

CONTRACT OF AGENCY

Meaning

When a person employs another person to do any act for himself or to represent him in dealing with third persons, it is called a '*Contract of Agency*'. The person who is so represented is called the 'principal' and the representative so employed is called the 'agent (Sec. 182). The duty of the agent is to enter into legal relations on behalf of the principal with third parties. But, by doing so he himself does not become a party to the contract to the contract not does he incur any liability under that contract. Principal shall be responsible for all the acts of his agent provided they are not outside the scope of his authority.

Competence of the parties to enter into a contract of agency

The person employing the agent must himself have the legal capacity or be competent to do the act for which he employ the agent. A minor or a person with unsound mind cannot appoint an agent so as to be legally represented by him (Sec. 183). But an agent so appointed need not necessarily be competent to contract (Sec: 184) and hence minor or an insane can be appointed as an agent he can bring about legal relations between the principal and the third party but such an incompetent agent cannot personally be held liable to the principal.

Consideration not required: Contract of agency requires no consideration. It comes under the category of those contracts which law has declared to be valid without consideration (Sec. 185).

Creation of Agency: Agency may be created by any of the following ways:

1. Expressly (Sec. 187)

When an agent is appointed by words spoken or written, his authority is said to be express.

2. Impliedly (Sec. 187)

When agency arises from the conduct of the parties or inferred from the circumstances of the case, it is called implied agency.

Example: A of Calcutta has a shop in Delhi. B, the manager of the shop, has been ordering and purchasing goods from C for the purpose of the shop. The goods purchased were being regularly paid for but of the funds provided by A. B shall be considered to be an agent of A by his conduct.

Partners, servants and wives are usually regarded as agents by implications because of their relationship.

Wife as an implied agent to her husband

(a) Where the husband and wife are living together in a domestic establishment of their own, the wife shall have an implied authority to pledge the credit of her husband for necessaries. The implied authority can be challenged by the husband only in the following circumstances.

(1) The husband has expressly forbidden the wife from borrowing money or buying goods on credit (*Debenham V. Mellon* (1880) 6 A.C. 24).

(2) The articles purchased did not constitute necessities.

(3) Husband had given sufficient funds to the wife for purchasing the articles she needed to the knowledge of the seller (*Miss Gray Ltd. V. Cathcort* (1922) 38 T.L.R. 562).

(4) The creditor had been expressly told not to give credit to the wife (*Etherington V. Parrot* (1703) Salia 118).

(b) Where the wife lives apart from husband without any of her fault, she shall have an implied authority to bind the husband for necessaries, if he does not provide for her maintenance.

3. Agency by necessity

Under certain circumstances, a person may be compelled to act as an agent to the other, e.g. master of the ship can borrow money at a port where the owner of the ship has not agent, to carry out necessary repairs to the ship in order to complete the voyage. In such a case of necessity, person acting as an agent need not necessarily have the authority of the principal. However, the agent must act under pressing conditions and for the benefit of the principal.

Example: The master of the ship on finding that the cargo is rapidly perishing is entitled to dispose it of at the best price available so as to bind the consignor as an agent by necessity.

4. Agency by estoppel (Sec. 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 and obligations if he has by his words or conduct induced such third person to believe that such acts and obligations were within the scope of the agent's authority.

Example: A says to B in the presence of and within the hearing of C that he is C's agent. C remains mum. B supplies goods of Rs. 10,000/- to A taking him as C's agent. C's responsible for the payment of price of these goods.

5. Agency by ratification (Sec. 196 to 200)

Ratification means subsequent acceptance and adoption of an act by the principal originally done by the agent without authority. According to section 196. "Where acts are done by one person on behalf of another but without his knowledge or authority, he may check to ratify or to disown such act. If he ratifies them, the same effects will follow as if they had been performed by his previous authority."

Example: The manager of a company purporting to act as an agent on the company's behalf but without its authority, accepted an offer by L, the defendant L subsequently withdrew the offer, but the company ratified the manager's acceptance. L was held to be bound by the acceptance. His revocation of the offer was held to be invalid. Ratification relates back to the time when the agent had first acted and, therefore, subsequent revocation shall have no effect.*

In order that ratification may be legal and valid, it must satisfy the following essentials. (1) The act must be done in the name of the principal.

(2) Principal must have been in existence and competent to contract at the time when agent acted on his behalf as well as on the date of ratification.

(3) The act must be legal which the principal must be competent to do.

(4) Ratification must be with full knowledge of all the material facts (Sec. 198).

(5) Ratification must relate to the whole act and not to a part of it. Ratification of a part of the act will not be valid (Sec. 199).

(6) There can be no valid ratification of an act which is to the prejudice of a third person (Sec. 200).

* *Blton Partners V. Lambert* (1889) 41 Ch. D. 295

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

(7) Ratification of an act must be made, either within the time fixed for this purpose or within a reasonable time after the contract was entered into by the agent.

CLASSIFICATION OF AGENTS

A general classification of agents from the point of view of the *extent of their authority* is as follows

1) Special agent. A special agent is one who is appointed to perform a particular act or to represent his principal in some particular transaction as, for example, an agent employed to sell a house or an agent employed to bid at an auction. Such an agent has a limited authority and as soon as the act is performed, his authority comes to an end. He cannot bind his principal in any matter other than that for which he is employed. The persons who deal with him are bound to ascertain the extent of his authority.

2) General agent. A general agent is one who has authority to do all acts connected with a particular trade, business or employment. For example, the manager (general agent) of a firm has an implied authority to bind his principal by doing anything necessary for carrying on the business of the firm or which falls within the ordinary scope of the business. Such authority of the agent is continuous until it is put to an end. If the principal, by secret instructions, limits the authority of the general agent, and the agent exceeds the authority, the principal is bound by the agent's acts done within the scope of his authority, unless the third parties dealing with the agent have a notice of the curtailment of the authority of the agent.

3) Universal agent. A universal agent is one whose authority to act for the principal is unlimited. He has authority to bind his principal by any act which he does, provided that act (i) is legal, and (ii) is agreeable to the law of the land.,

4) Another classification of agents from the point of view of the nature of work performed by them is as follows :

1. Commercial or mercantile agent. A 'mercantile agent', according to Sec. 2 (9) of the Sale of Goods Act, 1930, means "a mercantile agent having in the customary course of business as such agent, authority either to sell goods, or to consign goods for the purposes of sale, or to buy goods, or to raise money on the security of goods." This definition does not cover all kinds of mercantile agents which are as follows:

(1) Factor. A factor is a mercantile agent entrusted with the possession of goods for the purpose of selling them. He has ostensible authority to do such things as are usual in the conduct of business [*Pickering v. Busk*, (1812) 15 East 38]. He sells the goods in his own name as an apparent owner upon such terms as he thinks fit. He can sell them on credit as well. He has also the authority to receive the price and give a good discharge to the purchaser.

A factor has a general lien on the goods of his principal for a general balance of account between him and the principal (Sec. 171). If he is in possession of goods, or of the documents of title to goods, with the consent of the owner, any sale, pledge or other disposition of them made by him, in the ordinary course of business, is binding on the owner, whether or not the owner authorised it.

Example. P owned a motor car and delivered it to A, a mercantile agent, for sale at not less than £ 575. A sold the car for £ 340 to T, who bought it in good faith and without notice of any fraud. A misappropriated the £ 340 and F sued to recover the car from T. *Held.* as A was in possession of the car with P's consent for the purposes of sale, T got a good title [*Fakes v. King*, (1923) 1 K.B. 2821.

(2)Auctioneer. An auctioneer is an agent appointed by a seller to sell his goods by auction for a reward generally in the form of a commission. He is primarily the agent of the seller but after the sale has taken place. he becomes the agent of the purchaser also. He resembles factor in all respects except that he has only a particular lien on the goods for his charges. He has authority to receive the price of the goods sold. He can also sue for the price in his own name. The principal is liable to the third parties for the acts of the auctioneer if the auctioneer acts within the scope of his apparent authority even though he disobeys instructions privately given to him.

Example. P instructed A to sell a pony by auction, subject to a reserve price of £ 25, A. at the time of sale inadvertently stated that there was no reserve price and knocked the pony down to T at £ 16. *Held,* the sale was binding on P [*Rainbow v. Hawkins*, (1904) 2 K.B. 322).

If the auctioneer states that the sale is subject to a reserve price, but by mistake knocks the article down at a price below the reserve price, the sale is not binding on the owner. In such a case, the buyer knows that there is a limitation on the auctioneer's authority, and therefore bids can only be accepted provided the reserve price is reached [*McManus v. Fortescue*, (1907) 2 K.B. 11.

(3)Broker. A broker is an agent who is employed to buy or sell goods on behalf of another. He is employed primarily to bring about a contractual relation between the principal and the third parties. He is not entrusted with the possession of the goods in which he deals. He, cannot act or sue in his own name. And as he has no possession, he has no right of lien.

The ,usual mode of dealing by a broker is to put the terms of the contract in writing in a book, sign it and then send the particulars of the contract to both the parties. The document sent to the buyer is called the "bought note", and that sent to the seller the "sold note". If these documents agree, the terms of the contract are defined. If they do not agree, there is no binding contract. A reference is then made to signed entry in the broker's book.

(4) Commission agent. A commission agent belongs to a somewhat indefinite class of agents. He is employed to buy and sell goods, or transact business generally for other persons receiving for his labour and trouble a money payment, called commission.

(5) Del credere agent. A *del credere* agent is one who, in consideration of an extra commission, guarantees his principal that the person with whom he enters into contract on behalf of the principal, shall perform their obligations. He occupies the position of both a guarantor and an agent.

Banker. The relationship between a banker and his customer is really that of debtor and creditor. But there is a super-added obligation on the part of the banker to pay when called upon to do so by the draft or order (in the form of a cheque) of the customer. To this extent, a banker is the agent of his customer.

Non-mercantile agents. These include attorneys, solicitors, insurance agents, clearing and forwarding agents and wife, etc.

Rights of an Agent

1. *Right to claim reimbursement for expenses:* Agent has the right to retain, out of the money received on behalf of the principal, money advanced or expenses properly incurred in conducting the agency business (Sec. 217). The agent may have paid the money at the request of the principal, or on account of the understanding implied by the terms of the agency or through mercantile usage.

2. *Right to receive remuneration:* He has also a right to claim remuneration as may be payable to him for acting as an agent. In the absence of any contract to the contrary, this right to claim remuneration will arise only when he has carried out the object of the agency in full without being guilty of misconduct (Sec. 219).

An agent who is guilty of misconduct in the business of the agency is not entitled to any remuneration in respect of the part of that business which had been misconducted (Sec. 220).

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

3. *Right to indemnification against consequences of all lawful acts* : An agent has a right to be indemnified by the principal against the consequences of all lawful acts done in exercise of his authority. (Sec. 222).

Example: B, a broker at Calcutta, by the orders of A, merchant there, contracts with C for the purchase of 10 casks of oil for A. Afterwards A refuses to receive the oil and C sues B. B informs A, who repudiates the contract altogether. B defends, but unsuccessfully, and has to pay damages and incurs expenses. A is liable to B for such damages, costs and expenses.

4. *Rights of indemnification against consequences of acts done in good faith:* An agent has a right to be indemnified by the principal for any compensation which he may be required to pay to the third parties for injuries caused to them by his wrongful acts within the scope of his actual authority done in his good faith, i.e., without any wrong or dishonest intentions (Sec. 223).

Example: B at the request of A, sells goods in the possession of A, but which A had no right to dispose of B does not know his, and hands over the proceeds of the sale to A. Afterwards C, the true owner of the goods sues B and recover the value of the goods and cost. A is liable to indemnify B for what he has been compelled to pay to C and for B's own expenses.

But 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 the act (Sec. 224).

Example: A employs to 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.,

5. *Right of indemnification for injuries caused by Principal's neglect:* An agent has a right to claim compensation from the principal for injuries caused to him by the negligence or want to skill on the part of the principal (Sec. 225).

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

6. *Right of particular lien:* An agent is entitled to retain under the possession both movable and immovable of the property of the principal received by him until the amount due to him for commission, disbursements and services has been paid or accounted for him, provided the contract does not provide otherwise (Sec. 221).

Duties of an Agent

1. *To follow the instructions of his principal:* The agent must conduct the business of the principal according to the directions of the latter. In the absence of any such directions, he must follow the custom of the business prevailing in the locality where the agent is conducting such business. If the agent acts otherwise and the principal sustains a loss, the former must compensate the latter for it. He will have to account for the profits to the principal if there are any. He will also lose his remuneration (Sec. 211).

Example: A, an engaged in carrying on for B a business in which it is the custom to invest from time to time, at interest, the money which may be in hand omits to make such investment. A must take good to B the interest usually obtained by such investment.

2. *Duty to act, with skills and diligence* (Sec. 212): The agent must conduct the business of 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.

Example: 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 enquires 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.

3. *Duty to render accounts:* An agent is bound to render proper accounts to his principal on demand. He must explain those accounts to the principal and produce the vouchers in support of the entries (Sec. 213).

4. *Duty to communicate with the principal:* In cases of difficulty it is the duty of the agent to use all reasonable diligence in communicating with the principal and in seeking to obtain the instructions. It is only in an emergency where there is no time to communicate that he may act bonafide without consulting the principal (214).

5. *Duty not to deal on his own account:* The relationship of principal and agent is of a fiduciary character. An agent, therefore, should not deal on his own account and should not do anything which may indicate a clash between his interest and duties. An agent shall have to pay all the benefits to the principal, which may have resulted to him from his dealings on his own account in the business of the agency without the knowledge of the principal (Secs. 215 & 216).

Example: A directs B, his agent, to buy a certain house for him. B tells A that it cannot be bought, any 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.

6. *Duty not to delegate his authority:* An agent cannot delegate his authority to another person unless authorised or warranted by the usage of trade or nature of the agency. A work entrusted to the agent must be done by him.

7. *Duty to protect the interest of principal or his legal representative in the event of principal's unsoundness of mind or his death:* 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 (Sec. 209).

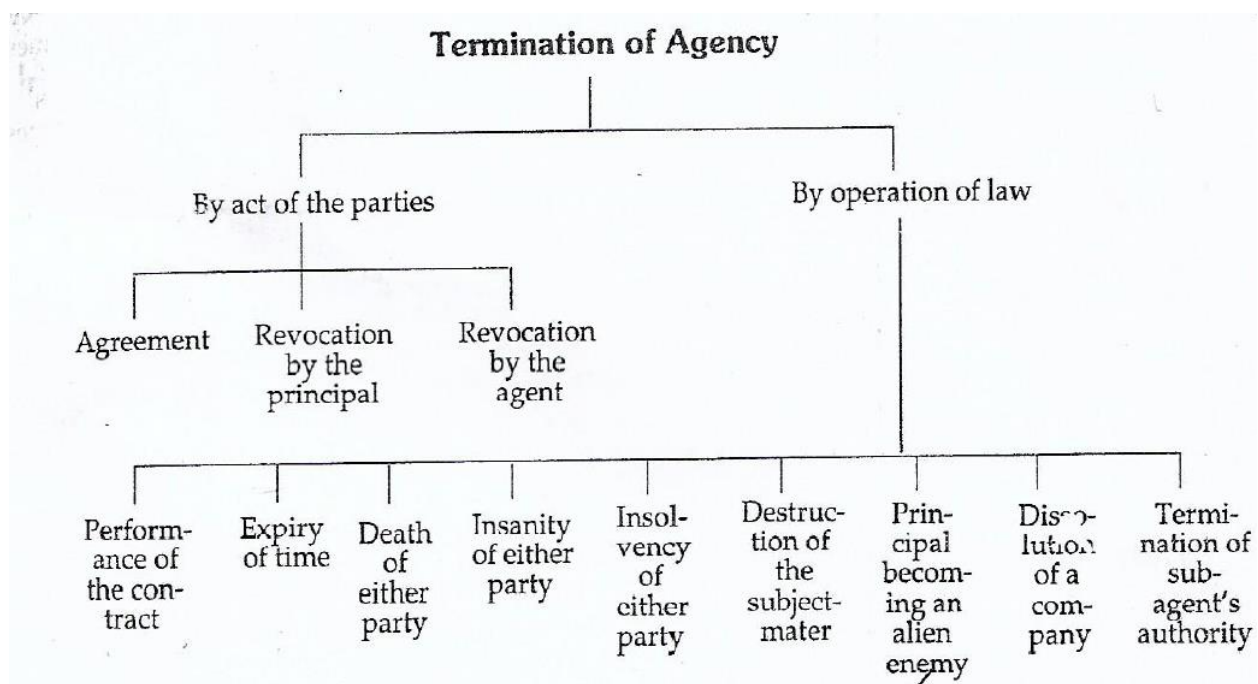
8. *Duty to pay sums received for principal:* The agent is bound to pay to his principal all sums received on his account after deducting for his own claim (Sec. 218).

Rights and Duties of the Principal

The agent's duties are principal's right and agent's rights are principal's duties.

TERMINATION OF AGENCY

Sec. 201 describes the modes of termination of agency. The Section is not comprehensive. The various modes of termination of agency as mentioned in Sec. 201 and other modes are indicated in the chart given below. In certain cases, the agency is irrevocable.



1. Termination of agency by act of the parties

(1) Agreement. The relation of principal and agent like any other agreement may be terminated at any time and at any stage by the mutual agreement between the principal and the agent.

(2) Revocation by the principal. The principal may revoke the authority of the agent (Sec. 201) at any time before the agent has exercised his authority so as to bind the principal unless the agency is irrevocable (Sec 203). But if the act has begun, the authority can only be revoked subject to any claim which the agent may have for breach of contract (Sec. 204). Where the agency is a continuous one, notice of its termination to the agent and also to the third parties is essential.

(3) Revocation by the agent. An agency may also be terminated by an express renunciation by the agent after giving a reasonable notice to the principal (Sec. 201).

Where there is an express or implied contract that the agency should be continued for a period of time, the principal must make compensation to the agent, or the agent to the principal, as case may be, for any previous revocation or renunciation of the agency without sufficient cause (Sec. 205). Reasonable notice must be given of such revocation or renunciation, otherwise the Bar,

thereby resulting to the principal or the agent, as the case may be, must be made good to the one by the other (Sec. 206). Revocation and renunciation may be expressed or may be implied in the conduct of the principal or agent respectively (Sec. 207).

Examples. (a) P employs A to let P his house. Afterwards P lets it himself. This is an implied revocation of A's authority.

(b) A was appointed agent to do all acts and carry on business on behalf of P, the principal, in his absence from India. *Held*, applying Sec. 207, the power should be treated as impliedly revoked when P returned to India [*Azam Khan v. S. Sattar*, A.I.R. (1978) A.P. 4221].

2. Termination of agency by operation of law

(1) Performance of the contract. The most obvious mode of putting an end to the agency is to do what the agent has undertaken to do (Sec. 201). Where the agency is for a particular object, it is terminated when the object is accomplished or when the accomplishment of the object becomes impossible.

(2) Expiry of time. When the agent is appointed for a fixed period of time, the agency comes to an end after the expiry of that time even if the work is not complete.

(3) Death and insanity. When the agent or the principal dies or becomes of unsound mind, the agency is terminated (Sec. 201). When the termination thus takes place, the agent must

take, on behalf of the representatives of his late principal, all reasonable steps for the protection and preservation of the interests entrusted to him (Sec. 209).

(4) **Insolvency.** The insolvency of the principal puts an end to the agency (Sec. 201) though nothing is mentioned in Sec. 201 as regards insolvency of the agent. The insolvency of the agent, if accepted, also terminates the agency unless the acts to be done by the agent are merely formal acts.

(5) **Destruction of subject-matter.** An agency which is created to deal with a certain subject-matter comes to an end by the destruction of the subject-matter. Where, for example, an agent is employed to effect an insurance on a particular house, the agency terminates if, before the insurance is effected, the house is destroyed by fire.

(6) **Principal and Agent becoming Alien enemy** contract of agency is valid so long as the countries of the principal and the agent are at peace. If war breaks out between the two countries, the contract of agency is terminated.

(7) **Dissolution of a company.** When a company, whether principal or agent, is dissolved, the contract of agency with or by the company automatically comes to an end.

(8) **Termination of sub-agent's authority.** The termination of an agent's authority puts an end to the sub-agent's authority (Sec. 210).