

Law of agency

Agency – relationship between the principal and the agent whereby the agent creates contractual relationships between the principal and 3rd parties.

Agent – person employed/appointed to enter into contracts on behalf of his principal with 3rd parties. Can be a servant or independent contractor. Cannot be vice versa. Underlying maximum is “he who does a thing through another, does it himself”. Since the agent contracts for another, he need not have contractual capacity - may be an infant. The principal should have full contractual capacity.

Sec 3 of the civil law ord. – enables the reverting to English principles of agency subject to certain limited legislation in Sri Lanka.

Capacity of the parties is governed by rdl. General rules are;

1. Principal must have the capacity as understood by rdl. Exceptions are – a. Sec 571 of the c.p.c. – manager of a person of unsound mind.
B. Contracts regarding minors – immovable property.
2. The 3rd party's capacity
3. An agent does not require the contractual capacity to act as an agent. But his capacity does affect –
 - A. The contract between the principal and agent
 - B. An action against the agent by the 3rd party for breach of warranty of authority.

Creation of agency

- (1) Actual authority
- (2) Apparent authority/estoppel
- (3) Necessary authority
- (4) Subsequent authority
- (5) By deed

(1) Actual authority

Can be from either – expressed
Implied agreement

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

Boden vs. French – principal ordered agent to sell coal for certain profit agent sold above the profit but on credit.

Held – no breach of agency since the conduct of the agent could reasonably be considered by him as coming within the general terms of the agency

Implied agreement arises in 2 ways –

I. Agent is impliedly authorised to carry out things incidental to carrying out his express instructions. Anz bank vs. Ateliers constructions electriques de charteroie – Australian agent and Belgian company. Agent put the cheques of his principal to his account. Company knew of the fact. Held – which the agent had the implied authority to do so.

II. Where a person is appointed to a particular position and it is usual for that office to have contractual powers, the principal is implied to have conferred those powers as well. Panama developments vs. Fidelis furnishing fabrics – company secretary and sending customers through taxis to the airport.

Held – that modern company secretary had implied authority to sign contracts connected to the admin. Side of the company

Slightly different approach taken where the agent is employed for the principal in a certain place of business. Then the agent is impliedly authorized to act according to the usages and customs of that place of business.

Bayliffe vs. Buttersworth – selling of shares and practice by the Liverpool brokers.

Where a 3rd party does not know about the principle limiting the powers of his agent, and deals in good faith, will not be affected and the principal is bound to him.

Watteau vs. Fenwick – humble ordering cigars on credit against the orders of the owners. Held that humble had entered the contract during ordinary authority and thereby the owners were still liable.

(2) Apparent authority/estoppel

- arises when the principle holds out a person as an agent
- for the purpose of making a contract with a 3rd party
- relies on the fact that
- that even though the agent has no actual authority.

Also known as agency by estoppel and maybe based on sec 115 of the evi. Ord.

Where one allows 3rd parties to believe that another is acting as his agent he will be estopped (precluded) from denying the agency if such 3rd parties rely on it to their detriment. This is so even if no agency was intended by the principal.

Estoppel arises through –

1. Where the agent has no actual authority at all
2. Where there is a relationship between the principle and agent, but the authority of the agent is limited by agreement.

Requirements of estoppel were summed up by slide j. In rama corporation vs. Proved tin and general investments ltd.

(3) Necessary authority

Arises through an operation of law and there is a need to presume such authority.

Great northern railway vs. Swaffield – defendants held liable to pay for livery stable charges of horse.

Conditions required to fulfill agency by necessity

1. Genuine emergency that threatens the property.
courtier vs. Hastie – stock of corn overheating on ship. Captain deciding to sell corn at tunis.

Held that the captain had acted as necessary agent.

2. Impossible to communicate with the owner regarding the instructions
Springer vs. Great western railway – selling of tomatoes before they went bad.

Held that even though there was an emergency since there was a failure to communicate, the defendant's traffic agent had no necessary authority.

3. The agent should act in good faith and make a genuine attempt to save the property.
Hawtayne vs. Bourne – miners wanting to seize their employer's machinery but manager on his own initiative borrowed money to pay the wages and avoid distress.
Held that his action could not be indemnified on the ground of implied or necessity authority.

(4) Agency by ratification

Where the agent makes an unauthorized contract on behalf of his principal, the principal can either ratify or adopt the contract.

Ratification can be either expressed or implied.

Sinnothamby vs. Johnpulle – held that attestation is not required for the ratification of a lease agreement entered into by an agent without authority.

Following must be fulfilled regarding ratification;

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.

Turpin vs. Bilton – held that by failure to insure his principal's vessel, the agent was in breach of his contractual duty and therefore liable.

Important exceptions –

- I. A gratuitous agent will not be held liable for failure to perform.
- II. An agent who has undertaken to perform something unlawful is not liable.

2. An agent is obliged to obey the **lawful** instructions of his principal in the performance of his work.

Dexwell vs. Christie – held that since the instructions were unlawful and a fraud on the members of the public, the auctioneer was not bound to follow them and therefore not liable for damages.

Where no instructions are given and the matters are left to the discretion of the agent, he must act in good faith and use his best judgement for the benefit of the principal.

Betram armstrong vs. Godfrey – held that g must account to b for the price difference plus interest.

3. The agent must do his work personally and not delegate his work.

From the maxim delegatus non potest delegare

Exceptions –

- A. Where the principal is aware at the time of the creation of the agency that the agent intends to delegate his authority
- B. Under the circumstances the agent would have the power to delegate his authority.
- C. Where the agent's authority is such as to necessitate its execution with the assistance of others.
- D. Where the delegated act is purely ministerial and does not require or involve confidence or discretion.
Allen and co. Vs. Europa poster services ltd – held that what had been delegated was purely ministerial and therefore the complaint of unauthorized Delegation could not succeed.
- E. Where such delegation becomes necessary due to sudden emergency.
- F. Where delegation is the usual practice of the trade and there is nothing inconsistent in the agreement.

The agent however is responsible for the defaults of the sub agent and not the principal.

4. The agent must carry out his work diligently and with ordinary skill.

Paid agents and gratuitous agents are **liable** to the principal for the diligent performance of their duties.

A gratuitous agent is liable only for gross negligence.

A paid agent is expected to use care and diligence such as are exercised in the ordinary and proper course of similar business and such skill usual and requisite in the business for which he receives payment.

If the agent possesses any special skill that is required for the work he has been appointed to perform, then he must display that skill or he will be **liable to indemnify his principal for any resultant damage**, even though he has done his best.

5. Should conduct his duty in a fiduciary manner

I. Must not buy/sell to his own principal without full disclosure

Mcpherson vs. Watt – 2 ladies appointed agent to sell their property who wanted it for himself and bought it through his bro. When discovered, specific performance of the contract was refused.

Senerviratne vs. Senerviratne – held that an agent appointed generally by power of attorney cannot enter into a mortgage bond to mortgage the property of the principal for the purpose of settling a debt that is owed by the principal to the agent personally.

II. Owes a full duty of disclosure to his principal.

Keppel vs. Wheeler and Blundell vs. Stephens – partner of chartered accountant lost confidential letter containing libels on 3rd parties. House of Lords awarded nominal damages against the accountant.

III. Must not take undue advantage over his principal's property for himself.

De Vos vs. Bett – pltf was a broker agent employed to buy property. Falsely represented prices to the defendant and agreed with the seller to a commission.

Held that the agent who has arranged a secret profit can recover nothing as commission.

Peter Pan Manufacturing Corporation – held that since the vs. Corsets Silhouette Ltd. Info was confidential defendants could not use it and was thus liable to account to the plaintiff the profits made.

Further held that the agent's fiduciary duty could continue even after the termination of the agency.

IV. Must not take bribes.

Boston Deep Sea Fishing Co. Ansell – director accepted payments from suppliers for the goods he ordered.

Held that he must account to the company for the bonuses and secret commissions he had received together with the interest.

Reading vs. The Attorney General – army sergeant who rode in civilian Lorries to help smugglers. Had used his employment as a means of obtaining a bribe and secret profit.

If the principal discovers that his agent has obtained a secret commission or a bribe as an inducement to make the contract, the principal can –

01. Recover the commission from the agent, dismiss him without notice and refuse to pay his commission.

Boston Deep Sea Fishing vs. Ansell – held the dismissal was justified and the managing director must pay over the commissions he received to the company.

02. The principal may repudiate the contract with the person who paid the commission and sue him for damages.
Salford corp. Vs. Lever – held that the agent and the person giving the bribe are jointly and severally liable to the principal for any loss caused as a result.
 03. He may apply for the prosecution of the agent and the 3rd party.
 04. Recover the bribe from the agent if he has received it or from the 3rd party.
 05. Repudiate the contract with the 3rd party.
Shipway vs. Broadwood – regarding horses.
Held that a was not bound by the contract whether the agent was in fact biased or not.
Note – the principal might not sue for damages or recover the bribe as well since it would amount to recovery of losses twice over - mahesan vs. Malaysia government officer's co-operative housing society ltd.
- V. Has a general duty to account. They include –
- A. To keep personal property separate from the principal's property
 - B. To keep accurate accounts and produce them when required
 - C. Hand over to the principal all documents originally handed over to him for the purpose of the agency.

6. The agent must handover to the principal all profits arising out of the agency – includes all unlawful agencies as well.
De mattos vs. Benjamin – turf commission being employed to make bets.

Held that even though wagering was a void transaction, he must pay all winnings.

7. The agent is estopped from denying his principal's title to the money or goods on the grounds that he has superior title.

The rights of an agent

01. The right to commission and remuneration

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.

The fact that this is contractual does not mean that it is always enjoyed where agency is created.

Similarly, the following situations do not allow for remuneration to be paid to an agent;

- 1) Where the agent is a gratuitous agent
- 2) Where the agent has entered into an unlawful contract
- 3) Where the agent is in breach of fiduciary duty

Where no remuneration is specified, the courts might imply a reasonable remuneration where the relationship is a commercial one and payment is usual.

Way vs. Latilla – agent undertook to furnish information on gold mines but the contract didn't provide for remuneration.

Held that in the surrounding circumstances, the services were not intended to be free and therefore they implied a term for reasonable remuneration.

Agent is not entitled to remuneration if he has not performed his part of the contract.

Rimmer vs. Knowles – surveyor asked to sell estate by the defendant a promised commission. Defendant raised the price of the estate and although plaintiff could not afford the price, he made plans to buy the estate on lease agreement.

Held that there was substantial performance and therefore the plaintiff was entitled to his commission.

2 conditions regarding an agent's entitlement to a commission;

- A. Where the transaction has gone through
- B. Where the transaction has not gone through

Where the transaction has gone through, the question should be asked whether the transaction actually occurred due to the agent.

Miller, son and co. Vs. Radford – agent instructed to find purchaser for the principal's property. Tenant found and agent paid commission. Tenant bought over the property 15 months later and agent claimed another commission.

Held that in order to claim the commission, then it must be shown that the agent was the effective cause in bringing about the sale. Since the agent had not taken an active interest after the tenant was found, he was not entitled to the commission.

The right to a commission depends on the terms of the contract. Where the transaction does not through and if the commission is receivable by the agent only if he performs certain acts or brings about a specified result and fails to do so, he might not be entitled to his commission.

Luxor vs. Cooper – agent employed to find purchaser for 4 cinemas, and provided him with commission in the event a buyer was found. Agent introduced potential buyer but vendors withdrew contract and were sued by the agent who claimed an implied term in the contract. Held that there was no such term in the contract and therefore the agent could not claim the commission.

Contrast with Christie Owen and Davies vs. Rapacioli – agent employed to find ready and willing purchaser of defendant's restaurant. Purchaser introduced by the agent. He signed the contract and kept deposit as well. Defendant withdrew the contract.

Held that since the purchaser was ready and willing – agent was entitled to the commission.

02. The right of indemnity

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

Hitchens, Harrisons, Woolston and Co. Vs. Jackson and Sons – stockbrokers were instructed by solicitors to sell shares. Subsequently the solicitor's client repudiated the contract.

Held that the stockbrokers were entitled to be indemnified by the solicitors.

Christoforides vs. Terry – C employed X to buy cotton and became indebted to him. X lawfully closed the account by selling the cotton. X became personally liable to the contracts and the sale resulted in loss.

Held that X was entitled to be indemnified by C.

The agent has a right to indemnify himself through –

- An action
- Exercise of lien
- If he is sued by the principal by set off.

The agent is not entitled to the right to be indemnified where he has acted against, without authority or where he has been negligent or acted in breach of fiduciary duty.

Davison vs. Fernandes – the principal had told the agent to sell shares ex. Div. The agent quoted a cum. div. Price and got the principal's authority. The agent sold the stock and had to pay the dividend to the purchaser.

Held that he was not entitled to be indemnified since he was negligent.

Effects of agency relations between the principal and 3rd parties

If the agent acts within the scope of his actual or apparent authority – principal is bound to the 3rd party to the extent of the authority possessed by the agent.

Camillo Tank ss Co. Ltd. Vs. Alexandria Engineering Works – principal's ship was compelled to come under repairs and agent was authorized to verify the repairs effected and approve the bill submitted by the repairers. The principal later contested the bill.

Held that the agent's act was the same as if the principal had been on the spot and therefore the principal was liable to the repairers.

Furthermore, where the agent has acted through necessity or the agency is ratified by the principal, the principal is bound to 3rd parties to that extent.

Where the 3rd party knows that the agent lacks authority, the principal is not bound to the 3rd party.

Jordan vs. Norton – father informed the owner of a horse that his son had only the authority to take delivery of the horse provided that a certain warranty was given. The owner failed to give the warranty but delivered the horse to the son.

Held that since the owner had express notice of the limitations imposed upon the son's authority, the father was not bound.

The undisclosed principal

Undisclosed principal - when at the time the contract is entered, the 3rd party is not aware that the agent is acting on behalf of a principal.

General rule – undisclosed principal is permitted to intervene on his agent's contracts and therefore acquires the rights and liabilities on the contract. It is subject to the following exceptions –

- (A) If the intervention would contradict an express or implied term of the contract
Humble vs. Hunter – agent entered into a charter party with the defendant purporting to contract as the owner of the ship.
Held that since the agent had described himself as the owner he had contracted as the sole principal and therefore the principal could not intervene.
- (B) Where the contract is affected by personal factors
Said vs. Butt – plaintiff had dispute with manager of theatre. Sent an agent to purchase tickets but was refused entry.
Held that in the case the identity of the contracting party was of importance and therefore an undisclosed principal couldn't intervene.
- (C) Where there is actual misrepresentation regarding the identity of the principal.
Archer vs. Stone – agent was specifically asked by the defendant whether he was acting for the plaintiff and the agent untruthfully replied – no.
Held that since the defendant had been induced to contract by the misrepresentation, specific performance would not be granted against him.

The legal effect of the undisclosed principal are;

- I. The agent may sue/be sued on the contract as long as the principal remains concealed.
- II. The 3rd parties right of action in the 1st instance maybe against the agent.
- III. The undisclosed principal's rights against the 3rd party is subject to any defenses that the 3rd party may have had against the agent if the agent had sued.
rabone vs. Williams
- IV. A payment by the 3rd party to the agent (before the principal being disclosed) would operate as a valid discharge of the liability of the principal.
Coates vs. Lewes – agent employed to sell some linseed under knowledge that the agent used his own name. Agent sold to the defendant and was paid. When the plaintiff sued the defendant to recover the price, it was held that since the plaintiffs had authorized the agent to deal with the oil as though he was the principal the payments made by the defendant was binding on the plaintiff.

Duties of the principal

- 01. To pay the agreed commission or remuneration to the agent.
- 02. Not to prevent or hinder the agent from earning his commission or remuneration.
- 03. To indemnify the agent against liabilities incurred in the discharge of his duties

Termination of agency

The contract comes to end in the following manners –

01. By agreement between the parties
02. By custom
Dickinson vs. Lilwal – the agent was given the authority to sell goods belonging to the principal in the Irish provision trade. By custom in the trade of an agent expired on the date on which it was given. Held that – a contract made by an agent some days after he was appointed was not binding upon the principal.
03. By complete performance of the contract
04. Through the expiration of time – when the agency is for a certain period.
05. Through frustration –
 1. By physical impossibility of performance as when the subject matter of the agency is destroyed.
 2. Illegality -
Hagenback vs. Vaitalingam – an action on a contract of agency between a German national and a local broker was struck off the role when Germany became an alien enemy in 1914. However, the plaintiff's right to file a fresh action after the end of the war was preserved.
06. By the death of either party
07. By insanity
Yonge vs. Toynebee
08. 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.
09. Revocation of the agent's authority by the principal – the principal may at any time terminate the agency unless it is by express agreement or by operation of law regarded as irrevocable.
Campanari vs. Woodburn – agent was employed to sell a picture on the understanding that he would be paid later. Sale was revoked before the sale. Held that he was not entitled to the commission since he had sold the picture after the authority was revoked.

No special formalities are required for the revocation of the agency and even an appointment by deed can be revoked orally.

The revocation of the agent's authority will prevent the possibility of the agent binding the principal provided the 3rd parties are informed of the revocation of authority. In other words, the apparent authority of an agent will continue until 3rd parties are warned of the agent's lack of authority.

Culewis vs. Birbeck – plaintiff sent horses to agent to be sold but later revoked his authority. Agent sold the horses notwithstanding the revocation.

Held that since the defendant had no notice of the authority his payment to the agent operated as a good discharge of the debt and was binding upon the principal.

A principal cannot revoke the agency in the following –

- (1) Where the agent has carried out or is in the process of carrying out his duties and has incurred liabilities that must be indemnified by the principal.
Read vs. Anderson – held that principal could not revoke unilaterally the agent's authority.
- (2) Where the agent was appointed to enable him to get some benefit already owed to him by the principal.
- (3) Where the 3rd party has started to act in reliance of the contract negotiated with the agent.
Chappel vs. Gray - held that the defendant cannot revoke the agency after it had been acted upon by the 3rd party. Wilde j – an authority cannot be revoked if it has passed an interest and has been executed.
- (4) Where the agency is coupled with interest. This is where sufficient consideration has been given and the agency is granted for the purpose of securing some benefit to the donee of authority, such authority may be irrevocable.
Gausson vs. Morton – held that since the agency was coupled with an interest the agency was irrevocable

Where there is a revocation, there is a problem whether the agent is not entitled to the commission earned prior to the revocation but also for the commission that might have been earned had his authority not been revoked. This seems to depend on the construction of the particular agreement.

Rhodes vs. Forwood – held that an agent was not entitled to the future commission because there was no express/implied term that the factory would continue for 7 years and hence the agent ran the risk of the factory being closed down. Contrast with

Turner v. Goldsmith – held that since contract did not specifically refer to the factory and since the contract was not even confined to shirts there was no impossibility of performance and therefore T was entitled to reasonable compensation.

10. Renunciation – the agent must renounce the authority given to him and the agency will terminate.

Liability for torts of an agent

01. If a false representation is made by the agent at the express request of the principal who knows it to be untrue, the principal will be held liable to the 3rd party for deceit.
02. The agent if he knows that the representation made by him at the request of the principal is untrue, will be jointly and severally liable with the principal.
03. Where the agent has acted fraudulently and the representation is made within the scope of his actual or apparent authority, the principal remains liable.
Bress vs. Woolley –
04. If the agent has acted outside the scope of his authority or if the principal has innocently made false representation, the principal will not be liable to the 3rd party.

Vicarious liability of the principal

In certain instances the principal maybe liable for tort commitments by the agent in the course of his duties. This is an indirect liability for the action of another and the extent depends whether the agent is a servant or an independent contractor.

Servant – employed as a member of a business organization and subject to the control of his master both as to what he must do as well as how he is to do it.

Independent contractor – not a member of a business organization but essentially an outsider and his control as what he must do. But he is free to select how he will do it.

An employer is liable for all torts committed by his servants during the course of their employment but, he is not usually label for torts committed by independent contractor.