Unit-9

Contract of Agency – Section 182 of the Indian Contract Act, 1872

The Indian Contract Act, 1872 does **not define the term "Agency"**, but **Section 182** defines the two key parties involved in a contract of agency:

1. Agent:

An **Agent** is a person employed to do any act **on behalf of another** or **to represent another** in dealings with third parties.

2. Principal:

A Principal is the person for whom such an act is done or who is represented by the agent.

Key Features of Agency:

- The agent acts on behalf of the principal.
- The agent's actions create legal obligations for the principal.
- There must be mutual consent between the agent and the principal.
- The principal must be legally capable of entering into a contract.

Test of Agency

To determine whether a relationship qualifies as **Agency**, the following tests are applied:

- ${f l}$. Does the person have the capacity to bind the principal?
 - O If the person's actions create legal obligations for the principal, then he is acting as an agent.
- 2. Can the person establish privity of contract between the principal and third parties?
 - O If the person can make agreements that directly bind the principal with third parties, then there is an agency relationship.

Conclusion:

If the answer to both these questions is **YES**, then the person is considered an **Agent**, and the relationship between them and the principal is one of **Agency**.

Who May Employ an Agent?

According to **Section 183** of the Indian Contract Act, 1872:

Any person who has attained majority (as per the applicable law) and

Who is of sound mind

can appoint an agent.

- **A minor** or
- **A** person of unsound mind

cannot appoint an agent because they lack the legal capacity to contract.

Who May Be an Agent?

According to Section 184 of the Indian Contract Act, 1872:

Any person may become an agent—even a minor or a person of unsound mind can act as an agent.

However, ! as a rule of caution:

- A minor or an unsound person should not be appointed as an agent because they cannot be held liable for misconduct or negligence.
- If such an agent commits a mistake, **the principal will have no legal recourse** against them since they lack the capacity to contract.

Consideration Not Necessary for Agency

Section 185 of the Indian Contract Act, 1872 states that no consideration is required to create an agency.



- The acceptance of the role of an agent itself is considered sufficient.
- Unlike normal contracts that require consideration, an **agency contract is valid even** without any monetary or material benefit.

Example:

If **A appoints B as his agent** to sell a property, **B does not need to receive money or benefits upfront** for the agency relationship to be valid. The act of **B agreeing to act as an agent** is enough.

Creation of Agency

1. Express and Implied Authority [Section 187]

Express Authority

- An authority is said to be **express** when it is given **by words**, either **spoken or written**.
- The principal directly authorizes the agent to act on his behalf.

A gives a written power of attorney to B, allowing him to sell a property. Here, B has express authority to sell the property.

Implied Authority

V Definition:

An authority is said to be **implied** when it is **not expressly given** but is inferred from:

- Circumstances of the case
- Conduct of the parties
- Things spoken or written
- Ordinary course of dealing

Example:

If a person **collects rent** from tenants and **hands it over** to the landlord, he is **acting as an agent** for the landlord by **implied authority**, even though no written agreement exists.

Agency by Estoppel (Section 237 of the Indian Contract Act, 1872)

An **agency by estoppel** arises when a **person is prevented (estopped)** from denying the authority of another as his agent due to his own conduct or representation.

- **Solution** Essentials for Creation of Agency by Estoppel:
- 1 Representation by the Principal The principal must have made a representation (express or implied).
- 2 False Appearance of Authority The representation must state that the agent has authority to do a certain act, even though he actually does not have such authority.
- 3 Inducement of a Third Party The third person must have been induced to believe in the agent's authority because of the principal's representation.
- **Reliance by the Third Party** The third party must have **believed** in the representation and **entered into a contract** on that belief.

Example:

If a company allows a person to act as its purchasing officer and places him in charge of procurement, a seller dealing with him **may assume he has authority**. If the company later denies his authority, the seller can hold the company liable under **agency by estoppel**.

Agency by Necessity

An **agency by necessity** arises when a person, due to an emergency, is compelled to act as an agent **without the principal's express authority** to prevent loss or damage.

- **Second Second S**
- 1 Existence of an Emergency There must be an urgent situation where immediate action is required.
- 2 Impossibility to Communicate with the Principal The agent must be unable to seek instructions from the principal in time.
- 3 Action Taken in Good Faith The agent must act reasonably and in the best interest of the principal.
- 4 Necessity to Protect the Principal's Interest The action must be taken to prevent loss or safeguard property.

A transporter carrying perishable goods (like fruits) finds that his vehicle has broken down. Since he cannot contact the owner, he **sells** the goods to prevent them from rotting. This is a case of **agency by necessity**.

Agent's Authority in an Emergency (Section 189 of the Indian Contract Act, 1872)

Section 189 states that an agent has the authority **to take necessary actions in an emergency** to protect the principal from loss, just as a **prudent person** would act in similar circumstances.

- Conditions for a Valid Agency in an Emergency:
- 1 Existence of an Emergency A sudden situation must arise where immediate action is required.
- **2** Impossibility of Communication The agent must be unable to contact the principal in time for instructions.
- 3 Act in Good Faith The agent must act honestly and with reasonable care.
- 4 Necessity to Protect Principal's Interest The agent's action should be aimed at preventing loss or safeguarding the principal's goods, business, or reputation.

Example:

A shipping agent transporting goods by sea finds that due to a storm, the ship needs to be lightened. If the agent **throws some goods overboard** to save the rest, he is acting under **Section 189**, and his actions are legally justified.

Agent's Authority in an Emergency (Section 189 of the Indian Contract Act, 1872)

For an agent to exercise authority in an emergency, the following conditions must be fulfilled:

- 1 Lack of Opportunity to Communicate The agent must be unable to contact the principal within the available time.
- **Existence of a Commercial Necessity** There must be an **actual and definite necessity** requiring urgent action.
- 3 Good Faith & Benefit of the Principal The agent must act honestly and in the best interest of the principal.
- 4 Reasonable & Practicable Action The agent must choose the best possible course under the given circumstances.
- 5 Possession of Principal's Goods The agent must be in possession of goods that belong to the principal and are subject to the contract.

If a warehouse manager notices a fire and sells perishable goods at a reasonable price to minimize loss, this would be a valid use of emergency authority under **Section 189**.

Agency by Operation of Law

Agency by operation of law arises when the law itself considers one person as an agent of another, even if there is no formal agreement between them.

Example:

- Partners in a Firm A partner is considered an agent of the firm for the business of the firm (as per the Indian Partnership Act, 1932).
- Company Directors Directors act as agents of the company when dealing with third parties.
- Legal Guardians Parents or legal guardians act as agents for minors in legal and financial matters.

Effect of Ratification [Section 196]

Meaning of Ratification:

When a person (agent) does an act **on behalf of another (principal) without authority**, the principal has two options:

- 1. Ratify (approve) the act The act is considered valid as if it was done with prior authority.
- 2. **Disown the act** The act is not binding on the principal.

Effects of Ratification:

- The act is treated as if it was originally done with proper authority.
- The principal becomes bound by the agent's actions.
- Ratification can be **express** (clearly stated) or **implied** (through conduct).

Example:

A buys goods on credit for B without B's authority. If B later **accepts the goods** and pays for them, he has **ratified** A's act. Now, B is bound by the contract.

Essentials of a Valid Ratification

For ratification to be legally valid, the following conditions must be fulfilled:

197] Ratification may be Express or Implied [Section 197]

- Express Ratification: When the principal clearly states approval, either orally or in writing.
- **Implied Ratification:** When the principal's **conduct or actions** indicate approval (e.g., accepting benefits from an unauthorized act).

Knowledge Requisite for Valid Ratification [Section 198]

Meaning:

For ratification to be valid, the principal **must have complete and accurate knowledge** of the act being ratified. If the principal's understanding of the situation is **materially defective** (i.e., incomplete or incorrect), the ratification will not be legally valid

***** Example:

A, an agent, purchases goods on behalf of B without B's prior approval. A falsely informs B that the goods were purchased at a discounted price. If B ratifies the purchase based on this **false information**, the ratification will be **invalid** under Section 198.

The Whole Transaction Must Be Ratified [Section 199]

Meaning:

Ratification must be **complete and unconditional**—the principal must either accept the entire transaction or reject it entirely. He **cannot** pick and choose parts that benefit him while discarding the rest.

Key Points:

- **1** No Selective Ratification The principal cannot approve only the profitable aspects of the agent's act while avoiding any burdens or liabilities.
- 2 Must Accept Both Benefits and Liabilities If an agent's act results in both a profit and a loss, the principal must accept both if he wishes to ratify.
- **Ensures Fairness** This rule prevents unfair advantage to the principal while protecting the interests of third parties involved in the transaction.

***** Example:

A, acting as B's agent without prior authorization, purchases **100 bags of wheat** at ₹500 per bag. Later, the price of wheat rises to ₹600 per bag.

- B cannot ratify only 50 bags at the old price and reject the rest.
- B must either accept the full 100 bags or reject the transaction entirely.

Ratification Cannot Injure Third Person [Section 200]

Meaning:

The principle of **ratification** applies only when it does not harm the rights of third parties. If a third party has acquired certain rights in the intervening period between the agent's unauthorized act and the principal's ratification, the **ratification will not be valid**.

Key Points:

- **No Retrospective Effect on Third Parties** Ratification cannot operate **back in time** to invalidate any rights that a third party has legally acquired before the ratification.
- **2 Protects Third-Party Interests** Ensures fairness in transactions and prevents harm to innocent third parties.

📌 Example:

A, without B's authority, **sells B's house** to C on January 1. On January 10, B ratifies the sale. However, on January 5, C had already sold the house to D.

• Since D acquired legal ownership before B's ratification, B's ratification cannot take away D's rights.

Ratification Within Reasonable Time & Communication of Ratification

♦ 1. Ratification Must Be Made Within a Reasonable Period of Time

- A principal cannot delay ratification indefinitely.
- It must be done within a reasonable time, depending on the nature of the transaction.
- If ratification is **too late**, it may become invalid, especially if circumstances have changed significantly.

X Example:

A sells B's goods without permission. B learns about the sale but does not respond for six months. If the market price drops, B **cannot ratify the sale later** to avoid loss.

♦ 2. Communication of Ratification

- The **principal must inform the other party** about the ratification.
- Until communicated, **ratification is not complete**.
- If the third party is unaware, they may assume that the agent had **no authority**, which could lead to legal disputes.

X Example:

A contracts with C on behalf of B without authority. B later ratifies the contract but does not inform C. If C cancels the contract before learning about ratification, **B cannot enforce it**.

Act to Be Ratified Must Be Valid

V Key Principle:

For an act to be ratified, it must be legally valid at the time it was performed. If the act is illegal, void, or against the law, it cannot be ratified later.

X Example:

A, pretending to be B's agent, forges B's signature on a contract. Later, B tries to **ratify** the contract. **This is not possible**, as forgery is illegal. Agent's Authority in Normal Circumstances [Section 188]

♦ General Principle:

An agent, when given authority to perform an act or conduct a business, also has the **implied authority** to do everything **lawful and necessary** to complete that act or business.

W Key Aspects:

- 1 Authority to Do What Is Necessary If an agent is authorized to do an act, he can also do all lawful things necessary to complete that act.
- 2 Authority in Business Operations If an agent is authorized to run a business, he can take all usual and lawful actions needed to operate it.

***** Examples:

- If an agent is authorized to **sell goods**, he can also **advertise**, **negotiate**, **and deliver the goods**.
- If an agent is given authority to manage a shop, he can hire employees, buy stock, and make payments necessary for the business.

When an Agent Cannot Delegate [Section 190]

♦ General Rule:

An agent **cannot lawfully delegate** his authority to another person unless:

- 1 Custom of Trade Allows It If it is a usual business practice to appoint a sub-agent.
- 2 Nature of Agency Requires It If the agent is unable to perform the task alone due to its nature.

📌 Example:

- If A appoints B to negotiate a contract, B cannot delegate this responsibility unless the trade practice allows it.
- However, if A appoints B to transport goods, B can hire a driver because it is necessary for carrying out the task.

Definition of a Sub-Agent [Section 191]

♦ Who is a Sub-Agent?

A sub-agent is **appointed by the original agent** and **works under his control** in handling the principal's business.

X Example:

• A (principal) appoints B (agent) to manage his factory. If B hires C as a supervisor, then C is a **sub-agent**.

Exceptions Where an Agent Can Appoint a Sub-Agent

- **General Rule:** An agent cannot delegate unless the case falls under certain exceptions.
- **V** Exceptions (When an Agent Can Appoint a Sub-Agent):
- When the Principal Allows It
 - If the principal **expressly or impliedly permits** the agent to appoint a sub-agent, then delegation is valid.
- Custom of Trade
 - If it is **common practice in the trade** to appoint sub-agents, then delegation is allowed.
 - Example: A real estate agent hiring brokers to assist in selling a property.

3 Unforeseen Emergency

- If an emergency arises, making delegation necessary to protect the principal's interests.
- Example: An agent managing a warehouse falls sick and must appoint someone to handle urgent deliveries.

X Key Impact:

• In these cases, the **sub-agent becomes directly responsible** to the **principal** and is not just under the original agent's control.

Representation of Principal by a Properly Appointed Sub-Agent (Section 192)

When a sub-agent is **properly appointed** under the exceptions mentioned earlier, the following legal effects arise:

- 1 Principal's Liability to Third Parties
 - The **principal is liable** for all the lawful acts of the sub-agent.
 - The sub-agent's actions are considered as if they were done by the principal himself.

2 Agent's Responsibility for Sub-Agent

• The **original agent is responsible** to the principal for the sub-agent's acts.

• If the sub-agent commits mistakes or negligence, the **agent is accountable** to the principal.

3 Sub-Agent's Liability to Principal

- The **sub-agent** is **responsible to the agent** (not directly to the principal).
- Exception: If the sub-agent commits **fraud or willful misconduct**, then he becomes directly liable to the principal.

X Example:

A travel agency (Agent) appoints a local tour guide (Sub-Agent) for a client (Principal).

- If the guide mismanages the trip, the travel agency (Agent) is responsible to the client (Principal).
- If the guide **cheats** the client, then the client (Principal) can directly take legal action against the guide.

Agent's Responsibility for Sub-Agent Appointed Without Authority (Section 193)

If an agent appoints a sub-agent without proper authority, the legal consequences are:

1 Agent's Full Responsibility

- The **agent alone** is responsible for the sub-agent's acts, both to the **principal** and to **third parties**.
- If the sub-agent makes a mistake or causes harm, the principal can **only hold the agent liable**, not the sub-agent.

Principal is Not Liable

- The **principal is not responsible** for any acts of the sub-agent.
- Since the sub-agent was appointed **without permission**, the principal has **no legal connection** with them.

3 Sub-Agent's Limited Liability

- The **sub-agent** is **not answerable** to the principal.
- He is **only answerable to the agent** who appointed him.

***** Example:

A company (Principal) hires a marketing manager (Agent) to run its advertising campaigns. Without permission, the manager hires a freelancer (Sub-Agent) to handle social media.

- If the freelancer posts misleading ads, the company (Principal) cannot sue the freelancer directly.
- The marketing manager (Agent) is fully responsible for any harm caused.
- The freelancer (Sub-Agent) is **only answerable to the manager**, not the company.

Substituted Agent vs. Sub-Agent

⊀ Substituted Agent

A substituted agent is a person appointed by the agent to act directly on behalf of the principal, with the knowledge and consent of the principal.

- The substituted agent is not a sub-agent.
- The **substituted agent directly works for the principal** and is considered an **agent of the principal**.

★ Key Differences Between Sub-Agent & Substituted Agent

Feature	Sub-Agent	Substituted Agent
Appointed by	Agent	Agent (but with principal's
Works for	Agent	Principal
Principal's liability	Principal is liable only if sub-agent was properly appointed	Principal is always liable
Responsibilit y	Sub-agent is answerable to the agent	Substituted agent is answerable to the principal

📌 Example:

A company (Principal) hires a lawyer (Agent) for a court case. The lawyer **needs expertise in taxation**, so he appoints a **tax consultant** (Substituted Agent) with the principal's consent. The tax consultant works **directly for the company**, not for the lawyer.

Relation Between Principal and a Person Duly Appointed by an Agent [Section 194]

Key Points:

- 1. If an agent has **express or implied authority** to appoint another person to act in the business of the agency, that person **does not become a sub-agent**.
- Instead, that person is treated as a direct agent of the principal for the specific work assigned.
- 3. The **principal is directly responsible** for the acts of this newly appointed agent.

📌 Example:

- ♦ A company (Principal) hires a **legal advisor** (**Agent**) to handle corporate legal matters. The legal advisor, **with the company's approval**, appoints a **tax expert** to handle tax-related cases.
- The tax expert is **not a sub-agent** but a **direct agent of the company** for tax-related matters.
- ♦ The company (Principal) will be **liable** for the tax expert's actions, just as it is for the legal advisor.

Agent's Duty in Naming a Substituted Agent [Section 195]

Key Points:

- 1. When an **agent appoints another agent** for the principal, he must exercise **reasonable care** and **prudence** in selecting that person.
- 2. The agent must choose someone **competent and reliable**, just as an **ordinary prudent person** would do in their own case.
- 3. If the agent **fulfills this duty** and still the substituted agent commits a mistake or negligence, the original agent **will not be held responsible** for those acts.
- 4. However, if the agent **fails to choose wisely**, he will be **liable** for any losses caused by the substituted agent's negligence.

X Example:

- ♦ A business owner (Principal) hires a manager (Agent) to run operations.
- The manager hires an accountant to handle financial records.
- → If the manager **carefully selects** a qualified and experienced accountant, but the accountant later makes a mistake, the manager **won't be held responsible**.
- ♦ However, if the manager **carelessly appoints** an unqualified accountant, leading to financial loss, then the manager **will be liable** for negligence.

Difference between Sub-Agent and Substituted Agent

S. N	Sub-Agent	Substituted Agent
1	Works under the control and direction of the agent .	Works under the instructions of the principal .
2	The agent delegates a part of his duties to the sub-agent.	The agent does not delegate any part of his work.
3	No direct contract (privity of contract) between the principal and sub-agent.	Direct contract (privity of contract) exists between the principal and substituted agent.
4	The sub-agent is responsible only to the agent , not directly to the principal.	The substituted agent is directly responsible to the principal.
5	The agent is responsible for the acts of the sub-agent.	The agent is not responsible for the acts of the substituted agent.
6	The sub-agent cannot claim remuneration from the principal.	The substituted agent can claim remuneration from the principal.
7	Sub-agents may be appointed improperly , making their appointment voidable.	Substituted agents must always be properly appointed.
8	The agent remains liable for the sub-agent's acts throughout the sub-agency.	The agent's duty ends once he has appointed the substituted agent.

Duties and Obligations of an Agent

1. Duty to Follow Instructions or Customs (Section 211)

- The agent **must** conduct the business as per the **directions** given by the principal.
- If no specific directions exist, the agent should follow the **customs** of that particular trade or location.
- If the agent **fails** to do so:
 - o **Loss**: The agent must **indemnify** the principal for any loss.
 - o **Profit**: If any profit is made, the agent must **account for it** and pass it to the principal.

Agent's Duty to Communicate with Principal (Section 214)

- In cases of **difficulty or uncertainty**, the agent must:
 - O Use **reasonable diligence** to communicate with the principal.
 - O Seek clear instructions before taking action.

♦ Why is this important?

- Ensures that the agent does not take actions that might go **against the principal's interests**.
- Helps in avoiding misunderstandings and possible financial losses.

Duty of Reasonable Care and Skill (Section 212)

- An **agent must** conduct the principal's business with:
 - o Reasonable skill common to others in the same profession.
 - o **Due diligence and care** to protect the principal's interests.
- Exception: If the principal is aware that the agent lacks skill and still appoints him, the agent cannot be held liable for lack of expertise.
- **♦ Key takeaway:** The agent must act **prudently and competently**, just like any other professional in the same field.

Agent's Liability for Negligence or Misconduct (Section 212 - Continued)

- An agent must:
 - Act with reasonable diligence.
 - Use the **skill** that he possesses.
 - Compensate the principal for **direct losses** caused by:
 - Neglect
 - Lack of skill
 - Misconduct
- However, the agent **is not liable** for:
 - X Indirect or remote losses arising due to his negligence or misconduct.

If an agent **forgets to insure goods** and they get **damaged**, he is liable. But if the loss leads to **future business losses**, he won't be responsible for those.

Duty to Render Proper Accounts (Section 213)

X Obligation of the Agent:

An agent must maintain and present accurate accounts to the principal whenever demanded.

Key Aspects:

- The agent **cannot just show** the accounts; he must provide **proper supporting vouchers** (bills, receipts, invoices, etc.).
- If the agent **fails to maintain proper records**, he may be held liable for any loss or discrepancies.
- If there is a dispute, the agent must prove that he handled the principal's funds correctly.

Example:

If an agent collects ₹50,000 from a customer on behalf of the principal, he must provide a receipt or bank statement as proof when asked.

Duty Not to Deal on His Own Account (Self-Interest) – Section 215

⊀ Key Obligation:

An agent must **not** act in his **own interest** while conducting business on behalf of the principal **without prior consent**.

⊀ If the Agent Violates This Duty:

- 1 The Principal Can Repudiate (Cancel) the Transaction If the agent buys or sells goods for himself instead of the principal, the principal can reject the deal.
- **The Principal Can Claim the Agent's Profits** If the agent makes a profit by misusing his position, the principal can demand that profit.

Example:

If an agent is asked to buy land for the principal but secretly buys it in his own name and later sells it at a higher price, the principal can either **cancel the sale** or **claim the extra profit** made by the agent.

Duty Not to Make Secret Profits – Fiduciary Responsibility

⊀ Key Principle:

An agent **must not** earn any **secret profit** beyond the agreed commission or remuneration while acting on behalf of the principal.

⋠ Why?

The relationship between the **principal and agent is fiduciary** (based on trust and good faith). The agent must act in **absolute honesty** and prioritize the principal's interests

Duty Not to Delegate – Section 190

General Rule:

An **agent cannot delegate** his authority or duties to another person. The principal **appoints the agent based on trust and confidence**, so the agent must **personally** perform the tasks assigned to him.

Exceptions – When Delegation is Allowed:

An agent can appoint a sub-agent in the following cases:

- **1** By Principal's Consent If the principal expressly allows delegation.
- **2** By Custom of Trade If delegation is common practice in that business.
- 3 By Nature of Work If the task requires special expertise that the agent lacks.
- 4 By Necessity In an emergency where the agent cannot act personally.
- [5] Ministerial Acts If the work is routine or mechanical and does not require personal skill.

📌 What Happens If the Agent Wrongfully Delegates?

- X The agent is responsible for the sub-agent's actions.
- The principal is not liable for the sub-agent's mistakes.
- X The principal can terminate the agency.

Agent's Duty to Pay Sums Received for Principal – Section 218

★ What does it mean?

An **agent must hand over** all the money or property received on behalf of the **principal**. The agent **cannot keep** any part of the amount unless authorized or entitled to deductions.

- **Property** Deductions Allowed:
- **Expenses incurred** in carrying out agency work.
- Remuneration/commission agreed upon.
- **⊀** What happens if the agent fails to pay?
- igwedge The **principal can sue** the agent for recovery.
- X The agent may have to pay interest on delayed payments.

Duty Not to Use Confidential Information Against the Principal

⊀ What does it mean?

An **agent must not misuse** any confidential information obtained during agency work **for personal gain** or to **harm the principal**.

- 📌 Examples of Confidential Information:
- Business secrets (trade formulas, strategies, pricing policies).
- Customer databases.
- Upcoming deals or projects.
- **Consequences of Breach:**
- X Termination of agency by the principal.
- **X** Legal action for damages.
- X Injunction to stop the agent from using confidential information.

Rights of an Agent – Section 217

₹ Right to Retain Out of Sums Received on Principal's Account

An agent has the right to deduct certain amounts from the money received on behalf of the principal before handing it over.

What Can an Agent Retain?

- Reimbursement for Advances If the agent has spent money from his own pocket for the business.
- Reimbursement for Expenses Any properly incurred expenses while conducting the principal's business.
- **Remuneration/Commission** The agreed payment for the agent's services.

Example:

- ◆ Suppose an agent collects ₹50,000 on behalf of the principal.
- \bullet He has spent 75,000 on business-related expenses.
- \rightarrow His commission is $\boxed{10,000}$ as per the agreement.
- \bullet He can retain $\pm 15,000$ ($\pm 5,000 + \pm 10,000$) and pay the remaining $\pm 35,000$ to the principal.

What if the Principal Refuses to Pay?

- X The agent can withhold further payments until his dues are cleared.
- X The agent can take legal action for unpaid remuneration.

Right to Remuneration – Section 219

An agent is entitled to be paid for his services.

When Does an Agent Get Remuneration?

- As per Contract If the principal and agent have agreed on a specific amount, that will be paid.
- As per Custom If no fixed amount is agreed upon, the agent is entitled to the customary commission or fees generally paid in that type of business.

Key Points to Remember:

- ◆ The agent's right to remuneration arises only when he completes his assigned work unless otherwise agreed.
- → If the agent **does not complete the work** due to his own fault, he may lose his right to remuneration.
- The principal cannot refuse to pay if the agent has lawfully completed his duty.

Example:

- ← A real estate agent helps sell a house and is supposed to get 2% commission as per the agreement.
- \leftarrow If the house sells for ₹50 lakhs, the agent is entitled to ₹1 lakh as remuneration.
- _____ If there was no contract but the market rate is 1.5%, he can still claim ₹75,000 based on business customs.

Agent's Lien on Principal's Property – Section 221

🖈 An agent has a right to retain the principal's property until his dues are cleared.

What Can the Agent Retain?

- Goods received from the principal
- Documents (papers, agreements, contracts, etc.)
- Movable or immovable property of the principal

Conditions for Exercising Lien:

- ◆ **Agent must have a lawful claim** The agent should be entitled to commission, reimbursement, or payment for services.
- Only for due amounts The agent can retain the property only to the extent of unpaid dues.
- ◆ No contract restricting lien If there is an agreement stating that the agent cannot exercise lien, then he cannot retain the property.

- ← A **shipping agent** receives goods from a manufacturer to send abroad.
- The manufacturer has not paid the agent's commission and expenses.
- The agent can **refuse to release the shipment** until his dues are paid.

Important Conditions for Exercising Lien (Section 221)

The agent's right to retain the principal's property is subject to specific conditions:

1 Property Must Belong to the Principal

- The agent can only retain goods, papers, or property **owned by the principal**.
- If the property belongs to a third party, the agent **cannot exercise lien** over it.

Property Must Be Received in the Course of Agency

- The property should have been received while performing duties as an agent.
- If the agent acquires it for personal reasons, lien cannot be exercised.

3 No Unlawful Possession

- The agent must have obtained possession legally.
- If the agent takes the property by fraud, coercion, or any illegal means, he cannot claim a lien.

X Example:

If a **travel agent** unlawfully takes a customer's passport to demand extra fees, he **cannot claim** a **lien**.

If a warehouse agent stores goods for a client and the client fails to pay storage fees, the agent can exercise lien over the goods.

When an Agent Loses the Right to Lien (Section 221)

An agent's **right to lien** over the principal's property **is lost in the following cases:**

1 Loss of Possession

- If the agent **voluntarily or involuntarily loses possession** of the property, his right to lien **comes to an end**.
- Example: If an agent returns the goods to the principal, he cannot later claim lien over them.

Waiver of Lien

- If the agent waives his right to lien, either expressly or impliedly, he loses the right permanently.
- Example: If an agent agrees in writing that he will not exercise lien, he cannot later claim it

3 Existence of a Contract to the Contrary

- If the principal and agent agree that the agent will not have lien, then the agent cannot claim it.
- Example: If a contract between a warehouse owner and a company states that the warehouse owner cannot hold goods for non-payment, the owner loses the right to lien.

Key Takeaway:

The **right to lien is not absolute** and can be lost due to **possession loss**, **waiver**, **or contractual terms**.

Right to Indemnity (Section 222) - Right of Indemnification for Lawful Acts

📌 Meaning:

The **principal is legally bound** to indemnify (compensate) the agent for any **loss**, **damage**, **or legal consequences** that arise due to lawful acts done by the agent in the course of agency.

Key Points:

✓ Lawful Acts Covered

- Any action taken by the agent within the scope of his authority.
- The act must be **legal and done in good faith** for the benefit of the principal.

V Principal's Obligation ■

• The principal **must compensate the agent** for losses incurred while acting on his behalf.

Example:

• A **cargo agent** arranges the transportation of goods as per the principal's instructions. If the agent has to **pay extra shipping charges due to sudden price hikes**, the **principal must reimburse** the agent for that amount.

Right of Indemnification Against Acts Done in Good Faith (Section 223)

📌 Meaning:

If an agent **acts in good faith** while carrying out the principal's instructions, the **principal must indemnify** (compensate) the agent for any **loss or damage** that may arise.

Key Points:

Act Must Be in Good Faith

- The agent must have acted **honestly and with genuine belief** that the act was lawful.
- Even if the act later turns out to be **wrongful**, the agent is still entitled to indemnification **as** long as he acted in good faith.

V Principal's Responsibility

- The principal **cannot refuse indemnity** just because the act resulted in loss.
- The only exception is if the act was illegal and the agent knew it.

• A land broker sells a property based on documents provided by the principal. Later, it is found that the documents were fake. Since the broker acted in good faith, the principal must indemnify the agent for any financial or legal consequences.

Non-Liability of Employer for Criminal Acts (Section 224)

Meaning:

If a principal **orders an agent** to commit a **criminal act**, the **principal is not responsible** for indemnifying (compensating) the agent for any loss or punishment resulting from that act.

Key Points:

X No Indemnity for Criminal Acts

- Even if the principal **promises** to compensate the agent for committing an **illegal act**, such a promise is **not enforceable**.
- The **agent alone** will be held liable for any **criminal liability**.

X Employer Cannot Escape Criminal Liability

- While the agent is personally liable, this does **not mean** that the principal is **completely free from legal consequences**.
- If the **principal is found guilty** of abetting the crime, he may also **face punishment** under criminal law.

Example:

- A boss instructs his employee to forge company accounts to evade taxes.
- The employee follows orders and is caught.
- The **boss refuses to compensate** him for legal fines and penalties.
- The law does not allow the agent to claim indemnity, as the act itself was criminal.

Right to Compensation for Injury Caused by Principal's Neglect (Section 225)

📌 Meaning:

If an agent suffers an injury due to the principal's negligence or lack of skill, the principal must compensate the agent for the loss suffered.

Key Points:

🔽 Duty of Care by Principal

- The principal must **ensure** that the agent is **not exposed to unreasonable risks** while performing the agency duties.
- If the principal **fails to take proper precautions**, and the agent **suffers injury or damage**, the agent is **entitled to compensation**.

▼ Negligence or Lack of Skill

• The principal is responsible if the damage occurs due to lack of expertise, improper instructions, or failure to provide a safe working environment.

Example:

- A company **appoints an agent** to transport fragile goods but **fails to provide proper packaging**.
- During transportation, the agent gets **injured** while handling the damaged goods.
- The company (principal) is **liable to compensate** the agent for the injury.

Principal's Liability for the Acts of the Agent (Section 226)



A principal is bound by the acts of his agent if they are done within the scope of the agent's authority. This means that the agent's actions, when performed as per the authority given, are legally binding on the principal.

Key Points:

✓ Acts within Authority

- If an agent acts within the actual or apparent authority, the principal is liable for those acts.
- Even if the act is **unauthorized initially**, the principal can **ratify** (**approve**) it later.

Example:

1 Authorized Act:

- A **sales agent** is given the authority to sell products at a fixed price.
- If the agent sells the product at that price, the **principal is bound** to honor the contract.

Principal's Liability When Agent Exceeds Authority (Section 227)



If an agent **performs an act that exceeds his authority**, only the part of the act **within his authority** is binding on the principal. The **excess part**, which is beyond his authority, **does not bind the principal** unless the two parts **cannot be separated**.

Key Points:

Separable Acts:

• If the agent's action **consists of two parts**—one **authorized** and one **unauthorized**, the principal is **bound only by the authorized part**.

• The unauthorized part does not affect the principal unless he chooses to ratify it.

Principal Not Bound When Excess of Agent's Authority is Not Separable (Section 228)

Meaning:

If an agent exceeds his authority and the authorized and unauthorized parts cannot be separated, the principal is not bound at all. The entire transaction is invalid unless the principal chooses to ratify it.

Key Points:

✓ Indivisible Transaction:

• If the agent **performs a single act** that includes both **authorized** and **unauthorized** parts, and they **cannot be separated**, the **principal is not bound** by any part of it.

🔽 No Legal Obligation on Principal:

• The third party **cannot force the principal** to accept any part of the transaction.

V Only Ratification Can Make It Binding:

- If the principal wants to accept the transaction, he must ratify it entirely.
- Otherwise, he can **reject it completely**.

Example:

X Indivisible Act (Principal Not Bound):

- A principal **authorizes** his agent to **sell 5 acres of land** for ₹50 lakh.
- The agent sells 10 acres for $\mathbb{T}1$ crore without permission in a single contract.
- Since the deal cannot be separated into authorized and unauthorized parts, the principal is not liable at all.
- The buyer cannot force the principal to sell 5 acres only.

Consequences of Notice Given to Agent (Section 229)

Meaning:

When a third party gives notice or shares information with an agent, it is legally treated as if the principal himself received it—provided the notice is related to the business the agent is conducting for the principal.

Why is this Important?

- Prevents **principals from escaping liability** by claiming ignorance.
- Ensures **transparency** in business transactions.
- Protects **third parties** from unfair treatment by principals.

✓ Principal is Bound:

- A bank manager (agent) receives a loan repayment default notice for a customer.
- The bank (principal) **cannot later claim** that it did not receive the notice.
- A property broker (agent) is informed that a house for sale has legal disputes.
- The **owner** (**principal**) is considered to have been informed, even if the agent does not tell him.

Principal's Liability for Agent's Fraud, Misrepresentation, or Torts (Section 238)

Meaning:

If an agent commits fraud or makes a misrepresentation while acting within the scope of his authority, the principal is held liable as if he committed the fraud or misrepresentation himself.

However, if the fraud or misrepresentation occurs **outside the agent's authority**, the principal **is not liable**.

Examples:

V Principal is Liable:

- A sales agent misrepresents product quality to a customer to increase sales. The company (principal) is responsible for any legal consequences.
- A real estate agent commits fraud by selling land on behalf of a property owner using fake documents. The owner may be held liable if the agent was acting within the scope of his duties.

Agent Cannot Personally Enforce or Be Bound by Contracts (Section 230)

⊀ General Rule:

An agent who enters into a contract on behalf of the principal cannot personally enforce it or be held liable for it. The contract is between the principal and the third party, not the agent.

Example Cases

✓ Agent Not Liable:

• A broker signs a contract **for buying land** on behalf of a real estate firm. If the firm **fails to pay**, the broker **cannot be sued** because he acted as an agent.

Agent's Liability in Contracts for a Foreign Principal

General Rule:

When an **agent enters into a contract** for the **sale or purchase of goods** on behalf of a **foreign principal**, the law presumes that the **agent is personally liable** for the contract's performance.

≯ Why?

Since the **principal is not locally present**, the third party may have no direct way to enforce the contract against the principal. To **protect the third party**, the agent is **held personally responsible** unless:

- 1 The contract **expressly states** that the agent is **not liable**.
- 2 The third party **knows about the foreign principal** and agrees to deal with him directly.

Example Cases

Agent Personally Liable:

• An Indian agent contracts with a local seller **to buy machinery** for a UK-based company. If the **UK company refuses to pay**, the seller **can sue the agent** in India.

Agent's Liability When the Principal is Undisclosed

⊀ General Rule:

When an **agent does not disclose** the name of his principal while entering into a contract, the law presumes that **the agent is personally liable** for fulfilling the contract.

★ Why?

Since the third party **does not know who the actual principal is**, they **assume** they are dealing **directly with the agent**. This protects the third party from potential risks.

Example Scenarios

Agent Liable (Undisclosed Principal):

• A business consultant **signs a lease** for an office space but **does not mention** that he is acting for a startup client. If the rent is unpaid, the **landlord can sue the consultant personally**.

Key Takeaways

- ♦ If an agent does not disclose the principal, the agent is presumed liable.
- ◆ If the third party later **discovers the principal**, they **can choose to sue either**.
- To avoid liability, an agent must clearly disclose the principal's name at the time of contract.

Agent's Liability When the Principal is Non-Existent or Incompetent

⊀ General Rule:

If an agent enters into a contract on behalf of a principal who does not exist or is legally incompetent, the agent is personally liable for the contract.

Example Scenarios

- Agent Liable (Company Not Incorporated Yet)
 - An agent signs a **rental agreement** on behalf of a startup that is **not yet registered**.
 - If the startup is **never incorporated**, the **landlord can sue the agent personally** for unpaid rent.

Pretended Agent – Liability Explained

% Who is a Pretended Agent?

A **pretended agent** is someone who **acts as an agent** without having any actual authority from the principal. If the **principal disowns** the act and refuses to ratify it, the **pretended agent becomes personally liable**.

Example Scenarios

- Pretended Agent Liable (Principal Disowns Act)
 - A person **signs a contract** on behalf of a company without approval.
 - The company **rejects the contract** and refuses to recognize it.
 - The third party can sue the person who signed for damages.

Agent Exceeding Authority – Personal Liability



If an **agent exceeds his authority** and misleads a third party into believing that he has the necessary power, then the agent can be held **personally liable** for **breach of warranty of authority**.

Liability of Agent to Third Parties

Rights of Third Parties in a Contract Made by an Undisclosed Agent (Section 231)

★ What is an Undisclosed Agency?

An **undisclosed agency** situation arises when an agent enters into a contract **without informing the third party** that they are acting on behalf of a principal. The third party believes they are dealing directly with the agent.

Legal Implications Under Section 231

1. Principal Can Enforce the Contract

- Even though the third party was unaware of the principal's existence, the **principal can step** in and enforce the contract.
- The third party must **perform their obligations** as if the contract was originally made with the principal.

2. Third Party's Rights Against the Principal

- Once the principal is disclosed, the **third party gains the same rights against the principal** that they had against the agent.
- The third party can **demand performance or sue for breach** of contract.

✓ 3. Third Party's Right to Sue Either the Agent or Principal

• Since the third party was unaware of the principal at the time of contract formation, they can choose to hold either the agent or the principal liable.

√ 4. Agent's Personal Liability

- If the principal **refuses to take responsibility**, the **agent remains personally liable** for the contract.
- The agent can then recover from the principal if they acted within their authority.

Example Scenarios:

⊀ Scenario 1: Principal Steps In

- A **broker buys property** without revealing that they are acting for a real estate company.
- Later, the company **reveals itself** and demands that the seller transfers the property to them.
- The seller must complete the sale with the company.

⊀ Scenario 2: Third Party Sues the Agent

- A wholesaler sells goods to an agent, believing they are the actual buyer.
- Later, the agent discloses that they were purchasing for a **hidden retailer**.
- If the retailer refuses to accept the goods, the wholesaler can sue the agent for payment.

Performance of Contract with Agent Supposed to Be Principal (Section 232)

★ What Happens When an Agent Does Not Disclose Their Principal?

If an agent **enters into a contract without revealing** that they are acting on behalf of a principal, the **third party assumes** that they are dealing directly with the agent. Later, if the **principal steps in** and demands performance of the contract, certain rights and obligations arise.

Legal Implications Under Section 232

✓ 1. Principal Can Enforce the Contract

Even though the third party was unaware of the principal's existence, the principal can
demand performance of the contract.

2. Rights of the Third Party Against the Agent

- Since the third party believed they were contracting with the agent, any **pre-existing rights** and obligations between the agent and the third party **remain valid**.
- For example, if the agent made any **misrepresentations or warranties**, the third party can still **hold the agent liable** for those.

🗸 3. Third Party's Right to Refuse Performance

• If the third party can prove that they would not have entered into the contract had they known about the principal, they may have the right to refuse performance (depending on the circumstances).

🔽 4. Agent's Liability Does Not Automatically End

- Even though the principal demands performance, the agent **may still be personally liable** if they:
 - o Exceeded their authority.
 - O Made personal commitments.
 - o Provided warranties beyond the principal's approval.

Example Scenarios:

✗ Scenario 1: Principal Demands Performance

- A **travel agent books luxury hotel rooms** under their own name but actually on behalf of a celebrity.
- The **celebrity later discloses** that they are the real principal and asks the hotel to honor the contract.
- The hotel must **provide the rooms** but can still hold the travel agent responsible for **any personal guarantees** they made.

📌 Scenario 2: Third Party Holds the Agent Liable

- A **stockbroker purchases shares** without revealing that they are buying them for a large investment firm.
- Later, the firm asks the seller to transfer the shares directly to them.
- If the broker had promised additional benefits, the seller can still hold the broker responsible for those.

Performance of Contract with Agent Supposed to Be Principal (Section 232)

📌 What Happens When an Agent Does Not Disclose Their Principal?

If an agent **enters into a contract without revealing** that they are acting on behalf of a principal, the **third party assumes** that they are dealing directly with the agent. Later, if the **principal steps in** and demands performance of the contract, certain rights and obligations arise.

Option to Third Person – Sue the Agent or the Principal (Section 233)

★ When Can a Third Party Choose to Sue the Agent or the Principal?

Under Section 233, if an agent is personally liable, the third party (who entered into a contract with the agent) has the option to sue either:

- 1 The agent
- 2 The principal
- **3** Both the agent and the principal

Situations Where the Agent is Personally Liable

◆ 1. Agent Acts Without Disclosing the Principal

- If the agent does not disclose the principal's identity, the third party assumes they are dealing with the agent directly.
- The third party can later sue **either the agent or the principal** once the principal's identity is revealed.

🔷 2. Agent Contracts for a Foreign Principal

• If an agent enters into a contract on behalf of a **foreign principal**, the law presumes that the **agent is personally liable** unless stated otherwise.

3. Principal is Non-Existent or Incompetent

• If an agent contracts for a principal who **does not exist or is legally incapable** (e.g., a minor), then the agent is personally liable.

♦ 4. Agent Provides Personal Guarantees

• If an agent **personally guarantees** the contract's performance, the third party can sue them directly.

♦ 5. Agent Exceeds Authority

• If an agent **acts beyond the scope of authority**, making the third party believe they have approval, the agent can be sued.

Example Scenarios:

📌 Scenario 1: Undisclosed Principal

- A property broker sells land to a buyer **without mentioning** that they are acting for a real estate company.
- Later, when the company claims ownership, the buyer can choose to sue **either the broker or the company**.

📌 Scenario 2: Foreign Principal

- An **import agent** signs a purchase agreement with a manufacturer but does not clarify that they are acting for a US-based company.
- If the US company refuses to pay, the manufacturer can hold the agent personally liable.

✗ Scenario 3: Non-Existent Principal

- An agent enters into a contract claiming to act on behalf of a startup company that hasn't been legally registered.
- Since the company **does not exist**, the agent is **personally liable** for fulfilling the contract.

Key Takeaways from Section 233:

- If an agent is **personally liable**, the third party can **sue either the agent, the principal, or both**.
- The burden of proof may be on the agent to show that they were acting within their authority.
- If the principal is foreign, undisclosed, incompetent, or non-existent, the agent is liable by default.

Consequence of Inducing Agent or Principal to Act on Belief That Principal or Agent Will Be Held Exclusively Liable (Section 234)

***** What Does Section 234 State?

If a **third party** (who has entered into a contract with an agent) **induces** either:

- 1 The agent to believe that only the principal will be held liable, or
- 2 The **principal** to believe that only the agent will be held liable,

then later, that third party cannot change their stance and hold the other party liable.

Key Implication of Section 234:

- Once a **third party** makes a clear **representation** that they will hold **only one party responsible** (either the agent or the principal), they **lose the right** to later claim liability from the other party.
- This prevents unfair switching of liability and protects both the agent and the principal from unexpected legal actions.

Example Scenarios:

📌 Scenario 1: Third Party Induces the Agent

- A supplier enters into a contract with a company's purchasing manager (agent).
- The supplier **explicitly tells the manager** that only the company (principal) will be held responsible for payment.
- Later, if the company defaults, the supplier **cannot sue the manager personally** because they **already assured** the manager that only the company was liable.

✗ Scenario 2: Third Party Induces the Principal

- A client signs a contract with a freelancer (agent) working under an agency (principal).
- The client **explicitly assures** the agency that they will deal **only with the freelancer** for any issues.
- Later, if the freelancer fails to complete the work, the client **cannot sue the agency** because they **already waived liability** from the agency.

Key Takeaways from Section 234:

- **Prevents unfair shifting of liability** after a contract is made.
- Protects both agents and principals from unexpected legal claims.
- Once a third party **explicitly** agrees to hold only one party liable, they **cannot change their** stance later.

Here's a structured presentation of "Personal Liability of Agent to Third Parties" in a concise format:

Here's an improved version of the **Revocation of Authority** presentation with more clarity and structure:

Revocation of Authority

Meaning:

Revocation of authority refers to the termination of an agent's power by the principal before the agent fully exercises it.

♦ Legal Provision (Section 203):

- The principal **can revoke** the authority of an agent **before** it is exercised.
- However, if the authority is **partly exercised**, revocation **is not allowed** for acts already done.

♦ Modes of Revocation:

- **1. Express Revocation** Directly informing the agent.
- **2. Implied Revocation** Actions that indicate withdrawal of authority.
- **3. By Operation of Law** Death, insanity, or insolvency of either party.

Effects of Revocation:

- ✓ The agent loses the right to act on behalf of the principal.
- ✓ Third parties must be notified to avoid disputes.

Exceptions (When Revocation is Not Allowed):

- Name of the State of the Agency If the agent has an interest in the subject matter.
- Natially Executed Authority Revocation is not valid for completed acts.

Renunciation by Agent (Section 206)

Meaning:

An agent can renounce (resign from) the agency just as the principal can revoke the authority.

Key Provisions:

- If the agency is for a **fixed period**, premature renunciation **without sufficient cause** requires the agent to **compensate** the principal. [Section 205]
- The agent **must give reasonable notice** before renouncing the agency.
- The **length of notice** depends on the same principles as revocation by the principal.
- If the agent renounces without proper notice, he must compensate for any resulting damage.

Termination of Agency

♦ Ways an Agency is Terminated:

- **Completion of Business:** Agency ends automatically when its purpose is fulfilled. Example: An agent appointed to sell goods loses authority once the sale is completed.
- **Death or Insanity:** Agency terminates if the principal or agent dies or becomes insane. The same applies to company liquidation or partnership dissolution. Acts done before death remain valid.
- 3 Principal's Insolvency: If the principal is declared insolvent, the agency comes to an end.
- **Expiry of Time:** If an agency is for a fixed period, it automatically ends when the term expires, regardless of whether the purpose is achieved.

♦ When is an Agency Irrevocable? (VVV Imp)

An agency becomes **irrevocable** when the agent has a **personal interest** in the subject matter.

As per Section 202:

- If the agent has an **interest in the property** related to the agency, the principal **cannot terminate** the agency unless there is an express contract allowing it.
- Revocation should not harm the agent's **vested interest** in the subject matter.
- Example: If an agent is given authority to sell goods and has advanced money against them, the principal **cannot revoke** the agency to the agent's disadvantage.

♦ Effects of Termination (Section 208)

- **When does termination take effect?**
- 1 For the Agent:
 - Termination is effective only **when the agent comes to know** about it.
- For Third Parties:
 - Termination is effective **only when third parties become aware** of it.
- Example: If an agent enters into a contract **without knowing** that his authority has ended, the contract is **still valid** for third parties.

◆ Agent's Duty on Termination due to Principal's Death or Insanity (Section 209)

- If the principal dies or becomes insane, the agent must:
- 1 Protect and preserve the principal's property.
- 2 Act in the best interest of the principal's legal representatives.

♦ Termination of Sub-Agent's Authority (Section 210)

When an agent's authority ends, the sub-agent's authority also automatically ends unless stated otherwise.