

Over 5,000 individuals in the United States operate hot-air balloon businesses. A hot-air balloon has four key components: the balloon that holds the heated air, the basket that houses the riders, the propane burner that heats the air in the balloon, and the propane storage tanks.

The owner of a hot-air balloon business recently notified several basket and burner manufacturers that she or her agent might be contacting them to purchase baskets or burners. The owner did not specifically name any person as her agent. Basket and burner manufacturers regularly receive such notices from hot-air balloon operators. Such notices typically include no restrictions on the types of baskets or burners agents might purchase for their principals.

The owner then retained an agent to acquire baskets, burners, and fuel tanks from various manufacturers. The owner authorized the agent to buy only (a) baskets made of woven wicker (not aluminum), (b) burners that use a unique "whisper technology" (so as not to scare livestock when the balloon sails over farmland), and (c) propane fuel tanks.

The agent then entered into three transactions with manufacturers, all of whom had no prior dealings with either the owner or the agent.

(1) The agent and a large manufacturer of both wicker and aluminum baskets signed a contract for the purchase of four aluminum baskets for a total cost of \$60,000. The agent never told the manufacturer that he represented the owner or any other principal. The contract listed the agent as the buyer and listed the owner's address as the delivery address but did not indicate that the address was that of the owner rather than the agent. When the baskets were delivered to the owner, she learned for the first time that the agent had contracted to buy aluminum, not wicker, baskets. The owner immediately rejected the baskets and returned them to the manufacturer. Neither the owner nor the agent has paid the basket manufacturer for them.

(2) The agent contacted a burner manufacturer and told him that the agent represented a well-known hot-air balloon operator who wanted to purchase burners. The agent did not disclose the owner's name. The agent and the burner manufacturer signed a contract for the purchase of four burners that did not have "whisper technology" for a total price of \$70,000. The burner contract, like the basket contract, listed the owner's address for delivery but did not disclose whose address it was. The burners were delivered to the owner's business, and the owner discovered that the agent had ordered the wrong kind of burners. The owner rejected the burners and returned them to the manufacturer. Neither the owner nor the agent has paid the burner manufacturer for the burners.

(3) The agent contracted with a solar cell manufacturer to make three cells advertised as "strong enough to power all your ballooning needs." The agent did not tell the manufacturer that he was acting on behalf of any other person. One week after the cells were delivered to the agent, he took them to the owner, who installed them and discovered that she could save a lot of money using solar cells instead of propane to power her balloons. The owner decided to keep the solar cells, but she has not paid the manufacturer for them.

Assume that the rejection of the baskets and the burners and the failure to pay for the solar cells constitute breach of the relevant contracts.

1. Is the owner liable to the basket manufacturer for breach of the contract for the aluminum baskets? Is the agent liable? Explain.

2. Is the owner liable to the burner manufacturer for breach of the contract for the burners? Is the agent liable? Explain.

3. Is the owner liable to the solar cell manufacturer for breach of the contract for the solar cells? Is the agent liable? Explain. (Do not address liability based upon restitution or unjust enrichment.)

Question Presented

A balloon-business owner notifies several basket and burner manufacturers that she or her agent may contact them to buy baskets or burners, without naming any agent; such notices are common and usually carry no restrictions. She then hires an agent authorized to buy only wicker baskets, whisper-technology burners, and propane tanks.

← the notice to basket/burner makers is a manifestation that can create apparent authority

(1) The agent buys four aluminum baskets for \$60,000, listing himself as buyer and never revealing a principal (delivery to the owner's unlabeled address). The owner rejects them.

← no authority + undisclosed principal = owner not bound, agent personally liable

(2) The agent buys four non-whisper burners for \$70,000, telling the manufacturer he represents a well-known balloon operator but not naming her. The owner rejects them.

← notice + custom + a disclosed principal = apparent authority; unidentified principal

(3) The agent buys three solar cells the owner never authorized, disclosing no principal (delivery to the agent). The owner installs and keeps the cells, likes the savings, but has not paid.

← no authority, but keeping the benefit can be ratification

For each deal: is the owner liable, and is the agent liable?

← the agent is liable on all three; the owner's liability turns on authority or ratification

Issue 1: The Baskets (Undisclosed Principal)

Issue. Whether the owner or the agent is liable on the aluminum-basket contract.

Rule. G/R: An agent binds a principal only when acting with actual or apparent authority. Actual authority comes from the principal's manifestations to the agent; apparent authority from the principal's manifestations to the third party. A principal is undisclosed when the third party does not know any principal exists. An agent who contracts for an undisclosed principal is personally liable, and a principal is not bound where the agent

Transaction 1.

actual, apparent, then disclosure status

lacked authority.

Analysis. Here, the owner authorized only wicker baskets, so the agent had no actual authority to buy aluminum. There was no apparent authority either: the owner made no manifestation to this basket manufacturer identifying this agent, and there were no prior dealings. The principal was undisclosed, since the agent listed himself as buyer and revealed no principal. So the owner is not bound and the agent is personally liable.

Conclusion. Therefore, the owner is not liable and the agent is liable on the basket contract.

undisclosed = agent personally on the hook

answer to Transaction 1

Issue 2: The Burners (Unidentified Principal)

Issue. Whether the owner or the agent is liable on the burner contract.

Rule. G/R: A principal is unidentified (partially disclosed) when the third party knows a principal exists but not the identity. Apparent authority can arise from the principal's manifestations to the third party, including notices and trade custom. An agent for an unidentified principal is personally liable, and the principal is also bound if the agent had apparent authority.

Analysis. Here, the agent again lacked actual authority (only whisper-technology burners were authorized). But he likely had apparent authority: the owner had notified burner manufacturers that she or her agent might buy burners, such notices are customary and unrestricted, and the agent disclosed that he acted for a well-known balloon operator and used the owner's address. The manufacturer reasonably believed the agent was authorized, and the owner's existence was known though not her identity.

Conclusion. Therefore, both the owner and the agent are liable on the burner contract.

Transaction 2.

existence known, identity not

notice + custom + disclosed agency

answer to Transaction 2

Issue 3: The Solar Cells (Ratification)

Issue. Whether the owner or the agent is liable on the solar-cell contract.

Rule. G/R: Absent authority, a principal may still be bound by ratification, by manifesting assent or by conduct justifiable only on the assumption of consent, such as accepting and keeping the benefit with knowledge of the facts. Under the traditional rule an

Transaction 3.

ratification as a fallback to authority

undisclosed principal cannot ratify; under the modern approach, acceptance and use can bind the principal. An agent for an undisclosed principal remains personally liable.

Analysis. Here, the agent had neither actual authority (only propane tanks were authorized) nor apparent authority (no notice to this manufacturer, and delivery to the agent). But the owner installed, kept, and benefited from the cells, conduct consistent only with ratification. Under the traditional rule she could not ratify as an undisclosed principal; under the modern approach her use ratifies and binds her. Either way, the agent is personally liable.

Conclusion. Therefore, the agent is liable, and the owner is liable if the modern ratification rule applies, but not under the traditional undisclosed-principal rule.

kept the benefit = ratification (modern rule)

answer to Transaction 3

Step-by-Step: Is the Principal Bound?

For each contract, test actual authority, then apparent authority, then ratification; the agent's own liability turns on disclosure.

1. Baskets: authority and disclosure?

→ No actual (wicker only), no apparent (no manifestation to this maker); undisclosed principal. **owner out, agent liable**



2. Burners: authority and disclosure?

→ No actual, but apparent authority from the owner's notice and custom; unidentified principal. **owner + agent liable**



3. Solar cells: authority or ratification?

→ No authority, but the owner kept and used them = ratification under the modern rule. **owner may be bound; agent liable**



Bottom line

→ The agent is personally liable on all three; the owner is bound only where there was authority or ratification.