Chapter One

1. The concept of the law of agency

Introduction

- A person may deal with his affairs
  - ✓ **either personally**, or
  - ✓ **through other persons who represent and act on his/her behalf**.
- Accordingly, where the circumstance and the complexities in the modern **commercial**, **social** and **legal interactions** so demand a person may enter in to a contract with another person and handle his affairs as smoothly as possible.
- Hence, every day, in various parts of the world, **there are persons acting for and on behalf of others**, in **different capacities** and **under different circumstances**

- Therefore, **agency is a very important institution applicable in almost all areas of law..**
- Given its growing importance, it can be said that, **agency is not an alternative** but **essential component in the daily life of persons**

❑Teaching material;

- "The concept of Agency is recognized **in all modern legal systems** as **an indispensable part of the existing social order.**"

- An agent is appointed **when an individual is unable to act himself** on account of; his **manifold occupations**,
  - absence,
  - illness,
  - advanced age, etc; or
- A representative may be designated in order to take advantage of his;
  - ✓ **special capacity**,
  - ✓ **knowledge, and experience**
  - ✓ Or **even for the mere desire**, such as **not to appear personally** in order to **avoid hostility**, **controversy**, etc

❑Definition

❖Agent

- an agent is **one who is authorized to act for or in place of another**;
- or is a representative **who normally binds not himself** but the person he represented (the principal) by the agreement he enters in to with the latter **(Black's law dictionary)**
- An agent is a person who has agreed to **"act on the principal's behalf** and **subject to the principal's control**

❖Principal

➢ Is the one who confers authority to an agent to be represented and to be liable for the acts of the agent

❖Agency;

- There is **not yet a comprehensive definition** provided for the concept 'agency'. However, there are different attempts put forward so far.

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

- *The relationship between **one person**, **the agent**, **having authority to act**, and having consented to act **on behalf of another, the principal,** in contractual relations **with a third party.***

- Simply put, agency can be defined as;
- " a relationship between **two persons**, where one (the agent) **may act on behalf of the other** (principal) and **bind the principal by words and actions."**

- *The Nigerian supreme court once stated that*
  - *In law the word agency is used to connote* ***the relationship which exists when one person has an authority or capacity to create legal relations between a person occupying the position of principal and third party,***
  - *and the relation also arises when one person* ***called the agent*** *has* ***the authority to act*** *on behalf of another* ***called the principal*** *and consents (expressly or by implication) so to act".*

➢ *What can you discern from this explanation???*

- Alternatively;
  - Law of agency relates to **the authority to act on behalf of others** or **the authority to enter in to juridical act/s on behalf of other persons**
- Take a look at Article 2199 of the civil code
  - *Agency **is a contract** whereby a person, **the agent**, agrees with another person, **the principal**, **to represent him** and **to perform on his behalf** one or several **legally binding acts**."*
  - What elements can you pinpoint from the article????

- **Vol.1; ው/ትማህላትግ/ስሊሴ እና እነ አቶ መንግስቱ (ሁለት ሰዎች); p.43**
- ውክልና ማለት **ተወካይ የሆነ ሰው** ወካዩ ለሆነው **ሌላ ሰው እንደራሴ ሆኖ** አንድ ወይም ብዙ **ህጋዊ ስራዎች በወካዩ ስም** ለማከናወን የሚገባበት **ውል ነው።** (ፍ/ህ/ቁ 2198)

- **Generally,**
  - There may be **many instances** in which a person represents or acts for or on behalf of another.
  - But the true law of agency applies only when **the act of the presumed agent produces legal consequence**
  - **the agency r/ship must be performed in such** a way as to be able **to affect the principal's legal position** with respect to strangers to the relationship)

- the law of agency **does not apply to social or other non-legal situations** for example,
  - when a man sends his wife or son to represent him at a **wedding**, **launching**, or **naming ceremony,**
- But, for example in Sale contract if **A (agent)** is given authority to act on behalf of **P (principal)** and A sale a motorcycle to T (THIRD PARTY) the contract **is enforceable b/n P and T**
- **A has no liability to either P or T on that contract.**

❑Significance/why the law of agency

❖***From the point of view of juridical personality;***

- Juridical persons, though they are holders of rights and bear obligation, **they do not have physical existence**. Rather, they are run by human persons who represent the interest of the fictitious persons.
- **Art. 216 of the commercial code;**

1) A business organization shall acquire rights and incur liabilities **by its agents in accordance with the provisions relating to agency.**
2) A business organization shall act in **legal proceedings by its agents.**

❖ **From the point of view of business demand;**

➢ **Physical inconvenience** - Though individuals may have to involve themselves in different business and other transactions, **because of**

- **Spatial(space),**
- **cultural, language,**
- **or other limitations**, they **could not manage** to undertake each and every activity by themselves;
- this in turn brings forth **the need to be represented.**
- It is essential for effectiveness and efficiency by reducing the cost of handling business.

- **Professional inconvenience** - This point is also related to overcoming limitations attached with **knowledge and skill**.
  - **Vol.1;ወ/ት ማህሌት ገ/ስላሴ እና እነ አቶ መንግስቱ (ሁለት ሰዎች); p.43**
  - አንድ ባለ ጉዳይ ፍ/ቤት መቅረብ የማይፈቅድ ከሆነ ነገሩን ለማስረዳት፣ለመከራከር፣ለሚጠይቀው ሁሉ በቂ መልስ ለመስጠት **የሚችል ሰው በዋናው ባለጉዳይ ተተክቶ በነገረፈጅነት፣በወኪልነት፣በጠበቃነት**ሊከራከር እንደሚችል በፍ/ሥ/ሥ/ሕግ **ቁጥር 57 ስር ተገልጿል።**

❑Acts which cannot be performed by an agent;

- Though a person, in principle, can undertake business through an agent, exceptionally, there are acts **which are so personal to the doer** and **can't be handled by an agent;**

❖Will

- *Art. 857 - Strictly personal nature.*
- *A will is an act which is **strictly personal to the deceased**.*
- *agreement whereby a person grants to another person the power to make, modify or revoke a will on his behalf **shall be of no effect**.*
- *A person may not entrust a third person with the task of determining **how and on whom his succession is to devolve.***

❑Donation

- *Art. 2434 - Personal nature of donation.*
  - *(1) A donation is an **act purely personal to the donor.***
  - *(2) The authority given to make a donation shall be of no effect **unless** it specifies the property **to be donated and** the donee.*
- Exceptionally, according to Art.2434 (2) of the civil code, if the donee and the property to be donated are specified, donation can be made by an agent who is so authorized

❑Marriage

- ***RFC - Article 12 -*** *Representation not allowed.*
  - *Each of the future* ***spouses shall personally be present*** *and consent to the marriage* ***at the time and place of its celebration.***
  - *Notwithstanding the provisions of Sub-Art. (1) of this Article, marriage by representation* ***may be allowed by the Ministry of Justice*** *where it has ascertained that*
    - ✓**there is a serious cause** *and*
    - ✓*the person who intended to do so* ***has fully consented thereto***.

❑Genesis and Development of the Law of Agency

- The concept of agency representation in the sense it is understood now is said to be emerged around the **12th c (A.D)** along with **the slave and slave owner's relations.**
- Since slaves were considered **as a mere chattel** without any rights; it was logical **to hold the owner legally liable for the acts of his slave**, especially if the acts of the slave were done based on the direction of the slave owner.
- The concept of agency developed independently ***in the civil and common law legal systems***.
- However, the rudimentary rules of agency representation as it is understood today became visible in both legal systems around the end of the ***twelve-century and early thirteen centuries***

❑ *The Roman law*

- In ancient Roman law, for a contract to exist between two persons, **both of them should be personally and physically present**.

➢ Reason:

– The Roman conception of the **personal nature of obligation**

✓ rights and liabilities were acquired or incurred only by **the persons making the contract**;

✓ **third parties are not considered**.

✓ **ceremonial nature of contracts**

– **Patriarchal economy of the Romans**. This economy was least developed, and almost all business transactions were limited within the family.

– Hence it is possible to infer that there was no need for the institution of agency.

- Hence, In spite of its high development, **the Roman law did not outgrow an overall theory of agency** in their law of contract, and even
- ‘’it was **utterly unknown in the early law of contracts** and never in the entire history of the Roman law did it reach the importance it has attained in the **English law.**

❑Common law

- It is believed that agency was not part of the common law **until the 13th C.**
- But **around the end of the 12th C and beginning of the 13th C**, owing to the emergence of **master and servant relationships**, the concept brought in to the system.

- **Three main standards** gave rise to the effective development:
  - The emergence of **the class of attorneys in legal matters.**
  - **The impact of cannon** (laws of the Christian church) law: and
  - **Custom of merchants**, which at that time was already engaged **in lively trade in Europe,** created the introduction of some concepts of agency.
- Accordingly, the common law recognized that **when contracts are made by an agent on behalf of his principal**,
  - **it was to be held that the principal and not the agent was liable**; not only when the agent had express authority to do the particular acts,
  - but also when **he acted within the scope of an authority** to do acts of a particular kind

❑Civil law

- The concept of agency started to develop in the Roman law, however, **in the 15th and 16th C** and slowly had to recognize **the activities of agents.**
- Accordingly, at a certain point, in the historical development of the Roman's the agency concept, **holding masters liable for acts of their slaves or agents was observed**.

❑ Ethiopia

- It has been said that, even prior to the adaption of the Fetha Negest around the 16th C;
  - the Roman law of Justinian influenced the Ethiopian legal System in earliest stage – because, around the 6th C AD, Ethiopia **had a permanent communication with Emperor Justinian who was the emperor of the Roman Empire** then whose codes influenced the formation and development of modern private laws in many countries of the world.

➢ *Fewese Menfesawi*

- This is **the first known code of law prepared** during the reign of **Emperor Zaraya Yacob in the middle of 15th C.**
- Was essentially **a religious document**.
- When the emperor heard about a document of superior quality in Egypt, order for translation – **'Fetha Negest'**

❑*The Fetha Negest*

- Brought to Ethiopia in the middle of **15th C during the reign of Emperor Zarayacob.**
- A Coptic Church scholar named **Ibn Al Assal** said to have created the document in the 13th C compiling the
  - **principles of Christianity**,
  - **Byzantine legal tradition** and
  - **Islamic commercial law**.
- Translated **in to Geez** by a church scholar (**named Abda Sayd's son**) from the **Egyptian Arabic version in the 15th C.**
- Has both **religious and secular parts**

❑*The concept of Agency under the Fetha Negest;*

- ***Chapter XXX (30), Mandate (on Proxy/ assigning authority)***
  - *Provides rules governing the relationship of* **mandatory (principal)** *and* **mandatary (agent).**

❑*Some important* ***stipulations worth consideration****;*

- ***Who can be an agent?***
  - ***Anyone who adheres*** *in every respect to* ***the rules regarding his soul and to the laws*** **is worthy of being appointed as mandatary.**

➢***Scope of mandate*** *- A mandate may extend*

- ✓***to all affairs*** *and* ***judgments*** *or*
- ✓*with respect to* ***specific objects****,* ***to the exclusion of others.***

- ***Nature of the mandate*** –
  - ✓ The mandatary accepts **the mandate** **with or without remuneration.**
- **Form of mandate** –
  - ✓ A mandate is not valid unless the mandatory gives
    - **it verbally** and **the mandatary accepts** the **word** either **formally or by his actions.**

- *There were stipulations regarding;*
  - ***Source of Authorities*** *and* ***duties of the mandatary***
  - ***Proof of authority***
  - ***Extinction of authority***
  - ***Revocation of authority***
  - ***Conflict of interest***
  - *Effect of* ***fraudulent contract*** *with the family of* ***the mandatory***
  - *Mandatary for jointly owned property*
  - ***Delegation of authority to another person***

- *according to the Fetha Negest, the contract of **mandate** had only to say with regard to*
  - ***the internal relation of the mandate giver and the mandate receiver*** *(mandatory or agent).*
- ***Hence the external relations i.e the relation of the mandatary or mandatory with a third party was not given a cover.***
- After the Fetha Negest and **before the 1950's and 1960's codification,**
- particularly in the 1920's, early 1930's and 1940's Ethiopia passed several statutes;
  - such as company law, loan law, bankruptcy law, business registration law and banking law.
  - However, **it is not stated whether this laws have dealt with agency matters.**

Shortly **summarize** the facts and decision rendered in the case of **Costace V. Forteye**,

- Try to explain its relevance with regard to the development of law of agency

❑Session two

❑Sources of agency

- What are **the sources authority?**
- From where does **the agent derive his authority?**
- **Read art. 2179 of the civil code?**

❑What do we mean by authority?

- Authority-;
  - ✓the right **to exercise powers**
  - ✓an ability **to execute juridical acts** in the name and on behalf of the principal

❖ Art – 2179;

➢ ***The authority to act on behalf of another may derive from the law or a contract.***

- Accordingly, while agency relationship predominantly **results from contract**, in some cases it arises **from the law**.

➢ **What source do you think is lacking from this definition????**

❑ Agency emanating from law

➢ When agency arises from the law, it is **the law which governs the agency.**

➢ the consent of the principal **has no role in creating the agency relationship**

- This usually happens where ;
  - a person to be represented **is not in a position to appoint his agent** for one thing or another.
  - due **to the necessity to safeguard the interest of the person** to be represented
- Hence, there is already a single contract,
  - The external contract
  - the internal relationship **is legal and not contractual**
  - However, the external contract is governed **by the provisions pertaining to agency**

❑Eg. 1. Minors

❖**What do you remember about tutor and guardian???**

- **Read Art 199**
  - ✓ guardian- upbringing
  - ✓Tutor-pecuniary matters
- **280 of the civil code;**
  - – *The tutor shall represent the minor **in all civil matters.***

❖Art.269 of the RFC;

- *1) The minor shall be represented **by his tutor** concerning **his property and his pecuniary interests**.*
- *2) The tutor shall take **utmost care** concerning the **pecuniary interests of the minor** and the administration of his property*

- **Art. 305 of the RFC;**
  - Acts performed by the tutor, **on behalf of the minor, shall be binding on the minor as though he had performed them himself being a major.**
  - **They shall not be binding on the tutor personally**, save an **explicit undertaking** on his part or in cases provided by law
- In this case, without the need to secure the consent of the principal or authorization, **agent-principal relationship comes into existence.**

2. Business organizations; example

❖**ordinary partnership**

- Art. 236;
  - ***All the partners shall have a right to act as managers****, unless … **one or more of the partners or a third party [is appointed]**.*
- Art.241. rights and duties of managers
  - *The provisions **relating to agency shall apply to rights and duties of managers.***

❖**General partnership;**

➢ Art. 287 - Administration of partnership.

– *(1)* The partnership shall be administered **by one or more managers** who may or may not be partners.

– *(2)* ***Where no manager is appointed,*** ***each partner shall be a manager.***

➢ **Art. 289. – Scope of duties of managers**

– *(1) Managers may, in accordance with the law,* ***act for and. bind their firm.***

❖**Limited partnership;**

➢ **Art.300** – have the same rights and obligations as partners in general partnership.

❖**Share company** – see Art. 363 of commercial code

❖**Private limited company** - **Art. 525ff** of commercial code

❑Agency emanating from judicial decision;

- This is not an agency either by a **prior agreement** or **by operation of the law**;
  - ✓but arises **from the order of the court upon application**.
- **Take a look at Arts. 2253-2256??????**
- **Who are the Parties?**
  - ✓**Read, Art.2253;**
    - –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 hereinafter called*** **the curator.**
    - –**the curator** and **the person to be represented**
- **Who can apply** to be a curator??- **see art. 2254**
- **What requirements** need to be fulfilled? **See art. 2255**

- **What are the obligation** of a curator?
  - ✓ see art. 2255
    - ✓to carry out acts as are of **Urgent nature**
      - What do you think are this acts?
  - ✓Read art. 2256(1) and (2)- informing the represented
  - ✓Right and obligation as stated under 2199-2233 of the civil code

❑Contentious issues

- As the heading of Chapter 4 shows it is **authority granted by the court.**
- But, as Art. 2179 shows authority may arise **from the law or a contract.**
  - ***So, can we say that, strictly speaking it is the third type of authority granted by judicial decision***?

➢ Two different views

- **Proponents**

i. the person represented **won't be required to give his consent** (Art. 2256 (1)),

ii. **It is the court which is appointing the agent** for conditions **specified upon the application of the parties** stated therein and that

iii. **ascertaining these elements is up to the court, it is a third source of agency – by virtue of judicial decision.**

iv. They buttress their argument based on **Art. 2256 (2)** which makes cross reference to the application of chapter 2 provisions in case of agency emanating from judicial decisions

- **Counter argument–**

i. since Art. 2179 specified the two possible source of agency, Art. 2253 and following provisions **can be taken as agency emanating from law.**

ii. **It is even the law which is defining the relationship** and therefore, the authority emanates from the law.

➢ **Which side of argument do you support? Why/why not????**

❑Contractual Agency

- **Is the basic /most common** sources of agency
- Its purpose is **to give authority for an agent** so that he can perform juridical acts with third parties.
- Thus, **there are three parties which comes in to picture**
- **Art. 2199 and the following** provisions govern agency **emanating from contract**. In view of that,

❖Read Art. **2199- the definition**

❖Is it **inclusive of** both the **internal** and **external contract?**

- The parties to the contract are**: principal and agent**
- it also seems that it more **capitalize the obligation of the agent** than the obligations of the principal.

- This doesn't mean that the principal owes no obligation – **see Art.2219**
- The emphasis signifies the fact that in contractual agency, though there are two contracts, **the internal contract is the basis for the external.**

- Contract of agency is **a special form of contract**.
- As such, the provisions of the general contract law are still applicable where **the matter is not specifically regulated under the law of agency**.
- Thus, **the validity requirements for the formation of contract** under the general contract provisions **(Art. 1678 cc),** need to be consulted

❑**Requirements – Art. 1678 cc**

i. Capacity;

✓**See. Art. 1678**

✓**Literal meaning- The ability to do something**

- **Legally- competence to enter** into **a legally binding agreement.**

❖**Consider the following quotaion. What do you think?**

❖**"NEMO POTEST FACERE PER ALIUM, QUOD PER SE NON POTEST"**

✓which means that "**no one can do through another what he cannot do himself**".

✓*what* ***he has no power to do*** *personally* ***he cannot acquire*** *power to do by doing it* ***through another****.*

❖**Should a principal possess a legal capacity?**

✓consider the following statements from the TM;

- "A principal can only delegate transactions, **which he is capable to perform himself**. He cannot extend his legal capacity by acting via an agent. Therefore a minor can appoint an agent only for the specific acts, **which he is capable under the law to perform personally**."

➢**The capacity of the principal is an essential element of the contract.**

❖**What about a third party**? The same is true.

❖What about an agent?

- **The problem lies with regard to the capacity of the minor?**
- **What do you think??**
- Remember your discussion on the law of contract
- Art. **192 and the ff**
  - **Capacity is presumed** – **but might be restricted by the law**
- **General disability** -:age, mental condition and sentence passed)
- **special disability** (foreigners)

- Minor- **Art. 198- less than 18 years and**
- Art. 199- a minor **may not perform juridical acts except allowed by the law.. See for example, art. 228, 272, 273 and 308**
- **So can a minor be an agent of someone????** Provisions related with agency law **provide nothing**
- So it is **a contentious issue**
- Can a principal appoint **a minor agent? Why/why not?**

• Generally there are arguments for and against

❑Argument for

- ➢Any person, though without power to contract in his own right **may act as an agent for another**
- ➢the agent **does not bind himself** but **acts as a mere intermediary**
- ➢The capacity of an agent **is a matter of indifference with** respect to the **main contract**
- ➢They state Art. **2189- complete agency/disclosed agency**
  - The agent should act **in the name of the principal**
  - The agent – has to act **within the scope of his power**.
  - In such cases the contract is deemed to have been made by the principal --so **the agent steps out of the contract**

- Therefore, in case of complete agency, the agent is said to be **not party to the contract** – non-existent in the eyes of the law.
- Thus, they argued that the principal has every right **to appoint as an agent an incapable person.**

- If the former **is confident enough in the honest and intellectual capacity** of the incapable person.
- And this is owing to the fact **that his agent is not responsible for the acts he performs** in the name of the principal.

- Conceptually, most jurists agree that **since the agent is out of picture, incapacity of the agent won't affect the external contract.**

- *See Arts. 2197 and 2198 of the cc* ***for undisclosed*** *agency where the agent acts* ***in his own name*** *but* ***on behalf of the principal.***

❖ **Argument against**

- Art. 1678(1) ,199(3),
- Read Art. **2182(1) cum. Art. 2230,**
- it states that, ***unless there is otherwise agreement***, **incapacity of the agent is one of the grounds for the termination** of the contract of agency.
- Thus, a principal can not appoint a minor to be his agent **who is precluded from making a juridical act**
- and even the law of agency itself stipulates that **incapacity** (minority) terminates the agency relationship.

- But those who argue in favor of the first argument again respond that
  - Both art**. 2182 and 2230** state ``**unless otherwise agreed**
  - Thus, where the contract of agency is concluded **knowing that the agent is incapable**, it can be taken as an '**otherwise agreement**' and thus, won't have effect on the external contract.
  - These articles also refers only **to an agent who had capacity at the time of authorization** but **declared incapable at a latter time**
  - to construe the stated article, as it requires the agent's legal capacity may be **inconsistent with the intention of the drafter of the civil code**

- Effects of **incapacity**
  - ✓**What is the effect of incapacity?**
  - ✓**Does it make a contract void or voidable??**
  - ✓**Who should apply??**
  - ✓Read Art. 1808 (1) cc provides,
    - **incapacity makes a contract only voidable.**
    - Accordingly, if the incapable person does not apply for invalidation, the validity of **the contract persists and the other party is bound thereby**

❖Consent

- Read **Art.1678 (a) cum 1679** ff of the civil code,
  - the parties to the contract of agency **should give consent** which is **sustainable at law** being **free from vices of consent** such as**, mistake, fraud, duress**.
- **Effects of Vice of consent--the contract is voidable as per Art.1808(1) cc**.
- But, until such time that the internal contract is invalidated, **it won't have effect on the external contract.**

- **The effect of <u>Consent of the agent in the external contract;</u>**

✓ **<u>It is addressed under art. 2189</u>**

✓ Here, the consent of **the agent becomes important element for the validity of the external contract**.

✓ Read article **<u>2189(2) and sub (3)</u>** of the CC

✓ **What differences can you discern or pin point????**

❖2189(2)

✓the principal may avail himself of **any defect in the consent of the agent**…….

- Thus, where the agent is ***mistaken***, ***defrauded*** ***or subjected to duress***, **the principal has** the right to avail these as a defense **against the validity of the contract;** even though the agent **is considered as invisible**
- **Thus, the principal can invoke the defense according to Art. 1808 (1).**

❖Art. 2189 (3)

- **If fraud is committed** against **the 3rd party to the external contract**, he can avail this as a defense against the principal;
  - **Why does the legislator singled out only fraud?**
  - **What about mistake, duress?????**

❖**Teaching material** –

- Art.2189 of the civil code renders **more protection to the principal than to the third party.**
- **Do you agree??**

❑Argument against

➢ though it looks only fraud

- ✓ **as a party to the contract,** the 3rd party can avail himself of **other grounds of defects** in consent and invalidate the contract **based on Art. 1808 (1).**
- ✓ **Even, art. 2189(3) renders more protection to third parties**

❑For example,

- **Art.1704. - Fraud.**
- (2)- A contracting party who has been deceived by a third party shall be bound by the contract unless the **other contracting party knew or should have known of the fraud** on the making of the contract **and took advantage thereof.**

- On the other hand, Art. 2189 (3) **talks about any kind of fraud committed by the agent** and here the contracting 3rd party;
  - ✓is not expected to show that **the principal knew or should have known the deceitful act** of the agent and took advantage of it.
- Thus, the provision is **more advantageous to the 3rd party**; **not in favor of the principal** as the teaching material so provides.
- WHICH LINE of argument is sound???

❑ Object;

- Covered under Arts. **1711 -1716 of cc**,
- object – shall **be freely determined by parties** subject to restriction imposed under the law
- has to be **lawful**, **moral, possible** and **sufficiently defined.**
- **In agency law**, In contract of agency, difficulties usually arise; Art. 1714
  - regarding **the extent of power given to the agent**
  - – whether the object **is sufficiently defined or not**.
  - Art. 1714 -**Object must be sufficiently defined**

➢ Reasons

i. The agent deals in the absence of the principal..

ii. Difficulty in conferring general power..to do Everything

- ❑ So the law need to find a solution
- ❑ Eg. French law-
  - power given in general terms-- confer the power to **undertake acts of administration**
  - an agent cannot alienate or mortgage property where **there is no express authority**.
- ❑ **What about under the Ethiopian civil code????**

- Read from Art. **2203 – 2205**
- **It provided** answer for this problem.
  - ✓ Art. 2203- authority in general terms -acts of management – **General agency**
  - ✓ Art. 2204- **enumerates those acts of management**
  - ✓ Art. 2205 list those acts which demand **explicit authorization from the principal- special agency**

❑Form;

- **See Art. 1678 (c) cum 1719 and 2200 ff of cc,**
- Freedom of form-
  - --**unless a special form is required by law. 1719(2)**
  - **Or unless parties stipulate a special form. 1719(3)**
- Similarly, as Art. 2200 provides,
  - ✓Authority may be conferred up on the agent either **impliedly** or **expressly.**
  - ✓However, where **a special form is prescribed by law** regarding **the external contract, the same formality is required** to confer authority on an agent **(internal contract).**

- Effects of non observance
  - **Read Art. 1720(1)- mere draft**
- practically, **contract of agency is made in a written form.**

- **See FSCCB decision No. 59568, vol. 12; Tewodros Tesfaye vs. Mulu Arge, et al P.561**
- የውክልና ስልጣን መስጫ ሰነድ **በህግ ስልጣን በተሰጠው አካል ቀርቦ ካልተረጋገጠና ካልተመዘገበ በስተቀር ህጋዊ ውጤት የማይኖረው ስለመሆኑ** አዋጅቁ. 334/95 አንቀጽ 5/1//
- N.B -According to **Art. 5 (1) (b)** of proclamation No. **334/1995 (2003),**
  - a document granting **‘power of attorney** (agency) **made in writing** will not have legal effect **unless it is authenticated and registered** in the documents authentication and registration authority.

❑Offer and acceptance in the formation of contract of agency;

- A **contract is formed** via **consent expressed by the contracting parties.**
- Consent is **expressed through offer and acceptance**
- Read art. 1681-- offer and acceptance can be effected through
  - **orally** or **in writing** or
  - **by signs customarily used**,
  - or **by conduct,**
  - **An oferror can also stipulate a special form of acceptance**

- **What would be the effects of silence** ?
- Read art. 1682
  - ✓**Silence does not amount to acceptance**…
- **What about in cases of Agency contract??**
- **Try to compare and contract Art. 1682 Vs. 2201**
- **What can we say about silence ??**
- **art. 2201 (1),**
  - **Acceptance- either expressly or impliedly.**
  - What would be the effects of silence of the agent when an offer is made by a principal?
  - See art. 2201(2)

- Silence shall be construed as acceptance unless immediately refused in cases of;
  - **Art. 2201 (2)**–where the offeree is one who carries **in an official capacity** or **professionally** or where **he holds himself out publicly** for such functions. Eg, **attorneys, commission agent, forwarding agent….**
  - **Art. 2235 (3)– commission agents**
  - *(3) Such duties shall be carried out by a person notwithstanding that **he has not accepted the commission**, where the commission falls **within his professional activity.***

- The provision is applicable for ***del credere*** agents as well – Art. 2241
- **Art. 2251 (2) – forwarding agents**

- **Group Assignment 10%**
- Read cassation No. 38721, volume 12, page 555
  - አመልካች- ካፒቴን ዮናስ ሀሉፍ
  - ተጠሪዎች-፡ አቶ እስጢፋኖስ ኪዳኔ
    -ወ/ሪት አስቴር፣ ሄለን፤ እና አዜብ ኪዳኔ
- **Read FSCCB decision No. 59568, vol. 12; Tewodros Tesfaye vs. Mulu Arge, et al P.561**
- Try to read the decision of the cassation bench
- Shortly summarize the facts of the case;
- Decisions of the FFc, FHC, FSC and the cassation bench
- Evaluate the final decision of the cassation bench in light of the agency provision and
- write the reasons why you agree or disagree with the decision of the court.

❑Session Three

❑Scope of Agency – Arts 2202ff of cc

- **Read Art. 2181 (1)**
  - – is determined by **the contract giving rise to agency**.
- **Art. 2181(3) states**
  - ✓the scope of power of agency contract **shall be interpreted in a restrictive manner**
  - ✓**it** advocates **the principle of narrow construction.**
- **Art. 2202 (1)** puts forth that
  - ✓where the scope of agency **is not expressly provided** in the contract, it **has to be fixed** according to **the nature of transaction to which it relates.**

- **Are the two provisions conflicting?**
- **Art. 2202 (1),**
  - based **on the nature of transaction the agent** is conferred authority, t
  - he agent may enjoy **an implied authority** which are not necessarily and explicitly stated in the contract.
  - **Accordingly, the principal and the agent are bound not only by expressed terms but also by implied terms read into the contract.**
- This is also in tune with **Art. 1713**;
  - ✓ where parties to the contract are bound by **implied terms** read into the contract taking in to account **custom, good faith and equity.**

- Therefore, it is important to have in mind that, **restrictive interpretation** prescribed under **Art. 2181 (3)** does not contradict with what is provided under **Art. 2202 (1)**.

❑Class activity

- **Assume** ‘P’ authorized ‘A’ to rent his room and the latter made contract with ‘B’ to renovate the room. **Assuming that** the room was not in a proper state **to be rented out without renovation.** But, ‘P’ is not happy with the renovation and claims that **he is not bound by the contract the agent entered in to.**
- **Can p reject the acts performed by A? why/why not??**
- it can be inferred that in accordance with the requirement of ‘good faith’, renovation of the room is incidental effect of the contract.

- **NB**. Notwithstanding this, it has to be kept in mind that the interpretation of the contents of the contract of agency in accordance with **Art. 2181 (3) in line with Arts. 2202 (1) cum 1731** is subject to the conditions attached with the two types of scope of agency as provided under Art. 2202 (2); i.e., **general and special agency**.

❑ General agency – Art. 2203 and 2203

❑ Compare and contrast the definition of 'general agency' as provided under Arts. 2202 (2) and 2203 and 2204.

- **Art. 2202 (2)** – "*the agency may be … **general for all the affairs of the principal**.*"
- **Art. 2203** – "***Agency expressed in general terms*** *shall only confer upon the agent authority to perform acts of management.*"

- The question is, under the Ethiopian legal system, **is it possible to authorize an agent to perform all the affairs of the principal** (which can of course be performed by agent)?
- There seems to be conflict b/n the two provisions. They confuse two things: ***'general agency'*** ***Vs.*** ***'agency expressed in general terms'***.
- it can be said that under the Ethiopian legal system, it is doubtful that the concept of 'general agency' as defined under Art. 2202 (2) is recognized
- rather, **it is the concept of 'agency expressed in general terms'** which the provisions deal with.

❑ Teaching material;

➢ General agency

- ✓ is a type of agency conferred in general terms
  - such as, **all my affairs, anything related to my property**, **any affairs which I am called to perform**)
- ✓ **Is given to**
  - **sustain the rights of the principal**
  - to **preservation/maintenance** of those affairs/ rights of the principal.
- ✓ The power is related **with continuity of services**
  - **Is not a one time service**
- ✓ **Does not give rise to disposal of the rights of the principals.**
- ✓ Hence, such agents have **a limited power less of disposing** the rights of the person represented.
- ✓ usually agency conferred in general terms **is limited only to the management of the said affair** – Art. 2203.

- Usually agency conferred in general terms **is limited only to the management of the said affair** – Art. 2203.
- **Then, what are acts of management?**
- See the lists stated under art. 2204 (1) and 2
- Are the **listing exhaustive?**
- **2204**
  - Acts done for **the preservation of maintenance of property;**
  - Leases for terms **not exceeding three years**
  - The **collection of debts**
  - The **investment of income**;
  - **Discharge of debts**

- Art. 2204(2)Similarly:
  - **the sale of crops**;
  - the sale of **goods intended to be sold**; and
  - The sale of **perishable commodities** are categorized **as acts of management**.
- **The TM;**
  - **these acts are acts of disposition**, however, such acts **protects the loss of the rights of the person represented** … and the law is interested **to preserve the interest of the principal.**
  - Thus, the implication is that other acts necessary to preserve the interest of the principal may fall under the category.

- And hence, **these acts are acts of management**.
- read page 47 of the TM
- E.x., will taking debt to discharge acts of management be considered as acts of management?
- For instance, '**collection of debts**' is stated but not the authority '**to issue receipts**' to that effect…
  - But the 'amharic version' and the FSCCB decision shows that issuing **a receipt for debt** collected **is part of acts of management.**

- **FSCCB, vol. 5, CN 17320, CBE vs. Dr. Shawl Gebre, et al**
- በዚህም መሠረት በውክልና ማስረጃው ውስጥ በዝርዝር ባይገለጹም **“ቤታችንን እንዲያስተዳድር”** የሚለው ቃል፣ ተወካይ የወካዮቹን ቤት **የመጠበቅ፣ የማከራየት፣ የቤት ኪራይ የመቀበል፣ ደረሰኝ የመስጠትና <u>ሌሎች አስተዳደራዊ ተግባራትን</u>** እንዲያከናውን የውክልና ስልጣን የሰጡት መሆኑን የሚያመለክት ነው
- **FSCCB, vol. 13, A/o Sishah Kifle (2 others) v. W/o Atsede Dube (2 others)**
  - የውክልና ውሎች በጠባቡ ሊተረጎሙ የሚገባ ስለመሆኑ እና **<u>“በስማችን ውል እንዲዋዋል”</u>** በሚል በደፈናው የተሰጠ ውክልና ሊተረጎም የሚችልበት አግባብ **የፌ/ብ/ሀ/ቁ.2181(3), 2205, 2204**

- As the court reasoned out “ተጠሪዎች ውካዩ **‘በስማችን ዉል እንዲዋዋል’በማለት የሰጡት ውክልና”**
- grants upon the agent **the authority to enter in to contracts to perform acts of management as provided under Art. 2204** and do not confer upon him the authority **to alienate**, **mortgage** or **sale immovable properties.**
- ***The reason is that, according to Art. 2181 (3), contracts of agency has to be interpreted narrowly.***

❑Special agency

- Read Art. **2205 and 2206**
- is an authority that **empowers** the agent **to dispose** the rights of the person represented.
- That is why it is named **acts of disposition**.
- It is an authority conferred to perform
  - **a particular affair** or
  - **certain affairs,**

➢ special agency don't involve **continuity of services.**

➢ confers authority only to conduct

✓ **the affairs specified by the agreement** and

✓ **their natural consequences according to the nature of the affair and usage** -Art. 2206(1)

- See the lists enumerated. **Are they exhaustive**?
- TM- where the agent is called upon **to perform acts other than acts of management**
  - shows that the acts mentioned there **are not exhaustive**
  - Art. 2206 (1) – "… *and* ***their natural consequences*** *according to* ***the nature of the transaction***."
- All attest that the list **is not exhaustive**

❖**Discuss the list of acts under Arts. 2205 and 2206**;

❑**Sign bills of exchange**

- It is one of commercial instruments
- There are promissory notes, cheque, travelers cheque…..
- Why did the legislator singled out only bills of exchange?
- What about **other commercial instruments** (as stated under **Art. 732 of the Comm. Code)?**
- Since they **entail disposition of the rights of the principal** and since it is said above that the listing under Art.2205 and 2206 are not exhaustive, **others also fall under the scope of special agency.**

- **What is the difference b/n investment of income (the Amharic version deposit of income) under Art.2204 (1) and investment of capital under Art. 2205 (2)?**

- Investment of capital entails **putting capital in profitable venture**. The Amharic version says it as '**putting capital in a business organization**' which is a profitable organization.
- Thus, unless we stick to the Amharic version of Art. 2204 (1) which says deposit of income, it is difficult to distinguish the two.
- Consider the position of the teaching material and the example there.

- Art. 35 of the commercial code – powers of manager
  - In his relations with third parties, the manager shall be deemed **to have full power to** carry out **all acts of management** connected with the exercise of the trade, **including the power to sign a negotiable instrument**.
  - Unless expressly authorized to do so, **he may not sell or pledge immovable property**, nor may he **sell**, **hire** or **pledge a business**.

- As has been said previously, **authority of managers of business organizations** is an illustration of agency **emanating from law**.
- However, such managers have the authority **to sign bills of exchange by default**; without special authorization.
- **Thus it constitutes an exception to Art. 2205.**

- **Effect a settlement** – refers to using both the court and ADR.

- **FSCCB, vol. 5, CN 17320, CBE vs. Dr. Shawl Gebre, et al**
  - ንብረትን ለመሸጥ ለመለወጥ ብሎም ለሦስተኛ ወገን ለማስተላለፍ በሚል የተሰጠ ውክልና ንብረቱን በመያዣነት ለማስያዝ የሚያስችል ስልጣን እና ችሎታን የሚያጎናጽፍ ስለመሆኑ የፍ/ብ/ህ/ቁ. 3049(2) and 2206(1)
  - የውክልናማስረጃውለተወካዩልዩየውክልናስልጣንየሚሰጥከሆነሕጋዊ ውጤቱበውክልናማስረጃውላይከተፃፉትተግባራትበተጨማሪ፣በውክልና**ማስረጃውየተገለፀትንጉዳዮችናእንደጉዳዩክብደትናእንደልምድአሰራርበውክልናማስረጃውየተገለጹትንጉዳዮችተከታታይናተመሣሣይየሆኑአስፈላጊተግባራትንየመፈፀምስልጣንንየሚያካትትመሆኑየፍት**ሐብሔርሕግቁጥር 2206 ንዑስአንቀጽ 1 ይደነግጋል።ስለዚህየተጠሪዎችተወካይቤቱንአስመልክቶየተሰጠውልዩ የውክልናስልጣን፣በውክልናማስረጃውበግልጽየተመለከቱትንጉዳዮች ናበውክልናማስረጃውባይገልፁምበፍትሐብሔርሕግቁጥር 2206 ንዑስአንቀጽ 1 የሚሸፈኑጉዳዮችንየመፈፀምችሎታእንደሚጨምርለመረዳትይቻላል ።

- **በመሆኑምተጠሪዎችለወኪላቸውአቶገዛኸኝበልሁቤ ቱንእንዲሸጥእንዲለወጥናለሶስተኛወገንእንዲያስተላ ልፍ …**
  የሰጡትየውክልናስልጣንተወካያቸውቤቱንበመያዣነ ትለማስያዝየሚያስችለውስልጣንናችሎታየሚያጎናጽ ፈውመሆኑንንየፍትሐብሔርሕግቁጥር 2206 ንዑስአንቀጽ 1 እናየፍትሐብሔርሕግቁጥር 3049 ንዑስአንቀጽ 2 ይደነግጋሉ፡

- In addition, as the above case shows it is possible that in a single contract of agency,
  - ✓ **the agent will be given special agency** in respect **to certain affairs** and
  - ✓ **general agency concerning the same affair** or, as a case may be, other affairs of the principal.

- “...ተወካይየሆነውአቶገዛኸኝበልሁየወካዮቹንቤትእንዲያስተዳድር፣እንዲሸጥእንዲለውጥናለሦስተኛወገንለማስተላለፍየሚችልመሆኑንበግልጽየያዘመሆኑንአመልካችናተጠሪዎቹተማምነዋል። ... የውክልናማስረጃዉአግባብነትካላቸውየሕግድንጋጌዎችጋርበማገናዘብስንመረምረውሁለትመሠረታዊባሕሪያትናውጤትያለውነው። ... የመጀመሪያውተጠሪዎቹተወካዩቤታቸውንእንዲያስተዳድርጠቅላላየውክልናስልጣንየሰጡትመሆኑንየሚያስረዳሲሆን ... ሁለተኛደረጃይኸውየውክልናማስረጃየተጠሪዎችተወካይ**ቤቱንለመሸጥየመለወጥናለሶስተኛወገንየማስተላለፍልዩየውክልና**ስልጣንያለውመሆኑንየሚያስረዳነው

Session four

Authority of an Agent

- Ability of the agent to bind the principal
- Art. 2189(1) – **complete or disclosed agency/ perfect representation**
  - The agent should act **in the name of the principal**
  - The agent **should act within the scope of his power**.
  - Thus, Juridical acts done by the agent **are binding on the principal** as though performed by the latter.
- **Thus, the authority of the agent is the power within which the agent can act with the effect of making the principal liable with third parties.**

❑Actual or real authority

- See Art.2200 (1)
  - authority may be conferred upon the agent **either expressly or impliedly.**
  - Whether express or implied such authority of the agent given in fact is referred as **Actual or real authority.**
  - **Ex. The agent is instructed to sell a particular property(car) for the prinicipal**
- **Actual or real authority is the authority given in the contract or is an incidental effect of terms set forth in the contract**
- **It** brings the effect of linking **the represented with the representative.**

❑Express authority

- Arts. 2181(1) and 2202ff,
  - what has been **expressly fixed in the contract** as the authority of the agent.
  - It is specifically created and **limited by the terms of the contract.**

❑Implied authority

- Restrictive interpretation under Art. 2181 (3),1713 + 2202 (1) + 2206 (1) shows us
  - parties are bound **by terms incidental to the express terms** as deriving from **custom**, **equity** or **good faith** taking in to account **the nature of the transaction**; **i.e., implied authority**

❑Teaching material;

- Implied authority
  - important **for the carrying out of the authority expressly granted.**
  - implication are made on the basis that **the principal has in fact consented to the agent's having authority** to act in such a manner or as regards such transaction.
  - If there is evidence that **the principal has consented otherwise or not** so consented, then **this implication cannot be made.**
  - Thus, the consent of the principal **is a necessary part of implied authority.**
- Hence this authority is **one aspect of the agent's actual or real authority.**

❑Apparent authority

- Here, **there is not authorization** (i.e., express) even from which implied authority can be derived.
- Rather, because of **the words or conduct** (behavior or view) of the parties, most particularly of **the principal towards the agent**,
- **it appears in the minds of 3rd parties that there exists a principal agency relationship b/n the two**;
- and **3rd parities assume that the agent has the authority to act** on behalf of the principal.

- **Common Law experience**

❑apparent/ostensible-Agency by Estoppel

I. representation

- A supposed principal **intentionally** or other wise causes a third party **to believe that another person is his agent**
- **By words or conduct**

ii. Reliance on representation

- **Third part relies in dealing with the agent**
- **He should act on the faith of the representaion**

iii. Alteration of position

- **The claimant must show that he suffered loss or his position is altered**

➢ **Then, the principal will be barred /Estopped from denying the existence of agency relationship**

➢ **So he will be bound by the acts of the agent**

- **Saul Raccah** v. **Standard Company of Nigeria(**1938). The court stated that
  - ✓where any person **by words** or **conduct**, **represents** or permits it to be represented **that another person has authority to act on his behalf**, **he is bound by the acts of such another person with respect to anyone who deals on the faith** of such representation….

- Based on such experience try to read Art. 2195

❑TM- all the cases under article 2195 are apparent authority.. But let us see them each

➢ Art. 2195(a)

  – Where the principal has informed a third party of the existence of the power of attorney but failed to inform him of the partial or total revocation of such power;

  – Can we take it as a proper form of apparent authority? Why/why not?

➢ Art. 2195(b)

  – **Failure** of the principal **to demand for the return of document evidencing agency** **and** **failed to seek judicial decision**

  – What about the condition stated under this sub article? Can we take it as apparent authority?

- How do you see the conjunction, and under art. 2195(b)??
  - Do you think?? When should the principal should ask judicial remedy?

➢ Art. 2184 and 2185??

✓ the principal has a right and duty to demand return of document when the authority comes to an end

✓ But the agent may not return the document because it may be lost/destroyed.

✓ the latter case the principal may demand the court to declare that the document is revoked at the expense of the agent

- Finally the cumulative requirement for return of the document and judicial declaration is meant when the agent fails to return the document and not as an additional duty on the principal on top of the return of document.
- Art. 21959(c)
  - Where the principal **causes in a certain manner** for a third party **to believe the existence of authority**:
  - no contract of agency earlier unlike the above two case
  - **Can we take this as Apparent authority? Why/why not**?

- **it is difficult** to consider the **cases under Art. 2195 (a &b) as sources giving rise to apparent authority**.
- Rather, **they signify cases where the principal will be held liable** for the acts of an agent **who had an actual power** but the revocation of **which was not made according to the requirements.**
- an **apparent authority will not give an agent the power to create a contract** b/n the principal and 3rd party although the act of the agent will make the principal liable.

- This limitation may be explained by **Art. 1678** of the civil code which requires **free and full consent**; **which is missing in this case**.
- **TM** -Generally, we can conclude that **there is nothing called apparent agency in Ethiopia**.
- But the principal is liable towards the third party with the agent to the occurrence or otherwise of one of the acts under **Art 2195 of the civil code.**

- Unlike some common law countries **where apparent authority has a binding effect**, under the Ethiopian jurisprudence apparent authority does not, in principle create agency relationship unless under **the exception provided under Art. 2195 (c).**

Session five

Modes of Representation

- The Ethiopian law has acknowledged **three modes** by which **the agent may represent the principal**:

I) Disclosed agency

II) Partially disclosed agency; and

III) Undisclosed agency

I. Disclosed agency

- As discussed before, where the two conditions stipulated under Art. 2189 (1) are met, the agency is called – **complete or disclosed agency/ perfect representation;** and hence,
- **The agent should act in the name of the principal (disclose the principal)**

- Disclosed agency
  - the agent reveals **the name of the principal** to the third parties with which he/she is interacting (on behalf of the principal).
  - third party enters into contract with the agent **with the full knowledge** that **the person with whom he/she is interacting is the agent** and
  - **whose name as a contracting party** is stated **is the principal.**

ii. Partially disclosed agency

- is the situation where the agent represented the principal on the latter's behalf but in the name of himself.
- **Art. 2197 agent acting on his own name (Amharic version)**
  - ✓An agent who acts **on his own name** shall **personally enjoy the rights** or **incur the liabilities** deriving from the contracts **he makes with third parties, notwithstanding that such third parties know that he is an agent.**

- The marked phrase above shows that the kind of agency contemplated by the provision is 'partially disclosed' **for the agent discloses that he is making the contract on behalf of a principal whom he did not disclose.**

- The above expression also signifies the fact that
  - there is a possibility that the third party **may not know that the agent is acting on behalf of another** or it is also meant that **the third party may know** that the person in front is an agent acting on behalf of another.
- What is the affect of acts performed by the agent???
- Discuss the legal effects of partially disclosed agency under **Arts. 2197 and 2198** as regards the 3rd parties and the principal

III. Undisclosed Agency

- Is the mode of representation in which the agent reveals **neither the fact that he is acting on behalf of another person** nor **the name of another person is made known** to the third party contracting.
- Therefore, **the agent acts**
  - **on his own name and**
  - **he is acting on his own behalf.**

❑**Rational -** This form of representation is inferred from the expression of Art 2197(1) last provison.

❑That is "--- notwithstanding that such third parties know that he is an agent."

- The contrary reading of the excerpt shows that **the 3rd parties might have contracted with the agent without knowing that he is an agent**.
- Notwithstanding that, **the agent is liable for the consequences**.

- The presumption behind the liability of the agent is that **the agent has violated the name test,** thus his representation is not complete and therefore, **can't bring legal consequence on the principal.**

❑ Conclusion of the TM;

- only disclosed agency **under Art 2189** shall bring effects of agency.
- The other two forms of agency explained under Art. 2197 of the Civil Code **are not capable of affecting the principal** and hence **bringing the effects of agency.**

- How do you see the conclusion vis-à-vis the use of the term ‘agency’ in the partially disclosed and undisclosed agency?
- Can we say that a person who acted in his own name and on his own behalf represent undisclosed agency. **What makes him agent after all?**

❑ **Question for discussion;**

➢ Generally, what makes an agency a relationship ‘**undisclosed**’ **is the name test**.

- Accordingly, **the principal is not made known to third parties** but it is clear that **the agent acts on behalf of somebody else.**
- That is why such agency relationship is often considered as **an incomplete agency** or **imperfect agency/representation**.

- The mere fact that the agent wrote his name in the place of the space reserved for the principal while all his acts speak out that he is acting as a representative may not necessarily make him responsible for his acts.
- So, we may sometime be required to look in to the overall circumstance before concluding on the grounds of Art. 2197.
- **FSCCB, vol.5, case no. 23861; ሊቀስዩማን አሰፋ ባሻህውረድ እና የሣህሊተ ምህረትና ክርስቶስሣምራ ደብር አስተዳደር;**
  - ወኪል የሆነ ሰው **ውክልናውን በሚገባ እስካሰየ ድረስ በማመልከቻው ላይ የራሱን ወይም የወካዩን ስም አስቀድሞ መፃፉ** ወኪልነቱን ለውጦ ባለቤት የሚያደርገው ስላለመሆኑ የፌ/ብ/ሥ/ሥ/ህ/ቁ. 58

- የአመልካች ወኪል ጀነነው አሰፋ የተባለው በፌ/መ/ደ /ፍ/ቤት ክስ መስርቶ ክሱ በመታየት ላይ እያለ ፍ/ቤቱ አቶ ጀነነው አሰፋ ክሱን የመሠረተው “ ከሳሽ ጀነነው አሰፋ” ብሎ ፅፏል፣እሱ ወኪል እንጂ ከሳሽ ሊሆን አይችልም በማለትክሱን ውድቅ አደረገ።
- የውክልና ሥልጣን ያለው ሰው በዋናው ባለመብት ስም የክስወይም የአቤቱታ ማመልከቻ ማቅረብ እንደሚችል የፍ/ሥ/ሥ/ሕ/ቁ. 58 ይደነግጋል።አቶ ጀነነው አሰፋ የሊቀ ስዩጣን አሰፋ በሻህ ውረድወኪል መሆኑ በፍ/ቤቱም የተገለፀ በመሆኑ አመልካቹን ወክሎክስ ማቅረብ ይችላል።ክስ የመሠረተውም በውክልናው መሠረት ለመሆኑ ለየካ ምድብ ፍትሃብሄር ችሎት የፃፈው የክስ ማመልከቻ ያረጋግጣል። በመሆኑም የሥር ፍ/ቤት የፍ/ሥ/ሥ/ሕ/ቁ. 33/2/

- በመጥቀስ በጉዳዩ ላይ መብት ስለሌለው ሊከስ አይችልም ማለቱ ተገቢ ሆኖ አላገኘነውም። ምክንያቱም ክስ የመሠረተው በውክልናው እንጅ ባለመብት ነኝ በማለት ስላልሆነ ነው።

- **ወኪሉወኪልመሆኑንእስካሣየናእስከገለፀድረስ** በማመልከቻውላይየራሱንወይምየወካዩንስምአስቀድሞመፃፉምቢሆንወኪልነቱንለውጦባለመብትየሚያደርገውአይሆን፡;

Effects of undisclosed Agency

- **Art. 2197 (1)** – **the external contract is binding** between **the agent and 3rd parties.**
- **The agent personally enjoys the right** and **incurs the corresponding liability.**
- **Art. 2197 (2)** – as far as 3rd parties are concerned, they don't have **a right to claim their right directly from the principal,**
- but only on the **rights pertaining to the agent**. This **presupposes the existence of right of the agent** against the principal.

- **Arts. 2219 and 2220**
  - **remuneration right of the agent which may be derived from the law or the contract.**
- **Art. 2221**
  - The right **to be reimbursed of the expenses**, outlays, etc which the agent **has incurred from his own pocket** (where the principal **has not effected advance payments for expenses and outlays**.

- **Will it be possible for the principal to invoke against 3rd parties those defenses available against the agent?**

- **Art. 2223 (2)**
  - is about **set-off**.
  - Accordingly, the principal can claim for setoff against the agent **where the agent owes sums of money to the principal** because of **default in the performance of his duty.**
- Thus, where there **is legal subrogation of the 3rd party on behalf of the agent,** it follows that **the principal may raise any defenses which were available against the subrogator.**
- After all, **the 3rd party doesn't have independent claim against the principal** but as a subrogatee and **any defence against the agent can be raised against the 3rd party.**

- Will the agent be regarded as **the owner of those properties he acquired** while acting **in his own name** but **on behalf of the principal?**

➢ **Art. 1186 (1)** –

– the buyer of **corporeal chattels** is regarded **as the owner of the same upon possession of the good**.

- But, **under Art. 2198 (1)** though the agent is acting on behalf of others, according to the principle under Art. 1186 (1) **he should have been the owner**.
- Nevertheless, **Art. 2198 (1) presumes** that **it is the principal who is the owner** though the **agent has acted in his own name.**

- Had it not been for this, it wouldn't have entitled the principal the right to recover the property
- **Thus, can we say that Art. 2198 (1) is an exception to Art.1186 (1)?**
- However, Art.2198 (1) protects **the interest of 3rd parties** who transacted with the agent **in 'good faith' see also Art 1161 of cc**

❑What is the fate of those goods **which are sold out by the agent in his own name but on behalf of the principal?**

- **Art. 2198 (2)**
  - the principal may **substitute himself for the agent** and **enforce his claim rights (i.e., monetary rights)** against **3rd parties** where the conditions under **Art.2198 (3)** are satisfied.
  - The assumption here is that **the agent has certain claim right against 3rd parties.**
  - As far as monies in the hands of the agent which are the proceeds of the goods sold out are concerned – **See Art.2210**

Session Six

Acts performed by the agent beyond the scope of his power + unauthorized agency

- Recall the concept of 'complete agency' under Art. 2189
- The effects of violation of '**name test' are addressed** above
- The focus here is the legal stance when the **'authority test' is violated**,
- i.e., where the agent has **acted beyond the scope of his power.**

❑Read Art. 2190

- Where the agent acts in the name of the principal **but beyond the scope of his power** (**with a lapsed power** or **exceeding his authority**), **the principal has two options (sub-1):**
  - **Ratification** – subsequent adoption of juridical acts performed by the agent/ the adoption of unauthorized act; or
  - **Repudiation** – refusal to adopt

❑Ratification and its effects – Art. 2191ff

- In principle, **ratification is optional.** Thus, the principal may ratify if he wants to be bound by the performed act. If he doesn't like, **he can repudiate it.**

- **this may rely on the fruits of the act.** If the fruits of the act **are promising**, then the principal, **most of the time wants to ratify the act.**
- In addition, the principal will ratify only those acts the agent performed;
  - **beyond his scope of power** or
  - **based on power already lapsed** provided that **there is or was an agent principal relationship**.

❑FSCCB, vol.13, case no. 74538, ው/ሪት አሊያት ይማም ሙዘይን እና አቶእምነቴ እንደሻው

- ውካይ የሆነ ሰው የውካዩን ድርጊት እንደተቀበለዉ ሊቆጠር የሚችለው በህግ የሚፀና የውክሌናው ሌኖሮ ነገርግን ውኪሉ ከተሰጠው ስሌጣን በሊይ ሰርቶ የተገኘ እንደሆነ ወይም የውክልና ስሌጣኑ ካበቃ (ከተቋረጠ) በኋላ ውካዩን በመወከል የሰራቸውን ሥራዎች በተመለከተ ብቻ ስለመሆኑ፣የፌ/ብ/ህ/ቁ. 2190
- The appellant authorized her father as an agent in January 1995 E.C but the allegation was brought against her based the contract of sale of a house which her father made with the respondent in 1994. On the other hand, the contract of sale registered before the relevant office in 1998.

- Lower courts decided that:
- በ1994 የተከሳሽ ወኪል እና ከሳሽ ያደረጉት የቤት ሽያጭ ዉል ተወካዩ ህጋዊ ዉክልና እስካገኘት ጊዜ ድረስ ረቂቅ ነዉ የሚባል ቢሆንም በ1998 ዉሉ ከተመዘገበ በኃላ ህጋዊ ነዉ

❑ **FSCCB;**

- There is no legal ground to say that a draft contract written in 1994 will become a valid contract *ab initio* upon registration in 1998.
- በ1995 የተሰጠ የዉክላና ሥልጣን አገልግሎት የዉክልና ሥልጣን ከተሰጠበት ጊዜ ጀምሮ ለሚከናወኑ ህጋዊ ከግባራት ተብሎ የተሰጠ መሆኑን ከሚያመለክት በቀር ወኪሉ የፈጸመዉን ማናቸዉም ተግባር ለመቀበል እንደፈቀዱ አያስቆጥርም።
- Art. 2190 do not serve for situations where **the person purporting to be a representative was not given any agency authority**

- There are, however, exceptional instances where the principal **may be duty bound by law to ratify**.

A. Art. 2207-Good faith

- Where **good faith so requires**, even though the agent acted **beyond the terms of references given to him** by the principal, the latter **is duty bound to ratify the acts.**

- Consider the conditions attached under Art. 2207 (2 and 3).
  - ✓Sub-2 - a situation where the principal is expected to **have extended the scope of the agent's** authority **had he had prior knowledge about the situation**

- Sub-3 – where **the agent communicated the situation to the principal forthwith after having been acted.**
- The agent should communicate the fact **if he has time to do that- or**
- or he should **let the principal know** about the condition **after he acted**

➢ **Thus, if he fails to do so, he waives the opportunity**

B. Unauthorized agency (Agency of necessity), Art. 2257ff

- it is **an emergency power of agency emanating from law** where **the principal has some manageable interests** but **fails to manage it** and **without due authorization** some other person undertake the activities on behalf of the principal.
- Article 2257- Scope of Application
  - 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 without having been appointed an agent.**

❑ Unauthorized agency exists;

1. **Emergency situation-** pre supposes some kind of danger on the principals interest
2. **There is manageable interest** of the principal
3. The principal is **unable to do himself personally**
4. **No authorization**
5. **Then, agency by law**

- **conditions need to be fulfilled**
  - **Art. 2258 (1)** – the management should not be undertaken **against the principal's will**
  - **Art. 2259 (1)** – the acting person **should not undertake the mater in his own interest** (has to act on behalf of the principal), unless under the situation under Art. **2259 (2)**
  - **Art. 2260 (1)** – the acting person shall **forthwith inform** the principal that he undertook the management of his affair without authorization.

- **Art. 2261 -** the acting person should manage the affair **as the same care as bonus paterfamilias**
- Art. 2263- the acting person should act **with strict good faith**

- Where the acting person **has acted disregarding these conditions**, **he will not be considered as 'unauthorized agent'**
- Thus no agency relationship **unless the latter 'ratifies' the acts optionally** – **Arts. 2258 (2)** or as provided **under 2259 (2)**

- **Art. 2259 (2) –** this **does not need ratification** and it represents a typical case where agency emanate from law

❑ Finally, Art 2264

– Where the conditions above are satisfied and the interest of the principal are managed by somebody, **the principal has the obligation to ratify the acts done**.

- **Art. 2264 (1)** "…, he **shall ratify** the acts done by the acting person in his name (i.e. in the name of the principal)."
- The remarked phrase shows that **ratification is mandatory.**

❑ **Note**: - unauthorized agents do not have the authority to undertake acts

- ✓ **which have the effect of disposing any or all affairs of the person represented**, but **only management of the principal's affairs.**
- ✓ The individual on whose behalf unauthorized dealing was made **must be capable of entering into juridical acts** at the time the unauthorized act was committed.

❑ Effects of ratification

- **Read Arts. 2192;**
- *Where the **contract is ratified**, the agent shall he deemed* **to have acted within the scope of his power**
- Art. 2265;
- *Where the principal is bound by law to ratify the transaction or he in fact ratifies it,* ***the provisions governing agency shall apply (Art. 2233) – makes cross reference to Arts. 2179 – 2198***
- See also Art. **2264 (2 and 3)**

- Accordingly,
  - ✓ acts performed **before ratification are binding on the principal** and bring the principal and 3rd party as parties to the contract.
- **From what time on wards will the principal be bound?**
  - TM - Rights and obligations on the unauthorized contract are created **from the moment of the conclusion of the contract;**
  - that means, **ratification has a retrospective effect.**
- Reason; Art. 2192 **"… shall be deemed to have acted**…"
- The expression in the past tense shows **the retroactive effect.**
- **Within what time interval should the principal ratify?**

- See Art. 2191 – if the 3rd party wants to know the fate of the contract concluded beyond the scope of power;
  - ✓ he can demand the principal **to declare immediately his intention whether to ratify or not**.
  - TM – this provision also shows that **the third party cannot cancel the contract on his own** and **destroy the principal's power to ratify** by withdrawing from the contract.
  - Where such demands are made, the principal is duty bound to declare **his intention immediately**;
  - unless **silence is construed as repudiation (Art. 2191 (2).**

- In other cases, **there is no clear provision which obliges the principal** and ;
  - he is **at liberty to ratify it at any time**, of course **until a demand is made from 3rd party.**
  - Thus, we may resort to the period of limitation provided **under Art. 1845** of the general contract provisions by virtue of **Art. 1677.**
- **FSCCB, vol. 13, case no. 67376, እነ ወ/ሮ ንግስት ኪዳኔ (ሁለት ሰዎች) እና እነ አቶ በለጠ ወለደ ሰማያት (ሁለትሰዎች)፡**
- ወካይ የሆነ ወገን በተወካይ አማካኝነት የተረገን **ህገወጥ ውል እንዲፈርስ** በሚል የሚያቀርበው አቤቱታ **በአሥር አመት ይርጋ የሚታገድ ስለመሆኑ**

- The appellants authorized their agent (the respondent) **to undertake acts of management** concerning their house **when they left Ethiopia in 1990 b/c of the Ethio-Eritrean war.**
- However, the agent **sold the house in April, 1992 E.C** alleging that it was then ordered by the government **that Eritrean deportee shall sale their immovable within a month**.
- Claimant's opened a case before the Federal High Court in **09, June 2002 E.C.**
- They alleged that they knew the sale in **07, June 2002 E.C** (**the date they returned to Ethiopia**).

➢ **FSCCB;**

- The appellant's demanded invalidation of the contract not based on lack of **capacity**, **consent**, **object** or **form**; rather alleging that the contract **is illegal** which the agent performed **beyond the scope of his authority**.
- Thus, the provisions of Arts. **1808 -1818** as **Art.2192** so provides **are not relevant**. So does **Art. 2187 (2)** – **since there is no issue of conflict of interest.**
- Thus, it is important to find the relevant provision under **the general contract provisions.**
- In that case, **Art. 1845 is the relevant rule** and, therefore, **10 years is the period of limitation to bring action** (which is going to be calculated from **the date the principal knew the act performed**).

- **FSCCB; vol. 12, case no. 43226, ጌታ ትሬዲንግ ኃ/የተ/የግ/ማህበር እና የኢትዮጵያ ንግድ ባንክ**
- ውሎችን **ህገወጥ ናቸው ወይም በህግ የተቀመጠውን መስፈርት** አላሟላም (**Unlawful contracts** or **illegal contracts**) በሚል ለመለየት የሚቻልበት አግባብ እና የሚያስከትለት ውጤት።

- አንድ የማይንቀሳቀስ ንብረት ሀብቱን በሽያጭ የማስተላለፍ የውክልና ሥልጣን **በባለሀብቱ ባልተሰጠው ሰው** ወይም ንብረቱን **በሽያጭ ለማስተላለፍ በማይችል ሰው** ቢሸጥ ውሉን በመሠረታዊ ባህሪው በሞራላዊ ይዘቱና ዓላማው ህገ መጥ ውል /**unlawfull contract/** አሳደርገውም። ይህ ጉድለት መኖሩ ቢረጋገጥ ዉሉ ባለሀብትነትን በሽያጭ ለማስተላለፍ የተደነገጉትኔ አግባብነት ያላቸው ዶንጋጌዎች የማያሟላ **‘illegal or invalid contract’** የሚያደርገው ጉድለት ነው።

- ከባለሀብቱ በቂ የሆነ የውክልና ሥልጣን ሣይኖረው መይም ንብረቱን ለመሸጥ **የሚያስችል መብት በሌለው ሰው የተደረገ የሽያጭ ውል**፣
  - ውሉ በህግ የተደነገጉ **አስገዳጅ መስገርቶችን የማያሟላ ነው**። የዚህ ጉድለት ውሉን በፍርድ ቤት እንዲፈርስ መቃወሚያና ክርክር ሊቀርብበት የማይችል **‘invalid contract’ የሚያደርግ አይደለም**።
- Therefore, the terminology used in the previous case (vol. 13), i.e., **ህገ ወጥ ውል እንዲፈርስ** is erroneous. It should have been said **በህግ የተቀመጠውን መስፈርት** የማያሟላ ውል።

- B/c if the contract is illegal,
  - ✓action for invalidation or cancellation of the contract **can be barred by period of limitation** (Arts. 1810, 1845, or other specific provisions).
- Whereas, where the object of the contract is unlawful,
  - ✓**there is no period of limitation**; action can be brought at any time **since the contract is void *ab initio*** (Arts.1715-1718 + 1808(2)).

❑ Repudiation and its Effects, Arts. 2193ff

- **Read Art. 2193 (1)**
  - ✓ makes cross reference to **Arts 1808 – 1818** of the general contract provisions governing the **effect of cancellation and invalidation** of contract.
  - ✓ In such cases, as per **Art. 1815** the parties are to be **reinstated to the position they were before the contract**.
- Does **Arts. 2190ff** provisions show that where the principal **fail to ratify** or accept the **acts performed by the agent beyond the scope** of his authority or based on an authority lapsed **necessarily result in cancellation or invalidation of the contract**?

- **FSCCB; vol.5, case no. 26399, አቶ ታ/ማርያም ባዩ እና እነ አቶ ሣሙኤሌ ጎሣዬ (አምስት ሰዎች)**

- የውክልና ስልጣኑ ቀሪ ከተደረገበት እንደራሴ ጋር በቅንልቦና ውል ፈፅሙው በተገኙ ጊዜ ውል እንዲፈርስ **ላይወሰን የሚችልበት አግባብ የፌ/ብ/ሀ/ቁ. 1808, 1816, 2191(2), 2193**
- Fact – the agent sold the house of the principal based on an authority which is lapsed during the sale of the house. አመልካች (3rd party) የንግድ ድርጅቱን ከ1ኛ ተጠሪ(agent) ከገዛ በኋላ መልሶ ለሌላ ሦስተኛ ወገን በሽያጭ ስላስተላለፈና በእጁ አይገኝም

- **FSCCB;**

- ይሁን በዝምታ እንደራሴው ሥልጣኑ ቀሪ ከሆነ በኋላ የሠራውን ሥራ ያልተቀበለው መሆኑ ከተረጋገጠ የዚሁ ያለመቀበል ውጤትበቁጥር 2193 ተደንግጓል።የዚህን ድንጋጌ ይዘት ስንመለከት ሿሚው ይህንኑ የእንደራሴውን ሥራ ካልተቀበለው ምንጊዜም ይኸው ውል ፈራሽ ነው የሚል አይደለም።

- ይልቁንምከፍ/ብ/ሕ/ቁ. 1808 እስከ 1818 ድረስ የተመለከቱትን ድንጋጌዎች ተከትሎ የውሉ መፍረስ ወይም መሰረዝ ሊወሰን የሚችል መሆኑን የሚያመለክት ነው።ይህም እነዚህኑ አግባብነት ያላቸውን ድንጋጌዎች በመከተል ውሉ ሊፈርስ የማይችልበት አጋጣሚ ያለ መሆኑን የሚያሳይና ነገር ግን ውሉ የሚፈርስ ሆኖ በተገኘ ጊዜ ውሉ በመፍረሱ ምክንያት በቅን ልቦና ከእንደራሴው ጋር በተዋዋሉት 3ኛ ወገኖች ላይ ለሚደርሰው ጉዳት ካሣ የሚጠየቅበት መንገድ የሚያመቻች ድንጋጌ ነው፡

-

- ከላይ ከተረጋገጠው ፍሬ ቃል አንፃር አግባብነት ያለው ድንጋጌ በፍ/ብ/ሕ/ቁ. 1816 ነው።

➢ *Art. 1816 - Rights of third parties.*

- *Acts done in performance of the contract shall not be invalidated where the interest of third parties in good faith so requires.*
- ስለሆነም የዚህን3ኛ ወገን መብት ለመጠበቅ አስፈላጊ የሆኑትየቀና ልቦና እና የተሠራው ሥራ ውጤት ጠቃሚነት መስፈርቶች የተሟሉ ሆነው እስከተገኙ ድረስ የ3ኛውን ወገን መብት ከመጠበቅ አንፃር ይህ አከራካሪ የሆነው ውል የሚፈርስ ሆኖ አልተገኘም።

➢ Art. 2193 (2) – compensation for damage:

- The 3rd party can claim damage if two conditions are satisfied;
  - –He has to prove that **he has suffered loss as a result of repudiation**; and
  - –That he must have entered in to the contract **in good faith believing that the agent has authority**.

➢ Where these two conditions are satisfied, there is compensation.

❑ Who bear liability to pay compensation?

- Art. 2194 (1) – in principle,
  - **the agent is responsible alone**.
- Exceptionally, where the conditions under **Art. 2194 (2)** are satisfied,
  - the agent is relieved off the obligation and the principal alone bear the liability.
- Compensation may also be claimed **from both where** both the agent and the principal are at fault;
  - Art. 2195 (a):
  - Fault of the principal – **failure to inform 3rd parties** revocation of authority of the agent.
  - Fault of the agent – concluded the contract **knowing that his authority is totally or partially revoked**, taking advantage of silence of the 3rd party.

- **Art. 2195 (b)** – this provision presupposes the existence of document evidencing the agency contract and upon extinction of the contract; **the agent is bound to return the document – Art. 2184**.
- See also **Art. 2185** – The procedure in case the agent alleges that the document is destroyed or lost.

- Fault of the principal – failure to ask the return of the document or to secure court authorization under **Art. 2185**.
- Fault of the agent – **failure to return** the document and continuing to represent the principal though revoked.
- Art. 2195 c) – **apparent authority**;

- Fault of the principal – he know that he did not authorized the agent **but his behavior, view or act deceived 3rd parties.**
- Fault of the agent – acted knowing **that he is not authorized.**
- Discuss Art. 2196 – exclusion of liability

❑Session Seven

Obligations of the parties

- The obligations of the parties are dependent on
  - the **agreements made**,
  - the **law** **and** **by such incidental effects** as are attached to the obligations concerned **by custom**, **equity** and **good faith**. (Art 1713)

- As **duties and rights are correlative**,
  - **duties of an agent** are **rights of the principal**
  - and **duties of the principal** **are** **rights of the agent**.

❑Duties of the Agent

- Duties of the agent to a contract of agency **arise either from**
  - **Agreement** (express or implied) or
  - **from Law** (fiduciary nature of agency relationship)
- Basically where the agency **is contractual** the agent is bound to perform what **he has undertaken to perform.**

I. Duty to avoid conflict of interest – Art. 2187

➢ **TM -** The interest of the principal is
  - **the material interest valued in terms of his benefit**.

- The agent should represent his/her principal **solely for his benefit**.

- The agent **should not expect benefit of any kind** from the transaction he/she executes **without the knowledge of the principal.**
- If the agent is going to benefit **without the knowledge of the principal that may result in a conflicting interest**

- To say that there was a conflicting interest ***the point is not with whom he has concluded a contract*** but the fact that ***the interest of the principal is affected by the act of the agent*.**

- **Read Art. 2187 (1):**
- 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.**
- Consider sub-art. 2 and 3
- **TM-** when the principal has made his intention known to the third party to declare the cancellation,
  - the third party **has the right to sustain the contract** by making **the difference good within two months from having been informed** by the principal to cancel the contract **(Art.2187(3))**

- **FSCCB; vol.5, case no. 32241, <u>ወ/ሮ ካሰች ተካልኝ</u> እና አቶ <u>ታ/ማርያም አበበ</u> (ሁለት ሰዎች)**

- እንደራሴ የሆነ ሰው የውክልና ስልጣኑን መሠረት በማድረግሥራውን በሚያከናውንበት ጊዜ ተቃዋሚ ጥቅሞች (Conflict of interest) ማስወድ ያለበት ስለመሆኑ እና ከእንደራሴው ጋር ውልየፈፀመው ሦስተኛ ወገን እንደራሴው የውክልና ስልጣኑን በሚያከናውንበት ጊዜ ተቃዋሚ ጥቅሞችን የማስወገድ ግዳታውን አለመወጣቱን ማወቁ ወይም ማወቅ የሚገባው መሆኑ **ያደረጉትን ውሌ ፈራሽ ስለማድረጉ የፍ/ብ/ሀ/ቁ. 2187(1).**
- Facts - አመልካች **<u>ሚያዝያ 19 ቀን 1998 ዓ .ም</u>**. በተሰጠ የውክልና ሥልጣን በስማቸው ተመዝግቦ የሚገኝ የሚንቀሳቀስም ሆነ የማይንቀሳቀስ ንብረት መሸጥንም ጨምሮ ለ 1ኛ ተጠሪ የውክልና ስልጣን የሰጡ ስለመሆኑ በማስረጃ ተረጋግጧል።ይህ የውክልና ስልጣን ከተሰጠ በኋላ

- 1ኛው ተጠሪ ለክርክሩ ምክንያት የሆኑትን **ቤትና መኪና** በሽያጭ ለ 2ኛ ተጠሪ **ሚያዝያ 20 ቀን 1998 ዓ .ም እጅግ አነስተኛ በሆነ ዋጋ ሸጧል**።1ኛ እና 2ኛ ተጠሪ በክብር መዝገብ ሹም ፊት ጋብቻ የፈጸሙት **ሚያዝያ 30 ቀን 1998 ዓ .ም ነው**። አመልካች ይህንን ሽያጭ የሚቃወሙት በ 1ኛ እና 2ኛ ተጠሪ መካከል የባልና ሚስት ግንኙነት ስላለ **ከፍ/ብ/ሕ/ቁ. 2188/1/ አኳያ ከራስ ጋር እንደተደረገ ስለሚቆጠር ፈራሽ ነው በማለት ነው**።

➢ Judgement;

- ጋብቻቸውን የፈጸሙት ሽያጩ ከተደረገ በኋላ **ሚያዝያ 30 ቀን 1998 ዓ .ም** . በመሆኑ በሕግ ዓይን የሽያጭ ውል በተደረገ ጊዜ በሁለቱ መካከል ጋብቻ አለ ለማለትስ ለማይቻል አመልካች የጠቀሱት የፍ/ብ/ሕ/ቁ. **2188/1/ ለጉዳዩ አግባብነት ያለው ሆኖ አልተገኘም**።

- ቢሆንም **ሚያዝያ 19 ቀን 1998** ዓ.ም. ሽያጩ ተደርጎ **ሚያዝያ 30 ቀን 1998 ዓ.ም.** ከ 10 ቀን በኋላ ጋብቻቸውን መፈጸማቸው ሲታይ **ሽያጩ በተደረገ ጊዜ በሽያጭ የሚተላለፈው ንብረት በቅርብ እርቀት የእራስ ንብረት ሊሆን እንደሚችል በማሰብ ውሉ የተደረገ መሆኑን አጉልቶ የሚያሳይ ነው።** ይህም የጥቅም ግጭት መኖሩ ያሳያል።
- 2ኛ ተጠሪም እንደራሴው 1ኛ ተጠሪ በሚያደረገው የሽያጭ ውል **የጥቅም ግጭት መኖሩን እየተገነዘቡ ውሉን ማድረጋቸው የተረጋገጠ** በመሆኑ በዚሁ ሁኔታ የተፈጸመው ውል ፈራሽ መሆኑን የፍ/ብ/ሕ/ቁ. **2187/1/ ያሳያል።**

- **FSCCB; vol.10, case no. 50440, አቶሃብቱወልዱእናእነወ/ሮመሰለደስታ (ሁለትሰዎች)**
- ወኪል የሆነ ሰው የውክሌና ሥራውን በሚሰራበት ጊዜ የራሱን ወይም ከራሱ ጋር ቤተሰባዊ ወይም ሌላ ጥብቅ ግንኙነትና ትስስር ያለው ሰውና የወካዩ ጥቅም ሊጋጭ የሚችልበት አጋጣሚ እንዳይፈጠር መከላከል ያለበት ወይም በተፈጠረ ጊዜ አስቀድሞ ለወካዩ ማሳወቅ ያለበት ስለመሆኑ የፍ/ብ/ህ/ቁ. 2187(1)፣ 2198፣ 2208፣ 2209

➢ Facts፡

- አመልካች በመቀሌ ከተማ በስማቸው የተመዘገበውን ቤት አንደኛ ተጠሪ እንዲያስተዳድሩ ፣እንዲቆጣጠሩ ፣እንዲሸጡና እንዲለውጡ ውክልና ሰጥተዋቸው የነበረ ቢሆንም ከውክልናቸው ውጪ ለእናታቸው በስጦታ በመስጠት ስሙን ያዛወሩ በመሆኑ የስጦታው ውል ፈርሶ ስማቸው እንዲዞርላቸው ጠይቀዋል። አንደኛ ተጠሪ በሰጡት መልስ በተሰጣቸው ውክልና መሰረት ቤቱን ለሁለተኛ ተጠሪ ከመሸጥ በቀር በስጦታ አልሰጠሁም።

- አመልካችም በስር ፌ/ቤት በተደረገው የቃል ክርክር የሽያጭ ውልም ቢሆን አንደኛ ተጠሪ ውሉን ያደረጉት ከእናታቸው ጋር በመሆኑ የጥቅም ግጭት አለ በማለት ተከራክረዋል።
- First instance court - አንደኛ ተጠሪ ለእናታቸው ሸጪያለሁ ያሉት በተዘዋዋሪ የራሳቸውን ጥቅም ለማስጠበቅ ስለሆነ የጥቅም ግጭት አለ።
- Judgement;
- በፍ/ብ//ህ/ቁ. 2208 እና 2209 መሠረት **ተወካዩ የራሱን ጥቅም ብቻ ሳይሆን የቤተሰቡ ፣የጓደኛው ወይም ቅርብ ግንኙነት ያለው ሰው** ጥቅምን በሚመለከት ጉዲይ ሲያጋጥመው ሁኔታውን ለወካዩ ሳያሳውቅና ሳይስማማ ስራውን እንዲይሰራ ይከለክላል። ይህም የሚሆነው የውክልና ስራውን በሚሰራበት ጊዜ የራሱን ወይም ከራሱ ጋር ቤተሰባዊ ወይም ሌላ ጥብቅ ግንኙነትና ትስስር ያለው ሰውና የወካዩ ጥቅም በሚጋጭበት ጊዜ ከራሱ ወይም ከቤተሰቡ ጥቅም ይልቅ የወካዩን ጥቅም በማስቀደም ለወካዩ ጥቅም ብቻ ይሰራል ተብሎ ስለማይገመት ነው።

- ተወካይ ውሉን ከመፈፀማቸው በፊት ለአመልካች ያሳወቁና ስምምነታቸውን ያገኙ ስለመሆኑ በስር ፍ/ቤት ያቀረቡት ክርክር የለም። ወይም አንደኛ ተጠሪ ቤቱን የአመልካችን ጥቅም ብቻ በሚያስጠብቅ መልኩ ተገቢው ጥንቃቄ በማደድረግ ቤቱ በተሸጠበት ጊዜ ሊያወጣ በሚችለው የገበያ ዋጋ ሽያጩን ያከናወኑ መሆኑና የአመልካች ጥቅም በምንም መልኩ ያልተጎዳ መሆኑን በስር ፍ/ቤት ሊያስረደ ይገባል። ይህ ግን

- አልሆነም።በሌላ በኩል አንደኛ ተጠሪ ቤቱን በውክልና ስልጣናቸው የሸጡላቸው በመሆኑ የጥቅም ግጭት እንደሚኖር ሁለተኛ ተጠሪያው ቃሉ ወይም ሊያውቁ ይገባል። አንደኛ ተጠሪ ከአመልካች በተሰጣቸው የውክልና ስልጣን መሰረት የአመልካችን ቤት ለእናታቸው ለሁለተኛ ተጠሪ መሸጣቸው የጥቅም ግጭት መኖሩን የሚያሳይ በመሆኑም አመልካች ውለ እንዲፈርስላቸው ሊጠይቁ ይችላሉ።

II. Contracting with oneself

Read Art. 2288

- Contracting with oneself of the agent **may be explained** in two ways:
  - **the agent acting on his behalf** or
  - acting on **behalf of another principal**.

➢ In these cases the principal can **without proving either the conflict** or **the knowledge of the agent** (which the law has presumed to know) **declare the cancellation**.

➢ Here, the law has taken for granted that **when the agent acts either on his behalf** or **on behalf of another third party** there is **a conflict of interest**.

➢ Yet the agent may sustain the relationship by making the difference good. But the burden to prove that there was not conflict of interest rests on the agent.

- **Consider Sub-Art – 2 and 3**

- **FSCCB; vol. 1, case No. 14974, ወ/ት ማህሌትገ/ስላሴ እናአቶዮሴፍገ /ሥላሴ**
- አንድ ተወካይ በወካዩ ላይ ባቀረበው ክስ ወካዩን ወክሎ መከራከር ስለመቻሉ የፍ/ብ/ህ/ቁ. 2188፣2189፣ 2208፣ 2209, የፍ/ብ/ሥ/ሥ/ህ/ቁ. 57፣58
- Facts –in the lower courts, the 2nd respondent who was the agent of the appellant brought case against the appellant and the 1st respondent. And again, the 2nd respondent brought statement of defence in the name of the appellant in his capacity as an agent.
- **Issue -** አንድ ተወካይ በወካይ ላይ በመሠረተው ክስ በወካዩ ስም መልስ ሊያቀርብ ይችላል ወይ? አቅርቦ ስ ከሆነ ክርክሩ ወካዩ እንዳቀረበው ሊቆጠር ይችላል ወይ?

➢Judgment;

- ተወካዩ ለወካዩ **ፍጹም ታማኝ** የመሆን እና የወካዩን **ጥቅም ሙሉ ለሙሉ የማስጠበቅ ግዴታ ተጥሎበታል**። ስለሆነም ተወካዩ ስራውን በሚያከናውንበት ጊዜ ቅድሚያ ሊሰጥ የሚገባው የወካዩን ጥቅም ብቻ በመሆኑ የጥቅም ግጭት ባለበት ሁኔታ ተወካዩ በስራው አፈጻጸም ጥንቃቄ ሊያደርግ ይገባል። **ምክንያቱም የጥቅም ግጭት በሚፈጠርበት ጊዜ አንድ ተወካይ ከራሱ ጥቅም ይልቅ የወካዩን ጥቅም ሊያስቀድም ይችላል ተብሎ አይታሰብም**።
- Art. **2208፣2209 እና 2188** - ተወካዩ ለወካዩ ፍጹም ታማኝ መሆን እንዳለበት እና ለወካዩ ጥቅም ብቻ መስራት እንዳለበት፣ የጥቅም ግጭት ባለበት ጊዜ ሁሉ ሁኔታውን ለወካዩ የማሳወቅ ግዴታ እንዳለበት የሚያስገነዝቡ ናቸው። በመሆኑም አንድ ተወካይ የጥቅም ግጭት ባለበት ጊዜ **ለወካዩ ሳያሳውቅ** የሚየከናውነውን ስራ **ወካዩ ሊቃወመው የሚችል** መሆኑን እና በዚህ ሁኔታ የተከናወነው ስራም ወካዩ ካለፀደቀው በቀር ወካዩ ራሱ እንደፈጸመው ሊቆጠር እንደማይገባ ከውክልና ግንኙነት አጠቃላይ ዓላማ እና ከፍ/ብ/ህጉ ድንጋጌዎች መገንዘብ ይቻላል።

- 2ኛ ተጠሪ በአመልካች (በስር 3ኛ ተከሳሽ) ላይ የመሰረተው ክስ በወኪሉ እና በተወካዩ መሃከል ግልጽ የጥቅም ግጭት ፈጥሯል። 2ኛ ተጠሪም ራሱ ከሳሽ ሆኖ የቀረበበትን ጉዳይ ለአመልካች የገለፀላት መሆኑ እና አመልካቿም ተጠሪው የቀረበውን መልስ የተስማማችበት ለመሆኑ የተረጋገጠ ነገር የለም። አመልካቿ እንዲያውም ወኪሏ የሰጠውን መልስ ተቃውማዋለች። በመሆኑም 2ኛ ተጠሪ **ራሱ በመሠረተው ክስ ለአ መልካች ሳያሳውቅ ያቀረበው መከላከያ መልስ ስለወኪልነት የተመለከቱትን መርሆች እና የህጉን ድንጋጌዎች የሚቃረን በመሆኑ** **አመልካች በወኪሏ በኩል ክርክር አቅርባለች ለማለት አይቻልም**። በዚህም ምክንያት አመልካች በወኪሏ በኩል መልስ ሰጥታ የተከራከረች በመሆኑ በሌለሁበት የተሰጠው ውሳኔ ተነስቶ ወደ ክርክሩ ልግባ በማለት ልትጠይቅ አይገባም ተብሎ የተሰጠው ብይን የህግ ስህተት አለበት።

III. Good faith required of the Agent –2208 and 2209

- The Agent **should act with strict good faith**
  - **To the best interest of the p.**
  - **Should avoid conflict of interest**
- 2208(2)
- The agent should disclose circumstances which would justify **the revocation** or **a variation of the terms**.
  - Ex. where the agent is **less interested to the affair he/she is running;**
  - **risk of conflict of interest**
  - **risk of bankruptcy**
- What kid of circumstances- those any reasonable man could think of *relevant-**objective standard***

- See the FSCCB decision above - **vol.10, case no. 50440, አቶ ሃብቱ ወልዱ እና እነ ወ/ሮ ሞሰለ ደስታ (ሁለትሰዎች)**
- **Read Art. 2209- effect**
  - Acting to the exclusive interest of the P.
  - Should not derive any benefit w/o the knowledge of P. Ex. Bribe,
  - Should not use information's he gained during his tenure to the detriment of P
- **But nothing similar to effect is provided there-it is just additional obligation of the agent**

- **TM -** The failure of the agent to fulfill the requirements of good faith or any other similar duties must be remedied by the rights of the principal to revoke under Art **2226 and Art 2227** of the Civil Code, where the principal is empowered **to revoke the** authority at his discretion **where he has a just motive**
- when the contract is revoked by the principal the benefits the agent gained shall **no more be benefits to the agent**. Therefore the principal may set aside the transaction and claim from the agent **any profit the agent may have obtained from such transaction.**

IV. Duty to account – Art. 2210 and 2213

- Read Art. **2210 Accounts**
  - The agent shall account to the principal **for sum received by him** and **all profits accruing to him** in the **course of his employment**, **not withstanding that the sums he received were not owed to the principal.**
- What does the last phrase imply?
  - What if the third party pays additional payment **mistakenly/ by the fraudulent act of the agent?**
  - Who is entitled to the money?
- **TM;**
  - This duty exists even **if there is an adverse claim to the money by someone else** including the agent.
  - It exists even if the money received **by the agent on behalf of the principal was illegal.**

- Could also be the case where the agent **has received an extra amount with a mistake of fact from third parties.**

- **TM** - the agent **is obliged to keep the principal's property and money separate from his own and from other people's property and money** to keep proper accounts, and to **be ready to produce them on demand** to the principal or a person appointed.

- Read Art. 2214;
- Provides for **measures the principal may take** when the agent accounts the management of affairs in accordance with Arts. **2210 and 2213.**
- Accordingly, the principal may:
  - Expressly **accept the report- relive the agent fron any liability**
  - Expressly **reject it- is bound to be examined whether the agent acted within his power and whether the principal is bound to ratify it. See Art. 2207 of CC**
  - **Or remain silent- if too long- is deemed acceptance**

- Art. 2214 (1), **The time is evaluated based on the nature of the affair or usage- ex. Perishable goods, holidays…?**
- the 3rd situation works for both an agent working **within the scope** or **acting beyond the scope** of authority – **Art. 2214 (2).**
- When the principal does not respond within a period dictated by the nature of the affair or usage then **the principal is assumed to have approved and hence assumed to be ratified the acts done**

V. Diligence required from an agent – Art.2211

- It is about the duty **of care and skill** the agent is expected to show towards the affairs of the principal.
- What is the degree of care and diligence required? **Is it subjective or objective?**

➢ Read Sub -3 gives as a clue.

  – Accordingly, when the agent acts without consideration, he has to apply the same degree of diligence **he employs for his own affairs**

  – **subjective standard--**For **remunerated agents**,

  – **objective standard** – he has to act as ***a bonus pater familias; like* a good father would show towards his family/children**.

➢ See Art. 2212 – applicable for **both paid and gratuitous agents**

VI. **Non-delegation of authority – 2215 - 2218**

- principle –
  - maxim ***"delegatus non potest delegare,"*** which means the delegate (agent) **cannot appoint a delegate (agent).**
  - **The Agent must perform his duty personally..however**
- Exception;
- Art. 2215 (1) – out of contract i.e
  - Where the agent is authorized by the P.
- Authorization by the law
  - where it is implied from usage of the place of performance that the personal qualification of the agent does not matter.-P.

– unforeseen circumstances prevents the agent from discharging his obligation and he is unable to inform to the

❖ **relationship b/n the agent and the sub-agent- Liability of the A.**

- Read Art. 2216 –
  - If no authorization- the agent him self is liable
  - If authorization- he will be liable **for the care with which he selected the sub-agent**

❖ Relationship between the Principal and the sub-agent

- Read Art. 2217
  - if the sub-agent had reason to belive that the agent has authority to appoint- he is assumed to get authority directly from the P.
  - If no belief- unauthorized agency
- Art. 2217 (1) – **why the belief of the sub-agent matter**? **Is the law in favor of the sub-agent?**

- Read Arts. 28 -60 of the commercial code.

- Read Arts. 28 -60 of the commercial code.
- **FSCCB, vol. 13, case no. 68498, አቶ ገብረክርስቶስ ገብረ እግዛብሔር እና ሰባ እምነበረድ ኃላፊነቱ የተወሰነ የግል ማህበር**
- አንድን ተቋም ወክሎ ውል ለመዋዋል በህግ ስልጣን የተሰጠው ሥራ አስኪያጅ ስልጣኑን ለሌላ ሰው **<u>በህግ ተቀባይነት ባለው ሁኔታ አስተላልፎ ውል የተደረገ እንደሆነ ተቋሙ በሥራ አስኪያጁ በራሱ በመፈረም ውል አላደረገም በሚል ምክንያት ብቻ በውሉ አንገደድም ለማለት የማይቻል ስለመሆኑ፤ በፍ/ብ/ህ/ቁ. 1731 2274 2214(1 2215(3),2180)</u>**
- Facts – the head of the purchasing office (A/o Estifanos Asfaw) of the respondent concluded contract of sale of marble to the appellant based on an oral authority given by the manager of the respondent who had the exclusive legitimate authority to sign contract of sale on behalf of the respondent

- Latter, the respondent contested the existence of valid contract when it is requested for the performance of unperformed part of the contract claiming that the contract is not made by the right person and in writing.
- Judgment;
- Art. 2180 does not require special form where the external contract is not subjected to a special form. Sale of marble is not required to be made in writing.
- As Art. 33 (1) and 35 (2) of the com. code provide, manager is authorized to act as an agent of business organizations

- Thus, the contract made by the purchasing officer under the authority granted upon him by **the manager who has the full authority to do so under Art. 2215 (3) and based on Art. 2180** is a contract made while the manger is aware of the same.
- In addition, the respondent did not declare that **the officer has made the contract beyond the scope of his authority** and thus, not bound by it.
- This shows that the principal approved the contract according to Art. 2214 (1) – because after having considered the contract accepted advanced payments and performed part of the obligation (delivered 616.40 m3 marble); 2164.60 m3 not delivered.
- Thus, the respondent is bound by the contract made by the officer as a sub-agent.

❑Obligation of the principal

1. **Obligation to pay Remuneration**

- Representation might be up on remuneration or for free(gratuitous)
- Read Art. 2219
- Three scenarios-

i. **The agreement have stated remuneration and fixed the amount**

- **Hence the agent is entitled the amount fixed. But the court can reduce the amount-Art.2219(2)**
- **Can the court analogically increase the amount paid to the agent when it is too low? Why/why not?**

❑Two lines of Argument

a. yes-

- there is nothing which prevent the court from using analogy to increase the mount to the agent
- Equality of parties to the contract

b. No.

- Absence of agreement what is presumed is gratuitous agent- Art. 2220
- So, the court can not increase the payment which is low
- It is for this reason that the law deliberately inclined toward the p.

ii. **Where the contract does not stipulate remuneration either expressly or impliedly**

- Read. Art. 2220
  - No remuneration – gratuitous agent -sub 1
- Exception- when the agent "**carried out the agency within the scope of <u>his professional duties</u>** or **<u>where remuneration is customary</u>**- sub-2
  - Ex. Attorney, commission agent(2243)

iii. **<u>When the amount is not stipulated in the contract</u>**

- **<u>Read Art. 2220(2)</u>**
- **<u>There is a contract but it failed to fix the amount</u>**
- **<u>Or the agent might be professional agent</u>**
- **<u>Read art. 2243</u>**

- In such cases the court shall fix it with recognized rates and usage

2. **Duty to Advance Money**

- **Read Art. 2221(1)**
  - Money needed to run the representatio. Ex. transportation……

3. **Duty to reimburse outlays and expenses**

- **Read Art 2221(2)**
- the principal needs to reimburse the expenses the agent has incurred with the interests it bears calculated from the day where the agent has used the money

4. **Duty to release the Agent from Liabilities and Damages**

- **Read Art 2222**
- The principal's duty to indemnify his agent's losses, liabilities and expenses incurred in the performance of the undertaking
- requirments

a. For liability- The liability should be incurred by the agent while acting in the interest of the principal. Ex**. Payment of additional custom duty** or **tax**

b. For damages the agent sustained- the damage must not be due to his own fault- if not the P should cover it. Ex he **might destroy goods**; **might cause damage to others**

5. Set – off Conditional to the Principal

- Look at Art. 2223.
- The principal's **obligation to pay remuneration when it is not committed** **is breach of the obligation** on the part of the principal for which the agent may sue.
- In this case **the principal cannot raise the defense of set-off** **under the pretext that the transaction was unsuccessful.**
- But the principal may set – off the sums which he/she is bound to pay (including remuneration) when the business was unsuccessful **due to the agents default in the performance of the affair**.

6. Agent's Lien Right

- Look at Art 2224
- If the principal **has not discharged his obligation** of **paying remuneration**, **expense, damage** or **liability payments** etc and if the agent **is in possession of goods belonging to the principal**, then the agent is entitled to exercise **a lien on such goods and retain possession of them** **until such time as the principal has satisfied the due claims of the agent**
- **However,** the agent **cannot exercise a lien right over the document evidencing agency** between the agent and principal. **See Art. 2184**