Agency is the fiduciary relationship which exists between two persons, one of whom expressly or impliedly consents that the other should act on his behalf so as to affect his relations with third parties, and the other of whom similarly consents so to act or so acts. The three relationships in agency are: principal/agent, agent/third party (customer), principal/third party (customer). Agency and other relationships distinguished: common agent (where P authorizes A to enter into the contract with C in A’s own name); direct selling (internet); distributor (distributor buys goods form business and get title to them, which does not happen with agency); licensing (owner of a design or goods or owner of an industrial process can grant a licence to sell or manufacture the products in question).

**APPLENT/OSTENSIBLE AUTHORITY:** -exists where the principal’s words or conduct would lead a reasonable person in the third party’s position to believe that the agent was authorized to act, even if the principal and the purported agent had never discussed such a relationship.

Agency by Estoppel – If a principal creates the impression that an agent is authorized but there is no actual authority, third parties are protected so long as they have acted reasonably.

*Rama Corporation Ltd v Proved Tin and General Investments Ltd* - cannot call in aid an estoppel unless you have three ingredients:

(i) there must be a representation that the agent has authority – express or implied eg from dealings or from conduct.

(ii) that representation must come from someone with authority, usually, though not always, the principal – Freeman & Locker v Backhurst Park Properties - the principal will be estopped from denying the grant of authority if third parties have changed their positions to their detriment in reliance on the representations made.

*Notice by A to P* must be given in time and it is a question of fact whether the notice has been received or not.

**DUTIES OF AGENTS**

*The agent has a duty to perform agreed tasks and follow instructions - even where A believes that P’s interests could be better served by doing something else. A must obey P and not go outside the terms of his authority -* Bertram, Armstrong & Co v Godfrey

* Duty to exercise reasonable skill and care in performing his duties and generally to personally the agreed tasks. – The standard of duty of A acting without payment is not necessarily any lower than that for a paid agent. Other factors include: A involved in relevant trade or profession; level of skill and expertise which he has or purports to have.

*Fiduciary duties* – duty to account; to avoid conflict of interests (that is, the agent cannot engage in conduct where it stands to gain a benefit for himself to the detriment of the principal) - Armstrong v Jesson - not the secret profit (secretly profiting); not to run a Deep Sea Fishing and Ice Co v Ansell, to maintain confidentiality.

*P* must not engage in self-dealing or otherwise unduly enrich himself from the agency. An agent must not usurp an opportunity from the principal by taking it for himself or passing it on to a third party.

*In return, the principal must make a full disclosure of all information relevant to the transactions that the agent is authorized to negotiate and pay the agent either a prearranged commission, or a reasonable fee established after the fact.*

**RIGHTS OF THE AGENT**

*A is entitled to payment from P for his services and expenses if there is an agency contract – and express (or implied) term that A will be paid – Luxor (Eastbourne) v Cooper.*

*The agent can lose the right to commission if he acts outside the scope of his authority (Mason v Clifton); acts in an unlawful or dishonest manner; commits a serious breach of its duties (Boston v Ansell case)*

*The agent has a right to keep any of the P’s goods which are in possession until the A has been paid any commission or expenses he is owed by the P.*

**TERMINATION**

*P can revoke A’s authority as long as A has not fulfilled his obligations and/or properly incurred personal liability, since he is then entitled to be reimbursed by P.*

*Effective revocation will bring the agency contract to an end.*

**OTHER WAYS:**

*A’s task comes to an end.*

*P & A to terminate the relationship.*

*Death, insanity or bankruptcy of P or A, or insolvency if one party is a company.*

*Notice by A to P renouncing the agency.*

Effects of termination on pre-existing claims

*Although an agent’s authority may be terminated, this deals with the future situation between the parties.*

*P & A are still entitled sue one another for claims occurring up to the point of termination, so it is entitled to sue for commission on completed deals.*

*If an agency is for fixed period, it is a matter of construction of the contract as to whether A has a claim if P goes out of business before the end of the period.*