The Law of Agency: Its History and Present Principles, by S. J. STOLJAR, LL.B., LL.M., PH.D. (Sweet & Maxwell Ltd, London, 1961), pp. i-xliii, 1-341. Australian price £2 9s. 6d.

The Principles of Agency, by H. G. HANBURY, Q.C., D.C.L., 2nd ed. (Stevens and Sons Ltd, London, 1960), pp. i-xix, 1-235. Australian price £2 9s. 6d.

As a separate subject of English law, agency is relatively young. The word 'agent' does not appear in the index to *Blackstone's Commentaries.* When Professor Hanbury's predecessor wrote, there was learning about stewards, factors, bailiffs and attornies but the subsumption of the rules relating to those more or less distinct categories under a more general heading awaited the nineteenth century changes in the scale of trade. Paley's book which appeared in 1811 was the first treatise on agency. This was followed by the works of Kent, Wilshere, Story and Bowstead. The first editions of Professor Hanbury's book and Professor Powell's book appeared in 1952 and since then the works of Mr Fridman and, latterly, Dr Stoljar have been published. Dr Stoljar's book is of such worth as to dispel any fear that he has merely brought about a state of superabundance.

Dr Stoljar has conceived his task as 'a searching re-examination to show not only what the rules are, but why they are what they are'. In doing this he has set out 'to pay renewed attention to the historical context of the basic rules and to their logical explanation'. Basically, his book is arranged in two parts: in the first part the author deals with the external aspects of agency, namely, the legal relations of the principal to third persons and in the second part he is concerned with the relations between agent and principal. In these he covers all the topics usually treated in works on agency but with a degree of theoretical analysis seldom found in other works.

The terminology of agency law with its categories of real authority, usual authority, ostensible authority, agency by estoppel and apparent authority, has made it a complex subject. Dr Stoljar believes that there need be only the two categories: real authority and apparent authority. In this view even usual authority is only a branch of apparent authority since, strictly speaking, a person cannot have a usual authority; he can only appear to have one. He finds that the reliance by nineteenth century courts on estoppel was misplaced and that many of the theoretical difficulties can be avoided by adopting the viewpoint of a third person dealing with the putative agent. Broadly, he classifies situations of apparent agency as (i) those in which there has been a course of dealing by P which gave A an apparent authority to make P liable to T, (ii) those in which P has installed A in a position normally involving a general or managerial authority and (iii) situations in which A is in possession of certain property such as documents of title. He is concerned to show that apparent agency does not depend on estoppel but gives rise to a contract between P and T if the agent was within his real or apparent authority. To reach this conclusion he relies on an analogy with the law's creation of a contract *inter absentes* when offer and acceptance pass through the mails. He is also concerned to show that there is a contract *inter praesentes* between A and T. It is this latter contract which P can ratify in a case where A acted outside his real or apparent authority, and its

existence, if proved, explains the decision in *Bolton Partners v. Lambert*[1] that P can ratify even after T has purported to withdraw from any relation with A. Some may doubt whether that decision deserves justification.[2] He rejects the conventional view that the liability of A to T when A lacks authority is tortious. Once it is sought to show that A has made a contract with T irrespective of making P bound to T, the question of A's legal capacity becomes material and a fuller discussion of that capacity would have added interest to the thesis. The author's concern for basic theory is also shown in a full and critical survey of the various theories upon which the doctrine of undisclosed principal is based. In this area also he relies on the existence of a contract *inter praesentes* between A and T which creates transmissible rights and liabilities capable of assumption by the undisclosed principal.

Interest is added by the author's reliance on legal and economic history: the transition whereby the mediaeval master's liability for goods received through his servant was broadened to a principal's liability for contracts arranged by his agent is shown to be one more consequence in the change from debt to *assumpsit* (pages 36-41); changes in the distributive economy at the end of the seventeenth century from itinerant to sedentary trade explain the emergence of a concept of managerial authority (page 49) and this in turn helps to explain the much discussed decision in *Watteau v. Fenwick*;[3] the passing of the Factors Acts of 1823 and 1825 is explained by the inability of the common law to accommodate exceptions to the principle of *nemo dat quod non habet* so as to accord factors the enlarged powers of dealing with goods called for by commercial moves towards a larger volume of trade (pages 113-118); and the delayed emergence of the undisclosed principal until the eighteenth century is related to a change from a trade in which sales were usually executed affairs to a commerce in which factors were more willing to grant credit, with the result that the normal trading bargain became an executory affair (pages 204-209).

There are some points possibly worthy of attention in a later edition. Some reference to the distinction between an agent and the donee of a power of appointment would round out the early discussion; in dealing with unauthorized dispositions of shares, reference might be made to *Tobin v. Broadbent*[4] and *Tobin v. Melrose*;[5] note 19 on page 168 does not take into account joint banking accounts by which one person can empower another to make withdrawals after the death of the former;[6] and in dealing with the apparent authority of an agent for a company the author assumes that the doctrine of constructive notice of the memorandum and articles is relevant only to notice of the company's powers, whereas some courts have thought it material also on the question of notice of the extent of the agent's authority.

The new edition of Professor Hanbury's book takes into account legislation and decisions made since 1952 but does not differ basically from the first edition. For those common lawyers who are content with workable solutions and who eschew theoretical speculation, Professor Hanbury's work will be preferred to that of Dr Stoljar. The former work is not devoid of critical comment but the analysis is not sustained so well

[1] (1889) 41 Ch.D. 295.
[2] Seavey, *Studies in Agency* (1949) 104.
[3] [1893] 1 Q.B. 346.
[4] (1947) 75 C.L.R. 378.
[5] [1951] S.A.S.R. 139.
[6] *Russell v. Scott* (1936) 55 C.L.R. 440.

as in the new book which is more likely to promote that process by which the common law, in the words of Lord Mansfield[7] (when he was Mr Solicitor-General), 'works itself pure'.

H. A. J. FORD*

International Immunities, by C. WILFRED JENKS (Oceana Publications, New York, and Stevens & Sons Ltd, London, 1961), pp. i-xxxviii, 1-178. Australian price £2 9s. 6d.

This book deals with the privileges and immunities both of international organizations and of the officers in their service. There was a time not so long ago when the subject was virtually unknown. The League of Nations Covenant contained a brief reference in its Article 7 (4) and (5) to the diplomatic privileges and immunities of members' representatives and of League officials when engaged on the business of the League, as well as to the principle of the inviolability of the organization's property. These provisions, by reason of their inclusion in the Covenant, bound League members. However, membership of the League was far from universal, and questions of detail had been left unsolved. As the author rightly said, the subject remained in its infancy in the period before the United Nations and its agencies were set up. Since then it has quickly reached the status of a somewhat boisterous adulthood. The main question which remains in the reviewer's mind is whether the aim of uniformity should not be pursued further. As it is, the law will be found in a very great variety of international conventions, agreements and protocols, some of a multilateral, others of a bilateral character. At times problems have been left open: agreement could not be reached, or it did not appear to require settlement.

On pages xxi-xxxi the author lists the international conventions and other agreements which form the main basis for the law in this field. The most prominent among them is the General Convention on the Privileges and Immunities of the United Nations which was approved by the United Nations General Assembly in 1946. It is in force today for two-thirds of member states (in 1960 of the then 90 members of the United Nations, 62 had ratified the Convention). Australia is a party to this Convention by passing the Commonwealth International Organizations (Privileges and Immunities) Act.[1] On the other hand, Australia has never become a party to the other major convention in this field, the Convention on the Privileges and Immunities of the Specialized Agencies. Unfortunately this convention is in force only for one-third of member states of the United Nations. Yet many of the points in issue are regulated by the agreements between individual specialized agencies and the members of these agencies. What do these conventions and general agreements deal with? Generally, the extent of jurisdictional immunity, the question of the inviolability of the organization's premises, the protection of property and assets of the organization, the inviolability of its archives and other documents, the questions of international *laissez-passer*, and then generally the international legal position of the organization's officials. Prominent among the questions normally settled with regard

[7] *Omychund v. Barker* (1744) 1 Atk. 21, 33.

* LL.M. (Melb.), S.J.D. (Harvard); Barrister-at-Law; Professor of Commercial Law in the University of Melbourne.

[1] No. 72 of 1948.