



# **TOPIC 4**

# **LAW OF AGENCY**

- 1) **Introduction**
- 2) **Definition**
- 3) **Creation of an Agency**
- 4) **Authority of an Agent**
- 5) **Duties of Principal to Agent**
- 6) **Duties of Agent to Principal**
- 7) **Termination of Agency Contract**

**STAGE 2**

**STAGE 1**

3rd Party

Principal

Agent

(Only after consent given by Principal, then only agent can act on behalf of Principal to deal with 3<sup>rd</sup> party, otherwise no agency created between Principal and Agent)

((a) Principal must give Consent/authority. Consent/authority -actual or apparent.

- (b) Agent to act on behalf of Principal for some purpose.)

**CONCEPT OF AGENCY**

# 1) *Introduction*

At times a person cannot act for himself as he may be ill or sick to buy something for him. A house owner who intends to sell may want a real estate agent to sell him the house. The real estate is the mouthpiece (spoke person) for the house owner to sell his house. He can also act on behalf of the house owner in dealing with the sale of the house.

# *Introduction*

So an agency is important in business transaction.

Malaysia: law is found in Part X, the Contracts Act 1950. Sec. 135 - "inter alia an 'agent' is a person employed to do any act for another or to represent another in dealings with a 3rd person."

## *2) Definition*

### Legal definition:

“where one person (the principal) authorises or consents to another (the agent) to act on his behalf for some specific purpose.”

### Principle element:

“Authorises/Consents to act on behalf for some specific purpose.”

# Definition

Principal: is person to whom the agent is acting on behalf. Should be of majority in age and sound mind.

Agency: is the relationship which subsists between the principal and the agent who has been authorised to act for him or represent him in dealings with another.

An agent not need possess full contractual capacity. Can be a minor but principal should be prudent to appoint a minor principal will not

# Definition

be able to recover from a minor agent for any  
*Chan Yin Tee v William Jacks & Co (Malaysia) Ltd* - loss caused by him. Case:

Yong, a partner and a minor ordered goods for the business. In this instance, Chan refuse to pay held that the agent was a minor, thus principal was responsible toward agent's action. Thus, Chan would have to pay Yong's order

Role of agent: as intermediary, bringing together the seller and buyer.



# LAW OF AGENCY

- **Agency can be created through:**
  - 1) **Express appointment**
  - 2) **Implied appointment**
  - 3) **Ratification by the principal**
  - 4) **Necessity**
  - 5) **Doctrine of Estoppel**

# I) Express Appointment

- This happens when the principal expressly appoints a person to be his agent. This can be done in two ways : oral and in writing.
- E.g. Ali : “Abu I want you to be my agent”

## 2) Implied appointment

- It happen under three (3) situations:
  - 1) **When a person by his words or conduct holds out another person as having authority to act for him**  
**e.g: Ali always ask Siti to order for him, goods from Abu. When Abu delivers the goods, Ali will pay for the goods. Now, as impliedly Siti become Ali's agent.**

## **2) Relationship between husband and wife**

**Presumption can be rebutted: (a) husband expressly forbade wife to pledge credit; (b) husband expressly warned tradesmen not to supply wife with goods or credit; (c) wife was sufficiently provide for with goods; (d) wife given sufficient allowance; (e) the order for necessaries was unreasonable because of husband's income.**

### **3) Relationship between partners**

**Case : Chan Yin Tee v. Williams  
Jacks**

**Held: Any person, irrespective of his competency to contract, may become an agent, for whose acts the principal may be liable to third party**

### **3) Ratification**

- **Agency by ratification can happen only if it falls under these two situations :**

**a) Agent who has been appointed has exceeded his authority when he entered into a contract with the third party**

**b) A person who has no authority to act for the principal but he acted as if he has the authority to enter into a contract with 3<sup>rd</sup> party.**

**Sec.149: The principal has the option whether to reject or accept the contract. When he accepts, it is known as 'Ratification'.**

# 9 conditions of Ratification

1) *The act must be unauthorised.*

The contract done by the agent was without authority or exceeding the authority.

2) *The unauthorised act is lawful.*

*Brook V Hook*

The principal may not ratify a contract in which his signature had been forged by the unauthorized agent.

**3) The agent must act as an agent,  
not as principal.**

**He must not allow 3<sup>rd</sup> party to  
believe that he is the principal**



## **Case: Keighley Maxted & Co V Durant**

- An agent was authorized by the appellant (principal) to buy wheat at a certain price. The agent exceeded his authority & bought it at a higher price. However the agent contracted in his own name.
- Held: The appellant was not liable to Durrant (3<sup>rd</sup> party) because the appellant could not ratify the contract because the contract was made in the agent's own name.

**4) The agent must have a principal who is in existence.**

**Kelner V. Baxter**

Held: A contract to buy a hotel made by an agent on behalf of a company which was not registered/formed could not be ratified by the company, because the company(principal) did not exist at that time.

**5) The principal must have capacity to enter a contract.**

- Principle in Contract Act 1950 applies

**6) The principal must ratify the whole contract.**

-He cannot accept which is advantageous to him and reject the rest.

**↗ The principal must have all the material facts regarding the contract.**

**March V Joseph**

A principal had ratified a contract without the full knowledge of all material facts.

Held : The principal was not bound to such contract.

**8) Ratification must be made within a reasonable time.**

**Metropolitan Asylum Board V Kingham  
& Sons**

The agent contracted to buy eggs without the authority. The principal tried to ratify the contract 1 week after it was made.

held: ratification was too late.

**9) Ratification must not injure a third party.**

- Ratification must not injure or affect the interest of a 3<sup>rd</sup> person-Sec.153

## **4) Agency by Necessity**

- **Sec.142 : A person may become an agent although he was not appointed.**
- **When this situation happen, that person is known as agent by necessity.**
- **3 conditions must be fulfilled:**
  - a) It is impossible to get the principal instructions**
  - b) The agent action is necessary to prevent loss to the principal**
  - c) The agent has acted in good faith.**


## **Great Northern Railway v. Swaffield** **(1874)**

- The Defendant has put his horse on to the Plaintiff's train to be sent to a destination which has been agreed by both parties. Upon arrival at the destination, there was no one to take the horse.
- The station master didn't know the Defendant's address and thus directed that horse to be put in stable.
- The railway company later claimed from the Defendant for the charges of the stable.
- Held: Plaintiff has acted as an agent by necessity.



# *Springer V. Great Western Railway Co.*

- The Def agreed to carry the Plaintiff's tomatoes from Jersey to Covent Garden market. Owing to bad weather, the ship arrived at Weymouth. Meanwhile, the Def's workers were on strike. Therefore, the tomatoes were found to be bad. The Def decided to sell the tomatoes at Weymouth because the Def felt that the tomatoes could not arrive at Covent Market in saleable condition.

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- However, the Def did not communicate this to the Plaintiff. Plaintiff claim for damages.
  - Held : The Plaintiff was entitled to damages because the Def were not agent by necessity and they have failed to communicate with the Plaintiff when they could have done so.

# The effect of Agency by Necessity

- 1) The agent will be protected from any claim of the principal.
- 2) The agent will be entitled to the additional payment for his effort to protect & to preserve the safety and interest of the principal.
- 3) A contract exist between the principal and the 3<sup>rd</sup> party.

## **5) Agency by Estoppel**

- **Sec. 190**
  - a) It happens when the principal allows a 3<sup>rd</sup> party to believe that a person is the agent of the principal**
  - b) The principal can make the 3<sup>rd</sup> party to believe so through his conduct or words**
  - c) When this happens, the principal is stopped from refusing to accept that a person is his agent.**

## Example :Agency by Estoppel

- You tell Ali, in the presence of Mina, that you are Mina's agent and Mina does not deny this statement. Mina cannot later refuse to accept you as her agent, if Ali sells goods to you, believing you to be her agent and later claims the price from Mina.

## **Freeman & Lockyer V Buckhurst Park Properties Ltd**

- **There were 4 directors in a company. 1 of them, 'A' contracted on behalf of the company with 'T' (3<sup>rd</sup> Party) without any authority. The other directors knew about the contract, but not inform 'T' that 'A' actually had no authority to act. This induced 'T' to believe that 'A' had the authority to enter into a contract on behalf of the company.**
- **Held: The co. is estopped from denying that 'A' is the co.'s agent & from denying that 'A' had the authority to act on behalf of the company.**

# AUTHORITY OF AGENT

- 2 types: a) Actual authority  
b) Apparent / Ostensible authority

## I) Actual (given by agreement)

a) Expressly given: Oral, Writing

b) Impliedly

- look at the circumstances of the case
- custom or usage of trade
- situation & conduct of parties

## **EXAMPLE :**

- You appoints Ali as your agent to sell your house for not less than \$300,000. If Ali has acted in accordance with this authority, then you are bound by the contract Ali made on your behalf.



## 2) Apparent / Ostensible (given by law)

- 2 circumstances :

a) Where a Principal by his words or conducts, leads a 3<sup>rd</sup> party to believe that his agent has authority to make contracts for him.

b) Where the agent previously had authority to act, but that authority was terminated by the principal w/out notice to 3<sup>rd</sup> party.

## Example :

- P gave authority to A to buy goods not more than RM3,000. When they went to the shop, A bought goods RM4,000. P has no objection. 3<sup>rd</sup> party believe agent has authority. P is liable.

# Breach of Authority

- If agent act outside of his authority, he is liable for breach of warranty of authority.
- When this situation happens, the 3<sup>rd</sup> party can take an action against the agent.

# Case: Yonge V Toynbee

- Held: the agents(Toynbee) were held liable for damages even though they had acted in good faith in the mistaken belief that they had authority.
- In this case, their authority had been terminated by the insanity of the principal. (they do not have capacity to proceed with the claims)
- Therefore, the agents were liable to the 3<sup>rd</sup> party. (Yonge)

# **DUTIES OF AN AGENT TO HIS PRINCIPAL**

- **Section 164 – 178**

- 1) To obey the Principal's instruction:Sec. 164**

- An agent must follow the instruction of the Principal. If agent does not follow, it is a breach of agency contract.
- An agent only has to follow the instruction if it is lawful.

## **Turpin V Bilton**

The agent has been instructed by the Principal to get the insurance for his vessel. However the agent failed to do so. The vessel lost and as a result the Principal has to bear some loss.

Held: the agent is liable for breach of duty. Due his failure to obey the principal's instruction. The agent is liable to pay compensation for the loss.

**2) To act according to custom when instructions are not given : Sec. 164**

- When the Principal does not give any instructions, agent has to act according to normal standard in doing business.

**3) To exercise care, skill and diligence :**  
**S.165**

**Keppel V Wheler**

D (agent) was employed to sell the Principal's house. An offer was received & accepted by the Principal 'subject to contract'. Later, higher offer for the same house was made by X but this offer was not communicated to the Principal by D. Contract been made with 1<sup>st</sup> offeror.

Held: D was liable to P for differences of 2 offers.



#### **4) To render proper accounts when required by the principal : S.166**

- Agent must give all account for all monies & property that he is in charged, when principal ask for it.

#### **Lyell V Kennedy**

Held: An agent who has been entrusted with the principal's money/property is bound to keep the money/property separately from his own property.

**5) To pay to his principal all sums received on behalf of the principal : S.170-S.171**

- Agent must give the principal the money that he received on behalf of the principal
- Agent however, before giving all the monies, may deduct the followings:
  - 1) Advances paid by the agent
  - 2) Agent's commission
  - 3) Agent's remuneration

## **6) To communicate with the principal : Sec. 167**

- Agent must try his best to communicate with the principal
- In the situation when this is possible, e.g. in cases of emergencies, the agent must use his discretion to the best interest of the principal

**7) Agent must not let his own interest to conflict with his duty.**

**Case : Wong Mun Wai V Wong Tham Fatt**

Held: The D had breached his duty as agent to the P on 2 reasons:

1. He sold the P's share of land below the market price.

2. He failed to inform the P that he had sold it to his wife.


-Agent couldn't use his position to gain profit at the P's expenses.

## **8) Not to make any secret profit out of the performance of his duty.**

- **Secret Profit???**

Means bribe, payment of secret, commission by a 3<sup>rd</sup> party, financial advantage.

- There are 6 actions could be take by Principal if agent are making the 'secret profit'.

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- a) Repudiate the contract : Sec.168
  - b) If the principal knows about it & consent to it, the agent can keep the profit :Sec.168
  - c) Principal may dismiss the agent on the ground of breach of duty

## **d) Recover the amount from the agent**

### **Case: Tan Kiong Hwa V Andrew S.H Chong**

P bought a flat house from a company. D (agent) was a director of that company. P ordered the D to resell the flat house at the price of RM45,000. However D managed to sell it at RM54,000 and the extra of RM9,000 was credited into the D's company acc.

Held: P was entitled to claim the extra RM9,000 from D (breach of duty)

**e) The principal may refuse to pay commission or remuneration to the agent**

**Case: Andrews V Ramsay**

Held: Principal can sue both amount:

- 1) Principal can recover the 20 pound commission given by the purchaser to the agent and;
- 2) 50 pound commission he has given to the agent



**f) Principal may sue the agent & 3<sup>rd</sup> party for damages, for any loss he suffered due to entering the contract.**

### **Maheesan V Malaysian Govt.**

The differences of price was not informed to the P.

Held : Respondent could recover either one of these :

a) The bribe money

b) The actual loss suffered by respondent as result of entering into the contract.


- **9) Not to disclose confidential information or documents entrusted to him by his principal.**
- **10) Not to delegate his authority**  
“ delegates non potest delegare”  
( a delegate cannot delegate )


# Exceptions :

- a) Where the principal approves of the delegation. **De Bussche V Alt**

Facts : The principal appoints an agent to sell the ship at a certain price. The agent cannot sell it & ask the principal w/her he can appoint a sub agent to replace him. Principal approves it.

Held : Agent didn't breach his duty because the appointment of sub-agent was approved by principal.

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- b) Where it is presumed from the conduct of the parties that the agent have power to delegate his authority.
  
  - c) Where the customs of the trade or business permits the delegation

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- e) In case of necessity or unforeseen emergency. E.g illness of agent.
  
  - f) Where the act to be done is purely ministerial or clerical and does not involve the exercise of discretion.

# DUTIES OF PRINCIPAL TO HIS AGENT

- Sec. 175 – Sec. 178

1) To pay commission or remuneration as agreed in the contract.

- If agent guilty of misconduct, (Sec. 173) = agent loses his right to remuneration

# What is Misconduct???

- Refers to wrongful or improper conduct which results in a wrongful gain to the agent or a wrongful loss to the principal.

## 2) Not to willfully prevent or hinder the agent from earning his commission

- Sec.175

E.g : A principal cannot employ a 2<sup>nd</sup> agent to do the same act as the first agent.

This is to protect the 1<sup>st</sup> agent from not getting the commission that has been promised to him by the principal. (***Luxor V Cooper***)



**3) To indemnify & reimburse the agent for acts done in the exercise of his duties.(S.176)**

**Solloway & Anor V McLaughlin.**

The Privy Council held that agents who engaged in a fraudulent scheme to defraud the principal would not be entitled to be given indemnity, in regards of transaction which was formed out of the fraud.

## **↗ Termination of Agency Contract**

**Termination: ending the contract of agency between principal and agent.**

**Many ways an agency can be terminated.  
Sec.154 – Sec.163, CA deals with it.**

**General law: 2 ways in which relationship can be terminated:**

# Termination of Agency Contract

- 1) By the parties themselves: Mutual consent or unilateral revocation by principal or unilateral renunciation by agent. S154 – “an agency is terminated by principal revoking his authority; or by an agent renouncing the business of the agency.”

Revocation & renunciation can be done expressly or impliedly. (Sec.160)

## a-1) S.159 : reasonable notice must be given

- It depends on the facts & circumstances
- **Case: Sohrabji V Oriental Security Assurance**

3 1/2 month notice was not adequate to terminate an agency which had lasted to 50 years. In this circumstances, 2 years notice would have been reasonable notice.

## **Syarikat Jaya V Star Publication (M) Bhd**

- The court held that 6 month's notice was reasonable in terminating a sole agency agreement.

## **b) Power to revoke the agency by principal is limited by :**

- 1) Sec.155 –where the agent has an interest in subject-matter.

### **Case: Smart V Sanders**

A factor(an agent) was sent with goods to be sold on behalf of the principal. The factor made advances to the principal for the security of the goods.

Held: the agency cannot be terminated by the principal because the agent has an interest in the goods by paying the security of the goods.

**2) S.157 –The Principal cannot revoke the authority given to his agent after the authority has been partly exercised**

**Case: Read V Anderson**

Held: A principal could not revoke the turf commission agent's authority after losing the bet. The principal would have to indemnify the agent for the amount which the agent had paid to the person with whom he made the bet.

# **Termination of Agency Contract**

**If an agency is expressed for a fixed period or implied from contract, but is revoked sooner without lawful justification, principal then liable to make compensation to agent. (Sec.158)**


**An agent may renounce the agency but, where agency is for an indefinite duration, reasonable notice must be given. (Sec.159). Otherwise agent is liable for any damages suffered by principal. (Sec.158).**

**Where an agency is for fixed duration, agent to compensation principal for premature renunciation without valid justification.**



# By operation of law.

- 1) Sec.154 : By the performance of the contract of agency, that is the transaction which has been undertaken is performed.
- 2) By the expiration of the period fixed or implied in the contract of agency.

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- 3) By the death of either the principal or agent except when the agent has an interest in the property which forms the subject matter of the agency: Sec. 155
  - 4) By the subsequent insanity of either the principal or agent: Sec. 154
  - 5) By bankruptcy or insolvency of principal (Sec. 154).

## **6) By the happening of an event which renders the agency unlawful**

- “Doctrine of Frustration”
- E.g: Principal becomes an enemy alien owing to outbreak of war, the subject matter is lost, destroyed or expropriated, the change of law.