



**ATENELO CENTRAL BAR OPERATIONS 2007**  
Civil Law  
SUMMER REVIEWER

**LAW ON AGENCY**

**CHAPTER 1: NATURE, FORM AND KINDS OF AGENCY**

**Contract of Agency** is a contract whereby a person binds himself to render some service or to do something in *representation* or *on behalf of another*, with the consent or authority of the latter. (**Art. 1868**)

**Characteristics:**

1. Consensual
2. Nominate
3. Preparatory
4. Principal
5. Unilateral;  
Bilateral (if agency is for compensation)

**Nature:** Since it is a contract there must be a meeting of the minds as to consent, object, and cause.

**Exception to contractual nature:**

- a. When the agency is created **by operation of law**  
*Ex: Agency by Estoppel*

**Basis:**

- **Representation:** The acts of the agent on behalf of the principal within the scope of his authority produce the same legal and binding effects as if they were personally done by the principal.
- Hence, the distinguishing features of agency are its representative character & its derivative authority.

**Purpose:** Extend the personality of the principal through the facility of the agent

**Capacity of the Parties:**

1. **Principal**
  - a. He may be a natural or a juridical person
  - b. He must be capacitated. The rule is if a person is capacitated to act for himself or his own right, he can act through an agent.
    - i. The agent is not liable where he was ignorant of the principal's incapacity

**2. Agent**

- a. Insofar as the third persons are concerned, it is enough that the principal is capacitated.
- b. Insofar as his obligations to his principal are concerned, the agent must be able to bind himself.
- c. But as an agent, some mental capacity is necessary, so, those who are absolutely incapacitated (*ex. Insane persons*) cannot be agents.

**Essential Elements:**

1. *Consent* of the parties to establish the relationship;
2. Object of the contract is the *execution of a juridical act* in relation to third persons;
3. Agent acts as a *representative* and not for himself; and
4. Agent acts *within the scope of his authority*.

**Orient Air Services v. CA, G.R. No. 76931, May 29, 1991**

*An illegal termination of agency does not justify reinstatement of the agent as such. The agency cannot be compelled by the courts to be reinstated because such relationship can only be effected with the consent of the principal.*

**Acts That Cannot Be Done By Agent:**

1. Personal Acts – *ex. Making of a will*
2. Criminal or Illegal Acts

**Nature of Relationship between Principal and Agent:**

**Fiduciary** - based on trust & confidence

1. Agent is estopped from asserting interest adverse to his principal
2. Agent must not act as an adverse party
3. Agent must not act for an adverse party
4. Agent must not use or disclose secret information
5. Agent must give notice of material facts
  - **Knowledge of the agent is imputed to the principal** even though the agent never communicated

**Exceptions:**

- a. Where the interests of the agent are adverse to those of the principal;
- b. Where the person claiming the benefit of



the rule colludes with the agent to defraud the principal.

### Distinction between Agency & Lease of Service

Agency	Lease of Service
Representation	Employment
Agent exercises <b>discretionary powers</b>	Lessor ordinarily performs only <b>ministerial functions</b>
3 persons are involved: principal, agent and the 3 <sup>rd</sup> person with whom the agent contracts	2 persons are involved: lessor and lessee
Relates to <b>commercial or business transactions</b>	Relates more to the matters of mere <b>manual or mechanical execution</b>

### Distinction between Agency & Guardianship

Agency	Guardianship
Agent represents a <b>capacitated</b> person	A guardian represents an <b>incapacitated</b> person.
Agent is <b>appointed by the principal</b> and can be removed by the latter.	Guardian is <b>appointed by the court</b> and stands in <i>loco parentis</i> .
Agent is subject to the directions of the principal.	Guardian is not subject to the directions of the ward but must act for the benefit of the latter
Agent can make the principal personally liable.	Guardian has no power to impose personal liability on the ward.

### Distinction between Agency & Lease of Property

Agency	Lease of property
Agent is controlled by the principal.	Lessee is not controlled by the lessor.
Agency may involve things other than property.	Lease of property involves property.
Agent can bind the principal.	Lessee cannot bind the lessor.

### Distinction between Agency to Sell & Sale

Agency to sell	Sale
Agent receives the goods as the principal's goods	Buyer receives the goods as owner
Agent delivers the proceeds of the sale	Buyer pays the price
Agent can return the object in case he is unable to sell the same to a third person	Buyer, as a general rule, cannot return the object sold

Agent in dealing with the thing received is bound to act according to the instructions of his principal	Buyer can deal with the thing as he pleases, being the owner
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### Distinction between Agent & Contractor

Agent	Independent Contractor
Represents his principal	Employed by the employer
Acts under the principal's control and instruction	Acts according to his own method
Principal is liable for torts committed by the agent within the scope of his authority	Employer not liable for torts committed by the independent contractor.

### Distinction between Agency and Partnership

Agency	Partnership
An agent must submit to the principal's right to control	A co-partner is not subject to co-partner's right to control, unless there is an agreement to that effect
The agent assumes no personal liability where he acts within the scope of his authority	The partner binds not only the firm members but himself as well
The agent takes his agreed share of profits not as owner but as an agreed measure of compensation for his services	The profits belong to all the partners as common proprietors in agreed proportions

**Art. 1869. Agency may be express, or implied from the acts of the principal, from his silence or lack of action, or his failure to repudiate the agency, knowing that another person is acting on his behalf without authority. Agency may be oral, unless the law requires a specific form. (1710a)**

### Classifications of Agency

#### 1. As to manner of creation

- a. **Express** – agent has been actually authorized by the principal, either orally or in writing
- b. **Implied** – agency is implied from the acts of the principal, from his silence or lack of action or his failure to repudiate the agency knowing that



another person is acting on his behalf without authority, or from the acts of the agent which carry out the agency, or from his silence or inaction according to the circumstances

### 2. As to character

- a. **Gratuitous** – agent receives no compensation for his services
- b. **Onerous** – agent receives compensation for his services

### 3. As to extent of business of the principal

- a. **General** – agency comprises all the business of the principal
- b. **Special** – agency comprises one or more specific transactions

### 4. As to authority conferred

- a. **Couched in general terms** – agency is created in general terms and is deemed to comprise only acts in the name and representation of the principal.
- b. **Simple or Commission** – agent acts in his own name but for the account of the principal.

### Forms of Agency:

**General Rule:** Appointment of an agent may be oral or written; no formal requirements

**Exception:** When the law requires a specific form (ex. agent's sale of real property or any interest therein)

**Art. 1875. Agency is presumed to be for a compensation, unless there is proof to the contrary. (n)**

- The agent does not have to prove that the agency is for compensation.
- But, the *prima facie* presumption that the agency is for a compensation may be contradicted by contrary evidence

**Broker:** Negotiate contracts relative to property in behalf of others and for a compensation/fee

### **When Broker Entitled to Compensation:**

- Whenever he brings to his principal a party who is able and willing to take the property, and enter into a valid contract upon the terms named by the principal, although the particulars may be arranged and the matter negotiated and completed between the principal and the

purchaser directly

- However, a broker is never entitled to commission for unsuccessful efforts.

**Manotoc Brothers, Inc. v. CA, 221 SCRA 224 [1993]**

*The broker should be paid his commission where he is the **efficient procuring cause** in bringing the sale.*

**Efficient procuring cause:** when there is a close proximate and causal connection between the efforts and labor of the agent and the principal's sale of property.

### **Law on Double Agency:**

- Disapproved by law for being against public policy and sound morality **EXCEPT** where the agent acted with full knowledge and consent of the principals

### **Right of agent to compensation in case of double agency:**

1. **With knowledge of both principals** - recovery can be had from both principals
2. **Without the knowledge of both principals** - the agent can recover from neither
3. **With knowledge of one principal** - as to the principal who knew of that fact and as to the agent, they are in *pari delicto* and the courts shall leave them as they were, the contract between them being void as against public policy and good morals

**Art. 1870. Acceptance by the agent may also be express, or implied from his acts which carry out the agency, or from his silence or inaction according to the circumstances. (n)**

**Art. 1871. Between persons who are present, the acceptance of the agency may also be implied if the principal delivers his power of attorney to the agent and the latter receives it without any objection. (n)**

**Art. 1872. Between persons who are absent, the acceptance of the agency cannot be implied from the silence of the agent, except:**

1. **When the principal transmits his power of attorney to the agent, who receives it without any objection;**
2. **When the principal entrusts to him by letter or telegram a power of attorney with respect to the business in which he is habitually engaged as an agent, and he**



*did not reply to the letter or telegram. (n)*

**Forms of Acceptance by Agent:**

1. **Express** - when it is oral or written
  2. **Implied** - when it can be inferred from the acts of the agent which carry out the agency, or from his silence or inaction according to the circumstances
    - a. **Between persons who are present** – implied acceptance if the principal delivers his power of attorney to the agent and the latter receives it without any objection
    - b. **Between persons who are absent** – acceptance not deemed implied from the silence of the agent.
- Exceptions:**
- i. When the principal transmits his power of attorney to the agent who receives it without any objection
  - ii. When the principal entrusts to him by letter or telegram a power of attorney with respect to the business in which he is habitually engaged as an agent, and he did not reply to the letter or telegram

**What is meant by “present”?**

Generally, “face to face”, but includes people conversing directly through technology (ex. *over the telephone*).

**Power of Attorney:** Instrument in writing by which one person, as principal, appoints another as his agent and confers upon him the authority to perform certain specified acts or kinds of acts on behalf of the principal; primary purpose is to evidence agent’s authority to third parties within whom the agent deals

**Construction of Power of Attorney:**

**General Rule:** *Strictly construed and strictly pursued;* held to grant only those specified powers

**Exception:** when strict construction will destroy the very purpose of the power

**Art. 1873.** *If a person specially informs another or states by public advertisement that he has given a power of attorney to a third person, the latter thereby becomes a duly authorized agent, in the former case with respect to the person who received the special information, and in the latter case with regard to any person.*

*The power shall continue to be in full force until the notice is rescinded in the same manner in which it was given. (n)*

**Way of Giving Notice of Agency & Its Effect:**

1. **By special information** - the person appointed as agent is considered such with respect to the person to whom it was given.
2. **By public advertisement** - the agent is considered such with regard to any person

**How do you revoke an agency?**

In the same manner as it was constituted. However, constitution by Special Information may be revoked by notice in a daily newspaper, provided it can be proven that 3<sup>rd</sup> persons in question read the revocation

**What is an agency by estoppel?**

There is really no agency at all, but the alleged agent seemed to have **apparent or ostensible**, although no real **authority** to represent another.

**Distinction between Agency by Estoppel and Implied Agency**

	Agency by Estoppel	Implied Agency
Existence of actual agency	No agency at all	There is an actual agency
Reliance by 3 <sup>rd</sup> persons	Can be invoked only by a 3 <sup>rd</sup> person who in good faith relied on the conduct of the principal in holding the agent out as being authorized	Such reliance in not needed, since the agent is a real agent
Nature of Authority	An agent by estoppel has none of the rights of an agent, <b>except</b> where the principal's conduct are such that the agent reasonably believed that the principal intended him to act as an agent	An agent by implied appointment has all the rights and liabilities of an agent, <i>i.e.</i> has actual authority to act on behalf of the principal



**Art. 1874. When a sale of a piece of land or any interest therein is through an agent, the authority of the latter shall be in writing; otherwise, the sale shall be void. (n)**

**Art. 1876. An agency is either general or special. The former comprises all the business of the principal. The latter, one or more specific transactions. (1712)**

**Art. 1877. An agency couched in general terms comprises only acts of administration, even if the principal should state that he withholds no power or that the agent may execute such acts as he may consider appropriate, or even though the agency should authorize a general and unlimited management. (n)**

**Will an authority embodied in a letter be sufficient?**

**Yes.** (Jimenez v. Rabot, 38 Phil 387 [1918])

**Attorney-In-Fact:**

- One who is given authority by his principal to do a particular act not of a legal character
- The term is, in loose language, used to include agents of all kinds, but in its strict sense, it means an agent having a special authority created by a deed.

**Distinctions between a General Agent and a Special Agent**

	<b>General Agent</b>	<b>Special Agent</b>
Scope of Authority	All acts connected with the business or employment in which he is engaged	Specific acts in pursuance of particular instructions or with restrictions necessarily implied from the act to be done
Nature of Service Authorized	Involves continuity of service	No continuity of service
Extent to Which Agent May Bind the Principal	May bind his principal by an act within the scope of his authority although it may be contrary to the latter's special	Can not bind his principal in a manner beyond or outside the specific acts which he is authorized to perform

	instructions	
Termination of Authority	Apparent authority does not terminate by the mere revocation of his authority without notice to the third party	Duty imposed upon the third party to inquire makes termination of the relationship as between the principal and agent effective as to such third party unless the agency has been entrusted for the purpose of contracting with such third party
Construction of Principal's Instructions	Merely advisory in nature	Strictly construed as they limit the agent's authority

**Agency Couched in General Terms:** Covers only MERE ACTS OF ADMINISTRATION *even if:*

- The principal should state that he withholds no power
- The agent may execute such acts as he may consider appropriate
- The agency should authorize a general and unlimited management

**How are contracts of agency construed?**

- Contracts of agency, as well as general powers of attorney, must be interpreted in accordance with the language used by the parties.
- The real intention of the parties is primarily determined from the language used and gathered from the whole instrument.
- In case of doubt, resort must be had to the situation, surroundings and relations of the parties. The intention of the parties must be sustained rather than defeated.
- So if the contract be open to constructions, one of which would uphold the intention while the other would overthrow it, the former is to be chosen.

**Art. 1878. Special powers of attorney are necessary in the following cases:**



1. *To make such payments as are not usually considered as acts of administration;*
2. *To effect novations which put an end to obligations already in existence at the time the agency was constituted;*
3. *To compromise, to submit questions to arbitration, to renounce the right to appeal from a judgment, to waive objections to the venue of an action or to abandon a prescription already acquired;*
4. *To waive any obligation gratuitously;*
5. *To enter into any contract by which the ownership of an immovable is transmitted or acquired either gratuitously or for a valuable consideration;*
6. *To make gifts, except customary ones for charity or those made to employees in the business managed by the agent;*
7. *To loan or borrow money, unless the latter act be urgent and indispensable for the preservation of the things which are under administration;*
8. *To lease any real property to another person for more than one year;*
9. *To bind the principal to render some service without compensation;*
10. *To bind the principal in a contract of partnership;*
11. *To obligate the principal as a guarantor or surety;*
12. *To create or convey real rights over immovable property;*
13. *To accept or repudiate an inheritance;*
14. *To ratify or recognize obligations contracted before the agency;*
15. *Any other act of strict dominion. (n)*

Art. 1879. *A special power to sell excludes the power to mortgage; and a special power to mortgage does not include the power to sell. (n)*

Art. 1880. *A special power to compromise does not authorize submission to arbitration. (1713a)*

**Powers Not Included in the Power to Mortgage:**

1. To sell
2. To execute a second mortgage
3. To mortgage for the agent's or any 3<sup>rd</sup> persons' benefit, UNLESS clearly indicated

**Powers Not Included in the Power to Compromise Submission to Arbitration**

Rationale:

- A principal may authorize his agent to compromise because of absolute confidence in the latter's judgment and discretion to protect the former's rights and obtain for him the best bargain in the transaction.
- If the transaction would be left in the hands of an arbitrator, said arbitrator may not enjoy the trust of the principal.

Art. 1881. *The agent must act within the scope of his authority. He may do such acts as may be conducive to the accomplishment of the purpose of the agency. (1714a)*

Art. 1882. *The limits of the agent's authority shall not be considered exceeded should it have been performed in a manner more advantageous to the principal than that specified by him. (1715)*

Art. 1883. *If an agent acts in his own name, the principal has no right of action against the persons with whom the agent has contracted; neither have such persons against the principal.*

*In such case the agent is the one directly bound in favor of the person with whom he has contracted, as if the transaction were his own, except when the contract involves things belonging to the principal.*

*The provisions of this article shall be understood to be without prejudice to the actions between the principal and agent. (1717)*

**Requisites for Principal to be Bound by Act of Agent:**

1. The agent must act in behalf of the principal
2. The agent must act within the scope of his authority

**When a principal NOT BOUND by act of agent:**

1. The latter acts without or beyond the scope of his authority in the former's name

**Exceptions:**

- a. Where the acts of the principal have

**Special Power of Attorney:** an instrument in writing by which one person, as principal, appoints another as his agent and confers upon him the authority to perform certain specified acts or kinds of acts on behalf of the principal.

- The special power of attorney can be included in the general power when it specifies therein the act or transaction for which the special power is required.



- contributed to deceive a 3<sup>rd</sup> person in good faith;
- b. Where the limitations upon the power created by the principal could not have been known by the 3<sup>rd</sup> person;
  - c. Where the principal has placed in the hands of the agent instruments signed by him in blank;
  - d. Where the principal has ratified the acts of the agent
2. The latter acts within the scope of his authority but in his own name, EXCEPT when the transaction involves things belonging to the principal

**Jesus M. Gozun v. Jose Teofilo T. Mercado a.k.a. 'Don Pepito Mercado,' G.R. No. 167812 (19 December 2006)**

**Facts:**

In the 1995 elections, Don Pepito vied for the gubernatorial post in Pampanga. The latter's wife transacted with Gozun, the owner of JMG Publishing House, for the printing of campaign paraphernalia. Don Pepito's wife had told Gozun that the former has already given his approval and that the latter could already start printing. Gozun thereafter availed of the services of two other publishing houses to be able to meet the deadline. The printed materials were then delivered to Don Pepito's headquarters.

Meanwhile, Don Pepito's sister-in-law, Lilian Soriano, obtained from Gozun a "cash advance" allegedly for the allowances of poll watchers. Lilian acknowledged on petitioner's 1995 Diary receipt of the amount without thereby indicating that she was obtaining such amount on behalf of Don Pepito.

Gozun sent a Statement of Account for the printing, including the amount due the other publishing houses plus the amount of the loan given to Lilia. Don Pepito's wife made a partial payment to Gozun. Despite repeated demands, respondent failed to settle the balance. Hence, a collection case was instituted by Gozun.

**Issue:** Whether or not Don Pepito should be held liable for the amount.

**Held:** The loan obtained by Lilia cannot be collected from Don Pepito, but the cost of campaign materials is properly collectible.

consent or authority of the latter. Contracts entered into in the name of another person by one who has been given no authority or legal representation or who has acted beyond his powers are classified as unauthorized contracts and are declared unenforceable, unless ratified.

Generally, the agency may be oral, unless the law requires a specific form. A special power of attorney is necessary for an agent to, as in this case, borrow money, unless it is urgent and indispensable for the preservation of the things which are under administration. Since nothing in this case involves the preservation of things under administration, a determination of whether Soriano had the special authority to borrow money on behalf of respondent is in order.

In the case at bar, there was not enough evidence establishing that the loan was made on behalf of Don Pepito. Gozun's testimony, during trial, failed to categorically state whether the loan was on behalf of the respondent or his wife. The **receipt signed by Lilian was also in her name alone**, without indicating that she was acting on behalf of Don Pepito; she thus **bound herself in her personal capacity** and not as an agent of the respondent or anyone for that matter.

As to the issue on whether or not Gozun can collect the cost of the printing due to the other publishing houses, the Court held that Gozun is the real party in interest insofar as the recovery of the cost of campaign materials is concerned. The Court was not persuaded by Don Pepito's theory that the campaign materials delivered to him were donations from his friends and supporters; if so, such fact should have been printed on the face of the materials as required by the Comelec rules.

**NOTE:** The agent is not deemed to have exceeded the limits of his authority should he perform the agency in a manner more advantageous to the principal than that indicated by him, since he is authorized to do such acts as may be conducive to the accomplishment of the purpose of the agency.

By the contract of agency, a person binds himself to render some service or to do something in representation or on behalf of another, with the

### CHAPTER 2: OBLIGATIONS OF THE AGENT



Art. 1884. *The agent is bound by his acceptance to carry out the agency, and is liable for the damages which, through his non-performance, the principal may suffer.*

*He must also finish the business already begun on the death of the principal, should delay entail any danger. (1718)*

Art. 1885. *In case a person declines an agency, he is bound to observe the diligence of a good father of a family in the custody and preservation of the goods forwarded to him by the owner until the latter should appoint an agent or take charge of the goods. (n)*

Art. 1886. *Should there be a stipulation that the agent shall advance the necessary funds, he shall be bound to do so except when the principal is insolvent. (n)*

Art. 1887. *In the execution of the agency, the agent shall act in accordance with the instructions of the principal.*

*In default thereof, he shall do all that a good father of a family would do, as required by the nature of the business. (1719)*

Art. 1888. *An agent shall not carry out an agency if its execution would manifestly result in loss or damage to the principal. (n)*

Art. 1889. *The agent shall be liable for damages if, there being a conflict between his interests and those of the principal, he should prefer his own. (n)*

Art. 1890. *If the agent has been empowered to borrow money, he may himself be the lender at the current rate of interest. If he has been authorized to lend money at interest, he cannot borrow it without the consent of the principal. (n)*

Art. 1891. *Every agent is bound to render an account of his transactions and to deliver to the principal whatever he may have received by virtue of the agency, even though it may not be owing to the principal.*

*Every stipulation exempting the agent from the obligation to render an account shall be void. (1720a)*

Art. 1896. *The agent owes interest on the sums he has applied to his own use from the day on*

*which he did so, and on those which he still owes after the extinguishment of the agency. (1724a)*

Art. 1897. *The agent who acts as such is not personally liable to the party with whom he contracts, unless he expressly binds himself or exceeds the limits of his authority without giving such party sufficient notice of his powers. (1725)*

### **Obligations of the Agent to the Principal**

#### **1. General:**

- a. Act with utmost good faith & loyalty for the furtherance of principal's interests
- b. Obey principal's instructions
- c. Exercise reasonable care

#### **2. Specific:**

- a. Carry out the agency
- b. Answer for damages which through his non-performance the principal may suffer
- c. Finish the business already begun on the death of the principal should delay entail any danger (*exception* to the rule that death extinguishes agency)
- d. Observe the diligence of a good father in the custody and preservation of the goods forwarded to him by the owner in case he declines an agency, until an agent is appointed
- e. Advance necessary funds if there be a stipulation to do so (*except* when the principal is insolvent)
- f. Act in accordance with the instructions of the principal, and in default thereof, to do all that a good father of a family would do  
**Exceptions** (*to the rule that the agent must not depart from the instructions of principal*):
  1. There's a sudden emergency
  2. If the instructions are ambiguous
  3. If the departure is so insubstantial that it does not affect the result and the principal suffers no damage thereby
- g. Not to carry out the agency if it would **manifestly result in loss or damage** to the principal
- h. Answer for damages if there being a conflict between his & principal's interests, he prefers his own
- i. Not to loan to himself if he has been authorized to loan money at interest
- j. Render an account of his transactions and deliver to the principal whatever he





may have received by virtue of the agency (If the agent fails to deliver and instead converts or appropriates for his own use the money or property belonging to his principal, he may be charged with *ESTAFADA*.)

- k. Be responsible in certain cases for the act of the substitute appointed by him
- l. Pay interest on funds he has applied to his own use

### Distinctions between Authority and the Principal's Instructions

Authority	Instructions
Sum total of the powers committed to the agent by the principal	Contemplates only a private rule of guidance to the agent; independent and distinct in character
Relates to the subject/business with which the agent is empowered to deal or act	Refers to the manner or mode of agent's action
Limitations of authority are operative as against those who have/charged with knowledge of them	Without significance as against those with neither knowledge nor notice of them
Contemplated to be made known to third persons dealing with the agent	Not expected to be made known to those with whom the agent deals

### When agent has a right to disobey the principal's instructions:

1. When the instruction calls for the performance of illegal acts
2. Where he is privileged to do so to protect his security in the subject matter of the agency

### When obligation to account not applicable:

1. If the agent acted only as a middleman with the task of merely bringing together the vendor and the vendees.
2. If the agent had informed the principal of the gift/bonus/profit he received from the purchaser and his principal did not object thereto.
3. Where a right of lien exists in favor of the agent.

### When agent may incur personal liability?

1. When the agent expressly binds himself
2. When the agent exceeds his authority

3. When an agent by his act prevents performance on the part of the principal
4. When a person acts as an agent without authority or without a principal
5. A person who purports to act as agents of an incapacitated principal

**Art. 1892. The agent may appoint a substitute if the principal has not prohibited him from doing so; but he shall be responsible for the acts of the substitute:**

1. When he was not given the power to appoint one;
2. When he was given such power, but without designating the person, and the person appointed was notoriously incompetent or insolvent.

**All acts of the substitute appointed against the prohibition of the principal shall be void. (1721)**

**Art. 1893. In the cases mentioned in Nos. 1 and 2 of the preceding article, the principal may furthermore bring an action against the substitute with respect to the obligations which the latter has contracted under the substitution. (1722a)**

### Appointment of Sub-agent:

1. If the principal has not prohibited the agent from appointing a substitute, he will be **liable to 3<sup>rd</sup> persons** for the acts of the sub-agent within the scope of his authority
2. If there is a prohibition but nevertheless the agent appoints a subagent, all the subagent's acts are **void as to the principal**.
3. If there is authority to appoint and subagent is not designated by the principal, the agent will be liable for all the acts of the subagent if the subagent is notoriously incompetent or insolvent.
4. If there is authority to appoint and subagent is designated by the principal, the agent is released from any liability from the acts of the subagent.
5. If the appointment of a sub-agent is not authorized but not prohibited, it shall be valid if it is beneficial to the principal. But, should the principal incur damage due to such appointment, the agent shall be primarily responsible for the acts of the substitute.

**Art. 1894. The responsibility of two or more agents, even though they have been appointed**



*simultaneously, is not solidary, if solidarity has not been expressly stipulated. (1723)*

**Art. 1895.** *If solidarity has been agreed upon, each of the agents is responsible for the non-fulfillment of agency, and for the fault or negligence of his fellows agents, except in the latter case when the fellow agents acted beyond the scope of their authority. (n)*

### **Responsibility of 2 or More Agents Appointed Simultaneously:**

**General Rule:** Liable jointly

**Exception:** Solidarity has been expressly stipulated; each of the agents becomes solidarily liable for (1) the non-fulfillment of the agency; or for (2) the fault or negligence of his fellow agent

**Exception to the exception:** when one of the other agent/s acts beyond the scope of his authority – innocent agent is NOT liable

**Art. 1898.** *If the agent contracts in the name of the principal, exceeding the scope of his authority, and the principal does not ratify the contract, it shall be void if the party with whom the agent contracted is aware of the limits of the powers granted by the principal. In this case, however, the agent is liable if he undertook to secure the principal's ratification. (n)*

**Art. 1899.** *If a duly authorized agent acts in accordance with the orders of the principal, the latter cannot set up the ignorance of the agent as to circumstances whereof he himself was, or ought to have been, aware. (n)*

**Art. 1900.** *So far as third persons are concerned, an act is deemed to have been performed within the scope of the agent's authority, if such act is within the terms of the power of attorney, as written, even if the agent has in fact exceeded the limits of his authority according to an understanding between the principal and the agent. (n)*

**Art. 1901.** *A third person cannot set up the fact that the agent has exceeded his powers, if the principal has ratified, or has signified his willingness to ratify the agent's acts. (n)*

**Art. 1902.** *A third person with whom the agent wishes to contract on behalf of the principal may require the presentation of the power of attorney,*

*or the instructions as regards the agency. Private or secret orders and instructions of the principal do not prejudice third persons who have relied upon the power of attorney or instructions shown them. (n)*

**Art. 1909.** *The agent is responsible not only for fraud, but also for negligence, which shall be judged with more or less rigor by the courts, according to whether the agency was or was not for a compensation. (1726)*

**Effect where 3<sup>rd</sup> person aware of limits of agent's power:** If the agent exceeds his authority, it shall be VOID unless the principal ratifies it.

**DOCTRINE OF AGENCY BY NECESSITY:** actually, an agency can never be created by necessity; what is created is additional authority in an agent appointed and authorized before the emergency arose. The existence of emergency or other unusual conditions may operate to invest in an agent authority to meet the emergency, provided: **(PURE)**

1. The agent's enlarged authority is exercised for the principal's **protection**
2. The agent is **unable to communicate** with principal;
3. The means adopted are **reasonable** under the circumstances;
4. The emergency really **exists**;

### **When 3<sup>rd</sup> person repudiate the contract**

- Before actual ratification by the principal, or before the principal has signified his willingness to ratify the agent's acts.

### **Effect of the principal receiving the benefits of the transaction:**

- He is deemed to have ratified it. A principal may not accept the benefits of a transaction and at the same time repudiate its burdens

### **Conditions for Ratification**

1. The principal must have capacity and power to ratify
2. He must have had knowledge of material facts
3. He must ratify the acts in its entirety
4. The act must be capable of ratification
5. The act must be done in behalf of the principal
  - To be effective, ratification need not be communicated or made known to the agent or the third party. The act or



conduct of the principal rather than his communication is the key. But before ratification, the third party is free to revoke the unauthorized contract.

**Effects of Ratification**

1. **With respect to agent** - relieves the agent from liability to the third party for the unauthorized transaction, and to his principal for acting without authority; may recover compensation
2. **With respect to principal** - assumes responsibility for the unauthorized act, as fully as if the agent had acted under original authority but not liable for acts outside the authority approved by his ratification
3. **With respect to 3<sup>rd</sup> persons** - bound by ratification to the same extent as if the ratified act had been authorized; cannot raise the question of the agent's authority to do the ratified act
- 4.

**Robinson v. Borse**

*Ratification is spelled out when the principal brings legal proceedings to enforce the contract entered into by the unauthorized agent, subject to qualification, however, that the bringing of legal proceedings is not deemed ratification where the principal's action is undertaken to avert a greater loss rather than to assert a gain.*

**NOTE:** Agent always liable for fraud but not for negligence, which shall be judged with more or less rigor by the courts, according to whether the agency was or was not for compensation.

Acts of the Agent	Effect	Exception(s)
In behalf of the principal, within the scope of authority	<ol style="list-style-type: none"> <li>1. Binds principal;</li> <li>2. Agent not personally liable</li> </ol>	Agent liable if he: <ol style="list-style-type: none"> <li>1. Expressly makes himself liable</li> <li>2. Exceeds the limits of his authority without giving the parties sufficient notice of his powers</li> </ol>
Without or beyond scope of authority	Contract is unenforceable as against the principal <b>but</b> binds the agent to the third person	Binding on the principal when: <ol style="list-style-type: none"> <li>1. Ratified or</li> <li>2. The principal allowed the agent to act as though he had full powers</li> </ol>
Within the scope of authority but in the agent's name	<ol style="list-style-type: none"> <li>1. Not binding on the principal;</li> <li>2. Principal has no cause of action against the 3<sup>rd</sup> parties and vice versa</li> </ol>	When the transaction involves things belonging to the principal: <ol style="list-style-type: none"> <li>1. Remedy of the principal - damages for agent's failure to comply with the agency</li> <li>2. Remedies of the third person                             <ul style="list-style-type: none"> <li>• If the case falls under the general rule, he can sue the agent.</li> <li>• But when the contract involves things belonging to the principal, he can sue the principal.</li> <li>• But if it cannot be determined without litigation who is liable, he can sue both.</li> </ul> </li> </ol>
Within the scope of the <i>written</i> power of attorney but agent has <i>actually</i> exceeded his authority according to an understanding between him & the principal	<ol style="list-style-type: none"> <li>1. Insofar as 3<sup>rd</sup> persons are concerned (not required to inquire further than the terms of the written power, agent acted within scope of his authority;</li> <li>2. Principal estopped</li> </ol>	
With improper motives	Motive is immaterial; as long as within the scope of authority, valid	<ol style="list-style-type: none"> <li>1. Third person knew agent was acting for his own benefit: principal is not liable to 3<sup>rd</sup> third person</li> <li>2. Owner is seeking recovery of personal property of which he has been</li> </ol>



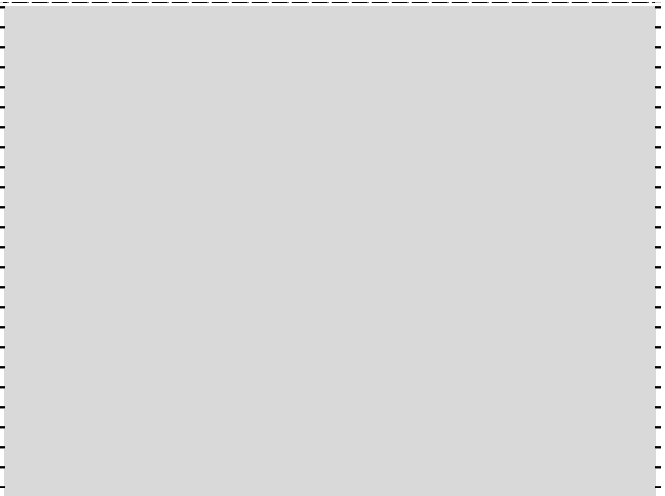
		unlawfully deprived
With misrepresentations by the agent	<ol style="list-style-type: none"> <li>1. Authorized - principal still liable</li> <li>2. Beyond the scope of the agent's authority <b>General Rule:</b> Principal not liable <b>Exception:</b> principal takes advantage of a contract or receives benefits made under false representation of his agent</li> <li>3. For the agent's own benefit – principal still liable; agent's motive immaterial</li> </ol>	
Mismanagement of the business by the agent	<ol style="list-style-type: none"> <li>1. Principal still responsible for the acts contracted by the agent with respect to 3<sup>rd</sup> persons;</li> <li>2. Principal, however, may seek recourse from the agent</li> </ol>	
Tort committed by the agent	Principal civilly liable so long as the tort is committed by the agent while performing his duties in furtherance of the principal's business	
Agent in good faith but prejudices 3 <sup>rd</sup> parties	Principal is liable for damages	
Agent in bad faith and prejudices 3 <sup>rd</sup> persons	Only the agent is liable for damages	

**Art. 1903.** *The commission agent shall be responsible for the goods received by him in the terms and conditions and as described in the consignment, unless upon receiving them he should make a written statement of the damage and deterioration suffered by the same. (n)*

**Art. 1904.** *The commission agent who handles goods of the same kind and mark, which belong to different owners, shall distinguish them by countermarks, and designate the merchandise respectively belonging to each principal. (n)*

**Art. 1905.** *The commission agent cannot, without the express or implied consent of the principal, sell on credit. Should he do so, the principal may demand from him payment in cash, but the commission agent shall be entitled to any interest or benefit, which may result from such sale. (n)*

**Art. 1906.** *Should the commission agent, with authority of the principal, sell on credit, he shall so inform the principal, with a statement of the names of the buyers. Should he fail to do so, the sale shall be deemed to have been made for cash*



**Commission Agent:** One whose business is to receive and sell goods for a commission and who is entrusted by the principal with the possession of goods to be sold, and usually selling in his own name.



**Distinction between Ordinary Agent & Commission Agent**

Ordinary Agent	Commission Agent
Acts for and in behalf of his principal	May act in his own name or in that of the principal
Need not have possession of the principal's goods	Must be in possession of the thing he disposes

**Distinctions between Commission Agent & Broker**

Commission Agent	Broker
Engaged in the purchase and sale for a principal of personal property which has to be placed in his possession and disposal	No custody or possession of the thing he disposes; merely a go-between, an intermediary between the seller and the buyer
Has a relation with principal, buyer or seller, and property which is the object of the transaction	Maintains no relation with the thing which he purchases or sells

**Obligations of a Commission Agent:**

1. Responsible for the goods received by him, as described in the consignment, *UNLESS* upon receiving them he should make a written statement of the damage and deterioration suffered by the same
2. If goods are of the same kind and mark but belonging to different owners, make a distinction by counter marks and designate the merchandise respectively belonging to each principal cannot, without consent of the principal, sell on credit; should he do, principal may demand payment in cash, but the commission agent entitled to any interest/benefit which may result from such sale
3. If an agent receiving guarantee commission (a *del credere* agent), bears the risk of collection and pay the principal the proceeds of the sale on the same terms agreed upon with the purchaser **liable to damages** if agent does not collect the credits of his principal at the time when they become due and demandable, *UNLESS* he proves, that he exercised due diligence for that purpose.

**CHAPTER 3: OBLIGATIONS OF THE PRINCIPAL**

**Art. 1910. The principal must comply with all the obligations which the agent may have contracted within the scope of his authority.**

**As for any obligation wherein the agent has exceeded his power, the principal is not bound except when he ratifies it expressly or tacitly. (1727)**

**Art. 1912. The principal must advance to the agent, should the latter so request, the sums necessary for the execution of the agency.**

**Should the agent have advanced them, the principal must reimburse him therefor, even if the business or undertaking was not successful, provided the agent is free from all fault.**

**The reimbursement shall include interest on the sums advanced, from the day on which the advance was made. (1728)**

**Art. 1913. The principal must also indemnify the agent for all the damages which the execution of the agency may have caused the latter, without fault or negligence on his part. (1729)**

**Art. 1915. If two or more persons have appointed an agent for a common transaction or undertaking, they shall be solidarily liable to the agent for all the consequences of the agency. (1731)**

**Art. 1916. When two persons contract with regard to the same thing, one of them with the agent and the other with the principal, and the two contracts are incompatible with each other, that of prior date shall be preferred, without prejudice to the provisions of Article 1544. (n)**

**Art. 1917. In the case referred to in the preceding article, if the agent has acted in good faith, the principal shall be liable in damages to the third person whose contract must be rejected. If the agent acted in bad faith, he alone shall be responsible. (n)**

**Obligations of the Principal to the Agent:**

1. Comply with all the obligations agent contracted in representation of the principal
2. Advance sums necessary for the execution of the agency, when agent so requests; liable for reimbursement regardless of the undertaking's success whenever agent had advanced & has no fault; includes interest
3. Reimburse the agent for all advances made



- by him provided the agent is free from fault
4. Indemnify the agent for all the damages which the execution of the agency may have caused the latter without fault or negligence on his part
  5. Pay the agent the compensation agreed upon or the reasonable value of the latter's services

### **Liability of 3<sup>rd</sup> persons to the Principal:**

1. **In Contract** – a 3<sup>rd</sup> person is liable to the principal upon contracts entered into by his agent, as if the contract has been entered into by the principal.
2. **In Tort** – the 3<sup>rd</sup> person's tort liability to the principal, insofar as the agent is involved in the tort, arises in 3 situations:
  - a. Where the 3<sup>rd</sup> person damages or injures property or interest of the principal in the possession of the agent
  - b. Where the 3<sup>rd</sup> person colludes with the agent to injure/defraud the principal
  - c. Where the 3<sup>rd</sup> person induces the agent to violate his contract with the principal to betray the trust reposed upon him by the principal.

### **Requisites for solidary liability of principals:**

1. There are 2 or more principals
2. The principals have all concurred in the appointment of the same agent
3. The agent is appointed for a common transaction or undertaking

**Note:** The rule in Art. 1915 applies even when the appointments were made by the principals in separate acts, provided that they are for the same transaction. The solidarity arises from the common interest of the principals and not from the act of constituting the agency.

### **Rule where 2 persons contract separately with agent and principal**

Two persons may contract separately with the agent and the principal with regard to the same thing. If the two contracts are **incompatible** with each other, the one of prior date shall be preferred. This is subject, however, to the rules under Article 1544 of the Civil Code (Double Sale).<sup>1</sup>

<sup>1</sup> **Art. 1544.** If the same thing should have been sold to different vendees, the ownership shall be transferred to the person who may have first taken possession thereof in good faith, if it should be a movable property.

**Art. 1914. The agent may retain in pledge the things which are the object of the agency until the principal effects the reimbursement and pays the indemnity set forth in the two preceding articles. (1730)**

### **Agent's Right of Retention:**

1. Specific (only for those goods connected with the agency) and
2. Until the principal effects the reimbursement and pays the indemnity

**Art. 1918. The principal is not liable for the expenses incurred by the agent in the following cases:**

1. **If the agent acted in contravention of the principal's instructions, unless the latter should wish to avail himself of the benefits derived from the contract;**
2. **When the expenses were due to the fault of the agent;**
3. **When the agent incurred them with knowledge that an unfavorable result would ensue, if the principal was not aware thereof;**
4. **When it was stipulated that the expenses would be borne by the agent, or that the latter would be allowed only a certain sum. (n)**

### **Principal's Liability for Expenses:**

**General Rule:** Principal is liable for the expenses incurred by the agent

#### **Exceptions: (AFUS)**

- a. If the agent acted in contravention of the principal's instructions, unless principal derives benefits from the contract
- b. When the expenses were due to the fault of the agent
- c. When the agent incurred them with knowledge that an unfavorable result would ensue, if the principal was not aware thereof

Should it be immovable property, the ownership shall belong to the person acquiring it who in good faith first recorded it in the Registry of Property.

Should there be no inscription, the ownership shall pertain to the person who in good faith was first in the possession; and, in the absence thereof, to the person who presents the oldest title, provided there is good faith.



- d. When it was stipulated that the expenses would be borne by the agent, or that the latter would be allowed only a certain sum

**Art. 1911. Even when the agent has exceeded his authority, the principal is solidarily liable with the agent if the former allowed the latter to act as though he had full powers. (n)**

**Who can be estopped to deny agency?**

1. **Estoppel of Agent**- one professing to act as agent estopped to deny his agency both as against his asserted principal and the third persons interested in the transaction in which he is engaged
2. **Estoppel by the Principal**
  - a. *As to agent* – one knowing another is acting as his agent and fails to repudiate his acts, or accept the benefits of them, will be estopped to deny the agency as against such other
  - b. *As to sub-agent* – for the principal to be estopped from denying his liability to a third person, he must have known or be charged with knowledge of the transaction and the terms of the agreement between the agent and sub-agent
  - c. *As to third persons* – one who knows that another is acting as his agent or permitted another to appear as his agent, to the injury of third persons who have dealt with the apparent agent as such in good faith and in the exercise of reasonable prudence, is estopped to deny the agency
3. **Estoppel of Third Persons** – a third person, having dealt with one as an agent may be estopped to deny the agency as against the principal, agent or 3<sup>rd</sup> persons in interest
4. **Estoppel of the Government** - government neither estopped by the mistake/error of its agents; may be estopped through affirmative acts of its officers acting within the scope of their authority

**Distinction between Ratification and Estoppel**

Ratification	Estoppel
Rests on intention	Rests on prejudice
Affects the entire transaction from the	Affects only relevant parts of the transaction

beginning	
Substance of ratification is confirmation of an authorized acts or conduct after it has been done	Substance of estoppel is the principal's inducement to another to act to his prejudice

**Distinction between Apparent Authority & Authority by Estoppel**

Apparent Authority	Authority by Estoppel
Though not actually granted, principal knowingly permits/holds out the agent as possessing the necessary powers to act in a certain way	Where the principal, by his negligence, permits his agent to exercise powers not granted to him, even though the principal may have no notice or knowledge of the conduct of the agent

**CHAPTER 4: MODES OF EXTINGUISHING AGENCY**

**Agency is Extinguished: (EDWARD)**

1. By the expiration of the period for which the agency was constituted.
  2. By the death, civil interdiction, insanity or insolvency of the principal or of the agent;
  3. By the withdrawal of the agent;
  4. By the accomplishment of the object or purpose of the agency;
  5. By its revocation;
  6. By the dissolution of the firm or corporation which entrusted or accepted the agency(**Art. 1919**)
- The list not exclusive; causes *particular* only to agency; may be extinguished by the modes of extinguishment of obligations in general whenever they are applicable, like loss of the thing and novation
  - Agency is TERMINATED, as a matter of law, upon the outbreak of war.

**Presumption of Continuance of Agency**

- It means that when once shown to have existed, an agency relation will be presumed to have continued, in the absence of anything to show its termination.

**Continuance of Agency**

Parties must be

1. Present,
2. Capacitated and
3. Solvent



### **Modes of extinguishing an agency, generally:**

1. Agreement
2. Subsequent acts of the parties which may be either:
  - a. By the act of both parties or by mutual consent
  - b. By the unilateral act of one of them
3. By operation of law

**Note:** Even if the reason for extinguishing the agency is not true, the agent cannot insist on reinstatement. The agent can only demand damages.

### **What happens of the subject matter of the agency is lost or destroyed?**

In the absence of any agreement by the parties to the contrary, the loss or destruction of the subject matter of the agency terminates the agent's authority to deal with reference to it

#### **Exceptions:**

1. if it is possible to substitute other material for that which was destroyed without substantial detriment to either party
2. if the destroyed subject matter was not in fact essential to the contract
3. a partial loss or destruction

#### **Form of renunciation:**

It is not always necessary for the agent to renounce the agency expressly. He can do so impliedly, such as:

1. where he has conducted himself in a manner incompatible with his duties as agent
2. when he abandons the object of his agency and acts for himself in committing a fraud upon his principals
3. when he files a complaint against the principal and adopts an antagonistic attitude towards him

**Art. 1930. The agency shall remain in full force and effect even after the death of the principal, if it has been constituted in the common interest of the latter and of the agent, or in the interest of a third person who has accepted the stipulation in his favor. (n)**

**Art. 1931. Anything done by the agent, without knowledge of the death of the principal or of any other cause which extinguishes the agency, is valid and shall be fully effective with respect to third persons who may have contracted with him**

**in good faith. (1738)**

### **Exceptions to Extinguishment by Death**

1. If the agency is coupled with an interest
2. If the act of the agent was executed without the knowledge of the death of the principal and the third person who contracted with the agent acted in good faith
3. To avoid damage
4. If it has been constituted in the common interest of the principal and of the agent, or in the interest of a third person who has accepted the stipulation in his favor

**Art. 1932. If the agent dies, his heirs must notify the principal thereof, and in the meantime adopt such measures as the circumstances may demand in the interest of the latter. (1739)**

### **Can the heirs continue the agency?**

**General Rule:** agency calls for personal services on the part of the agent; rights & obligations are **not transmissible**

#### **Exceptions:**

- a. Agency by operation of law, or a presumed or tacit agency
- b. Agency is coupled with an interest in the subject matter of the agency (ex. *power of sale in a mortgage*).

### **Exceptions to Extinguishment Upon Loss or Destruction of Subject Matter**

- 1) If it is possible to substitute other material for that which was destroyed without substantial detriment to either party or if the destroyed subject matter was not in fact essential to the contract;
- 2) A partial loss or destruction does not always result in a complete termination of the agency, and under such circumstances, while the agency may be ended in so far as the destroyed property is concerned, it may continue in existence as to other property not affected
  - i) If the loss brought about by the principal (ex. *principal sells subject matter to another party even if an agent has been constituted in reference to it*), principal liable for damages for his wrongful terminating act; if subject matter is lost without principal's fault, no liability assumed by him





### **Change of Circumstance:**

**General Rule:** when there is a basic change in the circumstances surrounding the transaction, which as not contemplated by the parties and which would reasonably lead the agent to believe that the principal would not desire him to act, the authority of the agent is terminated

### **Exceptions:**

- a. If the original circumstances are restored within a reasonable period of time, the agent's authority may be revived
- b. Where the agent has reasonable doubts as to whether the principal would desire him to act, his authority will not be terminated if he acts reasonably
- c. Where the principal and agent are in close daily contact, the agent's authority to act will not terminate upon a change of circumstances if the agent knows the principal is aware of the change and does not give him new instructions

**Art. 1920.** *The principal may revoke the agency at will, and compel the agent to return the document evidencing the agency. Such revocation may be express or implied. (1733a)*

**Art. 1921.** *If the agency has been entrusted for the purpose of contracting with specified persons, its revocation shall not prejudice the latter if they were not given notice thereof. (1734)*

**Art. 1922.** *If the agent had general powers, revocation of the agency does not prejudice third persons who acted in good faith and without knowledge of the revocation. Notice of the revocation in a newspaper of general circulation is a sufficient warning to third persons. (n)*

**Art. 1923.** *The appointment of a new agent for the same business or transaction revokes the previous agency from the day on which notice thereof was given to the former agent, without prejudice to the provisions of the two preceding articles. (1735a)*

**Art. 1924.** *The agency is revoked if the principal directly manages the business entrusted to the agent, dealing directly with third persons. (n)*

**Art. 1925.** *When two or more principals have granted a power of attorney for a common transaction, any one of them may revoke the same without the consent of the others. (n)*

**Art. 1926.** *A general power of attorney is revoked by a special one granted to another agent, as regards the special matter involved in the latter. (n)*

**Art. 1927.** *An agency cannot be revoked if a bilateral contract depends upon it, or if it is the means of fulfilling an obligation already contracted, or if a partner is appointed manager of a partnership in the contract of partnership and his removal from the management is unjustifiable. (n)*

**Art. 1928.** *The agent may withdraw from the agency by giving due notice to the principal. If the latter should suffer any damage by reason of the withdrawal, the agent must indemnify him therefor, unless the agent should base his withdrawal upon the impossibility of continuing the performance of the agency without grave detriment to himself. (1736a)*

**Art. 1929.** *The agent, even if he should withdraw from the agency for a valid reason, must continue to act until the principal has had reasonable opportunity to take the necessary steps to meet the situation. (1737a)*

**Revocation:** Termination of the agency by the subsequent act of the principal

**Renunciation/Withdrawal:** Termination of the agency by the subsequent act of the agent

### **May the agency be extinguished at will?**

- A. **AGENT** may do so but subject to the contractual obligations owing the principal (*i.e.* fixed period of time for the agency or purpose not yet accomplished);
1. **Expressly or impliedly**
    - a. conducted himself in a manner incompatible with his duties;
    - b. abandons the object of agency and acts for himself in committing a fraud upon his principal;
    - c. he files a complaint against the principal and adopts an antagonistic attitude towards him
      - *with just cause* - give due notice
      - *without just cause* - liable for damages if agent suffers damages thereby UNLESS the



agent should base his withdrawal upon the impossibility of continuing the performance of the agency without grave detriment to himself

2. The mere fact that the agent violates his instructions does not amount to renunciation, and although he may thus render himself liable to the principal, he does not cease to become an agent.

B. **PRINCIPAL** may also revoke the agency at will

**Exception:** agency coupled with interest

- a. When a bilateral contract depends upon the agency
- b. When the agency is the means of fulfilling an obligation already contracted
- c. When a partner is appointed as manager of a partnership in the contract of partnership and his removal from the management is unjustifiable.

**Exception to the exception:** when the agent acts to defraud the principal

### Implied Revocation of Agency

1. Principal appoints a new agent for the same business or transaction, only if there is incompatibility); effective as between the principal and the agent only if communicated to the agent; does not prejudice rights of third persons acting in good faith without knowledge of the revocation
2. Principal directly manages the business entrusted to the agent, dealing directly with 3<sup>rd</sup> persons

### Effect of Issuance of a Special Power of Attorney:

- The general power is impliedly revoked as to matters covered by the special power because a special power naturally prevails over a general power.

### Principal's Liability for Damages despite Revocation:

1. If the agency was constituted for a fixed period, the principal shall be liable for damages occasioned by the wrongful discharge of the agent before the expiration of the period fixed
2. Even if there was no time fixed for the continuance of the agency, but the agent can prove that the principal acted in bad faith by revoking the agency in order to avoid the payment of commission about to be earned, the principal can be held liable for damages

### Necessity of Notice of Revocation

1. **As to the agent** - express notice always necessary; sufficient notice if the party to be notified actually knows, or has reason to know, a fact indicating that his authority has been terminated/suspended; revocation without notice to the agent will not render invalid an act done in pursuance of the authority
2. **As to 3<sup>rd</sup> persons** – express notice necessary
3. **As to former customers** - actual notice must be given to them because they always assume the continuance of the agency relationship
4. **As to other persons** - notice by publication is enough

### Effect of Extinguishment Without Notice

- Act of agent deemed valid insofar as 3<sup>rd</sup> parties acting in good faith and without knowledge of revocation