SECTION 1 INTRODUCTION

15.1.1 The law of agency plays an important role in commercial transactions, particularly with the advent of the modern company which, by a legal fiction, is regarded as having personality and may enter into transactions in its own right. Even with individuals, it will often be easier to transact through intermediaries. Accordingly, much day to day commercial transacting is facilitated by intermediaries acting within the scope of the authority that has been conferred on them whether expressly or by implication. Such persons who act on behalf of others are regarded as agents and the legal effect of such acts by agents is that the person for whom they are acting - the principal - is bound by such acts and may incur legal obligations to the third party who has dealt with the agents. By this, the law of agency is able to multiply the individual´s legal personality in space.

SECTION 2 DEFINITION OF AGENCY

15.2.1 All definitions suffer from inadequacies but essentially agency is defined as the relationship which arises where one person known as the agent acts for another known as the principal. Through the acts of the agent, the principal and a third party may be brought into a contractual relationship. The agent may also have the power to dispose of property of the principal to a third party. Generally the agent´s acts have such effect because the principal has authorized the agent to do the acts in question and the agent has agreed. The agent in a sense becomes an extension of the principal and is therefore capable of altering the principal´s legal position either by binding him to a contract or effecting a binding disposal of the principal´s property.

SECTION 3 AGENCY CONTRASTED WITH OTHER RELATIONSHIPS

15.3.1 At common law, there are a number of relationships that resemble agency but may not have the distinguishing feature of being able to affect the legal position of another as in agency, e.g. servants/employees, bailees, trustees, etc. For example, a servant or employee may be given specific tasks to perform which, though important, do not confer on the servant or employee any authority or power to bind the master vis-à-vis a third party. A finance manager of a company may not be authorized to enter into transactions on behalf of the company that he or she works for. The finance manager´s role may simply be to ensure that the accounts of the company are kept up to date. On the other hand, there are many employees who would have authority to bind their principals. A good example is the managing director of a company. As the officer of the company charged with the day to day running of the company, managing directors frequently have wide powers to enter into transactions on behalf of their companies.

15.3.2 A bailee is a person to whom goods have been entrusted. Normally, bailees do not have any power to deal with the goods that have been entrusted to them. However, bailees can also be given authority to dispose of the goods entrusted to them, or such authority can sometimes arise by operation of law. In such circumstances, the bailees are also agents. A trustee´s role is to hold property for the benefit of another person. A trustee may have no authority to enter into contracts or dispose of the trust property. Nevertheless, trustees may sometimes be conferred with such power. For example, the trust document may confer on the trustee a power to invest, in which event the trustee acquires agency powers and any investments the trustee makes within such power will bind the trust property and the beneficiary of the trust.

SECTION 4 CREATION OF AGENCY

Express Authority

15.4.1 The most obvious way to create an agency relationship is by express consent or authorization. Express authority arises where the principal expressly by words consents to the agent acting for the principal in a certain way and the agent agrees. The principal and agent will be held to have consented if they have agreed to what amounts in law to such a relationship, even if they did not recognize it themselves and even if they had professed to disclaim it. However, the consent must have been given by each of them. Primarily one looks to what they said and did at the time of the alleged creation of the agency. Earlier words and conduct may afford evidence of a course of dealing in existence at that time and may be taken into account more generally as historical background. Later words and conduct may have some bearing, though are likely to be less important - see Garnac Grain Co Ltd v Faure & Fairclough Ltd [1967] 1 Lloyd´s Rep 495 at pp 508-509; Freeman & Lockyer v Buckhurst Park Properties (Mangal) Ltd [1964] 2 QB 480.

Implied Authority

15.4.2 Another way in which an agency relationship can be created is where the authority is implied. In cases of implied authority, the principal does not expressly say to the agent that the agent has been conferred authority to act in a certain manner. Instead, the acts of the principal and the agent are such that it is clear that the principal has consented to the agent having some authority, and the agent has agreed. Such agreement, in other words, is inferred from the conduct of the party and the circumstances of the case. The most common instances of implied authority arise when a person is appointed to a position without any express authority being conferred on that person, and the position is one which usually carries with it a certain authority. For example, when a board of directors appoints one of its own to the position of managing director or chief executive officer the board impliedly authorizes him to do all such things as fall within the usual scope of that office - see Hely Hutchinson v Brayhead Ltd [1968] 1 QB 549 at p 583. One would expect that most managing directors will usually at least have implied authority to authorize or enter into contracts that are within the company´s ordinary course of business.

Apparent Authority

15.4.3 It should be noted that express and implied authority are regarded as actual or real authority. In other words, the authority actually exists. However, even where no authority has been expressly or impliedly conferred, an `agent´ may still be able to bind the `principal´. In such cases, it is said that the `agent´ has apparent authority. Although the authority is not real, to the extent that the `agent´s´ acts are capable of binding the `principal´, an agency relationship is created.

15.4.4 The reason why the principal is capable of becoming bound is this way is because the law of agency operates principally in the commercial realm where transactional certainty is important. As such, the law of agency cannot be limited to cases where the agent has actual authority, whether express or implied. If commercial transactions in the modern economy are to be able to take place quickly and efficiently, any such limits would substantially increase the costs of transacting. Inquiries would have to be made and, in the case of corporations, formal resolutions may be required. This would substantially defeat the purpose of allowing agents to be used. Additionally, in modern commerce, there is often a need to confer some degree of discretion upon agents, e.g. to negotiate and finalise the terms of an agreement, particularly where the agent is a senior employee of the business organisation. With such discretion, it may arise on occasion that the agent will act outside the scope of his or her actual authority. If this is the case, the agent will be liable to the third party for breach of the agent´s warranty of authority (see Section 9 below). But, this may be cold comfort to the third party who will often prefer to look to the principal on the contract entered into.

15.4.5 Accordingly, unless there are circumstances where the law of agency will allow such contracts to be enforced, there is a danger that faith in the utility of agents will be severely undermined to the detriment of commercial convenience and the efficient operation of markets. If the law were such that there would never be any circumstances under which a principal would be bound by the unauthorized acts of the principal´s agent, a third party would always have to refer to the principal to be certain of entering into a binding transaction. A principal would be able to resile from an unauthorized contract entered into by the principal´s agent no matter

how objectively reasonable it was for the third party to have thought that the agent was properly authorized. The principal would also have less incentive putting in place procedures to ensure that the principal´s agents acted properly.

15.4.6 Accordingly, the law of agency has developed the doctrine of apparent authority whereby an agent who appears to have authority is capable of binding his principal where the third party has acted on the faith of such appearance of authority, usually by entering into a contract with the agent. The doctrine is not an unqualified one; it arises where, on the facts, it appears or looks as if a person (the `agent´) has actual authority. This appearance of authority has come about because of something that the `principal´ did or said, in other words, because of a representation by the `principal´. If the third party relies on this and enters into a contract with the `agent´ believing that the `agent´ is acting on behalf of the `principal´, the `principal´ is bound. The most common explanation for apparent authority is that it rests on the doctrine of estoppel - see Freeman and Lockyer v Buckhurst Park Properties (Mangal) Ltd [1964] 2 QB 480.

15.4.7 The conduct of the principal that can constitute a sufficient representation may comprise placing an agent in a position that would normally carry the requisite authority but did not in the instant case because the principal had restricted the agent's authority. It must be clear though that a person holding such a position would usually have such authority unless the authority was limited by the principal. In such circumstances, a third party would be entitled to assume, in the absence of notice to the contrary, that such an agent had the requisite authority. In Skandinaviska Enskilda v Asia Pacific Breweries [2011] 3 SLR 540, the Court of Appeal held that the title of "finance director" did not connote any specific authority and therefore the Defendant's finance director did not have apparent authority to perform the acts in question.

15.4.8 Apparent authority can come about where an existing agent exceeds his authority or where the person was not an agent but appears to be one because of what the `principal´ said or did. For example, A may have been appointed to act as P´s agent. The agency is later terminated by P but A continues to act as if he was P´s agent and enters into a contract with T who does not know about the termination of the agency. P is nonetheless bound by A´s act. Another example is where P never appointed A as P´s agent but P allows A to act as if he were, or leads T to believe that A is P´s agent. In such circumstances, P will be bound to T if T enters into a transaction with A purportedly acting on behalf of P within the scope of A´s apparent authority.

15.4.9 It is important to note that the appearance of authority must have arisen because of what the `principal´ did. An agent cannot make representations as to his own authority and bind the principal by what the agent himself says - see Sigma Cable (Pte) Ltd v NEI Parsons Ltd [1992] 2 SLR 1087. If this were not the position, anybody with some nexus to the principal could claim to have authority to bind the principal and cause the principal to incur obligations to a third party. Commercial undertakings would be forced to take extraordinary steps to attempt to inform all and sundry exactly what their employees can or cannot do, often perhaps to no avail.

15.4.10 Apparent authority can arise even with companies. A company can make the requisite representations through its properly authorized officers or through one of its organs such as the board of directors, see Freeman & Lockyer v Buckhurst Park Properties Ltd [1964] 2 QB 480.

15.4.11 Apparent authority allows the third party to sue the principal. If the principal wants to sue the third party, he cannot rely on apparent authority because he must obviously know that his agent did not have the requisite authority. Nor can the principal claim the benefit of any estoppel that arises from the principal´s own acts. To sue the third party, the principal must ratify the agent´s acts.

SECTION 5 RATIFICATION

15.5.1 Ratification is a means by which the agency relationship is created retrospectively. Where the agent does not have actual authority, the principal cannot rely on the acts of the agent since the agent was not authorized to perform those acts. If the principal

wishes to enforce the contract that the agent has entered into, the principal must adopt what the agent has done. The doctrine of ratification allows a principal to adopt his or her agent´s past acts. By so doing, the principal retrospectively clothes his agent with authority and the law then proceeds on the basis that the agent had authority from the outset – see *Cavenagh Investment Pte Ltd v Kaushik Rajiv [2013] 2 SLR 543*. The doctrine of ratification facilitates the utility of the law of agency as an agent who exceeds his authority can have his acts adopted if the principal wishes to affirm the agent´s acts, albeit retrospectively. From the third party's perspective, the third party had consented to the transaction and ratification should generally be unobjectionable. In a great many cases, the third party will be completely unaware that the agent had not been clothed with authority and that ratification had taken place, because there is no need to communicate the act of ratification to the third party. The third party will only be unhappy with ratification if the market has moved against the third party, but there may be no compelling reason why a third party who finds itself bound to a contract because of ratification should be in a better position than any other contracting party.

15.5.2 For ratification to take place, the agent must have purported to act on behalf of a principal. If the agent did not make it clear that the agent was acting for a principal, and the agent was not properly authorized to so act, no ratification can take place. Since what the agent did was unauthorized, and the agent did not purport to act for anybody but himself, there is no basis to allow the principal to adopt the `agent´s´ acts. A principal who wishes to ratify must also ratify the agent´s acts in their entirety. A principal cannot pick and choose those parts of the contract that he likes and discard the rest. To allow him to do so would be to impose a different contract on the third party than the one to which he agreed.

15.5.3 Where an agent acts in an unauthorized manner, the agent breaches his duty to the principal. Thus, where a principal is liable to the third party because of apparent authority, the principal is entitled to recover his loss from the agent. However, where the principal ratifies the agent´s acts, in general, the principal waives his rights against the agent for the breach of duty, since the principal has seen it fit to adopt the agent´s acts. There may be circumstances though where the principal feels compelled to adopt the agent´s acts, e.g. the principal´s business reputation would materially suffer if no ratification took place, and in such circumstances, it is possible that ratification will not absolve the agent from liability to the principal.

15.5.4 The doctrine of ratification, however, applies even when the third party has withdrawn from the agreement with the agent prior to the act of ratification taking place - see Bolton Partners v Lambert (1889) 41 Ch D 295. This is in one sense a startling proposition as it effectively prevents the third party from withdrawing from the transaction even though the agent did not have any authority. The proposition has therefore been criticized severely on the basis, that absent a valid contract, there should be nothing to prevent the third party from withdrawing. The retrospective nature of ratification ought not to be extended to situations where there has been a valid withdrawal since such a withdrawal would mean that there is no longer any outstanding transaction for the principal´s retrospective consent to fix on. Nevertheless, this legal principle has been around for more than a hundred years and there may be reluctance to overrule it in view of its antiquity.

15.5.5 However, recognizing the capacity of the ratification doctrine to cause injustice to third parties, the law has developed limits to protect third parties. Without such limits, third parties may be in an invidious position. The principal can take his or her time to decide whether to ratify or not. If the market moves in the principal´s favour, the principal will ratify; if not, the principal will not. In the meantime, the third party does not know whether he will be bound or not and will take the full risk of any adverse market movements. In a contract to sell goods, for example, the third party is potentially stuck with the merchandise until the principal decides whether to proceed with the purchase or not. This is unfair to the third party. Such a substantial risk would undermine the utility of the law of agency.

Limits to Ratification

15.5.6 Because of the potential injustice to third parties, one limit to the doctrine of ratification is that it must take place within a reasonable time after the agent´s unauthorized acts. If ratification does not take place within such time, the principal loses the right to ratify - see Metropolitan Asylums Board v Kingham & Sons (1890) 6 T.L.R. 217 at p 218; Re Portuguese Consolidated Copper Mines, Ltd (1890) 45 ChD 16 at pp 31, 34. What is a reasonable time will depend on the nature of the contract and the circumstances. For example, if the contract is for the sale of perishable goods such as fruit and vegetables, the time for ratification must be relatively

brief. In addition, if the third party knows that the agent is unauthorized, the third party can give a reasonable time limit to the principal to elect whether to ratify or not. If the principal chooses not to do so, the right to ratify will be lost.

15.5.7 Another limit on ratification that relates to time is that, when an act is required to be done by a certain time, it cannot be ratified by the principal after that time. It is said that if a time is fixed for doing an act, whether by statute or agreement, the doctrine of ratification cannot be allowed to apply if it would have the effect of extending that time - see Presentaciones Musicales S.A. v Secunda [1994] Ch 271. Since the contract entered into by the agent specifies that the act is to be performed by a certain time, ratification should not operate so as to effectively modify a key aspect of the agreement. Thus, if an option to purchase property has to be exercised within 14 days of the date of the option, and the agent without authority exercises the option, the principal cannot ratify the agent´s act after the 14 days have expired. To do so would be to give the principal more time to decide whether to exercise the option.

15.5.8 The conventional view is that these two time-based limits on the doctrine of ratification are based on separate rules. However, it may be that the second time-based limit is a specific application of the rule that ratification must take place within a reasonable time. Thus, where the contract specifies a time limit for the doing of a certain act, ratification after such time will generally not be considered to have taken place within a reasonable time.

15.5.9 A further limit on the doctrine of ratification is that the act of ratification must take place at a time, and under circumstances, when the ratifying party might himself have lawfully done the act which he ratifies - Bird v. Brown (1850) 4 Exch. 786. In other words, a principal cannot ratify an act if, at the time of ratification, the principal lacks the legal capacity to authorize the act in question. A principal may also not be entitled to ratify certain acts that were lawful at the time they were entered into, but were no longer so at the time of ratification. Thus, if there is a change in the law such that a transaction, which was lawful when done, has now become so unlawful that an attempt thereafter to authorize it would be void, the transaction cannot be ratified unless perhaps there is nothing against public policy to allow the enforcement of rights that arose before the transaction became unlawful.

15.5.10 In addition, if property or contractual rights have vested in another person, ratification cannot divest such a person of his rights - see Bird v. Brown (1850) 4 Exch. 786. Thus, if A and T have entered into a contact by which T agrees to sell his property to P for whom A purports to act, though he is not authorized, and T subsequently enters into a contract to sell the same property to Z, the subsequent ratification by P will not divest Z of the latter´s contractual rights which have already vested. This, however, does not prevent the principal from suing the third party for breach of contract if the ratification had taken place within a reasonable time. Ratification may be effective as between the parties, if not against others who are not privy to the contract or other transaction being ratified.

15.5.11 Acts that are a nullity also cannot be ratified because such acts are devoid of any legal effect - see Watson v Davis [1931] 1 Ch 455. Similarly, illegal acts cannot be ratified - see Bedford Insurance Co Ltd v Instituto de Resseguros do Brasil [1985] Q.B. 966. Forgeries are an example of acts that are regarded as nullities - see Brook v Hook (1871) L.R. 6 Exch. 89. This, however, depends on the nature of the forgery. Strictly speaking, a forgery occurs where a signature or seal has been counterfeited. However, where a person has signed a document or affixed a seal on behalf of another person without the latter´s authorization, such acts constitute forgeries also - see Northside Developments Pty Ltd v Registrar-General (1990) 170 C.L.R. 146. It is said that a forgery in the former category cannot be ratified in so far as the perpetrator did not intend to act on behalf of the party whose signature or seal has been counterfeited. In the latter category, the forgeries may be ratified as the person who has signed the document or affixed the seal did intend to do so as an agent - see M´Kenzie v British Linen Company (1881) 6 App. Cas. 82 at pp 99-100.

15.5.12 It should be noted that, if an agent acts outside the scope of the agent´s authority, and there is no ratification, the third party can sue the agent. This will be discussed under the section headed Breach of Warranty of Authority below.

SECTION 6 RELATIONSHIP BETWEEN THE PRINCIPAL AND AGENT

15.6.1 As the agent is an intermediary, generally, once the principal and third party are brought into a contractual relationship, the agent drops out of the picture, subject to any issues of remuneration or indemnification that he may have against the principal, and more exceptionally, against the third party. Generally, agents are entitled to be indemnified for all liabilities reasonably incurred in the execution of the agents´ authority.

15.6.2 Aside from any specific contractual obligations that may govern the relationship between the principal and the agent, an agent is considered a fiduciary vis-à-vis the principal. As such, the agent should not, without obtaining the informed consent of the principal, place himself in a position where his duty to his principal may conflict with his own interests. If the agent receives a secret bribe, the agent must account for this to the principal - see Mahesan v Malaysian Government Officers Co-operative Housing Society Ltd [1975] 1 MLJ 77.

15.6.3 Obviously, if the agent exceeds the authority conferred on him and this causes the principal loss, the principal may claim against the agent.

SECTION 7 RELATIONSHIP BETWEEN THE AGENT AND THIRD PARTY

15.7.1 The agent does not as an intermediary generally incur any liability to the third party under the contract entered into. Nevertheless, it is possible for the agent not only to contract on behalf of the principal but for the agent´s own benefit too. A good example arises in the case of a partner who negotiates a contract on behalf of the entire partnership. Sometimes the form of words used will determine if the agent has contracted personally, either in addition with the principal or sometimes to the exclusion of the principal. For example, if words of a representative character are used such as "on behalf of" or "as agent for", it will be clear that the agent is not contracting in the agent´s own personal capacity. On the other hand, if the agent signs off as "manager" or even "agent" without any other qualifying words, the issue will arise whether the agent was acting in a representative manner or if the words used are only intended to describe who the agent is or what he does, in which event the agent may be held to have contracted personally.

SECTION 8 UNDISCLOSED AGENCY

15.8.1 Under the law of agency, there is a peculiar feature known as undisclosed agency. Essentially, where an agent enters into a contract intending to do so on behalf of the agent´s principal, provided the agent was acting within the scope of the agent´s authority, the principal may as a general rule sue and be sued on the contract even though the principal´s existence (and not merely his identity) was unknown to the third party - see Siu Yin Kwan v Eastern Insurance Co [1994] 2 WLR 370. Since ratification is only possible where an agent has purported to act for a principal, no ratification can arise in cases involving undisclosed agency.

15.8.2 The doctrine of the undisclosed principal has been widely criticized as it allows a person who is not a party to the original contract, to take all the benefits of such a contract against the third party who was altogether unaware of the existence of the undisclosed principal. It is said that this offends well accepted principles of contract law, in particular, the privity doctrine. However, to the extent that the doctrine of the undisclosed principal pre-dated the development of the strict rules of privity of contract, it is clear that both concepts are well capable of co-existing.

15.8.3 Unlike cases of disclosed agency where generally the contract is only between the principal and the third party, in undisclosed agency cases, the initial contract is one made between the third party and the agent in the agent´s personal capacity. Since the third

party believed that he was dealing with the agent, and the agent did not contract in a representative capacity, the agent clearly assumed personal liability under the contract. The agent may therefore sue and be sued on the agreement.

15.8.4 However, because the agent actually intended to act on behalf of the principal, the principal is entitled to intervene on the contract entered into, should the principal wish to do so and the agent´s right to sue must generally give way to the principal´s. The principal may therefore sue on the contract and, at the same time, when his existence is discovered by the third party, the third party has an option of enforcing the contract against the principal or the agent. The third party must elect against whom he wishes to enforce the contract; he cannot enforce it against both parties.

Rationale for Undisclosed Agency

15.8.5 Undisclosed agency has been justified on the basis of commercial convenience. Often, persons act for someone else without disclosing this fact. This is not because they are trying to perpetrate a fraud but simply because the existence and identity of the principal is often of no importance to the other party, particularly in transactions involving the sale and purchase of goods. It may also be that the agent sometimes acts on his own account and sometimes for others, and it is inconvenient to segregate these various transactions. Sometimes, an agent does not disclose that he is acting for someone else because he does not want the other party to go directly to the principal and cut out the agent. Or, a principal may not want the market to know for good business reasons what he is doing and so he uses an agent and tells the agent to behave as if the agent was acting for himself only.

Defences Available Against the Undisclosed Principal

15.8.6 When the principal enforces the contract, he must do so subject to any claims that the third party may have against the agent personally. Therefore, if the third party has a valid claim against the agent, that claim may be set off against any claim that the principal may bring against the third party arising out of the transaction entered into by the agent on behalf of the undisclosed principal. Thus, if the agent owes the third party $1000, and the third party buys goods worth $1500 from the agent, without knowing that the agent was acting for an undisclosed principal, in a suit by the undisclosed principal against the third party for the sum of $1500, the third party will be entitled to set off the sum of $1000 owed by the agent to him against the claim of $1500. Thus, the third party need only pay the undisclosed principal $500.

15.8.7 The reason for this is not difficult to divine. The third party may,for example, have entered into the contract with the agent because of the existence of a right of set-off that the third party had against the agent. The third party may have purchased goods from the agent knowing that payment would not have to be made in full but could be deducted from what was owed to the third party by the agent - see Greer v Downs Supply Co [1927] 2 KB 28. Allowing the third party to raise such defences against the principal is necessary is to prevent injustice to the third party who has dealt with the agent because the agent already owes obligations to the third party.

Limits to the Undisclosed Principal´s Ability to Sue

15.8.8 There are certain limits to the ability of the undisclosed principal to sue. For example, an undisclosed principal cannot sue where he did not have capacity to enter into the contract at the time it was made. Since the undisclosed principal could not have made the contract himself, he cannot take the benefit of another person´s acts on his behalf.

15.8.9 Where the terms of the contract are inconsistent with the existence of an undisclosed principal, the undisclosed principal may not intervene on the contract. For example, the contract may contain an express or implied term that excludes the possibility of an undisclosed principal, e.g. where the contract described the agent as the "owner" of the property, which objectively suggests that the agent was only acting for himself and excludes the possibility of the agent acting for someone else.

15.8.10 An undisclosed principal also cannot intervene where the third party had some special reason for contracting only with the agent or entered into a contract with the agent based on considerations or factors personal to the agent. Examples of this include a

contract of employment where the technical skills of the employee are important, a performance by the agent or a painting to be done by the agent where the skill or reputation of the agent is paramount.

15.8.11 What if the third party says that he would never have dealt with the undisclosed principal? In other words, the third party says that while he would have been happy to deal with others generally, there was some reason why he would not have dealt with the undisclosed principal. The law is not clear on this issue but it is suggested that, unless there has been a positive representation by the agent that he is only acting for himself and not someone else, the undisclosed principal should still be able to intervene. If undisclosed principals are not allowed to intervene in such circumstances, it would greatly reduce the certainty of transactions involving an undisclosed principal being enforced.

SECTION 9 BREACH OF WARRANTY OF AUTHORITY

15.9.1 All agents who act for principals warrant to the third parties that they deal with that they are properly authorized so to act on behalf of their principals. Such a warranty is usually implied although an express warranty is sometimes sought by third parties. The basis for this principle is that, each time an agent (whether properly authorized or not) claims to act for the benefit of another person, he makes a representation to the third party that he has been properly authorized. This representation has contractual force and the consideration supporting it is the entry by the third party into a contract with the person for whom the agent purports to act. If the agent was not authorized to enter into the contract, the third party may bring a claim against the agent for any damages that the third party may have suffered from the agent´s lack of authority - see Yonge v Toynbee [1910] 1 KB 215; Fong Maun Yee v Yoong Weng Ho Robert [1997] 2 SLR 297. Since the liability arises in contract, the agent is responsible even if the agent acted in good faith and without negligence, see *Chu Said Thong v Vision Law LLC [2014] 4 SLR 375*.

15.9.2 This means that even where an agent has apparent authority, the third party should in principle be entitled to sue the agent for breach of warranty of authority. However, while such a claim may be brought, it would largely be an exercise in futility. Since the doctrine of apparent authority means that the principal would be bound, the third party in effect has suffered no loss on the agent´s breach of warranty. As such, the third party in such circumstances would at best be entitled to nominal damages. This is so even if the principal was not able to fulfill the principal´s obligations. All that the agent warrants is that the agent has authority to bind the principal, not the solvency of the principal or the principal´s ability to perform the principal´s side of the bargain.

SECTION 10 TERMINATION OF AGENCY

15.10.1 The agency relationship is generally terminated upon the death of the principal. The principal may also in general terminate the agency by giving notice to the agent, unless the relationship is governed by a specific contract, in which case the terms of the contract will have to be observed. Even here though, the courts may not order specific performance of the contract, in which event the agency can be terminated subject to the agent´s right to claim damages for breach of contract.