

Law of Agency

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01. General Nature of Agency

Agency is a relationship between the principal and the agent whereby the agent creates contractual relationship between the principal and third parties.

(i) Agent

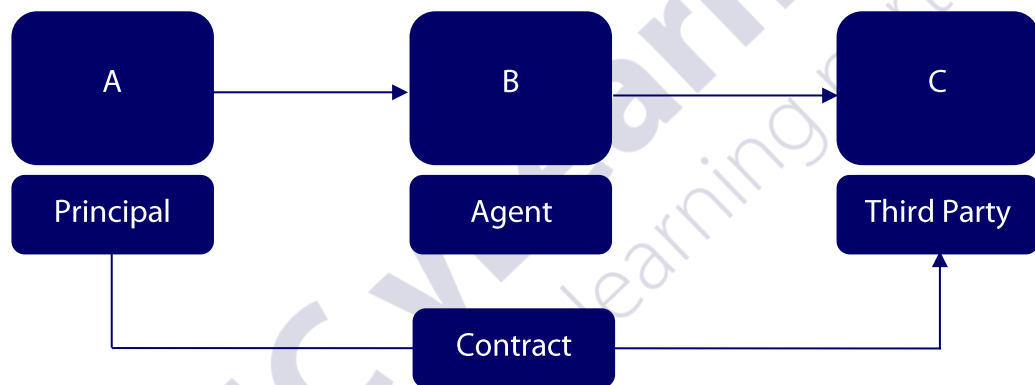
A person employed or appointed to enter into contracts on behalf of his principal with third parties.

(ii) Contractual Capacity

Since the agent contracts for another, he need not have contractual capacity, may be an infant.

But the principal should have full contractual capacity.

When an agent enters into a contract with a third party, principal becomes the party to the contract and not the agent.



02. Type of Agents

(i) Broker

A Broker does not obtain possession of goods. Broker cannot sell goods under his own name.

In *Fowler v. Holling* (1872) QB 616

A Broker was defined as follows,

"A Broker is an agent employed to make bargains and contracts between persons in matters of trade, commerce and navigation. Properly speaking a broker is a mere negotiator between other parties."

(ii) Del Credere Agent

A del credere agent promises to indemnify the principal if a third party fails to pay under the contract for extra commission.

Churchill v. Goddard (1939) AER 675

It was held that, in the of non-payment the del credere agent may be able to sue the third party.

(iii) Auctioneer

Auctioneer is a person who sells property on behalf of a seller by a public or private auction. Auctioneer may or may not be give possession of the goods. He is an agent for both parties.

(iv) Special Agent

Where the agent has authority to act only on a particular occasion or for a specific purpose.

Ex: To sign cheques on the principal's current account.

(v) General Agent

Where the agent is authorized to handle all of has principal's business

Ex: A partner of a partnership is a general agent for both business and the other partners.

(vi) Universal Agent

Universal agent is authorized to handle all the affairs of his principal. It is an unlimited authority.

Ex: General power of Attorney

03. Creation of Agency

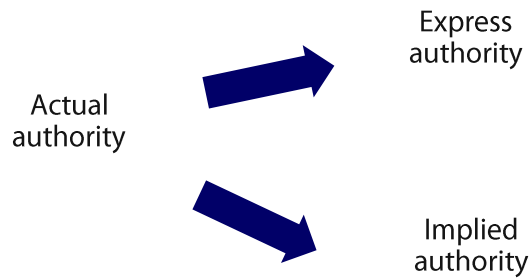
1. Actual authority
 - (i) Expressed authority
 - (ii) Implied authority
2. Apparent authority / Estoppel
3. Necessary authority
4. Agency by ratification
5. By deed

(1) Actual Authority

This can be from either expressed or implied. This arises where the principal expressly or impliedly appoints an agent to do acts or enter into contract on his behalf.

Where the instructions are not clear, can act on reasonable construction.

Actual authority may arise from express agreement or from implied agreement.



(i) Express authority

Principal expressly appoints an agent to do an act or enter into contracts on his behalf. If the instructions are not clear he should get a clarification. If he cannot contract the principal he can act on reasonable construction.

The expresses authority could be given by word of mouth or in writing.

Ex: A asks B by word of mouth to issue cheques to A 's business partners.

A by a special power of attorney give power to B to issue cheques to A 's business partners.

Generally no particular form is required for the granting of actual authority. But there are certain exceptional situations in which it is necessary to appoint an agent in writing.

- The appointment of the registered attorney in a civil case has to be in writing and signed by the client. That document is called 'proxy'.
- A power of attorney should be in writing.

Example case for express authority.

Boden v. French

A principal gave express authority to an agent and ordered him to sell coal for certain profit. Agent sold then on a profit but on credit court held that there is no breach of agency since the conduct of the agent could reasonably be considered by him as coming within the general terms of agency.

(ii) Implied authority

By implied authority, the principal places his agent in a position such as manager, director or broker. Here agent is impliedly authorized to carryout things incidental to carrying out his express instructions.

ANZ Bank v. ateliers de Charteois

Here a Belgian company carried out its business in Australia, through an agent. Belgian company did not maintain a bank account in Australia. So

agent put the cheques of his principal to his bank account. Belgian company know the Fact. Court held that the agent had the implied authority to do so.

On the other hand, implied authority is also a authority necessary to carry out the express authority.

Ex: To pay telephone bills, Electricity bills

Rosenbaum v. Belson

Principal asked agent to sell a house. It was held that, there was implied authority to agent to make a binding contract and authority to sign an agreement of sale.

(2) Apparent Authority (Agency of Estoppel)

Estoppels arises where the principal expressly or impliedly holds out or represent another as having the authority to make contracts on behalf of him. Subsequently principal cannot deny the existence of agency.

Ex: A induced C to believe that B s his agent and C enters into a contract B with believing that B is a agent of A. Here it creates a relationship by estoppel between A and B subsequently A cannot deny the existence of agency.

Freemen v. Buckhurst

A a director acted as the managing director of a company without being appointed. The other directors were aware about this but no body objected. A later entered into a contract with a third party, to get architectural design done. Third party later sued company to recover fees. The company refused by stating that A has never been appointed as the Managing director. Court held that company is liable under estoppels. Relationship creates between the company and A by estoppels.

Lloyd v. Grace Smith

A solicitor's clerk fraudulently obtained client's property. Court held that the solicitor was liable since he allowed the clerk to deal with such matters, because clients reasonably think that clerk has power to do so.

*** If a third party was actually ware that the agent did not have authority, he might not be able to rely on estoppel.

Case Study

A appointed B as a agent to sell vehicles on behalf of him. B also arranged arranged leasing facilities and A was aware of it, but never objected. C a third party sued against A regarding a leasing matter. A Disclaimed the liability stating that B has never given a authority to provide leasing facilities.

Discuss liability of A

(3) Necessary Authority

Necessary authority arises where due to an emergency a person has no option but to act on behalf of another as his agent although not appointment to do so.

Requirements

- a) A person claiming to be agent of necessity must have driven by real emergency and not mere convenience.

Genuine emergency that threatens the property.

Courtier v. Hastie

A stock of corn was carrying from Selonica to England. Stock of corn was overheating on ship. Captain decided to sell Corn at Tunisia. Court held that the captain had acted as necessary agent.

- b) Impossible to communicate with the owner regarding instructions.

Springer v. Great Western Railway

S appointed a railway company to transport tomatoes. There was a delay to transport them to S because there was a sudden strike which broke out at the railway. As a result, the tomatoes were getting spoilt. Then the railway company sold them at a lower price without asking from S even though the railway company knows where S lives.

The court held that even though there was an emergency, no agency of necessity arises because the railway company knew where S lives and had opportunity to get instructions from

- c) The agent should act in good faith.
Agent of necessity must act bona fide in the interest of all concerned, if not personally liable for his actions.

- In agency of necessity a practical thing today?

Attempting to communicate with owner and failing to do so gives rise to agency of necessity. With today's modern communication methods, hardly on opportunity to say communication was not possible.

Prager v. Blatspiel

X bought goods as agent for Y. It was unable to send them to send them to Y because of war. X sold goods before war was over.(X was appointed only to buy) X argued on agency by necessity. Court held that there was no real necessity for sale because goods. Were not in jeopardy. It was not practically impossible to get consent of principal in that time.

Case Study

Sarath, as the agent for 'Jaffna Textiles' bought large stock of shirts in Colombo to be dispatched to 'Jaffna Textiles' located in Jaffna. Due to floods which continued for a long period in Jaffna, it was impossible to send or communicate with it. Sarath sold the shirts in Colombo.

- a) Discuss Sarath's liability.
- b) Would it make any difference in the liability as discussed above, if the commodity involved was tomatoes?

ANSWER

No principal agent relationship arises when a person acts without the expressed or implied authority given by the person called 'principal'. But if he acts so for his principal in emergency situation, relationship by necessity arises on satisfaction of following requirements.

- a) Genuine emergency that threatens the property.
- b) Impossible to communicate with the owner.
- c) The agent should act in good faith.

Here Sarath was an agent for Jaffna Textiles. He was given authority to buy a stock of shirts.

- a) A person Claiming to be an agent of necessity must have driven by real emergency and not a mere convenience. Here due to floods Sarath couldn't send that stock of shirts to Jaffna. But those shirts were not in jeopardy because commodity involved in this matter was not of a perishable nature. Sarath had sold them for mere convenience. So an agency of necessity cannot be pleaded because there was no real danger to that property. (Plager v. Blatspiel)

Another contradiction arises with today's advance communication methods. It is hard to say that communication was not possible.

To establish agency of necessity, law required Sarath to attempt to communicate with the owner of the goods to obtain instructions. If there was a possibility to Sarath of communicating and if it was not done, then an agency of necessity cannot be pleases.

Besides that, there was no real necessity or emergence for sale, because goods were not in a jeopardy. (Plager v. Blatspiel)

- b) If the commodity involved was tomatoes, then goods were in real jeopardy. Here there is a genuine emergency that threatens the property. So Sarath can plead the agency of necessity, only if there was a impossibility to communicate with the principal. (Courtier v. Hastie)

(4) Agency by Ratification

Agency by ratification arises where, the agent makes an unauthorized contract on behalf of his principal, the principal can either ratify or adopt the contract subsequently.

Following must be fulfilled regarding ratification.

- (i) At the time the agent enters into the contract, he should enter into that contract for his principal, and agent must have expressed or implied authority to act as an agent of the principal. Therefore the principal cannot ratify the transaction where his agent has entered into, without authority.

- (ii) The principal must be in existence at the time the agent entered into the contract.

Kelner v. Baxter

A contract entered by a company before its incorporation subsequently cannot be ratified.

- (iii) A void contract cannot be ratified

Ashbury Railway v. Riche

A company entered into a ultra vires contract. Court held that it cannot be ratified as it is void.

Case Study

Amal authorized Ranidu to buy wheat at a certain price. Ranidu exceeded his authority and bought wheat at a higher price from Ajith. Ranidu had bought in his own name without disclosing that he bought it for Amal. Amal later ratified the contract.

Discuss.



ANSWER

Agency by ratification arises where the agent makes an unauthorized contract on behalf his principal, the principal can ratify that contract later. But following requirement must be fulfilled to prove agency by ratification.

- (i) Agency must have expressed or implied authority to act as an agent of the principal.

Here Ranidu had bought those goods in his own name, without disclosing that he bought it for Amal. No agency arises because Ranidu had not entered into the contract as an agent of Amal. He bought those goods in his own name to himself. So principal cannot ratify it subsequently.

(5) Agency of a Wife

A wife entitled to pledge the husband's credit regarding the purchase of necessities.

According to English law wife's authority to buy goods is based on law of agency. According to Roman Dutch Law, it is based on Law of maintenance.

Lalchand v. Sarawanamuththu

A wife bought a large stock of Sarees on her husband's credit. Court held that has right to buy those goods not on agency but on marriage. The right of the wife to bind her husband's credit for necessities was based on marriage and not on agency.

In deciding about necessities, the court will take into account, the position of the husband and his standing in society.

Exceptions to Agency of a Wife

- (i) Where the husband had expressly warned the tradesman not to supply goods on credit to his wife.
- (ii) Where the husband had expressly forbidden his wife to pledge his credit.
- (iii) Where the husband can show that the wife had sufficient funds to buy necessities without pledging his credit.
- (iv) Where the husband can show that his wife was already sufficiently supplied the goods in question.

04. Duties of an Agent

- (1) The agent must do what he has undertaken to do. If the agent defaults in his duty then the principal is entitled to recover damages from the agent.
- (2) An agent is obliged to obey the lawful instructions of his principal in the performance of his work.
- (3) The agent must do his work personally and not delegate his work. (delegates non potest delegate-the maxim)
- (4) The agent must carry out this work diligently and with ordinary skill.
- (5) The agent should conduct his duty in a fiduciary manner.
- (6) A agent must not buy his own principal's property without full disclosure and must not sell.

- (7) A full duty of disclosure to his principal
- (8) An agent must not take undue advantages over his principal's property for himself. (Duty for not making secret profits)
- (9) Must not take bribes
- (10) To keep personal property separate from the principal's property.

05. The Rights of an Agent

- (1) The right to commission and remuneration

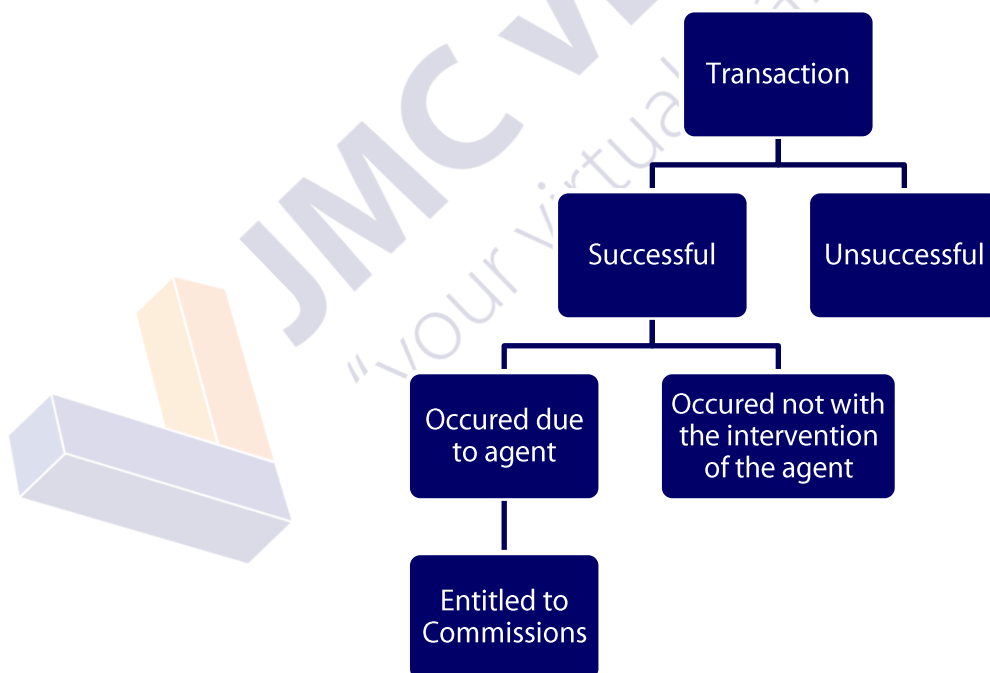
This based on the contract and therefore the agent will only be entitled to receive a commission for his services if there is an express or implied term in the contract. Generally agents under necessity or apparent authority are not entitled to receive commissions.

Commission

Condition regarding an agent's entitlement to a commission.

- (i) Where the transaction is successful.
- (ii) Where the transaction is unsuccessful.

Where the transaction is successful, then the question should be asked whether the transaction actually occurred due to the agent.



Miller v. Radford

An agent was instructed to find a purchase or a tenant for the principal's property. Tenant found and principal paid commission. Is months later that tenant bought that property. then that agent claimed another commission for that sale. Court held that in order to claim commission, the agent had taken an active interest to sell that property after the tenant was found, so he was not entitled to the commission.

(2) The right of indemnity

The agent has power to be indemnified against any such liabilities that he may incur in the process of carrying out his duties and has right to recover any such money.

(3) Lien rights

The agent has lien over all the goods of his principal that is in his custody. There by he is entitled to retain the goods until the principal meets his claims.

06. Duties of The Principal

(1) To pay the agreed commission or remuneration to the agent.

(2) Not to prevent or hinder the agent from earning his commission or remuneration.

(3) To indemnify the agent against liabilities incurred in the discharge of his duties.

07. Termination of Agency

(i) By agreement between the parties.

The agency can be terminated by agreement between the principal and the agent. Even though the agent has been appointed for a specified time, they can terminate agency by agreement even before expiration of the agreed time.

(ii) By complete performance of the contract

(iii) Through the expiration of time

Ex: The agent has been appointed for period of 12 months. Such agency is terminated by 12 months.

(iv) Through frustration

(a) By physical impossibility of performance as when the subject matter of the agency is destroyed.

Ex: A appointed B to find purchaser to sell his house. In the meantime the house was destroyed by a fire.

The agency is terminated by frustration.

If the agency cannot be performed later because something happened beyond the control of the parties.

(b) Illegality.

- (v) By death of either party.
- (vi) By insanity.
- (vii) Through bankruptcy.

The principal's bankruptcy terminates the authority of an agent but the agent's bankruptcy will only terminate the contract if it affects the agent's fitness to act.

- (viii) Revocation of the agent's authority.

The principal may at anytime terminate the agency unless it is by express agreement or by operation of law regarded as irrevocable.

Campanari v. Woodburn

Agent was employed to sell a picture on the understanding that he would be paid later. Sale was revoked before the sale. Court held that he was not entitled to the commission since he had sold the picture after the authority was revoked.

Case Study

Mr. Fernando, an agent of Mr. Alwis, dishonestly agreed with Mr. Ranaweera that he should purchase a land situated in Imbulgoda, and sell it to Mr. Alwis at a higher price. Mr. Fernando promised Mr. Ranaweera to persuade Mr. Alwis to buy that land at the price that Mr. Ranaweera would offer. Mr. Ranaweera made a net profit of Rs. 400,000/= from this transaction and paid Rs. 100,000/= to Mr. Fernando as a gratification. However Mr. Alwis later become aware of this transaction of Mr. Fernando.



ANSWER

The relationship between Mr. Fernando and Mr. Alwis is a principal and agent relationship. When an agent acts for his principal the agent should act in a fiduciary manner. Here the agent

Mr. Fernando has acted dishonestly with Mr. Ranaweera, the third party to sell a land to his principal, at a higher price.

Here Mr. Fernando has breached several duties as an agent.

- The agent should conduct his duty in a fiduciary manner.
Here Mr. Fernando acted dishonestly to sell his land to Mr. Alwis at a higher price, and Mr. Fernando has earned secret profit about Rs. 100,000/=. Here the agent has breached his fiduciary duty.
- An agent must not take undue advantages over his principal's property.

(De vos v. Bett)

Here Mr. Fernando earned undue advantage about Rs. 100,000/= An agent who acts for his principal is bound by a duty to disclose his principal in respect of all the material facts belonged to the principal. When an agent earns a secret profit the agent should disclose it for his principal.

Here the agent has breached the duty of disclosure by not disclosing the undue advantage.

When an agent has breach duties for his principal there are remedies available to the principal against the agent and the 3rd party.

Remedies against the agent

- 1) Principal can refuse to pay commission (Bosten v. Ansell)
- 2) Principal can recover secret profit
- 3) Principal can repudiate the contract

Remedies against third party.

- 1) Can terminate the contract with the third party and recover secret profit.
(Salford Corporation v. Lever)

