

Law of Agency

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Law of Agency

- An agency is a legal relationship in which one person represents another and is authorized to act for him/her.
- The person who acts for a principal is the agent; the person for whom the agent acts is the principal.

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Law of Agency

- Agency relationship is of fundamental importance to all business and without agency law, business would be severely crippled.
- Without the body of agency law, every person would have to act directly for him/herself which would create problems in the business world.

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Law of Agency

- Where a person enters into an agreement as agent for his principal the contract is the contract of the principal and not that of the agent; and, prima facie, at common law the only person who may sue is the principal, and the only person who can be sued is the principal.
- When the agent has created a contractual relationship between his principal and third parties, his function is generally over.
- When an agent enters into a contract with third parties, it is the principal who becomes the party to the contract and not the agent.
- Therefore, it is the principal who must have the contractual capacity to enter into a contract and not the agent.

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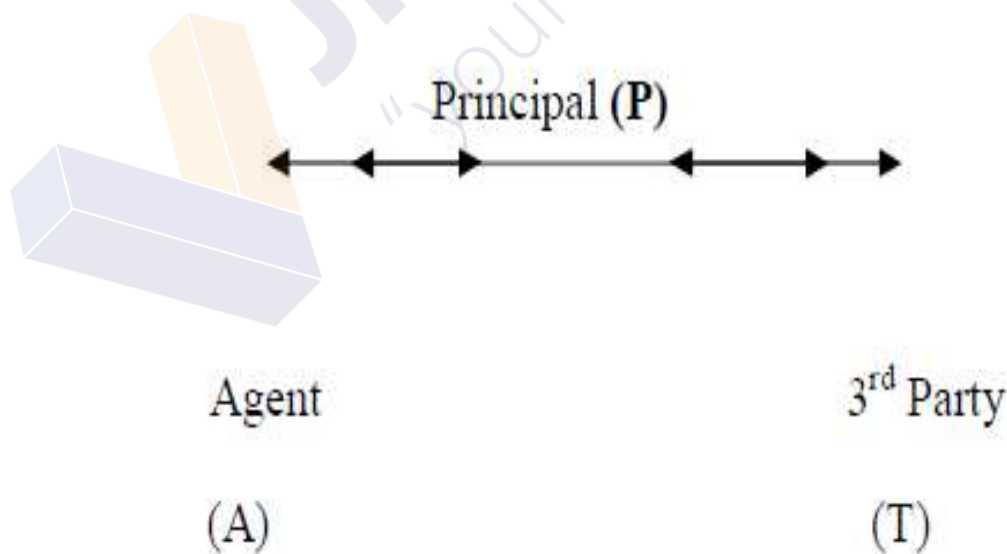
Law of Agency

Agency has been described as a triangular relationship. There are three parties, Principal (**P**), Agent (**A**) and third party (**T**), and three relationships:

- The relationship between P and A
- The relationship between A and T
- The relationship between P and T

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Law of Agency



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Types of Agency Authority

- **Actual Authority**
- **Apparent Authority**
- **Implied authority**

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Creation of Agency

Agency may be created:

- a. Through express agreement between the principal and agent
- b. Through implied agreement between the principal and agent
- c. Through Agency by Ratification
- d. Trough agency by Estoppel
- e. Through agency of Necessity

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a. Agency through express agreement

- Express agency means an actual agency created by written or oral agreement between the principal and the agent.
- Through this agreement the principal authorizes a person to act as the principal's agent.
- However, in certain circumstances the appointment should be made only in writing. Otherwise the appointment will be invalid.

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a. Agency through express agreement

- **Examples**

According to the Company law, the appointment of an agent to attend company members meetings should be made in writing. Such appointment is made by a document called Proxy form.

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b. Agency through implied agreement

- An agency that arises by implication. Parties are taken as having agreed or consented to an agency relationship due to the way they have conducted themselves towards each other. Implied agency may arise through usual authority.

Examples

A wife is presumed to be an agent of her husband to purchase household necessities.

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b. Agency through implied agreement

Case Law in brief: Heely-Hutchinson v Brayhead Ltd [1968]

Facts:

- Heely- Hutchinson invested money into his own company, Period Electronics
- This investment was indemnified by Mr. Richards the managing director of Brayhead Limited. but was only formally engaged as its chairman
- Brayhead subsequently purchased Period Electronics, but Period still went into liquidation
- Heely-Hutchinson sued on the basis of Mr. Richards' indemnity recovers his investment.

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b. Agency through implied agreement

- **Issue:** Whether Heely-Hutchinson could recover his investment and did Mr. Richards have the authority to give the indemnity?
- **Decision:** The board of directors allowing the chairman to act as managing director had impliedly authorized him to enter into this contract.
- **Justification:** Lord Denning: the judge (at first instance) was correct that in acting as managing director, Mr. Richardson had apparent authority to give the indemnity, but he also had actual authority by virtue of the office he worked in;

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c. Agency by Ratification

- Ratification means subsequent adoption of an activity. Soon after ratification principal – agent relations will come into operation. The person who has done the activity will become agent and the person who has given ratification will become principal.

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c. Agency by Ratification

Essentials for a valid Ratification

- Agent must purport to the third party that he is acting for a principal.
- The person, who is going to give ratification, must be in existence at the time of activity.
- The person who is going to give ratification should have capacity to contract, at the time of activity as well as at the time of ratification.
- Ratification should be given within reasonable period after the activity the concept of reasonable period depends upon nature of the situation.

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c. Agency by Ratification

- Ratification must be absolute. To entire activity ratification is to be given. Partial ratification carries no validity.
- The fact of ratification must be communicated to all parties in connection with the activity.
- The contract can be ratified only by the principal who was named or ascertainable when the contract was made.
- The activity which is going to be ratified must be a lawful activity.
- The person who is going to give ratification should have right to do such activities.
- At the time of ratification the principal must have full knowledge of the material facts, or intended to ratify the contract
- Ratification relates back to date of activity. Though ratification takes place after the date of activity, it will be assumed that ratification is given on the date of activity.

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c. Agency by Ratification

Case Law in brief: Bolton Partners v Lambert (1889)

Facts

- The claimant's (principal) agent concluded a contract of sale by accepting the defendant's offer
- The defendant revoked the offer, refusing to sell
- The claimant purported to ratify the acceptance

Issue: Was the claimant entitled to specific performance?

Decision: Yes

Justification: When the contract was ratified by the claimant it got retrospective effect.

Therefore, there is a contract between claimant and defendant.

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d. Agency by Estoppel or agency by Holding Out

- Estoppel arises where the Principal by his words or conduct holds out another as having the authority to make contracts on his behalf.
- After that person made the contract with a third person, the principal is prevented from denying that the person had authority and is bound by such contracts as if he had expressly authorized them.

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d. Agency by Estoppel or agency by Holding Out

To create Agency by estoppel, the following three elements should be met.

1. There should be a representation by a person
2. The 3rd party should rely on the representation and
3. The 3rd party should alter his position relying on the representation

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d. Agency by Estoppel or agency by Holding Out

i.e.:

X is a whole seller buying and selling sugar. Last three years X allowed Y to buy goods from Z who is also a whole seller who import sugar. X subsequently settle all the bills purchased by Y. Thereby Z was permitted to believe that Y was X's agent. In a case X cannot deny the fact the Y is not his agent and prevent paying bills due to Z for the goods purchased by Y. This creates the agency by estoppel.

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d. Agency by Estoppel or agency by Holding Out

Case Law in brief: Freeman and Locker v Buckhurst Park Properties [1964]

Facts

- One director of a Buckhurst, its agent, commissioned Freeman and Locker as architects for their Buckhurst Park Estate project
- Buckhurst later refused to pay their invoices, saying that the director was not authorized to enter into the transaction which commissioned the architects.

Issue: Was the company bound to pay

Decision: Yes

Justification: The director had acted as the managing director of Buckhurst. The representation was made by the appointment of the director into his position, whose office would normally provide powers of authorization. The director therefore had apparent authority and bound the company

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e. Agency by Necessity

- Agency by necessity is an agency created by an emergency arising from a situation making it necessary or proper for the agent to act without receiving the consent or authorization of the principal, in order to prevent harm to the principal.
- Under these circumstances by operation of law, a principal is bound by a contract that is made by that person or the agent without the permission of the principal.
- In those circumstances, that person or the agent is treated as an agent of necessity.

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e. Agency by Necessity

To create an agency by necessity three conditions must be fulfilled.

1. It must be a situation that impossible for the agent to get the principal's instruction

Case Law in brief: Great Northern Railway Co. vs. Warfield (1874) LR 9 Each 132

Facts: In this case the defendant delivered a horse to Great Northern Railway Company to transport to another station. The railway took the horse to that station but he did not come to collect it. Therefore the railway company had to spend money to keep the horse in a stable and to feed the horse. When he later came to collect the horse the railway company claimed the stable charges and the amount paid for feeding the horse.

Issue: whether the plaintiff can claim for the charges and the amount paid for feeding the horse.

Decision: Yes

Justification: The court held that there is an agency by necessity, therefore the railway company is entitled to claim the amount spent.

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e. Agency by Necessity

2. It must be impossible to get the instructions of the principal.

Case Law in brief: Springer v. Great Western Railway Company [1921] 1 KB 257

Facts: Great Western Railway Company as defendant agreed to carry plaintiff's tomatoes from Channels Island to London, by ship to Weymouth and by train to London. The ship was stopped at Channels Island for three days due to bad weather. Eventually, when the ship arrived at Weymouth, 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, defendant decided to sell the tomatoes as they felt that tomatoes could not arrive in Covent Garden market in a good and saleable condition.

Issue: whether the plaintiff could claim damages for the loss.

Decision: Yes

Justification: The plaintiff was entitled for damages because defendant ought to have

communicated with the plaintiff when the ship arrived at Weymouth to get instruction. As defendant has failed to communicate with plaintiff when they could have done so, thus, there was no agency of necessity.

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e. Agency by Necessity

3. There must be a genuine and acted in good faith (Bona fide) emergency making it necessary for the agent to act as he did.

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Types of Agents

- **General agent and special agent**
- **Auctioneers**
- **Factor / Mercantile Agents**
- **Brokers**
- **Stockbrokers**
- **Del Credere Agents**
- **Forwarding agent**
- **Commission agents**

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General agent and special agent

- A general agent acts for a principal in the ordinary course of that agent's business; a special agent is appointed to act only for a particular transaction that is not part of that person's ordinary course of business.
- A solicitor would be a general agent if authorized to undertake a range of legal work for a client, but a special agent if only authorized by the client for a specific task
i.e. to sell a house.

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Auctioneers

- An auctioneer is an agent who sells goods on behalf of another person at a public auction.
- He has authority to receive the purchase price and can sue for it in his own name.
- He has a lien on the goods and on the sales proceeds for his charges.
- He has implied authority to sell without a reserve price and even if he sells below a reserve price specified by the owner the contract will be binding on the owner (principal).
- If however he declares that the sale is subject to a reserve then a sale below the reserve price is not binding on the owner.

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Factor / Mercantile Agents

- A mercantile agent is also known as a factor. A mercantile agent is an agent employed to sell goods which are entrusted to him by his principal.
- Even though he is not the owner of the goods, he can give good title to the buyer.

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Factor / Mercantile Agents

His powers are:

- To sell goods in his own name;
- To give a warranty if it is usual in the course of the business; Into receive payment for goods sold give valid receipts and grant reasonable credit;
- To pledge the goods. To pledge means to raise money, by keeping the goods as security.

I.e. has a lien on the goods in his possession and on the sales proceeds, for his charges and he has an insurable interest in the goods.

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Brokers

A broker is an agent employed to make bargains and contracts in matters of trade, commerce or navigation between other parties for a compensation commonly called brokerage. A broker is different from a mercantile agent, because

a) He does not have possession of goods, therefore he does not have a lien on the goods for his brokerage, and he cannot sue in his name on the contract.

b) He may not sell goods in his own name, unless there exists a trade custom enabling him to do so.

c) He has no power to pledge the goods.

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Stockbrokers

- A stockbroker is a member of the Stock Exchange usually engaged in buying and selling of company shares debentures etc.
- on behalf of his client, and he has an implied authority to make contracts (i.e. either to buy or sell shares) for his principal in accordance with the rules of the Exchange.
- These rules bind the principal even if he is not aware of them.

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Del Credere Agents

- These are agents who in return for an extra commission called 'del credere commission' guarantees to his principal that the purchasers he finds will pay for the goods sold to them, and he further guarantees that if the purchasers do not pay he will pay the principal.
- Therefore, he is a guarantor for the payment. But a Del credere agent does not guarantee that he will take delivery of the goods if a buyer does not accept delivery.

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Forwarding agent

- A forwarding agent undertakes the transmission of goods for the principal and is personally liable for the freight charges, which are then recoverable from the principal.
- Such an agent is obliged to exercise reasonable care in relation to the goods.

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Commission agents

- A Commission agent is also a mercantile agent.
- He buys or sells goods for his principal on the best possible terms in his own name.
- For this, he receives a commission.

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What is a Power of Attorney?

- A power of attorney is a legal document giving one person (called an "agent" or "attorney-in-fact") the power to act for another person (the principal).
- The agent can have broad legal authority or limited authority to make legal decisions on the principal's property and finance.
- The power of attorney is frequently used in the event of a principal's illness or disability, or when the principal can't be present to sign necessary legal documents for financial transactions.

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What are the differences between a general and special power of attorney?

- A general power of attorney gives broad authorizations to the agent. The agent may be able to make medical decisions, legal choices, or financial or business decisions.
- A special power of attorney narrows what choices the agent can make and it is more specific.

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Obligations of the Principal and Agent towards each other

- An agency is the creation of a contract entered into by mutual consent between a principal and an agent.
- By agency a principal grants authority to an agent to act on behalf of and under the control of the principal.
- Therefore it is the responsibility of the agent to ensure that they deal within the given authority of the principal in order to make principal liable for the transaction.
- In other words if the agent performs the transaction within the given authority the principal it will be principal and third parties contract.

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Obligations of the Principal and Agent towards each other

An agent owes certain duties towards his/her principal and a principal owes certain duties towards his/her agent. The scope of an agent's duty to the principal is determined by:

- The terms of the agreement between the parties; and
- The extent of the authority conferred and the obligations of loyalty to the interests of the principal.

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Agent's Primary Duties

- 1) Act on behalf of and be subject to the control of the principal
- 2) Act within the given authority of the principal
- 3) Discharge his/her duties with appropriate care and diligence
- 4) Avoid conflict between his/her personal interests
- 5) Not to acquire any material benefit or any secret profit from a third party in connection
- 6) Duty not to delegate powers.
- 7) Duty of Obedience
- 8) Duty to account

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Agent's Primary Duties

Case law in brief: Case Law in Brief: *Lucifero V Castel* (1887)

Facts: An agent appointed to purchase a yacht for his principal bought the yacht himself and then sold it to his principal at a profit. The principal did not know that he was buying the agent's own property.

Issue: .Whether the principle can recover the profit earned by the agent by selling his yacht to the principal

Decision: Yes

- **Justification:** If the agent receives any secret profits from the other party without the knowledge of the principal, the principal will be entitled to recover the secret profits from the agent with transactions conducted or through the use of his/her positions as an agent.

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Principal's Primary Duties

1) To compensate the agent by paying the remuneration/commission as agreed:

Case law in brief: *Luxor (Eastbourne) Ltd Vs Cooper* (1941)

Facts: The contract provided that the vendor of a land should pay the estate agent his commission "on completion of sale". A prospective purchaser was introduced by the agent.

He was ready willing and able to buy, but the sale did not take place because the owner refused to deal with him.

Issue: .whether the agent was entitled for the commission.

Decision: No

Justification: Agent was not entitled to his commission since the owner refused to deal with the third party.

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Principal's Primary Duties

- 2) To indemnify and protect the agent against claims, liabilities, and expenses incurred in discharging the duties assigned by the principal.
- 3) To act in accordance with the express and implied terms of any contract between a principal and an agent.

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Modes of Termination of Agency

Termination of agency may take place broadly in the following ways.

- 1) By completion of the agency agreement
- 2) By the act of parties
- 3) By operation of law
- 4) By completion of the agency agreement
 - (a) Either the period fixed for the agreement comes to an end, or
 - (b) The purpose for which the agreement is created is accomplished.

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Modes of Termination of Agency

2) By the act of parties again divided as follows

(a) By mutual agreement between the parties

(b) Expressed renunciation (self-denial /giving up of the agency) by the agent

(c) The principal may revoke the agent's authority.

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Modes of Termination of Agency

The principal may revoke the agent's authority.

However in the following circumstances the principal is not entitled to revoke the agency

(i) Where the agent has carried out or is in the process of carrying out his instructions and has incurred liabilities which must be indemnified by the principal, the agency cannot be revoked.

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Modes of Termination of Agency

Case law in brief: Read Vs Anderon [1884] 13 QBD 779

Facts: The principal who was the defendant instructed the plaintiff, a turf commission agent, to place bets on his behalf. The plaintiff placed the bets and lost. By custom, a turf commission agent always bets in his own name and becomes solely responsible to the person with whom the bet is made. If he is declared a 'defaulter' owing to his failure to pay the lost bet, he is subject to certain disqualifications which will have a serious impact on his business.

Issue: Whether the principal could unilaterally revoke the agent's authority.

Decision: No

Justification: He would have to indemnify the plaintiff for the amount which the latter had paid to the person with whom he made the bet.

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Modes of Termination of Agency

(ii) Where the 3rd party has started to act in reliance of the contract negotiated with the agent.

(iii) Where the agency is coupled with a personal interest to the agent.

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Modes of Termination of Agency

3) By operation of law

(a) Death

Death of either the principal or the agent terminates the agency. If an agent acts despite the death of a principal the third party may sue him for breach of warranty of authority.

(b) Insanity

The insanity of the agent terminates the agency. The insanity of the principal also will automatically put an end to the agency. But if the third party is not aware of the insanity of the principal, the principal is still liable.

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Modes of Termination of Agency

Case law in brief: Drew Vs Nunn (1879)

Facts: A husband gave authority to the wife to buy goods from Drew, but the husband later became mentally disordered. Drew did not know about this. But the wife continued to buy goods on husband's account from Drew.

Issue: Whether husband was liable for the purchases after he became insanity.

Decision: Yes

Justification: Since Drew was not informed the insanity of the husband and, therefore the husband was liable to pay.

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Modes of Termination of Agency

(c) The bankruptcy of the principal

(d) Frustration.

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Modes of Termination of Agency

Frustration. It may happen by

a) Physical impossibility of performance,

Example if an agent is appointed to sell a car the agency terminates by frustration if the car is destroyed by fire.

b) Subsequent illegality

For example if a Sri Lankan is appointed as an agent by a foreigner, and if a war is declared between the two countries after the agency is created, the agency will become illegal.

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Agents Liability in Contracts

- An agent acts as an intermediary between the principal and the 3rd party and help to form the contract.
- Once the contract is formed agent will not be liable for any contractual liability which arises from the contract.

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Agents Liability in Contracts

However there can be instants where the agent will be personally liable for the Contacts formed between the principal and the third party.

- When the agent does not indicate to the third party that he is contracting as an agent.
- When the nature of the contract and the related circumstances make it obvious that the agent is liable.
- When the agent is contracting on behalf a non-existing principal.
- When the agent executes a deed in his own name.
- When the custom of a trade make the agent liable.
- When the agent is contracting on behalf a non-existing principal

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Agents Liability in Contracts

Case law in Brief: Kelner v Baxter (1866) LR 2 CP 174; [1861-73] All ER 2009.

Facts: A promoter, who is in the process of incorporating a company, enters into contracts on behalf of the company to be incorporated.

Issue: whether promoter was liable for the expenses on company incorporation.

Decision: Yes

Justification: Promoter incurs liability on these contracts personally, as the proposed company (principal) was not in existence at the time the agent (promoter) entered into the contract.



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