

CHAPTER NO 5 AGENCY

INTRODUCTION

- An agent is a person who is authorized to represent another person, who is called the principal.
- The agent creates a legal relationship between the principal and a third party.

LETS SEE HOW THIS ALL IS DONE

When people do business, they often deal with each other directly

Buyer ← → Seller

However, sometimes they deal with each other using a “middleman” (or representative or *intermediary*)

Buyer ← Middleman → Seller

The legal relationship between the middleman and the businessperson is governed by the **law of agency**

The legal term for a middleman or representative is an **agent**

The person who is represented by the agent is called the **principal**

Therefore, in our example

Buyer ← Middleman → Seller

If the middleman represents the buyer

Principal ← Agent → Seller

Definition:

- An agent is a person who is authorised to represent another person, who is called the principal.
- The agent creates a legal relationship between the principal and a third party.

Therefore, any contract entered into is between the principal and the third party, even though it is arranged by the agent. The agent does not usually get any rights or responsibilities under the contract. Therefore, it is the principal who must have the capacity to contract and not the agent

CREATION OF AGENCY

The principal/agent relationship can be created in several ways

- 1. Express Appointment**
- 2. Ratification**
- 3. Implication**
- 4. Necessity**
- 5. Estoppels**

1. EXPRESS APPOINTMENT

- This is the most common way of creating an agency
- The agent is specifically appointed by the principal for a particular task or a general function
- It can be done by contract, but this is not necessary
- What matters is *authority*.

2. RATIFICATION

- In this case, a person who does not have the authority of the principal enters into a contract with a third party on behalf of the principal
- Ratification occurs when the principal expressly accepts the contract later

The effect of this is to make the earlier actions of the agent valid.

The following conditions apply to ratification

- 1. The principal must have been in existence at the time the agent made the contract with the third party**

- This is not a problem where the principal is a real person, but it could apply to companies or partnerships which have not been formed

2. The principal must have had the legal capacity to contract at the time the contract was made

3. An undisclosed principal cannot ratify a contract

✚ In other words, when the agent made the contract with the third party, he must have stated to the third party that he was acting as an agent for a particular person

- Even though the principal had not actually authorised him

If the agent appeared to be acting for himself, then the principal cannot ratify the contract later.

4. The principal must adopt the whole of the contract

- The principal must accept the whole contract.
- He cannot try to accept only certain terms

5. Ratification must take place within a reasonable time

- What is 'reasonable' depends on the circumstances
- If the third party finds out that the agent actually had no authority, he can set a time limit for the principal to ratify the agency

3. IMPLICATIONS

- Agency by implication is where it is assumed that the principal has authorised the person to act as his agent
- It is assumed that because the agent holds a particular position, then he has the authority of the principal to enter into contracts
- Eg: in *Panorama Developments v Fidelis Furnishing Fabrics Ltd*, it was held that a company secretary had the implied authority to make contracts in the company's name for the day to day running of the company

4. NECESSAITY

- A principal/agent relationship can be created where there has been no agreement between the parties when there is an emergency and one person acts to protect the interests of another person.
- There are 3 conditions for necessity to apply
- There must be a genuine emergency
- Eg in *Great Northern Railway Co v Swaffield*, the railway company transported the defendant's horse
- When no one arrived at the destination to collect it, the railway company paid to put the horse in some stables
- The court allowed the company to recover the costs as necessity had forced them to pay for the stables
- There must also be no practical way of getting further instructions from the principal
- In *Springer v Great Western Railway Co*, some tomatoes arrived late at a port because of a storm
- The railway company could not transport them to London immediately because of a strike
- The company decided to sell the tomatoes locally before they became rotten
- The court held that the railway company should pay the owner of the tomatoes the difference in the price between the price obtained locally and the (higher) price which would have been obtained in London
- The reason for this is that it was possible for the company to have contacted the owner for instructions before selling the tomatoes locally
- The person who acted as 'agent' must have acted in the genuine interests of the 'principal'

5. ESTOPPEL

- This form of agency is also known as **agency by holding out**

- It occurs where there is no actual principal/agent relationship, but the principal makes a third party think that there is
- In this case the agent has **apparent authority** and the principal is bound by any contract entered into by the 'agent' and a third party who thought there was a proper principal/agent relationship
- There are 2 conditions for estoppel to apply
- The 'principal' must have made a representation that the 'agent' had his authority
- The party who claims there has been estoppel must have relied on the principal's representation

SMALL NOTE ON AUTHORITY

Normally, an agent can bind his principal only when the agent has authority to do so.

Authority; An agent can bind his principal only when the agent has the authority to do so. AUTHORITY is the agent ability to affect his principals legal relations. It has two main forms

- 1. Actual authority (Here the consent must be communicated to the agent)**
- 2. Apparent authority (It must be communicated to the third party)**

Actual authority occurs in 2 ways

- Expressly
- By implication

Express Actual Authority

- This is the authority given by the principal expressly to the agent
- In other words, the principal tells the agent what he wants the agent to do and what powers (or authority) the agent has to do those things .

Implied Actual Authority

- This authority covers the situation where a third party is entitled to assume that the agent has been given the power to do something by his principal, even though the agent may not have been given that power expressly
- In other words, a third party can assume that someone has the powers which a person in the agent's position usually has, whether or not the agent has been given those powers expressly.
- For example, in *Watteau v Fenwick*, the new owners of a hotel employed the previous owner as the manager
- They expressly told him that he could not buy certain things, including cigars
- However, the manager bought cigars from a third party
- The third party sued the owners for payment as the manager was their agent
- The court held that buying cigars was within the usual authority of the manager of a hotel
- If the owners wanted to limit the manager's authority in buying things then they would have to tell third parties of the limits of his authority

Apparent Authority

- Apparent authority relates to agency created by estoppel
- Apparent authority occurs in 2 ways
- The first situation is where a person makes a representation to a third party that another person has their authority to act as their agent even though that person has not been appointed as their agent
- In this situation, the person who makes the representation is bound by the actions of their apparent agent
- A person will also be liable if he knows that someone is claiming to be his agent, but he does nothing to stop that person
- The second situation where apparent authority occurs is when a principal told a third party in the past that someone was his agent

- If the principal ends the agency but does not tell the third party, then he may still be liable for the actions of his former agent

FEW EXCEPTIONS WHERE THE CONTRACT IS NOT BETWEEN PRINCIPAL AND THE THRID PARTY

As mentioned already, the general rule is that any contract entered into by an agent is between the principal and the third party, even though it is arranged by the agent. Therefore, only the principal can sue and be sued under that contract However, there are exceptions to this rule:

- **Where the agent discloses the existence of the principal**
- The agent does not have to disclose the principal's name, only that he is an agent for a principal
- Here the general rule is that any contract entered into by an agent is between the principal and the third party, even though it is arranged by the agent
- Therefore, only the principal can sue and be sued under that contract

Exceptions to this rule:

- a) Where the agent has expressly accepted liability with the principal in order to persuade the third party to make the contract
- b) By implication
 - This usually happens where the agent signs the contract with the third party in his own name only instead of signing to show that he is acting on behalf of a principal
- c) Where the agent acts for a principal who does not exist

2. Where the agent does not disclose the existence of a principal

- Again, the general rule still applies
- However, the third party can enforce the contract against the agent
- And the agent can enforce it against the third party
- The principal may also enforce the contract

KINDS OF AGENTS

- A **general agent** has the power to act for the principal in all business matters
- A **special agent** only has the authority of the principal for one transaction
- A **del credere agent** guarantees to the principal that if the third party does not pay then the agent will pay.
 - The agent usually takes a higher commission for this
- A **Subagent is one** appointed by an agent to perform tasks that the agent has undertaken to perform for his principal. For example , if you retain accounting firm as your agent, the accountant actually handling your affairs is the firms agent and your sub agent.
- **marketing agent** has limited authority to introduce potential clients to the principal. He does not have the authority to negotiate or enter into contracts on behalf of the principal
- A **distribution agent** is appointed by a supplier to arrange for distribution of the supplier's goods in a particular place.
- Note: a franchising arrangement where one person allows another person to run a business using the original name of the business is not a form of agency
 - Eg McDonalds

