

Effects of Agency Relationship

Establishing a Relationship Between Principal and Third Party

- Once a contract of agency is formed it has got effects.
- The effect of agency is that the agent will bind the principal to third party.
- The effect of agency is spelt out under Article 2189 of the Civil Code. The effect of agency is to develop a relationship between the principal and third party as though the relationship was conducted between the principal and the third party. This effect of agency shall come out upon fulfillment of two conditions: *the name test and scope test*.
- The agent must act in the name of the principal. This is one mandatory requirement for the establishment of a relationship between the principal and the third party. In addition to the *name test*, the agent must act within the scope of the power granted. *These two elements are cumulative*. The non-fulfillment of either or both is a barrier to establish the link between the principal and the third party.

Duties in an Agency Relationship

- The relationship between an agent and principal is a fiduciary relationship.
 - One who owes to another the duties of good faith, trust, confidence, and candor; or
 - One who must exercise a high standard of care in managing another's money or property
- Accordingly, 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.
- 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:
 - the duties that an agent owes to the principal, and

- the duties that the principal owes to the agent.

Duties of the Agent towards the Principal

Duty of Loyalty

- One of the most fundamental duties that an agent owes to its principal is the broadly termed Duty of Loyalty. Through the agency relationship, the agent is working for and is appointed by the principal. In this capacity, agents must be loyal, diligent, and faithful to their employers, and act in the most professional and ethical manner, putting forth their best efforts to further the interest of their principals.
- 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.

Duty to Act in Good faith - 2208

- Good faith means “faithfulness to one’s duty or obligation.”
- The above provision states that the 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.

Duty to Communicate - 2208

- Agents may not compete with their principals in matters covered by the agency.
- Generally, an agent also has a duty to communicate information to the principal.
- This is sometimes referred to as the duty of candor. It requires the agent to disclose any information that would justify the revocation of the agency or variation of its terms.
- What circumstances ‘would justify the revocation of the agency or variation of its terms’? The code does not clarify this but it is clear that the agent has to disclose all material information or information that would harm the interest of the principal.
- Another question is doing the provision 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.

Duty to Avoid Conflict of Interest - 2209

- Conflict of interest is defined as 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.
- The agent shall act in the exclusive interest of the principal and may not, without the principal's knowledge, derive any benefit from any transaction into which he enters in pursuance of his authority.
- The prohibition against conflict of interest applies even to the appearance of impropriety.
- The provision also prohibit 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.
- An important limitation on this rule is that if the agent has notified the principal the subsequent transaction is not a conflict of interest unless the principal refuses to allow it.
- The provision 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.

Duty to protect Confidential Information

- Agents must convey any information or notice from a third party intended to be transmitted to the principal. But they have to keep secret a confidential information
- 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.

Duty to Account - 2210

- The agent has the duty to make an accounting to the principal for all property, money, or other valuable consideration received in the course of the agency.
- 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.
- 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.
- 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.
- 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.

Duty of Diligence - 2211

- In addition to what the agent must do and must 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.
- 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.
- 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.

- Sub (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.

Duty to Perform Personally

- An agent has the duty to perform his or her duties personally, rather than delegate responsibilities to another.
- 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.
- The duty to perform personally the responsibilities of agency is not absolute. An agent may delegate responsibility under the following circumstances:
 - where the principal authorizes the agent - an agent to delegate responsibility when he or she receives authorization from the principal.
 - where such authorization is implied from the surrounding circumstances. Authorization shall be implied where from usage it appears a matter of indifference whether the agent acts personally or by deputy. 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. But what amounts to indifference? Motive of the principal in choosing the agent, scope of agency, expectations of the principal etc. may be considered by the court.
 - Where the agent has a duty to appoint - The agent must delegate responsibility when unforeseen circumstances prevent him from carrying out the agency. This exception to operate three conditions need to be fulfilled.
 - Best interest of the principal requires appointment
 - Unforeseen circumstances prevent the agent from carrying out the agency personally. This is a force majeure requirement.

- The agent is unable to inform the principal of the circumstances.
- In delegating a substitute, the agent can be liable for two things; - 2216
 - When he delegates without authorization, and
 - If authorized, for bad selection of representative.

Duties of the Principal towards the Agent

- 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 above.
- 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.

Duty to Remunerate - 2219

- The basic duty that the principal owes to the agent is the duty to remunerate.
- The above provision 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.
- Sub (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.
- In the absence of contractual stipulation - 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.
 - The first exception is, 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
 - The second is, even if the contract does not stipulate remuneration, and 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.

Duty to Reimburse and Indemnify - 2221

- 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.
- 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.