

E-Content(1) for the students of B.Com II Semester

Subject- Business Law.

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Topic- Contract of Agency.

The law relating to agency under section 182 to 238 of the Indian Contract Act, 1872.

Meaning of Contract of agency- A person cannot do every business transaction by himself because of time constraint and business complexity. Therefore, business people perform many activities through another person. The person who carried out the transaction on behalf of another is known as an Agent. This arrangement is known as Contract of Agency.

Agent- Section 182- An agent is a person employed to do any act for another or to represent another in dealings with third persons. Thus, an agent establishes a contract between such another person and third person.

Who can be an agent? Any person may become an agent even a minor or a person of unsound mind can become an agent.

Liability of agent- Generally an agent is liable to the principal, but an agent is not liable to the principal if he is a minor or is of unsound mind.

Principal- The person for whom such an act is done or who is so represented is called the principal.

Who may employ agent- section 183- any person who is of the age of majority according to the law to which he is subject, and who is sound mind may employ an agent. Thus a minor or a person of unsound mind cannot appoint an agent.

Essential and legal rules for valid agency-

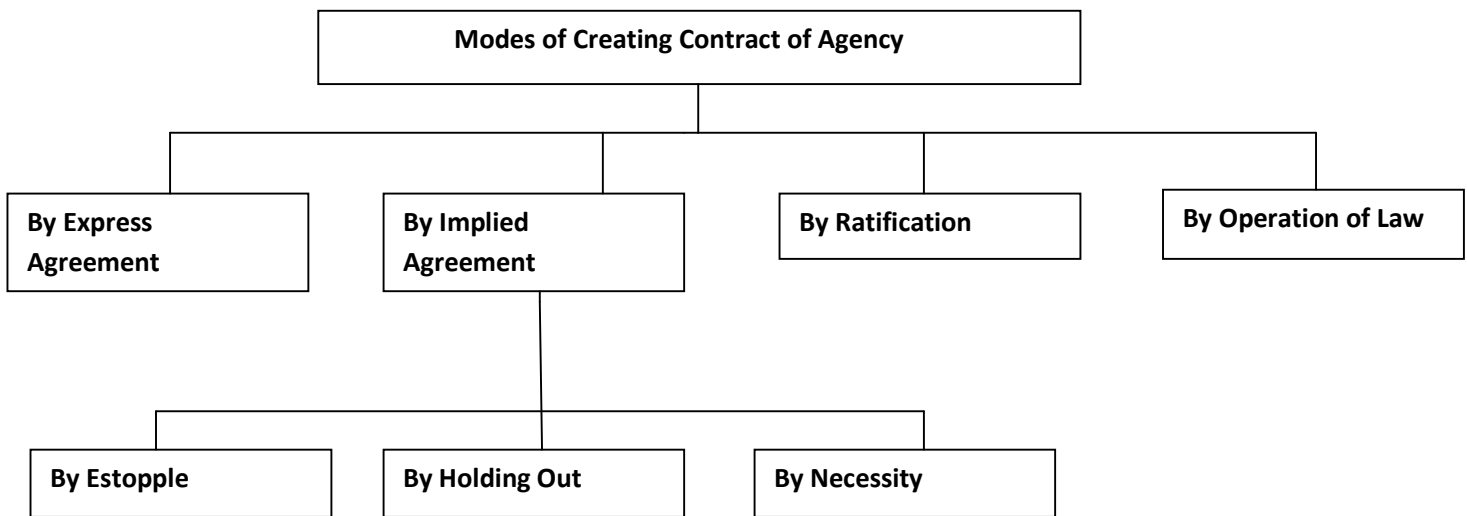
- 1- There should be an agreement between the principal and agent. Agreement may be express or implied.
- 2- The agent must act in the representative capacity.
- 3- The principal must be competent to contract.
- 4- The agent need not be competent to contract.

5- The consideration is not necessary.

Types of Agents

1. Special Agent- Agent appointed to do a singular specific act.
2. General Agent- Agent appointed to do all acts in the ordinary course of trade and profession.
3. Sub-Agent-An agent appointed by an agent.
4. Factor-A factor- a factor is the mercantile, entrusted with the possession of goods, who has the authority to buy, sell or otherwise deal with goods or to raise money on their security.
5. Broker- a broker is the mercantile agent who is employed to negotiate and make contracts for sale or purchase of goods on behalf of the principal. He is not given the possession of goods. He has no lien on goods.
6. Auctioneer- an auctioneer is one who is interested with the possession of goods for sale at a public auction. He has only a particular lien on the goods for his charges.
7. Commission Agent- the term 'commission agent' is a general term which is used in practice even for a factor or a broker.
8. Del-Credere Agent- a del credere agent is one who gives guarantee to his principal to the effect that the third person with whom he enters into contracts shall perform his obligation. He gives such a guarantee for an extra remuneration which is called del credere commission. For example, an agent who also undertakes the risk of bad debts due to the insolvency of customers to whom the goods were sold on credit, will be called the del credere agent.

Creation of agency- The various modes to create the contract of agency are shown below:



1- Creation of Agency by express agreement section 186 and 187- Here the appointment of the agent is made in writing or verbally. In formal cases when written agreement are made, it is done by a power of attorney which is normally stamped and registered. Example : If a customer of a bank wishes to transact his banking business through an agent, the bank will require written evidence of the agreement of the agent and will normally ask to see the registered power of attorney appointing the agent.

2-Creation of Agency by implied Agreement- There is no evidence that the agent has been appointed by any writing or verbally. But, there are facts and circumstances that can show that an agency has been created. In other words, agency is implied from the special circumstances of the case. **Example-** A owns a shop in Shimla, living himself in Kolkata, and visiting the shop occasionally. The shop is managed by B, and he is in the habit of ordering goods from C in the name of A for the purposes of the shop and of paying for them out of A's funds with A's knowledge. B has an implied authority from A to order goods from C in the name of A for the purpose of the shop.

Implied agency includes the following –

A- Agency by estoppel- Agency by estoppel arises where a person by his words or conducts induces third person to believe that a certain person is his agent. The person who induces as such is estopped or prevented for denying the truth of agency. The act deals with agency by estoppel.

Example: In presence of A , B says to C that he (B) is A's agent though it is not so actually. A has not restricted B from making such statement. It is agency by estoppel.

B- Agency by holding out- Agency by holding out is a type of agency by estoppel. Such agency arises when a person by his past affirmative or positive conduct leads third person to believe that person doing some act on his behalf is doing with authority.

Example- X allows Y, his servant to purchase goods for him on credit from Z and later on pays for them. One day X pays cash to Y to purchase goods. Y misappropriates the money and purchases goods on credit from Z . Z can recover the price of his goods from X because X had held out Z as his agent on earlier occasions.

C- Agency by necessity – It is some extraordinary situation that compels a person to act as the agent of some person without his consent or authority of that person. Such an agency is created as an agency by necessity.

To constitute a valid agency by necessity, the following conditions must be satisfied:

- 1- There must be an emergency.
- 2- There was a necessity to act on behalf of the principal.
- 3- The agent was not in a position to communicate with the principal.
- 4- The agent has acted honestly and in the interest of the principal.

D- Agency by Ratification- section 196 and 197- A ratification means confirmation of the facts already done. When a person does some acts on behalf of another person without his knowledge or authority. Later on, if the person ratifies the acts done on his behalf. In such a case an agency is created by the ratification. It is also known as an ex post facto agency. On the ratification, the principal is bound by the acts done by the agent. The ratification may be express or implied.

Essentials of a valid ratification section 198 to 200 –

- 1- The agent must act on behalf of the principal.
- 2- The principal must have contractual capacity both at the time of the contract and at the time of the ratification.
- 3- The principal must be in existence at the time of the contract.
- 4- Ratification must be with full knowledge of facts.
- 5- The whole transaction must be ratified.
- 6- Ratification must be done within a reasonable time.
- 7- Ratification must be communicated.
- 8- The act to be ratified must be lawful and not void or illegal.

9- Ratification should not put a third party to damages.

10- Ratification can be of the acts which the principal had the power to do.

E- Agency by Operation of Law- Agency by operation of law is said to arise where the law treats one person as an agent of another. Example- On formation of a partnership, every partner becomes the agent of other partner. Such agency is said to be arisen by operation of law.

Extent of an Agents Authority- An agents authority means the capacity of the agent to bind his principal. The extent of agents authority means the scope of authority of an agent, it means what a person can do as an agent on behalf of his principal. Such an authority of the agent to bind the principal maybe-

- 1- Actual or real authority- an actual authority means that authority which has been really delegated to the agent. The authority of the agent maybe be express or implied. The principal is bound by the act of the agent.
- 2- Ostensible or apparent authority- when the agent is employed for a particular business, persons dealing with him can presume that he has the authority to do all such acts that are necessary for such a business. Such an authority of an agent is called an ostensible or an apparent authority.
- 3- Authority in emergency- section 189- the agent has an authority, in an emergency, to do all such acts for the purpose of protecting his principal from loss as would be done by a person of ordinary prudence in his own case under the similar circumstances. When the agent has acted beyond the authority in emergency, the principal is bound by the act of the agent.

Delegation of Authority- An agent, being himself a person who has got delegated authority from the principal, cannot further delegate except with the permission of the principal. This is expressed by the Latin maxim 'delegatus non potest delegate': a delegate cannot further delegate, i.e., one cannot delegate that which one has himself undertaken to do. Agency is a matter of trust and confidence and an agent is appointed only because the principal has got full confidence in his integrity or ability. So, the agent cannot without the permission of the principal, delegate his authority and ask some other person to do the work. To this rule the following are the exceptions:

- (i) where the duties of the agent do not require any skill or discretion, and can satisfactorily be performed by any one;
- (ii) where the custom of the trade permits delegation;
- (iii) where the principal knows that the agent intends to delegate;
- (iv) where the nature of the business requires delegation

(v) where an emergency makes it necessary to delegate.

An agent cannot lawfully employ another to perform acts which he has expressly or impliedly undertaken to perform personally, unless by ordinary custom of trade a sub-agent may, or, from the nature of the agency, a sub-agent must be employed. A legal practitioner is permitted by the usage in the profession, to authorize any other practitioner to appear for him. But, in cases in which he has expressly undertaken to 'appear personally, he has no such right to delegate his authority.

Sub-agency- Where an agent having authority expressly or impliedly to delegate his authority appoints another person to act in the matter of the agency, such other person is called a 'sub-agent', provided he acts under the control of the original agent; and a 'substituted agent, if the original agent drops out of the transaction and the newly appointed person carries on the business of the agency.

Relationship between principal and sub-agent: You ,have seen that in circumstances agent can appoint a sub-agent. In such cases the principal is bound U by the acts of the sub-agent, since the sub-agent is not responsible to the principal ' but he is responsible for his acts to the original agent only. The principal cannot take action against sub-agent, except in cases of fraud or willful wrong. As between the original agent and the sub-agent, the relationship is that of the principal and agent.

In case the appointment of a sub-agent is not proper, the principal shall not be bound by the acts of the sub-agent. The original agent will, in such cases, be personally liable to both the principal as well as the third parties for the acts of the sub-agent. In such cases, the sub-agent is not responsible to the principal for any of his acts.

SUBAGENT AND SUBSTITUTED Agent -A sub-agent has been defined by Section 191 of the Indian contract Act. "A subagent is a person employed by and acting under the control of the original agent in the business of the agent". A substituted agent is defined by Section 194. Thus "Where an agent, holding an express or implied authority to name another person to act for the principal in the business of agency, has named another person accordingly, such person not a sub-agent, but an agent of the principal for such part of the business of the agency as is entrusted to him".

Duties of an agent-

1. Duty to follow the instruction of principal
2. Duty to carry work with care and skill
3. Duty to render accounts to the principal
4. Duty of the agent in case of any difficulty to make reasonable efforts to communicate with his principal and to obtain his instruction.
5. Duty not to deal on his own account. If the agent deals on his account without the principal's consent or with full disclosure, the principal may cancel the contract.
6. Duty not to make any secret profit. If the agent, without the knowledge of his principal, deals in the business of the agency on his own account, instead of on account of his principal, the principal is entitled to claim from the agent, any benefit which may have resulted to him from the transaction.
7. Duty to pay sums received for the principal- It is the duty of the agent to his principal, all monies received on his behalf.
8. Duty to protect interest of the principal in case of his death or insolvency- On the death or insanity of the principal, the agent is terminated. However, in such a case it becomes the duty of the agent to take reasonable steps to protect the interest of the principal.
9. Duty not to delegate- The agent cannot delegate his authority to perform his act in express or implied manner unless the custom of trade or the nature of the agency so requires.

Rights of an agent

1. Right to retainer- Section 217- The agent may retain out of any sums received on account of the principal in the business of the agency, all money due to him in respect of the advances made or the expense properly

incurred by him . In conducting such business and also such remuneration as may be payable to him for acting as the agent.

2. Right to receive remuneration –Section 219 & 220- The agent has the right to receive the agreed remuneration from the principal. If the remuneration is not fixed, the agent is entitled to receive reasonable remuneration.
3. Right of lien-Section 221- In the absence of any contract to the contrary, the agent is entitled to retain the goods,papers and other property whether movable or immovable, of the principal received by him, until the amount due to himself .
4. Right to be Indemnified-Section 222- The principal is bound to indemnify the agent against the consequences of all the lawful acts within his authority.
5. Right of compensation- Section 225- The agent has the right to receive compensation for the loss suffered due to the principal's negligence or want of skill.

Personal liabilities of an agent –

Usually, the agent cannot personally be liable for the contract entered into by him on behalf of the principal. However,the agent is personally responsible in the following cases-

- 1- When the agent acts for a foreign principal.
- 2- When the agent acts for an undisclosed principal
- 3- When agent acts for an incompetent principal
- 4- When the agent acts for a principal not in existence
- 5- When the agent signs a contract in his own name
- 6- When the agent acts beyond his authority
- 7- Where there is a misrepresentation or fraud by agent
- 8- Where the trade, usage or custom makes the agent personally liable
- 9- Where authority is coupled with an interest.
- 10- Pretended agent- A person who untruly represents himself to be the authorized agent and induces a third person to enter onto the contract or otherwise deals with him is called a pretended agent.

Termination of agency- The agency relationship maybe terminated by the act of parties. The agency can be terminated by either the principal or the agent in the following manner:

Termination by act of parties:

- 1- By agreement- mutual consent
- 2- By revocation of authority by the principal- The principal can revoke the authority of an agent at an time before the authority has been exercised as to bind the principal.
- 3- By renunciation by the agent- by giving reasonable notice.

Termination by operation of law:

- 1- By performance of contract of agency.
- 2- By death of principal or agent.
- 3- By expiry of time- where agency is for fixed time period.
- 4- By insolvency of the principal.
- 5- By destruction of subject matter- agency was created to sell a house & house destroys.
- 6- By becoming alien enemy- where principal & agent are from different countries.

Irrevocable agency:

The agency which a principal cannot revoke is known as irrevocable agency.

- 1- Where the agency is coupled with interest- the agency coupled with an interest does not come to an end on the death, insanity or the insolvency of the principal. A gives authority to B to sell A's land & to pay himself out of the proceeds, the debt due to him from A. A cannot revoke this authority.
- 2- Where the agent has incurred personal liability- where the agent has bought in his own name and makes himself a personal liability for his act. In such case the agency becomes irrevocable.

3- Where an agent has partly exercised an authority, the authority cannot be revoked-X authorizes Y to buy 10 bags of wheat on his account. Y buys 10 bags of wheat in the name of X. X cannot revoke the authority.