

CHAPTER FOUR

LAW OF AGENCY

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4.1 INTRODUCTION

Student! Do you think that everyone can do multiplicity of things at the same time everywhere he/she wants? I don't think your answer will be positive. I hope your answer will be no and I tell you this is absolutely correct. This is undoubtedly true because a person at a given time cannot be available at a different place simultaneously. Hence, he/she cannot perform different activities at different places or at geographically distant areas by his/her physical capacity. The issue is then what will be the solution for a person who wants performance in every region or certain regions in Ethiopia or Ethiopia and abroad at the same time. If one thinks to perform several tasks, at the same time everywhere he likes, without his direct involvement, there must be some other individuals who can undertake the tasks on his/her behalf.

Law of Agency regulates representation of the person by another person. In this chapter, you will learn how agency is important in particular for those who involve and undertake commercial activities. Moreover, you will understand the concept relating to agency, how it is formed, duties of parties and their liability, the legal effects and its termination in more detail.

After the lesson students will be able to:

- Explain how agency relationship is created.
- Identify parties and their obligations in a contract of agency
- Explain the respective duties of principal and agent
- Explain effects of agency relationship
- Display grounds of termination for agency contract

4.2 Formation of Agency

How is agency formed in accordance with the law?

Before discussing how agency is created it would be better to define the term agency. Agency literally may be defined as the relationship between principal and agent. A legal dictionary defines it as a fiduciary relationship created by express or implied contract or by law, in which one party (the agent) may act on behalf of another party (the principal) and bind that other party by words or actions.

As described by the Black's law dictionary, the rational or the basic theory of agency is to enable a person, through the services of another (agent), to broaden the scope of his activities (principal) and receive the product of another's efforts, paying such other for what he does but retaining for himself any net benefit resulting from the work performed. That is for a person to carry out various activities, he/she may be represented by an agent who can perform on his/her behalf.

To return to the legal definition under the Ethiopian civil code, Art 2199 defines agency to mean a contract where by a person, the agent, agrees with another person, the principal, to represent him and to perform on his behalf one or severally binding acts.” According to this definition, agency relationship may involve three persons: principal, agent and third party.

As clearly stated in the above definition, principal is the person authorizing another person to do on his behalf; agent is the person who acts on the name and on behalf of the principal. A third party is the person to whom an agent deals with. You can also understand from the definition that the relationship that exists between the principal and agent creates binding effect up on them. That means if the agent acts with the scope of his power authorized by the principal, a direct relationship between the principal and third party will be created and the principal will be responsible for the acts done by the agent.

Agency relationship emanates from two sources.

These are:

1. Agency by operation of the law
2. Agency by contract

Agency by operation of the law is created only when the law authorizes a person to represent others, example,

Minors represented by guardians/tutors

Representation of person in urgent situation/un authorized agent/

Representation by the appointment of court

As regards agency by contract is concerned, it is formed by the consent of parties like any other contract. The two parties known as principal and agent must have consent in order to create agency as contractual relationship because it is a gradient element for its formation.

The contract that is created between the principal and the third party through an intermediary of agent is commonly known as the external contract, and it is the most important aspect as far as the law of agency is concerned. It is concerned with the rights, duties and liabilities that could be created as between a principal and third party through the mediator of an agent.

An agency relationship may arise from an express or implied agreement. As every point in the contract cannot be expressed or impractical to specify each and every points associated with the contract, the implied agreement can be inferred from or derived from an express agreement.

Noteworthy also that agency as a special contract should satisfy all the requirements of a valid contract as explained in general contract in unit two.

The other point relates with importance of agency.

Agency relationship is important for several reasons, among which are when:

- an individual is unable to act by himself on account of his multiple occupations,
- a person is seriously sick,
- a person is a absent but there is a need to administer his affairs
- In time of old age when he/she is unable to carry out his/her duty etc.
- Spatial difference/distance

- Want of skill, special knowledge/capacity, or experience
- time constraints to handle several duties at the same time

More fundamentally, agency is very significant in the contemporary commercial/industrial world. All the above grounds indicate as there are many factors that cause people to represent others to perform certain acts on their behalf and to take responsibilities in respect of the acts done by their representatives/agents.

4.3 Scope of Power of the Agent

The scope of the power of agency depends up on the source of agency and the terms of the contract. In particular in the case of agency created by contract, the scope of power of agency/authority/ must be specified explicitly or impliedly in the contract.

Implied power of an agent is derived from the nature of the contract as expressed by words or writing in the contract.

Example: A person who is authorized to sell goods in the shop is an express authority and may have an implied power making a contract to the same effect to negotiate the price of the goods and to collect the price of the goods to be sold.

Agency may be general or special. General agency is conferred in general terms and is limited only to the management affairs. Agency expressed in general terms shall only confer agent authority to perform acts of management.

Acts of management is not defined in our civil code but it provides list of activities. As provided in Article 2204 of the civil code, activities that are considered acts of management are specified as:

“Acts done for the preservation or maintenance of property, leases for not exceeding three years the collection of debts investment of income and discharge of debts, sale of crops, goods intended to be sold or perishable commodities.”

The main point here is that acts of management like the activities specified above can not affect the economic interest of the principal; it rather has a purpose to protect/sustain/ the economic

interest of the principal. Thus, an agent conferred with agency in general terms is only empowered to sustain the rights of the principal and is not empowered to perform acts of disposing the rights of the principals. For instance; Vegetables, fruits, etc, which are collected for commercial purpose will be perished if left unsold for a long period.

A special agent shall be required to perform acts other different from acts of management. Special agency is an authority different from general agency in that it authorizes the agent to dispose/alienate/ the rights of the principal.

The agent in special agency is conferred power by the principal to act in a particular transaction. As provided in Art.2205 of the civil code, the agent is empowered to do acts like sale of a house, lease of a house for more than 3 years, signs bills of exchange, make donation, mortgage, effect settlement, give consent for arbitration, sue/defend actions before the court.

From the reading above, you may perceive that a special agent is broader than a general agent and it is the power given to agent to make decisions on the economic matters of the principal. Hence, in order to dispose of immovable property by agent, the agent must get a power of special authority.

4.4 Effects of Agency

Once a contract of agency is formed as required by law, it has got effects. The principal obligation of a lawfully formed agency is the relationship between the principal and the third party. That means the principal shall be responsible for the contract concluded between the agent and the third party. Such triple relationship brings obligations among the three parties principal agent and third parties.

The effect of agency is to develop a relationship between the principal and third party as though the contract/relationship was conducted between the principal and the third party. In doing so, the agent should disclose the name of the principal to whom he represents while interacting with third parties in his scope. This entails the principal liable to third parties as if it was made by the principal himself. This idea is incorporated in the Ethiopian civil code in Article 2189. As provided thereof, contracts made by an agent in the name of another within the scope of his power, shall be deemed to have been made directly by the principal.

However where the agent acts in his own name either on his own behalf or on behalf of the principal, it is only the agent that is liable to the third party Art. (2197 C.C.). Therefore; the agent must comply with his authority given by the principal.

The issue then may be raised what if the agent exceeds the scope of his power? In this case the principal has two options: either to ratify the acts done by the agent beyond his scope or reject and makes the agent to bear the liability.

4.5 Duties and Rights of the Agent and Principal

4.5.1 Duties of the Agent

Obligations of agent depends on the agreement made between agent and principal, the law and by such incidental effects as are attached to the obligations concerned by custom, equity and good faith. This is true in the sense that it is hardly possible to list all the obligations within an agency relationship. To mention some

- **Duty to do his obligation:** basically where the agency is contractual, the agent is bound to do what he has undertaken to perform. This amounts to the duty of him to carry out the contract which the agent has made with the principal. Failure of the agent to carry out his obligations as agreed is non-performance and results in the liability of the agent toward the principal.
- **The duty to avoid conflicting interest:** The agent must avoid any transaction that creates conflicting interest with the interest of the principal. When the agent acts either on his behalf or on behalf of third party, there is a conflict of interest. If an agent on behalf of the principal, for example, concludes a contract with himself, it brings a conflicting interest so that the effect of a contract made by the agent in conflict with the interest of the principal will result cancellation by the request of the principal.
- **Duty of Good Faith/fidelity**

The agent shall act with the strictest good faith towards his principal. Good faith in this case refers to acting in the best interest of the principal. He may not make a secret profit out of the performance of his duties as an agent without the knowledge of the principal.

- **To be diligent**

An agent should be diligent/careful to perform acts on behalf of the principal like a good father / bonus pater familias/ as long as he is entrusted therewith.

- **Duty to Account**

The agent is bound to account for money and activities/ management of the affairs to the interest of the principal and agent must pay over to his principal all money received to the use of his principal.

- **Duty to act personally**

Though the agent shall perform his undertaking personally, he/she may delegate his power of agency when he is authorized by the principal to appoint a substitute. Therefore; performance in person is a rule but delegation is an exception.

4.5.2 Duties of principal

Duties of the Principal

Like the agent, the principal, has duties towards the agent. Some of these are:

- **Remuneration**

Representation may be made with consideration or free of consideration. The agent may need money to run the representation of the principal. The duty of the principal is to pay remuneration if it exists.

- **Reimburse outlays and Expenses**

To carry out the affairs of the principal, the money advanced by the principal may not be sufficient or the principal might not have advanced money for the agent. In such cases the agent may employ his own money or money from other persons. Thus, the principal must reimburse such expenses.

- **To release the Agent from Liabilities and Damage**

Where the agent has made a contract with a third party on behalf of a principal and has authorized the agent to make such contract, the principal can sue and be sued by the third party on the defects of the formation of contract or performance of that contract.

It is the principal's duty to indemnify his agent's losses, liabilities and expenses incurred in the performance of the undertaking.

4.6 Extinction of Agency Relationship

For various reasons, obligation does not usually remain for an indefinite period. Performance is the main cause for extinction of obligations of contract, including agency. Invalidation, cancellation, etc, are also the other causes that can bring obligation of agency relation to extinguish.

In general, extinction of Agency relationship may result from different causes; these are, by agreement of parties, by unilateral declaration and the law.

- a) **Extinction by agreement:** Parties not only make agreement to create contractual obligation but also agree to extinguish obligations. So a contract may terminate where the parties so agree
- b) Extinction by **unilateral declaration:**

Where parties cannot agree to distinguish by their agreement, one of them may declare unilaterally that the obligation of agency relationship cease. The declaration to terminate by the principal is called revocation but the declaration to terminate by the agent is renunciation.

- c) **Extinction by operation of the law**

The relationship between principal and agent will be extinguished by performance of the respective obligations, upon death, in capacity, or bankruptcy of either or both of the parties. The existence of these grounds brings the agency relationship to come to an end by the operation of the law.

Summery

Agency generally is a relationship in which a person acts on behalf and for the benefit of another. This relationship may result from the law or a contract. As to the first source, the relationship is created by law without the proper consent of the parties. The relationship between a minor and a tutor is a typical illustration of agency formed by law. In the second source, it is the consent of the parties that creates the relationship. In this agency, the agent and the principal have agreed to the relationship, the agent to act on behalf of the principal for the performance of juridical acts of the principal. For this agency to exist, the requirements for formation of a valid contract must be fulfilled. As to the formal requirement, an agency can be created in whatever form they wish. But where the act stated in the agency must be carried out in writing, the agency must as well be in writing.

Activity

1. Explain the importance of agency?

2. Discuss the effects of agency contract in line with the Ethiopian law.

3. As parties are can create agency relation by their agreement, they also extinguish it. Identify and discuss thoroughly the sources of termination of agency contract.

4. Meseret who is a Canadian resident authorized Mamit who is living in Addis Ababa, Ethiopia, to purchase villa house with 800,000:00 birr. Mamit by accepting the agency contract with Meseret bought 780, 000:00 birr from Kedir in Lideta Kifle Ketema. Based on the above case, fill the following Blanks

a) Who is the principal? _____

b) Who is the third party _____

c) Indicate the main contract/external contract/ _____

d) Indicate the internal contract/secondary contract/ _____

5. Discuss the tripartite relation of parties and their liability in agency relationship

Case Type Question

Fikru has appointed Teka as an agent for the preservation & maintenance of his property, collection and discharge of all his debts. The principal has appointed the agent for he is on the process to flay to America.

Unfortunately, Fikru was unsuccessful and back to his previous job. Due to this fact, Fikru decides to revoke the power that he gave to Teka. Therefore, Fikru has informed Teka that this power of agency is terminated from July 1, 2010 onwards. Despite this, Teka has collected the money i.e. 10000 br. on July 10, 2010 that Fikru has given to Kifle.

Based on the above facts, answer the following.

- a. If Fikru claims payment from Kifle, can he get? Why or why not?
- b. If Teka asks for remuneration, what would be your decision?
- c. Who should be liable for Kifle for the payment that he made if Kifle pays Fikru again?

Why

