

CHAPTER 10 THE LAW OF AGENCY

After studying this chapter students should be able to:

DEFINE AGENCY

- An agency is the relationship which exists between two persons (natural or legal): the agent and the principal. The agent creates a legal relationship between his principal and a third party.

DESCRIBE THE DIFFERENT METHODS BY WHICH AN AGENCY RELATIONSHIP MAY BE CREATED

- Express agreement or implied agreement.
- Necessity.
- Estoppel: where the principal's words or actions give the impression that he has consented to a person acting as his agent.
- Ratification: the principal may only ratify the agreement if certain conditions are in place.

EXPLAIN THE AUTHORITY OF AN AGENT

- Express actual authority.
- Implied actual authority: authority to act is inferred from the conduct of the parties and the circumstances of the situation
- Apparent authority: a representation has been made by a principal to a third party that an agent has authority to act when in fact he does not.

IDENTIFY THE RIGHTS AND DUTIES OF AN AGENT

- The duties of an agent are: to perform agreed tasks, to exercise care and skill, to account, to avoid a conflict of interest, not to make a secret profit, not to take a bribe, to maintain confidentiality.
- Rights of an agent are: to remuneration, to a lien over the principal's property, and to claim indemnity for expenses and losses incurred in carrying out their authorized duties as agents.

UNDERSTAND THE RELATIONSHIP BETWEEN AGENT, PRINCIPAL, AND THIRD PARTY

- Usually once an agent has created a contract between a third party and a principal, the agent has no further responsibility and only the third party and principal can enforce the contract.
- Where the principal is disclosed, the agent will usually incur no liability.
- Where the principal is undisclosed, the agent is initially liable on the contract but the principal may intervene and enforce a contract provided the agent has authority to act.
- A principal is vicariously liable for tortious acts committed by his agent acting within his actual or apparent authority.

EXPLAIN HOW AN AGENCY RELATIONSHIP MAY BE TERMINATED

- Operation of the law: death, bankruptcy, or mental incapacity (unless the agent has a lasting power of attorney), or frustration of the agency agreement.

- Termination by parties: completion of fixed term or task, mutual agreement, unilateral revocation by one party.
- Some agency agreements are irrevocable.

BE AWARE OF DIFFERENT TYPES OF AGENCIES

- General agents have authority to act for a principal in the ordinary course of their business.
- Special agents have authority to act in particular transactions.
- Commercial agents are self-employed intermediaries who have continuing authority to negotiate the sale or purchase of goods on behalf of a principal.