

Business law

Lecture 6

MGM412
Business law

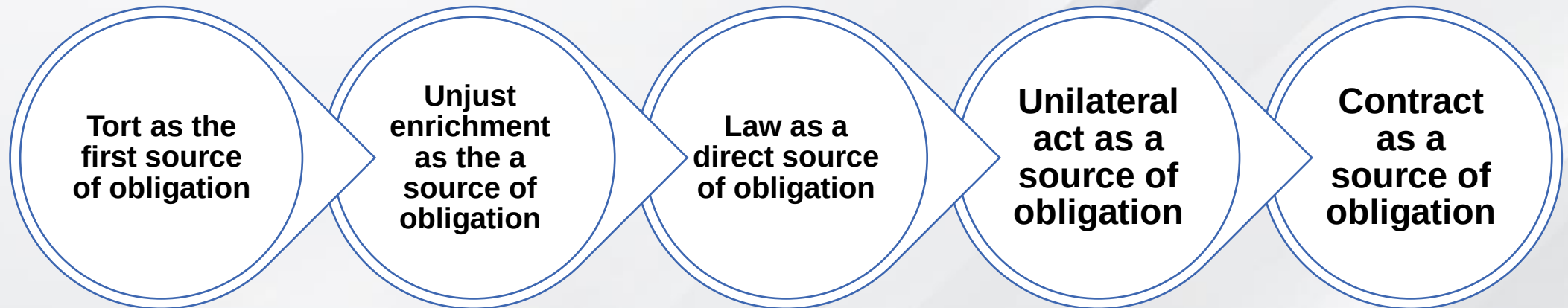
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Lecture goals

- 1- Quick revision of the previous lecture .**
- 2- Our educational goals today**
- 3- Conclusion**
- 4- References**



1- quick revision of the previous lecture



2- educational goal today



Part 4: Sources of obligation

VI- Different applications of business-related contracts.

a- standard contracts.

B-Agency contract.

- a- **Standard contract**

- standard or model contracts are one of the most important tools for organizing contractual relations in the modern business world. They **are ready-made contract forms that are prepared in advance by one of the parties**, such as large companies or government institutions, and presented to the other party for signature without making any substantial changes in contract terms. These contracts contribute to facilitating and accelerating contracting procedures.
- This type of contract is uniform, meaning it is used in many similar contracts concluded by the entity that prepared, and is often in his favor . Any person who intend to deal with this entities may only accept to conclude contract based on terms defined in the standard contract or refuse the whole transaction. This why it is called **take it or leave it contracts with no substantial negotiations**.

- **Why use a standard form contract?**
 - In complex contracts, such as international sale contracts, the difficulty is often to determine exactly what obligations the terms of the contract create.
 - This difficulty is not usually apparent in negotiating the contract, but becomes apparent when there is a dispute in which the parties argue that the terms in question have different meanings.
 - Merchant traders do not necessarily have definite legal terms in mind when negotiating their contracts.
- standard contracts have different advantages and disadvantages we shall explain each in the following:

- **Advantage of Standard Contracts**

- **Saving time and effort:** Model contracts help speed up the contracting process and reduce the costs associated with preparing contracts individually.
- **Standardization:** These contracts contribute to the standardization of contractual standards and terms, which
 - ☐ Their contents are well known in advance to interested parties. so, Parties know their rights and obligations.
 - ☐ Minimize the risk of misunderstanding. And reduces disputes and disagreements between contracting parties.
 - ☐ it Serves the purpose of uniformity of commercial law by some typical provisions they create.

Disadvantages and Problems Raised by Model Contracts:

- Despite the advantages offered by model contracts, they raise many legal and ethical problems, including:
- **Contractual inequality:** Model contracts are often **in favor of the stronger party**, which may lead to an imbalance in obligations of the contracting parties.
- **Lack of negotiation:** It **does not give the weaker party enough opportunity to negotiate** the terms of the contract, which makes it accept the terms as they are without any amendment.
- **Circumvention of the law:** Model contracts may be used to **circumvent laws** and harm the rights of others.

- **Legal Solutions**

- To overcome the problems raised about model contracts, many legislations and laws have proposed solutions, including:
- **Obligation of transparency:** The party preparing the model contract **must provide a clear explanation** of its terms and conditions to the other party.
- **Judicial censorship :** The judge plays an effective role in interpreting the terms of the model contract , if the term is vague, the **interpretation should be in favor of the weak party**

- **Imposing contractual balance:** laws in some areas such as consumer protection allow the courts to examine the reasonableness of the contract terms presented in the model forms and protect the weaker party from exploitation by imposing contractual balance between the parties, and amending contracts to increase the rights of the weaker party or increase its obligations

- **- Battle of forms:**
- The term "Battle of Forms" in commercial law refers to the conflict that occurs between two parties to a contract when **each party uses a different standard contract** from the other party's form.
- In other words, when two companies enter into negotiations to sign a contract, each company usually comes up with its own "contract form", which **contains the terms and conditions that it prefers**. When the parties try to merge these two forms into one contract, a state of contradiction and conflict between the terms arises, leading to what is called a "battle of forms".

- Reasons for the “Battle of the Models or forms”:
- **Difference in terms:** Each contract model contains a set of terms and conditions that serve the interests of the party that prepared it, and **these terms are often in conflict with the terms of the other model.**
- **Priority:** The parties wonder **which model will be adopted in the final contract**, and which terms will be valid.
- **Difficult Negotiation:** The parties may take **a long time to negotiate conflicting terms**, which delays the contract conclusion process.

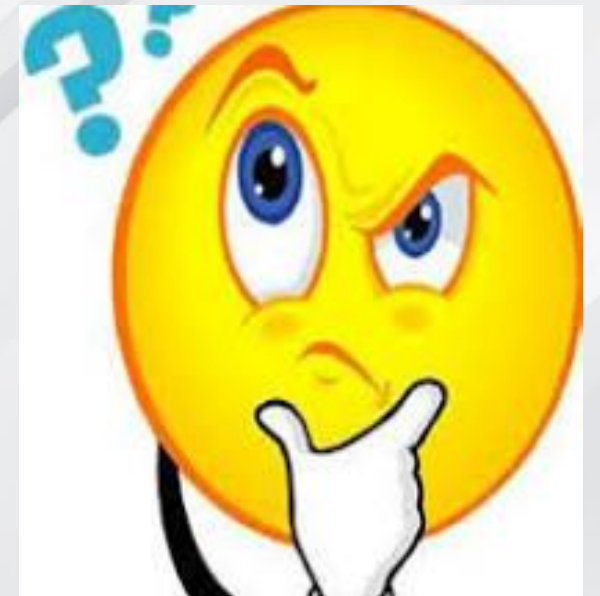
- - **legal solution:**
- If a company offered to sell goods to another according to a form containing the standard terms of trade prepared by the seller, and purchaser accepted that offer by another form containing his standard terms. the seller did not object any of these terms, and executed the contract by delivering the sold products. the contract will be concluded according to the last form which is the purchaser form.
 - (concluded according to the person who fired the last shot)

- Case Study
- Alpha, a company specializing in the manufacture of electronic devices, wanted to purchase a large quantity of electronic components from Beta. Both companies sent their own contract template to the other party.
- First draft: Alpha sent a draft contract detailing the required services. This template indicates that Beta is responsible for any defects in the product for a full year.
- Second draft: Beta responded with its own template contract containing a clause related to limiting its liability in the event of any defect in the application. This template also limited the company's liability for defects to only three months.

- Beta then sent a sample to Alfa, which Alfa accepted and sent an acceptance of the contract. Accordingly, Beta sent the devices and received the full price. After six months, Alfa discovered major defects in the electronic components that were purchased, and these defects caused the company significant financial losses. Is Beta responsible for these defects or not?



- It must be specified which contract was finally agreed upon between the two parties. Is it the contract sent by Alpha or the one sent by Beta?
- Since it is last form sent was beta form stating that company's liability for defects is limited to three months only, then beta is not liable for these defects.



- **b- THE Agency contract**

- - **Definition of the agency and the agent:**
- In law the agency is a **contract by which the agent undertakes to do a legal act for and on behalf of his principal** .
- **The agent** is a person who is employed to bring another person called the principal into contractual relationship with a third party or performing other acts in the law on his behalf.
- In other words, an agent is invested with a legal power to conclude legal acts which produce legal effects that extend only to the principal.

- Needless to say, that countless number of commercial transactions which take place in the modern life is carried out through agents.
- It is recognized that the "Concept of agency" is fundamental to modern business law, and without it modern commerce would not exist.



**CONTRACT
OF AGENCY**

Examples

- An exporter of cotton in Alexandria would **seek the services of an overseas "sales agent"** to make contracts with purchasers abroad on his behalf.
- An "estate agent" may agree to **buy a villa for and on behalf of his customer** at a summer resort on the north coast.
- A claimant of a certain right may appoint a **"lawyer"** to conduct litigation on his behalf or even to negotiate for an amicable settlement.
- A **"stockbroker"** agrees to buy or sell shares for and on behalf of a client.

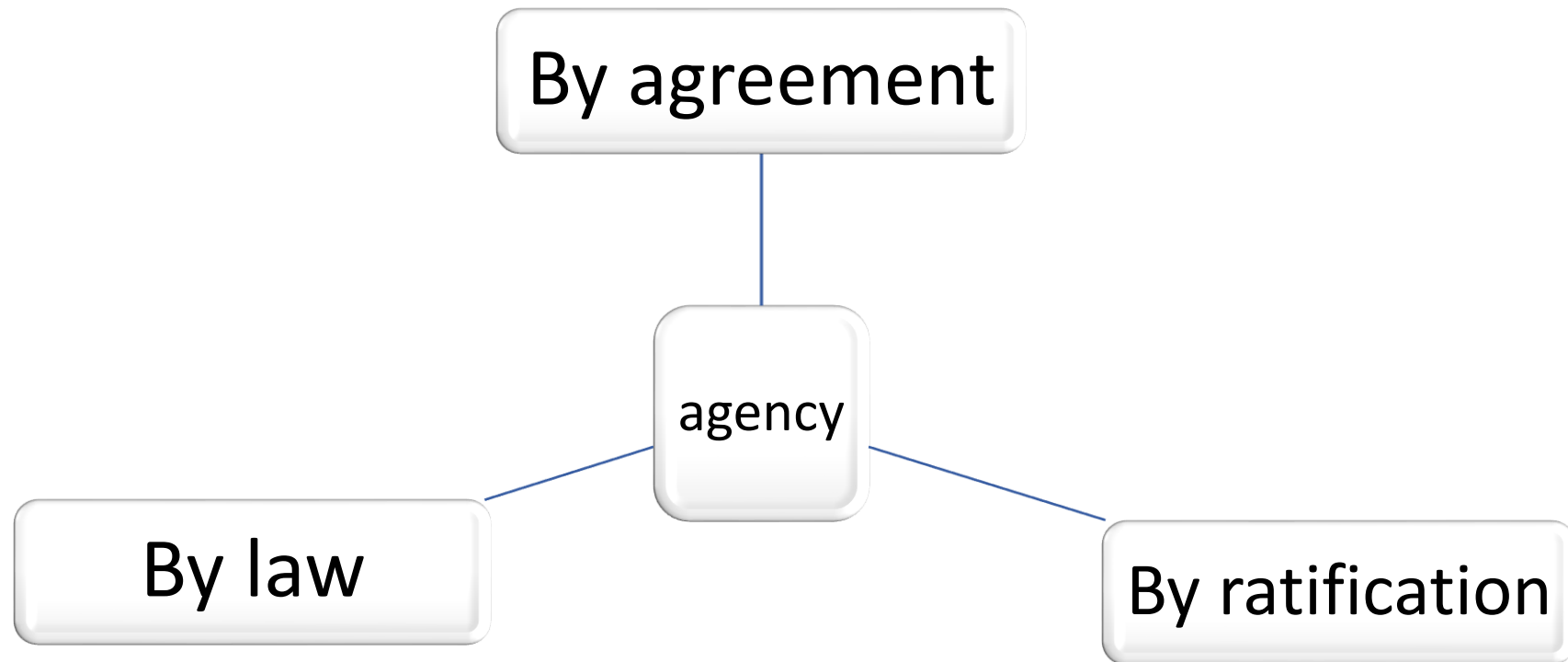


- An employer can assign a "recruiting agent" to select on his behalf suitable candidates for vacant positions in his company.
- A "shipping agent" or shipbroker is under obligation to render the necessary services to the principal's ship on his behalf during its stay in the port.
- A businessman may appoint a "contracts agent" to carry on his behalf at a certain area of activities, the necessary marketing, negotiations and conclusion of contracts by the name of the principal and for his account against remuneration

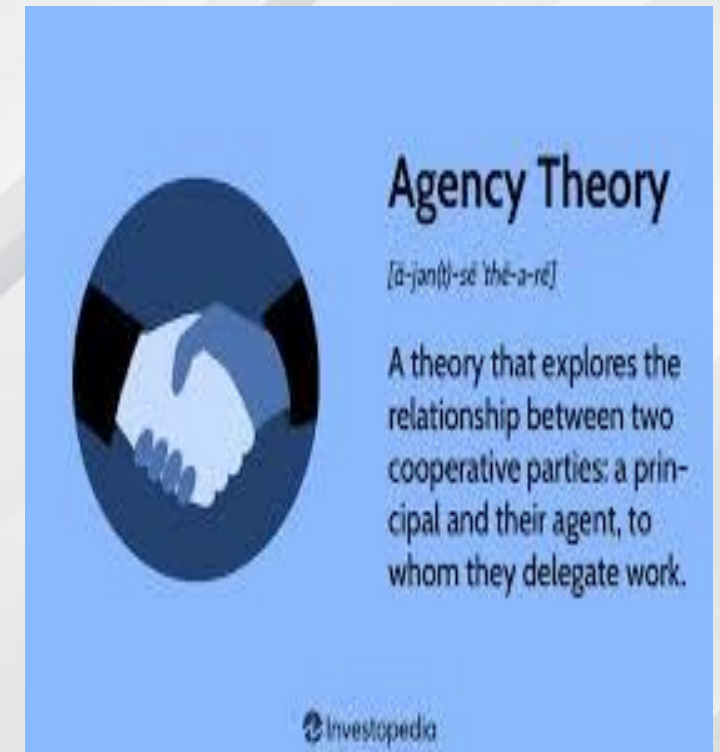


- **Why do we use agents?**
- 1- If the principal has **lack of experience**, (estate agent).
- 2- If the principal has **no enough time** to carry transaction. (Custom broker, recruiting agent).
- 3- agency may be **enforced by law**, as in the case of employing lawyers to conduct litigation on behalf of their clients.
- 4- To make use of the high **negotiating abilities** and proficiency of the agent, (sale and purchase broker).
- 5- If the transaction is to be performed at a **remote place**, as in a foreign country, so a local agent at that country could be appointed to carry out the transaction on behalf of the principal.

- agency could be classified to agency:



- **A- actual agency (by agreement):**
- It is the authority of agent **based on the agreement of agency** (contract) between him and the principal.
- the actual agency gives **express** and **implied powers**, it also enforce certain **duties on the agent**, and **grant him certain rights** we shall explain each of these powers in the following:



- **I- express powers (authority):**
- **Derived from express agreement** between the agent and the principal. this agreement may be oral.
- The agreement **does not need any formality** such as writing, unless the agent is appointed to execute deed (formal authenticated document), then his appointment must be by a deed (registered in notary department).

- **li- implied powers (authority):**
- The authority of the agent to do acts or contracts **not expressly authorized in the agency agreement** but necessary for the execution of the express authority vested to him by the principal.
- Ex: if the exporter instructs **his forwarding agent** to load goods on board of specific ship, the agent has implied authority to do the customs clearance and other acts to load them on board.

- **lii- duties of the agent:**
- 1- to **obey the instructions of his principal.**
- 2- to **exercise reasonable care and skill.** Ex: if the agent's duty is to sell property, he has to obtain the best price that is reasonably obtainable.
- 3- to **act personally.** The agent can not delegate performance of agency to another person. except with the principal's permission or accepted by custom. This is justified by the fact that the principal puts his trust in the agent particularly because of his personal skills or confidence in his discretion.



- **4- to act in good faith.**
- **a- Not to permit a conflict of interest.** Accordingly, the agent who is employed to sell property of his principal **cannot sell it to himself**, because this will make conflict between the agent's interest to pay the lowest price and the principal's interest to obtain best price.
- **b- Not to make a secret profit or accept bribe.** The agent **cannot make Any profit for himself above the commission**, or take bribe from the other party.
- So if P gives money to A to buy goods on his behalf and A invests the money so that he earns interest by putting money into bank account, he must not keep the interest but give it to the principal.
- **c- Not to obscure information related to agency away from his principal and not to misuse confidential information**

- **5- to account:** agent has duty to **keep proper accounts of all transactions** connected to the agency and give them to the principal.



- **IV- Rights of the agent:**

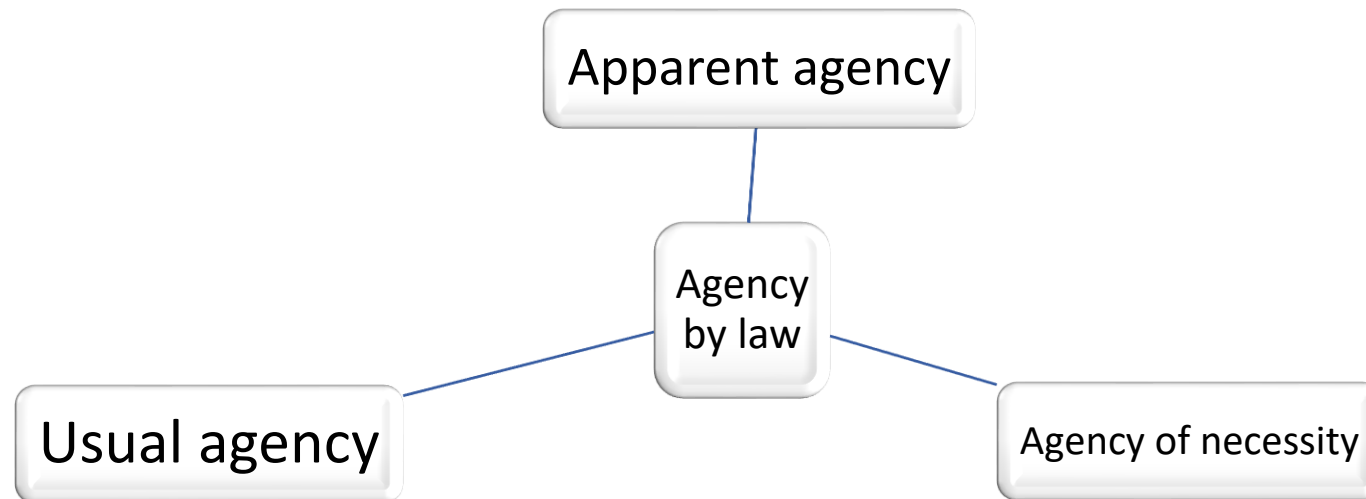
- **1- agent's right to indemnity :**

- Agent has the **right to take back any payment of money he paid to a third party** only if the expenses was reasonably incurred whilst the agent is acting within the scope of his authority. So if the agent acted out of the principal's instructions he will not be entitled to indemnity of what he paid.
- For example: In a case a forwarding agent is appointed by a shipper of goods to reserve certain shipping space for him on a ship , and the agent did so but the space was unfilled because of the shipper's delay in sending goods to the port, and the agent had to pay to the shipowner damages for “**dead freight**”. The agent had the right of indemnity of such damages.

- **2- agent right of remuneration (commission):**
- This right exists only in paid agency, it is usually defined by the contract, It may take the form of salary, or commission or both or even certain percentage of the full value of the accomplished transaction.
- But if there is no express right to payment , a court may imply a term in the contract giving the agent a reasonable remuneration especially if the agent is professional.
- agent may be entitled to “ double commission” from the principal and third party only if he make full disclosure of that to both of them.

- **3- agent right to lien :**
- An agent has the right to **exercise a lien on any goods belonging to the principal** which he has in his lawful possession until he takes his rights (indemnity and remuneration).

- **b- agency by operation of law :**
- It is agency enforced **by law without any agency agreement** between the agent and the principal. It happens in 3 cases:



- **I - apparent agency: (agency by estoppel):**
- Is defined as that case in which the agent appears to have in spite of the fact that he has not such authority .
- So , It happens where the **principal by words or conduct has represented that someone is his agent** so the third party entered the contract on reliance of this representation .The principal in these circumstances is estopped from denying that actual authority existed .

- **ii- usual authority:**
- It is the authority which comes within the scope of activities **usually invested in an agent of the same character though in fact they are not.**
- A traditional example: if a **hotel owner appointed a manager** to run the hotel on his behalf but forbids purchasing certain articles such as cigars, but the manager bought cigars from third party for the use of the hotel, here the third party can ask the principal to pay the price because buying cigars is within the usual activities of hotel manager and he was not aware of the forbidding instructions.

- **3- agency of necessity: (voluntary agency as a kind of unjust enrichment)**
- The law presumed agency to the person **in case of emergency** in which the property or interest of another person is in imminent danger and it becomes necessity to preserve such property or interest to **act for owner's benefit without his permission**.
- This kind of agency requires the following conditions:
 - - case of emergency.
 - -Agent is not able to communicate principal to get instructions.
 - - agent acted honestly for the interest of the principal. - agent acted in a reasonable way.)
- Ex: Ex: if the manager of a ship found that he needs money to make urgent repairs to the ship and he could not communicate the owner of the ship, he may borrow money or even mortgage the ship to make the repairs and the owner will be bound by such borrowing or mortgaging contract.

- **C- ratification:**
- Means that a person can adopt **an act done on his behalf by another person without his permission** may be considered as agent's act if the principal adopts this act later, also ratification may implied where it is inferred from the conduct of the principal .
- By ratification, the principal will be in the same position as if he had primarily authorized the agent to act and will be entitled to the rights of the contract and bound with any obligations which may arise out of it

- **Termination of agency contract**

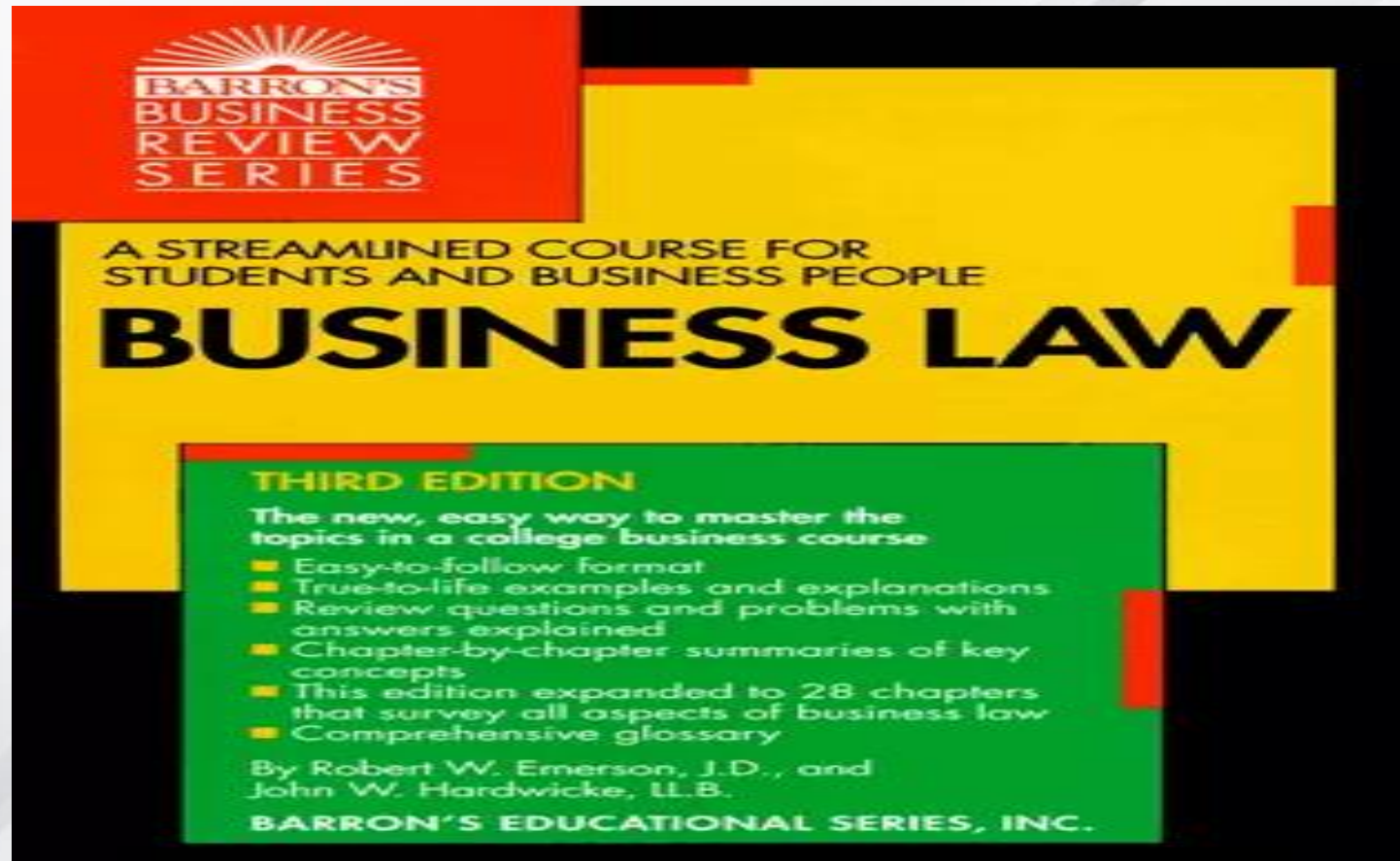
- 1- **by agreement** of parties.
- 2-by the operation of **law**.
 - a- by the end of fixed period or required task.
 - b- by death or incapacity of one the parties.
 - c- by act of law due to illegality of the agency object. So an agency agreement that entrust the agent with exporting certain type of products, will terminate automatically If the government issued a decree banning exporting such product.

3- Conclusion



4- References

Business Law (Barron's
Business Review) by
Robert W. Emerson J.D.





Thank You