
CONTRACT OF AGENCY, VICARIOUS LIABILITY AND STATUTORY

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ABSTRACT

This research through secondary sources of data examines the complex nature of relationships between principals and agents. It focuses mainly on how liable, or responsible, agents are to principals and third parties. It digs deeper into the representative and substitute nature of an agent's authority. It emphasizes the important details in contracts that determine how far an agent's liability extends. The concept of implied authority and an agent's personal liability are explored. Insights are drawn from legal cases to help explain the implications. The research expands its inquiry to the liability of states as principals for the acts of their agents. It navigates, or makes its way through, the complex details in constitutions. The **Kaushal Kishor vs. State of Uttar Pradesh** case serves as a relevant example. Furthermore, the paper includes the Law Commission's position on state liability. It advocates for a fair relationship between individual rights and state responsibilities. Vicarious liability in agency contracts is taken apart. It differentiates between tort and contract cases. It underlines the importance of the agent's authority. The defense of statutory authority emerges as a pivotal consideration. This reveals instances where the state can avoid liability under specific statutes. The research contemplates the delicate balance between protecting individual rights and giving leeway for state actions.

Keywords: Contract of Agency, Principle, Agent, Vicarious Liability, Statutory authority, third party, representation.

INTRODUCTION

An agency contract is very important for business relationships. In an agency contract, one person called the agent agrees to work for another person called the principal. The agent will do things on behalf of the principal. This type of contract is governed by laws in India's Contract Act from 1872. The contract carefully explains the roles, powers, and responsibilities of both the principal and agent when doing transactions with other people. As we learn more about agency contracts, we see they are even more important when related to two key ideas: statutory authority and vicarious liability. When an agent works for a principal, the principal can be responsible for things the agent does, even if the principal did not directly do those things. And the agent has power to act because laws give them that authority when working under an agency contract.

RESEARCH QUESTIONS

- What is the liability of an agent to the principle and to the third party?
- Can the state be held liable as a principle for the acts of its agents?
- What is the role of vicarious liability and state working under the defense of statutory authority in the light of contract of agency?

DESCRIPTIVE ANALYSIS

The contract of agency is a type of special contract where a person agrees to act or represent on behalf of the other person. The one who represents is called an agent while the one who is represented is called a principal. The agent is the “one who agrees and is authorized to act on behalf of another, a principal, to legally bind an individual in particular business transactions with third parties pursuant to an agency relationship”¹. As per The Indian Contract Act, 1872 under Chapter X of Agency, “An agent is a person employed to do any act for another, or to represent another in dealings with third persons. The person for whom such act is done, or who is so represented, is called the principal”².

¹ West's Encyclopedia of American Law (Thomson Gale, 2nd ed. 2005) 169.

² The Indian Contract Act, 1872 § 182.

The case of *P. Krishna Bhatta v Mundila Ganapathi Bhatta*³, as interpreted by Justice Ramaswami of the Madras High Court, explores the understanding of the concept of agency in legal terms. The judge emphasizes that not every person who acts on behalf of another automatically qualifies as an agent. Instead, the key difference lies in the individual's role as a representative in business negotiations and their involvement in creating, modifying, or terminating contractual obligations between the principal and third parties.

According to Justice Ramaswami, the defining characteristics of an agent are their representative character and derivative authority. The term "representative character" implies that the individual is acting on behalf of another party, essentially representing their interests in a particular context. This representation is specifically in the realm of business negotiations, highlighting the commercial and transactional nature of the agency relationship. Moreover, the concept of "derivative authority" underscores that the agent's power and authority derive from the principal. In other words, the agent is empowered to act on behalf of the principal based on the authority granted to them by the principal. This derivative authority is essential for the agent to carry out actions that impact the legal relationships between the principal and third parties.

So, it is very clear that the authority of an agent is representative and derivative. An agent should always keep in mind the concerns of the principal and act on their behalf. Since the agent's authority is derivative, they cannot do anything that is originally not a part of the principal's jurisdiction.

The personal liability of an agent is towards both the principle and the third party. In *Germie Motors (Pty) Ltd v Ericksen*⁴, an agent was held liable for breach of warranty of authority where his principal in fact had conferred authority on him to sell a motor vehicle when the motor vehicle was, to the knowledge of the principal (and not of the agent), stolen.

Friedman J held that the plaintiff had not established fraudulent misrepresentation. Regarding the alternative claim based on negligent misrepresentation, his lordship did not make any finding, but decided to base his decision on the second alternative claim-breach of the express, alternatively implied, warranty of authority.⁵

³ *P Krishna Bhatta v Mundila Ganapathi Bhatta*, AIR 1955 Mad 648.

⁴ *Germie Motors (Pty) Ltd v Ericksen*, 1985 (2) SA 389 (C).

⁵ Pauw, P., 'Personal Liability of an Agent', 102 S. African L.J. 603 (1985).

Contracts that are entered into through an agent and the obligations that arise from such an act shall be enforced in the same manner and will have the same legal consequences as the contract has been entered into by the principal himself⁶. Hence, any act of the agent shall be seen as the act of the principal himself. The principal is thus liable for the consequences that arise from the acts of the agent, provided that such act was authorized from him and should such act be unauthorized, then the principal shall be not liable in such a case⁷. Where the agent has exceeded his delegated authority and the agent's part can be separated from the principal's part, then in such a case, then only the part which is within the authority delegated to the principal is binding on the principal⁸. Where the act cannot be separated from what was within the actual ambit of the agent's delegated authority, then in such a case, the principal is not obligated to recognize such a transaction⁹.

This makes it quite clear that an agent can only be individually held liable for his actions when he is not acting under the authority of the principle and exceeds his delegated authority thereby overstepping and distinguishing his actions from the powers conferred to him. The concept of implied authority plays a crucial role in understanding the scope of an agent's powers and its impact on the contractual relationship between the principal, agent, and third party. Even if an agent exceeds their express authority – the authority explicitly granted by the principal – there may be instances where the agent's implied authority still binds the principal to the agreement and relieves the agent from contractual liability to the third party.

Implied authority arises when the circumstances surrounding the agency relationship suggest that the agent should reasonably have the authority to perform certain acts, even if not explicitly stated by the principal. This authority is implied from the nature of the agency, the usual course of business, or the actions of the principal that lead the third party to believe the agent has such authority¹⁰.

⁶ *Muhammad Hussain v. Bashir Ahmed*, PLD 1987 Lahore 392, at para. 6. See also, *Messrs Mastersons v. Messrs Ebrahim Enterprises*, 1988 CLC 1381 (Karachi), at para. 13; *Ramzan v. Lara*, 2001 MLD 957 (Lahore); *Abdul Abid v. Siddique Moti*, 2003 MLD 1993 (Karachi), 1998.

⁷ A. I. Munir, *'The Rights and Liabilities of the Principal, Agent and the Third Parties in A Contract of Agency'* (September 11, 2023).

⁸ *Ali Mohataram Naqvi v. Messrs Cogefar-Astaldi Sidmail*, PLD 1986 Karachi 574, at para. 33. See also, *Muhammad Hussain v. Bashir Ahmed*, PLD 1987 Lahore 392, at para. 6.

⁹ *Sh. Muhammad Saleem v. Saadat Enterprises*, 2009 CLC 291 (Lahore), 2009 CLD 390 (Lahore) at para. 8.

¹⁰ Willis L. M. Reese & A. S. Flesch, *'Agency and Vicarious Liability in Conflict of Laws'*, 60 Columbia Law Review 764 (1960), <https://doi.org/10.2307/1120183>.

The key **conditions for the application of implied authority** are:

1. **Acting on Behalf of the Principal:** For implied authority to be effective, the agent must be acting on behalf of the principal. This means that the agent is carrying out tasks or negotiations that are related to the business or interests of the principal.
2. **Disclosure of Agency Relationship:** The agent must disclose the agency relationship to the third party. This is a crucial aspect as it ensures transparency and informs the third party that the agent is representing another party in the transaction. Without disclosure, the third party may not be aware of the agency relationship and could assume the agent is acting on their own behalf.

A recent case *Kaushal Kishor vs The State Of Uttar Pradesh*¹¹ can be used to study the liability of agents of state as well. The case involved two separate instances where State Ministers in Uttar Pradesh and Kerala made derogatory statements, leading to a conflict between the right to freedom of speech and the right to dignity of the affected individuals. In the first case, a UP Minister made disparaging comments about sexual assault victims, labeling it a “political controversy.” In the second instance, a Kerala Minister issued highly derogatory statements about women.

Both petitions alleged a violation of the right to dignity protected under *Article 21*¹² of the Constitution. The matter was initially presented to a three-judge bench but was later referred to a five-judge bench due to the significant legal questions involved.

The primary issues before the court were:

- Whether the right to freedom of speech under Article 19(1)(a)¹³ could be curtailed to protect the right to dignity under Article 21.
- Whether the State had a positive duty to protect an individual's rights under Article 21 against non-State actors.

In a 4:1 verdict, the Court held that an individual's right to freedom of speech could not be

¹¹ *Kaushal Kishor v. The State of Uttar Pradesh*, (2023) 4 SCC 1.

¹² The Indian Constitution art. 21.

¹³ The Indian Constitution art. 19(1)(a).

restricted merely for violating another individual's dignity. The majority opinion emphasized that when fundamental rights conflict, the court must balance or prioritize them. The grounds for restricting freedom of speech, as listed in Article 19(2), were considered exhaustive, preventing the addition of new grounds. The majority also discussed the horizontal application of fundamental rights, stating that the State has an affirmative duty to protect citizens' life and personal liberty from both State and non-State actors.

However, Justice BV Nagarathna, in a partly dissenting opinion, argued that dignity is a fundamental aspect of rights under Article 21 and cannot be curtailed by invoking Article 19(1)(a). She contended that, in this case, where the speech was disparaging and resembled hate speech, it could not be protected under Article 19(1)(a). According to her, the issue was not about balancing two fundamental rights but addressing an abuse of freedom of speech attacking an individual's fundamental rights.

In the last chapter (Chapter VIII¹⁴) of its first report, the Law Commission made several important suggestions and observations. First, it emphasized how important it is, especially in a country that takes care of its people, to find a fair balance between individual rights and what the government is responsible for. Second, it noted that when the Constitution was made, how much the national and state governments should be responsible for the mistakes of their workers or people was something left for future laws to deal with. The Law Commission said it is very complex to decide how far the government should be responsible when their people do wrong, describing it as trying to balance different things. The goal was to not limit the government's work too much while also protecting citizens enough. Additionally, the Commission stressed how important it is to make laws that are clear and definite, rather than leaving it up to courts to develop the law based on each individual judge's views. One very important idea from the Law Commission was to stop using the old distinction between essential government functions and non-essential government functions when deciding if the government is responsible. This shift suggested moving away from outdated categories and toward a more thoughtful and modern way to look at how accountable the government is for the actions of its people. In essence, this part of the first Law Commission report clearly supports the idea that the government can be held responsible like a boss for what its people do, calling for a thoughtful and updated framework for defining this responsibility.

¹⁴ First report of Law Commission, Chapter VIII.

In the **general law of torts**, encompassing English common law principles imported into India, guided by justice, equity, and good conscience, and supplemented by statutory modifications, several key principles govern the liability of the state. These principles, reflecting a nuanced understanding of the state's accountability for tortious acts, are outlined as follows:

- **Liability for Employee and Agent Torts:** The state is held liable for torts committed by its employees and agents while acting within the scope of their employment.
- **Breaching Duties to Employees or Agents:** The state is liable for breaching duties owed to employees or agents under general law due to its role as their employer.
- **Liability for Independent Contractors:** The state bears liability for torts committed by an independent contractor only in specified cases.
- **Corporate Liability:** The state is also liable for torts where a corporation owned or controlled by the state would be held accountable.
- **Property-Related Liability:** The state is liable for breaching duties attached to the ownership, occupation, possession, or control of immovable property from the moment it occupies, takes possession, or assumes control of the property.
- **Liability for Dangerous Things:** The state is subject to general law liability for injuries caused by dangerous things.

Regarding **duties of care imposed by statute**, the following principles apply:

- **Inherently Injurious Acts:** The state is not liable if a statute authorizes an act that is inherently injurious.
- **Statutory Duty Breaches:** The state is liable, without proof of negligence, for breaching a statutory duty imposed on it or its employees, causing damage.
- **Negligence or Malicious Acts:** The state is liable if, in discharging statutory duties, its employees act negligently or maliciously, regardless of the discretion involved.
- **Nuisance, Trespass, or Negligent Acts:** The state is liable if, in exercising powers

conferred by statute, it causes nuisance, trespass, or acts negligently or maliciously, resulting in damage.

- **Comparison to Private Employers:** The state is subject to the same duties and rights as a private employer under a statute, irrespective of whether it is specifically binding on the state.
- **Acts Limiting Compensation:** If an act negates or limits compensation for a citizen who suffered damage within its scope, the state's liability aligns with that under the act, and the injured person is entitled only to remedies provided under the act.

In the context of agency contracts, vicarious liability plays a significant role in holding a principal responsible for the actions and promises of their agent, even if those promises were unauthorized. This concept suggests that the principal should be bound by the actions of their agent within the scope of their agency power. When working under the defense of statutory authority in the realm of agency contracts, the focus shifts to whether the agent's actions were within the boundaries of the law or any specific statutes that authorize such actions. This defense can be used to justify the agent's actions and potentially shield the principal from liability if the agent was acting within the scope of their statutory authority. Overall, the combination of vicarious liability and the defense of statutory authority in agency contracts helps determine the extent of the principal's responsibility for the actions and promises made by their agents, considering both legal and contractual implications.

Vicarious liability is a legal concept where one party is held responsible for the actions or omissions of another party¹⁵. In the context of agency relationships, vicarious liability typically refers to the situation where a principal (employer) is held accountable for the actions of an agent (employee) performed within the scope of their employment¹⁶.

Application in Agency Relationships:

In agency relationships, the application of vicarious liability differs between torts and contracts¹⁷. In tort cases, the employer can be held liable for the actions of the employee if they

¹⁵ Giliker, Paula. *Vicarious Liability in Tort: A Comparative Perspective*. Vol. 69. Cambridge University Press, 2010.

¹⁶ McCarthy, Louise. 'Vicarious Liability in the Agency Context', 4 Queensland U. Tech. L. & Just. J. 1 (2004).

¹⁷ Mearns Jr., E. A. 'Vicarious Liability for Agency Contracts', 50-57 Virginia Law Review (1962).

were acting within the scope of their employment, even if the employer did not authorize the specific action. However, in contract cases, the employer is typically only bound by the promises of the agent if they were authorized to make such promises.

In contract liability, the focus is on the agent's authority to bind the principal. The principal is usually only liable for the agent's promises if the agent had real or apparent authority to make those promises. Consent from the principal to be bound by the agent's actions is a crucial factor in determining vicarious liability in contract situations.

In some cases, the concept of “inherent powers” or implied authority is used to explain situations where the agent's actions may not have been explicitly authorized by the principal but are still binding. This concept helps in understanding and analyzing outcomes where the agent's actions are beyond their explicit authority¹⁸. The scope of the agent's power is a key factor in determining vicarious liability in agency relationships. If the agent's actions or promises fall within the scope of their agency power, the principal may be held liable for those actions or promises, even if they were not explicitly.

Vicarious liability in agency contracts is often justified by the need for businesses to rely on the appearance of authority and the actions of their agents in conducting commercial transactions. Holding principals accountable for the actions of their agents helps maintain trust and efficiency in business dealings.

Here, another concept of General defense of Statutory authority comes into picture. Even if state is held liable as a principle for the acts of its agents, there is a chance that it can still escape liability under statutory authority. State in general works for the welfare of the people and if damage is caused to a person by the acts of state or its agents under the authority of legislature, he cannot bring any action for it. This is because in such matters the action of state direct or vicarious, are protected to ensure the accessibility for development in the longer run. In *Vaughan v. Taff Vale Rly and Co*¹⁹, a railway company was not held liable as it came under the ambit of statutory authority. There are many more cases which upheld the very same conclusion.

¹⁸ *Thurber & Co. v. Anderson*, 88 Ill. 167 (1878).

¹⁹ *Vaughan v. Taff Vale Rly and Co.*, (1860) 5 H. & N. 679.

CONCLUSION

In conclusion, there is a clear pattern of responsibility within an agency contract: the agent is primarily responsible to the principal. The agent's responsibility to third parties only extends when the agent's authority or actions can be clearly separated from the principal. The agent's role is to represent and act on behalf of the principal. Their responsibility depends on how well their actions match the authority given by the principal. When the agent exceeds their delegated authority and distinguishes their actions from the principal's scope, they may become personally responsible. Furthermore, looking at the state's role as a principal in agency relationships, we find that the state can indeed be held responsible for the acts of its agents.

However, there is an important detail when the actions of state agents fall under a statutory authority. In such cases, neither the state nor its agents can be held responsible if it can be proven that the agents were acting in their official role representing the state. Having statutory authority protects both the state and its agents from accountability. It reinforces the principle that acting within the boundaries of legislated authority shields the state and its agents from legal consequences.

This dual framework – the agent's responsibility to the principal and potential responsibility to third parties based on how distinguishable their actions are from the principal, along with the nuanced dynamics of state responsibility under statutory authority – underscores the complex balance between protecting individual rights and allowing flexibility for state actions within the contractual relationships of agency. As we navigate this complicated area, having an understanding of these legal principles becomes essential to ensure a fair and just balance between the rights of principals, agents, and third parties, as well as the broader responsibilities of the state.