

Business organisations law



BUSINESS ORGANIZATION LAW a) Actual authority is having more power than apparent authority. Actual authority is either express authority (based on oral or written words to the agent) or implied authority (inferred from words or conduct manifested by the principal) and there would be legal relationship between agent and his principal. Emerson and Robert W defined apparent authority or ostensible authority as a communication or a signal directly from the principal to a third party. (Emerson & Robert W, p. 283). It is implied by the general principles of agency that the agent will be held liable for his actions and hence liability will be high. It means that the liability of actual authority is greater compared to that of apparent authority because there is an agreement already undertaken.

Actual authority is said to enjoy more power than an agent with apparent authority because a third party will usually be unaware of the terms and conditions of the agreement between the principal and his agent and thus he will be unaware of the extent of the agent's actual authority. According to John D Maltas, an agent's apparent authority will be unaffected by limitations on the actual authority, i. e. it is easier for a third party to establish that the agent acted within the scope of his apparent authority rather than the agent's actual authority (John D Maltas, p 43) and hence he is said to have more power than apparent authority. Richard A. Mann and Barry S. Roberts emphasize that an apparent authority can not exist where the principal is undisclosed because, apparent authority is the power resulting from acts that appear to the third party to be authorized by the principal. (Richard A. Mann and Barry S. Roberts, p. 350)

b). Should Principal recover commission paid to an agent

Normally an agent needs to disclose to his principal all material facts known

to him and circumstances that may influence his principal when entering in to contracts. Once an agent fails to disclose these facts, he is not entitled to commission. Suppose, the agent has received any profit resulting from non-disclosure is recoverable by the principal (John D Maltas, p 49).

This has been well explained by S. A. Christensen and W. D. Duncan. When one party to a contract pays a secret commission to the agent and does not disclose this to the principal, the party takes the risk of non-disclosure. A party who deals secretly with the agent of another will be considered to have committed a fraud against the principal and cannot later defend the validity of the transaction. This will require the principal to return any benefits received under the transaction, because this will not prohibit him from recovering from the agent. (S. A. Christensen and W. D. Duncan p. 332)

c) Universal agent and del- credere agent

A universal agent is one who is appointed and authorized by the principal to carry out all acts that the principal may personally carry out. According to P C Tulsian, a universal agent has unlimited authority to bind the principal” (P C Tulsian, p. 19) “ A del credere agent has been defined as a commercial agent who agrees with his principal that the third party, with whom he contracts on the principal’s behalf, will perform his obligations” (Dennis, Editor Campbell, p. 484). Both universal and del credere agents hold almost same duties and responsibilities towards the principal. The del credere agents give guarantee of sale of the goods that they take and thus they hold same responsibility to the principal.

d. Principal is liable for the torts of the agent

“ A tort has been defined as a wrongful act against an individual or body corporate and his, her or its property which gives rise to a civil claim”. (David

Kelly, Ann E. M. Holmes, Ruth Hayward)

The reasons that a principal is considered to be directly responsible for his agent's torts are given below:

The agent was improperly or negligently chosen.

The principal gave improper instructions that caused the torts happen

The principal failed to supervise or oversee the work when he had a duty to do like that.

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