



HULU TERENGGANU

**E - BOOK**  
**BUSINESS LAW**  
(LEGAL ASPECTS OF  
BUSINESS ENTITIES  
& AGENCY)



DPB 30073

BUSINESS LAW

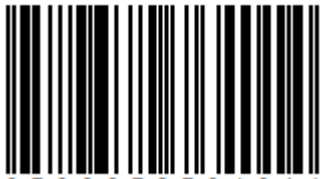
COMMERCE DEPARTMENT

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e ISBN 978-967-2764-01-4



9 7 8 9 6 7 2 7 6 4 0 1 4

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## **BIBIOGRAFI PENULIS**

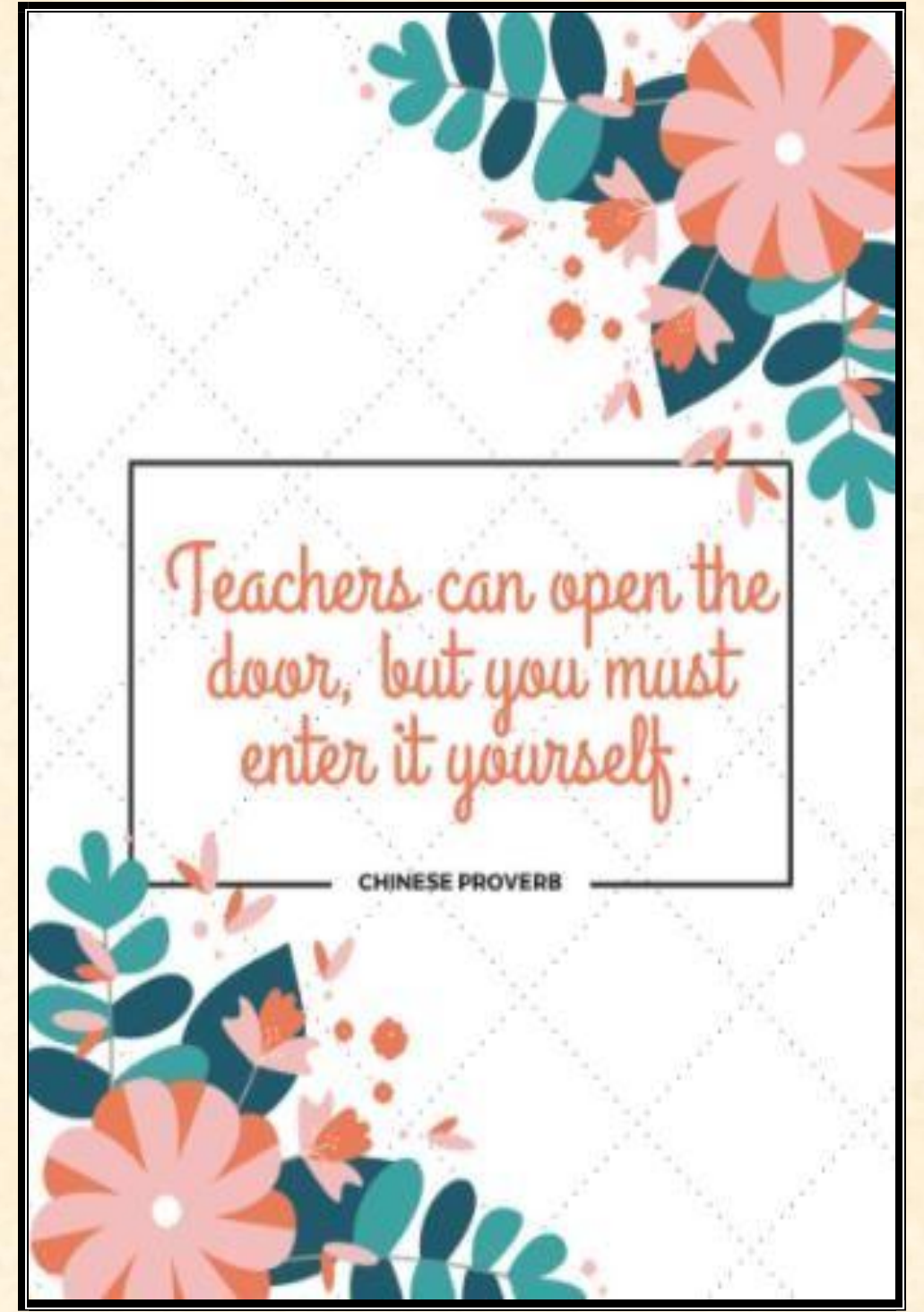


**ZAIDAH BINTI MAMAT**

**Pegawai Pendidikan Pengajian Tinggi  
Jabatan Perdagangan  
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## **PRAKATA**

Buku ini diwujudkan sebagai rujukan kepada pelajar politeknik yang mengambil Kursus Business Law semasa di semester ke dua. Buku ini juga merupakan ringkasan nota-nota yang disusun mengikut silibus kursus untuk memudahkan pelajar memahami konsep undang-undang perniagaan. Buku ini merangkumi dua topik dari keseluruhan topik iaitu Entiti Perniagaan dan Agensi.



Teachers can open the  
door, but you must  
enter it yourself.

CHINESE PROVERB

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## Chapter 3 Legal Aspect of Business Entities

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Define sole proprietorship  
Define partnership  
Define company

2

Characteristic of sole proprietorship,  
partnership and company

- formation
- management
- registration
- numbers of members
- constitution
- liability
- dissolution

3

Rights and duties of  
partner based on  
Partnership Act 1961

4

Dissolution of partner

**SUCCESS IS NOT FINAL;  
FAILURE IS NOT FATAL:  
IT IS THE COURAGE TO CONTINUE  
THAT COUNTS.**

WINSTON S. CHURCHILL

## 3.1. TYPES OF BUSINESS ENTITIES IN MALAYSIA

### SOLE PROPRIETORSHIP

A sole proprietorship also referred to as a sole trader or a proprietorship, is an unincorporated business that has just one owner who pays personal income tax on profits earned from the business.

### PARTNERSHIP

Section 3(1) Partnership Acts 1961 Defines a partnership as the relation which subsists between persons carrying on a business in common with a view of profit.

### COMPANY

Company is a legal entity formed by a group of individuals to engage in and operate a business, commercial or industrial and enterprise. A company may be organized in various ways for tax and financial liability purposes depending on the corporate law of its jurisdiction



## 3.2 CHARACTERISTIC OF SOLE PROPRIETORSHIP, PARTNERSHIP AND COMPANY





## 3.3 RIGHTS AND DUTIES OF PARTNERS

(Section 26 Partnership Act 1961)

- a) share equally capital and profits of the business and losses.
- b) indemnify every partner of payment made and personal liabilities incurred by him.
- c) entitled to interest at the rate of eight per cent per annum of payment.
- d) a partner is not entitled before the ascertainment of profits to interest on the capital subscribed by him.
- e) every partner may take part in management.
- f) no partner shall be entitled to remuneration for acting in the partnership business.
- g) no person may be introduced as a partner without the consent of all existing partners.
- h) any differences arising as to ordinary matter, may be decided by a ,majority of the partners.
- i) the partnership books are kept at the place of business.



## 3.4 DISSOLUTION OF PARTNER

### a) By agreement

- partnership agreement, the partnership is terminated on the expiry
- mutually agree to dissolve the partnership.

### b) By operation of law-sec 3

- if partnership was entered into for a fixed term and the term expires -sec 34(1)(a)
- if the partnership was entered into for a single adventure and that adventure terminates -sec 34(1)(b)
- if the partnership was entered into for an undefined time, by giving notice to the partner of his intention to end the partnership -sec 34(1)(c)



## 3.4 DISSOLUTION OF PARTNER

c) By death or bankruptcy-sec 35(1)

- Lee Choo Yam Holdings Sdn Bhd & Ors v Khoo Yoke Wah & Ors (1990)

d)By changing on shares –sec 35(2)

e)By supervening illegality-sec 36

f)By court order –sec 37



## 3.4 DISSOLUTION OF PARTNER

The court may order the dissolution of the partnership in any of the following cases:

a) insanity of partner - sec 37(a)

b) Permanent incapacity of any partner to perform his duties - sec 37(b)

c) Conduct calculated to prejudicially affect the carrying on the business - sec 37(c)



# CONTENT

## Chapter 4 BANKS Agency

1

Define law of agency

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- agent

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- factor
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- del credere
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Relationship between principals and agents

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- Rights and duties of an principal toward his agent

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Termination of agency

Types of agency by authority

- actual
- apparent

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**SUCCESS IS NOT FINAL;  
FAILURE IS NOT FATAL:  
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THAT COUNTS.**

WINSTON S. CHURCHILL

## 4.1. NATURE OF AGENCY

The law of agency is governed under **Part X of the Contra Act 1950.**

### 4.1.1 Define law of agency

➤ **Definition of agency**

Agency is the relationship between principal and agent.

➤ **Definition of agent**

Agent - a person is employed to do any act for another or to represent another in dealings with third persons (Section 135, Contract Act 1950).

➤ **Definition of principal**

The person for whom such act is done or who is so represented.

Effects of contract:

There are 2 separate contracts:

- i. Contract of agency between the principal and the agent
- ii. Law of contract between the principal and the 3rd party



## Qualification

- i. Principal- section 136: principal must be the age of majority and sound mind.
- ii. Agent - section 137: any person may become an agent but an agent who is a minor or unsound mind is not responsible for his act.

## 4.12 Formation of agency

### ➤ **Agency by express appointment by the principal**

Section 140: Authorization can be in writing or oral

### ➤ **Agency by implied appointment**

a) Implied by the circumstances of the case. When one person by his words or conduct holds out another person as having authority to act for him.

### ***Chan Yin Tee V William Jack***

Facts: Chan told William Jacks that Yong a minor is his partner. Yong ordered goods for the business but Chan refused to pay.

Held: agency relationship exist between Chan and Yong by referring to their conducts and thus, Chan have to pay for Yong's order.



b) Implied by relationship between husband and wife

It is implied that the wife is an agent to the husband and she has authority to pledge her husband's credit.

However, if the husband can prove any of this, he need not pay for the goods. The wife would be personally liable.

- i. He expressly forbids his wife from pledging his credit.
- ii. He expressly warned the tradesman not to supply his wife with goods on credit.
- iii. His wife was sufficiently provided with the goods.
- iv. His wife was given sufficient allowance to buy goods without pledging her husband credit.
- v. The order was unreasonable with her husband's income even though it was necessary goods.

c) Implied by the Partnership Act 1961. Section 7 states that a partner is an agent to his firm and another partner.

Case: ***Chan Yin Tee V William Jacks***





## ➤ Agency by ratification- Section 149 Contract Act 1950

Agency by ratification arises in 2 situations:

- i. An agent who is appointed exceeded his authority.
- ii. A person who had no authority to act but acted as if he has the authority.

According to section 149, principal has choices

- To ratify- The principal is liable
- Disown the act - Agent is liable

However, there are 8 conditions need to be fulfilled before the principal ratifies:

- i. The act must be unauthorized or the agent has exceeded the authority.
- ii. The act must be recognized by law
- iii. The agent must expressly acts as an agent for the principal at the time of contract.

### ***Keighley Maxted V Durant***

Facts: An agent bought wheat at a price higher than authorized by the principal in his own name.

Held: principal could not ratify the contract. Agent would be personally liable to pay the price of the wheat.



- iv. The principal must be in existence and have contractual capacity at the time of the contract.
- v. The principal must have contractual knowledge of all material facts of the contract. In ***Marsh V Joseph***, the ratification was void because the principal was not aware of the contract when it was made.
- vi. The principal must ratify the whole contract, not only the part that & is beneficial to him.
- vii. Ratification must be made within reasonable time.

### ***Metropolitan Asylum Board V Kingham***

Held: ratification 1 week after the agent bought eggs was too late

- viii. Ratification must not injure the interest (causes loss) to 3rd party

### ➤ **Agency by necessity- Section 142 Contract Act 1950**

Section 142: a person can become an agent by necessity without formal appointment by principal in emergency case. However, some kind of contractual relationship must already exist between them (e.g.: a contract to deliver goods).



## ***Great Northern Railway Company V Swaffield***

Facts: the plaintiff, railway company carried the defendant's horse to its destination. On arrival there was no one to meet. Since the station master did not know the defendant's address, he instructed that the horse to be put in stable. Later, the railway company claimed for the charges from the defendant. The defendant refused to pay.

Held: the railway company had acted as agent of necessity. The horse need to be kept safe in the stable. Therefore, the claim was successful.

Three conditions must be fulfilled:

- i. The agent's action is necessary to prevent loss to the principal

In ***Phelps James Company V Hill***, agency by necessity does not arise if there is no real agency for example where the goods are sold because they were inconvenient from the principal.

- ii. It is impossible for the agent to communicate and get further instruction from the principal. Agent must use all reasonable diligent to communicate with his principal.



## ***Springer V Great Western Railway Company***

The defendant was supposed to carry the goods (tomatoes) to its destination, sold the goods in the middle of the journey without trying to communicate with the owner when it is possible to do so.

Held: no agency by necessity

- iii. The agent must act in good faith and reasonable in the circumstances. Good faith means good intention, not because of personal interest.

### **➤ Agency by estoppel or holding out - Section 190 Contract Act 1950**

- i. If the principal himself by his words or conduct, allows a 3<sup>rd</sup> party to believe that a person has an authority to act for him, the principal is stopped from denying the agent's authority.
- ii. When the principal does not inform to the 3<sup>rd</sup> party that his agent has no authority, or the agent's authority had been terminated, but the agent still continues acting on behalf of the principal.



## ***Freeman & Lockyer V Buckhurst Park Properties Ltd***

Facts: Mr. Kapoor without authority, hired a firm of architects and surveyors to do work for the company. The other directors even though had knowledge about this did not inform the third party that Kapoor had no authority. Third party sued the company for payment.

Held: the company was precluded from denying Kapoor's authority to act for them. Agency by estoppel was existed between Kapoor and the Company. Therefore, the company was liable to pay the firm.



# FORMATION OF AGENCY



**EXPRESS  
APPOINTMENT**

**IMPLIED  
APPOINTMENT**



**RATIFICATION**



**NECESSITY**

**ESTOPPEL**



## 4.2 TYPES OF AGENCY

### 4.2.1 Types of agency by function

- Brokers - an agent who is engaged to make contracts between two principals engaged in some aspect of trade, commerce or navigation.
- Factors / mercantile agent –an agent who has more extensive powers to act for a principal than a broker possesses. At common law, the factor is an agents for sale who is entrusted with possession of goods belonging to the principal for sale and who sells the goods in the name of the agent without disclosing the name or existence of the principal.
- Commission agent / commission merchant – an agent appointed by a principal to sell goods or to buy goods on behalf of the principal.
- *Del credere* agent - an agent who assumes a super-added duty to ensure the principal is paid by the third party.is in consideration of extra commission.
- Power of attorney – legal instruments under which principals (donor) confer authority on agents to perform certain acts for the principal. Unlike most other agency relationships, power of attorney are



# Types of agency by function



broker

factor

commission agent



del credere

power of attorney



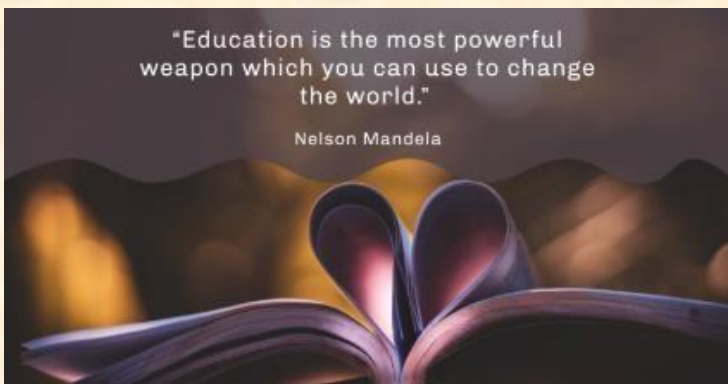
## 4.2.2 Types of agency by authority

### ➤ **Actual**

- i. Express authority : expressly given by the principal orally or in writing
- ii. Implied authority - implied from express authority, custom or trade of the business, circumstances of the case and conduct of parties.

### ➤ **Apparent/ ostensible**

- i. When the principal by words or conducts leads the 3rd party to believe that his agent has authority to make a contract for him.
- ii. When the agent has the authority but that authority has been terminated and the third party does not know about that (third party still believe that the agent still has the authority to act).



## 4.3 THE RELATIONSHIP BETWEEN PRINCIPALS AND AGENTS

Since the relationship between the principal and agent is contractual relationship, there are certain duties must be performed by both parties.

### 1. Rights and duties of agent toward his principal

1. To obey the principal's instruction : Section 164

#### ***Turpin v Bilton***

Facts: the agent was instructed by his principal to insure his ship. The agent, however, did not follow the instruction of his principal. The ship was lost and the principal claimed damages from the agent.

**Held:** the agent was breach of duty and liable to pay the loss.

Exception:

#### ***Cohen v Kittel***

Held: an agent is under no duty to obey the unlawful instructions.



2. To act according to the-customs : Section 164

In the case where there is no instruction given, the agent must follow the custom. This means that the agent must do what he usually does.

**Example:**

Mia has been appointed as agent by Sita. Mia's duty is to pick the fruits and sell to the market every day. Suddenly the principal fell sick and was hospitalized. In this situation, Mia will not get the instruction from his principal. In this situation, Mia must act according to custom, i.e. even though no instruction given by his principal, he must pick and collect the fruits as usual.

3. Exercise care and diligence in carrying out his work and to use such skills he possesses : Section 165

***Keppel v Weller***

Facts: the principal instructed the agent to sell his house. There are two offers given to the agent. However, the agent had accepted the offer which is lower in price. Held: agent was liable.

4. Render proper account when required by the principal : Section 166



### ***Parker v Mason***

Held: it is a duty of an agent to prepare and show a proper account which includes money received by him from illegal or void transaction.

#### 5. Communicate with principal : Section 167

Agent must use all reasonable diligence in communicating with his principal, and in seeking to obtain his instruction.

Section 142, if he fails to get further instruction, then, he can use his own discretion to act, in order to protect the interest of his principal.

#### 6. Do not let his personal interest conflicts with his duty

### ***Wong Mun Wai v Wong Tham Fatt***

Facts: the principal instructed the agent to sell his share. The agent had sold the share to his wife below the market price. The principal sued the agent.

Held: the agent had breached his duty for letting his personal interest conflicts with his duty.

### ***Amstrong v Jackson***

Held: an agent who was employed to buy shares must not share his own shares to the principal unless he has informed the principal and he consented to it.



## 7. Do not make secret profit : Section 168

Secret profit means extra payment, secret commission or financial advantages from the 3<sup>rd</sup> party.

If the agent had made secret profit and the principal knows and consents, the agent can keep the amount/ benefit as it is no more secret. However, if the principal does not agree, he can take these actions:

- i) Repudiate the contract between the agent and the third party.
- ii) Recover the amount of secret profit.
- iii) Refuse to pay commission to the agent.
- iv) Dismiss the agent and terminate the contract of agency as in ***Boston Deep Sea-Fishing & Ice Co v Ansell.***
- v) Sue the agent and claim damages for the loss suffered.
- vi) Initiate criminal action against the agent and/ or third party under Anti-Corruption Act 1997.

### ***Mahesan v Government Officers Cooperative Society***

Facts: the principal (company) instructed the agent (director) to buy a piece of land. The agent found the seller who wanted to sell the



land to the company for RM944, 000. The seller gave a bribe to the agent RM122, 000.

Held: the company can claim the payment given by the third party to the agent.

8. Pay to his principal all sums received on his behalf : Section 171

Exception: Section 170 allows the agent to retain or deduct from the sum received for any advances made, expenses incurred, commissions and other remuneration.

9. Do not disclose any confidential information and documents entrusted to him by his principal.

10. Do not delegate his authority to another agent (sub agent): Section 143

Maxim delegates *non potest delagare* (a delegate Cannot delegate)



## 4.3.2 Rights and duties of principal toward his agent

1. To pay the agent commission and other remuneration when the duty is completed: Section 172

### ***Tan Chiok Sing v Llian Fatt Sawmills Co***

Held: an agent is entitled to reasonable remuneration even though the contract between his principal and the party fails.

Section 173: if agent is guilty of misconduct, he is not entitled to any remuneration.

2. Not wilfully to prevent the agent from denying his commission.

The principal cannot hire another agent to compete with the first agent.

3. To indemnify and reimburse the agent in the following circumstances
  - i. When the agent suffered losses in performing his duty: section 175



## ***Kyall & Evatt v Lim Kim Keat***

Held: the agent was entitled to be indemnified for the loss because the principal failed to disclose important information.

- ii. The agent cause injury to 3rd party : Section 176
- iii. The agent suffers injury due to principal's negligence or lack of skill : Section 178

Section 177: the principal does not need to indemnify the agent if he does an act which is a crime.

## ***Soloway v Mc Laughli***

Held: the agent is not entitled to be indemnified if there is fraud done by him.





## 4.4 TERMINATION OF AGENCY

### 1. By agreement

➤ When both parties desire and agree that the agency shall be terminated, the agency is terminated.

➤ If the agency is evidenced by a contract, then any provisions regarding the termination of the agency by agreement should be observed by the party wishing to terminate the agency.

### 2. By the principal revoking the agent's authority- Section 156

➤ Generally principal can revoke the agent's authority where the principal gives notice of termination and the agent is in default under the agency.

### 3. By the agent's renunciation – Section 156

➤ An agency may be terminated when the agent relinquishes or surrenders his authority and by so doing ends the mandate given to him as agent.

➤ Renunciation is a unilateral act.

➤ When the agency is for a definite or fixed period of time, the agent can terminate the agency



by giving reasonable notice of termination to the principal.

4. By performance – Section 154

➤The contract of agency is brought to an end when the agent has performed the contract. This can happen when an agency is created for a single specific transaction and the transaction is completed.

5. By operation of law – Section 154

➤Upon the death of the principal or the agent. The death either the agent or the principal terminates the agency.

➤When the principal or agent become insane. Since an insane person is not capable of entering into a valid contract to appoint an agent or act as one, the agency is terminated by such insanity.

➤When the principal or agent become insolvent or is make a bankrupt. Upon insolvency, a person's rights and liabilities are vested in the Director General on Insolvency and therefore the agency relationship ceases.

6. By frustration

➤Upon the happening of an event which renders the agency unlawful, the agency may be terminated.



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Thank You!  
for reading