

LAW OF AGENCY
THE LEGAL RIGHTS AND DUTIES, OBLIGATIONS AND
LIABILITIES OF AN AGENT TOWARDS PRINCIPAL AND THIRD PARTY

by

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PREFACE

There is a widespread usage of Agency in the Mercantile world. At the same time there is however controversy in its application and usage. One of the reasons that can be directly attributed for this problem is that of the failure to understand the rights and duties of an agent towards principal and third party. This problem has resulted in litigation between principal and agent, agent and third party and principal and third party.

It is against this background that this study is made in order to sieve the murky waters of existing law and attempt to obtain the true picture of duties of an agent viz a viz principal and third party. In doing so, this paper will outline the law of agency and examine the duties and rights of an agents as well as their fiduciary duties, tortious and criminal liabilities.

In preparing this paper I'm as the writer has made extensive use of library materials with the great assistance of the staff at the Perpustakaan Tun Abdul Razak ITM, Shah Alam, the University of Malaya Law Library and High Court Library of Kuala Lumpur. To them I wish to extend my heart felt thanks.

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CHAPTER I

INTRODUCTION

The law of agency deals with the relationship that arise when one person is used by another to perform certain tasks on his behalf. The word agency in a general way signifies the relations that arises way to create problems of many kinds in respect of the rights and duties, resulting from the introduction of a third person. In other words there are three parties in an agency relationship, that is the party who authorizes another to do some business, the authorized party and the party with whom the business is transacted. It is meant to indicate that although there may be many situations in which one person represents or acts on behalf of another, it is only when such representation or action on another's behalf affects the latter's legal position, that is to say his rights against, and liabilities towards other people, that the law of agency applies. The law of agency has no relevance to social or other non-legal obligations. ~~Law of agency has no relevance to social or other non-legal obligations.~~ *redundant*

The importance is the way in which the law regards the relationship that has been created. It is the effect in law of the way the parties have conducted themselves, and not the conduct of the party considered apart from the law, or the language used by the parties¹, that must be investigated. There are

also consent of parties and the authority of the agent. "..... the relationship that exists between two persons, one of whom the principal, expressly or impliedly consents that the other, the agent, similarly consenting, should represent him or act on his behalf".²

Unlike the ordinary employer - employee relationship agency agreement is fiduciary in character. Therefore the agents must really understand duties and obligations as a fiduciary which are indeed stringent. Many of the incidents of the agency relationship, rights, duties, and liabilities which attach to the parties, do not arise as a result of any special agreement between them, but are attached to the relationship by virtue of some rule of law.

Furthermore, some of the obligations incumbent upon an agent are "imposed by law, irrespective of agreement, and may properly be classed as quasi-contractual. An example is the duty of the agent to hand over to his principal money belonging to him, and received to the principal use."³