

## The Naughty List - Responsibility for Rogue Elements

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By Markus Esly | December 31, 2018

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When should a company, partnership or principal be liable for fraud committed by their employee, partner or agent? In answering this question, the law has to strike a balance between the interests of those who conduct their business through representatives and third parties who deal with those representatives, often without knowing the true position or authority given to the intermediary.

In *Winter v Hockley Mint Ltd* [2018] EWCA Civ 2480, the Court of Appeal overturned the High Court, finding that the judge had applied the wrong legal test when grappling with the issue. The agent had fraudulently induced a company to enter into a contract – committing the tort of deceit. Holding the principal liable for the deceit of the agent, the judge had applied a modern unified test rather than following earlier authorities specifically concerning dishonesty (as opposed to other misconduct by agents). Arguably, on the High Court judge's approach, it would be easier to hold a principal liable for an agent's dishonest schemes. However, the Court of Appeal reaffirmed the earlier test. It remitted the case for a re-trial (which might yet result in the principal being liable anyway).

This article reviews the relevant legal principles and considers whether the Court of Appeal's decision is to be applauded.

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