

SCOPE OF THE AGENT'S RELATIONSHIP

This is also called the agent's authority. By scope, we mean the exact nature and extent of the power which is possessed by the agent. The nature and extent of this power is explained in terms of the artificial notification of law as the agent's authority.

Generally, it can be said that the principal will only be bound to the third-party by acts which are within the agent's authority. Those acts which are done by the agent outside or exceeding his authority do not bind the principal unless he ratifies them. Furthermore, should the agent extend his authority, he can be held liable to the principal for breach of contract of agency or he can also be held liable to the third party for breach of the implied warranty of authority.

There are various categories of authority because of the diverse type of the situations in which agency arises. These types are:

- i. actual / real authority (this may be equated to agency created by contract or through ratification);
- ii. apparent authority (equated to agency created by estoppel); and
- iii. presumed authority (equated to agency created by operation of law).

i. Actual Authority

This refers to the authority which the agent has been given by the principal; by a contract or agreement made between them.

If the third party with whom the agent's contract is unaware of this authority i.e. in case of undisclosed principal, he will still be bound by the contract for purposes of clarity.

Actual authority is divided into various categories namely:

- a. express authority
- b. implied authority
- c. usual / customary authority

These are all species of actual authority.

a. Express Actual Authority

In this situation, the agent's authority may specifically be created or limited by the terms of the contract or agreement which gives rise to the agency relationship. That authority may be contained in a deed.

If the authority is contained in a deed, this is normally referred to as a power of attorney and that particular authority will be construed strictly in accordance with the following rules i.e.:

- the authority is limited by the purpose for which it is given; thus anything done by the agent in excess of the authority will not bind the principal.
- If in that deed / power of attorney there are general words which are used, then those words are limited by the specific duty the agent is authorised to do. Those words are binding.
- If the operative part of the deed is ambiguous, then the recital will govern the recital of power of attorney.

b. Implied Actual Authority

The agent's authority may be implied from the nature of the business which the agent is employed to transact. However, the principal must consent to the authority. Generally, every agent has implied authority to do things necessary for and incidental to the carrying out of his expressed authority. There may be implied authority in certain kinds of agents: -

- A factor as an agent may sell the goods entrusted to him for sale in his own name; unless instructed to sell in the principal's name. He also sells the goods in the way he thinks fit, including on reasonable credit terms. If giving a warranty for goods sold is customary to the trade, the factor may give warranty for the goods to be sold. The only prohibition is that if he is instructed to sell goods, he may not pledge or barter those goods.
- A broker may act in accordance with the usage and rules of the market in which he normally deals. However, the rules and usages must not be unreasonable and illegal.

- Auctioneers may also have implied authority to sign the contract on behalf of both the vendor and the purchaser. However, an auctioneer does not have authority to receive payments except in cash and he cannot give credit. An auctioneer also cannot give warranty for the good he sells nor can he sell at less than the reserved price. If the auction is subject or reserve price, if he sells, then he will be liable for breach of the implied authority.
- With regard to ship masters, apart from the authority under the doctrine of agency of necessity, they possess a wide implied authority to do all the things which are necessary for the due and proper execution of the voyage.

c. Usual and Customary Authority

This has been defined as the authority which an agent in the trade, business, profession or place in which the particular agent is employed will usually, normally or customarily possess; unless expressly stated to the contrary by the principal. It therefore rests on the objective idea of what is usual in any particular trade, business or profession.

In the case where an agent is employed to act for his principal in a certain place, market or business; then the agent is impliedly authorised to act according to the usages and customs of such place market or business. However, the custom must be known to the principal or else be so notorious that the principal be deemed to have notice of it. It must also be a lawful and reasonable custom

ii. Apparent Authority

This is normally equated to agency that is created by estoppel. This is an authority which an agent has not been given by the principal but which the law regards the agent as possessing despite the principal's lack of consent to his exercising such authority. This is because the principal, by his conduct, has allowed the agent to appear to have authority or to have greater authority than was in fact conferred upon him by the principal.

It is important to distinguish between implied and apparent authority. In order to prove the existence of implied authority, it must be shown that they are acts performed by the agent were necessarily incidental to the proper performance of his agency or some trade or profession or any other parties justified his acting in such a manner. However, to prove apparent authority, it must be shown that the principal's conduct was such as to mislead the third-party and to induce him to rely upon the existence of his agency to his detriment.

iii. Presumed Authority

The doctrine of presumed authority is applicable to situations where agency is created by operation of law. Presumed authority does not depend upon any express authority from the principal. It also does not depend upon any implied consent and neither does it depend or result from a representation on the principal's part which gives rise to an estoppel.

It is an authority which the law presumes to exist and to be possessed by the agent. It is a particular type of authority which arises in situations which include the agency of a deserted wife and the agency's arising from cohabitation as well as agency of necessity.

Conclusion

In conclusion, it is important to note that in those situations in which an agency relationship results from:

- a prior agreement or contract between the two parties or from the ratification by the principal of the agent's authority is **actual**, but
- where the agency arises by the doctrine of estoppel, the authority is **apparent**; and
- where agency arises by operation of law the authority is **presumed**.