

## AGENT AND PRINCIPAL RELATIONSHIP WITH RESPECT TO BANKING SECTOR

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### Abstract

This paper includes the agency of contract law. This paper is basically on the principal and agent's relationship which is described by an maxim that is qui facit per alium facit per se. It briefly describe who is an agent and what are the duties and rights of an agents, and who is principal and what are the duties of a principal towards his agent. There are various types agents namely, Del Credere agent, pakka adatia, factor, broker auctioneer and banking agent but this paper mainly focuses on the banking agent. This paper also describes the relationship of principal and third party and what are the agent's authorities. There are basically four types of agents' authority namely, actual authority, apparent authority, usual and incidental authority and authority of agent in emergency. And what happens if agents exceed his authority.

### INTRODUCTION

The term agency has been described in the law of contract in the words "although as a general rule one man cannot by contract with another confer or rights to impose liabilities upon a third party, yet he may represent another person as being employed by him, for the purpose of bringing him into legal relation with the third party. Employment for this purpose is called agency."<sup>1</sup>

The agency is expressed in the maxim, qui per alium facit per seipsum facere videtur. "He who does an act through another is deemed in law to do it himself", or more shortly, qui facit per alium facit per se, "he who acts by another acts himself". The common law allows one man to authorize another to contract for and to bind by him an authorized contract by an agent and the application for agency principles in other parts of the law may involve different considerations from those relevant in contract."<sup>2</sup>

<sup>1</sup> by Ramon Casadesus-Masanell and Daniel F. Spulber Agency Revisited January 2004

<http://www.hbs.edu/faculty/Publication%20Files/10-082.pdf> (10-07-18 8:33)

<sup>2</sup> Eric Rasmusen AGENCY LAW AND CONTRACT FORMATION Discussion Paper No. 323 05/2001 (10-07-18 8:47)

**WHO IS AN AGENT?**

An agent is a person employed to do any act for another or to represent another in dealing with third person, the person for whom such act is done, or who is so represented, is called the principal.<sup>3</sup> A person who has express or implied authority to act on behalf of the principal.

A general principal has the full apparent authority due to his employment or position and the principal will be bound by his acts within that authority though he may have imposed special restrictive limits which are not known to the other contracting party. A special agent has apparent authority beyond the limits of his appointment and the principal is not bound by his acts in excess of those limits whether the other contracting party knows of them or not.<sup>4</sup>

**WHO IS THE PRINCIPAL?**

A person who employs and gives a legal authority an agent to act on behalf of him for a business transaction. The person for whom an agent has received instruction and to whose benefit the agent is expected to perform and make decisions.<sup>5</sup>

**DUTIES AND RIGHTS OF AN AGENT****Rights of agents**

**Right of Retainer:** Agent has right to deduct the quantity that is because of him by principal, from quantity owed to principal.<sup>6</sup>

**Right of stoppage in transit:** just in case whenever agent is in person liable, he has right to prevent the products in transit. The nice could also be moving towards client or principal.

**Right to say Remuneration:** As per the terms of agency contract, agent has rights to say remuneration. If remuneration was not agreed, he will be entitled to receive reasonable remuneration, regard being had to the nature of the work performed by him.

**Right of Indemnity:** Principle of indemnity gets operated between principal and agent wherever principal is implicit indemnifier and agent is implicit indemnity holder. Therefore agent will create principal accountable for every kind of sufferings.

<sup>3</sup> Section 182 The Contract Act 1872

<sup>4</sup>Manupatra AGENT'S AUTHORITY- JUDICIAL INTERPRETATION

<http://docs.manupatra.in/newsline/articles/Upload/FA398636-A18A-4B4A-AD0B-67DF42E894B4.pdf>

<sup>5</sup> <http://www.duhaime.org/LegalDictionary/P/Principal.aspx> (11-07-18 2:30)

<sup>6</sup> LAW OF BUSINESS <http://www.lawsofbusiness.com/2012/04/rights-and-duties-of-agents.html>

**Right of lien:** Agent will perform right of lien but contract act has not such as whether or not it's lien or explicit lien. Soothe character of agent's lien depends upon sympathy.

“In the absence of each contract to the contrary, an agent is designate to maintain goods, paper and other property, whether movable or immovable of the principal acquired by him, until the amount due by himself for commission, disbursement and services in respect of the same has been paid or accounted for to him”.<sup>7</sup>

**Right to compensation for injury caused by principal's neglect:** The principal must make compensation to his agent I respect of injury caused to such agent by the principal's neglect or want of skill.<sup>8</sup>

### Duties of Agents

- (1) Agent ought to follow the directions given by the principal.
- (2) If agent comes across any sophisticated state of affairs, he needs to communicate that state of affairs to principal and his recommendation is to be obtained.
- (3) Agent ought to behave in his capability as agent; he mustn't run the group action in his own name.
- (4) Agent mustn't create secret profits by utilizing name of the principal.
- (5) Agent ought to safe guard property of principal notably upon happening of events like death of principal, economic condition of principal, etc.
- (6) Agent ought to maintain correct accounting records to inscribe the transactions pass him.
- (7) Agent needs to remit amounts to principal properly.
- (8) Agent needs to remit amounts to principal properly.
- (9) Agent mustn't keep it up delegation

### Duties of the Principal to the Agent

Similar to the above duties, there are also certain duties that the principal owes to his agent. While these duties are not as concrete nor so distinctly spelled out by state statutes, the duties

<sup>7</sup> Section 221 of Indian Contract Act 1872 Edition 2018

<sup>8</sup> Section 225 of Indian Contract Act 1872 Edition 2018



are important in determining the rights of the agent when the principal fails to live up to obligations created by the agency relationship.<sup>9</sup> These duties are

- performance,
- compensation,
- reimbursement, and
- Indemnification.

### 1. Performance

Performance is often thought-about to be an agent's obligation; but, the principal is anticipated to try to no matter are often done fairly to accomplish the aim of the agency.

### 2. Compensation

Compensation is often per the listing agreement or employment agreement. Though the receipt of compensation is typically dependent on the closing of the sale or lease, in most assets transactions the agent has earned his or her fee once he or she has made a prepared, willing and ready client (usually proved by the linguistic communication of the acquisition contract or lease). The earned fee is typically collectable solely upon the closing of the dealing. Still, compensation arrangements are negotiable and may take many forms.

### 3. Reimbursement

Reimbursement implies that the principal should reimburse the agent for expenses created on the principal's behalf. This doesn't mean that the principal has got to reimburse the agent for the prices of advertising, diversion, and different prices of doing business. An example of reimbursable expenses could embody matters involving Associate in Nursing traveler landholder or marketer if the agent is needed to perform minor repairs and incur different little expenses so as to stay the property in shape. Once these expenses area unit created in honesty and at intervals the scope of the agent's authority, the agent is entitled to compensation from the principal for funds spent on the principal's behalf. To avoid confusion

<sup>9</sup> Dietmar Braun David H

Guston <http://www.trainagents.com/DesktopModules/EngageCampus/CourseContent.aspx?ModuleType=StudentMyCourses&CrsPageType=Topic&CourseRecordID=116&LessonRecordID=1438&TopicRecordID=26579&Demo=True>

and disputes, reimbursable expenses area unit typically approved or known within the agreement that makes the agency relationship.

#### **4. Indemnification**

Indemnification is changing into a lot of vital for the agent. This duty arises once the agent suffers a loss through no fault of his or her own whereas playing duties on behalf of the principal. Associate in nursing example may be a broker creating Associate in nursing innocent falsehood in playing acts on behalf of the principal. As antecedently mentioned, the agent is sort of invariably liable if the agent makes a falsehood to a 3rd party. However, if the broker relied on a illustration created by the principal, the agent is also reimbursed for losses attributable to the principal's falsehood. This usually includes hid defects and illustration relating to the standard and condition of the property.

#### **RELATIONSHIP BETWEEN PRINCIPAL AND THIRD PARTY**

The general rule is that the principal is at risk of the third party for any act done by the agent that falls at intervals the agent's authority. In sure circumstances the principal is entitled to sign the agent's unauthorized acts, and so is enabled to require advantage of them visa - a -versa the third party, though, if he will therefore, he himself becomes contractually guaranteed to the third party.

In some cases the information of the principal is deemed to be the information of the agent, and the other way around.

#### **AUTHORITY OF AN AGENT**

##### **1. ACTUAL AUTHORITY**

The authority gave on an agent by the principal is named as the actual authority. It can be characterized into two classes, in particular express and implied. A authority is said to be express when it is given by words talked or written. A power of attorney can be taken for instance of express authority. An authority is said to be implied when it is to be gathered from the conditions of the case; and things talked or composed or the normal course of managing, might be accounted conditions of the case. The refinement amongst express and implied authority depends simply on whether the agent is delimited by words or by lead.

## **2. APPARENT AUTHORITY**

"Apparent or ostensible authority is the expert of an agent as it appears to others. It regularly corresponds with real authority. In this manner, when the board (of executives) choose one of their individuals to be an managing director they contribute him with inferred expert, as well as with ostensible authority to do every single such thing as fall inside the typical extent of that office. "The term 'apparent specialist' indicates no expert by any means. It is an expression helpfully used to depict the position which emerges when one individual has dressed another, or enabled him to accept an appearance of expert to follow up for his sake, without really giving him any specialist either express or inferred, by which appearance of expert an outsider is misdirected into trusting that a real authority exists."

## **3. USUAL OR INCIDENTAL AUTHORITY**

In specific conditions, a principal might be liable for the unauthorized acts of a agents. In these cases, the presence of the principal was obscure to the outsider, with the goal that it couldn't be said that the principal held out the agent to have authority to go about as operator and was stopped

## **4. AGENT'S AUTHORITY IN AN EMERGENCY**

An agent has authority, in associate degree emergency; to try and do all such acts for the aim of protective his principal from loss as would be done by someone of normal prudence, in his own case, underneath similar circumstances

An agency essentially will arise within the case of a carrier of products or a master of ship who, underneath sure circumstances essentially, is scented on behalf of the ship-owner or the owner of the products carried to eliminate the products or to enter into such different contract as is also necessary, and can be thought of to own their authority to try and do thus. The agency essentially is often wont to describe cases wherever one person, in associate degree emergency, performs services or incurs expenditure to preserve the property or rights of another and seeks compensation, or once someone claims to be protected against associate degree action for wrongful interference with the property of another by pleading necessity.



### AGENT EXCEEDING AUTHORITY

When an agent does more than he is authorized to do and when the two can be separated, so much only of what he does as is within his authority is binding as between him and his principal. If the act cannot be separated from what is within it, the principal is not bound to recognize the transaction. Any notice given to or information obtained by the agent, provided it be given or obtained in the course of business transacted by him for the principal, shall have the same legal consequences as if it had been given to or obtained by the principal. Misrepresentations made, or frauds committed, by agents acting in the course of their business for their principals, have the same effect on agreements made by such agents as if such misrepresentations or frauds had been made or committed by the principals.

If the principal has authorized a false statement to be made, or knows that it is being made by the agent or keeps the real facts from the agent, the principal is liable. L.C.B. Gower has stated the position of English Law in the following words:

“The law is that a principal is not liable for fraud in respect of his agent’s acts unless-

- a) He intends or knowingly permits the agent to make a false statement, or
- b) His agent acting within the actual or apparent scope of his authority makes a statement with knowledge of its falsity or recklessly not caring whether it is true or false.”

### DIFFERENT KINDS OF AGENTS

#### 1. Del Credere Agents

A Del credere agent is a mercantile agent who for extra commission takes the responsibility that person with whom he contracts on behalf of the principal will perform their contract; a Del credere agent will be responsible to the principal for the same.

“An agent for the sale of goods sometimes acts under a Del credere commission; that is, for a higher reward than is usually given, he became responsible for his principal for the solvency of buyer; or in other words, he guarantees, in every case of sale, the payment of the price of the goods sold, when ascertained and due<sup>10</sup>.”

<sup>10</sup> Sudhir singh rajput, arun joshi, yatish mittal, amit yadav, vikrant arora contract of agency  
<https://www.slideshare.net/SudhirSinghRajput/contract-of-agency-13822531>

## 2. Pakka Adatia

A pakka adatia is agents to whom goods are handed over by principal and then the actual sale of the goods became the agents own affair such an agent is particularly vague in Bombay markets. A pakka adatia has authority to enter into transactions in his own name. Thus a pakka adatia He may contract as a principal rather than as an agent. Thus a pakka adatia is one who undertakes the business of his principal but the transactions or contracts he enters into are his own affairs. Thus, in certain respects a pakka adatia may be taken to be a principal in that he can allocate the transaction to himself and himself buy from and sell to his constituent as a principal.

## 3. Factor

A factor is the agent who is entrusted with the possession and control of the goods to be sold by him for his principal.

“Factor has possession and authority to sell them in his own name, and a general discretion as to their sale. He may sell on the usual terms of credit, May receive the price and give a good discharge to the buyer. His authority to dispose of the goods cannot, even at common law, be restricted as against third parties by instruction privately communicated to him by his principal, for he has ostensible authority to do such things as are usual, in the conduct of his business.”

## 4. Broker

A broker is a mercantile agent who is employed by the principal to enter contracts for sale or purchase on behalf of his principal. He is not given the possession of the property. A broker can neither enter into contract in his own name nor can he receive payment. He cannot also cancel a contract which he has entered into on behalf of his principal.

A broker is an agent primarily employed to negotiate a contract between two parties. Where he is a broker for sale, he has no possession of the goods to be sold, and he has not the authority which a factor enjoys. Nor has the authority to sue in his own name on contracts made by him.



## 5. Auctioneer

An auctioneer is an agent to sell property at a public auction. He is primarily an agent for the seller, but upon the property being knocked down he became also the agent of the buyer. He has authority to sell, but not to give warranties as to the property sold, unless expressly authorized by the seller. Any deposit paid by the buyer is normally held by him, not as agent of the seller, but as a stake holder.

## 6. Banking Agents

A banking agent may be a retail or communication outlet contracted by a financial organization or a mobile network operator to method clients' transactions. Instead of a branch teller, it's the owner or a worker of the retail outlet United Nations agency conducts the group action and lets purchasers deposit, withdraw, and transfer funds, pay their bills, inquire regarding an account balance, or receive government advantages or an immediate deposit from their leader. Banking agents are often pharmacies, supermarkets, convenience stores, lottery retailers, post offices, and plenty of additional. Banks round the world, particularly in South America and Africa, square measure currently getting down to see the advantages of Agency bank which might be accustomed reach the unbanked population and is far cheaper to startup compared to fixing a bank branch. Banking agents may help money formation to switch existing customers from packed branches providing a "complementary", typically additional convenient channel.

The Globasure Agency Banking solution (GABS) allows enlargement and the supply of banking services by victimization trendy channels and devices, while not major investments in infrastructure and work force. Implementation of GABS technology allows money establishments to involve Agents to work on their behalf, holding full insight, management and responsibility of its business. Agents become AN extended arm of economic establishments that participate equally within the provision of services to end-users.

GABS is supported by the high level technology that outsources vital a part of branch banking services, like money withdrawal, money deposit, cash transfer, balance enquiry etc. via completely different channels, such as: EFT-POS terminals, electronic kiosks, ATMs, mobile and net. It's appropriate for the rising countries with poor infrastructure wherever the

price of ancient branch institution is high and really typically not possible

### **Banker as an Agent**

The functions of banker act as an agent of his costumer in performing are as follows<sup>11</sup>:

- **Payment and collection of subscription, dividends, salaries, pensions etc.**

A customer gets payments and receives money on behalf of their bankers in the following ways:

- Payment of insurance premium.
- Payment of enrolment subscription to club, library, and professional association
- Payment of rents and salaries.
- Collections of dividends on behalf of consumers.
- An assortment of pension, rents etc.
- Transfers of tunas from one account to a different.

The banker charges a nominal quantity for this service. For doing this service the banker ought to get clear directions in writing from customers.

The directions of the client ought to be clear and not be finish unsure loans that bring about to polemic which means. The banker might not settle for the directions that are tough to accommodates however once accepted it's the duty of the banker to hold out the directions.

### **2. Purchases and sales of securities:**

Banker undertakes to induce and sell shares and debentures of joint stock Company on behalf of his shopper entirely.

Whenever the shopper delegates the work to the bank the banker need to get clear and precise directions in special forms used for this purpose. The form need to contain the following things:

1. The particulars of securities to be sold-out or purchased.

<sup>11</sup> Iedunote <https://iedunote.com/bank-customer-agent-trustee-executor-administrator>

2. The minimum and most value at that the securities are to be sold-out or purchased.
3. The amount inside that they're to be sold-out or purchased.
4. The names, addresses of the persons in whose name they're to be registered.
5. In corporal punishment this services the banker act as agent of his client. Solely members of the exchange will sell or purchase of securities.

As the bank is not the members of exchange they appoint brokers who act as sub-agents of the bank to carry out the directions.

- **Acting as an attorney:**

Power of attorney is also given by a client to the Tanker. By granting power of professional person, the client approved the banker to receive dividends and interest on securities happiness to him and provides a sound discharge, therefore.<sup>12</sup>

### **CONCLUSION**

Over the years, it has been seen that an agent plays several roles in a contract. He has to step into the shoes of the principal, yet is excluded from liability for his actions in general. Hence, the limits of his authority have been a question of debate and pondering for several decades since the emergence of the Agent-Principal relationship idea. Several judges over a span of time, in various cases that have been covered in the research paper have expressed varying opinions and views regarding the authority of an agent. In lieu of simplifying the task of deciding this authority, several classes of agents were also identified. The responsibilities and underlying powers of these agents differ, depending on the work they carry out.

An agent is often seen as a person who steps into the shoes of his principal and carries out all tasks like the principal would do in similar circumstances, with his utmost diligence and vigilance.

A general rule that has been evolved to check an agent's liability is his presence or lack of reasonable care and attention to the work at hand. His authority, if exceeded, can be challenged by the principal in a court of law; however, the third party which has entered into the contract in question shall have a binding right on it. Overall, after this extensive study of

<sup>12</sup> <https://iedunote.com/bank-customer-agent-trustee-executor-administrator>



the elaborate and complex nature of the Agent's contract we can see that courts, especially in judicial interpretation do not seek to indemnify the agent against the losses caused due to his mistakes, but rather seek to indemnify the third party from the same. At the same time, the principal maintains the right to sue the agent and demand compensation in case the agent has exceeded his authority without a very reasonable and essential reason for the same.

