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Critical Examination of the Ugandan Law of Agency Uganda

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ABSTRACT

This article examines the Ugandan law of agency. Recognizing the multi-party nature of agency transactions, one should distinguish the agency aspects of a problem from basic tort or contract law. Problems dealing with basic tort or contract principles generally require an analysis of whether or not there was a tort or contract duty; whether that duty was breached; and whether the defendant's breach caused compensable injury to the plaintiff. Agency analysis, however, is not concerned with whether there is any liability, but to whom the liability runs. It is on this basis that this article noted that since the Law on Contract aims to provide an effective legal framework for contracting parties to resolve their disputes and regulate their contractual obligations, this should be always self-regulatory, with the majority of contracts requiring no intervention. The courts should be making no consideration for whether the contract is fair or not; if it is agreed, it should be enforced. Despite this, on some occasions, the courts should be departed from the principle of contractual freedom. This should be applied where there has been an abuse of bargaining power by one contracting party. It is equally recommended that contracts should contain clauses addressing recourse in the event of a dispute. In addition to hopefully deterring certain actions by spelling out the consequences, this contract language can actually help guide the parties, or perhaps an arbitrator or judge, in figuring out how the dispute should be addressed.

Keywords: Agency transactions, Breach of contract, Contractual agreement, Law of agency, Principal-servant relationship

INTRODUCTION

Broadly speaking, the law of agency deals with situations where one person enters into legal relationships with another person by acting not personally but through an intermediary. Such a concept of agency is known in almost every modern legal system, however, rather than providing the exact definition of representation, most of them explain this legal phenomenon through its consequences [1]. The law of agency is emphatically described as a legal miracle or a subject of never-ending fascination [2]. Agency law is important for several reasons. First of all, representation is the only real opportunity for the implementation of capacity when it is limited or a person lacks it altogether. Secondly, it gives the possibility to enter into transactions when due to various social circumstances a person is unwilling or unable to participate personally in civil relations. Finally, the most significant outcome of representation is that it allows individuals to participate in civil circulation on a much wider scale and more efficiently, thereby enabling the rapid development of economic relations. In the absence of agency, it is impossible to imagine the normal turnover of trade, investment, services, and many other activities [3]. Therefore, the possibility to participate in business relationships through the agent is a guarantee for implementing the right of a person to freedom and initiative of business activity. Recognizing the multi-party nature of agency transactions, one should distinguish the agency aspects of a problem from basic tort or contract law. Problems dealing with basic tort or contract principles generally require an analysis of whether or not there was a tort or contract duty; whether that duty was breached; and whether the defendant's breach caused compensable injury to the plaintiff. Agency analysis, however, is not concerned with whether there is any liability, but to whom the liability runs [4]. Expressed differently, the basic tort or contract issue becomes a threshold question that must be resolved before considering the application of agency principles. Returning to the four issues included in the application of the general rule, the first issue requires existence of the relationship be uncontrolled. In other cases, the courts tend to apply the "assent, benefit, and control test" described earlier. The point here is to simply emphasize that the existence of an agency relationship is a necessary precedent to an analysis of vicarious liability [5]. The alternative liability of an undisclosed principal is subject to two exceptions. First, if the contract involves a negotiable instrument, no liability can arise from the instrument itself unless the principal's signature appears on the document." This is consistent with normal negotiable instrument policy that limits rights and liabilities to

those indicated on the face of the document [6]. However, this does not prevent ordinary liability arising from the underlying contract itself and thus is primarily applicable to holders and transferees of the original third party. The general rule regarding agent's contracts not only requires disclosure of the agency relationship but in addition, requires that the agent be fully authorized by the principal to agree. If the agent did not have the authority to enter into the contract in question, the principal will not be liable [7]. In this case, the agent will be liable to the third party, but the theory of the agent's liability varies with the facts. If the agent did not disclose the agency in addition to failing to have the requisite authority, ordinary contract principles tell us that the agent is simply liable for the contract. Since the principal is not liable for the contract if the agent had no authority to enter into it, a determination of whether authority existed is crucial to the analysis. Thus, this article critically analysed the Ugandan law of agency.

Existence of Master-Servant Relationship

Having found an agency relationship, one must then determine whether or not this is the particular kind of agency that supports vicarious liability. The general rule indicates that a principal will only be liable for torts committed by those agents "whose physical conduct in the performance of the principal's service is controlled or is subject to the right to control. by the principal [8]. If the principal has this necessary control of or right to control the physical conduct of the agent, then our principal is called a master, and the agent who is subject to such control is called a servant. Every master is a principal, but every principal is not a master. Likewise, every servant is an agent, but every agent is not a servant [9]. The control of or right to control the physical conduct of the agent in the performance of the principal's service is the key to imposing vicarious liability in agency law [10]. This is the crucial distinction between a simple agency such as that which exists between an attorney and his client, and the kind of agency that supports the imposition of vicarious liability. While this distinction may appear artificial, limiting the imposition of vicarious liability to master-servant cases is consistent with the general policies supporting vicarious liability. As the master-servant relationship tends to arise in employment transactions, we are usually dealing with circumstances where risk distribution, deep pockets, and the ability to use care in the selection of employees are relevant [11]. Modem courts have indicated a willingness to find a theoretical "right to control" in cases where the policy grounds for imposing vicarious liability are strong. Thus, an argument for imposing liability can be made by emphasizing those aspects of a relationship that could be directed by the principal even though very little actual control was exercised. For example, an appliance store sold a new furnace to a homeowner and agreed to remove the old furnace. The company hired a part-time, casual laborer to dismantle and haul away the old furnace. The laborer negligently injured the homeowner while attempting to break up the old furnace with a sledgehammer. There was no evidence that the agent laborer was directed to break up the old furnace nor was any representative of the selling store present to supervise or control their agent's actions. In addition, it was clear that once the hammer began its swing, no one could direct its control. A Missouri Court of Appeals in 1969, however, had no trouble upholding a jury verdict imposing liability in a similar case because the employer had a right to control the laborer's conduct in the performance of these duties had it chosen to exercise that right [12]. Another typical class of cases involving the "right to control" issue arises when a traveling salesman negligently injures a third party while driving his car between cities where customers are located. The principal has no actual control over the auto at the time of the accident, but courts that have imposed liability have emphasized the right of the principal to direct the agent to use a particular route, that the agent calls upon a particular customer at a specified time, and (3) that the nature of the job required the use of an automobile.

Servant Action within the Scope of Employment

Having concluded that tortious agent falls within the master-servant classification, one must then determine if the injury occurred while the agent was acting within the scope of his employment [13]. In general, a determination of the scope or course of employment is nothing more than a determination of what duties the agent (servant) was engaged to perform. Courts have been fairly willing to extend the scope of employment to any activity reasonably related to the main job the agent was to perform. For example, a ranch worker who was required to perform duties some distance from any eating place was normally furnished a box lunch by his employer. On a day that the lunch was not furnished the worker negligently started a fire while attempting to prepare a meal. The employer was held liable since the nature of the duties required some means of feeding workers on the job [14]. Thus, the worker's negligence was within the scope of employment. In another widely cited case, Nelson v. American- West African Line, Inc.[15], 20 the boatswain of a commercial ship, whose duties generally included supervision of the ship's merchant seamen, returned to the ship "roaring drunk" amid "much noise, disorder, and violence." Although the plaintiff was not due to go on watch for 30 minutes, the boatswain decided that he should get up and go on deck at once. Crying out, "Get up, you big son of a bitch, and tum to," he struck the plaintiff across the face with a wooden bench while he lay in his bunk. Judge Learned Hand had no problem finding that those facts supported a cause of action against the boatswain's employer, on the ground that while the motives of the boatswain may have been mixed, "if the boatswain intended to act for the ship

at all, his command was within his powers. In other words, having given A the general power to direct the seamen on the ship, the principal would be liable even if this power was abused by A so long as a jury could find that some part of the boatswain's motive was to perform the principal's business. Another class of cases that arises within the scope of employment issues includes those characterized by "frolic and detour" -those cases in which the servant deviates from his assigned duties to accomplish a personal objective and negligently injures a third party before clearly returning to his duties. The traditional language is that the employer shall not be liable if the servant causes the injury while engaged in a personal frolic, but shall be liable if the servant had merely detoured from his assigned tasks [16]. Whether a servant had returned to his master's task was the critical issue in two well-known cases. In Riley v. Standard Oil CO[17], the agent was directed by his employer to deliver goods by truck to a freight yard and to return. After delivering the items, he picked up a load of scrap lumber at the freight yard and took it to his sister's house some four blocks away. On his way back toward the freight yard and his employer's place of business, the agent negligently injured the plaintiff. The New York Court of Appeals held that while the trip to the sister's house was probably not within the scope of the agent's employment, a jury could find that the agent had returned to his duties when the accident occurred. The same court that decided Riley had an opportunity to consider the issue again the next year in another case involving an agent truck driver who deviated from his master's instructions to satisfy a personal desire. In Fiacco v. Carver [18] the driver had been instructed to return the truck to its garage on the west side of New York after making a delivery but instead drove the vehicle to the east side of town where a street carnival was in progress. After giving a ride on the truck through the district to several children, the driver stopped at a pool hall to visit a friend. The plaintiff, an eleven-year-old, was injured as the truck departed from the pool hall and the driver started to return the truck to the garage. The court held that as a matter of law, the driver had not returned to his master's business at the time of the accident and distinguished the holding in Riley on the ground that this issue is not to be decided "by tests that are merely mechanical or formal." Rather, the facts of each case must be analyzed in order to determine whether the "dormant purpose" of the agent at the time of the accident was the performance of the master's business.

Tortious Act and the Imposition of Vicarious Liability

The fourth issue that must be considered to apply the general rule of vicarious liability is whether the tort committed by the servant was the kind of tort that traditionally supported the imposition of vicarious liability. Generally speaking, vicarious liability is limited to negligent acts of agents. Thus, a special problem is presented when the injured party is harmed by the intentional act of the agent. To a degree, this issue is closely related to the scope of employment problem in that an agent is seldom acting within the scope of his employment when he commits an intentional tort such as battery [19]. It should be recognized, however, that some kinds of employment involve potential physical force(such as with guards and armed watchmen) and, as indicated in the Nelson case, which involved the drunk boatswain, a servant can commit intentional torts while attempting to carry out his duties. While intentional torts can be found to be within the scope of one's employment, generally courts have not so found if the act is especially violent and unforeseeable. Thus, a court has imposed liability on the employer of a truck driver who got into a fistfight with another trucker after arguing over a parking space at a delivery dock. The driver was attempting to further the principal's business and arguments and fist fights are not foreign to the trucking business [20]. Uganda Supreme Court upheld a jury verdict against an employer for injuries that arose out of an assault by the employer'sagent upon the plaintiff. In doing so, the court emphasized that under the circumstances, the employer should have foreseen that an altercation might occur as the agent had been sent to repair an earthen dam that had been the subject of a long-standing controversy between the plaintiff and defendant employer [21].

Application of the General Rule of Vicarious Liability

As a more general limitation on the imposition of vicarious liability, one should note that the general rule is limited to torts that cause tangible personal injury or property damage to third persons. Tortious acts by agents causing economic injury only, such as fraud or deceit, are not grounds for the imposition of liability on the principal unless the agent is authorized to make statements such as the one made [22]. This is the only time authorization is an issue in determining the principal's liability for an agent's tort. The discussion of authority concerning contractual matters that follow is relevant here. One should also note that the agent need not be authorized to make the false or misleading statement, but merely be authorized to make statements of the type that were false in the given case. That is, if a salesman is authorized to make statements regarding the quality of P's goods, P will be liable if the salesman makes a false statement regarding the quality [10]."

The converse of the general rule for the imposition of vicarious liability is that an alleged principal is not liable for the torts of independent contractors. Since the term independent contractor is defined to include all persons who contract to do something for another but are not controlled or subject to the right of control concerning the physical performance of the undertaking by that other person,"it should be clear that this is not truly an exception to the general rule, but simply another way of stating that rule. In short, the term independent contractor and servant are mutually exclusive. An independent contractor may or may not be an agent; the key is simply control

or the right to control [23]. The recognition that the underlying rationale for a particular holding may be an unexpressed policy factor does, however, help one reconcile otherwise conflicting opinions and suggests a basis for arguing for liability in future cases notwithstanding adverse precedent. For example, in Elkins u. Husky Oil Co.[24], the plaintiff was injured by fire resulting from a gas station attendant's carelessness in permitting gasoline to overflow while filling the tank of plaintiffs car. The plaintiff's theory of suit was that the owner of the station was the servant of defendant Husky Oil, and thus attempted to hold Husky liable vicariously. Although the court recognized the "intrinsically dangerous" exception to the general rule, the court refused to apply it in this case and affirmed the District Court's grant of a motion for summary judgment in favor of the defendant with a rather confused discussion relating to the difference between servants and independent contractors." While part of the problem with the decision could have been rectified by a clearer enunciation of the difference between a servant and an independent contractor, an argument for liability based on policy grounds might have caused the court to make a more diligent effort to at least give the plaintiff a day in court. Another group of cases which are hard to fit into the general rule are the cases involving accidents caused by smoking by employees. Obviously, very few employees' duties require them to smoke thus presenting a serious obstacle to application of the "scope of employment" issue. It is foreseeable, however, that employees will smoke and do so negligently, even though contrary to express instructions by the employer. In cases where the employee is required to work around flammable materials such as paint or petroleum products, some courts have imposed liability on the employer by characterizing the activity as "inherently dangerous" or "non- delegable [25]. Commercial activities that are granted a public franchise, and thus a limited monopoly, have also been denied the opportunity to avoid liability by having work done by persons who would otherwise be classified as independent contractors due to the lack of control. This "publicly franchised activity" exception can also be viewed as a non-delegable duty, in that the rationale includes the concept that the grant of the franchise requires an assumption of the burdens as well as the benefits. Note that the activity performed by the other person must be within the scope of the franchise that part of the franchised activity that non-franchise holders are prohibited from doing [10]." Another class of cases which seems to be an exception to the general rule are those which involve principles of estoppel. As in ordinary estoppel cases, the exception here requires a holding out of a particular set of facts which induced detrimental reliance by the claimant. In this setting the alleged master manifests by his conduct that a particular person is an ordinary employee performing duties within the ordinary scope of the apparent employment, when in fact the relationship is that of independent contractor. For example, the alleged master was a corporation owning a large department store. In one corner of the main retail sales building, the plaintiff attempted to buy shoes from the clerk working there and was injured negligently by the clerk in fitting a shoe that had a nail protruding from the inner sole. The corporation defended the suit on the uncontradicted ground that the shoe department was operated by an independent lessee. The defense was rejected on estoppel grounds since the actual relationship between the lessee and the corporation was inconsistent with the apparent fact that the shoe department was an integral part of the master's business [26].

Termination of a Contract

The basis for the rule against bias is the need to maintain public confidence in the legal system. Bias can take the form of actual bias, imputed bias, or apparent bias. The right to a fair hearing requires that individuals should not be penalized by decisions affecting their rights or legitimate expectations unless they have been given prior notice of the case, a fair opportunity to answer it, and the opportunity to present their own case[27]. For instance, Jabulani 's first right is to file a complaint with the labour officer nearest to his place of work for unfair dismissal and seek that the employer is summoned to justify the dismissal. Jabulani can also sue the employer for unfair dismissal and failure to grant him an opportunity to be heard. Jabulani as an employee has the right to receive a final paycheck, the option of continuing health insurance coverage, and may be eligible for severance pay and unemployment compensation benefits. A severance agreement is a contractual agreement between an employer and an employee. The agreement typically entails the following terms: the employer will provide the terminated employee with a severance package in exchange for the employee's promise not to sue the employer. In addition to a lump sum payment, a severance package may include health insurance, continuing payments for a number of years, and the services of an outplacement program. An employer is entitled to dismiss summarily, and the dismissal is justified, where the employee has fundamentally broken his or her obligations arising under the contract of service. According to Halsbury 's Laws of England [28], an employer has a common law right to dismiss an employee without reasonable notice on the grounds that the employee's gross misconduct and such a dismissal is not wrongful. Originally this right was explained as a legal incident of the status of master and servant but, in line with the modern contractual analysis of the employment relationship, is now explained in contractual terms, as the acceptance by the employer of a repudiation of the contract by the employee. Alternatively, gross misconduct justifying summary dismissal may be seen as conduct so undermining the trust and confidence, which is inherent in the particular contract of employment that the employer should no longer be required to retain the employee in his employment. Furthermore, in John Eletu vs Uganda Airlines

Corporation[29], the court found that while a summary dismissal was dismissal without notice, to justify such dismissal at common law, the breach of duty by an employee must be a very serious one. It must be such a breach as amounting in effect to repudiation by the employee of his or her obligations under the contract of employment such as disobedience of lawful orders, misconduct, drunkenness, immorality, assaulting fellow workers, incompetence or neglect. The Employment Act, 2006 [30] provides for summary dismissal. It stipulates as follows: "Summary termination shall take place when an employer terminates the service of an employee without notice or with less notice than that to which the employee is entitled by any statutory provision or contract term. An employer is entitled to dismiss summarily, and the dismissal shall be termed justified, where the employer has, by his or her conduct indicated that he or she has fundamentally broken his or her obligations arising under the contract

Applicability of the General rule of Contract Liability

First, assume that an agent was authorized by his principal to enter into a contract with Mr. T, but the agent did not disclose to Mr. T the fact that this was an agency transaction. H the existence of the agency is completely undisclosed to T, the transaction when entered into obviously appeared to T to simply be a contract between himself and another person (the agent). The application of ordinary contract principles would seem to hold the agent person-ally liable since he had objectively manifested his intent to be bound to T. On the other hand, the unknown and undisclosed agency should have some bearing on the transaction. The courts have reconciled this problem by holding the principal and the agent liable alternatively, that is, that T can sue either the principal or the agent but not both." Once the agency has been disclosed to T, an election by T is required and can be implied from T's conduct [31].

CONCLUSION

In all, agency thought and analysis obviously omits a number of topics that can be found in the standard reference works. As indicated at the outset, however, the purpose here is to simplify the main principles and suggest an analytical framework to which the subtleties can be added as needed. Without such an understanding, the existing opinions are bound to continue to reflect confusion. It on this basis that this article noted that since the Law on Contract aims to provide an effective legal framework for contracting parties to resolve their disputes and regulate their contractual obligations, this should be always self- regulatory, with the majority of contracts requiring no intervention. The courts should be making no consideration for whether the contract is fair or not; if it is agreed, it should be enforced. Despite this, on some occasions, the courts should be departed from the principal of contractual freedom. This is should be applied where there has been an abuse of bargaining power by one contracting party. It is equally recommended that contracts should contain clauses addressing recourse in the event of a dispute. In addition to hopefully deterring certain actions by spelling out the consequences, this contract language can actually help guide the parties, or perhaps an arbitrator or judge, in figuring out how the dispute should be addressed.

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