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BOOK REVIEW

Contracting with Companies BY ANDREW GRIFFITHS [Oxford: Hart Publishing, 2005. xxxiii + 321 pp. Hardback: £45]

An intriguing question in company law arises from the relationship between the rules of apparent authority and indoor management (or sometimes referred to as the rule in *Turquand's* case). Has the latter been replaced or subsumed by the former? *Walter Woon on Company Law* (3rd ed., 2005) argues that the rules should be merged: "The rule in *Turquand's* case should, in a modern context, be seen as a sub-set of the rules of apparent authority." (para. 3.40) *Prima facie*, this is an attractive and neat suggestion. Doctrinally, both the rules of apparent authority and indoor management are concerned to protect third parties that contract with an agent. Nevertheless, the rather cursory discussion leaves one with some lingering doubts on whether the matter may be so expeditiously disposed of.

This book argues that the rules of apparent authority and indoor management are different in two crucial aspects: the sources of the rules and their underlying premises. Agency law develops to meet the needs of commerce which requires that a person, an agent, be given authority to enter into binding contracts on behalf of another, his principal. Initially the agent and principal would almost invariably be human beings. The indoor management rule, on the other hand, was initially developed as a gloss on the doctrine of constructive notice which applied to the constitutional documents of companies registered under the successive companies acts. It was a rule specifically developed and intended to apply to corporate bodies. These differences meant that agency rules, although restated in their application to companies, may nevertheless fail to pay sufficient regard to a company as a corporate body. Consequently, agency rules may impose unreasonable burdens on third parties that contract with a company. This insight, when developed fully, provides the context for the two rules and helps to justify the controversial decision in *First Energy (UK) Ltd v. Hungarian International Bank Ltd* [1993] BCLC 1409 where the English Court of Appeal found in favour of the third party, even though the bank manager had effectively generated his own apparent authority.

The central theme of this book is that the law should "strike a balance between facilitating commerce with companies and maintaining respect for the formalities of company law" (p. 1). The author argued that the common law failed to give adequate weight to the special circumstances of corporate agency in setting the burden that the rules of attribution place on third parties. This happened because it assigned a risk of invalidity to third parties when companies were in fact the least cost-avoider. That is

not in the interests of companies in general because it increases overall transaction costs. One may intuitively arrive at this conclusion but the explicit use of economic analysis of law, together with a scholarly exposition of the relevant rules, provides the rigorous arguments one needs to make a coherent case.

The need for rules governing the making of contracts by companies to be efficient can hardly be overstated. UK and Singapore reformed their company laws recently in the hope of improving their competitiveness. In view of the central role played by companies in a modern economy, and contracts as the engine for wealth creation, it is a wonder that until the publication of this monograph there seems to be no book in the Commonwealth that is devoted entirely to studying the whole corpus of rules on contracting with companies. This book fills that gap admirably. It should prove valuable to law reformers, judges, academics, students and practitioners, for at least two reasons.

First, it is unique from most other company law texts in adopting an economic perspective. It examines the rules in terms of the risks they apportion between companies (i.e. the shareholders when the company is a going concern) and parties contracting with them (i.e. primarily external parties except in the cases of directors or persons connected with them, as contracting in this scenario raises conflict of interests considerations). Readers who are unfamiliar with economic analysis of law need not feel deterred from reading the book for two reasons. First, Chapter 2 of the book provides an excellent guide to the reader on understanding the use of economic analysis in law. The various notions of efficiency, a critical concept in economic analysis of law, are explained. Next, the discussion of risk allocation does not stay merely at the abstract level. The author integrates the question of allocation of risk into his analysis of each aspect of corporate contracting. The detailed reasoning should help readers to follow the author's arguments without much difficulty. For example, to hark back to the above question on the relationship between the rules of apparent authority and indoor management, he explains why the former rule tends to allocate the risk disproportionately to outsiders contracting with a company, whereas the latter rule allocates the risk better.

Secondly, it contains an in depth and stimulating analysis of the complex and diverse rules on contracting by companies. In addition to the usual agency rules in their application to companies, it discusses the capacity and power of a company to make contracts, issues of identity and existence, contracting with the board, contracts involving self-dealing and the statutory provisions in the UK Companies Act 1985 that regulate conflicted transactions. Its critique of the concept that the company may artificially make a contract in its own right instead of through agents is enlightening. References were made to the consultancy documents produced by the Company Law Review Steering Group where appropriate. This should mean that although the book is outdated to the extent of the enactment of the UK Companies Act 2006, readers will still benefit from the author's analysis of the suggested reforms or draft provisions.

It is hoped that the insights offered by this book will be readily absorbed by authors of books on agency and company law. On the one hand, chapters on corporate capacity and acting on behalf of companies in texts on company law usually fail to highlight to readers the need to bear the different contexts in mind when applying agency rules developed with reference to human agents and principals to companies, and even if they do that they do not usually provide enough guidance on how the

application may be done appropriately. This is likely to cause difficulties to students, as they are usually required to apply agency rules, after having been introduced to them in a few lectures, in a corporate context, or even practitioners. On the other hand, although a book on agency law will have to provide a unifying account on all types of agents, its exposition will be improved if the contextual differences between different types of agents are brought out clearly where appropriate. In fact, the insights offered by this book are useful not only in the area of contracting with companies, but with appropriate adaptations, may be applied to contracting with all kinds of actors in the economy, including statutory bodies, limited liability partnerships, partnerships and even societies. In that regard, this book is essential reading for any one who is serious about understanding the economic considerations pertaining to rules of contracting with such bodies.

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