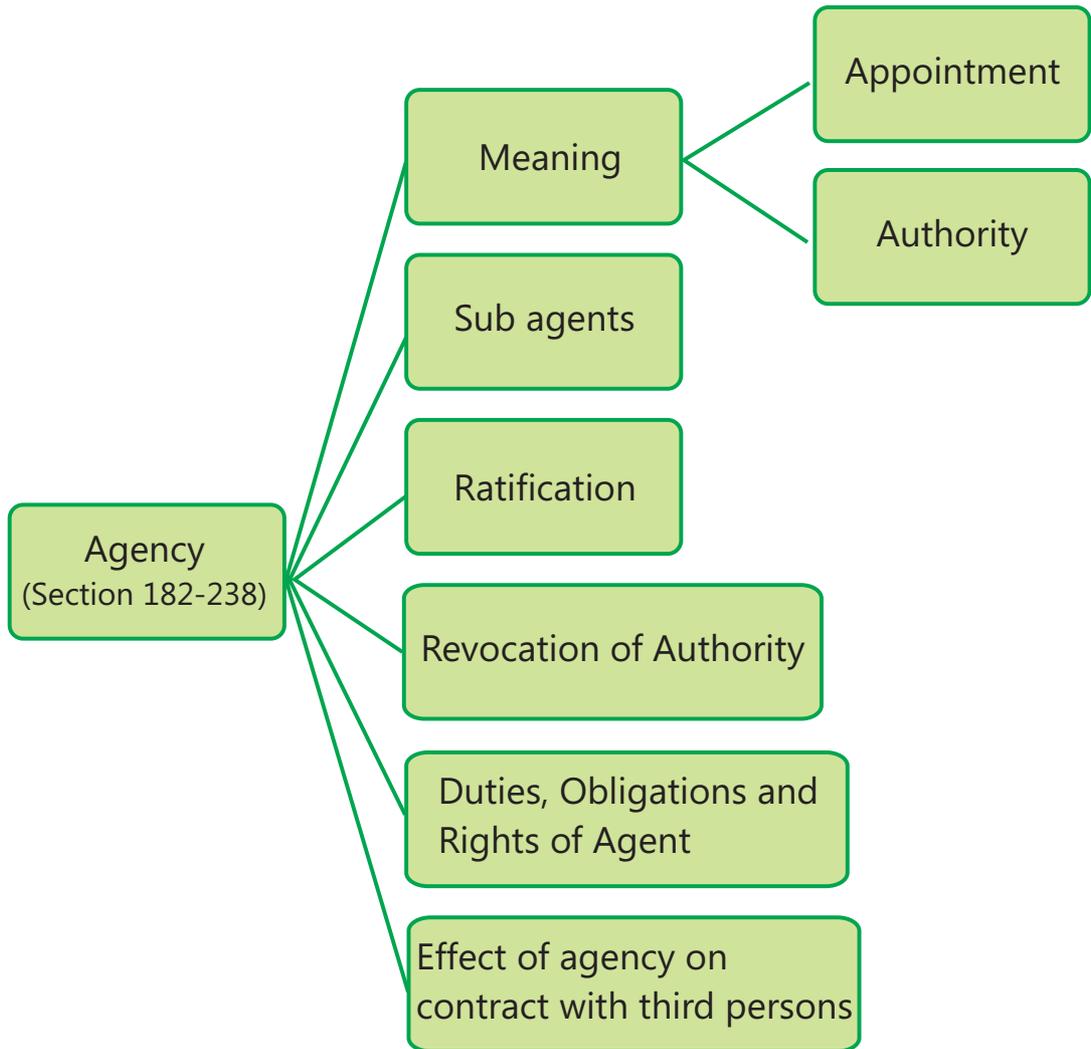


## UNIT – 3 : AGENCY

### LEARNING OUTCOMES

After studying this unit, you would be able to :

- ❑ Understand the relationship between agent and principal and the intention behind adoption of such course of agency.
- ❑ Know that consideration is not at all necessary for validity of agency contracts.
- ❑ Understand rights and obligations of an agent as well as the circumstances when the agent is personally liable for the acts done by him on behalf of the principal and the legal position of the agent, the principal and the third parties involved.
- ❑ Identify with the terms 'sub-agent' and 'substituted agent' and to distinguish between the two.

**UNIT OVERVIEW** 

In the modern world conduct of business is not possible without the help of agents. Therefore, it is necessary to know the law relating to agency. The law of agency is contained in sections 182 to 238 of the Indian Contract Act, 1872.



## 1. WHAT IS AGENCY ?

The relationship of agency arises whenever one person called the agent has authority to act on behalf of another called the principal. An agent is not a mere connecting link between principal and third party. He has the power to make the principal answerable to third parties for his conduct.

The Indian Contract Act, 1872 does not define the word 'Agency'. However the word '**Agent**' is defined as "a person employed to do any act for another or to represent another in dealings with third persons". The person for whom the act is done or who is so represented is called "**Principal**". [Section 182]



### Test of Agency

- Whether the person has the capacity to bind the principal and make him answerable to the third party.
- Whether he can establish Privity of Contract between the principal and third parties.

If the answer to these questions is in affirmative (Yes), then there is a relationship of agency.

Thus, 'Agency' is a comprehensive word used to describe the relationship between one person and another, where the first mentioned person brings the second mentioned person into legal relation with others.

The Rule of Agency is based on the maxim "*Quit facit per alium, facit per se*" i.e., he who acts through an agent is himself acting.



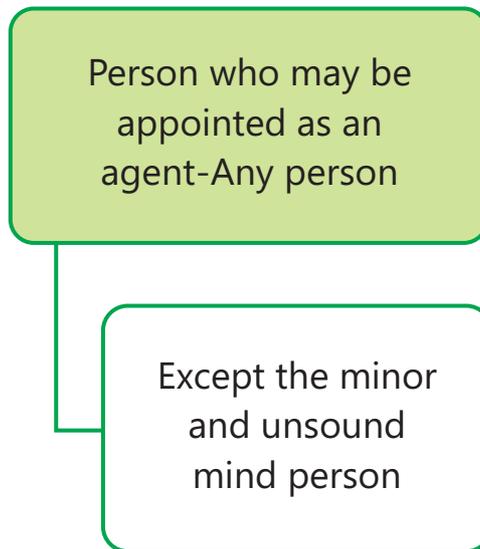
## 2. APPOINTMENT AND AUTHORITY OF AGENTS

**Who may employ agent :** According to Section 183, "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." Thus a minor or a person of unsound mind cannot appoint an agent.

Person qualified to appoint agent must be

- major
- sound mind

**Who may be an agent :** Section 184 provides that "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 of sound mind can become an agent, so as to be responsible to his principal according to the provisions in that behalf herein contained.



Section 184 of the Contract Act provides that any person may become an agent. In other words, even a **minor** can become an agent and the principal can be bound by his acts.

Since, agent is a mere connecting link between the principal and the third party, it is immaterial whether or not the agent is legally competent to contract. Thus, there is no bar to the appointment of a minor as an agent. However, in considering the contract of agency itself (i.e. the relation between principal and agent), the contractual capacity of the agent becomes important.

Thus, if the agent happens to be a person incapable of contracting, then the principal cannot hold the agent liable, in case of his misconduct or where the agent has been negligent in performance of his duties.

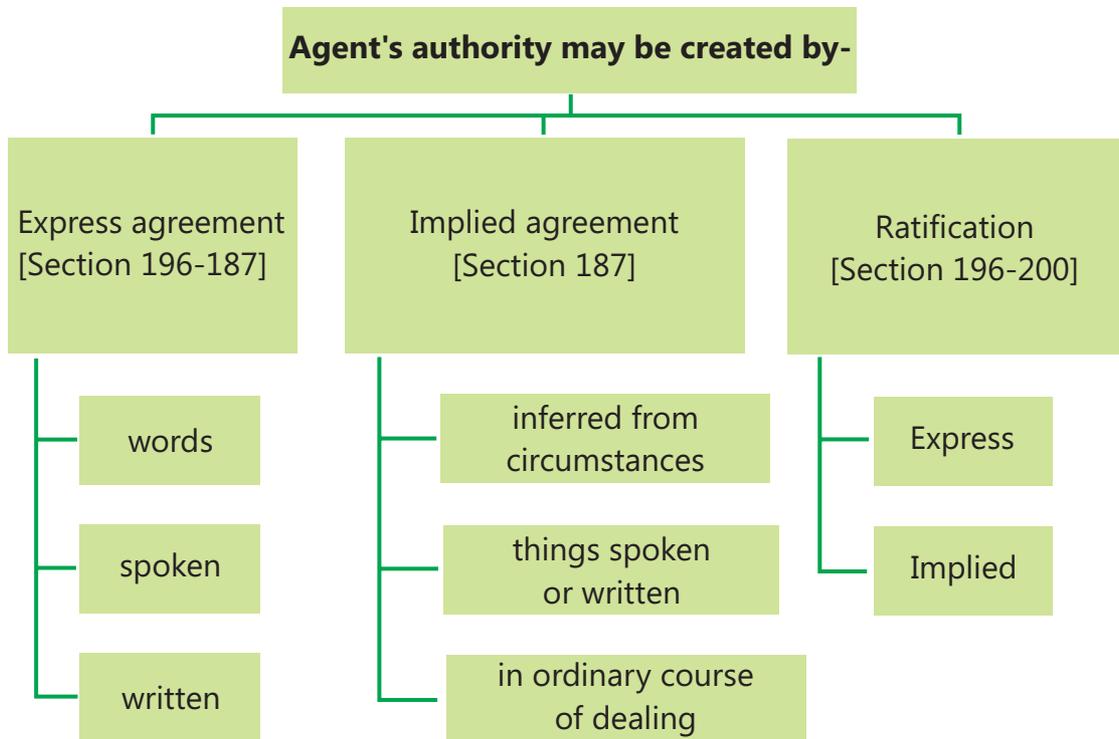
**Example :**

P appoints Q, a minor, to sell his car for not less than ₹ 2,50,000. Q sells it for ₹ 2,00,000. P will be held bound by the transaction and further shall have no right against Q for claiming the compensation for having not obeyed the instructions, since Q is a minor and a contract with a minor is 'void-ab-initio'.

**Consideration not necessary :** According to Section 185, no consideration is necessary to create an agency. The acceptance of the office of an agent is regarded as a sufficient consideration for the appointment.

### 3. CREATION OF AGENCY

There are various ways in which agency may be created. Following are the relevant sections under which agent's authority comes into an existence, and thus creates agency—



**The authority may be express or implied :** According to Section 186, the authority of an agent may be express or implied.

#### **Definitions of express and implied authority [Section 187]**

**Express Authority :** An authority is said to be express when it is given by words, spoken or written.

**Example :** A is residing in Delhi and he has a house in Kolkata. A appoints B by a deed called the power of attorney, as a caretaker of his house. Agency is created by express agreement.

**Implied Authority :** 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 circumstances of the case.

**Example 1 :** If a person realises rent and gives it to the landlord, he impliedly acts for the landlord as an agent.

**Example 2 :** A owns a shop in Serampore, 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 purposes of the shop.



## 4. EXTENT OF AGENT'S AUTHORITY

The extent of an agent's authority, whether expressed or implied is determined by :

- (a) the nature of the act or the business he is appointed to do
- (b) things which are incidental to the business or are usually done in the course of such business,
- (c) the usage of trade or business.

Whatever be the nature or extent of the agent is authority, it will always include the authority to do :

- (1) every lawful thing necessary for the purpose of carrying it out,
- (2) every lawful thing justified by various customs of trades,
- (3) in an emergency, all such acts for the purpose of protecting the principal from loss as will be done by a person of ordinary prudence in his own case under similar circumstances.

The agent's authority is governed by two principles, namely (a) in normal circumstances and (b) in emergency.

**(a) Agent's authority in normal circumstances [Section 188] :** An agent having an authority to do an act has authority to do every lawful thing which is necessary in order to do such act.

An agent having an authority to carry on a business has authority to do every lawful thing necessary for the purpose, or usually done in the course, of conducting such business.

**Example 1 :** A is employed by B, residing in London, to recover at Mumbai a debt due to B. A may adopt any legal process necessary for the purpose of recovering the debt, and may give a valid discharge for the same.

**Example 2 :** A constitutes B as his agent to carry on his business of a shipbuilder. B may purchase timber and other materials, and hire workmen, for the purposes of carrying on the business.

**(b) Agent's authority in an emergency [Section 189] :** 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.

To constitute a valid agency in an emergency, following conditions must be satisfied.

- (i) Agent should not be in a position or have any opportunity to communicate with his principal within the time available.

- (ii) There should have been actual and definite commercial necessity for the agent to act promptly.
- (iii) the agent should have acted bonafide and for the benefit of the principal.
- (iv) the agent should have adopted the most reasonable and practicable course under the circumstances, and
- (v) the agent must have been in possession of the goods belonging to his principal and which are the subject of contract.

**Example 1 :** An agent for sale may have goods repaired if it be necessary.

**Example 2 :** A consigns provisions to B at Kolkata, with directions to send them immediately to C at Cuttack. B may sell the provisions at Kolkata, if they will not bear the journey to Cuttack without spoiling.

## 5. SUB-AGENTS

**When agent cannot delegate [Section 190] :** 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.

**“Sub-agent” defined [Section 191] :** A “Sub-agent” is a person employed by, and acting under the control of, the original agent in the business of the agency.

**Analysis :** Sub agency refers to case where an agent appoints another agent. The appointment of sub agent is not lawful, because the agent is a delegatee and a delegatee cannot further delegate. This is based on the Latin principle **“delegatus non potest delegare”**.

A contract of agency is of a fiduciary character. It is based on the confidence reposed by the principal in the agent and that is why a delegatee cannot further delegate.

**Exception where an agent can appoint Sub-agent :**

- (1) The appointment of a sub agent would be valid if the terms of appointment originally contemplated it.
- (2) Sometimes customs of the trade may provide for appointment of sub agents. In both these cases the sub agent would be treated as the agent of the principal.
- (3) Where in the course of the agent’s employment, unforeseen emergency arise which make it necessary for him to delegate authority.

**Representation of principal by sub-agent properly appointed [Section 192] :** Where a sub-agent is properly appointed,

- (1) 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.

- (2) **Agents responsibility for sub agents :** The agent is responsible to the principal for the acts of the sub-agent.
- (3) **Sub-agents responsibility :** The sub-agent is responsible for his acts to the agent, but not to the principal, except in case of fraud or wilful wrong.

**Agent's responsibility for sub-agent appointed without authority [Section 193] :**

Where an agent, without having authority to do so, has appointed a person to act as a sub-agent,

- (1) 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;
- (2) the principal is not represented by or responsible for the acts of the sub agent, the sub agent is not responsible to the principal at all. He is answerable only to the agent.

**Analysis :**

- (a) **Where the sub-agent is properly appointed :** Where a sub agent is properly appointed, the principal is bound by his acts and is therefore responsible to third parties as if he were an agent originally appointed by the principal.

**Example :** A, a carrier, agreed to carry 60 bags of cotton waste from Morvi to Bhavnagar by a truck. A asked B, another carrier, to carry the goods. The goods were damaged in transit. Held, A was liable even though it was proved that B was the carrier.

- (b) **In the case of appointment without authority :** In case where the appointment of sub agent takes place without authority, the principal is not bound by the acts of sub agent and sub agent is not bound to the principal. It is the agent who is the principal of sub agent. Where the sub-agent purportedly acts in the name of first principal, that first principal may ratify the act of sub agent. However if the sub agent acts in his own name or in the name of the agent who has without authority delegated to the sub agent the business which is in fact of the principal, the principal cannot ratify such acts of sub agent.



## 6. SUBSTITUTED AGENT

Substituted Agent is a person appointed by the agent to act for the principal, in the business of agency, with the knowledge and consent of the principal.

Substituted agents are not sub agents. They are agents of the principal. Where the principal appoints an agent and if that agent identifies another person to carry out the acts ordered by principal, then the second person is not to be treated as a sub agent but only as an agent of the original principal.

**Relation between principal and person duly appointed by agent to act in business of agency [Section 194] :** 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.

**Example 1 :**

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.

**Example 2 :**

A authorizes B, a merchant in Kolkata, 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 a solicitor for A.

**Agent's duty in naming such person [Section 195] :** 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.

**Analysis**

While selecting a "substituted agent" the agent is bound to exercise same amount of diligence as a man of ordinary prudence and if he does so he will not be responsible for acts or negligence of the substituted agent.

**Example 1 :**

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.

**Example 2 :**

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.



## 7. DIFFERENCE BETWEEN A SUB-AGENT AND A SUBSTITUTED AGENT

Both a sub-agent and a substituted agent are appointed by the agent. But, however, the following are the points of distinction between the two.

1. A sub-agent does his work under the control of agent but a substituted agent works under the instructions of the principal.
2. The agent not only appoints a sub-agent but also delegates to him a part of his own duties. The agent does not delegate any part of his task to a substituted agent.
3. Privity of contract is established between a principal and a substituted agent. But there is no privity of contract between the principal and the sub-agent.
4. The sub-agent is responsible to the agent alone and is not generally responsible to the principal. But a substituted agent is responsible to the principal and not to the original agent who appointed him.
5. The agent is responsible to the principal for the acts of the sub-agent, but he is not liable for those of the substituted agent, provided he has taken due care in selecting him.
6. In the case of a substituted agent, the agent's duty ends once he has named him, but in the case of a sub-agent the agent remains answerable for the acts of the sub-agent as long as sub-agency continues.



## 8. RATIFICATION

### **Rights of person as to acts done for him without his authority, Effect of ratification**

**[Section 196]** : Where 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.

### **Essentials of a valid Ratification**

1. **Ratification may be expressed or Implied [Section 197]** : Ratification may be expressed or may be implied in the conduct of the person on whose behalf the acts are done.

#### **Example 1 :**

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.

#### **Example 2 :**

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

2. **Knowledge requisite for valid ratification [Section 198]** : No valid ratification can be made by a person whose knowledge of the facts of the case is materially defective.

**Example :** A has an authority from P to buy certain goods at the market rate. He buys at a higher rate but P accepts the purchase. Afterwards P comes to know that the goods purchased by A for P belonged to A himself. The ratification is not binding on P.

If however the alleged principal is prepared to take the risk of what the purported agent has done, he can choose to ratify without full knowledge of facts.

- 3. Effect of ratifying unauthorized act forming part of a transaction [Section 199] :** A person ratifying any unauthorized act done on his behalf ratifies the whole of the transaction of which such act formed a part.

There can be ratification of an act in entirety or its rejection in entirety. The principal cannot ratify a part of the transaction which is beneficial to him and reject the rest.

- 4. Ratification of unauthorized act cannot injure third person [Section 200] :** 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. In other words, when the interest of third parties is affected, the principle of ratification does not apply. Ratification cannot relate back to the date of contract if third party has in the intervening time acquired rights.

**Example 1 :**

A, not being authorized thereto by B, demands on behalf of B, the delivery of a chattel, the property of B, from C, who is in possession of it. This demand cannot be ratified by B, so as to make C liable for damages for his refusal to deliver.

**Example 2 :**

A holds a lease from B, terminable on three months' notice. C, an unauthorized person, gives notice of termination to A. The notice cannot be ratified by B, so as to be binding on A.

- 5. Ratification within reasonable time :** Ratification must be made within a reasonable period of time.
- 6. Communication of Ratification :** Ratification must be communicated to the other party.
- 7. Act to be ratified must be valid :** Act to be ratified should not be void or illegal, for e.g. payment of dividend out of capital is void and cannot be ratified.



## 9. REVOCATION OF AUTHORITY

### Termination of agency [Section 201]

An agency is terminated-

by the principal  
revoking his authority;  
or

by the agent  
renouncing the  
business of the agency;  
or

by the business of the  
agency being  
completed; or

by either the principal  
or agent dying or  
becoming of unsound  
mind; or

by either the principal  
or agent dying or  
becoming of unsound  
mind

### Termination of agency, where agent has an interest in subject-matter [Section 202]

Where the agent has himself an interest in the property which forms the subjectmatter of the agency, the agency cannot, in the absence of an express contract, be terminated to the prejudice of such interest.

**Example 1 :** A gives authority to B to sell A's land, and to pay himself, out of the proceeds, the debts due to him from A. A cannot revoke this authority, nor can it be terminated by his insanity or death.

**Example 2 :** A consigns 1,000 bales of cotton to B, who has made advances to him on such cotton, and desires B to sell the cotton, and to repay himself, out of the price the amount of his own advances. A cannot revoke this authority, nor is it terminated by his insanity or death.

### When principal may revoke agent's authority [Section 203]

The principal may, save as is otherwise provided by the last preceding section, revoke the authority given to his agent at any time before the authority has been exercised so as to bind the principal.

### Revocation where authority has been partly exercised [Section 204]

The principal cannot revoke the authority given to his agent after the authority has been partly exercised so far as regards such acts and obligations as arise for acts already done in the agency.

**Example 1:** A authorizes B to buy 1,000 bales of cotton on account of A, and to pay for it out of A's money remaining in B's hands. B buys 1,000 bales of cotton in his

own name, so as to make himself personally liable for the price. A cannot revoke B's authority so far as regards payment for the cotton.

**Example 2 :** A authorizes B to buy 1,000 bales of cotton on account of A, and to pay for it out of A's money remaining in B's hands. B buys 1,000 bales of cotton in A's name, and so as not to render himself personally liable for the price. A can revoke B's authority to pay for the cotton.

### **Compensation for revocation by principal, or renunciation by agent [Section 205]**

Where there is an express or implied contract that the agency should be continued for 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 sufficient cause.

### **Notice of revocation or renunciation [Section 206]**

Reasonable notice must be given of such revocation or renunciation; otherwise the damage thereby 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 [Section 207]**

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

**Example :** A empowers B to let A's house. Afterwards A lets it himself. This is an implied revocation of B's authority.

**When termination of agent's authority takes effect as to agent, and as to third persons [Section 208] :** The termination of the authority of an agent does not, so far as regards the agent, take effect before it becomes known to him, or, so far as regards third persons, before it becomes known to them.

**Example 1 :** A directs B to sell goods for him, and agrees to give B five per cent commission on the price fetched by the goods. A afterwards, by letter, revokes B's authority. B, after the letter is sent, but before he receives it sells the goods for ₹ 1,00,000. The sale is binding on A, and B is entitled to ₹ 5,000 as his commission.

**Example 2 :** A, at Chennai, by letter directs B to sell for him some cotton lying in a warehouse in Mumbai, and afterwards, by letter, revokes his authority to sell, and directs B to send the cotton to Chennai. B, after receiving the second letter, enters into a contract with C, who knows of the first letter, but not of the second, for the sale to him of the cotton. C pays B the money, with which B absconds. C's payment is good as against A.

**Example 3 :** A directs B, his agent, to pay certain money to C. A dies, and D takes out probate to his will. B, after A's death, but before hearing of it, pays the money to C. The payment is good as against D, the executor.

**Agent's duty on termination of agency by principal's death or insanity [Section 209] :** When an agency is terminated by the principal dying or becoming of unsound mind, the agent is bound to take, on behalf of the representatives of his late principal, all reasonable steps for the protection and preservation of the interests entrusted to him.

### Termination of sub-agent's authority [Section 210]

The termination of the authority of an agent causes the termination (subject to the rules herein contained regarding the termination of an agent's authority) of the authority of all sub-agents appointed by him.



## 10. DUTIES AND OBLIGATIONS OF AN AGENT

Conduct the business according to principal's directions

Conduct the business with the skill and diligence

Render proper accounts

Communicate with principal in cases of difficulty

Repudiation of the transaction by principal

Not to deal on his own account

Agent's duty to pay sums received for principal

- (i) **To conduct the business of agency according to the principal's directions [Section 211] :** An agent is bound to conduct the business of his principal according to the direction 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 be sustained, he must make it good to his principal, and, if any profit accrues, he must account for it.

**Example 1 :** 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 investment. A must make good to B the interest usually obtained by such investment.

**Example 2 :** B, a 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 was very high. C, before payment, becomes insolvent. B must make good the loss to A.

- (ii) **The agent should conduct the business with skill and diligence that is generally possessed by persons engaged in similar business :** According to section 212, 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 such skill as he possesses; and to make compensation to his principal in respect of the direct consequences of his own neglect, want of skill or misconduct, but not in respect of loss of damage which are indirectly or remotely caused by such neglect, want of skill or misconduct.

**Example 1 :** A, a merchant in Kolkata, has an agent, B, in London, to whom a sum of money is paid on A's account, with orders to remit. B retains the money for a considerable time. A, in consequence of not receiving the money, becomes insolvent. B is liable for the money and interest from the day on which it ought to have been paid, according to the usual rate, and for any further direct loss- as, e.g. by variation of rate of exchange-but not further.

**Example 2 :** A, an agent for the sale of goods, having authority to sell on credit, sells to B on credit, without making the proper and usual enquiries as to the solvency of B. B, at the time of such sale is insolvent. A must make compensation to his principal in respect of any loss thereby sustained.

**Example 3 :** A, an insurance-broker, employed by B to effect an insurance on a ship, omits to see that the usual clauses are inserted in the policy. The ship is afterwards lost. In consequence of the omission of the clauses nothing can be recovered from the underwriters. A is bound to make good the loss to B.

**Example 4 :** A, a merchant in England, directs B, his agent at Mumbai, who accepts the agency, to send him 100 bales of cotton by a certain ship. B, having it in his power to send the cotton, omits to do so. The ship arrives safely in England. Soon after her arrival the price of cotton rises. B is bound to make good to A the profit which he might have made by the 100 bales of cotton at the time the ship arrived, but not any profit he might have made by the subsequent rise.

- (iii) **To render proper accounts [Section 213]** : An agent is bound to render proper accounts to his principal on demand. Rendering accounts does not mean showing the accounts but the accounts supported by vouchers. (*Anandprasad vs. Dwarkanath*)
- (iv) **Agent' duty to communicate with principal [Section 214]** : 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.
- (v) **Repudiation of the transaction by principal [Section 215]** : 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, if the case shows either that any material fact has been dishonestly concealed from him by the agent, or that the dealings of the agent have been disadvantageous to him.
- Example 1** : 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.
- Example 2** : 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 allow B to buy, in ignorance of the existence of the mine. A, on discovering that B know of the mine at the time he bought the estate, may either repudiate or adopt the sale at his option.
- (vi) **Not to deal on his own account [Section 216]** : 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 A at the price he gave for it.
- (vii) **Agent's duty to pay sums received for principal [Section 218]** : Subject to such deductions, the agent is bound to pay to his principal all sums received on his account.



## 11. RIGHTS OF AN AGENT



- (i) **Right of retain out of sums received on principal's account [Section 217] :** his section empowers the agent to retain, out of any sums received on account of the principal in the business of the agency for the following payments:
- (a) all moneys due to himself in respect of advances made
  - (b) in respect of expenses properly incurred by him in conducting such business
  - (c) such remuneration as may be payable to him for acting as agent.
- (ii) **Right to remuneration [Section 219] :** The agent in the normal course is entitled for remuneration as per the contract. In the absence of any agreed amount of remuneration, he is entitled for usual remuneration which is customary in the business. However he is not entitled for any remuneration for acts done through misconduct/negligence.

**Example 1 :** A employs B to recover ₹ 1,00,000 from C, and to lay it out on good security. B recovers the ₹ 1,00,000 and lays out ₹ 90,000 on good security, but lays out ₹ 10,000 on security which he ought to have known to be bad, whereby A loses ₹ 2,000. B is entitled to remuneration for recovering the ₹ 1,00,000 and for investing the ₹ 90,000. He is not entitled to any remuneration for investing the ₹ 10,000, and he must make good the ₹ 2,000 to B.

**Example 2 :** A employs B to recover ₹ 1,00,000 from C. Through B's misconduct the money is not recovered. B is entitled to no remuneration for his services, and must make good the loss.

- (iii) **Agent's lien on principal's property [Section 221] :** An agent is entitled to retain the goods, properties and books for any remuneration, commission etc. due to him. The possession of such property should be however lawful.
- (iv) **Right of indemnification for lawful acts [Section 222] :** The principal is bound to indemnify the agent against all consequences of lawful acts done in exercise of his authority.

**Example :** 'A' of Delhi appoints 'B' of Mumbai as agent to sell his merchandise. As a result 'B' contracts to deliver the merchandise to various parties. But A fails to send the merchandise to B and B faces litigations for non performance. Here, A is bound to protect B against the litigations and all costs, expenses arising of that.

- (v) **Right of indemnification against acts done in good faith [Section 223] :** Where the agent acts in good faith on the instruction of principal, agent is entitled for indemnification of any loss or damage from the principal.

**Example :** Where P appoints A as his agent and directs him to sell certain goods which in fact turned out to be not those belonging to P and if third parties sue A for this act, A is entitled for reimbursement and indemnification for such act done in good faith.

However, the agent cannot claim any reimbursement or indemnification for any loss etc. arising out of acts done by him in violation of any penal laws of the country.



## 12. NON-LIABILITY OF EMPLOYER OF AGENT TO DO A CRIMINAL ACT

According to section 224, where one person employs another to do an act which is criminal, the employer is not liable to the agent, either upon an express or an implied promise, to indemnify him against the consequences of that act.

**Example 1 :** A employs B to beat C, and agrees to indemnify him against all consequences of the act. B thereupon beats C, and has to pay damages to C for so doing. A is not liable to indemnify B for those damages.

**Example 2 :** B, the proprietor of a newspaper, publishes, at A's request, a libel upon C in the paper, and A agrees to indemnify B against the consequences of the publication, and all costs and damages of any action in respect thereof. B is sued by C and has to pay damages, and also incurs expenses. A is not liable to B upon the indemnity.



### 13. COMPENSATION TO AGENT FOR INJURY CAUSED BY PRINCIPAL'S NEGLIGENCE

Section 225 provides that the principal must make compensation to his agent in respect of injury caused to such agent by the principal's neglect or want of skill.

**Example :** A employs B as a bricklayer in building a house, and puts up the scaffolding himself. The scaffolding is unskilfully put up, and B is in consequence hurt. A must make compensation to E.



### 14. AGENT'S LIABILITY TO THIRD PARTIES

An agent does all acts on behalf of the principal but incurs no personal liability. The liability remains that of the principal unless there is a contract to the contrary. This is because there is no privity of contract and passing of consideration between the agent and third party. An agent also cannot personally enforce contracts entered into by him on behalf of the principal.

(i) **Principal's liability for the Acts of the Agent :** Principal liable for the acts of agents which are within the scope of his authority. Contracts entered into through an agent, and obligations arising from acts done by an agent, may be enforced in the same manner, and will have the same legal consequences, as if the contracts had been entered into and the acts done by the principal in person.

**Example 1 :** A buys goods from B, knowing that he is an agent for their sale, but not knowing who is the principal. B's principal is the person entitled to claim from A the price of the goods, and A cannot, in a suit by the principal, set off against that claim a debt due to himself from B.

**Example 2 :** A, being B's agent with authority to receive money on his behalf, receives from C, a sum of money due to B. C is discharged of his obligation to pay the sum in question to B.

(ii) **Principal not bound, when agent exceeds authority [Section 227] :** When an agent does more than he is authorised to do, and when the part of what he does,

which is within his authority, can be separated from the part which is beyond his authority, so much only of what he does as is within his authority is binding as between him and his principal.

**Example :** A, being owner of a ship and cargo, authorizes B to procure an insurance for ₹ 4,00,000 on the ship. B procures a policy for ₹ 4,00,000 on the ship, and another for the like sum 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.

**(iii) Principal not bound when excess of agent's authority is not separable**

**[Section 228] :** Where an agent does more than he is authorised to do, and what he does beyond the scope of his authority cannot be separated from what is within it, the principal is not bound to recognise the transaction.

**Example :** A authorizes B to buy 500 sheep for him. B buys 500 sheep and 200 lambs for one sum of ₹ 6,00,000. A may repudiate the whole transaction.

**(iv) Consequences of notice given to agent [Section 229] :** Any notice given to or information obtained by the agent, provided it be given or obtained in the course of the business transacted by him for the principal, shall, as between the principal and third parties, have the same legal consequence as if it had been given to or obtained by the principal.

**Example 1 :** A is employed by B to buy from C certain goods of which C is the apparent owner, and buys them accordingly. In the course of the treaty for the sale, A learns that the goods really belonged to D, but B is ignorant of that fact. B is not entitled to set off a debt owing to him from C against the price of the goods.

**Example 2 :** A is employed by B to buy from C goods of which C is the apparent owner. A was, before he was so employed, a servant of C, and then learnt that the goods really belonged to D, but B is ignorant of that fact. In spite of the knowledge of his agent, B may set off against the price of the goods a debt owing to him from C.

**(v) Agent cannot personally enforce, nor be bound by, contracts on behalf of principal [Section 230] :** In the absence of any contract to that effect, an agent cannot personally enforce contracts entered into by him on behalf of his principal, nor is he personally bound by them.

**Presumption of contract to the contrary :** Such a contract shall be presumed to exist in the following cases :

- (1) Where the contract is made by an agent for the sale or purchase of goods for a merchant resident abroad/foreign principal;

- (2) Where the agent does not disclose the name of his principal or undisclosed principal; and
- (3) Where the principal, though disclosed, cannot be sued.

**(vi) Rights of parties to a contract made by agent not disclosed [Section 231] :**

If an agent makes a contract with a person who neither knows, nor has reason to suspect, that he is an agent, his principal may require the performance of the contract; but the other contracting party has, as against the principal, the same right as he would have had as against the agent if the agent had been the principal.

If the principal discloses himself before the contract is completed, the other contracting party may refuse to fulfil the contract, if he can show that, if he had known who was the principal in the contract, or if he had known that the agent was not a principal, he would not have entered into the contract.

**(vii) Performance of contract with agent supposed to be principal [Section 232] :**

Where one man makes a contract with another, neither knowing nor having reasonable ground to suspect that the other is an agent, the principal, if he requires the performance of the contract, can only obtain such performance subject to the rights and obligations subsisting between the agent and the other party to the contract.

**Example :** A, who owes 50,000 rupees to B, sells 1,00,000 rupees worth of rice to B. A is acting as agent for C in the transaction, but B has no knowledge nor reasonable ground of suspicion that such is the case. C cannot compel B to take the rice without allowing him to set off A's debt.

**(viii) Right of person dealing with agent personally liable [Section 233] :** In cases where the agent is personally liable, a person dealing with him may hold either him or his principal, or both of them, liable.

**Example :** A enters into a contract with B to sell him 100 bales of cotton, and afterwards discovers that B was acting as agent for C. A may sue either B or C, or both, for the price of the cotton.

**(ix) Consequence of inducing agent or principal to act on belief that principal or agent will be held exclusively liable [Section 234] :**

When a person who has made a contract with an agent induces the agent to act upon the belief that the principal only will be held liable, or induces the principal to act upon the belief that the agent only will be held liable, he cannot afterwards hold liable the agent or principal respectively.

**(x) Liability of pretended agent [Section 235] :** A pretended agent is a person who represents himself to be an agent of another, when in fact he has no authority

from him, whatsoever if the principal ratifies his acts as agent, he has no liability. But if the principal refuses to ratify his acts, he becomes personally liable to third party for any loss or damage caused to him. It is to be noted that where agent is personally liable, the third party can sue the principal or the agent or both the principal and the agent, as the liability of the principal and agent is joint and several.

**(xi) Person falsely contracting agent not entitled to performance [Section 236] :**

A person with whom a contract has been entered into in the character of agent, is not entitled to require the performance of it if he was in reality acting, not as agent, but on his own account.

**(xii) Liability of principal inducing belief that agent's unauthorized acts were authorized [Section 237] :** When an agent has, without authority, done acts or incurred obligations to third persons on behalf of his principal, the principal is bound by such acts or obligations, if he has by his words or conduct induced such third persons to believe that such acts and obligations were within the scope of the agent's authority.

**Example 1 :** A consigns goods to B for sale, and gives him instructions not to sell under a fixed price. C, being ignorant of B's instructions, enters into a contract with B to buy the goods at a price lower than the reserved price. A is bound by the contract.

**Example 2 :** A entrusts B with negotiable instruments endorsed in blank. B sells them to C in violation of private orders from A. The sale is good.

**(xiii) Effect, on agreement, of misrepresentation or fraud by agent [Section 238] :**

Misrepresentations made, or frauds committed, by agents acting in the course of their business for their principals, have the same effect on agreements made by such agents as if such misrepresentations or frauds had been made, or committed, by the principals; but misrepresentations made, or frauds committed, by agents, in matters which do not fall within their authority, do not affect their principals.

**Example 1 :** A, being B's agent for the sale of goods, induces C to buy them by a misrepresentation, which he was not authorized by B to make. The contract is voidable, as between B and C, at the option of C.

**Example 2 :** A, the captain of B's ship, signs bills of lading without having received on board the goods mentioned therein. The bills of lading are void as between B and the pretended consignor.



## SUMMARY

- **Agency:** Relation between an agent and his principal created by an express/ implied agreement authorising an agent by his principal to create contractual relations with third parties. Person so appointed to represent the principal is called as agent whereas a person who appoints an agent to represent him as per his directions and authority is called as principal.
- Agency can be either expressed or implied.
- **Sub-agent:** Person appointed by the original agent in the business of agency under his direction and control and being responsible to the principal for acts of a sub-agent.
- **Substituted agent:** Person is named by the agent expressly or impliedly to act for the principal in the business of agency.
- **Ratification:** Where 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. Ratification may be expressed or may be implied in the conduct of the person on whose behalf the acts are done.
- **Revocation of authority:** An Agency is terminated (a) by the principal revoking his authority; or (b) by the agent renouncing the business of the agency; or (c) by the business of the agency being completed; or (d) by either the principal or agent dying or becoming of unsound mind; or (e) by either the principal or agent dying or becoming of unsound mind
- **Duties and obligations of an Agent:** (a) Conduct the business according to principal's directions (b) Conduct the business with the skill and diligence (c) Render proper accounts (d) Communicate with principal in cases of difficulty (e) Repudiation of the transaction by principal (f) Not to deal on his own account (g) Agent's duty to pay sums received for principal
- **Rights of an Agent:** (a) Right of retain out of sums received on principal's account (b) Right to remuneration (c) Agent's lien on principal's property (d) Right of indemnification for lawful acts (e) Right of indemnification against acts done in good faith.

 **TEST YOUR KNOWLEDGE****Multiple Choice Questions**

- \_\_\_\_\_ is one who represents to be an agent of another when in reality he has no such authority from the other agent at all.
  - Substituted agent
  - Subordinate agent
  - Pretended agent
  - Both (a) & (b)
- Out of the following, who can appoint an Agent ?
  - Minor
  - Person of sound mind
  - Person of unsound mind
  - None of the above
- When an authority of agent is said to be implied :
  - given by words
  - spoken
  - inferred from the circumstances of the case
  - written
- Substituted Agent is agent of the \_\_\_:
  - Agent
  - Principal
  - Sub-agent
  - Third party
- L made an offer to MD of a company. MD accepted the offer though he had no authority to do so. Subsequently L withdrew the offer but the company ratified the MD's acceptance. State which of the statement given hereunder is correct :
  - L was bound with the offer
  - An offer once accepted cannot be withdrawn
  - Both option (a) & (b) is correct
  - L is not bound to an offer.

6. A is residing in Delhi and has a house in Mumbai. A appoints B by a power of attorney to take care of his house. State the nature of agency created between A and B :
- Implied agency
  - Agency by ratification
  - Agency by necessity
  - Express agency

### Answer to MCQs

1. (c)	2. (b)	3. (c)	4. (b)	5. (c)	6. (d)
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### Question and Answer

#### Question 1

*A appoints M, a minor, as his agent to sell his watch for cash at a price not less than ₹ 700. M sells it to D for ₹ 350. Is the sale valid? Explain the legal position of M and D, referring to the provisions of the Indian Contract Act, 1872.*

#### Answer

According to the provisions of Section 184 of the Indian Contract Act, 1872, as between the principal and a third person, any person, even a minor may become an agent. But no person who is not of the age of majority and of sound mind can become an agent, so as to be responsible to his principal. Thus, if a person who is not competent to contract is appointed as an agent, the principal is liable to the third party for the acts of the agent. Thus, in the given case, D gets a good title to the watch. M is not liable to A for his negligence in the performance of his duties.

#### Question 2

*State with reason whether the following statement is correct or incorrect Ratification of agency is valid even if knowledge of the principal is materially defective.*

#### Answer

Incorrect : Section 198 of the Indian Contract Act, 1872 provides that for a valid ratification, the person who ratifies the already performed act must be without defect and have clear knowledge of the facts of the case. If the principal's knowledge is materially defective, the ratification is not valid and hence no agency.

#### Question 3

Ramesh instructed Suresh, a transporter, to send a consignment of apples to Mumbai. After covering half the distance, Suresh found that the apples will perish before reaching Mumbai. He sold the same at half the market price. Ramesh sued Suresh. Will he succeed?

### Answer

An agent has the authority in an emergency to do all such acts as a man of ordinary prudence would do for protecting his principal from losses which the principal would have done under similar circumstances.

A typical case is where the 'agent' handling perishable goods like 'apples' can decide the time, date and place of sale, not necessarily as per instructions of the principal, with the intention of protecting the principal from losses. Here the agent acts in an emergency and acts as a man of ordinary prudence. In the given case Suresh had acted in an emergency situation and Ramesh will not succeed against him.

### Question 4

*Mr. Ahuja of Delhi engaged Mr. Singh as his agent to buy a house in West Extension area. Mr. Singh bought a house for ₹ 20 lakhs in the name of a nominee and then purchased it himself for ₹ 24 lakhs. He then sold the same house to Mr. Ahuja for ₹ 26 lakhs. Mr. Ahuja later comes to know the mischief of Mr. Singh and tries to recover the excess amount paid to Mr. Singh. Is he entitled to recover any amount from Mr. Singh? If so, how much? Explain.*

### Answer

The problem in this case, is based on the provisions of the Indian Contract Act, 1872 as contained in Section 215 read with Section 216. The two sections provide that where an agent without the knowledge of the principal, deals in the business of agency on his own account, the principal may :

- (1) repudiate the transaction, if the case shows, either that the agent has dishonestly concealed any material fact from him, or that the dealings of the agent have been disadvantageous to him.
- (2) claim from the agent any benefit, which may have resulted to him from the transaction.

Therefore, based on the above provisions, Mr. Ahuja is entitled to recover ₹ 6 lakhs from Mr. Singh being the amount of profit earned by Mr. Singh out of the transaction.

### Question 5

*Comment on the following :*

*'Principal is not always bound by the acts of a sub-agent ' .*

### Answer

The statement is correct. Normally, a sub-agent is not appointed, since it is a delegation of power by an agent given to him by his principal. The governing principle is, a delegate cannot delegate'. (Latin version of this principle is, "delegates non potest delegare"). However, there are certain circumstances where an agent can appoint sub-agent.

In case of proper appointment of a sub-agent, by virtue of Section 192 of the Indian Contract Act, 1872 the principal is bound by and is held responsible for the acts of the sub-agent. Their relationship is treated to be as if the sub-agent is appointed by the principal himself.

However, if a sub-agent is not properly appointed, the principal shall not be bound by the acts of the sub-agent. Under the circumstances the agent appointing the sub-agent shall be bound by these acts and he (the agent) shall be bound to the principal for the acts of the sub-agent.

