⁰²Even if agency doctrine is not always explicit, agency law nonetheless achieves the desired goals. Efficiency can intervene as a unifying principle of great appeal, just as it can in other areas of law where common morality and legal requirements create misunderstanding.¹⁰³

⁹⁹ <https://www.mbaknol.com/mercantile-law/types-of-agents/> (accessed December 27, 2023).

¹⁰⁰ B.S Markesinis and R.J.C Munday, *An Outline of the Law of Agency* (England: Butter worth and Co Ltd 1979).

¹⁰¹ Venkoba Rao, *Law of Agency*, 2nd ed. (Allahbad: The Law Book Company (P)Ltd ,Allahbad., 1986).

¹⁰² Eric Resmusen, "Agency Law and Contract Formation," *American Law and Economics Review*, Vol. 6, No. 2 (Fall 2004), 369-409.

¹⁰³ *ibid*

CASE LAW

According to the Supreme Court's ruling in the case of Syed Abdul Khader v. Rami Reddy (1979), "the expression agency" is used to connote the relation which exists where one person has the authority or capacity to create legal relations between a person occupying the position of principal and a third party".¹⁰⁴

2.8 TERMINATION OF AGENCY UNDER PAKISTAN'S LAW

An agency ends when the principal revokes his authority, the agent renounces the agency's business, the agency's operations are completed, either the principal or the agent passes away or loses mental capacity, or the principal is declared insolvent under the terms of any Act currently in effect for the relief of insolvent debtors.¹⁰⁵

CASE LAW

It was determined in Ford v. Newth that an agency, unless it is for a definite duration, manifestly persists and may be terminated at the principal's discretion, is neither transferable nor assignable, and is wholly reliant on the arrangement established with the principal.¹⁰⁶

In Mehdi Khan v. Faqir Muhammad, it was decided that the demise of the principal or agent, determines whether a contract of agency exists. Principal-agent relationships are contractual in nature and cease with the passing of either party.¹⁰⁷

In limitation Act it was said that on the death of the principal, the agency is terminated, and the agent must be sued for accounts within three years.¹⁰⁸

¹⁰⁴ Syed Abdul Khader v Rami Reddy (1979) 2 SCC 601.

¹⁰⁵ Contract Act 1872, Sec 201.

¹⁰⁶ Ford v Newth (1901) 1 K B 683 ; C & S 492.

¹⁰⁷ Mehdi Khan v Faqir Muhammad PLD 1980 Lah.110.

¹⁰⁸ The Limitation Act 1908, Sec 89.

If the agent has a personal stake in the asset that is the subject of the agency, that interest cannot be adversely affected by the termination of the agency in the absence of an express contract.¹⁰⁹ Only in situations when the authority is granted in order to serve as security or as a component of security does the concept of Section 202 apply, and not to situations where the donee's interest surfaces later; in these situations, the authority is not coupled with the interest but rather is there when the interest surfaces later.¹¹⁰

Contract Act state that except as otherwise specified by the previous preceding provision, the principal may revoke the authorization before the power has been used to bind the principal, given to his agent at any moment.¹¹¹

Further stated that the principal cannot revoke the agent's authority once it has been partially exercised in relation to acts and obligations that result from actions already taken in the agency.¹¹²

CASE LAW

According to the ruling in *Read v. Anderson*, if a principal hires an agent to carry out a task and, should the authority be revoked, the agent will legally be subject to loss or suffering, the power cannot be removed. The same rule will apply in cases where the agent's liability arises from utilization of business that was known to both parties at the time of employment and the basis for the agency agreement, rather than from legal liability.¹¹³

In cases where there is a written or unwritten agreement stating that the agency would continue for a certain amount of time, the principal is required to compensate the agent for any prior revocation or renunciation of the agency without a good reason.¹¹⁴

¹⁰⁹ Contract Act 1872,Sec 202.

¹¹⁰ M.A Mannan, *The Contract Act 1872, with an Exhuastive Commentary*, 3rd ed. (LAW PUBLISHING COMPANY, 1983).

¹¹¹ Contract Act 1872,Sec 203.

¹¹²,Contract Act 1872,Sec 204.

¹¹³ *Read v Anderson* 13 Q B D 779.

¹¹⁴ Contract Act 1872, Sec 205.

In Pak .I.D.C v Aziz Qureshi it was held that the principal's authority to withdraw an agency and his right to do so must be distinguished from one another. While he is able to withdraw an agent's authorization, he will not be able to do so if he has consented to designate a certain individual for a predetermined amount of time. Therefore, an agent's power may be revoked at any time, but the agency agreement cannot be broken without the principal being held accountable for any losses.¹¹⁵ If such revocation or renunciation occurs, reasonable notice must be given; otherwise, the principal or the agent, as applicable, would suffer damages that must be made good to them by the other.¹¹⁶ Revocation and renunciation can be made explicitly known or inferred from the principal's or agent's actions, respectively.¹¹⁷ The doctrine of implied revocation or renunciation under section 207 of Contract Act, cannot be invoked in a case where the decree-holder had in the course of execution assigned his rights to his pleader because assignment although it operates to convey property in the decree to the assignee, does not entitle him without the permission of the Court under Order XXI rule 16 C.P.C to take control of execution proceedings. The decree holder has still the control of those proceedings and the pleader engaged by him continues to represent him in those proceedings.¹¹⁸ As far as the agent is concerned, the termination of their power doesn't happen before they find out, and as far as third parties are concerned, it doesn't happen before they find out.¹¹⁹ When a principal dies or loses mental capacity, the agency ends, and the agent has an obligation to maintain and preserve the interests entrusted to him on behalf of the representatives of the deceased principal.¹²⁰ After the principal passes away, it is fair for an agent operating within the boundaries of his power to engage into a contract for the acquisition of products to maintain

¹¹⁵ Pak .I.D.C v Aziz Qureshi PLD 1965 Kar.202.

¹¹⁶ Contract Act 1872, Sec 206.

¹¹⁷ Contract Act 1872, Sec 207.

¹¹⁸ *ibid*

¹¹⁹ Contract Act 1872, Sec 208.

¹²⁰ Contract Act 1872, Sec 209.

the principal's manufacturing.¹²¹ When an agent's authority is terminated, all of his designated sub agents' authority also ends (subject to the guidelines included below governing the termination of an agent's authority).¹²²

In the following situations, revocation is impossible:

a) When power is "coupled with interest." that's why the agent was assigned, allowing him to obtain a benefit that the principal had previously owed him. Where a power of attorney is issued to secure anything, it cannot be withdrawn in the following circumstances.

- i) the grantee's proprietary interest, or
- ii) fulfillment of a duty due to the grantee.¹²³

b) The principal may be prevented from revoking without the agent's approval in cases where the agent will suffer a personal loss as a result of the revocation.

c) The principal may not withdraw in a way that jeopardizes the rights of a third party who is innocent.¹²⁴

If the principal revokes the agency, the agent's power to act on behalf of the principal does not expire until the agent receives or gives notice of the revocation. However, the agent's power immediately ends in situations when the termination is involuntary, such as when the agent dies, becomes insane, or the agency becomes frustrated. Finally, if the agency is established for the agent's or a third party's benefit instead of the principal, neither the agent nor the principal may, at any time, revoke or renounce the agent's authority, and neither party's death, incapacity, or bankruptcy may end the agency relationship.¹²⁵ This can be

¹²¹ *ibid*

¹²² Contract Act 1872, Sec 210.

¹²³ Mohamed Jameel, "Law of Agency", https://www.academia.edu/45015351/LAW_OF_AGENCY. (accessed May 11, 2023).

¹²⁴ *ibid*

¹²⁵ Onyekachi Duru, "Law of Agency Relationship", https://www.academia.edu/6792779/Law_of_Agency_Relationship. (accessed May 11, 2023).

better comprehend by a case in which defendants owned an oil lease and agreed in writing to give \$250,000 to the plaintiff as compensation for his assistance in closing a deal, if the sale were effected before February 20th. On January 30th, two days after executing the agreement, the defendants revoked the agency and gave notice to that effect. Despite this notice the plaintiff continued in his efforts and on February 14th presented a purchaser. Defendants refused to sell and plaintiff recovered his commission. On appeal of the defendants, it was decided that plaintiff not to be entitled to a recovery the instrument sued on not vesting him with an irrevocable right to sell the land any time before the date specified.¹²⁶

Another reason for termination is bankruptcy or insolvency of the Principal. Finally, but just as importantly, if something occurs that makes the agency illegal.¹²⁷ Agency is automatically terminated through frustration, by intervening illegality, by the principal becoming an alien enemy.¹²⁸ And if the company or firm is dissolved the agency comes to an end.¹²⁹

2.9 INTERNATIONAL COMMERCIAL LAW

The contracts of commercial agency is one of the most used agreements in international trade.¹³⁰ The international commercial agency contract is used for activities requiring a commercial agent to promote the sale of goods in overseas markets. In this contract, one party (Principal) asks other party (Agent) either a person or a company to carry out the promotion of international trade transactions for a continuous period of time as an independent intermediary assuming

¹²⁶ “Agency: Revocation of the Agency,” *The Michigan Law Review Association* 23, no. 4 (February 1925): 401_402.

¹²⁷ Awie Bin Tomani, “Law of Agency,” September 2016, <https://www.coursehero.com/file/44884644/BUSINESS-LAW-LAW-OF-AGENCYpdf/>. (accessed March 12, 2023).

¹²⁸ Mohamed Jameel, “Law of Agency,” https://www.academia.edu/45015351/LAW_OF_AGENCY. (accessed May 11, 2023).

¹²⁹ “Termination of Agency,” <https://www.srdlawnotes.com/2018/06/termination-of-agency-contract-of-agency.html>. (accessed May 18, 2023).

¹³⁰ <https://www.legalmondo.com/product/guide-international-commercial-agency-contracts/> (accessed December 23, 2023).

liability for those transactions.¹³¹ According to Tan, in ordinary commercial contracts it is "usually a matter of indifference to the third party whether there is an undisclosed principal or not". This, Tan says, makes the undisclosed principal doctrine fully compatible with the doctrine of privity.¹³²

2.10 UNDISCLOSED PRINCIPAL

A key idea in contract law's agency law is undisclosed agency, which deals with the rights and responsibilities of an agent acting on behalf of the principal. On the other hand, if the agent is acting on behalf of another party, he might not always reveal the identity of the principal. Agent will be held personally accountable in this case.¹³³ Coming to Undisclosed Principal types, these are two, one where the agent does not disclose his agency second where he reveals the agency's identity, but he withholds the agency's name.¹³⁴ The Contracts (Rights of third Parties) Act 1999 established an exemption to the norm of privity of contract, which states that only parties to a contract may pursue their rights under it. A non-party to a contract has the right, under the C(RTP)A 1999, to enforce any provision of the contract in its own right where to deal with benefits or pretends to benefit a third party.¹³⁵

CONCLUSION

The notion of the law of undisclosed agency is essential and has an impact on the Undisclosed Principal, Agent, and Third Party in different ways. The use of the idea in both English law and Pakistan's Law of Contract is the main emphasis of this chapter, which goes into the concept's introduction, definition, historical evolution, and key characteristics. This legal framework deals

¹³¹ <https://www.scribd.com/document/229348568/International-Commercial-Agency-Contract> (accessed December 23, 2023).

¹³² <https://ojs.victoria.ac.nz/vuwlr/article/download/7742/6890/10895> (accessed December 23, 2023).

¹³³ Pramit Bhattacharya ' Contract with an undisclosed principal' (2016) <https://blog.iplayers.in/contract-undisclosed-principal/> (accessed October 30, 2022).

¹³⁴ Venkoba Rao, *Law of Agency*, 2nd ed. (Allahbad: The Law Book Company (P)Ltd ,Allahbad., 1986).

¹³⁵ Contracts(Right of Third Parties) Act 1999 (UK).

with the difficulties that develop when a party who first seems unrelated to a contract ends up being important in the event of a dispute. The issue of who should be held accountable—the Undisclosed Principal or the Agent—arises, allowing the Third Party to pursue damages for any losses incurred. It is vital for both the undisclosed principal and agent to be held accountable in order to maintain justice and protection for the Third Party. With this strategy, an undisclosed agency cannot claim they are not a direct party to the contract in order to avoid liability. In order to stop any misuse of third parties' rights, it is crucial to reexamine the idea of agency. A safe environment should be created for third parties, guaranteeing that their rights are not solely exploited, by holding undisclosed principal and agent accountable. In order to encourage justice and openness in contractual interactions involving unknown parties, this change in the law of agency is need of the hour.

CHAPTER 3

RIGHTS AND DUTIES OF PRINCIPAL, THIRD PARTY

AND AGENT UNDER COMMON LAW

3.1 INTRODUCTION

It might be challenging to do work alone at times due to the bustle of daily life, necessitating the hiring of others to accomplish some tasks. At this point, the agency contract can serve as best facility and may come into force since it establishes a fiduciary relationship.¹³⁶ Further elaborate by **McCardie J. in Armstrong v Jackson**, as the agent has particular and burdensome obligations resulting from his role in undisclosed agency, and the fiduciary connection between the agent and principal is the basis for the high level of behavior expected from agent. According to Jackson, the agent's job status is confidential, abuse is easy to come by for him, to address the particular situation, a strict and advantageous rule is required. The existing principles of English law derive from the strictness initially enforced by Courts of Equity in situations where the fiduciary tie existed.¹³⁷ So in order to avoid possible ways for legal issues related to rights and duties, its necessary it should be clearly defined, which will be examined further.

The Pakistan's Contract Act 1872, deals with the law of agency, firstly glance over the definition of the terms "agent" and "principal" as an agent is a person chosen by a principal to represent them in business or other professional interactions with third parties. The agent is chosen to represent the principal by the principal.¹³⁸ The terms of any expressed or implicit agreement between the principal and the agent govern their rights and obligations. However, in addition to these particular

¹³⁶ "Rights and Duties of Agent in Contract of Agency," <https://www.writinglaw.com/rights-and-duties-of-agent-in-contract-of-agency/>. (accessed May 21, 2023).

¹³⁷ *Armstrong v Jackson* (1917). 2 KB 822 at 826 .

clauses, the very fact that the relationship even exists places some obligations on both parties. Particularly, the agent owes his primary fiduciary obligations.¹³⁹ Additionally, the agent of one cannot also be the agent of other person he is supposed to deal with. As the agent might be tempted to compromise one of his principles if he allowed this.¹⁴⁰ If both parties are aware of the double agency and agree to it, there can be no objection; otherwise, neither party will be able to compensate the agent. Additionally, if one party is aware of the double agency and is aware that the other party is unaware of it, the contract is voidable at the innocent party's request.¹⁴¹

3.2 UNDISCLOSED PRINCIPAL

Generally speaking, an undisclosed principal is a main individual whose existence is unknown to the third party with whom the agent transacts, rendering the agent to the third party to be the principal.¹⁴² Agents are held personally responsible if they fail to divulge the identify of their principal.¹⁴³ As in the cases of any fraud or wrong committed. So much of the money as is necessary to compensate for the loss cause thereby must be refunded, through the amount has been paid over to his principal.¹⁴⁴ Principal cannot be force to disclose himself if the other party gets knowledge about him not from the principal himself but from any other source.¹⁴⁵ Due to the fact that the principal is the real stakeholder, who was identified in the deal with his agency, third party should have the authority to hold him accountable once it learns who he is, subject to specific exceptions.¹⁴⁶

¹³⁹ A.G.GUEST M.A, *Anson's Law of Contract*, 26th ed. (United States: CLARENDON PRESS. OXFORD, 1984).

¹⁴⁰ *Gann v Zettler*, 60 S.E .

¹⁴¹ Alfred William Bays, *The Law of Agency and the Law of Partnership* (CALLAGHAN AND COMPANY, 1912)

¹⁴² "Undisclosed Principal," <https://www.Eaa.Org.Hk/En-Us/Information-Centre/Publications/Agency-Law/-10-Undisclosed-Principals>, (accessed May 5, 2023).

¹⁴³ Shaukat Mahmood, *The Contract Act*, 2nd ed. (Legal Research Center).

¹⁴⁴ *Ibid*

¹⁴⁵ *ibid*

¹⁴⁶ Roderick Munday, *Agency Law and Principles* (United Kingdom: Oxford University, 2010).

3.3 AGENTS DUTY TO PRINCIPAL

3.3.1 Agent's Obligation to manage Principal's Company

An agent representing a principal is expected to conduct the principal's business in line with the guidelines supplied by the principal, or in the absence of guidelines, in line with the custom followed at the site where the agent conducts such activities. In the event that the agent behaves differently, he has the responsibility of tracking any gains and compensating his principal for any losses.¹⁴⁷

3.3.2 Agent must follow Principal's Instructions

An agent must carry out his principal's orders. Even though the clearing agent prepares a bill of lading in his name, he does not become the owner of the goods. He is required to follow the directives of his superior, the true consignee.¹⁴⁸ The agent must behave sensibly even if a subagent is assigned.¹⁴⁹ An agent who negligently disregards the principal's orders, whether or not acting as a gratuitous agent, is guilty of gross negligence and liable for any damage to the principal that results.¹⁵⁰

3.3.3 Agent must follow custom

If there is a commercial tradition controlling the situation and since the principal has not given any instructions, the agent must adhere to the tradition. As a result, agent is not responsible for any damages incurred by the principal due to the mixing of the principal's commodities for sale with other items in line with commercial practice.¹⁵¹ However, it was determined that in cases where the plaintiff bought goods on behalf of the defendants and sold them without the defendants' consent,

¹⁴⁷ Contract Act 1872, Sec 211.

¹⁴⁸ PLD 1973 Kar.49

¹⁴⁹ AIR 1930 Lah.974 (DB).

¹⁵⁰ AIR 1931 Lah.302

¹⁵¹ AIR 1929 Lah .591(DB).

he would be responsible for the losses the defendants suffered as a result of the unauthorized sale in the absence of a mercantile custom authorizing the plaintiff's action.¹⁵²

3.3.4 Fidelity to Principal

When an agent joins a group of speculators while serving as the principal's agent and artificially inflates the rates before settling on the basis of these rates, then there is a blatant breach of the agent's obligation to the principal. This is because as the agent has a fiduciary obligation to the principal, he is not permitted to take any activities that would violate that duty or generate any hidden profits.¹⁵³

3.3.5 Expertise and Hard work.

If the agent's lack of expertise is not known to the principal, the agent must manage the agency's operations with a level of competence that is equivalent to others in related professions. The agent must use diligence and make use of their own abilities. They are accountable for covering any direct costs brought on by their carelessness, incompetence, or wrongdoing on behalf of the principal. However, they are not responsible for losses or damages that are caused by such activities remotely or inadvertently.¹⁵⁴ Agent is always required to exercise reasonable care, make good use of his skills, and compensate his principal for any direct damages resulting from his own negligence.¹⁵⁵ The agent's and principal's capacity to be reasonable depends on custom and accepted business procedures. An agent is not liable for damage brought on by a lack of insurance if they routinely transport things by rail without insurance without the principal's consent.¹⁵⁶ The rights of the principal are to demand an accounting and payment for illicit and hidden gains,

¹⁵² AIR 1929 Lah .666(DB).

¹⁵³ AIR 1928 Lhr.196 =9 Lah.7 (DB)

¹⁵⁴ Contract Act 1872,Sec 212.

¹⁵⁵Shaukat Mahmood, *The Contract Act*, 2nd ed. (Legal Research Center).

¹⁵⁶ *ibid*

recover damages for lack of skill, care, and obedience to the directive, or to thwart the agent demonstrates that he acted on behalf of the principal in order to support their claim for repayment and compensation.¹⁵⁷

3.3.6 Agent's Accounts

When requested, the agent must give the principal accurate and full transaction records.¹⁵⁸ The accounts must be provided by the principal to the agent at the location of his business upon request.¹⁵⁹

If an agent who has been detained and accused of misappropriation is still an agent and accountable for realization at that time. Payments received by the agent on behalf of the principle must be reported to the principal under any illegal or invalid contracts, and he is not permitted to use the contract's illegality as an excuse for withholding payments.¹⁶⁰

3.3.7 Right of Agent to retain money from funds received on behalf of Principal

Any sums due to the agent for reasonable expenditures incurred or advances made while conducting business may be deducted from any cash received as the principal's representative in the course of agency operations. The agent also has the right to keep the agreed-upon payment for their services as an agent.¹⁶¹

For any legitimately incurred expenditures, the agent is qualified to get a lien or retainer against funds belongs to the principal that are in his possession. In such circumstances, the issue of limitation is moot.¹⁶²

¹⁵⁷ *ibid*

¹⁵⁸ Contract Act 1872, Sec 213.

¹⁵⁹ *ibid*

¹⁶⁰ *ibid*

¹⁶¹ Contract Act 1872, Sec 217.

¹⁶² Shaukat Mahmood, *The Contract Act*, 2nd ed. (Legal Research Center).

3.3.8 Agent's Obligation to Reimburse Principal amounts received

The Agent shall transmit to the Principal all sums received on the Principal's behalf after making the necessary deductions as set out above. To put it another way, the agent must give the principle the remaining cash after deducting their legal costs and compensation.¹⁶³ Any individual operating as an agent is required to give their principal a proper account of any money they collect while claiming to do so on their behalf. The agent does not have the right to keep the money for personal purpose just because the master could not have enforced it.¹⁶⁴ An agent who receives money on behalf of his principle under an invalid or illegal contract is required to give his principal an account of the funds they have received. When the other contractual party paid the money, he could not use the contract's illegality as a defense for withholding payments in an action brought by the main.¹⁶⁵ The explanation is two fold, first given the position of absolute confidence and trust in which he stands toward his principal, it does not fall within the purview of an agent to seek refuge behind such a justification. Second, the person from whom the agent got the benefit renounced any objections regarding the benefit's legality and actually paid the money.¹⁶⁶ When a party sues an agent for money, the agent is entitled to set off any funds that are his but are held by the principal. As a result, in a lawsuit brought by the primary bank, the agent may offset the money the agent put in the bank.¹⁶⁷

3.3.9 When the Agent is entitled to payment

The Agent shall not be entitled to remuneration for the Agent's services until the Agent has fully performed the stipulated act or job, absent any explicit agreement. Even if not all of the consigned

¹⁶³Contract Act 1872, Sec 218.

¹⁶⁴ Shaukat Mahmood, *The Contract Act*, 2nd ed. (Legal Research Center).

¹⁶⁵ *ibid*

¹⁶⁶ *ibid*

¹⁶⁷ *ibid*

items have been sold or the sale process is not yet complete, the agent does have the right to keep any money received on account of the products sold. In certain circumstances, the agent may decide to keep the money until the transaction is complete.¹⁶⁸ Except where there is an express agreement or special custom to the contrary, when an agent's compensation is payable upon the performance by him of a specific or specific undertaking, he is entitled to payment as soon as he has substantially completed all that he undertook to do.¹⁶⁹ The agent will be entitled to any commission when a contract is simply to procure a loan by the agent for the principal and the latter procures the same but only in accordance with certain conditions that the principal does not assent to. The terms of the contract were simply to procure a loan without any conditions at all.¹⁷⁰

3.3.10 Agent not entitled to remuneration for business mis-conducted

An agent loses their entitlement to compensation for the specific component of the agency's business that they mismanaged if they act improperly when managing the agency's affairs. In other words, the agent does not have a claim for payment for the portion of the transaction in which they behaved unlawfully. Because of their behavior, their compensation may be withdrawn.¹⁷¹ The guiding idea of this section is that a principal is only entitled to commission from an honest agent and not from someone whose activities are intended to harm that principal's interests.¹⁷² If an agent has engaged in misconduct or committed a wrongdoing while performing his obligations, he forfeits any right to compensation for services performed. Therefore, if a bailee unjustly converts property that is with him while acting as an agent, he would not be entitled to any costs for maintaining the property with him before the conversion.¹⁷³ A principle cannot pay any

¹⁶⁸ Contract Act 1872, Sec 219.

¹⁶⁹ Shaukat Mahmood, *The Contract Act*, 2nd ed. (Legal Research Center).

¹⁷⁰ *ibid*

¹⁷¹ Contract Act 1872, Sec 220.

¹⁷² *ibid*

¹⁷³ PLD 1961Kar.275 (DB).

compensation to an agent who falsely advertises themselves as such and the principal is unaware of this.¹⁷⁴

3.3.11 Agent's lien on Principal's Property

An agent has the right to retain possession of the commodities, papers, and any other property, whether mobile or immovable, obtained from the principal, unless a special agreement states otherwise. The agent may keep these things until they get paid in full or get a proper account for the commission, expenses, and services they rendered in connection with those things. In essence, the agent has the authority to retain custody of the principal's belongings until they are paid their dues.¹⁷⁵ The limited scope of an agent's lien to commission includes just specified particular items or objects. He does not hold the authority of a mortgagee who may keep control of the property until he is paid.¹⁷⁶ In the event that an agent incurs expenses prior to the passing of an order for the company's winding up, the Court is not authorized under Section 149 of the Companies Act to deny him the right to remain in possession of such assets, unless the agreement between the company and the agent specifically excludes the operation of this particular provision.¹⁷⁷

3.4 RIGHTS AND DUTIES OF PRINCIPAL

3.4.1 Right of Principal in cases when agent transacts in agency business on his own account without principal approval

The principal has the right to reject or repudiate any transactions that an agent enters into on their own behalf that are linked to the agency's business without first receiving the principal's approval and without revealing all pertinent information that is available to the agent. This power may be invoked if it is clear that the agent either acted in the principal's best interests or dishonestly

¹⁷⁴ *ibid*

¹⁷⁵ Contract Act 1872, Sec 221.

¹⁷⁶ Shaukat Mahmood, *The Contract Act*, 2nd ed. (Legal Research Center).

¹⁷⁷ *ibid*

concealed significant information from the principal. Due to the agent's lack of openness or the potential harm to the principal's interests, the principal may choose to reject the transactions the agent has performed in certain circumstances.¹⁷⁸ An agent cannot be permitted to benefit from his agency above his legitimate compensation as an agent without the principal's knowledge and approval.¹⁷⁹ Any understanding between the servant or agent and a third party who enters into a contract with the master or principal that is likely to benefit him will give him the right to rescind the contract with that third party when there is a conflict between duty and interest.¹⁸⁰

3.4.2 Principal's entitlement to any benefits received from an agent acting on his own behalf in an agency transaction

The principal has the right to claim any advantages or benefits that the agent may have had from that transaction if the agent does business on behalf of the agency but does so without disclosing them to them. In other words, the agent's gains or advantages from the business operations might be claimed for the agent's own account rather than the principal's. Any profits gained from such improper conduct must be returned to the principle or paid in compensation. Only when an agent generates money in a way that isn't consistent with his role as an agent does this part come into play. When the defendant isn't at all an agent, it doesn't apply.¹⁸¹

This clause prohibits the principal from keeping the agent's earnings when the agent earns money operating in a capacity unrelated to that of an agent. The principal cannot approve the acquisition of a property in a court proceeding made by an agent acting independently of the principle and against the principal's instructions since the purchase was not made in the course of the agency.¹⁸²

¹⁷⁸ Contract Act 1872, Sec 215.

¹⁷⁹Shaukat Mahmood, *The Contract Act*, 2nd ed. (Legal Research Center).

¹⁸⁰ *ibid*

¹⁸¹ *ibid*

¹⁸² *ibid*

An agent has a duty to both protect and advance the interests of his principal. He must avoid situations where his interests could conflict with those of the principal.¹⁸³

3.4.3 Agent to be indemnified against consequences of lawful acts

Any damages sustained by the agent as a result of any legal measures he takes while acting within his power must be paid for by the agent's employer.¹⁸⁴ The agent's claim to indemnification emerges and is enforceable as soon as he assumes the obligation; it is not contingent on his also discharging the liability. As a result, it was determined that, consistent with the principles of Section 222, the commission agent who had entered into a contract with the buyer to buy and ship goods on his or her behalf and at the risk of the buyer were not to be held responsible for the loss when the goods were lost due to the outbreak of war while they were in transit..¹⁸⁵ The agent may seek compensation for his principal even without real proof of a loss.¹⁸⁶

3.4.4 Agent to get indemnification for actions taken in good faith

When a person appoints another person to do a task, and that person completes the work truthfully and in good faith, the employer is obligated to pay that person for any consequences that emerge from that decision, even if those consequences jeopardize the rights of third parties.¹⁸⁷ An agent is entitled to deduct funds permitted by the principle but spent by him for unlawful purposes in a lawsuit brought by the principal against the agent, however he may not be successful in a lawsuit to recover the funds thus spent.¹⁸⁸

¹⁸³ *ibid*

¹⁸⁴ Contract Act 1872, Sec 222.

¹⁸⁵ Shaukat Mahmood, *The Contract Act*, 2nd ed. (Legal Research Center).

¹⁸⁶ *ibid*

¹⁸⁷ Contract Act 1872, Sec 223.

¹⁸⁸ Shaukat Mahmood, *The Contract Act*, 2nd ed. (Legal Research Center).

3.4.5 Non-liability of employer of agent to do a criminal act

The employer is not required to pay the agent, either explicitly or implicitly, for any consequences resulting from the unlawful conduct committed by the person who hired the other person.¹⁸⁹

3.4.6 Agent's compensation for harm brought on by principal's negligence

Any loss or injury to the agent brought on by the principal's carelessness or lack of expertise must be compensated for by the principle.¹⁹⁰ Regardless of whether he has discharged such obligations or not, a pucca adatia is entitled to reclaim from his principle the amount of liabilities he had accrued while settling the deals he had carried out under his principal's instructions.¹⁹¹

3.5 AGENT'S IMPACT ON TERMS OF CONTRACT WITH THIRD PERSONS

3.5.1 Contract enforcement and ramifications for agents

Contracts entered into through an agent and obligations resulting from the agent's conduct are enforceable and have the same legal consequences as if the principal had personally entered into and carried out the contracts and acts.¹⁹² An agreement formed by an agent is enforceable against the principal for whom it was made. Therefore, a mine manager has the authority to bind the mine owner to a contract. The Railway is liable for the goods when a Station Master accepts bailment, who has the authority to do so. The consignor of the goods is also obligated by a risk letter signed by a person who really delivered the items. Railways.¹⁹³ A deed signed by a legitimate representative in the president of Pakistan's name and on his behalf is required for him to be bound by a contract.¹⁹⁴

¹⁸⁹ Contract Act 1872, Sec 224.

¹⁹⁰ Contract Act 1872, Sec 225.

¹⁹¹ *ibid*

¹⁹² Contract Act 1872, Sec 226.

¹⁹³ Shaukat Mahmood, *The Contract Act*, 2nd ed. (Legal Research Center).

¹⁹⁴ *ibid*

3.5.2 Principal how far bound, when agent exceeds authority

Only the portion of an agent's acts that are within their allowed scope will be enforceable between the agent and the principal if the agent exceeds the power assigned to them and it is possible to discern between those actions and those outside of it. Any text that deviates from their purview will not be regarded as binding.¹⁹⁵ When the principal ends the lease and instructs the agent to take possession, the agent's ability to collect rent is terminated, and any subsequent acceptance of rent by the agent—which would be unlawful—would not bind the principal.¹⁹⁶ Public agents are subject to the standard laws of agency, and the government is not obligated by the unlawful actions of its employees. Only to the extent of the authority granted to such officials would it be liable.¹⁹⁷

3.5.3 Principal is not obligated when an agent's excess power cannot be divided.

The principal is not required to recognize or approve the transaction if the agent exceeds the scope of their authority and it is hard to tell which activities are inside and which are outside of it. The principal may then deny the transaction as a whole.¹⁹⁸ He is also accountable for the act of the agent if the unlawful act of the agent cannot be distinguished from the approved act. As a result, when the agent is given permission to purchase cotton at a specific period. However, the agent makes a separate purchase agreement, and the principal is not bound by the terms of the agent's agreement with regard to a third party.¹⁹⁹ Where a partner is permitted to draw a bill up to a particular amount, drawing a bill to a higher amount without the firm's knowledge would not subject the firm to liability above the permitted amount.²⁰⁰

¹⁹⁵Contract Act 1872,Sec 227.

¹⁹⁶Shaukat Mahmood, *The Contract Act*, 2nd ed. (Legal Research Center).

¹⁹⁷ *ibid*

¹⁹⁸Contract Act 1872,Sec 228.

¹⁹⁹ *ibid*

²⁰⁰ *ibid*

3.5.4 Consequences of notice given to agent

As long as it takes place during the course of the agent's business activities on behalf of the principal, any notice given to or information obtained by the agent will have the same legal ramifications for the principal and third parties as if the notice or information had been directly obtained by the principal.²⁰¹ In interacting with the third party, an agent completely represents his principle, and whatever knowledge he acquires while working in the course of his employment must be regarded as belonging to that main.²⁰² Because they are more than just its agents, a bank is assumed to have knowledge of its main officials. Their behavior and actions are sufficient to assert an estoppel defense against the agent.²⁰³

3.5.5 Agent cannot personally enforce, nor be bound by, contracts on behalf of

Principal

Without an explicit agreement to the contrary, an agent is not personally liable for any transactions entered into on behalf of their principal and is not permitted to enforce such contracts unilaterally.²⁰⁴

3.5.6 Rights of Parties to a contract made by agent not disclosed

The other contracting party has the same rights against the principal as he would have had against the agent if the agent had been the principal if an agent enters into a contract with a party who neither knows nor has reason to suspect that the agent is acting in that capacity. If the principal makes himself known before the contract is finished, the other contracting party may refuse to fulfill the terms of the agreement if he can demonstrate that he would not have entered into the

²⁰¹ Contract Act 1872, Sec 229.

²⁰² Shaukat Mahmood, *The Contract Act*, 2nd ed. (Legal Research Center).

²⁰³ *ibid*

²⁰⁴ Contract Act 1872, Sec 230.

agreement if he had known who the principal was in the contract or if he had known that the agent was not a principal.²⁰⁵

According to this provision, the principal is bound by any equities that arise between the agent and the contractual party as well as being able to claim the full benefit of any contracts entered into by the agent in his or her own name.²⁰⁶

3.5.7 Performance of contract with agent supposed to be principal

When two parties enter into a contract without either party knowing or having a good reason to believe the other is acting as an agent, the principal (if seeking enforcement of the contract) can only obtain performance subject to the rights and obligations already in place between the agent and the other party to the contract.²⁰⁷

An undisclosed principal has a general right to enforce a contract entered into by his agent. Under this section, the general right of the principal to require performance is subject to the rights or obligations that existed between the agent and the other contracting party. Thus section 232 is to be read as qualification of the first portion of para 1 of section 231.

3.5.8 Right of person dealing with agent personally liable

An individual dealing with the agent has the choice to hold either the agent or the principal responsible, or even both of them, for any obligations that may emerge in circumstances where the agent carries personal liability.²⁰⁸ Therefore, unless he has renounced that right, a person who has entered into a contract with an agent may inquire with the principal directly whenever and however

²⁰⁵ Shaukat Mahmood, *The Contract Act*, 2nd ed. (Legal Research Center).

²⁰⁶ Contract Act 1872, Sec 231.

²⁰⁷ Contract Act 1872, Sec 232.

²⁰⁸ *ibid*

he pleases. The opposite party may choose to hold the agent's principal accountable in addition to or instead of the contract obligations if the agent specifically contracts in his or her own name.²⁰⁹

CONCLUSION

By examining the extent of the agent's power, it has been highlighted the importance of clearly defining and communicating these powers to prevent unauthorized actions and mitigate potential legal issues. The study has shed light on the legal implications for third parties dealing with agents and principals. In conclusion, the law of agency serves as a cornerstone of modern commerce, facilitating effective representation, delegation of authority, and protection of interests. Understanding the roles and rights of agents, principals, and third parties is essential for maintaining ethical business practices, upholding legal standards, and fostering trust in commercial relationships. As global marketplace is evolving rapidly, the insights gained from this research will undoubtedly contribute to the continued development and refinement of agency law for years to come.

²⁰⁹ *ibid*

CHAPTER 4

COMPARISON OF ENGLISH AND PAKISTAN LAW OF AGENCY

4.1 INTRODUCTION

The Common Law Doctrine of Privity prevents third parties from benefiting from contracts or being held accountable for their actions. Agency is one of the exceptions to this rule, though it is acknowledged that the agent's legal identity melded with the principal in circumstances involving agency.²¹⁰The applicability of the doctrine of privity's exemption for agency in situations when agency is not disclosed makes it somewhat controversial. In such circumstances, the third party first enters into a contract with the agent without being aware of the existence of undisclosed principal. As a result, it is unclear and up for discussion how much the undisclosed principal should be held to be bound by the contract.²¹¹But when a third party is involved, a number of fundamental problems and complexity appear that can make it more difficult to preserve the third party's right if the contract has an express consideration provision.²¹²According to Mechem, the undisclosed agency is "undoubtedly an anomaly, but even so...as well established as any other rule in the law of agency."²¹³ Professor Tan Cheng Han proposes that the undisclosed principal doctrine and privity doctrine can nevertheless be reconciled through the concept of the third party's implied intention to contract with the principal. Tan draws this idea from *Teheran-Europe Co Ltd v S T Belton (Tractors) Ltd*, where Diplock LJ said:

²¹⁰ Muhammad Kamran Akbar, "Legal Value of Third Party Right over a Valid Contract," *Journal of Applied Environmental and Biological Sciences*, Text Road Publications 7, no. 7 (2017): 175-179

²¹¹ *ibid*

²¹² *ibid*

²¹³ *ibid*

Where an agent has ... actual authority and enters into a contract with another party intending to do so on behalf of his principal, it matters not whether he disclosed to the other party the identity of his principal, or even that he is contracting on behalf of a principal at all, if the other party is willing or leads the agent to believe that he is willing to treat as a party to the contract anyone on whose behalf the agent may have been authorised to act. In the case of an ordinary commercial contract such willingness of the other party may be assumed by the agent unless either the other party manifests his unwillingness or there are other circumstances which should lead the agent to realise that the other party was not so willing.²¹⁴

4.2 REASONING FOR THE UNDISCLOSED PRINCIPAL INTERVENTION

When the identity of the contracting parties is unimportant to them, the court permits the participation of an undisclosed principle in the contract. An illustration of this is the case of "Fred Drughorn," where the court found that the agents were really working on behalf of an unnamed principle. The court acknowledged that although the agent identified himself as a "charterer," this description did not confine him to that role. The court defended its choice by saying that it was in line with common sense and customary business procedures. This accommodating approach by the court, allowing the agent to enter into agreements on the unnamed principle's behalf and enabling either the agent or the principal to bring a claim based on those agreements, emphasizes how hidden agency poses a threat to the idea of privity of contract. It demonstrates how the traditional concept of privity, which forbids third parties from exercising rights or incurring obligations under a contract, can be overturned by the presence of an unknown principal.²¹⁵

²¹⁴ <https://ojs.victoria.ac.nz/vuwlr/article/download/7742/6890/10895> (accessed December 29, 2023).

²¹⁵ Fred Drughorn Ltd v Rederiaktiebolaget Transatlantic [1919] AC 20.

Additionally, the *Siu Yin Kwan v. Eastern Insurance Co.* case serves as a prime example of the court's tolerant attitude toward permitting an unidentified principle to interfere in agreements between the agent and third parties. The court stressed that a concealed principal's participation should be permitted since, in insurance arrangements, the parties' identities are not relevant. In fact, it advocated for assuming that the forms "may have been completed by an agent." Lord Lloyd further emphasized that the fact that it was a typical business arrangement allowed for the concealed principal's participation. Intervention is permitted to maintain the favorable presumption in commercial matters when a concealed principle acts behind the conduct of an agent in typical business settings. The priority given to commercial convenience plainly contradicts the idea of privity of contract in this strategy. The third party may use any defenses provided in the contract with the agent against the hidden principle in addition to the undisclosed principal's ability to sue and be sued in a transaction to which they are not a party. This demonstrates how the standard idea of privity is contested since the parties' rights and responsibilities go beyond the typical scope of the contract.²¹⁶

The principle of election in the case of *Clarkson Booker v Andjel*²¹⁷ shows a loose attitude toward the third party's decision of who to sue. The court acknowledged that both the secret principle and the agent may be subject to legal action in circumstances of unauthorized agency "until the proceedings are taken to judgment or a conclusive election is made." Given that the third party did not know the concealed principle existed when the contract was made, letting the plaintiff choose who to sue is a just and reasonable strategy. This recognition of the third party's freedom to decide whether to involve and hold responsible the secret principal strengthens the argument that undisclosed agency undercuts the conventional idea of privity of contract. It illustrates how the

²¹⁶ *Siu Yin Kwan v Eastern Insurance Co Ltd* [1994] 2 AC 199.

²¹⁷ *Clarkson Booker v Andjel* [1964] 2 QB 775.

contract's obligations and rights go beyond the parties directly engaged, contradicting the conventional notions of privity.²¹⁸

The law involving unnamed principals has drawn criticism from certain quarters, but supporters counter that it is consistent with business reality. Despite the fact that the unnamed principle may not be expressly specified in the contract, they do exist and control the agent's behavior. The agent only serves as the principal's tool for action. There appears to be no unfairness in holding the principle directly responsible to the third party or permitting them to enforce the contract against the third party because the principal controls the agent and profits from the agreement with the third party. Even though the concealed principal is not explicitly specified in the contract, the rule still recognizes its factual existence.²¹⁹

4.3 LIMITATIONS ON THIRD PARTY RIGHTS

In accordance with common law, other parties may hold the unnamed principle accountable for agreements made by the agent. Four "exceptions" that limit this ability include ratification, authority limitations, discharge of the principal through agreements with the agent, and election.²²⁰ It is proven that the principle and agent, as opposed to the third party, are the primary beneficiaries of the law's encouragement of concealment and secrecy in concealed agency.²²¹ Here

²¹⁸ "Critically Analyse the Extent to Which the Principles of Undisclosed Agency Undermine the Notion of Privity of Contract," *Practical Solution through Industry Expertise* (blog), <https://masonhayes.co.uk/critically-analyse-the-extent-to-which-the-principles-of-undisclosed-agency-undermine-the-notion-of-privity-of-contract/>. (accessed May 8, 2023).

²¹⁹ *Friedmann Equity Developments Inc. v. Final Note Ltd.*, No. [2000] 1 S.C.R. 842. *Keighley Maxsted & Co. v. Durant*, [1901] A.C. 240 (H.L.), *Lindley Law Journal* : 261 ; E. J. Weinrib, "The Undisclosed Principle of Undisclosed Principals" (1975), 21 *McGill L.J.* 298.

²²⁰ Paridhi Poddar, "The Rationalisation of Third Party Rights under the Law of Undisclosed Agency," *NALSAR Stud .L.Rev* 13, no. 1 (2019).

²²¹ *ibid*

the legal status of contracts under English common law and Pakistani law will be compared and contrasted.

4.4 DOCTRINE OF ELECTION

According to the theory of election, where many inconsistency remedies are available, selecting one of them bars the party from pursuing any other remedy.²²² The theory of election requires the third party to choose whether to pursue legal action against the principal or the agent in cases involving hidden agency. Although it is regarded as a procedural problem, it is intimately related to the understanding of the three persons engaged in concealed agency. According to this approach, the third party is subject to severe duties under English law, allowing just one claim under the contract and giving the agent's and the undisclosed principal's culpability the benefit of the doubt.²²³ When a third party wins a judgment against the agent under the single claim technique, their claim against the principal is combined with the decision against the agency.²²⁴ This means that even if they weren't aware of the principle's existence when they obtained the judgment against the agent, it is forbidden for the third party to pursue the concealed principal.²²⁵

Under English law, two crucial issues come up: First, even if the third party was not aware of the principal's existence, their right to sue the unnamed principle is barred. Second, the bar is not triggered by the initiation of legal action against one of the parties but rather only when a decision is reached. These factors make this rule more closely related to the concept of merging than the idea of election. Contrary to the theory of election, the party making the election is not necessary

²²² Maurice H. Merrill, "Election between Agent and Undisclosed Principal: Shall We Follow the Restatement", 12 NEB. L. BULL. 100, 119 (1933); *Chicago Tit. & Tr. Co. v. De Lasaux*, 168 N. E. 640, 642 (1929).

²²³ Sir Fredrick Pollock, Dinshaw Fardunji Mulla, *POLLOCK & MULLA: THE INDIAN CONTRACT AND SPECIFIC RELIEFS ACT.*, 14th ed., vol. 2 (Nilima Bhadbhade 2012).

²²⁴ *ibid*

²²⁵ *ibid*

to be informed of competing claims, and an election can be made based on action rather than merely obtaining judgment.²²⁶

The Contract Act's Sections 230 and 233 deal with the election rule. According to Section 230, the party dealing with the agent may hold either the agent or the principal, or both, accountable for the contract where the agent is personally liable.²²⁷

An agent is not personally obligated by, and is not permitted to personally enforce, agreements entered into on behalf of their principal, unless the express terms of the agreement provide otherwise. A contract to the contrary, however, shall be deemed to exist under the following circumstances:

1. When the agent enters into a purchase or sale agreement on behalf of a foreign-based business.
2. When the agent withholds their principal's name.
3. When the principal cannot be sued even after disclosure.²²⁸

The section's phrasing first raised questions about whether it intended to depart from the English approach, where the principal and agent's culpability is alternative, in favor of joint liability. The objective, however, was to mimic English law, as shown by the writing history.²²⁹

It depends on the parties' purpose as inferred from the nature, terms, and surrounding circumstances of the contract as to whether an agent is personally bound by the contract or works only on behalf of the principal in situations not covered by the exceptions in Section 230. The

²²⁶ Karl Stecher, "The Doctrine of Election as Applied to Undisclosed Principal and Agent", *Mississippi Law Journal* (1935) :466, 471.

²²⁷Contract Act ,1872,Sec 233.

²²⁸ Contract Act 1872,Sec 230.

²²⁹ Paridhi Poddar, "The Rationalisation of Third Party Rights under the Law of Undisclosed Agency," *NALSAR Stud .L.Rev* 13, no. 1 (2019).

agent is not personally obligated by the contract, unless otherwise stated in the clause. As a result, the principal and the agent cannot be held accountable for the same contract's breach in separate lawsuits. This norm is true even if the agent enters into a contract on behalf of the principal while acting dishonestly and knowing they lack the necessary power. Even in these situations, the agent cannot be held liable for the contract if it was formed by them in their capacity as agent.²³⁰

As decided by the court in the following case *Bubna More and Co. Pakistan Ltd vs Modern Trading Co : (Pakistan)Ltd* (2)The plaintiffs ,Bubna More and Co .contracted to import from an Italian exporters 125 bales of cotton yarn through their Agents in Pakistan , Messers Modern Trading Company . After taking delivery of the goods , the plaintiffs found that the consignment was not properly packed , and the Surveyor's report further confirmed not only a shortage of 12500 lbs. of yarns but also the yarn was not of the standard specification . The Plaintiffs submitted the survey report to the exporter's agents ,Messrs Modern Trading Company (defendant No.1) and lodge a claim for 39,000, which the agents failed to pay. The agents denied their personal liability relying on the arbitration clause in the original contract which absolutely absolved the agents from any liability arising from such claim. The High Court upheld the lower court's decision and dismissed the plaintiff's appeal. Justice Akbar observed...

‘.....we have found that through their representative in Pakistan, the foreign firm and the plaintiff corporation entered into a deal.Furthermore, it is explicitly stated in the contract's arbitration clause that the agent will not be held personally liable for the dispute. Therefore, section 230(1)'s presupposition is refuted here.The Modern Trading Company (Pakistan) Limited undertook no

²³⁰ Frederick Pollock, *The Indian Contract Act: With a Commentary, Critical and Explanatory* (London: Sweet & Maxwell, 1905), https://books.google.com.pk/books?id=ohQZaD6kp08C&pg=PA584&source=gbs_toc_r&cad=3#v=onepage&q&f=false.

personal liabilityand is not liable and we do not think the mere circumstance that they had a foreign principal is enough to make them liable'²³¹

4.4.1 ANALYZING RULE OF ELECTION

There are three basic arguments in favor of the rule of election in matters involving secretive agencies. First, it harmonizes the law of undisclosed agency with the notion of the principle's and agent's identities, which holds that when the agent enters into a contract with a third party, only one obligation is formed.²³² Just one contract left, therefore the liabilities are substitute even if the third party has the choice of suing either the principal or the agent under the law of hidden agency. By permitting them to sue both parties afterwards, the theory of election precludes the third party from claiming that there are two contracts—one with the principal and other with agent.²³³ Furthermore, the election rule prohibits the third party from receiving a "undeserved windfall" due to the revelation of undisclosed principal.²³⁴ The goal of the rule of election in instances involving undeclared agencies is to prevent the third party from abusing the agent's good name while preserving the opportunity to select either the agent or the principal. This right shouldn't, however, enable the third party to arbitrarily pursue any party. Furthermore, mandating an early election is warranted for expediency since it eliminates uncertainty regarding the third party's decision between the principal and the agent, which might cause business annoyance.²³⁵

²³¹Aftab Ahmed, *Law of Contract and Agency In Pakistan*, 1st ed. (Multan: Amir and Asim Publications, 1987).

²³² Merton L. Ferson, "Undisclosed Principals", *University of Cincinnati Law Review*. (1953): 131, 159.

²³³ Maurice H. Merrill, "Election between Agent and Undisclosed Principal: Shall We Follow the Restatement", 12 *NEB. L. BULL.* 100, 119 (1933); *Chicago Tit. & Tr. Co. v. De Lasaux*, 168 N. E. 640, 642 (1929).

²³⁴ Merton L. Ferson, "Undisclosed Principals", 22 *University of Cincinnati Law Review*. 131, 159 (1953).

²³⁵ Election of Remedies by Party Dealing with Agent of Undisclosed Principal, 39(2) *YALE Law Journal*. 265 (1929).

4.4.2 CRITICISMS ON THE RULE OF ELECTION

Four basic reasons are used to challenge the election rule. First, in interactions involving unknown agents. There are two distinct duties: one owed by the agent due to the binding character of contract and another owed by the concealed principal based on equitable principles of agency law rather than directly from the contract.²³⁶ In fact, the agent's obligations arise from their position as a contracting party, whereas undisclosed principal's obligations derive from their status as a party to an agency agreement.²³⁷ Since there are two independent and non-contradictory responsibilities resulting from the particular characteristics of such partnerships, the common law notion of election is not applicable in situations involving secret agencies. Furthermore, the principal's appearance and the ensuing legal liabilities do not constitute an unfair benefit for the third party. The disclosure of the principle may cause bias when a third party hires an agent based on that agent's reputation since it might indicate that the agent is less reputable than they represented.²³⁸ The primary goal of legislation of undisclosed agency, which is to provide the third party with the financial gain they negotiated for in the contract, is therefore undermined by the execution of the rule of election.²³⁹ The rule of election enables the third party to choose litigation against the agent, whose credit they first trusted, as opposed to being forced to go after the concealed principle in opposition to their decision. Furthermore, the undeclared principle and agent themselves chose to sign into contracts while retaining secrecy, making the commercial expediency defense of election

²³⁶ Warren A. Seavey, "The Rationale of Agency", 29(8) *YALE Law Journal*. 859 (1920).

²³⁷ Mark A. Sargent & Arnold Rochvarg, "A Re-Examination of the Agency Doctrine of Election", *MIAMI Law Review*, 36 (1982): 411, 431.

²³⁸ Grover R. Heyler, "Undisclosed Principal's Rights and Liabilities: A Test of Election of Remedies", 39 *California Law Review*, (1951): 409, 412.

²³⁹ Maurice H. Merrill, "Election between Agent and Undisclosed Principal: Shall We Follow the Restatement", 12 *Nebraska Law Bulletin*. (1933): 100, 119 ; *Chicago Tit. & Tr. Co. v. De Lasaux*, 168 N. E. 640, 642 (1929).

invalid. Therefore, the principal and agent should be held responsible for any trouble brought on by concealment, not a third party.

The rule of election also places an additional duty on the third party to assess whether party—the agent or the concealed principal—is more solvent and likely to stay that way until the judgment is met.²⁴⁰ The third party might not have the data necessary to make this judgment, though. The majority of the time, procedural regulations in many jurisdictions forbid learning the defendant's net worth prior to the judgment being rendered.²⁴¹ This might result in the third party making the wrong decision and possibly losing a legitimate claim entirely.²⁴² For instance, the third party could elect to sue the main because they believe they have superior financial standing, but they may struggle to establish the agency link, which might result in the claim being rejected.²⁴³

4.5 SETTLEMENT OF ACCOUNTS

The rule of discharge by settlement of accounts, is the second regulation limiting the rights of third parties with relation to hidden principals. If the principle has already cleared their accounts with the agent before the agency is disclosed, this rule prevents the third party from pursuing the principal.

Rule governing account settlement may be traced to a statement made by Lord Tenterden in the case of *Thompson v. Davenport* (also known as "Thompson"). The requirement that "the state of the account between the principal and the agent [has not been] altered to the prejudice of the principal" is what limits the third party's ability to collect from the secret principal, he said".²⁴⁴

²⁴⁰ *ibid*

²⁴¹ *ibid*

²⁴² *ibid*

²⁴³ *ibid*

²⁴⁴ *Thompson v. Davenport*, 9 B. & C. 78 (Exch. 1829).

According to this observation, the principal may be released from their responsibility if they pay the agent in good faith and with the expectation that the third party will clear the agency's bills. However, with several courts taking conflicting positions, the judicial situation in England remained ambiguous for a while. The rule of discharge by settlement from Thompson was rejected in *Heald v. Kenworthy* ('Heald'). Whether or not the third party is aware of the secret principal's existence, according to Lord Parke, making a payment to the principal's agent will not absolve them of their obligation to make payment to the third party. The principal is still responsible for seeing that the agent pays the third party. The case did, however, leave open the prospect of restricting third parties' rights. It was said that the third party's ability to collect from the principal could be barred if the third party's actions lead the principle to believe that the agent and third party have reached a settlement, causing the principal to pay their agency.²⁴⁵

However, *Armstrong v. Stokes* (known as "Armstrong") marked another shift in the law).²⁴⁶ The Armstrong court upheld the Thompson rule, ruling that the principal may be discharged from debt if payment is paid to the agent before the agency is disclosed. The case was reexamined in *Irvine & Co. v. Watson & Sons* (the "Irvine" case) because of inconsistent rulings),²⁴⁷ which maintained the Heald rule as the legitimate legal interpretation. Therefore, under current English law, a third party may only bring a claim against the when "it was reasonable [for the principal] to infer [from the third party's conduct] that the agent has already settled with such third party, or that the latter looks exclusively to the agent for payment," the principle may be compensated under this rule."²⁴⁸

²⁴⁵ *Heald vs Kenworthy* ,(1855) 10 Excg 739 .

²⁴⁶ *Armstrong vs Stokes*. (1872) L.R 7 Q.B.D 798 .

²⁴⁷ *Irvine & Co. v Watson & Sons*, (1880) 5 Q. B. D. 414.

²⁴⁸ Karl Stecher, "The Doctrine of Election as Applied to Undisclosed Principal and Agent", *Mississippi Law Journal* (1935): 466, 471.

The Contract Act leaves open the question of whether any agreement reached by an unnamed principle and their agent can absolve the principal of responsibility to a third party. The topic of concealed agency has not yet been litigated. Since the Contract Act does not cover every aspect of agency law, these situations could be controlled by common law rules and rulings from the courts.²⁴⁹ Pakistan's contract law is significantly influenced by English law, hence English common law ideas and rulings may have a big influence on Pakistan's legal system.²⁵⁰ The approach established in Irvine is likely to be followed by a Pakistani court if such a case is brought before it. This conclusion is supported by Contract Act -Section 234, which said that a third party cannot later hold the principal (or the agent, respectively) liable if they misled the principal into believing that only they would be held liable during the contracting process.

In the case of FIDA MUHAMMAD VS PIR MUHAMMAD KHAN (DECEASED) THROUGH HIS LEGAL HEIRS AND OTHERS, it was ruled that the agent must obtain the principal's consent after disclosing all pertinent information before dealing with the property covered by the agency for his or her own account, such as buying it for himself or his own benefit. The principal has the power to reject the transaction if the agent doesn't do that.²⁵¹

4.6 ANALYZING THE RULE OF DISCHARGE BY SETTLEMENT

Courts have endorsed the principle of discharge by settlement on the grounds of equity, contending as it would be unreasonable to require an undisclosed principal who has previously reached a settlement with their agent to pay the third party again. However, there are a number of problems with this logic. First off, the rule's application in Thompson and Armstrong, which restricted it,

²⁴⁹ Contract Act 1872 ,of Pakistan.

²⁵⁰ ibid

²⁵¹ PLD 1985 SC 341.

shows that the third party lacks an independent right against the concealed principal.²⁵² If the third party has a separate right of recourse against the primary, a deal between the principle and the agent cannot eliminate that right.²⁵³ According to this viewpoint, the law of undisclosed agency only refers to the 'assignment' of the agent's rights against the principal in favor of the third party following revelation.²⁵⁴ The equity standards, however, recognize the third party's autonomous right to take action against the concealed principle, thus this is not the case. These third party's equitable rights are presumptively known by the undisclosed agency, who cannot curtail them by just paying their agent.²⁵⁵

Second, Irvine limited the rule's application to circumstances in which the principal is persuaded to pay their agent as a result of the third party's actions. This strategy is appropriate given that the third party's ability to sue the concealed principle is grounded in equity, and as a result, the third party is ineligible to assert such a right if their own actions have been unfair.²⁵⁶ Nevertheless, the Irvine court finally decided that the restricted interpretation of the rule would be enforced, regardless of the third party's awareness of the principal's existence. The rule is predicated on the idea that even prior to the third party being informed of the principal's existence, they might persuade them to believe they were only depending on the agent for payment by their actions.²⁵⁷ This is a serious issue since a third party engaging with a partially revealed principle might unintentionally act in a way that inspires trust in the principal's thinking without being aware of their exact identity.²⁵⁸ According to the Irvine judgment, third party engaging with an agent posing

²⁵² Wolfram Muller-Freienfel, "The Undisclosed Principal", 16 MOD. L. REV. 299 (1953).

²⁵³ *ibid*

²⁵⁴ *ibid*

²⁵⁵ P. F. P. Higgins, "The Equity of the Undisclosed Principal", 28 MOD. L. REV. 167, 177 (1965).

²⁵⁶ Floyd R. Mechem, "The Liability of an Undisclosed Principal", 23 *Harvard Law Review*, (1910) : 513, 520.

²⁵⁷ *ibid*

²⁵⁸ *ibid*

as the principle cannot deceive a concealed principal they are fully ignorant of. This runs counter to the idea of enticement, presuming awareness.

Furthermore, it is difficult to define what counts as "misleading conduct" for the purposes of applying the rule, even when its application is restricted to enticement by a third party after becoming aware of the concealed principle. In order to prove a reasonable reliance on a third party's action changing their stance, the principal must meet a lesser standard for deceptive behavior than for election.²⁵⁹ But this situation could have unanticipated results. As an illustration, the third party can file a lawsuit against the agent (as principal) and fail to drop it after learning of the existence of the secret principal. This may make the principle think that the third party merely wants to sue the agent, which would make the main pay to settle the accounts. Even after the payment to the agent has been made, the third party may ultimately decide to pursue legal action against the principal. Due to the lack of litigation on this matter, its ramifications are still largely unknown.²⁶⁰ It's unclear whether or not this action qualifies as deceptive behaviour. To avoid making the principle make a second payment, it appears from the few decisions that have been resolved on this issue that courts tend to rigorously observe the norm. For instance, juries have determined that the third party's inability to request payment (from the main) within the predetermined time period²⁶¹ and an incorrect assumption about the agent's receiving money from the third party.²⁶² Conduct that causes the principle to pay the agent in reliance on such activities may be sufficient to discharge the principal.

²⁵⁹ *ibid*

²⁶⁰ *ibid*

²⁶¹ *Kymer v. Suwercropp*, 1 Camp. 110.

²⁶² *Wyatt v. Marquess of Hertford*, 3 East 147.

In addition, clause mandating that the principal to pay the third party even after settling accounts with the agent may not always result in unfair results. The principal may file a claim for violation of fiduciary duty to take legal action against their agent.²⁶³ However, rather than the third party, the principal who hired the unnamed agent should be responsible for bearing the risk of eventual loss if the amount paid cannot be recouped from the agent.²⁶⁴ Given that the principle chose a covert strategy and has the resources to assure payment to the third party, the risk allocation is appropriate. Therefore, the principal should be held accountable if they pay the agent without checking to see if they also paid the third party.

4.7 AUTHORITY

Unknown principals are exempt from the usual rule that an agent can hold their principle accountable for actions taken while acting under their apparent authority, even if they go against orders. This legal stance appears rational since a third party engaging with an agent under the impression that they are the principle cannot later assert that the principal should be held accountable based on the appearance of power in their agent (unaware of the true principal's existence) the standard rule that says an agent can hold their principal accountable for actions done while acting within their apparent authority,²⁶⁵ even if it is against the rules, does not apply to principals who are not revealed. This legal position seems reasonable since a third party engaging with an agent under the impression that they are the principle cannot later assert that the principal should be held accountable based on the appearance of power in their agent (unaware of the true

²⁶³ Contract Act 1872, Sec 211.

²⁶⁴ Michael L. Richmond, "Scraping Some Moss from the Old Oaken Doctrine: Election between Undisclosed Principals and Agents and Discovery of Their Net Worth", 66 Marquette Law Review, (1983): 745, 750.

²⁶⁵ Contract Act 1872 of Pakistan.

principal's existence).²⁶⁶ This provision, however, could unduly limit the rights of third parties that work with secret principals. The idea of apparent authority cannot be applied in English law to hold the unnamed leader responsible. As a result, the concealed principle is immune from liability to a third party for actions taken by their agent outside the bounds of their true power.²⁶⁷ Contrary to the normal rule, certain courts have adopted a different stance and found the concealed principle accountable in specific circumstances. The *Watteau v. Fenwick* case (sometimes known as "Watteau") is one such instance,²⁶⁸ Agent Humble was chosen by principal Fenwick to run his beer company. Humble was not allowed to buy anything other than bottled ales and mineral waters, despite the fact that his name was on the door and the company license. Nevertheless, Humble purchased cigars and Bovril from Watteau. Watteau then identified the undeclared principal as Fenwick and filed a lawsuit against him to recoup the cost of the products. Because it was impossible for the court to determine apparent authority directly, it decided that once the defendant (Fenwick) was proven to be the genuine principle, he would be held accountable for all actions taken by the agent (Humble) while acting within the scope of that agent's normal authority, regardless of any restrictions between the principal and agent. This rule was thought to be necessary to top hidden restrictions on agent authority from invalidating third-party claims made against principals. Even though the case has never been expressly overturned, it has not been widely embraced in later legal rulings. Academic literature has also criticized the *Watteau* case.²⁶⁹ Despite using the idea of "usual authority," academics contend that the *Watteau* decision really held the principle responsible because he "held-out" to the public that his agent had the

²⁶⁶ "Martin Schiff, "The Undisclosed Principal: An Anomaly in the Laws of Agency and Contract", *Commerce Law Journal*, (1983) :229, 232.

²⁶⁷ *Miles v McIlwraith*, (1883) 8 App. Cas. 120.

²⁶⁸ *Watteau v. Fenwick*.

²⁶⁹ "Erich C. Stern," A Problem in the Law of Agency", 4 *MARQ. L.REV.* 6 (1919); J. L. Montrose, Liability of Principal for Acts Exceeding Actual and Apparent Authority, 17 *CANADIAN B. REV.* 693, 695 (1939); J. A. Hornby, The Usual Authority of an Agent, 1961 *CAMB. L.J.* 239, 246 (1961); Michael Conant, Objective Theory of Agency: Apparent Authority and the Estoppel of Apparent Ownership, 47 *NEB. L. REV.* 678 (1968).

authority of the business's owner.²⁷⁰ Instead of outright rejecting the judgement, some academics suggest that it only apply in situations when an unidentified principle gives the agent "apparent ownership" of the company, as opposed to all instances of "apparent authority." This is due to the fact that in circumstances involving the former, a third party may credit both the agent (as principle) and the business he seems to control (but which, in reality, belongs to the principal).²⁷¹ Some academics support the result in *Watteau* by highlighting how analytically typical authority differs from ostensible authority and arguing that the case is not always dependent on apparent authority.²⁷² According to some academics, the verdict in *Watteau* is just and equitable. They contend that the provision establishes parity between the responsibilities of revealed and concealed principals by preventing dishonest principals from recruiting bankrupt, undisclosed agents and claiming secret restrictions on their authority.²⁷³

When an agent acts on behalf of the principle without the principal's permission and incurs obligations to third parties, the principal is nonetheless liable if the agent's actions led the third parties to believe that the agent was authorized to take those actions. Some academics defend the decision in *Watteau* by pointing out that the case is not always dependent on seeming authority and emphasizing the analytical distinction between true authority and apparent authority.²⁷⁴ A person who has the power to execute an act also has the power to carry out all legal steps required to complete that act. Similar to this, an agent who has been given the power to run a business is

²⁷⁰ "J. G. Collier, "Authority of an Agent – *Watteau v. Fenwick* Revisited", 44(3) *CAMB. L. J.* (1985); Goodhart & Hamson, *Undisclosed Principals in Contract*, 4 *CAMB. L. J.* 310 (1932).

²⁷¹ Pollock and fardunji Mulla, *POLLOCK & MULLA: THE INDIAN CONTRACT AND SPECIFIC RELIEFS ACT.*

²⁷² "Richard T. H. Stone,"Usual and Ostensible Authority - One Concept or Two"?,*Journal of Business Law.* (1993):325.

²⁷³Kevin M. Rogers, A Case Harshly Treated? *Watteau v. Fenwick* Re-Evaluated, 2(2) *HERTFORDSHIRE Law . Journal*, (2004): 26, 29.

²⁷⁴Contract Act 1872,Sec 237.

able to carry out all legal acts that are necessary for it to accomplish its goals or those that are generally carried out throughout the normal course of running such a corporation.²⁷⁵

The learned counsel used the indoor management philosophy and cited the rulings in *Dun and Muhammad Azim in the matter of AMJAD ARIF vs. MUHAMMAD ASHRAF SHAGUFTA*. The concept states that a firm is responsible for any actions taken by its directors, including those that are not approved, so long as such actions are within the scope of their apparent power.²⁷⁶

4.8 RATIFICATION

Ratification basically happens when a contract is signed and carried out on behalf of the party seeking to ratify it.²⁷⁷ Accordingly, and in accordance with the English decision of *Keighley Maxsted & Co. v. Durant* (known as "Keighley")²⁷⁸, the courts have ruled that ratification is not permitted where an agent merely wishes to bind the principal but does not profess or otherwise express that intention, as is evident in an undeclared agency.²⁷⁹ This stops an unidentified principle from not only allowing an unlawful act by their agent but also from being held accountable by a third party for such an agreement. Regarding the ratification of unnamed principals, there is no difference between the positions taken by English and Pakistani law. In both areas, the Keighley law is applied.²⁸⁰ The English court in *Keighley*, nevertheless, rejected this line of thinking due to the evidential ambiguity involved in determining the agent's goals, which are not proclaimed.²⁸¹ Therefore, ratification cannot be used by a third party to hold the unnamed principle accountable

²⁷⁵ Contract Act 1872, Sec 188.

²⁷⁶ PLD 1996 Lahore 711.

²⁷⁷ Contract Act 1872 of Pakistan.

²⁷⁸ *Keighley Maxsted & Co. v. Durant*, (1900) Q. B.D. 630.

²⁷⁹ *Keighley Maxsted & Co. v. Durant*, (1900) Q. B.D. 630; *Morgan v. Georgia Paving & Construction Co.*, 40 Ga. App. 335, 149 S. E. 426 (1929).

²⁸⁰ "Edwin C. Goddard, *Ratification by an Undisclosed Principal*, 2 *Michigan Law Review*, (1903): 25, 39.

²⁸¹ *ibid*

for the agent's improper actions.²⁸² However, concerned about the unjust consequences that such a limitation on ratification may have in cases where the principal gains benefits under an illegal contract, the Second Restatement of the Law of Agency provides a mechanism to allow some remedy to a third party. A person on whose behalf another acts or appears to act may be held accountable for the value of the advantages gained as a consequence of the first transaction, even in the lack of ratification, according to the Restatement...²⁸³ Such a relief, grounded in unjust enrichment, is also available under English and Pakistan's law.

4.8.1 ANALYZING THE RULE OF RATIFICATION

Due to the courts' consistent and severe interpretation of the doctrine's criteria, the doctrine of ratification has never been able to account for undisclosed agency ties.²⁸⁴

Goddard, who supports ratification by undisclosed principal, contends that the issue of ratification has to be reexamined in light of practicality and reason in the marketplace. In order to maintain commercial relationships between the parties as much as possible, he argues that ratification should be permitted.²⁸⁵ Goddard also asserts that the courts would maintain the agent's true purpose as it existed at the time the contract was formed by permitting ratification by the secret principle in situations where the agent 'intended' to act for the principal. He thinks that parties should not be denied substantive rights based only on a lack of clear evidence.²⁸⁶ Goddard claims further that it is only "fair" to permit the undisclosed principal to approve such contracts in order to "correct" the balance of rights if the law currently in effect permits the undisclosed principal be subject to a

²⁸² Timothy J. Sullivan, "The Concept of Benefit in the Law of Quasi-Contract", 64(1) *GEORGETOWN LAW Journal*. 1 (1975).

²⁸³ "Restatement (Second) of the Law of Agency, Section 104.

²⁸⁴ Edwin C. Goddard, "Ratification by an Undisclosed Principal", 2 *MICH. LAW. REV.* (1903): 25, 39.

²⁸⁵ *ibid*

²⁸⁶ *ibid*

third-party lawsuit that makes the principal accountable for more than the actual power he gave his agent.²⁸⁷ Rochvarg, on the other hand, is in support of ratification for the purpose to safeguard the third party's rights. He argues that courts must recognize how frequently denying ratification jeopardizes third parties' rights by denying the accountability of the concealed principal.²⁸⁸

Due to the courts' consistent and severe interpretation of the doctrine's criteria, the doctrine of ratification has not been able to account for concealed agency connections. Therefore, the third party does not have the right to ratify in order to hold the unnamed principle accountable for the agent's unlawful actions. Despite the arguments made by academics, the technicalities supporting the theory of ratification make it unnecessary to alter the current status of Pakistan's law. Ratification is complicated since it involves determining the agent's true purpose and the need that the act be performed "on behalf of another." However, legislative revisions could be able to allow the unidentified principle to ratify the agreement going back in time; however, such a privilege cannot be reconciled with the common law's conventional definition of ratification.²⁸⁹ He may choose to approve or repudiate actions taken on his behalf by another individual without his knowledge or consent. If he decides to approve them, the same results will occur as if they were carried out under his authority.²⁹⁰ This ratification may be explicitly stated or implied in the actions of the person acting on your behalf.²⁹¹ This legal stance means that even if a lawsuit is brought by someone with "no authority," the principal may subsequently validate any potential flaw. It is the principal's obligation to successfully question the agent's authority, not anyone else's (Messrs.

²⁸⁷ *ibid*

²⁸⁸ Arnold Rochvarg, "Ratification and Undisclosed Principals", *MCGILL Law Journal*. (1989): 286, 327-28.

²⁸⁹ Timothy J. Sullivan, "The Concept of Benefit in the Law of Quasi-Contract", 64(1) *GEORGETOWN LAW JOURNAL*. 1 (1975).

²⁹⁰ Contract Act 1872, Sec 196.

²⁹¹ Contract Act 1872, Sec 197.

MRS. Anjum Saleem and others vs. FIRST DAWOOD INVESTMENT BANK LIMITED).²⁹² The pertinent section of *Khyam Films and Others v. Bank of Bahawalpur Ltd.* implies that the principal may successfully contest the person's power. Even in the face of opposition, the principal's continued recognition of the agent's right to file the lawsuit might be construed as confirmation, establishing the suit's legality. The practice of drafting a preliminary issue on such grounds and postponing the main claim for years is criticized by the court as impeding on sound business operations.’’²⁹³

CONCLUSION

Pakistan’s agency law is quite similar to English agency law because it was evolved from English law. However, it becomes clear through a comparative analysis that Pakistan's agency legislation has several gaps that need to be closed in order to protect the rights of third parties. The equitable treatment and recompense of people who unintentionally enter into contractual agreements with unnamed principals is being compromised by these loopholes. When third parties sign a contract with someone who seems to be the principal, they find themselves in an unusual situation. The third party upon entering into the contract, demands recompense for any damages incurred over the course of the transaction, they learn that the person they negotiated with was not the genuine principal but rather was acting as a hidden agent. It becomes difficult for contractual agreements to operate fairly and effectively due to the ambiguity and lack of transparency in agency interactions.

The rights and interests of unwary third parties are seriously threatened by the presence of these loopholes. Due to these weaknesses, there is a risk of misuse and exploitation wherein unidentified

²⁹² 2016 CLD 920.

²⁹³ 1982 CLC 1275.

principals and agents can take advantage of contractual provisions to the detriment of other parties. These legal gaps must be closed in order to resolve these issues and guarantee a fair and open agency system. It is essential to strike the proper balance between supporting the ideals of openness and accountability and safeguarding the interests of all parties concerned. The law can prevent the abuse of secret agency arrangements and advance moral behavior in commercial interactions by setting forth explicit rules and regulations. Additionally, it's crucial to raise awareness among those participating in agency transactions. By understanding the principal's real identity and their roles inside the contract, this will help third parties make wise judgments. The rights of third parties can be safeguarded and any misunderstanding can be avoided by putting mechanisms in place to ensure disclosure of the principal's name. The judicial system can also put in place procedures for looking into dubious agency arrangements. Effective enforcement and sanctions for failing to disclose agency links can serve as deterrents against unethical behavior, preventing agents and principals from taking advantage of gullible people.

To preserve just and effective contractual partnerships, it is crucial to fix the gaps in Pakistan's agency legislation. The present flaws undercut accountability and transparency, allowing unidentified principals and agents to take advantage of third parties. All parties participating in contractual agreements can benefit from a more equitable and reliable agency system, which can be fostered by the legal framework by enforcing fines, enacting suitable laws, and raising aware

CHAPTER 5

CONCLUSION AND RECOMMENDATIONS

5.1 CONCLUSION

In the field of law, the term undisclosed principal relates mainly to the liability of an agent for obligations incurred on behalf of a principal. If the agent does not disclose the nature of his agency (the fact that he acts on behalf of another) and thus does not disclose the name of the principal, the agent may be held personally liable for his actions. If, however, the agent disclosed his agency and the name of the principal (disclosed principal), he will normally not be held liable for commitments undertaken within his authorized agency. A dummy buyer may sometimes have an undisclosed principal.

When the rights of an undisclosed principal are in question courts recognize that he was in a better position to protect himself than the outsider. Therefore his rights are limited by any defense or claim the defendant third person had against the agent. But this concern for the third party's plight is not as evident when he is the one trying to assert rights. Because the nature of the transaction was hidden from him at the outset, he had no opportunity to demand the obligation of both principal and agent, as he otherwise might well have done. Yet on his discovery of the true facts the election rule is interposed to prevent his doing the same thing.

Requiring an election of remedies by one dealing with an undisclosed principal ignores the policy considerations which distinguish the undisclosed principal's obligation from that of the agent. All of them furnish arguments that his liability should not be alternative to the agent's but available to

the third party in addition. Only if it is so available can the latter have any fair assurance he will be able to satisfy his claim.

During the Middle Ages, the merchant class must have considered the undisclosed principal doctrine just and logical, if not necessary for efficient commerce, in adopting it as custom. But its subsequent adoption into the common law divorced it from its mercantile roots and has seen it transform into a general agency doctrine with limitless application. Nevertheless, if 150 years ago Lord Blackburn considered the doctrine too firmly entrenched in the common law for the courts to give it a second thought, it is certainly too late now. However, the diverse range of proposed underpinning theories, and their inconsistent judicial adoption, have only acted to further confuse the doctrine's rules, thereby making it ever-increasingly difficult to maintain any semblance of internal coherence. As such, save legislative intervention, the doctrine ought simply to be recognised as anomalous and exceptional to the law of contract formation, rather than justified and rationalised on grounds that do not withstand analysis.

5.2 RECOMMENDATIONS

1. Discharge by satisfaction, ought to take the place of the existing method of dismissing by election. By using this regulation, the third party should be allowed to join the principal and the agent as defendants. Until one of the three parties fulfills the judgment, it will continue to be against all three.

2. The third party should have the opportunity to file a case against the surviving party. It intends to defend the interests of the concerned third party and correct any inequalities that could result from the election rules as they stand. The goal of the suggested stance is to accomplish this in order to establish a more equitable and balanced judicial system.

3. Third party should be given preference in terms of favor while deciding the matter because it's a party to a more complex agreement and could not expect to look beyond by using the notion of preponderance of evidence that it was unaware of the fact that he is going to contract with undisclosed agency agreement.

4. The least-cost avoidance option should be use and the liability should be placed on party who can most cheaply avoid the loss whether agent, principal or third party.

5. Any risk associated with the lack of such disclosure of agency should be taken on by the principal rather than the third party, even if undisclosed principal might not be able to inform the third party about undisclosed agency,in order to shield itself from liability.It would counterbalance the rights of undisclosed principals and third parties, preventing undisclosed principals from avoiding lawsuits by covertly limiting the authority of its agents.The Contract Act should be amended in order to address liability issues and create a more equitable framework for both the undisclosed principals and third parties participating in undisclosed agency transactions.By doing this, the law will better safeguard the rights of all parties and undisclosed principals from abusing undisclosed agency at the expense of other people's rights.

6. Doctrine of Undisclosed Agency is an exception to the Privity, but it should not harm third party rights using a legal shield. Laws should be updated from time to time in order to provide justice to everyone on equal footing.

7.Rather than changing the present stance on ratification, legislative changes might be made that the transaction may be approved by the undisclosed principal retrospectively, subject to the third party confirming the agreement following the agency's disclosure. As such, this strategy would

enable a more workable resolution without fully breaking from the accepted common law notion of ratification.

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