

Law of agency essay sample

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Law of agency is related to relationship between a principal and his agent to do lawful acts on behalf of his principal with written or oral authority. A principal is bound by the action initiated by the agent on his behalf. An agent is the representative of his principal who enter into contract as regards to purchase or sale of property or any other thing and has the power delegated from the principal to deal with the third parties on his behalf.

An agent is one –

- Who is employed by the principal
- To do any or specific act for principal
- To represent principal in dealing with the third parties.

The peculiarity of the law of agency is that though it is a part and parcel of contract law but it differs from it in one aspect. The Contract Act stipulates that only parties to the contract can be held liable and in that respect it differs from the Law of Contract.

The agency can be illustrated in the following cases: a lawyer for his client, a managing director or director of the company acting through powers delegated to him by the Board of Directors, a managing partner or partner of the partnership etc.

For a valid contract of agency, three persons are involved viz. principal, agent and a third party. Agency contract is one where the principal is bequeathing his authority to his agent to enter into transaction with a third party on behalf the principal. Thus, if an agent acts within the authority and acts on behalf of his principal, there exists a valid contract of agency.

For appointing an agent, Principal should be of sound mind, must be in the age of majority and he is not disqualified from contracting by any law.

Likewise, an agent should also be in the age of majority and is not disqualified from contracting by any law.

Tinnevelly Sugar Refining Co v Mirrlees, Watson and Yaryan Co Ltd:

Butler and Darley, acting on behalf of the company entered into a contract with a third party. But it was found that the company was not formed at the time of entering into contract. There was no existence of principal at the time when contract was entered. Hence there was no contract of agency.

For a valid contract, consideration is essential . For creating an agency contract, no consideration is necessary. Thus, an agent may work for his principal even with out remuneration or consideration.

An agency may be created in following ways.

- By Express i. e. by written agreement or written documents.
- By the conduct of the party. This is also known as doctrine of estoppel or holding out.
- By necessity
- By ratification

Sir W. Grant M. R describes “ An agent may within scope of his authority bind his principle and in many cases by his acts. What agent has said may be what constitutes, the agreement of the principal or the representations or statement made, maybe of the foundations of or inducement to, the agreement.

Therefore, if a writing not necessary by law, evidence may be admitted to prove, the agent did make that statement or representation. So, with regards to acts done, the words, which those acts accompanied, frequently tend to determine their quality. The party, therefore, to be bound by the act, must be affected by the words. But except in one or other of those ways, what is said by an agent can be evidence against principal.

Further an agent authority may be expressed or implied. For instance, A owns a business in Los Angeles and lives in New York. A visits his business in Los Angeles occasionally. The business is being managed by B and B is in the habit of ordering goods from C in the name of A for the purpose of business and B is paying the cost of goods purchased out of A's funds with A's knowledge. In this instance, B has an implied authority from A to order goods for the business from C in the name of A for the purpose of the business.

Thus, an authority is said to be express when it is given by words spoken or written. An authority is said to be implied when it is to be inferred from the circumstances of the case and things spoken or written or the ordinary course of dealing, may be accounted circumstances of the case.

Mackenzie v Cluny Hill Hydropathic Co:

The rank and position of the manager of a hotel is such that, he is construed to be the agent of the management. By virtue of his position as manager, he usurps certain authority for the management of the Hotel. Due to business needs, he has to enter into certain contract with 3rd parties and the management is bound by the actions of its agent viz. manager.

Other instances of Implied Agency:

- An auctioneer has implied authority to sign a contract on behalf of both buyer and seller.
- The master of a ship has implied authority to contract for the conveyance of merchandise according to the usual employment of the ship, or to enter into reasonable circumstances, to give warranty to purchasers on behalf of his principal etc.
- The factor has implied authority to sell the goods in his own name, or to give credit in reasonable circumstances, to give warranty to purchasers on behalf of his principal.
- The broker has implied authority to act in accordance with the usage and the rules and regulations of the market in which he deals, or to sell on reasonable credit, etc.
- A receiver is deemed to be the agent of the debtor company under the Insolvency Act.
- A was a partner of ' X' firm. A placed an order to C for the supply of goods to be supplied to D. C supplied goods to D. X paid the amount . It is construed that A has authority to pledge XYZ's credit on a subsequent occasion for goods sent by C to D on the order of A.
- X allowed his wife Y to manage his estates and to mortgage it . X is bound by her acts.
- X was the owner of the goods, He handed over the goods to B along with their title to goods. B sold the goods to C, who purchased them on good faith. A was bound by the sale.

- X is the son of Y. X gave order for furniture dealer .- A. The furniture dealer A supplied the furniture and arranged it in the presence of Y. Y gave him certain instructions as to how they should be arranged. Y is bound to pay the cost of furniture to A.

Watteau vs. Fenwick (1893) 1 QB 346

This is a leading case showing ostensible or apparent authority of an agent . When it can be said that an agent's act was within the scope of his apparent authority and it is depended upon the act appeared to be authorised.

The defendant was the owner of a hotel. M was their manager. The defendant instructed M not to purchase cigars on credit. Plaintiff was a cigar merchant. He did not know the defendants or M. He approached the hotel for promoting his business. He saw the name plate of M and trusted him to be the owner of the hotel and asked him to purchase cigars from him and also offered to extend credit also.

To enhance the hotel business, M purchased the cigars from him on credit as he had to offer cigars to his customers who demand it at a cost. But he failed to the outstanding due to plaintiff. Later the plaintiff came about the true owners and sued them for the recover of his money. The defendant argued that he did not place the order for cigars, further he already instructed M not to purchase on credit.

The Queen Bench gave judgment in favour of plaintiff . It opined that the cigars were ordered by M in a good faith for improving the business, even though he was instructed not to do so. Such cigars were used in the business. The defendant entertained the profits of such business. After using <https://assignbuster.com/law-of-agency-essay-sample/>

the goods purchased from the plaintiff, he cannot repudiate the contract .
Hence it ordered the defendant to pay the price of cigars to the plaintiff.

PICKERING V. BUSK (1812)

X purchased certain quantity of hemp from Y – a broker and permitted the hemp to be remained with Y for a long time. Y being a broker, sold the hemp to Z . Z purchased the hemp in good faith. X sued Z . The Court held that C got good title over the hemp, who purchased it in good faith from the broker- Y. However, X has the remedy against Y to sue for damages.

Husband and Wife – Application of Estoppel Agency:

Either of the spouse is an implied agent to others subject to some conditions.

- They must reside together.
- The expenses involved in dispute should be incurred for household necessity or for the benefits of the both.
- Either of them has no implied power to sell other's property without the consent of the others.

In general, an agent can not be sued on a contract entered into with a third party on behalf of the principal.

Halsbury's law of England define the nature of the relationship of Agency as follows: " The term " Agency" and " Agent " have in popular use a number of different connotations but in law the word " Agency" denotes the relationship which exists where one person has authority or capacity to establish legal relations between a person occupying the position of principal and third parties. The relationship of agency arises , whenever one person called the "
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agent “ has the authority to act on behalf of another called the “ Principal” and consents to act . Whether that reaction in any circumstances depends not in the precise technology employed by the parties to describe their relations.

If an agreement in substance contemplates the alleged agent acting on his own behalf and not on behalf of the principal, then although he may be described in the agreement as agent, the relationship of agency does not arise or will not have arisen. Conversely, the relation of agency may arise despite a provision in his agreement that it shall not. An independent contractor or a servant, though not necessarily the employer’s agent, may often have authority to act as such when relations with authority are involved. As such, an agent is not a servant.

DUTY OF AN AGENT:

- DUTY TO OBEY:

An agent is bound to obey the instruction given by the principal . If he disobeys and loss has occurred, then he will be held liable.

Gilmour v Clark:

Principal ordered the agent to place his goods in a particular ship but the agent has placed the same in another boat and that boat sank later. It was held that agent was responsible for the loss.

- To exercise reasonable care and skill:

Agent should see that no conflict of interest arise between him and the principal since the agency relationship revolves on fiduciary relationship.

An agent should act prudently and exercise due care. In *Copland v Brogan*, it was that even if the contract of agency was gratuitous in nature, the agent must exercise reasonable care and skill.

- To act in good faith.

AGENCY OF NECESSITY:

Agency of necessity is created in cases of emergencies. In these cases, the persons who perform their service as an agent do not seek prior permission or appointment from the principals. The principals are also in certain difficult situations and they could not give their assent or refusal, but to accept the services rendered by such persons.

Matheson v. Smiley (1932)

In this case, an unconscious person was brought by some unknown person before a surgeon. The unconscious person was attempted to commit suicide. Surgeon tried to save his life. He incurred huge expenses during the life saving process. The Court held that the surgeon was entitled to recover the medical expenses and service charges.

Sims & Co v. Midland Rly Co.

The plaintiff sent certain quantity of butter to a dealer by the defendant railway. Due to strike, the train was stopped in the middle of the way. The defendant sold the butter as it was perishable in nature and remitted the

same to the plaintiff. The plaintiff sued the defendant claiming damages. The Court held that the defendant acted as an agent in necessity and in good faith and he was not liable.

Instances of Agency:

Fowler vs. Hollins (1872 A. C.): While disposing the case, the House of Lords held that “ A broker is an agent employed to make a bargain for another and receives a commission on the transaction which is usually called brokerage. He neither possesses the custody or the possession of goods. It is his duty to establish privities of contract between the principal and the third party.

A post office may be called as an agent hence it delivers the goods of the seller by a service called Value payable parcel. (VPP).(A process by which the post office deliver the goods which is sent by the postal on behalf of the seller and collects the value of the goods before delivery from the purchaser and remits the same to the seller).

A proxy appointed by a shareholder is an agent of that shareholder because the word “ proxy” denotes some agent properly appointed.

In every partnership business, each partner plays a dual role, one as the principal and other being agent. In fact, the law of partnership is a branch of agency.

Great Northern Railway Co v. Swafield (1874 LR 9 EX 132)

The defendant sent a horse by plaintiff’s railway. After reaching the destination, the consignee or any authorised persons of the defendant did

not take delivery of the horse. There were no arrangements in railway to keep the horse. The plaintiff handed over the horse to a livery stable -keeper and incurred expenses for its feeding and safeguarding. After the lapse of one month, the defendant asked the plaintiff to deliver the horse. The plaintiff demanded the expenses incurred on the horse. The defendant refused. The Plaintiff sued the defendant. The Court held that it was an agency of necessity and the defendant had to pay the necessary expenses to the plaintiff-railway.

Mc. Cardie J states that principle of “ Agency of necessity “ is a basic, broad and useful one. The object of the common law is to solve difficulties and adjust relations in social and commercial life. It must be meet so far as possible, sets of facts abnormal as well as usual. It must grow with the development of the notion. It must face and deal with changing or novel circumstances . Unless it can do that it fails its function and declines in its dignity and value. An expanding society demands an expanding common law.

Initially, the principle of agency of necessity was applied in marine adventures. Later, these decisions crept in general walk of life too. Story explains the principle imbedded in the law of agency of necessity as follows:

“ Although the powers of agents are ordinarily limited to particular act, yet extraordinary emergencies may arise , in which a person who is an agent , may from the necessities of the case , be justified in assuming extraordinary powers and his acts fairly done, under such circumstances, will be binding upon his principal. “

However, the principle of “ Agency of Necessity “ can be applied in appropriate circumstances, that too in emergencies. If there is no such emergency, and there are chances to give information to the principal, the person who intends to act as an agent should obtain prior consent of the principal. The following case law offers a good precedent.

Gwilliam v. Twist (1895) 2 QB 84

A was the owner of an Omni bus. He employed B – a car driver . One day, while B was driving Omni bus, there was a police constable traveling in it. At that time, driver –B is in the drunken state. The police constable thought it was not safe if B drove the vehicle. He demanded B not to drive the vehicle and ordered him to get away from the driver’s seat. On the demand of police constable, driver –B gave the vehicle to the police constable. Police constable began to drive the vehicle. After some time, the vehicle dashed a pedestrian – the plaintiff . The plaintiff sued the defendant for damages contending that he was injured by the A’s agent police constable who acted in necessity.

The Court held that the defendant, the owner of the Omni bus was not liable, as there was no emergency in driving the vehicle by police constable. The police constable could have given information to the principal or at least could have stopped the vehicle until the principal arranged for an alternative.

It is to be noted that this Judgment was declared in 1895 and this is not relevant now as law has changed and owner of the vehicle can be held liable

for the accidents occurred in the absence whether he has authorised the driver or not.

Munro V. Wilmot (1949)

The plaintiff asked the defendant to allow him to park his car in the open yard of the defendant for a month. The defendant on courtesy allowed to do so. Some years passed . But the plaintiff did not return to take away the car. After several years, the defendant wanted to construct a house in the open space and wrote letters to the plaintiff to take away the car. The plaintiff was silent.

Vexed with the attitude of the plaintiff and due to urgency to construct a house, the defendant removed the car from the open space and repaired it and sold it away. The plaintiff sued for defendant for damages. The defendant argued that he did it in necessity that too after intimating the plaintiff properly. The Court held that the defendant had no right to sell it without plaintiff's consent, as there was no emergency and “ agency of necessity” did not arise in this case.

Prager v. Blastpiel Stamp & Heacock Ltd (1924) 1 KB 566.

Both the plaintiff and defendant were the dealers in dressed skins. During the First World War, the plaintiff gave money to purchase certain quantity of dressed skins with an intention to export them to Rumania after peace resumed. The defendant purchased dressed skins with the plaintiff's money. The plaintiff instructed the defendant to store the dressed skin in his godown till the resumption of peace.

After the lapse of one year, the defendant sold them. The plaintiff sued the defendant for the cost of goods and also claimed damages. The plaintiff pleaded that he sold the goods in an emergency under the rule of “ Agency of necessity”. It was held by the Court that the nature of dressed skins was that of not perishable and that the plaintiff purchased them in war time with an intention to sell after peace resumed. Therefore, there was no emergency and no “ Agency of Necessity “ was created . The defendant was held liable.

LAW OF AGENCY IN REAL ESTATE DEALINGS:

Law of Agency is playing a vital role in real estate business. A buyer’s agent with whom one has signed a brokerage agreement may help one to devise a negotiating plan. In real estate business, agents refer individual licensees . But in reality, the brokerage firm will act as agent and every individual license under that firm is legally bound to act according to the duties of an agent regarding that firm’s principals. Both buyer’s and Seller’s agent is bound by the duties to protect their customer’s interest.

A real estate firm can appoint and delegate to another agent and such agent is called sub agent. Thus, cooperation between real estate businesses is achieved by delegating certain business to some other agency in the business. But it is to be noted that sub-agent is not the buyer’s agent. Sub-agent is bound to carry out the same duties and responsibilities to the seller as does the listing agent. Sub-agent may also known as “ Broker’s broker”.

But there is a technical difference between a sub-agent and Broker’s agent. It is to be noted that a broker’s broker is an agent of the seller’s broker . But he is not the agent or sub-agent of the seller. This is mainly to avoid the <https://assignbuster.com/law-of-agency-essay-sample/>

seller's liability for actions by a sub-agent. If fraudulent representation was made by a broker's broker as regards to a property, the broker's broker or listing agent can be legally sued by the buyer but not against the seller. In other words, a broker's broker function and duties is more similar to that of a sub-agent.

A real estate can be sued along with the seller, if there is a misstatement resulting in fraudulent activities, whether if the agent was aware or not about the fraudulent statement of the seller or the buyer in case of buyer's agent

Generally, agency services are made through written contracts and engross the agent working on behalf of the client. A seller's agent has to advise, offer listing sheets, counsels or negotiate on behalf the seller.

In all most in all the states of U. S, agency relationship is created through formal agreement . Further, there is a mandatory requirement to disclose the agency relationship to all parties involved by that agency relationship. Hence, any kind of undisclosed agency is illegal.

An agent has to sign an Agency Relationship Disclosure. It is only a compliance of law and does not create any contract. Further, it is mandatory, that all agency contracts in real estate business whether it is for buyer or seller, it should be in writing.

In one case, Court held that as the result of improper supervision by the principal –real estate broker to his sales agent and this constituted an

unworthiness and incompetency and failure to meet their duty to supervise sales personnel.

Under law, a real estate broker or his sales agent is prevented from serving as a double agent representing parties with conflicts of interest in the same transaction without the informed consent of the principals. The restriction is also applicable to where an agent represents in a separate, but interested transactions. As an agent of the seller, the broker has the duty to dispose the property in most prompt manner. As an agent of the buyer, he has to get the best quotes. But if he acts in a dual capacity, a conflict of interest will definitely arise.

Due to necessity, if a real estate agent has been compelled to act on dual capacity, it is his duty to disclose the fact to all parties involved in the transaction. The law shifts the burden of proof on the real estate agent to make a disclosure and that disclosure led to the principal's informed consent. Thus, if a real estate agent acts in a dual capacity, it may end in breach of fiduciary duty unless if it is established that adequate disclosure has been made.[1]

Lingering Apparent Authority:

If a principal has not made it known to others that he had severed his connection with his agent, if an agent makes some business with the same persons and making others to believe that he is still acting as agent of the principal, the principal still can be held liable for the action of agent . This will also applicable in real estate transactions. Only exception to this rule is the death or incompetency of the principal and in such cases, no notice need to

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be given. In case of death of a principal, the authority of the agent gets automatically cancelled and the principal's estate in no way bound to any agreements entered into after the death or declaration of incompetency of the principal.

Inherent Authority:

Under certain situations, the principal will be held for the action of an agent even though nothing has happened to give the agent apparent or actual authority. Inherent authority is always imposed when the agent has apparent or actual authority to do one thing and does the other.

As per “ Control test “ a real estate agent was supposed to be employee . This is because as the agent was mandated to fulfill with an detailed set of guidelines and quality controls directed by the franchiser and by the broker. Thus, the franchise advertisement had to include the franchise logo .

Further, agent and agency details have to be also published. Details like whether the agent was under the control and supervision of the local broker or franchiser has to be mentioned clearly in the contract entered into between the sales agents. Re/ Max of New Jersey, Inc v. Wausau Insurance Companies, 304 N. J. Super. 59 (CH. Div. 1997).

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[1] Jay J. Gurfein, “ Brokerage Law –Column “, Real Estate Weekly, June 23, 1993.