

# Introduction to the Law of Agency

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## Definition of the Law of Agency

The law of agency is one which concerns itself with the 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 action[1].

## Who is an agent?

An agent can be defined as one who is authorised to act for or in place of another[2].

In the case of *Godwin vs. CAC (1998) 14 NWLR pt 584*, the term “agent” was defined per Ogwuebu JSC as:

Any person who acts for another in the capacity of deputy, steward, rent collector or any other agent or trustee.

## Why the Law of Agency

The law of agency serves a lot of significance in the day to day running of businesses all over the world. Without the law of agency, there would be an inability to carry out business on a large scale. The following are some of the reasons for the law of agency:

1. It helps in the transaction of business over a long distance. For example, If Company A, which is based in Nigeria, needs to conduct business in the United States, it cannot do so without the help of someone else in the United States that would act as its representative. This other party is its agent.
2. The law of agency also helps to narrow gaps caused by disparities in technical knowledge. If for instance, a company is venturing into a transaction in a very technical field like engineering, oil and gas and so on, it makes use of an agent, who is skilled in that field, to successfully transact its business.

## Legal Implication of Agency Relationship

The legal implication of the law of agency is underscored in the fact that whatever action done by the agent on behalf of his principal would be binding on his principal. This is well expressed in the latin maxim *Qui facit per alium facit per se*[3].

Thus, in an agency contract, the principal would bear responsibility for the actions of the agent in relation to the contract. However, the agent does not incur liability in the contract he makes on behalf of his principal[4]. Although, since it is a fiduciary relationship, the agent has to act in his principal’s best interest.

## Characteristics of Agency

1. **Creates Bipartite and Tripartite Relationship:** The relationship between the agent and his principal is a bipartite relationship. It is called bipartite because it is a relationship between two people. Their relationship is also known as an internal relationship. The tripartite relationship is the relationship between the principal, the agent and a third party. It is also known as an external relationship.
2. **It is determined by Law:** The relationship between the parties is one that is determined by law and not by the consent or intention of the parties involved. In some instances, the parties might think there is an agency relationship between them, while in the eyes of the law, there is no such relationship.
3. **It creates a fiduciary relationship:** Agency creates a fiduciary relationship between the principal and the agent. A fiduciary relationship is one where the parties are legally expected to act in trust and confidence.
4. **It concerns legal rights and obligations:** The law of agency only comes into play when the actions of the agent affects the principal’s legal rights and obligations. The law of agency is nowhere to be found when it comes to social or non-legal obligations.
5. **The actions of the agent binds the principal:** In an agency relationship, the agent acts on behalf of the principal. Thus, he is sort of like a conduit between the principal and third parties. Hence, if the agent acts lawfully

within his authority, his actions bind his principal.

## References

[1] Blackâ€™s Law Dictionary 9<sup>th</sup> Edition

[2] Blackâ€™s Law Dictionary 9th Edition

[3] *he who does a thing through another does it himself*

[4] MC Okany: Nigerian Commercial Law