



CONTRACT OF AGENCY

@ Dr. Amol B. Karwa

Agency

- “Agency is the relationship that exists between a person identified as a principal and another by virtue of which the latter may make contracts with third persons on behalf of the principal”



Parties to the contract

- Agent:- “ He is the person employed to do an act for another or to represent another in dealing with third person.”
 - Agent is a “party appointed by the principal to enter into a contract with a third party on behalf of the principal”
- Principal: - “ Principal is the person for whom such act is done or who is represented
 - Principal: “party who appoints a second party to serve as an agent”



- Relationship & Contract of Agency

- Employee/Employer: employee is the “person hired to perform work and who is obligated both as to the work to be done and as to the manner in which it is to be done”
- Employer is the “party who employs employees to do certain work”.
- Partnerships: “voluntary association of two or more people who have combined their resources to carry on as co-owners of a lawful enterprise for their joint profit”
- Independent Contractor: “one who contracts to perform certain tasks for a set fee, but who is independent of the control of the contracting party as to means by which the contract is executed, except for specifications established in the contract”



Essentials of Valid Agency

- *Qui Facit per alium facit per se*
 - 1) Principle must be competent to contract
 - 2) Any person may become an agent.
 - 3) Consideration is not necessary for creation of agency.
 - Exception:- *Ex Nudo Pacto Non Oritio actio*
 - *Agreement With out consideration is void.*



Contract of agency:- Characteristics

- Principal authorizes the agent to deal with a third party.
- Principal must indicate that the agent is to act for and under the control of the principal.
- Agent must consent to act on behalf or and subject to the control of the principal.
- Principal's authorization to the agent can be express or implied.
- Fiduciary relationship.
- Contract is between the principal and third party.



RELATIONSHIP BETWEEN PRINCIPLE AND AGENT

- Agent has the authority to represent the principal.
- Principal is liable for the agent's acts.
- Agent's duties require judgment, discretion and decision-making.
- Key issue is degree of control.
- Principal requirements:
- Agent requirements:
- Agents are responsible for “tortuous” activity.
- Agents generally cannot appoint sub-agents.



Kinds of Agent

- 1) Delcredle agent
 - For extra Commission
- 2) Pakka Adatya
 - Transaction in his own name
- 3) Factor
 - Entrusted with possession & Contract
- 4) Broker
 - Brokerage, Public Auction
- 5) Auctioneer
 - Every Right of Sale



Modes of Creating Agency

Agreement

Necessity

Ratification

Estoppel / Holding Out



Duties of Agent Towards Principal

Duty to perform

Duty to perform his undertaking

Duty to obey instructions given by principle

To use due skill & Care

Fiduciary & General Duties

Duty to make full disclosure of any personal interest

Disclosure where he deals with principle

Liability of an agent accepting bribes

Agent using position to acquire benefit

Duty to account

Not to acquire principles property in his own name

Agent's Estoppel as principles title

Agent Liable to pay Interest

Liability for act of sub agent co agent

PRINCIPAL'S DUTIES

- Appropriate compensation.
- Reimbursement for expenses.
- Indemnification for losses.
- Right of lien against the agent.
- Protection from injury.



Termination of Agency

