Chapter One

The concept of the law of agency

Introduction

- A person may deal with his affair **either personally**, without assistance from third parties or, **as a case may be, through other persons** who represent and act **on his 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.
- 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 manifolds
    - ✓ **occupations, absence, illness, advanced age, etc;** or
  - A representative may be designated in order to take advantage of his special capacity, knowledge, and experience even for the mere desire, such as not to appear personally in order to avoid hostility, controversy, etc or similar considerations.

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**

Agency;

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

- 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**."

- 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**.
  - Teaching material;

    "Law of agency is **the judiciary relation which results from the manifestation of consen**t by one person to another that the other shall act on his behalf and subject to his control, and consent by the other so as to act."

    (Black's law dictionary, 1991)

- The civil code; **Art. 2199 - Definition**

  *"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**."*

- **Vol.1; ወ/ት ማህሌት ገ/ስላሴ 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)

Significance/Why law of Agency?

a. 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.

- At this juncture, it is important to appreciate the distinction between **an agent acting on behalf of a juridical person** and **employees of the same**;

Employee v. agent

- **Art. 2199.-Definition.**

  "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."
- See Art.4(1) and 2(3) of the labour proclamation for the definition and nature of employee/employer relationship

Differences

- Parties;
  - Agency - Principal and the agent
  - Contract of employment – employer and employee

    :- however, an agent, as distinguished from an employee, can be a natural or a juridical person

- In relation with the right and extent of control;
  - In both cases, either the employer or the principal have the right to define the work to be done; but, it is only the employer that has the right to determine the manner in with a work is to be done while the principal does not normally have such right.
- Source of authority;
  - According to Article 2179 of the Civil Code of Ethiopia, the source of authoring of the agent could be a law or contract, whereas the source of employment relationship or the worker's source of authority is only a contract.
- Wage;
  - Wage is an element of an employment relationship. So, we cannot get a "worker" who serves for free.
    - **12. Obligations of an Employer**

      2) To pay the worker wages and other emoluments in accordance with this Proclamation or the collective agreement
    - 53 (1) "**Wages**" means the regular payment to which the worker is entitled in return for the performance of the work that he performs under a contract of employment
  - But, remuneration is not so essential in agent – principal relationship, as we don't find this element in the definition of Agency;
    - **Art. 2220. - Remuneration not fixed by contract.**

      (1) In the absence of a stipulation in the contract, the agent shall not be entitled to remuneration unless he carried out the agency within the scope of his professional duties or where such remuneration is customary.
- Under whose name the service is rendered;
  - The agent renders service in the name of the employer i.e. the principal.

- But such is not the case for the worker. Though the service he renders is in the interests of the employer, the worker always provides service in his own name.

b. From the point of view of incapacity of physical persons;

- Though physical persons are deemed holders of rights and bearers of duties from birth, for different socio-legal considerations, the law excludes certain categories of physical persons, such as minors, interdicted persons, infirm persons, foreign nationals, etc from entering into legally binding contractual relationships. Hence, they need to be represented by an agent for their interests be managed appropriately.
- **Note;**
  - An agent normally supposed to represent the principal and binds not himself but his principal. Therefore, any person capable of performing the functions involved can be an agent.
  - Thus, would it be logical to conclude that **legal capacity (particularly, minority)** should not be a condition precedent to act as an agent (notwithstanding that his duties and liabilities to his principal might be affected by his status)?
    - ***Fetha Negest*** – *says: "Anyone who can administer all his affairs properly and can give a sound judgment is worthy of being appointed as a chief." Arabic text: "Anyone who can administer his own affairs can also be appointed administrator (Mandatary)."*

c. 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, temporal, 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**

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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.

    1. A will is an act which is strictly personal to the deceased.

    2. Any 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.

    3. 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 done 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.

  1. *Each of the future spouses shall personally be present and consent to the marriage at the time and place of its celebration.*
  2. *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 emerged around the 12th c (A.D) along with the salve 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***.

1. 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:
    1. The Roman conception of the personal nature of obligation

2. 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.
3. rights and liabilities were acquired or incurred only by the persons making the contract; third parties are not considered.

- 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.

2. 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:
    1. The emergence of the class of attorneys in legal matters.
    2. The impact of cannon (laws of the Christian church) law: and
    3. 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.

3. 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.

4. 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; <u>Chapter XXX (30), Mandate (on Proxy/ assigning authority)</u>*
  - Provides rules governing the relationship of mandatory (principal) and mandatary (agent).
  - Some important stipulations worth consideration;
    - *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 may be given 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 of the mandatory [either formally] or by his actions.*
    - *There are also 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 mandatory 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.

Session two

1. Sources of Agency

- The authority of an agent which enables him to execute certain acts in the name and on behalf of the principal may derive from law or contract; but exceptionally, it may also emanate from the decision of courts of law (judicial decision).
- 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.

Agency emanating from law

- When agency arises from the law, it is the law which governs the agency.
  - **minor**
    - Art 280 of the civil code;

      1. 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
      - In this case, without the need to secure the consent of the principal or authorization, agent-principal relationship comes into existence.
      - This usually happens when the persons interest so demands and that person is not in a position to appoint his agent for one or other reason.
    - Art. 305 of the RFC;

      1. 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.

2. They shall not be binding on the tutor personally, save an explicit undertaking on his part or in cases provided by law.

- **Business organizations; example**
  - Management of Business organizations
    - **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

        1. The provisions relating to agency shall apply to rights and duties of managers.

        2. …
      - ✓ Art. 242. - Unauthorized agency

        Where a person holds himself out to be a manager of a partnership or where a manager exceeds his powers, the rules relating to unauthorized agency shall apply.
      - ✓ Art. 265. Duties and responsibilities of liquidators (appointed where it is necessary to dissolve the OP)

        1. Unless otherwise provided in the partnership agreement or by law, the liquidators shall have the same duties and responsibilities as managers.

        2. …
    - **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.

(2) Any provisions restricting the extent of these powers shall only affect third parties where such provisions have been entered in the commercial register or if it is shown that the third parties were aware of such provisions

- **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

- Civil procedure – Art. 58 agents who can make appearances, applications and acts before courts representing the parties to the case.

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.
- Governed by arts. 2253-2256
- 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 an agency law that by judicial decision?
- 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.
  - **Proponents** – since it is an appointment by the court for conditions specified upon the application of the parties

stated therein and that the person represented won't be required to give his consent (Art. 2256 (1)), and ascertaining these elements is up to the court, it is a third source of agency – by virtue of judicial decision.

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** – since Art. 2179 specified the two possible source of agency, Art. 2253 and following provisions can be taken as agency emanating from law. It is even the law which is defining the relationship and therefore, the authority emanates from the law.

Contractual Agency

- Basically, the purpose of a contractual agency 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 when we think of agency; the principal, agent and third party/ies.
- Accordingly, when agency emanates from contract, it is appropriate to distinguish between the internal contract creating the agency relationship and the external contract which the agent concludes with third parties.
- **Art. 2199ff** provisions govern agency emanating from contract. In view of that,
  - The parties to the contract are: **principal and agent**
  - Particularly, the definition under Art.2199, though it tries to define the internal contract of agency, it more capitalize the obligation of the principal and is neutral about 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 formations of the internal contract (including the requirements) need to be considered in reference to the validity requirements for the formation of contract under the general contract provisions (Art. 1678 cc), when necessary.

Requirements – Art. 1678 cc

- Capacity;
  - consider the discussion in the previous session
  - consider the following statements from the teaching material;
    - "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.

    - The capacity of an agent is a matter of indifference with respect to the main contract. Hence, a principal can appoint an incapable person as his agent. 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.

- Art. 2189 – complete or disclosed agency/ perfect representation
  - *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.*
    - Two conditions needs to be satisfied to say that there is perfect representation:
      1. The agent should act in the name of the principal (disclose the principal)
      2. The agent shouldn't transgress the power bestowed – has to act within the scope of his power.
- If these two conditions are satisfied, there is perfect agency and the effect is that:
  - Juridical acts done by the agent are binding on the principal. Contracts made by the agent are deemed to have been made by the principal.
  - That is why it is said (in this kind of agency) that "a person acts himself when acting for other."
- 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.
- Additionally, what Art. 2189 tells us is that, under the Ethiopian law of agency, it is the "***name test***" (1st condition) which is more crucial than the "***authority/functional test***" (2nd condition). Because;
  - If the second condition is violated, there is a redress mechanism called the "process of ratification". According to Art. 2190cc, the principal may ratify or repudiate the act of the agent who acted beyond his authority. The effect of ratification is that, the agent is deemed to have acted within the scope of his power – Art. 2192

- However, where the name test is violated (except in the cases of commission agents), the principal will not be bound the act performed.
  - ✓ See **Art. 2197 amharic version** (the title of the English version erroneously says “agent acting on his own behalf” instead of “agent acting on his own name”)
  - ✓ እንደራሴዉ በራሱ ስም ሲለሚፈፅመዉ ተገባር።

    An agent who acts on his own name shall personally enjoy the right or incur the liabilities deriving from the contracts he makes with third parties, notwithstanding that such third party know that he is an agent.

- As stated above, in case of complete agency, the agent disappears from the transaction. Thus, it can be argued that the principal has every right to appoint as an agent an incapable person.
- As 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.
- What would be the effect of unfulfillment of the requirement of capacity in internal contract on the external contract? (Assume for instance that a minor is appointed as an agent and concludes contract of sale with third party (complete agency – fulfilling the two conditions).
  - Conceptually, most jurists agree that since the agent is out of picture, incapacity of the agent won’t affect the external contract.

- On the other hand, when we look at 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.
  - ✓ The implication of this provision is that, 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. The same works where the agent become incapable after the conclusion of the contract of agency and the principal having been informed, do not terminate the contract.

❖ <u>Consent;;</u>

- According to Art.1678 (a) cum 1679ff 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.
- Unless, the contract is voidable as per Art.1802 (1) cc. But, until such time that the internal contract is invalidated, it won't have effect on the external contract.
- **The effect of Consent of the agent in the external contract;**
  - As Art. 2198 (2) provides, vitiation of consent of the agent when he conclude contract with third parties has different effect than the incapacity case.
  - Here, the consent of the agent becomes important element for the validity of the external contract. 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).

- In addition, the fact that Article 2189 talks about the effect of consent setting aside the issue of capacity shows that the intention of the legislator that incapacity has no impact on the external contract.
- Art. 21389 (3) – if fraud is committed against the 3rd party to the external contract, he can avail this as a defense against the principal; but not duress false statement or mistake.
    - Why does the legislator singled out only fraud? And only fraud committed by the agent but not the ppal?
        - ✪ **Teaching material** - art.2189 of the civil code renders more protection to the principal than to the third party.
        - ✪ **Regarding the first question**, though it looks that the legislator has singled out 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).

✪ **2nd question;**

Art.1704. - Fraud.

(2) A contracting party who has been deceived by a third party shall be bound by the contract <u>unless the other contracting party knew or should have known of the fraud</u> on the making of the contract and took advantage thereof.

- The answer demands a look at Art. 1704 (2) of the cc which also talks about a contracting party defraud by

third party. According to this provision, a contracting party deceived by a 3rd party need to prove that the other contracting party knew or should have known of the fraud on the making of the contract and took advantage of it. 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.

- Object;
  - According to Arts. 1715 and 1716 of cc, object of any contract including the object of contract of agency has to be lawful, moral possible and sufficiently defined.
  - Concerning contract of agency, difficulties usually arise regarding the extent of power given to the agent – whether the object is sufficiently defined or not.
    - Art. 2203 – 2205 give answer for this problem. Accordingly, where the authority is given to the agent in general terms, he can perform only acts of management as defined under Art. 2204. On the other hand, Art. 2205 list those acts which demand explicit authorization from the principal (special agency).

- Form;
  - Art. 1608 (c) cum 1719ff of cc, parties to the contract have the authority to determine the form of the contract unless a special form is required by law.

- Similarly, as Art.2200 provides, there is no formality for acceptance of agency. It can be implied or express. So there is freedom of form. 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).
- Though this is the case, most often people worry about the validity of authority granted for the agent and thus demand a proof. Thus, practically, contract of agency is made in a written form.

NB:-

- 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.
- **See FSCCB decision No. 59568, vol. 12; Tewodros Tesfaye vs. Mulu Arge, et al**

  - የውክልና ስልጣን መስጫ ሰነድ በህግ ስልጣን በተሰጠው አካል ቀርቦ ካልተረጋገጠና ካልተመዘገበ በስተቀር ህጋዊ ውጤት የማይኖረው ስለመሆኑ አዋጅ ቁ. 334/95 አንቀጽ 5/1//ለ

- **Offer and acceptance in the formation of contract of agency;**
  - As does any other contract (Art, 1682ff cc) offer and acceptance in contract of agency can be effected orally or in writing or by signs customarily used, or by conduct, unless the party who makes the offer stipulate a special form of acceptance.
  - As Art. 2201 (1) provides, the agent may accept his appointment either expressly or impliedly. Accordingly, as does any other contract if for instance, silence may be taken as acceptance. But, silence won't be construed as

acceptance in some exceptional cases under the law of agency. In other words, express acceptance is required in the following cases;

- ✓ **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
- ✓ **Art. 2235 (3) – commission agents**
  (3) Such duties shall he 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**

Session three

Scope of Agency – Arts 2202ff of cc

- **Art. 2181 (1)** - The scope of power assumed by the agent is determined by the contract giving rise to agency.
- On the other hand, sub-art. 3 of the same provision provides that the scope of power of agency as provided by the contract shall be interpreted in a restrictive manner – advocates **the principle of narrow construction.**
- Once again, **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?

- According to Art. 2202 (1), based on the nature of transaction the agent is conferred authority, the 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 what has been provided under the general law of contract Art. 2713; where parties to the contract are bound by implied terms read into the contract taking in to account custom, good faith and equity.
  - *Art. 1713 – contents of contract*
    The parties shall be bound by the terms of the contract and by such incidental effects as are attached to the obligations concerned by custom, equity and good faith, having regard to the nature of the contact.
- Therefore, it is important to have in mind that, restrictive interpretation prescribed under Art. 2181 (3) do not affect what is provided under Art. 2202 (1).

- **E.g**., If '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, and if 'P' says that he is not bound by the contract the agent entered in to, it can be inferred that in accordance with the requirement of 'good faith', renovation of the room is incidental effect of the contract.

❖ 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**.

1. 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 is easy to infer that 'all affairs' as stated under Art. 2202 is more than 'acts of management'. Accordingly, the provision gives the impression that a general agent can perform acts other than acts of management. Whereas, Art. 2203ff provision

limits the scope of the authority and state that if the agent wants to perform acts other than acts of management, he has to get special authorization.

- ♣ For instance, though the contract of agency says that the agent is authorized to undertake all the affairs of the principal, such agent can't do acts stated under Art. 2205.

- Thus, 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.
- **The 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 etc) … and usually agency conferred in germs is limited only to the management of the said affair – Art. 2203.
  - ♣ A person, conferred with agency in general terms is only empowered to sustain the rights of the principal and is not empowered to perform acts of disposing the rights of the principals. Hence, such agents have a limited power less of disposing the rights of the person represented.
- **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 የሚያናጽፍ ስለመሆኑ የፍ/ብ/ህ/ቁ. 3049(2)2206(1)
  - ♣ በዚህም መሠረት በውክልና ማስረጃው ውስጥ በዝርዝር ባይገለጹም "ቤታችንን እንዲያስተዳድር " የሚለው ቃል፣ ተወካይ የወካዮቹን ቤት የመጠበቅ፣ የማከራየት፣ የቤት ኪራይ የመቀበል፣ ደረሰኝ የመስጠትና ሌሎች አስተዳደራዊ ተግባራትን 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 ሊተረሙ የሚገባ ስለመሆኑ እና "በስማችን ውል እንዲዋዋል" በሚል በደፊናው የተሰጠ ውክልና ሊተረም የሚችልበት አግባብ የፌ/ብ/ህ/ቁ.2181(3), 2205, 2204
- ♣ As the court reasoned out "ተጠሪዎች ወካዩ 'በስማችን ዉል እንዲዋዋል' በማለት የሰጡት ወክልና" 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.***

❖ What are the acts considered to be acts of management?

➢ See the list of activities stated under Art. 2204 (1) and (2)

- **Are the listings exhaustive?**
  - 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 above (the 1st) shows that issuing a receipt for debt collected is part of acts of management.
  - **The teaching material;**
    - these acts are acts of disposition, a close look at these activities reveals that the purpose of conferring power to conduct these activities for an agent 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.

E.g., will taking debt to discharge acts of management be considered as acts of management?

- **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.

2. Special Agency – Art. 2205 and 2206

- ❖ Special agency is an authority different from general agency in that it empowers the agent to dispose the rights of the person represented. **That is why it is named acts of disposition.**
- ❖ Since it is an authority conferred to perform a particular affair or certain affairs, special agency don't involve continuity of services. **It confers upon the agent 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)**
- ❖ " … where the agent is called upon to perform acts other than acts of management."
  - ➢ **Teaching material** – the phrase shows that the acts mentioned there are not exhaustive; rather all acts involving disposition of the interest of the principal has to be conferred in the form of special agency.

- Art. 2206 (1) – "… *and their natural consequences according to the nature of the transaction*."
  - ♣ This shows that, though the authority of a special agent is limited to the particular affair (s), still he may discharge acts naturally follow the principal act.
    - ✓ **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 የሚያናጽፍ ስለመሆኑ የፍ/ብ/ህ/ቁ. 3049(2)2206(1)
      - ✪ የውክልና ማስረጃው ለተወካዩ ልዩ የውክልና ስልጣን የሚሰጥ ከሆነ ሕጋዊ ውጤቱ በውክልና ማስረጃው ላይ ከተፃፉት ተግባራት በተጨማሪ፣ በውክልና ማስረጃው የተገለፁትን ጉዳዮችና እንደ ጉዳዩ ክብደትና እንደ ልምድ አሰራር በውክልና ማስረጃው የተገለጹትን ጉዳዮች ተከታታይና ተመሣሣይ የሆኑ አስፈላጊ ተግባራትን የመፈፀም ስልጣንን የሚያካትት መሆኑ የፍትሐብሔር ሕግ ቁጥር 2206 ንዑስ አንቀጽ 1 ይደነግጋል። ስለዚህ የተጠሪዎች ተወካይ ቤቱን አስመልክቶ የተሰጠው ልዩ የውክልና ስልጣን፣ በውክልና ማስረጃው በግልጽ የተመለከቱትን ጉዳዮችና በውክልና ማስረጃው ባይገልፁም በፍትሐብሔር ሕግ ቁጥር 2206 ንዑስ አንቀጽ 1 የሚሸፈኑ ጉዳዮችን የመፈፀም ችሎታ እንደሚጨምር ለመረዳት ይቻላል።
      - ✪ በመሆኑም ተጠሪዎች ለወኪላቸው አቶ ገዛኸኝ በልሁ ቤቱን እንዲሸጥ እንዲለወጥና ለሶስተኛ ወገን እንዲያስተላልፍ … የሰጡት የውክልና ስልጣን ተወካያቸው ቤቱን በመያዣነት ለማስያዝ የሚያስችለው ስልጣንና ችሎታ የሚያጎናጽፈው መሆኑንን የፍትሐብሔር ሕግ ቁጥር **2206** ንዑስ አንቀጽ **1** እና የፍትሐብሔር ሕግ ቁጥር **3049** ንዑስ አንቀጽ **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.

- For instance, in the above case, it was stated that the scope of authority of the agent was defined in the following terms:

  “...ተወካይ የሆነው አቶ ገዛኸኝ በልሁ የወካዮቹን ቤት እንዲያስተዳድር፣ እንዲሸጥ እንዲለውጥና ለሦስተኛ ወገን ለማስተላለፍ የሚችል መሆኑን በግልጽ የያዘ መሆኑን አመልካችና ተጠሪዎቹ ተማምነዋል። ... የውክልና ማስረጃዉ አግባብነት ካላቸው የሕግ ድንጋጌዎች ጋር በማገናዘብ ስንመረምረው ሁለት መሠረታዊ ባሕሪያትና ውጤት ያለው ነው። ... የመጀመሪያው ተጠሪዎቹ ተወካዩ ቤታቸውን እንዲያስተዳድር ጠቅላላ የውክልና ስልጣን የሰጡት መሆኑን የሚያስረዳ ሲሆን ... ሁለተኛ ደረጃ ይኸው የውክልና ማስረጃ የተጠሪዎች ተወካይ ቤቱን ለመሸጥ የመለወጥና ለሶስተኛ ወገን የማስተላለፍ ልዩ የውክልና ስልጣን ያለው መሆኑን የሚያስረዳ ነው።

❖ **Look at the FSCCB; vol.13, case no. 72337,** ወ/ሮ ንግስቲ እምነት እና ቴዎዶሮስ ተክሌ

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

- **Sign bills of exchange**
  - Why did the legislator singled out 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
  - Art. 35 of the commercial code – powers of manager

    1) 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****.*

    2) 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.
- **Discuss the others**

Session four

Authority of an Agent

- As it has been discussed previously, where the two conditions stipulated under Art. 2189 are met, the agency is called – **complete or disclosed agency/ perfect representation**
    1. The agent should act in the name of the principal (disclose the principal)
    2. The agent shouldn't transgress the power bestowed – has to act within the scope of his power.
- If these two conditions are satisfied, there is perfect agency and the effect is that:
    - Juridical acts done by the agent are binding on the principal or Contracts made by the agent are deemed to have been made by the principal. Unless (where the agent transgresses the authority test), the effects under Arts. 2190 and 2206 (2) will follow, as a case may be.

: - **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**.

1. Actual or real authority

- According to Art.2200 (1), the authority of an agent having effect on the principal results from an authority 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.**
- **Actual or real authority is the authority given in the contract or is an incidental effect of terms set forth in the contract and it** gives the authority to act on behalf of another and it is only such authority which brings the effect of linking the represented with the representative.

1. Express authority

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

2. Implied authority

- ❖ Within the principle of restrictive interpretation under Art. 2181 (3), according to Arts. 1713 + 2202 (1) + 2206 (1) shows us that in addition to what has been expressly provided for in the contract of agency, the 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 is important for the carrying out of the authority expressly granted.
  - Moreover, where such implication can be made they 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. 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.

2. Apparent authority

- ❖ Here, there is not authorization (i.e., express) even from which implied authority can be derived. Rather, because of the 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.

- 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).**
- TM – for the teaching material all the circumstances under Art. 2195 constitute a ground that give rise to apparent authority.
  - The question here is, from whose perspective do we define the existence or otherwise of apparent authority (i.e., the agent or 3rd party)?
    - It is said above that, apparent authority is presumed to exit when 3rd parties, based on the conduct of the principal (which don't include statements such as under Art. 2195 (a)), assume the existence of agency relationship.

    - Where the 3rd party was informed by the principal the existence of agency relationship (as under Art. 2195 (a) but not the revocation or where the agent still holds the document authenticating his power and based on which 3rd parties acted upon, they (3rd p) did not presume the existence of power of attorney; rather took the statement or the document for granted.
    - Art. 2195 (c); "… **failure to act** …'
      - Given this general phrase, if the cases under a and b are about apparent authority, they will become redundant.

- Thus, 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.

❖ It should be clear that, 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 where one of the essential conditions for valid existence of contract is that parties give their free and full consent; which is missing in this case. However, though the principal has not consented to, he has led 3rd parties astray and may be extra contractually liable. (This is common to all the cases under Art. 2195).

- **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.

❖ **Discuss the three cases (TM)**

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

1. Disclosed agency

- As it has been discussed previously, where the two conditions stipulated under Art. 2189 (1) are met, the agency is called – **complete or disclosed agency/ perfect representation;** and to this effect - **The agent should act in the name of the principal (disclose the principal)**
- Disclosed agency is the mode of representation in which the agent reveals the name of the principal to the third parties with which he/she is interacting (on behalf of the principal).
- By the same token the 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.

2. Partially disclosed agency

- 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)**

  (1) *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 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.
- Notwithstanding the knowledge or otherwise of the 3rd party, where the agent has acted in his own name but on behalf of the principal the former himself enjoys the rights and corresponding liabilities – Art. 2197
    - Discuss the legal effects of partially disclosed agency under Arts. 2197 and 2198 as regards the 3rd parties and the principal.

3. Undisclosed Agency

- **TM** - Undisclosed agency is the mode of representation in which there is no disclosure of the fact that the front person is acting on behalf of another person. That is 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 proviso. 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 which is termed as complete agency under Art 2189 of the Civil Code 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.
- ♣ In principle, where the agent acts in his own name but on behalf of the principal, he personally enjoys the rights and bears the obligations. However, there are exceptional cases where such relationships bring the principal in to the picture and, therefore, there exist a valid agency principal relationship. E.g., Arts. 2234 – 2252 – commission agents, *del creder* agents and forwarding agents + unauthorized agent – Art. 2257ff.

- ✓ See also the commercial code, Arts. 271 – 279 – **joint venture**.

- ♣ So, do you think that the understanding of 'undisclosed and partially disclosed agency' under the TM give any legal sense?

❖ 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;** ሊቀ ስዩማን አሰፋ ባሻህውረድ እና የሣህሊተ ምህረትና ክርስቶስ ሣምራ ደብር አስተዳደር**;**
  - ወኪል የሆነ ሰው ውክልናውን በሚገባ አስካሳየ ድረስ በማመልከቻው ላይ የራሱን ወይም የወካዩን ስም አስቀድሞ መግፋ ወኪልነቱን ለውጦ ባለቤት የሚያደርገው ስላለመሆኑ የፌ/ብ/ሥ/ሥ/ህ/ቁ. 58
  - የአመልካች ወኪል ጀነነው አሰፋ የተባለው በፈ/መ/ /ፍ/ቤት ክስ መስርቶ ክሱ በመታየት ላይ እያለ ፍ/ቤቱ አቶ ጀነነው አሰፋ ክሱን የመሠረተው " ከሳሽ ጀነነው አሰፋ" ብሎ ፅፉል፣ እሱ ወኪል እንጂ ከሳሽ ሊሆን አይችልም በማለት ክሱን ውድቅ አደረገ።
  - የውክልና ሥልጣን ያለው ሰው በዋናው ባለመብት ስም የክስ ወይም የአቤቱታ ማመልከቻ ማቅረብ እንደሚችል የፍ/ሥ/ሥ/ሕ/ቁ. 58 ይደነግጋል። አቶ ጀነነው አሰፋ የሊቀስዩማን አሰፋ በሻህውረድ ወኪል መሆኑ በፍ/ቤቱም የተገለፀ በመሆኑ አመልካቹን ወክሎ ክስ 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 እንጂ ባለመብት ነኝ በማለት ስላልሆነ ነው።

- ወኪሉ ወኪል መሆኑን እስካሣየና እስከገለፀ ድረስ በማመልከቻው ላይ የራሱን ወይም የወካዩን ስም አስቀድሞ መግፋም ቢሆን ወኪልነቱን ለውጥ ባለመብት የሚያደርገው አይሆንም፣

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. For example;
    - ✓ 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.

- Art. 2198 (1) – in principle, the principal doesn't have the right to bring action directly against 3rd parties; rather, he can substitute

himself in the place of the agent with the view to enforce the claim acquired on his behalf.

- 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'.
    - Art. 1161 - Possession in good faith. According to this provision, buyers who bought a certain corporeal chattel become the owner of the same up on taking possession of the good (sub-art. 1). Such right won't be affected where it is found that the person who transferred the chattel do not have a valid title. Art. 2198 (1) stick to this principle.
  - 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.

- ♣ Why does the law allow the principal to substitute the agent and bring claim against 3rd parties while he was not party to the external contract?
- 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

- ❖ TM, page 66 – 69; regarding what considerations need to be taken in to account to determine the scope of authority of an agent.

- ❖ Recall the concept of 'complete agency' under Art. 2189; particularly, the two conditions necessary (TM – adds 3rd requirement – the existence of agency relationship) for the agent's act to bind the principal.
- ❖ Accordingly, it is only when the name and authority test requirements are satisfied that acts performed by the agent make the principal directly responsible to contracting 3rd parties. 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.
- ❖ Art. 2190;
  - Where the agent acts in the name of the principal but beyond the scope of his power (without any authority 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

- Art. 2190 (2) – the provision is applicable in case where the agent has acted under an authority which had lapsed.
  - ✓ Consider the implication of this provision on Art. 2195 (1 and 2).

1. 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.

- **TM** - 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,** ወ/ሪት አሊያት ይማም ሙዘይን እና አቶ እምነቴ እንደሻው
  - ወካይ የሆነ ሰው የወካዩን ድርጊት እንደተቀበለዉ ሊቆጠር የሚችለው በህግ የሚፀና የውክሌና ውሌ ኖሮ ነገር ግን ወኪሉ ከተሰጠው ስሌጣን በሊይ ሰርቶ የተገኘ እንደሆነ ወይም የውክልና ስሌጣኑ ካበቃ (ከተቋረጠ) በኋላ ወካዩን 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:

በ 1994 የተከሳሽ ወኪል እና ከሳሽ ያደረጉት የቤት ሽያጭ ዉል ተወካዩ ህጋዊ ዉክልና እስካገኝት ጊዜ ድረስ ረቂቅ ነዉ የሚባል ቢሆንም በ 1998 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.
  - በ 1995 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** – 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).

- For the requirement of 'good faith' under Sub–1 to be satisfied the conditions stated under the subsequent sub-provisions may serve as the determinant;
  - 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.
    - If there was time to communicate to the principal beforehand or where the agent

failed to inform the principal immediately, he waives the opportunity.

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

- **TM** – 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.

  - **TM -** This kind of agency exists only under certain conditions. These conditions must be of an emergency nature (presupposes some kind of danger on the principal's interest)? An agent who acted in the absence of any emergency to take action cannot in any way be considered one who is acting in good faith?
- Conditions need to be satisfied;
  - **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.
    - Where the acting person has acted disregarding these conditions, he will not be considered as 'unauthorized agent' and thus no agency relationship will be

established with the person represented 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.

- ❖ 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 acting person)."
    - 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;**

- 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)

- According to these provisions, it meant that 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?
  - ✓ Art. 2191 – if the 3rd party wants to know the fate of the contract which he has concluded with the agent acting beyond the scope of his 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, upon finding of the fact that the agent lacks the authority, 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 ወለደሰማያት**(ሁለት ሰዎች)፡**
  - ወካይ የሆነ ወገን በተወካይ አማካኝነት የተረገጉ ህገ ወጥ 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 ህገ ወጥ ናቸው ወይም በህግ የተቀመጠውን መስፈርት አላሚላም (Unlawful contracts or illegal contracts) በሚል ለመለየት የሚቻልበት አግባብ እና የሚያስከትለት ውጤት።
  - አንድ የማይንቀሳቀስ ንብረት ሀብቱን በሽያጭ የማስተላለፍ የውክልና ሥልጣን በባለሀብቱ ባሌተሰጠው ሰው ወይም ንብረቱን በሽያጭ ለማስተላለፍ በማይችል ሰው ቢሸጥ ዌሉን በመሠረታዊ ባህሪው በሞራላዊ ይዘቱና ዓላማው ህገ መጥ ውል /unlawfull contract/ አሳደርገውም። ይህ ጉድለት መኖሩ ቢረጋገጥ ዉሉ ባለሀብትነትን በሽያጭ ለማስተላለፍ የተደነገጉትኔ አግባብነት ያላቸው ዶንጋጌዎች የማያሚላ 'illegal or invalid contract' የሚያደርገው ጉድለት ነው።
  - ከባለሀብቱ መቂ የሆነ የውክልና ሥልጣኔ ሣይኖረው መይም ንብረቱን ለመሸጥ የሚያስችል መቤት በሌለው ሰው የተደረገ የሽያጭ ውል፣ ውሉ መህግ የተደነገጉ ስገዳጅ መስገርቶችን የማያሚላ ነው። የዚህ ጉዴለት 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 የማያሚላ 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)).

2. Repudiation and its Effects, Arts. 2193ff

- **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 ኃ/ማርያም ባዩ እና እነ አቶ ሣሙኤሌ ጎሣዬ **(አምስት ሰዎች)**
    - የውክልና ስልጣኑ ቀሪ ከተደረገበት እንደራሴ ጋር በቅን ልቦና ውል ፈፅመው በተገኙ ጊዜ ውሉ እንዲፈርስ ላይወሰን የሚችልበት አግባብ የፌ/ብ/ህ/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;**
      - ሟሚው በግልጽም ይሁን በዝምታ እንደራሴው ሥልጣኑ ቀሪ ከሆነ በኋላ የሠራውን ሥራ ያልተቀበለው መሆኑ ከተረጋገጠ የዚሁ ያለመቀበል ውጤት በቁጥር 2193 ተደንግጓል። የዚህን ድንጋጌ ይዘት ስንመለከት ሟሚው ይህንኑ የእንደራሴውን ሥራ ካልተቀበለው ምን ጊዜም ይኸው ውል ፈራሽ ነው የሚል አይደለም። ይልቁንም ከፍ/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 የዚህን 3ኛ ወገን መብት ለመጠበቅ አስፈላጊ የሆኑት የቀና 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;
    a. 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.

    b. 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.

c. 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.

a. 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 out of the transaction he/she makes on behalf of the principal 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.
- 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****.*

- The underlined phrases put forth the conditions which need to be met for the contract to be cancelled.

❖ 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,** ወ/ሮ ካሰች ተካልኝ እና እነ አቶ ኃ/ማርያም አበበ **(**ሁለት ሰዎች**)**

- እንደራሴ የሆነ ሰው የውክልና ስልጣኑን መሠረት በማድረግ ሥራውን በሚያከናውንበት ጊዜ ተቃዋሚ ጥቅሞች (Conflict of interest) ማስወገድ ያለበት ስለመሆኑ እና ከእንደራሴው ጋር ውል የፈፀመው ሦስተኛ ወገን እንደራሴው የውክልና ስልጣኑን በሚያከናውንበት ጊዜ ተቃዋሚ ጥቅሞችን የማስወገድ ግዳታውን አለመወጣቱን ማወቁ ወይም ማወቅ የሚገባው መሆኑ ያደረጉትን ውሌ ፈራሽ ስለማድረጉ የፍ/ብ/ህ/ቁ. 2187(1)
- Facts - አመልካች ሚያዝያ 19 ቀን 1998 ዓ .ም . 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 ቤቶችና 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 ለማለት ስለማይቻል 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,** አቶ ሃብቱ ወልዱ እና እነ ወ/ሮ መሰለ ደስታ **(**ሁለት ሰዎች**)**
  - 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፣ እንዱቆጣጠሩ፣ እንዱሸጡና እንዲለውጡ ውክልና ሰጥተዋቸው የነበረ ቢሆንም ከውክልናቸው ውጪ ለእናታቸው በስጦታ በመስጠት ስሙን ያዛወሩ በመሆኑ የስጦታው ውል ፈርሶ ስማቸው እንዲዘርላቸው 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 ተጠሪ ያውቃሉ 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።

b. Contracting with oneself

❖ **TM;**

- 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.5, case No. 14974,** ወ/ት ማህሌት ገ/ስላሴ እና አቶ ዮሴፍ ገ /ሥላሴ

- አንድ ተወካይ በወካዩ ላይ ባቀረበው ክስ ወካዩን ወክሎ መከራከር ስላለመቻሉ 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 defense 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? አቅርቦስ 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።
  - 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 የሚያከናውነውን ስራ ወካዩ ሊቃወመው የሚችል መሆኑን እና በዚህ ሁኔታ የተከናወነው ስራም ወካዩ ካላፀደቀው 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 ግጭተ ፈጥሯል። 2ኛ ተጠሪም ራሱ ከሳሽ ሆኖ የቀረበበትን ጉዳይ ለአመልካች የገለፀላት መሆኑ አና 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።

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

- Where the agent is in a position in which his own interest may affect the performance of his duties to the principal, the agent is obliged to make a full disclosure of all material circumstances so that the principal with such full knowledge can choose whether to consent to the agents acting.
- See the FSCCB decision above - **vol.10, case no. 50440,** አቶ ሃብቱ ወልዱ እና እነ ወ/ሮ መሰለ ደስታ **(**ሁለት ሰዎች**)**
- **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.

d. 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?
  - 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, we apply an 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

e. Duty to account – Art. 2210 and 2213

Art. 2210 Accounts

(1) The agent shall account to the principal for sum received by him and all profits accruing to him in the course of his employment, **notwithstanding that the sums he received were not owed to the principal.**

- What does the last phrase imply?
  - **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 transaction in respect of which 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.

❖ 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
  - ✓ Expressly reject
  - ✓ Art. 2214 (1) - the effect of silence for a long period than warranted by the nature of the affair or usage, i.e. it amounts to acceptance.
    - **TM** – the 3rd situation works for both an agent working within the scope or acting beyond the scope of authority – Art. 2214 (2).
- Would approval under Art. 2214 (2) by the principal constitute ratification or is it concerned about the internal affairs b/n the agent and the principal?

Art. 224 (2)

ተወካዩ ወካይ ከሰጠው ቴአዛዝ አልፎ ሠርቶ እኔደ ሆነና በውክልናው ከተሰጠው ሥልጣን በላይም ሠርቶ እንደ ሆነ ለወካዩ ላቀረበው መግለጫ ተቃዋሚ ወይ አጽዳቂ መልስ ካልተሰጠው አፈጻጸሙ ከላይ በተመለከተው አይነት ይሆናል።

➢ The effect of ratification is that the acts performed by the agent beyond his scope of power are considered as if done within the scope of his power (2192). Thus creates relationship b/n the

principal and the 3rd party and relieves the agent from liability. Under Art. 2214 (2), appears that the effect of approval relieves the agent from liability for his act beyond his scope of authority or disregarding specifications; it will not have the effect under Art. 2192.

f. Non-delegation of authority – 2215 - 2218

- ❖ Discuss the provisions
  - In principle sub-delegation is not allowed
  - Exception;
    - Art. 2215 (2) – where the personal qualification of the agent does not matter.
    - Art. 215 (3) – where the conditions here are satisfied
  - Art. 2216 – relationship b/n the agent and the sub-agent
  - Art. 2217 – relationship b/n the principal and sub-agent
    - 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.
- ❖ **FSCCB, vol. 13, case no. 68498,** አቶ ገብረ ክርስቶስ ገብረ እግዛብሔር እና ሳባ እምነበረድ ታላፈነቱ የተወሰነ የግል ማህበር
  - አንድን ተቋም ወክሎ ውል ለመዋዋል በህግ ስልጣን የተሰጠው ሥራ አስኪያጅ ስልጣኑን ለሌላ ሰው 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)
  - 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.

❖ **Obligations of the principal**

- The principal like the agent has some contravening duties towards the agent. These are:
- Remuneration;

- Duty to advance money;
- Duty to reimburse outlays and expense;
- Duty to release the agent from damages and liabilities;
- Set off conditional to the principal;
- Agent’s lien right.