

# Agencies under Indian Contract act

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# Agent & Principal

- An agent is a person employed to do any act for another or to represent another in dealings with third person.
- The person for whom such act is done, or who is so represented, is called the principal.
- Definition of agency is given under Section 182 of Indian Contract Act, 1872
- Section 182 to 238 of Indian Contract Act, 1872 deals with the concept of agency.

# Some features of a contract of agency

1) The principal should be competent to contract.

2) the agent may not be competent to contract.

the capacity of an agent could be looked from 2 angles.

Firstly, the capacity of the agent to act on behalf of the principal, so as to bind his principal and the third person . Here, agent is merely a connecting link between the two parties. Here, agent not required to be competent to contract.

Secondly, his capacity to bind himself by a contract himself and his principal. Here, agent should also be competent to contract.

3) No consideration is necessary to create an agency.

# Ways of formation of agency contract

- **Expressed:**

The agency contract can be created in an oral or written manner. Any eligible person could make the appointment of an agent to perform duties on their behalf by contract.

No particular form is required for appointing an agent. But in certain exceptional cases formal documents are essential. For instance, in order to authorize a person to effect conveyance of landed property there should be a power of attorney which is formal deed.

Advocates can be appointed only by executing a 'vakalatnama'.

The appointments of agents effected by corporations must be in writing and under the seal of the corporation.

An authority to execute a deed must be given by deed.

- **Implied:**

In an indirect manner also, an agent can be appointed by the principal, and consequently, there is the formation of an implied agency contract. This formation of an implied agency contract could be due to particular circumstances or relationships. This happens in two ways:

- 1) By application of estoppel and holding out: eg a partner who retires from a partnership must give notice of his retirement.

Otherwise he will continue to be liable under this principle.

The master's conduct in holding out his servant to be his agent estops him from denying the continuance of his authority.

- 2) By a presumption in case of co habitation: husband-wife /wife pledging his credit for necessaries. Burden is on tradesman.

- **Ratification of the unauthorised activities subsequently:**

If initially the agent is not appointed by the principal but subsequently the principal provides authority and accepts the act, then an agency contract is formed by ratification of the unauthorised activities.

Ratification may be express or may be implied. Ratification relates back to the date of the act ratified.

Pre-requisites of ratification:

- a) Agent must purport to act for a principal.
- b) Principal must be existing
- c) Capacity of principal at the date of the contract and at the date of ratification.
- d) Ultra vires acts: act must be legal and capable of being ratified by the principal. It should not be void agreement.
- e) Knowledge of material facts to the principal.
- f) No partial ratification.
- g) Limitation: ratification must be made within reasonable time.

- **Agency by necessity**

When one person is faced with an emergency in which the property or interests of another are in imminent danger and it becomes necessary in order to preserve the property or interests.

# Kinds of agents

- 1) Special Agent- Agent appointed to do a singular specific act.
- 2) General Agent- Agent appointed to do all acts relating to a specific job.
- 3) Sub-Agent-An agent appointed by an agent.
- 4) Co-Agent- Agents together appointed to do an act jointly.
- 5) Auctioneers: whose business is to sell goods or other property by auction. The authority vested in him is to sell the goods only and not to give warranties on behalf of the seller, unless expressly authorized in that behalf.

he is a mercantile agent within the meaning of section 2(9) of the sale of goods act.



6) Factors: who is entrusted with the possession of the goods for the purpose of the sale.

If owner has put a factor in possession of the goods or the document of title but without authorizing him to sell the goods, the sale of goods by him will convey a good title to a bonafide buyer.

7) brokers: who has an authority to negotiate the sale or purchase of goods on behalf of his principal, with a third person.

Unlike a factor, he himself has no possession of the goods.

8) Del Credere agents : who guarantees the performance of the contract by the third person.

If in such a case the third person, for instance, fails to pay for the goods supplied to him, the principal can bring an action against del credere agent.

## Agency between Husband and Wife

Generally, there exists no agency between a husband and wife, except in cases where it has expressly or impliedly been sanctioned that either of them would do certain acts or transactions as the agent of the other.

That is, a relationship of agency can come into existence between the two through contract, appointment, or ratification. A husband is responsible for necessaries to his wife when they are living apart due to the husband's fault. This results in an agency of necessity where the wife can use her husband's credit for what is necessary for her to live.

But in cases where they are separated because of the wife's own whims or faults, for no just reason, the husband is not liable for the wife's necessaries.

# Effect of agency on contracts with third persons

- 1) enforcement of contracts against the principal( section 226)
- 2) severability: can be separated then bound only for that.

But the principal is not bound when the excess of agent's authority is not separable.

- 3) notice to agent is notice to the principal. Section 229 exception in case of fraud on the part of agent.
- 4) agent's liability to third persons( section 230): general rule is :not liable

Exceptions :a) express contract

b) Contracting for foreign principal

c) principal's name is not disclosed .section 230

d) Principal cannot be sued as in the case principal is minor or foreign sovereign

e) Principal is not in existence

# Who is a sub-agent?

- An agent may sometimes delegate the duty that has been delegated to him by the Principal to somebody else. Ordinarily, an agent cannot delegate the duty he is supposed to perform himself to another person, except in particular circumstances where he must, out of necessity, do so. Section 191 of the Indian Contract Act, 1872 defines a sub-agent to be a person employed by and acting under the control of the original agent in the business of the agency.

- **Delegatus non potest delegare**

An agent cannot in ordinary circumstances delegate the duty that was delegated to him. The principle is based upon the idea that when a Principal appoints an agent, he does so by placing his confidence and trust in the agent and might not have similar trust in the work of another person.

- **Difference between sub-agent and substituted agent**

The difference between sub-agent and the substituted agent is very fundamental. When a person, in the capacity of an agent, is asked to *name* someone for a certain task, the person who is named does not become a sub-agent to the Principal, but a substituted agent.

# Agent's right

The following are rights of agents under an agency contract:

- Remuneration: The agent has the right to receive remuneration as per the agreement. If there is any misconduct in the activities of the agent, he would not get any remuneration.
- Right to Retention: The agent has the right to retain the amount of money received on account of the principal, the entire outstanding balance regarding advances, or the expenditures to run the business.
- Right to lien: If commission and disbursement are not received by the agent, then he has the right to lien on the property of the principal until he receives his due, subject to some conditions.
- Indemnity: The compensation shall be provided to the agent by the principal against the outcomes of the entire legal activities performed by them.
- Right to compensation: For any losses or damages faced by the agent because of the lack of competency of the principal, compensation shall be provided to the agent.

# Agent's duty

- Carry out the business of the principal: The business of the principal shall be conducted by the agent as per the guidance provided by them.
- Reasonable knowledge and diligence: It is the duty of the agent to carry out activities by using reasonable skills and diligence.
- Communication: The agent must communicate with the principal and carry out activities according to the directions provided by the principal.
- Provide Accounts: As per the demand of the principal, the agent shall provide the appropriate accounts.
- Evade conflict of interest: If the agent performs activities without the permission of the principal, then the principal could reject the transaction if the agent significantly performs activities in a dishonest way or if it is disadvantageous for the principal.
- Prohibition on Making Secret Profits: Agents cannot generate secret profits.
- Remittance of sum: It is the duty of the agent to transfer the entire amount of money received on behalf of the principal.
- Not to delegate: The agent does not have any right to delegate duties to another person that are implied on him. Only in cases of consent of the principal, nature of work, ministerial action, and trade customs can a sub-agent be appointed by the agent.

# Termination of Agency

The relationship of agency may be terminated:

- 1) By act of the parties-
  - a) agreement
  - b) revocation of authority
  - c) renunciation by agent
- 2) By operation of law –
  - a) particular by completion of business, expiry of time, death of principal or agent, insanity of principal or agent or insolvency of principal
  - b) general by destruction of subject matter, principal turning alien enemy or dissolution of a company.