

# **1 (N) Contract of Agency**

**Subject : Commerce**

**Lesson : Contract of Agency**

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# 1 (N) Contract of Agency

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# 1 (N) Contract of Agency

The scope of the Unit is given below:

14.1 Definition

14.2 Creation of Agency

14.3 Agent's Authority

14.4 Sub-Agent & Substituted Agent

14.5 Rights and Duties of an Agent

14.6 Rights and Duties of a Principal

14.7 Termination of Agency The term agency has been referred to in previous lessons <sup>136</sup>

. It is important to know precisely what agency means. Agency is a relationship between two people where one is called the principal and the other is called the agent.



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## 14.1 Definition

According to Section 182 of the Indian Contract Act 1872, "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'".



**Figure14.1 An Agent**

### Illustration

Illustration Sukrita, a resident of Delhi, wanted to buy a house in Shimla, so she approached a property dealer and asked him to purchase a house for her. The property dealer bought a house from Mr Nagendra in Shimla according to the budget and the other specifications given by Sukrita. In this case Sukrita is the principal, the property dealer is the agent and Mr Nagendra is the third party.

### Who can be a Principal?

- The principal should have contractual capacity. Therefore the following two conditions must be fulfilled: The person should be of the age of majority according to the law to which he/she is subject.<sup>36</sup>
- The person should be of sound mind.<sup>37</sup>

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Who can be a principal?

1 The person should be of the age of m  according to the law to which he/she is subject.

2 The person should be of s  ind.

Click the down arrow to view the dropdown list options and select the appropriate one.

Who can be an Agent?

One can become an agent even without having contractual capacity, therefore even a minor or a person of unsound mind can become an agent. Whether the agent has the contractual capacity or does not have the contractual capacity, it is the principal who would be held liable to the third party for the acts of the agent. However it is the agent with contractual capacity who would be responsible to the principal for his/her acts and not the agent without contractual capacity. Therefore it is in the interest of the principal to appoint only those agents who have contractual capacity.

## Illustration

Badruddin a tailor sent his trainee Ramzan, who was twenty one-year old to his customer Neeta to deliver a kurti. On the way Ramzan lost the Kurti. Hence it is Badruddin who is responsible for compensating Neeta for her lost Kurti and not Ramzan. However Ramzan is responsible to Badruddin for losing the kurti. Thus Badruddin if he wants can deduct from Ramzan's salary the cost of the Kurti or can take any other action to penalize Ramzan for his irresponsibility.

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## Illustration

Badruddin a tailor sent his trainee Ramzan, who was thirteen years old, to his customer Neeta to deliver a kurti. On the way Ramzan lost the Kurti. Hence it is Badruddin who is responsible for compensating Neeta for her lost Kurti and not Ramzan. As Ramzan is a minor, he is not responsible to Badruddin for losing the kurti, therefore Badruddin cannot penalize Ramzan for losing the Kurti.

How is an Agent Different from a Servant?

The difference is given in the Table 14.1

Basis of Distinction	Agent	Servant
Relations with third party	Agent creates legal relationship between the principal and the third party	Servant does not create legal relationship between his/her employer and the third party
Authority	Agent is not under direct supervision and control of the principal. He / she can exercise discretion to a large extent	Servant acts under direct supervision and control of the employer. He / she cannot exercise discretion
Line of command	Agent can work for several principals at the same time	Servant generally works for only one employer
Interconnection	Agent cannot be considered a servant	Servant can for some purposes act as an agent of his/her employer

## Laxmi Narayan Ramgopal & Sons Ltd. Vs. Hyderabad Govt (1954) A.I.R. S.C. 364

Lakshmi Narayan Ramgopal and Sons was appointed under an agreement of 1920 to manage the business of Ram Gopal Mills & Co., subject to the contract and supervision of the Director of the latter company. The remuneration paid for the services was to be taxed. The question for consideration was whether Lakshmi Narayan Company's status was of a servant or an agent. It was found that the company in question was in the position of an agent and not of a servant. Here the remuneration was taxable as it arose in the course of the agency. In this case the Supreme Court of India made a vital observation "that an agent as such is not a servant but a servant is generally for some purposes his master's agent, the extent of agency depending upon the duties or position of the servant".

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The difference is explained below

Agent	Servant
<ul style="list-style-type: none"><li>● Agent creates legal relationship between the principal and the third party</li></ul>	<ul style="list-style-type: none"><li>● Servant does not create legal relationship between his/her employer and the third party</li></ul>
<ul style="list-style-type: none"><li>● Agent is not under direct supervision and control of the principal. He / she can exercise discretion to a large extent</li></ul>	<ul style="list-style-type: none"><li>● Servant acts under direct supervision and control of the employer. He / she cannot exercise discretion</li></ul>
<ul style="list-style-type: none"><li>● Agent can work for several principals at the same time</li></ul>	<ul style="list-style-type: none"><li>● Servant generally works for only one employer</li></ul>
<ul style="list-style-type: none"><li>● Agent cannot be considered a servant</li></ul>	<ul style="list-style-type: none"><li>● Servant can for some purposes act as an agent of his/her employer</li></ul>

## Characteristics of Agency

Certain essential elements of Agency are given below:

1. Agreement between Principal and Agent: It is important that there be an agreement as agency depends on agreement and not necessarily on contract. A contract cannot be formed with a minor because an agreement with a minor is void, but an agreement of agency with a minor is possible because between the principal and the third person any person may be appointed as an agent whether it be a minor or a person of unsound mind.

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**Figure14.2 Principal & Agent**

## **Illustration**

Illustration Rustam a shoe manufacturer appointed Kapil as his agent to sell shoes. Kapil was just fifteen years old. Therefore the agreement between Kapil and Rustam is a void agreement and cannot become a contract. However the agreement between them can be treated as a contract of agency because in an agency the agent can be a minor.

**2. Intention of the Agent to Act on Behalf of The Principal:** For an agency to arise, it is important that the person (agent) intends to act on behalf of another (principal).

## **Illustration**

Illustration Prabhu a builder appointed Sooga as his agent to sell houses. The agreement between them can become a contract of agency only when Sooga gives his consent to Prabhu to become his agent.

## **Krishna Vs. Ganapathi (1955) A.I.R, Mad. 648**

It was held by the Court that it is only when one acts as a representative of the other in business dealings so as to create contractual relations between that other and third persons, that one is an agent and there is an agency.

**3. Whatever the Principal can do Personally he/she can do through his/her Agent:** The agent can perform all those activities which the principal is liable to perform. However the agent cannot perform acts which are personal in character or are annexed to public office such as marriage and the duty of a magistrate.

## **Illustration**

Ramlal was going to get married, so he appointed Shambhu, his cousin as his agent to



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look after his business and all other personal and business affairs. Shambhu had the right to run the business on behalf of Ramlal but he did not have the right to marry on behalf of Ramlal.

**4. He who does an act through another does it by himself/ herself:** The acts of an agent are the acts of the principal. The principal is liable to the third party for the acts done by the agent.

### Illustration

Radheylal a creditor appointed Ramu as his agent to recover payments from his debtors. Ramu was sent by Radheylal to recover rupees fifty thousand from, Sangeeta a debtor. Ramu took rupees fifty thousand from Sangeeta and ran away with it. Hence Radheylal cannot ask Sangeeta to pay the money again. However if Ramu is a major, then Radheylal can take legal action against him.

**5. No Consideration Required for Agency:** According to section 185 of the Indian Contract Act no consideration is necessary to create an agency. The fact that the principal has agreed to be represented by the agent is a sufficient detriment to the principal to support the contract of agency.

### Illustration

Sangeeta had a headache so she asked her son to go to the market and get a tablet of disprin. In this case the relation between the mother and son is that of a principal and agent and for the service of getting a tablet of disprin Sangeeta gave nothing in cash or kind to her son. Thus there is a contract of agency without any consideration.

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## 14.2 Creation of Agency

Agency can be created in any of the following ways:

The agent gets authority from the principal. The authority can be given in two ways. Either it can be expressly given or the authority can be implied. Section 187 of the Indian Contract Act defines express and implied authority as under:



**Figure14.3 Express & Implied Authority**

**1. Express Authority:** An authority is said to be express when it is given by words spoken or written. The authority enables the agent to bind the principal by acts done within the scope of his/her authority. A written contract of agency is a power of attorney wherein one person empowers the other to represent him/her, or act in his/her stead for certain purposes.

### **Illustration**

Phulki was a garment trader in Delhi. She used to buy her garments from Jodhpur. Once it was not possible for her to go to Jodhpur so she asked her salesman Farhan to go and buy the merchandise from Jodhpur.

**2 Implied Authority:** An implied authority arises from the conduct, situation or relationship of the parties. It is inferred from the circumstances of the case. The agency arises when the principal conducts himself / herself towards the person alleged to be the agent to the third parties in such a manner as if the principal had conceded to the appointment of that person as agent. This form of agency can be formed in any of the following manner

**(a) Agency in Emergency:** According to section 189 of the Indian Contract Act an agent has authority in an emergency, to do all such acts for the purpose of protecting his / her principal from loss as would be done by a person of ordinary prudence in his /her own case, under similar circumstances. The agent while protecting the principal from loss may exceed his / her authority thus giving rise to agency of necessity provided (1) he / she was not in a position to communicate with the principal (2) had taken all

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reasonable care and necessary steps to protect the interests of the principal and (3) had acted bona fide.

## Illustration

Salman was a tea merchant who used to export tea. He had kept Balram as his agent whose duty was to take export orders and then deliver the tea from the storehouse. One day the storehouse caught fire and Balram poured water to extinguish the fire. Though this was not a part of the duty assigned to him, yet as an agent it was his implied duty to protect his principal from loss.

**(b) Agency by Necessity:** Sometimes in certain urgent circumstances the law confers an authority on a person to act as an agent for the benefit of another, there being no opportunity of communicating with that other. Such agency is called agency of necessity. The following are some cases of agency by necessity:  
1. Person entrusted with another's property: when a person is entrusted with some property of another, which he/she has to protect or preserve. In such case although the person who is entrusted with the property has no express authority to do the act necessary to preserve it, yet because of the necessity such an authority is implied.

## Illustration

Ranbir wanted to sell his car but was not very good at dealing with purchase and sale so he entrusted this job to his friend Jeetendra and put the car in his possession. One night a thief tried to steal the car and Jeetendra tried to catch hold of the thief, and while doing that he got hurt. Jeetendra acts as an agent of Ranbir. Although it is not his car but he is bound to protect it as an agent

**2. Husband and wife:** A wife is considered to be the agent of her husband. A husband is bound to supply necessaries of life to his wife and if he makes no adequate provision for her maintenance, she is entitled to pledge his credit for necessaries<sup>38</sup>. The husband can escape liability if he can prove the following:



**Figure14.4 Wife – An agent for Husband**

- (1) He has expressly forbidden his wife to pledge his credit.
- (2) The goods purchased by his wife are not necessary goods.
- (3) He has expressly told the salesman not to give credit to his wife.

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### Illustration

Ram and Sita were husband and wife who were staying together. Ram was the breadwinner and used to run the house. He had expressly told his wife Sita not to buy anything from the shop on his credit. One day Sita went to a grocery shop and bought some salt, sugar and rice on Ram's credit. Ram is not liable to pay for the goods purchased by Sita.

### Illustration

Ram and Sita were husband and wife who were staying together and Ram was the breadwinner who used to provide all the necessities of life to his wife. One day his wife bought a gold necklace from a jeweler on Ram's credit. As gold jewelry was not a necessity therefore Sita cannot buy it on Ram's credit and Ram is not liable to pay for it.

### Illustration

Ram and Sita were husband and wife who were staying together and Ram was the breadwinner who used to provide all the necessities of life to his wife. He had told the shopkeepers of that locality not to give anything to Sita on credit. Sita purchased a necessary good from one of the shopkeeper on Ram's credit. Thus Ram is not liable to pay for it.

**Wife and husband living separately:** If a woman's husband has deserted her and they are both living separately she still has the authority to pledge her husband's credit for necessities. The wife enjoys this right only if her husband does not provide for maintenance. If the wife is living separately out of her own will and without any valid justification then she cannot be treated as the agent of her husband and the husband is not liable for her necessities.

### Illustration

Ram and Sita were husband and wife who were staying separately because Ram had abandoned Sita and he was not even providing maintenance to her. Sita had a right to buy necessary goods on Ram's credit and therefore Ram was liable to pay for the goods purchased by Sita.

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## Illustration

Ram and Sita were husband and wife who were staying separately from each other. It was Sita's decision to live separately because she wanted to stay at her mother's place. Sita was not entitled to buy necessary goods on her husband's credit because Ram had not abandoned her.

**3. Agency by Estoppel:** At times the principal by his / her conduct creates an impression in the mind of a third person that the agent has an authority to act on his/her behalf. In such a case the principal is liable towards the third person for the acts done by the agent, on the ground of the application of the law of estoppel. The basis of the action is what appears to the third person to be an authority, i.e. apparent or ostensible authority conferred on the agent.

## Illustration

Pankaj had come from America and for a few days came to stay with his friend Rajinder in Bikaner. Rajinder went with Pankaj to the market and got lunch packed from a nearby restaurant. While he was getting the lunch packed he told the restaurant owner that Pankaj was like his brother. After a couple of days Pankaj moved out of Rajinder's house and started staying somewhere else. One day he went to the same restaurant and got a lunch packed and the restaurant owner did not charge him anything for it as he thought that Pankaj was taking the lunch on Rajinder's behalf. Later he charged Rajinder for the price of the lunch.

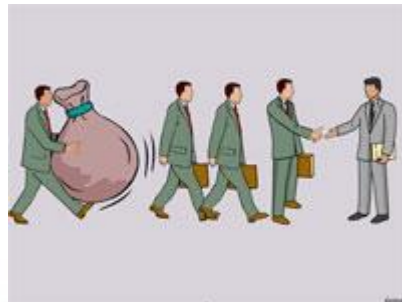
**4. Agency by Holding out:** Such an agency is based on the "doctrine of holding out" which is a part of the law of estoppel. In this case also the alleged principal is bound by the acts of the supposed agent, if he / she has induced third persons to believe that they are done with his/her authority. But, unlike an "agency by estoppel" "agency by holding out" requires some affirmative or positive act or conduct by the principal to establish agency subsequently.

## Illustration

Rajni went to a sweetshop and purchased sweets. In the meantime her neighbour's eight year old daughter Harshita happened to visit the place. Rajni out of affection for Harshita asked the shop owner to serve two hot gulab jammuns to Harshita. Rajni paid for the gulab jamuns. One day again Harshita visited the sweet shop and the owner served her hot gulabjamuns and mistaking her for Rajni's daughter did not ask for the money. Later he recovered the price of the gulab jamuns from Rajni.

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**3. Agency by Ratification:** If a person may acts as an agent of someone and does an act on his/her behalf for which he/she does not have the authority, and if that someone binds himself / herself for the acts done by the agent, then it is called an agency created by ratification.



**Figure14.5 Agency Created by Ratification**

Illustration Som had a car, which he wanted to sell. He was not at home when a buyer came to see the car. Som's son Rahul showed the car to him and without asking his father finalized the deal for rupees fifty thousand. After coming home Som gave his consent to the deal. As a result an agency was created by ratification.

## **Illustration**

Som had a car, which he wanted to sell. He was not at home when a buyer Mr Nath came to see the car. Som's son Rahul showed the car to him and without asking his father finalized the deal for rupees fifty thousand. After coming home Som did not approve of what his son had done and the agreement between the buyer and Rahul was revoked and the contract of agency was never formed.

## **Bolton vs. Lambert (1889) 41 Ch. D. 295**

In this case the managing director of a company, purporting to act as agent on the company's behalf, but without its authority, accepted an offer made by Lambert, the defendant, for the purchase of some sugar works belonging to them. Lambert subsequently withdrew the offer but the company ratified the managing director's acceptance. Held: that Lambert was bound. The ratification related back to the time of managing director's acceptance and so the withdrawal of the offer was inoperative.

(c) The Principal Must have Contractual Capacity Both at the Time of the Contract and at the Time of Ratification: The principal must have the contractual capacity both at the time of original contract and at the time of ratification.

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### Illustration

Sapna was suffering from mental sickness and was declared mentally unsound by the doctors. She went to a property dealer and asked him to sell her house. The property dealer on her behalf finalized a deal with a buyer. The property dealer could not act as an agent of Sapna because Sapna was of unsound mind and so was incapable of becoming a principal.

### Case Law Case Law 4 (d)

Ratification Must be with Full Knowledge of Facts: The principal must have full knowledge of all the material facts of the contract, which he /she is to ratify or the principal must give an unqualified acceptance where he/she intends to ratify the contract irrespective of the facts.

### Illustration

Gunia's mother wanted a new saree to wear to a party. Gunia, who was a minor, went to a showroom and bought a saree on credit. She showed the saree to her mother and told her the price but the mother did not approve of the transaction. Hence Gunia's mother did not ratify the agreement of agency and so the agreement between Gunia and the shopkeeper was revoked.

(e) Ratification Must be done Within a Reasonable Time After The Act That is to be Ratified: Ratification to be effective must be made within a reasonable time after the original contract has been made. If the time has been expressly fixed for the performance of the contract then ratification must be made within that time.

### Illustration

Saroj promised to sell her brother's house to Mr. Kripashankar and informed her brother about the deal. Her brother asked her to give him sometime to think. He gave his approval after four months, but the agreement between Saroj and Mr. Kripashankar had already lapsed because the contract of agency was not ratified within a reasonable time.

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**(f) The Act to be Ratified must be Lawful and not Void or Illegal or Ultra Vires in Case of a Company:** It is important that the object and the consideration of the agreement entered into by the agent and the third party be lawful. The principal cannot ratify an unlawful agreement.



**Figure14.6 Lawful Act**

## **Illustration**

Somnath had a fight with his neighbour and he was very upset about it. His friend Shyam came to know of his problem and on his behalf hired some goons to bash up Somnath's neighbour. Somnath could not ratify the agreement between Shyam and the goons because the object of the agreement was unlawful.

(g) The Whole Transaction Must be Ratified: Ratification must be of the whole transaction. The principal cannot ratify a part of the transaction and reject the rest of it. He/she cannot accept the benefits and reject the burdens. Either he/she rejects the whole transaction or accepts (ratifies) the whole transaction.

## **Illustration**

Roopwati used to sell cosmetics and bags. She hired an agent Neelam to sell the same in some other locality. Neelam had an agreement with Shalu, a buyer who was ready to buy cosmetics and bags if she was given a discount of 40%. Neelam agreed to sell the articles at a discount of 40% after getting the approval of Roopwati. Roopwati gave her approval to sell only the cosmetics at the discounted rate and not the bags. The agreement was not ratified because Roopwati accepted only one part of the transaction and not the other part.



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( h) Ratification Must not Injure The Third Party: Ratification cannot be effective where its effect is to subject a third person to damages, or terminate any right or interest of a third person.

### Illustration

Mr. Singla a sweet shop owner had prepared a lot of sweets during Diwali. After Diwali, a lot of sweets were left unsold and some of them had become stale and unfit to eat. Mohan had a party at his house and ordered sweets from Mr Singla's shop. Kishan a helper at the shop took Mohan's order and agreed to send the required quantity of sweets. He wanted to send the stale sweets. Mr Singla was not to ratify the agreement because it was injurious to Mohan, the third party.

(i) Ratification is Tantamount to Prior Authority: ratification relates back to the date when the act (contract) was done by the agent, which means that agency comes into existence from the moment the agent first acts and not from the time when the principal ratifies the act (contract).

### Illustration

Jagan entered into a contract to buy a car from Pawan on behalf of his brother Chandan on 1st February 2008. Pawan was at that time in Agra and was not aware of the contract. He returned on 20th February 2008. He then ratified the contract of agency entered into by his brother Jagan. Though Pawan came to know of the agreement on the 20th February, but he ratified the contract from 1st February 2008.

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## 14.3 Agent's Authority

The authority of an agent means his/her capacity to bind the principal to third parties. The agent can bind the principal only when he/she acts within the scope of his/her authority (Section 226). The types of authority are as follows:



**Figure14.7 An Agents Authority**

**Actual Authority:** Actual authority is the acts which have been assigned to the agent by the principal either expressly (in words spoken or written) or impliedly (inferred by circumstances of the case or the ordinary course of dealings) and thereby bind the principal to the third party.

### **Illustration**

Reenu a garment manufacturer in Punjab appointed Mr. Yadav as her agent to look after her business in the southern states of India. She gave him the freedom to take decisions only in case of the selling of the goods. For any other case he was supposed to consult Reenu before taking a decision.

**Ostensible or Apparent Authority:** When an agent is employed for a particular business, persons dealing with him/her can presume that he/she has authority to do all such acts as are necessary or incidental to such business. Such authority is called Ostensible / Apparent Authority. If the act of an agent is in excess of his/her actual authority, but within the scope of his/her ostensible authority, the principal will be bound by the act of the agent.

### **Illustration**

Reenu a garment manufacturer in Punjab appointed Mr. Yadav as her agent to look after her business in the southern states of India. She gave him the freedom to take decisions only in case of the selling of the goods and for any other matter he was supposed to consult Reenu before taking a decision. For selling the goods Mr. Yadav had to take a shop on rent and he took the decision of renting a shop without consulting Reenu.

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Though the renting of a shop was not the actual authority given to Mr Yadav by Reenu but the renting was incidental to the selling of the goods that was within his actual authority.

## **Watteau Vs. Fenwick (1893) 1 Q.B. 346**

It was held that if it is the usual practice of hotel managers to purchase liquors and cigarettes, then purchases of this nature shall be deemed to be within the scope of the manager's apparent authority and the principal will be bound by such purchases.

Authority in emergency: In an emergency an agent has the authority to do all such acts which protects his or her principal from loss.

### **Illustration**

Jaspinder a garment manufacturer in Punjab appointed Mr. Yadav as her agent to look after her business in the southern states of India. She gave him the freedom to take decisions only in case of the selling of goods and for any other case he was suppose, to consult her before taking a decision. However a few days later Jaspinder had a heart attack and she was bed ridden. Mr Yadav had no other option but to take decisions on all matters which had to do with the running of the business without consulting Jaspinder.

## **14.4 Sub-agent & Substituted Agent**

When the principal appoints a particular agent to act on his/her behalf, he/she relies upon the agent's skill, integrity and competence. Therefore, according to section 190, the agent is not entitled to delegate his/her authority to another person. However section 190 also provides that an agent may appoint a sub-agent and delegate the work to him/her in any of the following circumstances:



**Figure14.8 Sub-Agent & Substituted Agent**

- (i) There is a custom of trade to that effect.

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## Illustration

Mr Bal a businessman had appointed a lawyer Mr Ramchandani to fight a case against Mr Maheshwari. Mr Ramchandani being a very busy lawyer asked his assistant Mr Shekhran to handle the case on his behalf.

(ii) The nature of work is such that a sub-agent is necessary.

## Illustration

Mr Rastogi a resident of Meghalaya wanted to buy a house in Jamshedpur. He contacted John, a property dealer residing in Meghalaya, to buy the house for him. John was not very familiar with Jamshedpur, therefore he contacted his friend Bansal who was a property dealer in Jamshedpur to buy the house for Mr Rastogi.

(iii) Where the principal is aware of the intension of the agent to appoint a sub-agent and does not object to it.

## Illustration

Ramvir was a seller of ladies garments. His business was expanding and it was becoming difficult for him to manage the business all by himself. Therefore he asked Shyam his brother to look into the business. As Shyam did not have knowledge about ladies garments, he told Ramvir that he would like to involve his wife Asha in running the business.

(iv) Where unforeseen emergencies arise rendering appointment of a sub-agent necessary.

## Illustration

Rukmani had a beauty parlour running in five countries. She was managing only the Indian parlor. Four different agents appointed by her were managing the other four parlors. One of the agents in Hong Kong named Julie met with an accident and so was unable to work. She appointed a sub-agent Anna for managing the parlour till she was fit again to run the parlor.

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(v) Where the act to be done is purely ministerial, not involving confidence or use of discretion.

### **Illustration**

Narain Tiwari was a very renowned Chartered Accountant. He used to audit the accounts of many business houses. He had kept four chartered accountants as agents to look after the audit and accounts of business houses in the four regions of India (Northern, Southern, Western and Eastern) of India. The agent in the North got too much of work to handle; therefore, after informing Mr Tiwari, he appointed a sub-agent Mr Jogi to look after all the clerical and routine work related to his job assignment.

(vi) Where the power of the agent to delegate can be inferred from the conduct of both the principal and the agent.

### **Illustration**

Sandhya was running a catering business. As her business was expanding and she was finding it difficult to manage it alone, she appointed Naina her sister to help her in running the business. Naina was managing the catering orders for South Indian food and Sandhya for North Indian food. One day Naina received an order for Italian food, which she was unable to cater, so she appointed Angelina, a proficient cook of Italian food for catering orders for Italian food.

(vii) Where the principal permits appointment of a sub-agent.

### **Illustration**

Ram Narain a builder appointed an agent Sukhwinder to look after his construction work in Nepal. Sukhwinder could not understand the Nepalese language, therefore he took Ram Narain's permission to appoint a Nepalese national as an agent to help him in the construction work.

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## Sub-agent

According to section 191 a sub-agent "is a person employed by and acting under the control of, the original agent in the business of agency. He is the agent of the original agent".

<b>Calico Printers Association vs. Barclays Bank (1931) 145 L.T. 51.</b>
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It was held that in the eye of law there is no privity of contract between the principal and the sub-agent and therefore, in general, the principal cannot claim against the sub-agent for negligence.
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The sub-agent may have two positions:

1 Sub-agent's Position When he / she is Properly Appointed (Section 192)

As the principal has permitted the appointment of a sub-agent therefore he /she is bound by the acts of the sub-agent and is responsible to the third party.

The agent is responsible to the principal for the acts of the sub-agent.

The sub-agent is responsible for his/her acts to the agent, but not to the principal, except in case of fraud or willful wrong.

2 Sub-agent's Position When he/she is not Properly Appointed (Section 193)

As the sub-agent is appointed without the consent of the principal the principal is not responsible for the acts of the sub-agent to the third parties.

The agent is responsible for the acts of the sub-agent to the principal as well as to the third parties.

The sub-agent is responsible for his/her acts to the agent and not to the principal.

## Substituted Agent / Co-agent

According to section 194 of the Indian Contract Act "a co-agent or a substituted agent is a person who is named by the agent, on an express or implied authority from the principal, to act for the principal. He 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. He is the agent of the principal, though the agent names him, at the request of the principal".

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## Illustration

Ramnath a businessman was unable to travel because of the age. He appointed an agent Seekunder to look after his business in the North of India. His business had expanded to the South as well. Therefore after consulting Seekunder and on his recommendation he appointed another agent Mr Narain to look after his business in the South. In this case Seekunder is the agent and Mr Narain is the sub-agent. Both Seekunder and Mr Narain are responsible to Ramnath and Ramnath is liable for the acts of both to the third party.

## Difference between Sub-agent and Substituted agent

Basis of distinction	Sub-agent	Substituted agent
Line of command	Sub-agent is under direct control of the agent.	Substituted agent is under direct control of the principal.
Privity of Contract	There is no privity of contract between the sub-agent and the principal	There is a privity of contract between the substituted agent and the principal.
Responsibility	The sub-agent is responsible for his/her acts only to the agent and the agent is responsible for all the acts of the sub-agent to the principal	The substituted agent is responsible for his/her acts only to the principal
Liability to third party	If the sub-agent is properly appointed then for all his/her acts the principal is liable to the third party. If the sub-agent is not properly appointed then for all his/her acts the agent is liable to the third party	For all the acts of the substituted agent the principal is liable to the third party

# 1 (N) Contract of Agency

Difference between Sub-agent and Substituted agent	
Agent	Servant
<ul style="list-style-type: none"> <li>● Sub-agent is under direct control of the agent.</li> <li>● There is no privity of contract between the subagent and the principal</li> <li>● The sub-agent is responsible for his/her acts only to the agent and the agent is responsible for all the acts of the sub-agent to the principal</li> <li>● If the sub-agent is properly appointed then for all his/her acts the principal is liable to the third party. If the sub-agent is not properly appointed then for all his/her acts the agent is liable to the third party</li> </ul>	<ul style="list-style-type: none"> <li>● Substituted agent is under direct control of the principal.</li> <li>● There is a privity of contract between the substituted agent and the principal.</li> <li>● The substituted agent is responsible for his/her acts only to the principal</li> <li>● For all the acts of the substituted agent the principal is liable to the third party</li> </ul>

## Position of Principal and Agent in Relation to Third Parties:

The position of the principal and his/her agent as regards contracts made by the agent with third parties are discussed below:

**Named Principal:** In this case the principal's existence and name is disclosed by the agent to the third party while making a contract. Therefore the principal is liable for the acts of the agent to the third party provided the agent's acts are done within the scope of his/her authority and in the course of his/her employment as an agent. If the agent exceeds his/her authority then the principal is bound by that part of the work which is within the agent's authority and which can be separated from the part which is beyond his/her authority. The principal also has the power to repudiate the whole transaction if what the agent has done beyond the scope of authority cannot be separated from what he/she has done within the authority. The principal is liable for the fraud and misrepresentations made by the agent in the course of business. However if the agent commits such misrepresentations and frauds and they do not fall within his/her authority then the principal cannot be held liable.

### Illustration

Sunita wanted to buy a house and for that she contacted Prabhu a property dealer. Prabhu on behalf of Sunita bought a house from Rajneesh. Sunita did not pay the whole amount. She promised to pay the balance within a month's time. A month elapsed and Sunita did not pay the amount to Rajneesh. Rajneesh sued Sunita for the balance.



## 1 (N) Contract of Agency

Unnamed Principal: In this case the agent discloses the existence of the principal but conceals the principal's name from the third party while entering into a contract. The principal is liable to the third party, unless there is a trade custom or a term, express or implied, to the effect, which makes the agent personally liable. If the third party contracts knowing that there is a principal although his/her identity is not disclosed then he/she cannot sue the agent. However if the agent does not disclose the existence of the principal then he/she is liable to the third party.

### Illustration

Sunita wanted to buy a house and for that she contacted Prabhu a property dealer. Prabhu on behalf of Sunita bought a house from Rajneesh but did not disclose her name to Rajneesh. Sunita did not make the full payment. She promised to pay the balance within a month's time. A month lapsed and Sunita did not pay the amount to Rajneesh. Rajneesh sued Sunita for the balance. Even though Sunita's name was unknown to Rajneesh, Rajneesh could still sue her for non-payment.

Undisclosed Principal: In this case the agent does not disclose the existence as well as the name of the principal to the third party. The agent gives an impression to the third party that he /she is contracting in an independent capacity. This gives rise to the doctrine of undisclosed principal. The agent is personally liable to the third party and the third party can sue the agent. However if the third party comes to know of the existence of the principal then he/she can either sue the principal or sue the agent or sue both of them.

### Illustration

Sunita wanted to buy a house and for that she contacted Prabhu a property dealer. Prabhu bought the house from Rajneesh without telling him that he is the agent of Sunita and Sunita is the actual buyer. The identity of the principal was not disclosed to Rajneesh. Sunita did not pay the full amount. She however promised to pay the balance within a month's time. A month lapsed and Sunita did not pay the amount. Rajneesh sued Prabhu for non-payment.

### **T.R Chettiar Vs. M.K. Chettiar (1970) A.I.R Mad. 337**

It was held by the Court that the liability of the principal and agent is joint and several. In such a case if the third party elects to sue the agent and the claim remains partially unsatisfied, he may afterwards sue the principal for the balance.

# 1 (N) Contract of Agency

**Pretended Agent:** If an agent represents himself/herself as an authorized agent of a person and induces the third party to enter into a contract then he/she alone is liable to the third party and the third party has the right to sue only the agent. However if the alleged principal ratifies the agent's acts then contract of agency comes into existence and the principal will become liable to the third party for all the acts done by the agent. In case this does not happen then the pretended agent may also be sued for fraud by the aggrieved party (third party).

## Illustration

Sunita mentioned one day to her friend Prabhu that she wanted to buy a house. Prabhu on his own made a deal and bought a house from Rajneesh for Sunita. After buying the house he told Sunita. Sunita ratified the deal.

## Illustration

Sunita mentioned one day to her friend Prabhu that she wanted to buy a house. Prabhu on his own made a deal with a seller and bought a house from Rajneesh for Sunita. After buying the house he told Sunita. Sunita did not ratify the deal. Hence Prabhu was liable for any loss incurred by Rajneesh due to this deal.

**Personal Liability of the Agent:** Generally it is the principal who is liable to the third party for all the acts done by the agent on his/her behalf however the agent is personally liable in the following cases:



**Figure14.9 Personal Liability**

1 When the contract expressly provides that it will be the agent alone who would be responsible to the third party for all his/her acts.

## 1 (N) Contract of Agency

### Illustration

Romita hired an agent Raghuvver to run her business. She had made it clear to Raghuvver that he alone would be liable for any transactions he makes with a third party.

2 In case the agent acts for a foreign principal then also he/she is personally liable. The agent can exclude his/her personal liability by an express provision to this effect in the contract. If he/she does that then the agent is not personally liable.

### Illustration

Nainika residing in the United Kingdom wanted to buy a house in Calcutta. She asked her friend Ram to buy a house for her. Ram bought the house. Hence he would be liable to the third party.

3 When the agent acts for a principal who is incompetent to enter into a contract (minor or a person of unsound mind) then he / she is personally liable to the third party.

### Illustration

Nikita a twenty-four year old girl was mentally challenged. Her brother Raghuvver bought a house on her behalf from Somnath. Although the house belongs to Nikita (the principal), as she was mentally challenged it was her brother (the agent) who was liable to the third party.

4 In case the agent signs a contract in his / her own name without disclosing that he/she is an agent then also he /she is personally liable to the third party<sup>39</sup>

5 When the agent acts for an undisclosed principal<sup>40</sup>

# 1 (N) Contract of Agency

## 14.5 Rights and Duties of an Agent

Duties of an agent

The agent has the following duties towards the principal:

1 Duty to Follow Principal's Directions or Customs: According to Section 211 of the Indian Contract Act, "the first duty of every agent is to act within the scope of the authority conferred upon him/her and perform the agency according to the directions given by the principal. When the agent acts otherwise and loss is sustained the agent must make it good to the principal and if any profit accrues then the agent must account for it".

### Illustration

Ram asked his sister Sulochna to book rail tickets in second class AC from Delhi to Guwahati. Sulochna couldn't get reservation in second class AC so she booked tickets in First class AC. Ram had not asked her to book tickets in first class AC therefore Sulochna had the option to either pay the extra money on the ticket from her pocket or cancel the ticket and bear the loss of cancellation herself.

### Case Law Case Law 8

#### **Lilley Vs. Doubleday (1881) 7 QBD 510**

In this case the principal instructed the agent to warehouse the goods at a particular place and the agent warehoused them at a different warehouse which was equally safe, but the goods were destroyed by a fire. Though this was not due to the agent's negligence, it was held that he was liable for the loss because any departure from the instructions makes the agent absolutely liable

# 1 (N) Contract of Agency

**2 Duty to Carry Out The Work With Reasonable Skill and Diligence.** According to Section 212 of the Indian Contract Act the agent must carry the work of agency with reasonable diligence and to the best of his/her skill.

## Illustration

Jyotsna asked her friend to help her buy a second hand car. Her friend without doing much research bought a second hand car without test drive and without checking the parts of the car. After the purchase it was found that the car had a starting problem. Hence Jyotsna could sue her friend for not working with reasonable diligence and to the best of his ability while selecting the car.

**3 Duty to Render Accounts:** According to Section 213 of the Indian Contract Act "it is the duty of an agent to keep proper accounts of his/her principal's money or property and render them to him /her on demand, or periodically if so provided in the agreement".



**Figure14.10 Maintain Proper Accounts for Principal**

## Illustration

Joseph had a business, which was running all over India. He appointed an agent to look after his business in the eastern part of India. It was the agent's duty to keep proper accounts and hand over the money whenever Joseph demanded it.

**4 Duty to Communicate:** According to section 214, in case of any difficulty the agent should communicate with his/her principal and seek instructions from him/her before taking any steps in facing the difficulty or emergency.

# 1 (N) Contract of Agency

## Illustration

Jyotna wanted to buy a laptop. She asked her brother to buy one for her. She had given him a budget of rupees fifty thousand. Her brother went to buy the laptop but couldn't find any laptop as per his liking within the budget. He liked a laptop, which was worth rupees seventy thousand. As this was a difficult situation, so he rang up Jyotsna and asked her if he could buy the laptop for seventy thousand. Jyotna permitted him to buy the laptop. Hence Jyotna is liable to pay her brother the extra money incurred on the purchase.

5 Duty Not to Deal on his/her Own Account: According to Section 215 and 216 the agent must not deal on his /her own account. This means that he must buy or sell goods only on behalf of his/her principal. If the agent violates this rule then the principal may repudiate the transaction and can also claim from the agent any benefit, which may have resulted to the agent from the transaction.

## Illustration

Sonpari had hired an agent to sell purses. The agent was to sell purses on Sonpari's behalf. However the agent started selling the purse as her own and taking the share of profit, which actually belonged to Sonpari. Hence the agent is liable to return any such monetary profit she made on the transaction to Sonpari.

6 Duty Not to Make any Profit out of his/her Agency Except his/her Remuneration: According to section 217 and 218 an agent must not make any secret profit out of the agency. The agent must pay to his/her principal all money, which he/she may have received on the principal's account.

## Illustration

Jamshed had asked his nephew Rahim to help him sell carpets. Rahim sold the carpets at a price higher than what Jamshed had quoted and kept the excess profit with him. In this case Rahim was cheating Jamshed, therefore Jamshed could repudiate the contract and sue Rahim for the profit he made secretly.

7 Duty on Termination of Agency by Principal's Death or Insanity: According to section 209 "when an agency is terminated by the death of the principal or due to his/her mind becoming unsound, the agent must on behalf of the legal representatives of the principal take all reasonable steps for the protection and preservation of the interests entrusted to him/her".

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## Illustration

Shyamnath had his brother helping him in his firm. Shyamnath got an attack of paralysis and was bed ridden. It was now the duty of his brother to take all possible steps to protect and preserve the interests of Shyamnath.

8 Duty not to Delegate Authority: According to section 190, subject to certain exceptions<sup>41</sup> an agent cannot delegate his/her authority to another person. He/she has to perform all the work himself / herself.

## Illustration

Rakesh asked his friend Sonu to escort his mother from the railway station. Sonu asked his brother Monu to get Rakesh's mother from the station. Sonu did not have a right to delegate his work to Monu.

Rights of an Agent:

The agent has the following rights against the principal:

1 Right of Retainer: According to section 217 of the Indian Contract Act the agent has the right to retain out of sums received on account of the principal the money due to himself/ herself in respect of his /her remuneration or advances made or expenses properly incurred by him in conducting the business of agency.

## Illustration

Rakesh a publisher hired an agent Paul to sell books. Paul was to take a commission of five percent on every sale. Paul had a right to deduct his commission from the total sales he made before handing over the proceeds to Rakesh.

**2 Right to Receive Remuneration:** According to section 219 and 220 the agent is entitled to receive his/her agreed remuneration and if nothing is agreed upon, to a reasonable remuneration, unless he/she agrees to act gratuitously. In the absence of any special contract the right to claim remuneration arises only when the agent has done what he/she had undertaken to do. The agent can claim remuneration once the work has been completed even though the contract is not executed on account of breach either by the principal or the third party.

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**Figure14.11 Right for Remuneration**

## Illustration

Rakesh a publisher hired an agent Paul to sell books. Nothing was decided about the terms of remuneration to be given to Paul. Paul was able to sell fifty books and he returned all the proceeds he had made by selling the books to Rakesh. However Paul had a right to claim a reasonable amount of remuneration from Rakesh.

## Rights of an Agent

Right of stoppage of goods in transit

Right to compensation

Right to be indemnified

Right of lien

Right to receive remuneration

Right of retainer

Click your mouse each Layer to view associated description.

3 Right of Lien: According to section 221 of the Indian Contract Act an agent has the right to retain goods, papers and other property, whether movable or immovable, of the principal received by him/her until the amount due to himself/herself for commission, disbursements and services in respect of the same has been paid or accounted for to him



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/ her. The lien is a particular lien but by a special contract the agent may have a general lien 42

## Illustration

Rakesh a publisher hired an agent Paul to sell books. Nothing was decided about the terms of remuneration to be given to Paul. Paul was able to sell fifty books and he returned all the proceeds he had made by selling the books to Rakesh. Rakesh did not pay any remuneration / commission to Paul. Paul had a right to retain the unsold books till his remuneration was paid. 4 Right to be Indemnified: According to section 222 of the Indian Contract Act an agent has all the right to be indemnified against the consequences of all lawful acts done by him/her in exercise of the authority conferred upon him/her. The agent also has a right to be indemnified against the consequences of acts done in good faith, though they may turn out to be injurious to the rights of the third persons (section 223).

## Illustration

Ramsingh wanted to sell his scooter. As he was busy he asked his brother Vishal to sell the scooter. Vishal sold the scooter to Mr. Goswami for rupees ten thousand. Mr Goswami was not satisfied with the deal and he wanted to cancel the deal. Vishal did not cancel the deal so Mr Goswami sued Vishal for giving him a defective scooter. It was the duty of Ramsingh to indemnify his brother's act.

5 Right to Compensation: According to section 225 the agent has the right to be compensated for injuries sustained by him/her due to the principal's neglect or want of skill.

## Illustration

Sangram used to manufacture crackers. Sumeet had taken an agency for selling crackers for Sangram. The crackers, which Sumeet took to his shop from Sangram, were not properly packed. On the way Sumeet lit a cigarette and one of crackers caught fire. Sumeet received burn injuries. Hence it was Sangram's duty to compensate Sumeet for his injuries.

## 1 (N) Contract of Agency

6 Right of Stoppage of Goods in Transit: An agent can stop the goods in transit to the principal if he or she has purchased the goods either by incurring a personal liability and the principal has become insolvent.

### Illustration

Aloknath had taken agency from Soomnath to sell readymade garments. Aloknath used to also buy raw material for making readymade garments on behalf of Soomnath. Aloknath had already made a delivery of raw material by truck to Soomnath when he heard that Soomnath had turned insolvent. Aloknath stopped the goods in transit after hearing the insolvency of Soomnath.

## 14.6 Rights and Duties of Principal

### Duties of a Principal

The duties of a principal towards his/her agent are the rights of the agent against the principal. The rights of the agent have already been discussed above.

### Rights of a Principal

The principal can enforce all the duties of the agent, which are indirectly the rights of the principal. If the agent fails in his/her duty towards the principal, the principal has the following remedies against the agent.



Figure14.12 Rights & Duties of Principal

## 1 (N) Contract of Agency

1 To recover Damages: If the principal suffers loss due to disregard by the agent of the directions by the principal, or by not following the custom of trade in the absence of directions by the principal, or where the principal suffers due to lack of requisite skill, care, or diligence on the part of the agent, he/she can recover damages accruing as a result from the agent.

### Illustration

Ramsingh asked his brother Rakesh to sell his mobile. Rakesh took the mobile and put it in his shirt pocket. That day was Holi and Rakesh played Holi without removing the mobile from his pocket. The mobile got damaged. Hence Rakesh was liable to compensate his brother for the damage.

2 To Obtain an Account of Secret Profits and Recover Them and Resist a Claim for Remuneration: If the agent makes secret profits out of the business of agency, the principal has a right to recover from the agent. The principal can also forfeit his/her right to any commission in respect of the transaction.

### Illustration

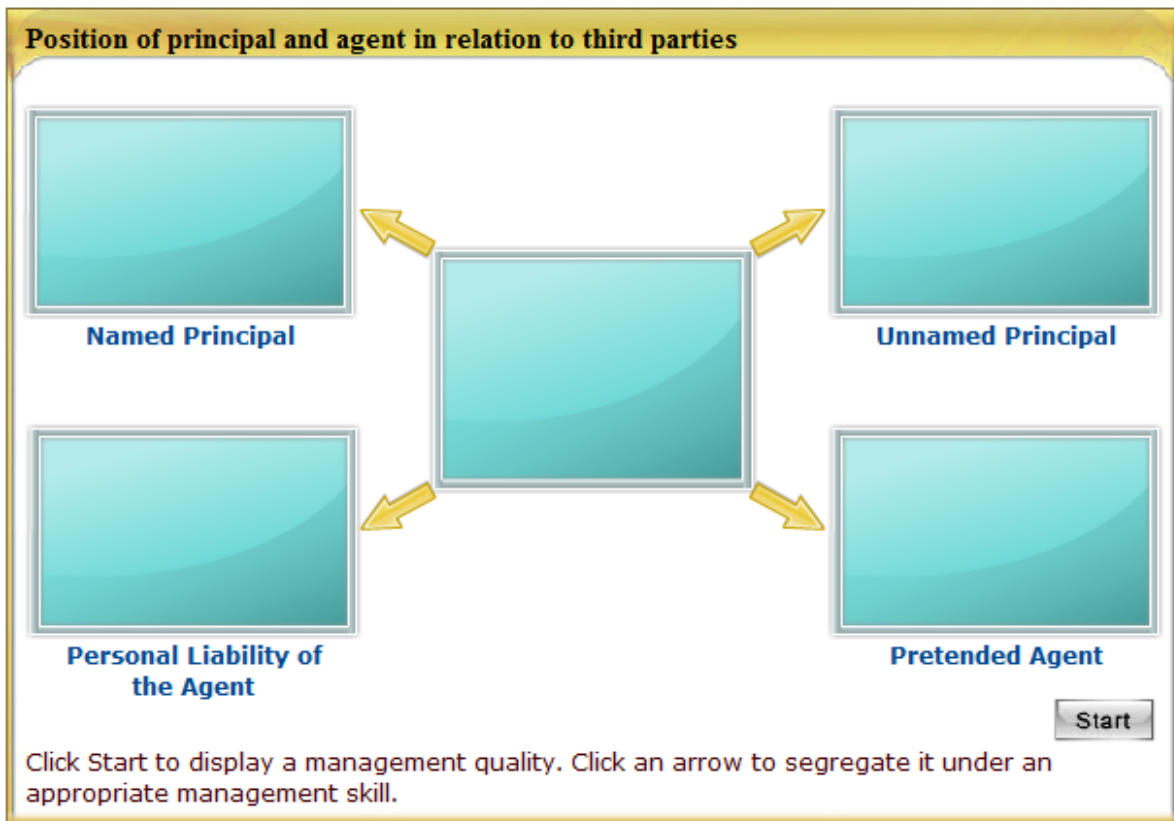
Joginder had taken an agency for selling Nokia mobile phones. He was selling phones at a price higher than what he had quoted to Nokia. Hence he was liable to return the secret profits he had made.

3 To Resist Agent's Claim for Indemnity Against Liability Incurred: If the principal can prove that the agent has acted as principal himself/herself and not merely as agent, he/she can resist the agent's claim for indemnity against liability incurred by him/her in such a transaction.

### Illustration

Rumani sold Tulsi's car, without asking her, to Sridevi. The car brakes were defective, hence Sridevi met with an accident while driving the car. Sridevi sued Rumani for selling her a defective car. As Tulsi had not asked Rumani to act as her agent, therefore she did not indemnify Rumani against the liability.

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**Rights of an Agent**

- Right of stoppage of goods in transit
- Right to compensation
- Right to be indemnified
- Right of lien
- Right to receive remuneration
- Right of retainer

Click your mouse each Layer to view associated description.

# 1 (N) Contract of Agency

## 14.7 Termination of Agency

An agency can be terminated or can be brought to an end by any of the following ways:

1 By act of the parties

2 By operation of law

Agency can be terminated by act of the parties in the following ways:

1 By Revocation of the Agent's Authority: According to section 203 "the principal can revoke the authority of the agent at any time before the agent has exercised his/her authority so as to bind the principal, unless the agency is irrevocable (i.e. it cannot be terminated)".



**Figure 14.13 Termination of Agency**

### Illustration

Aslam took an agency for selling dolls made by Bonney. Aslam took twenty dolls but before he could sell any doll Bonney terminated the agency. (2) By Agreement: An agency can be terminated at any time by mutual agreement between the principal and the agent. Illustration Aslam took an agency for selling dolls, made by Bonney. Aslam took twenty dolls but was able to sell only two dolls. Bonney wanted to cancel the agency. He approached Aslam and after paying his share of remuneration for selling two dolls, both of them mutually agreed to terminate the agency.

3 By Renunciation by the Agent: An agency can be terminated by an express renunciation by the agent because a person cannot be compelled to continue as agent against his/her will. According to section 206 the agent must give a reasonable notice of renunciation to the principal, otherwise he/she will be liable to compensate the principal for any damage resulting thereby. If the agency is for a fixed period and the agent renounces it without sufficient cause before the expiry of the period, he/she will have to compensate the principal for the resulting loss, if any.

# 1 (N) Contract of Agency

## Illustration

Aslam took an agency for selling dolls made by Bonney. Aslam took twenty dolls but was able to sell only two dolls. After some time Aslam wanted to cancel the agency. He approached Bonney and told him that he would not like to continue with the agency after a month. This was taken as a reasonable notice and the agency was duly terminated with mutual consent after a month.

Agency can also be terminated by operation of law in the following circumstances:

(1) By the Completion of the Business of Agency: According to section 201, an agency automatically terminates when the purpose for which agency was created is fulfilled.

(2) By Expiry of Time: If the agency is for a fixed term, the expiration of the term puts an end to the agency, even though the business of the agency may not have been completed.

(3) Death and Insanity of the Principal or the Agent: According to section 201 an agency is terminated automatically on the death or insanity of the principal or the agent. After knowledge about the principal's death or insanity, although the agency terminates, the agent must take all reasonable steps for the protection of the interests of the principal.

(4) By Insolvency of the Principal: According to section 201 of the Indian Contract Act agency terminates when the principal becomes insolvent. The section is silent on the point whether agency terminates when the Agent becomes insolvent.

(5) By Destruction of the Subject Matter: when the agency is created to deal with a subject matter and when that subject matter gets destroyed the agency automatically terminates.

(6) By Dissolution of a Company: When the principal or the agent is an incorporated company, the agency automatically terminates after the company gets dissolved.

(7) Principal or the Agent Becoming an Alien Enemy: If the principal and agent are nationals of two different countries and a war breaks out between the two countries the agency gets terminated. If they still continue the agency then they would be called alien enemies and their relationship of agency will be unlawful.

**Irrevocable Agency:** When the authority given to an agent cannot be revoked it is called irrevocable agency. An agency becomes irrevocable in the following circumstances:

(1) Where the Agency is Coupled with Interest: According to section 202 if the agent has himself / herself an interest in the subject matter of the agency, the agency is said to be coupled with interest. Such an agency is created with the object of protecting or securing an interest of the agent. It cannot be applied to a case where an agent's interest arises after the creation of agency.

## 1 (N) Contract of Agency

### Illustration

Vipin had given loan of rupees ten thousand to Sekunder. Sekunder was unable to pay the loan so in consideration he appointed Vipin as his agent to collect rents due from his tenants for adjusting the loan amount. In this case the agent Vipin has an interest in the subject matter of agency (collection of rent). Hence the agency becomes irrevocable

(2) Where the Revocation of Agency Would Cause a Personal Loss to the Agent: Where the agent has in pursuing his/her authority contracted a personal liability, the agency becomes irrevocable and the principal cannot revoke the agent's authority unilaterally. Illustration Narain asked his brother Sindh to buy a sofa set for his new house. He promised to pay the money later. Sindh bought the sofa set and paid the money from his own account. Hence Narain cannot revoke the agency.

(3) When the Authority has been Partly Exercised by the Agent: According to section 204 the principal cannot revoke the authority after the agent has partly exercised his/her authority, so far as regards such acts and obligations as arise from acts already done in agency.

### Illustration

Sukhmani asks Govind her neighbour to prepare five dishes for a dinner which is being hosted at her place. Govind purchases all the ingredients needed for the preparation and starts preparing the dishes. Sukhmani cannot revoke the contract of agency because the authority has already been partly exercised by Govind.

# 1 (N) Contract of Agency

## Summary

### Definition of Agency

Difference between Agent and Servant

### Characteristics of Agency

- Agreement between principal and agent
- Intention of the agent to act on behalf of the principal
- Whatever the principal can do personally he/she can do through his/her agent
- He who does an act through another does it as if by himself/ herself
- No consideration required for agency

### Creation of Agency

Express authority

Implied authority

Agency by ratification

### Implied Authority

Agency in Emergency

Agency by Necessity

a. Person entrusted with another's property

b. Husband and wife

Agency by Estoppel

Agency by Holding out

### Elements of Ratification

The principal must be in existence at the time of the contract

The agent must purport to act as agent for a principal who is in contemplation

The principal must have the contractual capacity both at the time of the contract and at the time of ratification

Ratification must be with full knowledge of facts

Ratification must be done within a reasonable time the act that is to be ratified

The act to be ratified must be lawful and not void or illegal or ultra vires in case of a company

The whole transaction must be ratified

Ratification must not injure the third party

Ratification is tantamount to prior authority

### Agent's Authority

Actual Authority

Ostensible / Apparent Authority

Authority in an Emergency

### Delegation of work to a Sub-Agent

There is a custom of trade to that effect

The nature of work is such that a sub-agent is necessary

Where the principal is aware of the intension of the agent to appoint a sub-agent and does not object to it

Where unforeseen emergencies arise rendering appointment of sub-agent necessary

Where the act to be done is purely ministerial not involving confidence or use of discretion

Where the power of the agent to delegate can be inferred from the conduct of both the principal and the agent



# 1 (N) Contract of Agency

Where the principal permits appointment of a sub-agent

## Position of a Sub-agent

- When Sub-agent is properly appointed
- When Sub-agent is not properly appointed

## Substituted Agent / Co-agent

Relation between Substituted Agent, Sub-Agent and the Principal  
Difference between Sub-Agent and Substituted Agent

## Position of a Principal and an Agent in relation to third parties

Named Principal  
Unnamed Principal  
Undisclosed Principal  
Pretended Principal  
Personal liability of the Agent

## Rights and Duties of an Agent

Duty to follow Principal's directions or customs  
Duty to carry out the work with reasonable skill and diligence  
Duty to render accounts  
Duty to communicate  
Duty not to deal on his/her own account  
Duty not to make any profit out of his/her agency except his/her remuneration  
Duty on termination of agency by Principal's death or insanity  
Duty not to delegate authority

## Rights of an Agent

Right of retainer  
Right to receive remuneration  
Right of lien  
Right to be indemnified  
Right to compensation  
Right of stoppage of goods in transit

## Rights of a Principal

To recover damages  
To obtain an account of secret profits and recover them and resist a claim for remuneration  
To resist Agent's claim for indemnity against liability incurred

## Termination of Agency

By act of the parties  
By operation of law

### By act of the parties

By revocation of Agent's authority  
By agreement  
By renunciation by the Agent

### By operation of law

By the completion of the business of agency  
By expiry of time

## 1 (N) Contract of Agency

By death and insanity of the principal or the Agent  
By insolvency of the Principal  
By destruction of the subject matter  
By dissolution of a company  
By Principal or the Agent becoming an alien enemy

### **Irrevocable Agency**

Where the agency is coupled with interest  
Where the revocation of agency would cause a personal loss to the Agent:  
When the authority has been partly exercised by the Agent

