

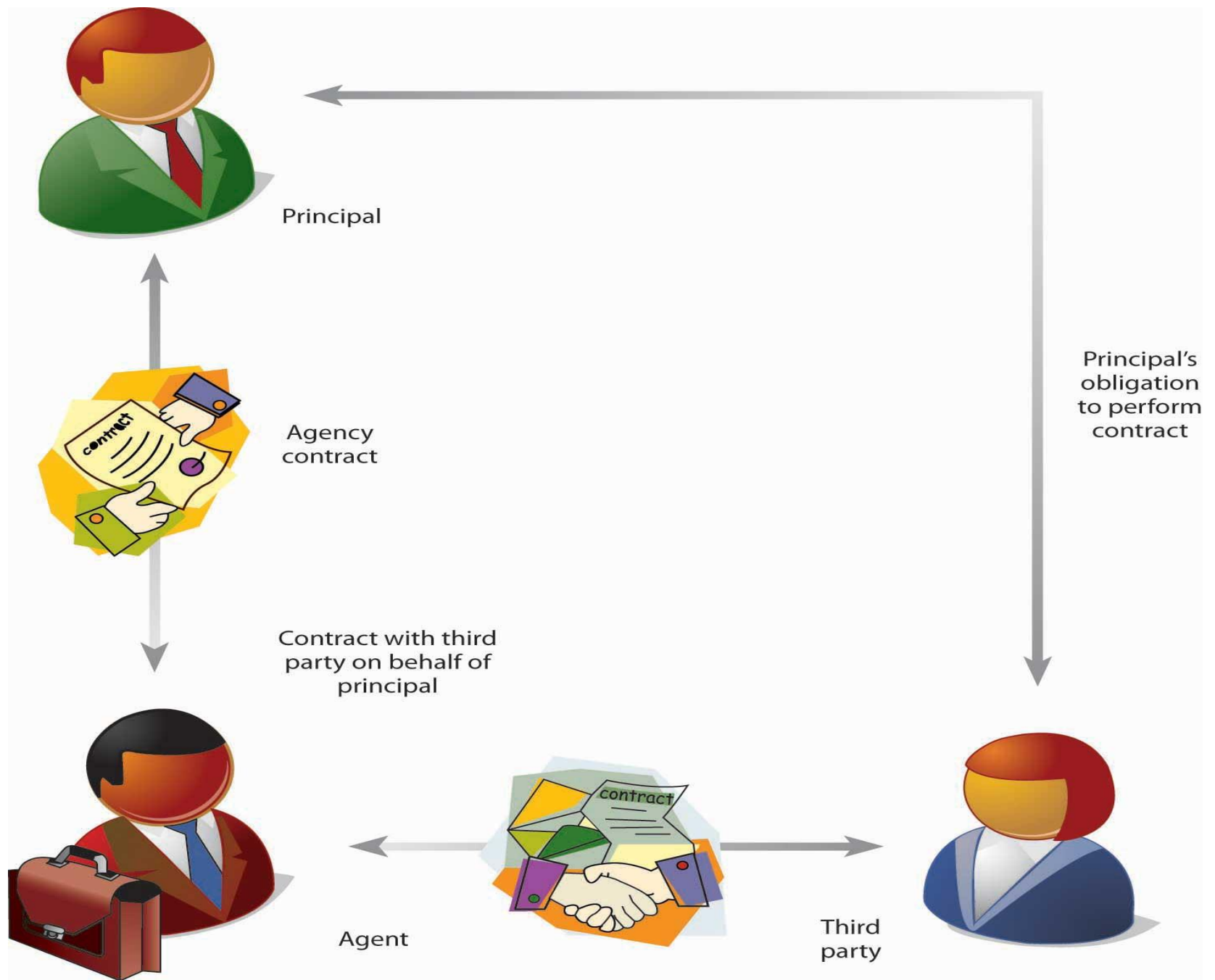
LAW OF AGENCY

“He who does an act through another is deemed in law to do it himself”

- Privity of contract
- If one person authorizes another to do an act on his behalf ,that other becomes the agent of the first.
- Then the first(principal)becomes liable as if he himself had done it in the first place.
- In commercial matters usually agency relationship arises as a result of a contract. but this is not the only way....

Other type of relationships

- Master and Servants
- Independent contractors
- Partnerships-"every partner is an agent of the firm and his other partners for the purpose of the business of the partnership"
- Dealerships



Law

- Sec. 3 of the Civil Law Ordinance states as follows:
- “In all questions or issues which may hereafter arise or which may have to be decided in Ceylon in respect of the law of partnerships, corporations, banks and banking, principals and agents, carriers by land, life and fire insurance. The law to be administered shall be the same as would be administered in England, In the like case as the corresponding period, if such question or issue had arisen or had to be decided in England, **unless in any case other provision are or shall be made by an any enactment now in force in Ceylon or hereinafter to be enacted.**”
- However, the capacity of the parties is governed by Roman Dutch Law (RDL) principles.

capacity

Acts that may be done by an agent

- A person may appoint an agent to do any act which he himself is capable of ,except such acts that require his personal skill,knowledge or discretion,or which he must ,by statute,do himself.

How Agency is arises

- **By express agreement**
- **By implied agreement**
- **By operation of law**
- By estoppel
- Agency of necessity
- Agency by ratification

AGENT OF NECESSITY

- “A PERSON WHO IN CIRCUMSTANCES OF AN EMERGENCY ACQUIRED BY OPERATION OF LAW A PRESUMED AUTHORITY TO ACT AS AN AGENT”
- THIS WAS A CREATION OF ENGLISH COMMON LAW TO SOLVE THE REAL LIFE PROBLEMS.
- Eg-masters or captains of a ship,
- Perishable goods.....

Conditions required to fulfill agency by necessity-

1. Person claiming to be agent of necessity must have been driven by real emergency & not a mere convenience.

Courtier vs. Hastie

2. Impossible to communicate with the owner regarding the instructions

Springer vs. Great western railway

3. Agent of Necessity must act bona fide in the interest of all concerned. If not — personally liable for his actions (Sachs v Miklos)

Agency by marriage and cohabitation

- Gunasena v Nonababa

Agency by ratification

- The principal adopts or confirm an earlier act done by the agent which was not binding on the principal
- It is treated as equivalent to original authority.
- It is constituted retrospectively

Requirements for Ratification

1. A should have contracted with 3rd p on behalf of P.

Keighley v. Durant

2. There must be an agency relationship at the time of the contract. The principal must be in existence at the time the agent entered into the contract with the 3rd party.

Kelner vs. Baxter

3. At the time P ratifies ctt, P must continue to have capacity to ctt.

Grover v. Matthews

4. Contract cannot be ratified if it is a void / Forged ctt

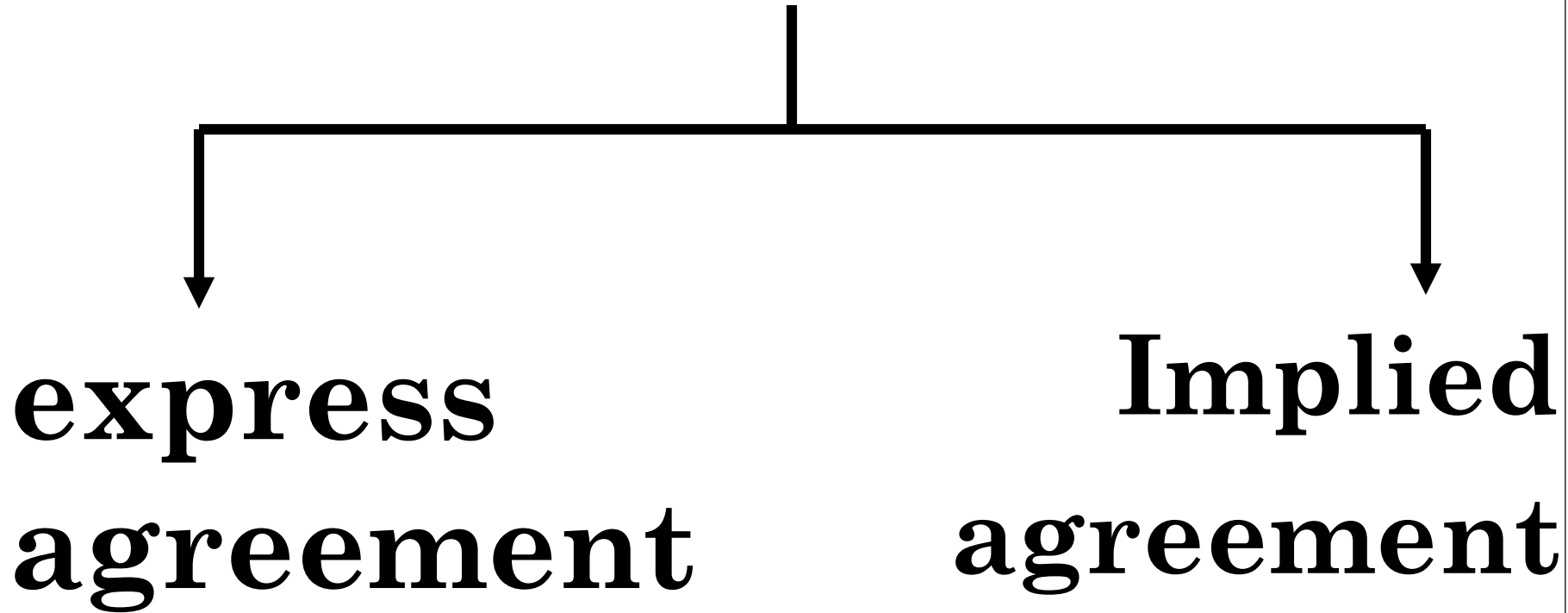
Ashbury railway carriage Co. Vs. Richie

Agency by Estoppel

- “if a person by words or by conduct represents to the world that someone is his agent ,he cannot later deny that agency if third parties had dealt with that person as if he was the agent.

Authority

ACTUAL AUTHORITY



- *Where the instructions are not clear, the agent can act on reasonable construction*

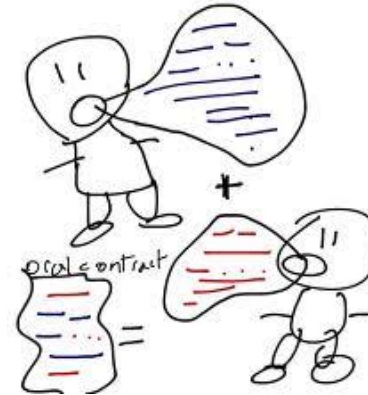
• *Boden v. French*

Express Actual Authority

- **Creation**

It can be done in 2 ways

1. Oral Appointment



2. Written appointment – 2 methods

- i) A doc other than a power of attorney

- S. 139 of the Companies Act
- s. 27 of the CPC

- ii) Power of attorney

- Sec 2 of the Power of Attorneys Ordinance
- S. 36(5) of the Intellectual Property Act



Implied Actual Authority

1. Agent is impliedly authorised to carry out things incidental to carrying out his express instructions.
 - *Anz bank vs. Ateliers constructiones electriques de charteois*

2. Where a person is appointed to a particular position and it is usual for that office to have contratual powers, the principal is implied to have conferred those powers as well.
 - *Panorama developments vs. Fidelis furnishing fabrics*

Implied Actual Authority Contd..

- where the agent is employed for the principal in a certain place of business. Then the agent is impliedly authorised to act according to the usages and customs of that place of business.
- *Bayliffe vs. Buttersworth*
- Where a 3rd party does not know about the principle limiting the powers of his agent, and deals in good faith, the principal is bound to him.
- *Watteau vs. Fenwick*

APPARENT AUTHORITY/ESTOPPEL

Arises when the principle holds out a person as an agent

- for the purpose of making a contract with a 3rd party
- relies on the fact that
- that even though the agent has no actual authority.



- Also known as agency by estoppel and maybe based on sec 115 of the evi. Ord.
- PANORAMA DEVELOPMENT V FIDELIS FURNISHING FABRICS/DE SILVA V DON CAROLIS

APPARENT AUTHORITY/ESTOPPEL Contd...

- *Loyd vs. Grace smith*
- *Freeman's and lockyer vs. Buckhurst park properties*
- Where the agent knew that the agent did not have the authority to act or ought in the circumstances to have been aware of it – will not be able to rely on the right of estoppel.
- Generally the state will only be bound by the acts of a public officer only where he acts within his authority.

A. G. Vs. Silva –

Cattgories of agents

- Factors and brokers
- Estate agents
- Auctioneers
- Bankers
- Other eg.-masters of the ships,lawyers,travel agents,insurance brokers,stockbrokers,patent agents
- Del credere agents
- Insurance Agent
- Mercantile Agent

DUTIES OF AN AGENT

1. The agent must do what he has undertaken to do.

Turpin vs. Bilton

2. An agent is obliged to obey the lawful instructions of his principal in the performance of his work.

Dexwell vs. Christie

Where no instructions - he must act in good faith and use his best judgement for the benefit of the principal.

3. The agent must do his work personally and not delegate his work.

DUTIES OF AN AGENT Contd...

4. The agent must carry out his work diligently and with ordinary skill.

Paid agents

Gratuitious agents

5. Should conduct his duty in a fiduciary manner

i. Must not buy/sell to his own principal without full disclosure

Mcpherson vs. Watt

Armstrong v. Jackson

ii. Owes a full duty of disclosure to his principal.

Keppel vs. Wheeler

DUTIES OF AN AGENT Contd...

- iii. Must not take undue advantage over his principal's property for himself.
- iv. The agent must handover to the principal all profits arising out of the agency – includes all unlawful agencies as well.



V. Must not take bribes.

Boston deep sea fishing co. Ansell

Remedies for Bribes-

1. Dismiss the agent without notice
2. refuse the agent his remuneration or commission or to recover it if already paid.
3. Recover the commission from the agent if he has received it or from the 3rd party if it was not paid
4. Sue the agent or the 3rd party for damages if any loss is caused to the principal as a result to the 3rd party bribing the agent.

Salford corp. Vs. Lever

5. Repudiate the contract with 3rd party

DUTIES OF AN AGENT Contd...

6. Has a general duty to account. They include –

- To keep personal property separate from the principal's property
- To keep accurate accounts and produce them when required
- Hand over to the principal all documents originally handed over to him for the purpose of the agency.



THE RIGHTS OF AN AGENT

1. The right to commission and remuneration

❖ remuneration

- Where no remuneration is specified, the courts might imply a reasonable remuneration where the relationship is a commercial one and payment is usual.

Way vs. Latilla

- Agent is not entitled to remuneration if he has not performed his part of the contract.

❖ Commission

- Conditions regarding an agent's entitlement to a commission:
- ✓ Where the transaction has gone through, the question should be asked whether the transaction actually occurred due to the agent.

Miller, son and co. Vs. Radford

- ✓ Where the transaction has not gone through

Christie Owen v. Rapacoli

THE RIGHTS OF AN AGENT Contd..

02. The right of indemnity

03. Lien

Lien is of 2 kinds —

- (i) general lien
- (ii) particular lien

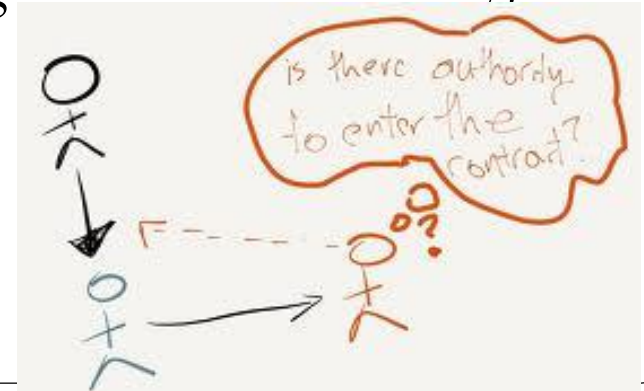


DUTIES OF THE PRINCIPAL

EFFECTS OF AGENCY RELATIONS BETWEEN THE PRINCIPAL AND 3RD PARTIES



- If the agent acts within the scope of his actual or apparent authority
Camillo tanks co. Ltd. Vs. Alexandria engineering works
- Furthermore, where the agent has acted through necessity or the agency is ratified by the principal, the principal is bound to 3rd parties to that extent.
- But, where the 3rd party know that the agent lacks authority, the principal is not bound to the 3rd party.
- *Jordan vs. Norton*



THE UNDISCLOSED PRINCIPAL

- General rule – undisclosed principal is permitted to intervene on his agent's contracts and therefore acquires the rights and liabilities on the contract.
- It is subject to the following exceptions –
- If the intervention would contradict an express or implied term of the contract
- Where the contract is affected by personal factors

Said vs. Butt

- Where there is actual misrepresentation regarding the identity of the principal.

THE RELATIONSHIP BETWEEN THE AGENT AND THE 3RD PARTY

- Impliedly warranties
- That the principal is in existence
- That the principal has the capacity to contract
- That he has the authority from the principal to enter into the contract.
- *Kelner vs. Baxter*

Agents liability

- Where the agent has contracted personally.
 - Non-existing contract
 - Signing of BOE Or cheque
-
- Meaning of pp..?

TERMINATION OF AGENCY

- By agreement between the parties
- By custom
- By complete performance of the contract
- Through the expiration of time – when the agency is for a certain period.
- Through frustration
- By the death of either party
- By insanity
- Through bankruptcy
- Revocation of the agent's authority by the principal
- Renunciation

TERMINATION OF AGENCY

- Operation of law(death,insanity,bankruptcy,frustration ..)
- By agreement