

Law of Agency

AAT Level II BLA – Business Law

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Chapter 4 - Law of Agency

Q1) What is the law of agency?

The law of agency is a branch of commercial law that deals with the relationship between two parties: the principal and the agent. An agency relationship is formed when one person (the principal) grants authority to another person (the agent) to act on their behalf. This relationship is based on mutual consent and agreement, and it has significant legal implications. The principles of agency law are essential in various fields, including business, real estate, and law.

Q2) Who are the parties involved?

- 1) Principal: The individual or entity that authorizes the agent to act on their behalf.
- 2) Agent: The person or entity authorized to act on behalf of the principal.

Q3) How is an agency created?

1) Agency by expression

- Express Agency is created through explicit agreement, either written or oral, between the principal and the agent. Ex: Power of Attorney.

- In **Boden v French**, A principal gave express authority to sell coal for a certain profit. The agent sold for a profit but on credit. The actions of the agent were within the actual authority.

- Implied Agency: Arises from the conduct of the parties, implying an agency relationship based on their actions.

- Ex: **Watteau v Fenwick**

Plaintiff, Watteau, sold goods to a pub manager, Humble, under the belief that Humble was actually the pub owner. Plaintiff learned that Defendant, Fenwick, was the actual owner and sought to collect from Defendant for the unpaid balance of goods purchased by Humble.

An undisclosed principal can be held liable for the actions of an agent who is acting with an authority that is reasonable for a person in the agent's position regardless of whether the agent has the actual authority to do so.

Where there is agency by expression, there is **actual authority**. This is the authority explicitly granted by the principal to the agent.

2) Apparent Agency/Agency of Estoppel

- This is created when a third party reasonably believes that an agency relationship exists, even if it doesn't in reality.
- Estoppel arises when the principal expressly or impliedly holds out or represents the other as having the authority to make contracts on behalf of him. Subsequently the principal cannot deny the existence of the agency.
- In **Freeman v Buckhurst** a director acted as the Managing Director of a company without being appointed. The other directors were about this but nobody objected. Later on, he entered into a contract with a third party to get architectural designs done. The third party later sued the company to recover the fees. The company refused to pay stating that the said Managing Director was not officially appointed. However, the court held that the company is liable to pay because there is a relationship, that is, an agency created between the company and the Managing Director by estoppel.

Apparent Authority: This is where the authority that a third party reasonably believes the agent possesses, based on the principal's manifestations. This is also known as ostensible authority.

3) Agency by Necessity

- Agency by necessity is a legal concept that arises in situations where an agent assumes authority to act on behalf of a principal, not through explicit authorization or agreement, but out of necessity.
- This type of agency typically emerges in emergency situations or circumstances where immediate action is required, and the principal is unable to provide explicit consent.
- The requirements are as follows
 - i) There must be an emergency for the goods.
 - ii) Contacting the Principal should have been impossible
 - iii) The agent must have acted in good faith on behalf of the principal.
 - iv) The Agent's actions must be reasonable and prudent.
 - v) There was an actual commercial necessity to act in such a way.

In **Great Northern Railway v Swaffield**, the plaintiff had transported a horse to a station on behalf of the defendant. When the horse arrived there was no one to receive it / collect it. The plaintiff sent the horse to the stables and for a number of months paid the stable charges. The plaintiff made a claim to recover the money spent. However, the court held that there was an agency because the plaintiff was found to have had no choice but to arrange for the proper care of the horse.

In **Springer v Great Western Railway**, the ship was stopped at Channels Island for three days due to bad weather. Eventually, when the ship arrived at Weymouth, the defendant's employees were on strike, tomatoes were unloaded by casual laborers but it was delayed for two days. At that time, some of the tomatoes were found to be bad. So, the defendant decided to sell the tomatoes as they felt that tomatoes could not arrive in Covent Garden market in a good and saleable condition. When the plaintiff found out about this, the plaintiff wanted to claim damages from the defendant. The court held that the plaintiff was entitled to damages because the defendant ought to have communicated with the plaintiff when the ship arrived at Weymouth to get instruction. As the defendant has failed to communicate with the plaintiff when they could have done so, thus, there was no agency of necessity.

4) Agency by Ratification

- The principal may choose to accept and affirm the actions of an agent that were initially unauthorized.
- This arises when the agent makes an unauthorized contract on behalf of his principal, the principal can either ratify or adopt the contract subsequently.
- For this to be applicable the following requirements must be met.
 - **Keighly v Durant** – If the Agent has entered into the contract by his personal name, the Principal is precluded from ratifying such action.
 - **Brook v Hook** – Ratification applies only to valid and legally enforceable contracts.
 - **Kelner v Baxter** – At the time of making the contract by the agent, the Principal must have had contractual capacity.

Q4) What are the types of Agents?

- a) General Agent: Authorized to perform a broad range of acts on behalf of the principal.
- b) Special Agent: Authorized to perform a specific task or act within a limited scope.
- c) Universal Agent: Given authority to handle all of the principal's affairs.
- d) 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
- e) Auctioneer - sells property on behalf of buyer as well as seller either in a private auction or public auction.
- f) Broker - Connects the buyer and the seller. Does not obtain possession of goods and cannot sell goods under his own name.

Q5) What are the duties and responsibilities of an agent?

- a) Fiduciary Duty: Agents owe a duty of loyalty and trust to their principals, requiring them to act in the best interests of the principal.
- b) Duty of Care: Agents must exercise reasonable care and skill in carrying out their duties.
- c) Duty of Obedience: Agents are obligated to follow the lawful instructions of the principal.
- d) Duty of disclosure: the agent must disclose all information accurately to the principal
- e) Duty not to make secret profit
- f) The agent must not delegate his work and must do that work personally (delegatus non potest delegare).
- g) Duty to keep personal property separate from the principal's property.

Q6) What are the rights of an agent?

- a) Right to commission and remuneration - only if the transaction is successful and occurred due to the agent
- b) The right to indemnity - liabilities incurred by agents on behalf of the Principal can be recovered.
- c) Lien rights - the agent has lien over all the goods of his principal that is in his custody. He is entitled to retain the goods until the principal meets his claim.

Q7) What are the duties of the Principal?

The duties of the principal are the same as the rights of an agent.

- a) To pay the agreed commission or remuneration to the agent.
- b) Not to prevent or hinder the agent from earning his commission or remuneration.
- c) To indemnify the agent for liabilities incurred on behalf of the principal.

Q8) What are the rights of the Principal?

- The rights of the principal are the same as the duties of an agent.

Q9) How to terminate an agency?

- a) By Agreement: Both parties may agree to terminate the agency relationship.
- b) By Operation of Law: The agency may terminate due to changes in circumstances, such as ;
 - by performance of the contract
 - the death of either party,
 - the expiration of a specified time period;
 - by frustration;
 - by bankruptcy of the principal;
 - by insanity of either party

- c) By Revocation or Renunciation: The principal or agent may revoke or renounce the agency relationship.

Q10) What is the Liability of parties in the Law of Agency?

- a) Principal's Liability: Principals are generally liable for the actions of their agents when the agents are acting within the scope of their authority.
- b) Agent's Liability: Agents may be personally liable if they exceed their authority or act negligently.

In conclusion, understanding the law of agency is crucial for businesses, legal professionals, and individuals involved in various transactions. It governs relationships that involve trust, delegation of authority, and fiduciary responsibilities. By defining the rights and obligations of both principals and agents, the law of agency provides a framework for ethical and legal conduct in commercial and contractual relationships.

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