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SEP
2018

2018 WEDNESDAY
AUGUST

WK 31 • 213-152

01

CHAPTER - 9

AGENCY ...

Relationship between the
agent and principal

A person employed to do any act for another or to represent another in dealing with the third person.

The 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 3rd party
- Whether he can establish privity of contract between
Principal &
3rd parties.

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Rule of agency is based on the maxim

"Qui facit per alium facit per se"

who acts through an agent is himself acting

9.2 Appointment and authority of agents

Who may employ an agent:

- Any person who has attained majority according to the law to which he is subject and who is of

Sound mind, may employ an agent

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Who may be an agent ?

Any person may become an agent i.e.

- even a minor
 - of unsound mind
- Principal shall be bound by his acts.

Consideration not necessary :-

No consideration is necessary to create an agency.

9.3 Creation of agency :-

The relationship of the principal and the agent may be created in any of the following ways

Where authority can be

Express

Implied

Given by words / spoken / written

Inferred from the circumstances / conduct of the parties and things spoken / written in ordinary course of dealing

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	8	9	10	11	12	13	14
	15	16	17	18	19	20	21
	22	23	24	25	26	27	28
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Implied agency includes +

★ Agency by estoppel.

Principal induces another person

To believe that a certain person is his agent

He is subsequently prevented / estopped from denying the fact of agency.

Can be created if :

Principal must have made a representation

Express Implied

Representation must state the agent has an authority to do certain act although really he has no authority

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SEP
2018

2018

MONDAY
AUGUST

WK 32 • 218-147

06

- Principal must have induced the third person by such representation.
- 3rd party must have believed the representation and made the contract on the belief of such representation.

★ Agency by necessity ÷

Due to some emergent circumstances.

Agent is authorised to do certain act and while doing such an act, an emergency arises, he acquires an

- extra-ordinary or special authority to prevent his principal from loss

★ Agency by operation of law ÷

When law treats one person as an agent of other

★ Rights of person as to acts done for him without his authority, effect of ratification ÷

Kaam hone ke baad authority dena.

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2018	8	9	10	11	12	13	14
	15	16	17	18	19	20	21
	22	23	24	25	26	27	28
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Where acts are done by one person on behalf of another (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.

Ratification

Approving a previous act or transaction

May be express or implied by the conduct of the person whose behalf the act was done

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Essentials of a valid ratification ÷

- a) Ratification may be expressed or implied
- b) Knowledge requisite for valid ratification.

No valid ratification can be made] by a person whose knowledge of the facts of the case is materially defective.

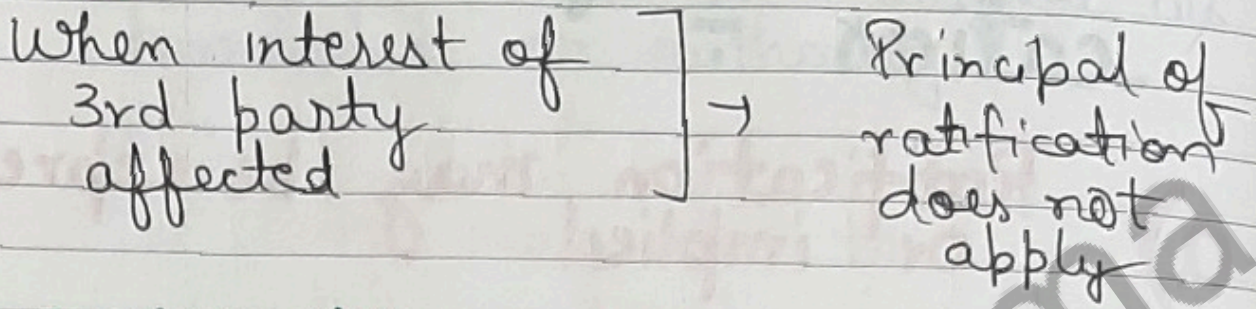
c) The whole transaction must be ratification.

Ratification of an act entirely or its rejection in entirety

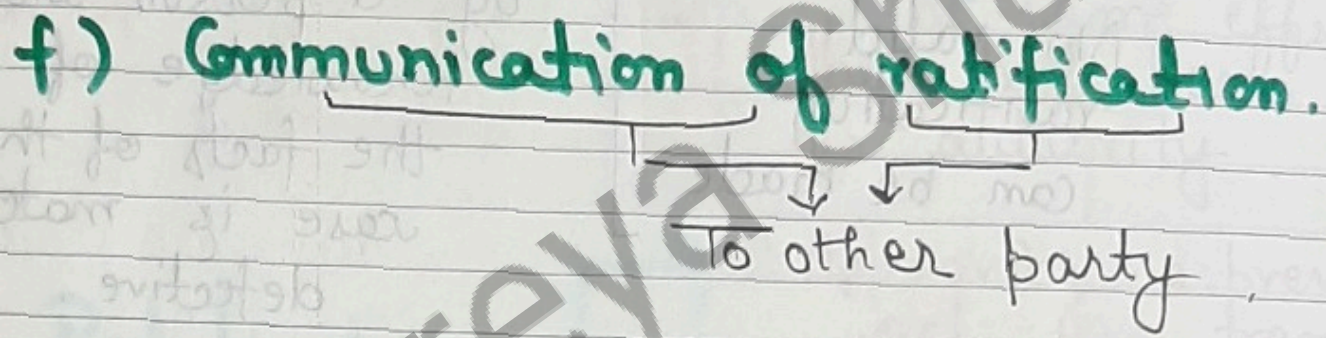
Principal cannot ratify a part of the transaction which is beneficial to him and reject the rest

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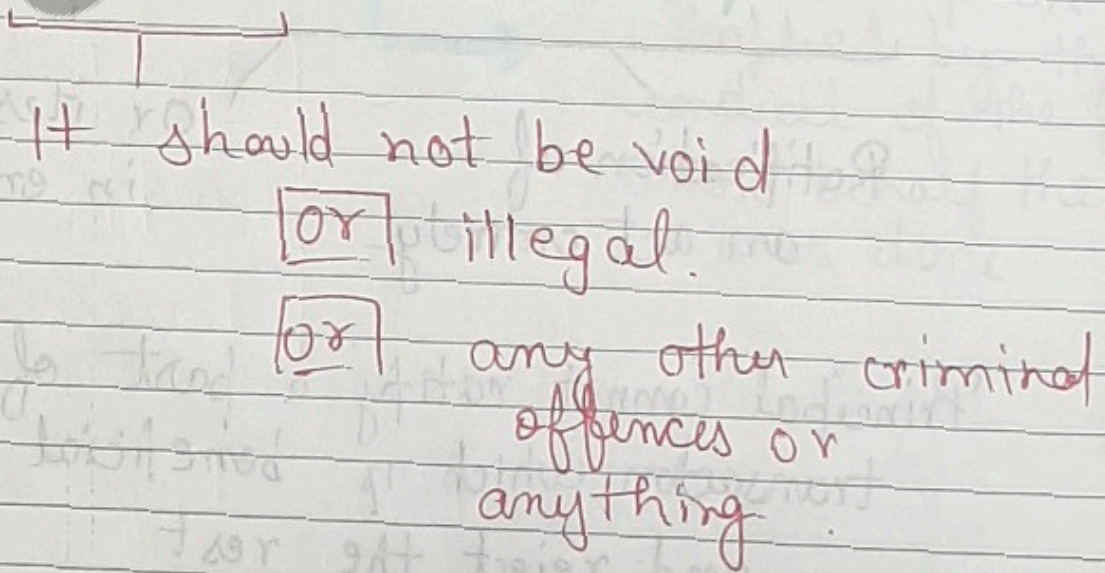
d) Ratification cannot injure third person ÷



e) Ratification within reasonable time.



(g) Act to be ratified must be valid ÷



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Extent of Agent's authority:

1. Agent's authority in normal circumstances ÷

Work authorized + Incidental work
 If necessary

2. Agent's authority in an emergency:

Agent can do all such acts in an emergency that are for the purpose of protecting his principal from loss as would be done by a person of ordinary prudence in his own case.

→ To constitute a valid agency in an emergency

★ Agent should be in position to communicate with principal in reasonable time

★ Actual and definite commercial necessity for the agent to act promptly

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	8	9	10	11	12	13	14
	15	16	17	18	19	20	21
	22	23	24	25	26	27	28
	29	30	31				



Agent should have acted

Bonafide for the benefit of the principal



The agent should have adopted the most reasonable and practicable course under (und) circumstances



Agent must have been in

possession of goods belonging to his principal and which are the subject of contract

SUB AGENTS :-

12

SUNDAY

Agent appoint agent

→ Delegator

→ Delegatee

Mainly can't appoint

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★ when agent cannot delegate :-

Cannot lawfully employ another to perform

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his act, which he has

Expressly Impliedly
Undertaken to
perform personally

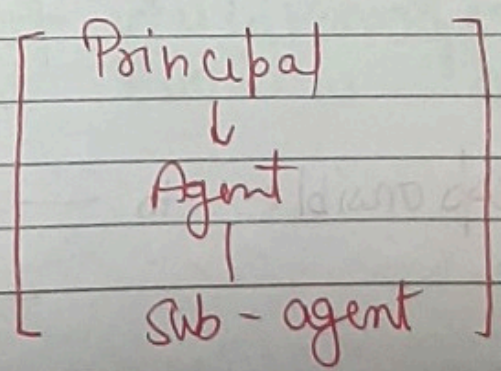
by the ordinary custom of trade a sub agent may, or from the nature of the agency a sub agent must be employed.

Sub agent

A person employed by, and acting under the control of the original agent in the business of the agency.

Based on the principle of

“Delegatus Non Prodest Delegare”.



14

TUESDAY

AUGUST

2018

	S	M	T	W	T	F	S
JUL	1	2	3	4	5	6	7
2018	8	9	10	11	12	13	14
	15	16	17	18	19	20	21
	22	23	24	25	26	27	28
	29	30	31				

• **Exception where an agent can appoint sub-agent:**

1. The terms of appointment originally contemplated it.

2. Customs of the trade

3. Unforeseen emergency.

• **Representation of principal by sub-agent properly appointed**

1. Principal — Liable to 3rd parties

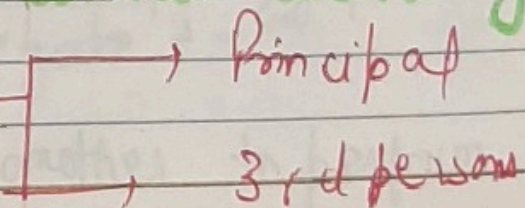
2. Agent — Responsible to the principal for the acts of the sub-agent

3. Sub-agent's liability to principal:

sub agent is responsible to agent

Not to principal

• **Agent's responsibility for sub-agent appointed without authority.**

1. Agent responsible to —  Principal, 3rd persons

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3	4	5	6	7	8	9
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2. Principal isn't responsible for the acts of the sub-agent.

3. The sub-agent is not responsible to the principal at all.

→ Answerable to agent only.

9.6 SUBSTITUTED AGENT :-

is a person appointed by the agent to act for the principal, in the business of agency, with the knowledge and consent of principal.

[Agents of principal]

Relation between principal and person duly appointed by agent to act in business of agency [Section 194]

Agent :- has authority to suggest a name for principal if he asks as substituted agent.

Agent's duty in naming such person

He is bound to exercise the same amount of discretion as a man of ordinary prudence would exercise in his own case.

Duties and obligations of an agent

Duty to follow instruction or customs.

★ An agent is bound to conduct the business of his principal according to the directions given by the principal.

★ In absence of such directions] - Acc to customs which prevails in doing business of the same kind at the place where agent conducts such business.

★ When agent acts otherwise] - Loss sustained by Principal is indemnified
] - Must account for the profit accrues.

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SEP
2018

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WK 33 • 229-136

2018 | FRIDAY
AUGUST

17

Duty of reasonable care and skill.

As he has done
in his own case

Conduct the
business of
the principal
with as much
skill as is generally
possessed by
persons engaged
in similar business

To make compensation
↓
in respect of direct
consequences of his
own neglect, want
skill and misconduct

• Duty to render proper accounts .

Book of Account + Voucher

• Agents duty to communicate with principal

• Duty not to deal in his own account.

without first obtaining the consent
of the principal, otherwise
the principal may -

(a) Repudiate the transaction

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

18

SATURDAY
AUGUST 2018

	S	M	T	W	T	F	S
JUL 2018	1	2	3	4	5	6	7
	8	9	10	11	12	13	14
	15	16	17	18	19	20	21
	22	23	24	25	26	27	28
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• Duty not to make secret profits

Any advantage obtained by agent over and above his agreed remunerations and which he would not have been able to make but for his position as agent

[Principal की वरत का पैसे]

• Duty not to delegate :

The act agent has promised to do expressly or impliedly perform personally unless by the ordinary custom of trade a sub-agent may or from the nature of agency a sub agent is employed.

19

SUNDAY

• Duty to pay sums received for Principal

• Duty not to use any confidential information received in the course of agency against the principal.

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SEP
2018

2018

MONDAY
AUGUST

WK 34 • 232-133

20

9.9 RIGHTS OF AN AGENT :-

• Right to retain out of sums received on principal's account.

All money due to himself in respect of advances made

In respect of expenses properly incurred by him in conducting such business

Remuneration as may be payable to him for acting as agent

• Right to remuneration :-

In absence of any agreed amount, he is entitled for usual remuneration which is customary in the business. However an agent who is guilty of misconduct

No remuneration.

• Agent's lien on principal property :-

In the absence of any contract to contrary agent may retain the goods, papers, property of principal

21

TUESDAY
AUGUST 2018

	S	M	T	W	T	F	S
JUL 2018	1	2	3	4	5	6	7
	8	9	10	11	12	13	14
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Condition of rights:

(a) Agent should be lawfully entitled to receive from the principal a sum of money by way of commission earned or disbursement made or services rendered in proper execution of the business of agency.

(b) The property over which the lien is to be exercised should belong to principal.

It should have been received by the agent in his capacity and during the course of his ordinary duties as an agent.

Agent obtains possession of the property by unlawful means if he cannot exercise particular lien.

The agent right to lien is lost

When

- Possession of the property is lost
- Agent waives his right
- Agent's lien is subject to a contract to the contrary

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(iv) Right to indemnity :-

(a) Right to indemnification for lawful acts

Principal is bound to indemnify the agent against all consequences

of lawful acts done in exercise of his authority

(b) Right of indemnification against acts done in good faith.

Agent is entitled to get indemnified for any loss or damage

(c) Non-liability of employer of agent to do a criminal act.

Where one person employs another to do an act which is criminal,

The employer is not liable to agent to indemnify him against the consequences of that act.

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(v) Right to compensation for injury caused by principal's neglect:

Principal [Must compensate] [In case of his neglect or want of skill.]

9.10 ★ Principal's liability to 3rd parties:

Agent does all acts on behalf of principal } But incurs No personal liability

BCZ there is no privity of contract and passing of consideration between the agent & third party } The liability remains that of the principal unless there is a contract to contrary.

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1. Principal's liability for the acts of the agent:

which are within the scope of his authority.

2. Principal's liability when agent exceeds authority:

Only that part for which authority granted not other party.

• Principal not bound when excess of agent's authority is not seperable.

Not seperable [Mere repudiate

Exception: liability of principal inducing belief that agent's unauthorized acts were authorized.

If agent has done acts / obligations to 3rd party on behalf of principal.

Then principal is bound for agent's authority and action taken by him.

25

SATURDAY

AUGUST

2018

	S	M	T	W	T	F	S
JUL 2018	1	2	3	4	5	6	7
	8	9	10	11	12	13	14
	15	16	17	18	19	20	21
	22	23	24	25	26	27	28
	29	30	31				

3. Consequences of notice given to agent.

Any notice given to or information obtained by agent

The knowledge of the agent is treated as the knowledge of the principal.

4. Principal's liability for the agent's fraud, misrepresentation or torts:

Done for principal with authority - Same effects on agreements made by such agents.

26 Without authority - Do not affect principals.

SUNDAY

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9.11 Personal liability of agent to 3rd parties :-

Agent cannot personally enforce, nor be bound by contracts on behalf of principal.

He can neither sue nor be sued on contracts made by him on principal's behalf.

Exceptions :-

1. Foreign principal } Then it is assumed agent is buying goods for him not on behalf of principal.

2. If the agent does not disclose the name of his principal.

3. Non-existent or incompetent principal.

4. Pretended agent

5. When agent exceeds authority { Seperable
Non-seperable

	S	M	T	W	T	F	S
JUL	1	2	3	4	5	6	7
2018	8	9	10	11	12	13	14
	15	16	17	18	19	20	21
	22	23	24	25	26	27	28
	29	30	31				

RIGHTS OF 3RD PARTIES ÷

(i) Rights of parties to a contract made by undisclosed agent:

The other contracting party has the same right as against the principal as he would had as against the agent if the agent had been the principal.

If principal discloses himself before the contract is completed, the other party may refuse to fulfill the contract.

(ii) Performance of contract with agent supposed to be principal

When agent does not disclose that he is acting as an agent and principal requires

the performance of the contract, then the principal can obtain such performance subject to the rights and obligations subsisting b/w agent and other party.

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SEP 2018

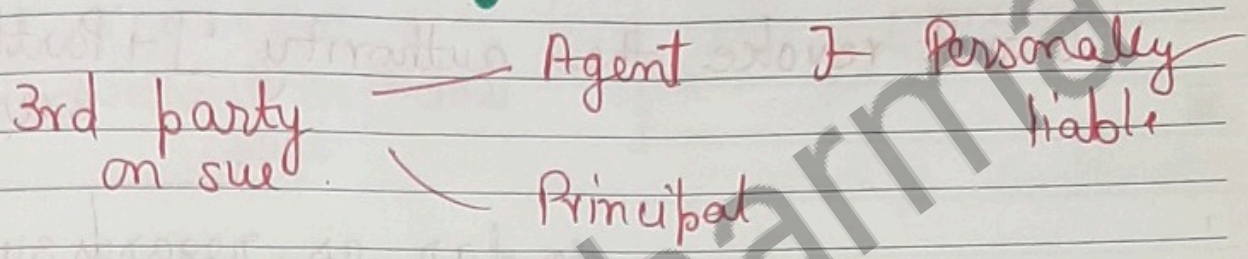
2018 WEDNESDAY AUGUST

WK 35 • 241-124

29

(iii) Option to third person - sue the agent or the Principal.

(a) Right of person dealing with agent personally liable.



(b) Consequences of inducing agent or principal to act on belief the principal or agent will be held exclusively liable.

★ Revocation of Authority

Termination of agency means putting an end to the legal relationship between principal and agent

	S	M	T	W	T	F	S
JUL	1	2	3	4	5	6	7
2018	8	9	10	11	12	13	14
	15	16	17	18	19	20	21
	22	23	24	25	26	27	28
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(a) **Revocation**: An agency may be terminated by the principal revoking authority of an agent

Cannot revoke the authority] → Partly exercised

so far as regards such act and obligations as arise for acts already done in the agency

Compensation for revocation by principal:

Premature Revocation] → The principal must compensate

Notice of revocation:

There is a reason so given] Reasonable notice] NO compensation

Revocation and renunciation may be — Expressed
— Implied

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17	18	19	20	21	22	23
24	25	26	27	28	29	30

SEP
2018

2018

FRIDAY
AUGUST

31

WK 35 • 243-122

when agent cancel.

(b) Renunciation by agent:

If agent renounce (Premature renunciation) without sufficient cause.

He have to compensate principal.

(c) Completion of business:

Business complete

Agency Khatam

(d) Death or insanity

If agent & principal dies } Agency done and renounce

(e) Principal's insolvency

(f) On expiry of time.

Purpose completed

Automatic expiry

01

SATURDAY
SEPTEMBER 2018

	S	M	T	W	T	F	S
AUG 2018	5	6	7	8	9	10	11
	12	13	14	15	16	17	18
	19	20	21	22	23	24	25
	26	27	28	29	30	31	

Why the agency is irrevocable?

If the agent has personal right in agency
(Eg compensation, loan) by Principal.

Then agent cannot cancel the contract bcz he has rights in the contract.

Effects of termination :-

- When termination of agent's authority takes effect as to agent and as to 3rd persons.

Termination can't be done

→ Until we don't tell the agent he have taken his authority

02

SUNDAY

- Agent's duty on termination of agency by principal's death or insanity.

M	T	W	T	F	S	S
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15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30	31				

Agent can take compensation on behalf the representatives of his late principal

If he died
or
Becoming of unsound mind.

Termination of sub-agent's authority.

Principal - Gya ✓
Agent - Gya ✓
Sub agent - Bhi Gya ✓

COMPLETED

[ICA] UNIT 9 ☺

(a) Learn with Shreya! :-)