

Unit-9 Agency

- * Agent means a person employed to do any act for another or to represent another in dealing with the third persons.
- * Principal means a person for whom such act is done or who is so represented.

Test of Agency :-

- Whether the person has the capacity to bind the principal and make him answerable to the third party.
- Whether he can establish privity of contract between the principal and third parties.

- Person qualified to appoint agent → major
↳ sound mind
- Person qualified to be agent → any person, but if minor / unsound mind
→ principal bound by the acts.

- No consideration necessary to be agent.

* Extent of Agent's Authority

(i) In Normal circumstances [Sec. 188]

- has authority to do every lawful thing which is necessary.
- usual course of the business

(ii) In Emergency [Sec. 189]

- to do all such acts for the purpose of protecting his principal from loss as would be done by a person of ordinary prudence.
 - no opportunity to communicate with principal
 - actual and definite commercial necessity is must
 - most reasonable & practical course of action taken
 - must have possession of goods

* Mode of Creation of Agency

1. Express Authority - when authority is given by words.

2. Implied Authority - Inferred from circumstances of the case, conduct of the parties and things spoken or written

(a) Agency by Estoppel [Sec. 237]

→ Where principal by his conduct or statement → willfully induces another person to believe that certain person is his agent

→ He is subsequently estopped from denying the fact of agency.

(b) Agency by Necessity

→ arises due to some emergent circumstances

→ When emergency arises, agent acquires special power to prevent principal from loss.

(c) Agent by Operation of Law - Where law treats one person as agent of another

(d) Effect of Ratification [Sec. 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 act. If he ratifies them, the same effects will follow as if they had been performed by his authority.

• Essentials of a Valid Ratification :-

(a) may be express or implied (b) full knowledge of ratification

(c) whole transaction must be ratified (d) It cannot injure a third party

(e) within reasonable time (f) communication (g) act to be ratified must be valid

* Sub Agent - is a person employed by, and acting under the control of the original agent in the business of the agency.

General Rule:- The appointment of sub-agent is not lawful, because the agent is a delegatee and a delegatee cannot further delegate.

• Exceptions where an agent can appoint Sub-Agent:-

(i) If the terms of original appointment states it

(ii) there is a custom of the trade which requires it

(iii) if unforeseen emergency arises.

• If sub-agent properly appointed:- [Sec. 192]

→ Principal liable to third parties for acts of sub-agent

→ Agent liable to principal

→ Sub-agent liable to agent for his acts.

• If sub-agent appointed without authority:- [Sec. 193]

→ Agent is liable to principal and third party both.

→ Principal is responsible for his acts

→ Sub-agent is not responsible to principal at all. Only answerable to agent.

• Rules of Sub-Agent:-

(i) Work under control and directions of agents

(ii) Agent delegates a part of his own duties to sub-agent

(iii) No privity of contract b/w Principal and sub-agent

(iv) Sub-agent is responsible to agent only

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

(vi) Sub-agent has no right of action against the principal for remuneration due to him.

* Substituted Agent - A person appointed by agent to act for principal with knowledge and consent of principal.
Agent's duty for naming such agent - exercising ordinary prudence.

• Rules of Substituted Agent:-

- (i) Works under the instructions of the principal.
- (ii) Agent does not delegate any part of his task to a substituted agent.
- (iii) Privity of contract exists b/w principal and substituted agent.
- (iv) Responsible to principal
- (v) Agent is not responsible to principal for acts of substituted agent.
- (vi) Substituted agent can sue principal for remuneration due to him.

* Duties and Obligations of an Agent :-

- (i) Duty to follow instructions or Customs [Sec. 211]
→ When the agent acts otherwise and any loss is sustained by principal, he must indemnify him, if any profit accrues, he must account for it.
- (ii) Duty of reasonable care and skill [Sec. 212]
- (iii) Duty to render proper accounts [Sec. 213] - Not only accounts but also supported by vouchers
- (iv) Communicate with principal [Sec. 214]
- (v) Duty not to deal on his own account
→ Should not deal on his own account without first obtaining the consent of the principal, otherwise principal may
(a) Repudiate the transaction (Sec. 215)
(b) Claim from agent any benefit which may have resulted to him from the transaction.
- (vi) Duty not to make secret profits
- (vii) Duty not to delegate [Sec. 190]

- (viii) Duty to pay all sums received on the behalf of principal
- (ix) Duty not to use any confidential information received in course of agency

* Principal's liability towards Third parties :-

(i) Principal's liability for the acts of the agent [Sec. 226]

→ principal is liable for acts of agent which are within scope of his authority.

(ii) Principal's liability when agent exceeds authority.

→ If excess part can be separated = principle is not liable for only that part

→ if excess part cannot be separated = principal not liable at all.

→ However, if principal induces third party to believe that act was authorised → then principal is liable.

(iii) Consequences of notice given to agent [Sec. 229]

→ Any notice given to / information obtained in course of business will have some legal consequences as if it is given to or obtained by agent.

(iv) Principal's liability for agent's fraud, misrepresentation or Torts [Sec. 238]

→ If matter falls under agent's authority, then such fraud / misrepresentation will be done by principal.

→ If agent acts beyond authority, principal not liable.

* Rights of Agent :-

(i) Right to retain out of sums received on principal's account

→ Agent can retain:

- (a) all money due to himself in respect of advances made
- (b) in respect of advances, expenses properly incurred by him
- (c) his remuneration

→ The right can be exercised on any sum received on account of the principal in the business of agency.

(ii) Right to Remuneration

→ In normal course - as per terms

→ If not in terms - as per customs

→ Agent guilty of misconduct - not entitled to remuneration

(iii) Agent's Lien on principal's property

→ an agent is entitled to retain goods, papers, other property (movable or immovable) → until amount due to himself for commission, disbursement and services in respect of same has been paid or accounted for him.

• Conditions for this right:-

(a) Agent should be lawfully entitled for such commission

(b) Possession of property should not be by unlawful means.

• Lien is lost when:-

(a) Possession is lost

(b) Agent waives his right

(c) Agent's lien is subject to contract to contrary

(iv) Right to Indemnify

- (a) Right of indemnification for lawful acts done - bound to indemnify agent against all consequences of lawful acts done in his authority.
- (b) Right of indemnification when acts are done in good faith except when acts done by agent are in violation of any penal law.
- (c) Non liability of employer of agent to do a criminal act - If agent is appointed to do criminal act, principal not bound to indemnify the loss.
- (v) Right to compensation for injury caused by principal's neglect

* Personal Liability of Agent to Third Parties :-

- (i) When contract made on behalf of merchant resident abroad / foreign principal
- (ii) When agent does not disclose the name of principal
- (iii) Principal's non existence / incompetent
- (iv) Pretended agent
- (v) When agent exceeded his authority:

- Agency is irrevocable: If the agent becomes personally interested in the subject matter of agency.

• Effects of Termination :

- Termination does not take effect until it is known to agent as well as third party.
- Termination of agent's authority leads to termination of all the sub-agent's authority.

* Rights of Third Parties :

(i) Right of parties to a contract made by undisclosed agent [Sec. 231]

- Third party has same rights as against principal as he had against agent.
- If principal disclose himself before completion of contract → then third party may refuse to fulfill the contract.

(ii) Performance of contract with agent supposed to be principal [Sec. 232]

- 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 b/w agent and third party.

(iii) Options to Third person: Sue the agent or principal

- Right of person dealing with agent personally liable - third party dealing with such agent may hold agent or principal, or both liable.
- Consequences of inducing agent or principal to act on belief that principal or agent will be held exclusively liable -
 - When third party induces the agent to act upon the belief the 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 afterward hold liable the agent or principal respectively.

* Termination of Agency

(i) Revocation - principal may revoke the authority at any time.

→ cannot revoke when authority partly exercised - will be liable for acts already done

• compensation for revocation [Sec. 205]

→ If revocation is premature without cause, compensation is necessary.

• notice for revocation [Sec. 206]

→ when principal has justified reason to revoke, reasonable notice to be served.

• Revocation can be expressed [implied] [Sec. 207]

(ii) On principal's insolvency

(iii) On expiry of time - in case agency for fixed term.

(iv) On death/insanity of principal/agent

(v) Completion of Business

(vi) Renunciation by Agent [Sec. 206]

→ Agent may renounce the business of agency in same manner principal can revoke.

→ However, rules as to compensation, notice will remain same as Revocation.

→ If renounces without proper notice, he will be liable for damages.