

**UNIT 3 : AGENCY**

• **MEANING AND FEATURES OF AGENCY**

Meaning: The Indian Contract Act does not define 'Agency' but it defines an agent as a person employed to do any act for another or to represent another in dealings with third person. The person for whom such act is done, or who is so represented is called the principal (Section 182).

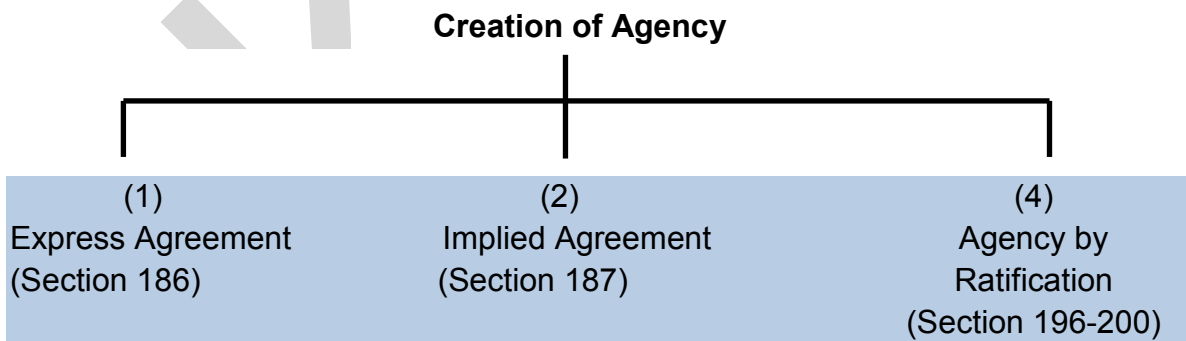
The Rule of Agency is based on the maxim "*Quit facitper alium, facitper se*" i.e., he who acts through an agent is himself acting.

• **Essentials of Agency:** Agency is a specific contract. The essentials of such contract may be enumerated as follows:

- (i) Basis of the agreement:
- (ii) Consideration not necessary: A contract of agency constitutes an exception to the general rule contained in Section 25 that no contract can be valid unless it is entered into for consideration
- (iii) Principal has to be a competent person (Section 183).
- (iv) Agent has to be a competent person so as to be responsible to his (Section 184).

• **MODES OF AGENCY**

An agency may be created in any one of the following ways:



**The authority may be express or implied :** According to Section 186, the authority of an agent may be express or implied.

**Definitions of express and implied authority [Section 186 &187]**

- (1) **Express Authority:** An authority is said to be express when it is given by words, spoken or written.
- (2) **Implied Authority:** An authority is said to be implied when it is to be inferred from the circumstances of the case; and things spoken or written, or the ordinary course of dealing, may be accounted circumstances of the case.

**(3) Ratification:**

**Rights of person as to acts done for him without his authority, Effect of ratification [Section 196]:** Where acts are done by one person on behalf of another, but without his knowledge or authority, he may elect to ratify or to disown such acts. If he ratifies them, the same effects will follow as if they had been performed by his authority.

**Essentials of a valid Ratification**

1. Ratification may be expressed or Implied **[Section 197]**
2. Knowledge requisite for valid ratification **[Section 198]**
3. The principal cannot ratify a part of the transaction which is beneficial to him and reject the rest. **[Section 199]**
4. Ratification of unauthorized act cannot injure third person **[Section 200]**
5. Ratification should be done within reasonable time.
6. Ratification must be communicated to the other party.
7. Act to be ratified should not be void or illegal, for e.g. payment of dividend out of capital is void and cannot be ratified.

**• EXTENT OF AGENT'S AUTHORITY**

Extent of Agents Authority can be understood, in the following circumstances

- 1) **Normal circumstances:** An agent having an authority to do an act, has all the authority to do every lawful thing which is necessary in order to do such act. Thus an agent having an authority to carry on a business has authority to do every lawful thing necessary and which is usually done in the course of conducting such business.
- 2) **In case of emergency :** He has an authority in an emergency to do all such acts for the purpose of protecting his principal from loss as would be done by a prudent person, in his own case under similar circumstances.  
To constitute a valid agency in an emergency, following conditions must be satisfied.
  - (a) Agent should not be in a position or have any opportunity to communicate with his principal within the time available.
  - (b) There should have been actual and definite commercial necessity for the agent to act promptly.
  - (c) The agent should have acted bonafide and for the benefit of the principal.
  - (d) The agent should have adopted the most reasonable and practicable course under the circumstances, and
  - (e) The agent must have been in possession of the goods belonging to his principal and which are the subject of contract.

**• DUTIES AND RIGHTS OF AGENT****Duties of Agent**

- 1) Duty in conducting principal's business **(Section 211)**
- 2) The agent is liable to the principal for any loss if he deviates from the above duty/ obligation where he did not act according to instruction of the principal.
- 3) Agent must act always as a person with diligence and skill normally exercised in the trade. He would otherwise be responsible to compensate the principal for any loss suffered by the principal for want of his skill **(Section 212)**.
- 4) To render proper accounts **(Section 213)**
- 5) Agent' duty to communicate with principal **[Section 214]**
- 6) If an agent deals on his own account in the business of the agency, without first obtaining the consent of his principal and informing him with all material circumstances, the principal may repudiate the transaction **[Section 215]**
- 7) Not to deal on his own account **[Section 216]**
- 8) Agent's duty to pay sums received for principal **[Section 218]**

**Rights of Agent:**

- 1) Right of retain out of sums received on principal's account **[Section 217]:** The agent can retain, out of any sums received on account of the principal in the business of the agency for the following payments:
  - (i) All moneys due to him in respect of advances made
  - (ii) In respect of expenses properly incurred by him in conducting such business
  - (iii) Such remuneration as may be payable to him for acting as agent.
- 2) Right to remuneration **[Section 219]**
- 3) Agent's lien on principal's property **[Section 221]**
- 4) Right of indemnification for lawful acts **[Section 222]**
- 5) Right of indemnification against acts done in good faith **[Section 223]**

**• NON-LIABILITY OF EMPLOYER OF AGENT TO DO A CRIMINAL ACT**

According to **Section 224**, where one person employs another to do an act which is criminal, the employer is not liable to the agent, either upon an express or an implied promise, to indemnify him against the consequences of that act.

**• COMPENSATION TO AGENT FOR INJURY CAUSED BY PRINCIPAL'S NEGLIGENCE**

**Section 225** provides that 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.

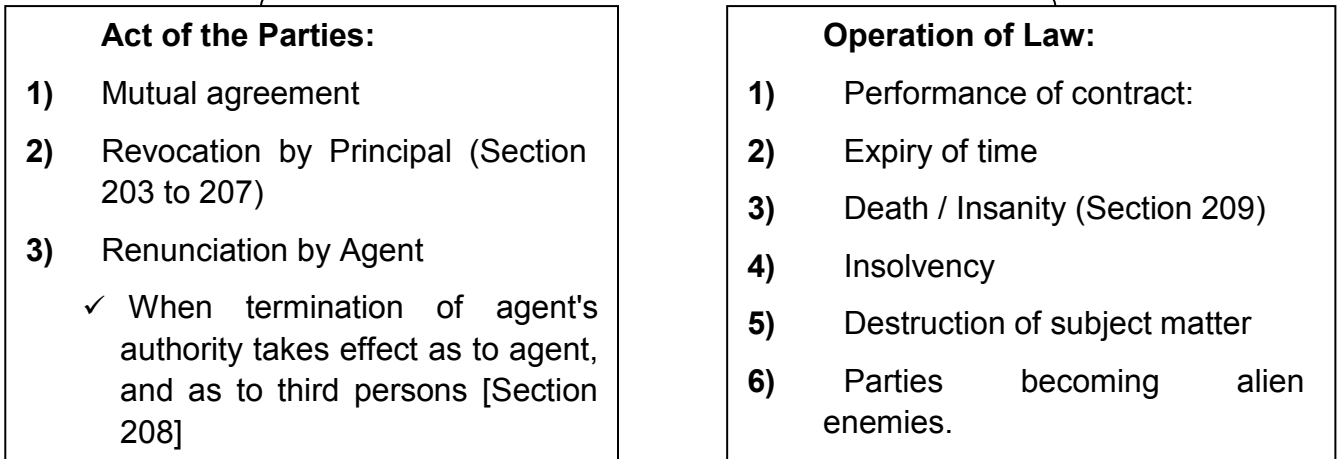
**• LIABILITY TO THIRD PARTIES****In following cases principal liable for agent's act:**

- 1) When the agent acts within the scope of his authority (**Section 230**):
- 2) When agent exceeds his authority and principal ratifies it (**Section 227**)
- 3) Principal is bound by the notice given to agent (**Section 229**)
- 4) Liability of pretended agent (**Section 235**): A pretended agent is a person who represents himself to be an agent of another, when in fact he has no authority from him, whatsoever if the principal ratifies his acts as agent, he has no liability. But if the principal refuses to ratify his acts, he becomes personally liable to third party.
- 5) Liability for Misrepresentation or fraud by an agent when agent is acting within his authority (**Section 238**).
- 6) **Where the Principal is unnamed:** When the agent discloses the existence of principal but does not disclose, the name of principal, in such a case the principal is liable for the acts of the agent.
- 7) When agent acts in emergency and good faith.
- 8) **Liability of principal inducing belief that agent's unauthorized acts were authorized [Section 237]** : 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 his words or conduct induced such third persons to believe that such acts and obligations were within the scope of the agent's authority.
- 9) When agent is incompetent to contract.

**In following cases agent is personally liable:**

- 1) When he so agrees with the concerned parties (**Section 230**)
- 2) When he represents that he has authority to act on behalf of a principal, but who does not actually possess such authority or who has exceeded the authority and the alleged employer does not ratify his acts (**Section 235**).
- 3) Where a contract is entered into by a person apparently in the character of agent, but in reality in his own account. (**Section 236**) (Undisclosed agent )
- 4) When he signs a negotiable instrument in his own name without making it clear that he is signing as an agent.
- 5) When he is working for a foreign principal.
- 6) Where he is acting for a principal who cannot be sued on account of his being a foreign sovereign, ambassador etc.
- 7) Where trade, usage or custom holds him liable in certain kinds of business.
- 8) Where the agency is coupled with interest in the subject matter of the agency.
- 9) **Principal not bound when excess of agent's authority is not separable [Section 228]** : Where an agent does more than he is authorised to do, and what he does beyond the scope of his authority cannot be separated from what is within it, the principal is not bound to recognise the transaction.

• **TERMINATION OF AGENCY**



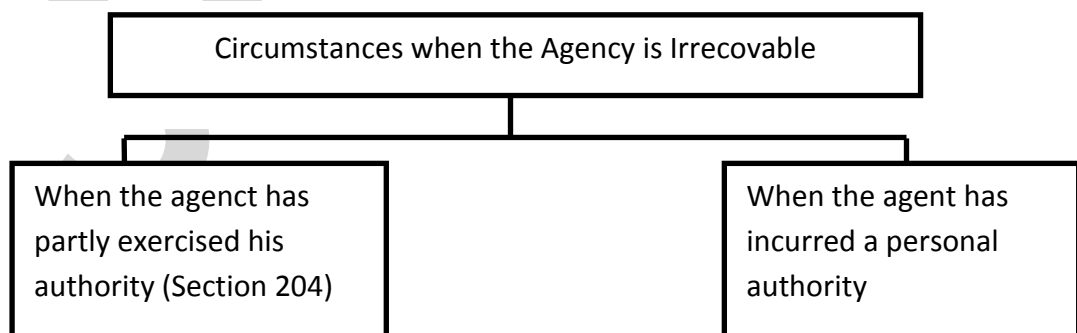
• **UNDISCLOSED PRINCIPLE (Section 231 to 235)**

In such cases neither the existence nor the name of the principal is disclosed and the agent gives an impression to the third-party as if he himself is the contracting party although the agent has authority in fact and is contracting on behalf of another.

In such a case, the mutual rights and liabilities of the principal, agent and the third party are:

- 1) Since the agent has contracted in his own name, he is personally liable to the third party.
- 2) If the third party comes to know the existence of the principal before obtaining judgment against the agent, he may sue either the principal or the agent or both.

• **IRREVOCABLE AGENCY**



• **SUB-AGENT**

The term sub-agent is defined in **Section 191** as, "a sub-agent is a person employed by and acting under the control of the original agent in the business of agency." Thus a sub-agent is an agent appointed by the agent. The relation of the sub-agent to the original agent is that of the agent and the principal.

The general rule of law is that an agent cannot delegate his powers to another without the consent of the principal. This general principle is based upon the Latin

Maxim "delegatus non Protest delegate" which means a delegatee cannot further delegate. In the following cases, however, the agent may appoint a sub-agent:

- a. Where the principal has expressly allowed the appointment of a sub-agent.
- b. Where the principal knows that the agent intends to appoint a sub-agent but he does not object to it.
- c. Where the custom of trade permits the appointment of a sub-agent.
- d. Where the act to be done is purely ministerial and does not involve exercise of discretion or any skill.
- e. Where unforeseen emergencies arise which makes the appointment of sub-agent necessary.

Where a sub-agent is properly appointed (as mentioned in above cases), the principal is bound and is liable to third parties for his act, as if he were an agent originally appointed by the principal. The agent is responsible to the principal for the acts of the sub-agents. The sub-agent is responsible for his acts to the agent and not the principal.

• **SUBSTITUTED AGENT**

Substituted agents are not sub agents. They are agents of the principal. Where the principal appoints an agent and if that agent identifies another person to carry out the acts ordered by principal, than the second person is not to be treated as a sub agent but only as an agent of the original principal.

**For example,** 'A' directs 'B' his solicitor to sell his property by auction and 'B' appoints 'C' an auctioneer. In this regard, 'C' is an agent of 'A' and not a sub agent. While selecting a "substituted agent" the agent is bound to exercise same amount of diligence as a man of ordinary prudence and if he does so he will not be responsible for acts or negligence of the substituted agent.

**DIFFERENCE BETWEEN SUB-AGENT AND SUBSTITUTED AGENT**

A sub-agent works under, the control and directions of the agent.	A substituted agent works under the control and directions of the principal.
The agent delegates to the sub-agent a part of his own duties.	The agent does not delegate any part of his duties to the substituted agent.
There is no privity of contract between the principal and the sub-agent.	There is privity of contract between principal and substituted agent.
The sub-agent is responsible to the agent alone.	The substituted agent is responsible to the principal
The agent is responsible to the principal for the acts of the sub-agent.	The agent is not responsible to the principal for the acts of the substituted agent.
The sub-agent has no right of action against the principal for remuneration due to him.	The substituted agent can sue the principal for remuneration due to him.
Sub-agents may be improperly appointed	Substituted agents can never be improperly appointed.
The agent remains liable for the acts of the sub-agent as long as the sub-agency continues.	The agent's duty ends once he has named the substituted agent

