

Contract of Agency
B.com First year for 2nd Semester
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CONTRACT OF AGENCY

Introduction :

Who is an agent and a principle (Sec. 182)

An "agent" is a person employed to do any act for another, or to represent another in dealing with third persons. The person for whom such act is done, or who is so represented, is called the "principal".

The relationship between an agent and a principal is called an "Agency." An agent therefore brings together his principal and a third person. Ex- A appoints B to Purchase a house for him. A is the principal, B is an agent and the relationship between them is that of Agency.

GENERAL RULES OF AGENCY

1. Whatever a person competent to contract may do by himself, he may do through an agent, except for acts involving personal skill and qualifications. Like, a person cannot marry through an agent, a person cannot paint a picture through agent.
2. The acts of an agent are acts of a principal for all legal purposes.

Difference between Agent and Servant

Authority to create contractual relationship: Apart from acting on behalf of his/her principal, an agent has the authority to create contractual relations between the principal and a third party. A servant ordinarily, has no such authority.

2. **Control and Supervision:** A servant is bound to work under direct control and supervision of his employer. A 'principal' directs the agent as to what is to be done, but a master or employer of a servant not only has that right, but also the right to direct how it is to be done.

3. **Number of Masters:** A servant usually serves only one master, but an agent may work for several principals at the same time.

4. **Remuneration:** The mode of remuneration is usually different. Remuneration for a servant is paid by way of salary or wages, whereas an agent generally gets his remuneration in terms of commission calculated on the basis of the amount of business transacted.

5. **Duty Assignment:** A servant in certain cases to some extent may be assigned the duties of an agent, and may act as one. For example, the secretary of a company is regarded as the servant of the company, but in respect of the matters that come under his/her domain he/she becomes an agent in their dealings with third persons. An agent as such never occupies the position of a servant because whenever he acts, he acts on behalf of his principal and binds him/her (principal) to third parties.

6. **Liability:** A principal is liable on contracts made by his agent within scope of authority. But a master is answerable for any wrongful act of his servant if it is committed in the course of the servant's employment.

Question : Explain various ways in which an agency relationship is

created. Also describe about the different kinds of Agent?

INTRODUCTION:- An agent is a person employed to do any act for another or to represent another in dealing with third parties. The person for whom such act is done or who is so represented is called the principal. Where one person merely gives advice to another in matter of business agency does not arise because of such advice only does not create an Agency. **Sayed Abdul Khader v/s Rami Reddy, 1979.**

The following are the various ways in which a relationship of agency is created:-

WHO MAY EMPLOY AGENT:- No person can employ an agent if he does not possess capacity to contract. So a minor or person of unsound mind cannot become the principal under **section 183** of the Indian Contract Act.

WHO MAY BE AN AGENT:- According to section 184 of the Act any person can be appointed as an agent but a person who is not of age of majority and of sound mind cannot be made personally liable for the act done on behalf of the principal. Minor can create contractual relation but a minor agent cannot be made personally liable to the principal for the misconduct like an adult agent.

CONSIDERATION: No consideration is required for the creation of an Agency under section 185 of the Act. **A case of Digvijay Cement Co.Ltd. v/s State Trading Corpn., 2006.**

KINDS OF AGENT:- On the basis of provisions available in the Contract Act the following are kinds of Agent in the business of Agency:-

1. **Del-Credere Agent:-** Such type of Agent who for extra remuneration undertakes the liability of guarantee the due performance of the contract by the other party. He is also responsible for the solvency and performance of their contracts by the other parties.
2. **COMMISSION AGENT:-** A commission agent is person who purchases and sells goods in the market on behalf of his employer on the best possible terms and who gets commission for his labor.
3. **FACTOR:-** He is such type of agent who is given the possession of the goods for the purpose of selling them. He is entitled to sell the goods in his own name. A factor has a right to retain the goods for a general balance of accounts.
4. **BROKER:-** He is also to be known in the name of Mercantile Agent employed for the purpose of sale and sale of goods. The main duty of a broker is to establish privity between two parties for a transaction and he gets commission for his labour. He is not entrusted with the possession of the goods. He merely brings two parties together and if the deal is materialized he becomes entitled to the commission.
5. **CO-AGENT:-** Where several persons are expressly authorized with no stipulation that anyone or more of them shall be authorized to act in

name of the whole body. They have a joint authority and they are called co-Agents.

6. **Sub-Agent:-** The sub-agents are usually appointed by the original Agent in the business of Agency. He works under the control of original Agent.
7. **PACCA- AARTIA:-** He is also known by this name only and he works in the open market to sell the goods on commission basis. He only sells the goods.

CONCLUSION:- As regards to determine whether relationship is that of Agent and Principal or that of Master and servant. Agent has to remain faithful to his principal and has work in good faith in the business of Agency. There must be relation in between principal and the agent. Merely giving advice to another person in the matter of business does not arise any business of agency. The main object of the agency business that the agent makes the principal answerable to third person.

CREATION OF AGENCY

Question : Write different method for creation of Agency ?

Ans : It may be created in any one of the following ways:

1. **By DIRECT APPOINTMENT**

Where the agent's authority is expressed, it is said to be a creation of agency by direct appointment. The authority of the agent is said to be expressed when it is given by words spoken or written.

Illustration: X appoints Y as his agent to sell his goods at X's shop by spoken words. It will be a creation of agency by direct appointment.

2. **BY IMPLICATION**

When the agency is inferred from the course of dealings between two persons or from the conduct, the agency is said to be created by implication. Here the genetal authority is not given by words spoken or written but it is assumed by the conduct or by the dealing of the parties.

Illustration; A owns a shop in Multan and lives in Bahawalpur. The shop is managed by B. B is in the habit of ordering goods from C in the name of A and makes payment from A's fund with A's knowledge. It means B has implied authority from A to deal with C.

3. **AGENCY BY NECESSITY**

When the agent has no authority from his principal in expressed or any other way, but under certain emergency circumstances he does any act for the principal, it is known the creation of agency by necessity.

illustration; A horse is sent by a train but at arrival, there is no one to receive it The railway company is bound to take reasonable steps to keep the horse alive. It will be a creation of agency by necessity. The railway company will have agental position in such case.

4. **AGENCY BY ESTOPPEL**

When an **agent** has without authority, done acts or incurred obligations to third persons on behalf of his principal, the principals are bound, by such acts or obligations if he has by his words or conduct induced such third persons to believe that such acts and obligations were within the scope of agent's

authority. It will be the case of creation of agency by estoppels. Sec. 237 Illustration ; X consigns goods to Y for sale, and gives him instructions not to sell under a fixed price. Z, being ignorant of Y's instructions enters 'into a contract with Y in X's presence to buy the goods at a price lower than the reserved price. X is bound by the contract.

5. AGENCY BY RATIFICATION

Where a person (Principal) ratifies an unauthorized act done by an other person (agent) on his behalf. It is known as creation of agency by ratification , Illustration; A having no authority from B purchases goods on B's behalf. But after that B sells the goods on his account, B's conduct implies a ratification of the purchase made by A on his behalf

Essentials of a valid ratification :

- a) The agent must purport to act as agent for a principal who is on contemplation.
- b) There should be an act capable of ratification.
- c) The principal must be in existence.
- d) The principal must be competent to contract.
- e) The principal must have full knowledge of material facts.
- f) Whole transaction must be ratified.
- g) Within reasonable time.
- h) Ratification must not injure a third person.

6. AGENCY BY OPERATION OF LAW

Under some cases the agency is automatically created by the Operation of law enforceable in Pakistan. For example, a partner is an agent of the firm for the purpose of the business of the firm.

TERMINATION OF AGENCY

QUESTION : What are the circumstances in which Agency is terminated?

INTRODUCTION:- Contract entered into through an Agent and obligations arising from the acts done by an agent be enforced in the same manner and will have the same legal consequences as if the contract has been entered into and the acts done the principal in person as described in **section 226** of the Act. Where a Agent does not work in good faith and is not loyal to his principal and tries to commit fraud or misrepresent in the business of Agency then principal is bound to take steps towards termination of the agency.

The following may be the reasons which can be responsible for the termination of the Agency:-

1. **By the principal revoking his authority:** Under section 203 of Contract Act-1872 lays down that, the principal may save or otherwise revoke the authority given to his agent at any time before the authority has been

exercised so to bind the principal.

2. **By the Agent renouncing the business of the Agency:-** Section 206 of Indian Contract Act, 1872 provides that, principal can revoke the agent's authority so also the agent can renounce the agency by giving a reasonable notice of renunciation otherwise he will be liable to make the loss good for any damage. Sec. 207 further mentions that like revocation the renunciation may also be express or implied in the conduct of agent.
3. **By the business of the agency being completed:-** In term of contract where the period of completion of the business is made the agency automatically stands terminated.
4. **By either the principal being adjudicated an insolvent:** Section 201 of the Act clearly indicates that, the agency which may be validly created stands revoked in the event of different situations including the death or insanity of the principal or the agent or by insolvency of the principal.
5. **Principal should give reasonable notice of revocation:-** Provisions says that a reasonable notice of the revocation when he have the justification to revoke the authority **under sec.206**.
6. **By either the principal or Agent dying or becoming unsound mind:** Section 201 also describes that, when principal dying or becoming of unsound mind agent is bound to take on behalf of the representatives of his late principal all reasonable steps for the protection of interests of agency.
7. **By the happening of any event rendering the agency unlawful:** - Whenever there is declaration of war the principal and agent may become alien enemies also comes in the way of termination of the agency.
8. **If a limited period is given:-** If the agency is for a fixed term, although with the possibility of fresh appointment after the expiry of the term it automatically terminates on expiry of the said term such agency cannot be said to be irrevocable as in the case of **P. sukhdev v/s Commissioner of Endowments-1997. Under sec.205**.
9. **MANNER AND CIRCUMSTANCES OF REVOCATION:-** The principal may have where the agent has himself an interest in the property which forms the subject matter of the agency, revoke the authority given to his agent at any time before the authority has been exercised so as to bind the principal under section 203 of the Act.
The Principal cannot revoke the authority given to his agent after the agent has partly exercised his authority so far as regards such acts and obligations as arise from acts already done in the Agency as laid down in the section 204 of the Act.
The reasonable notice of revocation is essential. Revocation may be express or implied in the Contract of the business under section 206 of the act.

The revocation and renunciation may be expressed or may be implied in the conduct of the principal or agent respectively under **section 207** of the act.

ILLUSTRATION: - A empowers B to let A's house. Subsequently A lets it himself. This implied revocation of B's authority.

CONCLUSION:- The effect of termination of Agency is on the maximum level to the Agent about his earnings and also put the principal in financial losses. Agent must remain faithful in the business of Agency. He should rendered the accounts, financial matters, appointment of sub-agents and other activities relating to Agency to the notice of his principal failing which it leads to termination of Agency.

PRINCIPAL LIABILITIES TO THIRD PARTY

QUESTION : Discuss fully the extent of Principals liabilities to third parties for the Act of the Agent.

INTRODUCTION:- Agent is a person employed to do any act for another or to represent another in dealing with third persons. There one of the most essential characteristics of Agency is that the agent makes the principal answerable to third persons. Principal is held bound by the obligations incurred on his behalf by his agent. **Section 226 to 228** of the Act deals with the law regarding the obligations of principal for the contract of his Agent.

We will find from the following provisions and illustrations that how the Principal's liabilities and is bound answerable to the third parties for the acts done by his agent:-

1. **Principal's obligation for acts of Agents:-** **Section 226** of the Indian Contract Act provides that contract entered into through an Agent and obligations arising from acts done by an Agent and will have the same legal consequences as if the contract has been entered into and the acts done by the principal in person. This section is based on the principle act as in Maxim which means that the act of an Agent is the act of the principal.

ILLUSTRATION:- A being B's Agent with the authority to receive money on his behalf receives from C a sum of money due to B. C is discharged of his obligation to pay the sum in question to B.

2. When an agent does more than he is authorized to do and when the part of what he does, which is within his authority, can be separated from the part which is beyond his authority the principal is liable only for so much part of what he does as is within Agent's authority as provided in **Section 227** of the Act.

ILLUSTRATION:- A being the owner of a ship and cargo authorizes B to procure an insurance for Rs.4000/- on the ship. B procures a policy for

Rs.4000/- on the ship and another for the like sum on the cargo. A is bound to pay the premium for the policy on the ship but not the premium for the policy on the cargo.

3. An agent does more than he is authorized to do and what he does beyond the scope of his authority is not separable from what is within it the principal is not liable for the transaction as provided in the section 228 of the Act.

ILLUSTRATION:- Where A authorizes B to buy 5000 sheep for him and B buys 5000 sheep and 200 lambs for a sum rupees 6000/- . A may repudiate the whole transaction.

4. **OSTENSIBLE AUTHORITY:-** Section 237 of the Contract Act embodies the principle of ostensible authority. The section lays down When an agent has without authority done acts or incurred obligations to third persons on behalf of his principal, the principal is bound by such acts or obligations if he has by the words or conduct induced such third persons to believe that such acts and obligations were within the scope of the Agent's authority."

ILLUSTRATION:- A being B's agent for the sale of goods induces C to buy them by misrepresentation which he was not authorized by B to make. The contract is voidable as between B and C, at the opinion of C. Under **section 238** of the Act misrepresentation or fraud committed by an Agent may be classified into two categories:-

- i) Under his actual or ostensible authority.
- ii) Which is not covered within his authority, the principal is liable for the acts which fall under actual or ostensible authority.

5. A leading case on this subject is of **Lloyds v/s Grace Smith** in which it was held that a principal is liable for the fraud of his agent within the scope of his authority whether the fraud is committed for the benefit of the Principal or for the benefit of Agent.

CONCLUSION:- On the perusal studies of the above provisions and the illustrations it is seen that the liabilities of the Principal towards third persons are based on the acts done by his agents. However in some cases it is also seen and Principal is not liable for any wrongful act or omission of his Agent while acting without the principal authority outside the ordinary course of employment or while not acting nor purporting to act on his principal's behalf.

SUB AGENT

QUESTION : Define the term Sub-Agent. How far is principal bound by the acts of Sub-Agents. Distinguish between Sub-Agent and Substituted Agent.

INTRODUCTION:- A rule which based on the principle that Agency is a

contract based on trust and mutual confidence between the parties. A principal may have the mutual confidence in his Agent but not in the subsequent sub Agent appointed by the Agent. There is a provision regarding 'delegates non-protest delegare' which means of this maximum is that an agent to whom another has delegated his own authority cannot delegate that authority to a third person.

PROVISIONS MADE IN THE ACT:- Under section 190 of the Contract Act which deals with delegation of an authority by the Agent describes as under:-

"An agent cannot lawfully employ another to perform acts which he has expressly or impliedly undertaken to perform personally unless by the ordinary custom or trade a sub-agent may or from the nature of the agency a sub-agent must be employed."

However the general principle is that the agent cannot delegate his authority to a third person but there are two exceptions to this general rule. These are:-

- i) When the ordinary custom of trade permits employment of a sub-agent.
- ii) When the nature of agency demands that employment of a su-agent is necessary by the Agent.

Although there are two exceptional conditions no agent is authorized to delegate his authority if the nature of his act is purely managerial and he is supposed to use his personal skill in discharge of his duty or where he is personally required to perform his duties.

SUB-AGENT:- Sub agent is a person employed by and acting under the control of the original Agent in the business of Agency under section 191 of the Act.

LEGAL POSITION OF SUB-AGENT PROPERLY APPOINTED:- Sub Agent may be either properly appointed or improperly appointed. If he is appointed by the Agent with the authority of his principal he is called sub-agent properly appointed. If he is appointed without the authority of principal he is improperly appointed.

When the sub-agent is appointed properly with the consent of the principal, the principal is bound by his acts and is responsible for his action as if he was an agent appointed by the principal.

The sub-agent is not responsible for his acts to principal. He is responsible only for such acts to the original Agent.

But if the sub-agent is guilty of fraud or willful wrong against the principal he becomes directly responsible to the principal under section 192 of the Act.

Difference between sub-Agent & substitute Agent

SUB-AGENT	SUBSTITUTED AGENT
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<p>Sub Agent is a person employed by and acting under the control of the original agent in the business of agency.</p> <p>A sub-agent is not generally responsible to the principal but he is responsible to the agent.</p> <p>There is no privity of contract between sub-agent and principal.</p>	<p>Substituted agent can be nominated by the original Agent to act for the principal for a certain part of the business of agency. A substituted agent by his mere appointment becomes immediately responsible to his principal.</p> <p>A privity of contract is created between the principal and the substituted Agent.</p>
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CONCLUSION:- There is lot of difference in between sub-agent and substituted agent one is appointed by the original agent is immediate responsible to the original whereas the substituted agent is directly responsible to the principal. He is appointed for some part of the business of agency.

QUESTION : EXPLAIN DUTIES AND RIGHTS OF AGENT

Duties of an Agent

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1) Agent's duty in conducting principal's business (Section 211) :

An agent is bound to conduct the business of his principal according to the directions given by the principal, or, in the absence of any such directions, according to the custom which prevails in doing business of the same kind at the place where the agent conducts such business. When the agent acts otherwise, if any loss be sustained, he must make it good to his principal, and, if any profit accrues, he must account for it.

Illustrations :

(a) A, an agent engaged in carrying on for B a business, in which it is the custom to invest from time to time, at interest, the moneys which may be in hand, on its to make such investments. A must make good to B the interest usually obtained by such investments.

(b) B, a broker in whose business it is not the custom to sell on credit, sells goods of A on credit to C, whose credit at the time was very high. C, before payment, becomes insolvent. B must make good the loss to A.

2) Skill and diligence required from agent (Section 212) :

An agent is bound to conduct the business of the agency with as much skill as is generally possessed by persons engaged in similar business, unless the principal has notice of his want of skill. The agent is always bound to act with reasonable diligence, and to use such skill as he possesses; and to make compensation to his principal in respect of the direct consequences of his own neglect, want of skill or misconduct, but not in respect of loss or damage which are indirectly or remotely caused by such neglect, want of skill or misconduct.

Illustrations

(a) A, a merchant in Calcutta, has an agent, B, in London, to whom a sum of money is paid on A's account, with orders to remit. B retains the money for a considerable time. A, in consequence of not receiving the money, becomes insolvent.

B is liable for the money and interest, from the day on which it ought to have been paid, according to the usual rate, and for any further direct loss - as, e.g., by variation of rate of exchange – but not further.

3) Duty to render proper accounts (Section 213)

According to Section 213 of Indian Contract Act 1872, An agent is bound to render proper accounts to his principal on demand.

4) Duty to communicate with principal (Section 214) :

It is the duty of an agent, in cases of difficulty, to use all reasonable diligence in communicating with his principal, and in seeking to obtain his instructions.

5) Not to deal on his own Account :

Section 215 of the Indian Contract Act 1872 deals with right of principal when agent deals, on his own account, in business of agency without principal's consent. Section 215 runs as follows -

If an agent deals on his own account in the business of the agency, without first obtaining the consent of his principal and acquainting him with all material circumstances which have come to his own knowledge on the subject, the principal may repudiate the transaction, if the case shows either that any material fact has been dishonestly concealed from him by the agent, or that the dealings of the agent have been disadvantageous to him.

Illustrations

(a) A directs B to sell A's estate. B buys the estate for himself in the name of C. A, on discovering that B has bought the estate for himself, may repudiate the sale, if he can show that B has dishonestly concealed any material fact, or that the sale has been disadvantageous to him.

6) Not to make Secret Profits

Section 216 of Indian Contract Act, deals with Principal's right to benefit gained by agent dealing on his own account in business of agency. An Agent, without the knowledge of his principal, should not deal in the business of agency on his own to make secret profit.

7)Duty to pay sums received for principal :

According to Section 218 of the said Act, An agent is bound to pay to his principal all sums received on his account.

8) Not to Disclose Secret :

It is duty of an agent to maintain secrecy of the business of agency and should not reveal the confidential matters.

RIGHTS OF AGENT

1) Right to Receive Remuneration : According to Section 219 of the Indian Contract Act, An agent is entitle to his remuneration. But Section 220 of the said Act says that, an agent who is guilty of misconduct in the business of the agency is not entitled to any remuneration in respect of that part of the business which he has misconducted.

2) Right of Lien (Section221) : Agent's lien on principal's property

In the absence of any contract to the contrary, an agent is entitled to retain goods, papers, and other property, whether movable or immovable, of the principal received by him, until the amount due to himself for commission, disbursements and services in respect of the same has been paid or accounted for to him.

3) Right to Indemnity : Agent to be indemnified against consequences of lawful acts. Indemnity means promise make good the loss According to Section 222 of the Indian Contract Act, 1872 "The employer of an agent is bound to indemnify him against the consequences of all lawful acts done by such agent in exercise of the authority conferred upon him.

Illustrations

(a) B, at Singapore, under instructions from A of Calcutta, contracts with C to deliver certain goods to him. A does not send the goods to B, and C sues B for breach of contract. B informs A of the suit, and A authorizes him to defend the suit. B defends the suit, and is compelled to pay damages and costs, and incurs expenses. A is liable to B for such damages, costs and expenses.

4) Right to Compensation :

According to section 225 of the said Act, an agent is entitled to claim compensation for the injuries suffered as a consequence or want of skill of the principal. Section 225 reads as follows -

"The principal must make compensation to his agent in respect of injury caused to such agent by the principal's neglect or want of skill.

Illustration

A employs B as a bricklayer in building a house, and puts up the scaffolding himself. The scaffolding is unskillfully put up, and B is in consequence hurt. A must make compensation to B.