

## The Indian Contract Act, 1872.

### Unit - 3 = Agency.

#### \* Introduction :-

##### • Agent (Sec. 182) :-

⇒ A person employed to do any act for another, or to represent another in dealings with third persons.

##### • Principal (Sec. 182) :-

⇒ Person for whom such act is done, or who is so represented.

##### • Who can appoint agent. (Sec. 183) :-

⇒ Any person who is - of the age of majority,  
- of sound mind.

##### • Who can be agent (Sec. 184) :-

⇒ Any person even minor and person of unsound mind. But they are not responsible to principal.

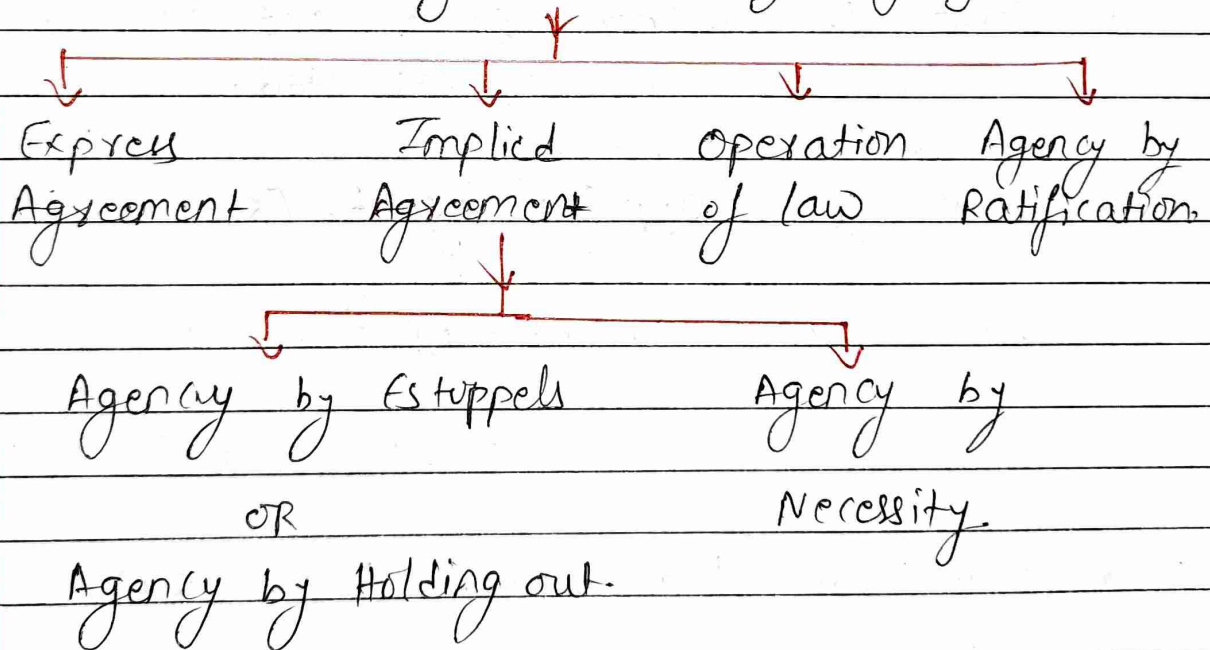
Example 1:- A appoints B, a minor to sell

his old bike at a minimum price of Rs. 30,000. B sold the bike for Rs. 20,000. Now A can not recover the loss of Rs. 10,000 from B.

• Consideration (sec. 185) :-

2) No consideration is necessary to create an agency.

\* Modes of Creation of Agency.



## \* Modes of Creation of Agency :-

### (1) By Express Agreement (Sec. 186 & 187) :-

⇒ The authority of an agent may be expressed or implied (Sec. 186)

⇒ An authority is said to be express when it is given by words spoken or written. (Sec. 187) :-

Example 2 :- A appoints B by a written agreement (Power of Attorney) as his agent to sell his factory. The relationship between A and B is an agency by an express agreement.

### (2) By Implied Agreement (Sec. 187 & 237) :-

⇒ An authority is said to be implied when it is to be inferred from the circumstances of the case (Sec. 187).

Example 3 :- X of Agra regularly sells goods to Y of Fathchabad. Z of Fathchabad coming to Agra, collects the money from Y and pays to X. Now, there is an implied agency between X and Z.

(a) Agency by Estoppels OR by Holding out  
(Sec. 237):-

2) Where the principal by his conduct or statement willfully induces another person to believe that a certain person is his agent, he is subsequently prevented or estopped from denying the fact of agency.

Example 4:- A tells T within the hearing of P that he (A) is P's agent. P does not object to the statement of A. Later on, T supplies certain goods to A who pretends to be acting as an agent of P. P is liable to pay the price to T.

Example 5:- P allows his servant habitually to purchase goods for him on credit from T, and pays for them. On one occasion, he pays his servant cash to purchase the goods. The servant misappropriates the money and purchases goods on credit from T. T can recover the price from P as he had held out his servant as his agent on prior occasions.

(b) Agency by necessity (sec. 189):-

→ An agent has authority, in an emergency, to do all such acts for the purpose of protecting his principal from loss as would be done by a person of ordinary prudence, in his own case, under similar circumstances.

Example 6:- The master of a ship on finding that the cargo is rapidly perishing is entitled to dispose it off at the best available price so as to bind the consignee as an agent by necessity.

NOTE:- When the husband and wife living together, and husband does not provide for her necessities, the wife has a implied authority as an agent to pledge her husband's credit for bare necessities.

Example 7:- R is the wife of P. She purchased some sarees on credit from Q. Q demanded the amount from P. P refused. Q can recover the said amount from P if sarees purchased by R are necessities for her.

## • Conditions for a valid Agency by Necessity:-

- (i) There must be a real and definite necessity for the agent to act promptly.
- (ii) It must be impossible for the agent to get instructions from the principal.
- (iii) The agent must act honestly in the interests of the principal.
- (iv) The agent must adopt the most reasonable and practicable course under the circumstances.
- (v) The agent must have been in possession of the goods belonging to the principal and which are the subjects of the contract.

## (3) Agency by operation of law:-

- e) When law treats one person as an agent of other.

Example 7:- A partner is the agent of the firm for the purpose of the business of the firm.

#### (4) Agency by Ratification (Sec. 196):-

⇒ Where a person acts for someone without his knowledge or authority and the other person subsequently accepts or ratifies the act, agency by ratification arises and the ratifier is bound by the act as if he had expressly authorized the person do to the act on his behalf.

Example 8:- A insures P's goods without his authority. If P ratifies A's act, the policy will be as valid as if A had been authorized to insure the goods.

Ratification may be expressed or may be implied by the conduct of the person on whose behalf the acts are done (Sec. 197).

Example 9:- A, without authority, buys goods for P. Afterwards P sells them to T on his own account. P's conduct implies a ratification of the purchase made for him by A.

## \* Essentials of a valid Ratification :-

- (a) The principal must be existence at the time of when act was done in his name.
- (b) The principal must have contractual Capacity both at the time of the contract and at the time of ratification.
- (c) Ratification must be with full knowledge of facts.

Example 10 :- A has an authority from P to buy certain goods at the market rate. He buys at a higher rate but P accepts the purchase. Afterwards P comes to know that the goods purchased by A for P belonged to A himself. The ratification is not binding on P.

- (d) Ratification must be done within a reasonable time.
- (e) Only lawful acts can be ratified.



(f) The whole transaction must be ratified. Ratification of part of transaction will be considered as ratification for whole transaction.

(g) Ratification must be communicated to the third party so as to bind him.

(h) Ratification can be of the act, which the principal had the power to do.

(i) Ratification should not put a third party to damages.

Example 11:- T holds a lease from P, terminable on three ~~no~~ months notice. A, an unauthorized person, gives notice of termination to T. The notice cannot be ratified by P, so as to be binding on T.

\* Extent of Agent's Authority:-

• Agent's authority in normal circumstances (Sec. 188):-

⇒ An agent, having an authority to do an act, has authority to do ~~evr~~ every lawful thing which is necessary in order to do such act.

Example 12:- A is employed by B, residing in London, to recover at Bombay a debt due to B. A may adopt any legal process necessary for the purpose of recovering the debt, and may give a valid discharge for the same.

⇒) An agent having an authority to carry on a business has authority to do every lawful thing necessary for the purpose, or usually done in the course, of conducting such business.

Example 13:- A constitutes B his agent to carry on his business of a ship-builder. B may purchase timber and other materials, and hire workmen, for the purpose of carrying on the business.

• Agent's authority is an emergency. (sec. 189):-

⇒) In emergency, an agent has

authority to do all such acts for the purpose of protecting his principal from loss as would be done by a person of ordinary prudence, in his own case, under similar circumstances.

Example 14:- An agent for sale may have goods repaired if it be necessary.

Example 15:- The master of a ship on finding that the cargo is rapidly perishing is entitled to dispose it of at the best available price so as to bind the consignee as an agent by necessity.

### \* Delegation of Authority (sec. 190):-

⇒ The general rule is that an agent cannot appoint an agent. This is based on the Latin principle "delegatus non potest delegare" which means a delegate cannot further delegate. An agent being a delegate cannot transfer his duties to another.

Exceptions to the above rule :- An agent may appoint an agent in the following circumstances.

1. Where expressly permitted by principal.
2. Where the ordinary custom of trade permits delegation.
3. The nature of agency is such that it can not be accomplished without the appointment of a sub-agent.
4. Where the nature of the job assigned to the agent is purely clerical and does not involve the ~~exercise~~ exercise of discretion.
5. In an unforeseen emergency.

\* Sub-Agent (Sec. 191) :-

Meaning :- Delegation of authority by the agent results in the appointment of sub-agent. A person who is appointed by the agent is called sub-agent.

## Status of Sub-agent :-

- ⇒ He acts under the control and direction of the original agent.
- ⇒ The relationship between sub-agent & agent is of agent and principal.
- ⇒ There is no privity of contract between the principal and the sub-agent.
- ⇒ Principal cannot sue the sub-agent except for fraud or willful wrong.

## \* Consequences :-

- Where a sub-agent is properly appointed  
Sec. 192 :-

(a) Principal is liable to third parties for the acts of the sub-agent.

(b) Agent is responsible to the principal for the acts of the sub-agent.

(c) The sub-agent is responsible for his acts to the agent and not to the principal except in cases of fraud and willful wrong.

(d) The sub-agent cannot sue the principal for ~~remun~~ remuneration.

- Where a sub-agent is improperly appointed (Sec. 193):-

(a) Principal is not liable to third parties for the acts of the sub-agent.

(b) Agent is responsible to the principal as well as to third parties for the acts of the sub-agent.

(c) The sub-agent is not responsible to the principal for anything. He is responsible only to the agent.

### \* Substituted Agent

#### Meaning (Sec. 194):-

z) Substituted Agent is a person appointed by the agent to act for the principal, in the business of Agency, with knowledge and consent of principal. Such person is not sub-agent.

Example 16:- A directs B to sell his

estate by auction and to employ an auctioneer for the purpose. B suggests C, an ~~an~~ auctioneer, to conduct the sale. C is not a sub-agent, but is A's agent for the conduct ~~for~~ of the sale.

Example 17:- A has to recover some money from Z & Co of Delhi. He authorized B, a merchant in Delhi, to recover the money. B instructs D, a solicitor, to take legal proceedings against Z & Co. for the recovery of the money. D is not a sub-agent, but is solicitor for A.

### \* Agent's Duty in Naming such Person (Sec. 195)

=> In selecting such agent for his principal, an agent is bound to exercise the same amount of discretion as a man of ordinary prudence would exercise in his own case; and, if he does this, he is not responsible to the principal for the ~~the~~ act or negligence of the agent so selected.

Example 18:- X appoints Y as his agent to purchase a old Cold Storage for him. Y appoints Z, a civil engineer, to calculate the worth of that old Cold Storage with the permission of X. Z worked negligently and thereafter it was found that Cold Storage was not worthy as per report. Held, Y is not liable for negligence of Z. Z will be personally liable for any loss to X due to his negligence.

Example 19:- A consigns goods to B, a merchant, for sale. B, in due course, employs an auctioneer in good credit to sell the goods of A, and allows the auctioneer to receive the proceeds of the sale. The auctioneer afterwards becomes insolvent without having accounted for the proceeds. B is not responsible to A for the proceeds.



## \* Difference between Sub-agent and Substituted agent:-

Basis	Sub-Agent	Substituted Agent.
Appointing Authority.	Work under the control and directions of agent.	Works under the instructions of the principal.
Delegation	Agent delegated a part of his own duties to sub-agent.	Agent does not delegate any part of his task to a substituted agent.
Privity of Contract.	No privity of contract between the principal and the sub-agent.	Privity of contract exists between a principal and a substituted agent.
Responsibility.	Sub-agent is responsible to the agent only.	Substituted agent is responsible to the principal.
Responsibility of to principal.	Agent is responsible to the principal for the acts of the sub-agent.	Agent is not responsible to the principal for the acts of the substituted agent.
Rights.	Sub agent has no right of action against the principal for remuneration due to him.	Substituted agent can sue the principal for remuneration due to him.

## \* Duties of Agent:-

- (1) To carry out the work undertaken according to the directions given by the principal.

Example 20:- The principal instructed his agent to deliver goods only against cash but the agent delivered them on credit, he was held liable for the price which the purchaser failed to pay.

In the absence of any such directions, agent should follow the custom of the business at the place where such business is conducted (Sec. 211).

Example 21:- P appoints A as his agent for his business, in which it is custom to invest from time to time, at interest, the ~~monkeys~~ moneys which may be in hand. But A omits to make such investment. A must make good to P the interest usually obtained by such investments.

(2) To carry out the work with reasonable care - (Sec. 212) :-

Example 22:- A of India appoints B as his agent to collect money from A's customers and to transfer in A's account. 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 and for any further direct loss - as, eg., by variation of rate of exchange.

Example 23:- A of England directed his agent B of Bombay to purchase 100 bags of cement for him and send to him by certain ship. At that time, the price of each bag was Rs. 350. B omits to do so. The ship arrives safely in England. Then the price of cement rises to Rs. 400 per bag. B is bound to compensate the loss of Rs. 5000 to A.

(3) To present proper accounts to his principal (Sec. 213).

(4) To communicate with the principal in case of difficulty (Sec. 214).

(5) Not to deal on his own account without first obtaining the consent of the principal, otherwise the principal may -

(a) repudiate the transaction, (Sec. 215)

(b) claim from the agent any benefit which may have resulted to him from the transaction (Sec. 216).

Example 24: A directs B to sell A's estate. B buys the estate for himself in the name of C. Without first obtaining the consent of A, A, on discovering that, may repudiate the sale.

Example 25: A directs B, his agent, to buy a certain house for him. B tells A it cannot be bought, and buys the house for himself. A may, on discovering that B has bought the house, compel him to sell it to A at the price he gave for it.

Example 26:- Mr. Ahuja of Delhi engaged Mr. Singh as his agent to buy a house in west extension area. Mr. Singh bought a house for Rs. 20 lakhs in the name of a nominee and then purchased it himself for Rs. 24 lakhs. He then sold the same house to Mr. Ahuja for Rs. 26 lakhs. Mr. Ahuja is entitled to recover ₹ 6 lakhs from Mr. Singh being the amount of profit earned by Mr. Singh out of the transaction.

- (6) To protect and preserve the interests of the principal in case of his death or insolvency. (sec. 209).
- (7) To pay sum received for the principal. He may deduct therefrom all moneys due to himself in respect of advance made or expenses properly incurred by him in conducting such business and also such remuneration as may be payable to him for acting as agent. (sec. 217 & 218)

(8) Not to use information obtained in the course of the agency against the principal.

(9) Not to delegate authority without the consent of principal (Sec. 190)

\* Rights of Agent :-

(1) To retain, out of any sums received in agency, all moneys due to himself in respect of his remuneration and advances made or expenses properly incurred by him in conducting such business. (Sec. 217)

(2) Right of lien on principal's goods, papers and other property until remuneration due to him is paid. (Sec. 221).

(3) Right of indemnification against the consequences of all lawful acts done by him in exercise of the authority conferred upon him (Sec. 222).

Example 27:- B, an agent of A, entered into a contract on behalf of A with C on to supply a certain goods. A did not supply on time. C filed suit against B. B has to pay legal expenses to defend the case. Hence, B can recover those legal charges from A.

(4) To receive agreed remuneration as per the agreement. If there is no agreement then to claim a reasonable remuneration. (Sec. 219).

Example 28:- A was employed an agent to sell a property on the terms that he would be paid commission on the completion of sale. He produced a person ready and willing to buy, but the owners refused to sell. Held, the agent was not entitled to commission as sale had not been completed.

However, Agent not entitled to remuneration for business mis conducted (Sec. 220).

Example 29:- A employs B to recover 1000 rupees from C. Through B's misconduct the money is not recovered. B is not entitled to any remuneration for his services, and must make good the loss.

(5) Right of indemnification against consequences of acts done in good faith - (sec. 223).

Example 30:- A, at the request of P, sells goods in the possession of P, but which P had no right to dispose of. A does not know this and hand over the proceeds of sale to P. Afterwards T, the true owner of the goods, sues A and recovers the value of the goods and costs. P is liable to indemnify A for what he has been compelled to pay to T, and for A's own expenses.

However, the right of indemnity is not available against those acts which are unlawful or criminal in nature - (sec. 224).



(6) Right of Compensation for injuries caused by him by neglect on the part of the principal. (Sec. 225).

Example 31:- 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 consequences hurt. A must make compensation to B.

\* Principal's liability to third person:-

1. liability for the Acts of Agents (Sec. 228):-

⇒ The principal is liable for all the acts of an agent which are lawful and within the scope of Agent's authority.

Example 32:- A, being B's agent, is authorised by B to receive money on his behalf. He 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) Liability when agent exceeds authority

⇒ Where the agent does more than he is authorized to do and the act done beyond his authority can be separated from what is within the authority

⇒ the principal is liable only for so much of what agent does as is within his authority (sec. 227)

Example 33:- A, authorized B to procure an insurance on his ship. B procures a policy on the ship and another on the cargo also. A is not bound to pay the premium for the policy on the cargo.

(3) Principal not bound when excess of agent's authority is not separable (sec. 228):-

⇒ Where the agent does more than he is authorized to do, and the act done beyond his authority can not be separated from what is within the authority.

⇒ the principal is not bound to

recognize the transaction.

Example 34: A authorizes B to buy 500 sheep for him. B buys 500 sheep and 200 lambs for one sum of 5000 rupees. A may repudiate the whole transaction.

(4) Consequences of notice given to agent:-

⇒ Any notice given to the agent in the course of the business transacted by him for the ~~special~~ principal, shall have the same legal consequences as if it had been given to the principal. (Sec. 229).

(5) Liability of principal inducing belief that agent's unauthorized acts were authorized:-

⇒ 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. (Sec. 237).

Example 35:- A tells T ~~that~~ within the hearing of P that he (A) is P's agent. P does not object the statement of A. later on, T supplies certain goods to A who pretends to be acting, as an agent of P. P is liable to pay the price to T.

(6) Effect on agreement, of misrepresentation or fraud, by agent.

⇒ If the agent commits any misrepresentation or fraud in the course of their business for their principal, shall have the same effect as if committed by the principal. (Sec-238)

Example 36:- A, being B's agent for the sale of goods, induces C to buy them by a misrepresentation, which he may

not authorized by B to make.  
The contract is voidable, as between B and C, at the option of C.

### \* Personal Liability of Agent:

- (1) Foreign principal :- When agent works for a principal who is resident of abroad.
- (2) Undisclosed Principal :- When agent does not disclose the name of principal.
- (3) Principal can not be sue being incompetent :- Principal is minor or of unsound mind.
- (4) Exceeds Authority :- When agent acts beyond his authority and that is not ratified by principal.
- (5) Express Contract :- When the contract expressly provides that agent will be personally liable.
- (6) Sign in own name :- When he sign a contract in his own name

without making it clear that he is signing it as agent only.

(7) Principal not in existence :- Where agent acts for a principal not in existence.

(8) Mistake or fraud :- Where agent receives or pays money by mistake or fraud.

(9) Interest :- Where his authority is coupled with interest, Eg. Auctioneer, Factor.

(10) Pretended agent :- When agent pretends but is not an actual agent and the principal does not ratify the act, the pretended agent will be personally liable (Sec. 235)

### \* Rights of Third Parties :-

(1) When agent does not disclose that he is acting as an agent, the third party has rights against him as he is a principal. (Sec. 231).

2) If the principal disclosed himself before the contract is completed, the other contracting party may refuse to fulfil the contract, if he can show that if he had the knowledge about the principal in the contract, he would not have entered into the contract. (sec. 231)

(3) When agent does not disclose that he is acting as an agent and the principal requires the performance of the contract then the principal can obtain such performance subject to the rights and obligations subsisting between the agent and the other party to the contract. (sec. 232).

Example 37:- Aman sell 1000 rupees worth of rice to Tarun and Aman also liable to pay Rs. 500 to Tarun. Aman is acting as agent for Pratab in the transaction, but Tarun has no knowledge nor reasonable ground of suspicion

that Aman is acting as agent for Pratap. Now Taxun has right to adjust Rs. 500 from Rs. 1000. Pratap cannot compel Taxun to take the rice without setting off Aman's debt.

4. In cases where the agent is personally liable, a person dealing with him ~~to~~ may hold either him or his principal, or both of them, liable (Sec. 233).

Example 38:— T enters into a contract with A to sell him 100 bales of cotton, and afterwards ~~discovers~~ discovers that A was acting as agent for P. T may sue either A or P, or both, for the price of the cotton.

- (5) When a person who has made a contract with an agent induces the agent to act upon the belief that principal only will be held liable, or induces the



principal to act upon the belief that the agent only will be held liable, he cannot afterwards hold liable the agent or principal respectively. (Sec. 234).

## \* Termination of Agency:

(1) By ACT of ~~parties~~ Parties.

- a. By Agreement.
- b. By Revocation.
- c. By renunciation of agency by agent.

(2) By operation ~~of~~ of law.

## \* By ACTS of Parties:—

- (a) By Agreement:— By ~~mut~~ mutual agreement between principal ~~and~~ and agent.

## (b) By Revocation :-

1. An agency may be terminated by the principal revoking authority of agent before the authority has been exercised.

NOTE: The principal cannot revoke the agency where :-

- (i) Authority of agent coupled with interest.

Example 39:- P gives authority to A to sell P's land, and to pay himself, out of the proceeds, the debt due to him from P. P cannot revoke this authority, nor it be terminated by his insanity or death.

- (ii) Authority of agent is partly exercised. (Sec. 204) :-

Example 40:- P authorises A to buy 100 tons of rice for B and to pay for it out of P's

money remaining in A's hands. A buys 100 tons of rice for P in his own name, so as to make himself personally liable for the price. P cannot revoke A's authority so far as regards payment for the cotton.

### (C) By renunciation of agency by agent:-

- ⇒ An agency may be terminated by agent by renouncing the business of agency.
- ⇒ Renunciation may be expressed or implied.
- ⇒ When agency for a fixed period, agent must compensate the principal for premature renunciation of agency.
- ⇒ A reasonable notice should be given for renunciation.

### (2) \* By operation of law or Compulsory:-

- (a) By performance of contract.
- (b) By expiry of time.

- (c) By death of insanity of the principal or agent.
- (d) By insolvency of the principal.
- (e) By destruction of the subject matter.
- (f) By the principal becoming an alien enemy.
- (g) By dissolution of the company where it is an agent or principal.