

# LAW OF AGENCY:

## Basic Definitions:

**Agent:** An agent is a person employed to do any (lawful) act for another or to represent another in dealings with third persons.

**Principal:** The person for whom such act is done, who is so represented is called the principal.

**Test of Agency:** The test of agency is whether the person is purporting to enter into transaction on behalf of the principal or not, i.e. to create, modify or terminate contractual obligations between, his principal (whom he represents) and, some third person.

**Who may employ an agent:** Any person who is of the age of majority according to the law to which he subject, and who is of sound mind, may employ an agent.

**Appointment of an agent by a minor:** An appointment of an agent by a minor is void. The guardian of a minor may appoint an agent for the minor.

**Who may be an agent:** Any person can be an agent between a principal and third party, but as between the principal and third persons, an agent will not be liable to the principal unless the agent is a major and of sound mind.

**A minor as an agent:** A agent's competency to act or contract for his principal is not limited to his competency to contract for himself. A person who has no capacity to contract on his own behalf is competent enough to contract for his principal so as to bind him.

In a nutshell, a minor can be an agent of a principal when the principal is competent to contract. Where a person knowingly appoints a minor as his agent, later he cannot say that the contract is void, being made by a minor.

**No consideration necessary:** No consideration is necessary to create an agency. The very fact of employment and the credit gained thereby on one hand and the promise to act on the other are sufficient to constitute the employment of agency.

## Duties of Agent:

- 1) **Duty of execute mandate:** The first and the most important duty of every agent is, to carry out the mandate of his principal. He should perform the work for which he has to be appointed to do. Any failure in this respect would make the agent absolutely liable for the principal's loss.
- 2) **Duty to follow directions or customs:** It is the duty of agent to conduct the business of agency according to the directions of the principal. In the absence of any direction, he must act according to the custom that prevails in doing business of the same kind at the place where the agent conducts such business.

((If the agent fails to do so he is liable to the principal for the loss sustained and he must account for the profits if any to the principal.

**Use of direction:** In the absence of instructions, the agent may use his own discretion and must be guided by the honest exercise of his own judgment and the interest of the principal.))

- 3) **Duty of Reasonable Diligence and Skill:** It is the duty of an agent to conduct the business of agency with reasonable diligence and skill.

**Degree of Skill:** The care, skill or diligence required is not merely that which the agent in fact possesses but such as is reasonably necessary for the due performance of his undertaking, as much skill as is generally possessed by persons engaged in similar business.

**Effect of lack of skill and diligence:** If the agent fails to exercise proper skill and diligence, he will not be entitled to his remuneration or commission. The principal may recover damages for the loss only if it is the direct consequences of the agent's neglect, want of skill or Misconduct, but not for such loss may arise indirectly.

- 4) **Duty to maintain accounts:** It is the primary duty of an agent to be accountable to the principal, to render account to the principal when demanded.
- 5) **Duty to communicate:** It is the duty of an agent to keep his principal fully informed. In other words, it is the duty of an agent to communicate with the principal regarding matters relating to the agency and to obtain his instructions. This duty must be discharged with reasonable diligence.
- 6) **Duty to avoid conflict of interest:** As a fiduciary, it is the duty of an agent not to bring about any conflict between his duty to his principal and his own interest. An agent must not deal on his own account in the business of agency, without the consent of the principal. If the agent has not obtained the principal's consent to do so or has not acquainted him with all the material circumstances within the principal may repudiate the transaction if any material fact has been dishonestly concealed from him by the agent or the dealings indulged in by the agent have been disadvantageous to him.
- 7) **Duty to pay /remit sums:** It is the duty of an agent to pay to his principal all sums received on his account. However, the agent is entitled to deduct his lawful charges but subject only to this right, the principal's money must be remitted to him even if it has been received under an illegal or void contract.

**(Mode of Payment:** It follows from this rule that an agent to receive money has generally no authority to receive anything else as equivalent. As between the principal and a third person a set-off or balance of accounts between that person and the agent in his own right is not a good payment to the agent on behalf of the principal.))

- 8) **Duty to act personally:** An agent cannot lawfully employ another to perform acts which he has expressly or impliedly undertaken to perform, unless by the ordinary custom of trade a sub-agent may, or, from the nature of the agency, a sub-agent, must be employed.
- 9) **Duty in selecting a substituted agent:** 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.

- 10) **Duty in case of principal's death or insanity:** Though the agent's authority is terminated by the death or insanity of his principal. The agent takes these steps on behalf of the legal representatives of the deceased principal.

### **Rights of Agent:**

- 1) **Right to remuneration:** The right of remuneration arises only when agency is not gratuitous. An agent has no right to receive remuneration from the principal unless there is a contract (express or implied) to that effect. Every agent is clearly entitled to his, if there is no agreement to a reasonable remuneration.

((When agent remuneration becomes due: In the absence of any special contract:

- (i) **Completion of act:** In order to entitle the agent to receive his remuneration he must have carried out all that he had agreed to do under the agency and all conditions imposed by the contract must have been fulfilled.
- (ii) **Transaction resulting from agency:** An agent can claim commission only on transaction made by a direct result of his agency.

#### Illustrations:

- An agent was appointed to sell a house.
- He held an auction but failed to find a purchaser.
- One of the persons attending the auction obtained from him the address of the principal and purchased the house from him without intervention of the agent.
- Even so the transaction was held to be a result of the agent's effort entitling to his commission.

- (iii) **Work partly done:** The agent may retain moneys received by him for partial sale of goods through all the goods have not been sold or sale is not fully complete.

- 2) **Right of particular lien:** An agent has a right of particular lien on the property of the principal until the amounts due in respect of:

- commission
- distribution
- service

are

- paid to him or
- accounted for to him.

- 3) **Right of Retainer:** An agent has a right to retain his principal's money in his hands for

- all moneys due to himself in respect of

\* advances made or

\* expenses properly incurred

by him in conducting the business of agency.

- such remuneration as may be payable to him for acting as agent.

- 4) **Right to indemnify for lawful acts:** An agent has the right to be indemnified against the consequences of all lawful acts done by him in exercise of the authority delegated to him.
- 5) **Right to indemnify for acts done in good faith:** An agent has a right to be indemnified against the consequences of:
  - Act done in good faith
  - though it causes an injury to the rights of third persons.
- 6) **Right to compensation:** An agent has a right to be compensated in respect of injury caused to him by the principal's
  - neglect or
  - want of skill.

**Ratification:** Once a person (the agent) act's on behalf of another without the other's authority that other (the principal) may elect:

- i) to ratify that act or
- ii) to disown it.

If he ratifies it, than act will be deemed to have been done with the principal authority. Thus ratification is the affirmation of unauthorized act. Ratification may be:

- express, or
- implied

### **Requirement:**

- 1) **On Behalf of another:** It is necessary that the act in question must have been done on behalf of the person who want to ratify it. The alleged agent must profess to act as an agent on behalf of an identifiable person.
- 2) **Competency of Alleged Principal:** Since ratification relates back to the time when the contract originally made by the agent, it is necessary that the principal who want to ratify must be in existence at the time of formation of contract and must also be competent.
- 3) **Knowledge of Facts:** No valid ratification can be made by a person whose knowledge of fact is materially defective.
- 4) **What acts may be Ratified:** Only lawful act are open for ratification. An act which is void from very beginning cannot be ratified. Similarly, acts which would become injurious to other by way of ratification cannot be adopted.
- 5) **Whole transaction:** There can be no partial ratification of the unauthorized agent. Thus a ratification of part of transaction operates as a ratification of whole of the transaction.
- 6) **Time period:** A ratification must be down with in a reasonable time.

### **Effects of Ratification:**

- 1) **Agency:** Ratification establishes the relationship of Principal and Agent to the extent that the ratifies is concerned between the ratifier and the person doing the act from the time of making of contract and not from the time of ratification.

- 2) **Contract with third party:** Ratification establishes contractual relationship between the ratifier and the third party from the time of making a contract.

### **Creation of Agency:**

**A) Agency by Express Agreement:** In this case an agent is appointed by an agreement in writing or by words of mouth. The usual form of written contract of agency is power of attorney which gives him authority to act as an agent on behalf of principal in accordance with terms and conditions mentioned in it.

Power of attorney vary very much in scope. A general power of attorney is more under in scope than special power of attorney.

**B) Agency by Implied Agreement:** It arises due to

- the conduct of the parties
- the course of dealing between parties
- the situation of a particular case

1) **Agency by Estoppel:** Where a person by his words or conduct willfully conveys another person to believe that a certain person is his agent, he is subsequently estopped from denying fact of agency.

2) **Agency by holding out:** It is a kind of agency by estoppel. It is something more than estoppel. In this case there is some prior possible conduct of principal to the agency subsequently.

3) **Agency by Necessity:** An agency may be created by necessity of a particular case. Sometimes extra ordinary circumstances may arise in which a person may be compelled to act as an agent of some other person without requiring his consent or authority.

#### **Requirements of Agency by Necessity:**

- a) There must be genuine emergency and necessity to act on behalf of principal.
- b) The agent must not in a position to communicate with the principal or to obtain his instructions.
- c) The agent must act bonafidely and in interest of principal.
- d) The agent must adopt reasonable and practicable course under circumstances of case.

**C) Agency by Ratification:** Ratification means the subsequent adoption and acceptance of an act originally done without authority.

Ratification related back to the original making of the contract so that agency is taken to have come into existence from the moment the agent first acted and not from the time of principal's ratification.

**D) Agency by Statue:** Sometimes agency is created by statue according to Partnership Act, every partner is agent of his co-partners and the firm for the purpose of the business of the firm.

**Undisclosed Agency / Principal:** Sometime an agent not only conceals the name of the principal but also the fact that he is an agent. This gives rise to the doctrine of undisclosed principal. The agent in such a case gives an impression to the third party as if he is contracting in an independent capacity:

- 1) **Position of the agent:** As between the principal and the agent, the agent has all rights of an agent as against the principal, but as regards the third party, he is personally liable on the contract. He may be sued on the contract and he has the right to sue the third party.
- 2) **Position of the third party:** In a contract with an agent for an undisclosed principal, the third party may:
  - elect to sue either the principal or the agent or both
  - if the principal discloses himself before the contract is completed, the other contracting party may refuse to fulfill the contract.
  - The third party may also claim a right of set-off against the agent.
- 3) **Position of Principal:** The principal may intervene and sue the third party for non-performance of the contract. But he cannot exercise this right to the prejudice of the third party and the third party has the same right against the principal as he would have had as against the agent if the agent had been the principal.

**Requirement of the intervention of the principal:**

- i) **Consent of third person:** A principal can only intervene (in case of undisclosed agency) when the third party with whom the contract has been made by the agent signifies his assent in intervention.
- ii) **Terms of the contract remain unchanged:** When the principal requires the performance of the contract, he can only obtain such performance as is subject to the rights and obligations subsisting between the agent and the other party to the contract.
- iii) **Rights of third party remain unaffected:** The third party can also claim a right of set-off against the agent. The principal may intervene and sue the third party for non-performance of the contract. But he cannot exercise this right to the prejudice of the third party.
- iv) **In case of Non-Intervention clause:** If there is a term in the contract relating to non-intervention of any third party in the contract then the principal cannot intervene even if the third party signifies his assent in intervention.

**Personal Liability of Agent:**

**General Principal:** An agent is merely a connecting link between the principal and third party. His main function is to establish contractual relationship between the principal and third parties. Thus as a general rule, an agent cannot personally enforce the contract made by him on behalf of principal nor he can be personally held liable for such contracts.

- 1) **Foreign Principal:** Where an agent contracts for a principal residing abroad, such agent undertakes personal liability. However, the agent can exclude his personal liability by contracting in a manner which shows his intention not to incur personal liability.
- 2) **Undisclosed Principal:** Where an agent contracts for an undisclosed principal, he is definitely personally liable being a party to the contract. Where the agent contracts for an unnamed principal, there is no presumption of his personal liability.

- 3) **Incompetent or Non-Existent Principal:** An agent incurs personal liability where he contracts on behalf of a principal who though disclose cannot be sued such as
  - a minor
  - a person of unsound mind
  - a company which is not registered
- 4) **Where agent exceed authority:** Where an agent exceeds authority, he is personally liable to the third parties for the excess part if it can be separated from the authorized part otherwise fort the whole transaction.
- 5) **Agency coupled with interest:** Where an agent has an interest in the subject matter of the contract, he is personally liable to the extent of his interest in the contract. As a matter of fact, the agent is the principal for his own interest in the subject-matter of the contract.
- 6) **Custom or Usage of Trade:** Where the customs or usage of a particular trade provided that the agent shall be personally liable for the contract, the agent incurs personal liability.
- 7) **Pretended Agent:** Where a person pretends to act as an agent of another and if no ratification is made by his alleged principal, such agent is personally liable to the third party for any loss which that party has incurred by relying upon the representation.
- 8) **Improperly Appointed sub-agent:** An agent is personally liable to the third parties as well as to the principal for the acts of an improperly appointed sub-agent.

### **Duties of Principal:**

- 1) **Duty to pay:** It is the duty of the principal to pay agreed remuneration or (if there is no agreement) a reasonable remuneration to the agent.
- 2) **Duty to indemnify for lawful acts:** It is the duty of the principal to indemnify against consequences of all lawful acts done by the agent in exercise of the authority delegated to him.
- 3) **Duty to indemnify for acts done in good faith:** It is the duty of the principal to indemnify against consequences of the acts done in good faith by the agent during the labour of agency when such acts cause an injury to the rights of third person.
- 4) **Duty to compensate:** It is the duty of the principal to compensate for injury caused to the agent by his neglect or want of skill.

### **Termination of Agency:**

- 1) **By Agreement:** An agency, like any other contract, can be terminated at any time by the mutual agreement between the principal and the agent.
- 2) **By completion of business:** An agency automatically comes to an end when the business of agency is completed.

- 3) **By Expiry of term:** When the agent is appointed for a fixed period of time, the agency comes to an end after the expiry of that time even if the work is not completed.
- 4) **By death of either party:** When the agent or the principal dies the agency is terminated.
- 5) **By Insanity of either party:** When the agent or the principal becomes of unsound mind, the agency is terminated.

When the termination takes place the agent is bound to take on behalf of representatives of the late principal, all reasonable steps for the protection and preservation of the interests entrusted to them.

- 6) **By Insolvency of Principal:** An Agency is also terminated by the insolvency of the principal.
- 7) **By Destruction of Subject matter:** An agency which is created to deal with a certain subject-matter comes to an end with the destruction of the subject-matter.
- 8) **By Subsequent Impossibility / Illegality:** The agency terminates when the purpose of agency becomes impossible or unlawful.
  - **Dissolution of Company:** If the principal or agent is an incorporated company, the agency automatically (ceases to exist) on dissolution of the company.
  - **Principal Becoming an alien enemy:** When the agent and the principal are aliens, the contract of agency is valid so long as the countries of the principal and the agent are at peace. If war breaks out between the two countries, the contract of agency is terminated.
- 9) **By revocation:** The principal may revoke the authority given to his agent at any time before the authority has been exercised so as to bind the principal.

When 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 for any previous revocation of the agency without sufficient cause.

Reasonable notice must be given of such revocation other wise the damage caused to the agent must be made by the principal.

Revocation may be expressed or implied in the conduct of the principal.

- 10) **By Renunciation:** An agency may be terminated by an express renunciation by the agent to the principal.

When there is an express or implied contract that the agency should be continued for any period of the time, the agent must make compensation to the principal for any previous renunciation of the agency without sufficient cause.

Reasonable notice must be given of such renunciation otherwise the damage hereby to the principal must be made by the agent.

Renunciation may be express or implied in the conduct of the agent.