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THE FIDUCIARY DUTIES OF AGENTS

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CHAPTER I

INTRODUCTION

Sometimes a person may not be able to act for himself. He may suddenly fall ill and be unable to walk, in which case he may enlist the help of another to buy medicine for him. A house-owner who wishes to sell his home may require the help of a broker to sell his house for him. In such cases the person who acts for another is called an 'agent' and the person for whom or on whose behalf he acts is called the 'principal'. Agency therefore is the relationship which subsists between the principal and the agent who has been authorised to act for him or represent him in dealing with others.¹

The relationship of principal and agent is a very common one in the modern day business world. The word Agency in a general way signifies the relationship that arises when one party uses another party to accomplish some purpose. 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. The role and function of an agent is primarily to bring his principal and third party are brought into a contractual relationship he drops out. The agent does not become a party to the final arrangement. As in the case of Plantation Agency Sdn. Bhd. V Hj. Ariffin² the court held that an agent is not personally liable in contract made by his principal.

Instead of there being two persons directly connected in law with each other by unilateral act of one or the mutual act of both, the employment of an agent introduces another person whose conduct can

affect in variety of ways the legal position of one on whose behalf he acts and the one whom he deals.³

Unlike the ordinary employer-employee relationship agency agreement is of a fiduciary in character. It is bound on a confidence reposed in the principal in the agent. It is a relationship in which it is implied with a duty created by his undertaking to act primarily for the benefit of another in matters connected with his undertakings.

As such in effecting the legal position of another an agent is required to observe certain duties and obligation which some of them are of fiduciary in nature. This has been painted out by the court in a number of cases. Therefore the agents must really understand duties and obligations as a fiduciary which are indeed stringent.

In the case of Daing Soharah V Chabak⁴ the court held that the relief given by a Court of Equity is a secondary consequence of the principle that a person, standing in a relationship in which authority or influence may be supposed to exist, cannot hold a mere gift without making it clear that the intention to make it was not the result of his influence. The relationship itself does not necessarily preclude the making of the gift, but the burden lies on the donee to show that there was no such influence as to the source of the gift.

And in the case of Inche Noriah V Shaik Allie bin Omar⁵ the facts of which are as follows, a malay woman who was of great age and wholly illiterate, executed a deed of gift of landed property in favour of her nephew who had management of all her affairs and therefore being in the position of an agent for her. The donor had independent advice from a lawyer but this lawyer was unaware that the