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# Apparent Authority in a Civil Law Jurisdiction

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## APPARENT AUTHORITY IN A CIVIL LAW JURISDICTION

Upon checking his car into defendant's parking garage, a customer was assured by the attendant that his personal belongings in the car would be safe. The customer's attention was not directed to a sign or to the reverse side of the parking stub, both of which purported to limit the garage's responsibility to the safekeeping of automobiles. Subsequently the articles were stolen and the customer's insurance company, subrogee, brought action against the parking service. The Louisiana supreme court, basing its decision on the doctrine of apparent authority, *held* the garage liable, reckoning that the customer reasonably relied upon the attendant's assurance that the articles would be safe. *United States Fidelity & Guaranty Co. v. Dixie Parking Service, Inc.*, 262 La. 45, 262 So.2d 365 (1972).

Apparent authority, a term of common law origin, has been defined as authority resulting "from conduct by the principal which causes a third party reasonably to believe that a particular person who may or may not be the principal's agent, has authority to enter into negotiations or to make representations as his agent."[1] The doctrine protects innocent third persons who have reasonably relied to their detriment upon the representations of those whom the principal holds out as possessing authority to act for him.

Despite its foreign derivation, Louisiana courts have often endorsed the concept. In *Farrar v. Duncan*, the court, in finding apparent authority, justified its decision by stating, "a general authority empowers the agent to bind his principal by all acts within the scope of his employment, and the consequence of this authority is that its exercise is not . . . limited, as to a party dealing with him, by any private . . . direction not known to such party."[2]

*Johnson v. Manget Bros.* occasioned the assertion that secret limitations on the authority of an agent, binding as between him and his principal, are not effective against third persons who deal with the agent in good faith and in "reliance upon the apparent authority with which the principal has clothed him."[3]

1. W. SEAVY, LAW OF AGENCY § 8(D) (1964).
2. 29 La. Ann. 126, 127 (1877). *See also* Chaffee v. Barataria Canning Co., 113 La. 215, 36 So. 943 (1903).
3. 168 La. 317, 322, 122 So. 51, 52 (1929). *See also* Interstate Elec. Co. v.

In a majority of the cases in which the Louisiana courts have referred to apparent authority only sources from other jurisdictions have been cited. In *Mandel v. California Co.*,[4] however, article 3000 of the Louisiana Civil Code was used in support of the court's enunciation of the foregoing principle:

> "Powers granted to persons, who exercise a profession, or fulfill certain functions, or doing any business in the ordinary course of affairs to which they are devoted, need not be specified, but are inferred from the functions which these mandataries exercise."

In an opposing line of cases the courts ignored the doctrine and held article 3010 applicable.

> "The attorney cannot go beyond the limits of his procuration; whatever he does exceeding his power is null and void with regard to the principal, unless ratified by the latter, and the attorney is alone bound by it in his individual capacity."

Often the principals were deemed not liable when the agents exceed their authority, despite the fact that it was reasonable for third parties dealing with these agents to assume such authority existed. A typical case is *Vordenbaum v. Gray*, in which the court maintained that one who acts beyond his author-

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Frank Adam Elec. Co., 173 La. 103, 136 So. 283 (1931); Yoars v. New Orleans Linen Supply Co., 185 So. 525 (La. App. Orl. Cir. 1939); Broussard v. Boudreau, 155 So. 397 (La. App. 1st Cir. 1934); Troy Wagon Works Co. v. Hampton Reynolds, Orl. App. No. 8441 (1923); J.J. Clarke Co. v. McQuirk, 11 Orl. App. 6 (La. App. 1913); Henderson v. Louisville & N.R.R., 3 Orl. App. 43 (La. App. 1905).

A recent indication of the jurisprudential posture in the area of apparent authority came in *United States Fidel. & Guar. Co. v. Allwright*, 256 So.2d 479 (La. App. 2d Cir. 1972), a case involving a factual situation similar to that of the Dixie Parking case. In *Allwright*, the defendant was held liable even though the attendant, whom the court said possessed apparent authority, actually went beyond his mandate. In the instant case the court followed the reasoning expounded in *Allwright* and stated, "[t]he result reached in the case before us would not be different if we applied the principles enunciated in *United States Fidelity & Guaranty Co. v. Allwright Shreveport, Inc.*, . . . ." United States Fidel. & Guar. Co. v. Dixie Parking Serv., Inc., 262 La. 45, 51, 262 So.2d 365, 367 (1972).

4. 145 So.2d 602 (La. App. 4th Cir. 1962). *See also* Fidelity & Cas. Co. v. Aetna Homestead, 182 La. 865, 162 So. 646 (1935).

ity when purporting to act for another is "personally bound to fulfill the terms of the contract made."[5]

In the case under consideration the supreme court, in accepting plaintiff's contention that the attendant, as defendant's agent, was clothed with apparent authority, based its adherence to the doctrine on article 3000.[6] In so holding, the court rejected the appellate decision, which had employed article 3010 in refuting the plaintiff's claim.[7]

The instant case is exemplary of a court in a civilian jurisdiction importing a common law doctrine into the jurisprudence, but, ironically, by way of the Civil Code. At this point it seems appropriate to analyze the soundness of the court's decision-making process in light of the conceptual difference existing between agency at common law and its civilian counterpart, mandate.[8]

Our code articles, which somewhat parallel the common law concept of agency, appear in Title XV of the Civil Code, entitled "Of Mandate," and are derived substantially from the Code Napoleon.[9]

5. 189 So. 342, 348 (La. App. 2d Cir. 1939). *See also* Bodin v. McCloskey, 11 La. Ann. 46 (1856); Credit Alliance Corp. v. Centenary College, 136 So. 130 (La. App. 2d Cir. 1931); Salley v. Jones Motor Co., 125 So. 599 (La. App. 2d Cir. 1929); Piazza v. Steff, 13 Orl. App. 245 (La. App. 1916).

6. "The attendant who received the Morse [plaintiff's] car and who gave Morse the ticket stub performed, to that point, the precise function for which he had been employed. He was in the place where his employer put him—the first and only employee of the defendant in contact with Morse. Morse did inquire if the clothes would be safe. It would be unreasonable to infer from the functions of this employee of the defendant, in the absence of a showing of an attempt to limit the liability of the defendant, that the attendant did not possess the power to receive the contents of the automobile, especially called to his attention.

"Because of the principle announced in C.C. 3000, defendant cannot avail itself of the instructions given its employee (instructions not called to Morse's attention) to exculpate itself from liability which might arise from the loss of articles left in a parked automobile. Morse was entitled to *infer* that the attendant had the authority to receive the deposit of the articles." United States Fidel. & Guar. Co. v. Dixie Parking Serv., Inc., 262 La. 45, 50, 262 So.2d 365, 366 (1972).

7. 248 So.2d 377 (La. App. 4th Cir. 1971).

8. "For centuries, the historical development of the law of agency has followed independent courses in common-law and in civil-law systems." Müller-Freienfels, *The Law of Agency*, in CIVIL LAW IN THE MODERN WORLD 77 (A. Yiannopoulos ed. 1965).

9. The section of the Code Napoleon on mandate appears in Book III, Title XIII, "Of Procuration," arts. 1984-2010. For the limited purpose of this Note, procuration should be equated with the term "mandate," which appears in the Louisiana Civil Code. Essentially, both words describe the contract by which the agency relationship is created.

Article 3000 was adopted into our Civil Code of 1825 as article 2969, without comment in the projet. There are no exact corresponding articles in the French projets of the Code Napoleon, although articles 1998 and 1989 bear a resemblance to our Louisiana articles 3000 and 3010, the latter of which first appeared in the Code of 1808.[10]

In interpreting the French law of mandate, Planiol states that when the mandatory (agent) has not exceeded his power, "the execution of the mandate obligates him [the principal] directly toward third parties, just as if he had contracted himself without employing an intermediary. It is the effect of representation in juridical acts."[11] However, "when a mandatory exceeds the powers given to him, he acts in reality without mandate, and consequently the principal is not bound as to what he may have done beyond the scope of the procuration [agency] given him: he was not represented."[12]

The term "apparent authority" is not found in either the French or Louisiana Civil Codes.[13] Therein, agency is regulated only insofar as its comprehends the contract existing between mandator and mandatary. These codes are directed "toward the two-sided agency involved in the contract of mandate rather than toward the institution of representation, the threefold relationship corresponding to the three persons involved."[14] Thus, in the Louisiana Civil Code, "agency is not recognized except as a species of mandate"[15] and only the "internal contractual relation of principal and agent" is treated.[16]

Article 3000, the source of the supreme court's holding, is frequently cited as a source of implied authority. Essential is

10. Article 1998 of the Code Napoleon (FRENCH CIV. CODE (Richards transl. 1840)) reads: "The principal is bound to execute agreements contracted by the agent, conformable to the power which has been given him. He is not bound for what may have been done beyond them, except so far as he has expressly or tacitly ratified it." Article 1989 states: "The agent can do nothing beyond what is contained in his commission . . . ."

11. 2 PLANIOL, TRAITÉ ELÉMENTAIRE DE DROIT CIVIL 297 (La. St. L. Inst. transl. 1959).

12. *Id.*

13. Müller-Freienfels, *The Law of Agency*, in CIVIL LAW IN THE MODERN WORLD 88 (A. Yiannopoulos ed. 1965).

14. *Id.* at 92.

15. *Id.*

16. Freienfels speaks of external and internal authorization in distinguishing the agent-third party relationship and the principle-agent relationship. *See* Müller-Freienfels, *The Law of Agency*, in CIVIL LAW IN THE MODERN WORLD 81 (A. Yiannopoulos ed. 1965).

the reader's appreciation of the distinction between implied authority and apparent authority. The former operates to protect the agent in his relations with his principal, and any benefit received by third persons dealing with the agent is merely an incidental by-product of the primary principal-agent relationship.[17] On the other hand, the doctrine of apparent authority was created to protect innocent third persons who negotiate with agents, placing liability on the principal.

From a consideration of the foregoing principles it seems that article 3000 was introduced into the Civil Code to mitigate the harsh effect of article 3010, which otherwise would place liability upon innocent mandataries who reasonably but incorrectly assume that they have authority to bind their principals. Thus, the article establishes a "normal scope of authority"[18] that furnishes the agent with a legal guideline from which can be inferred the functions he may permissibly execute in conformity with his position.

Assuming the validity of this distinction between implied and apparent authority, article 3000 is not proper authority for the court's decision, because the agent could not have inferred that he was authorized to accept the articles on deposit, when in fact he had received private instructions to the contrary. Had the agent not been given limiting instructions, he could perhaps have reasonably inferred that he had authority to accept the articles, in which case the principal would have properly been held accountable to the third party as an indirect result of the protection afforded the agent, in accordance with article 3000.[19] However, given the factual situation of the case under consideration, the code provides no basis for plaintiff's recovery, inasmuch as the contract of mandate supplies no direct protection for third parties who contract with agents.

In short, our Code offers no safeguard for the interests of

17. The question of the existence of implied authority should be dispositive as to whether the agent is entitled to receive compensation from his principal in consideration for duties performed. *See id.* at 99. If it is found that the agent acted within his implied scope of authority, then the contract confected by him with a third party should be valid, and liability for breach or nonperformance would fall upon the principal. The third party would thus benefit indirectly from the agent's correct interpretation of his implied scope of authority.

18. *Id.* at 98.

19. *See* note 17 *supra.*

third persons involved in the agency relationship other than article 3010, which makes mandataries liable to such persons in their individual capacities. Since it is reasonable to assume that principals are more likely to be financially responsible than their agents, the solution contemplated by this article appears untenable in a modern commercial society. In view of Louisiana's need for a doctrine analogous to the common law concept of apparent authority, it seems that the result reached in *Dixie Parking Service* was the correct one, despite the court's questionable application of codal authority. It is submitted that it would be more desirable for the courts, in applicable cases, to apply common law principles as their source for apparent authority—at least until the Louisiana Civil Code can be revised so as to embrace an equivalent concept.

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THE RIGHT OF THE INDIGENT CLIENT TO SUE HIS COURT-APPOINTED ATTORNEY FOR MALPRACTICE

The assistance of counsel has been afforded the accused in federal criminal prosecutions for several decades.[1] The Supreme Court of the United States first guaranteed the indigent's right to counsel in all state felony prosecutions (via the fourteenth amendment) in *Gideon v. Wainwright*.[2] The recent decision in *Argersinger v. Hamlin*[3] provided that in all criminal prosecutions, including misdemeanors, no incarceration could flow from a conviction of a crime unless the defendant is afforded the assistance of counsel. Attorneys will as a result defend increasing numbers of indigent clients who are a diversion from and burden to their regular practice. It is a reasonable inference from this fact that the instances of professional malpractice may increase at least proportionately to the corresponding increase in representation of indigent clients. The concern of this Note is the isolation and examination of the civil remedies available to the indigent client to redress the wrong caused by his attorney's incompetence.

We must begin, however, with the remedies for incompetent counsel within the framework of the criminal proceed-

1. Johnson v. Zerbst, 304 U.S. 458 (1937).
2. 372 U.S. 335 (1963).
3. 407 U.S. 25 (1972).