

Agency

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Note: All Sections mentioned in the presentation are the respective section numbers of the Indian Contract Act, 1872 (9 of 1972)

Agent and Principal Defined

- 182. “Agent” and “principal” defined.—An “agent” is a person employed to do any act for another, or to represent another in dealings with third persons. The person for whom such act is done, or who is so represented, is called the “principal”.
- Representative Capacity and Power to effectuate legal relationships
- Derivative Authority
- Case Law –
 - National Textile Coprn. v. Naresh Kumar Badri Kumar Jagad [2011, SC]
- Test of Agency
 - Parties Calling the relationship as agency – Not conclusive

Difference between Agent and Servant

AGENT	SERVANT
Creates legal relationships on behalf of principal	Servant does not enjoy the authority
Not subjected to direct control of principal - What is to be done?	Subjected to direct control of master - What is to be done? How is it to be done?
Generally, receives commission	Generally received wages
Principal vicariously liable for acts done within scope of authority .	Master vicariously liable for acts done in the course of employment .

No word is more commonly and constantly abused than the word ‘agent’. The description ‘agent’ is often employed in business in a complimentary sense and not in a legal sense. Thus one may hear of “dress agency”, “secret agent” etc. [Kennedy v. De Trafford (1897, HoL)]

Possibility of a person acting in both capacities – Directors of a company

Who may employ an Agent

- 183. 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.
- 184. 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 of sound mind can become an agent, so as to be responsible to his principal according to the provisions in that behalf herein contained.

Creation of Agency

- Express Appointment
 - Will of the principal manifested in oral/ written words
 - Power of Attorney
- Implied Appointment [by conduct or situation]
 - Delhi Electrical Supply Undertaking v. Basanti Devi [1999, SC]
- Necessity of the case/ Agency of Necessity
 - Pre existing agency not always required
 - Great Northern Railway Co. v. Swaffield [1874, Exch.]
 - Conditions
 - Inability to Communicate with the Principal
 - Necessity - Prager v. Blastpiel Stamp & Heacock Ltd. [1924, CoA]
 - Bonafide Intent

Creation of Agency (contd.)

- Ratification [S. 196]
 - On Behalf of Other [Keighley Maxseted v. Durant (1901, HoL)]
 - Principal to be competent on the date of contract
 - Ratification can not be injurious to rights of third party [S. 200]
 - No valid ratification can be made by a person whose knowledge of the facts of the case is materially defective [S. 198]
 - A person ratifying any unauthorized act done on his behalf ratifies the whole of the transaction of which such act formed a part [S. 199]
 - May be express or implied [S. 197]
 - Doctrine of Relation Back
 - Boulton & Partners v. Lambert [1889, Chancery Division]
 - Watson v. Davies [1931, Chancery Division]

Agent's Authority

- 226. Enforcement and consequences of agent's contracts.—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.
- 188. Extent of agent's authority.—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.
- Dingle v. Hare [1859]
- 229. Consequences of notice given to agent.—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 consequences as if it had been given to or obtained by the principal.

Kinds of Authority

- Actual Authority
 - Express Authority
 - Implied Authority
 - 187. Definitions of express and implied authority.—An authority is said to be express when it is given by words spoken or written. 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.
- Ostensible /Apparent Authority [S. 237]
 - Illustration – Director of a company
 - Wattau v. Fenwick [1893, QB]
 - Kannelles v. Locke [1919, Ohio Appellate Court]

Agent Exceeding Authority

- 227. Principal how far bound, when agent exceeds authority.—When an agent does more than he is authorized 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.
- 228. Principal not bound when excess of agent's authority is not separable.—Where an agent does more than he is authorized 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 recognize the transaction.

Liability of Agent

- 230. Agent cannot personally enforce, nor be bound by, contracts on behalf of principal.—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 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;
 - (2) where the agent does not disclose the name of his principal;
 - (3) where the principal, though disclosed, cannot be sued.

Duties of Agent

- Duty to execute mandate
 - Pannalal Janakidas v. Mohanlal [1951, SC]
- Duty to follow instructions [S. 211]
 - Lilly v. Doubleday [1881, CoA]
- Duty of reasonable Skill and Care [S. 212]
- Duty to communicate with the Principal [S. 214]

Duties of Agent (Contd.)

- Duty to maintain accounts [S. 213]
- Duty to remit sums [S. 218]
- Duty not to make secret profits and conflict the interest [S. 215, 216]
 - De Busche v. Alt [1848, Ch.D.]

Duties of Agent (contd.)

- Duty not to Delegate [Ss 190-193]
 - When agent cannot delegate.—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.
 - **Improper Delegation** - Where an agent, without having authority to do so, has appointed a person to act as a sub-agent, the agent stands towards such person in the relation of a principal to an agent, and is responsible for his acts both to the principal and to third persons; the principal is not represented, by or responsible for the acts of the person so employed, nor is that person responsible to the principal.
 - **Proper Delegation** - Where a sub-agent is properly appointed, the principal is, so far as regards third persons, represented by the sub-agent, and is bound by and responsible for his acts, as if he were an agent originally appointed by the principal.
The agent is responsible to the principal for the acts of the sub-agent.
The sub-agent is responsible for his acts to the agent, but not to the principal, except in cases of fraud or wilful wrong.
- Appointing a substituting agent [Ss. 194 & 195]

Rights of the Agent

- Right to remuneration [S. 219]
- Right of Retainer [S. 217]
- Right of Lien [S. 221]
- Right to Indemnity [S. 222]
- Right to compensation for damage due to principal's conduct [S. 225]

Determination of Agency

Termination of agency.—An agency is terminated

- by the principal revoking his authority
 - before authority is exercised [S.203]
 - Prospective [S. 204]
 - Compensation for untimely revocation [S. 205-206]
 - Agency coupled with interest [S. 202]
- by the agent renouncing the business of the agency
- by the business of the agency being completed
- by either the principal or agent dying or becoming of unsound mind
- by the principal being adjudicated an insolvent under the provisions of any Act for the time being in force for the relief of insolvent debtors.

Effect of Determination

- 208. When termination of agent's authority takes effect as to agent, and as to third persons.— 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.

THANK YOU