

Unit - 9 Agency

Agency → (Sec-182) :- It is a relation between principal and agent whereby a principal can be held liable for the acts done by an agent in the ordinary course.

Agent :- Agent means a person employed to do any act for another or to represent another in dealing with the third person.

Principal :- Principal means a person for whom such act is done or who is so represented.

Test of Agency

- ① Person has the capacity to bind the principal & make him answerable to the third party.
- ② He can establish privity of Contract.

Who can be principal :- (Sec-183) - A person who attained majority who is of sound mind, may employ an agent.

Who can be Agent :- (Sec-184) - Any person may become an agent.

Consideration :- (Sec-185) - No consideration is necessary to create an Agency.

Creation of Agency

Expressed

Implied

Operation
of Law

Ratification

① Express Authority :- Agency entered into specifically either by oral or written words.

Ex- A residing in Delhi & he has house in Kolkata. A authorizes B under a power of attorney, as caretaker of his house.

② Implied Authority :- Agency entered into by the conduct of the parties concerned.

It is made by following :-

(a) Agency by Estoppel

(b) Agency by Necessity

(a) Estoppel :- When a person principal by his conduct prove that certain person is his agent and can deal on his behalf. Then, he is subsequently prevented or estopped from denying the fact of Agency. Law will not allow him to move back.

Example: - Principal \boxed{A} \longrightarrow \boxed{C} (1) A make a representation that B is her agent
 Agent \boxed{B} (2) B remain silent & thus C believed that she is in reality her agent.

(6) Agency by Necessity :- Need or to save the principal from loss. It is arises due to emergent circumstance.

Following condition must be satisfied for Agency by Necessity :-

- (i) Agent has acted to safeguard principal from loss.
- (ii) No communication between principal and Agent at that time.
- (iii) Agent has acted as man of ordinary prudence would have acted in his own case.

(3) Operation of Law :- When law treat one person as an agent of other.

Ex-① A partner is the agent of the firm for the purpose of business.

② Company \longrightarrow Director
 (Principal) (Agent)

③ Partners \longrightarrow firm
 (Agent) (Principal)

(11) Agency by Ratification (Sec-196) :- "Ratification means approving a previous act or transaction. Subsequent acceptance by principal of an act already done by an agent without his knowledge or authority."

Ex- Mr. A give authority to Mr. B (Agent) to sell any 4 land from all his land. But Mr. B sold all his land without the knowledge of Mr. A. And then, Mr. A accepted the deal. In this, B is in Agency by Ratification.

Essential elements of valid Ratification

- ① Ratification may be expressed or Implied (Sec-197)
- ② Knowledge requisite for valid ratification (Sec-198)
- ③ The whole transaction must be ratified (Sec-199)
- ④ Ratification cannot injure third person (Sec-200)
- ⑤ Ratification within reasonable time
- ⑥ Communication of Ratification
- ⑦ Act to be ratified must be valid.

Extent of Agent's Authority

Normal (Sec-188) Circumstances

If an agent has been appointed to do an act he will all the powers to do every lawful things which is necessary in order to fulfill his duty.

Emergency (Sec-189)

In an emergency an agent is authorised to do all such acts so as to protect the principal from losses he should do such acts as in his own case under similar circumstances.

Sub-Agent

① An agent cannot lawfully employ another to perform acts which he has expressly or impliedly undertaken to perform.

Exception where Agent can appoint Sub-Agent

- ① If the terms of appointment originally contemplated
- ② Customs of the trade
- ③ Unforeseen Emergency.

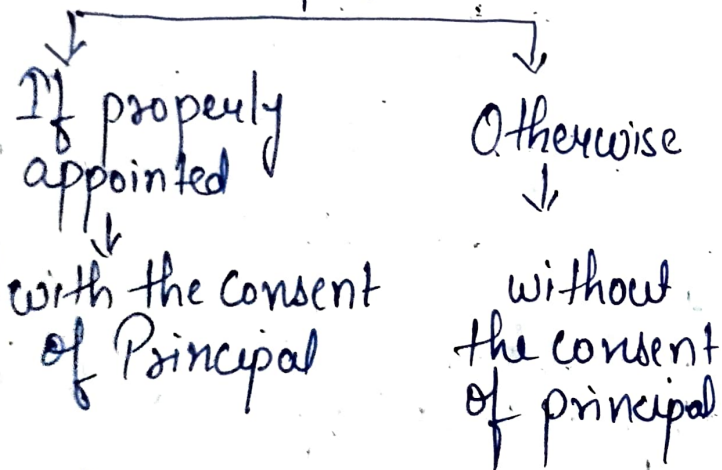
Imp) Kinds of Agent

Sub-Agent

↓
An agent appointed under the control & supervision of existing Agent.

③ Principal → Agent → Sub Agent

③ Sub-Agent



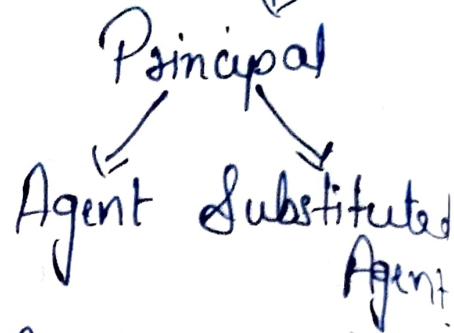
④ Agent always liable for the acts of Sub Agent

⑤ But if consent of principal is given so principal will also liable.

If properly appointed -

- Principal to third party
- Agent to principal
- Sub Agent to Agent

Substitute Agent



① Agent appoints the substituted agent as per the direction of principal & under the direct control & supervision of principal.

② Principal will directly liable for work of substitute Agent.

Exception

Agent will only be liable when agent did not apply due care while appointing the substitute Agent.

Duties And Obligations of an Agent (Imp)

- ① Duty to follow instructions or Customs :- An agent is bound to conduct the business of his principal according to the direction given by the principal or in the absence of the direction, according to the ^{custom which} prevails in doing business of same kind where agent conducts such business.
- ② Duty of reasonable care and skill :- An agent is bound to conduct the business of the principal with as much skill as is generally possessed by persons engaged in similar business.
- ③ Duty to render proper accounts :- An agent is bound to render proper accounts to his principal on demand.
- ④ Agent's duty to communicate with principal :- It is the duty of the agent, in cases of difficulty to communicate with principal, and in seeking to obtain his instructions.
- ⑤ Duty not to delegate :- An agent cannot lawfully employ another to perform acts which he has expressly or impliedly undertaken to perform.
- ⑥ Agent's duty to pay sum received for principal :- Agent is bound to pay to his principal all sums received on his account.
- ⑦ Duty not to use any confidential information received in the course of agency against the principal

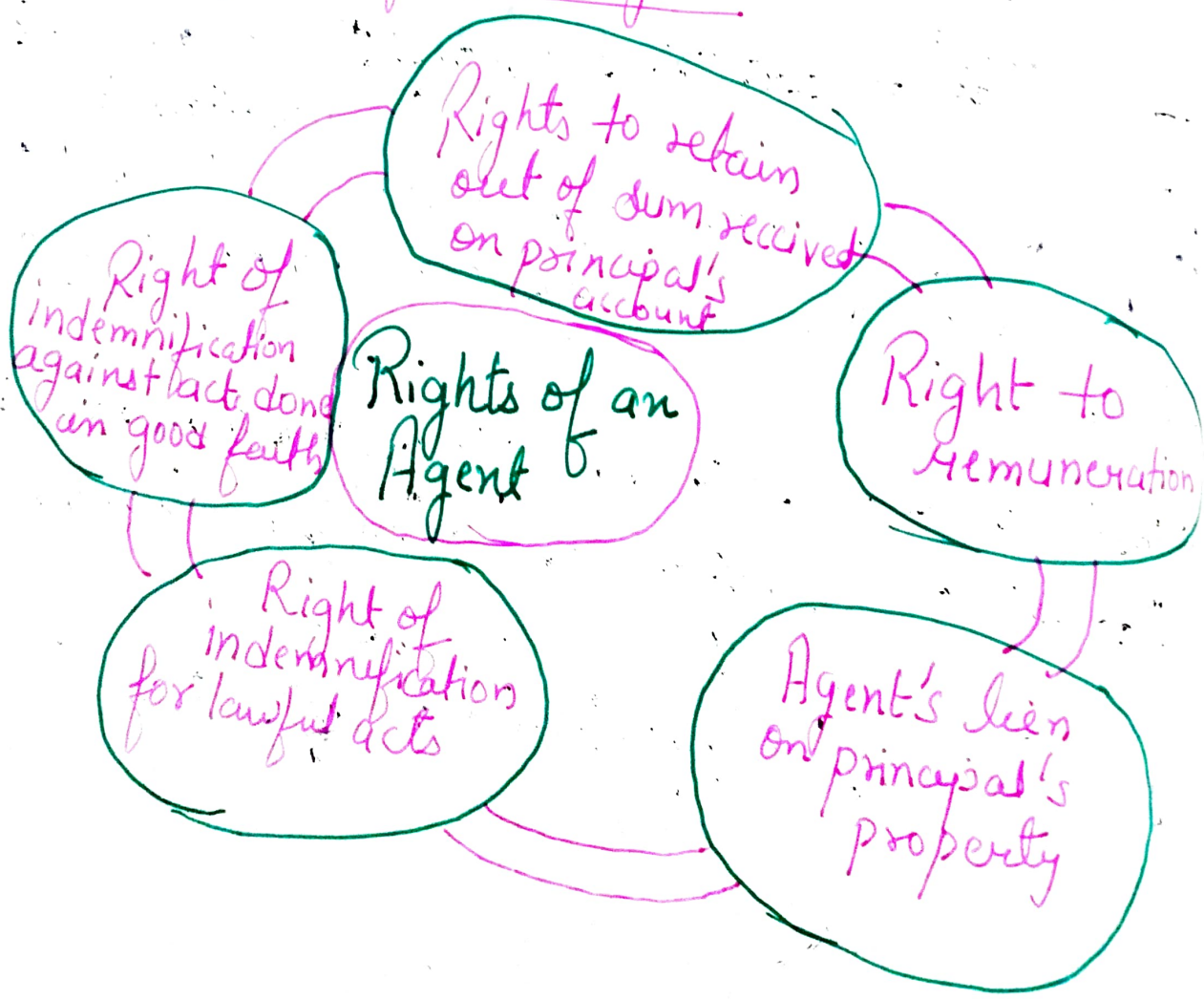
⑧ Duty not to deal on his own account :- Agent should not deal on his own account without obtaining the consent of the principal, otherwise the principal may

④ Repudiate the contract

⑤ Claim from the agent any benefit which may have resulted to him from the transaction.

⑨ Duty not to make secret profits :- It is the duty of the agent not to make any secret profit in the business of agency.

Rights of an Agent



- ① Rights of retain out of sum received on principal's account :- Pt. empowers agent to retain, out of any sum received on account of principal in the business of agency.
- Ⓐ All money due to himself in respect of advance made.
 - Ⓑ Expenses properly incurred by him in conducting business.
 - Ⓒ Remuneration payable to him for acting as agent.

② Right to remuneration :- The agent in the normal course is entitled for remuneration as per the contract. However, an agent who is guilty of misconduct in the business is not entitled to get remuneration.

③ Agent's lien on principal's property :- An agent is entitled to retain the goods of the principal received by him, until the amount due to himself has been paid or accounted for him.

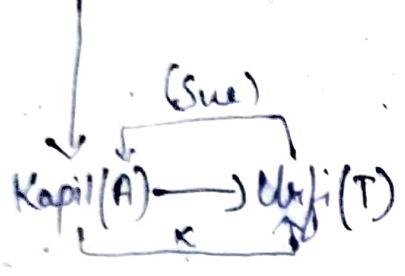
④ Right to Compensation for injury caused by principal's neglect :- Principal must compensate his agent in respect of the injury caused to such agent due to principal's neglect or want of skill.

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Rights of Indemnity

Lawful Acts

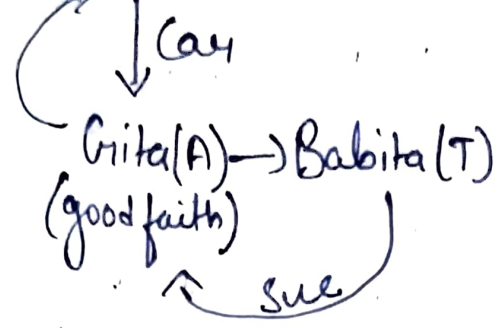
Ex- Imran (P)



Imran is bound to indemnify Kapil.

Act done in good faith

Ex. Sita (P)



Gita can recover the amount of losses from Sita.

Principal neglect want of skill

Principal must compensate the agent if he has suffered any injury/loss due to principal's neglect or want of skill

Principal's Liability To Third Parties

① Principal's liability for the Acts of the Agent

Within the agent authority

Principal is liable

Beyond the agents authority

Transaction is separable

e.g. Car Insurance (P)
Car + Life Insurance (A)

Principal is liable within power

Beyond power Agent is liable

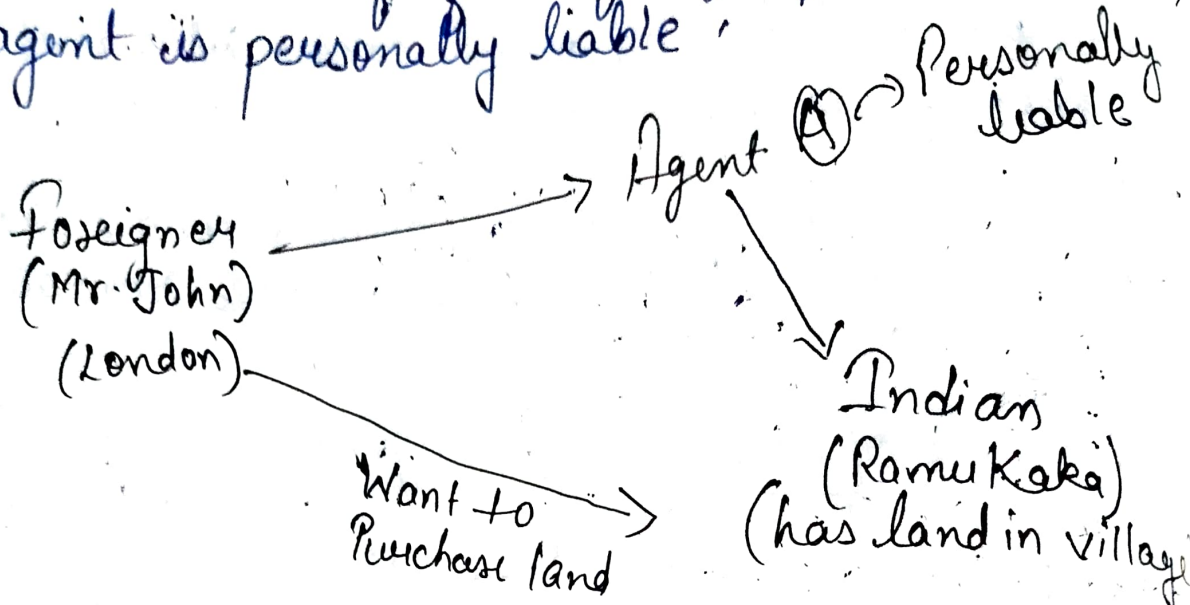
Transaction is not separable

Ex- 2 Kg Cake (P)
5 Kg Cake (A)

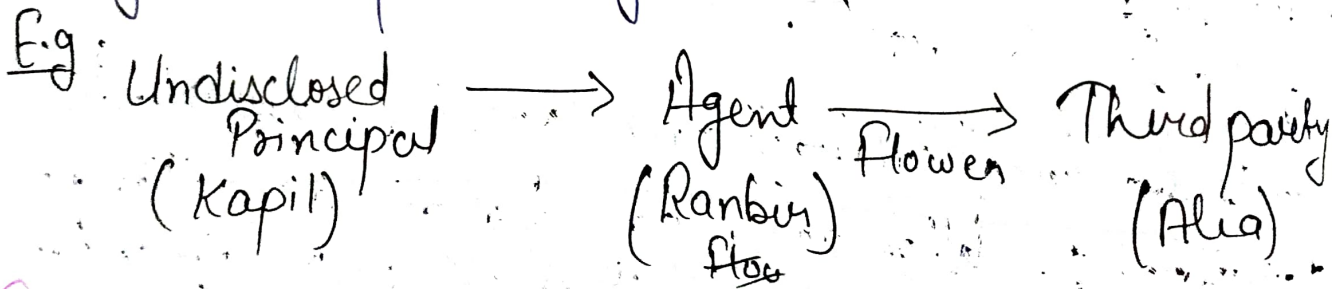
Agent is liable for transaction i.e. Principal is not bound to pay

① Foreign Principal :- Agent has entered into contract for sale & purchase of goods on behalf of a foreign principal. Then the agent is personally liable.

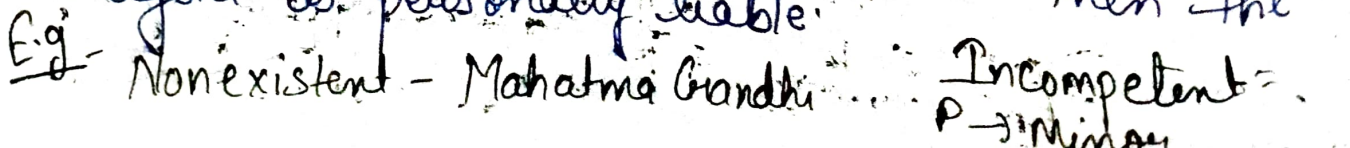
Eg.



② Undisclosed Principal :- Where the agent does not disclose the name of the principal & thus the third party enters into the contract believing that the agent is the principal himself then the agent is personally liable.



③ Non-existent or Incompetent Principal :- Where there is a person who cannot be sued - then the agent is personally liable.



④ Pretended Agent? - If an agent is pretended but is not an actual agent the pretended agent will be himself liable.

⑤ Where agent exceeds authority? - When the agent exceeds his authority then the agent can be made liable personally for the breach of warranty of authority.

E.g. - 2kg Cake: (Principal)
5kg Cake: (Agent bring)

Agent is liable for the whole transaction as he exceeds the authority.

Rights of Third Parties

① Rights of parties to a contract made by undisclosed agent? - When the agent makes a contract with a person who neither knows, that he is an agent or if the principal discloses himself before the contract is completed then the third party refuse to fulfill the contract.

② Performance of contract with agent supposed to be Principal? - When agent does not disclosed that he is acting as an agent & there were certain other obligation between the agent & third party then if such a contract is performed this obligation will also performed.

E.g.

(P) C $\xrightarrow{50,000}$ A (Seller) $\xrightarrow{1,00,000}$ B (Buyer)

Undisclosed \uparrow \downarrow (A) \downarrow (B) (No knowledge of agency)

50,000 $\xrightarrow{\text{Owes}}$ 50,000 B (creditor)

50,000 $\xrightarrow{\text{Set off}}$ A & B \rightarrow allowed

Revocation of

(a) Revocation :- An agency may be terminated by the principal revoking the authority of the agent.

- (i) Compensation for revocation by principal
- (ii) Notice of Revocation
- (iii) Revocation & Renunciation may be express or implied.

(b) Renunciation by Agent :- An agent may renounce the business of agency in the same manner in which the principal has the right of revocation.

(c) Completion of Business :- An agency is automatically and by operation of law terminated when its business is completed.

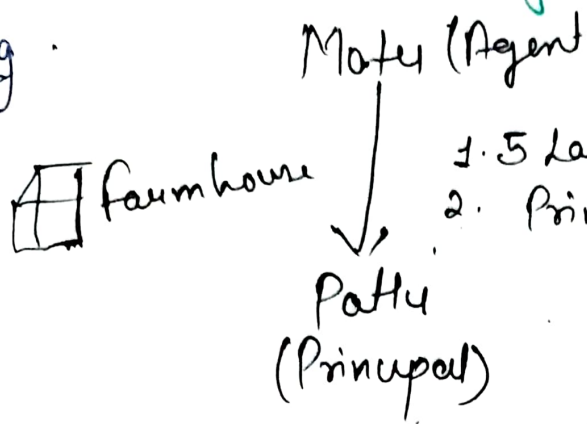
(d) Death and Insanity :- An agency is determined automatically on the death or unsanity of the principal or the agent.

(e) Principal's Insolvency :- An agency ends on the principal being adjudicated insolvent.

(f) On Expiry of time :- Where an agent has been appointed for a fixed term the expiration of the term puts an end to the agency.

When the agency is irrevocable

Eg.



1. 5 Lakh Interest

2. Principal Agent (Relationship)

18,00,000 Sale
(5,00,000) Dues
(1,00,000) Commission

12,00,000

Effects of Termination

- ① The principal is liable for all the acts of the agent till the time the contract is alive
- ② But as soon as the agency is terminated now, the principal is no more liable for the acts of the agents.
- ③ But your the notice of revocation has to be communicated to the agent.