

# **CONTRACTS OF AGENCY**

# WHAT IS AGENCY?

The Indian Contract Act, 1872 does not define the word 'Agency'. However, section 182 of the Indian Contract Act, 1872 defines Agent and Principal as:

**Agent:** means a person employed to do any act for another or to represent another in dealing with the third persons and

**The principal:** means a person for whom such act is done or who is so represented.

## Test of Agency

**(a)** Whether the person has the capacity to bind the principal and make him answerable to the third party.

**(b)** Whether he can establish privity of contract between the principal and third parties.

# **“Qui facit per alium, facit per se”**

**He who acts through an agent is himself acting.**

## **Two fold definition**

- **Anything which can be done by one's self can be done by another**
- **Anything which is done through another is deemed to be done by himself**

# Who can be a Principal

According to Section 183,

- ❑ “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.”

Thus,

- a minor or
- a person of unsound mind
- cannot appoint an agent.

# Who may be an agent

Section 184 provides that

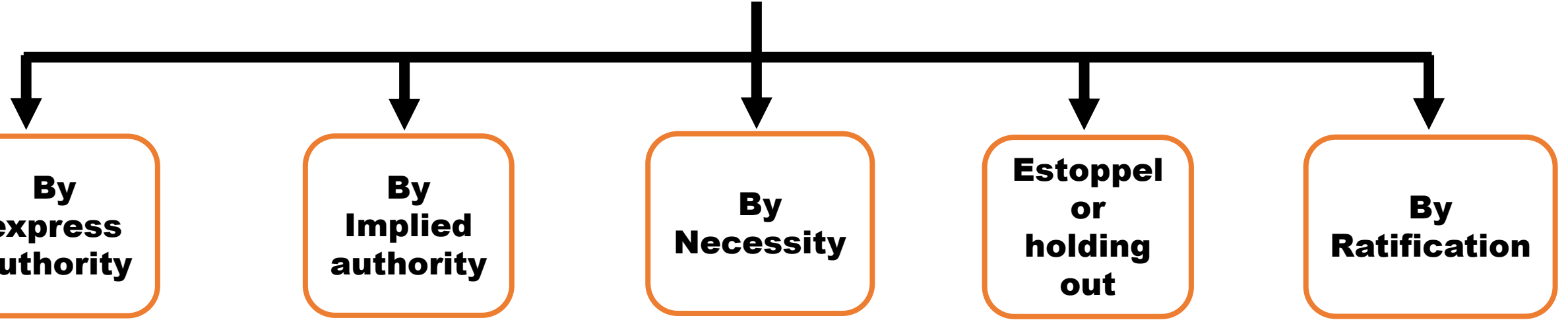
- any person may become an agent i.e.
- even a minor or a person of unsound mind
- may become an agent and the principal shall be bound by his acts.

**A minor or a person of unsound mind should not be appointed as an agent**

**because he is incompetent to contract and in case of his misconduct or negligence,**

**the principal shall not be able to proceed against him.**

# **Modes of creation of Agency**



# **Essentials of a valid Ratification**

**Ratification may be expressed or Implied [Section 197]:**

**Knowledge requisite for valid ratification [Section 198]:**

**Ratification of unauthorized act cannot injure third person  
Sec 200**

**Ratification within reasonable time:**

**Communication of Ratification:**

**Act to be ratified must be valid:**

# **EXTENT OF AGENT'S AUTHORITY**

**The authority of an agent means his capacity to bind the principal to third parties.**

**The agent can bind the principal only if he acts within the scope of his authority.**

**The extent of an agent's authority, whether expressed or implied is determined by:**

- (a) the nature of the act or the business he is appointed to do*
- (b) things which are incidental to the business or are usually done in the course of such business,*
- (c) the usage of trade or business.*



# EXTENT OF AGENT'S AUTHORITY

Whatever be the nature or extent of the agent's authority, it will always include the authority to do:

- (1) every lawful thing necessary for the purpose of carrying it out,*
- (2) every lawful thing justified by various customs of trades,*
- (3) in an emergency, all such acts for the purpose of protecting the principal from loss as will be done by a person of ordinary prudence in his own case under similar circumstances.*

The agent's authority is governed by two principles, namely

- (a) in normal circumstances and**
- (b) in emergency.**

# **In normal circumstances [sec188]:**

**An agent having an authority to do an act has authority to do every lawful thing which is necessary in order to do such act.**

**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:**

**A is employed by B, residing in London, to recover at Mumbai 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.**

## **Example :**

**A constitutes B as his agent to carry on his business of a shipbuilder. B may purchase timber and other materials, and hire workmen, for the purposes of carrying on the business.**

# **In an emergency [Section 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.**

**To constitute a valid agency in an emergency, following conditions must be satisfied.**

- (i) Agent should not be in a position or have any opportunity to communicate with his principal within the time available.**
- (ii) There should have been actual and definite commercial necessity for the agent to act promptly.**
- (iii) the agent should have acted bonafide and for the benefit of the principal.**
- (iv) the agent should have adopted the most reasonable and practicable course under the circumstances, and**
- (v) the agent must have been in possession of the goods belonging to his principal and which are the subject of contract.**

# **SUB AGENTS AND SUBSTITUTED AGENTS**

# Delegation of Authority

## When agent cannot delegate [Section 190]:

An agent cannot lawfully employ another to perform acts which he has expressly or impliedly undertaken to perform personally, unless 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” defined [Section 191]:

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

## Analysis:

Sub agency refers to case where an agent appoints another agent. The appointment of sub agent is not lawful, because the agent is a delegatee and a delegatee cannot further delegate. This is based on the Latin principle “delegatus non potest delegare”.

# Exception

## WHERE AN AGENT CAN APPOINT SUB-AGENT:

- (1) The appointment of a sub agent would be valid if the terms of appointment originally contemplated it.**
- (2) Sometimes customs of the trade may provide for appointment of sub agents. In both these cases the sub agent would be treated as the agent of the principal.**
- (3) Where in the course of the agent's employment, unforeseen emergency arise making it necessary for him to delegate the authority that was given to him by the principal.**

# **Sub Agent Properly Appointed: Sec 192**

- (1) Principal Responsible for third party:** The principal is, so far as regards third persons, is bound and responsible for the acts of sub-agent as if he were an agent originally appointed by the principal.
- (2) Agents responsibility for sub agents:** The agent is responsible to the principal for the acts of the sub-agent.
- (3) Sub-agents liability to principal:** The sub-agent is responsible for his acts to the agent, but not to the principal, except in case of fraud or willful wrong.

# **Sub Agent Not Properly Appointed**

**Where an agent, without having authority to do so, has appointed a person to act as a sub-agent,**

- (1) the agent stands towards such person in the relation of a principal to an agent, and is responsible for his acts both to the principal and to third persons;**
- (2) the principal is not represented by or responsible for the acts of the sub agent, the sub agent is not responsible to the principal at all. He is answerable only to the agent.**



# **SUBSTITUTED AGENT**

**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 the principal.**

**Substituted agents are not sub agents.**

**They are agents of the principal. Relation between principal and person duly appointed by agent to act in business of agency [Section 194]:**

# **SUBSTITUTED AGENT**

Where an agent, holding an express or implied authority to name another person to act for the principal in the business of the agency, has named another person accordingly, such person is not a sub-agent, but an agent of the principal for such part of the business of the agency as is entrusted to him.

## **Example:**

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

## **Example:**

A authorizes B, a merchant in Kolkata, to recover the moneys due to A from C & Co. B instructs D, a solicitor, to take legal proceedings against C & Co. for the recovery of the money. D is not a sub-agent, but is a solicitor for A.

## SUB AGENTS

A sub-agent does his work under the control and directions of agent.

The agent not only appoints a sub-agent but also delegates to him a part of his own duties.

There is no privity of contract between the principal and the sub-agent.

The sub-agent is responsible to the agent alone and is not generally responsible to the principal.

The agent is responsible to the principal for the acts of the subagent.

The sub-agent has no right of action against the principal for remuneration due to him.

Sub-agents may be improperly appointed.

The agent remains liable for the acts of the sub-agent as long as the sub-agency continues.

## SUBSTITUTED AGENTS

A substituted agent works under the instructions of the principal.

The agent does not delegate any part of his task to a substituted agent.

Privity of contract is established between a principal and a substituted agent.

A substituted agent is responsible to the principal and not to the original agent who appointed him

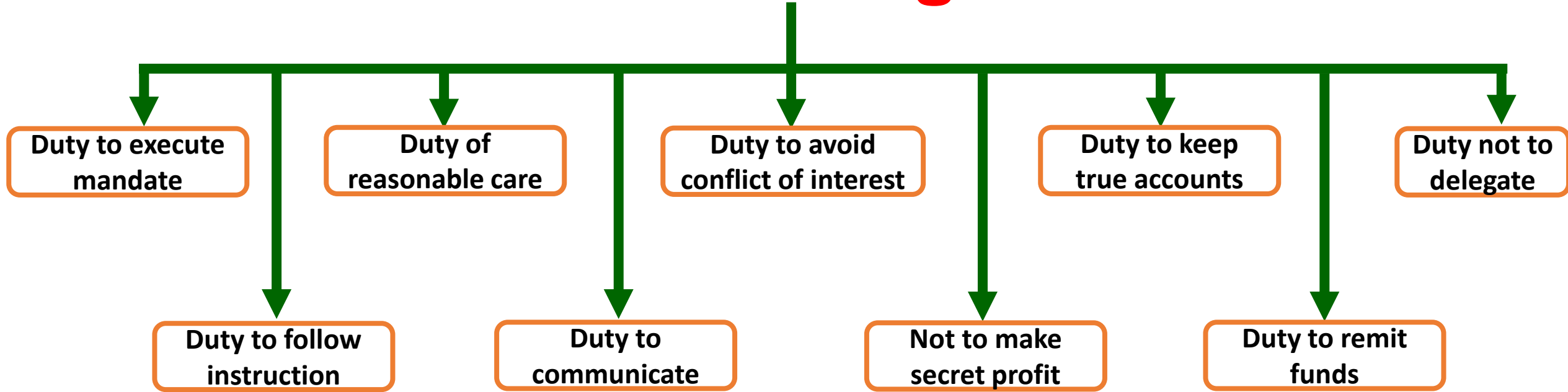
The agent is not responsible to the principal for the acts of the substituted agent

The substituted agent can sue the principal for remuneration due to him.

Substituted agents can never be improperly appointed.

The agent's duty ends once he has named the substituted agent.

# Duties of Agent



# Rights of an Agent

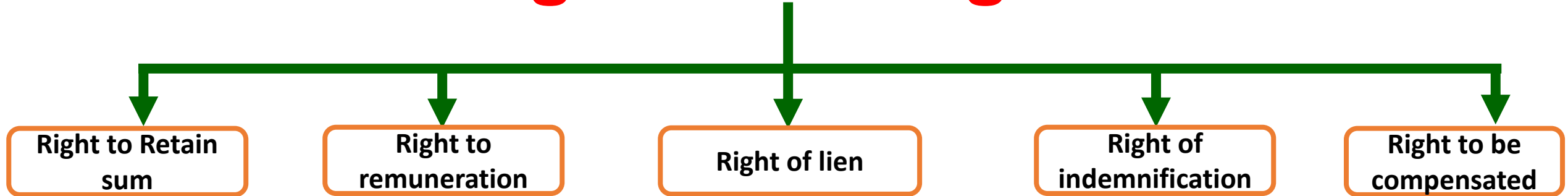
Right to Retain  
sum

Right to  
remuneration

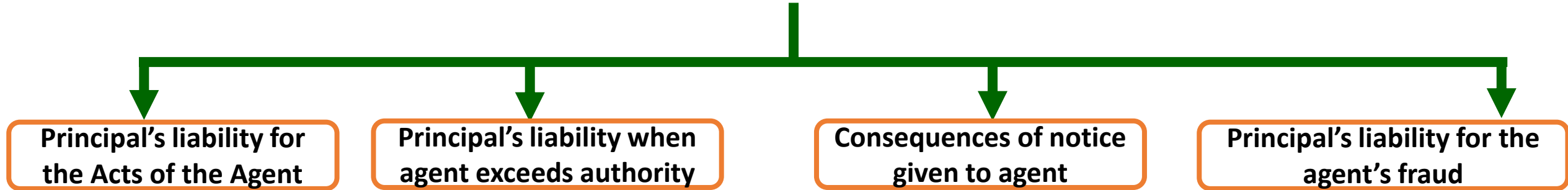
Right of lien

Right of  
indemnification

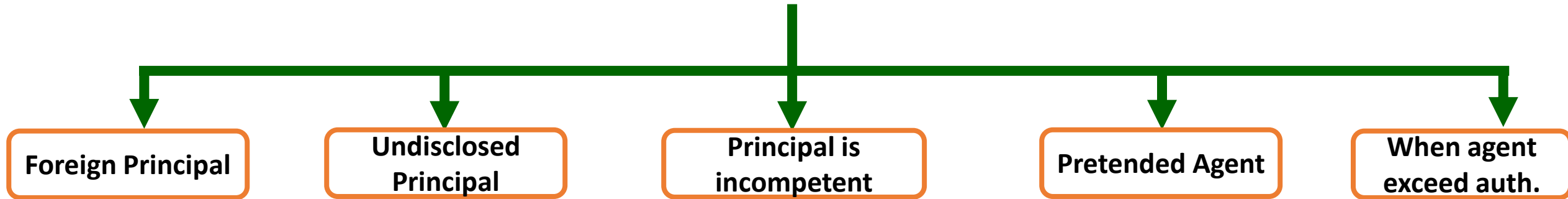
Right to be  
compensated



# PRINCIPAL'S LIABILITY TO THIRD PARTIES



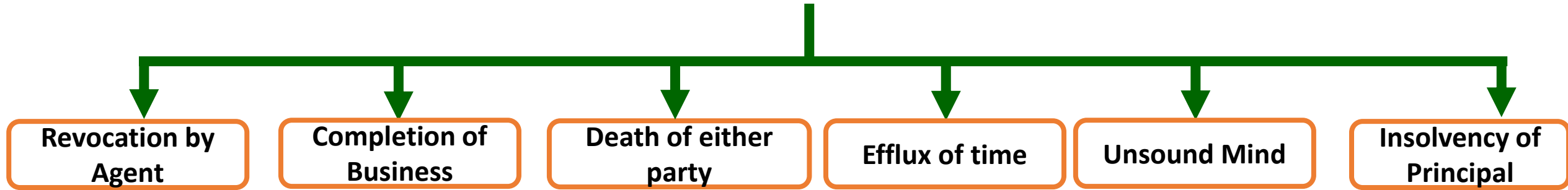
# PERSONAL LIABILITY OF AGENT



**Agent cannot personally enforce, nor be bound by, contracts on behalf of principal [Section 230]:**

In the absence of any contract to that effect, an agent cannot personally enforce contracts entered into by him on behalf of his principal, nor is he personally bound by them. He can neither sue nor be sued on contracts made by him on his principal's behalf.

# Termination of Agency





# **When the agency is irrevocable?**

## **When the agency is coupled with interest**

This is a case where an agent has interest in the subject matter of such agency. Where the agency is coupled with an interest, it does not come to an end even in the case of death or insanity or insolvency of the principal.

## **When an agent has incurred personal liability**

The principal cannot revoke the agency, the agency becomes irrevocable.

## **Where the agent has partly exercised the authority**

Where the agent has partly exercised the authority, and it is irrevocable with regard to liabilities which arises from the acts performed. (section 204)