



NATIONAL OPEN UNIVERSITY OF NIGERIA

SCHOOL OF LAW

COURSE CODE: LAW 332

COURSE TITLE: LAW OF COMMERCIAL TRANSACTIONS II

LAW OF COMMERCIAL TRANSACTIONS 2

Course Developer/Writer	Mr. Ugbejeh Ernest Ogwashi National Open University of Nigeria, Victoria Island, Lagos.
Course Editors	Prof. Justus A. Sokefun National Open University of Nigeria Victoria Island, Lagos. Dr. (Mrs.) Erimma Gloria Orié National Open University of Nigeria, Victoria Island, Lagos.
Dean	Prof. Justus A. Sokefun National Open University of Nigeria Victoria Island, Lagos.
Course Lecturers	Mrs. Anene Francisca, Mr. Ugbejeh Ernest Ogwashi, Mr. Njoku Nduka National Open University of Nigeria Victoria Island, Lagos.

National Open University of Nigeria Headquarters
14/16 Ahmadu Bello Way
Victoria Island
Lagos

Abuja Office
No. 5 Dares Salaam Street
Off Aminu Kano Crescent
Wuse II, Abuja
Nigeria

e-mail: centralinfo@nou.edu.ng

URL: www.nou.edu.ng

2015

CONTENTS

PAGE

Introduction	
Course Aim	
Course Objectives	
Working through this Course	
Course Materials	
Study Units	
Text books and References	
Assessment	
Tutor Marked Assignment	
Final Examination and Grading	
Course Marking Scheme	
Course Overview/Presentation	
How to Get the Most from this Course	
Facilitators/Tutors and Tutorials	
Summary	

Introduction

Welcome to Law 332: Law of Commercial Transaction II. This course is a compulsory course in National Open University of Nigeria that you must offer in the Law programme. This course is offered in the second semester of third year of your study and it is a 4 credit unit course.

As noted in the first semester course guide which dealt basically with the sale of goods, this second semester shall deal with the aspect of commercial transactions relating to Agency and Hire Purchase.

Course Aim

The primary aim of this course is to familiarize the student with the subject matter which is dealt with here and which the student is expected to know at the end of the course.

Course Objectives

The major objectives of this course, as designed are to enable the student:

- 1) Understand what an agency is.
- 2) Identify an agency relationship is created.
- 3) Understand the capacity of an agent.
- 4) Determine the scope of the authority of the principal in carrying out some duties.
- 6) Discern the rights, duties and obligation of an agent.
- 7) Understand when an agency relationship is created.
- 8) Identify the different modes of termination of an agency contract.
- 9) Explain the relationship of principal and third parties.
- 10) Understand the idea of irrevocable authority.
- 11) Know the nature and meaning of hire purchase
- 12) Distinguish between hire purchase in common Law and under the Hire Purchase Act.
- 13) Know the difference between ownership and passing of property under a Hire Purchase Contract.
- 14) Know the remedies available to the owners or hirer in case of breach of contract.
- 15) Understand the minimum payment clause and damage standard form.
- 16) Know the form and nature of a standard hirer purchase agreement.
- 17) Distinguish between bill of sales, conditional sale and credit sale agreement.

Working through this Course

To complete this course, you are advised to read the study units, recommended books and other materials provided by NOUN. Each unit contains Self Assessment Exercise, and at points in the course you are required to submit assignments for assessment purposes. At the end of the course there is a final examination. The course should take you about 17 weeks to complete. You will find all the components of the course listed below. You need to make out time for each unit in order to complete the course successfully and on time.

Course Materials

The major components of the course are:

- a) Course guide.
- b) Study Units.
- c) Textbooks
- d) Assignment file
- e) Presentation schedule.

Study Units

We deal with this course in 27 study units divided into 7 modules as follows:

Module 1
Unit 1	Meaning of Agency.....
Unit 2	Nature and Character of Agency Relationship ...
Unit 3	Classification of Agents
Module 2
Unit 1	Competence of the Principal
Unit 2	Competence of the Agent
Unit 3	Authority of an Agent
Unit 4	Formalities to Creation of Agency
Unit 5	Agency by Ratification
Unit 6	Agency by Necessity
Module 3
Unit 1	Relationship with Third Party: The Disclosed Principal
Unit 2	Relationship with Third Party: The Undisclosed Principal.....
Unit 3	Relationship between Principal and Agent
Module 4
Unit 1	Duties of the Principal to the Agent
Unit 1	Duties of the Agent to the Principal
Unit 2	Remedies Available to the Parties

Module 5
Unit 1	Termination of Agency by Acts of the Parties
Unit 2	Termination of Agency by Operation of Law
Unit 3	Incidence of Termination of Agency

MODULE 6

- Unit 1 – The Hire Purchase Contract
- Unit 2 – The Hire-Purchase Agreement
- Unit 3 – Obligations Implied Under the Act.
- Unit 4 – Recovery under the Hire Purchase Act.
- Unit 5 – Owners Obligations Under Sec. 9 (5).
- Unit 6 – Adverse Possession and Conversion.

MODULE 7

- Unit 1 – Controls of Hire Purchase Agreement
- Unit 2 – The Minimum Payment Clause Under the Hire Purchase Act.
- Unit 3 – Effect of Minimum Payment Clause Stipulations Agreements Governed by the Act.

All these Units are demanding. They also deal with basic principles and values, which merit your attention and thought. Tackle them in separate study periods. You may require several hours for each.

We suggest that the Modules be studied one after the other, since they are linked by a common theme.

Each study unit consists of one week's work and includes specific objectives, directions for study, reading materials and Self Assessment Exercises (*SAE*). Together with Tutor Marked Assignments, these exercises will assist you in achieving the stated learning objectives of the individual units and of the course.

Textbooks and References

Certain books and cases have been recommended in this course. You should read them the principles therein.

Assessment

There are two aspects of the assessment of this course, the Tutor Marked Assignments and a written examination. In doing these assignments you are expected to apply knowledge acquired during the course. The assignments must be submitted to your tutor for formal assessment in accordance with the deadlines stated in the presentation schedule and the Assignment file. The work that you submit to your tutor for assessment will count for 30% of your total score.

Tutor-Marked Assignment

There is a Tutor-Marked Assignment at the end for every unit. You are required to attempt all the assignments. You will be assessed on all of them but the best three performances will be used for assessment. The assignments carry 10% each.

When you have completed each assignment, send it together with a (*Tutor Marked Assignment*) form, to your tutor. Make sure that each assignment reaches your tutor on or before the deadline. If for any reason you cannot complete your work on time, contact your tutor before the assignment is due to discuss the possibility of an extension.

Extensions will not be granted after the due date unless under exceptional circumstances.

Final Examination and Grading

The duration of the final examination for this course is three hours and will carry 70% of the total course grade. The examination will consist of questions, which reflect the kinds of self-assessment exercises and the tutor marked problems you have previously encountered. All aspects of the course will be assessed. You should use the time between completing the last unit, and taking the examination to revise the entire course. You may find it useful to review your self assessment exercises and tutor marked assignments before the examination.

Course Marking Scheme

The following table lays out how the actual course marking is broken down.

Assessment	Marks
Assignments 1-4 (the best three of all the assignments submitted)	Four assignments. Best three marks of the four count at 30% of course marks.
Final examination	70% of overall course score
Total	100% of course score.

Course Overview and Presentation Schedule

Unit	Title of Work	Weeks Activity	Assessment (End of Unit)
	Course Guide	1	
Module 1			
1	Meaning of Agency	1	Assignment 1
2	Nature and Character of Agency Relationship	1	Assignment 2
3	Classification of Agents	1	Assignment 3
Module 2			
1	Competence of the Principal	2	Assignment 4
2	Competence of the Agent	2	Assignment 5
3	Authority of an Agent	2	Assignment 6

4	Formalities to Creation of Agency	3	Assignment 7
5	Agency by Ratification	3	Assignment 8
6	Agency by Necessity	3	Assignment 9
Module 3			
1	Relationship with the Third Party Disclosed Principal	4	Assignment 10
2	Relationship with Third Party; Undisclosed Principal	5	Assignment 11
3	Relationship between Principal and Agent	5	Assignment 12
Module 4			
1	Duties of the Principal to the Agent	6	Assignment 13
2	Duties of the Agent to the Principal	7	Assignment 14
3	Remedies available to the Parties	8	Assignment 15
Module 5			
1	Termination of Agency by Acts of the Parties	9	Assignment 16
2	Termination of Agency by Operation of Law	9	Assignment 17
3	Incidence of Termination of Agency	9	Assignment 18

	Module 6		
	The Hire Purchase Contract	10	Assignment 19
	The Hire-Purchase Agreement	10	Assignment 20
	Obligations Implied Under the Act.	11	Assignment 21
	Recovery under the Hire Purchase Act.	12	Assignment 22

Owners Obligations Under Sec. 9 (5).	13	Assignment 23
Adverse Possession and	14	Assignment 24
Revision	15	
Examination	16	
Total	16	

How to Get the Most from this Course

In distance learning, the study units replace the lecturer. The advantage is that you can read and work through the study materials at your pace, and at a time and place that suits you best. Just as a lecturer might give you in-class exercise, your study units provide exercises for you to do at appropriate times.

Each of the study units follows the same format. The first item is an introduction to the subject matter of the unit and how a particular unit is integrated with other units and the course as a whole. Next is a set of learning objectives. These objectives let you know what you should be able to do by the time you have completed the unit. You should use these objectives to guide your study. When you have finished the unit, you should go back and check whether you have achieved the objectives. If you make a habit of doing this, you will significantly improve your chances of passing the course.

Self Assessment Exercises are interspersed throughout the units. Working through these tests will help you to achieve the objectives of the unit and prepare you for the assignments and the examination. You should do each Self Assessment Exercise as you come to it in the study unit. There will be examples given in the study units. Work through these when you have come to them.

Facilitators/Tutors and Tutorials

There are 15 hours of tutorials provide in support of this course. You will be notified of the dates, times and location of the tutorials, together with the name and phone number of your tutor, as soon as you are allocated a tutorial group.

Your tutor will mark and comment on your assignments. Keep a close watch on your progress. On any difficulties you might encounter. Your tutor may help and provide assistance to you during the course. You must send your Tutor Marked Assignments to your tutor well before the due date. They will be marked by your tutor and returned to you as soon as possible.

Do not hesitate to contact your tutor by telephone or e-mail if you need help. Contact your tutor if:

- You do not understand any part of the study units or the assigned readings;
- You have difficulty with the self assessment exercises;
- You have a question or a problem with an assignment, with your tutor's comments on an assignment or with the grading of an assignment.

You should try your best to attend the tutorials. This is the only chance to have face to face contact with your tutor and ask questions which are answered instantly. You can raise any problem encountered in the course of your study. To gain the maximum benefit from course tutorials, prepare a question list before attending them. You will gain a lot from participating actively.

Summary

This course deals with 15 basic points typically relevant and found in Commonwealth Jurisdictions most of which gained independence from Britain, our colonial master. These topics, broken down into units generally are on employee/employers relationship in Nigeria and they may influence its form and content.

We wish you success with the course and hope that you will find it both interesting and useful.

CONTENTS

PAGE

Module 1

- Unit 1 What is an Agency?
- Unit 2 Nature and Character of Agency Relationship ...
- Unit 3 Classification of Agents

Module 2

- Unit 1 Competence of the Principal
- Unit 2 Competence of the Agent
- Unit 3 Authority of an Agent
- Unit 4 Formalities to Creation of Agency
- Unit 5 Agency by Ratification
- Unit 6 Agency by Necessity

Module 3

- Unit 1 Relationship with Third Party: The Disclosed Principal
- Unit 2 Relationship with Third Party: The Undisclosed Principal.....
- Unit 3 Relationship between Principal and Agent

Module 4

- Unit 1 Duties of the Principal to the Agent
- Unit 2 Duties of the Agent to the Principal
- Unit 2 Remedies Available to the Parties

Module 5

- Unit 1 Termination of Agency by Acts of the Parties
- Unit 2 Termination of Agency by Operation of Law
- Unit 3 Incidence of Termination of Agency

MODULE 6

- Unit 1 – The Hire Purchase Contract.
- Unit 2 – The Hire-Purchase Agreement.
- Unit 3 – Obligations Implied Under the act.
- Unit 4 – Recovery under the Hire Purchase Act.....
- Unit 5 – Owners Obligations Under Sec. 9 (5)
- Unit 6 – Adverse Possession and Conversion.

MODULE 7

- Unit 1 – Controls of Hire Purchase Agreement
- Unit 2 – The Minimum Payment Clause Under the Hire Purchase Act.
- Unit 3 – Effect of Minimum Payment Clause Stipulations Agreements Governed by the Act.

MODULE 1

- Unit 1 Meaning is an Agency
- Unit 2 Nature and Character of Agency Relationship
- Unit 3 Classification of Agents

UNIT 1 MEANING OF AGENCY

CONTENTS

- 1.0 Introduction
- 2.0 Objectives
- 3.0 Main Content
 - 3.1 Meaning of Agency
 - 3.2 The Origin of Agency
 - 3.3 Theories of Agency
 - 3.3.1 The Power Liability Theory
 - 3.3.2 The Consent Theory
 - 3.3.3 The Qualified Consent Theory
- 4.0 Conclusion
- 5.0 Summary
- 6.0 Tutor-Marked Assignment
- 7.0 References/Further Readings

1.0 INTRODUCTION

The law of agency is an essential part of commercial law because companies can only conduct business through agents. The function of the law of agency is to enable agents to bring commercial parties into contractual relations in such a way as to render the parties, not the agents, liable on, and able to enforce, the contract.

The principal, on whose behalf the agent bargains, must be able to place complete confidence in the agent. This has led the law of agency to make the agent a fiduciary.

This imposes strict obligations. However, there are interests other than the protection of the principal against misuse of power by the agent, the protection of the third party with whom the agent has dealt, the protection of the agent against any liability incurred on behalf of the principal, and the rights an agent may have against the principal.

2.0 OBJECTIVES

The main objective of this unit is to define the concept of agency as an essential part of commercial law. At the end of this unit the learner understand the meaning, origin and theory of agency.

3.0 Main Content

3.1 Meaning of Agency

Every day, in various parts of the world, there are persons acting for and on behalf of others, in different capacities and under different circumstances. During one's business career or private life, one may be involved in the selling of goods or services to the general public. As a customer, one may have to be involved with persons representing others. The question may therefore arise as to whether all such representatives are necessarily agents of the person they claim to represent. A person may be a representative of another or a dealer in the products manufactured by that other person and may in consequence attach to himself the title of '*agent*'.

The issue is, when can it be said that an agency relationship has come to existence?. These and other problems have made it difficult to arrive at what one might consider as a concise definition of the term '*agent*' or '*agency*'.

In the Oxford Companion Law, the term agency is defined as:

“The relationship between one person, the agent, having authority to act, and having consented to act on behalf of another, the principal, in contractual

relations with a third party. The term is also used more widely as one acting in the interest of another”.

In the same vein, the American Restatement on Law of Agency describes the term as:

“..... a term which in its broadest sense includes every relationship in which one acts for or represents another by his authority but in the law of principal and agent, the term signifies the fiduciary relations which result from the manifestation of consent by one person to another that the other shall act on his behalf and subject to his control and consented by the other so to act”.

In the English case of *The Quenn v. Kane (1901)1 Q.B 472, Alverstine LCJ* defined an agent as:

“any person who happens to act on behalf of another”.

In the Nigerian case of *James v. Midmotors (Nig) Ltd. (1978)11-12 SC.*

21 the Supreme Court, considering the phenomenon in relation to the definition of agency observed as follows:

“..... it necessary to explain the term agency.. In law the word agency is used to connote the relationship which exists when one person has an authority or capacity to create legal relations between a person occupying the position of principal and third party, and the relation also arises when one person called the agent has the authority to act on behalf of another called the principal and consents (expressly or by implication) so to act”.

Thus, whether an agency relationship exists or not in a given set of circumstances raises both factual as well as legal problems. This duality of significance was more succinctly brought out by *Herschell L.J in Kennedy v. Annette De Trafford & Ors (1897) A.C. 180.*

That court had the opportunity of dealing with the nature of agency relationship and observed that:

“No word is more commonly and constantly abused than the word ‘agent’. A person may be spoken of as an ‘agent’ and no doubt in the popular sense of the word may properly be said to be an ‘agent’ although when it is attempted to suggest that he is an ‘agent’ under such circumstances as to create the legal obligation attaching to agency that use of the word is only misleading”.

The above dictum stresses the two most important considerations in any attempt at defining the term agent.

In the first place, it distinguishes the legal meaning of the term from its ordinary or popular meaning. There may be many instances in which a person represents or acts for or on behalf of another. But the true law of agency applies only when the act of the presumed agent produces legal consequence. The legal requirement in this respect is that such representation in order to create a true agency relationship must be performed in such a way as to be able to affect the principal’s legal position with respect to strangers to the relationship.

Thus, the law of agency does not apply to social or other non-legal situations for example, when a man sends his wife or son to represent him at a wedding, launching, or naming ceremony, the law of agency has no application thereon. The reason for this is the law regards these relationships as intended purely to serve a social purpose. In other words, there is no intention to create legal relations between the parties.

In contrast, where a house-wife sends a boy or girl to purchase a loaf of bread from the local shop or super-market, she invests the boy or girl with authority to contract in respect thereto.

Thus, in the process of executing this simple instruction of the housewife, some legal rights and obligations could be created in favour of or against her.

Secondly, the dictum stresses that where true agency relationship exists or subsists, it

does so irrespective of what the parties concerned choose to refer or label it.

In *Bamgboye v. University Of Ilorin & Ors (1991)8 N.W.L.R 129*, the Court of Appeal was given the opportunity to examine the characteristics of an agency relationship. It held, inter alia, that agency, in law, is used to connote the relation which exists where one person has an authority or capacity to create legal relations between a person occupying the position of principal and third parties. The court went further to hold that the question whether that relationship exists in any situation depends not on the terminology used by the parties to describe it, but on the nature of the agreement between the principal and the agents.

The issue is that the fact that the parties have called their relationship an agency is not conclusive, if the incidence of the relationship as disclosed by evidence does not justify a finding of agency. The existence of an agency can only be deduced from facts.

This dictum stresses the abuse in the use of the word ‘agency’ or ‘agent’. Nowhere is such abuse most prevalent than in business transactions. In Nigeria, the terms agent, dealer, representative, sole agent, sole representative, wholesaler, retailer, attaché etc. are frequently employed as synonymous.

The word, ‘agency’ can therefore be graphically seen in a situation where P (*the principal*) instructs A (*the agent*) to act in the purchase of goods from T (*the third party*) in the sale of goods. The contract of sale that is made by A is enforceable between P and T. In general, A has no liability to either P or T on that contract.

SELF ASSESSMENT EXERCISE 1

1. Discuss the concept of agency in commercial transactions.
2. Attempt a definition of an agency.

3.2 The Origin of Agency

The origin of the modern law of agency can be traced to the early medieval period where

instances of the institution were identified in some rudimentary forms. Some early English writers traced these to the English doctrine of Uses.

Although the rudimentary form of an agency can be isolated and perceived, there was no developed legal institution which could be strictly described as agency. There was therefore very little law on the subject at the time. In fact, the designation 'agent' or 'agency' was not used under the English Common Law before the seventeenth century. The idea of representation or agency was as of that time subsumed with other service functions or auxiliaries, especially the master-servant relationship. With the development of commercial life, in many ways, such as the growth of trading companies, the law of agency grew in importance and extent and eventually emerged as a separate concept distinct from the relationship of master and servant.

Its further development was aided and encouraged by the introduction of both equitable and civil rules. The court of chancery dealt with the relationship of principal and agent as if it were a relationship of *cestui que trust* and trustee. Holt, C.J introduced ideas developed by the Court of Admiralty in respect of the relationship of ship owners, masters and merchants into the law dealing with the relation of principal and agent.

This growth in commercial life, especially with the rise in trading companies showed that both in contract and tort, the issue of agency was vital. As a result of this pivotal position agents occupy in commerce they play a major role in the consummation of commercial transaction in modern times. For example, a sale of goods abroad by an exporter or a purchaser by an importer may be brought into effect through an overseas agent. A newspaper may obtain order for advertisements also through the intervention of an advertising agent.

The origin of the concept of agency is also traceable to the use of people to effect contracts in private transactions. A man may engage the services of a broker to effect an insurance contract or a sale or purchase of shares in a company. He may also sell or purchase a house or real estate through an estate agent.

Generally, an agency relationship may be described as a special kind of contract or fiduciary relationship or simply as a grant of authority. It is relevant in our every modern day transactions.

3.3 Theories of Agency

There are three main theories that seek to define and explain the role of the agent.

These are:

The power-liability theory.

The consent theory.

The qualified consent theory.

a) The Power-Liability Theory

The concept of agency exists when a person (*the agent*) acquires the power to alter the principal's legal relations with a third party in such a way that it is only the principal who can sue, and be sued by that third party. This focuses on the external relationship with the third party and ignores the internal relationship between the principal and the agent.

The power-liability theory excludes many who are commonly called agents. Estate agents introduce buyers to sellers without, usually having any power to bind either party. Nevertheless, they are subject to fiduciary duties in the same way as agents narrowly defined.

b) The Consent Theory

According to the US Restatement (*third*) of Agency (Tentative Draft No. 2) (2003)

“Agency is the fiduciary relationship that arises when one person (a principal) manifests assent to another person (an agent) that the agent shall act on the principal's behalf and subject to the principal's control, and the agent manifests assent or otherwise consents to act”

In focusing on the fiduciary that an agent owes a principal there is recognition that agency exists only where someone is undertaking more than merely ministerial functions.

In other words, the agent must have been invested with a degree of discretion that shows the principal has placed trust and confidence in the agent. It is this which gives rise to a fiduciary duty.

The problems associated with the definitions of an agency under this theory are as follows:

It places attention on the internal relationship between principal and agent while ignoring the external relationship with the third party.

It also ignores the fact that agency relationship not only requires the assent of the parties, in all cases but such consent may not be necessary in an agency of necessity situation.

That consent or assent is only required in special cases.

It is noteworthy that whether or not the principal and agent consented to the creation of an agency is determined by an objective standard. The law is not concerned with the principal's or the agent's opinions. It takes cognizance of the objectives of the parties and whether the reasonable person would conclude that an agency existed.

The existence of an agency may be presumed, for instance, where Funmi represents to Bayo by actions or words that Ibrahim has authority to act as an agent and Bayo has acted on that representation.

c) **Qualified Consent Theory**

This theory combines the consent theory with the protection of 'misplaced reliance' to account for actual and apparent authority. This is more clearly defined in agency by ratification to reflect commercial reality since authorization may not always be neatly contemporaneous with the initial transaction.

SELF ASSESSMENT EXERCISE 3

Discuss briefly the various theories associated with the concept of agency.

4.0 CONCLUSION

A thorough perusal and understanding of this unit would enable the student to thoroughly understand the concept of agency, its origin and the various theories usually employed to determine the existence or otherwise of an agency relationship.

5.0 SUMMARY

This unit thought us:

- a) The various definitions of an agency.
- b) The origin of agency as a legal concept in commercial transactions.
- c) The various theories associated with the concept of agency.

6.0 TUTOR-MARKED ASSIGNMENT

1. Attempt a concise definition of an agency as a legal concept.
2. The origin of agency is vague; Discuss
3. Distinguish the various theories of agency as a concept in commercial transactions.

7.0 REFERENCES/FURTHER READINGS

- Kingsley Igweike (1993). *“Nigeria Commercial Law: Agency.”*
Jos, Nigeria: FAB Educational Books.
- American Restatements, Second, Agency, Article.
- Friedman, G.H.L. (1984). *Law of Agency*, 7th Edition.
London: Butterworths.

UNIT 3 THE NATURE AND CHARACTER OF AGENCY RELATIONSHIP

CONTENTS

- 1.0 Introduction
- 2.0 Objectives
- 3.0 Main Content
 - 3.1 The Consent of the Parties
 - 3.2 The Authority of the Agent
 - 3.3 Agency and Other Relationships Distinguished
 - 3.3.1 Agent and Trustee
 - 3.3.2 Agents, Servant and Independent Contractor
 - 3.3.3 Agent and Banker
- 4.0 Conclusion
- 5.0 Summary
- 6.0 Tutor-Marked Assignment
- 7.0 References/Further Readings

1.0 INTRODUCTION

The concept of agency in commercial transactions is a universal one. With the role played by agents as middlemen in the actualization of existence of contracts, it appears their existence is unavoidable. Agents do not come on board of business transactions without the requisite consent, approval or authority of their principals to so act. Hence, they derive their authorities to act through their principals who in turn fulfill their own obligation under the terms of employment. In this respect, the basic rules for the coming into effect of a valid contract must be observed. For this reason, the agent will not be able to enforce such contracts where there is a perceived breach.

In this unit, we shall deal extensively on the nature and character of an agency relationship with particular emphasis on the consent of the parties, authority of the agent and a vivid comparison of agency with other related situations.

2.0 OBJECTIVES

At the end of this unit, students should be able to know the basic nature and character of an agency relationship. This unit is meant to deal, in concise form, with the issue of consent of the parties to an agency relationship. It will also deal with the authority of the agent to act as such on behalf of his principal and a thorough comparison of agency and other related relationships which are often mistaken to an agency relationship.

3.0 MAIN CONTENT

3.1 The Consent of the Parties

Though there may remain some unresolved minor problems, once the relationship of principal and agent has been shown to exist absolutely, the main consequences are clear. A major problem however remains that at determining whether or not such a relationship exists in any given set of circumstances and if so at what point in time. The concern in this respect is the consensual aspect of the relationship as the major determining factor. This is more apparent when considering the various definitions of agency. An example is the definition preferred by *Bowstead*. He defined agency as:

“the relationship that exists between two persons, one of whom expressly or impliedly consents that the other should represent him or act on his behalf and the other whom similarly consents to representing the former or so to act”.

Consent is also manifested in the definition in the American Restatement on Agency. It is no doubt that consent is absolutely necessary in establishing agency relationship. This has received judicial approval in many cases. For instance in *Ayua v. Adasu (1992)*²

N.W.L.R. 598, the Supreme Court of Nigeria quoted with approval the dictum of *Lord*

Pearson in Garnac Grain Co. v. H.M.F. Fairclough Ltd (1967)1 Lyds. Rep. 495. that;

“The relationship of principal and agent can only be established by consent of the principal and the agent”

The learned jurist however went on to say that:

“They will be held to have consented if they have agreed to what amounts in law to such a relationship even if they do not recognize it themselves and if they have professed to disclaim it.”

He further emphasized that:

“The consent must however have been given by each of them either expressly or by necessary implication from their words or conduct.”

This dictum of the learned jurist raises two fundamental issues. First is “what amounts to consent in such a case?” and secondly, whether it is right to say that the relationship of principal and agent exists only where the agent and the principal have so consented.”

It is submitted that consent is fundamental in cases where such relationship was established by agreement and contract. It is not uncommon to find that in commercial transactions, most agents are appointed by this method. Under certain circumstances, the law may impose or thrust agency relationship upon the parties irrespective of their consent or indeed knowledge.

SELF ASSESSMENT EXERCISE 1

Consent is fundamental to the creation and existence of an agency, Discuss.

3.2 The Authority of the Agent

It is an essential characteristic of agency relationship that the agent is vested with legal authority or power to alter the legal relations of the principal with third parties. This seems to provide the nucleus of a true agency relationship. This underscores its representative character and the ability of the agent to subject the principal to personal responsibility and liability while creating rights in his favour as well as obligations against him.

Thus, in holding the principal bound by an act of the agent, it must be established that such an act was legally authorized. The principal will only be bound to the third party by an act which is within the agent's authority. However, an act which is ultra vires this authority, unless ratified by the principal, will not bind him.

The notion of authority is still very important in agency relationships in that it enables the judge or lawyer to state, even if provisionally what the agent can do and how he can affect his principal beneficially or adversely. In this regard, it becomes pertinent to determine both the source and the scope of the agents claimed or asserted authority.

An agent's authority may be derived from both an agreement between him and his principal, expressed or implied, or from operation of law. The exercise of such authority binds the principal if the agent acted within his actual (real) authority or his apparent (*ostensible*) authority.

The Actual or Real Authority

The actual or real authority refers to the authority of the agent to do that which the principal has agreed that the agent should do for or on his behalf. It includes the power to carry out whatever the principal has expressly mandated the agent to do or impliedly engaged him to accomplish. Such authority may emanate from express

instructions given by the principal to the agent, or implied from the words or conduct of the principal.

In *Freeman and Lockyer v. Burkhurst Park Properties LTD (1964)1 ALL E.R. 630*, **DIPLOCK, L.J.** described the actual or real authority of the agent as the legal relationship which subsists between the principal and the agent created by consensual agreement to which they alone are parties. Its scope, he states, is to be ascertained by applying ordinary principles of construction of contract including any proper implication from the express words used, the usage of the trade, or the course of dealing between the parties such an authority. He went further to state that such authority may be express when it is given by express words or implied when it is inferred from the conduct of the parties or from the surrounding circumstances of the case.

The Apparent or Ostensible Authority

The apparent or ostensible authority refers to authority which in fact does not but merely appears to exist. It is essential that the appearance of such an authority emanated from an independent act of the principal manifested to a third party.

Thus, the basic difference between actual authority and apparent authority is that in the former, the expression of authority is made directly to the agent, whereas in the later, the expression is made to a third party with whom the agent deals.

An agent who has apparent authority may or may not have actual authority, though it may coincide or sometimes exceed it. The apparent or extensible authority extends to doing all acts which a reasonable person or a person of ordinary prudence familiar with the customs and usage of the particular community, trade, business or profession where the agent is employed, would be justified in assuming that the agent has authority to perform.

SELF ASSESSMENT EXERCISE 2

Distinguish between actual and apparent authorities of an agent.

3.3 Agency and Other Relationships Distinguished

The concept of agency in commercial transaction has in most cases been mistaken to be

the same with some other relationship of similar nature and character. A preliminary way of understanding the typical features of agency relationship is to compare and contrast an agent with some other functionaries and relationships which appear similar but invariably are distinct and different. Such functionaries include trustees, servants, bailees, and independent contractors.

3.3.1 Agent and Trustee

For certain purposes, an agent may be treated as a trustee of his principal. An example of this is in cases of money had and received on behalf of the principal. Equally, a trustee may for certain purposes be treated as an agent of the beneficiary (*cestui que trust*). There is also the historical antecedent between them in that at some point in time, the concept of agency took its root from that of trusteeship. The consequence is that certain principles of law are thereby applicable to both, such as the doctrine of fiduciary relationship with its attendant incidents. Both functionaries are nonetheless distinguishable on the following grounds:

a) the relationship of principal and agent is generally consensual in origin, whereas and except in minor cases, a trust is created without the consent of the beneficiary (*cestui que trust*) or the trustee.

b) when an agent is appointed, this is invariably done by the principal himself, whereas, in a trust situation, the trustee is never appointed by the beneficiary (*cestui que trust*).

c) the agent is for all purposes, the representative of his principal in dealing with third parties whereas, the trustee is not in any way the representative of the beneficiary (*cestui que trust*).

d) actions between the principal and the agent may be barred by lapse of time under the limitation Acts whereas, no such limitation is imposed on actions between the beneficiary (*cestui que trust*) and the trustee.

3.3.2 Agent, Servant and Independent Contractor

Basically, an agent is distinguishable from both a servant and an independent contract. The essential feature of the master servant relationship is that the master always has the right to control the diligent performance by the servant of the terms of his employment. While a servant merely works for his master, an agent acts for and in place of his principal to effect legal relations of his principal with third parties.

The distinguishing features of an agency relationship are its representative character and derivative authority which gives the agent a degree of discretion in the performance of the terms of its agency which a servant would not ordinarily have.

An independent contractor on the other hand renders services to his employer in the course of an independent occupation or calling. He contracts with his employer only as to the results to be achieved, but not as to the means whereby the work is done.

Accordingly, he employs his own means and skill and is entirely independent of control and supervision of his employer.

3.3.3 Agent and Bailee

A bailment arises where personal property is delivered or transferred by the owner (bailor) to another person (bailee) under an agreement that the property can be returned to the owner (*bailor*) or transferred to a third party or dealt with in any other way indicated by the owner (*bailor*). The bailee is not an agent of the bailor strictly speaking since he has no authority to deal with the property in any other way except in accordance with the instructions of the bailor. The bailee does not render any service at all to the bailor which is an essential purpose of agency.

There are some important distinguishing features between an agent and a bailee.

- 1) The agent is the representative of his principal but the bailee does not thereby become the representative of the bailor.
- 2) The agent has authority to contract for and on behalf of his principal and can

make him liable in tort. A bailee essentially has no authority to bind the bailor in contract except perhaps to preserve the property the subject of the bailment, and can rarely make the bailor liable in tort.

SELF ASSESSMENT EXERCISE 3

Discuss and state the essential distinguishing features of an agent, trustee, servants, independent contractor and bailee?

4.0 CONCLUSION

This unit has revealed the basic nature and characteristics of agency vis- à-vis the authority of an agent and the differences between the concept of agency, trusteeship, servant, independent contractor and bailment. All these are basically common law concepts but now more relevant and applicable to issues arising from commercial transactions.

5.0 SUMMARY

This unit has revealed the following facts.

1. The necessity of the consent of the parties to the creation of an agency.
2. The basic differences between the various heads of authority of an agent.
3. The distinguishing factors and elements of an agency relationship with particular reference to trusteeship, servant, independent contractor and a bailment.

6.0 TUTOR-MARKED ASSIGNMENT

1. Consent is fundamental to the creation and existence of an agency. Discuss.
2. Distinguish between actual and apparent authorities of an agent.
3. Discuss and state the essential distinguishing features of an agent, trustee, servants, independent contractor and bailee?

7.0 REFERENCES/FURTHER READINGS

Kingsley Igweike (1993). *“Nigeria Commercial Law: Agency.”* Jos, Nigeria: FAB Educational Books.

American Restatements, Second, Agency, Article.

Friedman, G.H.L. (1984). *Law of Agency*, 7th Edition. London: Butterworths.

UNIT 4 CLASSIFICATION OF AGENTS

CONTENTS

- 1.0 Introduction
- 2.0 Objectives
- 3.0 Main Content
 - 3.1 General and Special Agents
 - 3.2 Commission Agents
 - 3.3 Mercantile Agents
 - 3.3.1 Factors
 - 3.3.2 Brokers
 - 3.3.3 Del Credere Agents
- 4.0 Conclusion
- 5.0 Summary
- 6.0 Tutor-Marked Assignment
- 7.0 References/Further Readings

1.0 INTRODUCTION

In view of modern developments in trade and commerce and changing need for specialization certain types of agents have distinguished themselves by name, character and function. Consequently, they have been invested with varying degrees of authority and power arising from the customs, trade, business or profession in which they belong or operate or simply from their distinct peculiarities.

It has therefore been realized that there is need for such types of agents to be specifically distinguished and examined in some detail here for proper understanding and assimilation.

2.0 OBJECTIVES

The main objective of this unit is to identify and thoroughly examine the various types of

agents that exist and attempt a through comparison of them with the aim of bringing out their peculiar features as they relate to modern commercial transactions.

3.0 MAIN CONTENT

3.1 General and Special Agents

Agents are classified as either “*general*” or “*special*” agents. The primary distinction between the two types lies in the nature of the authority given or accorded to each and the extent to which their exercise affects the position of the principal.

A General Agent is one who is authorized to act for and on behalf of his principal in all his affairs in connection with a particular kind of business, trade or profession or who represents him in the ordinary course of his own trade, business or profession, as agent.

An example of a general agent is a director of a limited liability company who acts for the purpose of the company’s business. In the same vein, a solicitor, broker or auctioneer who is engaged to perform in the ordinary course of his own business is a general agent of his employer in relation to that employment.

A special agent on the other hand is one authorized to act for and on behalf of his principal on or for special occasion. Such an agent may also be required to handle a particular transaction or to do a specific act which is not within the ordinary course of his trade, business or profession. An example of this is a dealer in goods taken on hire- purchase for the purpose of executing the necessary hire-purchase documents, paying the initial deposits, taking delivery of the goods and in some cases receiving the periodic payments.

Distinction between General and Special Agents

The distinguishing feature between the two classes of agents lies in the nature and character of the authority given or accorded and its scope in relation to third parties.

In this connection, the court observed in *Buller v. Maples* (1869) 9 Wall 766 that:

“The purpose of (a special agency) is a single transaction or a transaction with designated persons Authority to buy for the principal a single article of merchandise by one contract, or to buy several articles from a person named, is a special agency. But authority to make purchase from any persons with whom the agent may choose to deal, or to make an indefinite number of purchases is a general agency”.

SELF ASSESSMENT EXERCISE 1

Define and distinguish between general and special agents.

3.2 Commission Agents

A commissioned agent is the one to whom certain goods have been consigned for a foreign principal. This type of agent belongs to a recognized class of commercial agents whose rights and obligation are superimposed between the ordinary relationship of principal and agent on the one hand, and a buyer and seller on the other.

A commissioned agent is therefore saddled with dual responsibility. The first being an agent to his principal with equal rights and obligation of any other agent. The second is that who does not bind his principal contractually to third parties. Instead, he stands in his own right in the position of principal to such third parties.

The peculiar feature of this category of commercial agents was identified by Lord Blackburn in *Ireland v. Livingstone* (1872) A.C. 395. In that case he stated that a person who supplies goods to a commissioned agent has no authority to pledge the credit of his principal for them.

SELF ASSESSMENT EXERCISE 2

Define a commissioned agent and state its roles in commercial transaction.

3.3 Mercantile Agents

A mercantile agent is an agent having in the course of his business, as such agent, authority to sell or to consign goods for the purpose of sale, or to buy goods or to raise money on the security of goods. In essence, when one is dealing with a mercantile agent, it becomes pertinent to inquire whether in the “customary course of the agent’s business he has authority to sell, consign for sale or to buy or raise money on the security of goods in his possession as such agent.

This is so because there are many kinds of agents who receive or are in possession of goods, yet it is not their duty to sell or consign them for sale or to raise money on them. It is important therefore, that when one is dealing with an agent in possession of goods, one has to consider what sort of agent he is and what his customary course of business would be when he is getting in the capacity of an agent.

In *Oppenheimer v. Attenborough (1708) 1 K.B 221* a distinction between “*customary case of business*” and “*ordinary course of business*” by LORD BUCKLEY. According to the learned judge, a customary course of business speaks of the arrangement made between the owner of goods and his agent. It contemplates that the principal has given possession of the goods to the agent in the course of business which the principal knows or believes the agent carries on as a mercantile agent. It deals with the situation under which the agent gets his authority.

On the other hand, in ordinary course of business, has to do with the stage at which the agent is going to deal with the goods in his possession with reference to some other person.

There are three types of mercantile agents. These are Factors, Brokers and Del Credere Agents.

3.3.1 Factors

The term “*Factor*” has not been defined in any statute book, both foreign and local. However, under the common law it has been defined as referring to a mercantile agent who has been entrusted with the possession of goods for sale only. In *Barring*

v. Corrie (1818)2 B & AID. 137, Abott C. J., described a factor as a person to whom goods are consigned for sale by a merchant residing abroad or at a distance away from the place of sale and who normally sells in his own name without disclosing that of his principal.

This definition was qualified in *Stevens v. Biller (1884)25 CH. D. 31* where it was held that an agent does not lose his character of factor by reason of his acting under special instruction from his principal to sell the goods at a particular price and to sell in the principal's name.

3.3.2 Brokers

A broker is a mercantile agent who, in the ordinary course of his business is employed to make contact with third parties for the purchase of goods, or property or for the sale of his principal's goods or property of which he is not entrusted with possession or document of title thereto. He has been described under the common law as an agent employed to make bargains and contact between persons in matter of trade, commerce and navigation. He is a mere negotiator between such persons with no possession of the goods. He lacks the power or authority to determine whether the goods belong to the buyer or seller and no legal or power to determine whether the goods should be delivered to the one or be kept by the other.

In essence, a broker is not entrusted with the possession of the goods and has authority to sell them in his own right or name. Possession or control of the goods of the principal by the factor distinguishes him from a broker and he is personally liable when contracting for a foreign principal, while the broker incurs no personal liability if he does not exceed his authority or instruction.

3.3.3 Del Credere Agent

A del credere agent is defined as one who, in consideration of extra remuneration called a del credere commission, guarantees to his principal that third parties with whom he enters into contract for and on behalf of the principal shall duly pay any sums becoming due under those contracts. The element of extra remuneration by way of del credere commission is indispensable to the establishment of a del credere

agency and it is this feature that mainly distinguishes it from any other agent.

Therefore, where there are no words in an agency contract from which it can be held that a higher reward is being paid to the agent in consideration of his assuming liability for any amounts due from third parties and there is nothing in the course of conduct between the agent and the principal from which such arrangement can be inferred, the agent is not in del credere agent.

SELF ASSESSMENT EXERCISE 3

1. What are the main features of a mercantile agent.
2. Distinguish between the three major types of a mercantile agent.

4.0 CONCLUSION

We identified and examined three types of agents. They are: general and special agents, commission agents and mercantile agents. By this revelation, it is apparently clear that students can now easily distinguish the different types of agents in commercial transactions.

5.0 SUMMARY

This unit has dealt with the following points:

1. General and Special agents.
2. Commission Agents.
3. Mercantile Agents.
4. Brokers
5. Del Credere Agents.

6.0 TUTOR-MARKED ASSIGNMENT

1. Attempt the definition and distinctions between a general agent and a special agent.
2. What are the main features of a commission agent.

3. Mercantile agent's only deals with merchants; Discusses.
4. differentiate between a Factor, a Broker and a Del Credere Agents.

7.0 REFERENCES/FURTHER READINGS

Kingsley Igweike (1993). *"Nigeria Commercial Law: Agency."* Jos, Nigeria: FAB Educational Books.

Sir William Holdsworth, *"A History of English Law,"* Vol. IV. American Restatements, Second, Agency, Article.

Friedman, G.H.L. (1984). *Law of Agency,* 7th Edition. London: Butterworths

MODULE 3

Unit 1	Competence of the Principal
Unit 2	Competence of the Agent Unit
Unit 3	Authority of an Agent
Unit 4	Formalities to Creation of Agency
Unit 5	Agency by Ratification
Unit 6	Agency by Necessity

UNIT 1 COMPETENCE OF PRINCIPAL

CONTENTS

1.0	Introduction
2.0	Objectives
3.0	Main Content
3.1	Competence of the Principal
3.2	Infants
3.3	Mentally Ill person
3.4	Corporations
4.0	Conclusion
5.0	Summary
6.0	Tutor-Marked Assignment
7.0	References/Further Readings

1.0 INTRODUCTION

The most important step in determining whether the agent's act or omission will in law bind the principal is to establish whether an agency relationship actually exists between the supposed principal and a given agent. This type of relationship may be created or established in any of the ways to be discussed under this head.

However, some basic factors must be in existence before an agency relationship can be established and these are also to be distilled properly in this unit.

2.0 OBJECTIVES

The objectives of this unit are two folds; to establish and bring to the knowledge of the student steps to be understood before an agency relationship could be created and secondly to examine the various ways by which an agency relationship can be created with the main aim of informing the student of the relevance of those distinctions in commercial transactions.

3.0 MAIN CONTENT

3.1 Competency of the Principal

The general principle of law in this regard is that the competency of a person to entrust to another the performance of a task for and on his behalf is co-existent with the competency of that person to perform the task himself. However, to every rule, there is always an exception. In this instance where delegation of that said power is prohibited by law, the general common law rule that powers could be delegated will be of no effect.

Section 72 of the Companies and Allied Matters Act of 1990 provides thus:

“Any contract or other transactions purporting to be entered into by the company or by any person on behalf of the company after its formation and thereupon the company shall become bound by and entitled to the benefit thereof as if it has been in existence of the date of such contract or other transaction and had been a party thereto”.

“Prior to its ratification by the company, the person who purported to act in the name of or on behalf of the company shall in the absence of express agreement to the contrary, be personally bound by the contract or other transaction and entitled to the benefit thereof”.

The principle usually applied is often expressed in the maxim “*NEMO POTEST FACERE PER ALIUM, QUOD PER SE NON POTEST*” which means that “*no one can do through another what he cannot do himself*”.

Three categories of persons, due to natural or legal disability are either totally or partially incompetent to be principals. These shall be discussed in the next segment.

3.2 Infants

Generally, an infant cannot validly appoint another person, whether an adult or an infant to be or act as his agent except in the circumstances in which he can act personally or for himself. However, under the general law governing contracts, an infant can validly contract only for his legal necessities. The term necessities is not restricted to bare essentials of life, but extend to articles and matters which can be considered reasonably necessary to him, having regard to his state of life.

SELF ASSESSMENT EXERCISE 1

Discuss the exceptions to the general rule that an infant cannot validly appoint another person to be or act as his agent.

3.2 Mentally ill Persons

As in the case of an infant, a mentally ill person cannot appoint an agent where the circumstances are such that he would have been bound if he had himself personally acted. To render an appointment by such a person void and of no effect, it must be shown that his infirmity was such as to render him incapable of comprehending the true nature and probable consequences of his act.

SELF ASSESSMENT EXERCISE 2

Appointment made by a mentally ill person of another to act as his agent may sometimes be valid. Do you agree?

3.3 Corporations

The primary legal status of the particular corporation usually determines the competence of that corporation to appoint a person as its agent. This presupposes that if a corporation has legal personality of its own quite distinct from those of its member constituting it, it can contract and do other legal acts on its own behalf and in its own name just like an ordinary person.

However, to be so competent, the corporation must have been duly registered under the Companies and Allied Matters Act of 2004 and must have fulfilled the requirements of the Act. In that regard, section 63, (1) of the CAMA 2004 states that:

“A company shall act through its members in general meeting or its board of directors or through officers or agents appointed by or under authority derived from the members in general meeting or the board of directors”.

Section 65 of CAMA states in part:

“Any act of the member, in general meeting, the board of directors, or of a managing director while carrying on in the usual way the business of the company shall be treated as the act of the company itself and the company shall be criminally and civilly liable thereof to the same extent as if it were a natural person”.

SELF ASSESSMENT EXERCISE 3

Under what conditions would appointments made by a corporation of another to act as its agent be valid in law?

4.0 CONCLUSION

As must have been noted, the appointment of a person to act as an agent of another will be invalid if such person, body of persons or a corporation lacks the legal status to so act. Where the capacity or competency is not ascertained, such appointment will be declared void ab-initio.

5.0 SUMMARY

By now learners are expected to be able to differentiate between the appointments of an infant, a mentally ill person and a corporation to act as a principal for another.

6.0 TUTOR-MARKED ASSIGNMENT

1. Discuss the exceptions to the general rule that an infant cannot validly appoint another person to be or act as his agent.
2. Appointment made by a mentally ill person of another to act as his agent may sometimes be valid. Do you agree?
3. Under what conditions would appointments made by a corporation of another to act as its agent be valid in law?

7.0 REFERENCES/FURTHER READINGS

Kingsley Igweike (1993). *“Nigeria Commercial Law: Agency.”* Jos, Nigeria: FAB Educational Books.

Pollock and Maitland. *“The History of English Law,”* Vol. 11.

Walker, D.W. (1980). *“The Oxford Companion to Law.”* London: Butterworths.
American Restatements, Second, Agency, Article.

Friedman, G.H.L. (1984). *Law of Agency*, 7th Edition. London: Butterworths.
Companies and Allied Matters Act (1990). *Laws of the Federation of
Nigeria.*

UNIT 2 COMPETENCY TO BE AN AGENT

CONTENTS

- 1.0 Introduction
- 2.0 Objectives
- 3.0 Main Content
 - 3.1 Legal Practitioners
 - 3.2 Insurance Agents and Brokers
 - 3.3 Auctioneers
- 4.0 Conclusion
- 5.0 Summary
- 6.0 Tutor-Marked Assignment
- 7.0 References/Further Readings

1.0 INTRODUCTION

The rules governing the competency to be a principal are quite different from that governing the competency to be an agent.

The general rule here is that any person of age and of sound mind may act as an agent of another person. Thus, the law permits the employment as agents of infants, drunkards, mentally ill persons, aliens and others who may be under natural or legal disability. Therefore, the competence of a person to act as an agent of another is not limited by the competence of that person to act for him in that regard.

2.0 OBJECTIVES

However, in some instances, particularly in business, trades and professions, the law has placed limitations on the right to be or act as an agent. This is primarily to protect the general public from loss or damage at the hands of unscrupulous, unqualified and inexperienced persons who may take advantage of the ignorance of the consuming public. The adequate understanding of this set of professionals as agents is the main objective of this unit.

3.0 MAIN CONTENT

3.1 Legal Practitioners

The general rule and belief is that a barrister or solicitor is an agent of his client in regard to a matter for which he has been briefed. The client for whom he acts as barristers or solicitor is his principal. For a person to be legally entitled to be and to act as such agent, he or she must obtain the requisite qualification as a legal practitioner, be called to the Nigerian Bar and have his name enrolled in the register of the Supreme Court of Nigeria.

The competence to be or do this is regulated by the Legal Education (consolidation, etc.) Decree No.13 of 1976, as amended. Under this law, a person is entitled to have a qualifying certificate issued to him by the Council of Legal Education stating that he is qualified to be called to the Nigerian Bar if:

- (a) He is a citizen of Nigeria.
- (b) He has, except where the Council otherwise directs, successfully completed a course of practical trainings in the Nigeria Law school for a period fixed by the Council.

A person is entitled to be called to the Nigeria Bar if, and only if:

- (a) He is a citizen of Nigeria
- (b) He produces a qualifying certificate to the Body of Benchers and
- (c) Satisfies the Body of Benchers that he is of good character.

Once these conditions are qualified, the Body of Benchers is obliged to call him to the Nigeria Bar and issue him with a certificate of call to the Bar. Upon being called to the Nigeria Bar, such person becomes entitled to practice as a barrister and solicitor in Nigeria, if and only if, his name appears on the roll.

SELF ASSESSMENT EXERCISE 1

A person is entitled to be an agent of another if he is a barrister or solicitor. State

the conditions for qualification to practice as a barrister or solicitor in Nigeria.

3.2 Insurance Agents and Brokers

Like the legal profession, insurance business is also regulated by a law. Section 28 of the Insurance Decree No.58 of 1991 provides in part as follows:

- (1) No person shall transact business as an insurance agent unless he is licensed in that behalf under this Decree.
- (2) An application for a license as an insurance agent shall be made to the Director in the prescribed form and be accompanied by the prescribed fee and such other documents as may be prescribed, from time to time.
- (3) If the Director is satisfied that the applicant has satisfied the requirements as may be prescribed, he shall license the applicant as an insurance agent.

The following sets of people are not eligible to apply and may have his license cancelled if he has already obtained one.

- (a) A minor.
- (b) A person of unsound mind.
- (c) An ex-convict by a court or tribunal in the nature of a criminal appropriation of found or breach of trust.

However, the applicant may also be appointed as an insurance broker if the director is satisfied, inter alia, that the applicant has the prescribed qualifications.

Cancellation of License or Refusal of Renewal

Where the director is desirous of canceling a certificate of insurance or intends to refuse its renewal, the registered insurance broker must have,;

- (a) Knowingly or recklessly contravened the provisions of this part of the said Decree; or
- (b) For the purpose of obtaining a license, made a statement which is false in a material particular; or

- (c) Been found guilty by a court of competent jurisdiction of fraudulent or dishonest practices including misappropriation of clients' money
- (d) Materially misrepresented the terms and conditions of any policy or contract of insurance which he has sold to the clients or seeks to sell to prospective clients.

SELF ASSESSMENT EXERCISE 2

1. To be registered as an Insurance Broker, no particular form of registration is required. Do you agree?
2. State the condition for cancellation of an insurance broker's certificate.

3.3 Auctioneers

Generally, an auctioneer is a person who conducts a sale by auction for a client both before and of the position of an agent for the vendor i.e. the owner of the goods to be auctioned.

Apart from the requirement of application and obtaining a license from the appropriate licensing authority, on the payment of any prescribed fee or such other fee as may be prescribed, no special qualification is required by statute of one who wishes to carry on the business of or act as an auctioneer.

Such an application is made to the licensing authority for the area in which the principal office or place of business of the applicant is situate.

A license may be granted to a firm or corporation.

It is however an offence punishable by a fine for any person to carry on the business of or act as an auctioneer without such a license.

SELF ASSESSMENT EXERCISE 3

To practice as an auctioneer, no particular qualification is required. Discuss.

4.0 CONCLUSION

Generally, legal practitioners as professionals are expected to act on behalf of clients who are their principals. On the other hand, Insurance Brokers and Auctioneers, though not professionals are also expected to act on behalf of their clients who trust them with their years of experience and the failure of these set of groups to act as trustworthy agent is followed with necessary sanctions from their respective regulatory bodies.

5.0 SUMMARY

By now, the learner must have been able to distinguish between these sets to agents who are professionals in their own rights.

6.0 TUTOR-MARKED ASSIGNMENT

Differentiate the following types of agents

1. Legal practitioners
2. Insurance Brokers
3. Auctioneers

7.0 REFERENCES/FURTHER READINGS

Kingsley Igweike (1993). *“Nigeria Commercial Law: Agency.”* Jos, Nigeria: FAB Educational Books.

Walker, D.W. (1980). *“The Oxford Companion to Law.”* London: Butterworths.

American Restatements, Second, Agency, Article.

Friedman, G.H.L. (1984). *Law of Agency*, 7th Edition. London: Butterworths.

Companies and Allied Matters Act (1990). *Laws of the Federation of Nigeria.*

UNIT 3 AUTHORITY OF AN AGENT

CONTENTS

- 1.0 Introduction
- 2.0 Objectives
- 3.0 Main Content
- 3.1 Actual Authority of an Agent
- 3.2 Usual Authority
- 4.0 Conclusion
- 5.0 Summary
- 6.0 Tutor-Marked Assignment
- 7.0 References/Further Readings

1.0 INTRODUCTION

Authority of an agent simply means the power or right reposed in that agent by the principal. But in the context of an agency relationship, this issue has a broader and wider connotation. This is because the issue of authority has been engulfed in serious debates as to its relevance to the concept and its effects on the parties to an agreement on the one hand and a third parties on the other hand.

2.0 OBJECTIVES

The major objectives of this unit is to state the importance of authority of an agent in with emphasis on the known distinctions between the actual authority of an agent and his usual authority. It will also involve the effects of this authority on contracts carried out by the agent on behalf of the principal with a third party believes in the existence of the authority of the agent to so act.

3.0 MAIN CONTENT

The word, “Authority” is used in this unit to mean the ability of the agent to bind the

principal. This authority is entangled with the creation of agency by the principal and agent agreeing to the creation of the agency. That agreement will embody the authority of the agency.

Generally, the principal is bound only by those acts of the agent that are within the scope of that agent authority and every action carried outside that authority will be that of the agent unless the principal ratifies it.

3.1 Actual Authority of an Agent

The scope of an agent's actual authority is important. Generally, it is only if an agent acts within actual authority that he is able to claim an indemnity from the principal for any expenses incurred or remuneration under the agency contract with the principal.

In the same vein, an agent who acts outside this actual authority may be liable to the third party for breach of the implied authority.

The actual authority of an agent is determined by the agreement between the principal and the agent. It is a matter of content construction. Two types of actual authority exist.

1. Express Actual Authority

This is the authority, which the principal expressly gives to the agent. An example is where the agent is instructed to sell a particular property for the principal.

**See: Electronics Ltd v. Akhter Computer Ltd (2001)
1/BCLC/433**

2. Implied (or Incidental) Actual Authority

In addition to express actual authority, the agent may have implied actual authority. However, implied authority cannot contradict express actual authority because it is only a way of filling the gaps in the agency agreement. It is not a means of altering that

agreement.

An agent may have implied authority of his principal in the following ways.

- (a) To do things that are necessarily incidental to the execution of the express actual authority.
- (b) To undertake that which is implied from the particular circumstance of the relationship between him and the principal such as where there has been a previous course of dealings.
- (c) Such authority as is customarily enjoyed by dealings in the particular market. A custom must be uniform certain, notorious (generally known), recognized as binding and reasonable.

SELF ASSESSMENT EXERCISE 1

Discuss the two heads of actual authority of an agent.

Usual Authority of an Agent

The usual authority of an agent first came up for consideration in the case of *Watteau v Fenwick* (1893) 1 Q.B.346. In that case Humble (H) sold out to Fenwick (F), a firm of brewers, but stayed on as manager. He continued to run the business on Fenwick's behalf. The change in ownership was not publicised, and to all external appearances matters continued as before. Fenwick, whose business included the supply of most of the consumables, instructed Humble that he was not to order them from anyone else. Humble in breach of this instruction ordered some cigars, in his own name, from Watteau. Watteau (W) believed that Humble was buying for himself. The cigars were ordered for, and used in, Fenwick's business. The goods were not paid for. Having found out about Fenwick's interest in the hotel, Watteau sued them for the price of the cigars.

Held Fenwick liable on the ground that Humble had acted within the authority usually given to agents of this kind.

It might be argued that W did not think H was an agent, he believed H to be the principal, so if W had not been allowed to enforce the contract against F, W would have lost nothing because he was unaware of F's existence . Against this it might be said that F's action in allowing his agent, H, to represent himself as the principal placed W in a weakened position W had every reason to suppose that H was the original principal and this misconception was facilitated by F.

The case does not fall within the normal understanding of the doctrine of apparent authority because F made no representation to W that it was acting as F's agent.

Also, the decision does not appear to be the same with those case where someone is appointed to a particular position and the principal is bound by actions that fall within the usual authority of an agent in that position.

As will be seen later, the doctrine of undisclosed principal will not assist because for that to operate the agent must enter the transaction within the actual authority of the principal.

In the same vein, the principal cannot ratify the transaction because this would have required H to have told W that he was an agent and this he did not do.

Usual authority can therefore be likened to implied authority which an agent has in respect of his dealings with innocent third parties who are not aware that he lacks the authority to enter into such transaction on behalf of the supposed principal.

This is however subject to whether the principal was disclosed at the time of entering into the agreement with the third party and whether such action is ratifiable.

SELF ASSESSMENT EXERCISE 2

Discuss the decision in *WATTEAU V FENWICK*.

4.0 CONCLUSION

The authority of an agent to enter into control on behalf of the supposed principal is very

fundamental in the study of Law of Agency in relation to commercial transactions. Care must be taken so that the occurrences of these authorities will not be confused with one another.

5.0 SUMMARY

Actual authority of an agent refers to those express authorities contained in the agency agreement while the implied authorities includes those authorities the agent would reasonably be expected to exhibit in relation to demanding situations. Usual authority, as confusing as it may appear, is the direct and unequivocal direction of the principal provided no vitiating element is detected.

6.0 TUTOR-MARKED ASSIGNMENT

Distinguish between the Express Actual Authority and Implied (or incidental) Actual Authority of an agent.

The decision in *Wattean v Fenwick* is confusing and does not relate to the usual Authority of an agent. Discuss

7.0 REFERENCES/FURTHER READINGS

Kingsley Igweike (1993). *“Nigeria Commercial Law: Agency.”* Jos, Nigeria: FAB Educational Books.

Pollock and Maitland. *“The History of English Law,”* Vol. 11. Sir William Holdsworth, *“A History of English Law,”* Vol. IV.

Walker, D.W. (1980). *“The Oxford Companion to Law.”* London: Butterworths.

American Restatements, Second, Agency, Article.

Friedman, G.H.L. (1984). *Law of Agency,* 7th Edition. London: Butterworths.

Companies and Allied Matters Act (1990). *Laws of the Federation of Nigeria.*

UNIT 4 FORMALITIES TO CREATION OF AN AGENCY

CONTENTS

- 1.0 Introduction
- 2.0 Objectives
- 3.0 Main Content
 - 3.1 Agency by Agreement or Contract
 - 3.2 Agency by Estoppel
- 4.0 Conclusion
- 5.0 Summary
- 6.0 Tutor-Marked Assignment
- 7.0 References/Further Readings

1.0 INTRODUCTION

One of the several ways an agency situation comes to life is estoppel and this occurs intentionally or by necessary implication. When this situation arises, the supposed principal will be estopped from denying the fact that a third party acted on the belief that the agent was actually that of the principal. The principal will therefore be bound by an act or omission of the agent.

2.0 OBJECTIVES

The main objective of this unit is to bring to discuss the requirements for an agency created by estoppel. This is done by delving into the basic elements that qualify such acts of the supposed agent as that of the supposed principal.

3.0 MAIN CONTENT

Generally, no particular formalities are required for the creation of agency relationship. Consequently, the principal-agent relationship may be established by words of mouth, by mere conduct or by writing and may also be inferred from the

circumstances of a particular case.

Some appointments are required by law to be in writing or evidenced in writing or in any other particular manner. Thus, a power of attorney or the instrument of appointment of an agent who is required to execute a deed must be in the form of a deed.

Agents, such as solicitors, are sometimes, desirable to be appointed in writing so that the effect of agency and the extent of the authority conferred may easily be ascertainable. Apart from such appointments, the law does not require formal evidence of the existence of an agency relationship.

In *Heard v. pillay (1869) 4 Ch. App 548*, it was held that a contract of purchase of land made by an agent will be enforced although the agent was appointed by parole.

In *Davis v. Sweet (1962)2 Q.B. 300, DANCKWERT, L. J*, delivering the judgement of the Court of Appeal (English) observed on the same point that:

“..... But such an authority may be conferred upon an estate agent expressly or may be inferred from the circumstance of the case. It seems to me that authority to enter into a contract on behalf of the defendant should be inferred from the circumstances of this case”.

In the Nigeria case of *Rosenje v. Bakare (1973)5 S. C. 131*, the question arose as to whether a contract made by an agent in order to satisfy the provision of section 5(2) of the Law Reform (contracts) Act 1961, the agent's appointment need necessarily be in writing. The section which is the same as section 4 of the English Statute of Frauds of 1677 provides that:

“No contract to which this section applies shall be enforceable by action unless the contract or some memorandum or note in respect thereof is in writing and signed by the party to be charged therewith or by some other person lawfully authorized by him”.

The Supreme Court held that the section does not prescribe any form of authorization of an agent, although it is tidier and certainly desirable to expect a formal authorization.

3.1 Agency by Agreement or Contract

One of the basis of a contract, agreement is the consensus of the contracting parties to the terms and conditions of the proposed contract. The same principle applies to the formation of an agency agreement by express agreement or contract of the terms thereof. In commercial transactions, an agreement is the revelation of the intention of both the agent and the principal unequivocally to constitute such a relationship.

In *Ayua v. Adasu & Ors (1992)3 N.W.L.R. 598 Akanbi, JCA*, restated the law in the following statement of page 611 thus;

“In the ordinary law of Agency, the paradigm is that in which the agent and the principal agree that one should act for the other. And the term “agency” is assigned to this basic principle which involves consent of both parties. It is therefore trite law that agency arises mainly from a contract or agreement between the parties express or implied”.

The basic element in this situation is a manifestation by the principal that the agent shall act for and on his behalf and an evidence of the agent’s acceptance of that undertaking.

On the part of the principal, there must be either an actual intention to appoint the agent or an intention inferable from his words or conduct.

Where an agency relationship was set up through an agreement, such agreement must nonetheless possess all the essential pre-requisites or elements of a valid contract to be sustainable. To establish the existence of a valid contract therefore, the general rules of law of contract are applicable. These rules have been comprehensively treated in first semester.

It is to be noted that the mere fact that a person was described as an “agent or his relationship with another person described as “agent” in an agreement is not conclusive in law of such facts. Where such an agreement is by parole, proof would necessarily be essential for mere spoken words could easily be misunderstood or misinterpreted. The burden of proving the existence of such a relationship rests on the party who asserts it.

Where however, such an agreement is inferred, from conduct, the law demands that there must be some positive act from which such inference can be drawn.

SELF ASSESSMENT EXERCISE 1

An agency relationship can only be created by oral agreement. Discuss.

3.2 Agency by Estoppel

The general position of the law in this area is to the effect that where a supposed principal intentionally or otherwise causes a third party to believe that another person is his agent and the third party so relies in dealing with the supposed agent, the principal will be estopped from denying the existence of an agency relationship between him and a supposed agent. In such a situation, the supposed principal will be bound by an act or omission of the supposed agent to the same extent as if an agency relationship had existed between them.

In *Lukan v. Ogunnusi* (1972)5 S.C. 40, the Supreme Court of Nigeria affirmed this when it stated that:

“When a person behaves in such a way as to lead another person to believe that he has authorized a third person to act on his behalf and that other person in such belief, enters into transaction with the third person within the scope of such ostensible authority, the first mentioned person would be estopped from denying the fact of the first

person's agency. It would be immaterial whether the ostensible agent had no authority whatever in fact. It would also not matter whether the ostensible agent acted in excess of his usual authority".

Agency by estoppel is based on the principle of "holding out" by the principal to the third person or upon the "apparent" or "ostensible" authority of the agent.

Thus, in *Didigun v. R.T. Briscoe Ltd (SUPRA) OMOTESHO, J.* emphasizing this element of estoppel stated that:

"In law ostensible authority gives rise to agency by estoppel. Ostensible authority is based on the doctrine of "holding out".... The holding out may be by acts of the principal. For example, by allowing the agent to hold himself out as having authority. An important factor however, is that there must be a holding out by the principal, some acts of the principal which are capable of leading another to believe that the ostensible agent has authority".

The classical, judicial statement of the doctrine of agency by estoppel was made in *Saul Raccah v. Standard Company of Nigeria Ltd (1938) 4 W.A.C.A 162*. The court observed as follows:

"... where any person by word or conduct, represents or permits it to be represented that another person has authority to act on his behalf, he is bound by the acts of such other person with respect to anyone dealing with him as an agent on the faith of such representation, to the same extent as if such other person had the authority, he was so represented to have".

It is therefore possible, from the above illustrating and judicial authorities, to

proffer a broader definition of the term “estoppel” which would eliminate the need for the secondary category of agency liability based on apparent authority. In some ways, the two categories, (*ostensible and apparent authorities*) seem to cover the same area. That is, that the principal has done something or has failed to do something on which a reasonable third party relies upon as granting authority on the agent to contract on behalf of the principal. In those circumstances it is right to hold the principal bound and responsible for any resulting contract with the third party. Nevertheless, there is still reason for considering them distinctly. Some courts have distinguished them and secondly apparent authority as opposed to ostensible authority generally describes the situation in which the principal has been more active in causing his own liability.

ESSENTIAL ELEMENTS OF AGENCY BY ESTOPPEL

a. Representation

For a successful plea of agency by estoppel, a party must show some statement or conduct by the principal amounting to a representation that the supposed agent has the authority he has been represented to have.

In *Adeniji v. Jadesimi (1976) 3 Pt. 1 OYO SHC. 142 at page 145, Agbaje J.*, In this respect pointed out that:

“Where, as in this case, the appellant did not have contract with the respondent in so far as the transaction, the subject matter for this action are concerned before the transaction was concluded between her and the first defendant it is difficult for one to say that the appellant had by words or conduct represented or permitted to be represent to the respondent that the first defendant had authority to act on his behalf in those transaction.”

In *President Clothing & co. Ltd v Joseph Anyanwu (1975) 1 CCHCJ 1*, a Lagos High Court held that a representation in order to amount to ostensible authority must

- i) be made by word or conduct or acts of a general nature;
- ii) be made by the principal or by sources authorized to act for him;
- iii) representation of fact.

In *Colonial Bank and Anor. V. John Candy and Anor (1890) 15 A.C .267* , the English court of appeal held that for a statement or conduct to amount to a representation. It must be clear and unambiguous.

b. Reliance on Representation

The party who raise the issue of estoppel must show not only that a representation was made to him but in actual fact he acted upon it. If however he did not act at all on the faith of the representation, no agency of estoppel has been created.

In *Farguharson Brothers & Co. V King &Co.(1902) A.C.325, Lindley L.J.* said that:

“The holding out must be to the particular individual who says he relied on it, or under such circumstances of publicity as to justify the inference that he knew of it and acted upon it.”

c. Alteration of Position

For a successful plea of estoppel by representation, the claimant must show that he altered his position consequent upon the representation and to his detriment.

Therefore, if he has not altered his position at all, or has done so but has not suffered any loss or detriment thereby, or has done so but not on the faith of the representation, there is no valid agency by estoppel.

The position of the law on this issue is that for a representation to operate as an

estoppel, it must be “the proximate cause of the loss” suffered by the third party.

Generally, a party seeking the aid of estoppel must himself have acted honestly and without knowledge that the supposed agent had no authority or that he had exceeded his authority, if that be the case. This is based on the fact that estoppel is an equitable remedy and he who comes to equity must do so with clean hands and must have acted without blemish.

SELF ASSESSMENT EXERCISE 2

1. Agency by estoppel entails only the ostensible and apparent authority of act as an agency. Discuss.
2. Discuss the major element of an agency created by estoppel.

4.0 CONCLUSION

The formalities for the creation of an agency are quite straight forward. Where the principal agent holds himself out in some way with the knowledge and understanding of the principal, the principal shall be estopped from indemnifying himself from liability.

5.0 SUMMARY

With the understanding of the Doctrine of Agency by Estoppel, particularly its essential elements, learners should have less difficulty in identifying one where the situation arises.

6.0 TUTOR-MARKED ASSIGNMENT

1. An agency relationship can only be created by oral agreement. Discuss.
2. Agency by estoppel entails only the ostensible and apparent authority of act as an agency. Discuss.
3. Discuss the major element of an agency created by estoppel.

7.0 REFERENCES/FURTHER READINGS

Kingsley Igweike (1993). *“Nigeria Commercial Law: Agency.”* Jos, Nigeria: FAB Educational Books.

Pollock and Maitland. *“The History of English Law,”* Vol. 11. Sir William Holdsworth, *“A History of English Law,”* Vol. IV.

Walker, D.W. (1980). *“The Oxford Companion to Law.”* London: Butterworths.

American Restatements, Second, Agency, Article.

Friedman, G.H.L. (1984). *Law of Agency*, 7th Edition. London: Butterworths.

Companies and Allied Matters Act (1990). *Laws of the Federation of Nigeria.*

UNIT 5 AGENCY BY RATIFICATION

CONTENTS

- 1.0 Introduction
- 2.0 Objectives
- 3.0 Main Content
 - 3.1 Validity of Ratification
 - 3.2 Mode of Ratification
 - 3.3 Effect of Ratification
- 4.0 Conclusion
- 5.0 Summary
- 6.0 Tutor-Marked Assignment
- 7.0 References/Further Readings

1.0 INTRODUCTION

Agency by ratification exists where one person, the agent acts on behalf of another, the principal who at the relevant time was not aware of the action of the agent but later acknowledges the action by ratifying same. By this action, he is bound to be liable to the principal as well as to take all the advantages that comes with it.

2.0 OBJECTIVES

The objective of this unit is to know what is meant by agency by ratification its validity and the consequential effects, if any. This will also involve understanding the position of all interested parties i.e. the agent and the third party.

3.0 MAIN CONTENT

Ratification has been described as equivalent to antecedent authority and has been

defined as the affirmation by a person of a prior act which was done or done on his account, whereby the act, as to some or all persons, is given effect as if originally authorized by him.

The doctrine of ratification was explained in *Wilson v. Tunman (1843)6 MAN & G 236* as follows:

“ That an act done, for another, by a person not assuming to act for himself, but for such other person, though without any antecedent authority whatever, becomes the act of the principal if subsequently ratified by him, is the known and well established principle of law.”

The doctrine of agency by ratification can be simply illustrated thus:

If Ayo, unauthorized by Bola, with Charles, which Bola afterwards recognizes and adopts, there should be no difficulty in dealing with it as having been originally entered into with Bola's authority. Charles undoubtedly entered into the contract on the understanding that he was dealing with Bola, and when therefore Bola subsequently agrees to admit that such was the case, Charles was precisely put in the situation in which he was understood to be.

This doctrine must not be confused with and must therefore be distinguished from the doctrine of undisclosed principal. This is because the law permits an undisclosed principal, on whose behalf a contract has been entered into, to be liable on the contract. The effect of ratification is equivalent to previous mandate and a person who ratifies a contract entered into on his behalf is essentially in the same position as an undisclosed principal.

3.1 Validity of Ratification

For ratification to be successfully raised, it is required that the purported act of ratification must be valid, effective and binding on the alleged principal.

To acquire these qualities, the purported ratification must fulfill or meet certain criteria. These include:

Act Must be on Behalf of the Principal: For a successful establishment of act of ratification, the act of ratification can only be validly executed by the alleged principal for and on whose behalf the act was originally performed.

In *Folashade v. Alhaji Duroshola (1961)1 ALL N.L.R. 87*. It was held, per curiam, that there could be no ratification unless a person purported to act as an agent and to act for a particular person.

However, in respect of contracts, the law is very different. In *Keighley Maxstead & CO. v. Durrant (1901) A.C. 240*. the House of Lords unanimously held that a contract made by a person intending to contract on behalf of a third party, but without his authority, cannot be ratified by the third party, so as to render himself liable to sue or be sued on the contract, where the person who made the contract did not profess at the time of making it to be acting on behalf of a principal.

Existence of a Competent Principal: For an act to be rectifiable, the supposed principal must be in existence at the time the act was supposedly performed for and on his behalf. It follows that the supposed principal must be a person in law. That means he must be living or be a subsisting juristic person. In *Calighara v. Giovanni & co. Ltd (1961)3 ALL N.L.R. 534*, it was held that a company cannot ratify a contract purported to have been entered into on its behalf by the promoters prior to its incorporation.

In the same vein, in *Kelner v. Baxter (1866) L.R.2C.P.174*, *Erle, C.J* pointed out in this respect that:

“The cases referred to in the course of the arguments fully bear out the proposition that, where a contract is signed by one who professes to be signing “as agent”, but who has no principal existing at the time, and the contract

would be altogether inoperative unless binding upon the person who signed it, he is bound thereby and a stranger cannot by a subsequent ratification relieve him from that responsibility”.

This general common law position as stated in the two foregoing cases, though previously applicable to Nigeria, have been overruled by section 72 (1) of the Companies and Allied Matters Act of 1990. The effect of this provision is that the alleged principal must be in existence at the time the act was supposedly performed on his behalf. He needed not be named as identified provided it could be ascertained. This position was earlier stated in the English case of *Watson v. Swann (1862)11 C.B. (N.S) 756* where Wiles, J., suggested as follows:

“The law obviously requires that a person for whom the agent professes to act must be a person capable of being ascertained at the time. It is not necessary that he should be named; but there must be such description of him as shall amount to a reasonable designation of the person intended to be bound by the contract.”

The implication of this law is that infants and mentally incompetent persons would not be able to ratify acts purported to have been performed on their behalf in much the same way as they would not be able to appoint agents to perform those acts on their behalf.

The principal is expected to maintain his competence up to the time of the purported ratification. This is to the effect that there can be no ratification of an act which is ultra vires the principal or which although competent to perform it, at the time it was done on his behalf; he could no longer do the same at the time of the purported ratification. This was the position in *Ashbury Railway Carriage & Iron Co. v Richie (1875) L.R. 7 H.L. 653*.

The Legal Quality of the Act: The general rule here is that the principal may

ratify any act which he could have authorized at the time the act was performed for and on his behalf. There are, however, certain facts which are not capable of ratification so that any purported ratification would not be binding even on the principal.

Therefore, an act which the principal could not authorize in the first place because it is illegal, ultra vires or contrary to public policy cannot be made to become valid and effective by ratification.

In *Emmanuel Urhobo v. Chief J.S. Tarka (1976)11 CC HCJ*

262, a Lagos High Court held that if a pre-incorporation contract be entered into by the company which did not exist at the time, the contract is a nullity and neither the company when formed nor the promoter whose signature was appended could sue or be sued on the contract and the company could not take any benefit under it.

Note however, that this common law position has now been repealed by section 72(1) of the Companies and Allied Matters Act of 1990. The section provides, inter alia, as follows:

“Any contract or other transaction purporting to be entered into by the company or by any person on behalf of the company prior to its formation may be ratified by the company after its formation and thereupon the company shall become bound by and entitled to the benefit thereof as if it had been in existence at the date of such contract or other transaction and had been a party thereto.”

However, the general rule still remains valid and effective as regards other situations other than company pre-incorporation contracts and other transactions.

Time or Period of Ratification: For amount of ratification to be valid and effective it must be performed within the time limit, if any, prescribed by the parties or by the nature and circumstances of the particular case or within a reasonable time. In *Folashade v. Alhaji Duroshola (SUPRA)* it was held, per curiam that a proper case of ratification is subject to the important qualification that ratification must be within

a reasonable time after which an act cannot be ratified to the prejudice of a third party.

In some situations, the agent and the third party stipulate time for ratification. In such cases the principal can validly ratify only if he acted within the period so prescribed. In *Metropolitan Asylum Board Managers v. Kingham & Sons (1890)6 T.L.R. 217*, it was held that a contract must be ratified within a reasonable time after acceptance by an authorized person, and that such contract cannot be ratified after the date fixed for performance to commence.

Also the act constituting the ratification must have taken place when the act to be ratified could still, lawfully and effectively be performed. This issue came up in *Bird v. Brown (1850)4 Exch. 786* where an agent of the seller of goods purported to exercise the right of *stoppage in transitu* over the goods sent to the buyer. This was subsequently ratified by the seller but that was after the buyer's assignee had taken steps to interrupt and end the transit by the demand for possession and payment of the freight. It was held that the ratification came too late to divest the buyer's assignee of their right to obtain possession of the goods. The transit could not be artificially extended by the doctrine of ratification.

Partial or Conditional Ratification: Opinion seems to be divided on this criterion for validity of ratification of an act done on behalf of a principal by the agent. The main issue here is the question of whether the principal could validly ratify some acts of his agent while rejecting others.

A school of thought is of the opinion that the adoption or acceptance by the principal of part of what the agent has done on his behalf amounts to ratification of all that had been done.

The others are of the opinion that there could be ratification of one or more of a series of acts by the agent without the principal being obliged to accept all of them.

The majority view is that for ratification to be valid and effective, it must be absolute and unconditional. This view is premised on the fact that an act of ratification

must profess to adopt the transaction sought to be ratified in its entirety and absolutely without qualification. Therefore, a principal cannot ratify only the beneficial aspects of his agents' act while declining those that are prejudicial to him. If he elects to ratify at all, he must do so for the entire transaction, otherwise his action will not amount to an effective ratification.

In *Union Bank of Australia Ltd. V Mclintock (1922) A. C. 1* It was held that the respondents could not ratify the act of their managers in obtaining the drafts, so as to have a title to sue without also ratifying his subsequent dealing with the drafts, the form of which made collection through a bank necessary.

Awareness of the Material Facts: Before a principal could validly ratify an act or series of acts done or performed on his behalf by an agent it is essential that there must be some objective evidence that the principal is aware or ought to be aware of the material facts constituting the act before electing to affirm it and to be bound thereby. Thus, in *Phosphate of Lime V Green (1871)L.R. 7 C.P 43, Wiles, J.* expressed this as follows:

“..... ratification to be binding must be either with full knowledge of the character of the act to be adopted or with intention to adopt it at all events and under whatever circumstances.”

In the same vein, in *Marsh v. Joseph (1897)1 CH.D. 213*, the Court of Appeal (English) held that to constitute a binding adoption or ratification of acts done without previous authority, full knowledge of them and unequivocal adoption after knowledge must be proved or else the circumstances must warrant the clear inference that the principal was adopting the acts of his supposed agent.

SELF ASSESSMENT EXERCISE 1

Enumerate and explain the conditions that must be satisfied before ratification can be valid.

3.2 Mode of Ratification

Generally, ratification requires the manifestation by the principal in some way, of his intention to be bound by a prior unauthorized act of an agent. This, in most cases may be supplied by a clear and unequivocal adoptive act or by conduct amounting to acquiescence. Usually, an express approval of the transaction is the clearest evidence of ratification but sometimes, it may be supplied wherever the alleged principal accepts the benefit of the unauthorized transaction or otherwise obtains an advantage therefrom with the knowledge of the transaction.

In *Mutual Aids Society Ltd v. Akerele (1965)* 1 ALL A.L.R. 336, the Supreme Court held inter alia that even if were to be assumed that the auctioneer was exceeding his authority in publishing the notice of sale of the respondent's house, the silence of the appellant's manager on the placing of the action notice on a wrong property over the notice of sale implied ratification of it on their behalf.

Positive acts provide the clearest and most satisfactory evidence of ratification. Accordingly, a voluntary acceptance or retention by the principal of the benefits of a transaction purportedly entered into by the agent for and on his behalf but without authority will generally establish ratification.

On the other hand, where the principal institutes an action or sets up a defense to an action against him, in reliance upon some prior unauthorized act of his agent, he will be deemed to have affirmed it.

In general, no formality is required in order to effectively delegate authority to another person. Therefore, ratification need not be in any special form or made in a form or manner proper for an original authorization.

SELF ASSESSMENT EXERCISE 2

How is ratification effected?

3.3 Effect of Ratification

Generally, ratification is retrospective in nature. It is treated as though it had been authorized from the onset. All rights and liabilities attaching thereto are in consequence said to relate back to the date of the original act. This doctrine of relation back was aptly explained by Lord Staudale, in *M.R. Koenigablat V Sweet (1923)2 Ch. D 314* as follows:

“I think, it is settled law now that when once you get ratification it relates back. It is equivalent to an antecedent authority mandates priori acquiparator – and when there had been ratification the act that is done is put in the same position as if it had been antecedently authorized.”

The only exception to this principle of relation back is that ratification would not have this effect where to do so will prejudice an innocent third party who has, in the interim acquired a right or benefit under the transaction.

Ratification strictly speaking is not a method of appointing an agent but a means whereby an agency relationship may arise. It therefore relates only to past acts and does not thereby become a license or further authorization to perform similar or even the same act in the future.

It does not thereby constitute the agent into a general agent of the principal. Consequently, no formal termination of such agency relationship is called for, required or necessary.

SELF ASSESSMENT EXERCISE 3

Discuss the effects of ratification

4.0 CONCLUSION

As noted above, agency by ratification is created when the act of a supposed agent is subsequently acknowledge and when this is done, the principal will be deemed to have initially authorized the action in the first place. This is the concept of ratification and learners are expected to identify this.

5.0 SUMMARY

Learners must know that there cannot be ratification without a prior action done on behalf of the principal who later comes forwards to acknowledge the action of the agent with third parties.

6.0 TUTOR-MARKED ASSIGNMENT

1. Examine, with the aid of judicial authorities, agency by ratification.
2. What are the essential ingredients for the validity of ratification?

7.0 REFERENCES/FURTHER READINGS

Pollock and Maitland. *“The History of English Law,”* Vol. 11.

Walker, D.W. (1980). *“The Oxford Companion to Law.”* London: Butterworths.

American Restatements, Second, Agency, Article.

Friedman, G.H.L. (1984). *Law of Agency*, 7th Edition. London: Butterworths.

Companies and Allied Matters Act (1990). *Laws of the Federation of Nigeria.*

UNIT 6 AGENCY OF NECESSITY

CONTENTS

- 1.0 Introduction
- 2.0 Objectives
- 3.0 Main Content
- 3.1 Agency by Necessity?
 - 3.2 Doctrine of Deserted Wife's Agency of Necessity
 - 3.3 Conditions for Necessity of Agency
- 4.0 Conclusion
- 5.0 Summary
- 6.0 Tutor-Marked Assignment
- 7.0 References/Further Readings

1.0 INTRODUCTION

In a restricted range of instances, an agency may arise as a matter of law so the agent is authorized to bind the principal to the extent required by that instance without prior authority from them, or ratification by, the principal. This usually occurs in emergency situations.

2.0 OBJECTIVES

The significance of an agency created as a result of emergency is that it can bind a principal to a third party or allow an agent to claim reimbursement for expenses incurred, or provide a defence to a claim in the tort of conversion. This will be the focus of this unit.

3.0 Main Content

3.1 What is Agency by Necessity?

Generally, the courts are reluctant to find that an agency of necessity exists because it imposes obligations on someone who has not given consent to the supposed agent to so act.

The agency of necessity may arise where certain conditions are fulfilled.

1. Peluola's property must be in Ade's possession as the result of an existing legal relationship, such as a contract of bailment. This will also include claims by strangers such as someone who finds the goods.
2. Ade is unable to obtain instructions from the owner.
3. An emergency threatens the property. It is not sufficient for Ade to show that Peluola's property is causing Ade hardship or inconvenience.
4. Ade takes action in good faith and that action is commercially reasonable, proportionate and in the interest of Peluola.

See further *Sachs v. Miklos (1948) 2 K.B. 23* *Prager v. Blastpiel, Stamp and Hsacock Ltd (1924) 1 K.B. 566*. It is therefore pertinent to state that since it is a characteristic of an agent that they can affect the legal relations of the principal, it might be argued that those agents who only have the right to claim expenses or to defend an action are not true agents of necessity and that the only true agency of necessity is the master of a ship who acts to save the ship or its cargo in an emergency.

SELF ASSESSMENT EXERCISE 1

Explain in detail the concept of agency of Necessity.

3.2 Doctrine of Deserted Wife's Agency of Necessity

Another classical example of agency of necessity arising out of an existing or subsisting legal duty concerns a deserted wife. A deserted wife is an agent of necessity endowed by law with authority to pledge her husband's credit for necessities.

The locus classicus in respect of this point of law is the case of *Phillipson v. Hayter* (1870) L.R.6 C.P.38 where Wiles, J, while explaining the rule stated as follows:

“What the law infers is this, that his wife has authority to contract for things that are really necessary and suitable to the style in which the husband chooses to live, in so far as the articles fell fairly within the domestic department which is ordinarily confined to the management of the wife.”

This principle was applied and approved by the Court of Appeal (North Central State) Kaduna, in the Nigerian case of *Hutchinson v. Madam Olaide* (1970) N.N.L.R. 31 where it was held that a wife whose husband’s cruelty forced her to leave him was entitled to pledge his credit for necessaries. It was further held that this is subject to the wife’s own means and earning power and that it was limited to pledging the husband’s credit for goods supplied or services rendered but not extended to borrowing money.

However, there are certain conditions that are required by law to be fulfilled before a deserted wife can successfully set up an agency of necessity. These conditions are:

- a) That the husband (*Principal*) and the wife (*agent*) were legally married and cohabiting as husband and wife at the material time.
- b) That there was an actual or constructive desertion of the wife by the husband.
- c) That the credit pledged by the wife was for chattels other than money and for the domestic requirements.
- d) That such expenditure was suitable for her style or situation in life or for what she was used to while she was living with her husband.
- e) That there was no other credit available to her for her maintenance either through her own earning power or under a court order.

SELF ASSESSMENT EXERCISE 2

A wife is at liberty to bind her husband for cost of necessaries incurred by her. Discuss.

3.3 Conditions for Necessity of Agency

The existence or otherwise of an agency of authority is dependent on the fulfillment of the following conditions by the supposed agent. These are:

- a) That there is an emergency situation necessitating instantaneous action.
- b) That it was impossible for the claimed agent to communicate with the presumed principal at the material time.
- c) That the action taken was reasonably necessary having regard to the circumstances in the case.
- d) That the claimed agent acted bona fide and in the interest of the presumed principal.

A claimed agent must prove the existence of all these conditions cumulatively before reliefs sought in respect of expenses or damages accruing to him as a result of the agency situation can be sustained.

SELF ASSESSMENT EXERCISE 3

Reliefs sought by an agent of necessity are granted as of right. Do you agree?

4.0 CONCLUSION

From the foregoing it is believed that learners would have been able to know the various ways by which a contract of agency is created. A valid agency will be held to subsist where any of the foregoing situations is proved to exist.

5.0 SUMMARY

This unit has taught learners:

1. What is meant by competence of parties to be an agent?
2. The various ways by which an agency is created.
3. The distinctive features in the various ways by which an agency contract is created.

6.0 TUTOR-MARKED ASSIGNMENT

1. Examine in brief what you understand by competency of parties in an agency relationship.
2. Creation of agency follows a particular form. Do you agree?.
3. What are the distinguishing factors of the various modes of creation of agency?

7.0 REFERENCES/FURTHER READINGS

Sir William Holdsworth, "*A History of English Law*," Vol. IV.

Walker, D.W. (1980). "*The Oxford Companion to Law*" London: Butterworths.

American Restatements, Second, Agency, Article.

Friedman, G.H.L. (1984). *Law of Agency*, 7th Edition. London: Butterworths.

Companies and Allied Matters Act (1990). *Laws of the Federation of Nigeria*.

MODULE 4

Unit 1	Relationship with Third Party; Disclosed Principal
Unit 2	Relationship with Third Party; Undisclosed Principal
Unit 3	Relationship between Principal and Agent

UNIT 1 RELATIONSHIP WITH THIRD PARTIES; DISCLOSED PRINCIPAL

CONTENTS

1.0	Introduction
2.0	Objectives
3.0	Main content
3.1	Contracts by Agents
3.2	Principal and Third Party
3.3	Effect of Agency on Disclosed Principal
4.0	Conclusion
5.0	Summary
6.0	Tutor-Marked Assignment
7.0	References/Further Readings

1.0 INTRODUCTION

Under the law of agency, the principal is generally responsible to third parties for any decision, act or omission of his agent which was performed or taken while executing the terms of the agency. This is the hallmark of the law of agency on a disclosed principal.

2.0 OBJECTIVE

The main objective of this unit is to expose the learner to the peculiar relationship between a principal and an agent and its effects on a contract executed by the third party in favour of the principal where the principal is disclosed by the agent to the third party at the time of the contract.

3.0 MAIN CONTENT

The main content of this unit on the nature of contracts executed by the agent in favour of the principal with a third party who, at the time of the contract was aware to the existence of the said principal.

3.1 Contracts by Agents

Generally, issues in contracts by agents raise the fundamental problem of who can sue and who can be sued. between the principal or the agent. In either case, the rights and liabilities attaching to each depend on the following factors:

- 1) Whether the agent acted within the scope of his authority; express or implied.
- 2) Whether the principal is disclosed or undisclosed.
- 3) Whether the principal is a national as opposed to a foreign principal.

Where the agent acted within the scope of his authority, or if without authority, it has been subsequently ratified by the principal, and the identity of the principal disclosed, the latter alone is generally the true party to the contract and bound thereby. The agent incurs neither right nor liability under such a contract unless otherwise expressly made a party thereto.

Lord Erskin stated the position of the law clearly in *Ex Parte Hartrop (1806)12 Ves 349* when he said:

“No rule of law is better ascertained or stands upon a stronger foundation than this; that, where an agent names his principal, the principal is responsible, not the agent; but for the application of that rule, the agent must name his principal as the person to be responsible.”

It is however, not necessary that the agent must specifically have stated that he was acting for and on behalf of his principal in order for the latter to be disclosed. It is sufficient if the third party knows or ought to have known that the person he was dealing with was acting for another specific person.

However, where the principal is undisclosed, that is, where the fact of agency as well as the identity of the principal are not known to the third party, the contract may, as a general rule, be enforced by or against the principal if and when disclosed provided that the agent's act was authorized. See *Watteau v. Fenwick (1893)1 Q.B.D 346*.

SELF ASSESSMENT EXERCISE 1

Briefly examine the nature of contracts entered into on behalf of a disclosed principal, with a third party.

3.2 Principal and Third Party

The general rule is that where a person contracts as agent for a principal the contract is the contract of the principal and not that of the agent, and prima-facie, at common law the only person who may sue is the principal, and the only person who can be sued is the principal.

In other words, everyone is liable for his contract even where he acts for another unless it can be shown that this liability is removed by the operation of that contract.

The relationship between the disclosed principal and the third party will be brought to life and the principal could take advantage there from only under the following situations:

- 1) The agent discloses, named or unnamed the existence of a principal on whose behalf the contract was negotiated.
- 2) The agent acts within actual authority.
- 3) The agent acts without authority but the principal subsequently ratifies same.

Generally, the principal may be sued on the contract if the agent acts within apparent authority but the third party cannot be sued without firstly ratifying the act of the agent.

In response to a claim by the disclosed principal, the third party has the defences.

- 1) He can set up and use any defense or claim arising from the contract.
- 2) He may also use any defense available against the principal.

It is however to be noted that a defense or claim available against the agent and unconnected with the contract cannot be used against the principal.

SELF ASSESSMENT EXERCISE 2

What rights are available to both the principal and third party in an agency situation where the principal is disclosed?

3.3 Effects of Agency on Disclosed Principal

In *Barwick v. English Joint Stock Bank (1967) L.R, 2 Exch. 259. Wiles. J.* stated the rationale behind this issue thus:

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

The principal is only liable for those decisions, acts or commissions which fall within the scope of the real (*actual*) or apparent (*ostensible*) authority of the agent.

The crucial test is therefore whether a particular decision, act or omission falls within the scope of the agent’s authority and done or taken in the course of that agent’s employment.

Therefore, in as much as the third party dealt with the agent in good faith, the principal does not cease to be liable by reason only of the fact that the agent was acting fraudulently or otherwise to the detriment of the principal.

Generally, the effect of an agency relationship created by an agent on behalf of a disclosed principal with a third party is that the disclosed principal is bound in respect of the contract so created.

SELF ASSESSMENT EXERCISE 3

A disclosed principal is bound by contracts entered to on his behalf. Do you agree?

4.0 CONCLUSION

This unit has exposed the learner to the understanding of the nature of relationship that exists between an agent and a third party in a situation where there is a disclosed principal.

5.0 SUMMARY

By the end of this unit you should be able to understand:

1. The nature of contracts entered into by agents with a third party on behalf of a disclosed principal.
2. The extent of the liabilities or otherwise of the principal in a disclosed principal's contract entered into by an agent on the principal's behalf with a third party.
3. The effect of such contract on all the parties concerned.

6.0 TUTOR-MARKED ASSIGNMENT

1. Who is a disclosed principal?
2. State the rights available to both the principal and a third party in a disclosed principal's agency situation.
3. Contracts entered into on behalf of a disclosed principal are enforceable against the principal. Do you agree?

7.0 REFERENCES/FURTHER READINGS

Kingsley Igweike, (1993). *“Nigeria Commercial Law: Agency.”* Jos, Nigeria: FAB Educational Books.

Pollock and Maitland. *“The History of English Law,”* Vol. 11.

Walker, D.W. (1980). *“The Oxford Companion to Law.”* London: Butterworths.

American Restatements, Second, Agency, Article.

Friedman, G.H.L. (1984). *Law of Agency*, 7th Edition. London: Butterworths.

Companies and Allied Matters Act (1990). *Laws of the Federation of Nigeria.*

UNIT 2 RELATIONSHIP WITH THIRD PARTY; UNDISCLOSED PRINCIPAL

CONTENTS

- 1.0 Introduction
- 2.0 Objectives
- 3.0 Main content
 - 3.1 The Doctrine of Undisclosed Principal
 - 3.2 Personal Liability of the Agent
 - 3.3 Torts Committed By Agents
 - 3.4 Crimes Committed By Agents
- 4.0 Conclusion
- 5.0 Summary
- 6.0 Tutor-Marked Assignment
- 7.0 References/Further Readings

1.0 INTRODUCTION

This unit is meant to deal with the agency situation where the principal is not disclosed by the agent while dealing with a third party albeit on behalf of the principal. This is also known as Undisclosed Agency. Up to this point, the law of agency in respect of third parties seems relatively consistent in that it involves representations made by the principal to the third party. The consistency vanishes at the realm of undisclosed principal. In this instance, the existence of an agency is not disclosed.

2.0 OBJECTIVES

The main objective of this unit is to bring to the knowledge of the student the consequences of agreement entered on behalf of an undisclosed principal by an agent with a third party. It is also meant to look into the rights, obligations, liabilities and duties of all the parties concerned in this type of contract.

3.0 MAIN CONTENT

The following illustration explains this nature of agency. Ayo believes the contract is with Chime and is unaware that Chime is acting for Olu. Olu is entitled to intervene and enforce the contract. This is the subject that will be dealt with in this unit.

3.1 The Doctrine of Undisclosed Principal

An undisclosed principal is one whose existence and identity are unknown to the third party at the time of entering into a contract with an agent.

Under the doctrine of undisclosed principal, it is permissible, in appropriate circumstances for such principal on whose behalf a contract has been entered into by an agent to sue and be sued on the contract. Although it is a well settled principle of law, the doctrine has been described as an anomaly in the sense that it offends the doctrine of privity of contract and it is in this respect that it is often regarded as an exception to the doctrine of privity of contract rule.

EXCEPTIONS

The rights and liabilities of the principal on contracts negotiated by the agent on his behalf are subject to certain general exceptions. These are:

1. No principal can validly sue or be sued in respect of any contract purported to have been entered into on his behalf by the agent unless with his consent or authority.
2. At common law, no principal may sue or be sued on any deed, even if it was expressed to have been executed on his behalf unless he was described as a party thereto and it was executed in his name.
3. Where the contract in question is a negotiable instrument, for example a bill of exchange, cheque or promissory note, the principal is not liable unless his

signature appears on it. He needs to sign by himself to be liable.

4. Where the principal is a foreign principal, there is a presumption that the intention was to bind the agent and not the foreign principal. This may, however, be contradicted by clear terms of the contract itself or circumstantial evidence from the surrounding circumstances of the case.

5. The rights and liabilities of the principal may be expressly excluded by a term of the contract itself or impliedly by a custom, or usage of the particular trade, business or profession to which the agent belongs or in which he operates. This is subject to the provision that these are not inconsistent with the express term of the contract and not reasonable or unlawful.

SELF ASSESSMENT EXERCISE 1

The Doctrine of undisclosed principal is absolute. Discuss.

3.2 Personal Liability of the Agent

In situations where the principal cannot be sued on a contract entered into on his behalf by the agent, the question may arise as to whether the third party can sue the agent who negotiated the contract.

The common law rule is expressed in the maxim "*QUI PER ALIUM FACIT PER SEIPSAM FACERE VIDETUR*" which means "he who does an act through another is deemed in law to do it himself. That is why a person cannot escape liability merely because he has done what he did through an agent. However, an agent may also personally liable in some circumstances. These circumstances are:

a. Where the Agent Contracts Personally

In this situation, the agent will be held liable if he enters into the contract in his name instead of in the name of his principal, with or without disclosing the fact of his agency or the identity of his principal. It is generally presumed that he intended to

contract personally.

In *Calder v. Dobell (1871) L.R 6 C.P. 486* a broker contracted in his own name to purchase goods from the plaintiff, having previously disclosed to him that he was an agent of the defendant. In an action for the price of the goods, it was argued for the defendant that there is a distinction between the case where one party was not aware when entering into the contract that the other was acting as an agent and the case where he was aware of that fact but nevertheless the contract was entered into by the agent in his own way. It was submitted that the principal could be sued in the former case but not in the latter. This argument was rejected by the Court of Common Pleas which unanimously held that the plaintiff was entitled to sue the defendant on the contract.

See; *West African Shipping Agency (Nig.) Ltd & Anor v. Kalla (1978)3 S.C. 21. Jammal engineering (Nig.) Ltd. v. Nigeria Ports Authority & Ors CCHCJ/1/731.*

b. Where the Principal is Foreign

The general rule is that where an agent contracts on behalf of a foreign principal, there is a presumption that the intention was to bind the agent and not the principal. The practical consideration concerns the necessity to avoid the difficulties arising from the foreign element present in such circumstances. However, there would be no presumption where the intention to bind the principal was clear from the contract itself or from the surrounding circumstances of the particular case.

c. Where the Principal is Fictitious or Non-Existent

In cases where an agent professes to contract on behalf of a fictitious or non-existent principal, he may sometimes be presumed to have intended to be bound by the terms of such contract.

The leading judicial authority on this point is *Kelner v. Baxter & Ors (Supra)* where an agent purported to enter into a written contract on behalf of a company not yet incorporated. It was held that the agent was personally liable on the contract, even if he

expressed himself as contracting for the future company.

d. Where the Principal is Not Avowed

Where a person professes to contract as an agent and it subsequently established or revealed that he is in fact the real principal and that he was merely acting for himself, he is personally liable on the contract.

This situation is however, not an instance of undisclosed principal in the sense that the fact of agency and the existence of the principal are acknowledged but what was not known or apparent is the fact that the principal and the purported agent are one and the same person.

It is important to state here that there is no general principle of law prohibiting a person from acting as both as an agent and the principal in one and the same transaction. The only proviso is that where the identity of the principal is immaterial to the other contracting party, the agent would be entitled to sue and be sued on the contract.

e. Where the Contract is in Writing

The question whether an agent, who on behalf of his principal, purportedly enters into a written contract other than a deed or negotiable instrument is personally liable thereon depends on a number of factors. He will be personally liable if he signs his name absolutely and without qualification.

For such an agent to escape liability, the document so signed must unequivocally show that he contracted as agent and did not undertake any personal responsibility.

In *Gadd v. Houghton (1876)1 Exq. D. 357, Mellish, L.J*, had this to say on the matter:

“When a man signs a document in his own name, he is prima facie a contracting party and liable and there must be something very strong on the face of the instrument to show that liability does not attach to him.”

For this rule to be applicable, it will not be sufficient that the person should have described himself in the relevant document as an agent, director, secretary, accountant, broker, or words of similar nature. If it is stated in the document that he signs the same “*as agent for*” or “*on behalf of*” a simply “*for*” a principal or words of that kind, he escapes liability unless it was clearly evident from the body of the document that he intended to bind himself.

See *West African Shipping Agency (Nig.) Ltd & Anor v. Alhaji Kala (Supra)*

f. Where the Contract is a Deed

In cases where an agent appends his signature to a deed or document under seal and executes it in his own name, he is personally liable even if he is described in the document or deed as an agent acting for and on behalf of a named principal.

This rule is strict and operates even if that agent subsequently executes the document or deed on behalf of his principal. In *Schalfk v. Anthony (1813)1 M.B. & S 573*, a shipmaster, executed by deed, a charter party in his own name describing himself as the agent of the ship-owner. It was held that notwithstanding that description, the shipowner, as principal, was not entitled to sue for the freight but only the ship-master because the owner was not a party to the deed.

This principle is premised on the rule that no one can add to or contradict the terms of a deed. To escape liability, however, the agent must have executed the deed as the principle’s deed. In such instance, the agent will not incur personal liability.

g. Where the Contract is a Negotiable Instrument

Where an agent signs his own name on an ordinary bill of exchange, a cheque or promissory note, or endorses or accepts such an instrument by signing his own name, he is personally liable on the instrument notwithstanding that he added to his signature

words describing himself as an agent or as filing a representative character.

Where he signs as drawer, endorser or acceptor, adding to his signature words indicating that he signs not only as agent for a principal but also as agent for a specified principal, he will incur no personal liability.

Where the agent signs per pro (*per procuration*) he can only bind his principal for acts within his limited authority or capacity. He will however be personally liable for any excess.

He will equally be liable if he signs in a trade name if he signs in his own name.

h. Where There is Implied Warranty of Authority

Where an agent purports to act on behalf of a principal, and it turns out that he was acting without authority or in excess of his authority, the principal cannot be held responsible in the absence of ratification by him. The agent alone is responsible irrespective of whether he knew, or ought to have known, or inadvertently thought that he had the authority he was supposed to have professed. For responsibility to be placed on the agent, the law requires that the third party should have relied on the warranty of the agent in entering into the contract. Therefore, the agent will not be liable if the third party knows or was aware of the fact that the agent was mistaken as to his own authority.

It has been duly acknowledged that this principle is a well established exception to the general rule that an action for damages will not lie against a person who honestly makes a misrepresentation which misleads another see: *Starkey v. Bank of England (1903) A.C.114; Mcneal V Hawes (1923)2 K.B.539.*

It is however pertinent to point out that in most cases, the basic understanding of the agent's warranty is that the agent has his principal's authority to enter into the transaction in question. He is not however understood thereby, to warrant that his principal is solvent or will perform the transaction entered into. On the other hand the law would not allow implied warranty in some instances. These are:

- a) Where the assertion of representation is one of law as distinct from one of fact;
- b) Where the principal subsequently and effectively ratifies the said transaction; and
- c) Where the third party knows or ought to know that the agent had no authority.

SELF ASSESSMENT EXERCISE 2

State and discuss the various situations under which an agent will personally incur liability for contracts entered into on behalf of a principal with a third party.

3.3 Torts Committed by Agents

Under this doctrine, a principal is held answerable for torts committed by his agent in the course of executing the terms of his agency. The matter does not only affect the vicarious responsibility of the principal for such acts and omission but also the personal responsibility of the agent himself. Thus, a third party injured by the wrongful act or omission of an agent may proceed against the principal vicariously, and or the agent directly, as the perpetrator of the wrongful act.

The liability of the principal for a wrongful act of his agent is under the common law founded on the doctrine of “*RESPONDENT SUPERIOR*” which means “*Let the Principal Be Answerable.*”

Under the law, several rationale of vicarious liability have been suggested in tort cases. Some of these have been imported into the principal-agency relationship. Some of these are:

- a) that the master (*principal*) has a fictitious control over the behaviour of his servant (*agent*);
- b) that the master (principal) has selected his servant (*agent*) and trusted him and should therefore suffer for his wrongs, rather than an innocent stranger or third party.
- c) that it is a privilege granted by law for a person (*principal*) to be allowed to employ another (*agent*) and that for that privilege there should be a corresponding

responsibility;

d) those tort losses are placed upon the employer (*principal*) because he is better able to prevent them through careful hiring and better able to bear them.

3.3.1 Liability of the Principal

The liability of the principal under the doctrine of respondent superior is strict and the principal is so responsible notwithstanding his exercise of due care and diligence in selecting the agent or supervising him or probing the act or omission concerned. The principal is only liable in contract for things done or actions taken within the actual (real) or ostensible (*apparent*) authority of the agent.

In tort, he is liable for all wrongs committed by the agent whether within his actual or ostensible authority or not. In *Construction Industry Co. Ltd v. Bank of North (1968) N.C.L.R. 194*, a driver waiting to be served at a petrol station, struck a match on his cigarette. This action set a petrol station ablaze. It was held that his employer (*principal*) was liable for the damage caused thereby.

However, to make the principal liable, the act of the agent must have been committed in the course of the agent's employment. Thus, where it was established that the agent was on a frolic of his own, it was held that the agent was not in the course of his employment and therefore the principal was not liable.

See: *Navarro v. Moregrand Ltd. & Anor (1951)2 T.L.R. 674*.

The principal will also be held liable in the following circumstances.

a) where he authorized the wrongful acts.

See: *Pan Brothers Ltd. v. Landed Property Ltd & Anor (1982)2 All N.L.R. 22* *Adesuloye v. Martin & Anor (1978)10-12 CCHCJ 345*.

b) where the principal ratified the wrongful acts.

See: *Inoma Russel v. Niger Construcion Coy (1987)3 N.W.L.R. 298*. c) where there is a misrepresentation by agent.

See: *Imersel Chemical Co. Ltd. v. National Bank of Nigeria (1974)4*

3.3.2 Liability of the Agent

In situations where a third party suffers a loss, damage or injury as a result of the wrongful act or omission of the agent, the latter remains liable to him personally. The agent is liable directly as the perpetrator of the wrongful act or omission and jointly with his principal. His liability exists notwithstanding that he was acting with the express authority or instruction or order of the principal or for the benefits of the principal.

In *Baschet v. London Illustrated Standard Co. (1900)*¹ Ch. D. 73. It was held that an author whose copyright has been infringed was entitled to recover separate damages against every infringer, whether principal, agent or servant.

Unless the action of the agent is ratified by the principal, the agent will be personally liable. The same applies to a situation where the agent departs from the scope of his employment.

EXCEPTIONS

- a) If the wrongful act or omission complained of will not be tortious as regard his principal who has ratified it.
- b) If the wrongful act or omission complained of requires a specific state of mind at the time of its commission, and he did not have that state of mind at the time, e.g. innocent misrepresentation.
- c) If the agent is personally immuned from suit on the wrongful act or omission complained of even though the principal may remain liable.

Who May Be Sued

The third party may sue either the agent or the principal separately or both jointly since they are both generally jointly and severally liable. Any judgment obtained against either of them bars any further action against the other.

However, section 8(1)(a) of the Civil Liability (*Miscellaneous Provisions Act*) of 1961 has overruled this common law position as it forbids judgments obtained against a party from standing as bar to an action against any other person who is liable as a joint tort-feasor in respect of the same damage.

SELF ASSESSMENT EXERCISE

Distinguish between the liability of an agent and a principal to a third party in tort.

3.4 Crimes Committed by Agents

It is pertinent to state from the onset that crimes committed by agents in the course of executing the terms of their agency have a dual aspect. In the first place, it refers to the personal responsibility of the agents and the principal respectively. Secondly, it refers to the vicarious responsibility of the principal for the crimes committed by the agents.

1. Personal Responsibility of Principal and Agent

The general rule relating to crimes committed by an agent is that as the perpetrator of any act or omission constituting a crime, he is personally responsible whether such crime was committed in the course of his employment or not. Therefore, to be criminally responsible for such an act or omission, the prosecution must prove as against the agent, all the essential elements or ingredients of criminality. The agent must be proved to have:

- a) attained the age of criminal responsibility.
- b) been in possession of the relevant *mens rea* (i.e. the criminal intent) of the particular crime or offence at the time of its commission or omission and
- c) performed the *actus reus* i.e. perpetrated the act or omission constituting the particular offence or crime.

In *Mandillas and Caraberis & Anor v. Inspector General of Police (1958)3 F.S.C. 20*, the second defendant was the Area Manager of the first defendant company, from whose workshop two lorries, the subject-matter of the prosecution were allegedly

stolen. The prosecution submitted that the second defendant, being the Area Manager for the shop, were in personal possession of the lorries. He must therefore, be held criminally responsible for any offence committed in relation to the lorries. Ademola F.C.J., delivering the judgement of the Supreme Court held that, whatever the position of a manager may be in cases of absolute liability, he could not be convicted of an offence involving mens rea except in respect of his own act or omission.

2. Vicarious Responsibility of Principal

The general rule in common law is that the principal is not ordinarily vicariously responsible for a crime committed by his agent in the course of his employment. This principle of law has raised the issue of when a statute should be considered as having created a strict liability offence.

The general test that has been applied is whether the duty or offence created is or has been rendered absolute thereby. If it has or is, the principal is in the same vein made responsible, whether he has expressly delegated his duty under the statute to his agent or not and regardless of any intent, knowledge or mens rea. In *Gammon Hong Kong Ltd & Ors. v. Att. General of Hong Kong (1984)3 W.L.R. 437* the Judicial committee of the privy council set out the law relating to vicarious responsibility of a principal where crime is committed as follows:

- 1) that there is a presumption of law that mens rea is required before a person can be held guilty of a criminal offence.
- 2) that the presumption is particularly strong where the offence is truly criminal in character.
- 3) that the presumption applies to statutory offences and can be displaced only if this is clearly or by necessary implication the effect of the statute.
- 4) that the only situation in which the presumption can be displaced is where the statute is concerned with social concern and public safety is such an issue.
- 5) that even where a statute is concerned with such an issue, the presumption of *mens rea* stands unless it can also be shown that the creation of strict liability is effective to

promote the object of the statute by encouraging greater vigilance to prevent the commission of the prohibited act.

SELF ASSESSMENT EXERCISE 4

Under what conditions will a principal be held liable for crimes committed by his agent while contracting with a third party?

4.0 CONCLUSION

This unit deals with the doctrine of undisclosed principal in an agency relationship and its recognized exceptions. Learners have been exposed to rudiments of this doctrine as applicable both under the common law and statute.

5.0 SUMMARY

At this point of this unit you should be able to know the basic concepts of agency as they relate to the doctrine of undisclosed principal in general.

6.0 TUTOR-MARKED ASSIGNMENT

1. The doctrine of undisclosed principal in an agency relationship is without exceptions. Discuss.
2. In what instance would an agent be personally liable for contracts entered on behalf of a principal with a third party.
3. The distinction between the liability of an agent and that of his principal to a third party in tort is very remote Discuss?
4. Discuss the basic factors to be considered before a principal could be held liable for crimes committed by his agent.

7.0 REFERENCES/FURTHER READINGS

Kingsley Igweike, (1993). *“Nigeria Commercial Law: Agency.”* Jos,

Nigeria: FAB Educational Books.

Markesinis and Munday, (1986). "*An Outline of Agency.*" 2nd Edition.

Pollock and Maitland. "*The History of English Law,*" Vol. 11.

Sir William Holdsworth, "*A History of English Law,*" Vol. IV.

Walker, D.W. (1980). "*The Oxford Companion to Law.*" London:
Butterworths.

American Restatements, Second, Agency, Article.

Friedman, G.H.L. (1984). *Law of Agency*, 7th Edition. London:
Butterworths.

UNIT 3 RELATIONSHIP BETWEEN PRINCIPAL AND AGENT

CONTENTS

- 1.0 Introduction
- 2.0 Objectives
- 3.0 Main Content
 - 3.1 Duty to Perform
 - 3.2 Duty of Obedience or Loyalty
 - 3.3 Duty of Care and Skill
 - 3.4 Duty of Personal Performance
 - 3.5 Duty to Act in Good Faith
 - 3.6 Duty to Account
- 4.0 Conclusion
- 5.0 Summary
- 6.0 Tutor-Marked Assignment
- 7.0 References/Further Readings

1.0 INTRODUCTION

In modern commerce, the relationship of principal and agent is primarily consensual. Consequently, the rights and duties arising from such relationship are discernible from the express or implied agreement between the parties. The relationship is often described as fiduciary in the sense that it arises out of the trust or confidence reposed upon the agent by the principal. Hence, there exist rights and obligations with attendant duties on both parties to one another.

2.0 OBJECTIVES

The major objective of this unit is to bring to the fore and discuss the major duties of an agent to his principal when such relationship is established to exist. The continuation of the agency relationship is dependent on the agent carrying out his duties as such

diligently to the principal.

3.0 MAIN CONTENT

In commercial transaction it is apparent that a principal may sometimes engage or appoint an agent who belongs to a particular trade, business or profession or may be required or instructed to operate at a particular place or locality. In some of the cases, the principal is not always with the agent and this requires the agent to perform some basic duties to the satisfaction of the said principal. These duties are the basis of this unit.

3.1 Duty to Perform

The primary duty of an agent particularly where he was appointed under an agreement with the principal is to execute his agency in accordance with the terms of such agreement. In *Otto Hamman v. Senbanjo & Anor (1962)2 All N.L.R. B9 Adefarasin. Ag. J.*, aptly stated the position thus:

“It is the duty of an agent to carry out the business he had undertaken. This was his obligation unless he had in his contract expressly excluded responsibility.”

However, where the agent fails to perform his duties or to do so in accordance with the terms of his contract, he is generally liable only for the breach of his agency agreement. If he performs such duties carelessly or in an imperfect manner and thereby causes loss to his principal, he may in addition become liable in negligence. Such liability may take the form of an action for damages for the loss suffered by the principal, or an indemnity or contribution from the agent in favour of the principal.

However, his duty to perform is not absolute. If he was unable to perform his duty, he must promptly inform his principal or any other person having authority to receive such information.

Also, if the duties are illegal, he is not bound to perform them. If he is also a gratuitous agent, he will not be liable for breach of duty to perform.

SELF ASSESSMENT EXERCISE 1

The duty of an agent to perform his duties based on the terms of the contract is absolute. Discuss.

3.2 Duty of Obedience or Loyalty

When an agent is executing the terms of his agency, he is obliged to carry out such instructions as may be given to him by the principal relating thereto. In *Eso West African INC. v. Ali (1968) N.M.L.R 414*, an Ibadan High Court held, inter alia, that it is the duty of an agent to carry out any instructions that may be given to him by the principal and cannot depart from such instructions even though he reasonably believed that in doing so he was not promoting the interest of the principal.

Exceptions

1. Where no definite instructions has been given to the agent, or where such has been given, but this leaves the agent a measure of discretion, he would only be expected to be guided by the reasonable and honest exercise of his own judgement and the interest of the principal. If he is therefore so guided, he incurs no liability even if the principal suffers a loss by their exercise.
2. If the principal's instruction is ambiguous, the agent is put to election and provided he acted fairly and honestly, he would not be in breach of his duty of obedience and honesty even if the course chosen by him is less favorable to his principal.
3. If the agent is a professional agent the principal's instructions may be subject to any custom or usage of the particular trade, business or profession to which the agent belongs or within which he operates.

SELF ASSESSMENT EXERCISE 2

What is the extent of obedience or loyalty required of an agent to his principal.

3.3 Duty of Care and Skill

In the course of executing the terms of his agency, an agent is bound to exhibit such care, skill and judgment as are required under the circumstances of the particular situations. In *Spiropolous Co. Ltd. v. Nigeria Rubber & Co. Ltd (1970) N.C.L.R. 94*, a High Court in Benin held that the prudence which an agent is expected to show in the affairs of his principal requires that he should not involve the principal in a heavier financial burden where there is available means of involving him in a lesser financial burden. Accordingly, it was held that an agent who undertook to effect a policy of insurance on behalf of his principal is under a duty to do so at the most economical rate.

The degree of care, skill or diligence required of an agent may sometimes depend on whether he is a gratuitous agent or acting for reward. If he was acting for reward, a higher standard of care, skill or diligence is required of him. If he were a professional, agent or holds himself out as possessing a professional qualification, he must exhibit such care, skill or diligence as is usual or necessary or for the proper conduct of the trade, business or profession in which he is employed.

However, if he holds himself out to the principal as possessing a special skill or knowledge, then he is obliged to exhibit such care, skill or diligence as would normally be shown by one possessing such skill or knowledge.

SELF ASSESSMENT EXERCISE 3

What is duty of care and skill?

3.4 Duty of Personal Performance

The basic principle of law in this regard is covered by the maxim “*Delegatus Non Potest Delegare*” which means a delegated power cannot be further delegated. Agency relationship is one of confidentiality of principal and the agent, and the agent is generally expected to perform his duties as an agent, personally.

In the realm of agency, an agent cannot entrust to another person or a sub-agent the exercise of an authority or duty entrusted to him by his principal without the latter's express or implied authority to do so. In *Bangboye v. University of Ilorin & Ors (1991)8 N.W.L.R. 1*, the Court of Appeal affirmed that an agent to whom power is delegated cannot further delegate it without the express authority of the principal or authority derived from statute.

Exceptions

The recognized exceptions to this general rule include:

- 1) Where the transaction is required by statute to be evidenced by the signature of the principal himself.
- 2) Where the competency to do the act arises by virtue of holding some public office or by virtue of some power, authority, or duty of a personal nature and requiring skill or discretion for its existence.
- 3) Where a statute imposes on a person a duty which he is not free to delegate to another.
- 4) Where the agent has the express or implied authority of the principal to do so.
- 5) Where no personal confidence is reposed on the agent by the principal or by the terms of his agency.
- 6) Where the function or duty of the agent does not require any particular skill or discretion or is purely ministerial.
- 7) Where a custom or usage of the trade, business or profession of the agent or within which he operates allows.
- 8) Where an emergency has arisen requiring immediate or instantaneous action in order to preserve or protect the interest of the principal or the agency itself.
- 9) Where the nature of the agency itself necessitates a partial or total delegation, without which it would be superfluous or unreliable.
- 10) Where the principal ratifies the act of the agent in appointing a sub-agent or an act or omission of the supposed sub-agent either directly or otherwise.

- 11) Where the authority to delegate is derived from a statutory or legislative provision or enactment.

SELF ASSESSMENT EXERCISE 4

Discuss the various exceptions to the general rule contained in the maxim, *Delegatus Non Potest Delegare*”

3.5 Duty to Act in Good Faith

This duty of an agent arises principally from the fiduciary nature or character of the principal-agent relationship. Agency relationship, as a whole, is based essentially on the trust reposed on the agent by the principal. The principal employs an agent normally because he requires that agent’s personal service or expertise. He will usually depend on the agent for the due performance of those services. The law imposes on the agent the duty to show good faith in his dealings on behalf the principal.

The duty of good faith has many corollaries. These are:

- 1) The agent must avoid clash of personal interest with that of his principal.
- 2) The agent should not make any secret profit or other benefit from his position as agent in excess of his agreed commission or remuneration.
- 3) The agent is under an obligation not to take a bribe while executing his agency.

In cases where the giving or receiving of bribe is established against the agent, the principal could exercise the following options:

- a) dismiss the agent immediately and without notice.
- b) refuse to pay the agent any salary or commission payable or accruing.
- c) recover any salary or commission already paid on the particular transaction.
- d) recover the amount of the bribe paid to the agent.
- e) claim damages from the agent or the third party for any loss occasioned by the bribe.

SELF ASSESSMENT EXERCISE 5

The duty of an agent to act in good faith is qualified. Discuss.

3.6 Duty to Account

It is a fundamental obligation of every agent to keep and to render appropriate account of his stewardship to his principal whenever he is called upon to do so. Thus he must be willing and ready at all times to render an account of all transactions undertaken by him for and on behalf of his principal. This duty is more particularly important where money or property has been received for and on behalf of the principal. In *Majekodunmi v. Joseph Daboul Ltd. (1975)2 C.C.H.C.J. 161*, a Lagos High Court held, inter alia, that once the relationship of principal and agent is established, and the agent fails to keep proper account or fails to account to the principal for monies or properties received by him in the cause of his agency, he is accountable to such a principal and can be compelled to render such account by an action in a court for an account.

However, some individual obligations of the agent to his principal relating to the duty to account flow from the general duty to account. These are:

- 1) duty to keep proper account.
- 2) duty to make books and documents in his possession relating to the execution of the agency accessible to his principal.
- 3) duty to keep his personal monies separate from his principal's money.
- 4) he is under a duty, if he holds money or property on behalf of his principal, to pay over or account for such money or restore such property to his principal notwithstanding claims made by third parties provided that the money or property was not received in respect of a void or illegal transaction or that the agency itself is not void or illegal.

SELF ASSESSMENT EXERCISE 6

The basic duty of an agent is to render account to his principal. Do you agree?

4.0 CONCLUSION

The basis of the needs for duties which an agent is bound to perform in respect of his principal is premised basically on the fact that most agency situations are fiduciary

in nature. It is only when provisions are made as to their duties that effective agency could be effected.

5.0 SUMMARY

This unit has dealt with the different duties which an agent owes his principal and these include:

- 1) duty to perform.
- 2) duty of obedience or loyalty.
- 3) duty of care and skill.
- 4) duty of personal performs.
- 5) duty to act in good faith.
- 6) duty to account.

6.0 TUTOR-MARKED ASSIGNMENT

The various duties which an agent owes his principal are absolute. Discuss.

7.0 REFERENCES/FURTHER READINGS

Kingsley Igweike (1993). *“Nigeria Commercial Law: Agency.”* Jos, Nigeria: FAB Educational Books.

Markesinis and Munday, (1986). *“An Outline of Agency.”* 2nd Edition. Pollock and Maitland. *“The History of English Law,”* Vol. 11.

Sir William Holdsworth, *“A History of English Law,”* Vol. IV.

Walker, D.W. (1980). *“The Oxford Companion to Law.”* London: Butterworths.

Friedman, G.H.L. (1984). *Law of Agency,* 7th Edition. London: Butterworths.

MODULE 5

- Unit 1 Duties of the Principal to the Agent
- Unit 2 Remedies Available to the Parties

UNIT 1 DUTIES OF THE PRINCIPAL TO THE AGENT

CONTENTS

- 1.0 Introduction
- 2.0 Objectives
- 3.0 Main Content
 - 3.1 Duty to Remunerate
 - 3.2 Estate Agent's Commission
 - 3.3 Duty to Re-Imbursement and Indemnity
- 4.0 Conclusion
- 5.0 Summary
- 6.0 Tutor-Marked Assignment
- 7.0 References/Further Readings

1.0 INTRODUCTION

As discussed in the preceding unit, parties to an agency relationship have corresponding duties which they owe one another failure of which either of them could make valid claims in the law court for breach of contract. The failure to perform any of these duties of or performing some negligently which result into one of the other parties incurring loss is a ground for an action in damages.

2.0 OBJECTIVES

The major objective of this unit is to bring to the knowledge of the learner those duties a principal owes his agent which are either express or implied.

3.0 MAIN CONTENT

The major duty a principal owes his agent is premised on the issue of money and pecuniary advantages accruable to the agent in the event of an effective discharge of his own duties under the contract. This also includes carrying out the principal's instructions under the terms of the agency in respect of his dealings with third parties on behalf of the principal.

3.1 Duty to Remunerate

The primary duty of a principal to his agent is to remunerate him for the services rendered. Such duties arise whenever the agent is employed under such circumstances as would reasonably justify the expectations that he should be paid.

The remuneration may take the form of an agreed commission or wages or other benefit agreed between the parties such as some share of the benefits accruing to the principal from the agency.

However, the duty to remunerate is not absolute for the agent's right to receive it accrues only if he is entitled to it in accordance with the agency agreement which will also include the amount payable, the conditions under which it becomes payable and the time of payment.

The right to reasonable remuneration may sometimes be implied from the express terms of an agreement, the custom and usage of the particular trade, business or profession of the agent, where the parties operate and the surrounding circumstance including any dealings between the parties may also determine remuneration.

However, even when the duty to remunerate has arisen expressly or by implication the agent's right to it is further subject to certain conditions. These include:

- a) the agent must have earned the remuneration. That is, when the agent has done all or substantially all he was obliged to do under the circumstances.
- b) the agent must be the effective cause of the transaction from which the remuneration accrues.
- c) the agent must fulfill the conditions, if any, upon which the remuneration accrues.
- d) the agent must fulfill the conditions, if any, upon which the remuneration accrues.

SELF ASSESSMENT EXERCISE 1

It is an absolute right that an agent is entitled to his remunerations. Discuss.

3.2 Estate Agent's Commission

Estate agents are a peculiar type of agents whose rights, duties and obligations are often spelt out in an agreement, mostly Power of Attorney. They present a peculiar problem with regard to payment of commission or entitlement from their principals. This is primarily because there is normally no obligation on the estate agent to do anything for the principal. The contract with the latter is merely a promise binding on the principal to pay a sum of money upon the rendering of specified service by the estate agent.

In some cases, an instruction or agreement as to when any commission becomes payable may be given or concluded in one of various ways:

- a) on the estate agent introducing a buyer.
- b) on finding a buyer or someone to buy.
- c) on introduction of a person who signs or enters into a legally binding contract to purchase.

SELF ASSESSMENT EXERCISE 2

Estate agent's commission are payable as of right. Discuss.

3.3 Duty of Re-Imbursement and Indemnity

In every agency relationship, there is by implication, a duty on the principal to indemnify the agent of all losses, damages or liabilities sustained by the agent in the course of discharging his authorized duties. This implied duty is subject to any subsisting agreement or declared intention of the parties. All reasonable expenses incurred by the agent and any incurred by him when he engages the services of a sub-agent or substitute with the approval of the principal are payable.

Exceptions

- 1) where the parties provide in their agency relationship for the payment of some kind of remuneration the right to indemnity or re-imburement may be superseded.
- 2) where the right of the agent to indemnity or re-imburement is expressly provided for by the parties in their agency agreement.

The agent will not be entitled to this right in any of the following conditions:

- a) where the agent acted without express or implied authority, unless the transaction is subsequently ratified by the principal or any other person authorized by him to do so.
- b) where the agent incurred the expenses, loss or liability in consequence of his own negligence, default or insolvency.
- c) where the agent has acted in breach of his duty, including violation of any principal's lawful or reasonable instructions.

- d) where the agent acted in respect of a transaction that is to his knowledge unlawful or contrary to public policy.
- e) where the agent acted in respect of any transaction rendered null and void by any statute.

SELF ASSESSMENT EXERCISE 3

An agent is entitled to re-imburement of his incurred expenses and indemnity in all situations. Do you agree?

4.0 CONCLUSION

As noted earlier, the basis of any agency is for the principal and the agent to perform their respective duties both expressly and impliedly. The duty of a principal is to pay the various monies accruable to the agent on the fulfillment of the agency conditions provided his action does not fall under any of the known exceptions.

5.0 SUMMARY

This unit has revealed to the learner the duties a principal is obliged to perform to his agent which are as follows:

- a) Remuneration.
- b) Estate Agent's Commission
- c) Re-imburement and Indemnity.

6.0 TUTOR-MARKED ASSIGNMENT

The major duty of a principal to an agent under an agency relationship is premised on the monies accruable to the agent under the contract of Agency. Discuss

7.0 REFERENCES/FURTHER READINGS

Kingsley Igweike, (1993). *"Nigeria Commercial Law: Agency."* Jos, Nigeria: FAB Educational Books.

Markesinis and Munday, (1986). *“An Outline of Agency.”* 2nd Edition. Pollock and Maitland. *“The History of English Law,”* Vol. 11.

Sir William Holdsworth, *“A History of English Law,”* Vol. IV.

Friedman, G.H.L. (1984). *Law of Agency,* 7th Edition. London: Butterworths.

UNIT 2 REMEDIES AVAILABLE TO PARTIES

CONTENTS

- 1.0 Introduction
- 2.0 Objectives
- 3.0 Main Content
 - 3.1 Remedies Available to the Principal
 - 3.2 Remedies Available to the Agent
- 4.0 Conclusion
- 5.0 Summary
- 6.0 Tutor-Marked Assignment
- 7.0 References/Further Readings

1.0 INTRODUCTION

In every contractual situation there are bound to be infringement of the right of the parties by themselves. This comes in the form of breach of the terms of the agreement between the contracting parties. It is usually followed by claims for damages in the law court.

2.0 OBJECTIVES

The main corpus of this unit is to bring to the knowledge of the learner the available remedies to the parties under an agency relationship where there is a breach of any of the terms of the agreement by any of the parties.

3.0 MAIN CONTENT

Breach of an agency relationship may give rise to a claim for damages or other remedies available to the innocent party which may either be the principal or the agent. The remedies available to either party may depend on the terms of any relevant

agreement, the type or nature of the breach and the surrounding circumstances.

3.1 Remedies Available to the Principal

In situations where the agent by some misconduct or otherwise commits a breach of a term of his agency relationship with the principal, the latter may avail himself of one or more of a number of remedies stated below.

- 1. Dismissal:** The principal may determine or bring the agency relationship to an end or otherwise dismiss the agent from his employment without notice.
- 2. Rescission and Damages:** The principal may also rescind any contract made on his behalf by the agent without authority or in breach of his duty and this may include claims for damages.
- 3. Action for Account:** The principal may take an action to compel the agent to render an account for all his dealings on his behalf, in respect of their agency relationship. This may also include an account for all money or property of the principal in his possession.
- 4. Action in Tort:** The principal may in addition sue the agent for conversion where the latter has received property on his behalf and has misappropriated or misused it. He may also institute an action for negligence where such is in contravention of the agency agreement.
- 5. Private Prosecution:** The principal may be entitled to and may take out private summons against the agent where the latter's conduct, act or omission is criminal.

SELF ASSESSMENT EXERCISE 1

Enumerate and explain the various remedies available to a principal in an agency relationship.

3.2 Remedies Available to the Agent

Where the agency relationship is established by contract and the principal commits a breach of a term of his agency contract, the agent has most of the remedies ordinarily available to a contracting party under the general law of contract.

The law may imply certain remedies from the facts and circumstances of a particular agency case in some cases. Generally, in a case of a breach of an agency contract or a term thereof. Both the principal and the agent are entitled to and may claim one or more of the following remedies:

1. **Damages:** The agent may sue the principal to recover any loss or injury he may have suffered as a result of the principal's failure to perform any of his duties under the agency arrangement. This may include his right to indemnity or re-imburement and damages unless the parties agreed otherwise or the agent has waived or otherwise lost his right to sue.

2. **Right of Set-Off:** Whenever the principal institutes an action in a court of law against the agent, the latter may claim a right of set-off or counter-claim of engagement due to him from the principal by way of remuneration, indemnity or re-imburement. This he must specifically do in his defense to the claims by the principal.

3. **Right of Lien:** The agent also has a right of lien on the property, goods or chattels of his principal in his lawful possession or custody in respect of and up to the amount of his claim for remuneration, losses, liabilities and expenses incurred lawfully and for advances made in favour of the principal. This is however subject to any agreement between the parties. The law recognizes only two types of lien; the general and particular lien.

4. **General Lien:** This enables the agent of retain his principal's property, chattel, or goods until any sum due to him from the principal is paid.

5. **Particular Lien:** This only enables the agent to retain such property, chattel or goods pending payment of any sums due in respect of that property, chattel or goods.

6. **Right of Stoppage in Transitu:** Where the agent stands towards his principal in the position of an unpaid seller of goods, he may exercise this right against the goods of his principal.

This will arise where he bought the goods for his principal with his own money or otherwise incurs a personal liability to the seller for the price.

7. Other Remedies

- a) The agent may demand an accounting by the principal where there is reciprocal indebtedness by the parties to each other.
- b) The agent may be entitled to withhold further performance of the terms of his agency where there has been a continuing breach by the principal.
- c) Where the agent becomes possessed of property, goods or chattels or money to which conflicting claims have been made by the principal and a third party, he may claim relief by way of inter-pleader summons.

SELF ASSESSMENT EXERCISE 2

Discuss the various remedies available to an agent against his principal where there is a breach of agency agreement by the principal.

4.0 CONCLUSION

Where there are rights, remedies usually follow. Therefore, it is right to state here that a remedy follows a breach. The available remedies, to both parties under an agency situation have been well explained in this unit. It is expected that learners would have comprehended the available remedies in cases of breach.

5.0 SUMMARY

The remedies available to both the principal and an agent under an agency agreement, as stated, are easy to understand and learners are expected to engage in further readings for judicial authorities on these issues.

6.0 TUTOR-MARKED ASSIGNMENT

The general rule that Remedies follow breach is applicable in an agency agreement. Do you agree?

7.0 REFERENCES/FURTHER READINGS

Kingsley Igweike (1993). *“Nigeria Commercial Law: Agency.”* Jos, Nigeria: FAB Educational Books.

Markesinis and Munday. (1986). *“An Outline of Agency.”* 2nd Edition. Pollock and Maitland. *“The History of English Law,”* Vol. 11.

Sir William Holdsworth, *“A History of English Law,”* Vol. IV.

Walker, D.W. (1980). *“The Oxford Companion to Law.”* London: Butterworths.

American Restatements, Second, Agency, Article.

Friedman, G.H.L. (1984). *Law of Agency,* 7th Edition. London: Butterworths.

MODULE 6

- Unit 1 Termination of Agency by Acts of the Parties
- Unit 2 Termination of Agency by Operation of Law
- Unit 3 Incidence of Termination of Agency

UNIT 1 TERMINATION OF AGENCY BY ACTS OF THE PARTIES

CONTENTS

- 1.0 Introduction
- 2.0 Objectives
- 3.0 Main Content
 - 3.1 Agreement between Principal and Agent
 - 3.2 Revocation by Principal
 - 3.3 Remuneration by Agent
- 4.0 Conclusion
- 5.0 Summary
- 6.0 Tutor-Marked Assignment
- 7.0 References/Further Readings

1.0 INTRODUCTION

Generally, under the law of contract which by extension applies to commercial transactions, parties to an agreement usually state the modes by which their contractual relationship may come to an end. Failure of any of the parties to adopt any of the modes stated under the contract may actuate the other contracting party to sue for damages. This rule is also applicable to agency contract.

2.0 OBJECTIVES

The objectives of this unit is to highlight and state the general modes by which an agency agreement is terminated by the parties as provided in their agreement, provided there is one and also in the event of absence of such express agreement. This is to enable the learners to know that an action for breach of contract will lie at the suit of the perceived innocent party.

3.0 MAIN CONTENT

Subject to the operation of the principle of irrevocable authority, an agency relationship may be terminated by an act of the principal or and the agent. Such an act may be an agreement between the two parties or a unilateral act of either of them. A unilateral act of the principal terminating his relationship with his agent is referred to as revocation and that of the agent with the same effect is a remuneration. These three aspects of termination require further elucidation for better assimilation of their nature, effect and significance.

3.1 Agreement between Principal and Agent

The general nature of relationship of principal and agent is primarily consensual. It is generally considered as good sense to allow the parties the freedom to be able to terminate their relationship when it is no longer beneficial to them or fulfilling their purpose.

This freedom to terminate an agency relationship accruing to the two principal parties exists irrespective of the previous or original agreement by which the agency relationship was established or in any subsequent constituted agreement.

In *Esso West African INC. v. Alli (Supra)* an agency agreement provided for termination of the relationship at the end of six months or thereafter by one month's notice. An Ibadan High Court held that the agency relationship constituted by that agreement could be terminated by either party at the end of six months without notice.

SELF ASSESSMENT EXERCISE 1

The agreement by parties to terminate their agency relationship collectively at the happening of a particular event is unchallengeable. Do you agree?

3.2 Revocation by Principal

An agency relationship is generally presumed to have been created, formed or established for the benefit of the principal. It therefore follows that he is generally also free at any time to revoke the agency or any authority granted to the agent when he considers that the object or purpose is no longer attainable or when that benefit is no longer accruing to him.

Such revocation may constitute a breach for which an action may lie. While a revocation may be valid and effective and the authority granted to an agent terminated, the principal may also be liable in damages to the agent or a third party who has dealt with the agent for any loss, injury or damage sustained as a result of such revocation.

In spite of this general rule, a revocation is subject to the principle of irrevocable authority and the giving of reasonable notice.

See *Alexander Logios v. Att. General of Nigeria (1938)*⁴ W.A.C.A.

163.

Generally, no formality is required in respect of mode of revocation of an agency relationship. It is effective if the principal informs the agent or the third party who may be affected as a result, personally or if they independently learn of the event which revokes the agent's authority.

It may also be effected orally or simply by the principal intervening during the course of any negotiation by the agent and inferring by the parties concerned.

Where the agent is appointed via a written authority or a deed, any revocation by the principal is required to be recorded in like manner to be valid and effectual.

Revocation may be implied or inferred where the principal has withdrawn all necessary facilities originally provided to the agent for the proper execution of his agency or such facilities as will render the effectual operation of the agency untenable.

SELF ASSESSMENT EXERCISE 3

The right of revocation of agency by the principal is exercisable without regard to the rights of the agent and third parties. Do you agree?

3.3 Renunciation by Agent

Renunciation occurs where the agent unilaterally terminates his relationship with his principal. This right is implied in every agency relationship if the agent so wishes except in cases of irrevocable authority. The agent is contractually bound to perform his agency and any renunciation by him may constitute a breach of contract which may expose him to liabilities in damages. This would however not prevent the renunciation from being valid and effective to terminate his authority and duties as an agent.

Renunciation by the agent is also subject to the giving of notice by the agent to the principal. However, the agent may renounce his authority without notice where the principal is equally guilty of misconduct or breach of duty to the agent.

Modes of Renunciation

- 1) by a written instrument
- 2) by words of mouth.
- 3) by simply refusing to act.

- 4) by an unequivocal abandonment of the object of the agency.

Where the renunciation is wrongful, the agent may be liable to the principal in damages for injury sustained by the principal consequent upon the renunciation.

Consequences of Renunciation

The agent may forfeit his right to receive commission or renunciation or compensation for services rendered but not for those due prior to the renunciation. In other words, he may be entitled to a reasonable value of such services or a reasonable proportion of any agreed commission or remuneration after taking into consideration any damage or injury sustained by the principal as a result of the agent's action.

SELF ASSESSMENT EXERCISE 3

This right to renunciate an agency contract by an agent is exercisable without any consequences – Discuss.

4.0 CONCLUSION

Termination of agency by acts of the parties has been discussed under the foregoing heads. The consequential effect of failure to comply with the laid down procedures as contained in the agency agreement by either of the parties has also been discussed the contractual procedure is followed.

5.0 SUMMARY

The right of the parties to put an end to their relationship may be express or implied as shown above and learners are expected to have learnt and be able to distinguish between the various options available under this head.

6.0 TUTOR-MARKED ASSIGNMENT

Differentiate the following.

- a) Termination by Agreement of the parties
- b) Revocation by the principal
- c) Renunciation by the Agent

7.0 REFERENCES/FURTHER REASINGS

Kingsley Igweike (1993). *“Nigeria Commercial Law: Agency.”* Jos, Nigeria: FAB Educational Books.

Markesinis and Munday (1986). *“An Outline of Agency.”* 2nd Edition, Pollock and Maitland. *“The History of English Law,”* Vol. 11.
Sir William Holdsworth *“A History of English Law,”* Vol. IV.

Walker, D.W. 1980). *“The Oxford Companion to Law.”* London: Butterworths.

American Restatements, Second, Agency, Article.

Friedman, G.H.L. (1984). *Law of Agency,* 7th Edition. London: Butterworths.

UNIT 2 TERMINATION BY OPERATION OF LAW CONTENTS

- 1.0 Introduction
- 2.0 Objectives
- 3.0 Main Content
 - 3.1 By Performance
 - 3.2 By Effluxion of time
 - 3.3 By Frustration
 - 3.4 By Death of Principal or Agent
 - 3.5 By Insanity of Principal or Agent
 - 3.6 By Bankruptcy of Principal or Agent
- 4.0 Conclusion
- 5.0 Summary
- 6.0 Tutor-Marked Assignment
- 7.0 References/Further Readings

1.0 INTRODUCTION

Termination of Agency by operation of law occurs where any of the points to be discussed under the main content of this unit occurs. When such is the case the agency relationship automatically comes to an end. This is the focus of this unit.

2.0 OBJECTIVES

The main objective of this unit is to expose the learners to the situation that arises where, in exceptional cases, the parties to an agency relationship will be relieved of their obligations under the agency agreement. Usually, this situation puts an end to their relationship except where prior claims are yet to be made.

3.0 MAIN CONTENT

The main content of this unit is six in number each with its peculiarities in relation to termination of agency by operation of law.

3.1 By Performance

In cases where an agent is given an authority to accomplish or achieve a specific result reason demands that the authority terminates upon the object of the power being accomplished.

Generally, there are some or difficulties that can be identified with regard to the practical operation of this method of agency determination.

Firstly, there may be some initial difficulty of ascertaining the point in time when an agent's authority ceased or has been executed. An example is the authority of an estate agent.

Secondly, it may be possible for the express or implied authority of an agent to have ceased while his apparent or ostensible authority continues. In this situation, an agent may validly assert his apparent or ostensible authority when his express or implied authority has been fully executed. In such circumstances, the agency under which he was exercising express or implied authority might have terminated. In its place, an agency of estoppel might have been created or subsisting. Such apparent or ostensible authority or agency by estoppel would cease or terminate, as the case may be, whether by performance, revocation or renunciation in the ordinary way.

SELF ASSESSMENT EXERCISE 1

Termination of agency by performance becomes effective when the purpose of the agency has been achieved. Do you agree?

3.2 By Effluxion of Time

It is also generally expected that the authority of an agent which was conferred on him for a specific period of time terminates or ceases automatically upon the expiration of that period of time. The agency relationship terminates at the

expiration of such period of time irrespective of whether the task or object contemplated by its creation or formation has been accomplished or not.

Where no time is specified or agreed upon by the parties in their agency arrangement, a reasonable time is implied by the parties and the authority terminates at the expiration of such reasonable time or period.

What constitutes a reasonable time or period depends upon the facts and the surrounding circumstances of the particular case.

The period of time may also be fixed or agreed to by the parties to the agency arrangement or implied into their relationship by custom or usage of the particular trade, business or profession to which the agent belongs or profession to which the agent belongs or in which he or she operates. It can also be presumed from the nature and circumstances of the agency itself or the authority given or granted to the agent.

SELF ASSESSMENT EXERCISE

2

Explain the term “effluxion of time”.

3.3 By Frustration

Where an agency agreement exists between the principal and the agent, it may be terminated by the operation of the doctrine of frustration. This doctrine operates in situations when two people enter into a contract of agency which is dependent for the possibility of its performance on the continued existence or availability of a specific thing or matter. When the subject matter comes to an end by reason of circumstances beyond the control of the parties, that contract of agency is regarded as prima facie dissolved.

An agency relationship will automatically terminate if its object or subject matter

or the authority of the agent;

- a) becomes unlawful or illegal.
- b) ceases to exist by reason of government expropriation or compulsory acquisition or requisition.
- c) the principal or agent becomes an alien enemy.
- d) impossible to be executed or to be executed strictly in accordance with the arrangement between the principal and the agent.

SELF ASSESSMENT EXERCISE 3

The operation of the doctrine of frustration in relation to agency relationship is absolute. Do you agree?

3.4 By Death of Principal or Agent

Death is inevitable to every living being ordinarily. Save in cases of irrevocable authority, the death of a principal or agent terminates the agency relationship unless there is an express or implied stipulation to the contrary in their arrangement. In *Phillips v. Jones (1888)4 T.L.R.*

401, It was held that the authority of a broker, express or implied, terminated on the death of the principal.

The effect of the death of the principal is that it deprives the agent of that person for whom or on behalf of whom he should act while the death of the agent deprives the principal of the person through whom he should act.

Where the principal or agent is a limited liability company, an agency relationship to which they are parties terminates upon the dissolution of the company. In *Nzom & Anor v. Jinadu (1987)1 N.W.L.R. 533*, the Supreme Court held that a dead person ceases to have legal personality from the date of his death and as such can neither sue nor be sued either personally or in representative capacity.

In essence, termination of agency relationship by death of the principal or agent is

automatic. It does not depend on the principal or agent and indeed on any other party involved, acquiring knowledge or receiving notices of such death of the deceased party.

Where the death takes the form of a dissolution of a limited liability company, the principal or agent's knowledge of the fact is necessary to effect the termination. Any transaction by the agent after the termination by the death of the principal is not binding on the latter, his personal representation or his estate.

SELF ASSESSMENT EXERCISE 4

Termination of agency agreement by the death of either the principal or agent is absolute. Discuss.

3.5 By Insanity of Principal or Agent

One of the basic ingredients of a valid contract is that the parties to such an agreement must be of sound mind. In an agency situation, this rule is also applicable and where the insanity or mental incapacity of the principal or the agent occurs, the relationship is terminated except in cases of irrevocable authority.

In *Drew v. Nunn (1879)* 4 A.B. 661, the defendant had given his wife authority to deal with the plaintiff, who was a trades man, and had held her out as his agent and as entitled to pledge his credit. The defendant became insane shortly afterwards and while his insanity lasted, his wife ordered goods from the plaintiff, who accordingly supplied them. At the time of supplying the goods, the plaintiff was not aware that the defendant had become insane. The defendant afterwards recovered and then refused to pay for the goods supplied to his wife by the plaintiff. It was held that the defendant was liable for the price of the goods supplied to his wife during the period of his insanity.

This decision would have been otherwise but for the fact that there appears to be in existence the wife's agency of necessity which apparently was not determined by the supervising insanity of the husband.

The incidence of knowledge or notice of insanity or mental incapacity of a party appears to be apparent in various judicial decisions. In *Drew V Nunn* (Supra) Brett, L. J. opined as follows:

“...It seems to me that the person dealing with the agent without knowledge of the principal’s insanity has a right to enter into a contract with him, and the principal, though a lunatic is bound so that he cannot repudiate the contract assumed to be made upon himself.”

An authority may be given to an agent which has been determined without his knowledge by insanity of the principal. If the agent was appointed and authorised by the principal, and subsequently, the agent in the belief that he was acting in pursuance thereof made a contract or transacted some business with another representing that in so doing, he was acting on behalf of the principal; the agent is liable as having impliedly warranted the existence of the authority which he assumed to exercise to that other person, in respect of damages occasioned to him by reason of the non-existence of that authority. In **Younge v. Tonybee** (1910)1 K.B. 215 it was held that a solicitor was liable for breach of warranty of authority when without knowledge he continued with the litigation for a client, who had in the meantime become insane.

SELF ASSESSMENT EXERCISE 5

Knowledge of insanity is an essential ingredient to determine the existence or otherwise of agency. Discuss.

3.6 By Bankruptcy of Principal or Agent

The agency relationship of principal and agent ordinarily terminates at the bankruptcy of either the principal or agent. Where the principal becomes bankrupt his estate by law falls to be administered by his trustee in bankruptcy.

The effect of this is that the authority of an agent appointed by him automatically

terminates for a different principal is created in the trustee in bankruptcy. The new principal may however re-appoint the agent but until he does so the authority of the agent in respect of the original principal is assumed to have lapse.

Where the new principal re-appoints the agent, a new agency relationship is thereby constituted in which the parties are the trustees in bankruptcy and the original agent.

4.0 CONCLUSION

Generally, termination of agency by operation of law depends on the various circumstances of each or any given agency relationship. In the absence of notable exceptions, the happening of any of the above noted situations automatically puts an end to the agency relationship between the principal and the agent. This is one of the basic facts the learners must bear and always advert his mind to while treating this issue.

5.0 SUMMARY

Learners are expected to be able to differentiate the various differences inherent in the foregoing factors and situations that put an abrupt end to a subsisting agency relationship.

6.0 TUTOR-MARKED ASSIGNMENT

Contract of agency is determined by operation of law.
Discuss.

7.0 REFERENCES/FURTHER READINGS

Kingsley Igweike (1993). *“Nigeria Commercial Law: Agency.”* Jos, Nigeria: FAB Educational Books.

Markesinis and Munday (1986). *“An Outline of Agency.”* 2nd

Edition.

Pollock and Maitland. "*The History of English Law*," Vol. 11.

Sir William Holdsworth. "*A History of English Law*," Vol. IV.

Walker, D.W. (1980). "*The Oxford Companion to Law*." London:
Butterworths.

American Restatements, Second, Agency, Article.

Friedman, G.H.L. (1984). *Law of Agency*, 7th Edition.
London: Butterworths.

UNIT 3 INCIDENCE OF TERMINATION OF AGENCY

CONTENTS

- 1.0 Introduction
- 2.0 Objectives
- 3.0 Main Content
 - 3.1 Doctrine of Irrevocable Authority
 - 3.2 Notice of Termination
 - 3.3 Effect of Termination
- 4.0 Conclusion
- 5.0 Summary
- 6.0 Tutor-Marked Assignment
- 7.0 References/Further Readings

1.0 INTRODUCTION

Apart from the generally recognized situation by which an agency relationship could be brought to an end, there exists a particular situation, in the doctrine of irrevocable authority which either party to the agency relation must strictly observe where it exists in the agency agreement. Notice of termination and effect of termination are the other incidents of termination of an agency agreement.

2.0 OBJECTIVES

The contents of this unit shall include the doctrine of irrevocable authority, notice of termination and the effect of termination.

3.0 MAIN CONTENT

The three major incidents of termination of agency to be discussed under this unit have so well be discussed sparingly in the body of this work. Hence, minimal reference shall be made to irrelevant facts.

3.1 Doctrine of Irrevocable Authority

The general rule that an agency agreement could be brought to an abrupt end by an agreement of the parties, unilateral action of any of the parties or by operation of law is not absolute. There are identified exceptions.

There exists certain situation in which the authority of the agent cannot effectively be revoked or renounced at will by the principal or the agent, as the case may be, nor can the relationship be terminated by death, insanity or bankruptcy of either the principal or the agent. These involve cases in which the agency relationship was created for the benefits of either the agent or a third party rather than for the principal. In such situations, the authority of the agent is considered irrevocable.

To be irrevocable, however, the power or authority must:

- a) be created by deed and for a valuable consideration
- b) be granted in order to effect a security or protect the title or interest of the agent or some third party.

In the same vein, a power of attorney expressed to be irrevocable and either given for a valuable consideration or for a period not exceeding one year in favour of or purchase for value is irrevocable.

The most common form of irrevocable authority is one coupled with an interest in the subject matter. The mere existence of a right to earn a commission is not an interest. In *First v. Firth* (1906) A.C. 254, It was held that the ordinary case of an agent employed for pecuniary reward in the share of a fixed salary without more, though confers upon him a benefit is not irrevocable.

The reason given was that the appointment of a salary contained no reference to any special interest in the subject matter of the agency and was not intended to be subservient or dependent on the continuance of such interest.

The fact that the agent subsequently acquires an interest in the subject matter of the

agency also does not thereby render his authority irrevocable. To be irrevocable, the authority of an agent must have been conferred as a protection or security for the agent's interest.

Where an agent has incurred personal loss or liability such that the principal is obliged to indemnify him in respect of such loss or liability, his authority cannot be revoked by the principal solely to avoid his obligation to indemnify the agent.

SELF ASSESSMENT EXERCISE 1

Discuss the Doctrine of Irrevocable Authority in relation to termination of agency agreement.

3.2 Notice of Termination

This is another incidence of termination of agency and in fact a pre-requisite in some cases.

The general rule as to notice of termination of agency relationship is that an agent's authority continues until any purported termination is communicated to him.

For a notice under this rule to be valid and effective in law, it must be reasonable notice which to all intent and purposes depends on the facts of the particular case and the surrounding circumstances.

In *Alexander Logios v. Att. General of Nigeria (supra)* a Solicitor was appointed by the appellant to represent him in certain negotiations with the Government of Nigeria. The West African Court of Appeal held that the respondent was entitled to assume that the solicitor was still the agent of the appellant in as much as no step was taken to inform the government that the solicitor had exceeded his authority or that his agency had been revoked and warning them not to deal with him any longer.

In general, no form of notice is required. Therefore, notice is equally effective if the principal informs the agent or the third party directly or if they independently learn

of the event which terminates the agent's authority.

Notice may be given orally or in writing or by an overt act or omission, except that if the authority of the agent was ordinarily given in writing notice of termination should invariably be given in writing.

On the other hand, where the written authorization indicates specific conditions upon which the agent's authority will terminate and the agent or third party learns that such conditions have occurred no further notice is required.

If the principal gives the required notice or if the agent or third party independently learns of the termination, the principal incurs no further liability if the agent continues to act for him.

SELF ASSESSMENT EXERCISE 2

Termination of agency agreement with notice is required to follow a particular form oral or written. Do you agree?

3.3 Effect of Termination

The third incident of termination of an agency agreement is the consequential effect of that termination.

Where the agency is revoked by the principal, the agent's act for the principal does not terminate until notice of revocation is given or received by the agent.

Upon the receipt of the notice, the agent ceases to have authority to bind the principal but without prejudice to any rights and liabilities subsisting or accruing prior to the giving or receipt of the notice.

The same applies in other instances where notice of termination might be required as in cases of insanity, bankruptcy or dissolution of a limited liability company.

In instances where notice of termination is not required, e.g. where the act of termination is involuntary, as in the case of death of a party, or frustration or where termination is effected by performance, effluxion of time or the authority of the agent ceases automatically. The rights and liabilities of the principal, the agent and any affected third party are discharged forthwith except as they stood at the time of such termination.

In case of death or bankruptcy of the principal, his legal representative or trustee in bankruptcy, as the case may be, could elect to continue the agency or to ratify particular transactions effected by the agent. Where if the agent dies or becomes bankrupt, the principal cannot compel the agent's legal representative or trustee in bankruptcy, as the case may be, to perform the services rendered by the agent instead.

SELF ASSESSMENT EXERCISE 3

Examine the various effects of termination of an agency agreement.

4.0 CONCLUSION

Doctrine of Irrevocable Authority, Notice of Termination and Effect of Termination are the three incidents of termination of agency which the learner must have in mind. Even at the time of entering into an agency agreement, parties do have these factors at the back of their minds so that rights and liabilities could be easily ascertained.

5.0 SUMMARY

Doctrine of Irrevocable Authority, Notice of termination and Effect of Termination are fundamental in any agency relationship. It must always be borne in mind that as in all other relationships, agency agreements also come to an end.

6.0 TUTOR-MARKED ASSIGNMENT

Doctrine of irrevocable authority, notice of termination and effect of termination are

detachable and independent from the concept of termination of agency as a whole. Discuss.

7.0 REFERENCES/FURTHER READINGS

Kingsley Igweike (1993). *“Nigeria Commercial Law: Agency.”* Jos, Nigeria: FAB Educational Books.

Markesinis and Munday (1986). *“An Outline of Agency.”* 2nd Edition. Pollock and Maitland. *“The History of English Law,”* Vol. 11.

Sir William Holdsworth, *“A History of English Law,”* Vol. IV.

Walker, D.W. (1980). *“The Oxford Companion to Law.”* London: Butterworths.

American Restatements, Second, Agency, Article.

Friedman, G.H.L. (1984). *Law of Agency,* 7th Edition. London: Butterworths.

Companies and Allied Matters Act (1990). *Laws of the Federation of Nigeria*

MODULE 6

UNIT 1

THE HIRE PURCHASE CONTRACT

CONTENTS

- 1.0. Introduction.
- 2.0. Objective.
- 3.0. Main Body.
 - 3.1. Evolution of Hire Purchase
 - 3.2. Definitions of Hire Purchase
 - 3.3 Hire Purchase distinguished from other Legal transaction
 - 3.4 Reason for Hire Purchase Contract
 - 3.5 Applicable Laws
- 4.0. Conclusion
- 5.0. Summary
- 6.0. Tutor Marked Assignments (TMA)
- 7.0. References/Further Readings.

1.0 INTRODUCTION

A Hire Purchase transaction is a bailment of goods but with a provision for the option of sale or transfer of the property in the goods bailed from the bailor to the bailee. Whether a particular transaction is a hire purchase or not will, as shall be seen later in this unit, depend on the wording and meaning of the transaction and not merely on the appearance of the term Hire-Purchase on the document evidencing the agreement.

The contract of hire purchase is mostly governed by the Hire Purchase Act, Law of the Federation, 1990 and common law.

2.0 OBJECTIVE

The aim of this unit is to trace the development of hire purchase contract and explain the nature of the contract of Hire Purchase, under the Hire Purchase Act and at common law. From this unit, Learners should be able to define the term and distinguish it from other

legal transactions in commercial law. The learner should be able to identify and discuss the applicable laws.

MAIN BODY

3.1 Evolution of Hire Purchase

The development of hire purchase system is one of the greatest inventions of the lawyers, a very important contribution to the commercial development of the world. The concept of Hire Purchase is an important aspect of commercial transactions developed in the United Kingdom and can now be found in existence all over the world now. It is also called closed-end leasing. The first English Hire Purchase Act was in 1938, so it is a agency law of recent development. The origin of modern Hire Purchase agreement is the mid-Victorian custom in furniture trade under which persons who were unable to pay for the furniture at the time they desired to purchase it or who were not sufficiently worthy of open credit were allowed to take them. In the case of household furniture, it was successful for it prevented the property passing until full payment was received.

The true Hire Purchase Act did not come to being until the Factors Act, 1889 and Sale of Good Act 1893 which contain overlapping provisions to the effect that enable a person who has bought or agreed to buy or who is in possession of goods or document of title of goods with the consent of the owner to pass a valid title to a third party who bought without notice of the right of the original owner. This situation caused great anxiety and hardship to sellers and owners of goods who under the circumstance lose their ownership of their goods as well as their possession and therefore all the rights accruing to such ownership and possession, e.g. to sue for conversion or detinue.

This situation came to climax in the case of *Lee v. Buttler*, A, being in possession of some piece of furniture under a purported hire purchase agreement with the plaintiff sold and delivered the same to the defendant before the last installment had accrued or been paid. The defendant received the goods in good faith and without knowledge of the plaintiff's right in respect of them. The court held that the sale and delivery of the goods to the defendant were within the provision of Section 9 of the Factor Act 1889. It was also held further that he was person who bought or agreed to buy and therefore the sale to defendant was valid and the furniture could not be recover by the owner. After this case there was intense desire to avert this kind of pitfall arising from such situation. It was this desire that led to development and recognition of hire purchase.

Hire purchase system received judicial approval and blessings in the case of *Helby v. Matthews.*, In this case, the owners of piano agreed to let it on hire to H at a monthly rent of ten shillings and six pence. The agreement gave possession of the piano to H and permitted him to return it to the owner at any time subject to payment by him all the installment due at the date of return. It further provided that if and when the installment paid by it total (18) Eighteen guineas, the piano becomes his property but until such payment, it remained the property of the owner who will be entitled to resume possession of it, if H defaulted in his installmental payment or failed to keep the piano at his own address. Having taken possession and having paid some installments, H pledged the piano with a pawnbroker, as a security for a loan. The owner took this action to recover possession, the house of lord, unanimously held that the action succeeded. It was held further that it was not a person who has bought or agreed to buy the piano within the meaning of S. 9 of the Factor Act, 1889.

Lord Herschell has this to say:

All that he undertook was to make the monthly payments of ten shillings and six pence so long as he kept the piano. He has an option no doubt to buy it by continuing the stipulated payments for a sufficient length of time. If he has exercised that option he would have become the purchaser. I cannot see under these circumstances how he can be said either to have bought or agreed to buy the piano. The terms of the contract did not upon its execution bind him to buy, but left him to do so or not as he pleased.

In Nigeria as well, the contract of hire purchase is also of recent origin. Indeed, the first Act passed on this matter was in 1965, Its practice however dates back to scores of years ago when local traders sold on credit while dealers sold to people on local and informal.

It is important to note that there have been several judicial approvals to the practice of hire-purchase which increased the popularity of the practice.

3.2 Definitions of Hire Purchase

There have been several scholarly definitions of the phrase, hire purchase offered by authors and the statute books. There are judicial definitions which have suggested definitions of the term.

In Halsbury's Laws of England Vol. 1st Edition, a contract of hire purchase has been defined as "a contract of hire with option to purchase under which the owner of the chattel undertakes to sell it to, or that it shall become the property of the hirer conditionally on his making a certain number of payments. Until the making of the last payment, however, no property in the chattel passes."

In *Scammell v. Austin* (1941) 1All E.R 14, it was defined as a complex transaction, not a contract of sale but a bailment. This is a judicial definition.

A statutory flavor is given to this definition in Section 1 of the English Hire-Purchase Act, 1965 as: "an agreement for the bailment of goods under which the bailee may buy the goods, or under which the property in the goods will or may pass to the bailee."

From the foregoing, it is clear that it is an agreement concluded between a bailor, that is, the owner, and a bailee that is the hirer, in respect of some particular goods with the option of the hirer purchasing the goods.

3.3 Hire Purchase Distinguish from Other Legal Transactions

The term hire purchase is always loosely employed by many people as synonymous with credit purchase or such similar transactions. Here the Hire Purchase transaction will be distinguished from other legal transactions.

- **Hire Purchase Distinguished From Hire**

Hire is a kind of contract that does not pass title of the goods at a future date. The definition of Hire Purchase as seen above is different from the concept of hire. Hire only enables a person to use the goods for his immediate use and does not want to own the property. The hirer will return the chattel to the owner after its use.

It is also a kind of bailment in which the hirer is given possession of an article during the period of the particular hiring agreement.

- **Hire Purchase Distinguished From Loan and Mortgage**

Loans and Mortgages is a kind of arrangement where one person who desire some finance borrows money from a person or a financial institution for his use in order to satisfy some needs.

- **Hire Purchase Distinguished From Sale on Credit Terms**

This is a situation where a person wants to make an outright purchase of goods but may find out that he does not have sufficient money to make full payment for them.

In this instance, the person may pay in installment, while the goods pass to the buyer on credit. In this instance, the seller loses his seller's right of lien on the property and where the buyer resells the goods, the third party will be an innocent purchaser for value without notice and will have a good title.

In *J. Allen and Co. v. Sanni Adewale and Bello Lateju* (1929) 9 NLR 111, the Plaintiff sued the defendant and his surety to recover the balance of what was called the hire-purchase price on a car given to the first defendant. After reading the agreement, the court held that it was a contract of sale rather than a hire purchase contract.

3.4 Reason for the Adoption of the Hire Purchase System

There are mainly three reasons for the Hire Purchase system of commercial transactions

- 1) One of the most important reasons and the first is that it enables credit to someone, who is unable to pay cash for the goods he wants and who would be happy to pay some deposit and therefore pay the balance in installments at a stipulated rate of interest.
- 2) The other reason for this system is that the dealer or the manufacturer of the goods cannot always provide credit and yet the goods must be bought to enable the dealer in business.
- 3) The third option for the adoption of the hire purchase system is the possible evasion of the Money Lenders Act 1939 Cap 124 LFN, 1958, which regulates the conduct of the business of money lending.

3.5 THE APPLICABLE LAWS IN NIGERIA

1. Hire Purchase Act:

Originally, the Nigeria Hire Purchase Act 1965 is modeled after the United Kingdom Hire Purchase Act 1938 and the advertisement (Hire Purchase) Act 1957 with some

modification to meet local needs. The Nigeria Hire Purchase Act was originally passed in 1965 applicable to only Lagos State but by virtue of Hire purchase (Application) Degree No. 42 of 1966 it was made applicable to the rest of the country. It came into force in October 1, 1968 by virtue of Hire Purchase Act, 1965 (Application Day) order 1968. The Hire Purchase (Amendment Decree No. 23 of 1970) made minor changes to section 8 and 9 of the Act. The Hire Purchase Regulation of 1968 was made and published by Commissioner for Trade and Industries in exercise of his power under Section 5 and 8 of Hire Purchase Act of 1965. These amendments and further adjustment were made when the Act was re-enacted in 1990.

The Act is designed to regulate not only Hire Purchase but also credit sale transaction. The Hire Purchase Act is not a codifying statute like Sale of Goods Act although some rules of common law are extensively modified by the Act. There are still considerable areas in which those rules remain applicable.

2. Rules of Common Law.

The rules of common law are applicable to the following:

- (a) Applicable to cases falling outside the operation of the Act.
- (b) Apply to all agreements which became effective before October 1, 1968.
- (c) Goods other than motor vehicles whose hire purchase or total purchase price exceeds N2,000.

4.0 CONCLUSION

A Hire Purchase agreement is a contract whereby the owner of a chattel lets it out on hire for a periodic rent with the provision that on due compliance with the various terms of the agreement, and the compliance with the various terms of the agreement, and the completion of the agreed number of payment of rent, the hirer either becomes the owner of the goods automatically or shall have the option of purchasing the chattel by the payment of a small agreed sum.

5.0 SUMMARY

In summary the concept of Hire Purchase as we have seen in this unit is a new concept of commercial transaction. It enables the buyer of the goods to have possession of the goods with the option of acquiring the goods after fulfillment of the condition of the transaction.

It is clearly distinguishable from other forms of commercial transactions like Hire, Loan and Mortgages, just to mention a few of it. It also regulated by statute and common law.

6.0 TUTOR MARKED ASSIGNMENT (TMA)

- 1) Briefly explain the historical development of the concept of Hire Purchase and suggest your own definition of the term.
- 2) Distinguish between the contract of Hire Purchase and other Legal Transactions.
- 3) Hire purchase is regulated rules of common law. Discuss.

1.0 REFERENCES/FURTHER READING

- Sale of Goods Act, 1993
- Okany, Nigerian Commercial Law, Africana .FEP Publishers Limited, 1992.
- Hire Purchase Act, CAP 169, Laws of the Federation
- M.O. Sofowora General Principles of Business and Coop Law, Soft Associates, 1999.

UNIT 2

THE HIRE PURCHASE AGREEMENT

CONTENTS

- 1.0. Introduction.
- 2.0. Objective.
- 3.0. Main Body.
 - 3.1. Offer and Acceptance
 - 3.2. Capacity of the Parties
 - 3.3. Obligation of the Owner
 - 3.4. Obligation of the Hirer
 - 3.5 Obligation of the Dealer
- 4.0. Conclusion
- 5.0. Summary
- 6.0. Tutor Marked Assignments (TMA)
- 7.0. References/Further Readings.

1.0 INTRODUCTION

A Hire Purchase agreement may either be oral or written under the common law rule. It is however pertinent to note that a detailed Hire Purchase agreement is usually in writing and indeed should be in writing.

The common law rule does not specify a prescribed pattern or form for hire-purchase agreements. Note that hire-purchase agreements are characterized by three main essentials which are:

- a clause by which the owner agrees to let, and the hirer agrees to hire the goods.
- a clause which empowers the hirer to determine the hiring and return the goods.
- a clause giving the hirer the right or option to purchase the goods for a nominal sum at the end of the hiring.

Aside the above mentioned essentials, other terms may be included in the agreement, like period of hire, hire-purchase price, number of installments, insurance of goods and the right of the owner to retake.

2.0 OBJECTIVE

The main objective of this unit is to enable learners to be able to identify hire purchase agreement. Also, the learner in this unit, is also expected to understand the main rule under the common law, the doctrine of offer and acceptance, the capacity of the contracting party and the rudimental of the obligations of all the parties to the contract.

3.0 MAIN BODY

3.1 Offer and Acceptance

This is the first essential requirement of the hire-purchase agreement, which will give a party the right to enforce or sue for a breach of the agreement, in order to enforce a contract.

If the number of the parties in agreement is two then, the offer in respect of the hire-purchase in writing is constituted by the hirer signing the hire purchase agreement, while the owner signifies acceptance by executing the agreement already signed by the hirer. The acceptance must be communicated to the hirer in order for it to be valid.

An oral agreement between the hirer and the owner is also possible. If the hire-purchase agreement involves three parties, i.e the owner, the dealer and the hirer, then the offer is made by the hirer. Generally the dealer is not an agent of the owner, but for the purpose of receiving the offer, he may be construed as the agent of the owner for that particular moment.

Mere delivery of the goods is not sufficient as acceptance. It is important and compulsory to communicate such to the hirer.

3.2 Capacity of the Parties

The liability of infants under the general law of contract is the same under the hire-purchase agreements. Prima facie, infants are not liable under the hire-purchase agreement except those relating to necessities and beneficial contract.

3.3 Obligation of the Owner

The first obligation of the owner under the common law is to deliver the goods which are the subject matter of the hire purchase agreement to the hirer.

It is therefore a fundamental duty and its breach will entitle the hirer to repudiate the contract. Delivery in this sense might not be physical transfer but voluntary transfer of possession from one person to another.

In addition to the above duty of the owner, there should be some conditions implied in the contract. The first is that the owner should possess a good title to the goods. If his title is impeached this will amount to a total failure of consideration as between the purported owner and the hirer.

Another implied condition is the fitness for the purpose for which the goods are hired.

In *Stephen Anoka v. S.C.O.A Warri* (1955/56) W.N.L.R 113, the plaintiff bought a lorry on hire-purchase from the defendant. The engine was defective and the plaintiff replaced it with another engine. When the plaintiff subsequently defaulted in the periodical installments, the defendant seized and sold the lorry. The plaintiff sued for conversion and in addition for breach of warranty. The court held that in the absence of an express term in the agreement excluding any warranty of fitness or limiting the defendant's liability, the defendant was under a duty to ensure that the lorry was reasonably fit for the purpose for which the defendant must have known the lorry to be used for.

Exemption clauses will not avail an owner, where there is a fundamental breach of the terms of the contract.

If the owner fails to make delivery of the goods the hirer can sue for specific performance.

3.4 Obligation of the Hirer

This is the fundamental obligation of the hirer namely; to accept delivery of the goods, the subject matter of the hire purchase. Such hirer will be liable in damages if he fails to take delivery within a reasonable time after he had been requested to do so.

It is also the primary duty of the hirer to pay promptly the various sums provided for in the agreement in accordance with the provisions of the agreement. The payment in installments as specified in the hire-purchase agreement is mandatory and must be strictly

complied with. There are certain circumstances where the installmental payment may be suspended or waived.

In *Offodile and Sons Enterprises v. S.C.O.A (Nig.) Ltd (1969) CCHCJ 1333*, there was a hire-purchase agreement between the parties in respect of a motor vehicle during the civil war, and understandably the rentals were not paid, but the hirer enjoyed the undisturbed use of the motor vehicle. After the civil war the owners sued for arrears of rentals. The court held that the owners were entitled to the rentals, and that the hirer's strict liability to pay rentals during the war period was only waived or suspended during the civil unrest that should not be regarded as destroying the right to recover the rentals.

3.5 Obligation of the Dealer

In practice generally, the hirer is allowed to enforce certain rights under an independent contract entered into between them despite the fact that the finance company is the owner of the goods. However, the dealer is closer to the hirer as stated by the Supreme Court in *Amusan and Thomas v. Bentworth Finance Co. Ltd (1966) N.M.L.R 276*, that in law, the dealer (S.C.O.A) could be treated as agents of the finance company for the purpose of delivery of the vehicles but not for all purposes.

4.0 CONCLUSION

A hire-purchase agreement is an agreement that is precipitated on the general rule of contract of law of offer and acceptance on the part of the hirer and that of the owner. Sometimes with the dealer acting as the agent of the owner.

It pertinent to note that the obligation of the buyer and that of the owner are concurrent obligations and that must be done in line with each other's obligation.

5.0 SUMMARY

In summary, the hire-purchase agreement is an agreement that is essential to the contract of hire-purchase and is precipitated on the premise of offer and acceptance and that mere delivery of the goods is not enough as the acceptance of the agreement and acceptance must be communicated to the hirer.

The obligation of the hirer should be concurrent with that of the owner, and where there is a dealer, its obligations should also be concurrent in that regard.

6.0 TUTOR MARKED ASSIGNMENT (TMA)

1. Is mere delivery of the goods to the hirer enough as means of acceptance of the hire-purchase agreement?
2. The payment of installments as specified in the hire-purchase agreement is mandatory and must be complied with strictly but however such may be waived or suspended due to circumstances. Discuss?

7.0 REFERENCES/FURTHER READING

- Sale of Goods Act.
- Okanny, Nigerian Commercial Law, Africana .FEP Publishers Limited, 1992.
- Hire Purchase Act, CAP 169, Laws of the Federation.
- Sofowora, General Principles of Business and Coop Law, Soft Associates, 1999.

UNIT 3

OBLIGATIONS IMPLIED UNDER THE ACT

CONTENTS

- 1.0. Introduction.
- 2.0. Objective.
- 3.0. Main Body
 - 3.1. The Hire Purchase Act, 1965
 - 3.2. Obligations of the Owner
 - 3.3. Exemption Clauses
 - 3.4. The Hirer's Obligation
- 4.0. Conclusion
- 5.0. Summary
- 6.0. Tutor Marked Assignments (TMA)
- 7.0. References/Further Readings.

1.0 INTRODUCTION

The first comprehensive legislation on Hire Purchase in Nigeria was the Hire Purchase Act, 1965 and was brought into operation in 1968. This Act has been reviewed severally with the present one as the Hire Purchase Act in the Laws of the Federation of Nigeria.

The main purpose of the Act is to regulate hire-purchase transactions, which have been operated in the past under the ordinary law of contract, and under which some owners have exploited the ignorance of the people to enforce oppressive agreements.

Before the advent of the Act, recovery of goods by the owner under a hire-purchase agreement could be effected with or without proceedings in court. Such act had serious pitfalls. One problem in this instance was that under common law, even after the owner had retaken possession of the goods from the hirer and invariably had sold it, it was common practice for the owner and the hirer to stipulate in the agreement that the termination did not relieve the hirer from the liability to make further payments to the owner under the notorious minimum payment clause.

2.0 OBJECTIVE

The main aim of this unit is to examine the gaps in the common law and the extent the Act seeks to correct it.

3.0 MAIN BODY

3.1 The Hire-Purchase Act, 1965

The Act seeks to absolve the hirer of the liabilities under common law. With a view to strictly following the rules contained therein. It also appears to remove the harsh conditions of the common law rule and while providing more friendly ways under the Act along with the obligations of the owner and that of the Hirer under the Act as against the ones under the Common law procedure.

Under the Act, Hire Purchase means the bailment of goods in pursuance of an agreement under which the bailee may buy the goods or under which the property in the goods will or may pass to the bailee Hire-purchase agreement is where, by virtue of two or more agreements, none of them by itself constitutes a hire-purchase agreement, there is a bailment of goods and either the bailee may buy the goods, or the property therein will or may pass to the bailee. The agreements shall be treated for the purposes of this Act as a single agreement made at the time when the last agreements was made.

The hire-purchase agreement, unlike the position under the common law, all hire-purchase agreements which are intended to operate or fall within the provisions of the Act must comply with certain provisions or procedural requirements as to form and content stipulated under the Act.

They are as follows:

Written Information on Cash Price of Goods

Before any hire-purchase agreement is concluded, the owner shall state in writing to the prospective hirer, otherwise than in the note or memorandum of the agreement, a price at which the goods may be purchased by him in cash.

The Note or Memorandum

Section 2 (2) (a) of the Act states that:

“there must be a note or memorandum of the agreement made and signed by the hirer and by or on behalf of all other parties to the agreement.”

In this instance, what is required is that a note or memorandum must be in writing evidencing the agreement, and that it is not necessary for the hire-purchase agreement to be in writing. In commercial practice, hire-purchase is usually evidenced by a standard form agreement which is required to be signed by the hirer, and any other party. Initially, the agreement may be made orally, but within 14 days it must be followed by a signed memorandum.

Signature

The hirer must sign personally, The memorandum or note must be signed not only by the hirer but also by the other parties to the agreement while the other party may sign through their agents.

3.2 Obligations of the Owner

The implied terms have been described as warranty and condition. They bear the same meaning ascribed to them under the Sale of Goods Act. Distinction is however provided in the definition under Section 20(1) where –warranty is defined as a non-essential term, the breach of which entitles the hirer to sue for damages only. Condition is not given a statutory definition – but by implication, the difference lies in the breach – the hirer is entitled to reject the goods and treat the contract as repudiated.

1. Warranties

- **Quiet Enjoyment:** the act provides that in every hire-purchase agreement there must be:
 - a) An implied warranty that the hirer shall have and enjoy quiet possession of the goods. The general rule is that the owner must ensure that he remains in peaceful and undisturbed possession, note that interference from an interested third party would constitute a disturbance.
 - b) An implied warranty that the goods shall be free from any charge or encumbrance in favour of a third party at the time when the property is to pass. A charge or encumbrance in favour of a third party on goods which are subject of a hire-purchase agreement would remain perfectly good at the time of the hire because the ownership only passes when the hirer elects to exercise the option to purchase.

2. Conditions

There are three implied conditions under the Act.

- **Title:** An implied condition on the part of the owner that he shall have a right to sell the goods at the time when the property is to pass. This provision is aimed at assuring the buyer that the seller is an absolute owner of the goods. In addition, the right to sell arises at the time of the delivery of the hired goods and not when the agreement was signed. See *Akoshile v. Ogidan* (Supra).
- **Merchantable Quality:** In hire-purchase agreement there is an implied condition that the goods are of merchantable quality. However, no such condition will be implied where the hirer has examined the goods or a sample of them and the examination ought to have revealed the defects of which the owner could not reasonably have been aware at the time when the agreement was made.
- **Fitness for Purpose:** Where the hirer expressly or by implication makes known the particular purpose for which the goods are required, an implied condition that the goods shall be reasonably fit for that purpose.

3.3 Exemption Clauses

The implied conditions and warranties set out under the Act, all set out above shall be implied notwithstanding any agreement to the contrary. The Act also provides that the owner may rely on any provision in the hire-purchase agreement to modify or exclude any condition implied expressly under the Act.

3.4 The Hirer's Obligation

This has been discussed extensively in previous units of the synopsis and so there is really no need to belabor ourselves with it.

The hirer's right of termination is set out in section 8 of the Act. it provides that a hirer shall, at any time, before the final payment under a hire-purchase agreement, be entitled to determine the agreement by giving notice of termination in writing to any person entitled or authorized to recover any sum payable under the agreement.

4.0 CONCLUSION

The Hire-Purchase Act has played a prominent role in the agreement of hire-purchase. It implies that warranties and conditions of the owner of the goods are sacrosanct to the agreement and either party has a right to terminate the agreement before it is concluded.

5.0 SUMMARY

The Hire-purchase Act, 1965 has really brought succor to both the owner and the hirer under the agreement of a hire purchase. It states that there must be price of the goods of the contract and among other things for that a hire –purchase agreement to be valid then the hirer must sign the memorandum of contract.

6.0 TUTOR MARKED ASSIGNMENT (TMA)

- 1) Critically examine the role of the Hire-Purchase Act, 1965 in hire-purchase agreement.
- 2) How viable is the hirer's right to terminate contract before the contract is concluded?

7.0 REFERENCES/FURTHER READING

- Sale of Goods Act.
- Okany, Nigerian Commercial Law, Africana .FEP Publishers Limited, 1992.
- Hire Purchase Act, CAP 169, Laws of the Federation of Nigeria.
- Sofowora, General Principles of Business and Coop Law, Soft Associates, 1999.

UNIT 4

RECOVERY UNDER THE HIRE-PURCHASE ACT

CONTENTS

- 1.0. Introduction.
- 2.0. Objective.
- 3.0. Main Body
 - 3.1. Restriction of Recovery by the Owner
 - 3.2. Relaxation of Owner's Restricted Right of Possession
 - 3.3. Owner's Obligation under the New Section 9 (5)
- 3.4. Hirer's Consent to Repossession
 - 3.5. Powers of the Court in Action to Recover Goods
- 4.0. Conclusion
- 5.0. Summary
- 6.0. Tutor Marked Assignments (TMA)
- 7.0. References/Further Readings.

1.0 INTRODUCTION

It is important to note that recovery of goods under the hire-purchase agreement under the Act is only restricted to an action in court by the owner against the hirer. This is a welcome development as against the position under common law where the owner could even repossess without the due process being followed.

This development has been seriously criticised as it has given the hirer a blanket opportunity to default in the payment of the installment and then abscond with the goods to an unknown address, whereby making the efforts of the owner in instituting an action fruitless.

Section 9(5) of the Act lays down conditions to be followed strictly by the owner before he can institute an action. It is pertinent to note that the hirer also can consent to the repossession of the goods by the owner. Once the hirer has not paid a relevant proportion of the hire then the owner can repossess without his consent or an order of the court to that effect.

2.0 OBJECTIVE

It is expected that at the end of this unit, learners should be able to understand and explain the rules governing the recovery of goods under the Act and at common law.

3.0 MAIN BODY

3.1 Restriction of Recovery by the Owner Otherwise than by Action

It is important to note that the most common remedy available is an action in court against the hirer, which the hirer could frustrate the effort of the owner in this regard by absconding with the goods to an unknown destination with the goods being used in a manner detrimental to the goods itself. Recovery of Goods under the Act will also be treated.

Under common law, as we have already discussed, the extremity of the right to repossession and the harshness of judicial interpretation leave the hirer with little or no claim where the owner exercises his right.

The Act has removed the power where the owner can repossess goods at his whim and caprices.

Section 9 (1) of the Act places a restriction on the right of the owner to recover the property otherwise than by action especially where the hirer has paid a relevant proportion of hire-purchase price. For the purpose of this Act what is relevant proportion has been defined as:

- In the case of goods other than motor vehicle its one half
- While in motor vehicle it is three fifths.

If the owner recovers the goods in contravention of the rule then the hire purchase agreement is determined and the hirer and his guarantor are relieved of any liability under the agreement.

It is important to also note that the above provision has no effect where the hirer has exercised his right to terminate the agreement or the bailment. In this instance, the owner can repossess the goods whether the relevant proportion has been paid or not. The position under section 9 of the Act has been established by the courts. In *Adesanya v. Balogun & Ors* (CCHCJ/11/73), the hirer paid N1,647.00 out of the total hire-purchase price of N1,843.00 and sued for damages for seizure of the goods by the owner, without

any court order. The seizure was held wrongful, and the court released the hirer of all liability under the agreement. The court, further ruled that he could recover from the owner the sum N1,647.00 which he had already paid to the owner.

The Act is silent as to what happens where the hirer defaults before the payment of the relevant proportion of the hire-purchase price. It would appear that the common law rule will apply in such an instance.

The statutory restriction imposed on the owner under section 9(1) of the Act protects the goods from repossession not only where the relevant proportion has been paid but also where it has been tendered by or on behalf of the hirer or any guarantor.

3.2 Relaxation of Owner's Restricted Right of Repossession

The injustice of retaking the goods by the owner has been remedied by the restriction on the right of repossession by the owner other than by action after the relevant proportion has been paid or tendered.

This restriction received the acclamation of consumers but was widely condemned by owners of goods as radical, ill-timed and retrograde.

The hardship inflicted on the owner by this provision is where the hirer defaults in payment after paying the relevant three fifth of the hire-purchase price and then abscond with the goods to an unknown address, and the owner remedy is an action in court where there is default in payment. Since the whereabouts of the hirer may remain unknown, any action brought by the owner may prove expensive and dilatory. This action drastically reduces the hire-purchase agreement especially in relation to the motor vehicle.

The new section 9(5) of the Act has seemingly reduced the hardship on the owner in relation to the repossession of goods.

3.3 Owner's Obligation under the New Section 9(5)

The new section 9(5) appears to have at first glance relaxed the restricted right of repossession of goods after the payment of the relevant proportion. But the section has not done away with the right of action of the owner. It only lays down some conditions to be fulfilled.

The case of *Tabansi (Agencies) Ltd v. Incar Nigeria Ltd (CCHJ/7/74)*, shows that the introduction of the new section under the amendment Act has not done away with the right of action but that the owner has to fulfill certain conditions before he can invoke section 9(5) of the act. The conditions are as follows:

- keep the removed goods in his possession and protect them from damages or depreciation.
- retain them (in any remises he should determine) pending the determination of the case.
- be liable to the hirer for any damage or loss which may be caused by the removal.

These duties placed on the owner under Section 9(5) must be adhered to strictly for an action under section 9 (1) to succeed. In *Incar Nigeria Ltd v. Adeyemi (1976) CCHCJ/1127*, the defendant bought a motor vehicle from the plaintiffs under a hire-purchase agreement of November 4, 1972. It is being agreed that the hire purchase price of N26,680.00 was to be paid in twelve instalments, commencing January 30, 1973. The plaintiffs removed the vehicle in August 24, 1974 from a garage where the vehicle was undergoing repairs, at which time a total of N18, 686.76 had been paid, an amount above the relevant proportion, but he was in arrears of May, June and July, 1974. The owner then sold the vehicle after they had sued for arrears and repossession of the vehicle. The defendant counterclaimed damages on the ground of unlawful repossession.

The court thereon held that the owner was liable on the counter claim for by selling the vehicle he violated the provisions of Section 9 (5) of the Act and the attendant consequence is provided for under section 9 (2) i.e. the sum of N18, 686 already paid was to be refunded to the hirer with cost of N250.

3.4 Hirer's Consent to Repossession

The hirer has a right to voluntarily consent to the repossession of the goods by the owner, if the owner request for them. Repossession of goods with the hirer's consent appears to have been approved by the wordings of paragraph 5 of the statutory notice of section 2 (2) (c).

Here, consent should be obtained where the hirer has glaringly shown sufficient intention to abandon the goods on which the relevant proportion of the hire-purchase price has been paid, and which may suffer deterioration if not taken into custody. In this situation then the owner is said not to be in possession of the goods. He must therefore institute an action before he can be said to be in possession of the goods.

3.5. Powers of the Court in Action to Recover Goods

While the action is pending for the recovery of the hired goods in which the relevant proportion has been paid, the court entertaining the suit is vested with some statutory powers.

This is stated before the hearing or even at the hearing, before the hearing in order to protect the goods from damages or depreciation, the court may order at the application of the owner, pending the hearing of the action and make such order for this purpose.

At the hearing, the court may make further order (s) which may include

- An order for the specific delivery of the goods to the owner (section 10 (4)(a)).
- An order for the specific delivery of all the goods to the owner and postpone the operation of the order.
- An order for the specific delivery of a part of the goods to the owner and for the transfer to the hirer of the owner's title to the remainder of the goods.

However, there is the opportunity of postmen order. This is an opportunity giving to the hirer who has defaulted in making payments after he has paid the relevant proportion a second chance to make good the defaults. While the hirer is still in possession of the goods, the court may make a specific delivery order of the goods to the owner. See the provisions of Section 12 of the Act in relations to this.

4.0 CONCLUSION

In conclusion, it is important to note that the role of the Act specifically that of section 9 of the Act cannot be ignored as it has played a major role in reducing the hardship placed by common law rule on the hirer in the contract of hire-purchase. The courts have also played important roles in addressing the issues and the owners are also not left out of the protection under subsection 5 of section 9 of the Act.

5.0 SUMMARY

It is important to note that the Act has done a lot by protecting the right of the hirer as against the backdrop of the position under the common law where the owner's whims and caprices to recover possession without any cause of action are absolute. It is also pertinent to note that section 9 (5) has also gone ahead to protect the owner from mischievous hirers by protecting the goods from them.

<

6.0 TUTOR MARKED ASSIGNMENT (TMA)

- 1) The hirer is protected under the Act after a relevant proportion of the hire-purchase price has been paid. Discuss this proposition under the Act with relevant authority and statutes.
- 2) Section 9 (5) of the Act protects the right of the owner but does not remove the right to action. Discuss.

7.0 REFERENCES/FURTHER READING

1. Hire Purchase Act. Cap 169, Laws of the Federation.
2. Sale of Goods Act, 1893.
3. Rawlings, Commercial Law, University of London Press, 2007.
4. Okany Nigeria Commercial Law, Africana-Fep Publisher, Limited, 1992.
5. Sofowora, General Principles of Business and Coop Law, Soft Associates, 1999.

MODULE 7

UNIT 1

CONTROLS OF HIRE PURCHASE AGREEMENT

CONTENTS

1.0. Introduction.

2.0. Objective.

3.0. Main Body

3.1. Adverse Possession and Conversion

3.2. Control of Advertisement

3.3. Sanctions

4.0. Conclusion

5.0. Summary

6.0. Tutor Marked Assignments (TMA)

7.0. References/Further Readings.

1.0 INTRODUCTION

This is an area where the hirer must give possession of the goods in his possession once he has received notice to do so or else he will be guilty of adverse possession and conversion of the goods especially where he sells to a third party. No doubt, the owner will still exercise his right to repossess the goods even if the third party has bought without notice of the owner of the goods because the law under the hire-purchase is not the same as under the Sale of Goods Act.

2.0 OBJECTIVE

The purpose of this unit is to enable learners to understand the concept of adverse possession of goods and that of conversion of goods by the hirer where the owner is unable to exercise his right of repossession of the goods to its fullest.

3.0 MAIN BODY

0.1 Adverse Possession and Conversion

Where section 14(1) of the Act applies, a hirer in possession of goods under a hire purchase agreement is deemed to be in adverse possession if the owner, in any action to enforce a right to recover possession of the goods from the hirer, proves that after his

right to possession accrued and before commencement of the action, he made request in writing for the possession of the goods.

The purpose of this section is that where the hirer has defaulted, and a written notice has been issued on him, then if he refuses to deliver them up, the owner will have a cause of action for adverse possession against him. Giving of notice is mandatory, and if he refuses to deliver up the goods, his possession will be regarded as adverse, sufficient enough to ground the statutory cause of action in damages for adverse possession and could also be sued for conversion.

➤ **Recovery from Third Party**

Where the hirer has wrongfully made a disposal of the goods to a third party, who receives the good *bona fide* and without knowledge of the owners right, such third party does not take a good title. It should be noted that this is hire-purchase agreement and not sale of goods transaction, because the property in the hired goods does not pass to a person who purports to purchase same from the hirer. For this reason, the owner's right of repossession remains undisputed, and statutory conditions and warranties will be applied notwithstanding any agreement to the contrary.

➤ **Recovery of Possession after Death of the Hirer**

Generally, on the death of the hirer, his rights and liabilities under the hire-purchase agreement pass to his personal representatives by operation of law, while such right terminates under common law. In hire-purchase agreement, the personal representatives of the deceased are expressly placed in the same position as the hirer.

Such rule that the goods can be passed to the personal representatives or to his spouse can be neutralised by inserting a clause in the agreement that it should terminate on the demise of the hirer.

➤ **Recovery without Restriction**

Under listed are the conditions where the owner can recover the goods without any restriction or even litigation.

- Where the hirer has rightfully exercised his right to terminate the agreement or bailment.
- Where less than the relevant proportion of the hire-purchase price has been paid or tendered.

- Where the hirer has voluntarily consented to return the hired goods to the owner.

3.1 Control of Hire-Purchase Agreement

This is one of the statutory interventions for the purpose of checking the mischief perpetrated by the owners or dealers of goods subject to hire-purchase agreement, especially with regard to advertisements which are half truths and misleading.

The scope of control is where the Act regulates advertisements of goods as being goods available for display by way of hire-purchase or credit sale, if the advertisement includes:

- ✚ An indication that a deposit is payable
- ✚ Words indicating that no deposit is payable
- ✚ An indication of the amount of any one or more of the installments payable.

The general information required under the Act for advertisement shall include the following information:

- The amount of the deposit directly expressed
- The statement that no deposit is payable.
- The amount of each installment directly expressed
- The total number of installments payable
- The length of the period in which each installment is payable
- The number, if any, of installment payable before delivery of the goods
- A sum stated as the cash price of the goods.

The Act further stipulates that each part of the information in an advertisement must be displayed and stated clearly and in such a way as not to give undue prominence or emphasis to any part of it in comparison with any other part.

3.2 Sanctions

Any contravention of the provisions requiring the furnishing of certain information in the advertisement shall amount to an offence punishable by a fine.

Section 17 (3) of the Act provides that if the offence is committed by a body corporate with the consent, connivance or neglect of any of its directors, managers, secretary or any

other officer, he as well as the body corporate, shall be guilty of that offence and punishable by a fine.

4.0 CONCLUSION

In adverse possession, the hirer might be liable for conversion of the goods and the owner of the goods has a right to repossess the goods from the third party to whom the hirer has sold to, without notice of the owner because under hire purchase the hirer has no title in the goods as the goods has not passed to him. While the rule of advertisement of goods under hire purchase rule must be adhered to strictly, sanctions will be imposed in a situation where the rules laid down have been violated.

5.0 SUMMARY

The rule on adverse possession and conversion, state that where the hirer has refused to give possession despite the notice served on him by the owner before an action in court, and where he goes ahead to sell the goods then the bona fide purchaser without notice will not be protected as the rule in nemo dat quod non habet will avail.

6.0 TUTOR MARKED ASSIGNMENT (TMA)

- 1) How realistic is repossession under the Hire-Purchase Act.
- 2) Explain the importance of notice under the rule of adverse possession of goods by the hirer.

7.0 REFERENCES/FURTHER READING

1. Hire Purchase Act. Cap 169, Laws of the Federation.
2. Sale of Goods Act, 1893.
3. Rawlings, Commercial Law, University of London Press, 2007.
4. Okany, Nigeria Commercial Law, Africana-Fep Publisher, Limited, 1992.
5. Sofowora, General Principles of Business and Coop Law, Soft Associates, 1999.

UNIT 2

THE MINIMUM PAYMENT CLAUSES UNDER THE ACT

CONTENTS

1.0. Introduction.

2.0. Objective.

3.0. Main Body.

3.1. The Minimum Payment Clauses under the Act

3.2. Mode of Assessment of Amount Payable by the Hire

3.3. Effect of Minimum Payment Clauses

4.0. Conclusion

5.0. Summary

6.0. Tutor Marked Assignments (TMA)

7.0. References/Further Readings.

1.0 INTRODUCTION

The law stipulates the amount required as percentage for the initial payment of the hire-purchase agreement. The mode of calculating the amount payable by the hirer is also one of the areas of concern in this unit along with how much is payable by the hirer as a installments payment for that purpose. The Act also regulates the amount required for payment. The effect of the minimum payment clause is the right of the hirer to be able to terminate the agreement. These and more are the issues for discussion here in this unit.

2.0 OBJECTIVE

The main objective of this unit is to enable learners to know about the minimum payment clause in a hire-purchase agreement.

3.0 MAIN BODY

3.1 The Minimum Payment Clause Under the Hire-Purchase Act

The minimum payment clause is usually for the protection of the hirer. It could assume all sorts of forms. There are also cases of stipulation for payments of a fixed percentage of the hire purchase price or an amount payable by way of agreed depreciation of the goods.

3.2 Mode of Assessment of Amount Payable by the Hirer

Section 8 (1) of the Act gives the hirer a right to terminate the agreement. However, in the event of termination of the agreement, the hirer is liable to effect a fifty percent

minimum payment. If the hirer has paid more than half of the hire purchase, he will not be expected to bear further financial burden by reason of his terminating the agreement, except such installments which have accrued as arrears.

The assessment of the hired liability under section 8 (1) contemplates that any stipulation with regard to minimum payment clause in the hire-purchase agreement by the parties will be valid, if the amount specified therein is less than the amount payable.

Possible Liabilities on Hirer Following Termination

Once the hirer exercises his right of termination of the hire-purchase agreement, then a statutory duty to take reasonable care of the goods is imposed on him. However, if the goods are either damaged or destroyed then the owner has a remedy in damages.

In a situation where the hirer has terminated the agreement but wrongfully retains the goods, he will be liable to action for damages in detinue. In such a situation, he shall be compelled to deliver the goods to the owner without being given the opportunity to pay for the value of the goods.

3.3 Effect of Minimum Payment Clause Stipulation Agreement Governed by the Act

The Act statutorily recognizes the hirer's right to terminate the hire-purchase agreement. In the event of such termination, the collective effect of the provisions of section 8 (1) and section 3 (b) and (c) is that any sum stipulated by way of minimum payment clause will be rendered void.

Successive Hire-Purchase

The hirer may sometimes, for some reason, elect to cancel the old agreement and substitute it with a new one for the payment of the balance of the hire-purchase price.

Credit Sale Agreement

Section 20 (1) of the Act states that Credit –Sale means the sale of goods in pursuance of an agreement under which the whole or part of the purchase price is payable by five or more installments and credit sale shall be construed accordingly.

4.0 CONCLUSION

Once the minimum payment clause is inserted in the hire-purchase agreement, it will provide a fixed amount payable during the hire period. For this reason, the hirer has the right to terminate the hire-purchase agreement by himself while he still has hire amount to pay. In this situation, the balance is rendered void.

5.0 SUMMARY

In summary the minimum payment clause is inserted for the purpose of ascertaining the actual amount to be paid during the hire period. It is important to also note further that the hirer can terminate the agreement and with the provisions of the Act, the balance to be paid once the minimum amount clause has been inserted will be terminated.

6.0 TUTOR MARKED ASSIGNMENT

- 1) What is the effect of the minimum payment clause?
- 2) Briefly explain the possible liabilities of the hirer following the termination of the agreement.

7.0 REFERENCES/FURTHER READING

1. Hire Purchase Act. Cap 169, Laws of the Federation.
2. Sale of Goods Act, 1893.
3. Rawlings, Commercial Law, University of London Press, 2007.
4. Okany Nigeria Commercial Law, Africana-Fep Publisher, Limited, 1992.
5. Sofowora, General Principles of Business and Coop Law, Soft Associates, 1999.