



Law of Agency

Dzifa A. Gakpleazi

Courtesy:
www.carlprosper4nugs.yolasite.com

Meaning and Nature

- A relationship that exists between 2 persons called a principal and an agent
- Black's Law Dictionary, 8th ed.: *“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”*

Courtesy:

www.carlprosper4nugs.yolasite.com

- A fiduciary relationship arises when a person who acts on behalf of another is under a legal duty to pursue the best interest of the person on whose behalf he is acting as against his personal interest.
- Acts in good faith – honestly, sincerely and fairly
- Basis is that principal has placed his trust and

- Confidence in the agent and by accepting that duty he is enjoined to act in the best interest of the principal.

Creation of Agency

- By Agreement
 - Voluntary
 - Agent acts for the Principal in specified matters in a specified manner
 - May be oral or in writing

Courtesy:

www.carlprosper4nugs.yolasite.com

- Legal effect is 2 fold:
 - Agent is to deal with third parties on behalf of principal, in good faith in the interest of the principal
 - Principal becomes responsible in law for the agent's actions in respect of the transactions specified in the agreement

Courtesy:

www.carlprosper4nugs.yolasite.com

- **By Implication**

- Arises from the conduct of the principal towards the agent
- when the principal gives the agent authority to act on his behalf there are some acts that necessarily have to be performed in order to accomplish the act to be performed. In this sense the principal has given his/her authority by implication.

Courtesy:

www.carlprosper4nugs.yolasite.com

- By ratification

- This happens when the agent acts out of the authority given him/her or when the agent acts without authority. In this situation any liability will be borne by the agent unless the principal adopts the acts of the agent by ratifying the unauthorized acts.
- Ratification is the decision to adopt the act of the agent

Courtesy:

www.carlprosper4nugs.yolasite.com

- Takes effect from the date of the act
- Ratification need not be express, it may be implied thus needs certain conditions to be valid
- Page 292

- By estoppel

- When a principal allows third parties to reasonably and honestly believe that a third person, the agent, is acting on their behalf then the law will uphold this arrangement. The principal will be estopped from saying otherwise.

Courtesy:

www.carlprosper4nugs.yolasite.com

- **In *Ada Cooperative Food Farmers Union Ltd. v. Abodei*** - “agency by estoppel arises where one person has so acted as to lead another person to believe that he has authorized a third person to act on its behalf, and that other on such belief enters into transactions with the third person within the scope of such ostensible authority.”

Courtesy:

www.carlprosper4nugs.yolasite.com

- 3 conditions are necessary here:
 - There must be representation by the principal
 - There must be reliance on the representation
 - There must be a change in the position of the person relying on the representation and the change in position must be as a result of the reliance on the representation

Courtesy:

www.carlprosper4nugs.yolasite.com

- By necessity
 - Where a person acts on behalf of another without his authority or sometimes knowledge
 - Must be a situation which makes it reasonably necessary for the agent to act without authority,
 - ie where interest or property of principal is endangered in circumstances that make it impracticable or impossible to obtain permission before acting

Courtesy:

www.carlprosper4nugs.yolasite.com

- This arises by the operation of law.
- Note the 3 conditions:
 - There must be a genuine necessity to act on behalf of the principal
 - It was impracticable to obtain instructions from the principal
 - The agent must have acted in good faith
- Page 294 - 295

Duties of an Agent

- **TO ACT:** the agent must act on behalf of the principal. In *Turpin v. Bilton* (1843) 134 ER 641. An agent was instructed to insure his principal's ship. The agent failed to do so. Consequently, when the ship was lost, the owner was uninsured. It was held that the agent was liable to his principal for the loss caused by his failure to act.

Courtesy:

www.carlprosper4nugs.yolasite.com

- Avoid conflict of interest
- To be loyal
- To reject bribes
- To account
- To act with care, skill and diligence
- Personal performance of assigned task

Duties of Principal

- Duty to remunerate
- To indemnify
- To refund

- Termination – page 315
- Upon termination agent can no longer hold himself out as such and thus lacks authority to transact on behalf of the principal