



CONTRACT OF AGENCY

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INTRODUCTION

- In a contract of Agency, one person appoints another to act on his behalf. The person who appoints is called 'Principal' and who is appointed is called 'Agent'.
- In simple words a contract which creates the relationship of 'principal and Agent is called Contract of Agency.



DEFINITION OF AGENCY

- Section 182 of the Indian Contract Act defines Principal and Agent as follows :

An “agent” is a person employed to do any act for another, or to represent another in dealing with third persons. The person for whom such act is done, or who is so represented, is called the “principal”.



GENERAL RULES OF AGENCY

- Whatever a person competent to contract may do by himself, he may do through an agent, except for acts involving personal skill and qualifications.
- Like, a person cannot marry through an agent, a person cannot paint a picture through agent.
- The acts of an agent are acts of a principal for all legal purposes.



CREATION OF AGENCY

- The following are different modes of creation of agency.
- Agency by Express agreement.
- Agency by Implied authority.
- Agency by Operation of law.
- Agency by Ratification.



AGENCY BY EXPRESS AGREEMENT

- The agreement may be Oral or written. In formal cases when written appointments are made, it is done by a power of attorney which is normally stamped and registered.



- Example : If a customer of a bank wishes to transact his banking business through an agent, the bank will require written evidence of the appointment of the agent and will normally ask to see the registered power of attorney appointing the agent.



AGENCY BY IMPLIED AUTHORITY

- This type of agency comes into force by virtue of relationship between parties or by conduct of parties.
- For example: A and B are brothers, A has got settled in foreign country without any request from A, B has handed over A's agricultural land on these basis to a farmer and B is collecting and remitting the amount of rent to A. Here automatically A becomes principal and B becomes his agent.



- Agency by implied authority is of three types as shown below;
- Agency by Necessity
- Agency by Estoppel
- Agency by Holding out.



- *i)By Necessity:* At times it may become necessary to a person to act as agent to the other in emergency situation where the property or interest of another is in danger.



- *ii) By Estoppel:* Where a person, by his conduct or words spoken or written, wilfully leads another to believe that a certain person is acting as his agent, he is estopped later on from denying the truth of the fact that such a person is dealing as his agent.



- **Example:** In presence of A , B says to C that he (B) is A`s agent though it is not so actually. A has not restricted B from making such statement. It is agency by estoppel.



- ***(iii) By Holding out:*** the principal is bound by the act of agent if on an earlier occasion he has made others believe that other person doing some act on his behalf is doing with his authority.



- **Example:** Y is X's servant and X has made Y accustomed to bring goods on credit from Z. On one occasion X has given amount to Y to bring goods from Z on cash. X bought goods on credit as usually and runs away with the money. This is agency by holding out and therefore X is liable to pay amount to Z



AGENCY BY OPERATION OF LAW

- At times contract of agency comes into operation by virtue of law.
- For example: According to partnership act, every partner is agent of the firm as well as other parties. It is implied agency. On account of such implied agency only a partner can bind over firm as well as other partners, to his activities. In the same way according to companies act promoters are regarded as agents to the company



AGENCY BY RATIFICATION

- Ratification means subsequent adoption of an activity. Soon after ratification principal – agent relations will come into operation.
- The person who has done the activity will become agent and the person who has given ratification will become principal.



- Ratification can be express or implied. In case where adoption of activity is made by means of expression, it is called express ratification.
Example: Without A`s direction, B has purchased goods for the sake of A. There after A has given his support (adoption) to B`s activity, it is called Ratification. Now A is Principal and B is agent.



- The ratification where there is no expression is called implied ratification.
- For example: Mr. Q has P`s money with him. Without P`s direction Q has lent that money to R. There after R has paid interest directly to P. Without any debate P has taken that amount from R. It implies that P has given his support to Q`s activity. It is implied ratification.



RIGHTS AND DUTIES OF AGENTS

Rights Of Agents

- *Right of Retainer*
- *Right to claim Remuneration*
- *Right of Indemnity*
- *Right of lien*
- *Right of Compensation*
- *Right of stoppage in transit*



DUTIES OF AGENTS

- Agent should follow the instructions given by the principal.
- To communicate with the principal in the case of difficulty.
- Agent should behave in his capacity as agent, he should not run the transaction in his own name.
- Agent should not make secret profits by utilizing reputation of the principal.
- Agent should safe guard property of principal particularly upon happening of events like death of principal, insolvency of principal, etc.
- Agent should maintain proper accounting records to enrol the transactions run by him.
- Agent has to remit amounts to principal properly.
- Agent should not carry on delegation.



LIABILITIES OF AGENTS

Actually agents binds over principal to his activities but there are some situations where agent comes across personal liability. Those situations are as follows;

- Terms of contract of agency may create personal liability to agent.
- The tradition which is in operation in that particular type of business. May also create personal liability to agent.
- If agent does not behave in his capacity as agent and thus runs the transaction in his own way, personal liability arises.
- When agent acts for foreign principal, agent is personally liable.
- Pretending agent is personally liable.
- When agent acts for principal who has not come into existence, agent is personally liable.
- In case where principal cannot be sued, Customer sues agent and thus agent is personally liable.
- When agency is coupled with interest then also agent is personally liable.



TERMINATION OF AGENCY

- Agency may be terminated by;
 - i. Operation of law
 - ii. Agreement between the principal and agent



TERMINATION BY OPERATION OF LAW

- a) The death, mental incapacity or bankruptcy of the principal or the agent terminates the agency.
- b) If the subject matter of the contract for which the agent is appointed becomes illegal or is frustrated, the agency is terminated.



TERMINATION OF AGENCY BY AGREEMENT BETWEEN THE PRINCIPAL AND AGENT

- a) By mutual agreement between the principal and agent to bring the agency to an end.
- b) By the agent completely performing the contract of agency.
- c) By revocation of the agent's authority by the principal
- d) By discharge of the agent by the principal on discovering that the agent had breached his duties.

