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**“ RATIFICATION OF AN UNAUTHORISED
ACT'S OF AN AGENT”**

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ADDIS ABABA ETHIOPIA

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Table of contents

Contents	page n^o
<i>Acknowledgement</i>	<i>I</i>
<i>Introduction</i>	<i>II</i>
 Chapter one	
<i>General background</i>	<i>1</i>
<i>1. Definition of agency</i>	<i>1</i>
<i>2. Historical development</i>	<i>2</i>
<i>2.1. English law</i>	<i>3</i>
<i>3. Scope of agency</i>	<i>5</i>
<i>4. Classification & creation of relation</i>	<i>5</i>
<i>4.1. classification</i>	<i>5</i>
<i>4.1.1. Master & servant and independent contractor</i>	<i>6</i>
<i>4.1.2. Principal & agent</i>	<i>7</i>
<i>4.1.2.1. Principal</i>	<i>8</i>
<i>4.1.2.1.1. Infant & Insane person's as</i> <i>Principals</i>	<i>9</i>
<i>4.1.2.1.2. Un incorporated association as</i> <i>Principals</i>	<i>9</i>
<i>4.1.2.1.3. Business organization as</i> <i>Principals</i>	<i>10</i>
<i>4.1.2.2. An agent</i>	<i>10</i>
<i>4.1.2.2.1. Capacity to act as agent</i>	<i>11</i>
<i>4.1.2.2.2. Professional Agent</i>	<i>11</i>
<i>4.2. Creation of relation</i>	
<i>4.2.1. Requirement to create agency</i>	<i>12</i>
<i>4.2.2. Creation of agency</i>	<i>13</i>
<i>4.2.2.1. By agreement or appointment</i>	<i>14</i>

4.2.2.2. <i>By estoppels or implications</i>	14
4.2.2.3. <i>By ratification</i>	14
4.2.2.4. <i>By necessity or operation of law</i>	15
5. <i>Formation of agency in the Ethiopian legal</i> <i>frame work</i>	15

Chapter two

2. The nature of an unauthorized agency and an unauthorized acts of an agent.

2.1. <i>Introduction</i>	17
2.2. <i>Duties of an agent</i>	17
2.2.1. <i>Obedience to instructions</i>	18
2.2.2. <i>Loyalty and good faith</i>	18
2.2.3. <i>Skill, care & diligence</i>	18
2.2.4. <i>Keeping of Accounts & rendering of</i> <i>Statements</i>	18
2.3. <i>The main difference between an unauthorized</i> <i>Agency and an unauthorized acts of an agent</i>	
2.3.1. <i>An unauthorized agency</i>	19
2.3.2. <i>An unauthorized acts of an agent</i>	21
2.3.2.1. <i>Use of the agency for his</i> <i>self interest</i>	21
2.3.2.2. <i>Buying his own property for the</i> <i>principal</i>	22
2.4. <i>circumstances for the occurrence of an unauthorized</i> <i>acts of an agent in the Ethiopian legal frame work</i>	24
2.5. <i>Ratification</i>	
2.5.1. <i>Definition</i>	28
2.5.2. <i>Requirements for ratification</i>	29

2.6. <i>Forms of ratification express or implied</i>	30
2.6.1. <i>Conduct constituting ratification</i>	30
2.7. <i>Effects of ratification</i>	31

Chapter three

3.1. <i>Issues to be focused on ratification</i>	33
3.2. <i>Conclusion</i>	36

- *Foot notes*
- *Bibliography*

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My special thanks are owed to m y family, without support and help of whom this paper could not have come into existence.

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Introduction

The doctrine of law of agency means that the principal's power should be divided up in to agent and sub agents each with its own distinctive personnel and processes and that each branch of agent should be checked so that no one body can dominate the others.

To day, it is widely accepted that a rigid distinction of function between the agent and sub agent is impracticable in the present society. This is by virtue of the amount and complexity of businesses that principal's (agents) are expected to handle.

Even if human beings have knowledge and experience to adjust them selves with the "environment" they cannot totally control each and every circumstances in their activities. Although they know the occurrence of the circumstances most of the time they do not have the capacity to inform it. There fore, risk may occur on the agent and properties.

Standing on this view I tried to look in the ratification of unauthorized act(s) of the agent under the 1960 Ethiopian civil code. I felt this is one area of the law in Ethiopia on which there is no a large number of cases in the courts. The effort is made to look in to the grounds of ratification which are exercised by the principal that are found with in the 1960 Ethiopian civil code.

As many contracts do the parties (the principal and the agent) have contractual agreements that are organized in steps. The principal has the power of controlling the activities of his agent. On the other hand, the agent is accountable to his principal.

After gating into commitment of caring out my senior theses in different institutions. I noticed that I was too ambitious to try to handle such a large legal issue within the scope a semester. However, I managed to come out of it with information which needed much time, effort and skill of assembling disintegrated materials.

Finally, I decided to give the following structure to the paper. The paper has three chapters with related topics and subtopics.

The first chapter focuses on the definition, historical development and classification of agency as whole.

The second chapter deals with the definition of an unauthorized agent and an unauthorized acts of an agent, on the circumstances for the occurrence of an unauthorized act(s) of an agent, grounds to ratify such acts, ways of ratification and effects of ratification.

The last chapter of this paper is concerned about points to be focused in case of ratification if any and also put conclusions.

While writing this paper the writer used some methodologies related to the subject matter. That is comparative analysis which enabled the researcher to identify the historical similarities between systems of law of Ethiopia and common.

In writing this senior theses a number of legal materials have been used. Most importantly the work of professor Harold F.LUSK, entitled “business law and cases”, the work of Gorge Krzeczunowicz, “The Ethiopian law of

compensation for damage”, “the power of the agent” Alebachew Geda 1998,
Ethiopian Civil service college etc...

Chapter One

Agency in general

The encyclopedia salesman, the service-station attendant, the attorney each represents someone else in his business dealings with third parties. The complexities of business today often necessitate our delegating to others the things we can not conveniently do for ourselves. In this way, the agent-principal relationship is established. It would be difficult to operate even a small business without becoming involved in the delegation of authority to others, there by being regulated by the rules of principal and agent.¹

1. Definition of Agency stated by different sources as follow

Black's law dictionary defines Agency as:

“A fiduciary relationship created by express or implied contract or by law, in which one party may act on behalf of another party and bind that other party by words or actions.”²

Harold F. Lask also defines agency as:

“Agency is a personal relation created by the mutual consent of the parties. When it is created, it brings into play a developed body of law which defines the rights and liabilities of the parties in their relation to each other and also in their relation to third persons.”³

Dilavou and Howard in their own book said

“Agency is the relation created by employment strictly defined, however, agency is the relationship which arises when one party authorizes another to create, to modify, or to terminate contractual relations between the former and third parties. The one granting the authority is known as the principal; while the one who is given the power is called the agent.”⁴

After evaluating the above definitions we have also tried to assess the Ethiopian civil code about the definition of agency Under Ethiopian Civil code Agency is defined as:

(Ar. 2199) Agency is a contract where by a person, the agent, agrees with another person, the principal, to represent him and to perform on his behalf one or several legally binding acts⁵

Form the above definitions we can understand that Agency is special relationship between the principal and agent. Because the formation of the contract of agency is subject to the normal requirements of the law of agency for it to be valid.

2. Historical development

Agency is a personal relation created by the mutual consent of the parties. When it is created, it brings into play a developed body of law which defines the rights and liabilities of the parties in their relation to each other and in their relation to third parties. With in certain limits this rights and duties may be altered by mutual agreement; however, there are basic principles upon which the relation is founded and which are not subject to alteration. Since the relation is personal, parties can not be

forced into it against their will, and with perhaps one exception, they can not be forced to continue it.⁶

From the beginning of recorded history, there has been preset the basic concept of agency that is that one person may be subject to and act under the control and at the direction of another. However, the concepts of principal and agent and the law of agency are primarily the products of social and economic changes which began with the industrial revolution.⁷

The forerunner of agency was the relation of owner and slave since the slave was a mere chattel without legal rights, it was logical to hold the owner legally liable for the acts of the slave, especially if the acts were done at the direction of the owner. It was during this era that the concept of respondent superior the responsibility of a principal for the acts of his servant or agent had its origin.⁸

2.1. Early English law: -

As it true of most are as of the law, the law of agency developed in response to the needs of the time. In England the relation of master and servant was first recognized. Social and economic relations were such that there was little or no reason for one person to delegate the transactions business to another. In fact, most of the trade of the times was carried on by merchants in the fair cities, and the law which the merchants applied to their transactions and to the controversies arising there from was, with few exceptions, determined in the merchants' courts.⁹

About the development of the law of agency in England Holdsworth makes the following statements:

“We begin to see the rise of agent for the purpose of contract at an early date. At first these agents were found chiefly in the higher ranks of the society and in public law. “The king ever since John’s day has been issuing letters of credit empowering his agents to borrow money, and to promise repayment in his name. A great prelate will some time do the like. Among the clergy the idea of procurator was taking root; the elected kings and burgesses must bring with them to parliament ‘full powers’ for the representation of the shires and boroughs.” But in the early 13th c the appointment of agents for this purpose was not common; and it would seem that agents informally appointed or appointed by implication were hardly recognized. However, it was not long before it gained recognition; and the fact that the practice spread somewhat readily in the course of the 13th century is due to two allied influences of mercantile necessity and to the canon law. From an early date the records of the fair courts showed that some sort of commercial agency must have been recognized; and during the 14th c, the development of trading companies, which must necessarily act through agents, helped its further development.”¹⁰

By the latter part of the 17th c the broker and the factor, were well known and played a prominent role in commerce. The brokerage business was regulated by act of parliament late in the 17th century; however the courts treated brokers, factors, and agents as servants. They did not recognize the distinction between the relation of principal and agent, and that of master and servant, until industry and commerce began to develop during the 18th century.¹¹

3. Scope of agency:-

The term “agency” as used in the law, includes both the relation of master and servant and that of principal and agent. In general, it can note and any relation in which one person is acting for the benefit and under the control of another. Agency includes all degrees of such relationships existing between two persons from that where one is engaged by the other to perform the most menial physical services to that which arises when one person is engaged by the other to transact, business which involves great responsibility.¹²

The terms ‘agent’ and ‘agency’ are sometimes used to refer to relationship which do not come within the law of agency. For example, a merchant who has a franchise to sell the products of the ford motor company is generally referred to as ford agent, and his business is referred to as ford agency; but the merchant is not an agent of the ford motor company and the relationship between the ford motor company and the merchant is not that of agency. Such a person is an independent merchant dealing in for motor company products.¹³

4. Classification and creation of Relation:-

4.1 Classification:

Since agency is a broad in its scope, it is desirable, from the stand point of practical considerations, to subdivide the area in to classes, the classification being based on the nature of the services performed. The two

classes of relationships generally recognized are master and servant, or employer and employee, and principal and agent. A third relationship, termed “independent contractor,” has many of the characteristics of these two classes.¹⁴

The distinctions between these classes are based on the nature of the services rendered and the degree of control which is retained over the representative. The term “Master and servant” was used in the early law and its use still predominates; but outside the field of law the term “employer and employee” is in general use. The classification of master and servant is based on the control of the physical conduct of the servant (employee). The factory employee who reports at the employer’s factory and performs services under the direct and indirect control of the employer is a clear cut example of this class; but when we move up one notch in the factory organization, doubt is injected in to the picture. Is the factory foreman an employee (servant) or should he be classed along with the head of the personal department as a gent? This question can not be answered with certainty, since the classes shade into each other by imperceptible degrees.¹⁵

4.1.1 Master and Servant and Independent contractor.

The distinction between the master and servant relation and the independent contractor relation is based on the degree of control retained over the physical conduct of the person performing the services. If Archer needs a new machine, he may build in his own shops, in which case those persons who build the machine. Will be Archer’s employees. Archer may submit the specifications for the machine to Burch, who will contract to build the machine according to the specifications and for an agreed price. In

this case, Burch will not be an employee of Archer, since Burch has contracted to produce a result and is free to proceed by whatever method he may wish in producing that result. Burch's physical conduct is not under the control of Archer. Burch is an independent contractor. The employee is subject to the direction of his employer; the independent contractor obligates himself to produce a result and is free to sue his own method in the performance of the work.

In order to determine if a relationship is one of employment, a court will examine surrounding circumstances.

- a) Employer controls or has right to control the employee in the performance of physical tasks.
- b) Employees have little or no independent discretion
- c) Employees are paid for time rather than results.

The rights and duties of an employee differ from those of an agent. To day the distinction is important for purposes of applicability of legislation, such as tax statutes and worker men's compensation.¹⁷

4.1.2 *Principal and Agent*

The Agent principal Relationship

The party vested with authority to represent another in business transactions is the agent. The party whom the agent represents is the principal. The agreement between the two parties is called the contract of agency.¹⁸

4.1.2.1 Who maybe a principal?

Any person who has the right to perform an act for himself may delegate it's performance to another. If the principal is competent to contract, the contracts made for him by an agent will be valid and enforceable, as through he had made them himself.¹⁹

Three essential elements must be present to have a principal - agent relationship.

- 1) The agent must have the power to alter the legal relations of the principal and third persons, and to subject the principal to personal liabilities. The agents will also have power to alter the legal relations between the principal and him self.
- 2) The agent must be a fiduciary within the scope of the agency.
- 3) The agent must be under the control of the principal with respect to matters entrusted to him. One or more, but not all, of these elements may be present in other relationships. In such relation ships as trusts, executorships, and guardian ships, a fiduciary relation exists; but the trustee, executor, or guardian has no power to impose a personal liability on those for whom he acts. A fiduciary is a person who is vested with rights and powers to be exercised for the benefit of another person. The relationship necessitates a high degree of good faith and honesty on the party of the fiduciary. Mortgagees, pledges, or other similar power holders are not agents. They have the power to alter the legal relations between mortgagors or ledgers and third persons through the sale of the mortgaged or pledgers property, but their acts are for their own benefit and not for the benefit of the mortgagors or ledgers. They owe a duty to act fairly, but they owe no fiduciary to the mortgagors or pledgors.²⁰

4.1.2.1.1 Infants and Insane person as principals.

Since the relation of principal and agent is not contractual, it is not necessary that the principal have, when he appoints an agent, the capacity to contract. However, agency is a consensual relation; consequently, the principal must have sufficient legal capacity to give the consent essential to the creation of the relation.²¹

A person of limited capacity can not enlarge his legal capacity by appointing an agent and acting through the agent.

The infant or insane person is bound by the acts of a person whom he has appointed and authorized to act as his agent only to the extent that he (the insane or infant person) would be bound had he acted in person. For example, a contract negotiated by the authorized agent of an infant principal is voidable at the election of the infant to the same extent that such contract would be voidable had the infant negotiated it in person.

An infant would be liable for the reasonable value of necessaries furnished him if such necessaries were contracted for by his authorized agent.²²

4.1.2.1.2 Unincorporated associations as principals:

An unincorporated association is not recognized as an entity having legal capacity. As a general rule, it can not sue, be sued, own property, or contract. Its members, however, may have full legal capacity. If a person is appointed an agent for an unincorporated association, such person may be the agent of all of its members or of only certain ones of them. If the one appointing and authorizing the agent to act has been authorized by all of the

members of the association to act in their behalf, he is agent for the members and can bind them if he acts within the scope of his authority. Whether one is acting for the entire membership of the unincorporated association or for only a group of the member's will depend on the circumstances of the particular cases.²³

4.1.2.1.3 Business organizations as principals.

Business organizations, such as corporations, partnerships, and business trusts, which have the power to contract, have the capacity to a point agent. All the business of a corporation is, in fact, transacted through its agents. And although the partnership is not recognized as an entity, each partner acts as the agents of his co-partners in the transaction of partner acts as the agent of his co-partners in the transaction of partnership business. One who has been appointed the agent of a partnership by a member of the partnership who is authorized so to act is the agent of all the partners. The extent to which a business trust may act through an agent will depend on the terms of the trust agreement creating the trust.²⁴

4.1.2.2 Who may be agent?

Every person legally qualified to act for him self is qualified to service as an agent for others. Minors and others without capacity to contract in their own behalf are considered to be competent to represent other persons as agents if they are able to carry out the physical requirements of the agency agreement.²⁵

4.1.2.2.1 Capacity to act as agent:

A person may have capacity to act as an agent even though he does not have the capacity to contract. In the transaction of business through an agent the principal is the party to the transaction, not the agent. The agent's capacity is the party to the transactions, not the agent. The agent's capacity is immaterial so long as he has sufficient ability to carry out his instructions. An infant may act as an agent. A partnership, as general rule, can act as an agent will depend on the scope its charter powers. The capacity of other type of business organizations to act as agents will depend on the purposes for which they were organized. And an incorporated association can not, as such, act as an agent, but its members, as individuals, can act as agents.²⁶

4.1.2.2.2 Professional agent

A professional agent is a person who is in business for himself, and his business is that of acting as an agent for others. Attorneys, brokers, factors and auctioneers fall in to this category. The professional agent acts as agent for many different principals. His business is so operated that he is subject to the control of the principal in regard to the particular business he is transacting for him, but he is not under his control in regard to his physical acts. An agent, such as a salesman, is under the control of his principal in regard to both the business to be transacted and his physical conduct during the course of the transaction of the business.²⁷

At the same time the 1960 Ethiopian commercial code clearly stated the following points about professional agent. Under our commercial code Ar. 44 (1) a professional agent is defined as he is a person or business

organization, not bound to a trader by a contract of employment and carrying out independent activities, who is entrusted by a trader with representing him permanently in a specified area and dealing or making agreements in the name and on behalf of the trader. Sub article 3 also says a commercial agent normally acts as agent and may act as broker.²⁸

In addition to the above point Ar.51 says a commercial agent may not assign the agency agreement and may not substitute a third party for him, as an agency agreement is made on the basis of the personal qualifications of the agent.²⁹

Ar. 60 of the commercial code also explain that a commercial agent is a person or business organization who, independently, professionally and for gain, undertakes to buy or to sell in his name, but on behalf of the principal, goods, movables or any other thing of a similar nature, or to enter in his name but on behalf of the principal into contract of carriage of goods.³⁰

Therefore, the general rules of law which apply to principal and agent also apply to the principal and professional agent. However; due to the nature of the business of a professional agent, certain special problems arise in connection with the transaction of the principal's business.

4.2 Creation of Relation

4.2.1. Requirement to create agency

Generally, no special formalities are required in order to create an agency. Unless required by the statute of frauds or other statute, writing is not

necessary. If the appointment of an agent is in writing, the writing is called a “Power of attorney.” Whether or not such a relationship exists is a question of fact, and if, from the circumstances, it appears that one person is acting for the benefit and under the control of another, the courts will hold that an agency exists. The relation may be created without either party being aware of its existence and even though the parties have expressly stated that they do not intend to create it.³¹

In by far the majority of instances the relationship of master and servant, and that of master and servant, of principal and agent, is created by contract. However, the fact that an agent is acting gratuitously and that no enforceable contract of agency has been entered into between the principal and agent will in no way affect the validity of the contracts negotiated in the name of the principal by the agent. The gratuitous agent owes to his principal a fiduciary duty and is responsible to him for any failure to exercise due care in the transaction of the principal’s business entrusted to him. The gratuitous agent may terminate the relationship at any time without incurring liability.³²

4.2.2 Creation of Agency

Agency agreement may be created in four different ways.

- 4.2.2.1. By agreement or appointment.
- 4.2.2.2. By estoppels
- 4.2.2.3. By ratification
- 4.2.2.4. By operation of law.³³

4.2.2.1 By agreement or appointment

The usual method of creating an agency is by contract. The contract should state the rights and duties of both the principal and the agent. Specifically, it should include the duties, the compensation, and the duration of the agency. The contract may be oral, written, or implied. A written document in which an agent is appointed is called a power of attorney.³⁴

4.2.2.2 By estoppels, or implication.

Any one who acts in a way that leads others reasonably to believe that a particular person is his agent is prevented, or stopped, from proving that such person is, in fact, not his authorized agent. This method of creating an agency is known as agency by estoppels, or implication. If a person whom another represents to third parties to be the agent does not wish to be bound, it is his duty to object and there by warn such third parties from entering in to the agreement. The principal can not deny the existence of the agency after third parties, relying on his conduct, have had dealings with the supposed agent.³⁵

4.2.2.3 By ratification

The approval by the principal of un authorized act performed by his agent or of an act performed in his name by a person who had no authority to act as his agent results in an agency by ratification. The ratification may be expressed or may be implied from the principal's conduct.³⁶

4.2.2.4 By necessity or operation of law

Certain relationship implies the creation of agency rights, although in fact they may not actually exist. The wife and children of a man who fails to provide the essentials of life will be declared agents of the husband for the purpose of purchasing these necessities. The husband will be responsible for the contracts made in his name as long as purchases are reasonable.³⁷

If, in an emergency, an agent is obligated to make repairs to the principal's property or to buy supplies, an agency by operation of law is there by created and the principal is liable for the services or goods bought.³⁸

5. Formation of agency in Ethiopian legal frame work

The Ethiopian laws both the civil code and commercial code have listed the same concept about the formation agency relation. The 1960 civil code of Ethiopia art.2179 says the authority to act on behalf of another may derive from the law or a contract. This article shows the power (freedom of contract) of parties to conclude agency contract by using the general rules and provisions of contract.³⁹

On the other hand if the court confirms the appointment of agent over the person's properties and activities. By the application of any interested parties or by the court it self the agent may be appointed for the well being the stated person. Some of the issues are located in article 949 of the civil code which says that, where, a minor or an interdicted person is

the liquidator of a succession, he shall be represented by his tutor for the performance of the functions of liquidator. In addition to this, article 950 of the same book says the court shall appoint a liquidator, on the application of any interested person and the authority may be prescribed by regulations.⁴⁰

Further more, article 951 stated that the court may, on the application of any interested person, appoint a notary or some other person to replace the liquidator. Besides, article 2253 says the authority to do an act or acts of a certain kind on behalf of another may be given by the court to a person here in after called the curator.⁴¹

Specially, agency relation from the point of article 2200(1) of the civil code be express or implied.⁴²

Express authority also classified as oral or a written form. Express authority is that authority which is expressly conferred either orally or in writing, but in either event the principal must express to the agent the exact acts he wishes the agent to perform.⁴³

The other power of agent is that implied authority in almost all situations the agent will have authority to perform some acts not included in his express authority expressly to include every activities which an agent is to perform in the carrying out of his mission would be almost impossible.⁴⁴

In determining the scope of the agent's express and implied authority the measure used is the justified belief of the agent. The same principles apply to the interpretation of an agent's authority as apply in interpreting an offer to contract.⁴⁵

Chapter two

The nature of an unauthorized agency and an unauthorized act's of an agent.

2.1 Introduction

The operation of an agency involves the mutual obligations of the principal, the agent, and third party.¹

An agent must obey all reasonable orders and instruction within the scope of his agency contract. If he fails to do so, he becomes liable to his principal for any loss resulting from violation of orders, even though he can show that he exercised great care and for thought. Even a gratuitous agent /one not legally obligated to fulfill his promise/ who under takes to perform a promise must follow instructions or become responsible for any loss resulting from failure to do so.²

2.2 Duties of an agent

For the application of these points the Ethiopian civil code states the following duties on the shoulder of the agent.³ Among the duties that an agent owes to his principal are:-

- 2.2.1. Obedience to instructions
- 2.2.2. loyalty and good faith
- 2.2.3. skill, care and diligence
- 2.2.4. keeping of accounts and rendering of statements

2.2.1. Delegation of duties to subagents

- ◆ An agent must not delegate his work to sub agent unless his duties are purely mechanical and require no special knowledge, skill or responsibility; unless he has been authorized to do so by the principal; or unless he is required to do so by the nature of the agency.⁴

2.2.2. Loyalty and good faith

- ◆ A servant can not be loyal to masters. An agent must at all times act in the interest of his principal. Any failure to do so gives the principal the right to terminate the agency contract, with forfeiture by the agent of all claims for compensation. It is the agent's duty to inform the principal of all facts pertinent to the agency that may enable the principal to protect his interest.⁵

2.2.3. Skill care and diligence

- ◆ An agent is presumed to have the qualifications needed to carry out the work of the agency he has accepted. The exact nature of the business determines the measure of the agent's skill. He is liable to his principal for losses resulting from his neglect or in competence.⁶

2.2.4. Keeping of accounts and rendering of statements

An agent must keep accurate records of his transactions or dealings and must account for all money and property belonging to the principal. He must not

commingle the principal's money or goods his own. If, because of the careless way in which the agent keeps the accounts, it is impossible to tell what belongs to him and what belongs to the principal, the agent loses all claims to the property. The entire amount is considered as belonging to the principal. All profits that result from the contract of agency belong to the principal.⁷

From the above core points we can understand agency contract is a contract where by the agent agrees with another person to represent the principal. But in the conclusion and performance stage the agent should follow the law and his agreement otherwise the principal will exercise his power over the agent to protect his interest from abuse. Even the law helps the principal in the presence of bad faith on the side of the agent.

2.3. The main difference between Unauthorized agency and Unauthorized act's of an agent

2.3.1 Unauthorized agencies

The 1960 Ethiopian civil code Ar. 2257 defined unauthorized agency occurs where a person who has no authority to do so undertakes with full knowledge of the facts to manage another person's affairs with out having been appointed an agent.⁸

Harold F. Lusk defines an authorized agency in his book as:-

“If a person purports to act as agent for a party when he has no power to bind such party, he will become liable to the third person there to up on an implied warranty of

authority. If he tortuously misrepresents the existence of the agency or the scope of his authority, he will be liable in tort for the deceit. If the third person knows that the agent does not have authority, or if the agent

informs the third person that he is uncertain as to the scope of his authority or reveals the facts and circumstances of his authorization, the agent will not be liable to the third person for misrepresentation of his authority or for breach of implied warranty of authority. If the principal will not be bound by a contract which the agent has authority to negotiate, the agent will not be liable to the third person.”²

In addition to the above point, Harold stated that as a general rule:-

“When a third person is negotiating with an agent of a disclosed principal, he expects and is entitled to an obligation binding on the principal. If the agent exceeds his authority, or if no agency exists, the principal will not be bound, in which event the third person will be injured to the extent that he does not get the benefit of an obligation binding on the principal. If the third person has acted in good faith, without notice or knowledge of the lack of authority, and if the principal has not ratified the transaction, the agent will be liable for any resulting loss,”¹⁰

According to him in order to say that it is unauthorized acts of an agent is the criteria should be such as the contractual agreement of the principal and agent. He added that the power of attorney would be expressed in such terms “... his power /authority/ to act ... “¹¹

Finally, I conclude my definition on this concept unauthorized agency and agency law seems to indicate some relations with the common law legal system. So as a writer of this paper takes position with the exact relation of the Ethiopian agency law and the common law system.

2.3.2 Unauthorized acts of an agent

Acts of an agent considered unauthorized included the following:-

2.3.2.1 Use of the agency for his self interest

In most cases of agency, the agent is not a party to the contract because he is not person with whom the contract is made. Since he is not a party I can validly say that the agent can not exercise any contractual rights prior to the will of the principal.¹²

Robert Rosenberg on his book put the following illustration

“Parks, a salesman for data processing Corporation, owned two pieces of electronic equipment similar to the machines offered by his firm. A regular customer interested in buying this type of equipment was urged by parks to buy his own machines. In his unethical promotion of his own personal interest and profit, parks clearly acted in his own interest and showed complete lack of authority to his act.”¹³

2.3.2.2 Buying his own property for the principal

Selling the principals property for him self, or competing with his principal in any way without the principal's knowledge and consent.

Again Robert Rosenberg stated the following example: _

“The manager of data processing Corporation's repair department bought from Electronic whole sale Parts Company at special price 10,000 jumper wires of various colors for wiring control panels, as the need for this material arose at his company, the manager would sell the jumpers at the regular price, stating that he was purchasing them from the usual source of supply. This showed complete lack of loyalty and good faith. Discovery of the facts could result in his immediate discharge and a damage suit for such profits as he may have made at his principal's expense”.¹⁴

In addition to these points, the Ethiopian civil code Ar. 2239/1/ provide the following about unauthorized acts of an agent.

Where the commission agent grants time for payment contrary to the instructions of the principal or usage, the principal may demand immediate payment.¹⁵

Ar. 2187/1/ also defines an authorized acts of an agent as follow a contract made by an agent in a case where his interests conflict with those of the principal may be cancelled at the request of the principal where the third party who entered into the contract knew or should have known of the

conflict. This idea protects both the principal and third party by limiting the power of the agent and also protects the right of the third party if his interest affected by the illegal act of the agent. Therefore, the application of such article is not simple to avoid problems both on the side of the principal-agent and third parties.¹⁶

Ar. 2188 of the Ethiopian civil code again clearly shows what an unauthorized act of an agent, the law says:-

A contract made by an agent may be cancelled at the request of the principal where the agent made the contract with himself, whether he acted on his own behalf or in the name of a third party.¹⁷

As a writer of this paper, I appreciated the legislator intension. Because, the owner of the thing or the right always has full right to decide without the influence of other parties.

Therefore, the principal can protect his properties and rights from damage by applying revocation. At the sane time, such agent also will be liable both for the principal and third parties if problems occurred.

From these and other related issues it can be concluded that unauthorized acts of an agent may cover risks affecting property or risks arising out of contracting party's.

2.4. Circumstances for the occurrence of an unauthorized act's of an agent in the Ethiopian legal frame work.

Agency law is a very fundamental law, whose formation was called by the need of more effective legal regulation. The creation and development of this more progressive agency law was facilitated by the activities of agents and third parties.

The authority of agent is established in Ar. 2199 of the Ethiopian civil code, Ar. 44 of the Ethiopian commercial code. It is believed that in the law of agency, the agents of the principal become the dominating and effective sources of the agency relationships.

At first, the duties of the agents are to render supports to the principal. i.e in the conclusion of the contract with third party must perform his duties.¹⁸

As I have mentioned in the previous points the agent must show his performance honestly. Ar. 2209 of the civil code also says this concept the agent shall act in the exclusive interest of the principal and may not, with out the latter's knowledge, derive any benefit from any transaction into which he enters in pursuance of his authority. This concept always protect the rights of principal's this mean if the agent made a contract with third party with out the knowledge of the principal. Such contract or act/s/ of an agent. At the same time if the act is performed for the interest of the agent the principal will have right over his agent to take a legal action based on the law of unlawful enrichment Ar. /2162/ and extra contractual liability.¹⁹

In connection with the duties of the agent, the Ethiopian civil law particularly the law of contract and the law of agency did not undermined the circumstances for the occurrence of unauthorized acts of an agent.

Such circumstances are very helpful to protect the properties and rights of the principals if they are applicable in lawful manner by the agent. at the same time it will make a very good and peaceful relations between the principal's and the agent.

For the purpose of this paper, there are some circumstances for the occurrence of unauthorized acts of an agent. Before that as we know in practice the agent shall exercise the same diligence as a bonus paterfamilias in carrying out the agency as long as he is entrusted there with/Ar.2211(1)/ what we understood from this article, the agent must act like a good families i.e. the law did not expect the agent as a negative doer/enemy of the principal interest/ . Therefore, the agent in case of some unforeseeable circumstances as stated in Ar. 1793 of the civil code. For instance:- a storm, earth quake, a fire accident e.t.c. can have the right to extend his power of agency. For example, one who in B's absence extinguishes a fire or repairs a roof in B's burning or leaking house, collects B's harvest before a storm, interrupts an adverse Us caption period, sells B's perishable fruits, e.t.c. may recover his justified expenses but is liable for faults committed contrary to Ar. 2261(1) of the civil code.²⁰

As we know from the Ethiopian civil and commercial codes and other similar legislations both physical and artificial persons have the right to appoint their agents based on the lawful requirements.

For the purpose of this paper I would like to give the following examples. But the objectives of these examples are primarily to indicate how the lawful agent can extend his power of agency with its good intension to take lawful fruits. When we see the client and attorney relationships the attorney /lawyer/ is the agent of his client with the principles and duties of legal profession to perform his duties lawfully. But the client did not impose any sanction or unlawful interference to guide the attorney. Because, the attorney is an independent contractor to show only the result of his contractual agreement. In which, the so called attorney for the sake of lawful result for his client. ²¹

On the other way if the medical doctor in his daily activities purchases a medical equipments from a very known distributor through a formal sale contract to save the life of their regular customer and to apply his professional duties which stated in Ar. 2639 of the civil code.²²

In these cases the principal expected to ratify these unauthorized acts of an agent to strengthen their normal work conditions. Because, the acts of the attorney and the doctor are not evil to attack the intended result rather to make it effective.

One and another way there fore, to protect the well being of such and other relation the law has power over the principal, the agent and third party.

To elaborate the above ideas by observing other issues the Ethiopian Civil code Ar. 3183 allows extending power of agency in connection with the administrative authorities. This article provides this concept where circumstances which could not be for seen on the making of the contract upset the balance of the contract, the party contracting with the

administrative authorities shall performs his obligations where such performance remains materially possible. The intension of the legislator under this concept is that the administrator should be expected to give acceptance for the act of his employer if the performance of this act supported by unforeseen circumstances.²³

Furthermore, Ar. 3185(1) the application of unforeseen circumstances as an event to perform the contract between the contracting party may help the parties to perform their independent duties properly. At the same time it helps the parties to avoid /minimize/ unexpected damage in the course of performance.²⁴

Generally, the application of such article in administrative contract enables the parties to maximize the level of relation and business areas on the ground of good faith.

The general rule that a purported agent is personally responsible if he enters into an unauthorized contract on behalf an assumed principal, is subject to the qualification that if the contract is one which would be of no legal value and which the law would not enforce against the principal, even if it were authorized, the agent is not personally liable in contract or in tort, unless by some apt expression he guarantees the contract or assumes it himself, for otherwise the anomaly would exist of giving a right of action against the assumed agent for an unauthorized representation of his power to make the contract, when a breach of the contract itself, if it had been authorized, would have furnished no grounds of action.²⁵

2.5. Ratification

2.5.1. Definition of Ratification

Diluvia and Howard in their books defined ratification as:-

“Ratification consists of the performance of an act performed by one party for another without authority, and the relation of the parties assumes the status that would have existed had authority been granted before the act took place.” ²⁶

Robert Rosenberg also in his book said the following concept about what ratification mean

“The approval by the principal of an unauthorized act performed by his agent or of an act performed in his name by a person who had no authority to act as his agent results in an agency by ratification.”²⁷

Harold defines ratification as:-

“Ratification in the law of agency is the subsequent adoption and affirmance by one person of an act which another, without authority, has previously assumed to do for him while purporting to act as his agent. Ratification is equivalent to a previous authorization and relates back to the time when the act ratified was done, except where intervening rights of third parties are concerned. Any act which the principal could have authorized at the act was done may be ratified.” ²⁸

From the above statements we can understand that ratification is a must where by ratification of an unauthorized act to be made on condition that the agent is acted at a lawful ground in the law of agency and contract.

When we see the Ethiopian civil code about ratification Ar. 2264(1) says that where the principal's interest required that the management be undertaken, he shall ratify the acts done by the acting person in his name.²⁹

From this definition we can understand that the law of agency in case of ratification may share some common criteria with the Harold, Dillavou and Howard and Robert Rosenberg WilliamG.OTT definitions. Therefore, the Ethiopian agency law on ratification issue seems to follow the common law legal systems

2.5.2.1. Requirements for ratification

To have a valid ratification, the following conditions must be satisfied. (1) The person ratifying must have had the present ability to do the act himself authorize it to be done. (2) The person for whom the act was done must have been identified or the circumstances must have been such that he was capable of identification. (3) The person acting must have acted as agent of his principal or the person represented to be his principal. (4) The principal or person represented to be the principal must have been in existence at the time the act was done and must have been competent to do or authorize the act done. (5) The principal or person represented to be the principal must have had knowledge of all the material facts at the time he ratified. (6) The third party must not have cancelled the transaction and (7) The circumstances must have been such that the intervening rights of third persons were not cut off by the ratification.³⁰

2.6. Forms of ratification

There are no formal requirements for ratification. It may be expressed or implied from the act of the principal usually, acceptance of benefits or failure to repudiate within reasonable time will be convincing evidence of intent to ratify, provided the principal, at the time, has knowledge of all the material facts.³¹

2.6.1. Conduct constituting ratification

What conduct on the part of the principal will amount to ratification? To answer this question as a general principle ratification may be either express or implied. In my research, the Ethiopian civil code follows the same principles which are similar with the common law legal system. The reasons are, as I have mentioned in the previous chapter agency contract may follow the general principles of the law of contract. This means like offer and acceptance ratification also could be expressed by express or implied ways.³²

where certain formalities, such as writing or an authorization under seal, are required to create a particular agency, the ratification must follow the form required for the creation of agency. Aside from this, any conduct which definitely indicates an intention on the part of the principal to adopt the transaction will constitute ratification. It may take the form of words of approval to the agent, a promise to perform, or actual performance, such as delivering of the product called for in the agreement. Accepting the benefits of the contract or basing a suit on the validity of an agreement clearly amounts to ratification.³³

At this point the fact that an unauthorized act may not be ratified in part and rejected in part should be mentioned. The principal can not accept the benefits and refuse to assume the obligations art.2264 (1).³⁴

Because of this fact it is said that principal, by accepting the benefits of an unauthorized agreements, ratifies the means used in procuring the agreement unless within reasonable time after learning of the true facts, he takes steps to return, so far as possible, the benefits which he has received art.2191(1&2) of the 1960 Ethiopian civil code clearly supported by this point.³⁵

Further more, it is laid down as a general principle that ratification does not bind the principal unless he acts with full knowledge of all the important facts. Of course, where ratification is expressed and the principal acts without any apparent desire to know or to learn the facts involved, may not later defend himself on the ground that he was unaware of all the material facts. Where, however, ratification is to be implied from the conduct of the principal, it must appear that he acts with complete understanding of all important details.³⁶

2.7. Effects of Ratification

When a principal ratifies the unauthorized acts of his agent, the principal then accepts and receives all responsibilities for such act from the time they were done. However, if rights of the third person have intervened, such rights can not be cut off by ratification. When the principal has effectively ratified the acts of his agent, he cannot at a later time repudiate the ratification.³⁷

Ratification releases the agent from liability to both his principal and third persons for having exceeded his authority. It also gives the agent the same right against the principal as to compensation, etc... that he would have been given had the acts been previously authorized. In return the principal is entitled to receive from the agent every thing to which he would have been entitled had the act been originally authorized ar.2192.³⁸

Under the rule generally followed in Ethiopian legal system i.e. agency, the third person has the right to cancel or withdraw from the unauthorized transaction at any time before the principal ratifies, but no after ward.

It seems that every activity around this article particularly the phrase “contracts made by an agent” are not mentioned by name.

In my questionnaires, different persons who are working in legal profession gave various opinions on the above words and difficulties to interoperate them properly in case of real disputes.

From this point of view and the complexity of the world’s social and economic life, agency relations in Ethiopia also need speedy reformulation of their agency systems mainly the contracting parties are expected to come-up with initiations of modern trends that give value to human socio and economic aspects along side with the agency contractual results.

The other point to be evaluated by the parties is that the word “good faith” in Ar. 2207/1/ of the 1960 civil code. In this article, the presence of good faith is ground to ratify the an unauthorized act’s of an agent. Therefore, the principal should evaluate the real socio-economic conditions of that contract in detail. Because our societies live with various socio-economic and cultural heritages. Ignorance of such points may affect the good faith of the agent in specified contract.

Further more, the contracting party mainly third party is highly responsible to protect their contract from invalidation and help the agent to give life for his business by using the word immediate in connection with the real situations /conditions/ to exchange information between the principal and the agent. Otherwise, the application of the word ‘immediate’ is not simple for the existence of the contract.

If it is applied without patient and tolerance, if good relations and altitudes lack in a given agency relation abnormal transactions and delay in business would follow.

Therefore, the existence of substantive margins of good relations and altitudes of contracting parties is essential to the effective accomplishment of the word 'immediate' in agency contract.

Finally, what I have observed in some court data base survey, ratification of an unauthorized act's of an agent is not mostly passed through court decision. The implication of this point is that our society mostly uses their own alternatives dispute resolution mechanisms by using their own customary practices. But as to the writer of this paper I have observed that if such practices are contrary to the basic law of contract and agency may create unnecessary expenses and other problems on the contracting parties where it is brought before the regular court. Therefore, for the well-being of agency relation parties should adjust themselves with the basic principles and laws of the concerned issue.

Conclusion

As relates to agency, “ratification” is an express or implied adoption or confirmation, with knowledge of all material matters, by one person of an act performed in his behalf by another who at that time assumed to act as his agent but lacked authority to do so. Ratification relates back and is the equivalent of authority at the commencement of the act. It is the affirmance of a contract already made. The existence of agency and the authority of the agent can be and often is implied by proof of acts, circumstances, words, acts, and conduct of the party. As applied to the agency or authority which is created or related back by means of ratification, it may be implied by any facts and circumstances from which it can be reasonably inferred that the party to be principal.

As to what facts, circumstances, and conduct will justify the inference of agency, no fixed rule can be stated. There is no particular mode by which it must be established. It depends upon the situation in each individual case.

Furthermore, by reason of ratification, the authority reverts back and becomes effective as of the date of the act performed by the agent. because of this fact ratification of unauthorized acts of an agent can be effective only where both the principal and the agent were capable of doing the act at the time it was performed and are still capable at the time of ratification.

Therefore, as a writer of this paper I would like to appreciate the 1960 Ethiopian civil law particularly the law of agency. The reason is that it can protect both the principal, the agent and third parties in connection with ratification.

Foot notes

Chapter one

1. R. R obbert Rosenberg, William G. OTT; College business law; /4 Ed. 1972/ P.363
2. Black's law dictionary/ Ed. /
3. Harold F.Lusk; Business law principles and cases,/7 Ed. 1963/ P. 333
4. Dillavou and Haward; Principles of business law, /Revised Ed. 1946/ P.113
5. Civil code of the Empire of Ethiopia; Article 2199, 1960
6. Supra note3, P. 333
7. Ibid
8. Ibid
9. Ibid
10. Supra note3, 334
- 11.Ibid
- 12.Ibid
- 13.Ibid
- 14.Supra note 3, P.335
- 15.Ibid
- 16.Ibid
- 17.Barbora E. Behr; West's Business law Text and cases, /Revised 1982/ P. 232
- 18.Supra note 1, P. 363
- 19.Ibid
- 20.Supra note 3, P. 336
- 21.Supra note 3, P. 341

22. Ibid
23. Supra note 3, P. 342
24. Supra note 3, P. 343
25. Supra note 1, P. 365
26. Supra note 3, p. 343
27. Supra note 3, p. 337
28. The Commercial code of the Empire of Ethiopia ; Article 44, 1960
29. Supra note 28, Article 51
30. Supra note 28, Article, 60
31. Supra note 3, P. 339
32. Ibid
33. Supra note 1, P. 365
34. Supra note 1, P. 366
35. Supra note 1, P. 367
36. Ibid
37. Supra note 1, P. 368
38. Supra note 1, P. 369
39. Supra note 5, Ar. 2179
40. Supra note 5, Ar. 949
41. Supra note 5, Ar. 951 and 2253
42. Supra note 5, 2201 /1/
43. Supra note 3, P. 346
44. Ibid
45. Supra note 3, P. 347

Foot notes

Chapter two

1. R. Robert Robesenberg William G.OTT; College business law,/ 4
Ed.1972/ P. 376
2. Ibid
3. Ibid
4. Ibid
5. Ibid
6. Ibid
7. Ibid
8. Civil code of the Empire of Ethiopia; Ar. 2257,1960
9. Harold F.Luck; Business law principle and cases, 7 Ed. 1963/ P.395
10. Supra note 9, P.393
11. Ibid
12. Supra npte 1, P.377
13. Ibid
14. Ibid
15. Supra note 8, Ar. 2239/1/
16. Supra note 8, Ar. 2187/1/
17. Supra note 8, Ar. 2188
18. The civil code and commercial code of the empire of Ethiopia; Article
2199 and Article 44
19. Supra note 8, Art. 2209, and 2162
20. Supra note 8, Art. 2211/1/, 1793 and 2261/1/
21. Proclamation No.
22. Supra note 8, Ar. 2639

23. Supra note 8, 3183
24. Supra note 8, Ar. 3185/1/
25. Supra note 9, P. 396
26. Dillavou and Haward; Principles of business law /Revised 1946/ P 118.
27. supra note 1, P.367
28. Supra note 9, P.353
29. Supra note 8, Ar.2264/1/
30. Supra note 9, P.353
31. Supra note 9, P.354
32. Supra note 26, P.119
33. Supra note 26, p.120
34. Supra note 8, Ar.2264/1/
35. Supra note 8 Ar.2191 /1/ /2/
36. Supra note 26, p.119
37. Supra note 9, P. 354
38. Ibid

BIBLIOGRAPHY

Books

1. Harold F.Lusk, Business law principles and cases,7 ed., U.S.A., Richard D. IRWIN, INC, 1963.
2. Dillavou and Howard, Principles of Business law, 2 Revised ed, New York, Prentice. Hall, INC,1946.
3. R.Robert Rosenberg William G.OTT, College Business law, 4 ed, Mc Graw-Hill Book Company, 1972.
4. Barbara E.Behr, West's business law Text and cases, West publishing Company, 1980

Laws

1. The Civil code of the Empire of Ethiopia, Neg. Gaz. 19 Year, Proclamation No 166 of 1960.
2. The commercial code of the Empire of Ethiopia, Neg. Gaz. 19 Year, Proclamation No 166 Of 1960.
3. Proclamation No /

Others

1. Black's law Dictionary, ed, West publishing company, 1991.

DECLARATION

I hereby declared that this paper is my original work and I take full responsibility for any failure to observe the conventional rules of citation.

Name _____

Signed _____