



## Unit 9



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## What is Agency?

Agent means a person employed to do any act for another or to represent another in dealing with the third persons and The principal means a person for whom such act is done or who is so represented.

## Appointment and Authority of Agents

Who may employ an agent :-

Any person who become an agent i.e even a minor or a person of unsound mind may become an agent and the principal shall be bound by his acts.

But as a rule of caution, a minor or a person of unsound mind should not be appointed as an agent because he is incompetent to contract and in case of his misconduct or negligence, the principal shall not be able to proceed against him.

Consideration not necessary:-

No consideration is necessary to create an agency.

## Creation of Agency:-

The authority may be express or implied:-

### 1] Express Authority:-

An authority is said to be express when it is given by words spoken or written.

### 2] Implied authority:-

An authority is said to be implied when it is to be inferred from the circumstances of the case, conduct of the parties and things spoken or written, or in the ordinary course of dealing, may be accounted from the circumstances of the case.

Implied agency includes:-

Agency by estoppel:- An Agency by estoppel may be created when the following essentials are fulfilled:-

1. The principal must have made a representation
2. The representation may be express or implied.
3. The representation must state that the agent has an authority to do certain act although really he has an authority.
4. The principal must have induced the third person by such representation; and

5. The Third person must have believed the representation and made the contract on the belief of such representation.

b) Agency by Necessity:- Where an agent is authorised to do certain act, and while doing such an act, an emergency arises, he acquires an extra-ordinary or special authority to prevent the principal



Anand Sir has large farm on which Harshad sir is the caretaker. When Anand Sir is in Canada, there is huge fire on the farm. Harshad sir becomes an agent of necessity for Anand Sir so as to save the property from being destroyed by fire. Anand sir (The principal) will be liable for any expenses, Harshad sir (his agent) incurred to put out the fire and save the farm.

### 3] Agency by operation of law:-

When law treats one person as an agent of other

### 4] Rights of person as to acts done for him without his authority, effect of ratification:-

Ratification means approving a previous act or transaction.

#### Essentials of a valid Ratification:-

a] Ratification may be express or Implied

b] No valid ratification can be made by a person whose knowledge of the facts of the case is materially defective.

c] There can be ratification of an act in entirety or its rejection in entirety. The principal cannot ratify a part of the transaction which is beneficial to him and reject the rest.

d] Ratification cannot injure third person

e] Ratification must be made within a reasonable period of time.

f] Ratification must be communicated to the other party.

g] Act to be ratified should not be void or illegal.

### Extent of Agent's Authority:-

a] Agent's authority in normal circumstances:-

An Agent having an authority to carry on a business has authority to do every lawful thing necessary for the purpose, or usually done in the course of conducting such business.

b] Agent's authority in an emergency:-

An Agent has authority, in an emergency, to do all such acts for the purpose of protecting his principal from loss as would be done by a person of ordinary prudence, in his own case, under similar circumstances.

## Sub-Agents

### • When agent cannot delegate:-

An Agent cannot lawfully employ another to perform acts he has expressly or impliedly undertaken to perform personally, unless by the ordinary custom of trade a sub-agent may or from the nature of Agency, a sub-agent must, be employed.

### • Sub-agent :-

A sub-agent is a person employed by and acting under the control of the original agent in the business of the agency.

Exception where an agent can appoint Sub-agent :-

- 1) If the terms of appointment originally contemplated it.
- 2) Customs of the trade may provide for appointment of sub-agents.
- 3) Unforeseen emergency arise making it necessary for him to delegate the authority that was given to him by principal.

Representation of Principal by sub-agent properly appointed:-

- 1) Principal is liable to third parties for the acts of the sub-agent.
- 2) Agents responsibility for sub-agents.
- 3) Sub-agents liability to principal.

• Agent's responsibility for Sub-agent appointed without authority:-

- 1) The Agent is responsible for his acts both to the principal and to third persons.
- 2) The Principal is responsible for his acts of the sub-agent.
- 3) The Sub-agent is not responsible to the principal at all. He is answerable only to the agent.

**Substituted Agent:-**

- Substituted Agent is a person appointed by the agent to act for the principal., in the business of agency with the knowledge and consent of the principal.
- They are agents of the principal.
- Where an agent, holding an express or implied authority to name another person to act for the principal in the business of the agency, has named another person accordingly, such person is not a sub-agent but an agent of the principal for such part of the business of the agency as is entrusted to him.

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.

### Difference between Sub-Agent and Substituted Agent:-

S.no	Sub Agent	Substituted Agent
1.	A sub-agent does his work under the control and directions of agent.	A substituted agent works under the instructions of the principal.
2.	The agent not only appoints a subagent but also delegates to him a part of his own duties.	The agent does not delegate any part of his task to a substituted agent.
3.	There is no privity of contract between the principal and the subagent.	Privity of contract is established between a principal and a substituted agent.
4.	The sub-agent is responsible to the agent alone and is not generally responsible to the principal.	A substituted agent is responsible to the principal and not to the original agent who appointed him
5.	The agent is responsible to the principal for the acts of the subagent.	The agent is not responsible to the principal for the acts of the substituted agent.
6.	The sub-agent has no right of action against the principal for remuneration due to him.	The substituted agent can sue the principal for remuneration due to him.
7.	Sub-agents may be improperly appointed.	Substituted agents can never be improperly appointed.
8.	The agent remains liable for the acts of the sub-agent as long as the subagency continues.	The agent's duty ends once he has named the substituted agent.

## Duties and Obligations of an Agent :-

### i] Duty to follow instructions or customs:-

An Agent is bound to conduct the business of his principal according to the direction given by the principal or in the absence of any such directions, according to the customs which prevails in doing business of the same kind at the place where the agent conducts such business. When the agent acts otherwise and any loss is sustained by the Principal, he must indemnify him and if any profit accrues, he must account for it.

### ii] Duty of reasonable care and skill:-

The agent is always bound to act with reasonable diligence and to use such skill as he possess and to make compensation to his principal in respect of the direct consequences of his own neglect, want of skill or misconduct but not in respect of loss of damage which are indirectly or remotely caused by such neglect, want of skill or misconduct.

iii) Duty to render proper accounts:-

An Agent is bound to render proper accounts to his principal on demand.

iv) Agent's duty to communicate with principal:-

It is the duty of an agent, in cases of difficulty, to use all reasonable diligence in communicating with his principal and in seeking to obtain his instructions.

v) Duty not to deal on his own account:-

Agent should not deal on his own account without first obtaining the consent of the principal, otherwise the principal may-

a) repudiate the transaction.

b) Claim from the agent any benefit which may have resulted to him from the transaction.

vi) Duty not to make secret profits:-

It is the duty of an agent not to make any secret profit in the business of agency.

vii] Duty not to delegate:-

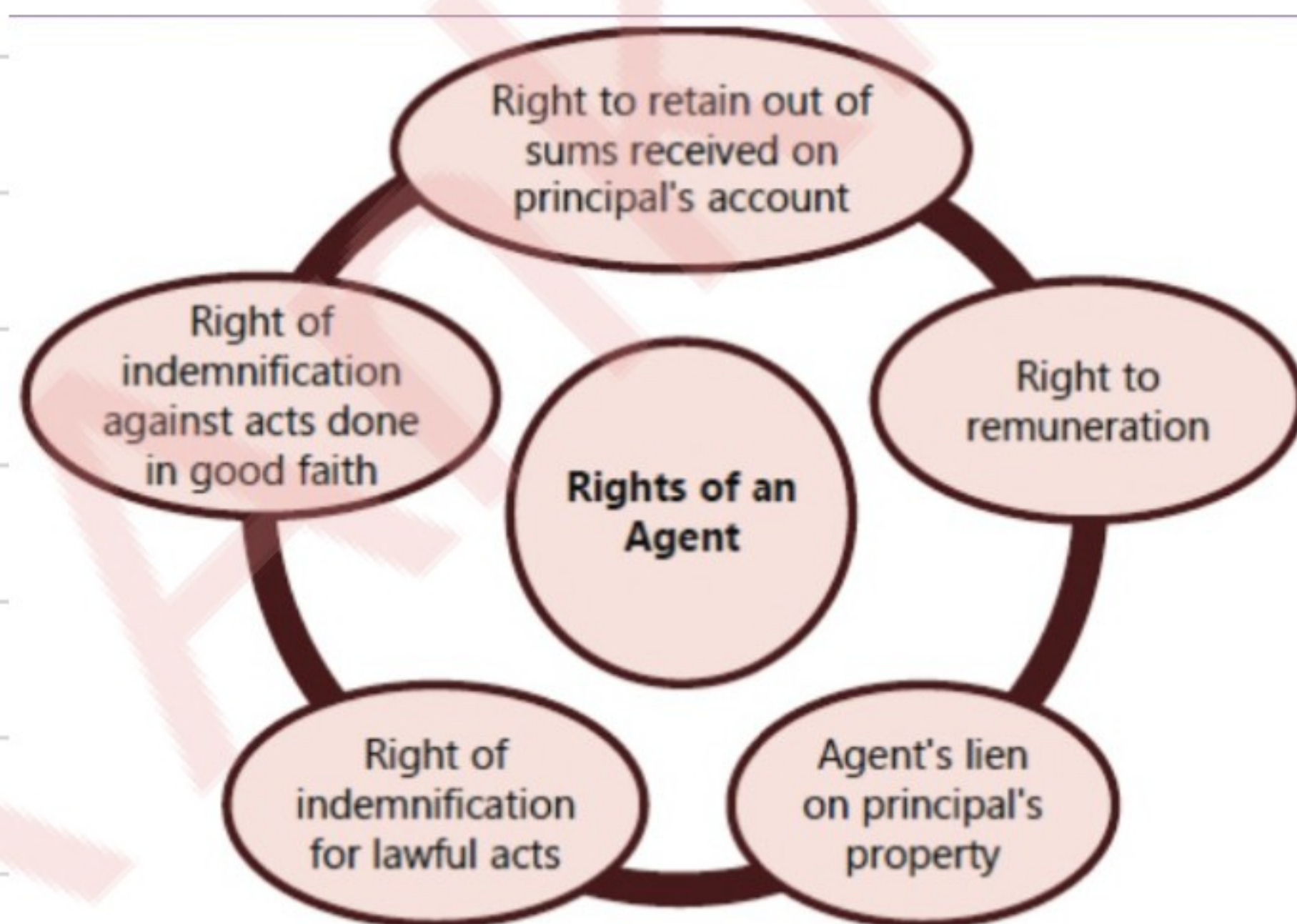
An Agent cannot lawfully employ to perform acts which he has expressly or impliedly to perform personally

viii] Agent's duty to pay sums received for principal:-

The Agent is bound to pay to his principal all sums received on his account.

ix] Duty not to use any confidential information received in the course of agency against the principal

### Rights of an Agent:-



i] Right of retain out of sums received on principal's account:-

Agent can retain, out of any sums received on account of the principal in the business of the agency for the following payments:-

- a) all moneys due to himself in respect of advances made.
- b) In respect of expenses properly incurred by him in conducting such business.
- c) Such remuneration as may be payable to him for acting as agent

### ii) Right to remuneration:-

The agent in the normal course is entitled for remuneration as per the contract.

### iii) Agent's lien on principal's property:-

An Agent is entitled to retain the goods, papers and other property whether movable or immovable of the principal received by him, until the amount due to himself for commission respect for the same has been paid or accounted for him.

### iv) Right to indemnity:-

#### a) Right of indemnification for lawful acts:-

The principal is bound to indemnify the agent against all consequences of lawful acts done in exercise of his authority.

b) Right of indemnification against acts done in good faith:-

Where the agent acts in good faith on the instruction of principal, agent is entitled for indemnification of any loss or damage from the principal.

c) Non-liability of employer of agent to do a criminal act:-

Where one person employs another to do an act which is criminal, the employer is not liable to the agent, either upon an express or an implied promise, to indemnify him against the consequences of that act.

v) Right to compensation for injury caused by principal's neglect:-

The Principal must compensate his agent in respect of injury caused to such agent due to principal's neglect or want of skill.

**Principal's liability to third Parties:-**

i) Principal's liability for the Acts of the agent:-

Principal liable for the acts of agents which are within the scope of his authority.

## ii) Principal's liability when agent exceeds authority:-

When an agent does more than he is authorised to do, and when the part of what he does, which is within his authority, can be separated from the part which is beyond his authority, so much only of what he does as is within his authority is binding as between him and his principal.

## iii) Consequences of notice given to agent:-

Provided it be given or obtained in the course of the business transacted by him for the principal, shall, as between the principal and third parties have the same legal consequence as if it had been given to or obtained by the principal.

## iv) Principal's liability for the agent's fraud, misrepresentation or torts:-

Misrepresentations made, or frauds committed, by agents acting in the course of their business for their principals, have the same effect on agreements made by such agents as if misrepresentations or frauds had been made or committed by the principals but misrepresentations made or frauds committed by agents in matters which do not fall within their authority, do not affect their principals.

## Personal liability of Agent to third parties:-

An Agent Cannot personally enforce contracts entered into by him on behalf of his principal, nor is he personally bound by them. He can neither sue nor be sued on contracts made by him on his principal's behalf.

### Exceptions:-

- 1) Where the contract is made by an agent for the sale or purchase of goods for a merchant resident abroad/ foreign principal
- 2) Where the agent does not disclose the name of the principal or undisclosed principal (Principal unnamed):-
- 3) Non-existent or incompetent principal:- Where the principal, though disclosed, cannot be sued, the agent is presumed to be personally liable.
- 4) Pretended agent:- If the agent pretends but is not an actual agent and the principal does not rectify the act but disowns it, the pretended agent will be himself liable
- 5) When agent exceeds authority:- When the agent exceeds his authority, misleads the third person in believing that the agent he has the requisite authority in doing the act then the agent can be made liable personally for the breach of warranty of authority.

## Rights of Third parties:-

i] Right of parties to a contract made by undisclosed agent:-

If an Agent makes a contract with a person who neither knows, nor has reason to suspect that he is an agent, his principal may require the performance of the contract but the other contracting party has, as against the principal, the same right as he would have had as against the agent if the agent had been the principal.

ii] Performance of contract with agent supposed to be principal:-

When agent does not disclose that he is acting as an agent & the principal requires the performance subject to the rights & obligations subsisting between the agent & the other party to the contract.

iii] Option to Third Person:- sue the Agent or the principal:-

a] Right of person dealing with agent personally liable:-

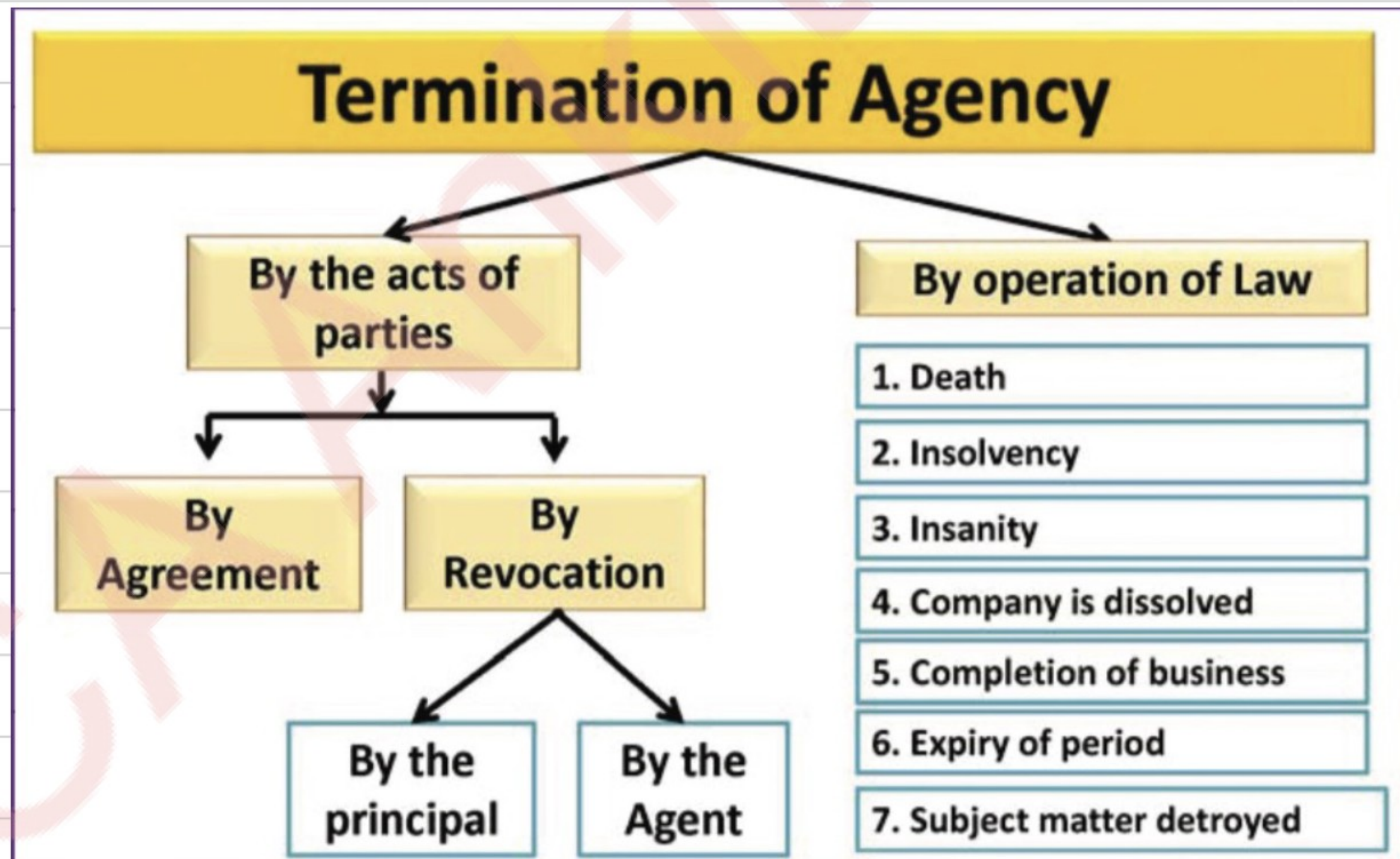
In cases where the agent is personally liable, a person dealing with him may hold either him or his principal or both of them, liable.

b) Consequence of inducing agent or principal to act on belief that principal or agent will be held exclusively liable:-

When a person who has made a contract with an agent induces the agent to act upon the belief that the principal only will be held liable or induces the principal to act upon the belief that the agent only will be held liable, he cannot afterwards hold liable the agent or principal respectively.

**Revocation of Authority:-**

1) Termination of Agency:-



## 2] Effects of Termination:-

The Termination of the authority of an agent does not, so far as regards the agent, take effect before it becomes known to him, or, so far as regards third persons, before it becomes known to them.

## 3] When the Agency is irrevocable?

When the agent is personally interested in the subject matter of agency the agency becomes irrevocable. "Where the agent has himself an interest in the property which forms the subject matter of the agency, the agency cannot in the absence of an express contract, be terminated to the prejudice of such interest."



"Yeh tho bas Indian Contract Act tha,  
Baki Ka syllabus toh Abhi Baki hai mere dost!"

CA ANKITA PATNI