

## UNIT V

Subject Name	Subject Code	Semester	Prepared by
Business Law	18BBA43A	IV	Dr Prabhu R Assistant Professor

### LAW OF AGENCY

#### INTRODUCTION

The contract which creates the relationship of principal and agent is known as 'Agency'. The legal provisions pertaining to agency are contained in Secs. 182-238 of the Indian Contract Act.

#### Agent

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

#### Principal

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

#### Who may employ agent?

Any person who is of the age of majority according to the law to which he is subject, and who is of sound mind, may employ an agent.

#### Who may be an agent?

As between the principal and third persons, any person may become an agent, but no person who is not of the age of majority and not of sound mind can become an agent, so as to be responsible to his principal. .

#### **Contract of Agency :Special Features**

The special features of contract of agency are outlined as follows:

1. Agreement An agency is created either on the basis of express or an implied agreement. As between the principal and the third parties, any person may become an agent, including a minor. The principal will be liable for the acts of such an agent.

2. Fiduciary relationship Agency contract is a contract of a fiduciary relationship between the principal and agent.

3. Competency of parties Only a person competent to enter into a contract can employ an agent.
4. Consideration No consideration is necessary for creation of an agency.
5. Basis of agency The basis of agency is 'what a person can do himself, he can also get it done through others'.
6. Intention of the agent to act on behalf of the principal: As between the principal and the third parties, the act of an agent will be looked upon as an act on behalf of the principal. Hence, there must be an intention on the part of the agent to act on behalf of the principal.

#### -General Rules Regarding Agency

The contract of agency is based on two important rules. They are:

1. He who does through another, does by himself. This implies that the acts of the agent shall for all legal purposes be considered to be the acts of the principal. .
2. Whatever a person is competent to do by himself, shall also be allowed to be done by an agent, except in case of contracts involving personal services such as painting , marriage, etc.

#### **CLASSIFICATION OF AGENTS**

There are various classes of agents. Agents are classified as follows:

1. Brokers A broker is an agent employed to buy and sell goods for brokerage and he has no authority to contract in his own name. The broker does not keep the goods or the property of the principal in his possession.
2. Factors A factor is a mercantile agent with whom goods are kept for sale. He has a general lien on the goods for money due to him as agent.
3. General agent and particular agent: A general agent is one who represents the principal in all matters concerning a particular business. A particular agent is one who is appointed for a specific purpose. Factors and commission agents are usually general agents.

Del credere agents: A del credere agent is one who in consideration of an extra commission called. del credere commission, guarantees to his principal that the persons with whom he enters into contracts shall perform. their obligation. He, thus, occupies the position of both a guarantor and an agent.

Auctioneer: An auctioneer is one who is entrusted with the possession of goods for sale at a public auction. He has only a particular lien on the goods for his charges.

Banker A banker acts as an agent of the customer when he collects cheques, drafts, bills or buys/sells securities on behalf of his customers. He has a general lien in respect of the general

balance of account.

**Universal agent** An universal agent is one who has authority to do all acts which the principal can lawfully do and delegate. He has an unlimited authority to bind the principal.

**Non-commercial agents** Non-commercial agents may include estate agents, attorneys, solicitors, insurance agents, clearing and forwarding agents, and wife.

## **CREATION OF AGENCY**

An agency may also be created by an agreement. A person becomes an agent of the other, due to the conduct of the parties. The agency by an implied agreement arises from the following agencies also:

1. Agency by estoppel
2. Agency by holding out
3. Agency by necessity
4. Husband and wife
5. Agency by conductor ostensible authority

The conduct of two parties is such that it appears that in the ordinary course of business, one party (principal) has conferred powers on the other (agent) of such a nature that would amount to an agency. In this situation, doctrine of estoppel may apply and either or both the parties may be stopped from denying that they were not principal and/or agent. This principle of the law of evidence provides a relief for the injured parties against wrongful acts of certain persons. Thus, if A represents to B that he has the authority to sell the goods of C, B cannot, later, deny that he was not the agent of C. Thus, estoppel is the principle on the basis of which agency by holding out or conduct is tested. This type of agency is not a creation of law nor is it an authorised way to do things. Its object is to save the innocent parties from the wrongs that may be caused to them due to transactions done by them bona fide,

**Presumption of agency** There may be a presumption of agency in certain cases like husband and wife binding each other as principal or agent, a domestic servant of Mr. X going to a shop to purchase groceries, etc.

**Necessity:** In circumstances of urgent necessity, or to save a person from loss, another person may incur a liability on him, because the concerned persons were unavailable, or unreachable. In such situations, the things done bona fide, and for the benefit of principal will bind him.

**Operation of law** An agency may also be created by operation of law like death of the agent himself or insanity or involuntariness of agent.

**Agency by ratification** Sec. 196 of the Act states that when acts are done by one person on behalf of another, but without his knowledge or authority, he may elect to ratify or to disown such acts. If he ratifies them, the same effects will follow as if they had been performed by his authority.

## Rules of ratification (Elements of ratification)

Act on behalf of another person: The act done must have been done for the person ratifying, and not on behalf of the person who does it.

Existence of a person: Person ratifying must be in existence on the date of ratification. For example, things done before the incorporation of a company cannot be ratified since the company comes into existence later on.

Capacity of parties: Ratifying person must be competent to appoint an agent. That is, he must be competent to contract.

Express/implied: Ratification may be expressed or implied from the conduct of the person on whose behalf the acts are done (Sec. 197)

Examples {a) A, without authority, buys goods for B. Afterwards B sells them to C on his own account; B's conduct implies a ratification of the purchase made for him by A.

A, without B's authority, lends B's money to C. Afterwards, B accepts interest on the money from C. B's conduct implies a ratification of the loan.

Full knowledge: Ratification must be done with the full knowledge of the material facts. In case the knowledge of the person ratifying is materially defective, or vitiated because of fraud, misrepresentation, mistake of fact, etc., the ratification will be invalid.

Lawful acts: No one can ratify void, invalid, or immoral acts. The acts to be ratified must be perfectly lawful.

Contractual capacity: The principal must have contractual capacity both at the time of contract and at the time of ratification. For instance, a minor cannot ratify the contracts made on his behalf during his minority.

Acts within principal's power: Only those acts which are within the principal's power can be ratified. Thus, an act which is beyond the competence of a principal cannot be ratified.

Within a reasonable time: The ratification must be done within a reasonable time, otherwise it will not be binding.

Entire transaction: The ratification must be made for the whole transaction, and not for a part of the transaction. When a person ratifies a part of the unauthorised transaction, it is treated as the ratification of the entire transaction.

Effects of ratification . .

Ratification gives rise to the following effects: 1, According to Sec. 196 of the Indian Contract Act, ratification will bind the principal as if the acts have been performed by his authority.

The principal is bound to the third parties for the acts done by the agent.

Ratification gives a retrospective effect as it relates back to the date when the act was performed by the agent. It means that agency comes into existence from the moment the agent first acted, and not from the moment when the principal ratified it. An unauthorised act or an act done beyond the authority of the agent becomes an authorised act.

The agent becomes eligible to receive his remuneration.

Ratification of unauthorised act cannot injure third person An act done by one person on behalf of another, without such other person's authority, which, if done with authority, would have the effect of subjecting a third person to damages, or of terminating any right or interest of a third person, cannot, by ratification, be made to have such effect.

## **LIABILITIES OF THE PRINCIPAL TOWARDS THIRD PARTIES**

The rights and liabilities of a principal in relation to third parties under contracts made by his agent depend upon, whether an agent is

1. acting for a named principal,
2. acting for an unnamed principal,
3. acting for an undisclosed principal.

### **1. Agent Acting for a Named Principal**

The rights and liabilities of a named principal for the acts of his agent may be discussed as below:

#### **1. Acts of an Agent within the Scope of his Authority**

If an act is carried on by an agent within his authority, his acts are binding on the principal. However, the act done should be lawful.

**Example:** *A* authorized his agent, *B*, to collect money on his behalf. *B* received from *C* a sum of money due to *A*. This receipt of money is binding on *A*, and *C* is discharged from his obligation to pay this amount to *A*.

#### **2. Acts of an Agent Exceeding his Authority**

It can be discussed under two heads as shown below:

1. **Where the work can be separated** – Where an agent exceeds his agency to do the work of the principal, the principal is bound by that part of the work which is within his authority if it can be separated from the part of the work which is beyond his authority.

**Example:** *A*, owner of a ship and cargo, authorizes *B* to procure an insurance policy for Rs.4,000 on the ship. *B* procures a policy for Rs.4,000 on the ship and another for Rs.6,000 on the cargo. *A* is bound to pay the premium for the policy on the ship, but not the premium for the policy on the cargo.

2. **Where the work cannot be separated** – When an agent does more than what he is authorized to do, and such act cannot be separated from that which is within his authority, the principal is not bound by the transaction. He is in such a case entitled to repudiate the whole transaction. So if the agent does something in excess of his powers, the transaction is not binding on the principal.

**Example:** *A* authorized *B*, an agent to buy 500 sheeps. But *B* purchased 500 sheeps and 200 lambs, for a sum of Rs.6,000. In this case, the principal may repudiate the whole transaction.

3. Notice Given to Agent

The principal is bound by the notice given to the agent in the course of business. Thus, the knowledge of the agent is the knowledge of the principal.

However, if the knowledge is not acquired by the agent in the course of his employment, it cannot be imputed to the principal. Further, if the agent had committed a fraud on the principal, the rule of this section will not apply.

**Example:** *X* engaged *Y*'s agent to insure him against loss of eye-sight for \$500 in case of total loss of eye-sight and \$250 in case of loss of only one eye. At the time of the insurance, it appeared that *X* was in fact a one-eyed man. Held, the knowledge of the agent that *X* was one-eyed man should be attributed to the company and that *X* could recover \$500 when he lost the other eye.

4. Liability by Estoppel

The principal is liable for the unauthorized acts of the agent, if the principal has created an impression on the third party by his conduct, that the agent has the authority to do such acts.

**Example:** *A*, an owner of a house held out that *B*, the auctioneer had authority to sell the house. *B* sold the house by auction to a third party for an amount less than the amount authorized by *A*. It was held that the purchaser is not affected by *A*'s instructions to the auctioneer not to sell below a certain price.

5. Liability for Misrepresentation or Fraud

The principal is liable for the misrepresentation or fraud committed by his agent while acting in the course of his business. It is immaterial whether the misrepresentation or fraud has been committed for the benefit of the principal or of the agent himself.

**Example:** *A* offered to buy a residential flats consisting of number of flats in it and enquired *C*, the property manager of *B*, whether all the tenants were paying their rents regularly. *C* informed *A* that the tenants were paying rents regularly with immaterial exceptions. This statement turned out to be false. *B* was held liable for fraud because his agent (property manager) who knew the real facts had made a false statement.

2. Agent Acting for an Unnamed Principal

When an agent contracts, as an agent for a principal but does not disclose his name, the principal is liable for the contract of the agent. But the unnamed principal should be in existence at the time of the contract and the acts must be within the scope of agent's authority.

**Example:** *A* appointed *B* as his agent to purchase some goods. *B* entered into an agreement with *C* for purchasing those goods. *B* signed the agreement as a broker "to my principal" but did not disclose the name of the principal. Here, *B* is not personally liable because he contracted in the capacity of an agent.

However, the agent is personally liable if he declines to disclose the identity of the principal when asked by the third parties.

### 3. Agent Acting for an Undisclosed Principal

In case of an agent acting for an undisclosed principal, the mutual rights and liabilities of the agent, principal and the third party are as follows:

#### 1. Rights and Liabilities of Agent

Here agent contracts in his own name. So he is bound by the contract. He is personally liable to the third party also. On such contracts, he can sue and be sued in his own name because in the eyes of law he is the real contracting party. In such cases, the principal and the agent have their respective rights against each other.

#### 2. Rights and Liabilities of Third Party

If the third party has discovered that there is a principal, he may file a suit against the principal, or his agent or both. In such a case, the third party must allow the principal, the benefit of all payments received by him from the agent.

**Example:** *A* sold 100 bales of cotton to *B* on credit. Afterwards, *A* discovered that *B* was acting as an agent of *C*. In this case, *A* may sue either *B* or *C*, or both for the performance of the contract.

#### 3. Rights and Liabilities of Principal

The principal has the right to intervene and require the performance of the contract from the third party. In such cases, the other party may sue either the principal or the agent or both. The principal if he likes may also require the performance of the contract from the other party. But in such a case, he should allow, the benefit of all payments made by the third party to the agent, to the third party.

**Example:** *A* contracted with *B*, a shopkeeper, to purchase furniture. *A* advanced a part payment of the price to *B*. Afterwards, *A* discovered that *B* is the agent of *C*. In this case, *C* may ask *A* to perform the contract. But he must account for the advance money received by his agent *B*.

{Sec. 232}. **REVOCAATION/RENUNCIATION**

Compensation by revocation by principal: Where there is an express or an implied contract that the agency should be continued by any period of time, the principal must make compensation to the agent, or the agent to the principal, as the case may be, for any previous revocation or renunciation of the agency without any sufficient cause.

Notice of revocation or renunciation: Reasonable notice must be given of such revocation or renunciation, otherwise, the damage there by resulting to the principal or the agent, as the case may be, must be made good to the one by the other.

Revocation and renunciation may be expressed or implied: Revocation and renunciation may be expressed or implied from the conduct of the principal or the agent respectively.

Example: A empowers B to let A's house. Afterwards B let it to himself,

This is an implied revocation of B.

## **RIGHTS OF PRINCIPAL**

When an agent deals on his own account, in the business of agency without the principal's consent

If an agent deals on his own account in the business of the agency, without first obtaining ' the consent of his principal and acquainting him with all material circumstances which have come to his own knowledge on the subject, the principal may repudiate the transaction.

Examples

(a) 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.

(b) A directs B to sell A's estate. B, on looking over the estate before selling it, finds a mine on the estate, which is unknown to A. B informs A that he wishes to buy the estate for himself, but conceals the discovery of the mine. A allows B to buy, in ignorance of the existence of the mine. A, on discovering that B knew of the mine at the time he bought the estate, may either repudiate or adopt the sale at his option.

Right to benefit gained by agent dealing on his own account in business of agency

If an 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. :

Example

A directs B, his agent, to buy a certain house for him. B tells A it cannot be bought, and buys the

house for himself. A may, on discovering that B has bought the house, compel him to sell it to C at the price he gave for it.

#### Agent's duty in conducting principal's business

An agent is bound to conduct the business of his principal according to the directions given by the principal, or, in the absence of any such directions, according to the custom which prevails in doing business of the same kind at the place where the agent conducts such business. When the agent acts otherwise, if any loss is sustained, he must make it good to his principal, and, if any profit accrues, he must account for it.

#### Examples

(a) A, an agent, engaged in carrying on for B a business, in which it is the custom to invest from time to time, at interest, the moneys which may be in hand, omits to make such investments. A must make good to B the interest usually obtained by such investments.

6) Ba, broker, in whose business, it is not the custom to sell on credit, sells goods of A on credit to C, whose credit at the time is very high. C, before payment, becomes insolvent. B must make good the loss to A.

#### Skill and diligence required from agent

An agent is bound to conduct the business of the agency with as much skill as is generally possessed by persons engaged in similar business, unless the principal has notice of his want of skill. The agent is always bound to act with reasonable diligence, and to use all such skill he possesses. To make compensation The agent is required to make compensation to his principal in respect of the direct consequences of his own negligence due to want of skill / misconduct.

#### To render accounts to his principal

An agent is bound to render proper accounts to his principal on demand.

#### Duty to communicate with principal

It is the duty of an agent, in cases of difficulty, to use all reasonable diligence in communicating with his principal, and in seeking to obtain his instructions.

#### Duty to pay sums received for principal

Subject to such deductions, the agent is bound to pay to his principal all sums received on his account.

## **RIGHTS OF AGENT**

#### Agent's right of retainer

An agent may retain, out of any sum received on account of the principal in the business of the agency, all moneys due to himself in respect of advances made or expenses properly incurred by him in conducting such a business, and also such remuneration as may be payable to him for acting as agent.

When agent's remuneration becomes due In the absence of any special contract, payment for the performance of any act is not due to the agent until the completion of such an act; but an agent may detain moneys received by him on account of goods sold, although the whole of the goods consigned to him for sale may not have been sold, or although the sale may not be actually complete.

#### Agent's lien on principal's property

In the absence of any contract to the contrary, an agent is entitled to retain goods, papers, and other property, whether movable or immovable, of the principal received by him, until the amount due to himself for commission, disbursements and services in respect of the same, has been paid or accounted for to him.

### DELEGATION OF AUTHORITY OF AGENT

The rule 'delegatus non potest delegare' is enshrined in Sec. 190 of'

the Indian Contract Act, 1872. Accordingly, 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 agency, a sub-agent must, be employed.

It is clear from the above that the person who has been delegated an act, cannot delegate it further, because this would result in confusion. Further, sub-delegation to many persons also will delay the execution of the work. Hence, the Act has prescribed that an agent cannot lawfully employ another to perform acts, which he has expressly or impliedly undertaken to perform himself.

### TERMINATION OF AGENCY

#### By the Act of the Parties

By agreement between the principal and the agent 'The relations between the principal and agent may be terminated at any time or at any stage by mutual agreement. In some cases, there will be express provisions as regards the termination of the agency.

#### Revocation of agency by the principal

The principal may, after giving reasonable notice, revoke the authority of the agent at any time before the agent exercised his authority, so as to bind the principal.

#### Revocation by the agent

The agent after giving reasonable notice may revoke the agency. Reasonable notice must be given before revocation of the agency by either of the parties. In the absence of such a notice, the principal or agent can be held liable for any loss suffered by the other.

#### On the performance of the contract of agency

When the agency is created for a single transaction, the agency terminates when the purpose is completed. For example, an agency for sale of a certain property comes to an end when the sale is completed.

#### On the insanity of principal or the agent

Insanity of principal or the agent terminates the contract of agency. The insolvency of the principal terminates the agency, and also, that of the agent, except in cases when the act which the agent is to do, is merely formal.

#### By the expiry of time fixed for the agency contract

When the agency is created for a specified period, it may be terminated at any stage by the mutual agreement or will stand terminated after the expiry of time.

#### By death of the principal or agent

When the agent or principal dies, the agency is terminated. If the agency terminates due to the death of the principal, the agent must take all reasonable steps to protect and preserve the interests of the late principal. By renunciation of employment by the agent An agent by giving reasonable notice to the principal, of his intention, can renounce the contract of the agency, for a person cannot be compelled or forced to continue as an agent against his will.

#### When the company is woundup

A company after being dissolved comes to an end and the powers of the principal or agent terminate thereafter. :

#### On principal becoming an alien enemy

When the agent and principal are aliens on break out of a war between two countries, the agency is automatically terminated.

#### On destruction of subject-matter

An agency is automatically terminated when the subject-matter of the contract ceases to exist.

## Effects of Termination

1. The termination of the agency amounts to automatic termination of all sub-agents appointed by the agent [Sec. 210].
2. As regards the third parties, the agency terminates when they come to know of the fact of termination,
3. When an agency is terminated by the death or insanity of the principal, the agent is duty bound to protect and preserve the principal's interest [Sec. 209].