DISTANCE MODULE ON AGENCY LAW

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# Law of Agency

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INTRODUCTION

Welcome to your module on Agency Law.

Agency, as any device of representation, is an unavoidable necessity in any developed economic system, and finds its roots in the positive division of labor, and therefore permeates many aspects of modern life. Agents allow principals to conduct many different business operations simultaneously in different locations. Therefore, agency law is essential to the existence of the modern economy, and to a pursuit of efficiency.

An agency relationship exists when one person acts for the benefit of and under the direction of another. You have probably been a part of an agency relationship numerous times. (Have you ever helped a friend in making some purchase on his behalf?) If you have ever employed an attorney, or acted as an attorney, you have been in an agency relationship. Agency law focuses mainly on the relations between principals and agents and third parties with whom the agent deal with in making contracts on behalf of principals.

In this module, you will study the nature of the agency relationship, how the relationship is formed and dissolved, what rights and duties are owed between an agent and a principal, and what liabilities result from a breach of duties.
To get the most out of this module, you will read and reread along with your Civil Code, paying particular attention to the illustrations, and answering the questions in a careful, detailed manner. Upon completion, you will receive personal instruction on Agency Law.

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Dire Dawa, Ethiopia, December 2006
Unit one: Agency relationship and its creation

★ INTRODUCTION

Agency is a fiduciary relationship that results from the manifestation of consent by one person to another that the other shall act on his behalf and subject to his control and consent. The agency relationship is created in different ways. It is created by contract (agreement), by operation of law, by ratification and by estoppel. So in this unit you will study these different ways of creating an agency relationship at the first section. You will also study the essential elements for the validity of agency contracts such as capacity, object and form in the second section of the unit. At the last and third section of the unit you will study about the scope of the authority of an agent.

☞ OBJECTIVES

Upon successful completion of this unit, you will be able to:

- Define agency relationship
- Distinguish different ways of creating agency relationships
- Identify ways of creating agency relationships recognized under Ethiopia law
- Differentiate between express and implied authority
• Know elements that are essential for the validity of agency contract
• Know the scope of agency
• Distinguish between general and special agent

Section 1: Different ways of creating agency relationship

★ Overview

In this section you will study what agency relationship is and different ways of creating it. There are four ways of creating agency relationship though only three of them are recognized under Ethiopia law. These are agency by agreement, agency by operation of law, agency by ratification and agency by estoppel.

☞ Objectives

Upon successful study of this section, you will be able to:

• Define what agency relationship is
• Explain the difference between express and implied authorization
• Understand why agency is said to be a fiduciary relationship
• Explain how agency relationship is created by agreement, by operation of law, by ratification and by estoppel

• Discuss the effect of ratification

1.1 AGENCY RELATIONSHIP

Agency is an indispensable part of the existing social order. It fulfils the most diverse functions in public and private law of today; in particular it assists in organizing the division of labor in national and international economy by making possible for a principal to extend his individual sphere of activity. Agency extends the individual sphere of activity by allowing him to perform multiple business operations simultaneously in various locations.

What do you understand by Agency Relationship?

Agency is a fiduciary relationship which results from the manifestation of consent by one person to another that the other shall act in his behalf subjected to his control and consent.
What does the term fiduciary show in the above definition?

The term fiduciary has a paramount significance in agency law and it has different meaning when it is used as a noun and as an adjective. When used as a noun it refers to a person who has a duty to act primarily for another's benefit. When the term is used as an adjective, as in fiduciary relationship, it means that the relationship is one involving trust and confidence.

An agent is appointed when an individual is unable to act on account of his manifold occupation, absence, illness, advance age; representative may also be designated in order to take advantage of his special capacity, knowledge and experience.

In agency relationships, the party for whom another acts and from whom the other party derives authority to act is a “principal”. To put it in another way, a principal is a person who authorizes another person (the agent) to act on his behalf.

Illustration
Ato Desalegn enters into agreement with Ato Negash so that the latter sells Ato Desalgn’s, 21 inch color TV set for 1200 birr. In this case an agency relationship exists between Ato Desalegn and Ato Negash. The authority to sell the TV set of Ato Desalegn is given to Ato Negash by Ato Desalegn; therefore, Ato Desalegn, in favor of whom Ato Negash agrees to act, is the principal.

The person who acts for and represents the principal, and acquires his or her authority is an agent. Pursuant to the grant of authority by the principal, the agent is the representative of the principal and acts in the place and instead of the principal.

In the above illustration Ato Negash, for whom the authority to sale the TV set is given by Ato Desalegn, is an agent.

The Ethiopian Civil Code provides the definition for the term “Agency” under its article 2199.

Article 2199: Definition

Agency is a contract where by a person, the agent, agrees with another person, the principal, to represent him and to perform on his behalf one or several legally binding acts.
The above definition of agency shows that agency is a contract. The article defines Agency as a contract to show that Agency is a consensual relationship. Meaning the agency relationship is made based upon the will and agreement of the principal and the agent. A person may not be forced to appoint another person as an agent without his /her interest and in no circumstance shall a person be forced to act for and on behalf of another. According to the above article an agency relationship exists when one party, called the principal, authorized another person to act for him and when the other person agrees to represent or act for the principal.

In an agency relationship, whatever an agent does in the lawful prosecution of the transaction the principal entrusted to him is considered as an act of the principal. This is based on the general principle of agency that *qua facit peralium Facit per se* it means one who does some thing through another does it oneself.

1.2 CREATION OF AGENCY RELATIONSHIP
In the previous section we have seen what agency relationship is and its significance for the modern life. Under this section we will see four ways by which agency relationship arise.

How is agency created?

___________________________________________________________
___________________________________________________________
___________________________________________________________

Article 2179 provides for source of agency.

The authority to act on behalf of another may derived from law or contract

According to this article a person, the agent, gets the authority or power to act on behalf of another, the principal, either from the contract entered between him and the principal or from law. Below we will see four situations that give raise to agency relationship.

1.2.1 AGENCY BY AGREEMENT

An agency relationship is a consensual relationship. It is usually formed by agreement (contract) although they may be found in the absence of the contractual agreement. This seems the reason why Article 2199 defines the term agency as a contract.
Article 2199

Agency is a contract where by a person, the agent, agrees with another person, the principal to represent him and to perform on his behalf one or several legally binding acts.

According to the above article the relationship between an agent and a principal is a contractual one. Since their relationship arises from contract, there must be a meeting of mind between the parties in establishing the agency relationship. Besides, the consent of the principal and the agent is necessary. The principal must intend that the agent act for him or her and the agent must intend to accept the authority and to act on it.

In other words the agency relationship arises when the principal expressly or impliedly agreed that the agent acts for him/her and when the agent in her/his side agreed to act for the principal.

As has been discussed above the principal may give the agent the power to act on his behalf expressly or impliedly.

Article 2200(1)

An authority may be conferred upon the agent either expressly or impliedly.
What do you understand by express and implied authority?

Authority is expressed when the principal specifically describes the extent of the agency power.

Illustration

Ato Kemal enters into a written contract with Ato Awel so that Ato Awel sells Ato Kemal’s house. In this contract of agency Ato Awel’s authority to act for Ato Kemal is express since the extent of the power of Ato Awel is specifically described in the contract and the power is limited to the sale of house.

Implied authority is authority of the agent to do whatever is reasonably necessary for him to accomplish the task he is expressly authorized to perform on behalf of the principal. Implied authority is granted to agent by law because it is not always possible for a principal to foresee every circumstance in which the agent may need to act in order to perform the act the latter is authorized to perform in principal’s behalf.
Illustration

Ato Mersha authorized W/ro Zewdnesh to accept the delivery of 100 quintals of teff from Ato Zenaneh who undertakes to deliver the teff to Ato Mersha upon contract of sale of teff entered between them on October 2005.

In this case W/ro Zewdnesh has express authority to accept the delivery of 100 quintals of teff from Ato Zenaneh. W/ro Zewdnesh also has an implied authority to employ, in the name of Ato Mersha daily laborers who can take the teff to store. She has also implied authority to enter into contract for the deposit of the teff on behalf of Ato Mersha.

1.2.2 AGENCY BY LAW

The authority to act on behalf of another may result from operation of law. Article 2253 of civil code can be cited as an example here. According to this article, courts have a power to appoint individuals known as curators to perform in the name of another, act or acts of a certain kind. According to article 2255(1), curator is appointed by courts to perform acts of urgent nature on behalf of another, where the person to be represented is for some reason or another unable to appoint a representative because he is away, or ill or for any other reason. Appointment of curators by court is provided under the law to safeguard the interest of the person to be representative.
The law has also empowered parents to represent their minor child or children under article 204 of Ethiopian civil code.

Article 204: Authority of parents

*The father and minor are, during their marriage jointly guardians and tutors of their minor child.*

As can be understood from the reading of the above article, the father and mother of a child are jointly the tutors of their child. Tutors are the persons empowered by law to represent a minor in relation to pecuniary interest and administration of property. (Please read article 199(2) of your civil code) So, acts done by the father and mother on behalf of their minor child bind the latter as if the minor has performed the act himself, being a major.

Commercial employees are another example of agency by operation of law. It is the law that enables commercial employees who are in charge of sale to represent the trader and act on behalf of the latter under article 32 of commercial code. For example an employee in charge of sale in a store shall be deemed to have a power of agency for the purpose of selling or receiving goods which come within the normal business activity of store of such nature.

Who is a commercial employee?
Article 28 of Commercial Code

Commercial employees are persons who are bound to trader by a contract of employment and who assist the trader by doing work of non manual nature as a sales man, secretary, accountant, guardian, inspector or director.

1.2.3 AGENCY BY RATIFICATION

The other way of creating an agency relationship is ratification. Ratification is approval or affirmation of prior unauthorized act. In order to legally bind another person by your act you should get prior authorization of a person on whose behalf you are going to act. However there are two instances where the act of an unauthorized person binds another person.

The first instant is when the principal affirms or approves the act done by his/her agent in excess of his /her authority. The second instant arise when a principal approves an act done on behalf of him by some one who has no prior authorization to do the act.
Ratification is a question of intent and the intent of the principal can be expressed either from his/her words or from her/his conduct. A principal is said to ratify unauthorized act of the agent by conduct when he, the principal:

_ accepts any performance under the agreement. This arises when a person enters into contract on behalf of the principal exceeding or without having authority to do so.

_ fails to repudiate the act of the agent with in a reasonable time.

_ brings an action to enforce the act.

1.2.3.1 EFFECT OF RATIFICATION

What do you think is the effect of ratification?

___________________________________________________________

___________________________________________________________

___________________________________________________________

___________________________________________________________

Article 2192

*Where the contract is ratified the agent will be deemed to have acted with in the scope of his power.*
The ratified act of unauthorized agent has the same effect as an act done by authorized agent. Meaning the ratified act is considered as an act performed by the agent having prior authority to represent his principal. Once he ratifies the act, the principal will be bound by the act as if it was made upon his authorization. Before ratification, the act of the agent that exceeds his authority binds only the agent. The principal will not be bound by the act. But after ratification, the agent will be released from his liability both to the third party and the principal.

Ratification has a retroactive effect. Knowing the retroactivity effect of ratification is important in order to determine the time starting from which the act done by the agent binds the principal who ratified the act. The ratified act will be effective on the principal starting from the date on which the act was done by the agent not from the date of ratification onwards.

Illustration

W/ro Almaz is the sister of Ato Markos, a bakery around Shewaber, a market place in Harar. At the time w/ro Almaz went to visit Ato Markos, Ato Markos told her as to the increase in the market price of flour. One day w/ro Almaz met with Ato ketema, a wholesaler of flour, and ask him the price for one quintal of flour. Thinking that the price of the flour asked by Ato Ketema is cheap, w/ro Almaz entered into a contract of sale on behalf of Ato Markos with Ato Ketema.
In the case at hand w/ro Almaz entered into a contract of sale on behalf of Ato Markos without having the necessary authority to do so. Hence, Ato Markos is not bound by the contract unless he subsequently ratified the act of w/ro Almaz either expressly or impliedly. Until and unless the contract is ratified by Ato Markos the contract will remain binding on w/ro Almaz. But if Ato Markos subsequently ratify the act, for example, by accepting the delivery of the flour or by seeking performance from Ato Ketema, w/ro Almaz will be released from her obligation under the contract and Ato Markos will be bound by the contract as if he himself concluded it.

1.2.3.2 REQUIREMENT FOR RATIFICATION

There are conditions or elements that need to be fulfilled for the effectiveness of ratification. These conditions include, but are not limited to, the disclosure of the principal to the third party, capacity of the principal and the ratification of the entire act to by the principal.

In order to be effective the agent must have acted on the behalf of the principal. Meaning the agent who acted on behalf of the principal shall disclosed to the third party that he/she, the agent, is doing the act on behalf of another person, the principal. The principal’s ratification of an act has no effect if the ratified act is not made for and on behalf of him, the principal.

Illustration:
Ato Negash is the general agent of Ato Mohammed. One day Ato Negash needs to buy 10 quintal of teff for his Hotel in Jijiga town and accordingly he went to Ato Haile, a famous dealer of teff in Harar, and entered into a contract of sale by his own name. According to their contract Ato Haile agreed to deliver 10 quintals of teff to Ato Negash at the house of Ato Mohammed and Ato Negash agreed to pay 400 birr for each quintal. At the due date of the contract Ato Haile delivered the teff to Ato Mohamed and the latter accepted the delivery. In this case the acceptance of delivery by Ato Mohammed doesn’t show ratification of the act by the same. Even if Ato Mohammed expressly declared the ratification of the contract, the ratification will not be effective since the contract is not entered initially on behalf of him.

The other condition for the effectiveness of ratification is capacity of the principal. The principal who ratified the act shall be capable both at the time the act was done by the agent and at the time of ratification. If the principal is incapable by the time a contract is concluded on his behalf by the agent, the ratification has no effect even if the principal becomes capable by the time he ratifies the act of the agent and the vice versa is true.

In order to be effective, the ratification of the act shall include the entire act of the agent. The principal may not ratify what is beneficial and repudiate what is burdensome. Moreover, the principal must be aware of all material facts; otherwise, the ratification is not effective.
1.2.4 APPARENT AUTHORITY (AGENCY BY ESTOPPEL)

Estoppel is the other way of creating agency relationship. This kind of agency relationship is created by the conduct of the principal and arises when the latter causes a third person to believe that another person is his/her agent. If the third person deals with the person believing that the latter is the agent of the principal, the principal will be estopped to deny the agency relationship. It is the act of the principal that creates the appearance of an agency relationship that doesn’t actually exist. The principal may cause a third party to believe the existence of authority by his statement, act, behavior, or by his failure to act or in any other manner.

Apparent authority or authority by estoppel is not recognized under Ethiopia law. Though apparent authority is not recognized under Ethiopia law, there are provisions in the 1960 Ethiopia civil code that are designed to make good the damage may caused to a third party who entered into contract believing from the act of the principal the existence of agency relationship. The provisions are article 2193 (2) and article 2195.
SECTION 2: ESSENTIAL ELEMENTS FOR A VALIDITY OF AGENCY CONTRACT

★ Overview

Agency is a contract. It is a special contract upon which the general provision of contract is applicable.

Article 2199- Definition

Agency is a contract ...........

Article 1676(1) - Provisions applicable to contracts.

(1) The general provision of this title shall apply to contracts regardless of the nature there of and the parties there too.
The cumulative reading of the two provisions above shows the applicability of the general principles of contract on agency contracts and there is one provision in the general principle of contract that makes the validity of any contract including agency contract conditional upon the fulfillment of certain essential elements. The elements as listed out under Article 1678 of civil code are capacity, object and form. Below we will see the capacity of a principal and agent to enter an agency contract, the object of agency contract and form of agency contract.

🔗 Objectives

Upon successful completion of this section you will be able to:

- Know the persons who can be a principal
- Know the person who can be an agent
- Identify essential elements for the validity of agency contract
- Identify the required form of agency contract

2.1 Capacity of principal

A principal is a person, natural or legal, who gives power to another person, the agent, so that the latter acts on behalf of him, the principal. This definition of principal above may bring to our mind a question. Can a principal validly authorize another person so that the other person performs on behalf of him, an act which cannot be validly done by himself? For example can an incapable person validly appoint a capable person so that latter entered into contract on behalf of him, the incapable? (Please give your answer in the space provided below)
The answer is in the negative. Since the legal effect of agent’s action on behalf of the principal is usually the same as the principal’s, a person cannot do through an agent any thing that she or he could not legally do personally. To put the answer positively, what a person can do through an agent is limited to what she or he could legally do personally.

Who may be a principal?

Since the authorized act of the agent is the act of the principal, (Art 2180(1)), and since a contract shall be entered between capable persons, (Art 1678(a)), only capable person may be a principal. In other words, one must be capable to appoint or authorize an agent. A minor or mentally impaired person may not validly appoint an agent.

2.2 Capacity of an Agent
An agent is a person who acts for another. The question that needs to be answered here is, who can act for another? Can an incapable person act for or on behalf of another?

Legal scholars have two different stands in relation to the capacity of an agent.

The majority of legal scholars argue that any person has the capacity to act for another. According to these scholars a person can act as an agent of another even if the agent is under legal disability. Meaning, even an incapable person, whose contract is not binding on him or on her, may nevertheless act as an agent for the principal and bind the latter by his act.

Based on the above scholarly argument, an incapable person can act for another. Although appointment of a minor or mentally impaired person is generally voidable, minors or mentally impaired persons may act as an agent and bind the principal by their act.

The scholar’s argument is based on the presumption that one who knowingly appoints another to act as his or her agent has conclusively guaranteed the capacity of such agent to act. For example if a person appoints a minor so that the latter enters into contract for him, the principal, the latter will be bound by the contract if the principal made the authorization knowing the minority of the agent. The principal will not be excused by the reason of incapacity of the agent.
Some legal scholars argue that all the parties to the contract of agency must be capable persons. According to these scholars incapable persons can not act for another person.

So your answer to the above question depends on the scholarly argument that sounds more reasonable for you.

2.3 Consent of contracting parties

There must be a meeting of minds between contracting parties’ to an agency contract. Both the principal and the agent shall give their consent to establish the agency relationship by contract; either impliedly or expressly. The principal must intend that the agent act for him/her and the agent must intend to accept the authority and to act on it.

The acceptance by the agent need not be made in a prescribed manner; it is usually implied from the performance by the agent of an act or acts on behalf of the principal. According to one writer on Ethiopian law, this procedure entails a number of risks for a principal who will have difficulty in providing that a contract of agency did exist if the agent did not perform the act he was supposed to perform. Meaning, the principal has no evidence that proves the acceptance of authority by an agent unless the latter perform the act he is authorized to do.

2.4 Object of agency contract.

Generally, in order for a contract to be valid the object of a contract shall be sufficiently defined, possible and lawful. This principle is also incorporated under the 1960 Ethiopia civil code. According to this article, there may not be valid contract unless the object of the contract is sufficiently defined, possible and lawful.
The object of an agency contract or the appointment of an agent is illegal if:

a. public policy or previous agreement between third party and the principal requires personal performance or/and

b. agreement to do an act, or the doing of an act itself is criminal, tortuous or opposed to public policy.

A principal may not validly appoint an agent so that the latter does acts that the principal must do by himself. For example, having contracted to present her work in Sheraton Addis hotel on the eve of Ethiopian New year, Aster Aweke, one of the famous singers in Ethiopia, may not appoint another singer so that the latter presents Aster’s songs on behalf of her. Aster shall present her work by herself.

It is not also possible for the principal to do through an agent acts that he, the principal, cannot legally do by himself. Meaning, acts that one may not lawfully do personally may not be done through another. If the principal, by contract of agency, appoint an agent so that the latter does an act which he, the principal, can’t legally do personally, the agency contract will be void. If it is unlawful for you to buy something yourself, you may not buy it through an agent.

For example, appointment of agent by the principal so that the agent enters into contract for the sale of a narcotic drug on behalf of the principal is void. This is because the object of the appointment of an agent, the sell of a narcotic drug is a criminal act. The same is true when the object of the agency contract is immoral and impossible. (Please read articles 1678(b) and 1716(1) of Ethiopia civil code)
Article 1678(b) Element of contract -

No valid contract shall exist unless:

(b) the object of contract is sufficiently defined, possible and lawful;

Article 1716 (1) Unlawful or immoral object- A contract shall be of no effect where the obligation of the parties or one of them are unlawful or immoral.

2.5 Form of agency contract

Agency is a special type of contract to which the general provisions of contract is applicable. One of the general principles of contract applicable to agency contract is article 1719.

Article 1719, form of contract

(1) Unless otherwise provided, no special form shall be required and contract shall be valid where the parties agree.

(2) Where a special form is expressly prescribed by law such form shall be observed.

When you apply the above article to agency contract you are able to learn that agency contracts can be made in any form unless a special form of agency is provided in other laws or provisions of the Civil Code.

Is there a special form to agency contract?
Article 2200 _ Form of agency

(1) Authority may be conferred upon an agent either expressly or impliedly.

(2) Where the act to be performed by the agent is under the law to be made in a prescribed form, such form shall be complied with in conferring authority upon the agent.

Generally, no formality is required to establish an agency relationship. The principal and the agent can enter into an agreement in any form they like. But there are exceptional cases in which agency contract must be done in a certain prescribed form. This happen in a case where the agent is appointed for the performance of an act that the law required to be made in a specified form. In such situations the agency contract must be made in a form provided by the law for the act. For example if Mr. K needs to appoint Mr. R to sell his house, the appointment must be made in a written form. This is because the law requires the act that is going to be performed by Mr. R, the sale of immovable, to be made in a written form. (Read article 1723 of your civil code)
Section three: Scope of agent’s authority

★ Overview

A principal is bound by a contract entered on his behalf by the agent, if the agent had authority to act for the principal. The authority of the agent is the very essence of the principal and agent relation. One who deals with the agent should know the extent of his authority first and this is possible by looking at the expressed or implied consent of the principal. In this section you will learn how the authority of the agent is determined. You will also know about general and special agents.

✈️ Objective

At the end of this section you will be able to:

- Know what implied authority of an agent is
- Identify implied authority of an agent
• Determine the extent of power of general agent
• Determine the extent of special agent
• Distinguish between Express and implied authority of an agent.

3.1 SCOPE OF POWER OF ATTORNEY

What power does the agent have?

___________________________________________________________
___________________________________________________________
___________________________________________________________
___________________________________________________________

Article 2181: Scope of power of attorney

1. The scope of a power of attorney given by contract shall be fixed in accordance with the contract.

2. Where the agent informs a third party of his power of attorney, the scope of his authority shall as regards such third party, be fixed in accordance with the information given to him by the agent.

3. The scope of the power of attorney shall be interpreted in a restrictive manner.
As indicated in sub article one of the above article, the extent of the power of an agent is determined from the express or implied consent of the principal stated on the contract of agency. (Please refer back to section one of your module to refresh your memory on implied and express authority.)

When the extent of the authority is provided expressly, the extent of the authority can be easily determined from the contract. The difficulty arises if the authority of the agent is stated impliedly.

As provided under article 2002 of the civil code, where the scope of the agent is not expressly fixed, such scope shall be fixed according to the nature of the transaction to which it relates. So in such situations the agent has authority to perform on behalf of the principal all acts that are necessary for the nature of the transaction to which it relates.

In cases where the authority of the agent is implied, one must ask the following two questions that are important to determine the extent of the authority of an agent.

a) was the act performed by the agent an act usually and customarily done in conducting transactions such as the transactions that the agent was authorized to transact?

b) Was the act done by the agent reasonably necessary for the object of the agency contract?

If both answers to the above questions are in affirmative, then the agent is said to act within the scope of his authority.

**General and special agency**
The authority to act on behalf of another may be expressed either in vague (general) terms or in a specific form.

Article 2202: Scope of agency

(2) The agency may either be special for a particular affair or certain affairs only, or general for all the affairs of the principal.

If the authority is expressed on a vague terms the agency relation is known as general agency and if the authority is given specifically the agency relationship is named as a special agency.

### 3.1.1 General agency

What is general agency?

An agency relationship is general when the contracting parties expressed their relationship in vague or more general terms to perform all affairs of the principal.

Article 2203: General agency

*Agency expressed in general terms shall only confer upon the agent authority to perform acts of management.*

What is act of management?
The 1960 Ethiopian Civil Code enumerates acts that amount to act of management under its article 2204. According to this article acts of management includes acts done for the preservation or maintenance of property, leases for terms not exceeding three years, the collection of debts, the investment of income and the discharge of debits and the sale of crops, goods intended to be sold or perishable commodities. (Please read article 2204)

Can a general agent alienate or mortgage a real estate?

As you can understand from the reading of the above article, alienation or mortgaging of a real estate are not incorporated on the list of acts that amount to acts of management. Besides, article 2205(1) states the need to get special authority in order to perform acts other than acts of management. Article 2205(2) is also a relevant provision for the above question. According to this article, a person must get special authority to alienate or mortgage a real estate. As you can learn from the cumulative reading of the above three articles, general agents cannot alienate or mortgage real estate.
3.1.2 Special agency

Special agency is a contract whereby the agent is authorized to perform a particular act only. Special agency may be drafted in a general or vague terms. For example, a principal may sign an instrument authorizing the agent to sell his movable property without enumerating the items to be sold or the terms on which the sale is to take place. Though the items to be sold is not enumerated the agency is special since the authority is limited to the sale of an immovable.

Summary

Agency is a fiduciary relationship that results from the manifestation of consent by one person to another that the other shall act in his behalf and subject to his control and consent. This relationship may be created between persons by agreement, by law, by ratification and by estoppel. The agency relationship is said to be created by agreement when the principal authorizes the agent act on behalf of him. For its validity, an agency contract must be made in a form prescribed by law and the object of the contract must be sufficiently defined, lawful, and possible. The principal must be also capable.

Self check exercise questions:

(1) What is agency relationship?
(2) What do you understand by fiduciary relationships?

(3) Discuss various method of creating agency relationships?

(4) How does agency relationships created by ratification?

(5) When is the principal said to ratify an act?

(6) Discuss is the effect of ratification?

(7) What are the requirements of ratification?
(8) How does agency by created by estoppel?

(9) What are the essential elements for the validity of agency contract?

(10) Every human being has a capacity to be an agent stating from has birth (comment)

(11) How can the principal prove the acceptance of authority by the agent?

(12) What is the form of agency contract?
(13) What is the difference between the power of authority of general agent and special agent?
UNIT TWO DUTIES OF THE AGENT AND PRINCIPAL

INTRODUCTION

The relationship between an agent and principal is a fiduciary relationship. According to Black’s Law Dictionary, a fiduciary is:

1. One who owes to another the duties of good faith, trust, confidence, and candor; or
2. One who must exercise a high standard of care in managing another’s money or property

A fiduciary relationship is defined by Black’s as, “A relationship in which one person is under a duty to act for the benefit of the other on matters within the scope of the relationship.”

From these definitions, we can see that a fiduciary relationship involves a set of obligations between parties to the relationship. By corollary, where there are duties, there are rights, and therefore the possibility that liability will arise. Unit 2 will discuss these rights and duties, while Unit 3 will discuss liabilities that arise due to breach of duties.
The legal sources of the duties and rights arising in a fiduciary relationship are twofold. Primarily, they are provided for in the Ethiopian Civil Code. However, the parties themselves may extend, limit, or define duties through contract. Thus, it is impossible to detail with precision the scope of the duties in an individual fiduciary relationship because they depend upon the terms of the specific agreement between the parties, in addition to the obligations set forth in the Civil Code.

However, as the definition above suggests, there are core obligations, some of which cannot be eroded, even by agreement of the parties. These duties can be divided into two categories: (1) the duties that an agent owes to the principal, and (2) the duties that the principal owes to the agent. These categories are discussed below.

🔗 Objectives

By the end of this Unit, students will be able to:

- Name and define the duty of loyalty, the duty to account, the duty to perform personally, and the duty of diligence
- Explain two different possible interpretations of article 2208(1)
- Explain generally what an agent can do to ‘cleanse’ a transaction of defects
- Explain the significance of an ‘appearance of impropriety’ in terms of the duty of loyalty
- Explain the policy behind the duty to perform personally
Explain when an agent *must* delegate authority, as opposed to when an agent *may* delegate authority

Explain why *force majeure* forces an agent to delegate his or her responsibilities

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Section 1: Duties of the Agent Towards the Principal

**Overview**

As the above definition suggests, there are some core duties that an agent owes to the principal in a fiduciary relationship. Generally, those duties are the duty of loyalty, the duty to account, the duty of diligence, and the duty to perform. In this section, we will explore what these duties entail, and how to interpret them in context

1.1 THE DUTY OF LOYALTY
One of the most fundamental duties that an agent owes to its principal is the broadly termed Duty of Loyalty. In a nutshell, this duty means that the agent shall act only in the best interests of the principal, rather than in his or her own interest, or in the interest of a third party. The Duty of Loyalty can be thought of as a collection of sub-duties, namely, the duty to act in good faith, the implied duty to communicate, the duty to avoid conflicts of interest, and the duty to hold confidential information. Each is discussed in detail in the Civil Code.

1.1.1. The Duty to Act in Good faith

The Duties of the Agent begin in the Civil Code with the Duty of Strict Good Faith:

Article 2208 – *Strict good faith*

(1) The agent shall act with the strictest good faith towards his principal.

(2) He shall disclose to his principal any circumstance which would justify the revocation of the agency or a variation of its terms.

According to Black’s, ‘good faith’ means “faithfulness to one’s duty or obligation.” Article 2208(1) shows that an agent not only has a duty to act in good faith, but to act in “strict good faith.” This duty means, at least, that
an agent must not negligently fail to fulfill his or her obligations to the principal.

Therefore, the Code says that an agent must keep a strict faithfulness to the duties owed to the principal. Thus, this provision outline a certain behavior of the agent, but also is qualifies how the other duties are to be dispatched.

What do you understand about the Duty of Good Faith?

1.1.2 The Duty to Communicate

Generally, an agent also has a duty to communicate information to the principal (sometimes referred to as the duty of candor). Please refer to the second paragraph of Article 2208, copied above. It requires that the agent disclose all information that “would justify the revocation of the agency or a variation of its terms.”

The Civil Code does not clarify what circumstances “would justify” the revocation or variation of the terms of agency. It is clear that the provision
requires disclosure of information that would harm the interests of the principal. But does it require the agent to disclose information that would benefit the principal? The Civil Code does not explicitly require this. However, in light of other jurisdictions’ practices, and the traditional view that an agent owes a duty to communicate all relevant information to the principal, the Article 2208(2) should be interpreted broadly to include a duty to communicate all relevant information that the agent receives.

Illustration 1:

Abdi is a real estate agent for Birhanu, who is a landowner. Birhanu has instructed Abdi to sell a parcel of land for 2 million birr. Abdi receives a bid to buy the property for 1 million birr from Catalan, for whom Abdi works as a purchasing agent. He tells Birhanu of the counteroffer and urges him to take it, but he does not mention that he also acts as a purchasing agent for Catalan. Birhanu accepts Abdi’s advice, and sells the land to Catalan for 1 million birr.

In this illustration, Abdi has violated Article 2208(2) because he does not disclose to Birhanu the fact that he also works as a purchasing agent for Catalan.

What do you think Abdi could have done to protect himself?

Are there any other duties Abdi violates under the above illustration?
1.1.3 The Duty to Avoid Conflicts of Interest

Black’s defines conflict of interest as a “real or seeming incompatibility between one’s private interests and one’s public or fiduciary duties.” An agent owes to the principal a duty to avoid acting in his own (or a third party’s) interest, when acting in the interest of the principal as well. Read Article 2209 and consider the example that follows.

Article 2209 – Effect.

(1) The agent shall act in the exclusive interest of the principal and may not, without the latter’s knowledge, derive any benefit from any transaction into which he enters in pursuance of his authority.

(2) He may not make use to the detriment of the principal of any information obtained by him in the performance of his duties as agent.

Article 2209(1) is the conflict of interest provision of Title XIV.

Illustration 2:
Law of Agency

Esteban is the sales agent for an automobile company. He sells this year’s Mustang Model for a minimum of 100,000 birr, and sometimes he is able to sell it for slightly more. During his employment, his own car breaks down, so he decides to buy one of the cars he sells. He pays the company 120,000 birr for the Mustang.

This illustration outlines a special point about the duty of loyalty. Even though Esteban has bought the automobile for a price above its market value, he is still in violation of 2209(1). This is because the prohibition against conflicts of interest of Article 2209(1) applies even to the appearance of impropriety. That is, Article 2209(1) prohibits an agent from deriving any benefit from a transaction which he enters into pursuant to his authority as an agent, even if the principal has benefited as well.

The rationale for this rule is simple: it is logically impossible to determine whether the agent has actually benefited or been injured. Take the Illustration 2 in which Esteban purchases the automobile above its market value. How could it ever be proved that someone else would not have bought the same automobile at an even higher price than Esteban paid? It cannot be proved. Therefore, 2209(1) prohibits an agent from deriving any benefit from a transaction entered into in pursuance of the agent’s authority.

However, there is an important limitation to the operation of this rule. Consider the phrase from Article 2209(1), “without the latter’s knowledge.” If the agent gives prior notice to the principal, the subsequent transaction is not a conflict of interest, unless the principal refuses to allow it. Thus, in
our example, if Esteban had informed his employer that he was going to purchase the automobile, and his employer did not refuse, the transaction would be ‘cleansed,’ i.e., it would not be a violation of Article 2209(1).

? What do you understand about the appearance of impropriety? Why it is considered a conflict of interest?

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An important question to ask is, what happens if the principal does not refuse, but does not expressly accept either? In other words, does the Civil Code require express refusal? Probably not. The terms of Article 2209(1) do not address the issue of ‘acceptance’, it only requires that the principal have “knowledge,” which means that express consent is not required. In other words, if the agent informs the principal of a conflict of interest prior to entering into a transaction of the type described in 2209(1), the agent would not be in violation of the provision.

It should be noted that, even though Article 2209 does not require express refusal either, an agent that enters into a transaction with the express refusal of consent from the principal violates the requirement of Article 2209(1) that the agent act in the “exclusive interest of the principal.”
1.1.4 The Duty to Protect Confidential Information

Now, please read again Article 2209(2). The best reading of this Article tells us that if an agent gathers information collected in the course of the agency, he or she may not use that information to the detriment of the principal. Consider the following illustration.

Illustration 3:

[Same facts as above Illustration 1, but Abdi is not an agent of Catalan's, rather he is a close friend of Catalan's.] While showing the property to various potential buyers, Abdi discovers that the city plans on paving the road adjacent to the property, which would considerably increase its commercial value. He and Catalan decide to buy the property together for the suggested 2 million birr.

In this illustration, Abdi has violated Article 2209(1) because he has financially benefited from a transaction he has entered pursuant to his authority. Also, he has violated Article 2209(2) because he used information that he obtained during the course of his agency to the detriment of the principal.
What could Abdi have done to ‘cleanse’ this transaction?

Many times, confidential information is obtained in the form of a trade secret. A trade secret is not easily defined, but can be thought of as a formula, process, device, or other business information that is kept confidential to maintain an advantage over competitors.

Illustration 4:

Dawit is the lawyer for a successful beer brewing company. Dawit represented them in litigation concerning the misappropriation of the recipe of the beer. (Assume that the beer recipe is a legally protected trade secret.) During the course of the litigation, Dawit had to view the recipe in order to prepare his client’s case. Shortly after the trial, Dawit starts his own beer brewing company in the same town, which brews beer very similar to that of his former client. Assume that the beer recipe is a trade secret.

In this illustration, Dawit has violated Article 2209(2), because he has used certain confidential information to compete against the principal (i.e., to the detriment of the principal.)
Consider the following questions:

(1) Do you think it should matter whether the company could receive *legal* protection for its recipe as a trade secret?

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(2) Do you think it should matter whether Dawit had formally quit his representation prior to starting the new company?

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1.2 THE DUTY TO ACCOUNT

Agents are often directly involved in transactions—they are the ones that collect or disburse sums of money that relate to transactions conducted on behalf of the principal. In respect of this role, an agent has the duty to account to the principal for all property and money received and paid out on behalf of the principal, according to Article 2210.
2210 – *Accounts*

(1) The agent shall account to the principal for all sums received by him and all profits accruing to him in the course of his employment, notwithstanding that the sums he received were not owed to the principal.

(2) Where the agent converted to his own use monies he owed to the principal, he shall be liable for the payment of interest as from the day of such use, without it being necessary that notice be given to him.

This Article should be read in conjunction with Article 2213:

2213 – *Duty to Account*

(1) The agent shall at any time account to the principal at his request for his management of affairs.

(2) He shall inform his principal without delay that he has accomplished his agency.
As Article 2210 makes clear, anything received by the agent for the principal shall be accounted for to the principal, including profits. The term “sums” indicates that the provision is not restricted to money only, and should include other forms of payment, such as property. Those sums are not restricted to property or money that the agent receives from third parties, but could mean property or money that the principal him or herself has given the agent for use.

Consider for example, a piece of capital such as a machine. The agent must not only account to the principal for the machine itself, but must also account for the profits that the piece of capital earned.

Article 2210 states further that it is immaterial whether the sums were actually owed to the principal. In other words, if an agent receives property such as gifts, secret profits, or even bribes, in the course of his or her agency, the agent must account for those sums as well. This may be considered in connection with the duty of loyalty.

**Illustration 5:**

Agent A is a sales agent for Principal P. Buyer B gives Agent A a gift of a new fountain for his house. Agent A does not account for the fountain to Principal P.

In this illustration, Agent A has violated the duty to account.
Why do think the agent must account for sums not owed to the principal?

Article 2210 does not specify that the agent has a duty to account for sums paid out by the agent, but it can be inferred from Article 2213 that the agent has a duty to keep track of these amounts as well, and to account for them if requested.

Please refer now to Article 2210(2). The language of Article 2210(2) is odd in that it does not adopt an explicit prohibition against the commingling of an agent’s and principal’s funds, as one might find in other Civil Codes or common law-derived laws. Indeed, the provision seems to recognize that this practice is acceptable, within limits. However, the legal effect of this provision may be identical to an express prohibition.

In other words, even though there is not an explicit prohibition against the commingling of funds, the agent will be liable to return those sums (Article 2210) plus any interest accruing from the date of taking the sums.
The paragraph does not clarify who bears the risk of commingling, but presumably under Article 2210(1), the agent assumes any risk of commingling the sums. For example, if an agent converts to her own use monies owed to the principal, and then is robbed of those monies, the agent is liable to the agent for the monies converted plus interest.

1.3 THE DUTY OF DILLIGENCE

In addition to what the agent must do and not do in the course of agency, the Civil Code also dictates how those duties are to be performed. The duty of diligence dictates the degree of care that must be exercised by the agent.

Article 2211 – Diligence required of agent.

(1) The agent shall exercise the same diligence as bonus pater familias in carrying out the agency as long as he is entrusted therewith.

(2) He shall be liable for fraud and for defaults in the performance of his duties.

(3) Whosoever undertakes without consideration to act as an agent shall not be liable unless he has not applied to the affairs of the principal the same degree of care as to this own.
Generally, an agent has the duty to use reasonable skill and care in performing his or her duties. In other words, the agent must avoid acting negligently. What is ‘reasonable’ or ‘negligent’ will vary under the circumstances, and depending on the nature of the agency. For instance, if an agent possesses special skills or talents (such as a lawyer or an accountant), that agent is expected to act as a reasonable lawyer or accountant would act under the circumstances. In this regard, it is important to note that the agent will be expected to act with any special skill *that the agent has represented him or herself as possessing*. Therefore, even if the agent is not a lawyer, the agent will be expected to act with the reasonable care and skill of a lawyer if the agent has represented him or herself as one, and the principal has believed the agent.

If the agent fails to use ordinary skill under the circumstance, he or she will be liable for the default in the performance of his duties. Additionally, the agent may be liable for fraud, depending on the circumstances of which agent represented him or herself.

Paragraph (3) applies to agency relationships that are entered into without consideration, i.e., without payment. In general, an agent is *not* liable for negligence in this type of agency relationship. However, the agent is responsible to the act with the same degree of skill as he would act in his or her own affairs. Note that this is a lower standard than a basic negligence standard, meaning that it would be more difficult to establish the liability of an agent acting without pay.
Illustration 6:

Amsale is in a gratuitous agency relationship with Gadissa, for the sale of a certain property. Amsale is also involved in selling her own property. Amsale does nothing to market either property, does not return phone calls, and pays very little attention in maintaining either properties' appearance for the sake of attracting potential buyers.

In this illustration, Amsale has not breached the duty of diligence, because she has applied a low degree of skill to her own affairs, and the gratuitous agency.

1.4 THE DUTY TO PERFORM PERSONALLY

An agent has the duty to perform his or her duties personally, rather than delegate responsibilities to another.

Article 2215 – Delegation of authority – 1. Possibility

(1) The agent shall carry out the agency in person unless he was authorised by the principal to appoint a substitute.
(2) Such authorisation shall be implied where from usage it appears a matter of indifference whether the agent acts personally or by deputy.

(3) The agent shall appoint a substitute, where the interest of the principal so requires, when unforeseen circumstances prevent him from carrying out the agency and he is unable to inform the principal of these circumstances.

The duty exists because the agent-principal relationship is a fiduciary relationship. In other words, it is one of trust and confidence. Therefore, the agent is selected by the principal based upon some trust and confidence in that particular agent, and that agent’s abilities. If the agent was allowed to delegate the authority vested in him or her, that would undermine the principal’s decision, which is based upon trust and confidence.

? How would you explain the policy underneath the duty to perform personally?
The duty to perform personally the responsibilities of agency is not absolute. An agent may delegate responsibility under two circumstances: (1) where the principal authorizes the agent, or (2) where such authorization is implied from the surrounding circumstances. The agent must delegate responsibility when unforeseen circumstances prevent him from carrying out the agency.

1.4.1 Where the principal authorizes the agent

Article 2215(1) allows an agent to delegate responsibility when he or she receives authorization from the principal. The text does not clarify whether such authorization may be inferred from the silence of the principal after due notification. However, a comparison with Article 2214(1), which explicitly refers to a case where approval may be inferred through silence, suggests that the drafters of the Code intended that authorization under 2215 may be obtained explicitly only.

This view is supported by the interpretative rule that exceptions to a general rule should be interpreted narrowly. Here, the general rule is that the agent must perform the responsibilities him or herself, while the exception is that the agent may, under certain circumstances, dispatch the responsibilities to a delegate. Thus, this interpretative rule suggests that authorization must be obtained explicitly, because it is a more narrow interpretation.
1.4.2 Where such authorization is implied from the surrounding circumstances

Article 2215 provides another circumstance in which an agent may delegate his or her duties. This paragraph states that the duty to perform an obligation personally may be waived if the authorization to delegate is implied from the circumstances that the delegation is a matter of indifference.

The Civil Code does not make clear what circumstances amount to “a matter of indifference.” However, a court would probably consider “indifference” in relation to certain factors such as the motivations of the principal for choosing that particular agent, and the scope of the agency relationship, including the expectations of the principal. Keep in mind that the policy underlying this provision is to encourage the principal to seek out and utilize agents, and therefore, a court would probably adopt a strict standard for allowing appointments due to indifference, if it in any way threatened the underlying policy of encouraging the formation of fiduciary relationships.

Illustration 7:

Assume a client seeks legal counsel from a famous litigator of products liability cases, with a reputation for courtroom rhetoric. The attorney does all the preparatory research, document drafting, and pretrial work, but then at trial appoints a junior member of her legal team to make the oral arguments to the judge.
In this case, the appointment is not an 'indifferent' delegation.

Note also the important qualification of “indifference” here. Article 2215(b) does not apply to actual indifference, but only to the appearance of indifference. This results in a subjective test whereby the agent’s perception of whether or not the appointment would amount to “indifference” is relevant.

? Give an illustration of an agent making a subjectively indifferent appointment.

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1.4.3 Where the agent has a duty to appoint a substitute

Finally, the agent has a positive duty to appoint a substitute in certain circumstances. Please re-read Article 2215(3). This Article is a force majeure provision. Force majeure is an event or events that cannot be anticipated or controlled. Thus, if an agent cannot perform his or her responsibilities (for example as a result of war), the agent has an obligation to appoint a substitute. (This assumes that the war could not be anticipated
or controlled by the agent). The rationale of this rule is that, if due to unpredictable circumstances, the agent is actually performing his or her duty diligently by appointing a substitute. In order for this exception to operate, three conditions must be fulfilled:

(1) the best interests of the principal require an appointment;

(2) “unforeseen circumstances” must have prevented the agent from carrying out the agency; and

(3) The agent is unable to inform the principal of the circumstances.

The second requirement is the *force majeure* requirement. Force majeure should not be interpreted in a manner that would eviscerate the duty to perform obligations personally. In judging what circumstances constitute force majeure, one should consider not only what could reasonably have been predicted by the agent, but also what *effect* the waiver of the general rule has on the first part of the rule of 2215(1). Article 2215(3) should be considered in harmony with 2215(1), rather than a derogation from it.

? Under what circumstances *must* an agent delegate his or her responsibilities? Under what circumstances *may* an agent delegate his or her responsibilities?
Section 2: Duties of the Principal Towards the Agent

★ Overview

It is not simply the principal that must be protected in order to strengthen the agency relationship, but the agent must be protected also. As long as both parties are duly protected, the objectives of agency are served.

Thus, the principal owes some duties to the agent, generally limited to those of a pecuniary nature. The biggest difference between the duties owed to each other is that the principal owes none of the strictly fiduciary duties toward the agent discussed in the last section, i.e., the duty of loyalty and the duty of diligence. Requiring the principal to perform these duties simply does not strengthen the objectives of the agency relationship.

However, requiring some duties of the principal is necessary to make the agency relationship function properly. These duties are the duty to remunerate, and the duty to reimburse and indemnify.

✈ Objectives

By the end of this section, students will
Law of Agency

- Understand why the duties owed to the agent are not fiduciary in nature
- Define and differentiate the duty to reimburse, the duty to remunerate, and the duty to indemnify
- Know when a principal must remunerate the agent in the absence of a stipulation in the contract
- Explain under what two circumstances must a principal indemnify the agent
- Explain the circumstances in which a principal may set-off sums owed to the agent
- Explain under what circumstances an agent acquires a lien over property belonging to the principal

2.1 THE DUTY TO REMUNERATE

The basic duty that the principal owes to the agent is the duty to remunerate. This duty is necessary to preserve the fiduciary relationship, since agent would not enter into fiduciary relationships without at least some protection in regards to compensation.

Article 2219 – *Contractual Remuneration*

(1) The agent shall be entitled to the remuneration fixed in the contract.
(2) The court may reduce the remuneration fixed in the contract where it appears excessive and out of proportion to the services rendered by the agent.

Article 2219 is straightforward; it reiterates that contractual obligations must be followed. Therefore, it is advisable to state clearly in the contract the amount of remuneration, and when that remuneration is expected.

Paragraph (2) gives courts the power to reduce the amount of remuneration the principal is required to pay where it is excessive and disproportionate to the services rendered.

The Civil Code also has a provision that applies to remuneration in the absence of a stipulation in the contract:

**Article 2220 – Remuneration not fixed by contract**

(1) In the absence of a stipulation in the contract, the agent shall not be entitled to remuneration unless he carried out the agency within the scope of his professional duties or where such remuneration is customary.
(2) Failing agreement between the parties, the court shall fix the remuneration in conformity with recognized rates and usage.

This Article lays out the general principal that where the contract does not stipulate remuneration, the agent is not entitled to any. In other words, a gratuitous agency will be implied. However, there are two important exceptions to this rule.

**Exception 1:** If the agent has carried out the agency within the scope of his professional duties, remuneration will be obligatory. For example, lawyers, accountant, and real estate brokers all carry out their agency duties within the scope of their professional duties, and therefore, would usually have a right to remuneration from the principal.

**Exception 2:** Even if the contract does not stipulate remuneration, the agent is entitled to remuneration where it is customary. This will depend largely on the particular community and industry that the agency takes place.

? Identify and explain the 3 circumstances in which a principal is obligated to remunerate the agent:
2.1 THE DUTY TO REIMBURSE AND INDEMNIFY

In addition to the duty to remunerate, the principal is obliged to reimburse the agent for any outlays and expenses the agent incurs in the course of agency, and also the principal must indemnify the agent for any losses suffered by the agent in the course of the agency.

Article 2221 – Outlays and expenses

(1) The principal shall advance to the agent the sums necessary for carrying out the agency.
(2) He shall reimburse outlays made and expenses incurred by the agent in the proper carrying out of the agency.

(3) Interest on such outlays and expenses shall be due by the principal as from the day when they were incurred without it being necessary to place the principal in default.

Thus, the principal has the obligation to advance to the agent whatever money or property is necessary to carry out the expected agency. It is unclear what the consequence of failing to advance the money is under the Civil Code, as the principal also has the obligation to reimburse the agent for any outlays made by the agent in the “proper carrying out of the agency,” plus interest from the date the agent incurs the expense.

So there is no practical difference between ‘advancing’ the sums and ‘reimbursing’ the sums used to carry out the agency. However, an agent would do well to require advances as much as possible. The phrase “proper carrying out of the agency” might lend itself to legal challenge by the principal after the agent makes demands for reimbursement.
How would you differentiate between remuneration, reimbursement, and indemnification?

In addition to the principal's duty to reimburse the agent for expenses, the principal also has the duty to indemnify the agent for any liabilities, and for damages incurred as well, granted that those damages were incurred in the course of the agency and any liability was not due to the agent's fault.

**Article 2222 – Liabilities and damages.**

(1) The principal shall release the agent from any liabilities which he incurred in the interest of the principal.

(2) He shall be liable to the agent for any damage he sustained in the course of the carrying out of the agency and which was not due to his own default.

In other words:
The principal must indemnify the agent for:

1. liabilities incurred in the interest of the principal; or
2. any damage suffered by the agent,
   a. within the proper carrying out of the agency, and
   b. the damage was not due to the agent’s own fault.

As an exception to the basic obligations that the principal owes to the agent, the principal may set-off the amounts owed to the agent under certain circumstances.

**Article 2223 – Set-off**

(1) The principal may not refuse to pay the sums due by him to the agent under the pretext that the transaction was unsuccessful.

(2) He may set-off these sums against those owed to him by the agent, in particular by reason of the latter’s
default in the performance of the agency.

Thus, if the principal owes sums to the agent, he or she may set-off those sums against sums owed by the agent, particularly those sums owed by reason of the agent's default in obligations. (Article 2223)

Illustration 8:

The principal owes the agent 500 birr for damages incurred by the agent, and the agent owes the principal 500 because the agent is in default in the performance of the agency, the principal may set-off the 500 birr and pay the agent nothing.

However, to the extent that the principal still owes the agent sums, after set-off or otherwise, the agent will obtain an agent's lien (i.e., a legal right over something) on any property entrusted to the agent by the principal, until reimbursement or indemnification by the principal occurs. Article 2224 – Agent’s lien reads:

Until the payment of the sums due to him by reason of the agency, the agent shall
have a lien on the objects entrusted to him
by the principal for carrying out the agency.

Please refer back to Article 2223. Notice the important clarification of
Article 2223(1), which stipulates that the result of a transaction performed
by the agent is irrelevant to whether or not the principal owes the duty to
reimburse the agent. Thus for example, where the agent enters into a
contract with a third party that turns sour, and is sued by the third party, the
principal must indemnify the agent for any liabilities incurred, despite the
fact that the contract was unsuccessful.

UNIT TWO SUMMARY

In this Unit, you have learned the basic duties that an agent owes to a
principal, and the basic duties that a principal owes to an agent. You have
also been exposed to the intricacies of the Civil Code, and how it can be
interpreted. At this point, you should have a firm grasp on the nature of the
agency relationship, and what policies underlie the various duties that are
created by the formation of the agency relationship.
REVIEW QUESTIONS FOR UNIT TWO

1. Mekdes is an accountant. She met with a client who sought assistance negotiating a business contract. Mekdes assured the client that she has a great deal of experience in negotiating contracts, but in reality, she has never negotiated a business contract professionally. Just prior to negotiations, there is a change in the contract law, which reasonable lawyers are expected to know about. Mekdes is not aware of the law, because she is an accountant and does not keep abreast of changes to contract law. The client loses money as a result of this oversight.

Has Mekdes breached any duties to the client? Is there anything she might be liable for outside of agency laws?

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Would you answer change if Mekdes is a lawyer, and has experience in negotiating contacts?

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__________________________________________________________________________
__________________________________________________________________________
Would it make any difference that she has negotiated contracts outside of her professional career?

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2. Miki is a famous and very successful real estate agent. Because of his reputation, Betel hires him as her agent in selling her home. But Miki is very busy, and so he assigns the sale to his partner, Fasil. Fasil sells the home at a price lower than its market value.

Has either Miki or Fasil breached any duty to Betel?

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Would your answer change if the home was sold for a price well above its market value?

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3. Assume a client seeks legal counsel from a famous litigator of products liability cases, with a reputation for courtroom rhetoric resulting in large damage awards. The attorney assigns all the preparatory research, document drafting, and pretrial work to his colleagues. They lose the case. Has the attorney breached any duty to the client?

4. Must the agent receive permission from the principal in order ‘cleanse’ a transaction that entails a conflict of interest?

5. Amsale is in a gratuitous agency relationship with Gadissa, for the sale of a certain property. Amsale is also involved in selling her own property. Amsale does nothing to market Gadissa’s property, does not she return phone calls from potential buyers of the property, and she pays very little attention in maintaining his property’s appearance for the sake of attracting potential buyers. However, she is aggressively marketing her own property, and she visits is every day to ensure that it is well kept.
6. Consider the case of a delala that assists people in finding homes to rent. Assume that a delala assists in finding someone a home for rent. The renter never pays any money to the delala, and there is no contract between the two parties. Does the delala have a claim against the renter? Should he or she?

7. X owns an auto dealership which acts as a sales outlet for an Auto Company. X therefore is the Auto Company’s sales agent. The dealership has many of the Auto Company’s cars for sale. X sells a car to Y. The car had faulty brakes, and soon after the sale, the brakes fail and Y is seriously injured. Y sues X for damages suffered as a result of the bad brakes.

Can X compel the Auto Company to indemnify any damages he is liable for to Y?
8. Assume the same facts as above in Question 5. The Auto Dealership fails to indemnify X. What options are available for X to recover the money owed to him?

9. Agent A is authorized by an agency contract to purchase “up to 500 computers from IBM.” After very favorable negotiations with both IBM and Dell Computers, Agent A enters a contract for the purchase of 1000 computers from IBM. She also enters a contract for the purchase of 200 computers from Dell Computers.

Is the Principal obligated to purchase all, none, or some of the computers?

Could the principal honor the contract if she wanted to? What could she do?
UNIT THREE: LIABILITIES IN THE AGENCY RELATIONSHIP

INTRODUCTION

So far, you have studied how the agency relationship is formed, and what duties and rights arise after the formation of the relationship. In this Unit, you will study the circumstances that create liabilities for the agent or the principal. The Unit is divided into three sections: the liability of the principal to third parties, the liability of the agent to third parties, and the liability of both parties to third parties.

Objectives

By the end of this unit, you will be able to:

- Explain why certain liabilities arise for the principal as opposed to the agent
- Define the ‘scope of agency’
- Explain when a principal is liable for an agent’s actions outside the scope of agency
- Explain the basic conditions that give rise to a principal’s liabilities
- Explain the basic conditions that give rise to an agent’s liabilities
- Explain the basic conditions that may give rise to joint liabilities
Section 1: The Liability of a Principal to a Third Party

Generally, the principal is liable to a third party under three circumstances: (1) when the agent acts within the scope of the agent’s authority; (2) when the agent acts outside the scope of agency, and the principal ratifies the action; and (3) when the agent commits fraud against a third party.

1.1 WHEN THE AGENT ACTS WITHIN THE SCOPE OF THE AGENT’S AUTHORITY

Article 2189 – Complete agency

(1) Contracts made by an agent in the name of another within the scope of his power shall be deemed to have been made directly by the principal.

Thus, whenever an agent acts within the scope of agency, the effect is as though it is the principal him or herself that entered the contract. Therefore,
the third party’s rights and duties vis a vis the principal are equivalent to a contract entered into by the principal him or herself. The principal must perform the contract. The agent, after entering the contract on behalf of the principal, disappears from involvement.

However, this form of liability only applies to situations where the agent acts within the scope of the agency. But two questions arise: (1) How can we define the “scope of agency”? and (2) What happens in a situation where the agent acts outside that scope?

1.1.1 What is the scope of agency?

As mentioned in Unit Two, the scope of agency cannot be determined with precision in every case, without looking at the individual contract between the agent and principal. But in general, in order to define the scope of the agency, one looks to the agency contract itself, the obligations set forth in the Civil Code, and the practice in the particular industry in which the agent operates. Please recall the discuss on scope of agency from Unit One.

1.2 WHEN THE AGENT ACTS OUTSIDE THE SCOPE OF AGENCY
The situation where the agent acts outside the scope of agency sometimes gives rise to liability as well. As a general rule, the principal is not bound by the agent’s actions outside the scope of agency (cf. Article 2189(1) above). To use a simple example, if the principal directs the agent to sell a piece of real estate, and the agent enters into a contract in the name of the principal for the sale of the third party’s automobile, then the agent has acted outside the scope of the agency, and the principal is not bound by the contract, and the agent is liable to the third party instead of the principal.

But what happens if the agent acts outside the scope of agency and the principal ratifies the action?

**Article 2190 – Abuse of lapse of power**

(1) Contracts made by an agent in the name of another outside the scope of his power may be ratified or repudiated at his option by the person in whose name the agent acted.

(2) The provision of sub-art (1) shall apply where the agent acted under an authority which had lapsed.

Or for a special agent:
Article 2206 – *Authority of special agent.*

(2) An act performed by the agent outside the scope of his authority shall not bind the principal unless he ratifies it, or in accordance with the principles governing unauthorized agency.

Thus, the Civil Code allows the principal to approve of the action, even if the agent acted outside his or her authority. If the principal does ratify the action, then the principal is liable to any third party that the agent contracts with.

So to return to the example above, if the principal gives authority to the agent to sell a piece of real estate, and the agent instead enters into a contract on behalf of the agent to buy an automobile, the principal could decide that he wants to purchase the automobile, and liability is formed. Thus, if he ratifies the contract of the agent, and later goes bankrupt and cannot pay, he cannot go back and claim that the agent has acted outside the course of agency.

1.2.1 What is ‘ratification’?
However, Article 2190 does not identify in what manner the principal must, or may, ratify the agent’s actions in order to incur liability. For instance, what happens if an agent notifies the principal of his action outside the scope of agency, and the principal remains silent? Using the example above, assume that the principal does not give a response to the agent when the agent informs the principal that he has entered a contract for the purchase of an automobile, on behalf of the principal. Is the principal liable to the third party?

This is a tricky issue in many parts of the Civil Code, which leaves the question of tacit versus explicit acceptance open in many parts. Neither Article 2190(1) or 2206(2) clarifies what the principal must do in order to ratify an agent’s actions. This could prove a source of difficulty.

Generally, ratification may take the form of words of approval to the agent, a promise to perform or actual performance, such as the delivery of the product called for in the agreement.

However, as a general rule, ratification does not have binding effect on the principal if he or she is without full knowledge of all relevant facts of the negotiation and execution of a contract. Therefore, if the principal ratifies an action of the agent which was performed outside the scope of the agent’s authority, but the agent withheld certain relevant facts from the principal, the principal is not bound by the action.

1.2.2 What is ‘repudiation’?
Another source of confusion within this context is the use of the word “repudiate” in Article 2189(1). Please compare Article 2190(1) and Article 2189. Article 2189 makes clear that it is the general rule that principals are only bound by the actions of an agent within the scope of agency. Conversely, it is a general rule that principals are not bound by actions of agents performed outside the scope of the agency. Thus, Article 2190(1) gives an exception to the general rule. Exceptions to rules are usually to be read narrowly, and in this case, should be read narrowly to protect the principal. However, read in this manner suggests that the use of the word “repudiate” would be redundant with Article 2189(1). The Civil Code should not be interpreted in a manner that makes for redundancies, when there is another valid interpretation available. Therefore, it is possible that Article 2190(1) makes express repudiation a requirement in order to avoid liability, even if it negatively affects the principal.

Consider the second interpretation in light of our example. Assume again that the agent enters into a contract for the purchase of an automobile, on behalf of the principal. The principal says nothing. Under the interpretation of Article 2189(1) above, the principal would still be liable, even if he did not expressly ratify the action because he did not expressly repudiate the contract either.
1.3 WHEN THE AGENT COMMITS FRAUD AGAINST A THIRD PARTY

Finally, the principal is liable to a third party where the agent commits fraud against the third party.

Article 2189(3) – Complete Agency

(1) Any fraud committed by the agent may be set up against the principal by the third party who entered into the contract with the agent.

Thus, if the agent commits fraud against a third party, the principal will be liable for damage suffered by the third party. So, for example, if the principal sells flood insurance, and the agent defrauds a third party into buying fire insurance that the principal does not offer, the principal will be liable for any damage suffered by the third party as a result of that sale.

Please note, however, that the principal is not criminally liable for the acts of the agent, he or she is only civilly liable. Thus, using the example above, if the fraudulent sale of the fire insurance was on such a scale as to amount to criminal fraud, the principal would not be liable for the criminal aspects of the fraud. In other words, the principal would not be subject to
criminal sanction (such as prison), but would be subject to civil sanctions (such as damages).

1.3.1 When the agent is defrauded

But consider a situation where the agent is the one being defrauded by the third party. Can the principal have a remedy against a third party that commits fraud against the agent? The answer is yes.

Article 2189(2) – Complete agency

The principal may avail himself of any defect in the consent of the agent at the time of the making of the contract.

Therefore, if the consent of the agent was obtained by fraud, the principal will have a remedy against the fraudulent third party. (Note also that this provision applies to consent given under duress, or by mistake as well.)

1.4 WHEN THE AGENT HAS MADE AN APPOINTMENT
Another circumstance might give rise to liability of the agent. Article 2216 provides for liability of the agent for his or her failure in the duty to perform personally.

Article 2216 – 2. Liability of agent

(1) The agent shall be liable for the acts of any person whom he appointed without authorisation as his substitute as if they were his own.

(2) Where the agent has been authorised to appoint a substitute, he shall be liable only for the care with which he selected his substitute and gave him instructions.

First, where the agent does not make a valid appointment according to Article 2215, he or she is liable for all the acts of the appointee as if they were the agent’s acts.

Second, if the agent does make an appointment in accordance with 2215, the agent will not be liable for the actions of the appointee. However, the agent may be liable for the care of which he or she made the appointment.

Finally, the Civil Code makes clear that the relationship between the appointee of the agent and the principal is identical to the relationship
between the agent and the principal, as long as the substitute agent believed that the agent was authorized to appoint a substitute.

Note that this is a subjective standard. This means that it does not make a difference whether the appointment was made in strict accordance with Article 2215. As long as the substitute agent “had reason to believe that the agent was authorized by the principal to appoint a substitute,” a legal relationship between substituted agent and principal is formed. Therefore, due to this formation, the relationship between substitute agent and principal entails all the same rights and duties under the Civil Code as any other agency-principal relationship.

However, if in fact, the agent did not have actual authority to appoint a substitute, the principal would have a cause of action under Article 2216(1) against the agent.

Section 2: The Liability of the Agent to a Third Party

As a general rule, an agent is not personally liable to third parties (as long as the agent acts with proper authority). However, what happens if the agent does not act with the proper authority?

Two different outcomes might occur in the situation where an agent acts without proper authority from the principal. According to Article 2190(1)
(copied above), if an agent acts without proper authority, the principal has the choice either to ratify or repudiate a contract. The situation in which the principal ratifies the contract is discussed above. However, if the principal decides to repudiate the contract, it is the agent who becomes personally liable to the third party, instead of the principal. (Note also that the same rule applies if the agent acts with authority which has lapsed).

We can probably consider repudiation to mean either express or tacit repudiation, because the general rule is that agents are liable to third parties for actions performed outside the scope of authority.

Section 3: Joint Liability

Under some circumstances, an agent and the principal are jointly liable to third parties.

Article 2195 – Liability of principal

The principal shall be jointly with the agent where:

(a) he informed a third party of the existence of the power of attorney but failed to inform him of the partial or total revocation of such power; or
(b) he failed to ask the agent to return the document evidencing the power of attorney and failed to seek a judicial decision to the effect that such document was revoked; or

c) he caused in any other manner, in particular by his statements, behavior or failure to act, a third party to believe that the person with whom he was dealing was authorized to act on behalf of the principal.

Article 2195 calls for joint liability under three difference circumstances. First, under paragraph (a), the agent and principal are jointly liable when the principal has:

(1) informed third parties of power of attorney of the agent; and

(2) that power has subsequently been partially or completely revoked; and

(3) the principal fails to inform the third party that such power has been revoked.

If these three elements are present, then the principal and agent will incur joint liability to the third party. The reason for such joint liability is to
encourage principals to keep all third parties informed of revocation of agency power, so as to avoid situations of apparent authority.

The second situation that will give rise to joint liability is where the principal fails to ask the agent to return the documents evidencing power of attorney. Article 2184(1) should be read in conjunction with Article 2195(b).

Article 2184(1) states that:

“The agent shall upon the authority coming to an end return to the principal the document, if any, evidencing his authority.

Thus, if:

(1) the agency is revoked; \textit{and}

(2) the agent does not return the documents evidencing such agency; \textit{and}

(3) the principal fails to ask the agency for the documents evidencing such agency,

the agent and principal will be jointly liable to third parties relying on the agent’s apparent authority.
Article 2195(b) entails another option for the principal as well. Instead of asking (and receiving) the documents evidencing agency, the principal may request a judicial decision to the effect that the agency has been revoked. This method would generally be used in a situation where the agent either refuses to return the documents, or claims them to be lost or stolen. If the principal does obtain a judicial decision to the effect that the document was revoked, there will be no joint liability.

Finally, joint liability arises when a principal’s behavior suggests to the third party that the agent has authority. Such behavior may be given by statements, conduct, or failure to act. In this situation, apparent authority is given by the principal.
UNIT THREE SUMMARY

In this unit, you have learned what happens when an agent or principal violates an obligation accruing to him or her by reason of the agency contract, or the Civil Code itself. At this point, you should be aware of the circumstances that give rise to liability in the agent, the principal, and both. You should understand that, in almost all situations, a principal may ‘cleanse’ a transaction by ratifying an agent’s actions. In this case, liability does not arise.

REVIEW QUESTIONS FOR UNIT THREE

1. Agent Matewos is authorized to sell 1,000 shares of stock in Company Y. He learns that the company is about to merge with another company next week (and thus its stock will increase in value). He does not communicate this information to the principal. Agent Matewos instead sells 2,000 shares of the stock. The principal ratifies the actions by accepting
the proceeds from the sale. After accepting the proceeds from the sale, the principal learns of the merger.

Can the principal later claim liability from Matewos?

2. Agent A’s authority has lapsed. Principal P tells potential Customer C to speak to A about buying a parcel of land. C and A enter into a binding contract for the purchase on behalf of the P. Who is liable for performance of the contract?
UNIT FOUR: TERMINATION OF AN AGENCY RELATIONSHIP

★ OVERVIEW

Agency relationship does not last forever. The relationship ends at some point either by the act of the parties or by operation of law. So in this unit you will study in detail how the act of the parties to agency relationship, and law, bring agency to an end.

4.1 TERMINATION BY THE ACT OF THE PARITIES

4.1.1 Under express reservation

A duly drafted agency agreement discusses, impliedly or expressly, when and how the agency is to end. Meaning, the parties may in their agreement condition or limit the occurrence of which will terminate the agency. The conditions or the limitations upon which the termination of an agency relationship may consist of certain dates, achievement of the purpose of agency or the occurrence of some particular event. If such specification is included in the agreement, the agency relationship will automatically terminate when the date lapses, the purpose of agency contract is achieved, or when the specified event occur.

The careful reading of article 1731(a) enables to know that one way of terminating agency is agreement of the parties.
Article 1731(1) – principle

A provision of a contract lawfully formed shall be binding on the parties as though they were laws.

If one or more provisions that deal with termination of agency relationship are inserted in agency contract, the provision will bind the contracting parties as law and the agency relationship will automatically be terminated upon the fulfillment of the condition. In their agreement, contracting parties may put lapse of time, achievement of the purpose of agency or occurrence of a specific event as a pre-condition for termination of agency.

4.1.2 Lapse of time

In their agreement parties to an agency relationship may specify the time period during which the agency relationship will exist. If such specification is made in a contract, the agency relationship ends when the time expires.

Illustration

In a written contract he entered with his daughter Miss M, Mr. A authorizes Miss M to handle his business affairs for three months starting from the date they entered into the agency contract. In this case, there is express agreement between the parties as to the termination of contract. According to their agreement the contract will terminate when the three month period specified in the contract lapses.

4.1.3 Achievement of the purpose of agency

An agent may be authorized to perform a specific act or to accomplish a particular objective. For example, an agent may be authorized to sell the
mobile phone of the principal. In this case, the authority of the agent automatically ends when the mobile phone has been sold.

4.1.4 Happening or cessation of stated event

An agency can be created to terminate upon the happening or cessation of a certain event. For example Mr.A appoints his daughter Mr.M to handle his business affair while he is away. When Mr.M returns, the agency automatically terminates since reservation is made for the termination of agency upon the returning back of Mr.A.

4.1.5 Mutual agreement

Contract or agreement doesn’t always create an obligation. As you have already learned in your contract I course, a contract or agreement can also be entered between two or more person to end an existed obligation. Meaning parties to a contract may enter into another contract to end the contractual obligation that already exists between them. As between themselves, the parties to an agency contract have a right to agree to its cancellation, and such mutual abandonment of an agency terminates the agency relationship. (Please Read article 1675 below)

Article 1675-contract defined

A contract is an agreement whereby two or more persons as between themselves create, vary or extinguish obligation of a proprietary nature.

Mr. A authorized Mr.B to manage his business while he was away, and then he left to Canada. While Mr.A is in Canada, a job offer is made to Mr.B by the Africa Union. Since Mr.B wants to accept the job offer, he made a call to Mr.A and told the latter his interest to accept the job offer
and to end the agency relationships that exist between them. Mr. A then accept Mr. B’s offer for the termination of the agency contract and appoint his wife Miss S into manage the business.

As you can understand from the above case, the termination clause was incorporated in the agency contract. According to the termination clause the agency contract was intended to end when Mr. A returns. But since subsequent agreement is made between the agent and the principal to end the agency relationship before the occurrence of the specified condition, the agency relationship will end before Mr. A’s return. The possibility of terminating the agency relationship by mutual consent can also be inferred from article 1819.

Article 1819- consent of the parties

1) A contract can be terminated where the parties so agree.

Termination by one party

Under Ethiopian law either the principal or the agent can terminate an agency relationship without any exceptions. If it is the agent who terminate the agency relationship, the act of the agent is said to be a renunciation of authority. But if the termination is by the principal the act of the principal is a revocation of authority.

Why are parties to an agency relationship allowed to terminate agency relationship unilaterally?
Parties to agency relationship are allowed to terminate their relationship unilaterally because, agency is a consensual relationship. Since it is a consensual relationship neither party can be compelled to continue in relationship. But this does not mean that the parties have a right to terminate the relationship unilaterally. The parties don’t have such rights. Hence, any party who unilaterally terminates the relationship will be liable for breach of contract.

4.1.6 Revocation of agency

What do you understand by revocation?

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Article 2183

(1) The principal may at any time restrict or revoke the authority he gave to the agent to make the contract in his name.

As you can understand from the reading of the above article, revocation is the withdrawal of the power of the agent by the principal. The principal may revoke the relationship in any ground and at his own discretion. Under Ethiopian law no exception is placed on the power of the principal to revoke agency.
Article- 2226 Revocation of agency

1. *The principal may revoke the agency at his discretion and, where appropriate, compel the agent to restore to him the written instrument evidencing his authority.*

2. *Any provision to the contrary shall be of no effect.*

As is explained above, no restriction is placed on the power of the principal to revoke the agency. The principal can revoke the relationship any time he wants to. However, as per article 2227(1) of the civil code, the principal should make good the damage caused to the agent if the revocation is made prior to the agreed date or under a condition detrimental to the agent.

Article 2227 – Effect of revocation

1. *The principal shall indemnify the agent for any damage caused to him by the revocation where such revocation occurred prior to the agreed date or under condition detrimental to the agent.*

2. *The principal shall incur no liability where the date was agreed upon in his own interest exclusively or he has a just motive for revocation.*

According to the above article revocation made prior to the agreed date subjects the principal to a suit for damages unless the date is fixed in the principal’s interest.

Can one of the principals revoke the agency where the agent has been appointed by several principals?
Article -2228

1. Where the agent has been appointed by several principals for a common affair, the revocation of the agent may be effected only by all the principals.

2. One of the principal may not without the others’ consent revoke the common agent unless such revocation is founded upon a just motive.

Dear learners, as you can understand from the reading of the above article, in cases where the agent is common agent, meaning in case where the agent is appointed by several principals for common purpose, the consent of all the principals is necessary to for revocation. One of the principals may not revoke the agency unless he has just motive to make the revocation.

What does just motive mean? What is just motive for one may not be just for other persons. So just motive is open to interpretation.

4.1.7 Renunciation by the agent

What do you understand by renunciation?

Renunciation by the agent means, resigning of an agent from the authority given to him by the principal. To put it in other words, renunciation by an agent means the giving up of authority by the agent. In order to have a
better understanding about renunciation please read the following provision of the Civil Code.

Article 2229- Renunciation of the agent

1. The agent may renounce the agency by giving notice to the principal of his renunciation.

2. Where such renunciation is detrimental to the principal, he shall be indemnified by the agent unless the latter cannot continue the performance of the agency without himself suffering considerable loss.

The Ethiopian Civil Code gives power to the agent to unilaterally terminate his agency relationship with the principal subject to only one condition. As indicated in article 2229(1) above, the only condition provided for renunciation of an agency by the agent is the giving of notice to the principal as to the renunciation.

Having the power to renounce does not mean that the agent has right to terminate the contract. If the renunciation is detrimental to the principal the agent shall indemnify the principal but this also is subject limitation. If the agent cannot continue the performance of the contract without suffering a considerable loss, the agent has no obligation to make the damage caused to the principal as a result of the renunciation.

4.2 TERMINATION BY THE OPERATION OF LAW

The law has recognized certain events the occurrences of which automatically terminate the agency relationship. These events automatically terminate the events because their occurrence makes it impossible for the agent to perform the act he is authorized to perform or makes improbable that the principal would continue to want performance.
The events include death or insanity, declaration of absence, incapacity and bankruptcy of the agent or the principal.

### 4.2.1 Death or incapacity of the agent

The general rule is death or incapacity of the agent automatically terminates the ordinary agency relationship. But as indicated under article 2230 of the 1960 Ethiopia civil code, the occurrence of such event does not terminate the agency contract if there is agreement between parties for the continuation of the contract after the occurrence of the events. (The result of loss of capacity in this case may be the result of temporary or permanent mental incompetency)

Article -2230 death or incapacity of the agent

1. *Unless otherwise agreed, a contract of agency shall terminate by the death of the agent or where he is declared absent, becomes incapable or is adjudicated a bankrupt.*

2. *The heirs or the legal representative of the agent who are aware of the agency shall inform the principal of these circumstances without delay.*

3. *They shall, until such time as the necessary steps can be taken by the principal, do whatever is required in the circumstance to safeguard his interest.*

Is there any instance by which an agreement made between the agent and principal for the continuation of the agency relationship after the death of an agent becomes effective? In other words does the term *unless otherwise agreed* under article 2230 applies to the event of death of an agent or is it only applicable to the other events?
If you narrowly interpret Article 2230(1) on the bases of the reality of life, you will definitely learn the inapplicability of the term *unless otherwise agreed* to the death of an agent. Is there any possibility by which the dead agent can act on behalf of the principal? No, hence agreement for the continuation of agency relationship after the death of an agent can’t be effective.

If you interpret Article 2230(1) in a broad manner, you may think of the possibility of the continuation of agency relationship even after the death of the agent. In their contract if the agent and the principal agree for the continuation of agency relationship after the death of the agent, the relationship may continue, for example, through the heirs of the agent. So your answer for the above question depends on your interpretation of the above article.

The other events that are recognized by law as grounds of termination of the agency relationship are declaration of absence and bankruptcy of an agent.

As you have already learned in your law and persons course, courts declare the absence of a certain person when a person has disappeared and has given no news of himself for years. You have also learned that declaration of absent has the same effect as death. (Please read your Civil Code articles 156 and 163-165)
If the agent is declared absent by the court, the agency relationship between him and the agent will automatically be terminated since such an agent is considered as a dead person from the date of declaration of absence onwards.

Is there any attempt made to protect the interest of the principal in cases where the agency relationship terminates due to the death of an agent?

Upon the death and incapacity of the agent, the law tries to protect the interests of the principal imposing two responsibilities upon the heirs of the deceased agent. First, heirs of the agent have the responsibility to inform the principal about the death of the agent. This helps the principal to appoint another agent or to personally act on the affair as soon as possible. Second, the heirs have responsibility to take measures to protect the interests of the principal until the latter appoints another agent or until he takes over the affairs himself.

According to Black’s law dictionary, a person is declared bankrupt when a person can’t meet his current financial obligation. Under Ethiopian law bankruptcy of the agent generally terminates agency relationships unless there is agreement to the contrary.

There are cases where several agents may be appointed for the same affair. In such cases the agency relationship terminates if one of the agents dies, becomes incapable, is declared absent or bankrupt; and the
termination is applicable on the survived agent or agents unless there is agreement to the contrary.

Is there exception to Article 2230(1)?

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Article 2250- Termination of commission

*The commission shall not terminate where the principal or the commission agent dies, becomes incapable or is declared absent where the heirs or representative of the principal or commission agent continue his commercial activity.*

The death of an agent does not always terminate agency relationship. As indicated under article 2250 of the civil code above, agency relationship will not be terminated even after the death of a commission agent if the heirs or representatives of the agent continue the activity of the agent. So this is the only exception to Article 2230(1).

**4.1.2 DEATH OR INCAPACITY OF PRINCIPAL**

Article- 2232

1. *Unless otherwise agreed, a contract of agency shall terminate by the death of the principal of where he is declared absent, becomes incapable or is adjudicated bankrupt.*
2. The agent shall in such event continue his management where he has commenced it and there is no danger in delay until the heirs or the legal representative of the principal are in a possession to take it over themselves.

As indicated in the above article the death, incapacity, declaration of absent and adjudication of bankruptcy of a principal automatically terminates an agency relationship if there in no contrary agreement between parties.

If the act for which the agent was authorized to perform relates to the act of management and if the agent has already started managing at the death of the principal, the agent can continue in its act of management until the legal representatives or heirs of the principal take over his place. But this is only possible if the continuation in the act of management of the agent after the death of the principal does not involve danger.

There is one exception to the above general rule. The death, incapacity, declaration of absence and adjudication of bankruptcy of the agent does not terminate the agency relationship in cases of commission agency. (Please read article 2250)

What if the death of the principal does not come into the cognizance of the agent? Will the act of the agent done after the death of the principal but before the communication of the fact to the agent bind the principal?
In such case the agent acts on behalf of the principal without knowing the coming to an end of his authority. The third party also entered into a contact with the agent believing in good faith the existence of valid authority.

Though the agent entered into a contract on behalf of the third party without knowing the coming to an end of his authority, the contract will not bind the principal. But the third party who in good faith entered into contract will be indemnified for the damage caused to him if the heirs of the principal failed to ratify the contract as per article 2193(2) of the Civil Code.

Who is going to make good the damage caused to a third party in the above case?

_________________________________________________________
_________________________________________________________
_________________________________________________________

Article 2192(2)

1. The agent shall not be liable where he acted in good faith not knowing the reason by which his authority had come to end.

2. The principal shall in such case be liable to pay compensation.

As per the above article, the agent who acted on behalf of the principal without knowing the termination of his authority will not be liable to make the damage caused to a third party as a result of repudiation of the contract. It is the responsibility of the principal or his heirs, if he is not alive, to pay for the damage caused to third party.
Summary of Unit Four

The agency relationship between the principal and the agent does not last forever. The relationship will stop at some point either by the act of the parties or by operation of law.

Parties to agency contracts can terminate the relationship between them unilaterally or mutually or by incorporating provision for the termination of the relationship in the contract creating the relationship. The termination of agency by the agent is known as renunciation and the termination by the principal is known as revocation. In the contract that creates the agency, parties may agree to terminate the relationship on a certain date, upon the expiry of a certain period of time, upon the happening or cessation of a certain event or upon the achievement of the objective of agency.

The Ethiopian Civil Code also list events upon whose occurrence the agency relationship terminates. These events are death, incapacity, declaration of absence and adjudication of bankruptcy of either the principal or agent. In case when the agents are more than one, the death of one agent brings to an end the authority of the surviving agent; unless there is contrary agreement between the parties.