AN APPRAISAL OF THE CONCEPT AND SCOPE OF AGENCY RELATIONSHIP UNDER THE NIGERIAN COMMERCIAL LAW

BY

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APRIL, 2015

DECLARATION

I declare that this project titled: **"An Appraisal of the Concept and Scope of Agency Relationship under the Nigerian Commercial Law"** has been carried out by me. The information derived from other literatures have been duly acknowledged. No part of this project has been previously presented for another Degree, or Diploma at this or any other institution.

Miriam Elisha KARU	**Signature**	**Date**

CERTIFICATION

This Project titled: **"An Appraisal of the Concept and Scope of Agency Relationship under the Nigerian Commercial Law"** by Miriam Elisha KARU meet the regulations governing the award of M.A Law of Ahmadu Bello University, and is approved for its contribution to knowledge and literary presentation.

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DEDICATION

This work is dedicated to Almighty God for giving me the wisdom and the strength to bring this work to a successful completion.

ACKNOWLEDGEMENT

I return all glory to Almighty God for giving me the wisdom and the strength to bring this work to a successful completion.

I wish to specially thank my supervisor, Dr. I.F. Akande for her kind assistance, comments, careful and critical reading of the entire manuscript in ensuring the successful completion of this project work.

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LIST OF ABBREVIATIONS

AC	-	Appeal Cases
ALL E.R	-	All England Reports
APP.GAS	-	Law Reports Appeal
CH	-	Law Reports Appeal
CCHC	-	Certified Copies of the High Court of Lagos State Judgement
C.P.D	-	Law Reports, Common Pleas Division
F.S.C	-	Selected Judgement of the Federal Supreme Court
K.B	-	Law Report Kings Research
N.M.L.R	-	Nigeria Monthly Law Reports
N.W.L.R	-	Nigeria Weekly Law Reports
Q.B.D	-	Law Reports, Queen Bench Division
W.A.C.A	-	Selected Judgements of the West African Court of Appeal
W.L.R	-	Weekly Law Reports.

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ABSTRACT

Agency relationship from its origin, presents situation where a person (principal) is bound by the acts of another (the agent) and he (the principal) takes the rights and obligations arising out of such relationship is therefore, an exception of the doctrine of privity of contract which generally disentitles a person from acquiring any right or obligation arising from any contract to which he is not a party. Agency relationship arises when a person is vested with authority by another to enter into a legal transaction on his behalf. The two basic ingredients for agency relationship are authority and consent. However, in the course of this research, the finding of the writer is that the doctrine of privity of contract disentitles a person from acquiring any right under or being subjected to any obligation arising from a contract to which he is not a party to the contract. Thus, a contract cannot confer enforceable rights or impose obligations arising under it on any person except parties to it, this event, further constituted a statement of problem of the research. In view of this, the objective of this research is to identify the basic rules of agency relationship vis-à-vis their adequacy or otherwise in practice. In this regard therefore, the research finally concluded by recommending that the law should provide an avenue for redress to genuinely affected persons who the strict common law interpretation of privity of contract might have deprived of such. Such that even a perfect stranger could be awarded damages if infringement is proved. The sources of information relied upon here are relevant text materials, statute, journals (both local and international), judicial authorities and e-materials.

CHAPTER ONE

GENERAL INTRODUCTION

1.1 Introduction

General, the doctrine of privity of contract disentitles a person from acquiring any right under or being subjected to any obligation arising from a contract to which he is not a party. However, the law does to dissuade a person from employing the services of another to negotiate or conclude a contract on his behalf. The employer may lack the expertise or skill of the trade, business or profession, the knowledge or experience of a particular market, area or commodity or may simply be too busy with the other matters to conclude the contract himself. Obviously, a limited liability company or even a partnership being an artificial person cannot contract for itself, but, must rely on human beings to be its mind and body for the purpose of making its contracts. So the law meets these needs of business through the concept of agency.

The law which governs agency relationship in Nigeria is the received English law particularly the common law and equity. The law itself primarily deals with the relationship which arises where one person expressly or impliedly employs another or is by law deemed to have employed such person to perform some tasks for and or his behalf.

The concept of agency is an essential part of commercial law in Nigeria because organizations/companies and men alike can conduct their business in most occasions through agents. The functions of the law of agency is to enable agents to bring commercial parties into contractual relations in such a way as to render those parties and not the agents liable on, and able to enforce the contract.

The principal, on whose behalf the agents is bargaining, must be able to place complete confidence in the agent. This has led the law of agency to make the agent a fiduciary, which imposes strict obligations. However, there are interest other than the protection of the principal against misuse of power by the agent the protection of the third party with whom the agent had 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.

However the agent must act within the authority given to him by the principal which can be actual or real authority or apparent or ostensible authority. In other words, an agent cannot act outside its authority if he does he would personally liable unless such authorized act has been ratified by the principle before the principal becomes liable.

1.2 Statement of Research Problem

Generally, the doctrine of privity of contract disentitles a person from acquiring any right under or being subjected to any obligation arising from a contract to which he is not a party to the contract, thus, "a contract cannot confer enforceable rights or impose obligations arising under it on any person, except parties to it"[1]. However, the law does not dissuade a person from employing the services of another to negotiate or even conclude a contract on his behalf. The problem emerges from the constant abuse of the word "agent" misconception of the nature of agency relationship. Many businessmen in Nigeria engage in agency relationship without having a clear understanding of the concept and scope of agency relationships under Nigerian law as epitomized by Lord Hershel in *Kennedy v. Annete De Trafford*[2] thus:

> No word is more likely commonly and constantly abused than the word "agency". A person may be spoken of as agent and no doubt in the proper 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 creates the legal obligations attaching to agency. That use of the word is only misleading.

Another problem occurs due to ignorance of the importance of agency relationship among businessmen in Nigeria as an important aspect of the emerging

[1] Sayag Nigerian Law of Contract (1989) 2nd edition, Spectrum Law series Ibadan page 489.
[2] (1987) A.C. 180, 188.

modern Nigerian commercial life. The expansion and development of commercial activities requires a comprehensive understanding of the concept and scope of agency relationship under Nigerian commercial law and its applicability to the emerging modern Nigerian commercial law.

1.3 Aim and Objectives of the Research

The aim and objectives of the study is to examine and pay close attention to the basic rules of agency relationship and their logical explanation so that the basis could be clearly understood.

It is also the aim of this study to create and highlight awareness of the importance of agency relationship as an important tool of the emerging modern Nigerian commercial life in its diversified economic structure. This is due to the practical necessity which arises from the changing needs of specialization and divisions of labour which has called for the delegation or distribution of various functions among specialist and amateurs alike in line with the economic reform programs of the present administration.

After this analysis, parties will be able to understanding the concept and scope of agency relationship under Nigerian commercial law and its importance as distinguished from its understanding in the social parlance.

1.4 The Scope of the Research

The study covers the concept and scope of agency relationship as an aspect of the emerging modern Nigerian commercial life. Thus, this study will cover mainly the definition, classification of the agency relationship, how they can come about, in other words, the creation of agency relationship, the duties and rights of the principal and agent arising out of the relationship, the remedies available to both parties and how the agent's acts affect the principal's legal position with third parties. The study also deals with the applicability of agency relationship to the emerging Nigerian commercial life.

1.5 Research Methodology

The method of research adopted in this study is the doctrinal method which is essential based on consultation of textbooks, article and journals which are related to the subject matter of research. Reference is also made to Nigerian Statues as well as judicial decisions, the internet was also consulted.

1.6 Literature Review

The law of Agency is an area of commercial law which is defined as a consensual relationship created by contract or by law where one party, the

principal, grants authority for another party, the agent, to act on behalf of and under the control of the principal to deal with a third party.[3]

In researching on this thesis topic, quite a number of textbooks, articles, journals as well as conducted interviews where examined for this thesis.

In examining the law of agency on a broader context, going beyond Nigeria, Goode[4], discusses typical contract structures to demonstrate how the law of agency can be organized in different ways to produce or avoid a desired legal result, it provides a detailed analysis of the law of agency stating the key benefits.

Also, Sealey L.S. and Hooley[5] Combines extracts from cases and other materials with substantial commentary and explanatory text as regards the law of agency, hence supporting its explanations with adequate cases and enlightenments.

It should be noted however, that the two textbooks mentioned above provides the Law of Agency on a wider perspective, giving a full understanding on what the law of Agency entails but however gives no reference to the law of Agency in Nigeria.

Igweike K.I in his book entitled *"Nigeria Commercial Law: Agency"*[6] discussed extensively on the concept of agency relationship and the two poles

[3]The free dictionary. AGENCY. http://legal-dictionary.thefreedictionary.com/agency
[4]Ewan M. (ed) (2010) Goode on Commercial Law, (fourth Edition) Penguin books.
[5] Sealey L.S. and Hooley (2008) Commercial Law: texts, cases and materials, (fourth edition) Oxford University Press

around which agency relationship is considered, which are the consensual aspect of the judicial formality.

While focusing on the discussion on the nature of agency relationship, Yagba, T.A.T, Kanyip B.B and Ekwo S.A. in their book entitled *"Element of Commercial Law"*[7] provided this discussion but however failed to elaborate on the scope of agency relationship in Nigeria.

In analyzing the law of agency on a wider scope in Nigeria, Ezejeofor G. Okonkwo C.O and Ilegbune C.U, in their book entitled, *"Nigerian Business Law "*[8] made this analysis, giving a general view on the law of Agency, nonetheless, he did not consider its applicability to modern Nigerian Commercial life.

Okanyi M.C, in *"Nigerian Commercial Law"*[9] discussed extensively the concept and nature of agency relationship under Nigerian commercial law but paid little attention to its applicability to the emerging modern Nigerian commercial life.

Iroye[10] in her article provides the definition the concept of agency as an essential part of commercial law, focusing on the general operation of the agency relationship vis-à-vis the duties and obligations of the parties involved in the

[6]St. Henbal and Co. Lahore (1980)p. 4
[7](1940), Tmaza, Zaria.
[8](1982), Sweet and Maxwell, London.
[9](1992), Africana-Feb Publishers Ltd. p.200
[10]Iroye, Mr. Samuel. "Course Developers/Writers: Mr. Ugbejeh O. Ernest Mr. Njoku C. Nduka Mr. Martins Ishaya."

relationship and remedies available to arties where there is a breach of obligation. However, the explanations are given in short summaries but nonetheless gives an understating on the whole concept of the Law of Agency in Nigeria.

Olumide K. O.[11] narrowed the Law of Agency using two landmark cases; *UKPANAH V. AYAYA (2011) 1 NWLR [PART 1227] 61* and *Samuel Osigwe vs. Privatization Share Purchase Loan Scheme Management Consortium Ltd & Ors (2009) 3 NWLR (Pt. 1128) 378,* nonetheless, although an appropriate understanding was given using these cases, that is however not adequate as agency law is broad and goes beyond referencing of just two cases.

Also, Igweike K., *"Nigerian Commercial Law: Sale of Goods*[12], considers the law relating to the sale of goods when the most common method of acquiring goods in Nigeria is the contract of sale referencing the law of agency as it impacts the sale of goods which is also a branch of commercial law. Likewise, Olayiwola O. in his book entitled "*An Introduction to Commercial Law in Nigeria"*[13] also provides the Nigerian commercial law and references to the Law of agency in Nigeria was also discussed.

All of the above reference focus their attentions on the concept and scope of Agency relationship under Nigerian commercial law but did not address its

[11]Olumide K. O.. (2011) A review of the Evolving Nigeria Principal-Agency Rules
[12] Igweike K., (1993) , *Nigerian Commercial Law: Sale of Goods,* Jos Fab Anien (Nig), p.68
[13]Olayiwola O., (2014) *An Introduction to Commercial Law in Nigeria ,* Sweet and Maxwell, London

applicability to the complexities of the ever changing and emerging modern Nigerian commercial life. It is on this background that the study intends to provide a detailed examination of the applicability of the concept and scope of agency relationship under Nigeria commercial law to the complexity of the emerging modern Nigeria commercial life.

1.7 Justification of the Research

This study is justified basically for two reasons: the first reason is, because of the expansion of commercial activities in Nigerian from small scale to larger ones as a result of the economic reform programmes and privatization of Public sector of the present Administration, it becomes pertinent to reconsider the concept and scope of agency relationship under Nigerian commercial law with the intent of the further clarification and expansion. The economic reform programme which includes diversification of the economy from the oil sector alone, reformation of the banking sector, insurance and aviation sector a free market to foreigners and protection of such through Nigerian Investment Promotion Commission (NIPC) and Immigration Act[14].

Secondly, because most of business men in Nigeria are ignorant of the nature of agency relationship, it's important to the complexities of the emerging

[14] Section 58 Nigerian Investment Promotion Commission Act

modern Nigerian commercial life. Agency relationship is an important aspect of this complex modern Nigerian commercial life, which needs to be reconsidered and expanded.

1.8 Organization Layout

This research study is divided into six main chapters. Chapter one deals with the general introduction of the topic, that is "the concept and scope of Agency Relationship under Nigerian commercial Law". Here an attempt is made to introduce us to the general concept of the nature of agency relationship, the State of the research problem, aim and objectives of the study, the scope of the study which specifies the areas that the researcher has paid close attention to, the method of research adopted in the course of the research, literature review which shows how different authors have expunged on the topic of the research.

Chapter two has considered the Conceptual Clarifications in agency relationship and in what circumstances one can say that the agency relationship exists.

Chapter three dwells with the Scope of Agency Relationship as briefly discussed in chapter one, capacity to act as principal and capacity to be appointed as agent.

Chapter four examines the duties and right of the principal and his agent arising out of the relationship as created in chapter two. By this, each party in the relationship can easily ascertain when the other party is breach of his duties.

Chapter five dwells on the Breaches of Obligations, Remedies Available to Principal and Agent and the remedies available to both parties that is the principal and his agent when there is a breach.

Finally, last chapter, chapter six deals with the conclusion and recommendation to the findings in the research.

CHAPTER TWO

CONCEPTUAL CLARIFICATIONS

2.1 Introduction

The necessity for the employment of some person to perform for or on-behalf of others is product of the complexities of modern commercial life. The development which is closely related to the changing needs for specialization and division of labour which have called for the delegation or distribution of various functions among specialists and amateurs alike.[15] This make it pertinent to give the meaning of this relationship.

2.2 Meaning of Commercial Law

Legal rules that (1) determine the rights and duties of parties engaged in trade and commerce, (2) govern disputes arising out of ordinary transactions of buyers and sellers, and (3) settle issues concerned with affreightment, banking, insurance etc. It also known as business law, is the body of **law** that applies to the rights, relations, and conduct of persons and businesses engaged in commerce, merchandising, trade, and sales. Commercial law governs the broad areas of business, trade, commerce, sales, and consumer transactions. Commercial law covers numerous issues of law, such as contracts, banking, bankruptcy, credit

[15](1987) A.C. 180, 188.

transactions, secured transactions, real estate and others. There are numerous laws at the state and federal level governing commercial law practices.

2.3 Meaning of Agency

Agency like other legal terms and concepts defies a concise definition. As a result of the non-availability of précised definition of the term "Agency", it has been subjected to abuse. In his words of Lord Hershel in *Kennedy vs. Annette De Trafford and Ors*[16].

No word is more commonly and constantly abused than the word "Agent". A person may be spoken of as "agent" and no doubt in the proper sense of the word may properly be said to be an "agent" under such circumstances as to create a legal obligation attaching to agency that use of the word is only misleading.

Though it's true that agency does not permit a brief and standard definition, this does not render it impossible to make an attempt to summarize what is involve in the concept of agency. Hence, attempts have been made by some authors to put forward acceptable definitions of the term "Agency".

Fredman, G.H in his book *"Law of Agency"*[17] defines agency thus, "agency is the relationship that exist between two person where one, called the principal, in

[16](1987) A.C. 180, 188.
[17]Burther Worth, London (1976) 4th edition p. 349

such a way as to be affect the principal's legal position in respect of strangers to the relationship by making contracts or led the deposition of property.

According to Bowstead, in his book "Agency"[18] agency is the relationship that exist between two person one of whom expressly or impliedly that other should represent him or act on his behalf, and the other of who similarly consents to represent the former so to act. The one who is to be represented or on whose behalf he act is to be done is called the principal. The one who is to represent or act is called agent. Any person other than the principal and the agent may be referred to as third party.

The American restatement of Law[19] defines agency as "a fiduciary relation which result from the manifestation of consent by one person to another that shall act on his behalf and subject to his control and consent by the other so to act. The one for whom action is taken is the principal. The one who is to act is the agent".

Igweike, K.I in his book, *"Nigerian Commercial Law Agency"*[20] has defined agency as "the relationship which subsists between a person called the principal and another called the agent by which the letter is by law invested with the legal authority to utter relationship of the former with third parties".

[18]Bowstead, Agency (1959) Sweet and Maxwell, London p. 9
[19](jentatius Draft No. 2) (2003), ss1. 01
[20]St. Henbal and Co. Lahore, (1980) P.4

The Black Law Dictionary[21] also defines "agency" as "a relation, created either by express or implied contractor or by law, whereby one party (called the principal or constituent) delegates the transaction of some lawful business or the authority to do certain acts for him or in relation to his rights or property, with more or less discretionary power, to another person (called the agent, attorney proxy or delegate) who undertakes to manage the affairs and render hi9m an account thereof.

According to the Nigerian judicial lexicon,[22] "Agency" is the Fiduciary relationship which exists between two persons, one of whom expressly or impliedly consents that the other should act on his behalf his with third parties, and the other whom similarly consents so to act or so acts" as was held in *Ironbar vs. Cross River Basin and Rural Development Authority and Anor*[23]in this case, the court referred to the case of *Vulcan Gases ltd vs. Gesselschaft F. Industries.*[24]

Agency therefore arises, when a person is invested with authority by another to enter into legal transaction, on his behalf. It follows therefore, that the parties in

[21]St. Henbal Minn West Publishing Co. (1910), 2nd edition.
[22]Ecowatch Publications Nigeria Ltd., Lagos (2006) p. 11
[23](2004) 2 N.W.L.R. (pt. 857) 411@431.
[24](2001)9 N.W.L.R. (pt. 719)610

the relationship must have the consent of each other as expressed by Lord Pearson in *Garmal Grainco Incorporation vs. H.M F Faure and fair Clouch Ltd.*[25]

Agent: the word "agent" is derived from the Latin word "agar" meaning "to see". In the case of *Queen vs. Kane, Lord Alvevstone C.J.,* [26] defined agent as a person who acts for another whether by expressed or implied term of the parties.

An agent is person authorized by another to act for him, one entrusted with another's business of some particularly place[27].

From the definition of an agent above, the agent must have the authority of the principal in order to alter his (principal's) legal relationship with third parties. This authority or consent can be expressed or implied by law.

The general rules is that whatever a person may do himself, he may authorize another to do the same, meaning that he who does anything by another, does it himself.

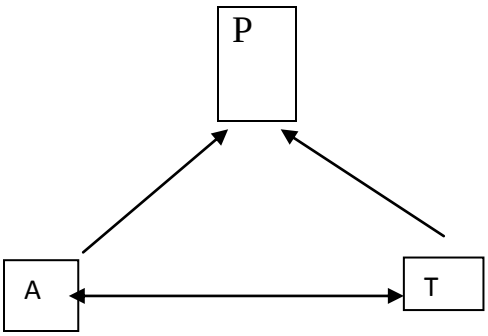
The law which governs agency relationship in Nigeria is the received English law particularly the common law and equity. The law itself primary deals with the primarily deals with the relationship which arises where one person,

[25](1967) 2 ALL ER. 534.
[26](1910) 1 Q.B. 472
[27]Nigerian Industrial Development Bank Ltd vs. Olalomi Industries Ltd. N.M. IR 414

expressly or implied employs another or is by law deemed to have employed such person to perform some tasks for and on his behalf.

The maxim, *"Qui facit per alum, facit per se"* which means, "he who acts by another acts by himself", states the bases of the law of agency. Therefore, where a person contracts as agent for a principal, the contract is that of the principal, and not that of the agent; and prima facie, at common law the only person who can be sued is the principal[28]. This was the decision of the court which was delivered by Wright J.

Agency therefore involves a triangular relationship involving the principal (P), his agent (A) and the third party (T) which is illustrated by the diagram below:



In other words, there are three parties, P,A and T and three relationships:

i. The relationship between P and A

[28] Montgomerie vs. United Kingdom Mutual Steamship Association (1891) 1 Q.B 370

ii. The relationship between A and T

iii. The relationship between P and T

The picture may be more complex than his (above) because T that is third party is like likely to use an agent and agents of P and T may be permitted to use sub-agents. Furthermore, one party may be simultaneously agent and principal, in *Aluminum Industries Vaasenby vs. Romalpa Aluminum Ltd*[29]under a contract of sale on credit, S(seller) reserved title in the goods and required B(buyers) to account to S for the proceeds of any resale of those goods. This meant that the resale, B was an agent for S and under an obligation to account for the resale proceeds, but B was also a principal in relation to the new buyer.

2.4 Authority

Authority is the power behind the exercise of the will of the principal by his agent, in order to order to affect the principal's legal position. Authority is the bedrock of agency relationship without which an agent cannot act on his principal's behalf. It is by the authority conferred that one can ascertain what agent can do and cannot do.

In this regard, it is important to determine both the sources and scope of the agent's claimed authority.

[29](1976) 1 W.L.R. 676

The authority of an agent to act may be actual or real, apparent or ostensible. The principal will be bound if the agent acted with the categories of authorities aforementioned. In the case of *Yisi Nig. Ltd vs. Trade Bank Plc*[30], the court held that a principal is bound by the acts of his agent carried out on his instruction.

2.4.1 Types of Authority

1. Actual or Real Authority

This is the authority which is entangled in the agency agreement usually form the principal to his agent. *In Freeman Tockyer vs. Buckhurst Park Properties (Manga) Ltd*[31]. Lord Dipock defined actual authority as "a legal relationship between principal and agent created by a consensual agreement in which they alone are parties. Its scope is to be ascertained by applying ordinary principles of constructions from the express words use, the usage of the trade or the course of between the parties.

Actual authority may emanate from express instructions or authority given by the principal to the agent or implied form words or conducts of the parties. Also, actual could be usual or customary authority.

[30] (2013)C.L.R.N
[31] (1964) 1 ALL ER 630 @644

The express actual authority is created and limited by the terms of the agency agreement which gives rise to the relationship. The clearest example express actual authority is the power of attorney, that is, written instruction which confers authority on an agent, in other word, deeds are strictly constructed where general words are used, and are limited by other special words which describe particular acts which the agents is authorized to perform. In determining the authority of an agent, the normal rules, for constructing contracts apply which was discussed in *S.M.C Electronics Ltd vs. Akhter Computers Ltd*[32] are as follows:

Express actual authority could also be in writing or parol. In this case the construction is less strict.

In implied actual authority, the agent will have actual authority to do those things that are necessarily incidental to the execution of the express actual authority. Implied actual is a way of filing in the gaps in the agency agreements it is not a means of altering that agreement. However, some agents in this contemporary (example those operating in the financial markets, such as stockbrokers and insurance brokers) are subject to terms imposed by statue or the express terms of the agreement.

[32] (2001) 1 BCLC 433

The implied authority of an agent, appropriate necessary implications for the surrounding circumstances, can be inferred.

Every agent as such has implied authority to do everything necessary incidental to carry out his authority.

Implied authority may also be conferred by custom or usage of the community, trade, business or profession where the agent operates, or by conduct of the principal.

Apparent (ostensible) authority is the authority of agent as it appears to others. This was earmarked by Lord Denning in *Hely Hutchinsoin vs. Brayhead Ltd*[33]. This authority has not actually being given, it only appeared to be the law regards the agent as possessing since the principal by his conduct has allowed the agent to appear to have authority.

2.5 Types of Agent

i. General Agent

General agent act on behalf of his principal on all affairs relating to the business they undertaken and matter in the ordinary course of agent's profession, business or trade.

[33] (1968) 1 QB 549.

ii. Special Agent

Special agent is one that has authority only in carrying out a particular or specific purpose that is not part of the ordinary course of business for such an agent.

Example of general agent is a Solicitor/Legal practitioner, brokers, auctioneers and estate agents. For a special agent, once he has undertaken or performed that particular function given to him, he cease to be an agent. In *Harmong Properties Ltd vs. Gradizis*[34], it was held that a director of Limited Liability Company was general of the company and could issue a valid quit notice, to a tenant of the company.

iii. Agency by Agreement

Agency relationship being primarily consensual in nature, it is usual in commerce to constitute such relationship by an agreement between parties to the contract which exists either where a promise is made on one side, and assented to on the other side, or where two or more persons enter into an agreement with each other, by a promise on either side. This does not necessarily require compliance with specific rule, no particular form is required for such agreement it may be concluded orally, by deed or document underseal or simple writing. It is sufficient

[34](1968) 3 ALL ER 267.

that the words used or the conduct performed indicate that it is the intention of the parties to constitute such a relationship. In the case of *Ayua vs. Adaru and Others*[35] Akanbi, J.S.C restated the law in the following statement

> 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 principal which involves consent of both parties. It is therefore a title law that agency arises mainly from a contract or agreement between the parties express or implied.

In another case, *Ironber vs. Cross River basin and Rural Development Authority and Another*[36] it was held, that the relationship of principal and agent may be constituted by agreement, whether contractual or not, between principal and agent which may be express or implied from the conduct or situation of the parties.

Like ordinary contract, agency by agreement is based upon trust and mutual confidence of the parties in each other. This agency must not be vitiated by duress, undue influence, mistakes or misrepresentation. The express of the agency usually defined the nature of the business terms of agency, duties of the agent, obligation of the principal, the remuneration of the agent and the parties in respect of whom the agent would act to bind his principal.

[35](1992) 3 NWLR 589.
[36](2004) 2 NWLR (pt. 857) 411 @451

iv. Agency by Estoppel

Agency by estoppels also known as ***Apparent Authority*** is based on the principal of "holding out". This means that where a person has acted in such a way as to make other people believe that a certain state of affair exists, the person holding out another will be prevented from turning or asserting that the state of affair really does not exist. This is because by his conduct, he may have concentrated liability in respect of third party who obviously will suffer innocently, if such a person is allowed to get away by claiming that the state of affairs does not in fact exist; and agency relationship would be imputed on him and the other party so as to make them principal and agent. A principal has a duty not to misrepresent another as his/her agent. When a principal (accidentally or purposefully) causes a third party to believe that someone is an agent, the principal is bound by the agent's actions even if the person was not an agent. The third party must be reasonable in believing that the person was an agent.

There are certain essential elements that must be present and specifically proved for a plea of agency by estoppels to succeed. The locus clasicus of the requirement of these elements is established in the statement of *Slade, J. in Rama Corporation Ltd vs. Proved Tin and General Investment Lt*[37]

[37] (1952) 1 ALL ER 554

> "… a party cannot call in aid an estoppels unless three ingredients are present (1) a representation (ii) a reliance on the representation and (iii) and alteration of his position resulting from such presentation".

The representation must be a conduct or statements by the principal which can or may amount to a representation that the agent has that authority from him to act on his behalf. Such a statement or conduct must be clear and unequivocal; in other words, most of fact and law. In *President clothing and Co. Ltd vs. Anyawu*[38], the High Court holding in Lagos held that such representation must be made by the principal, or someone authorized by him and must be a representation of fact. It held that the mere presence of managing director of a company at its party where pictures were taken is not in itself conclusive evidence that the pictures were taken at the instance of the company.

Also, the person to whom that representation was made to must rely on such representation if he had not had, then the party who made it cannot be held liable to him. Lord Lindley made this observation in the case of *Farguharson Bros vs. King and Co*[39] thus, *"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 interference that he knew of it and acted upon"*.

[38](1975) CCHCJ p.1
[39](1902) AC 325 @ 341.

Representation and reliance on it by the third party is not enough, he must further show that he altered his position thereby adding to his detriment. Other, the person making the representation will not be liable.

v. Agency by Ratification

This falls under kinds of agency that is not created as a result of an express or implied contract between the parties.

There are times when a principal will authorize the agent to act beyond his/her authority. As long as the principal knows about the stretch in authority and ratifies the action ahead of time, the agent has authority to act.

Ratification it the adoption or confirmation by a person (principal) of an act purportedly done on his behalf by another (agent) who either was not his agent at the time the act was done or was his agent but had, in fact, exceeded his authority by so acting. In effect, agency by ratification means that the principal has accepted the acts of another as done on his behalf even before the relationship of principal and agent was created as though he had originally permitted the person to do such an act. Ratification is deemed to supply the consent which may be necessary, its essence being that the prior unauthorized act is treated as if it had been authorized by the alleged principal from the onset. This agency is thus, retrospective in nature

and has the effect of constituting the act so performed in to that of the alleged principal, thereby making the principal liable.

Any act, whether lawful on not may be ratified provided it is not void abinitio or ultra-vires against the person adopting it. In order to successfully raise the issue of ratification, the purported act of ratification must be valid, and effective. To be valid and effectively certain essential requirements must be fulfilled. In *Firth vs. Stains*[40], Wright J. gave three conditions as thus:

> To constitute a valid ratification, three conations must be satisfied. First, the agent whose act is sought to be ratified must have purported to act for the principal, secondly, at the time the act was done the agent must have had a competent principal, and thirdly, at the time of ratification, the principal must be legally capable of doing the act himself.

This was also the ratio in *Vulkan Gases Ltd vs. Gescelshaft Fur Industries*[41]and the most recent Nigerian case of *Ironbar vs. Cross River Basin and Rural Development Authority and Ano*[42]**,** where it was emphasized in its holding that the relationship of principal and agent may be constituted by ratification, and would be implied whenever the conduct of the person in whose name or on whose behalf the act or transaction is done or entered into is such as to show that he adopts or recognizes such act or transaction in whole or in part.

[40](1897) 2 Q.B.D.7
[41](2001)9 N.W.L.R. (Pt. 719)610
[42](2004) 2 N.W.L.R. (Pt. 857) 411@431

Ratification will more often be implied from words or conduct. Such words or conduct must be unequivocal; they must not be such that they could be accounted for by other interpretations. The ratification must also be unequivocal.

vi. Agency by Operation of Law

Under agency by operation of law, the person held by law to be a principal does not consent to the act of the person held by law to be his agent.

Agency by operation of law arises only in certain situations where by for instances, for reasons of natural justice, or public policy, he law presumes an agency here, the law may be seeking to protect the interests of those classes of persons who may otherwise suffer where no agency is presumed. There are instances in which the law may presume the existence of agency relationship but only two would be considered in this work, these are agency of necessity and agency arising cohabitation.

vii. Agency of Necessity

In an emergency situation, an agent may act beyond his/her authority even if the principal did not give the agent permission. For example, an agent might use company funds to provide medical attention to an injured employee. The agent may not have authority to do so, but the emergency situation would excuse the agent's actions.

Agency of necessity also arises in situations where due to urgency or desperation, the law accepts what has been done by a person as having been done for and with the authority of another person, and presumes the relationship of principal and agent between them.

In case of emergency or necessity, the law may compel a person to act in a particular way or if he has already acted to justify his action. This is done usually in order to avert some irreparable loss, injury or damages. Necessity has a limited application and apart from cases where the supposed agent is under a moral or legal duty to act, is probably confined to cases where there are contractual agency relationships of some kind already in existence.

An example of agency arising out of legal duty is the case of a deserted wife. She is an agent of necessity to pledge her husband's credit for things necessity to their statute in life. Another instance where agency of necessity may arise is where a shipmaster (captain) acts reasonably as he think fit so that the safe of the voyage is guaranteed. In circumstances where he is faced with such emergency, he may need not obtain the consent or authority of the shipwnor. A classical case of such situation can be seen in the case of *Langan vs. the Great West Railway Co.*[43] where a train belonging to the defendant was involved in an accident and their employer took some of the injured passengers to the plaintiff's in where he ordered some

[43](1874) 3 OL.T.R. 173

Brand for them. In an action for the price of the Brandy, it was held that the defendant was liable, for the employer had authority to pledge the credit of the defendant for reasonable necessaries to people in the condition of injured passenger.

However, before agency by necessity would arise certain condition must be present. These conditions were stated by Smith, *L.J. I Williams vs. Twist*[44], thus:

> To constitute a person into an agent necessity, he must be unable to communicate with his employer, he cannot be such an agent if he is in a position to do so. The impossibility of communicating with the principal is the foundation of the doctrine of an agency of necessity.

viii. Agency arising from Cohabitation

Cohabitation means living together as husband and wife whether married or not.

For an agency of necessity to be implied between a husband and his wife they must be living together to where the wife has been deserted by the husband, there has been no court dissolving the marriage. Where the wife and her husband have been separated by court order, the wife does not have the presumed authority to pledge the husband's credit. Where the wife has been deserted by the husband, she continues to be an agent of necessity for goods, which fall within her domestic needs.

[44](1895) 2 Q.B.D. 84

Where she is entitled to pledge the husband's credit Wiles J. in *Philipson vs. Hayter. Remaked*[45]*:*

> What the law does refer is that the wife has authority to contract for things that are really necessary and in so far as the articles fall fairly within the domestic department which is ordinarily confided to the management of the wife.

Therefore, the things which the wife can pledge the husband's credit for are or should be commensurate to their standard of living. This is the position of the law.

2.6 Other Types of Agent

There are other types of agents examined below:

i. **Mercantile Agent**: This is agent who, in the customary course of business has authority to sell or consign goods for sale, or to buy goods or to raise money on the security of goods. Mercantile agent may also be entrusted with goods on sale or return terms and will be paid his share of profit.

ii. **Factor:** Factor is agent who is entrusted with the possession of good or documents of title to goods and who is allowed to sell them in the

[45](1870) L.R. 6c p. 38

factor's own name as a principal. In *Baring vs. Corrie*[46] Abbot C.J described a factor as a person to whom goods and 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.

iii. **Broker**: A broker is an agent that negotiates or serves as a link between a buyer and a seller without having possession of the goods or the document of title. As such, he can neither sue nor act in his own name example are stockbrokers in share dealings, insurance and general buying and selling.

iv. **Del Credere Agent:** This is an agent who guarantees his principal that a thirty party dealing with him shall duly make payment due under a contract in consideration of extra-remuneration which is known as **delcredere commission**. He guarantees the solvency of the third party in order words, he is like a surety for the due performance, by the third party of contract entered into with the third part on behalf of his principal.

v. **Commission Agent**: Commission agent (or commission merchant) buys or sells good on behalf of the owner or principal, but not establish a

[46] Kayajo vs. Olabode (1968)NCLR 414, see also ESSO W/Africa Inc. VALI (1968) NMIR 414

contractual relationship between the owner and the third party. The commission agent acts as principal in the contract with the third party. Nevertheless, this agent acts owe the owner all duties of an agent to a principal.

CHAPTER THREE

THE SCOPE OF AGENCY RELATIONSHIP

3.1 Introduction

An agency relationship is usually formed by an agreement between the two parties. An agent can only act on behalf of a principal for certain issues (depending on the agreement). Ultimately, this depends on the agreement made between the principal and the agent. In general, there are two ways to determine the scope of an agent's authority.[47]

Express: An agent's authority can be expressly determined. If an agreement specifies an agent's duties, an agent does not have authority to represent the principal beyond those duties.

Implied: An agent's authority can be implied by custom. Custom is determined by the express duties of other agents in the same position. For example, a realty company hires a real estate agent. It is implied that the agent has authority to help third parties buy and sell homes since it is the custom among real estate agents.

There are situations where an agent's authority is created even if the person is not an agent. Here are examples of these different situations; Apparent Authority

[47]Igweike K., (1993) , *Nigerian Commercial Law: Sale of Goods,* Jos Fab Anien (Nig), p.100

which is also known as Agency by Estopel, by Rectification, Emergency Powers which may arise out of necessity etc.[48] All these have been discussed in detailed in the previous chapter i.e. chapter two.

Agent authority often decides whether a principal or an agent is liable for a lawsuit. If the agent acts under the principal's authority, then the agent was most likely under the principal's control, thereby making the principal liable. In most instances, the principal has more money than the agent. As a result, injured parties want to go after a principal because that means more money, even though suing the agent would be easier.[49]

If the agent was outside his or her scope of authority, then the principal is not liable for any injuries. The only exception is if the principal ratified an agreement. If the agent was acting outside the scope of authority, the agent may be liable for any injuries or breach of contract.[50]

3.2 Capacity to Act as Principal

The general rules governing the capacity to enter into a contract also govern the right of a person to act as a principal and the general rule as regards the capacity to appoint an agent is that whatever a person has power to do himself may

[48]http://www.legalmatch.com/law-library/article/scope-of-an-agents-authority.html#sthash.Ofees2Wh.dpuf
[49]Bowstead on Agency (1976) 14th edn p.
[50]http://www.legalmatch.com/law-library/article/scope-of-an-agents-authority.html#sthash.Ofees2Wh.dpuf

do so by means of an agent. However there are two exceptions.First, where the act is required by a statute to be done by the person himself.[51]Secondly, where the competence to do the act arises by virtue of the holdings of some public office.

The converse of the general rule is also true. What a person cannot do himself, he cannot do by means of an agent. It follows that a principal that does not have full contractual capacity cannot make a contract by employing an agent who has full contractual capacity. In other words, those who lack capacity to contract for example, an infant, a lunatic, cannot as a general rule surmount this contractual disability by employing agents to enter into a contract on their behalf. Thus, while an infant may appoint an agent to contract on his behalf in respect of those contracts which are enforceable by and against him (e.g. contracts for the supply of necessaries, and beneficial contracts of service),[52] he cannot do so in respect of those contracts which are void against him (e.g. contracts for the supply of no-necessary goods). Therefore, an infant, a lunatic or a drunkard is liable upon a contract to indemnify his agent if the contract is of the type that he would have been liable had he contracted personally. Consequently, an infant will not be liable on a contract for non-necessaries purchased for him by his agent. An insane person cannot, except during lucid intervals,[53] act as an agent, since a contract, or the

[51] Bankruptcy Act, 1979 (Act No. 16 of 1979), section 18(1)Eastern Directors vs. Goldring (1957)2 Q.B. 600
[52]Doyle vs. White City Stadium Ltd (1935)1 K.B. 110
[53]Jenkins vs. Morris (1880) 14 Ch.D 674; Daily Telegraph Newspaper Co. Ltd V. Mc Laughlin (1904) A. C. 776

negotiation of one, requires a meeting of the minds of the parties to it which an insane person obviously cannot establish. A corporation cannot appoint an agent for any purpose which is beyond its powers (ultra vires) under its memorandum of association.[54] In other words, whether or not a corporation can act as an agent will depend on the scope of its character or memorandum of association. An unincorporated association cannot appoint or act as an agent, in any circumstance since it is not recognised as a legal entity. For this reason, a contract by a company promoter on behalf of a company as yet unincorporated will not bind the company and the company when incorporated cannot ratify or adopt such contract.[55] However, individual members of an unincorporated association, acting jointly, may become or be held liable as, principals, if they appoint an agent.

Courts differ as to whether the appointment of an agent by an infant principal is void or merely voidable. However, they agreed that an infant may act as an agent if he possesses the requisite physical and mental qualifications. It is also essential that the principal should be in existence at the time the agent purports to contract on his behalf. Furthermore, although the principal may have capacity at

[54]Re Jon Beauforte (1993) Ch. 131
[55]Caligara vs. Giovanni Sartori and Co. Ltd. (1961) ALL NLR. 534

the creation of the agency, his subsequent loss of capacity, for example by insanity, brings the agency relationship to an end.[56]

3.3 Capacity to be Appointed as Agent

An agent does not enter into a contract on his own behalf, but on behalf of his principal. Consequently, it is not necessary that he should have full contractual capacity. Therefore, all persons of sound mind, including infants and other persons with limited or no capacity to contract on their own behalf, are competent to act or contract as agents. In other words, since agency depends on agreement and not necessarily on contract, a person under contractual incapacity is not disabled from serving in the capacity of an agent. The rationale of this rule is that the agent is a mere instrument and that it is the principal who bears the risk of adequate representation.[57] Thus, an infant may act as agent in any type of contract provided that he has sufficient understanding to consent to the agency and to do the act required. For an infant, therefore, the test is one of metal capacity, not that of age. An illiterate person may act as an agent to sign a written contract.[58]

[56]Younge vs Toynbee (1910) 1 K.B. 215
[57]Bowstead on Agency (1976) 14th edn. P. 20
[58]Foreman vs. Great Western Rly Co. (1878) L.T 851

CHAPTER FOUR

DUTIES, RIGHT AND OBLIGATIONS IN THE AGENCY RELATIONSHIP

4.1 Introduction

The relationship of principal agent is primarily consensual. Consequently, the rights and duties arising out of such relationship are discernable from the express or implied agreement between the parties that is where the agency is by acts of the parties. The relationship is often described fiduciary in the sense that it arises out of the trust or confidence repose upon the agent by the principal.

In circumstances where the agency relationship is not consensual but arises out of the operation of law, certain rights and duties are implied by law. In such cases, the usage or custom of such community, trade, business or profession may be either expressly or by operation of law incorporated in to the dealing by the agent. From such usage or custom, certain rights and obligation may annexed to their relationship provided these are reasonable and lawful.

4.2 Agent's Duties to his Principal

The agent owes certain well defined duties ton his principal which arises out of their agency relationship. A full discussion of these duties and rights of the agents is made below.

4.2.1 Duty to Obey Instructions of the Principal

The agent in performing his duties is bound to obey the lawful instructions and authority of the principal, where he has been given instructions to follow, he should not depart from them even where the agent believes he is acting in the best interest of his principal, he is still not justified in disobeying his principal's instructions. Accordingly, in *Esso African Incorporation vs. Ali*[59] an Ibadan High Court held inter alia that, it is the duty of an agent to carry out instructions that may be given to him buy the principal and cannot depart from such instructions even though he reasonably believes that in doing so, he is promoting the interest of the principal.

The agent has to carry out his duties in the usual and customary way. Failure to carry out the instructions of the principal may involve the agent in liability to him (the principal). In *Bertrom Armstrong and Co. vs. Fodfrey*[60], the agent (a broker) was instructed to sell certain shares at stipulated price. Instead of selling at that price, in the meantime, the price of the shares fell below that which he had been instructed to sell and so, he had been instructed to sell and so, he couldn't sell. It was held that the agent was liable to his principal for not selling at the stipulate at the price instructed to him to sell.

[59](1963) NMLR 414
[60](1830) 1 KWAPP 381

The agent's duty of obedience is not absolute. First, where no definite instructions have been given or where such as been given which gives the agent measures of discretion, he is expected to be guided by the reasonable and honest exercise of his own judgment and the interest of his principal, if he is so guided, he incurs no liability even if the principal suffers a loss thereby.

Secondly, if the principal's instructions are ambiguous, the agent is put to election and provided he acted fairly and provided and honestly, he will not be in breach of his duty of obedience, even if it is less favourable his principal.

Thirdly, where the agent is a professional agent, the principal's instruction will be subjected to any customs or usage of a particular trade business or profession to which the agent belongs or operates.

Lastly, the duty of obedience does not obligate the agent to shield a dishonest principal.

4.2.2 Duty to Exercise Due Care and Skills

When agent is exercising the terms of his agency, he is bound to exhibit such reasonable care, skill and diligence required under the circumstances. All agents owe this duty to their principal, whether they are acting for remuneration or acting gratuitously.

The standard of skill and care expected of an agent is that of his profession, trade or business. Where the agent belongs to a profession, the care and skills require of him is which is usual and reasonably necessary in carrying out such business by member of his profession to carry out a duty as one assigned to the agent. But where the agent does not belong to a profession, the skill and care required of him is that which is usual, reasonable and necessary in carrying out such a duty. In *Omotayo v. Ojikutu*[61] appellant and respondent were general traders and members of a syndicate in Lagos the appellant visited London where he acted as agent for the respondent for the purchase of some motor cars and trucks. Despite the fact that the respondent had met the financial requirement for the transaction and the appellant had concluded arrangements with a third party in London for the delivery of the trucks, they did arrive Lagos. The respondents claimed damages for breach of agency as a result of the appellant's negligence. The court held that the principal was not liable to the respondent. In addition, the court held a principal who appoints an agent knowing his skill experience is not entitled to expect or require from the agent a high measure of skill knowledge that one in his position and experience could reasonably be expected to possess. An agent does not guarantee the successful outcome of the transaction he undertakes on behalf of his

[61](1961) 1 ALL NLR 904

principal and provided he aced honestly, no more can be demanded of him than that he should be expected of one in his position and experience.

The respondent knew of the fact that the appellant was only a product dealer and had no special qualification as motor or truck dealer.

The degree of care, skill or diligence required of an agent may also depend on whether the agent is a gratuitous agent or acting for reward. It was held by Adefarasin J. in the case of *Hamman vs. Alade Senbajo*[62] that a higher standard of care and skills is required of an agent for reward than one acting gratuitously.

4.2.3 Duty to Act Personally

The agent must perform his duty personally because agency relationship as seen above is built upon or base on mutual trust and confidence. Any delegation by agent may amount to a breach of that mutual trust and confidence which influence the principal's choice of his agent.

The maxim *"delegates non potest delegare"* which means that a delegate cannot sub delegate applies to agency relationship and prevents agent sub-delegating his authority expect with the consent of his principal or otherwise exercise by law. In the case of *Debusche vs. ATT*[63] X, it was appointed to sell a

[62](1962) ALL NLR 139
[63](1818) 8 CHD 286

ship in China on behalf of the principal at a stipulated price. He was unable to do so but obtained approval of his principal to appoint a sub-agent in Japan to sell the ship at the price required by the principal. It was held that this was not a breach of the agent's duty.

Generally, an agent may sub-delegate his functions in situation where the law so permit or the agreement stipulated the agent to sub-delegate in the following circumstances:

a) Where he has the express authority of the principal as was decided in *Derbusche vs. ATT*[64] where the court held as follows:
b) Where no personal confidence is reposed on the agent by the principal for example where the function in question requires no particular skill or discretion or is purely ministerial.
c) Where an emergency has arisen requiring immediate action in order to preserve or protect the interests of the principle or the agent itself.
d) Where the custom or the usage of trade, business or profession where the agent operates allows.
e) Where the nature of the agency itself necessitates a partial or total delegation.
f) Where statute or legislation permit sub delegation.

[64](1818) 8 CHD 286

In *Schmaling vs. Tomalison*[65] the sub-agent was unable to recover compensation from the principal for service rendered and the court held that as a generate rule there is no privity of contract between the principal and the sub-agent except where he acted reasonably in the exercise of his authority. Otherwise, rights and liabilities inherent in contract will not exists between the principal and subagent.

4.2.4 Duty to Act in Good Faith

This duty requires that the agent must always act in the interest of his principal, the duty agent to act in good faith has many aspects.

The first aspect is that the agent must not allow his personal interest to conflict with those of his principal. In *Igben vs. Oke Etawarie*[66]**,**Ogbobine, J of the Benin High Court confirmed that it is a rule of general application that an agent should be allowed to enter into agreement in which he has or can have his personal interest conflicting or which may possibly conflict with his principal's interest if were not so, the agent might act to the prejudice of his principal by being swayed by interest rather than duty. Also, where the performance of his duties may be affected by conflict of interest, he must elect whether or not he still requires the agent's services. Failure to disclose may entitled the principal to set aside the

[65](1815)6 TAUNT, 147
[66](1971) 1 NCLR 85

transaction, this was the issue in *Mcpherson vs. Watt*[67]. Here, the court refused to order specific performance of the contract for the sale of a house upon discovering that the agent bought the house in his brother's name to conceal the fact that he was buying it for himself.

Secondly, an agent must make any secret profit or a bribe or other befits from his position as agent. Any agent who uses his position as agent acquire is in breach of his duty act in good faith. In *Boardman vs. Phipps*[68] two trustees of a fund were retained to negotiate with a company in which the fund shares in the company for themselves and made a substantial profit. It was held that the profit was made by using information which had come to them in their capacity as trustees (agents) of the fund and so they could not retain it.

All rights, property, benefits or claims which the agent receives or acquires by virtue of his employment expect as his remuneration, belong to his principal whom he owes a duty to act. In *Sucfero vs. Castle the agent*[69] who asked to purchase property for his principal decided to purchase it for himself before selling it to his principal at a profit without disclosing this fact. It was held that the agent must give up the profit to the principal.

[67](1877) 1 NWLR 14
[68] (1967) 2 A.C. 46
[69](1887) 3 T.L.R.37

Thirdly, an agent must not make use of any information obtained in the cause of his employment as an agent for his own personal benefits unless he has the consent of his principal, in *Regal Castings Limited vs. Gmilliver and other*[70] it was held that an agent is accountable to his principal if he turns to his own use information or Knowledge which he has been employed by his principal to collect or discover or which he has otherwise acquired so as to make a profit by means of it for himself. This principle of law was applied in the decision of the court in *Boardman vs. Phipps*[71].

This duty of good faith may continue even after the agency relationship has terminated. This would be the case where the agent has acquired special knowledge of the principal's activities.

In *Carter vs. Palmer*[72] A, who as legal adviser, had acquired intimate knowledge of the principal's property. After the termination of the agency, he purchased P's property without disclosing his interest and solid it at a profit. It was held that A should return the profit he had made. In similar case; *Robb vs. Green*[73], the court granted an injunction against a former employee restraining him from using the list of principal's customer which he obtained while he was in the principal's employment.

[70](1942) 1 ALL E.R. 378
[71] (1967) 2 A.C. 46
[72](1842) 8 CL & FIN 657
[73](1895) 2 Q.B. 315

4.2.5 Duty Account

An agent is required to keep and render proper and accurate accounts for all transactions he had entered into on behalf of his principal. This duty is not limited to money only, but also includes rendering proper account of any property which he receives on behalf of his principal. In the case of *Majekonunmi vs. Joseph Dabout Limited*[74], a Lagos High Court inter alia held 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 money or property received by him in the course of his agency, he is accountable to the principal and can be compelled to render such account by an action in a court for an account. In *Akinbola vs. Neburabho*[75] the proprietress of private school who traveled overseas was held entitled to an account of how her agent had managed her business on her return from abroad. Also, in *Nsirim vs. Omuna Construction Co. Ltd*[76], four directors including the appellant agreed to set up a concrete block making industry and that the defendant should manage it under it under certain resolved condition among which the defendant should keep proper record of the account books and receipts for all sales or purchase from the businesses. The appellant banked certain amounts in his personal accounts and refused to handle receipt to the respondent. It was held that

[74] (1975) 2 CHCJ 161
[75](unreported) suit No. 2 W/171 74, Jan. 26, 1977 Warri HC
[76](2001) 7 NWLR pt. 713

an agent does not need to be fraudulent for the principal to be entitled to call upon him, for account of his agency.

An agent may become accountable to his principal in following circumstances:

i) If the agent uses a position of authority to which he has been appointed by his principal so as to gain money or other benefits by means of it for himself.

ii) If the agent uses property entrusted to him for his principal so as to make a profit for himself without his principal's consent or knowledge.

iii) If the agent is authorized to purchase property for his principal and he sells his own property to him thereby making a profit without full disclosure.

iv) If the agent is under a duty to keep money or property of his principal separate from his own and from those of other persons. If he mixes them, he will be liable to the principal for everything in the mixture which he cannot prove to be his own.

4.2.6 Duty of Respect to Principal's Title

The agent must respect the principal's title. He cannot dispute the principal's title put in his possession as agent either by the principal or held on his behalf

except in situation where the property was delivered to the agent for onward transmission to third party and he had already done so at the time of despite.

4.3 Right of the Agents or Duties of the Principal to the Agent

As earlier mentioned, the agent owes certain duties to his principal in return for certain rights he claims from his principal. The following duties on the part of the principal and rights of the agent are presumed and by law in every agency relationship unless the parties agree otherwise.

4.3.1 Right to Remuneration

This is the most important right of an agent. It is the duty of the principal to remunerate the agent for the services rendered. The duty arises whenever the agent is employed under such circumstances that reasonably justify the expectation that he should be paid, expect where the agent is acting gratuitously.

Where the parties agree as to the remuneration of the agent is entitled only in accordance with the agreement. Thus, the amount payable, the conditions under which it becomes payable and the time it is due are only ascertained from the terms of such agreement. In the case of *Erabor vs. Incar*[77], an agent was employed on commission to find a purchaser for the principal's property. The agent found and introduced a purchaser and negotiations for the sale held that the principal and the

[77](1968) N.C.L.R. 394

purchaser could not afterwards by agreement between them withdraw the matter from the agent so as to deprive him of his commission.

The right to remuneration may sometime be implied from the express terms, the custom and the usages of the particular trade, business or profession of the agent or where he operates and the surrounding circumstances including any dealings between the parties. In the case of *Badawi vs. Elder Dempster Agency Ltd*[78], an estate agent was employed to sell property on commission but the rate was not fixed. The Court held that the agent was entitled to commission as the standard rate charged by members of the profession if such, is known to the principal.

The rights to remuneration is not automatic, it is subject to some condition. Firstly, it is necessary that remuneration should have been "earned" by the agent. Remuneration is said to have been earned, in *British Bank for Foreign trade Limited vs. Noviex Limited*[79], when the agent has done all or substantially all that he or obliged to do under such circumstance.

Secondly, the agent must be effective cause of the transaction from which the remuneration accrues. In *Tribe and Others vs. Taylor*[80], *Bret J.* stated

[78](1949) 1 k.B. 623
[79](1876) 1 C.P.D. 505
[80](1903) 10 T.L.R

that: *"Causa proxima is not question the plaintiff most show that some act of their was causa Causans".*

Similarly, in *Muller Sons Co. vs. Radford*[81], Collins, M.R stated that: *"it is not sufficient that the act of the agent was a causa sine quanon, it was necessary to show that it was the sufficient causa in bringing about the transaction".* This principle was applied in the case of *Odudu vs. Omyibe*[82].

Thirdly, the agent must fulfill the condition if any, upon which the remuneration accrues. In *Ebun Olmorogie vs. Attorney General and Military Governor of Mid-Western State*[83], Begho, J. stated this: that when an agent is promised a commission on the happening of an event, the will not be entitled to any commission until the event has happened; unless provision for this is expressly made in the agency contract in order to give it business efficacy or otherwise to effect the intention of the parties.

An agent will not be entitle to receive his remuneration under the following circumstances:

[81] (1973) N.C.L.R. 273
[82](2001) 13 N.W.L.R. PT 729
[83]UNREPORTED H/C OF Benin, Suit No. B/47/1971

a) Where the transaction is unauthorized unless subsequent ratified by the principal or respect of any unlawful or null and void transaction or where he acted in breach of his duty to his principal.
b) Where the agent is negligent in the performance of his duty
c) If an agent for a company that went to liquidation before he is paid his remuneration he would be treated as a creditor of the company and paid from the proceeds of sale of the company assets.

4.3.2 Right to indemnity and Re-imbursement

Indemnity means compensation for wrong done, or trouble suffered, while re-imbursement means repayment of money spent on behalf and for the benefit of another.

Apart from agent's right to remuneration, he also has the right to indemnity and re-imbursement. Unless otherwise intended by the parties (expressly). It is implied in most cases of agency relationship that the principal should indemnify the agent for all loses, damages or liabilities sustained by the agent in the discharged of his authorized duties. Where the agent engages a sub-agent with the consent of the principal, the principal owes the same duties to the sub-agent.

The extent of liability of the principal to indemnify his agent against losses and expenses incurred depends upon the nature of the agreement between the

parties and the kind of business in which the agent is employed. In the case of *Adams vs. Morgan*[84], it was held that the business carried on by the agent for the principle was such that could be implied that the principal would indemnify his agent in respect of payment of super tax.

The right of an agent to be indemnified and imbursement by his principal for all loses, liabilities and expenses suffered or incurred is not absolute. There are some qualifications to this general rule as discussed below.

a) An agent who is neither expressly or impliedly authorized to do the acts which resulted to in liability or expenses will not be indemnified. In *Baron vs. Fitzgerald*[85], where an agent took life assurance policies in his own name and also X against the instructions of his principal, the court held that the agent had exceeded his authority and therefore, the principal were not liable.
b) There is no duty to indemnify an agent who has acted unlawfully, negligent or in breach of his duty. In *Duncan vs. Hill*[86]**,** a broker incurred liabilities on the sale stock as a result of his becoming insolvent. It was held that the principal was of his becoming insolvent. It was held that the principal was not liable to indemnify the broker against the loss. The other hand, an agent who has acted unlawfully will be entitled to an indemnify if he can prove

[84](1924) 1 K.BN. 757
[85](1840) 6BING 66
[86](1873) L.R. Ex. 242

that he was not aware of the illegality. Thus, in *Adamson vs. Javis*[87], an auctioneer sold goods for "P" unknown to him that at "P" had no right to disposed them. The auctioneer was made liable in damages in conversion to the true owner but it was held that auctioneer had a right to an indemnify for such damages, from his principal.

c) Where the agent acted in respect of transaction rendered null and void by the Gaming Act like wagering contract, his right to be indemnified will avail him. In *Thacker vs. Hardy*[88], a broker was employed to speculate for his principal. The court held that, since the stock exchange recognizes such transaction as real contracts and not as gaming or wagering contracts, the agent was entitled to claim indemnity.

4.3.3 Right to Lien

The agent of common law has a particular lien on such property of his principal that comes into his possession for the due payment of his remuneration and expenses properly incurred by him while transacting his principal's goods in his possession if the principal has failed to settle the amount due to the agent that arose from the agency. This is the agent's right to lien. An agent however, losses

[87](1827) 4 BING 66
[88](1878)4 Q.B.D. 685

his right of lien if he parts with the possession of the principal and he has no right to lien where the agency contract expressly excludes the right of lien.

Certain conditions are laid down below for a right to lien to be valid. Viz:

i) The agency contract contains nothing inconsistent with the exercise of a lien.

ii) The goods came into the agent's possession lawfully.

iii) The agent obtained possession of the good in his capacity as agent and not in some other capacity.

iv) The goods did not come into the agent's possession with a specific direction or purpose in consistent with a lien.

CHAPTER FIVE

BREACHES OF OBLIGATIONS AND REMEDIES AVAILABLE TO AGENT AND PRINCIPAL

5.1 Introduction

Breach of an agency relationship may give claim for damages or other remedy available to the innocent party. The innocent party may be the principal or the agent and 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 of the particular case. It is important to discuss these as they relate to each party to the agency relationship; that is the principal and the agent.

5.2 Remedies Available to the Principal

If the agent by some misconducts or otherwise commit a breach of a term of his agency relationship/agreement with the principal, the latter may avail himself of one or more of the number of remedies. These include:

5.2.1 Dismissal

A principal, after discovering his agent's breach of duty, may dismiss such an agent without giving him notice and without being liable to pay the agent any compensation. In *Andrew vs. Ramsey*[89] it was held that if the agent sues his

[89](1903) 2 K.B. 635

principal alleging wrongful dismissal, the principal may set up the breach as a complete defence to the action.

5.2.2 Recession and Damages

The principal may rescind any contract made on his behalf by the agent either without authority or breach of his duty. He may do this out of court or where his duty is challenged he may bring an action including seeking recession of the contract, transaction or other obligation. The principal may also sue for damages as a result of loss or liabilities he suffered by the agent's breach of duty. The damages may be measured in accordance with the rules laid down in *Hadley vs. Baxendale*[90], where Alderson, B. in delivering the judgment remarked thus:

> Where two parties have made contract which one of them has broken, the damages which the other party ought to receive in respect of such breach of contract should be such as may fairly and reasonably be considered either arising naturally from such a breach of contract itself or such as may reasonably be supposed to have been the contemplation of both parties at the time they made the contract as the probable result of the breach of it.

5.2.3 Action for Account

The principal may take proper action to compel the agent to render an account of all his dealings in lien of his agency and for any money had and

[90](1854) 9 Exch. 341

received on his behalf. In *Majekondunmi vs. Joseph Dabout Ltd*,[91] it was held that the agent is accountable to principal and can as well be compelled to render such an account by an action in the court of law.

5.2.4 Action for Conversion

In this, it is a situation where the agent has received property on behalf of his principal in the agency relationship and has misused or misappropriated it his principal may sue him for conversion.

5.2.5 Private Prosecution

The principal may in appropriate cases be entitled to and may take our private summary against his agent where the later's conduct, or omission is criminal in nature. This, where the agent has received a bribe or misappropriated the principal's property, the principal besides his remedy in damages, cal also institute appropriate private criminal proceedings against the agent.

5.3 Remedies Available to the Agent

An agent has the following remedies against his principal who breaches his obligations towards the agent.

[91](1975)2,161

5.3.1 Action for Damages

The agent may sue his principal to enforce his right to indemnity and that of reimbursement for losses, expenses or damages sustained in discharging the terms of his agency. In *Inchabald vs. Western Neilghery Coffee Co.*[92] where the agent was employed to sell shares in accompany and under the contract, he was entitled to receive his commission after all the shares were sold by the agent before the company was wound up. This made it impossible for the agent to continue in the performance of his duty. It was held that agent was entitled to damages for breach of contract calculated on the basis that all the shares would have been sold would have sold by the agent.

5.3.2 Right to Set-Off

Whenever the principal institutes an action in court law against the agent, the later may claim a right of set-off or counter-claim of any amount due to him from the principal by way of remuneration, indemnity or reimbursement. In the case of *Dixon vs. Hamond*,[93] it was held that the agent has the right to counter-claim the amount due to him as remuneration from the principal and that he most specifically do this in his defence on the claim by the principal.

[92] (1895) 2 Q.B. 315
[93](1864) 17 CBN S 733

5.3.3 Right to Lien

The right to lien does not extend to the agent selling the principal's property or chattel which would make him liable. This view was expressed in the case of *Langley Beldon Gaunt Limited vs. Morley,*[94] where the court held that the agent has the right to retain possessions of goods belonging to the principal until the principle pays up the debt he owes the agent.

5.3.4 Right to Stoppage in Transit

Where the agent stands towards his principle in the position of an unpaid seller of goods, he may exercise the right of stoppage in transit against the goods of his principal. He stands in such a position where, having bought the goods for his principal, he pays the seller with his own money or otherwise incurs a personal liability to the seller for the price. In the case of *Ireland vs. Livingstone,*[95] it was held that the agent has a right of stoppage in transit against the goods of his principal because the agent has used his own money to pay for the principal's goods thereby incurring liability also without being reimbursed by his principal.

[94](1965) 1 Lyds Rep. 297
[95](1872) L.R.S.H.L. 395 @ P. 403-409

5.3.5 Other Remedies

The agent may demand an accounting from the principal where is reciprocal indebtedness by the parties to each other.

The agent may also be entitled to withhold further performance of the terms of an agency where there has been a continuing breach of the agency by the principal.

Finally, where there arises a disagreement between the principal and his agent, which cannot otherwise be settled through any other means of action of law, the grant him relief through equity. In the *Exparte Mersey Docks vs. Harbour Board,*[96] the court held that it can step into an agency relationship at the request of the agent and grant him a relief through equity in cases where it is practicable.

[96](1899)1 Q.B.D. 564

CHAPTER SIX

SUMMARY AND CONCLUSION

6.1 Summary of the Research

Chapter one discussed the general introduction of the topic, that is "the concept and scope of Agency Relationship under Nigerian commercial Law". An attempt was made to introduce the general concept of the nature of agency relationship, the State of the research problem, aim and objectives of the study, the scope of the study which specifies the areas that the researcher has paid close attention to, the method of research adopted in the course of the research, literature review which shows how different authors have expunged on the topic of the research.

Chapter two discussed the Conceptual Clarifications in agency relationship and in what circumstances one can say that the agency relationship exists. The law, by medium of agency relationship allows a person to employ the services of another person (agent) to negotiate or even conclude contract on his behalf. But the fact that the parties have called their relationship an agency relationship, is not conclusive if the incidence of agency as disclosed buy evidence does not justify the findings of agency relation. In the case of *Bambgoye vs. University Ilorin and*

Another,[97] the court held that the question whether an agency relationship exists in any given situation depends not on the terminology used by the parties to describe it but on the nature of the agreement between the principle and the agent. Likewise in *Kennedy vs. De Traffords*[98] where it was held that in some circumstances, agency relationship might be opined to exist while in other similar circumstances, it might be opined not to exist.

Chapter three discussed the Scope of Agency Relationship as briefly discussed in chapter one, capacity to act as principal and capacity to be appointed as agent.

Chapter four discussed the duties and right of the principal and his agent arising out of the relationship as created in chapter two. By this, each party in the relationship can easily ascertain when the other party is in breach of his duties.

Chapter five discussed the Breaches of Obligations, Remedies Available to Principal and Agent and the remedies available to both parties that is the principal and his agent when there is a breach.

[97] (1991) 1 N.W.L.R 29
[98](1897) A.C. 1800 188

6.2 Findings

In lieu of this research find below the findings.

i. The doctrine of privity of contract: which disentitles a person from acquiring any right under or being subjected to any obligation arising from a contract to which he is not a party to the contract, thus, "a contract cannot confer enforceable rights or impose obligations arising under it on any person, except parties to it.

ii. Ignorance of the importance of agency relationship among businessmen in Nigeria: Most business men in Nigeria lack a proper understanding on the scope of agency relationship in commercial activities.

iii. Agency Cost: in agency relationship there is bound to be conflict of interest between the Principal and the Agent, in other to ensure that the agent acts in the best interest of the principal. The principal must monitor the activities of the agent in so doing to incures certain cost.

iv. Conflict of interest in Principal-Agent Relationship: Whenever one person acts in the interest of another, there must be conflicts of interest. This is when the agent is faced by alternatives that affects his own personal interest.

v. Agent acting outside their scope of authority: where the agent acts outside his scope of authority he becomes liable for any breach except where the principal authorizes his actions.

6.3 Recommendations

i. The doctrine of privity of contract It is recommended that the law should provide an avenue for redress to genuinely affected persons who the strict Common Law interpretation of privity of contract might have been deprived of such. Such that even a perfect stranger could be awarded damages if infringement is proved.

ii. Ignorance of the importance of agency relationship among businessmen in Nigeria. It is recommended that parties should always have a proper understanding on the scope of agency relationship before going into contract or agreement. The expansion and development of commercial activities requires a comprehensive understanding of agency under Nigerian Commercial Law and it's applicability to the modern Nigerian Commercial Law.

iii. Agency Cost: Cost of maintenance of Agency relationship is usually expensive, it is therefore recommended that the law can play an important role in reducing agency cost through rules and procedures

that enhances disclosure by agent or facilitate enforcement brought by principals against dishonest or negligent agent.

iv. Conflict of interest in Principal-Agent Relationship: It is recommended that the principal must monitor and sometimes limit the power of the agent.

v. Agent acting outside their scope of authority: It is recommended that agent must always ensure that they act within their scope of authority and also principal to always monitor their actions to ensure compliance.

6.4 Conclusion

The term agent may sometimes be loosely used to cover both servant and independent contractors. A servant may sometime be his master's agent, while an independent contractor may sometimes be his employer's agent.

However, this should not be confused as they are quite distinguishable from each other. The master/servant relationship is that the master always has a right of the terms of his employment. That is, he merely works for his master but an agent acts for and in place of his principal, which actually affects the legal relation with third parties.

The representative character which the third party must rely upon and show that, that reliance alters his position and the deviation authority, which gives the agent a degree of discretion executing the terms of his agency makes agency a distinct relationship from other forms of relationships. This was the holding of the case of *Federal Mortgage Bank vs. Olloh*[99]and the case of *Okomu Oil Palm Co. Ltd. vs. Iserhiensheri.*[100]

[99](2002) 9 N.W.L.R. pt. 773 at 4
[100](2001) 6 N.W.L.R. pt. 6 at 660

BIBLIOGRAPHY

Bowstead, (1959), *Agency*: Sweet and Maxwell, London.

Ewan M. (ed) (2010), *Goode on Commercial Law*, (4th Edition) Penguin books, London

Ezejifor G. et al, (1982), *Nigeria Business Law,* Sweet and Maxwell, London.

Freidman G.H. (1976) *The Law of Agency*, 4th ed. Butterworth, London.

Gordon J.B. (1990) *Commercial Law,* Butterworth, London.

Harold, G.H. (1960) *The Principle of Agency*, 2nd ed. Steven and Sons, London.

Igeweike K.J. (1994) *Nigeria Commercial Law: Agency*

Okanyi M.C. (1992) *Nigerian Commercial Law,* African Feb Publishers Ltd.

Olayiwola O. (2014) *An Introduction to Commercial Law in Nigeria*.

Olumide K. O. (2011) *A review of the Evolving Nigeria Principal-Agency Rules*

Raphel P. (1961) *The Law of Agency,* Zaded Isaac Pitman and Sons, London.

Sagay, J.E. (1989) *Nigeria Law of Contract,* Spectrum, Ibadan.

Sealey L.S. & Hooley, (2008), *Commercial Law: Texts, Cases and Materials,* (fourth edition) Oxford University Press, London.

Steven and Borrie, (1973) *Element of Mercantile Law,* 6th ed. Butterworth, London.

Yagba Y.A.T et al, (1994) *Element of Commercial Law,* Tamaza, Zaria.

www.agency.law.com

www.lawofegncy/cambridge.com

http://legal-dictionary.thefreedictionary.com/agency

http://www.legalmatch.com/law-library/article/scope-of-an-agents
uthority.html#sthash.Ofees2Wh.dpuf