



## **LIABILITY OF THE PRINCIPAL TO THIRD PARTY IN AGENCY PARTNERSHIP**

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### **ABSTRACT**

*The Principal is generally responsible to third parties for any decision, act or omission of his agent, which was performed or taken while executing the terms of his agency. Such decision, act or omission may constitute contractual, tortuous or criminal delinquency.*

**Keywords:** *Liability, Principal, Third Party, Agency, Partnership.*

### **Introduction**

Generally, the doctrine of privity to contract disentitles a person from acquiring any right under or being subjected to any obligation arising from a contract, to which he is not a party. However, the law does not dissuade a person from employing the services of another to negotiate or even conclude a contract on his behalf. The employer may lack the experience or skills of the trade, business or profession, the knowledge or experience of a particular market, ware of commodity or may simply be too busy with other matters to conclude the contract himself. The law thus meets this need of business through the concept of agency.

The necessity for the employment of some persons to perform tasks for others is a product of the complexities of modern commercial life. Its development is closely related to the changing needs of specialization and division of labour which have caused for delegation or distribution of various functions among specialists and entrepreneurs alike.

### **Definition of Agency**

There has never been any definition of agency which is comprehensive enough, for all purposes and free from controversy. Agency has been defined as a consensus relationship which arises when a person called the agent acts on behalf of another called the principal whereby the latter becomes answerable for the lawful acts of the former done within the scope

of the authority as they attracts the legal relationship between the principal and the third person. Agency has also been defined as the relationship which exist between two persons when one, called the agent is considered in law to represent the other, called the principal, in such a way as to be able to effect the principal legal position in respect of strangers to the relationship by the making of contract on the disposition of property<sup>(2)</sup>. In the oxford companion of law, the term agency is defined as the relationship between a person, the agent having authority to act, and having considered to act on behalf of another, the principal in contractual relation with the third party in the same vein, the American Department of Agency describes the term as a comprehensive term which in its broadest sense include every relation by his authority but in the law of principal and agent, the term Signifies the fiduciary relation which results from the manifestation of consent by one person to another that the other shall act on his behalf and subject to his control consented by the other so to act.

Thus, the law of agency does not apply to social or other non-legal situations. For example, when a man sends his wife or son to represent him at a wedding, launching or naming ceremony, the law of agency has no application to such a relationship. This is because the law regards this relationship as intended purely to serve social purposes. In contract, where a housewife sends the houseboy or girl to purchase a loaf of bread from the local shop or super-market, she invests the boy or girl with authority to contract in respect there to.

IN *BAMIGBOYE V. UNIVERSITY OF ILORIN AND OTHERS*<sup>(3)</sup>. The Court of Appeal was given the opportunity to examine the characteristics features of agency relationship. When it was held ‘inter alia’, that agency in law is used to connote the relationships which exist where one person has the authority or capacity to create legal relations between a person occupying the position of principal and third parties.

### **THE AUTHORITY OF AN AGENT**

This authority is an essential characteristic of relationship that the agent is vested with legal authority or power to alter the legal relations of the principal with third parties. This power-liability relation seems to provide the nucleus of a true agency relation. This underlies its responsibility and liability and to create rights in his favour as well as obligations against him.

Thus, in holding the principal bound by an act of the agent, it must be established that such an act was largely authorized. The principal will only be bound to the third party by an act which is within the agent's authority. An act which is in excess of this authority, unless ratified by the principal will not affect him. Powells confines the notion of authority to matters<sup>(4)</sup> which the principal has agreed with the agent that the agent may conduct on his behalf.

It should be further noted that authority may be express or implied that is, it is express when it is given by express words, such as when it is given by express words, and implied when it is inferred from the conduct of the parties and the circumstances of the case such as when directed to do such things as within the usual scope of the authority.

### **LIABILITY OF PRINCIPAL TO THIRD PARTIES**

The principal is generally responsible to third parties for any decisions, act or omission of his agent, which was perform or taken while executing the terms of his agency such decisions, acts or omission may constitute contractual, tortious or criminal delinquency. The rationale behind these principles was stated by Wiles J. in *BARWICK V. ENGLISH JOINT STOCK BANK* (1867) L. R. 2 EX CH.259. Where it was held that

*“the principal put the agent in his place to do that class of Acts, and he must be answerable for the manner in which that agent has conducted himself in doing the business which it was the act of his master to place him in”*

However, the principal is only liable for does decisions, acts or omissions which fall within the scope of the actual or apparent authority of the agent. The crucial test is therefore whether a particular decisions, act or omission falls within the scope of the agent's authority and done or taken in the course of that agent's employment. See *LLOYDS V. GRACE SMITH* (1912) A. C. 716. The Privy Council has adopted and applied this ruling *U.A.C LTD V. SAKA OWOADE* (1955) R. C. 130. Where it was held that a principal is liable for the fraud perpetrated by his agent in the course of executing the principal's business. Whether the proud was committed for the principal's benefit or not provided that it was committed by the agent in the course of his employment. Where the agent's acts or omissions were done outside the course of the agent's employment, the principal is not bound unless he takes

the benefit of it or otherwise ratifies it. See *MORRIS V. MARTINS AND SONS LTD* (1966) 1. QBD 716.

In the course of executing the terms of his agency, an agent may name or disclose his principal or may prefer to leave him anonymous. A principal is named when his existence as well as his name was disclosed to the third party. He is disclosed when his existence, though not necessarily his identity was made known to the third party. He is land is closed when both his existence as well as his identity was kept secrets from the third party. In addition, a principal may be foreign that is where he resides or carries on his business abroad.

### **RIGHTS AND LIABILITIES OF PRINCIPAL AND AGENTS**

The rights and liabilities of the agent and the principal on the one hand and of the third party on the other depend primarily on the kind of act performed or being performed by the agent and on the legal personality of the principal himself. Thus an agent may contract for and on behalf of his principal or may involve the principal in tortious or criminal responsibility.

### **DOCTRINE OF RESPONDENT SUPERIOR**

It should be further noted that the principal liability under the doctrine of respondent superior, is strict and the principal is so responsible notwithstanding his exercise of due care and diligence in selecting the agent or supervising him or probing the act or omission concerned. It is pertinent that his liability in tort is distinguished from that in contract for things done or actions taken within the actual or apparent authority of the agent. Thus, when the conductor of the omnibus was allowed by the driver to drive and he caused an accident, it was held that his employer (principal) was responsible. See *BEARD V. LONDON OMNIBUS* (1900) 2 QBD 530.

### **LIABILITIES OF PRINCIPAL UNDER TORT**

But in tort, he is liable for the wrongs committed by the agents, whether within his actual or ostensible authority or not. Thus, in *CONSTRUCTION INDUSTRY CO. LTD V. BANK OF THE NORTH* (1968) NCLR. 194 a driver waiting to be served at a petrol station struck a match to lit his cigarette, which action set a petrol station ablaze. It was held that his employer (principal) was held liable for the damage caused thereby. However, to make him so liable, the act of the agent must have been committed in the cause of the agent's employment. See *IKO V. JOHN HOLT* (1957) 2. FSC 50. Thus, where it was established that the agent was

on the frolic of this own, it was held that the agent was not in the course of his employment and therefore the principal was not liable. See LORD DENNING IN NAVARRO V. MOREGRAND LTD AND ANOTHER (1951) 2. TIR. 674.

In addition to the doctrine of respond superior, the principal may also be liable, if he was found to have directly or specifically authorized the agent's act or omission or ratified it, if it falls outside the authority granted to him or for misrepresentation.

### **WHO MAY SUED**

Since the principal and the agent are generally jointly and severally liable to the injured third party, the last mentioned may sue either the agent or the principal, separately or both jointly. At common law, a judgement obtained against either of them bars any further action against the other. See BRINSMEED V. HARRISON (1873) LR. 547 under the Nigerian Law, this position was subsequently altered by the civil liability (miscellaneous provisions) Act of 1961. Laws of the Federal Government of Nigeria No. 33, 1961. Where it is provided in Section 8<sup>(1)(a)</sup> of the Act that judgement recovered against any tort-feason in respect of any damage suffered by any person as a result of tort, whether crime or not shall not be a bar to an action against any other person who is liable to a joint tort-feason in respect of the same damage. Sub-Section<sup>(c)</sup> of the same Act provide inter alia, that for contribution from other tort-feason or persons except where the persons seeking contribution is liable to indemnify the persons against whom contribution is sought in respect of the damage for which contribution is sought.

### **LIABILITY OF PRINCIPAL FOR CRIMES COMITTED BY AGENT**

Crimes committed by agents in the course of executing the terms of their agency have a dual aspect. The one refers to the personal responsibility of the agents and the principal respectively. The other refers to various responsibility of the principal for the crimes committed by the agents. Both aspects are informed by different considerations and require separate treatments here.

#### **a. Personal Responsibility of Principal and Agent**

As the perpetrators to any act or omission constituting a crime, the agent is personally responsible whether such crime was committed in the course of his employment or not. However, to be criminally

responsible for such an act or omission, the prosecution must prove as against the agent, all the essential elements or ingredients of criminality.

**b. At Common Law**

The general rule is that the principal is not ordinarily vicariously liable for a crime committed by his agents in the course of his employment.

In conclusion, liability of the principal to third party may depend on whether the agent has authority to bind the principal or not and where he has authority, the principal will be liable for acts of the agent and where the agent lacks authority, the agent will personally be liable for his actions. Furthermore, the principal and or the agent could be personally or jointly liable for the act of the agent in torts and criminal law.

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