

**AGENCY**

# Formation of Agency

- ***Agency*** : contract involving two parties, one called the **Agent**, agrees to represent or act for the other, called the **Principal**.
- **Why?** contracts at **different places** with **different persons** at the same time

# ***TYPES OF AGENCY***



## Formation of the Agency Relationship

Method of Formation	Description
By Agreement	The agency relationship is formed through express consent (oral or written) or implied by conduct.
By Ratification	The principal either by act or by agreement ratifies the conduct of a person who is not in fact an agent.
By Estoppel	The principal causes a third person to believe that another person is the principal's agent, and the third person acts to his or her detriment in reasonable reliance on that belief.
By Operation of Law	The agency relationship is based on a social or legal duty (such as the need to support family members) or formed in emergency situations when the agent is unable to contact the principal and failure to act outside the scope of the agent's authority would cause the principal substantial loss.

# 1. Agency by Agreement

- Most agency relationships are based on an **express or implied agreement** that the agent will act for the principal and that the principal agrees to have the agent to act .
- An agency agreement can take the form of an **express written** contract or be created by an **oral** agreement.

# Case

- Henry asks Grace, a gardener, to contract with others for the care of his lawn on a regular basis. Is there an Agency??
- a hotel expressly allows only Hans Cooper to park cars, but Hans has no employment contract there. The hotel's manager tells Hans when to work, as well as where and how to park the cars. Is there an Agency??

# Answer

- If Grace agrees, an agency relationship exists between Henry and Grace for the lawn care.
- The hotel's conduct manifests a willingness to have Hans park its customers' cars, and Hans can infer from the hotel's conduct that he has authority to act as a parking valet. Thus, there is **an implied agency** agreement that Hans is an agent of the hotel and provides valet parking services for hotel guests.

## 2. Agency by Ratification

- A person who is not an agent **or** out of his Agency makes a **contract on behalf of another** (a principal). If the **principal approves** that contract by word or by action, an **agency** relationship is created **by ratification**.
- **Ratification** involves a question of intent, and intent can be expressed by either **words** or **conduct**
- A is an Agent for B to sale his Honda. A makes a contract with C to sale B's Ford. B is happy with the deal. **The sale contract is valid?**



# Answer

- By selling the Ford, A was acting out of his scope of Agency as he was only authorized to sell the Honda so the sale is not enforceable. As long as B the principal was happy with the deal so he accepted his agent act and approved the Ford sale agreement which will be valid and enforceable by ratification.

# 3. Agency by Estoppel

- **A causes a person to believe that B is his agent**, and that person acts in reasonable reliance on that belief, **the principal A is “estopped to deny”** (prevented from denying) the **agency** relationship
- The **principal’s actions have created the *appearance*** of an agency that does not in fact exist..

# CASE

- Marsha and Jerry Wiedmaier owned Wiedmaier, Inc. Their son, Michael, decided to form his own business. To obtain a line of credit with Motorsport Marketing, Inc. Michael asked his mother to sign the credit application form as a personal guarantor. She had signed as “Secretary Owner” of Wiedmaier, Inc. when Michael stopped payments on the merchandise he had ordered, Motorsport sued Wiedmaier, Inc., for the unpaid balance. **What would be the court decision?**

# Answer

- The court ruled that Michael was an apparent agent of Wiedmaier, Inc., because the credit application had caused Motorsport to reasonably believe that Michael was acting as Wiedmaier's agent in ordering merchandise.

## 4. Agency by Operation of Law

- **In Family Relationships**

A wife purchases certain basic necessities and charges them to the Husband's account. Is he liable?

- **In Emergency Situations**

➤ when the agent is **unable to contact the principal** and the **agent's failure to act outside the scope** of her or his authority would **cause the principal substantial loss**.

Railroad engineer contract on behalf of his or her employer for medical care for an injured motorist hit by the train. The employer is liable?

# Answer

- The courts often rule that a spouse is liable for payment for the necessities because of either a social policy or a legal duty to supply necessities to family members.
- Yes the employer is liable based on Agency by operation of law.

# Agent's Authority

- **Express Authority:** power of attorney can be special (permitting the agent to perform **specified acts only**), or it can be general (permitting the agent to **transact all business** for the principal)
- **Implied Authority :** to do what is reasonably necessary to carry out express authority and accomplish the objectives of the agency
- **Apparent Authority:** arises from what the principal causes a third party to believe

# ***DUTIES OF AGENT & PRINCIPAL***



# Agent's Duties

# Agent's Duties : 1.PERFORMANCE

- to use **reasonable diligence and skill** in performing the work.
- The degree of **skill or care** required of an agent is usually that **expected** of a **reasonable person** under similar circumstances

# CASE

- A lawyer pretends that he had worked for 20 years in Real estate sales. He bought a property for B below the market price from C. B discovers that there was a law suit concerning the ownership of the property before New Cairo court and the property belongs to D. Is there a material Breach of the Agency Contract?

# Answer

- Yes, there's a material breach of the agency contract as the agent with long experience had to use reasonable diligence and skill while contracting for the sale of this Property and should certify its ownership by C before signing the sale agreement with him on behalf of B.

# Agent's Duties :

## 2. NOTIFICATION

- to notify the principal **of all matters** that come to her or his attention **concerning the subject matter of the agency**
  - the law **assumes** that the **principal is aware of any information acquired by the agent** that is relevant to the agency—regardless of whether the agent actually passes on this information to the principal.
- ***Notice to the agent is notice to the principal.***

# Case

- Perez, an artist, is about to negotiate a contract to sell a series of paintings to Barber's Art Gallery for \$25,000. Perez's agent learns that Barber is insolvent and will be unable to pay for the paintings. The agent has a duty to inform Perez of Barber's insolvency?

# Answer

- The agent has a duty to inform Perez of Barber's insolvency because it is relevant to the subject matter of the agency, which is the sale of Perez's paintings.

# Agent's Duties :

## 3. LOYALTY

- The **agent's actions** must be strictly for the **benefit of the principal** and **not in the interest of the agent or a third party**
- **Information** or knowledge acquired through the **agency** relationship is **confidential**



# CASE

- Don Cousins contracted with Leo Hodgins, a real estate agent, to negotiate the purchase of an office building. While working for Cousins, Hodgins discovered that the property owner would sell the building only as a package deal with another parcel. Hodgins then formed a company to buy the two properties and resell the building to Cousins. When Cousins discovered these actions, he filed a lawsuit alleging that Hodgins had breached his fiduciary duties **What could be the court decision?**

# Answer

- The court ruled in Cousins's favor. As a real estate agent, Hodgins had a duty to communicate all offers to his principal and not to secretly purchase the property and then resell it to his principal . Hodgins was required to act in Cousins's best interests and could only become the purchaser in this situation with Cousins's knowledge and approval.

# Agent's Duties : 4.OBEDIENCE

- an agent has a duty to **follow all lawful and clearly stated instructions** of the principal. Any **deviation** from such instructions is a **violation of this duty**
- If **instructions are not clear** and the agent can not reach the principal = **Agent had to act in good faith for the benefit of the principal.**
- A gives instructions to his agent B to sell a parcel of land for 200 K \$. He sells it for 199k \$. **Can A sue his Agent?**

# Answer

- Yes, he can sue him based on a breach of the obedience duty as he had to sell it 200K \$ and he sold for 199K\$ only. The agent should follow strictly the principal's instructions.

# Agent's Duties :

## 5.ACCOUNTING

- keep and **make available to the principal** an **account of all property and funds received** and paid out on behalf of the principal
- The **agent** has a **duty** to maintain **separate accounts** for the principal's funds and the agent's personal funds, not to confuse funds in these accounts

# ***DUTIES OF PRINCIPAL***

# Principal's Duties :

## 1. COMPENSATION

- **Payment:** The principal has a duty to pay the agent **for services rendered**.

# Principal's Duties:

## 2.REIMBURSEMENT

- Whenever an agent disburses funds to fulfill the request of the principal or to pay for **necessary expenses in the course of reasonable performance** of her or his agency duties, the principal has the duty to reimburse the agent for these payments.



# Principal's Duties:

## 3.COOPERATION

- to **assist the agent** in performing his or her duties.

Akers (the principal) creates an exclusive agency by granting Johnson (the agent) a territory within which only Johnson may sell Akers's products. If Akers begins to sell the products himself within Johnson's territory or permits another agent to do so **Is he violating the Agency Agreement?**

# Answer

- If Akers begins to sell the products himself within Johnson's territory or permits another agent to do so, Akers has violated the exclusive agency and can be held liable for Johnson's lost profits.

# ***RIGHTS OF AGENT & PRINCIPAL***

# Agent's Rights

- **CONTRACT REMEDIES** for any violation of Agency Contract.
- **DEMAND FOR AN ACCOUNTING** in case if dispute arises concerning commissions pursuant to operations done by the Agent
- **NO RIGHT TO SPECIFIC PERFORMANCE**

The Agent can not enforce the principal to retain him as agent . He can recover for past services and future damages

# Principal's Rights

- **CONSTRUCTIVE TRUST**

Anything that an **agent obtains** by virtue of the agency **belongs to the principal**

- **AVOIDANCE = contracts made by the agent are not enforceable** When an agent breaches the agency agreement subject to the guilty knowledge of the third party who made the agreement with the agent.

- **REMEDIES**

for **violating principal instructions**

# ***TERMINATION OF AGENCY***

# Termination by : 1. Act of the Parties

1. Lapse of time.
2. Purpose achieved.
3. Occurrence of a specific event.
4. Mutual agreement.
5. At the option of one party but with prior notice.

## Notice to Third Parties Required

- Direct **to those who have dealt** with agency.
- Constructive **to all others** ( in newspaper)

# Termination by: 2. Operation of Law

1. Death or insanity.

2. Impossibility—destruction of the specific subject matter.

3. Bankruptcy.

- **No Notice Required to third Party**

Termination is automatic on the happening of the event.