

Sub Agent, Substituted Agent: Meaning Effects and Distinction

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Delegates non protest delegate (A delegate cannot further delegate): Sub Agent is appointed and works under the control of Agent, ordinarily, Agent has no power to delegate the works which has been given (delegated) to him by Principal: S. 190 prohibits agent to appoint sub Agent.

However, under certain exceptional circumstances as Agent has power to appoint sub agent and delegate his power to sub agent. **As S. 190 provides that:** An agent cannot lawfully employ another to perform acts which he has expressly or impliedly undertaken to perform personally, unless by the ordinary custom of trade a sub-agent may, or, from the nature of the agency, a sub-agent must, be employed.

Meaning of Sub Agent [S.191]- According to S. 191- A "Sub-agent" is a person employed by, and acting under the control of, the original agent in the business of the agency.

Thus Sub Agent is appointed by original agent and works under control of original agent. In following exceptional circumstance the sub agent can be appointed by original Agent.

- (i) Nature of work
- (ii) Custom of trade
- (iii) Ministerial work
- (iv) Unforeseen emergencies
- (v) Authorised by principal

Effects of appointment of Sub Agent- Substituted Agent Meaning [S.194]- Meaning of substituted agent has been defined u/s 194 of Indian Contract Act.

S.194 provides that where an agent, holding an express or implied authority to name another person to act for the principal in the business of the agency, has named another person accordingly, such person is not a sub-agent, but an agent of the principal for such part of the business of the agency as is entrusted to him.

Examples:

- (a) A directs B, his solicitor, to sell his estate by auction, and to employ an auctioneer for the purpose. B names C, an auctioneer, to conduct the sale. C is not a sub-agent, but is A's agent for the conduct of the sale.
- (b) A authorizes B, a merchant in Calcutta, 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 solicitor for A.

Thus regarding substituted agent following points are notable work:

- (i) Substituted agent is appointed by original agent.
- (ii) Original agent can appoint substituted agent only when he has authority to appoint substituted agent with the principal.
- (iii) Substituted agent work under direct control of the Principal.

Agent's Duty for appointing Substituted Agent [S.195]- S. 195 provides that in selecting such agent for his principal, an agent is bound to exercise the same amount of discretion as a man of ordinary prudence would exercise in his own case; and, if he does this, he is not responsible to the principal for the acts or negligence of the agent so selected. – In selecting such agent for his principal, an agent is bound to exercise the same amount of discretion as a man of ordinary prudence would exercise in his own case; and, if he does this, he is not responsible to the principal for the acts or negligence of the agent so selected.

Examples:-

- (a) A instructs B, a merchant, to buy a ship for him. B employs a ship-surveyor of good reputation to choose a ship for A. The surveyor makes the choice negligently and the ship turns out to be unseaworthy and is lost. B is not, but the surveyor is, responsible to A. (a) A instructs B, a merchant, to buy a ship for him, B employs a ship –surveyor of good reputation to choose a ship for A. The surveyor makes the choice a negligently and the ship turns out to be unseaworthy and is lost. B is not, but the surveyor is, responsible to A.
- (b) A consigns goods to B, a merchant, for sale. B, in due course, employs an auctioneer in good credit to sell the goods of A, and allows the auctioneer to receive the proceeds of the sale. The auctioneer afterwards becomes insolvent without having accounted for the proceeds. B is not responsible to A for the proceeds. (b) A consigns goods to B, a merchant, for sale. B, in due course, employs an auctioneer in good credit to sell the goods of A, and allows the auctioneer to receive the proceeds of the sale. The auctioneer afterwards becomes, insolvent without having accounted for the proceeds. B is not responsible to A for the proceeds.

Effects where sub-agent is properly appointed [S. 192]- Where a sub-agent is properly appointed, the principal is, so far as regards third persons, represented by the sub-agent, and is bound by and responsible for his acts, as if he were an agent originally appointed by the principal.

Agent's responsibility for sub-agent-Agent is responsible to the principal for the acts of the sub-agent.

Sub-agent's responsibility-The sub-agent is responsible for his acts to the agent, but not to the principal, except in cases of fraud or wilful wrong.

Thus, where the sub agent is properly appointed. The effects of such appointment will be:

- (i) The principal is represented by sub agent,

- (ii) The principal is bound or liable to the third persons by the acts of sub agent.
- (iii) Original agent is responsible to the principal
- (iv) Sub agent is responsible for his acts to the original agent but not to the principal except in cases of fraud or wilful wrong.

Effects, where sub-agent is not properly appointed [S.193]- Where an agent, without having authority to do so, has appointed a person to act as a sub-agent, the agent stands towards such person in the relation of a principal to an agent, and is responsible for his acts both to the principal and to third persons; the principal is not represented, by or responsible for the acts of the person so employed, nor is that person responsible to the principal.

Thus where sub agent is not properly appointed by original agent. The effects of such appointment will be as under:-

- (i) The principal is not represented by the acts of sub agent.
- (ii) Principal is not responsible for the acts of the sub agent towards third person.
- (iii) The original agent is responsible for the act of the sub agent both to the principal and to third person.

Distinction between Subagent and Substituted Agent

Sub-Agent has been defined u/s 191 where as substituted agent has been defined u/s S.194. Distinction between Sub-Agent and Substituted Agent are as follows:

- 1- **Relating to Central- Sub-agent** works under original agent whereas substituted agent works under direct control of the Principal.
- 2- **Relating to liability of Sub agent** –Sub agent is liable to the original agent and not to the Principal, where as substituted agent is liable to the Principal alone.

3- Relating to liability of original Agent:- For the acts of the sub-agent the original agent is liable to the Principal where as for the acts of the substituted agent the original agent is not liable to the principal.

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