The survey of sales agency agreement

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Abstract: The law of agency is an area of commercial law dealing with a set of contractual, quasi-contractual and non-contractual fiduciary relationships that involve a person, called the agent, that is authorized to act on behalf of another (called the principal) to create legal relations with a third party An agency relationship may be implied from the words and conduct of the parties and the circumstances of the case evidencing an intention to create the relationship irrespective of the words or terminology used by the parties to characterize or describe their relationship. Accordingly the main challenge of this research is trying to answer some issues that they consist of examine the nature of mandate, All kinds of deceit and fraud in the mandate and explain the nature of and scope of agency arrangement and the examine of the nature of irrevocable power of attorney At the end of the study determine that according to jurists the conveyance of certain contract is permissible following another contract on the other hand, The criteria for diagnosis of the nature of the agency arrangement is not nothing more than the will and intention of the parties to the contract.

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1. Introduction

An agency occurs when one party (the agent) has authority from another party (the principal) to create a legal relationship between the principal and a third party. The agent may enter into a direct contract with the buyer, or introduce the buyer to the principal. The usual remuneration of the agent is commission. By comparison in a distribution arrangement, a distributor takes title to goods supplied by the supplier and resells them either to a retailer, another wholesaler or the final consumer. The distributor's profit is the difference between the price at which he has purchased and the price at which he has sold the goods less his expenses. The distributor is essentially an independent contractor. His actions do not create contractual relationships between the third party customer and the supplier. The distinction between agency and distribution is important because different legal rules apply to each type of arrangement. An agency arrangement is suitable for entering into a foreign market as it does not usually involve a large initial expenditure, it is relatively flexible, and perhaps most importantly, the appointment of a local agent means the principal acquires knowledge and understanding of the way business is done in that particular country. Whereas the establishment of a subsidiary company will usually involve greater expense and is a less flexible way of entering into a foreign market.

A sole agency agreement is similar to an exclusive listing agreement, to the extent that you give rights to one real estate agent to sell the property whilst maintaining the ability to find a buyer yourself. However, in this situation no commission is payable to the agent if you are able to find a buyer who they did not introduce you to. The term "agency" is sometimes used more broadly, to describe both the position of an agent as representative of a principal to perform juristic acts that affect the principal's legal relations with third parties, and also a relationship of mandate in which an "agent" is bound as mandatory to carry out some task for the principal as mandatory. The law of agency is an area of commercial law dealing with a set of contractual, quasi-contractual and non-contractual fiduciary relationships that involve a person, called the agent, that is authorized to act on behalf of another (called the principal) to create legal relations with a third party. The common law provides six reasons why the principal may be bound by contracts made by the agent

1. Actual Express Authority. The principal has entered into an explicit agreement with the agent authorizing him to take particular action. When the board of directors of a company votes to authorize the president to purchase a new office building, this is actual express authority.

2. Actual Implied Authority. The principal has entered into an explicit agreement to employ the agent, and although he has not specifically authorized the particular action at issue, the agent can reasonably infer that authority for that action has been delegated to him. If the general manager of a department store hires clerks, the store is bound by his contract even if he was not expressly granted that authority.

3. Apparent Authority. The principal has no agreement with the agent authorizing the action, but a third party could reasonably infer from the principal's conduct that the agent was authorized.15 If the home

office tells a customer that the sales manager has authority to sell flour without confirmation, and then withdraws that actual authority without telling the customer, the sales manager still has apparent authority. 16 This differs from actual implied authority in that apparent authority may exist even if the principal has expressly forbidden the agent's action. Apparent authority depends on the beliefs of the third party, not on the actual relation between principal and agent.

4. Estoppel. The principal is "estopped" from objecting to the agreement made by the agent if the principal could have intervened to prevent the confusion over authority; e.g., if the principal overheard the agreement being made and failed to assert that the agent was unauthorized.

5. Ratification. If no other authority exists, but the principal agrees to the contract once he learns about it, this ratification binds the principal. If the flour salesman has no authority to sell wheat, but he makes a contract anyway, that contract is binding if the flour company agrees to it upon learning of the salesman's actions.

6. Inherent Agency Power. This concept is absent from the first Restatement of Agency. "Inherent agency power is a term used in the restatement of this subject to indicate the power of an agent which is derived not from authority, apparent authority or estoppel, but solely from the agency relation and exists for the protection of persons harmed by or dealing with a servant or other agent." The agency relationship may somehow give the agent the power to harm third parties even if there is no manifestation by the principal that the agent is acting on his behalf. "Inherent agency power" is the new term invented to cover this source of liability, which was already well known, but without a clear doctrinal foundation.

Surely, at present, Iranian legislation does not contemplate such rights for the Agent, therefore each time the parties should weigh up whether to subject the Agency Agreement to Iranian law, to the law of the Principal's country of origin or to the one of a third country(S. SCHUIT, J. (1978)..

One other fundamental aspect to consider is the determination of the tribunal in charge, where it is inserted in the Agency Agreement. In fact, in the Islamic Republic of Iran, not many conventions with other countries in terms of judicial cooperation and assistance are in force, which can create issues as to the recognition of judicial decisions adopted by foreign judicial authorities (however, in practice, there is a tendency to accept foreign judgments, as long as they are not in conflict with domestic norms of public order) (Steffen, Roscoe (1977).

It is therefore preferable to subject any controversy that could arise between the Principal and the Agent to the judgment of an Arbiter, as Iran ratified the New York Convention of 1958 on the recognition of arbitral awards given abroad. It is hence necessary to determine where the Arbitration will take place, which may be the country of origin of the Principal or a third country. The types of Agent recognized by Iranian legislation are three: the broker that is the one acting as mediator between the parties in a transaction; the Commission Agent, namely the one who acts under his own name on behalf of the Principal and, lastly, the Commercial Agent. The regulations do not provide for any specific prerequisites of the Agent; however it is important to note that the import license is issued only to legal or natural persons having Iranian nationality.

There are four different types of Agency Agreement:

Special, when the Agent has the duty to act only to accomplish a specific task;

General, when the Agent can act within the limits determined by the agreement;

Universal, when the Agent's powers are unlimited; 'Del credere';

When the Agent is responsible towards the Principal for the regular compliance to the agreement by third parties; No specific formal requisites are required to conclude an agreement, which can therefore be made orally or through the completion of written documents. The Agent's duties, regulated by art.666 ss., mainly derive from the agreement between the parties (Cooter, Robert (1985). The Agent must always comply with his obligations in the interest of the Principal, and he is considered liable for any economic losses when they are the consequences of his behavior. Anyhow, the Agent is liable in respect of the obligations undertaken with a third party, outside his mandate. Moreover, under art.668 ss., the Agent is under the obligation to inform the Principal. The duration and termination of the Agency Agreement may be determined freely according to the contractual will of the parties. Withdrawal from the Agency Agreement by the parties is possible at any point without reason, unless the agreement provides otherwise. The termination of the agreement due to death or incapacity to act of one of the parties is also allowed (Art.668 c.c.). According to art.672, sub-agency is not allowed, unless explicitly or implicitly provided for by the parties(American Law Institute (1933).

Any agreement which an industry is about to conclude should state explicitly:

The value of the Agent's commission, which otherwise is determined according to local practice; the obligation for the Agent to conclude insurance, as he is not obliged to guarantee the goods which he markets; the exclusive rights of the Agent. When an

agency agreement is terminated there are three potential areas of claim to consider:

Any outstanding commission if this hasn't been specifically excluded from the agreement;

Any 'pipeline' commission if this hasn't been specifically excluded from the agreement. Any compensation payable as a result of the termination; Compensation may be calculated on an indemnity basis or compensation basis. This is intended to reflect the value of the goodwill the agent has generated for the principal. If the agreement does not contain any provisions for how this payment is to be calculated, the payment will be calculated on a compensation basis.

A) The concept of sales agency:

Typical brokerage contract would cover issues such as acquisitions, proprietary investment opportunities, sale, mergers, re-capitalizations, management buyouts, financing or other typical business. It covers a broad field of representation. Essentially, agency is regarded as a legal relationship in which one person (the agent) represents another (the principal) and is authorized to act on his behalf. According to Article 656 of the Iranian Civil Code, “Agency is a contract whereby one of the two parties appoints the other party as his representative to perform something." BROKERS, COMMISSION AGENTS, and COMMERCIAL DEPUTIES are the major types of representation in the area of trade agency which have been specified in the Iranian Commercial Code (Marchetti, M. and Brewer, G. (2000). In this Guide, we are dealing only with “sales agents” in regard to the main issues covered: (i) termination and non-renewal of the sales agency contract by the principal and whether the sales agent can claim an indemnity or damages should that occur; and (ii) some other potential problem areas involving sales agents. An agency agreement is a legal contract creating a fiduciary relationship whereby the first party ("the principal") agrees that the actions of a second party ("the agent") binds the principal to later agreements made by the agent as if the principal had himself personally made the later agreements. The power of the agent to bind the principal is usually legally referred to as authority. Agency created via an agreement may be a form of implied authority, such as when a person gives their credit card to a close relative; the cardholder may be required to pay for purchases made by the relative with their credit card. Many states employ the equal dignity rule whereby the agency agreement must be in writing if the later agreement would also necessarily be written, such as a contract to buy thousands of dollars worth of goods.

Theprincipal may authorize the agent to perform a variety of tasks or may restrict the agent to specificfunctions, but regardless of the amount, or scope, of authority given to the agent, the agentrepresents the principal and is subject to the principal's control. More important, the principal isliable for the consequences of acts that the agent has been directed to perform. An agency relationship is created by the consent of both the agent and the principal; no one canunwittingly become an agent for another. Although a principalagent relationship can be created by acontract between the parties, a contract is not necessary if it is clear that the parties intend to actas principal and agent. The intent of the parties can be expressed by their words or implied by their conduct.

1.1. The Circle of Inclusion of agency agreements

Common forms of agency agreements include sales agency agreements, placement agency agreements and construction agency agreements. For a sales agency agreement, the agent will act as a sale representative responsible for sales and marketing activities. The contract should specify the duration of the agreement, whether or not the relationship is exclusive, how the agreement may be terminated, and how commissions will be calculated (Hansman, H. 1987). The agent's authority may be actual or apparent. If the principal intentionally confers express andimplied powers to the agent to act for him or her, the agent possesses actual authority. When theagent exercises actual authority, it is as if the principal is acting, and the principal is bound by theagent's acts and is liable for them. For example, if an owner of an apartment building names aperson as agent to lease apartments and collect rents, those functions are express powers, sincethey are specifically stated. To perform these functions, the agent must also be able to issuereceipts for rent collected and to show apartments to prospective tenants. These powers, since theyare a necessary part of the express duties of the agent, are implied powers. When the agentperforms any or all of these duties, whether express or implied, it is as if the owner has done so.

A contract of sale of goods must be distinguished from several other transactions which are normally quite different from a sale of goods but which, in particular circumstances, may closely resemble such a contract,1 namely (1) a contract of barter or exchange, (2) a gift, (3) a contract of bailment, (4) a contract of hire-purchase, (5) a contract of loan on the security of goods, (6) a contract for the supply of services, (7) a contract of agency, and (8) licenses of intellectual property such as ‘sales’ of computer software.2 These distinctions were at one time of importance mainly in connection with s. 4 of the 1893 Act. This section, which was originally part of s. 17 of the Statute of Frauds 1677 and was not applicable in Scotland, required contracts of sale of goods of the value of £10 and upwards to be evidenced in writing, whereas for

the other types of contract listed above there was no such requirement. Since the repeal of s. 4 by the Law Reform (Enforcement of Contracts) Act 1954, this particular point has ceased to be of importance in relation to domestic sales of goods,3 because no written formalities are now required in general for any of the above kinds of contracts.4 But it may still be necessary to decide whether a contract is a contract of sale of goods for one of a number of other reasons. In particular, of course, the provisions of the Sale of Goods Act apply only to such contracts. Given that the original Act of 1893 was largely a codifying Act, however, and given the tendency to construe the Act as though it were a part of the common law, it will often be immaterial whether a particular contract is labeled a contract of sale or a contract of a different character. In particular, when a question of implication of terms arises, the law may well be the same whether or not the Act applies. Indeed, there has been a noticeable tendency, first for the courts and then for Parliament, to model the common law contracts on the Sale of Goods Act and, in particular, to imply terms in these contracts very similar to those implied by the Act (Wotruba, T.R. (1989). In order for a broker to engage in business, he or she is generally required to acquire a license andpay a fee. Brokers who conduct business without a license can be fined by state licensingauthorities. In some states it is illegal for any person other than a licensed broker to be paid forservices concerning real estate transactions. Laws exist that impose a license tax on brokers. Revocation of License the state's concerns regarding brokers extend beyond initial licensing tothe establishment of conditions for the maintenance of a license. The state may provide for therevocation or suspension of brokers' license for reasonable grounds Darmon, R.Y. (1997). The power to revoke a license may be vested in a specially designated commission that existsprimarily to hear complaints about the fraudulent practices of brokers. Such proceedings areordinarily informal and technical court rules generally are not observed.During a hearing, the commission is presented with evidence relating to the broker's conduct andmust consider whether such conduct warrants denial of the privilege to engage freely in business. Bonds State regulations usually require that brokers, especially those engaged in the real estatebusiness, deliver a bond to insure faithful performance of their duties. The liability of the suretyguaranteeing such a bond extends only to transactions that arise during the normal course of thebroker's business and that are intended to be included in the bond. The compensation of a broker is based upon procurement of a client who is willing and able topurchase. The specific terms of the transaction must be satisfactory to the broker's client. Ofparamount importance is the prospective buyer's ability to provide the required funds at the suitabletime. A broker who has properly performed his or her duties should not be denied a commission dueto a failure by the parties to consummate the deal. In the absence of any agreement to be employed by a client, a broker is not to be compensated forvoluntary services. Similarly, compensation is not due a broker when a sale is made by an owner after the broker. Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to real property authorizes the agent to do all of the following:

(A) Demand, buy, lease, receive, accept as a gift or as security for an extension of credit, or otherwise acquire or reject an interest in real property or a right incident to real property;

(B) Sell; exchange; convey with or without covenants, representations, or warranties; quitclaim; release; surrender; retain title for security; encumber; partition; consent to partitioning; subject to an easement or covenant; subdivide; apply for zoning or other governmental permits; plat or consent to platting; develop; grant an option concerning; lease; sublease; contribute to an entity in exchange for an interest in that entity; or otherwise grant or dispose of an interest in real property or a right incident to real property;

(C) Pledge or mortgage an interest in real property or right incident to real property as security to borrow money or pay, renew, or extend the time of payment of a debt of the principal or a debt guaranteed by the principal;

(D) Release, assigns, satisfies, or enforce by litigation or otherwise a mortgage, deed of trust, conditional sale contract, encumbrance, lien, or other claim to real property that exists or is asserted;

(E) Manage or conserve an interest in real property or a right incident to real property owned or claimed to be owned by the principal, including all of the following:

(1) Insure against liability or casualty or other loss;

(2) Obtain or regain possession of or protect the interest or right by litigation or otherwise;

(3) Pay, assess, compromise, or contest taxes or assessments or apply for and receive refunds in connection with taxes;

(4) Purchase supplies, hire assistance or labor, and make repairs or alterations to the real property.

(F) Use, develop, alter, replace, remove, erect, or install structures or other improvements upon real property in or incident to which the principal has, or claims to have, an interest or right;

(G) Participate in a reorganization with respect to real property or an entity that owns an interest in or

right incident to real property and receive, and hold, and act with respect to stocks and bonds or other property received in a plan of reorganization, including all of the following:

(1) Sell or otherwise dispose of them;

(2) Exercise or sell an option, right of conversion, or similar right with respect to them;

(3) Exercise any voting rights in person or by proxy.

(H) Change the form of title of an interest in or right incident to real property; (I) Dedicate to public use, with or without consideration, easements or other real property in which the principal has, or claims to have, an interest

B) The legal nature of agency agreements

In the absence of complete legislative guidance, the subtle issue of whether, under a given set of factual circumstances, a real estate broker has earned a commission has essentially been extensively litigated. As a result, there has evolved a large body of fairly comprehensive, albeit generalized, jurisprudential "rules" which govern the vesting of commission rights under brokerage contracts. It frequently appears, however, that these "rules" are being applied conflictingly in cases that seem to be factually similar.

1.2. An irrevocable power of attorney is agency

According this theory, a power of attorney is revocable if the principal reserves the right to revoke the power at any time. Once the principal revokes the power, the agent can no longer act on the principal's behalf. But a power of attorney can be made irrevocable if the document includes a provision that specifically states that the principal gives up the right of revocation or otherwise indicates that the power is irrevocable. As a practical matter, an irrevocable power of attorney is rarely used and is typically limited to a specific purpose; respecting the scope of authority given by the principal to the agent, the agency may be general and for all the affairs of the principal, or limited to the performance of a specific matter or matters (Article 660 of the Civil Code). The usual types of agency created by contracts (or letters of power of attorney) are that of: SPECIAL AGENT for acting only on a particular occasion or for a specific purpose; GENERAL AGENT for doing anything within certain limits specified by the agency contract; UNIVERSAL AGENT who has unlimited powers to act for the principal; DEL CREDERE AGENT who undertakes the additional liability of guaranteeing his principal against the default of those with whom business is conducted. The most common use for an irrevocable power of attorney involves transactions in publicly traded stock. Shareholders unable to attend the yearly general meeting may use an irrevocable power of attorney to give another shareholder the right to vote their shares, commonly known as proxy voting. To give the corporation's directors assurance that the power is effective at the time of the meeting, the power is made irrevocable. The power is typically limited to the current meeting, after which it expires. An irrevocable power of attorney may also be used by courts in guardianship or conservator cases where the guardian or conservator resides out of state. As a condition of appointing the guardian or conservator, the court will require that an irrevocable power of attorney be given to the clerk of court to accept personal service of documents. This prevents the guardian or conservator from delaying court proceedings by evading or otherwise being unavailable for personal service of important court documents. Some states, such as Arizona, also permit an irrevocable power of attorney for making health care decisions when the agent cannot do so for themselves. Determining whether the principal is "disabled" enough to initiate this type of representation is a formal process. Springing powers of attorney are not automatic, and institutions may refuse to work with the attorney-in-fact.

Disputes are then resolved in court; Unless the power of attorney has been made irrevocable by its own terms or by some legal principle, the grantor may revoke the power of attorney by telling the attorney-in-fact it is revoked. However, if the principal does not inform third parties and it is reasonable for the third parties to rely upon the power of attorney being in force, the principal might still be bound by the acts of the agent, though the agent may also be liable for such unauthorized acts. Just as an irrevocable power of attorney can have a date or condition that terminates the assignment of power, it can also have a date or condition precedent that sets it into effect.

This is what's known as a springing power of attorney, because it automatically springs into effect on the set date or situation.

A power of attorney lapses for legal reasons (by operation of law) such as for mental incapacity or death. An irrevocable power of attorney will not lapse because it is continuing (enduring) and irrevocable, cannot be cancelled. An irrevocable power of attorney must say that it is irrevocable and it must be given for valuable consideration (Schultze, C. 1977).

Irrevocable powers of attorney allow people to plan ahead for care and financial management in their old age by appointing an attorney or manager to act on their behalf if they become incapacitated. Some jurisdictions allow an irrevocable power of attorney to make decisions about medical treatment.

Unless the power of attorney has been made irrevocable, the grantor may revoke the power of attorney by telling the attorney-in-fact it is revoked. However, if the principal does not inform third parties

and it is reasonable for the third parties to rely upon the power of attorney being in force, the principal may still be bound by the acts of the agent, though the agent may also be liable for such unauthorized acts.

Not all Powers of Attorney are alike. Some are General Powers of Attorney and grant full powers to do anything the Principal could do with regard to financial matters. Others are limited to specific actions. You can only do the things the document authorizes you to do. A Power of Attorney is not a license to take over the Principal's affairs and do things your way. As an Agent it is your duty to carry out the instructions and wishes of the Principal.

1.1.2. Financial market using

Frequently, a shareholder cannot attend a general assembly meeting. He passes a proxy to another shareholder. A proxy is a power of attorney whereby one shareholder gives another the authority to speak in his name. The concept can be enlarged to include an irrevocable power of attorney in which one shareholder grants a power of attorney to another and this power cannot be revoked. Such a legal concept could be utilized by a group of shareholders who grant an irrevocable power of attorney to a third to vote all shares in question in a certain fashion.

The irrevocable power of attorney is normally for short duration, the next general assembly. Contrary to its name, such powers of attorney in fact are not irrevocable, although an action in damages may lie for its cancellation. The irrevocable power of attorney is similar to a pooling agreement and a voting trust but far more temporal. Of course, it cannot have the diversity of use as a shareholders' agreement and is not a legal instrument particularly associated with international joint ventures.

2.1.2. Contract law using

Unless die principal has stipulated otherwise, an irrevocable power of attorney does not terminate in the event of the principal's death or by the principal being placed under curatorship. In the event of the principals insolvency an irrevocable power of attorney always terminates. Suspension of payment granted to the principal does not terminate a (revocable or irrevocable) power of attorney. However, since suspension of payment has the effect that the principal cannot perform transactions without the cooperation of the administrator, the agent cannot do so either. An irrevocable power of attorney also terminates in the event of the agent's death, placement under curatorship or bankruptcy (unless the principal has provided otherwise. If the powers of attorney, given for valuable consideration, are expressed to be irrevocable, then in favor of a purchaser, it shall not be revoked at any time, either by anything done by the donor of the power without the concurrence of the done of the power or by death, marriage, lunacy, unsoundness of mind or bankruptcy. Any act done by the done in pursuance of the powers contained in the instrument shall be valid as if done by the donor. Neither the done of the power nor the purchaser shall at any time be prejudiced by the notice of anything done by the donor of the power; According to this analysis can not generally be claimed that A power of attorney is agency for example sale and the regulated document is only as agency and else Although some jurisprudents If the power of attorney involves the right to an attorney even the unconditional of living of power of attorney for after death did not disbanded the contract attorney. It seems the rejecting claims under Article 22, 46 and 48 of the Registration Act do not enjoy than adequate stability because the sentence in the foregoing of the Registration Act, has a formality aspect and the registration of document does not consider as one of the pillars Sale. No instrument containing a power of attorney for the conveyance, mortgage, or lease of an interest in real property, which has been recorded, will be revoked by any act of the person by whom it was executed, unless the instrument containing such revocation is also recorded in the same office in which the instrument containing the power of attorney was recorded (Randy E. Barnett, *Contracts* (2003).

The question of whether an authority concludes a juristic act on behalf of another can be granted irrevocably is a controversial one. It has been held, in a number of cases, that an authority is irrevocable, in the strict sense, where the agent is appointed procurator in rem suam: that is, where the agent is authorized to do an act for the agent’s own benefit, and not for the principal’s; or, as it is generally styled, the authority is “coupled with an interest” or “forms part of a security,” for example, where an agent is authorized to pass a bond in his own favor over the principal’s property. This proposition reflects Anglo-American rather than Roman-Dutch law, which consistently refused to recognize the validity of a procurator in rem suam mentioned by Vote. Such a procurator was, in Vote’s time, no more than a cessionary, and, of course, the cadent lacked the power to revoke the cession unilaterally. Whether the Supreme Court of Appeal will accept that an authority “coupled with an interest” is irrevocable remains to be seen. “The better view,” writes Graham Bradfield “appears to be that an authority is always revocable, even if it is linked with a contract of mandate, which cannot be terminated unilaterally. Of course, if the principal has contracted not to revoke the authority, but does so, the principal will be liable in damages for breach of contract.

2.2. An irrevocable power of attorney of deal is portable.

Some comment must be made here on the words 'A contract of sale of goods is a contract by which the seller transfers... the property in goods' in s. 2(1). As is clearly apparent from these words, the actual contract may suffice to transfer the property in the goods, that is to say it may operate both as a conveyance and a contract. Attention is frequently drawn to this as though it was a remarkable rule, and a contrast is often made with the corresponding provisions of Roman law in which a sharp line was drawn between the contract and the conveyance. There is some point in this contrast, which is important in Scotland, 153 but a note of caution should be sounded against pursuing it too far, for remarkably few results follow in English law from the transfer of property by the mere agreement, which would not in any event follow from the transfer of property by delivery (Clark, Elias et al. (2007). This topic will be more fully examined later.154 it is possible that these words in s. 2(1) may also have the effect of bringing a transaction within the scope of a contract of sale even though it would be difficult to say that the object of the transaction was the transfer of the property in any goods. For example, if a person organizes a party, for which he sells tickets entitling a purchaser to help himself to drinks, it seems that a sale takes place when this happens, although it would be difficult to say that there was a contract of sale of goods arising from the mere sale of the ticket.155 On the other hand, the courts have shown little inclination to make use of this analysis in civil cases. Thus in the case of a contract for work and materials, the courts have not said that there is a contract of sale within the Act when property in the materials eventually passes to the party ordering the work and materials.156 And since the passing of the Supply of Goods and Services Act 1982, a court is perhaps more likely to hold that such a transaction is a contract for the transfer of goods rather than a contract for the sale of goods. But it would only be a matter of practical importance in very special circumstances. On the other hand, it must be admitted that in a number of modern decisions the courts have reiterated the old (but not strictly accurate) learning that the law does not recognize 'an agreement to agree' as a binding contract.

3. 2.The agency agreements is invalid contract

Although the views of the courts and the scholars of the law of science, this view not have the special position; however, as a hypothetical theory is warrant consideration, because it may claim since in the case of irrevocable power of attorney does not intend to awarded power of attorney and only in order to achieve the objectives that are sometimes contrary to law, are used in this way, so basically, the contract is overthrowing as legal validity; According to Article 46 Registration Act ; A name or designation, the nature or manner of use of which is contrary to Rules of Sharia, public order or morality and or if it is liable to deceive trade circles or the public as to the nature of the enterprise identified by that name, may not be used as a Trade Name and according to the Article 48 Registration Act; request of the invention owner regarding changes in contents and designs of invention shall be submitted to the registration authority in writing and by mentioning number and date of invention. Such changes are made on the condition that the information inserted in this patent certificate doesn't exceed limit of the information mentioned in the primary declaration as result of these changes. . In addition, if the Dealing of property is prohibited as legally forever or for a certain period or someone for some reason to be prohibited from dealing so its irrevocable power of attorney that adjust in order to evade the prohibition of barrier according to the same argument is invalid and without legal effect. For example, if the legislators has been prohibited the sale of urban or rural "dead" or uncultivated arable land Or sale urban arid lands has been deal with restrictions in the urban land and urban areas and the transfer is subject to a special inquiry of the Commission or authorities As its deal is illegal as normally so their Transmission also is illegal as irrevocable power of Attorney. The main problem of this mentioned idea is this issue that toward irrevocable power of Attorney of any kind and for any purpose has adjusted, judges equally and been subject to a verdict However, in all status can not be claimed that the irrevocable power of Attorney is void particularly where the adjustment is not in order to escape the peremptory provisions of the law and not contrary to public order In addition, The parties agree that to agency agreement, Its invalidity claim is far from reality and contrary to legal principles and jurisprudence; it is in contrast the text of the law.

It is very important to mention herein that the registration has many advantages. Registration provides safety and security to transactions relating to immovable property, even if the document is lost or destroyed. It gives publicity and public exposure to documents thereby preventing forgeries and frauds in regard to transactions and execution of documents. Registration provides information to people who may deal with a property as to the nature and extent of the rights which persons may have, affecting that property. As the records of the registered document is always available, people may see the record and enquire and ascertain what the particulars are and as far as land is concerned what obligations with regard to them. Registration of documents makes the process of verification and certification of title easier and simpler. It reduces disputes and litigations to a large extent.

As an example, If someone sells a car to be normally but have intended to travel abroad and don't have time for the official transfer of mentioned car after the receipt of inquiry hence he offer a irrevocable power of Attorney to the purchaser that he performs administrative and legal affairs until the end of the official transfer to your name or another In such circumstances, how can withdrew his claim; Even in cases where, due to the legal or the contractual prohibition, the sale of the property is being prohibited for a specified or unspecified period But in spite of this decree, If the irrevocable power of attorney adjusted can not be conclusively withdrew the claim; However such properties are changing hands through what is known as "power of attorney sales" It was further observed that time had come wherein keeping with ground realities government had introduce the scheme for regularizing the sales on the basis of the power of attorney. Instead of selling the pledged asset by way of an auction, the pledgee, or the security agent if it holds a valid power of attorney in relation to the assets, can sell the assets and repay the debt with the proceeds

In fact, it is the only type of ownership possible. Under certain circumstances, purchasers of property opt for getting an irrevocable power of attorney from the Seller to sell the property. If such Power of Attorney is registered in the relevant land registry department, it will restrict the owner of record from transferring title to the property for one year; It is thought that the notarized power of attorney may circumvent the court having to examine the merits of the claim and instead grant the beneficiary/ attorney the right to go straight to the enforcement judge to obtain a court order in relation to the assets. The process of obtaining a court order and having it enforced is usually lengthy and can take from six months up to several years, if the matter goes through all appeal levels. After a final judgment has been obtained, the execution court will order a public auction of the relevant assets.

4. 2.The selected review:

All theories that were discussed In the case of irrevocable power of attorney each is true but is not all the facts and can be seen the strengths and weaknesses in all three these theories; . The fact is that today irrevocable power of attorney are used for various purposes; the irrevocable power of attorney is only awarded only deputization and truly someone wants another thing to conduct; In this assumption, It has not intended to transferring property or right and the purpose of the parties is not the conceal of secret deal Nor to evade the rules of law has been concluded certainly such irrevocable power of attorney is in every respect subject to the rules to In the thirteenth chapter of civil law and attorney and client in contrast, the obligations and powers that will elaborate on the cause prolongation of the word. On the other hand, maybe the vouchsafing of the irrevocable power of attorney done with complete authority to purpose other than sale or other property transactions such as prejudice the right (lapse), admission of another's title, demise , sell, benefaction, allow exploitation, each alone or in collectively can be subject of the irrevocable power of attorney at the same time, as we see so prevalent today, It is not denied that the sale or transfer is subject to the power of attorney, that it is often the primary objective of the parties of contract and adjust the power of attorney as the transfer of ownership of property to another a conveyance deed is executed to transfer title from one person to another. Generally, an owner can transfer his property unless there is a legal restriction barring such transfer. Under the law, any person who owns a property and is competent to contract can transfer it in favor of another. If the owner gives another individual a power of attorney (POA), that person can sell it under this authority. A POA gives another person the power to act on behalf of the owner. However, if the POA only grants a person the authority to manage the property, he cannot sell it. Agreement to sell is the base document on which the conveyance deed is drafted. Every document of transfer of property by way of sale would be preceded by an agreement to sell. The agreement to sell is also in writing therefore can be detached the irrevocable power of attorney who replaced to the granting of Deputization and referred its verdicts and must refer the verdicts to the Civil Code and the prestigious jurisprudential fatwa. In other cases, the judge must in order to overcome hostility and justice, examine all factors case by case and with the help of all legal instruments or considering of the usual conventions and the content of the contract and records of the power of Attorney

Several jurisdictions have considered the question of whether a broker acting as the seller's agent owes a duty to the buyer to disclose material defects in the property.4 In general, a duty to disclose information arises:

In cases where the defendant has special knowledge, or means of knowledge, not open to the plaintiff, and is aware that the plaintiff is acting under a misapprehension of facts which would be of importance to him, and would probably affect his decision. The real estate agent or broker representing the seller is a party to the business transaction. In most instances he has a personal interest in it and derives a profit from it. Where such an agent or broker possesses, along with the seller, the requisite knowledge; whether he acquires it from, or independently of, his principal, he is under the same duty of disclosure.

The court held that the broker's failure to disclose "facts materially affecting the value or desirability of the property" would render the broker "jointly and severally liable with the seller.

No deed executed by a person acting for another, under a power of attorney, acknowledged, and recorded, is invalid or defective because he, instead of his principal, is named in such deed as such attorney as grantor; nor because his name, as such attorney, is subscribed to such deed, instead of the name of his principal; nor because the certificate of acknowledgment, instead of setting forth that the deed was acknowledged by the principal, by his attorney, sets forth that it was acknowledged by the person who executed it, as such attorney. All such deeds shall be as valid and effectual, in all respects, within the authority conferred by such powers of attorney, as if they had been executed by the principals of such attorneys, in person however, apparent authority does not arise where the lack of the agent's authority is known, or should be known to the party dealing with the agent. Furthermore, a principal is never bound where the person dealing with the agent knows, or has reason to know, that the agent is exceeding his authority. However, apparent authority does not arise where the lack of the agent's authority is known, or should be known to the party dealing with the agent. Furthermore, a principal is never bound where the person dealing with the agent knows, or has reason to know, that the agent is exceeding his authority. A power of attorney authorizing the execution of mortgages, bonds, warrants, bills, notes, etc., and generally to do all things whatsoever relating to the concerns and business of the constituent, confers authority upon the attorney to execute a bond and warrant of attorney to confess judgment for a bona fide debt owing by the constituent (Sawyer, Antoinette.2014).

There are a few actions that an Agent is prohibited from doing. An Agent may not sign a document stating that the principal has knowledge of certain facts. For example, if the Principal was a witness to a car accident, the Agent cannot sign an affidavit stating what the Principal saw or heard. An Agent may not vote in a public election on behalf of the Principal. An Agent may not make or revoke a will or codicil for the Principal. If the Principal is a trustee, executor, or other fiduciary the Agent is not permitted to act in those capacities.

3. Discussion:

Agency deals with situations in which one person -- the principal-- uses another person -- the agent-- to act on his behalf. Sometimes the acts of the agent are attributed legally to the principal, sometimes not. Clearly, agency is central to business dealings. No owner of a business can do everything himself; he must delegate some things to agents, and this is true not only of large corporations but of sole proprietorships that have employees who work for the owner. In partnerships, the partners act as each other's agents. And in corporations, the shareholders are completely unable to act on their own behalf; they delegate authority to a board of directors, who in turn delegate authority to the officers of the corporation. Indeed, agency is one of the main themes of corporate law, and a standard introductory section of its textbooks. Agency is often taught in conjunction with Corporations and Partnership, but it runs through all the major areas of law. In torts, it enters via vicarious liability; in contracts, via the validity of contracts made by agents; in criminal law, via conspiracy. Agency law has nonetheless been neglected in legal research

First, validity of Agreement of Sale or Agreement to Sell:

As per Section 54 of Transfer of Property Act, a contract of sale, that is, an agreement of sale does not, of itself, create any interest in or charge on such property.

Therefore, transfer of immovable property by way of sale can only be by a deed of conveyance (sale deed). In the absence of deed of conveyance (duly stamped and registered as required by law), no right, title or interest in an immovable property can be transferred. Any contract of sale (agreement to sell) which is not a registered deed of conveyance (deed of sale) would fall short of the requirements of sections 54 and 55 of TPA and will not confer any title nor transfer any interest in an immovable property. According to TPA, an agreement of sale, whether with possession or without possession, is not a conveyance. Section 54 of TP Act enacts that sale of immovable property can be made only by a registered instrument and an agreement of sale does not create any interest or charge on its subject matter.

Second, we will discuss about validity and scope of Power of Attorney:

A power of attorney is not an instrument of transfer in regard to any right, title or interest in an immovable property. The power of attorney is creation of an agency whereby the grantor authorizes the grantee to do certain acts specified therein, on behalf of grantor, which when executed will be binding on the grantor as if done by him. It is revocable or terminable at any time unless made irrevocable in a manner known to law. Even an irrevocable attorney does not have the effect of transferring title to the grantee. So, power of attorney does not convey ownership. An attorney holder may however execute a deed of conveyance in exercise of the power granted under the power of attorney and convey title on behalf of the grantor.

Third, we will discuss about the scope of Will: A Will is the testament of the testator. It is a posthumous disposition of the estate of the testator directing distribution of his estate upon his death. It is not a transfer inter-vivos. A Will is intended to come into effect only after the death of the testator and is revocable at any time during the life time of the testator. So, even a Will cannot transfer title or ownership in an immovable property. Many agency agreements are cross-jurisdiction. Clearly there can be some uncertainty as to which law will apply to the contract. This is particularly the case as the agent may challenge the governing law selected by the parties in order to try to achieve better protection.

Before implementing or terminating an agency agreement, consider taking legal advice to check whether the agency legislation described above applies and which governing law is likely to apply to the contract. The key difference is that the Reseller does not have the right to enter contracts that bind the Wholesaler at law.

If the nature of the relationship comes into dispute, the courts will look at the actual relationship, rather than what any agreement says. In some cases where a reseller's agreement has said that the relationship is not that of Principal and Agent, the court has found that the conduct of the parties binds the Wholesaler, regardless of what the reseller's agreement says

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