

# ICA- UNIT-9 “AGENCY”

## Definition of Agent

An **Agent** is a person who is employed to do any act for another person or to represent another in dealings with third persons.

---

## Definition of Principal

The **Principal** is the person for whom such act is done, or who is so represented by the agent.

---

## Rule of Agency (Legal Maxim)

The law of agency is founded upon the maxim: “**Qui facit per alium, facit per se**”, which means: “*He who acts through another is deemed to act himself.*”

Hence, the act done by the agent within the scope of his authority is considered to be the act of the principal.

---

## Who May Employ an Agent (Section 183)

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

“*Any person who has attained the age of majority and who is of sound mind may employ an agent.*”

Therefore, a **minor** or a **person of unsound mind** cannot appoint an agent.

---

## Who May Be an Agent (Section 184)

As per **Section 184 of the Indian Contract Act, 1872**,

“*Any person may become an agent.*”

Even a **minor** or a **person of unsound mind** may be appointed as an agent, and in such cases, **the principal shall be bound by the acts** of such agent.

---

## CREATION OF AGENCY

The relationship of **Principal** and **Agent** may be created in any of the following ways. The **authority** of an agent may be either **Express** or **Implied**.

---

## Express Authority

An **authority is said to be express** when it is **given by words**, whether **spoken or written**.

---

## Implied Authority

An **authority is said to be implied** when it is **inferred from the circumstances of the case**. For example, if a person collects rent and gives it to the landlord, he is **impliedly acting as an agent** of the landlord.

### Implied Agency Includes:-

#### 1. Agency by Estoppel [Section 237]:

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

According to section 237 of the Contract Act, an agency by estoppel may be created when following essentials are fulfilled:

1. The **principal must have made a representation**;
2. The **representation may be express or implied**;
3. The **representation must indicate that the agent has authority** to perform certain acts, although in reality, he has no such authority;
4. The **principal must have induced the third party** by such representation;
5. The **third party must have relied upon such representation** and entered into the contract based on that belief.

Example 7:

If Piyal (the principal) has, for several months, allowed Sunil to purchase goods on credit from Prasad and has made payment for those goods, Piyal cannot later deny liability to pay Prasad, who supplied goods under the belief that Sunil was acting as Piyal's agent. Piyal is estopped from denying the agency, as he had previously allowed Prasad to act under the impression that Sunil was authorised.

---

#### 2. Agency by Operation of Law

This form of agency arises when the **law recognises a person as an agent of another** due to their legal relationship.

For example, a **partner is deemed to be the agent of the firm** for all acts relating to the **business of the firm**.

---

### 3. Rights of Person as to Acts Done Without Authority and Effect of Ratification [Section 196]

Where acts are performed **by one person on behalf of another**, but **without his knowledge or authority**, then latter he may either:

- **Elect to Ratify** the act, or
- **Disown** the such acts;.

If he **ratifies**, the legal effect is the same as if the act had been performed **with his prior authority**.

In other words, **ratification** means **approval of a previously unauthorised act**. Ratification may be **express** or **implied from the conduct** of the person on whose behalf the act was done.

---

### 4. Agency by Necessity

An **agency by necessity** arises due to some **emergent and unforeseen circumstances**, a person is compelled to act **without prior authority**, in order to **protect the interest of the principal**. In emergency a person is authorised to do what he cannot do in ordinary circumstances.

Thus, where an agent is authorised to do certain act, and while doing such an act, an emergency arises, In such situations, he acquires an extra-ordinary or special authority to prevent his principal from loss.

---

## □ SUB-AGENTS

### □ GENERAL RULE – Agent Cannot Delegate

[Section 190]

**An** agent cannot lawfully appoint another person **to perform acts which** he has expressly or impliedly undertaken to perform personally, unless:

- Ordinary custom of trade **permits the appointment of a sub-agent**, or
- Nature of the agency **necessarily requires the appointment of a sub-agent**.

## ❖ 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.

□ Legal Maxim: *Delegatus non potest delegare* – A delegate cannot further delegate.

**The contract of agency is fiduciary in nature, i.e., it is based on trust and confidence reposed by the principal in the agent. Hence, a delegate cannot further delegate.**

---

## ❖ EXCEPTIONS 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.
- 

## ❖ REPRESENTATION OF PRINCIPAL BY SUB-AGENT PROPERLY APPOINTED [SECTION 192]

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

## ❖ AGENT'S RESPONSIBILITY FOR SUB-AGENT APPOINTED WITHOUT AUTHORITY [SECTION 193]

- ◆ (1) The agent is responsible for his acts both to the principal and to third persons.
- ◆ (2) The principal is not responsible for the acts of the sub agent.
- ◆ (3) The sub agent is not responsible to the principal at all. He is answerable only to the agent.

**Example 19:** A, a carrier, agreed to carry 60 bags of cotton waste from Morvi to Bhavnagar by a truck. A asked B, another carrier, to carry the goods. The goods were damaged in transit. Held, A was liable even though it was proved that B was the carrier.

---

## ❖ SUBSTITUTED AGENT

► A substituted agent is a person appointed by an agent, with the knowledge and consent of the principal, to act for the principal in the business of the agency. Such an agent is not a sub-agent, but an agent of the principal.

► Where an agent, having express or implied authority to appoint another person to act for the principal in the course of agency, appoints such person accordingly, such person shall be deemed the agent of the principal, and **not a sub-agent**, for the part of the business entrusted to him.

Example 21: 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.

---

## ❖ AGENT'S DUTY IN NAMING SUCH PERSON

In selecting an agent on behalf of the principal, the agent is bound to exercise the same degree of discretion as a man of ordinary prudence would exercise in his own case. If the agent exercises such prudence, he shall not be held liable to the principal for any act or negligence of the person so appointed.

❖ **EXAMPLE 23** A consigns goods to B, a merchant, for sale. B, in due course, employs an auctioneer of good credit to sell the goods of A, and permits the auctioneer to receive the sale proceeds. The auctioneer subsequently becomes insolvent without accounting for the proceeds.

✓ **Held:** B is not liable to A for the proceeds.

---

## ❖ DUTIES AND OBLIGATIONS OF AN AGENT

### ➤ Duty to Follow Instructions or Customs [Section 211]

An agent is bound to conduct the business of the principal in accordance with the directions given by the principal. In the absence of such directions, the agent must act according to the customs prevailing in the business of the same kind at the place where the business is conducted.

If the agent acts otherwise, and the principal suffers any loss, the agent must indemnify the principal. If any profit arises from such conduct, the agent must account for it.

**If**

Agent ≠ Follow Instructions or Prevailing Customs

**Then**

→ Loss to Principal = Agent Must Indemnify Principal

→ Profit to Agent = Agent Must Account to Principal

---

## ➤ Duty of Reasonable Care and Skill [Section 212]

An agent is required to carry out the business of the principal with the degree of skill ordinarily possessed by persons engaged in similar kinds of business, unless the principal is aware of the agent's lack of skill.

The agent must act with reasonable diligence and apply such skill as he possesses. He is liable to compensate the principal for any direct loss resulting from his own neglect, lack of skill, or misconduct.

**If**

Agent ≠ Reasonable Diligence OR Lacks Required Skill OR Misconduct

**Then**

→ Agent = Liable to Compensate Principal for Direct Consequences

---

## ❖ DUTY TO RENDER PROPER ACCOUNTS

An agent is bound to render proper accounts to his principal on demand, and such accounts must be supported by appropriate vouchers.

---

## ❖ AGENT'S DUTY TO COMMUNICATE WITH PRINCIPAL

It is the duty of an agent, in situations involving difficulty, to exercise all reasonable diligence in communicating with the principal and in seeking instructions from him.

---

## ❖ DUTY NOT TO DEAL ON HIS OWN ACCOUNT

An agent should not deal on his own account without first obtaining the consent of the principal. Otherwise, the principal may—

(a) ▲ Repudiate the transaction. (*Section 215*)

(b) ▲ Claim from the agent any benefit which may have resulted to him from the transaction. (*Section 216*)

■ **No Consent + Self-Dealing by Agent ⇒ Principal → [Repudiate Transaction (S.215) || Claim Benefit (S.216)]**

## ❖ EXAMPLE 30

A directs B to sell A's estate. B buys the estate for himself in the name of C. A, on discovering that B has bought the estate for himself, may repudiate the sale if he can show that B has dishonestly concealed any material fact, or that the sale has been disadvantageous to him.

---

### ❖ **Duty Not to Make Secret Profits**

It is the duty of an agent not to make any secret profit in the business of agency. His relationship with the principal is of fiduciary nature and this requires absolute good faith in the conduct of agency.

✓ **Secret Profit** refers to any financial advantage acquired by the agent beyond the agreed remuneration, which he could not have secured but for his position as an agent.

---

### ❖ **Duty Not to Delegate**

An agent must not delegate his authority to another person. He is expected to perform the acts personally unless such delegation is justified by trade customs, necessity, or express consent of the principal.

---

### ❖ **Duty to Pay Sums Received for Principal**

It is the obligation of the agent to pay to the principal all amounts received by him on behalf of the principal during the course of the agency.

---

### ❖ **Duty Not to Use Confidential Information Against the Principal**

An agent must not misuse any confidential information acquired during the course of the agency, directly or indirectly, to the detriment of the principal.

► **Secret Profit + Delegation + Sums + Confidential Use**  
⇒ **Agent Breach** ⇒ **Fiduciary Duty Violated** ⇒ **Principal entitled to remedies**

---

# Rights of the agent.

## ◆ (i) Right to Retain Out of Sums Received on Principal's Account [Section 217]

This section authorises the agent to retain, out of any sums received on account of the principal in the course of business of the agency, for the following payments:

- (a) ► All the money due to himself in respect of advances made;
  - (b) ► In respect of expenses properly incurred by him in conducting such business;
  - (c) ► Such remuneration as may be payable to him for acting as an agent.
- 

## ◆ (ii) Right to Remuneration [Section 219]

An agent is, in the ordinary course, entitled to remuneration as per the terms of the contract. In the absence of any specific agreement, he is entitled to reasonable remuneration which is customary in the business.

However, as per **Section 220**, an agent who is guilty of misconduct in the business of the agency is **not entitled to any remuneration in respect** for that part of the business which has been misconducted.

---

## ◆ (iii) Agent's Lien on Principal's Property [Section 221]

In the absence of any agreement to the contrary, an agent is entitled to retain the goods, papers, and other property of the principal—whether movable or immovable—received by him during the course of the agency, **until the amount due to him is paid**.

### ◆ ✓ *Conditions for Valid Exercise of Lien:*

- (a) ► The agent must be lawfully entitled to a sum from the principal by way of commission or services rendered.
- (b) ► The property over which the lien is to be exercised should belong to the principal and it should have been received by the agent in his capacity and during the course of his ordinary duties as an agent. If the agent obtains possession of the property by unlawful means, he cannot exercise particular lien.

### ◆ ✓ *Loss of Right of Lien:*

- (a) ► When the agent loses possession of the property.
  - (b) ► When the agent voluntarily waives the lien.
-



### ◆ (b) Right of Indemnification against Acts Done in Good Faith

Where the agent acts in good faith on the instruction of principal, agent is entitled for indemnification of any loss or damage from the principal.

---

### ◆ (c) Non-liability of Employer in Cases of Criminal Acts

Where a person employs another to commit a criminal act, the employer is **not liable** to indemnify the agent for any consequences arising therefrom.

---

### ◆ (v) Right to Compensation for Injury Caused by Principal's Neglect

The principal is bound to compensate his agent in respect of injury caused to such agent due to the principal's neglect or want of skill. This implies that every principal owes a duty of care towards the agent and must ensure that the agent is not exposed to unreasonable risks during the course of agency.

#### □ Legal Equation:

**Principal's Neglect / Lack of Skill → Agent Suffers Injury → Compensation Owed**

---

## PRINCIPAL'S LIABILITY TO THIRD PARTIES

As a general rule, an agent, while acting on behalf of the principal, does not incur personal liability. The liability arising from such acts is imposed upon the principal, except in cases where there exists a contract to the contrary.

---

### (i) Principal's Liability for the Acts of the Agent

The principal is **liable for the acts of the agent** which are performed **within the scope of the agent's authority**.

---

### (ii) Principal's Liability Where Agent Exceeds Authority

#### ■(a) Where Acts are Severable:

When an agent does more than what he is authorised to do, and where the portion of the act **\*within his authority\*** can be separated from the portion **\*beyond his authority\***, only such part as falls within the agent's authority shall be binding upon the principal.

**Principal not bound when excess of agents's authority is not separable**

**■(b) Where Acts are Not Severable:**

Where an agent exceeds his authority and the unauthorised portion **cannot be separated** from the authorised portion, the **principal is not bound** to recognise the transaction.

✓ **Example 43:** A authorises B to purchase 500 sheep for him. B purchases 500 sheep and 200 lambs for a consolidated amount of ₹6,00,000. A may repudiate the entire transaction.

✓ **Example 44:** A authorises B to draw bills up to the extent of ₹200 each. B draws bills in the name of A for ₹1,000 each. A may repudiate the entire transaction.

---

## **Exception**

**Liability of Principal Inducing Belief that agents's unauthorized acts were authorized:**

Where the principal, by his conduct or representation, induces a third party to believe that the acts of the agent—though unauthorised—were duly authorised, the principal shall be bound by such acts under the doctrine of apparent authority.

---

### **(iii)Consequences of Notice Given to the Agent**

Any notice given to, or information obtained by, an agent shall, **in the course of business transacted by him for the principal**, have the **same legal effect as if it had been given to or obtained by the principal**, as between the principal and third parties.

---

# **PERSONAL LIABILITY OF AGENT TO THIRD PARTIES**

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

As a general rule, **an agent neither acquires rights under the contract nor incurs liabilities thereunder**. When acting within the scope of authority and on behalf of a principal, **the agent cannot personally enforce the contract, nor can he be held personally liable upon it**.

□ **Statutory Basis – Section 230, Indian Contract Act, 1872**

*"In the absence of any contract to the contrary, 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 in his personal capacity."*

---

## ▣EXCEPTIONS: Cases Where Agent is Personally Liable

However, to this general principle, the law recognises the following **exceptions**, wherein the agent is **deemed to have undertaken personal liability**:

1. **Contract on behalf of a Foreign Principal (Merchant Resident Abroad)**

Where the contract is entered into by an agent for the **sale or purchase of goods on behalf of a merchant resident abroad**, there arises a presumption that the agent is personally liable, unless there is an express agreement to the contrary.

✓*Rationale*: The foreign principal being beyond the jurisdiction of Indian courts, the third party may not have an effective remedy against him.

2. **Undisclosed Principal**

Where the agent does not **disclose the name** of his principal at the time of contracting, the agent is presumed to be personally liable.

✓*Legal Position*: The third party, having contracted solely with the agent, may enforce the contract against him.

3. **Non-Existent or Incompetent Principal**

Where the principal is either **non-existent** (e.g., not legally created at the time of contract) or **legally incompetent** to contract (e.g., minor or of unsound mind), the agent is presumed to have contracted **personally** and becomes **liable**.

✓*Reasoning*: Since the principal is incapable of entering into a valid contract, the liability falls upon the agent.

4. **Pretended Agent**

Where a person **falsely represents himself as an agent** without any actual authority, and the alleged principal **does not ratify** the contract, such **pretended agent** is personally liable for **misrepresentation**.

✓*This amounts to misrepresentation of authority under general principles of law.*

5. **Exceeding Authority – Breach of Warranty of Authority**

Where the agent **exceeds the scope of his authority** and **induces** the third party to believe that he possesses such authority, he shall be personally liable for the **breach of warranty of authority**.

✓*The third party may hold the agent liable for loss or damage arising from such unauthorized acts.*

## Conclusion:

Although the general principle is that an agent is not personally liable for acts done on behalf of a principal, **Section 230 recognises specific exceptions** where personal liability may be imposed to protect the interests of third parties and uphold the sanctity of contractual obligations.

---

# RIGHTS OF THIRD PARTIES

Under the general principles of agency law, a contract made by an agent on behalf of a principal confers rights and imposes obligations primarily upon the principal. However, in specific circumstances, a third party may exercise certain rights directly against the agent or in relation to the principal. These rights are elaborated below:

---

## (i) Rights of Parties to a Contract Made by Undisclosed Principal

Where an agent enters into a contract without disclosing that he is acting as an agent, and the principal subsequently discloses himself before the contract is completed, the third party (i.e., the other contracting party) is entitled to repudiate the contract, provided:

- ✓ He can establish that, had he known the true identity of the principal, or that the agent was not the principal himself, he would not have entered into the contract.

## Illustration

SS procures an IPL match ticket at Wankhede Stadium through AB, acting as an undisclosed agent. SS uses this method because, due to personal reasons, the stadium management would not have issued a ticket to him directly. Upon discovering the true principal, the stadium management is entitled to repudiate the contract and refuse SS entry, as they would not have contracted had they known SS was the real party.

---

## (ii) Performance of Contract with Agent Supposed to be Principal [Section 232]

Where a person contracts with an agent under the bona fide belief that the agent is the principal himself, and later the undisclosed principal demands performance of the contract, such principal can only enforce the contract **subject to the existing rights and obligations** subsisting between the third party and the agent.

““In other words, the undisclosed principal ---steps into the shoes--- of the agent and cannot demand performance.””

## Illustration

A owes ₹50,000 to B. A sells rice worth ₹1,00,000 to B, acting on behalf of an undisclosed principal, C. B has no knowledge or suspicion of the agency. In such a case, C cannot compel B to accept delivery of rice without allowing B to set off A's debt of ₹50,000.

What this section means (in plain English):

If a person (called the *third party*) signs a contract with someone thinking they are dealing with the **owner (the principal)** — but actually, that person is **only an agent** — and this fact is not told to the third party...

Then later, if the real principal comes forward and says, "Fulfil the contract with me," the third party can say:

"No, I will treat you (the principal) the same way I would have treated the agent — including deducting any money the agent owed me."

□ **Simple Example:**  
**Let's say:**

- A owes ₹50,000 to B.
- A sells ₹1,00,000 worth of rice to B.
- But secretly, **A is acting as an agent for C** (the real seller).
- **B has no idea** that A is not the actual seller — he thinks he's buying from A directly.

Now, if C comes forward and says:

"Hey B, I'm the real seller, please pay me ₹1,00,000."

Then B can say:

"Wait! A owes me ₹50,000. Since I thought I was dealing with A, I will subtract that amount from the payment. I'll pay only ₹50,000."

## (iii) Option to Third Person – Right to Sue Agent or Principal

In situations where the agent is **personally liable** the third party has the **discretionary right** to:

- ✓ Sue either the agent,
- ✓ Or the principal,
- ✓ Or both jointly, for enforcement of contractual obligations.

---

# REVOCATION OF AUTHORITY

Termination of Agency – *Section 201 of the Indian Contract Act, 1872*

**Termination of agency refers to the “cessation of the legal relationship” between the principal and the agent. Such termination may take place by act of the parties **or** by operation of law.**

---

### **(a) Revocation**

An agency may be terminated by the **principal revoking the authority** granted to the agent.

✓ The **revocation must occur before the authority is exercised** in a manner that binds the principal.

✓ Once the agent has exercised the authority and thereby created binding obligations, the principal cannot revoke the agency with respect to such acts.

#### **—Compensation for Revocation by Principal:**

Where the principal revokes the agency **prematurely and without sufficient cause**, he shall be bound to **compensate the agent** for any loss suffered due to such revocation.

#### **—Notice of Revocation:**

Where the principal has valid grounds to revoke the agency, he must issue a **reasonable notice** of such revocation to the agent.

□ **Failure to provide reasonable notice** renders the principal liable to **compensate the agent** for any loss or damage suffered due to such failure.

---

### **(b) Renunciation by Agent**

An agent may **renounce the agency** in the same manner as the principal may revoke it.

► If the agency is for a **fixed period**, premature renunciation **without sufficient cause** shall make the agent liable to **compensate the principal** for any resulting loss.

► **Reasonable notice of renunciation** is also required.

Failure to give reasonable notice shall render the agent **liable for damages** caused due to abrupt renunciation.

---

### **(c) Completion of Business**

Where the agency was created for the purpose of conducting a particular business or transaction, the agency is **automatically terminated upon completion** of such business.

□ This termination occurs **by operation of law**.

---

### (d) Death or Insanity

The agency is automatically terminated upon the **death** or **insanity** of either the **principal** or the **agent**. However, any act lawfully done by the agent before death would remain binding.

---

### (e) Principal's Insolvency

The agency stands terminated upon the **adjudication of insolvency** of the principal. This is a **legal ground for automatic termination** of the agency.

---

### (f) On Expiry of Time

Where an agent has been appointed for a fixed term, the expiration of the term puts an end to the agency, whether the purpose of agency has been accomplished or not. An agency comes to an automatic end on expiry of its term.

---

## IRREVOCABLE AGENCY

### Section 202, Indian Contract Act, 1872

As a general rule, an agency is revocable at the will of the principal. However, where the agent has a personal interest in the subject matter of the agency, the agency becomes *irrevocable*. In such cases, the principal **cannot revoke the agent's authority**, even if he wishes to do so, and the agency does **not terminate by death or insanity** of the principal.

#### ✓Legal Provision:

*“Where the agent has himself an interest in the property which forms the subject matter of the agency, the agency cannot, in the absence of an express contract, be terminated to the prejudice of such interest.”*

— Section 202, Indian Contract Act, 1872

#### Essentials of Irrevocable Agency:

- ✓The agent must have a **personal interest** in the property forming the subject matter of agency.
  - ✓The interest must **exist at the time of creation** of the agency.
  - ✓Revocation by the principal would **prejudice** the agent's vested interest.
-

## Illustrations:

### ◇Example 1:

A authorises B to sell A's land and recover from the sale proceeds the amount due to B by A.

➤ *Held*: B has a personal interest in the subject matter (i.e., land). The agency is **irrevocable** and **not terminated** even by A's death or insanity.

### ◇Example 2:

A consigns 1000 bales of cotton to B. B had advanced money to A on security of the cotton and is authorised to sell the goods and repay himself from the proceeds.

➤ *Held*: The agency is **irrevocable** due to B's interest in the property and continues despite A's death or insanity.

---

## Duty of Agent on Termination by Death or Insanity of Principal:

Where the agency is terminated due to the **death** or **unsoundness of mind** of the principal, and the agency is **not irrevocable**, the agent is under a legal obligation to:

- ✓ **Take all reasonable steps to protect and preserve** the interests and property entrusted to him; and
- ✓ **Act on behalf of the legal representatives** of the deceased or insane principal until they are capable of assuming responsibility.

## Equation-----

CAUSE: Agent has Personal Interest



EFFECT: Agency becomes Irrevocable



CONSEQUENCES: □ Cannot revoke + Not ended by death



SECTION: Protected under Sec. 202



## ***Mathematical equation for conclusion,,,,,,,,,***

☐ ✓ AGENT HAS INTEREST IN PROPERTY



☐ ✓ AUTHORITY GIVEN BY PRINCIPAL



- ☐ ↳ AGENCY BECOMES

☐ ↳ IRREVOCABLE



☐ **Cannot Be Revoked**



↳ **Not Terminated  
by Death/Insanity**



► *“Protected under Section 202”* ◀