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| <p><b>182. “Agent” and “principal” defined.</b> — 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”.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
| <p><b>183. Who may employ agent.</b> — 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.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
| <p><b>184. Who may be an agent.</b> — 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.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
| <p><b>185. Consideration not necessary.</b> — No consideration is necessary to create an agency.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
| <p><b>186. Agent’s authority may be expressed or implied.</b> — The authority of an agent may be expressed or implied.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
| <p><b>187. Definitions of express and implied authority.</b> — 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.</p> <p>Illustration</p> <p>A owns a shop in Serampore, living himself in Calcutta, 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.</p>                              |
| <p><b>188. Extent of agent’s authority.</b> — 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.</p> <p>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.</p> <p>Illustrations</p> <p>(a) A is employed by B, residing in London, to recover at Bombay 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.</p> <p>(b) A constitutes B his agent to carry on his business of a ship-builder. B may purchase timber and other materials, and hire workmen, for the purpose of carrying on the business.</p> |
| <p><b>189. Agent’s authority in an emergency.</b> — 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.</p> <p>Illustrations</p> <p>(a) An agent for sale may have goods repaired if it be necessary.</p> <p>(b) A consigns provisions to B at Calcutta, with directions to send them immediately to C, at Cuttack. B may sell the provisions at Calcutta, if they will not bear the journey to Cuttack without spoiling.</p>                                                                                                                                                                                                                    |
| <p><b>190. When agent cannot delegate.</b> — 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.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
| <p><b>191. “Sub-agent” defined.</b> — A “sub-agent” is a person employed by, and acting under the control of, the original agent in the business of the agency.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
| <p><b>192. Representation of principal by sub-agent properly appointed.</b> — Where a sub-agent is properly appointed, the principal is, so far as regards third persons, represented by</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |

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the sub-agent, and is bound by and responsible for his acts, as if he were an agent originally appointed by the principal.

Agent’s responsibility for sub-agent. — The agent is responsible to the principal for the acts of the sub-agent.

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

193. Agent’s responsibility for sub-agent appointed without authority. — 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.

194. Relation between principal and person duly appointed by agent to act in business of agency. — 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.

Illustrations

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

(b) A authorizes B, a merchant in Calcutta, to recover the moneys due to A from C & Co. B instructs D, a solicitor, to take legal proceedings against C & Co. for the recovery of the money. D is not a sub-agent, but is solicitor for A.

195. Agent’s duty in naming such person. — 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.

Illustrations

(a) A instructs B, a merchant, to buy a ship for him. B employs a ship-surveyor of good reputation to choose a ship for A. The surveyor makes the choice negligently and the ship turns out to be unseaworthy and is lost. B is not, but the surveyor is, responsible to A.

(b) A consigns goods to B, a merchant, for sale. B, in due course, employs an auctioneer in good credit to sell the goods of A, and allows the auctioneer to receive the proceeds of the sale. The auctioneer afterwards becomes insolvent without having accounted for the proceeds. B is not responsible to A for the proceeds.

196. Right of person as to acts done for him without his authority. Effect of 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 ratify them, the same effects will follow as if they had been performed by his authority.

197. Ratification may be expressed or implied. — Ratification may be expressed or may be implied in the conduct of the person on whose behalf the acts are done.

Illustrations

(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.

(b) 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.

198. Knowledge requisite for valid ratification. — No valid ratification can be made by a person whose knowledge of the facts of the case is materially defective.



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**199. Effect of ratifying unauthorized act forming part of a transaction.** — A person ratifying any unauthorized act done on his behalf ratifies the whole of the transaction of which such act formed a part.

**200. Ratification of unauthorized 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.

Illustrations

(a) 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.

(b) 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.

**201. Termination of agency.** — 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 the principal being adjudicated an insolvent under the provisions of any Act for the time being in force for the relief of insolvent debtors.

**202. Termination of agency, where agent has an interest in subject-matter.** — Where the agent has himself an interest in the property which forms the subject-matter of the agency, the agency cannot, in the absence of an express contract, be terminated to the prejudice of such interest.

Illustrations

(a) 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.

(b) 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.

**203. When principal may revoke agent’s authority.** — 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.

**204. Revocation where authority has been partly exercised.** — 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 from acts already done in the agency.

Illustrations

(a) A authorizes B to buy 1,000 bales of cotton on account of A, and to pay for it out of A’s moneys 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.

(b) A authorizes B to buy 1,000 bales of cotton on account of A, and to pay for it out of A’s moneys 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.

**205. Compensation for revocation by principal, or renunciation by agent.** — 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.

**206. Notice of revocation or renunciation.** — Reasonable notice must be given of such

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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.

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

Illustration

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

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.

Illustrations

(a) 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, revoke B's authority. B, after the letter is sent, but before he receives it, sells the goods for 100 rupees. The sale is binding on A, and B is entitled to five rupees as his commission.

(b) A, at Madras, by letter, directs B to sell for him some cotton lying in a warehouse in Bombay, and afterwards, by letter, revokes his authority to sell, and directs B to send the cotton to Madras. 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.

(c) 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.

209.Agent's duty on termination of agency by principal's death or insanity. — 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.

210. Termination of sub-agent's authority. — 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.

211. 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 be sustained, he must make it good to his principal, and if any profit accrues, he must account for it.

Illustrations

(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 investment. A must make good to B the interest usually obtained by such investments.

(b) 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.

212. 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 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 or damage which are indirectly or



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remotely caused by such neglect, want of skill, or misconduct.

Illustrations

(a) A, a merchant in Calcutta, 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.

(b) 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.

(c) 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.

(d) A, a merchant in England, directs B, his agent at Bombay, 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.

**213. Agent's accounts.** — An agent is bound to render proper accounts to his principal on demand.

**214. Agent's 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.

**215. Right of principal when agent deals, on his own account, in business of agency without 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, 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.

Illustrations

(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.

**216. Principal's 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. Illustration 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.

**217. Agent's right of retainer out of sums received on principal's account.** — An agent may retain, out of any sums 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 business, and also such remuneration as may be

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| <p>payable to him for acting as agent.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
| <p><b>218. Agent’s duty to pay sums received for principal.</b> — Subject to such deductions, the agent is bound to pay to his principal all sums received on his account.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
| <p><b>219. When agent’s remuneration becomes due.</b> — 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 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.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
| <p><b>220. Agent not entitled to remuneration for business misconducted.</b> — An agent who is guilty of misconduct in the business of the agency, is not entitled to any remuneration in respect of that part of the business which he has misconducted.</p> <p>Illustrations</p> <p>(a) A employs B to recover, 1,00,000 rupees from C, and to lay it out on good security. B recovers the 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 B.</p> <p>(b) A employs B to recover 1,000 rupees 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.</p>                                                                                                                        |
| <p><b>221. Agent’s lien on principal’s property.</b> — 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.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
| <p><b>222. Agent to be indemnified against consequences of lawful acts.</b> —The employer of an agent is bound to indemnify him against the consequences of all lawful acts done by such agent in exercise of the authority conferred upon him.</p> <p>Illustrations</p> <p>(a) B, at Singapur, under instructions from A of Calcutta, contracts with C to deliver certain goods to him. A does not send the goods to B, and C sues B for breach of contract. B informs A of the suit, and A authorizes him to defend the suit. B defends the suit, and is compelled to pay damages and costs, and incurs expenses. A is liable to B for such damages, costs and expenses.</p> <p>(b) B, a broker at Calcutta, by the orders of A, 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 costs and incurs expenses. A is liable to B for such damages, costs and expenses.</p>                                            |
| <p><b>223. Agent to be indemnified against consequences of acts done in good faith.</b> — Where one person employs another to do an act, and the agent does the act in good faith, the employer is liable to indemnify the agent against the consequences of that act, though it cause an injury to the rights of third persons.</p> <p>Illustrations</p> <p>(a) A, a decree-holder and entitled to execution of B’s goods, requires the officer of the Court to seize certain goods, representing them to be the goods of B. The officer seizes the goods, and is sued by C, the true owner of the goods. A is liable to indemnify the officer for the sum which he is compelled to pay to C, in consequence of obeying A’s directions.</p> <p>(b) 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 this, and hands over the proceeds of the sale to A. Afterwards C, the true owner of the goods, sues B and recovers the value of the goods and costs. A is liable to indemnify B for what he has been compelled to pay to C, and for B’s own</p> |

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expenses.
<p>224. Non-liability of employer of agent to do a criminal act. — 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.</p> <p>Illustrations</p> <p>(a) 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.</p> <p>(b) 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.</p>
<p>225. Compensation to agent for injury caused by principal's neglect. — 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.</p> <p>Illustration</p> <p>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 B.</p>
<p>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.</p> <p>Illustrations</p> <p>(a) 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.</p> <p>(b) 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.</p>
<p>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.</p> <p>Illustration</p> <p>A, being owner of a ship and cargo, authorizes B to procure an insurance for 4,000 rupees on the ship. B procures a policy for 4,000 rupees 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.</p>
<p>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.</p> <p>Illustration</p> <p>A authorizes B to buy 500 sheep for him. B buys 500 sheep and 200 lambs for one sum of 6,000 rupees. A may repudiate the whole transaction.</p>
<p>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</p>





the same legal consequences as if it had been given to or obtained by the principal.

Illustrations

(a) 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.

(b) 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.

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.

231. Rights of parties to a contract made by agent not disclosed. — 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 rights as he would have had as against the agent if the agent had been 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.

232. Performance of contract with agent supposed to be principal. — 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.

Illustration

A, who owes 500 rupees to B, sells 1,000 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.

233. Right of person dealing with agent personally liable. — 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.

Illustration

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.

234. Consequence of inducing agent or principal to act on belief that principal or agent will be held exclusively liable. — 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.

235. Liability of pretended agent. — A person untruly representing himself to be the authorized agent of another, and thereby inducing a third person to deal with him as such



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agent, is liable, if his alleged employer does not ratify his acts, to make compensation to the other in respect of any loss or damage which he has incurred by so dealing.

**236. Person falsely contracting as agent not entitled to performance.** — 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.

**237. Liability of principal inducing belief that agent's unauthorized acts were authorized.** — 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.

Illustrations

(a) 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.

(b) 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.

**238. Effect, on agreement, of misrepresentation of fraud, by agent.** — Misrepresentation 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.

Illustrations

(a) 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.

(b) 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 cosignor.

## What is the principle behind agency?

One of the most striking features of modern business organisation is the emergence, growth and importance of the middleman. In a modern business organisation, it is not always possible for a man to do everything by himself. Hence it is necessary to delegate some of his acts to be performed by another, and that person is called an 'agent' and the contract by which he is appointed is called contract of 'Agency'. The law of agency is based on the principle "What a person does by another, he does by himself".

## What is a contract of agency?

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According to **Section 182** of the Contract Act 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'. Thus, it is clear from the definition, that an agent is a connecting link between his principal and third parties. Merely because one person gives advice to another in matters of business, the former does not become an agent of the latter. A company promoter's status is not that of an agent as he is acting for a company which is yet to come into existence. A person employed by another to invest money on his behalf and to represent him with debtors is an agent within the meaning of Section 182 (**Khub Chand v. Chittar Mal AIR 1931 All 372**). Since an agent is employed mainly to bring about contract between the principal and third parties, it is absolutely essential that both the principal and the third party must be persons capable of entering into a contract.

### **Who can appoint an Agent?**

**Section 183** provides as follows – 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 act as a principal. Though the section prohibits a minor from appointing an agent, does not preclude the guardian of a minor from appointing an agent to the minor (**Madanlal v. Bherulal AIR 1965 Mys 272**).

### **Who may be an Agent?**

**Section 184** of the Act provides answer to this question, which says – As between the principal and the 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

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responsible to his principal according to the provisions in that behalf herein contained. – From this section it becomes clear that "as between the principal and third persons, any person may become an agent". Now the question arises, can a minor or a person of unsound mind also become an agent? The answer is yes. In view of the language used by this section even a minor or person of unsound mind is not debarred from being appointed as an agent. But as a rule of caution, they should not be appointed as agent because if the principal appoints them, he undertakes a great risk. Because whatever such incompetent person does shall be binding on the principal, but the principal shall not be able to proceed against the agent for his misconduct or negligence. Thus, any person can be appointed as an agent. For example, where A, a principal, entrusts to B, a minor a diamond ring worth Rs. 11,000 and instructs him not to sell the same for credit or for any amount less than Rs. 9,000. If B sells the same to C on credit for Rs. 5,000, this transaction will certainly be binding as between A and C but A will have no right to claim damages as against B for his misconduct, since B happens to be a minor, But, if B were an adult, he would be liable to A for damages sustained due to his misconduct.

What is the consideration for agency?

As we know, consideration is essential for the validity of every contract, and consideration, in the sense of detriment, is sufficient to support a contract. **Section 185** expressly provides that no consideration is necessary to create an agency. The fact that the principal has agreed to be bound by the acts of the agent is a sufficient detriment to the principal. Therefore, it is not necessary that there should be a separate consideration. For example, when A employs B as his agent in as much as A's

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affairs are placed in B's hands, A suffers a detriment, and therefore, no further consideration in the shape of remuneration need be present. Thus, it means that there can be a gratuitous contract of agency and a gratuitous agent will be as much bound by his contract as a paid agent.

### **What is the proof of agency?**

The relationship of principal and agent may be created by (i) express appointment by the principal, or by a person duly authorised by the principal to make such appointment; (ii) by implication of law, from the conduct or situation of the parties or from the necessity of the case; or (iii) by subsequent ratification by the principal of the acts, done on his behalf. As to proof of agency, the actual status of the parties must be determined with reference to all the circumstances and not merely with reference to the words used. The crucial test of the status of an agent is that his acts bind the principal.

### **What is the difference between agent, servant and independent contractor?**

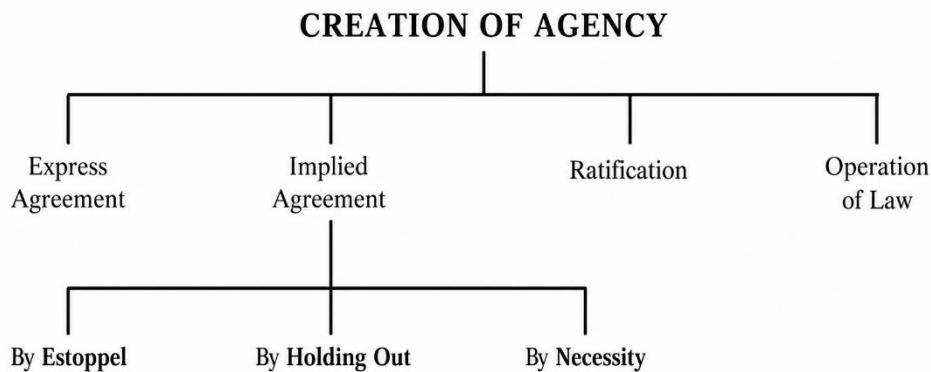
There is too much of similarity between an agent and a servant as both are employed to act for and on behalf of principal. There are, however, important distinctions between an agent and a servant. An agent has authority to affect the legal relations of the principal with third parties, whereas a servant ordinarily has no such authority. Although an agent is not necessarily a servant, and a servant is not necessarily an agent, a servant may also be an agent if he is authorized to bind his employer in dealings with third parties. [**Lakshminarayan v. Government of Hyderabad, AIR 1954 SC 364**]

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As for as the independent contractor is concerned, he undertakes to produce a given result but in the actual execution he is not under the order or control of the person for whom he does it, and may use his own discretion. An agent work under the control and supervision of the principal. An agent represents his principal and can bind the principal by his acts but a contractor is independent and cannot bind his employer by his acts.

How an agency is created?

The relationship of principal and an agent may be created in any of the following ways: (1) express agreement, (2) implied agreement, (3) ratification, and (4) operation of law.



1) Express Agreement: We know that when an agent acts within the scope of his authority, his acts bind the principal as well as the third party. The agent derives this authority by the contract by which he is employed as an agent. This contract may be express or implied. **Section 186** of the Act says "the authority of an agent may be expressed or implied". **Section 187** further says, "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". For example, A is residing in Delhi

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and he has an agriculture farm at Bombay. A appoints B, by a deed called the power of attorney, as a caretaker of his farm. In this way, the relationship of principal and agent has been created between A and B by an express agreement (power of attorney).

**2) Implied Agency:** From **Section 187**, we have seen that an agency may be implied when it is to be inferred from the circumstances of the case, things spoken or written, or ordinary course of dealing. For example, A has a car, but he cannot drive it. He allows his neighbour B to drive it. B while driving the car with A meets with an accident and injures C. C can sue A for damages because B is his implied agent.

Let us take another example. A and B are brothers. A lives in Delhi and B lives in Kanpur, B has a flat in Delhi. A with B's knowledge let out his flat. A used to realise the rent and remit the same to B who was accepting the same. Here A is the implied agent of B though he has not been expressly appointed, Implied Agency includes the following:

- a) agency by estoppel,
- b) agency by holding out, and
- c) agency by necessity.

**a) Agency by Estoppel:** First of all, we should understand the meaning of the term 'estoppel'. The rule of estoppel says "where a person by his words or conduct has wilfully led another person to believe that certain set of circumstances or facts exists, and that other person has acted on that belief, then he is estopped or precluded from denying the truth of such statements, although such a state of thing did not exist in fact. Thus, when a person, by his conduct or statement, wilfully leads another person to believe that a certain person is his agent, then he is estopped or prevented

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from denying the truth of agency. For example, X tells Y in the presence and within the hearing of Z that he (X) is Z's agent. Z keeps quiet and does not contradict this statement. Later on, Y enters into a contract with X, honestly believing that X is Z's agent. Z is bound by this contract, and in a suit between Z and Y, Z cannot be permitted to say that X was not his agent, even though X was not in actual fact his agent.

Section 237 of the Act deals with agency by estoppel. It says that when an agent has, without authority, done an act or incurred an obligation 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 agent's authority.

b) Agency by Holding Out: Agency by holding out is a type of agency by estoppel. Here, the alleged principal by his affirmative or positive conduct leads others to believe that person doing some act on his behalf is doing with his authority. For example, A allows his servant to purchase goods on credit from a nearby shop, and later on he pays for such goods. Later on, when the servant was not in A's employment, he buys goods on A's credit from the same shop. The shopkeeper can recover the price from A, because A had held out the servant as his agent on earlier occasions, so A will be bound for subsequent transactions entered into under similar circumstances.

c) Agency by Necessity: Sometimes, owing to the exigencies of circumstances, the law confers agency on some persons to act as an agent of another person without waiting for the consent of that person. However, before an agency of necessity can be inferred, the following conditions have to be satisfied:

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- (i) There should be an actual and definite necessity for acting on behalf of the principal;
- (ii) within the available time it should be impossible to obtain the principal's instructions;
- (iii) the person acting as agent must have acted *bona fide*. In such situations, the principal is bound by the acts of the agent.

For example, some milk was consigned from Bombay to Delhi. The tanker carrying the milk met with an accident. The milk being perishable was sold by the transporter. The sale is binding upon the principal. In this case, the transporter became an agent by necessity.

The traditional examples of agency by necessity are those of the shipmaster who has powers to act during an emergency and the acceptor of a bill of exchange who is entitled to be reimbursed by the person whom he pays.

**3) Agency by Ratification:** By ratification, we mean, "where acts are done by one person on behalf of another, but without his knowledge or authority, he may elect to ratify or disown such acts. If he ratifies them, the same effects will follow as if they have been performed by his authority". Ratification may be express or implied in the conduct of the person on whose behalf the acts are done. For example, without A's authority, his brother B lends his money to C. Later on, C pays the interest on the lend money and A accepts the interest. A's conduct implies a ratification of the loan, and it may be presumed that his (A's) brother B's conduct in lending the money is as valid as if it were done in pursuance of his (A's) prior authority and this kind of agency is called 'agency by ratification'

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**Effect of ratification:** The effect of ratification is to make the agent's acts, done without prior authority as binding and valid upon the principal as if they had the prior sanction of the principal. In fact, ratification relates back to the date when the act was done by the agent and not to the date when the principal ratified the act.

**4) By operation of Law:** Another mode of creation of agency is by Operation of Law. In certain circumstances, the law treats one person as an agent of another. It can be better understood by the example that when a partnership is formed, every partner, by operation of law, automatically becomes the agent of other partners.

### **Whether wife is an agent of her husband?**

Marriage does not of itself create the relation of agent and principal: A wife, in order to bind her husband by her dealings, must receive authority from the husband either expressly or by implication from his conduct. The following principles may be noted in this connection:

i) If husband and wife are living together, and the wife is charged with the duty of looking after the household, presumption is raised that she has got the authority to pledge her husband's credit for necessaries (**Debenham v. Mellon [1880] 6 AC 24**). But this presumption may be rebutted in the following cases:

a) where the wife is forbidden from purchasing anything on credit or from contracting debts;

b) where the goods purchased on credit are not necessaries;

c) where the wife is given sufficient money for purchasing necessaries, and forbidden from pledging his credit (**Morel Bros.**

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v. **Earl of Westmorland [1903] 1 K.B. 64**), or where an adequate allowance is made to her, or she has means of her own, either in money or in earning capacity (**Biberfeld v. Berens, [1952] 2 All E.R. 237**);

d) where the trader has been expressly warned not to give credit to his wife.

ii) When the wife lives apart from the husband under justifiable circumstances, the husband would, in law, be liable to maintain her, and he would be bound to pay her bills for maintenance during that period. But if she is living separately without any valid reasons, then she cannot pledge her husband's credit even for necessities.

### **What are different classes of agents?**

Agents are classified in several ways. From the point of view of authority given to them, they can be divided into general agents and special agents.

**General** agents have the authority to act in all matters concerning a trade or profession, or of a particular nature or to do some act in the ordinary course of his trade or profession.

**Special** agents have authority only to act in a particular transaction, for example, when an agent is appointed to sell a car or sell a house. The authority of a special agent is limited to that particular act only and his authority comes to an end when the work is over. Thus, the persons dealing with such agent are under an obligation to correctly ascertain from the principal the extent of his authority. On the other hand, a general agent has the authority to do all legal acts for the purpose of carrying on that trade or business, on behalf of his principal. It should be noted

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that unlike special agent, the authority of a general agent is continuous unless it is terminated.

A general agent is not the same thing as a universal agent. A **universal** agent can do all such things which the principal can lawfully do and delegate. He is authorised to transact all the business of his principal of every kind. He has an unlimited authority to bind the principal.

The most important classification of agents, however, is based on the nature of work performed by them. They can be classified as i) mercantile or commercial agents, and ii) non-mercantile or non-commercial agents.

**Mercantile** agents may be of several kinds, e.g., brokers, factors, auctioneers, del credere agents; commission agents, insurance agents; bankers. **Non-commercial** agents may be estate agents, house agents, lawyers, election agents, etc. Here we are mainly concerned with mercantile agents who are explained below.

**Broker:** A broker is one who makes bargains for another, and receives commission (brokerage) for so doing. He is an agent whose ordinary course of business is to negotiate and make contracts for the sale and purchase of goods etc., of which he has neither possession nor control. He acts in the name of his principal.

**Factor:** A factor is a person who is entrusted with the possession of goods, and who has the authority to buy, or sell or otherwise deal with the goods or merchandise, or to raise money on their security. A factor, usually, sells goods in his own name, he has a general lien on the goods.

**Auctioneer:** An auctioneer is an agent who is entrusted with the possession of goods for sale to the highest bidder at a public

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auction. He has the authority to deliver the goods on receipt of the price. He can sue for the price in his own name. However, unlike a factor, he has only a particular lien on the goods for his charges.

**Del Credere Agent:** A del credere agent is one, who in consideration of an extra remuneration called the Del Credere Commission, guarantees to his principal that the third person with whom he enters into contracts shall perform their obligations. Thus, such an agent guarantees to his principal the payment of the price.

**Commission Agent:** A mercantile agent who buys and sells goods on behalf of his principal and receives commission for his services. Actually, it is not a different category agent because brokers, factors may also act as commission agent.

**Banker:** Generally, the relationship between a banker and customer is that of a creditor and debtor. However, when he collects cheques or buys or sells securities on behalf of his client, he acts as an agent of the customer. A banker has the right of general lien in respect of the general balance of account.

### **What is the scope and extent of authority of an agent?**

An agent has the authority to do all things necessary for carrying out the particular purpose for which he has been appointed. When a person is held out as an agent for a particular purpose or business, persons dealing with him are entitled to presume that he has the authority to do all such acts as are necessary or incidental to such a business. Such authority is called apparent or **ostensible authority** of the agent, as distinguished from actual or real authority. **Actual authority** is created by agreements to which the principal and agent alone are parties.

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It is ostensible authority that determines the scope of an agent's authority. The ostensible authority of an agent may be curtailed by his principal.

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 (**Section 188**). For example, A employs B as his agent to carry on his business of a ship-builder. B may purchase timber and other materials, and hire workmen for the purpose of carrying on the business.

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 (**Section 237**). For example, A consigns goods to B for sale, and gives him instructions not to sell below a fixed price. C, being ignorant of B's instructions enters into a contract with B to buy the goods at a price below the reserved price. A is bound by the contract.

Though the scope of authority of an agent under normal circumstances is defined in Section 188, still, in cases of emergency he would have larger powers and **Section 189** therefore enacts that 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.

In such cases the authority is deemed to be conferred by what has been described above as agency by necessity. In **Sims & Co. v. Midland Railway Co. [1913] 1 K.B. 103**, where butter which was in danger of becoming useless owing to delay in transit was

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sold by the railway company for the best available price and it was found that it was impossible to obtain instructions of the principal, the sale was held binding upon the principal.

### **What is delegation of authority by agent?**

An agent, being himself a person who has got delegated authority from the principal, cannot further delegate except with the permission of the principal. This is expressed by the Latin maxim '*delegatus non potest delegate*' (a delegate cannot further delegate), i.e., one cannot delegate that which one has himself undertaken to do. Agency is a matter of trust and confidence and an agent is appointed only because the principal has got full confidence in his integrity or ability. So, the agent cannot without the permission of the principal, delegate his authority and ask some other person to do the work. To this rule the following are the exceptions:

- i) where the duties of the agent do not require any skill or discretion, and can satisfactorily be performed by any one;
- ii) where the custom of the trade permits delegation;
- iii) where the principal knows that the agent intends to delegate;
- iv) where the nature of the business requires delegation;
- v) where an emergency makes it necessary to delegate.

An agent cannot lawfully employ another to perform acts which he has expressly or impliedly undertaken to perform personally, unless by ordinary custom of trade a sub-agent may, or, from the nature of the agency, a sub-agent must be employed. A legal practitioner is permitted by the usage in the profession, to authorise any other practitioner to appear for him. But, in cases in

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which he has expressly undertaken to appear personally, he has no such right to delegate his authority.

Sub-agent: Where an agent having authority expressly or impliedly to delegate his authority appoints another person to act in the matter of the agency, such other person is called a '**sub-agent**', provided he acts under the control of the original agent; and a '**substituted agent**', if the original agent drops out of the transaction and the newly appointed person carries on the business of the agency.

Relationship between principal and sub-agent: We have seen that in certain circumstances an agent can appoint a sub-agent. In such cases the principal is bound by the acts of the sub-agent, since the sub-agent is not responsible to the principal but he is responsible for his acts to the original agent only. The principal cannot take action against sub-agent, except in cases of fraud or wilful wrong. As between the original agent and the sub-agent, the relationship is that of the principal and agent.

In case the appointment of a sub-agent is not proper, the principal shall not be bound by the acts of the sub-agent. The original agent will, in such cases, be personally liable to both the principal as well as the third parties for the acts of the sub-agent. In such cases, the sub-agent is not responsible to the principal for any of his acts.

Distinguish between subagent and substituted agent?

A sub-agent has been defined by **Section 191** of the Indian Contract Act: "A sub-agent is a person employed by and acting under the control of the original agent in the business of the agency".

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A substituted agent is defined by **Section 194** thus: "Where an agent, holding an express or implied authority to name another person to act for the principal in the business of 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".

Thus, the main difference between the two is that an agent not only appoints a sub-agent but the sub-agent works under his control, and the agent himself is liable for the acts of the sub-agent. But in case of substituted agent, the duty of the agent ends with appointing or naming a particular person for being appointed as a "substituted agent". The moment the substituted agent is appointed, privity of contract is established between him and the principal, and the original agent disappears from the scene altogether. The care that ought to be exercised by an agent in selecting a substituted agent is that which a man of ordinary prudence would exercise in his own case.

What is agency by ratification?

Sometimes a person may act for another person without any express or implied authority from that other person. The person in whose name the act has been done may either disown the act of that person or may approve the actions. This act of affirmation by the person in whose name the act has been done is known as 'ratification'. For example, A may act as B's agent although A has no prior authority from B. When B comes to know of it, he may either disown the acts of A or may subsequently accept them. The effect of ratifying the unauthorised act is that it places the parties in that position in which they would have been if the agent had principal's authority at the time he made the contract. Similarly, where an agent exceeds his authority, the principal

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may either reject it or accept it. If the principal accepts the work done by agent, he will be liable for the acts of the agent. For example, A appointed B as his agent to buy wheat for him. In addition to buying wheat, B buys 10 bags of rice for A. Afterwards, A agrees to take the delivery of rice as well. A is liable to pay the price of rice. This is a case of ratification of unauthorised acts.

**Section 196** of the Contract Act provides 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 have been performed by his authority. Further, **Section 197** provides that ratification may be express or may be implied in the conduct of the person on whose behalf the acts are done. For example, A, without authority, buys goods for B. Later on, B sells those goods to C and deposits the sale proceeds in his bank account. B's conduct implies a ratification of the purchase made by A.

Here you should note that ratification relates back to the date when the act was done by the agent, i.e., it tantamounts to prior authority. Hence the relationship of agency shall be deemed to have come into existence from the time the agent first acted and not from the time when the principal ratified the act. For example, in *Bolton Partners v. Lambert* the managing director of a company, without prior authority from the company, but acting on behalf of the company, accepted an offer made by B. B, later on, revoked the offer but the company ratified managing director's acceptance. It was held that because ratification relates back to the time of acceptance by managing director, B is bound by ratification and he cannot revoke his offer.

### **Essentials of a Valid Ratification**

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You have learnt that an agency may be created by ratification. However, for a valid ratification, following conditions should be fulfilled:

1) The agent must act on behalf of another person who is identifiable: When the agent enters into a contract, he should expressly contract as an agent. Further, the contract should specify an identifiable person as principal. For example. A representing himself to be an agent of B, but without authority or knowledge of B, entered into a contract with C to buy 100 bales of cotton on behalf of B. Subsequently, the prices of cotton bales go up. B on becoming aware of the transaction purported to have been done on his behalf, ratifies it. C refuses to perform the contract. B can compel C to perform the contract. If the purported agent does not mention that he is acting on behalf of another person, although in his mind he might be contemplating to act on behalf of the purported principal, such act cannot be ratified. It follows that acts done by the agent in his own name cannot be ratified later on.

2) Existence of the principal: For valid ratification it is necessary that the principal should be in existence at the time of when the act is done in his name. It is for this reason that when the promoters of a new company enters contracts for the company which has not yet come into existence, the company cannot ratify such contracts, when contract was entered into, the company (principal) was not in existence.

3) Principal should be competent to contract at the time when the act was done as well as at the time of ratification: For a valid ratification it is necessary that the principal should be competent to contract when the contract was made and also at the time of ratification. You would recall that a minor is nor

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competent to contract, hence on attaining majority he cannot ratify the contracts made on his behalf during his minority.

4) Full knowledge of all relevant facts: No valid ratification can be made by a person whose knowledge of the facts of the case is materially defective (Section 198). For valid ratification It is necessary that the ratifier should have the full knowledge of the acts of the case. For example, A employs B to take a house on reasonable rent in Delhi. B lets out his own house at a rent which is much higher than the prevailing rentals in that area. A starts living in the house. Later on, A comes to know that the house belonged to B. A's ratification is not binding upon himself.

5) Within reasonable time: The ratification must be done without any unreasonable delay. If the ratification is not done within a reasonable time, it will not be binding.

6) Ratification must be of whole transaction: The ratification must be made for the whole transaction. A ratifier cannot ratify a part which is beneficial to him and reject the rest. When a person ratifies a part of the unauthorised transaction, it is treated as the ratification of whole transaction (**Section 199**).

7) No damage to third party: **Section 200** puts a restriction on the power of the ratifier. It says, 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. So, any ratification which might cause any damage to third party or terminate any right or interest of a third party cannot be ratified.

For example:

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i) A is in possession of a cow belonging to B. C without authority from B demands on behalf of B, the delivery of that cow. A refuses to deliver the cow to C. B cannot ratify the demand made by C so as to make A liable for damages for A's refusal to deliver the cow.

ii) A holds a plot of land, which was leased to him by the owner B. The lease was terminable on three months' notice. C, an unauthorised person, gives notice of termination of lease to A. B cannot ratify the notice so as to be binding on A.

**8) Act to be ratified must be lawful:** Only those acts can be ratified which are valid and lawful. An act which is void, unlawful or illegal cannot be ratified. For example, A forged B's signature and withdrew some money from Bank. Subsequently, B ratifies A's act of withdrawing money. The ratification is not valid as forgery is an offence.

**9) Act to be ratified should be within the power of the principal:** The principal can ratify only such acts which are within his power. Hence an act which is beyond the competence of principal cannot be ratified. For example, if the director of a company does an act on behalf of the company which is ultra-vires the company, the principal (company) cannot ratify such act. Besides, to be valid the ratification must be communicated to the concerned party.

## **What are the rights of an agent?**

**1) Right to Receive Remuneration:** You know that an agent is a person employed to do any act for another, and for his services, he is entitled to receive remuneration. The amount of remuneration shall be such as may be fixed by the terms of agency. In case the remuneration has not been fixed, the agent is

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entitled to receive a reasonable remuneration. In the absence of a contract to the contrary, agent's right to receive remuneration would accrue only on the completion of the work. An agent is entitled for his remuneration when he has done what he had undertaken to do, even though the contract is not completed. For example, A was appointed as an agent by an export organisation to secure export orders. A secured some orders for the firm, but firm was dissolved. A is entitled to his commission, though the orders secured by him have not been executed. **Section 219** provides that 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 act, but an agent may detain money 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.

So, the pertinent question arises, when is the act complete? This is a question of fact depending upon the facts and circumstances of each case. But it is necessary that the transaction (act) should be the direct or indirect result of efforts of the agent. For example, A, a factory owner, employs a broker B, to arrange some raw material for A's factory. B introduced the supplier of that raw material to A. The supplier demanded some advance money which A was unable to pay. Later on, A directly contacted the supplier and entered into a contract for supply of raw material. B is entitled to his remuneration. However, under Section 220, an agent who is guilty of misconduct in the business of agency, is not entitled to any remuneration in respect of that part of the business, which he has mis-conducted. For example, A employs B to recover Rs. 20,000 from C and to invest the money in good securities. B recovers the money from C, invests Rs. 15,000 in good securities and Rs. 5,000 in securities which he

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ought to have known to be bad, whereby A loses Rs. 1,000. Here B is entitled to remuneration for recovering Rs. 20,000 and for investing Rs. 15,000. He is not entitled to receive any remuneration for investing Rs. 5,000 and he must make good the loss of Rs. 1,000 to A.

**2) Right of Retainer:** Section 217 of the Contract Act 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 advance made.
- b) in respect of expenses properly incurred by him in conducting such business, and
- c) such remuneration as may be payable to him for acting as agent.

**3) Right of Lien:** We have just now noted that the agent may retain principal's money until his proper payments have been made. Agent has another right i.e., right to retain his principal's goods, papers and other movable or immovable properties received by him until he is paid or accounted for his commission, disbursements and service charges. This lien of the agent is the particular lien. The right of lien has the following limitations:

- a) This right is available to the agent if there is no contrary to the contract.
- b) This right is available on those properties which have come into agent's possession lawfully. If the agent obtains possession by unlawful means, say by misrepresentation, or without authority from the principal, the agent cannot exercise lien.

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c) The lien is only a particular lien. By particular lien we mean that the agent can detain only such goods in respect of which some remuneration is due.

d) Right of lien can be exercised subject only to all rights and equities of third parties against the principal. For example, if the agent has sold certain goods belonging to his principal, he cannot refuse to deliver the goods to the buyer.

e) Since the lien is a possessory right, it cannot be exercised once the possession is lost.

**4) Right to be Indemnified: Sections 222 and 223** grant right to indemnify to an agent against his principal for the consequences of all lawful acts done by the agent in performing his obligations. Section 222 provides that the employer of an agent is bound to indemnify him against the consequences of all lawful acts done by such agent in exercise of the authority conferred upon him. For example, B, at Singapore, under instructions from A of Calcutta contracts with C to deliver certain goods to him. A does not send the goods to B, and C sues B for breach of contract. B informs A of the suit, and A authorises him to defend the suit. B defends the suit, and is compelled to pay damages and costs, A is liable to B for such damages, costs and expenses.

Agent's right to be indemnified extends even for those acts which are apparently lawful but are in fact unlawful or injurious to a third person. However, the right to indemnify is not available against those acts which on the face of it are unlawful or are criminal in nature, even if there is an express or an implied promise to indemnify the agent against the consequences of that act. For example, A employs B to put to fire C's growing crop and agrees to indemnify B against all consequences of the act. B,

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accordingly put to fire, B's growing crop and is made to pay damages to C. A is not liable to indemnify B.

Where one person employs another to do an act, which may cause an injury to the rights of a third person and the agent does the act in good faith, the principal is liable to indemnify the agent. For 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 this, and hands over the proceeds of the sale to A. Afterwards C, the true owner of the goods, sues B and recovers the value of goods and costs. A is liable to indemnify B for what he has been compelled to pay to C and for B's own expenses.

**5) Right to Compensation:** The agent has the right to receive compensation for the injuries or losses suffered due to the principal's neglect or want of skill (**Section 225**). For example, A employs B as a brick layer in building a house, and puts up the scaffolding himself. The scaffolding is unskilfully put and B is, in consequence, hurt. A must pay compensation to B. It should however, be noted that if the injury is caused by the negligence of the agent himself, then he cannot claim any compensation.

## **What are the duties of an agent?**

Following are the statutory duties of the agent:

**1) Duty to Act According to the Instructions or Custom of Trade:** **Section 211** lays down that it is the duty of an agent to conduct the business of the agency strictly according to the directions given by the principal. For example, if an agent is asked by his principal to insure the goods, the agent failed to do so and the goods are destroyed by the fire. The agent is liable to compensate the principal for the loss.

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However, when the principal has not given any directions, in that case the agent should conduct the business according to the custom of the trade. For example, B, a broker in whose business it is not the custom to sell goods on credit, sells goods of his principal on credit. Before making the payment, the buyer becomes insolvent. The broker, B is liable to pay for the loss.

When the agent acts otherwise, if any loss incurred, the agent must make it good to the principal, and if any profit accrues, the agent must account for it. For example, A, the principal, instructed his agent B to put certain goods in a particular warehouse. Ignoring A's directions, B puts the goods in another equally safe warehouse. The goods were destroyed by fire without any negligence on the part of B. Here the agent was held liable to make good his principal's loss.

**2) Duty to Act with Reasonable Care and Skill:** It is the duty of an agent to conduct the business of the agency with reasonable care and skill. The degree of care and skill required from the agent depends upon the nature of business and circumstances of each case. For example, A, living in Bombay asked B at Delhi, to collect Rs. 10,000 from C. B collects the money and sends the amount by bank draft, placed in a letter sent by register post to A. B has done his duty as a man of ordinary prudence would have done in his own case. However, if instead of sending the draft by registered post, B sends the draft by ordinary post, B would be responsible for acting negligently.

The agent is required to act with reasonable diligence, to use skill as he possess and to compensate the principal in respect of the direct consequence of agent's own neglect, want of skill or misconduct. For example, A, an insurance broker, was employed by B to effect an insurance on a ship. A insured the ship but

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failed to see that 'usual clauses' are inserted in the policy. The ship was lost in storm. Due to omission of the 'usual clauses' in the policy, nothing could be recovered from the insurance company. A is liable to make good the loss suffered by B.

It follows from the above that the agent is not liable to compensate the principal in respect of loss or damage which are indirect or remotely caused by such neglect, want of skill, or misconduct.

3) Duty to Render Accounts: An agent is bound to render proper accounts to his principal on demand and to pay overall sums received on principal's behalf subject to any lawful deduction for remuneration or expenses properly incurred by him.

4) Duty to Communicate with the Principal: Section 214 enjoins an agent, in case of difficulty, to use all reasonable diligence in communicating with his principal, and in seeking to obtain his instructions.

5) Not to Deal on His Own Account: An agent is not to deal on his own account in the business of agency, as no agent is permitted to put himself in the position where his interest conflicts with his duty. If an agent desires to deal on his own account in the business of agency, he must make a full and frank disclosure of all the material circumstances, which have come to his knowledge on the subject, to the principal and obtain his consent (*Lever Bros. v. Bell*). If, however, he fails to obtain such consent, and carries on the said business on his own account, or after giving the consent, the principal finds that either any material facts has been dishonestly concealed from him by the agent to his interests, the principal has two options. He may (i) repudiate the transactions entered into by agent and disclaim all

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losses, or (ii) claim from the agent benefit resulting from the transaction. For example, A directs B to sell his 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 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. Take another example. A directs B, his agent, to buy a certain house for him. B tells A that the house 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 (B) gave for it.

**6) Not to Use Information Obtained in the Course of the Agency against the Principal:** Where an agent has obtained information during the course of the agency, it is the duty of the agent not to use the same prejudicially to the interests of the principal. Where an agent does make use of such information, the principal may restrain him from doing so by an injunction.

**7) Not to Set Up Adverse Title:** Where an agent has obtained goods or property from the principal as an agent, it is his duty not to set up his own title or the title of a third person. In other words, the agent should not dispute the ownership of the principal.

**8) Not to Make Secret Profits:** As you know that the relationship of principal and agent is based on mutual confidence, it is the agent's duty not to make any secret profits in the business of agency. For example, A appointed B, an auctioneer to sell certain goods belonging to him. B sold the goods to C, and received some secret commission from C in addition to the commission from A. It was held that B was bound to hand over the secret commission to A.

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9) Duty to Exercise His Authority Personally: Section 190 of the Act requires an agent to perform acts personally which he has expressly or impliedly undertaken to perform personally. In other words, an agent must not delegate the authority given to him. However, under certain circumstances, this authority can be delegated as discussed earlier.

10) Duty on the Death or Insanity of the Principal: Section 209 requires that 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.

Rights and Duties of Principal towards Agent

As should be clear to one from what we have studied so far that the rights of the principal are the duties of the agent and duties of the agent are the rights of the principal.

What are the personal liabilities of an agent?

Ordinarily in a contract of agency, an agent being a person employed to create relationship between his principal and the agent, the agent can neither enforce the contract personally nor is he personally liable on the contract unless there is a contract to the contrary provides. 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. Such a contract shall be presumed to exist in the following cases:

- i) Where the contract is made by an agent for the sale or purchase of goods for a merchant resident abroad;

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- ii) Where the agent does not disclose the name of his principal;
- iii) Where the principal, though disclosed, cannot be sued.

However, there are circumstances when the agent becomes personally liable. These are as follows:

1) When the Agent Expressly Agrees: Sometimes the third party when contracting with an agent may specifically stipulate that the agent will be personally liable if the contract is not performed, in such a situation the agent will be personally liable. For example, A, an agent entered into an agreement with B to grant a lease of a house. In the lease deed it was mentioned that A was acting as an agent of the owner of the house C. However, in the subsequent portion of the lease deed it was provided that the agent would execute the lease. In this contract the agent will be personally liable if the contract is not performed, although the house belonged to C. Similarly, auctioneer of property signing agreement of sale in their own name without qualification must be understood to contract personally and not as agents.

2) When Acting for a Foreign Principal: Where an agent enters into a contract for a foreign principal (a merchant residing abroad), the presumption is that the agent is personally liable for such contracts. This presumption came into existence because in earlier times it was difficult to sue foreign principal, hence it became customary that when the agent into a contract on behalf of a foreign principal, the agent would be personally liable. But now because of changed atmosphere of international trade, although the rule still exists, but the agent do not undertake personal liability and the contracts are entered manifestly laying that the liability would be that of the principal if the contract is not performed.

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3) When Acting for an Undisclosed Principal: When a contract is made by an agent for an undisclosed principal, the agent is personally liable. The reason for it is that because the third party while making the contract, relied upon the credit of the known agent and consequently, the agent becomes responsible for the transactions.

4) Where the Principal though Discovered cannot be Sued: When the agent enters into a contract on behalf of a person who cannot be sued, as for example, where the principal is a foreign sovereign or an ambassador, or a minor or a lunatic, the presumption is that the third party gave credit to the agent, hence the agent is personally liable upon the contract.

5) When Principal is a Company which is yet to Come into Existence: When the promoters of a company enter into any contract on behalf of a company not yet incorporated, the promoters are personally liable for the obligation they create by any contract with any one. The reason for this is that the company, being not in existence at the time of formation of contract, cannot be sued.

6) When Agent's Authority is "Coupled with Interest": Where an agent has a special interest in the subject-matter of the contract, his authority is said to be coupled with interest. He is really a principal to the extent of his interest and may sue in his own name or be sued but only to the extent of his interest in the subject matter. For example, M authorises N to sell his land and out of the sale proceeds to pay himself the debts due to him from M. N's authority is coupled with interest.

7) When There is a Custom or Trade Usage: An agent may be held personally liable on contract entered by him, if there is some trade usage or custom, provided there is no contract to the

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contrary. For example, in the business of stock exchange it is a custom that a broker is personally liable for the contracts entered into by him, so a jobber may hold the broker personally liable.

8) Money Paid by Mistake or Fraud: When a person untruly represents himself to be the authorised agent of another and thereby induces a third party to deal with him as such agent, or the agent exceeds his authority, and the (alleged) principal does not ratify his acts, the alleged agent is personally liable to the third party and the third party may recover from him compensation in respect of any loss or damage suffered by them (**Section 235**).

9) When He Enters into Contract in his Own Name: If an agent enters into contract with the third party in his own name i.e., without disclosing that he is contracting as an agent. For example, A took a loan from B and executed a hundi in his favour. The hundi appeared to be drawn by a firm. A did not sign the hundi as agent of the firm nor did he disclose to B the name of the principal who was the proprietor of the firm. The agent was held personally liable on the hundi.

As we have already read in **Section 233** in case where the agent is personally liable, a person dealing with him may either hold him or his principal or both of them liable.

What are the liabilities of principal to third parties?

We have learnt that an agent enters into a contract with third parties on behalf of his principal, thus the principal is liable to third parties for the acts of the agent as follows:

1) Liability of the Principal where Both the Existence and Name of Principal is Disclosed:

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a) Since the agent is employed for bringing about the contractual relations between the principal and the third parties, contracts entered into by the agent binds the principal to the same extent, as if they had been made by the principal himself (**Section 226**).

b) The principal is generally liable for such acts of the agent which are within the scope of his authority. But if the principal gives the authority to represent him in a particular business, then the principal is bound by every such act of the agent which is incidental to such business or which falls within the apparent scope of the agent's authority or as it is often called the "ostensible authority" of the agent. Where a principal while conferring authority upon an agent imposes conditions or limits the authority, the principal shall be liable for such acts which are in excess of the authority, only when the other party is not aware of the limitations. For example, where A authorises B to sell goods, but privately instructs him not to sell on credit but B sells them to C on credit, who does not know of the restrictions, the sale is binding upon A.

When the agent exceeds the authority given to him, the principal has the option that he may either disown or accept it. In case the work where the agent has exceeded his authority can be separated from that part which falls within his authority, the principal is bound by the authorised work only (**Section 227**). For example, A being the owner of a ship and the cargo in it, authorises B to procure an insurance for Rs. 5,000 on the ship. B procured a policy of Rs. 5,000 on the ship and another policy for the like sum on the cargo. A is bound to pay the premium for the policy on the ship only, but he is not bound to pay the premium for the policy on the cargo.

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If the unauthorised portion cannot be separated from the authorised one, the principal may repudiate the whole transaction (**Section 228**). For example, an agent is authorised to buy 100 pants. The agent, in addition to buying 100 pants, buys 100 shirts also for Rs. 10,000, the principal will not be liable and he may repudiate the whole transaction.

c) Any information which is material for the business of the agency if brought to the notice of the agent is deemed to have been brought to the notice of the principal. **Section 229** accordingly provides that any notice given to or information obtained by the agent 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. For example, A is employed by B to buy from C certain goods of which C is the apparent owner. In the course of negotiations, A learns that the goods actually belong to D and C is the agent only. B is not aware of this fact. B had some claim against C which he wanted to set off against the price. Now B cannot set off his claim because the goods belong to D and not to C. Here the knowledge of the agent is treated as the knowledge of the principal.

d) If during the course of the business of agency, the agent makes any misrepresentation or commits any fraud, it will have the same effect on the agreement as if they have been committed by the principal. For example, A, being B's agent for the sale of sugar, induces C to buy it by a misrepresentation. The contract is voidable, as between B and C, at the option of C. However, if the misrepresentation is made or fraud is committed by the agent, in matters which do not fall within agent's authority, the principal is not liable (**Section 238**).

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2) Liability where only the Existence of the Principal has been Disclosed but not His Name (Unnamed Principal): If the agent while contracting with third parties discloses the fact that he is entering into the contract on behalf of his principal but does not disclose the name of the principal, the principal is bound by the contract. However, such acts must be within the scope of agent's authority and the unnamed principal must be in existence at the time of entering into the contract. For such contracts, the agent is not personally responsible unless there is something which shows that he agreed to be personally liable. But if the agent refuses to disclose his principal's identity when asked by third parties, then, the agent becomes personally liable.

3) Undisclosed principal: Sometimes, the agent contracts with a third party without disclosing the name and existence of the principal. He gives an impression as if he is independently making the contract, whereas, in fact he has entered into the contract on behalf of his principal, but the third party neither knows nor has reason to suspect that the person with whom they are dealing is an agent. In such a situation the principal remains undisclosed and may be called as an undisclosed principal. Mutual rights and liabilities of principal and agent in this case are as follows:

i) Because the agent has entered into the contract in his own name, therefore, the third party can hold him personally liable on the contract. The agent can be sued by the third party and he can sue third party as well, So far as his rights against the principal are concerned, he continued to enjoy all the rights of an agent against the principal.

ii) If the third party discovers that there is a principal, the third party has the option to sue the agent or the principal or both. This

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option is available to the third party, if it had already not obtained any judgement against the agent. If the third party decides to file a suit against the principal, he must allow the principal the benefit of all payments received by him (third party) from the agent. For example, A, an agent, without disclosing his principal, enters into a contract with B to buy certain goods for Rs. 10,000 and pays Rs. 500 as advance. In fact, A was acting as the agent of C. In case the contract is not performed, B (third party) may sue C, but B will have to give the credit of Rs. 500 which he (B) received from A.

It should be noted that the third party has to make a choice to sue either the principal or the agent or both. However, once the choice has been made, then he cannot sue the other (**Section 234**).

iii) Section 231 of the Act provides that if the principal discloses himself before the contract is completed, the other contracting party may refuse to fulfil the contract. But this can be done only if he can prove 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. For example, in *Said v. Butt* case through an undisclosed agent, A bought for himself a ticket of theatre because on personal grounds theatre management would not have issued the ticket to A. Theatre owner may repudiate the contract and refuse A to enter the theatre hall.

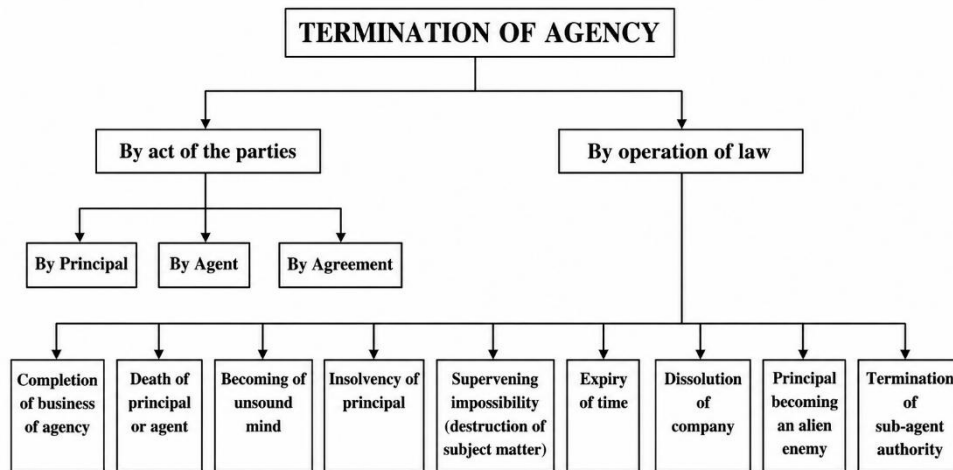
iv) Where one person enters into a contract with other neither knowing nor having any ground to suspect that the person with whom he has entered into contract is an agent, the principal, if he requires the contract to be performed, can obtain such performance subject only to the rights and obligations subsisting

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between the agent and the other party to the contract (Section 232). For example A, who owes Rs. 1,000 to B, sells Rs. 2,000 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.

If there exists some express or implied term in the contract, the undisclosed principal cannot intervene. For example, if in a contract of sale of 100 quintals of woods the agent describes himself in the contract as the owner, such manifestation precludes the principal because it shows an intention to make a personal contract. However, the principal may be allowed to intervene and may be allowed to show that he is in fact the principal. For example, A lets out his flat to B through a property agent C. In the contract the agent described himself as the owner of the flat. The undisclosed principal may contradict it.

### **How is an agency terminated?**

Except in those cases where the agency is irrevocable, the agency may be terminated in any of the ways mentioned in **Section 201** which reads: 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 the principal being adjudicated an insolvent under the provisions of any Act for the time being in force for the relief of insolvent debtors.



So, from the above description one will see that the agency may be terminated either (1) by act of the parties, or (2) by operation of law.

### By Act of the Parties

**i) By Principal:** As you have already noted that the principal may revoke the authority of his agent at any time before the authority has been exercised so as to bind the principal. So the agency may be terminated if the principal revokes his authority. But if the agent has partly exercised his authority, the principal may revoke agency for future acts only. Where the agent has some personal interest in the business of agency, the agency cannot be terminated. **Section 205** provides that, where there is an express or implied contract that the agency should be continued for any period of implied contract that the agency should be continued for any period of time, and any party, without any sufficient cause terminated the contract before the stipulated time, the defaulting party must make compensation to the other party for revocation or renunciation. If the agency is to continue for a fixed period of time, the principal must give a reasonable notice to the agent before terminating the agent's



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authority. If such a notice is not given, the principal shall be liable to compensate the agent for any loss suffered by him.

ii) By Agent: The agency may be terminated even by agent himself renouncing the agency, after giving a reasonable notice to the principal, Section 206 stipulates that reasonable notice must be given of revocation or renunciation of agency otherwise the defaulting party is liable to pay damages resulting to the other party. Revocation and renunciation may be either express or implied. For example, A employs an agent B to sell his car. Later on, A sells the car himself. This is an implied revocation of agent's authority.

iii) By Agreement: The agency, like any other agreement may be terminated, at any time, by mutual agreement between the principal and the agent.

By Operation of Law

The relationship of principal and agent may be terminated by operation of law, under any of the following circumstances:

i) Completion of the business of agency: An agency is automatically terminated as soon as the business of agency is completed. For example, A employs B to sell his car. The agency will be terminated when the sale is completed.

ii) Death or insanity of principal or the agent: The relationship of principal and agent is terminated when the principal or agent dies or becomes of unsound mind. Section 209 imposes a duty upon the agent by providing that even after the death of his principal and consequent termination of agency, with a view to protect the interest of his deceased principal, the agent is bound to take, on behalf of the representatives of his late principal all

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reasonable steps for the protection and preservation of the interests entrusted to him.

iii) Insolvency of the principal: When the principal becomes insolvent, the agency too is automatically cancelled. The reason being that insolvent person is disqualified from entering into contract in respect of his property.

iv) Destruction of subject matter: When the subject matter of the contract cease to exist, any contract relating to that subject matter also comes to an end. Consequently, any agency created to deal in that subject matter is also terminated by the total destruction of the subject matter. For example, A employs an agent B to sell his car. The car meets with an accident and becomes unsaleable. The agency terminates after the accident,

v) Expiry of time: When an agent is appointed for a fixed period, the agency terminates after the expiry of the stipulated time, unless the term of agency has been extended. The agency is terminated even though the business of the agency has not been completed.

vi) Dissolution of the company: If the principal or the agent is a company and the company is dissolved, the agency also automatically comes to an end on such dissolution.

vii) On principal becoming an alien enemy: If a contract is entered between a principal and an agent who are citizens of two different countries and a war breaks out between the two countries, the agency is terminated because the consequence of war is that the citizens of belligerent countries become alien enemy and the contract of agency becomes unlawful.

When termination of agency takes effect?

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The law in this regard is laid down in Section 208 and is as follows:

- 1) The authority of an agent, so far as he is concerned, comes to an end only when the agent comes to know that his authority has been terminated.
- 2) Likewise so far as third parties are concerned, the authority of the agent will be terminated only when they come to know that the authority has been revoked. In simple words, it can be stated that the termination is effective from the time when it comes to the knowledge of the agent or third parties. Thus, termination may be effective at a different time as regards the agent and as regards parties.

Hence, third parties may deal with the agent, as such, till they come to know of the termination of the authority. For example, A directs B to sell goods for him, and agrees to give B five per cent commission on the price fetched by the goods. Afterwards by letter, revokes B's authority. After the letter was sent, but before B received it, B sold the goods for 100 rupees. The sale is binding on A and B is entitled to the agreed commission.

Let us take another example, A. at Delhi by letter directs his agent B. to sell for him some mustard oil lying in a warehouse in Calcutta. Later on. A by a letter revokes B's authority to sell and directs B to despatch the mustard oil to Delhi. B, after receiving the letter of revocation enters into a contract with C, who knows of the first letter and has no knowledge of the second letter, whereby C agrees to buy the mustard oil from the agent. C paid the price to the agent who runs away with the money. A is bound by the contract and C's payment is good as against A.

What is irrevocable agency?

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The term 'irrevocable agency' means an agency which cannot be revoked or terminated by the principal. Contract Act envisages the following circumstances when the agency is irrevocable:

i) If the agency is coupled with interest: You have already learnt in this unit that when the agency is created for securing some benefit to the agent in addition to his remuneration as agent, such agency is termed as 'agency coupled with interest'. In this regard let us read **Section 202** which defines such agency. It says where the agent has himself an interest in the property which forms the subject matter of the agency, cannot in the absence of an express contract, be terminated to the prejudice of such interest. In other words, where an agent has some interest in the subject matter of the agency, it cannot be terminated so long as the interest subsists. For example, A owes Rs. 10,000 to B and A authorises B to sell A's house in Agra and to pay himself out of the proceeds. Once A has authorised B, A cannot terminate the agency nor will this agency be terminated by the death of A or on A's becoming of unsound mind. Here we should note that in order to avail the benefit of this principle, it must be remembered that the object of creating the agency is to secure some benefit to the agent. The rule is not applicable to those agencies in which the interest arises after the creation of agency. To distinguish this situation let us study this example, A entrusts 100 bales of cotton to B and directs B to sell them on A's behalf. Later on, B advances some money to A. A fails to repay the money and also directs B not to sell the bales of cotton. Ignoring A's directions and to recover his money, B sells the cotton bales. B cannot sell, because when the agency was created it was not coupled with interest, the agent's interest arose after the creation of agency.

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**ii) Where the agent has partly exercised his authority:**

**Section 204** presents another situation where agency is irrevocable. It says 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 from acts already done in the agency. It means that the principal cannot revoke the agent's authority for the acts already done, and the principal shall be liable for such acts which have already been done on his behalf. For example, A authorizes his agent B to buy 1000 tons of stainless-steel sheets on A's account and to make the payment out of A's money remaining in B's hands. The agent buys the sheets in the name of his principal. A cannot revoke agent's authority so far as regards payment for 1000 tons of stainless steel sheets is concerned.

**iii) When the agent has incurred a personal liability:** If in pursuance of a contract of agency, the agent has entered into any contract and has incurred some personal liability, the principal cannot revoke the agency. Because if the principal is thus allowed to revoke the authority of the agent, it would expose the agent to the risk and liability already incurred by him. For example, if in the above-mentioned example, the agent buys the stainless-steel sheets in his own name instead in the name of his principal, the agent makes himself personally liable. Hence, the agency becomes irrevocable and the principal cannot unilaterally terminate the agency.

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