THE LAW OF AGENCY.

**COURSE CODE:CPE 505**

**COURSE TITLE: ENGINEERING LAW**

**NUMBER OF UNITS: 2 Units**

**COURSE DURATION: 2 hours per week. Week 5**

**COURSE LECTURER:**

**TOPIC: THE LAW OF AGENCY.**

**INTENDED LEARNING OUTCOMES**

**COURSE DETAILS:**

**RESOURCES**

**Lecture time:**

Tuesady 10:00 am-12:00 noon.

A great number of transactions are conducted through agents middlemen representatives and dealers , it is necessary that third parties in these kind of transactions are protect ted if there is sufficient proof that the agent acted at the instance of the principal or where his acts is rectified by the principal. An agent is someone who brings another person, called the principal into a contractual relationship with third parties. The agent is said to be acting under the authority or consent of the principal. There are three parties to agency.

1. The Principal
2. The agent
3. The third party or parties as the case may be.

Agency relationship are classified into two ambits

The general agent and Special agents. The general agents is one who has been empowered by his principal to act on his behalf in all matters concerning a particular transaction he was contracted for which also includes acts to be done in the ordinary course of action. A special agent is one who has been contracted to conduct a single transaction that does not involve continuity of service.

CREATION OF AGENCY.

Agency may arise from mutual agreement which can be express appointment in writing, orally or by Deed (a power of attorney). It can also arise by implication of law where the law infers the existence of agency from the conduct of the parties or from surrounding circumstances of the case. Section 2(1) of SGA lays down the first exception, same position was protected in the case of Iman v. Ahmadu Bello University, the defendant offered for sale a car of one Madam Gwandu, a member of its staff acting as his agent, the purchaser’s interest was subsequently disturbed, he thereupon sued the defendants as agent claiming damages. The Kano high court held that as agent selling specific goods for a disclosed principal does not warrant the title of the goods but to know the defects in the principal’s title.

Agency by estoppel can arise where a principal holds out a person has having authority to act for him. Where an agent had no prior authority to acts, but his actions are ratified by the principal. Agency by ratification can also arise where the agent exceeds the initial authority given to him by the principal, but the principal latter rectifies the actions and adopts the transaction.

agency relationship can also arise by operation of law example is an agency of necessity. Where an agent is appointed to execute a contract under seal, he must be appointed by deed, a power of attorney, unless he is executing in the presence of the principal.

CAPACITY OF PARTIES.

Agency relationship is based on agreement between the parties unlike other agreements that are contractual. A person does not require contractual capacity to serve as an agent that is to say a minor can act as an agent because the contract that would arise from the agency relationship is between the principal and the third party.

THE AUTHORITY OF AN AGENT.

1. REAL AND ACTUAL AUTHORITY: signifies the authority given to the agent to do what the principal has agreed that the agent should do. It implies the power to do whatever the principal has expressly or impliedly authorized the agent to do. Real or actual authority is express when it is by the expressly in writing or by the express words of the principal and it is inferred from the conduct of the parties and the circumstances of the case.
2. EXPRESS AUTHORITY: it is the authority that is manifested expressly by the principal to the agent orally or in writing or by deed provided there is consensual agreement between them. It includes acts that are ancillary or accidental to the express authority.
3. IMPLIED AUTHORITY: an authority is implied when it is inferred from the conduct of the parties and circumstances of the case. It can also be inferred from the custom and usage of the community, trade of profession or from the conduct of the principal.
4. AUTHORITY BY OPERATION OF LAW: authority is said to be by operation of law if the law presumes the agency relationship to exist either as a result of emergency or through cohabitation.
5. AUTHORITY BY COHABOTATION: Where a man and a woman are living together or cohabiting whether they are married or not, the law presumes that the woman has authority to act for the man when necessaries are required. Since the authority does not depend on the actual marriage, it may be exercised either by a wife or by a mistress. The rule is that where a man and a woman are living together in circumstances in which the outside world is allowed to think that thy are man and wife. The woman would be in the same position as a wife as though they were actually married. Phillipson v. Hayter is a clear authority to the effect that the wife has authority to contract for things that are really necessary and suitable to the style in which the husband chooses to live, in so far as the articles falls fairly within the domestic department which is ordinarily confined to the management of the wife. In such a situation the wife or mistress may pledge the credit of the husband or man. It is important that such rights may be lost I n the following circumstances.
6. The wife or mistress is adequately supplied with necessaries
7. She had enough allowance for the purchase of necessaries
8. The man has expressly warned the tradesman not to supply goods to her
9. She exceeded her authority
10. The goods was supplied exclusively on the woman’s credit and not that of the man.
11. AUTHORITY BY NECESSITIES: During emergency, a person may be presumed to have the authority to act for another or contract on his behalf without any prior authority e.g in an emergency situation, a doctor may treat a person involved in an accident and in a state of comma as an agent of necessity. This may also arise where there is already a subsisting principal/ agent but the agent had to exceed his mandate to meet some emergency demands.
12. AGENCY OF NECCESITY OF A DESERTED WIFE: A wife is deserted in law where the husband takes off from the matrimonial home for no reason or without just cause, or where as a result of the husband’s cruelty, the wife is compelled to leave the matrimonial home. In this situation, the wife can pledge her husband’s credit as agent of necessity but only for necessaries. Take note that pledging the husband’s credit does not include borrowing, but if she borrows money and expends it on necessaries the lender will be subrogated to the right of the supplier of the goods to claim the money
13. AUTHORITY BY RACTIFICATION: where an agent enters into a contract with a third party, without the principals authority, the principal may ratify the agents action thus supplying the necessary authority retrospectively, except the contract is void. The effect of this is that the principal thereby becomes liable to sue and be sued on the contract. Ratification may be express or implied.
14. Ratification is said to be express where the principal supplies a clear, unequivocal and an adoptive act. That is an express approval of a transaction is the clearest evidence of ratification.
15. Ratification is said to be implied when it is inferred from the conduct of the principal amounts to acquiescence this can arise in situations where the principal accepts the benefits of a transaction or otherwise obtains any advantage there upon with the knowledge or delays unnecessarily in disclaiming an unauthorized action of the agent.

CONDITIONS NECESSARY FOR RATIFICATION.

1. A principal cannot ratify a contract unless the purported agent who acted on his behalf can be ascertained whether or not he is specifically named.
2. Where a purported agent acting for a specific principal, the contract cannot be ratified other than the specific principal named by purported agent.
3. A principal must be in existence and must have capacity to contract at the time the contract was made by the agent, since the effect of ratification is in retrospect.
4. Ratification can only be retrospective: a contract cannot be ratified in advance.
5. Ratification can only be done with full knowledge of all the facts of transaction
6. Ratification must be absolute and unconditional. A principal cannot satisfy only the beneficial aspect of the agents conduct while decline to affirm the rest. Ratification must be of the whole contract.
7. A void contract cannot be ratified but a voidable one may be ratified before avoidance.
8. A forgery cannot be ratified.
9. Ratification must be within the time limit, if any prescribed by the parties or by the nature and circumstances of the particular case or within a reasonable time.

TERMINATION OF AGENCY:

Agency agreements can be terminated in the following ways:

1. BY ACT OF PARTIES: a contract of agency can be terminated by mutual agreement of the parties’ e.g on the expiration of the tome fixed for the contract or the agent performing his part of the contract. But the principal can unilaterally terminate the agency by revoking the authority given to the agent. If the revocation is in breach of the contract with the agent, the principal will be liable to pay damages for loss suffered other than the agents loss of commission.
2. An agent can also renounce the agency agreement by giving reasonable notice of termination to the principal.
3. Operation of Law: termination of agency by operation of law arises without the fault of either party to then agency transaction.
4. Death of the parties
5. Bankruptcy
6. Insanity
7. Becoming an enemy
8. Frustration (destruction of the subject matter)