

MODULE 6

LAW OF AGENCY

Outline

- Nature and consequences of agency
- Identifying agents, types of agents, agency distinguished
- Authority and power of company officers under the Law of agency.
- Principal and agent relations.

Nature and consequences of agency

Agency, in law, the relationship that exists when one person or party (the principal) engages another (the agent) to act for him—*e.g.*, to do his work, to sell his goods, to manage his business. The law of agency thus governs the legal relationship in which the agent deals with a third party on behalf of the principal. The competent agent is legally capable of acting for this principal vis-à-vis the third party. Hence, the process of concluding a contract through an agent involves a twofold relationship. On the one hand, the law of agency is concerned with the external business relations of an economic unit and with the powers of the various representatives to affect the legal position of the principal. On the other hand, it rules the internal relationship between principal and agent as well, thereby imposing certain duties on the representative (diligence, accounting, good faith, etc.). The two relationships need not be in full conformity. Thus, an agent's effective powers in dealing with outsiders may extend to transactions that he is under a duty to his principal not to undertake, leading to a situation characterized as “apparent authority.”

Nature and consequences of agency cont'd

- The law which govern agency relationship in Nigeria is received English Law particularly Common Law and equity.
- The nature of law agency is that it applies only when acts of the agent produces legal consequences
- Another nature and consequences of agency is the authority of the agent. If the agent acts were authorized, the consequences are that the principal is bound by the acts to third party

Identifying agents, types of agents, agency distinguished

- Types of Agents
- Agents come in all kinds of different forms – it just depends on the situation. However, you can usually classify agents into a few different main types. Besides the regular agency relationship with 1 principal and 1 agent, other types of agents include:
 - **Co-agents**
 - When multiple agents have an agency relationship with just 1 principal
 - **Dual-agents**
 - When 1 agent acts on behalf of multiple principals in regard to the same transaction
 - For example, a real estate agent may act as the agent for the buyer and the seller on the same piece of property
 - Dual-agents also include spies who work for 2 or more governments.

Identifying agents, types of agents, agency distinguished

- **Sub-agents**
- Is an agent of an agent, where the original agent grants authority to a sub-agent
 - For example: principal (hires)--> agent (hires)--> subagent
- The subagent acts on behalf of the first agent and the principal
- Sub-agents are only allowed if it is:
 - Necessary to complete a project
 - For example, a general contractor might hire a subcontractor who then hires subagents to do specific tasks
 - General contractor (principal) --> subcontractor (agent) --> mason (subagent)
 - Customary in the business industry
 - The principal expressly allows the agent to hire a subagent
 - It deals with a very trivial matter

Agency Relationships

- Agency by **Agreement/Contract**: An agency relationship based on an express or implied agreement that the agent will act for the principal. Obviously the most common form. In some cases, there weren't enough required elements to form a contract, and thus only an "agreement."
- Agency by **Ratification**: A confirmation by the principal of an act or contract performed or entered into on his or her behalf by another, who assumed, without authority, to act as his or her agent. May be oral or written, usually cannot be rescinded, is retroactively applied back to original date the alleged contract was "made."
- Agency by **Estoppel**: If a principal (NOT THE AGENT) holds out to a third party that another is authorized to act on the principal's behalf, and the third party deals with the other person accordingly, the principal may not later deny that the other was the principal's agent for purposes of dealing with that third party. RARE!
- Agency by **Operation of Law**: Agencies recognized by courts -- e.g., family relationships, emergency situations -- in the absence of any formal agreement, confirmation, or act or omission by the principal that implied the agent's authority. Usually deals with necessities.

Authority and power of company officers under the Law of agency

The law of agency is an area of commercial law dealing with set of contractual and non contractual fiduciary relationships that involve a person (called the Agent) that is authorized to act on behalf of another (called the principal) to create legal relations with third party

A corporation is a fictitious legal person and can only act through agents.

The corporate secretary has actual authority to keep corporation books only except other authorities as conferred by board resolution

In Nigeria, the Companies and Allied Matters Act 2004 at section 63,64,65,66 made provisions on acts by or on behalf of the company as it relates to company's power

Section 283 (2) CAMA 2004 Provides the power and authority of the director to act upon

Authority and power of company officers cont'd

Position of Common Law: this implies that transaction which did not fall within the objects clause were null and void and incapable of ratification

Application of Ultra Vires Rule

The purpose of ultra vires rule is to protect the investors and creditors who have put money in the company

Principal and agent relations.

The relationship of principal and Agent is consensual (by Agreement) fiducially and confidential

Duty of Skill and Care

An agent is usually taken on because he has special knowledge or skills that the principal wishes to tap.

Duty of Good Conduct

In the absence of an agreement, a principal may not ordinarily dictate how an agent must live his private life.

Duty to Keep and Render Accounts

The agent must keep accurate financial records, take receipts, and otherwise act in conformity to standard business practices

Duty to Act Only as Authorized

This duty states a truism but is one for which there are limits. A principal's wishes may have been stated ambiguously or may be broad enough to confer discretion on the agent

Duty Not to Attempt the Impossible or Impracticable

The principal says to the agent, "Keep working until the job is done." The agent is not obligated to go without food or sleep because the principal misapprehended how long it would take to complete the job.

Principal and agent relations.

Duty to Obey

As a general rule, the agent must obey reasonable directions concerning the manner of performance. What is reasonable depends on the customs of the industry or trade, prior dealings between agent and principal, and the nature of the agreement creating the agency

Duty to Give Information

Because the principal cannot be every place at once—that is why agents are hired, after all—much that is vital to the principal's business first comes to the attention of agents

Review Questions

1. What are the types of Agents
2. Highlight the principal and agent relationship
3. What are the agency and other relationship distinguished ?
4. What are the authority and power of company officer

Reference

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