

REDEFINING THE SCOPE OF AGENT'S AUTHORITY

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PREFACE.

Agency is used widely in today's world of merchandise.
The Law of agency deals with the relationships that arise
when one person is used by another to perform certain tasks
on his behalf. This kind of relationship may create problems
of many kinds if the scope of the agent's authority is not
specific and definite.

The many forms of creation of agency relationship creates many
kinds of authority. Till today, there is no definite
classification of agent's authority. Controversy therefore
arises as to the type and scope of agent's authority.
Various authors and authorities have classified agent's
authority in different ways.

The Contracts Act 1950, (Revised 1974), for instance,
classifies agent's authority into two categories, express
and implied. Some writers classified implied and express
authority as two aspects of actual authority. Authors like
Bowstead did not actually classify them under actual authority.

Hence, there is a vacuum on this point. The law is not
clear on this.

Thus, it is the aim and object of this research paper to try and attempt to establish the definite scope of agent's authority and ascertained the classifications of agent's authority. In doing so, this paper will outline briefly on the various types of agency and ways in which a relationship of agency can be created and thus, the authority which can be derived from such relationship.

In preparing this paper, I have made extensive use of library materials of Perpustakaan Tun Abdul Razak, ITM, Shah Alam.

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CHAPTER I

INTRODUCTION

The Law of Agency introduces a situation whereby a person can act on behalf of another and thus enter into a contract on behalf of that person with a third party creating a contractual relationship and obligations between those two parties. This subsisting relationship will then bind both the third party and the other person he purported to act for.

In such a situation, the person who acts on behalf of the other is called the 'agent' and the person for whom and on whose behalf the act was done is called the 'principal'.

The Contracts Act, 1950 (Revised 1974) under Section 135 provides :

" An agent is a person employed to do any act for another in dealings with third persons. The person for whom such act is done, or who is so represented, is called the principal"

There is however no definite or exact definition as to the word ' Agency'. But in attempting to give a definition to it, authors and judges have taken a stand that there must exist authority given by the principal to his agent which can alter the principal's legal relation with a third party.

Thus, it can be said that 'authority' is an important element of agency. In short it can be said that the test suitable to be used in order to determine whether or not a person is an agent is by asking the question ; whether that person has the authority to do something for or on behalf of another person in dealing with a third party and thus making the principal legally obligated to the third party.

The significant word here is 'Authority' ; it is important to note that an agent or purported agent must acquire the authority to enable him to act on behalf of his principal and subsequently bind his principal with his acts. If no such authority exists, it is rather impossible for an agent to do so, unless his acts which are in excess of authority is ratified by his principal.

As to what extent the agent's authority is binding on the principal, the general rule is that if there is no authority, the principal can always make a denial that he is not legally bound by the act of his agent which is without authority or exceeding the authority given.

In Malaysia, the Law of Agency is governed by Part X of the Contracts Act, 1950 (Revised 1974). However, Part X is not exhaustive in that it does not specifically provide a definite definition and scope of the agent's authority. This has created uncertainty in the law on the point.¹