A COMMENTARY ON THE LAW OF AGENCY-REPRESENTATION IN ETHIOPIA

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This commentary is an attempt to study the law of representation in Ethiopia. It concerns Articles 2179-98 of the Civil Code: Chapter 1 of the Agency title of the Code, Title XIV. These sections deal with perhaps the most difficult and important aspect of agency law — the consequences of dealing with an agent for the principal who hired the agent and for the third party who dealt with him. These articles are not concerned with the rights of a principal and agent against each other or with legal presumptions and rules concerning the scope of an agent's authority to deal for and bind his principal. These are covered in Articles 2199-2265 of the Code.

This commentary is intended only as a short explanatory note on the articles concerned. It consists of a brief discussion, often reflecting the author's opinion on issues that have not yet been determined by the courts in Ethiopia. Much of the interpretation is based on the sources of the Ethiopian Code, particularly the French Civil Code, and on comparable provisions of the common law. In most instances there is no difference between the two legal systems with regard to agency.

Art. 2179. - Source of authority.

The authority to act on behalf of another may derive from the law or a contract.

This article describes the two ways in which an agent may derive his authority to act for and bind his principal: from a contract with the principal or by operation of law. In most cases, authority derives from an agreement between the agent and principal that the former should represent the latter in one or more transactions with other — "third" — persons. This contract may be written or verbal; it may even be implied by the conduct, sometimes even by the silence, of the principal and agent. The contract both creates and limits the authority. Most of the sections in the Code dealing with agency describe the limits and effects of this contract.

However, authority to act for another sometimes can arise in the absence of a contract, that is, by operation of law. For instance, a guardian or a tutor

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is empowered to act for his minor ward by the provisions of the Civil Code; there need not be, indeed cannot be, a contract between the guardian and child.[1] Similarly, authority to act for another is granted by law where an emergency has arisen which requires immediate attention[2] or where the agent occupies a certain position.[3] In all these cases, authority to act for another person is granted by the law, even though there has been no contract. But unless the law does specifically grant such authority, or unless authority is conferred on the agent by a contract with the principal, there can be no lawful and binding exercise of authority by one person on behalf of another.

Art. 2180. - Form of authority.

Where the law requires that a contract be made in a prescribed form, the authority to enter into such contract on behalf of another shall be given in the same form.

This article is concerned with certain formal requirements where authority is to be granted by contract. Where the contract made by the agent with a third person on the principal's behalf must be in a certain prescribed form to be valid, the authority from the principal to the agent must be in that same form. For instance, the law requires that certain contracts — partnership agreements, for example[4] — be in writing. Where a principal wishes to authorize an agent to enter into such a contract on the principal's behalf, that authority must also be in writing. It should be noted that this requirement applies only where the agent's authorization derives from a contract, not where it is based on the operation of law. It should also be noted that a principal may later ratify an originally imperfect authorization and thus make it binding.[5]

Art. 2181. - Scope of power of attorney.

(1) The scope of a power of attorney given by contract shall be fixed in accordance with the contract.

(2) Where the agent informs a third party of his power of attorney, the scope of his authority shall, as regards such third party, be fixed in accordance with the information given to him by the agent.

(3) The scope of a power of attorney shall be interpreted in a restrictive manner.

A power of attorney is simply an authorization to an agent to act for a principal.[6] Article 2181 states three rules regarding powers of attorney. First, the limit of the agent's authority is defined by the terms of the contract creating that authority. If the agent attempts to exceed this limit, his action will not bind the principal, unless by virtue of law.[7] If the power of attorney permits the agent to purchase a car, and he tries to purchase a boat, the principal will not be bound by his act. Secondly, where the agent informs a third party of his power of attorney, the third party is bound with the principal only to the extent of that information.[8]

1. See, e.g., Civ. C., Arts. 280 and 2253, dealing with tutors and curators respectively.
2. See Civ. C., Arts. 2257-65, dealing with unauthorized agency.
3. See Com. C., Arts. 32, 35, and 36.
4. Com. C., Art. 214.
5. See Civ. C., Arts. 2190 and 2192, dealing with ratification.
6. See Note on Code Translation, at the end of this commentary.
7. E.g., under Com. C., Art. 35.
8. But see Note on Code Translation, at the end of this commentary.

Finally, the scope of an agent's authorization under a power of attorney will be narrowly interpreted. The agent's authority will extend only to what is clearly mentioned in the agreement. If the agreement allows the agent to purchase twenty cans of black paint for the principal, the agent cannot bind the principal to pay for varnish or brown paint, or gray paint, or twenty-one cans.

Art. 2182. - Extinction of power of attorney.

(1) Unless otherwise agreed, a power of attorney given by contract shall be extinguished where the principal or the agent dies, is declared absent, becomes incapable or is adjudged bankrupt.

(2) The provisions of sub-art. (1) shall apply where a body corporate ceases to exist.

Unless there is an agreement to the contrary between the agent and principal, the power of attorney is extinguished if either the agent or principal dies, is declared legally absent by a court,[9] or becomes incapable.[10] (Minors are incapable under the law; a court will declare a person who is not a minor legally incapable if it is convinced that he is for some reason unable to conduct his affairs.) The power of attorney also is extinguished where either agent or principal is adjudged bankrupt, that is, where either is a commercial person ("trader") and cannot meet his debts.[11] Finally, if either agent or principal is a body corporate, such as a share company or private limited company, and ceases to exist under law, a power of attorney given by or to it also ceases to exist.

Article 2182 states that a power of attorney is extinguished under the specified circumstances unless there is an agreement to the contrary. Under some circumstances, however, such an agreement cannot be binding. For instance, if the principal loses his capacity to contract, he will not be bound by any power of attorney. Or, if the agent dies or loses his ability even to understand the transaction in question, the principal will not be bound by the agent's consent, even if he agreed to be bound under such circumstances in a power of attorney addressed to the agent.[12] But where there is no legal impediment to the agent's acting on behalf of the principal, they may agree in advance that the power of attorney will remain effective despite future mishap. Thus, they may agree that even if the agent is adjudged bankrupt, he may still act for and bind the principal under a power of attorney. These principles relating to extinction are carried over into contracts of agency in Articles 2230 and 2232 of the Civil Code.

Art. 2183. - Revocation of authority.

(1) The principal may at any time restrict or revoke, as regards third parties, the authority he gave to the agent to make contracts in his name.

(2) Any waiving of such right shall be of no effect.

This article makes it clear that a principal always has the right to restrict or revoke altogether any authority he may have given an agent. The principal cannot even contract away this right. The agent can, of course, claim that the principal has breached his contract with the agent by not allowing the agent to represent him, and the agent can sue the principal for damages for this breach. But he cannot bind the principal to a third party if the principal has revoked or restricted his authority.

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9. See Civ. C., Art. 154.
10. See Civ. C., Arts. 192-97.
11. See Com. C., Book V and Art. 5.
12. See Civ. C., Art. 2189(2).

Art. 2184. - Document to be returned.

(1) The agent shall upon the authority coming to an end return to the principal the document, if any, evidencing his authority.

(2) He may not retain such document until final settlement of his accounts or claims with the principal.

Article 2184 commands that an agent must return any instrument showing his authority to the principal whenever that authority comes to an end. He may not even keep the instrument until all his accounts with the principal have been settled, although he could have a copy made as evidence of his agreement with the principal. The reason for this requirement is that the agent otherwise could obligate the principal to unknowing third persons under Articles 2181 and 2195. For his own protection, therefore, the principal must be able to compel the return of documents of authorization he has signed. If the agent refuses to give the document to the principal, the latter could have the court demand its return; refusal then would be contempt of court.

Art. 2185. - Loss of document.

Where the agent alleges to have lost the document evidencing his power, the principal may, at the expense of the agent, apply to the court to declare that the document is revoked.

If an agent loses, or claims he has lost, a document of authorization, the principal can have a court declare that the document is revoked. If the principal does this, he will be protected against improper future use of the document, by either the agent or anyone else. He will not be liable to third parties under Article 2181 or 2195 of the Civil Code.

The expense involved if the principal has to get a court declaration of revocation because his agent has lost or claims to have lost his document of authorization is chargeable to the agent. This means that all court fees and the reasonable fee of the principal's lawyer will have to be borne by the agent.

Art. 2186. - Justification of authority.

Whosoever has dealings with an agent may at any time require him to produce a justification of his authority and, where his authority is evidenced by a document, to produce a copy of such document duly signed by the agent.

This article protects persons who deal with agents by permitting them to demand that the agent give a justification of his authority. (If he refuses, however, it would seem that the only remedy open to the third party would be to refuse to deal with him.) Where the agent has a document describing his authority, he can be asked to sign a copy of the document and "produce" it for the third party. According to the French language text of the Code, the agent is obliged to give a signed (by himself) copy of the document to the third party: this is what "produce" means in the English text. If the agent does produce a copy of the document, his authority will be as stated therein if the document has not been revoked by the principal or by law or a court.[13] If the third party fails to demand justification under Article 2186, he may have difficulty proving that he was misled by the principal under Article 2195. Careful third parties therefore should always demand justification, to protect themselves in the event that the agent is unauthorized.

13. See Civ. C., Art. 2181.

Art. 2187. - Conflicting interests.

(1) A contract made by an agent in a case where his interests conflict with those of the principal may be cancelled at the request of the principal where the third party who entered into the contract knew or should have known of the conflict.

(2) The principal shall, within two years from his knowing of such circumstances, declare whether or not he intends to cancel the contract.

(3) The contract shall be cancelled where the third party concerned fails to declare his intention to be bound by the contract within two months from having been informed of the principal's intention to cancel the contract.

This article protects the principal in the event that his agent's interests conflict with his own. An agent should represent only the interests of his principal. If there is a good chance that the agent has represented the interests of someone else, the principal should be allowed to cancel the effects of the agent's acts. There is a strong likelihood that an agent will not represent only his principal's interests when his own interests conflict with these. For instance, if the principal hires an agent to sell his car, and the agent is himself in the business of selling cars, the agent's interest will conflict with the principal's: the agent will try to get the best price for his own cars, not for the car of the principal. A principal is protected from such an agent by Article 2187. If the third party — the party to whom the agent sold the principal's car in the example above — knew that the agent's and principal's interests conflicted, the contract can be cancelled at the principal's request. It also may be cancelled even though the principal cannot prove that the third party actually knew about the conflict if the principal can establish that the third party should have known about it, that is, if a reasonable man in the third party's position would have known there was a conflict. But if the third party did not know of the conflict, and there was no reason why he should have known, the conflict does not constitute a basis for cancellation of the contract.

If the principal wishes to have the contract cancelled under Article 2187(1), he must inform the third party of that fact within two years after he discovers the conflict of interests.[14] Within two months after receiving that information, the third party must indicate to the principal whether or not he intends to "be bound" by the contract; that is, whether or not he opposes cancellation and wishes to hold the principal to the contract.[15] If he does not declare his intention within the two month period, or if he declares that he does not intend to hold the principal to the contract, the contract automatically is cancelled. Otherwise, the principal must seek cancellation from a court.[16] A contract may be cancelled only upon a court order, except where the law provides otherwise (as in Article 2187(3)).

Art. 2188. - Contract with oneself.

(1) A contract made by an agent may be cancelled at the request of the principal where the agent made the contract with himself, whether he acted on his behalf or in the name of a third party.

(2) The provisions of sub-art. (2) and (3) of Art. 2187 shall apply in such case.

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14. Civ. C., Art. 2187(2).
15. Civ. C., Art. 2187(3).
16. See Civ. C., Arts. 1808-18.

(3) Nothing in this Article shall affect the special provisions applicable to commission agents (Art. 2248 and 2252).

The agent's interests automatically conflict with the principal's where the agent contracts with himself, either on his own behalf or as the agent of another principal. Article 2188 permits the principal to cancel his contract with the third party in case of such conflict, and he may do so even though the third party is another principal, who did not know or have reason to know about the agent's dual role. As in Article 2187, the principal must state his intention to cancel within two years from the time when he realized the agent played his dual role, and the third party must reply within two months thereafter. Sub-article (2) and (3) of Article 2187 apply under Article 2188 just as they do under Article 2187.

There is one exception to the terms of Article 2188. This involves a "commission agent." Such an agent sells for another goods in the agent's own name.[17] Where there is a fixed price for the goods involved, such an agent may effect the transaction on his own account and still bind the principal, unless the principal has forbidden this.[18]

Art. 2189. - Complete agency.

(1) Contracts made by an agent in the name of another within the scope of his power shall be deemed to have been made directly by the principal.
(2) The principal may avail himself of any defect in the consent of the agent at the time of the making of the contract.
(3) Any fraud committed by the agent may be set up against the principal by the third party who entered into the contract with the agent.

This article is the cornerstone of agency law under the Civil Code. It sets two conditions. The agent must act within the scope of his authority, and he must act in the name of his principal. (Article 2197 makes it clear that the name of the principal must be known; it is not enough for the agent to tell the third party that he is acting for another, but unnamed, person.) If these two conditions are met, the resulting contract is legally deemed to have been made directly by the third party with the principal, and the agent "disappears" from the transaction. The agent is not bound to the third party, and the third party is not bound to him. The third party is instead bound to the principal, whom he may never have seen. This principle enables one man simultaneously to do business with many persons and over hundreds of miles of distance. Without it, legal persons, such as share companies and other business organizations, could not function at all.

Article 2189 also provides that where the agent did not consent to the contract with the third party the principal can cancel the contract. This is entirely consistent with the basic principles of agency law. Consent is an element of all valid contracts. Although the principal is deemed to contract, it is the agent who actually deals with the third party, and if the agent has not consented to the arrangement with the third party — if he has been coerced to contract, for instance — there has been no contract at all between the principal and third party. The agent has never reached his goal of communicating with the third party for the principal. It should be noted, however, that the agent need not be legally capable in order to give his consent. He need only be able to understand the transaction. A minor can act as an agent and bind his principal.

17. See Civ. C., Art. 2139.
18. See Civ. C., Arts. 2148-52.

Finally, Article 2189 provides that if the agent commits any fraud in his dealings with the third party the latter can treat it as the principal's fraud, and thus can cancel the contract. This also is consistent with the principles of agency law. The contractual relation between the principal and third party depends on their effective communication through the agent. Where the agent commits fraud on the third party, that communication is impaired.

Art. 2190. - Abuse or lapse of power.

(1) Contracts made by an agent in the name of another outside the scope of his power may be ratified or repudiated at his option by the person in whose name the agent acted.

(2) The provisions of sub-art. (1) shall apply where the agent acted under an authority which had lapsed.

This article covers the situation where a person has attempted to act as an agent for a principal but has acted outside any authority given him by the principal. In such a case, the principal is not bound to the third party, unless he wants to be. He has a choice: he can either ratify or repudiate the agent's acts. If he repudiates, he is not bound. If he ratifies, and the agent purported to act in his name, he is bound and so is the third party. Article 2190 applies whether the agent was empowered to act in some ways for the principal but exceeded that power, or whether he was never authorized or was once authorized under an authority which had terminated, or lapsed. In such cases the principal is not bound in con ract to the third party. He may incur liability under Article 2195, but that will be the extent of his obligations.

The Code does not define what acts will constitute ratification or repudiation. However, courts traditionally have treated this issue very flexibly. Clearly a written declaration will suffice for either. So also will an oral statement to the third party or even generally to the public, if it can be sufficiently proved. Under many circumstances, mere acts by the principal will be sufficient; for instance, if the principal accepts the benefits of the agent's action, or if he continues to perform under the contract made by the agent, he will be said to have ratified the contract and will be bound by it. In some cases, where it evidently was really in the principal's interest that the agent act for him, even if the agent lacked authority, the principal will be legally obliged to ratify the agent's acts.[19]

Art. 2191. - Option of principal.

(1) The third party having entered into the contract with the agent may demand that the person in whose name the agent acted immediately declare whether he intends to ratify or to repudiate the contract.

(2) Failing immediate ratification, the contract shall be deemed to be repudiated.

This provision helps protect a third party who has dealt with an agent who was not authorized. In such cases, under Article 2190, the principal has the option of ratifying or repudiating the contract. So that the third party may know whether or not he is in fact bound by the contract, he may demand that the principal commit himself at once. If the principal then fails to ratify immediately, he is deemed to have repudiated, and neither he nor the third party is bound. How long a time "immediately" may be, of course, depends on the circumstances of each case. The principal must make a reasonable effort to reach the third party

19. See Civ. C., Arts 2207 and 2264.

as soon as possible. He usually should use the same method of communication or a faster one than the third party used to reach him with his demand that the option be exercised.

Article 2191 can protect the third party only if he knows or suspects that the agent has acted outside his authority. Otherwise, the third party will not demand that the principal exercise his option, and Article 2191 will not apply. In the absence of such a demand, the Code does not indicate how long a time may pass before the principal is deemed to have accepted or rejected the contract. Depending on the case, this could be a long time. Once the principal has chosen to ratify, or repudiate, however, he cannot later change his mind. His decision is final.

Art. 2192. - Effect of ratification.
Where the contract is ratified, the agent shall be deemed to have acted within the scope of his power.

If the principal does ratify his agent's acts, the agent will be deemed to have acted within his power from the beginning; the principal and third party will be deemed to have made the contract when the agent made it, and not when the principal ratified. (The contract is said to have "related back" to the earlier time.) Thus, the third party cannot destroy the principal's power to ratify by attempting to withdraw from the contract between the time the agent made it, without authority, and the time when the principal ratified it. If the agent has without authority contracted to purchase food produce from the third party, the principal can ratify and bind the third party if the price of food goes up, or he can repudiate and withdraw from the contract if the price of food falls. The only protection the third party has is that he can force the principal to declare whether he will ratify or repudiate immediately — as soon, that is, as the third party becomes aware that the agent was unauthorized.

Art. 2193. - Effect of repudiation.

(1) The provisions of Art. 1808-1818 of this code shall apply where the contract is repudiated.

(2) The third party having entered into the contract with the agent may demand that the damage caused to him by reason of his having in good faith believed in the existence of a valid authority be made good in accordance with the provisions of the following Articles.

This Article provides for the event that the principal decides to repudiate the contract. Under Articles 1808-18 of the Civil Code a contract lawfully invalidated by one party binds neither party, but both should be restored so far possible to the positions they occupied before the contract was made. If the other party — the third party in an agency context — has already performed part of the contract, or made improvements that the first party — the principal — will obtain, the first party must either pay for the value of the benefits or perform that part of the contract himself. If the other party has unwittingly so far committed himself to the contract that it would be impossible to restore him to his former position, the contract may not be invalidated at all. It is interesting to note that under Article 1814 the first party must answer "in due time" whether he intends to cancel or affirm the contract, while under Article 2191 he must do so "immediately."

Where the principal has received no benefit from the third party's preparations or partial-performance of the repudiated contract, he is in general not liable for anything to the third party. The third party may still have suffered certain damages, however, either expenses of preparation or losses incurred by passing up chances to make other contracts. If the third party in good faith believed the agent

had authority to make the contract, he may be able to hold the agent liable for these damages under Articles 2194, 2195 and 2196, discussed below.

Art. 2194. - Liability.

(1) The agent shall be liable to pay compensation to the third party in the case referred to in Art. 2193.

(2) The agent shall not be liable where he acted in good faith not knowing the reason by which his authority had come to an end.

(3) The principal shall in such case be liable to pay compensation.

Where the principal repudiates the contract under Article 2193, the agent is in general liable to the third party for damages incurred by the latter because of his reliance on the contract which he supposed that he had with the principal. However, there is one case in which the agent can shift this liability to the principal. This exception occurs when the agent in good faith believed he did have authority to bind the principal. The agent's belief must have been held by him at the time he attempted to transact for the principal. It must also, it would seem, have been reasonable for the agent to think that he had authority. The Code seems to indicate that this exception can occur only where the agent once had authority, which, unknown to him, had terminated for some reason, but it is possible that the courts will apply the provision also in the case in which the agent reasonably thought he had a broader authority than he in fact possessed. Such cases would be very few in number (in most such cases there would be implied authority under Article 2200), but they conceivably might arise.

Art. 2195. - Liability of principal.

The principal shall be jointly liable with the agent where:

(a) he informed a third party of the existence of the power of attorney but failed to inform him of the partial or total revocation of such power; or

(b) he failed to ask the agent to return the document evidencing the power of attorney and failed to seek a judicial decision to the effect that such document was revoked; or

(c) he caused in any other manner, in particular by his statements, behaviour or failure to act, a third party to believe that the person with whom he was dealing was authorised to act on behalf of the principal.

If the principal, as well as the agent, is responsible for a third party's erroneous conclusion that the agent was authorized to deal for the principal, the agent is said to have been "apparently authorized" to deal for the principal, and the agent and principal are jointly liable. "Jointly," as used in this article, should be construed to mean that either or both the agent and principal can be sued for the full amount of the liability, in one action, or in separate actions if the plaintiff so desires.[20]

There are three instances in which the principal is made liable along with his agent. The first is where the principal informed the third party that his agent had a power of attorney, but then, without telling the third party, revoked or restricted the agent's power. In such a case, the third party will rely on the principal's original description of the agent's authority. Accordingly, although the principal is not bound by the contract, both he and the agent are liable for any damages incurred by the third party as a result of his reliance on the agent's apparent authority.

20. See Note on Code Translation, at the end of this commentary.

The principal can escape liability if he did not inform the third party of his agent's authority in the first place. But if he filed a power of attorney in a public registry, or if he made it generally known that he had given the authority, and the third party learned of the authority from any source, the principal will be liable for his failure to publicize his revocation of authority. If he does file such revocation, however, or if the third party hears about it in any fashion, the principal will not be liable.

Secondly, the principal is liable if he has failed to ask the agent to return a revoked or restricted power of attorney, or has not sought a court declaration of revocation or restriction.[21] If the agent shows a third party his document of authority[22] and the third party knows of no restriction on it, the principal will be made liable for damages suffered by the third party in reliance on the document.

The final source of liability for the principal as well as the agent occurs where he has "in any other manner" caused the third party to believe that the agent had authority to deal for the principal. The third party must actually believe that the agent has authority, and the belief must be reasonable under the circumstances. In addition, it must be based on knowledge that had its source in an action of the principal, but it does not matter how the knowledge came to the third party. He may have learned it directly from the principal; the principal may in the past have generally granted his agents the power in question; it may be that the position or title of the agent usually implies that he would hold certain authority; or the agent's apparent authority may be merely a matter of public rumor. As long as the source of the third party's reasonable misunderstanding can be traced back to the principal, he will be made liable for any damages that follow.

Art. 2196. - Exclusion of liability.

(1) Except in cases of fraud, a third party who has dealings with the agent may not claim compensation from the agent on the ground that he acted outside the scope of his authority where such third party, prior to entering into the contract, took cognizance of the document evidencing the authority of the agent.

(2) A third party may not claim compensation where the personal qualifications of the person with whom he has dealings is not essential to him and the agent agrees to be personally bound by the act he had done on behalf of another.

The first section of this article serves to protect the agent from incurring liability to the third party[23] through the third party's erroneous interpretation of the document evidencing the agent's authority. If the agent has been given a document by his principal and he shows this document to the third party, the third party must rely on the document as a correct statement of the agent's authority. Since the principal is solely responsible for that document, only he is liable to the third party for confusion which may arise as to the agent's authority. The agent is not liable unless he committed fraud — that is, unless it can be proved that he knew what his authority was and intentionally misrepresented to the party its scope.

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21. See Civ. C., Arts. 2184-85, and the discussion thereof above.
22. See Civ. C., Art. 2188.
23. Compare Civ. C., Art. 2194(3), which serves a similar purpose.

The second part of the article deals with the case in which an agent who has acted beyond his authority, and thus has not bound his principal, agrees himself to be bound to the contract. If the identity of the person with whom the third party contracts is not an essential part of the contract, the third party can hold the agent to his new contract, but he cannot claim damages from either the principal or agent. Thus, if an agent, without authority, agrees to supply the third party with a standard product on the principal's behalf, the principal is not bound. But if the agent agrees to be bound instead, and it does not matter to the third party who supplies the product, he must be satisfied with the agent. He cannot sue either agent or principal for damages.

Art. 2197. - Agent acting on his own behalf.

(1) An agent who acts on his own behalf shall personally enjoy the rights or incur the liabilities deriving from the contracts he makes with third parties, notwithstanding that such third parties know that he is an agent.

(2) Third parties shall in such case have no direct action against the principal and may only exercise against him, on behalf of the agent, the rights pertaining to the agent.

This article concerns agents who deal with third parties in their own names, and not in the name of their principal.[24] In such a case, if the third party does not know who the principal is, the principal is said to be "undisclosed," even though the third party may know that the agent is acting on behalf of *someone* else. An undisclosed principal is not liable on the contract. The agent and the third party are held to have contracted together, and the agent rather than his principal is bound by the contract.

The third party therefore cannot sue the principal directly on the contract. However, he can sue the agent, and through the agent he can in effect *indirectly* sue the principal. Under Article 1993 of the Code, a creditor may ensure that his debtor collects sums owing to him so that the creditor is fully paid, and, more directly in point, under Article 2197(2) a third party may exercise against an undisclosed principal rights which the agent has against that principal. Among the agent's rights against the principal is the right given by Article 2222 to compensation for liabilities incurred by the agent on the principal's behalf. Since his liability as agent for an undisclosed principal was incurred on behalf of the principal, the principal is liable for this same liability to the agent and, through Articles 1993 and 2197(2), the third party has an effective remedy even against an undisclosed principal.

There are two points to be noted about a third party's ability to sue an undisclosed principal, however. One is that he can sue only for money damages — he cannot demand specific performance, because the principal does not owe this to the agent under Article 2222. Only the agent can be sued for specific performance of the contract with the third party. Secondly, if for any reason the agent owes the principal money, the principal may set off this sum against the amount he owes the agent under Article 2222,[25] and for that much of the obligation the third party will be able to look only to the agent.

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24. The article states "on his own behalf," but it is clear that this is meant to be "in his own name, while on the principal's behalf." See Note on Code Translation, at the end of this commentary.

25. See Civ. C., Art. 2223.

For example, if an agent has contracted with a third party in his own name, whether he has stated that he is an agent for an unknown principal or not, the agent and third party are both liable on the contract. If the agent breaches the contract, the third party may sue him for damages. If the agent cannot pay, the third party can then go against the undisclosed principal. But if the agent owes the principal money, that sum will be deducted from the amount which the principal must pay to the third party. The third party, therefore, has complete recourse against the agent but, in some cases, less than full recourse against the undisclosed principal.

Art. 2198. - Rights of principal.

(1) Without prejudice to the rights of third parties in good faith, the principal may recover any movable which the agent acquired on his behalf while acting in his name.

(2) He may substitute himself for the agent with a view to enforcing the claims acquired on his behalf.

(3) The principal may not exercise his rights under this Article unless he discharges his obligations towards the agent.

An undisclosed principal may not directly sue the third party as a party to the contract. But if the principal discharges all his obligations towards the agent — so that the third party can get satisfaction from the agent for any damages under the contract, and so that the agent is treated fairly[26] — he does have some rights pertinent to the transaction.

In the first place, the principal can recover from the agent any movable property (defined in Civ. C., Arts. 1127-39) which the agent obtained from the third party, so long as this does not prejudice the third party's position with regard to the agent. Thus, if the agent has acquired a car from the third party, in his own name, but in the principal's behalf, the principal can compel the agent to transfer the car to the principal if this does not cause harm to the third party.

Secondly, if the agent has acquired claims against the third party, the principal can substitute himself for the agent to see to it that these claims are enforced. His position in this respect against the third party is as strong as the third party's position against him under Article 2197(2). Since the agent could, the principal also could demand specific performance by the third party on his contract with the agent. But it would seem that if the agent, for any reason, owed the third party any money, the third party could set off this debt against his obligation under Article 2198.[27]

Appendix

NOTE ON CODE TRANSLATION

The Civil Code originally was drafted in the French language, then translated into Amharic and English. Unfortunately, a number of discrepancies exist between these versions in Chapter 1 of Title XIV.

The English version of Articles 2180, 2183, 2189, 2190, 2191, 2192, 2193, 2196, and 2197, speaks of the "contract" which an agent makes with a third party on behalf of the principal. The Amharic version of 2180, 2183, 2189, 2191,

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26. See Civ. C., Arts. 2197 and 2222-23.

27. Compare Civ. C., Art. 2223, under which the principal can set off sums owed him by the agent against his obligations to the third party under Civ. C., Arts. 2197(2) and 2222.

2196, and 2197 speaks of "contract" (ውል); the Amharic of 2190, 2192, and 2193 speaks of "act" (ተግባር). The French version either uses the word "act" (*acte*) or speaks of the third party "dealing with" the agent; in either case, the French clearly includes all juridical acts which the agent performs on behalf of the principal. A contract is the major type of juridical act, but it is not the only one. Since there is no strong reason why the law of these articles should be limited to contracts, the English and Amharic versions should be read to include juridical acts other than contracts. Articles 2187 and 2188 also speak of the "contract" made by the agent with a third party. However, "contract" is also used in the French and Amharic (*contrat;* ውል), and the articles should be read as they appear.

The English version of Articles 2181, 2182, and 2195(a), speaks of a "power of attorney." A power of attorney is sometimes thought to be a formal written document. The French merely uses the word "power" (*pouvoir*) or the words "power of representation" (*pouvoir de représentation*), neither of which embodies a requirement or implication of formality or of a written document. The same is true of the Amharic (ሥልጣን፡ወይም፡የአንደራሊነት፡ሥልጣን፡). Therefore, the English words "power of attorney" should be read merely as "power," without any implication of special formalities or of a written document.

The English and Amharic versions of Article 2181(2) state that an agent's authority as regards a third party is fixed according to what the agent tells the third party. The French rendition is substantially different: where the English and Amharic say "agent" (አንደራሊ), the French says "the person represented" (*représenté*), that is, the principal. The English and Amharic seem to make little sense, since they give considerable freedom to the agent at the expense of the principal, and require little diligence on the part of third parties. However, since the difference in meaning is substantial, and since the Amharic account is official, little can be done about this problem unless the Civil Code is amended to conform with the drafter's intention, or unless the courts adopt the arguable principle that the French version may be used to interpret Amharic provisions which make little sense, even where the language of the Amharic provisions is unambiguous.

The English translation of Article 2195 speaks of the principal being "jointly" liable with the agent. The word "jointly" in the common law system means that both parties may be sued, but that they must be sued together, in the same action. This can be disadvantageous where it is difficult for the court to get jurisdiction over one of the parties. The French version uses the word *solidairement;* this word also means "jointly," but its interpretation in French law falls closer to what is called "joint and several liability" in the common law; that is, both parties are liable, and they may be sued together, or they may be sued separately for the full amount of the obligation, in the discretion of the plaintiff. The Amharic terminology (ከ...ጋራ) is somewhat ambiguous, but it seems to be interpreted like the French. Under these circumstances, the meaning of the French version should govern. The English translation should be treated as a mis-translation (the words "and severally" having been omitted). The Amharic provisions being somewhat ambiguous, the language of the drafter — the French — should be used as an aid in choosing the better interpretation, toward which the Amharic leans anyway. The French interpretation is supported by its greater flexibility; because the purpose of Article 2195 is to make both the agent and principal liable for their own actions, their own faults, it would seem that no unnecessary restrictions should be imposed on third parties entitled under the law to sue them.

The English version of Article 2197 speaks of an agent "acting on his own behalf." The French and Amharic accounts speak of an agent acting "in his own name" or "in his [the agent's] name" (*en son nom propre;* በራሱ ስም). The distinction is important, since an agent can act on behalf of another but still in his own name (for example, a commission agent; Civil Code, Art. 2234). The essence of representation, as embodied in Article 2189, is that an agent acts in the name of another; Article 2197 is clearly intended to cover the opposite situation; that is, when an agent acts in his own name. If it did not, there would be no provisions covering the circumstance where an agent acts in his own name. The situation where an agent acts in the name of another, but in his own behalf, is covered essentially by Articles 2187 and 2188. For these reasons, the Amharic and French versions are the only ones reasonable, and the English should be read accordingly. A similar language problem exists in Article 2196(2), where the English translation speaks of the act the agent did "in behalf of another." The French and Amharic speak of an act "in the name of another" (*au nom d'autui;* ለሌላ ስም). Here, too, the English should be read to conform with the Amharic and French versions.