

BUSINESS LAW

UNIT 3: Introduction to Special Contracts

TOPIC- Contract of Agency

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CONTRACT OF AGENCY(Sec. 182-Sec.238)

The contract which creates the relationship of 'principal' and 'agent' is called agency. An **agent** is a person employed to do any act for another or to represent another in dealings with third persons. The person for whom such act is done ,or who is represented, is called the **principal**.

An agent acts as a connecting link between the principal and the third party and **establishes 'privity of contract' between them.** After bringing about contractual relations between the principal and third parties, the agent drops out of the situation and ceases to be a party to the contract and the contract binds the principal and third party as if they have made it themselves.

Any person who is major, of sound mind and competent to contract may employ an agent i.e. **principal should be competent to contract .But agent could be any person** . Even a minor, or person of unsound mind can be appointed as agent but in such a case the principal runs a great risk because agent will not be liable and principal will remain liable to third parties for the acts of the agent.

Further **no consideration is necessary to create an agency.** The fact that principal has agreed to be represented by the agent is a sufficient 'detriment' to the principal to support the contract of agency i.e. to support the promise by the agent to act in that capacity.

General rules of agency

- Whatever a person competent to contract may do by himself, he may do through an agent, except for acts involving personal skill and qualification. eg. a person cannot marry through an agent, a person cannot paint through an agent.
- He who does through another, does by himself. This means the acts of agent are regarded as the acts of the principal. So where contracts have been entered through agents, the implications of it are as if they have been entered by the principal in person.

Agent	Servant
He is employed by another to act on his behalf.	He is employed by another to act as directed.
He establishes contractual relationship between principal and third parties and binds principal to them.	He does not establish contractual relationship between employer and third parties and doesn't bind employer to them
He receives commission for his work.	He receives salary or wages for his work
He is not subject to direct supervision & control of his principal. A principal directs the agent as "what is to be done".	He acts under direct supervision and control of his employer. A master directs the servant not only "what is to be done" but also "how it is to be done"
He has large discretion to act within the scope of his authority	Servant does not exercise discretion in his work.

KINDS OF AGENTS

- **On the basis of extent of authority**
 - ✓ General agent- agent employed to do all acts connected with a particular business eg. manager of a firm
 - ✓ Special agent-agent employed to do some particular act or particular transaction eg. property dealer engaged to sell a property
 - ✓ Universal agent-agent with unlimited authority -who can do all such acts or transact every kind of business which principal can lawfully do
- **On the basis of nature of work performed**
 - ✓ Merchantile agents-who are engaged in the course of business like
 - ☐ auctioneers- who sells goods on behalf of some other person to the highest bidder.
 - ☐ broker-he just brings two parties together to a negotiation table and if the transaction of sale/ purchase of goods materializes, gets his brokerage
 - ☐ commission agent-who buys or sells goods for his principal on best possible terms (with or without having possession of goods) for a commission
 - ☐ delcredere agent- who for an extra commission protects the principal against bad debts i.e. assures him that if buyer does not pay, he will pay
 - ✓ Nonmerchantile agents-like lawyers; bankers; insurance agent; wife

CREATION OF AGENCY

- **Agency by express agreement-** here the scope of authority of agent is expressed by words
 - Orally i.e. by words spoken
 - Writing i.e. by agreement in writing
 - Power of attorney i.e. in certain cases like when agent is appointed to execute a sale/purchase deed of immovable property
- **Agency by implied agreement-** here existence of agency is inferred from circumstances or conduct of parties
 - Agency by estoppel
 - Agency by holding out
 - Agency by necessity
- **Agency by ratification**

IMPLIED AGENCY

AGENCY BY ESTOPPEL-Where a person by his conduct/statement wilfully allows another to act on his behalf, the acts of such another person will be binding on him as if he were an agent of that person. Subsequently, this person (principal) cannot deny from such authority of the agent and third parties can presume that there exists agency between them.

EXAMPLE-A tells T in the presence and within the hearing of P that he is P's agent. P does not contradict this statement and keeps quiet. Later on T enters into a transaction with A presuming A to be P's agent. P is bound by this transaction and he will be estopped from denying the existence of the agency, even though such agency did not in fact exist.

AGENCY BY HOLDING OUT- Where a person by his **prior** affirmative/positive act or conduct, holds out to the third parties that a person is his agent, then he will be liable for the acts of that person like a principal.

EXAMPLE-P, the employer used to pay for goods bought on his behalf by his employee A. After sometime he dismissed A from service. A, subsequently, made certain purchases fraudulently in the name of P. P will be liable for purchases made by A, even after dismissal from service, as through his conduct (of paying for purchases made by A on previous occasions) he had held out to the world at large that A was his agent.

IMPLIED AGENCY

AGENCY BY NECESSITY

In case of emergency, when one person, with a bonafide intention, acts as the agent of another, without that person's consent, permission or instruction (as it was impossible to communicate with him) it is called agency by necessity. It arises in the following cases-

a) When the agent exceeds his authority, bonafide, in an agency

Eg. A consigns fruits to B, at Allahabad with directions to send them immediately to C, at Varanasi. B finds that the fruits are perishing rapidly and so sells them at Allahabad itself at best price obtainable. This sale will bind the principal and the agent cannot be held liable for exceeding his authority as in the present circumstances there arises agency by necessity.

b) When the carrier of goods, acting as bailee, does anything to protect the goods

Eg. If a truck develops an engine trouble, the driver can pledge a part of goods loaded thereon in order to raise the money necessary for repairs and the pledge will be binding on the owner of goods.

c) When husband improperly leaves his wife without providing means for her sustenance.

Eg. If a husband deserts his wife who then starts living separately, he is bound to provide for her maintenance. If he fails to do so, such wife is regarded as the agent of necessity of the husband and can pledge her husband's credit for necessities supplied to her. However, note that the husband cannot pledge the credit of his wife for necessities. Similarly if wife lives apart from husband at her own will, she cannot exercise such right.

AGENCY BY RATIFICATION

Ratification means subsequent adoption and acceptance of an act originally done without instructions or authority. If an act is done by one person (agent) on behalf of another (principal), but without his (principal's) knowledge or authority, the other person (principal) has two options –either to ratify it or to disown it. If he ratifies it, there arises agency by ratification retrospectively i.e. it will be considered as if agent was authorized to do that act right from the beginning. Essentials of a valid ratification-

- ✓ Ratification may be express or implied
- ✓ The act must be legal, permissible and capable of ratification – that's why members of co cannot ratify ultravires contract made by directors
- ✓ The act must have been done by agent on behalf of the principal and not on his own account
- ✓ The principal must be in existence at the time the act was done. That's why a company cannot ratify the preincorporation contracts entered into by the promoters of the company
- ✓ The principal must be competent to contract both at the time of original contract as well as at the time of ratification. That's why there cannot be ratification of minor's act on attaining majority.
- ✓ The principal must have full knowledge of material facts-
- ✓ The whole transaction must be ratified- there cannot be partial acceptance and partial rejection.
- ✓ Ratification must be done within a reasonable time
- ✓ Ratification must not injure a third person- it should not adversely affect a third person's right or interest
- ✓ Ratification amounts to 'prior authority' i.e. agency comes into existence from the moment the agent acted and not from the time when the principal ratified

EXTENT OF AGENT'S AUTHORITY-

The authority of agent means **capacity to bind the principal**. The agent can bind the principal only if he acts within the scope of his authority. If he does something which is beyond his authority, then agent will be personally responsible for it unless the principal ratifies it. The scope of an agent's authority is determined by-

1. Actual Authority i.e. Authority assigned to him either expressly (by words spoken or written) or impliedly (inferred from circumstances). Agent can bind the principal to third parties for all acts done within the scope of actual or real authority.
2. Apparent / ostensible Authority i.e. Authority which third parties presume (because of prevailing customs, usages, practices, ordinary course of business) as being vested in an agent though actually is in excess of his actual authority. The principal is bound for an act of an agent which is beyond his actual authority but is within the scope of his apparent authority provided the third parties act bonafide and without knowledge of limitation of the agent's apparent authority.
3. Authority in emergency i.e. A principal is also bound by all such acts done by an agent in an emergency situation for protecting the interest of the principal as would be done by a person of ordinary prudence in his own case.

Thus we can conclude that the agent can bind the principal for all the acts done within the scope of his actual, apparent and authority in emergency. If any act falls outside the scope of his actual, apparent and authority in emergency, the principal is not liable to third parties unless he ratifies them. For such acts, the agent himself will be liable.

DELEGATION OF AUTHORITY

The agent must not depute another person to do what he had undertaken to do. He cannot delegate his powers or duties to someone else. There is a Roman law , ' delegatus nonpotest delegare' i.e. a delegate cannot further delegate. An agent is himself a delegate of principal . So he cannot delegate authority further. This is because it is the confidence in the integrity and competence of a particular person which is the root of a contract of agency. But there are certain exceptions to this general rule and in these situations agent can delegate his authority to another i.e. he can appoint a sub-agent and such a sub-agent is called **properly appointed subagent**.

- a) Where the principal has allowed further delegation expressly or impliedly eg. principal gives permission for sub-agent or he knows that his agent intends to appoint subagent but doesn't object to it.
- b) Where acts to be done are purely ministerial /clerical/routine
- c) Where by ordinary custom of trade a sub-agent may be employed eg. In stock exchanges, brokers appoint clerks to transact business on behalf of their clients.
- d) Where the very nature of agency requires employment of sub-agent eg. A manager of a shop has to employ sales assistant.
- e) Where unforeseen emergencies arise rendering appointment of sub-agent necessary eg. agent is too ill to act

Consequences of appointing sub-agent

A sub-agent is a person employed by and acting under the control of, the original agent. He is the agent of original agent and the original agent is his principal. The legal effects of appointing a sub-agent as between principal and sub agent inter se and as regards 3rd parties depends on whether he is properly appointed or not.

WHERE SUB AGENT IS PROPERLY APPOINTED	WHERE SUB AGENT IS IMPROPERLY APPOINTED
The principal is bound and liable to 3 rd parties for the acts of subagent.	The principal is not liable to 3 rd parties for the acts of the subagent.
The agent is responsible for the acts of subagent to the principal	The agent is responsible for the acts of the subagent to the principal as well as 3 rd parties.
The subagent is responsible for his acts to the agent and not to the principal. Only when the subagent is guilty of fraud and wilful wrong he is liable/ responsible to principal.	The subagent is responsible for his acts only to the agent and not to principal at all. Even when subagent is guilty of fraud and wilful wrong, he is not liable /responsible to the principal

SUBSTITUTED AGENT- When at the request of the principal, the agent suggests him another person to act as agent for the principal, the person so named is called substituted agent of the principal. Substituted agent is directly responsible to the principal and privity of contract is established between the principal and substituted agent.

SUB-AGENT	SUBSTITUTED AGENT
There is no privity of contract between subagent and principal.	There is privity of contract between him and the principal
Agent is liable to principal for acts of subagent	Agent is not liable to principal for the acts of substituted agent
Agent is not discharged from liability till sub-agency continues	Agent drops out of the scene after he appoints/names him.
Principal is not responsible to 3 rd parties for the acts of improperly appointed subagent	Principal is responsible to 3 rd parties for the acts of the substituted agent

DUTIES OF AGENT

- **Duty to follow principal's instructions or custom**
He must work as per the scope of his authority/directions of the principal/ prevailing custom
If he acts otherwise he must compensate principal for loss & handover any profit that accrue
- **Duty to work diligently and carefully**
If he works carelessly causing loss to the principal, he must compensate principal .
He is liable for only direct consequences of his neglect and not for all indirect /remote losses
- **Duty to render accounts**
He must maintain proper account of his principal's money and property
He must render them to the principal on demand or periodically as directed
- **Duty not not deal on his own account**
He must not himself buy from or sell to his principal the goods he is asked to sell or buy
If he violates this rule and such a transaction is disadvantageous to the principal , the principal can repudiate such transaction or claim any benefit derived by the agent from such transaction.
- **Duty not to make profit out of agency**
Agent must not make any secret profits and
Agent must handover all moneys, gratifications etc received by him on behalf of the principal
- **Other duties**
Duty to communicate with principal and obtain instructions incase of difficulty
Duty to protect interest of principal on termination of agency due to his death or insanity

RIGHTS OF AGENT

- Right to receive remuneration
 - To get agreed remuneration/reasonable remuneration(if nothing agreed)
 - No remuneration if works gratuitously/is guilty of misconduct/ doesn't do required work
- Right of retainer
 - Can retain, out of sums received on account of principal , the sums due to himself
 - Sums due to agent include his remuneration, advances made, expenses incurred by him etc
- Right of lien
 - Agent can exercise lien on goods, papers, movable/immovable property of the principal
 - This lien can be exercised till payment of his dues on a/c of commission, disbursements etc
- Right of stoppage of goods in transit-Agent can stop goods in transit to principal if
 - he has bought goods either with his own money or by incurring a personal liability and
 - the principal has become insolvent
- Right to compensation
 - If agent has sustained injuries due to principal's neglect or want of skill
 - If there is premature revocation of agency by principal without sufficient cause
- Right to be indemnified
 - Against the consequences of all lawful acts done by him in the course of agency business
 - Against the consequences of all acts done in good faith if they turn out to be injurious to 3rd parties

PRINCIPAL'S LIABILITY FOR THE ACTS OF THE AGENT

• LIABILITY OF NAMED PRINCIPAL

- ✓ The principal is liable for all acts of the agent done within the scope of his actual, apparent and authority in emergency
- ✓ The principal is also liable for any misrepresentation made or fraud committed by the agent acting within the scope of his authority during the course of agency business. For this principal and agent are regarded as one.
- ✓ If the agent exceeds his actual as well as apparent authority the principal has the option either to disown the unauthorised act or to ratify the same. If he ratifies, he becomes liable for those acts .If the principal decides to disown the unauthorised act of the agent and the excess is separable from the authorized portion, the principal will be liable only for the authorized part. But if the excess is not separable from the authorized portion, the principal can disown the whole of it and so the agent will be liable for it personally
- ✓ The principal is bound by any notice given to or information obtained by the agent in the course of agency business . Knowledge of agent is said to be the knowledge of the principal.

• LIABILITY OF UNNAMED PRINCIPAL

- ✓ Unnamed principal is one whose existence is disclosed by the agent but name is not disclosed
- ✓ On being discovered, the legal position of unnamed principal is same as that of named principal
- ✓ If the agent fails to disclose the identity or name of the principal, then he will be personally liable on that transaction as if he was a contracting party himself and the principal will not be liable.

PRINCIPAL'S LIABILITY FOR THE ACTS OF THE AGENT

- **LIABILITY OF UNDISCLOSED PRINCIPAL**

- ✓ Where agent conceals not only the name but also the existence of the principal & gives impression as if he himself is the contracting party, his principal is called undisclosed principal
- ✓ If the undisclosed principal remains undisclosed, the agent will be personally liable on those transactions as he contracted in his own name
- ✓ If the third party comes to know about the principal, he may sue either the principal or the agent or both and the liability of principal and agent is joint and several.
- ✓ If the principal himself discloses his identity before the contract is completed, the third party may refuse to fulfil the contract, if he can show that had he known about the principal before he would not have entered into the contract.
- ✓ On being disclosed, the principal has the right to enforce the performance of the contract against the third party but subject to the rights and obligations subsisting between the agent and the third party and without any prejudice to the third party. So, the third party can claim right of set off and also benefit of all payments made by it to the agent.

PERSONAL LIABILITY OF AGENT TO THIRD PARTY

An agent cannot personally enforce contracts entered into by him on behalf of the principal nor can he be personally held liable for them. The principal is the right person to enforce such contracts and to be held liable therefor. However in following exceptional situations, an agent can be personally held responsible-

- ✓ Where the agent expressly agrees to be personally held liable
- ✓ When the agent acts for the unnamed principal and never discloses the name of principal
- ✓ When the agent acts for the undisclosed principal
- ✓ When the agent acts for a foreign principal
- ✓ When the agent acts for a principal who can't be sued eg. Promoters of a company under incorporation, agents of ambassadors /foreign diplomats etc are personally held liable.
- ✓ When the agent exceeds his authority and the principal does not ratify it.
- ✓ Where there is custom or trade eg. A jobber may hold broker personally liable as per the custom of trade in a stock exchange
- ✓ Where agent's authority is coupled with interest-where agent also has some interest in the subject matter , he is personally held liable to the extent of his interest

TERMINATION OF AGENCY

- BY THE ACTS OF PARTIES
 - ✓ By mutual agreement between the principal and the agent
 - ✓ By revocation by the principal- provided agent has not exercised his authority and reasonable notice has been by the principal to the agent and the third parties
 - ✓ By renunciation by the agent-provided the agent gives a reasonable notice to the principal
- BY OPERATION OF LAW
 - ✓ On completion of business of agency
 - ✓ On the expiry of period of agency
 - ✓ Death (if they are individuals)/ dissolution(if they are corporates) of principal or the agent
 - ✓ Insanity of principal or the agent
 - ✓ Insolvency of the principal
 - ✓ On destruction of subject matter of agency
 - ✓ On the principal or agent becoming an alien enemy- when their countries are at war