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Agents of the Good, Servants of Evil: Harry Potter and the Law of Agency

Keywords

Harry Potter, Voldemort, Dumbledore, Snape, Agency, Fiduciary duty, good conduct, Authority, Control, Enterprise liability

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Agents of the Good, Servants of Evil:
Harry Potter and the Law of Agency
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Like many works of literature, the Harry Potter novels concern the conflict between good and evil. As is often the case in novels and life, some characters are active in defense of the good, while others act to serve and advance evil. In the Potter novels, good and evil are each clearly personified – Dumbledore is the foremost representative of the former, and Voldemort is the unsurpassable embodiment of the latter.²

The Potter novels are, among other things, a saga of the (so far) never-ending battle between the minions of Voldemort and the adherents of Dumbledore. Every Death Eater acts on behalf and under the control of Voldemort, and the Order of the Phoenix appears to act under Dumbledore’s commands. Even Harry Potter is “Dumbledore’s man through and through.”³

The Potter novels are thus replete with examples of agency “relationship[s] in which one person, to one degree or another or respect or another, acts as a representative of or otherwise acts on behalf of another person.”⁴ As a result, concepts from the law of agency can help explicate these novels, and the novels can in turn furnish appealing illustrations of agency law concepts.

¹ Professor of Law and Director of the William Mitchell Fellows Program, William Mitchell College of Law, A.B. Harvard University, J.D. Yale Law School. I appreciate the advice of Potter enthusiasts Sonya Huesman, Lindsay Hutchins Matts, Kristina Shidlauski, and especially Sam, Rachael and Carolyn Kleinberger.

² While respecting the fears that lead many to eschew this name and substitute euphemisms such as “He Who Must Not be Named,” this essay follows the Dumbledore-Potter approach and calls a spade a spade.

³ HALF BLOOD PRINCE, ch. 17, p. 348; ch. 30, p. 649.

⁴ Restatement (Third) of Agency (“Restatement Third”), § 1.01, comment c (2006) (describing the agency relationship).

“Agency is the fiduciary relationship that arises when one person (a “principal”) manifests assent to another person (an “agent”) that the agent shall act on the principal’s behalf and subject to the principal’s control, and the agent manifests assent or otherwise consents so to act.”⁵ Agency relations are ubiquitous in our society (as well as in the Potter novels), and the study of Agency Law is almost as interesting and important as the study of Potions. This essay will consider the following eight topics, which arise from the overlap of Harry Potter and the law of agency:

- The Essence of Agency: Interfacing for the Principal
- Why the Labels Matter – Categories and Consequences
- Formation of an Agency Relationship – The Consent Requirement, House-Elves, and the Imperious Curse
- Ending the Agency Relationship – Potter-esque Variations on the Notion of Termination by Express Will
- The Agent’s Duties to the Principal – Loyalty, Obedience, Good Conduct, House-Elves and Snape
- An Agent’s Good Faith Struggles with the Duty of Loyalty
- Dumbledore – Agent or Principal and, if Agent, Agent for Whom?
- Servants of Evil?

The Essence of Agency: Interfacing for the Principal

An agency relationship necessarily involves an agent and a principal and typically implicates one or more others (third parties). In one way or another, an agent’s function

⁵ Restatement Third, § 1.01.

is to stand between the principal and the world and to “act[] as a representative of or otherwise . . . on behalf of [the principal] with power to affect the legal rights and duties of the [the principal]” toward the world.⁶

For example:

- A bank, understanding that not all customers like dealing with ATM machines, hires tellers to handle customer deposits, withdrawals, and similar transactions. The tellers are agents of the bank.
- A landowner, preparing to leave for an around-the-world tour and wishing to sell Greenacre as soon as possible, gives a real estate broker a “power of attorney.” This credential authorizes the broker to sell Greenacre on the owner’s behalf and to sign all documents necessary to form a binding contract and to close the deal. The broker is the owner’s agent.
- A corporate shareholder, unable to attend the corporation’s annual meeting, signs a “proxy” that authorizes another individual to cast the shareholder’s votes at the meeting. By accepting the appointment, the proxy holder becomes the shareholder’s agent.⁷

In the Potter novels, the Death Eaters are the most notorious agents, and Voldemort is their principal. Acting “on behalf of” another does not fit Voldemort’s character, although in his youth Tom Riddle does work briefly as an agent. His first job after leaving Hogwarts is as an employee of the Borgin and Burke partnership. In that role, the Dark-Lord-To-Be is the classic intermediary. According to Dumbledore,

⁶ Restatement Third, § 1.01, comment c.

⁷ These examples come verbatim from Daniel S. Kleinberger, AGENCY, PARTNERSHIPS AND LLCs: EXAMPLES AND EXPLANATIONS (Aspen 2002) (“Kleinberger, AGENCY”), § 1.2 at 4.

“Voldemort was sent to persuade people to part with their treasures for sale by the partners, and he was by all accounts, unusually gifted at doing this.”⁸

Hagrid is likewise an intermediary (and an agent) when he leaves his job at Hogwarts to reestablish diplomatic relations with the giants.⁹ And Mr. Weasley is a dedicated, hardworking, and often poorly-treated agent for the Ministry of Magic.

In contrast, Hermione is never Harry’s or Ron’s agent, even though she often does them the favor of “assisting” with their homework.¹⁰ “[A] person does not become the agent of another simply by offering help or making a suggestion.”¹¹

Thus, the Dursleys are not Dumbledore’s agents, even though Mrs. Dursley agrees to take Harry Potter in only because Dumbledore urges her to do so. There is no indication that Dumbledore asks that Harry be harbored *on Dumbledore’s behalf*, and certainly the Dursleys manifest no consent to act subject to Dumbledore’s control.

For the same reason, the members of “Dumbledore’s Army” are not Dumbledore’s agents, despite Dumbledore’s assertion to the Minister of Magic that it is “Dumbledore’s Army, Cornelius Not Potter’s Army. *Dumbledore’s Army*.”¹² The assertion cannot serve as the necessary manifestation by a principal that another act on the principal’s behalf, because Dumbledore makes the assertion long after the students have formed the organization.

For related reasons, Draco Malfoy’s cronies, Vincent Crabbe and Gregory Goyle, are not Draco’s agents. In an agency relationship, the agent has the power “to affect the

⁸ HALF-BLOOD PRINCE, ch. 20, at 432-33 (Dumbledore to Harry, as they are about to view a memory in the Pensieve).

⁹ Identifying Hagrid’s principal in this endeavor is complicated and is discussed below.

¹⁰ As Hermione is undoubtedly a “straight arrow,” rules on plagiarism and related forms of cheating must be different at Hogwarts than in the Muggle world.

¹¹ *Violette v. Shoup*, 20 Cal. Rptr. 2d358, 363 (Ca. App. 1993).

¹² ORDER OF THE PHOENIX, ch. 27 at 618 (emphasis in original).

legal rights and duties of” the principal,¹³ and Draco never reposes that amount of trust and confidence in either of his beefy henchmen.

Why the Labels Matter – Categories and Consequences

Regardless of whether the categories of principal and agent are interesting in the abstract,¹⁴ these labels have serious practical importance. Law often reasons through a process of “categories and consequences -- analyzing situations by defining categories of behavior and then attaching consequences to those categories.”¹⁵ Such high-powered “pigeon-holing” is characteristic of agency law, and any agency relationship “thus entails inward-looking consequences, operative as between the agent and the principal, as well as outward-looking consequences, operative as among the agent, the principal, and third parties with whom the agent interacts.”¹⁶

Formation of an Agency Relationship – The Consent Requirement, House-Elves, and the Imperious Curse

Agency is a consensual relationship. No agency is formed until the would-be agent “manifests assent or otherwise consents to act” for the would-be principal.¹⁷ In most circumstances, the consent is obvious and clear cut. For example:

<u>Employer:</u> [principal, “manifest[ing] assent to another person ... that the agent shall act on the	You’re hired.
---	---------------

¹³ Restatement Third, § 1.01, comment c.

¹⁴ A person who enjoys Arithmancy will likely find Agency interesting even in the abstract. In contrast, a person who thrills to Divination as “taught” by Professor Trelawney will likely consider too confining the intellectual discipline inherent in agency law concepts.

¹⁵ Kleinberger, AGENCY, Preface at xxiv.

¹⁶ Restatement Third, § 1.01, comment c.

¹⁷ Restatement Third, § 1.01.

principal's behalf and subject
to the principal's control"]

Employee:
[agent, "manifesting assent or
otherwise consent[ing] to
act"]

Great!

Sometimes, however, consent is at best debatable. For example, house-elves might seem the model of faithful agents, but Hermione would assert (vehemently) that the consent element is completely missing.¹⁸

At least one house-elf appears to agree. As Dobby explains to Harry Potter in THE CHAMBER OF SECRETS, status rather than consent engenders the relationship between a house-elf and the family of the house: "Dobby is a house-elf – *bound* to serve one house and one family forever."¹⁹ Indeed, after Dobby's "liberation by sock," he describes the house-elf's role as "enslavement."²⁰

Even more obedient and seemingly acquiescent are persons subject to the Imperious Curse. However, while such unfortunates may be Voldemort's helpless instruments, they are not his agents. Although an agent's assent is typically inferred "when the agent performs the service requested by the principal following the principal's manifestation,"²¹ whether conduct signifies assent depends on all the surrounding circumstances. Agency law applies an "objective" test – i.e., the law asks whether, in

¹⁸ See, e.g., THE GOBLET OF FIRE, ch. 10, p. 154 (Hermione describing Mr. Crouch's house-elf as "[h]is *slave*") (emphasis in original).

¹⁹ CHAMBER OF SECRETS, (Scholastic, softcover ed.), ch. 2, p. 14.

²⁰ Dobby, GOBLET OF FIRE, ch. 21, p. 380. Despite the strong case against considering house-elves to be agents, this essay will continue to do so. For one thing, without the house-elves many of this essay's best examples will disappear. For another, any good lawyer must be able to "believe[] as many as six impossible things before breakfast." Lewis Carroll, THROUGH THE LOOKING GLASS, chapter 5 (the Queen, speaking to Alice). And for a third, after liberation Dobby does *choose* to be employed by Hogwarts to perform work side-by-side with the Hogswarts house-elves.

²¹ Restatement Third, § 1.01, comment d.

light of the would-be agent's outward manifestations and the surrounding circumstances, a reasonable person would believe that the would-be agent has genuinely consented to act on behalf of the principal. No reasonable person could view a victim's subservience to the Imperious Curse as a manifestation of genuine consent.

A fortiori,²² a person *possessed* by Voldemort does not act as Voldemort's agent. There is no consent and, in light of the surrounding circumstances (i.e., the possession) there is no conduct that could be reasonably seen as manifesting assent. The person possessed is more a zombie than an agent.²³

*Ending the Agency Relationship –
Potter-esque Variations on the Notion of Termination by Express Will*

"An agency relationship may end in numerous ways,"²⁴ and the express will of either the principal or agent always suffices. The termination is effective when the manifestation of the express will reaches the other party. If the principal's "revocation" or the agent's "renunciation" breaches a contract between the parties, the termination will be wrongful and give rise to a claim for damages. Nonetheless, principal and agent each have the non-waivable power to terminate the agency.

Termination by express will has something important in common with the creation of an agency relationship. Both are assessed objectively; the relevant manifestation is interpreted from the perspective of a reasonable third person, and subjective intent is irrelevant. Thus, for example, Lucius Malfoy never intends to

²² Latin: even more so.

²³ See, e.g., ORDER OF THE PHOENIX, ch. 23 at 500 (Ginny describing her experience being possessed by Voldemort: "When he did it to me, I couldn't remember what I'd been doing for hours at a time. I'd find myself somewhere and not know how I got there.")

²⁴ Kleinberger, AGENCY, § 5.1 at 153.

terminate Dobby's role as house-elf, but even the despicable Malfoy recognizes the objective significance of throwing a sock and having Dobby catch it.²⁵

The distinction between an agent's right and power to renounce an agency is highly significant in the Muggle world, but the distinction blurs substantially when Voldemort is involved. As explained above, when an agent's renunciation is wrongful, the principal's normal recourse is to seek damages. But, when Voldemort is the principal, normalcy is not the norm and the consequences of breach are far more serious (and final). As explained by Sirius Black, recounting the death of his brother, "[Regulus] was murdered by Voldemort. Or on his orders, more likely,[H]e got in so far then panicked about what he was being asked to do and tried to back out. Well, you don't just hand in your resignation to Voldemort. It's a lifetime of service or death."²⁶

*The Agent's Duties to the Principal –
Loyalty, Obedience, Good Conduct, House-Elves, and Snape*

Agency is a "fiduciary relationship," and consequently the agent owes a duty of loyalty to the principal in all matters pertaining to the agency. "The agent's role is a selfless one, and the principal's objectives and wishes are dominant. . . . Except when the principal has knowingly agreed to the contrary or when extraordinary circumstances

²⁵ CHAMBER OF SECRETS, ch. 18, at 337-38 (attacking Potter and exclaiming, "You've lost me my servant, boy!").

²⁶ ORDER OF THE PHOENIX, ch. 6, at 112. In the Muggle world, there is one type of agent that lacks the power to *immediately* terminate the agency relationship. Business entity statutes typically require an entity formed under the statute to have a "registered agent for service of process." These agents have the power to resign, but the resignation is not effective until either the entity designates a new agent or a statutory waiting period has passed. *See, e.g.*, UNIFORM LIMITED PARTNERSHIP ACT (2001), § 116(c) (agent's resignation takes effect 31 days after delivery to the appropriate government filing office, unless a new agent is designated sooner); REVISED UNIFORM LIMITED LIABILITY COMPANY ACT, §115(c)(1) (same).

exist, the agent is obliged to prefer the principal's interests over its own and to act 'solely for the benefit of the principal in all matters connected with [the] agency.'"²⁷

The agent's duty of loyalty includes a duty to: (i) not compete with or take opportunities from the principal; (ii) safeguard the principal's confidential information; and (iii) avoid conduct that would reflect poorly on the principal or otherwise injure the principal's reputation (the duty of good conduct). The agent is also obliged to obey the principal's instructions and avoid unauthorized acts. In addition, "[i]f an agent possesses information and has reason to know that the principal may need or desire the information, the agent has a duty to provide the information to the principal."²⁸

THE HALF-BLOOD PRINCE contains a poignant acknowledgment of the agent's duty to provide information. In an attempt to extenuate Snape's betrayal of Harry's parents, Dumbledore says, "He was still in Lord Voldemort's employ on the night he heard the first half of Professor Trelawney's prophecy. Naturally, he hastened to tell his master what he had heard, for it concerned his master most deeply."²⁹

Even a brief breach of the duty of loyalty can have egregious consequences, as illustrated by the opening chapter of THE ORDER OF THE PHOENIX. The wizard Mundungus is acting for the Order and keeping watch on Privet Drive. He deserts his post to pursue business of his own, and the dementors attack. Harry must defend himself (and his cousin) and, as a result, faces expulsion from Hogwarts. Later in the book, with "a pleading note in his voice," Mundungus seeks to explain away his dereliction of duty:

²⁷ Kleinberger, AGENCY, § 4.1.1 at 117-18 (quoting RESTATEMENT (SECOND) OF AGENCY, § 387) (footnotes omitted).

²⁸ Kleinberger, AGENCY, § 4.1.5 at 125.

²⁹ THE HALF-BLOOD PRINCE, ch. 25, at 549.

“See, I wouldn’t ‘ave left . . . but I ‘ad a business opportunity –”³⁰ The excuse is lame, both as to common sense and the law of agency.

Not surprisingly, a glaring breach of duty can be found in Voldemort’s brief experience as agent for Borgin and Burkes. Consider the incident of Hepzibah Smith, Helga Hufflepuff’s cup, and Slytherin’s locket. Despite Voldemort’s protestation that “I am only a poor assistant, madam, who must do as he is told,” Voldemort acquiesces when Hepzibah burbles “I’ve something to show you that I’ve never shown Mr. Burke! Can you keep a secret, Tom? Will you promise you won’t tell Mr. Burke I’ve got it?”³¹

When Voldemort reports neither this conversation nor Hepzibah’s possession of the cup and locket, he breaches the agent’s duty to provide information. His subsequent theft of the two items breaches both his duty not to usurp opportunities from his principal and his duty not to compete with his principal.³²

As for the duties of good conduct and obedience, Hermione gives Ron a good reminder in the following colloquy on the role of prefects.

Ron: We’re supposed to patrol the corridors every so often and we can give out punishments if people are misbehaving. I can’t wait to get Crabbe and Goyle for something . . .

Hermione: You’re not supposed to abuse your position, Ron!
[sharply]

³⁰ ORDER OF THE PHOENIX, ch. 5 at 82.

³¹ HALF-BLOOD PRINCE, ch. 20 at 435.

³² Ms Smith’s heirs also have grounds to complain and, fearing to sue Voldemort, might argue that his employers (Borgin and Burkes) are responsible for his intentional tort [wrongful act]. Two agency law theories would be relevant: (i) that Borgin and Burkes were negligent (careless) in the hiring, training, supervising, or retention of Voldemort as an employee; and (ii) that Borgin and Burkes are vicariously liable because the tort occurred within the scope of Voldemort’s employment. The negligence theory would turn on whether Borgin and Burkes had any reason to know of Voldemort’s character (or lack thereof). The vicarious liability theory goes by the Latin name “*respondeat superior*,” is explained below, and would not win for the heirs in any Muggle jurisdiction other than perhaps Minnesota, where “*Respondeat Superior* [Has] Run Amok,” 59 BENCH & B. MINN. 16 (Nov. 2002).

Ron: Yeah, right, because Malfoy won't abuse it at all.
[sarcastically]

Hermione: So you're going to descend to his level?

Ron: No, I'm just going to make sure I get his mates before he gets mine.

Hermione: For heaven's sake, Ron --³³

Hermione is giving voice to a key principle of agency law. Although Ron's concern for his "mates" is commendable, he is obliged to obey the instructions of his principal and to avoid putting his principal "in a bad light." As a prefect, Ron acts on behalf of Hogwarts. His principal is the school, not any of his mates.

Perhaps ironically, it is Dobby (the house-elf) who seems to have best assimilated the agent's duty of loyalty. "We keeps their secrets and our silence, sir. We uphold the family's honor, and we never speaks ill of them."³⁴

Dobby tries to maintain this attitude even after his agency ends (i.e., he ceases to be the Malfoy house-elf):

"Dobby could tell Harry Potter that his old masters were – were – *bad Dark wizards*." Dobby stood for a moment, quivering all over, horror-struck by his own daring – then he rushed over to the nearest table and began banging his head on it very hard, squealing, "*Bad Dobby! Bad Dobby!*"³⁵

³³ ORDER OF THE PHOENIX, ch. [[[insert]]] at [[[insert]]].

³⁴ GOBLET OF FIRE, ch. 21 at 380.

³⁵ GOBLET OF FIRE, ch. 21 at 381 (emphasis in original). Arguably at least, Dobby's comments breach no duty, because almost all aspects of the duty of loyalty end when the agency

On the other hand, the series' most striking example of grudging loyalty is Kreacher, another house-elf. Kreacher despises his duty to serve Sirius Black:

“Kreacher lives to serve the noble house of Black [but] Master was a nasty ungrateful swine who broke his mother's heart . . . Master is not fit to wipe slime from his mother's boots, oh my poor [deceased] Mistress, what would she say she saw Kreacher serving him[?]”³⁶

Kreacher is no happier when Harry inherits Sirius' house and with it Kreacher's obligation of service: “‘Kreacher will do whatever Master wants,’ said Kreacher, sinking so low that his lips almost touched his gnarled toes, ‘because Kreacher has no choice, but Kreacher is ashamed to have such a master, yes ___’”³⁷

Tragically, Kreacher's disdain for Sirius eventually becomes outright disloyalty. When Harry fears that Sirius is in danger at the Ministry of Magic, Kreacher breaches his duty to Sirius by making sure that Sirius is incommunicado and by concealing from Harry the fact Sirius is still at home. As a result, Harry rushes off to the Ministry, fulfills Voldemort's plans, and finds himself confronting a detachment of Death Eaters.

Of course, the greatest breach of an agent's duty of loyalty is Snape's.

ends. However, the duty not to disclose confidential information obtained *during* the agency continues even *after* the agency. So, if Dobby obtained the secret “Dark wizard” information while serving as the Malfoy house-elf, Dobby is indeed “Bad Dobby” for disclosing that information to Harry. Otherwise, nothing in agency law restricts Dobby from “bad mouthing” his former principal.

³⁶ ORDER OF THE PHOENIX, ch. 6 at 109.

³⁷ HALF-BLOOD PRINCE, ch. [[[insert]]] at [[[insert]]].

An Agent's Good Faith Struggles with the Duty of Loyalty

Sometimes the duties of loyalty and obedience create a quandary for agents acting in good faith. Suppose compliance threatens the interests of others, or even the interests of the principal?

The Potter novels contain examples of both types of dilemmas. As to the interests of others, several times the pre-liberation Dobby acts as if Harry Potter's safety justifies disloyalty to the Malfoys. The RESTATEMENT (SECOND) OF AGENCY recognizes that an agent may legitimately act against the principal's interest "in the protection of . . . the interests of others,"³⁸ but Dobby is apparently unaware of this marvelously vague permission. He devises his own approach to acting adversely to his principal – transgressing in order to help Harry and then subjecting himself to appropriate discipline. For instance, in *THE CHAMBER OF SECRETS*, Dobby explains, "Dobby will have to punish himself most grievously for coming to see you."³⁹

Even without reference to the RESTATEMENT SECOND, Dobby's approach may be unnecessarily harsh. The Malfoys may have implicitly authorized Dobby to misbehave, on condition that he then inflict commensurate punishment on himself. The evidence is in a brief conversation between Dobby and Harry Potter. Harry asks, "[W]on't they notice if you shut your ears in the oven door?" Dobby responds, "Dobby doubts it, sir. They lets Dobby get on with it, sir. Sometimes they reminds me to do extra punishments. . . ."⁴⁰

The Hogwarts Sorting Hat experiences the second kind of dilemma. The Hat acts as an agent for the school; it takes on the sorting function formerly performed by the

³⁸ RESTATEMENT (SECOND) OF AGENCY, § 387, comment d.

³⁹ *CHAMBER OF SECRETS*, ch. 2 at 14.

⁴⁰ *CHAMBER OF SECRETS*, ch. 2 at 14.

school's four founders.⁴¹ In the troubled times described in THE ORDER OF THE PHOENIX, the Hat fears that faithful performance of its duties may undercut the very purpose for which it was created:

Though condemned I am to split you
Still I worry that it's wrong,
Though I must fulfill my duty
And must quarter every year
Still I wonder whether sorting
May not bring the end I fear.
....
For our Hogwarts is in danger
From external, deadly foes
And we must unite inside her
Or we'll crumble from within
I have told you, I have warned you . . .
Let the Sorting now begin.⁴²

The Hat solves its problem by fulfilling another duty – that of providing to the principal information pertaining to the principal's interests and relevant to the agency. As Nearly Headless Nick nearly succeeds in explaining, “The hat feels itself honor-bound to give the school due warning whenever it feels – [interrupted here by Professor McGonagall].”⁴³

Dumbledore – Agent or Principal and, if Agent, Agent for Whom?

It is clear that the Death Eaters act on behalf of Voldemort, but what does agency law have to say about those “agents of the good” who rally around Dumbledore? No one in the Potter novels engenders more loyalty (in the lay sense of the word) than Albus

⁴¹ GOBLET OF FIRE, ch. 12 at 177.

⁴² ORDER OF THE PHOENIX, ch. [[[insert]]] at [[[insert]]].

⁴³ ORDER OF THE PHOENIX, ch.11 at 207.

Dumbledore, Headmaster of Hogwarts, Order of Merlin First Class, Grand Sorcerer, Chief Warlock, Supreme Mugwump, International Confederation of Wizards. But loyalty in the lay sense does not necessarily signify an agent-principal relationship. For example, thousands of people in Chicago remain loyal to the Cubs, but those die-hards are certainly not agents of the ball club.

To understand Dumbledore's role (or, as will be seen, roles) from an agency law perspective, it is necessary first to understand that, in the modern world (whether of wizards or Muggles), a principal need not be a human being. In fact, in the modern world many, perhaps most, principals are organizations – e.g., corporations, partnerships, limited liability companies, etc. These organizations necessarily act through agents.

In the Potter novels, Gringotts (the wizard's bank) is a good example of an organization that acts through its agents. According to Hagrid, the bank is “[r]un by goblins.”⁴⁴ Presumably, some goblins function as the managing power that controls the organization, while others act as the bank's agents – doing “its” work, such as keeping accounts and providing security.

Hogwarts School of Witchcraft and Wizardry is another example. The professors and staff act on behalf of the School and are its agents. As Headmaster, Dumbledore has the authority to supervise and direct those agents, but he is not their principal. He is himself an agent of the School. In the nomenclature of the RESTATEMENT THIRD, § 1.04(1) and (9), (i) he and the others are coagents of Hogwarts; (ii) he is a superior agent; (iii) all the others are subordinate agents.

⁴⁴ SORCERER'S STONE, ch. 5 at 63.

For example, it is Dumbledore who decides that Hogwarts will use Hagrid to notify Harry that Harry has been accepted as a Hogwarts student.⁴⁵ While Hagrid may experience himself as acting “for Dumbledore,” viewed from an agency law perspective Hagrid is “on Hogwarts business.”

But if Dumbledore is “merely” an agent of Hogwarts and therefore subject to Hogwarts’ control, who controls Hogwarts? The ultimate management power resides in the governors as a group (including, distressingly, Lucius Malfoy). As Malfoy explains to Minister Fudge, even “[t]he appointment – or suspension – of the headmaster is a matter for the governors.”⁴⁶

When Dumbledore dies, it is for the board of governors to determine whether to close the school and, if not, whom to choose as Dumbledore’s successor. As Professor Flitwick says, “We must consult the governors We must follow the established procedures. A decision should not be made hastily.”⁴⁷ Professor McGonagall, Deputy Headmistress of Hogwarts, agrees: “[T]he right thing to do is to consult the governors, who will make the final decision.”⁴⁸

Thus, when Dumbledore acts in his Hogwarts role, he acts as an agent and not as a principal. Whatever loyalty is extended to him in that role is either personal (i.e., loyalty in the lay sense of the word) or directed at him in his representative capacity (i.e., as the highest ranking agent of the school).⁴⁹

⁴⁵ SORCERER’S STONE, ch. 4 at 50-51.

⁴⁶ CHAMBER OF SECRETS, ch. 14 at 263.

⁴⁷ HALF-BLOOD PRINCE, ch. 29 at 628.

⁴⁸ HALF-BLOOD PRINCE, ch. 29 at 629.

⁴⁹ Those who ultimately control Hogwarts – i.e., the governors -- are not themselves agents of the school, because they are not subject to the organization’s control. To the contrary, Hogwarts is controlled by its governors. (The governors temporarily cease to control Hogwarts during the period recounted in THE ORDER OF THE PHOENIX, when the Ministry of Magic enacts

And what of Dumbledore and the Order of the Phoenix? According to Hermione, the Order is “a secret society.... Dumbledore’s in charge, he founded it. It’s the people who fought against You-Know-Who last time.”⁵⁰

In legal terms, the Order is an organization, presumably a non-profit association, and, again presumably, its members have ultimate control over its activities. Therefore: (i) Dumbledore is himself an agent of the Order; and (ii) the Order’s adherents are not his agents, although they act under his direction. Thus, Dumbledore’s role in the Order of the Phoenix parallels his role at Hogwarts. He is the highest ranking agent of the organization – superior to his co-agents, who are his subordinates.

Given the parallel between Dumbledore’s roles and the overlap between the interests of Hogwarts and the concerns of the Order of the Phoenix, it is sometimes difficult to determine for whom Dumbledore is acting. For example, when Dumbledore chooses Snape to teach Occlumency to Harry, is Dumbledore acting as the person who is “in charge” of the Order of the Phoenix, as Headmaster of Hogwarts, or as both? (Whatever the answer, the choice proves disastrous.)

Hagrid’s sojourn with the giants provides another example of Dumbledorean complexity under the law of agency. Harry ascribes Hagrid’s absence from Hogwarts to “his mission – the thing he was doing over the summer for Dumbledore.”⁵¹ The mission is certainly an agent’s task (opening communication with the giants), but is Dumbledore personally the principal? It seems more likely that Dumbledore dispatches Hagrid on behalf of the Order of the Phoenix. It also seems likely that, acting as Headmaster of

legislation allowing it to control the school. The Ministry exercises control through its agent, Dolores Umbridge, who is initially High Inquisitor, eventually Headmistress, and unfailingly a dangerous and nasty fool.)

⁵⁰ ORDER OF THE PHOENIX, ch. 4 at 67.

⁵¹ ORDER OF THE PHOENIX, ch. 15 at 202.

Hogwarts, Dumbledore gives Hagrid a leave of absence from his work as instructor in Magical Creatures. (Dumbledore's dual roles do not create a conflict of interest here, because in this situation the interests of both principals are in accord.)

Servants of Evil?

One of the most important subcategories of agent status is that of the “servant.”⁵² The importance comes from the consequences that attach to the label. When a “servant agent” harms a third party through a wrongful act within “the scope of employment,” the principal (called the “master”) is liable automatically for the harm. The liability is vicarious and applies without regard to the master's fault. *Respondeat superior* -- literally: let the superior make answer. Or, to borrow Mr. Crouch's exclamation after the Dark Mark appears at the Quidditch World Cup, “If you accuse my elf, you accuse me....”⁵³

The key factor for determining servant status is the extent to which the principal has the right to control the details of the agent's performance. The following colloquy among Dobby, Hermione, and Harry, is illustrative – even though Harry had not exercised the detail of control that concerns Hermione. The discussion takes place in *THE HALF-BLOOD PRINCE*, following Dobby's and Kreacher's fruitless efforts to keep Draco Malfoy under surveillance:

Hermione: What is this? What's going on, Harry?

Harry: Well they've been following Malfoy for me.

⁵² This usage of the term “servant” dates back centuries, and the *RESTATEMENT THIRD* uses the more modern label of “employee.” However, most cases still use the older term. More importantly, “Agents of the Good, Employees of Evil” would make a far less catchy title for this essay.

⁵³ *GOBLET OF FIRE*, ch. 9 at 137.

Kreacher:	Night and day.
Dobby [proudly]:	Dobby has not slept for a week, Harry Potter.
Hermione [indignant]:	You haven't slept, Dobby? But surely, Harry, you didn't tell him not to –
Harry [quickly]:	No, off course I didn't. Dobby, you can sleep, all right? ⁵⁴

Similarly illustrative is Hagrid's description of the tactics Dumbledore imposes for Hagrid's negotiations with the giants. Dumbledore scripts a multi-stage process of overtures, gifts, and promises: "Dumbledore wanted us ter take it very slow Let 'em see we kept our promises."⁵⁵

The test for servant status is multi-factored, and, not surprisingly, the close cases are matters of degree. For example, in *THE SORCERER'S STONE* Professor Quirrel may have begun as Voldemort's non-servant agent, but, as the Professor himself explains, "When I failed to steal the stone from Gringotts, he ... decided he would have to keep a closer watch on me."⁵⁶

Although from an agency law perspective "the term *servant* has nothing to do with servile status or menial tasks,"⁵⁷ in the Potter novels many useful examples of servant status concern house-elves. As Winky explains in *THE GOBLET OF FIRE*, "House-elves does what they is told. I is not liking heights at all, Harry Potter . . . but my master sends me to the Top Box and I comes, sir."⁵⁸

⁵⁴ *HALF-BLOOD PRINCE*, ch. 21 at 451.

⁵⁵ *ORDER OF THE PHOENIX*, ch. 20 at 429.

⁵⁶ *SORCERER'S STONE*, ch. 17 at 291.

⁵⁷ Kleinberger, *AGENCY*, § 3.2.2 at 81 (emphasis in original).

⁵⁸ *GOBLET OF FIRE*, ch. 8 at 99.

In contrast, the Hogwarts Sorting Hat is likely a non-servant agent. The school has neither the right nor ability to control the manner in which the Hat makes its decisions. To the contrary, as the Hat itself proclaims, “The founders put some brains in me/So I could choose instead!”⁵⁹

What about the Death Eaters? In *THE HALF-BLOOD PRINCE*, Dumbledore and Voldemort disagree as to the proper characterization. Voldemort calls them “my friends,” and Dumbledore responds, “I am glad to hear that you consider them friends . . . I was under the impression that they are in the order of servants.” Voldemort rejoins, “You are mistaken.”⁶⁰

Dumbledore is most likely using the term “servant” in the colloquial sense; he is learned in many realms, but likely not in the Muggle discipline of agency law. Even so, in this, as in all his disagreements with the Dark Lord, Dumbledore is right. Control is the most important factor in the servant *vel non* analysis,⁶¹ and “with respect to the physical conduct in the performance of the services [each Death Eater] is [undeniably] subject to [Voldemort’s] control or right to control.”⁶²

The servant label also rests on two more specific factors. As to “the length of time for which the person is employed,”⁶³ as previously noted a Death Eater is “employed” by the Dark Lord forever, or until death, whichever comes first. As to “whether or not the parties believe they are creating the relation of master and servant,”⁶⁴

⁵⁹ *GOBLET OF FIRE*, ch. 12 at 177.

⁶⁰ *HALF-BLOOD PRINCE*, ch. [[[insert]]] at 444.

⁶¹ *Vel non* is Latin for “or not.” Because so much of legal analysis involves “categories and consequences,” lawyers often seek to understand whether a particular situation fits into a particular category or not.

⁶² *RESTATEMENT SECOND*, § 220(1).

⁶³ *RESTATEMENT SECOND*, § 220(2)(f).

⁶⁴ *RESTATEMENT SECOND*, § 220(2)(i).

despite Voldemort's disingenuous reference to "friends," it is abundantly clear that those who join the Dark Lord do so as servants. The brand of the Dark Mark can mean nothing else.

A final example of Voldemort as master can be found in the very first book of the Potter series. When Voldemort comes to share Professor Quirrel's body, the Dark Lord is on the spot to direct every aspect of the Professor's conduct. Quirrel is thus inescapably Voldemort's servant, and, when Quirrel addresses Voldemort as "Master," that label is apt. Fittingly, "The Man With Two Faces" personifies one of the most venerable maxims of agency law: *Qui facit per alium facit per se*.⁶⁵

[end]

⁶⁵ Latin: Who acts through another, acts himself.

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