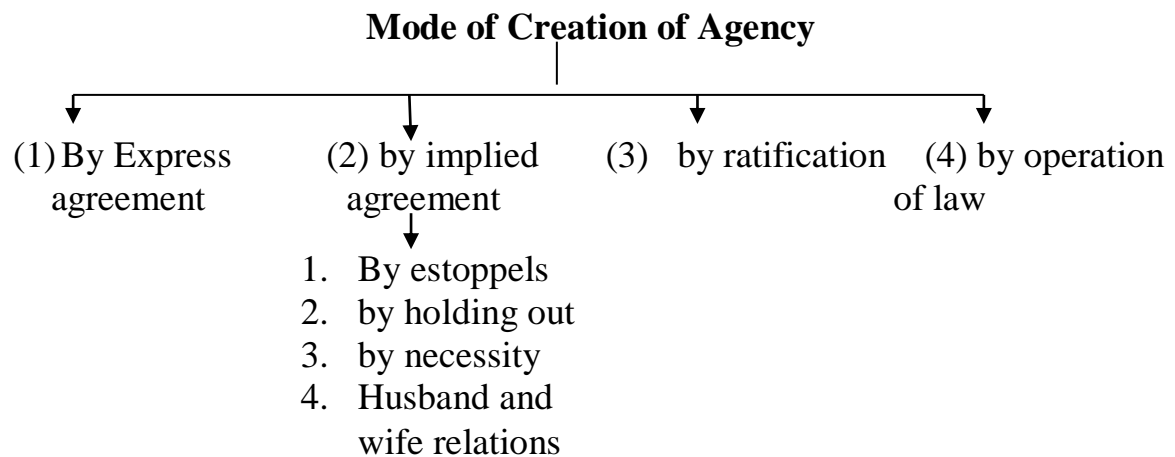


Mode of creation of Agency

Mode of creation of agency may be understood with the help diagram given below



1. **Be express agreement (S-187)**

In this mode an agent is appointed by an agreement in writing or by spoken words. There is no particular form is not required for the agent's appointment. The usual form of a written agreement is the power of attorney executed on stamp paper in favour of the agent. The power of attorney may be No (i) General power of attorney or (ii) special power of attorney. General power of attorney is one which authorized an agent to do all acts on behalf of his principal and a special power of attorney is one which authorized an agent to performed a single transaction on his principal.

2. **By Implied agreement**

An authority is said to be implied when it is to be inferred from the circumstances of the case; and things spoken or written, or the ordinary course of dealing, may be accounted as circumstances of the case.

Illustration

A owns a shop in Serampore, living himself in Calcutta, 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 purposes of the shop.

(A) by estoppel- This type of agency is based on rule of Estoppel mentioned in section 115 of Indian evidence Act. In this agency where a person, by his conduct or statement, will fully leads another person to believe that certain person is his agent then he is prevented from denying the truth of the agency

For example:

Mohan says to Sohan in the presence of Rohan the owner of the car, that Mohan is Rohan's agent and is authorized to sell the car. Rohan listens this statement of Mohan and remains silent, subsequently, Mohan sales the car to Shohan. This sale of the car is binding on Rohan.

(B) by Holding out – Rule of holding out is mentioned in section 28 of Indian partnership Act. This rule is a kind of agency by estoppel. In this rule there is some prior positive conduct of the principal. Which indicates that certain person was all ready his agent. For example in *Trueman v. Loder* (1840) X appointed Y as his agent to purchase some goods from Z on credit. After some time X terminated service of Y without informing Z subsequently Y purchased some goods in X's name on credit from Z. It was held that X was liable to pay the price of the goods purchased by the Y. Because X has not informed Z about the termination of Y's Agency

(C) By necessity-In certain extra ordinarily circumstances, the law confers an authority on a person to act as an agent for the benefit of another without his consent or authority of that other person, such agency is called agency by necessity. Section 189 provides that an agent has authority, in an emergency, to do all such acts for the purpose of protecting his principal from loss as would be

done by a person of ordinary prudence, in his own case, under similar circumstances.

Illustrations

- (a) An agent for sale may have goods repaired if it be necessary.
- (b) A consigns provisions to B at Calcutta, with directions to send them immediately to C, at Cuttack. B may sell the provisions at Calcutta, if they will not bear the journey to Cuttack without spoiling.

In case of *Great Northern Rly Co. v. Swafield* (1874) X consigned a horse with the Railway Company. When the horse reached the destination, nobody came to take its delivery. The Railway Company had no arrangement of its own to keep the horse. Therefore, it delivered the horse to a stable-keeper for its maintenance and safe custody. It was held that the Railway Company was an agent by necessity. Therefore it was allowed to recover charges of the stable keeper.

(D) Presumption Agency between husband and wife- The relationship between husband and wife is also that of a principal and agent. The husband is treated as principal and his wife treated as agent. Where the husband and his wife are living together, the wife is presumed to be the agent of her husband for buying household necessities.

It is pertinent to note here that the husband will be bound to pay the bills only when the following conditions are satisfied-

- (i) The husband and wife must be cohabiting together and living together in a domestic establishment
- (ii) The wife should be in charge of the domestic establishment
- (iii) Wife has authority to purchase domestic necessities

In the case of *Debenham v. Mellon* (1880) husband was a manager of a hotel where his wife was working as manageress. They were living together in the same hotel but they did not have any domestic establishment of their own. The wife purchased some clothes from a cloth merchant on credit. Merchant

demanded the payment from husband. It was held that husband was not liable to pay as there was no domestic establishment of their own.

However husband may escape from his liability if he proves that (i) he has expressly forbidden his wife to purchase goods on credit (ii) The trade man has expressly forbidden not to supply the goods on credit to his wife, or (iii) The goods purchase or not necessities or (iv) Wife has allowed sufficient funds to purchase the necessities

However if the wife is living apart from her husband without any justification, in such cases wife has not power to purchase necessities on credit with his husband's name.

It is also notable here that in England the implied agency of the wife has been abolished by the English Matrimonial Proceedings and Property Act, 1970.

3. Agency by operation of Law [Section 18 and 19 of Partnership Act]

An every partner of the partnership firm is an agent of the firm for the purpose of the business of the firm. He is also an agent of the other partners of the firm. Therefore the firm and the other partners are bound by the acts of a partner, which are done by him in the course of the business of the firm.

For Example – A, B, C and D were the partners of a firm which was carrying on the business of mobile making. A bought some raw material from E on credit, for the purpose of the firm. And the raw material was bought in the name of the firm. In this case, the firm is bound by the purchases made by A, and is liable to pay the price to D.