

CA Foundation
Paper 2 - Business Law

Chapter 2 - ICA

The Indian Contract Act, 1872

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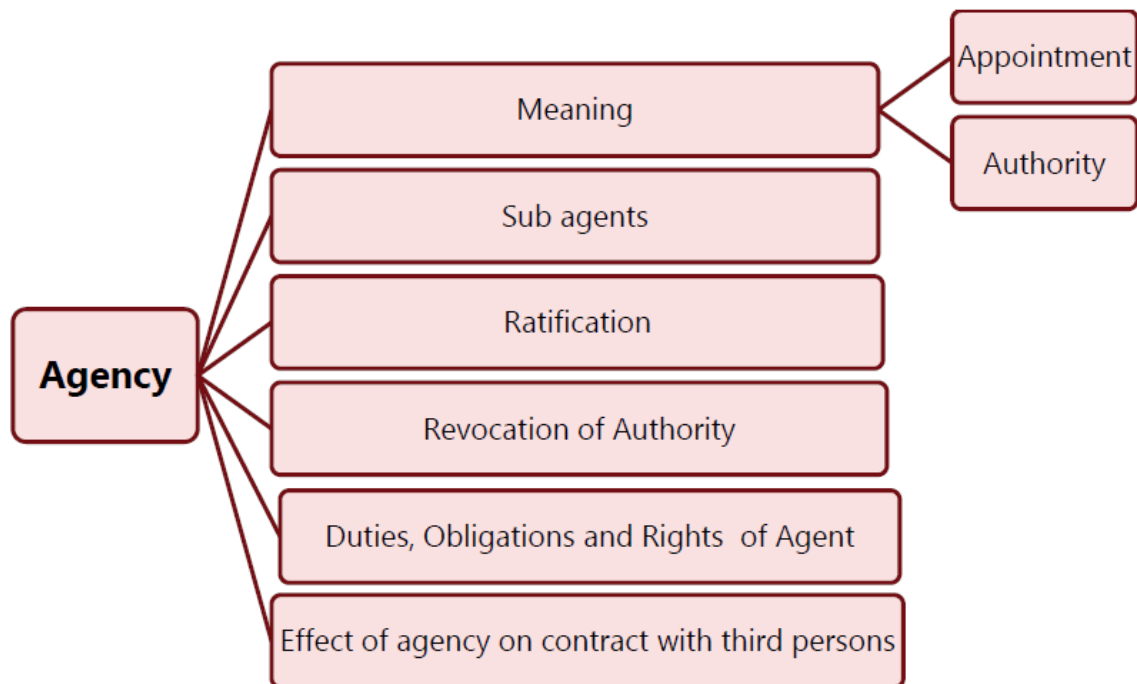
The Indian Contract Act, 1872

Unit 9 - Agency

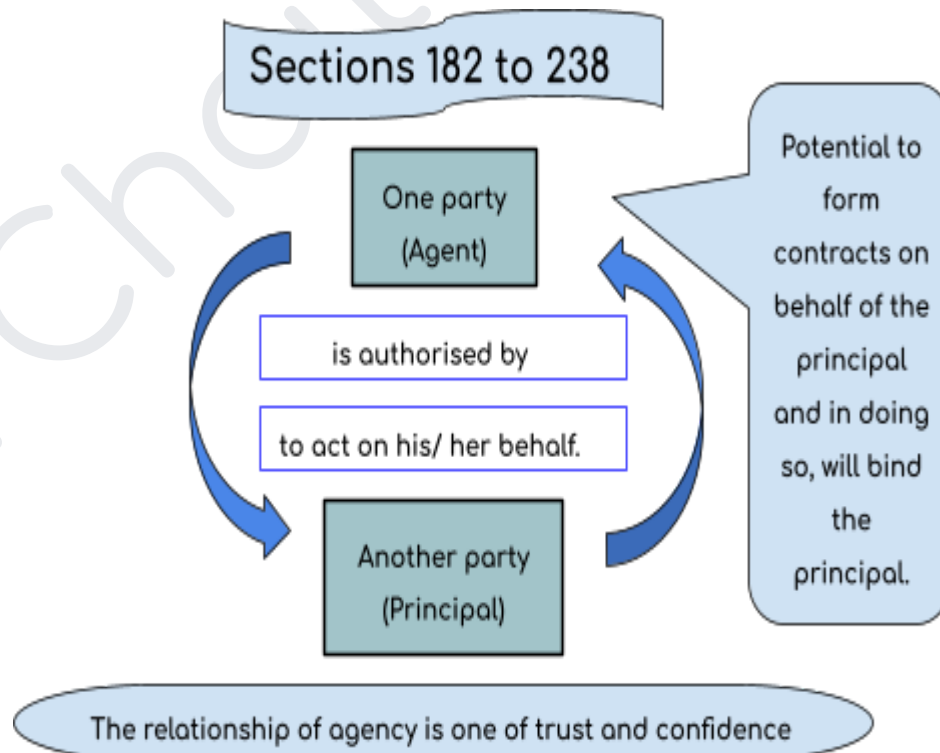
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Unit 9 - Agency



A relationship of agency is established when -



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- Such relationships are initiated when one party **desires to extend his/her activities** beyond his/her present limits or capacity.

WHAT IS AGENCY? - Section 182

- The Indian Contract Act, 1872 does not define the word '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 an act is done or who is so represented.**

TEST OF AGENCY

- a) Whether the person has the **capacity to bind the principal and make him answerable** to the third party.
- b) Whether he can **establish privity of contract between the principal and third parties**. If the answer to these questions is in **affirmative (Yes)**, then there is a relationship of agency.

- 'Agency' is a comprehensive word used to describe the relationship between -
- one person and another,
- where the first mentioned person brings the second mentioned person into legal relation with others.

The Rule of Agency is based on the maxim "*Qui facit per alium, facit per se*" i.e., he who acts through an agent is himself acting.

APPOINTMENT AND AUTHORITY OF AGENTS

183 - Who may employ an agent:

- Any person who has attained majority according to the law to which he is subject, and

→ who is of sound mind, may employ an agent.

→ Thus, a minor or a person of unsound mind cannot appoint an agent.

184 - Who may be an agent:

→ Any person may 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

Example 1: P appoints Q, a minor, to sell his car for not less than Rs. 2,50,000. Q sells it for Rs. 2,00,000. P will be held bound by the transaction and further shall have no right against Q for claiming the compensation for having not obeyed the instructions, since Q is a minor and a contract with a minor is 'void-ab-initio'. and in case of his misconduct or negligence, the principal shall not be able to proceed against him.

184 - Consideration not necessary:

No consideration is necessary to create an agency.

The acceptance of the office of an agent is regarded as a sufficient consideration for the appointment.

CREATION OF AGENCY

- In the words of Desai J, of the Supreme Court of India,
- "The relation of agency arises whenever one person called the agent has the authority to act on behalf of another called the principal and consents to act. The relationship has genesis in a contract"
- The relationship of the principal and the agent may be created in any of the following ways:
- The authority may be express or implied: According to Section 186, the authority of an agent may be express or implied.

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187 - Express and implied authority

Express Authority:

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

Example 2: A is residing in Delhi and he has a house in Kolkata. A authorizes B under a power of attorney, as caretaker of his house. Agency is created by express agreement.

Example 3: If a customer of a bank wishes to transact his banking business through an agent, the bank will require written evidence of the appointment of the agent and will normally ask to see the registered power of attorney appointing the agent.

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.

If a person realises rent and gives it to the landlord, he impliedly acts for the landlord as an agent.

Example 4: A owns a shop in Selampur, living himself in Kolkata and visiting the shop occasionally. The shop is managed by B, and he is in the habit of ordering goods from C in the name of A for the purposes of the shop, and of paying for them out of A's funds with A's knowledge. B has an implied authority from A to order goods from C in the name of A for the purposes of the shop.

Implied Agency includes:-

Agency by Estoppel [Section 237]:

Where the principal by his **conduct** or

Agency by Necessity -

- An agency of necessity

statement willfully induces another person to believe that a certain person is his agent, he is subsequently prevented or estopped from denying the fact of agency. An agency by estoppel may be created when 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 no 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	arises due to some emergent circumstances. • In an emergency, a person is authorised to do what he cannot do in ordinary circumstances. • Thus, where an agent is authorised to do a certain act, and while doing such an act, an emergency arises, • he acquires an extra-ordinary or special authority to prevent his principal from loss.
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Example 6: A consigns goods to B for sale and gives him instructions not to sell below a fixed price. C being ignorant of B's instruction enters into a contract with B to buy the goods at a price lower than the reserved price. A is bound by the contract. A cannot plead that he had given instructions to B to not sell the goods below a certain price. An agency by estoppel is, consequently, deemed between A and B.

Example 7: If Piyal (the principal) has for several months permitted Sunil to buy goods on credit from Prasad and has paid for the goods bought by Sunil, Piyal cannot later refuse to pay Prasad who had supplied goods on credit to Sunil in the belief that he was Piyal's agent and was buying the goods on behalf of Piyal. Piyal is estopped from now asserting that

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Sunil is not his agent because on earlier occasions he permitted Prasad to believe that Sunil was his agent and Prasad had acted in that belief

Example 8: Raja has a large farm on which Shyam is the caretaker. When Raja is in Canada, there is a huge fire on the farm. Shyam becomes an agent of necessity for Raja so as to save the property from being destroyed by fire. Raja (the principal) will be liable for any expenses, Shyam (his agent of necessity) incurred to put out the fire and save the farm from destruction during Raja's absence from the country.

Agency by Operation of Law:

- When the law treats one person as an agent of another,
- for example, a partner is the agent of the firm for
- the purposes of the business of the firm.

Example 9: X who is Y's agent has on 10th January 2022 purchases goods from Z on credit without Y's permission. After the purchase, on 20th January 2022, Y tells X that he will accept responsibility to pay for the purchases although at the time of purchase the agent had no authority to buy on credit. Y's subsequent statement on 20th January 2022 amounts to a ratification of the agent's (X's) purchase of goods on 10th January 2022.

RATIFICATION & ITS EFFECT

196 - Rights of person as to acts done for him without his authority,

"Ratification" means approving a previous act or transaction.

- Where acts are done by one person on behalf of another,
- but without his knowledge or authority,
- he may elect to ratify or to disown such acts.
- If he ratifies them, the same effects will follow as if they had been performed by his authority.
- May be express or implied by the conduct of the person on whose behalf

the act was done.

ESSENTIALS OF A VALID RATIFICATION		
Sec.	Concept	Description
197	Ratification may be expressed or implied	Ratification can either be explicitly stated or implied from the conduct of the person on whose behalf the acts were performed.
198	Knowledge requisite for valid ratification	A person cannot make a valid ratification if their knowledge of the facts of the case is materially defective.
199	Whole transaction must be ratified	The entire act must be ratified or rejected in full. Partial ratification (ratifying beneficial parts and rejecting others) is not allowed.
200	Ratification cannot injure third persons	Ratification cannot apply if it affects the rights of third parties. It cannot relate back to the contract date if a third party acquires rights in between.
	Ratification within reasonable time	Ratification must be done within a reasonable period.
	Communication of ratification	The ratification must be communicated to the other party involved.
	Act to be ratified must be valid	The act must not be void, illegal, or prohibited by law (e.g., forgery, payment of dividends from capital, or criminal activities).

Example 10: A, without authority, buys goods for B. Afterwards, B sells them to C on his own account; B's conduct implies a ratification of the purchase made for him by A.

Example 11: A, without B's authority, lends B's money to C. Afterwards, B accepts interest on the money from C. B's conduct implies a ratification of the loan.

Example 12: A has an authority from P to buy certain goods at the market rate. He buys at a higher rate, but P accepts the purchase. Afterwards, P comes to know that the goods purchased by A for P belonged to A himself. The ratification is not binding on P

Example 13: A, not being authorized thereto by B, demands on behalf of B,

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the delivery of a chattel, the property of B, from C, who is in possession of it. This demand cannot be ratified by B, so as to make C liable for damages for his refusal to deliver.

Example 14: A holds a lease from B, terminable on three months' notice. C, an unauthorized person, gives notice of termination to A. The notice cannot be ratified by B, so as to be binding on A

EXTENT OF AGENT'S AUTHORITY

The agent's authority is governed by two principles, namely -

- (a) in normal circumstances and
- (b) in emergency.

188 - Agent's authority in normal circumstances

- An agent having an authority to do an act has authority
- to do every lawful thing
- which is necessary in order to do such act.
- 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.**

189 - 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.

Conditions for Valid agency in an emergency -

1. **No communication possible:** The agent couldn't contact the principal within the available time.
2. **Urgent need:** There was a real and clear commercial need for the agent to act quickly.
3. **Acting in good faith:** The

	agent acted honestly and in the best interest of the principal. 4. Reasonable actions: The agent took the most practical and sensible steps based on the situation. 5. Possession of goods: The agent had control of the principal's goods related to the contract.
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Example 15: A is employed by B, residing in London, to recover at Mumbai a debt due to B. A may adopt any legal process necessary for the purpose of recovering the debt and may give a valid discharge for the same.

Example 16: A constitutes B as his agent to carry on his business of a shipbuilder. B may purchase timber and other materials, and hire workmen, for the purposes of carrying on the business

Example 17: An agent who has authority for sale of goods may repair it if necessary.

Example 18: A consigns perishable goods to B at Srinagar, with directions to send them immediately to C at Tamandu. B may sell the good if they begin to perish before reaching its destination

SUB-AGENTS

PROVISIONS RELATED TO SUB AGENTS		
Sec.	Concept	Description
190	When an agent cannot delegate	- An agent cannot lawfully employ another to perform acts - which he has expressly or impliedly undertaken

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PROVISIONS RELATED TO SUB AGENTS		
Sec.	Concept	Description
		to perform personally, • unless by the ordinary custom of trade a sub-agent may, • or from the nature of the agency, • a sub- agent must, be employed.
191	Sub-agent	A person employed by, and acting under the control of, the original agent in the business of the agency. Analysis: • Where an agent appoints another agent. • The appointment of sub agent is not lawful, because the agent is a delegatee and a delegatee cannot further delegate. • This is based on the Latin principle “delegatus non potest delegare”. • A contract of agency is of a fiduciary character. • It is based on the confidence reposed by the principal in the agent and • that is why a delegatee cannot further delegate.
	Exception where an agent can appoint Sub-agent (In both these cases the sub agent would be treated as the agent of the principal)	The appointment of a sub agent would be valid - • If the terms of appointment originally contemplated it • Sometimes customs of the trade may provide for appointment of sub agents. • Where in the course of the agent's employment, unforeseen emergency arise making it necessary for him to delegate the authority that was given to him by the principal.
192	Representation of principal by sub-agent properly appointed	Where a sub-agent is properly appointed - • Principal is liable to third parties for the acts of the sub-agent. • Agents responsibility for sub agents: The agent is responsible to the principal for the acts of the sub-agent. • Sub-agents liability to principal: The sub-agent is responsible for his acts to the agent, but not to the principal, except in case of fraud or

PROVISIONS RELATED TO SUB AGENTS		
Sec.	Concept	Description
		willful wrong.
193	Agent's responsibility for sub-agent appointed without authority	Where an agent, without having authority to do so - • Has appointed a person to act as a sub-agent, • the agent is responsible for his acts • both to the principal and to third persons • the principal is responsible for the acts of the sub agent, • the sub agent is not responsible to the principal at all. • He is answerable only to the agent.

Example 19: A, a carrier, agreed to carry 60 bags of cotton waste from Morvi to Bhavnagar by a truck. A asked B, another carrier, to carry the goods. The goods were damaged in transit. Held, A was liable even though it was proved that B was the carrier.

SUBSTITUTED AGENT

- A person appointed by the agent
- to act for the principal,
- in the business of agency,
- with the knowledge and consent of the principal.

Substituted agents are not sub agents. They are agents of the principal.

194 - Relation between principal and person duly appointed by agent to act in business of agency (Substituted Agent)

- Where an agent (**Agent 1**)
- 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 (**Agent 2**)

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- e. such person (Agent 2) is not a sub-agent,
- f. but an agent of the principal
- g. for such part of the business of the agency as is entrusted to him

Example 20: A directs B, his solicitor, to sell his estate by auction, and to employ an auctioneer for the purpose. B names C, an auctioneer, to conduct the sale. C is not a sub-agent, but is A's agent for the conduct of the sale. Example 21: A authorizes B, a merchant in Kolkata, to recover the moneys due to A from C & Co. B instructs D, a solicitor, to take legal proceedings against C & Co. for the recovery of the money. D is not a sub-agent, but is a solicitor for A.

195 - Agent's duty in naming such person

- a. In selecting such agent for his principal,
- b. an agent is bound to exercise
- c. the same amount of discretion
- d. as a man of ordinary prudence would exercise in his own case and
- e. if he does this,
- f. he is not responsible to the principal for the acts or negligence of the agent so selected.

Example 22: A instructs B, a merchant, to buy a ship for him. B employs a ship surveyor of good reputation to choose a ship for A. The surveyor makes the choice negligently and the ship turns out to be unseaworthy and is lost. B is not, but the surveyor is, responsible to A.

Example 23: A consigns goods to B, a merchant, for sale. B in due course, employs an auctioneer in good credit to sell the goods of A, and allows the auctioneer to receive the proceeds of the sale. The auctioneer afterwards becomes insolvent without having accounted for the proceeds. B is not responsible to A for the

proceeds.

DIFFERENCE BETWEEN A SUB-AGENT AND A SUBSTITUTED AGENT

Both a sub-agent and a substituted agent are appointed by the agent. But, however, the following are the points of distinction between the two:

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 sub-agent 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 sub-agent.	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 sub-agent.	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 sub-agency continues.	The agent's duty ends once he has named the substituted agent.

DUTIES AND OBLIGATIONS OF AN AGENT

DUTIES AND OBLIGATIONS OF AN AGENT		
Sec.	DUTY/ Concept	Description
211	Duty to follow instructions or	The agent must follow the principal's directions

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DUTIES AND OBLIGATIONS OF AN AGENT		
Sec.	DUTY/ Concept	Description
	customs	or local business customs . If there's a loss, the agent compensates; if there's a profit, they must give it to the principal.
212	Duty of reasonable care and skill	The agent must act with the expected skill of others in the field. If negligent or unskilled, the agent must compensate for direct losses but not indirect ones.
213	Duty to render proper accounts	The agent must provide detailed and supported accounts to the principal when requested.
214	Duty to communicate with the principal	The agent must diligently communicate with the principal in case of difficulties and seek instructions.
215	Duty not to deal on their own account	The agent cannot make personal deals without the principal's consent. The principal can cancel the transaction or claim the benefit from the agent.
216	Duty not to make secret profits	The agent must not earn undisclosed profits from the agency. They must act in good faith and disclose all benefits beyond agreed remuneration.
190	Duty not to delegate	The agent cannot delegate tasks unless allowed by trade customs or the nature of the agency.
218	Duty to pay sums received for the principal	The agent must hand over all money received on behalf of the principal, after any permitted deductions.
	Duty not to misuse confidential information	The agent must not use confidential information obtained during agency against the principal's interest.

211 - Duty to follow instructions or customs:

Example 24: A, an agent is engaged for managing the business of B, in which it is a custom to invest money at hand for interest. If A omits to make

such investment he must indemnify B for the losses i.e. for the interest B would have obtained for such investment.

Example 25: B, a broker, in whose business it is not the custom to sell on credit, sells goods of A on credit to C. C, before payment, becomes insolvent. B will have to indemnify A for the losses.

212 - Duty of reasonable care and skill:

Example 26: A, a merchant in Kolkata, has an agent, B, in London, to whom a sum of money is paid on A's account, with orders to remit. B retains the money for a considerable time. A, in consequence of not receiving the money, becomes insolvent B is liable for the money and interest from the day on which it ought to have been paid, according to the usual rate, and for any further direct loss- e.g. by variation of rate of exchange-but not further.

Example 27: A, an agent for the sale of goods, having authority to sell on credit, sells to B on credit, without making the proper and usual enquiries as to the solvency of B. B, at the time of such sale is insolvent. A must compensate his principal for the loss sustained by him.

Example 28: A, an insurance-broker, employed by B to effect an insurance on a ship, omits to see that the "usual clauses" are inserted in the policy. The ship is afterwards lost. In consequence of the omission nothing can be recovered from the underwriters. A is bound to make good the loss to B.

Example 29: A, a merchant in England, directs B, his agent at Mumbai, who accepts the agency, to send him 100 bales of cotton by a certain ship. B, having it in his power to send the cotton, omits to do so. The ship arrives safely in England. Soon after her arrival the price of cotton rises. B is bound to make good to A the profit which he might have made by the 100 bales of cotton at the time the ship arrived, but not any profit he might have made by the subsequent rise.

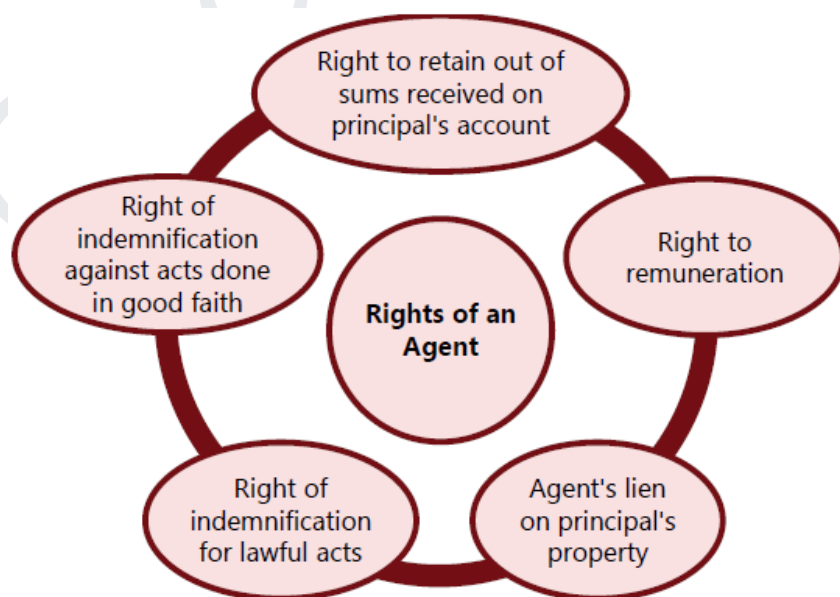
213 - Duty to render proper accounts -

Example 30: A directs B to sell A's estate. B buys the estate for himself in the name of C. A, on discovering that B has bought the estate for himself, may repudiate the sale if he can show that B has dishonestly concealed any material fact, or that the sale has been disadvantageous to him.

Example 31: A directs B to sell A's estate. B, on looking over the estate before selling it, finds a mine on the estate which is unknown to A. B informs A that he wishes to buy the estate for himself, but conceals the discovery of the mine. A allow B to buy, in ignorance of the existence of the mine. A, on discovering that B knew of the mine at the time he bought the estate, may either repudiate or accept the sale at his option.

Example 32: A directs B, his agent, to buy a certain house for him. B tells A it cannot be bought and buys the house for himself. A may, on discovering that B has bought the house, compel him to sell it to A at the price he gave for it.

RIGHTS OF AN AGENT



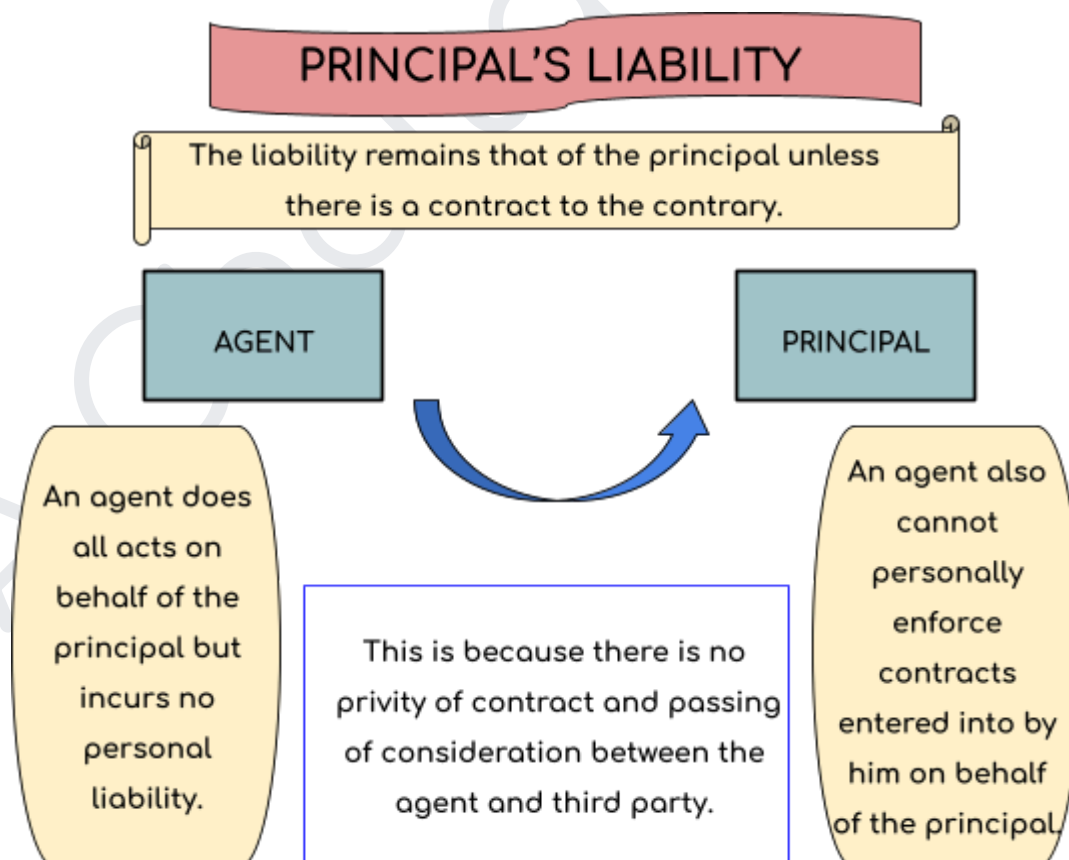
RIGHTS OF AN AGENT			
Sec.	RIGHT / Concept	Description / DETAIL	EXAMPLES
217	Right to retain sums received	The agent has the right to retain, out of sums received on account of the principal, payments for - - any money due for advances made, - expenses properly incurred, and - remuneration for their services. This right applies to any sums received in the course of agency business.	
219	Right to remuneration	- The agent is entitled to remuneration as agreed upon in the contract, or, - if not specified, - the usual remuneration customary in the business. - However, if the agent is guilty of misconduct, - they lose the right to remuneration for the part of the business they mishandled.	Example 33: B recovers ₹1,00,000, invests ₹90,000 wisely, but invests ₹10,000 poorly, causing A a loss of ₹2,000. B is entitled to remuneration for recovering the ₹1,00,000 and investing ₹90,000, but not for the ₹10,000 poorly invested.
220	Right to no remuneration in case of misconduct	- If the agent's misconduct leads to a loss in the business of the agency, - they forfeit their right to remuneration for that part of the work.	Example 34: B fails to recover ₹1,00,000 due to his own misconduct. B is entitled to no remuneration and must make good the loss.
221	Agent's lien on principal's property	- An agent is entitled to retain goods, papers, and other property - belonging to the principal - until they are paid for their commission, disbursements, or services rendered	-

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RIGHTS OF AN AGENT			
Sec.	RIGHT / Concept	Description / DETAIL	EXAMPLES
		- in the proper conduct of the agency business. - This lien is lost if the agent loses possession of the property or - waives the right to the lien.	
222	Right of indemnification for lawful acts	- The principal is bound to indemnify the agent - for all consequences of lawful actions done - in the exercise of their authority. - If the agent faces litigation or expenses due to such lawful actions, - the principal must bear the costs.	Example 35: A in Delhi appoints B in Mumbai to sell his merchandise. B enters into contracts to deliver the goods, but A fails to send them, and B faces legal actions. A must protect B from all legal costs.
223	Right of indemnification for acts done in good faith	- If the agent acts in good faith - on the principal's instructions, - the principal must indemnify the agent - for any resulting loss or damage. - However, the agent cannot claim indemnity for losses arising from acts done in violation of penal laws.	Example 36: P instructs A to sell certain goods, but they turn out not to belong to P. If A is sued by a third party, A is entitled to indemnification for acting in good faith.
224	Non-liability of principal for criminal acts	- If the agent is employed to perform a criminal act, - the principal is not liable to indemnify the agent, - even if there was an express or implied promise to do so.	Example 37: A asks B to beat C and promises to indemnify B. B beats C and has to pay damages. A is not liable to indemnify B for those damages.
			Example 38: A asks B to publish a libel against C. B is

RIGHTS OF AN AGENT			
Sec.	RIGHT / Concept	Description / DETAIL	EXAMPLES
			sued for the libel and has to pay damages and costs. A is not liable to indemnify B.
225	Right to compensation for injury due to principal's neglect	- The principal must compensate the agent - for any injury caused due to the principal's neglect or lack of skill. - The principal owes the agent a duty of care and - should not expose the agent to unreasonable risks.	Example 39: A hires B to work as a bricklayer. A puts up faulty scaffolding, which causes B to get injured. A must compensate B for the injury.

PRINCIPAL'S LIABILITY TO THIRD PARTIES



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I. 226 - Principal's liability for the Acts of the Agent

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

Example 40: A buys goods from B, knowing that he is an agent for their sale, but not knowing who is the principal. B's principal is the person entitled to claim from A the price of the goods, and A cannot, in a suit by the principal, set off against that claim a debt due to himself from

Example 41: A, being B's agent with authority to receive money on his behalf, receives from C, a sum of money due to B. C is discharged of his obligation to pay the sum in question to B.

II. 227 -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**.

Example 42: A, being owner of a ship and cargo, authorizes B to procure an insurance for Rs. 4,00,000 on the ship. B procures a policy for Rs. 4,00,000 on the ship, and another for the like sum on the cargo. A is bound to pay the premium for the policy on the ship, but not the premium for the policy on the cargo.

III. 228 - Principal not bound when excess of agent's authority is not separable

- Where an agent does more than he is authorized to do, and

- what he does beyond the scope of his authority
- **cannot be separated** from what is within it,
- the principal is **not bound to recognize the transaction**.

Example 43: A authorizes B to buy 500 sheep for him. B buys 500 sheep and 200 lambs for one sum of Rs. 6,00,000. A may repudiate the whole transaction.

Example 44: A authorizes B to draw bills to the extent Rs. 200 each. B draws bills in the name of A for Rs. 1,000 each. A may repudiate the whole transaction.

237 - Exception : Liability of principal inducing belief that agent's unauthorized acts were authorized

- When an agent has,
- **without authority, done acts or**
- incurred obligations to third persons
- on behalf of his principal,
- the **principal is bound** by such acts or obligations,
- **if he has by his words or conduct**
- **induced** such third persons to believe that
- such acts and obligations **were**
- **within the scope** of the agent's authority.

Example 45: A consigns goods to B for sale, and gives him instructions not to sell under a fixed price. C, being ignorant of B's instructions, enters into a contract with B to buy the goods at a price lower than the reserved price. A is bound by the contract.

Example 46: A entrusts B with negotiable instruments endorsed in blank. B sells them to C in violation of private orders from A. The sale is good.

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IV. 229 -Consequences of notice given to agent

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

Example 47: A is employed by B to buy certain goods of which C is the apparent owner, and buys them accordingly. In the course of the treaty for sale, A learns that the goods really belonged to D, but B is ignorant of the fact. B is not entitled to set off a debt owing to him from C against the price of the goods. Thus, the knowledge of the agent is treated as the knowledge of the principal

V. 238 -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 such misrepresentations or frauds had been made, or committed,
- by the principals;
- but misrepresentations made, or frauds committed, by agents,
- in matters which do not fall within their authority,
- do not affect their principals.

Example 48: A, being B's agent for the sale of goods, induces C to buy them by a misrepresentation, which he was not authorized by B to make. The contract is voidable, as between B and C, at the option of C.

Example 49: A, the captain of B's ship, signs bills of lading without having received on board the goods mentioned therein. The bills of lading are void as between B and the pretended consignor.

PERSONAL LIABILITY OF AGENT TO THIRD PARTIES

230 - Agent cannot personally enforce, nor be bound by, contracts on behalf of principal -

- In the absence of any contract to that effect,
- an agent **cannot personally enforce** contracts
- entered into by **him on behalf of his principal, nor**
- is he **personally bound by them.**
- **He can neither sue nor be sued** on contracts made by him
- on his principal's behalf.

EXCEPTIONS:

In the following exceptional cases, the agent is presumed to have agreed to be personally bound:

Exceptional Case	Concept	Details
Foreign Principal (Merchant abroad)	Personally liable for foreign transactions	When an agent contracts for the sale or purchase of goods on behalf of a foreign principal, the agent is presumed to be personally liable.
Undisclosed Principal	Principal unnamed	If the agent does not disclose the name of the principal, it is presumed that the agent undertakes personal liability.
Non-existent or Incompetent Principal	Liability when principal cannot be sued	If the principal is disclosed but cannot be sued (e.g., is non-existent or incompetent), the agent is personally liable.
Pretended Agent (Section 235)	Liability when pretending to be an agent	If someone acts as an agent without actual authority and the principal disowns the act, the agent becomes personally liable.
Exceeding Authority	Liability for breach of authority	If the agent exceeds their authority and misleads a third party into believing they have the authority, the agent is liable for breach of warranty.

Example 50: An agent who contracts for a minor, the minor being not liable, the agent becomes personally liable. This result, may not, however, follow where the other party already knows that the principal is a minor.

RIGHTS OF THIRD PARTIES

1. 231 - Rights of parties to a contract made by undisclosed agent

- If an agent makes a contract with someone who doesn't know (or suspect)
- that they are dealing with an agent,
- the principal can still require the contract to be fulfilled.
- However, the other party has the same rights against the principal as they would have had against the agent if they thought the agent was the principal.
- If the principal reveals themselves before the contract is completed,
- the other party can refuse to fulfill the contract —
- if they can prove that they wouldn't have entered into the contract
- had they known who the real principal was.

Example 51: SS bought for himself a ticket of IPL match at Wankhede Stadium through AB because on personal grounds Stadium management would not have issued the ticket to SS. Stadium management may repudiate the contract and refuse SS to enter the stadium.

2. 232 - Performance of contract with agent supposed to be principal

- When agent does not disclose
- that he is acting as an agent and
- the principal requires the performance of the contract
- then the principal can obtain such performance

- subject to the rights and obligations subsisting between the agent and the other party to the contract.

Example 52: A, who owes Rs. 50,000 rupees to B, sells Rs. 1,00,000 rupees worth of rice to B. A is acting as agent for C in the transaction, but B has no knowledge nor reasonable ground of suspicion that such is the case. C cannot compel B to take the rice without allowing him to set off A's debt.

3. Option to Third Person- sue the Agent or the Principal:

a. 233 - Right of person dealing with agent personally liable

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

Example 53: A enters into a contract with B to sell him 100 bales of cotton, and afterwards discovers that B was acting as agent for C. A may sue either B or C, or both, for the price of the cotton.

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

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

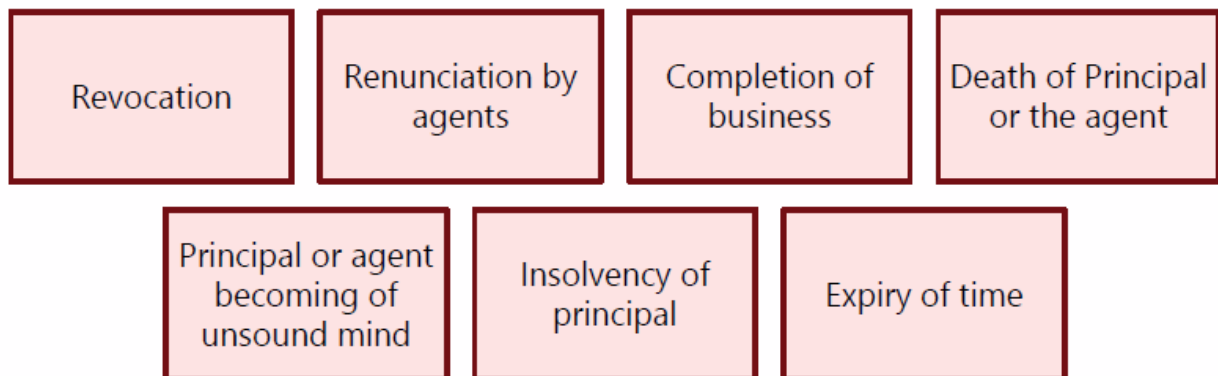
REVOCATION OF AUTHORITY

201 - Termination of agency

2.9 ► Agency

Termination of agency means putting an end to the legal relationship between principal and agent.

Modes of termination:



1. Revocation:

203 - An agency can be terminated if the principal revokes the agent's authority. The principal can do this anytime before the agent acts in a way that legally binds the principal

204 - However, once the agent has partly used their authority, the principal cannot revoke it for actions and obligations already carried out

Example 54: A authorizes B to buy 1,000 bales of cotton on account of A, and to pay for it out of A's money remaining in B's hands. B buys 1,000 bales of cotton in his own name, so as to make himself personally liable for the price. A cannot revoke B's authority so far as regards payment for the cotton.

Example 55: A authorizes B to buy 1,000 bales of cotton on account of A, and to pay for it out of A's money remaining in B's hands. B buys 1,000 bales of cotton in A's name, and so as not to render himself personally liable for the price. A can revoke B's authority to pay for the cotton.

205 - Compensation for revocation

If the principal revokes the agency without a valid reason before its completion, they must compensate the agent for the loss.

206 - Notice of revocation

If the principal has a valid reason to revoke the agency, they must give reasonable notice to the agent. Failure to do so may result in the principal being liable for compensation for any damage caused.

207 - Revocation and Renunciation

The termination of agency can be either expressed clearly or implied through the principal's actions.

Example 56: A empowers B to let A's house. Afterwards A lets it himself. This is an implied revocation of B's authority.

2. 206 - Renunciation by agent -

- a. An agent can renounce the business of the agency in the same way a principal can revoke it.
 - i. **205** - If the agency is for a fixed period, the agent must compensate the principal for premature renunciation without a valid reason
 - ii. The agent must give reasonable notice before renouncing. The duration of the notice should be based on the same principles that apply to the principal's revocation.
- b. If the agent renounces without giving proper notice, they will be responsible for compensating the principal for any damages caused.

3. Completion of business:

- An agency is automatically and by operation of law terminated
- **when its business is completed.**
- Thus, for example, the authority of an agent appointed to sell goods

2.9 ► Agency

ceases to be exercisable when the sale is completed.

4. Death or insanity:

- An agency is terminated **automatically on the death** or
- **insanity** of the principal or the agent.
- Winding up of a company or dissolution of partnership
- has the same effect.
- **Act done by agent before death would remain binding.**

5. Principal's insolvency:

An agency ends on the principal being adjudicated insolvent.

6. On expiry of time:

- Where an agent has been appointed for a fixed term,
- the **expiration** of the term **puts an end** to the agency,
- **whether the purpose** of agency has been accomplished or not.
- An agency comes to an **automatic end on expiry of its term.**

When the agency is irrevocable?

- When the agent is personally interested in the subject matter of agency the **agency becomes irrevocable.**

202 -

- 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

Example 57: A gives authority to B to sell A's land, and to pay himself, out of the proceeds, the debts due to him from A. A cannot revoke this authority, nor can it be terminated by his insanity or death.

Example 58: A consigns 1000 bales of cotton to B, who has made

advances to him on such cotton, and desires B to sell the cotton, and to repay himself, out of the price, the amount of his own advances. A cannot revoke this authority, nor it is terminated by his insanity or death

Effects of Termination

- **208** - When termination of agent's authority takes effect as to agent, and as to third persons
 - The termination of the authority of an agent does not,
 - so far as regards the agent,
 - take effect before **it becomes known to him** or
 - so far as regards third persons,
 - **before it becomes known to them.**

Example 59: A directs B to sell goods for him and agrees to give B five per cent commission on the price fetched by the goods. A afterwards, by letter, revokes B's authority. B, after the letter is sent, but before he receives it sells the goods for Rs. 1,00,000. The sale is binding on A, and B is entitled to Rs. 5,000 as his commission.

Example 60: A, at Chennai, by letter directs B to sell for him some cotton lying in a warehouse in Mumbai, and afterwards, by letter, revokes his authority to sell, and directs B to send the cotton to Chennai. B, after receiving the second letter, enters into a contract with C, who knows of the first letter, but not of the second, for the sale to him of the cotton. C pays B the money, with which B absconds. C's payment is good as against A.

Example 61: A directs B, his agent, to pay certain money to C. A dies, and D takes out probate to his will. B, after A's death, but before hearing of it, pays the money to C. The payment is good as against D, the executor.

2.9 ► Agency

- 209 - Agent's duty on termination of agency by principal's death or insanity
 - When an agency is terminated by the principal dying or
 - becoming of unsound mind,
 - the agent is bound to take on behalf of the representatives of his late principal,
 - all reasonable steps for the protection and preservation of the interests entrusted to him

210 - Termination of sub-agent's authority

- The termination of the authority of an agent
- causes the termination
- of the authority of all sub-agents appointed by him.
- (subject to the rules herein contained regarding the termination of an agent's authority)

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“ PROBLEM KYA HAI ? - Unit 9 ”

Question Bank

ICA

*This section is complied with questions and suggested answers
for the chapter - ICA*

- ❖ *ICAI Study material*
- ❖ *Previous year Question Papers (PYQPs)*
- ❖ *Mock Test Papers (MTPs)*
- ❖ *Revision Test Papers (RTPs)*

Compiled by - CA Chaitanya Jain

Question 1

A appoints M, a minor, as his agent to sell his watch for cash at a price not less than Rs. 700. M sells it to D for Rs. 350. Is the sale valid? Explain the legal position of M and D, referring to the provisions of the Indian Contract Act, 1872.

(Module)

Answer 1

According to the provisions of Section 184 of the Indian Contract Act, 1872, as between the principal and a third person, any person, even a minor may become an agent. But no person who is not of the age of majority and of sound mind can become an agent, so as to be responsible to his principal.

Thus, if a person who is not competent to contract is appointed as an agent, the principal is liable to the third party for the acts of the agent. Thus, in the given case, D gets a good title to the watch. M is not liable to A for his negligence in the performance of his duties.

Question 2

State with reason whether the following statement is correct or incorrect: Ratification of agency is valid even if knowledge of the principal is materially defective.

(Module)

Answer 2

Incorrect: Section 198 of the Indian Contract Act, 1872 provides that for a valid ratification, the person who ratifies the already performed act must be without defect and have clear knowledge of the facts of the case. If the principal's knowledge is materially defective, the ratification is not valid and hence no agency.

Question 3

Rahul, a transporter was entrusted with the duty of transporting tomatoes from a rural farm to a city by Aswin. Due to heavy rains, Rahul was stranded for more than two days. Rahul sold the tomatoes below the market rate in the nearby market where he was stranded fearing that the tomatoes may perish. Can Aswin recover the loss from Rahul on the ground that Rahul had acted beyond his authority?

(Module)

Answer 3

Agent's authority in an emergency (Section 189 of the Indian Contract Act, 1872): An agent has authority, in an emergency, to do all such acts for the purpose of protecting his principal from loss as would be done by a person of ordinary prudence, in his own case, under similar circumstances.

In the instant case, Rahul, the agent, was handling perishable goods like 'tomatoes' and can decide the time, date and place of sale, not necessarily as per instructions of the Aswin, the principal, with the intention of protecting Aswin from losses.

Here, Rahul acts in an emergency as a man of ordinary prudence, so Aswin will not succeed against him for recovering the loss.

Question 4

Mr. Ahuja of Delhi engaged Mr. Singh as his agent to buy a house in West Extension area. Mr. Singh bought a house for Rs. 20 lakhs in the name of a nominee and then purchased it himself for Rs. 24 lakhs. He then sold the same house to Mr. Ahuja for Rs. 26 lakhs. Mr. Ahuja later comes to know the mischief of Mr. Singh and tries to recover the excess amount paid to Mr. Singh. Is he entitled to recover any amount from Mr. Singh? If so, how much? Explain.

(Module)

Answer 4

The problem in this case, is based on the provisions of the Indian Contract Act, 1872 as contained in Section 215 read with Section 216. The two sections provide that where an agent without the knowledge of the principal, deals in the business of agency on his own account, the principal may:

1. repudiate the transaction, if the case shows, either that the agent has dishonestly concealed any material fact from him, or that the dealings of the agent have been disadvantageous to him.
2. claim from the agent any benefit, which may have resulted to him from the transaction.

Therefore, based on the above provisions, Mr. Ahuja is entitled to recover \$ 6 lakhs from Mr. Singh being the amount of profit earned by Mr. Singh out of the transaction.

Question 5

Comment on the statement 'Principal is not always bound by the acts of a sub-agent.'

(Module)

Answer 5

The statement is correct. Normally, a sub-agent is not appointed, since it is a delegation of power by an agent given to him by his principal. The governing principle is, a delegate cannot delegate. (Latin version of this principle is, "delegates non potest delegare"). However, there are certain circumstances where an agent can appoint sub-agent.

In case of proper appointment of a sub-agent, by virtue of Section 192 of the Indian Contract Act, 1872 the principal is bound by and is held responsible for the acts of the sub-agent. Their relationship is treated to be as if the sub-agent is appointed by the principal himself.

However, if a sub-agent is not properly appointed, the principal shall not be bound by the acts of the sub-agent. Under the circumstances the agent appointing the sub-agent shall be bound by these acts and he (the agent) shall be bound to the principal for the acts of the sub-agent.

Question 6

ABC Ltd. sells its products through some agents and it is not the custom in their business to sell the products on credit. Mr. Pintu, one of the agents sold goods of ABC Ltd. to M/s. Parul Pvt. Ltd. (on credit) which was insolvent at the time of such sale. ABC Ltd. sued Mr. Pintu for compensation towards the loss caused due to sale of products to M/s. Parul Pvt. Ltd. Will ABC Ltd. succeed in its claim?

(Module)

Answer 6

To conduct the business of agency according to the principal's directions (Section 211 of the Indian Contract Act, 1872): 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 custom which prevails in doing business of the same kind at the place where the agent conducts such business. When the agent acts otherwise, if any loss be sustained, he must make it good to his principal, and, if any profit accrues, he must account for it.

In the present case, Mr. Pintu, one of the agents, sold goods of ABC Ltd. to M/s Parul Pvt. Ltd. (on credit) which was insolvent at the time of such sale. Also, it is not the custom in ABC Ltd. to sell the products on credit.

Hence, Mr. Pintu must make good the loss to ABC Ltd

Question 7

R is the wife of P. She purchased sarees on credit from Nalli. Nalli demanded the amount from P. P refused. Nalli filed a suit against P for the said amount. Decide in the light of provisions of the Indian Contract Act, 1872, whether Nalli would succeed.

(Module)

Answer 7

The position of husband and wife is special and significant case of implied authority. According to the Indian Contract Act 1872, where the husband and wife are living together in a domestic establishment of their own, the wife shall have an implied authority to pledge the credit of her husband for necessities. However, the implied authority can be challenged by the husband only in the following circumstances.

1. The husband has expressly forbidden the wife from borrowing money or buying goods on credit.
2. The articles purchased did not constitute necessities.
3. Husband had given sufficient funds to the wife for purchasing the articles she needed to the knowledge of the seller.
4. The creditor had been expressly told not to give credit to the wife.

Further, where the wife lives apart from husband without any of her fault, she shall have an implied authority to bind the husband for necessities, if he does not provide for her maintenance.

Since, none of the above criteria is being fulfilled; Nalli would be successful in recovering its money.

Question 8

Bhupendra borrowed a sum of Rs. 3 lacs from Atul. Bhupendra appointed Atul as his agent to sell his land and authorized him to appropriate the amount of loan out of the sale proceeds. Afterward, Bhupendra revoked the agency.

Question Bank —> Chap 2 (Unit 9) - ICA, 1872

Decide under the provisions of the Indian Contract Act, 1872 whether the revocation of the said agency by Bhupendra is lawful.

(Module)

Answer 8

According to Section 202 of the Indian Contract Act, 1872 an agency becomes irrevocable where the agent has himself an interest in the property which forms the subject-matter of the agency, and such an agency cannot, in the absence of an express provision in the contract, be terminated to the prejudice of such interest.

In the instant case, the rule of agency coupled with interest applies and does not come to an end even on death, insanity or the insolvency of the principal.

Thus, when Bhupendra appointed Atul as his agent to sell his land and authorized him to appropriate the amount of loan out of the sale proceeds, interest was created in favor of Atul and the said agency is not revocable. The revocation of agency by Bhupendra is not lawful.

RTP, MTP & PYP Questions

Question 1

What is the meaning of 'Agency by estoppel'? What are the essential conditions for creation of an agency by estoppel? Give your answer with respect to the provisions the Indian Contract Act, 1872.

(MTP 4 Marks March 21)

Answer 1

An agency by estoppel is based on the principle of estoppel. The principle of estoppel lays down that "when one person by declaration (representation), act or omission has intentionally caused or permitted another person to believe a thing to be true and to act upon such belief, he shall not be allowed to deny his previous statement or he shall be stopped to deny his previous statement or conduct".

The agency by Estoppel is provided under section 237 of the Indian Contract Act. Section 237 states: "When an agent has without authority done acts or incurred obligations to third persons on behalf of his principal the principal is bound by such acts or obligations if he has by his words or conduct induced such third persons to believe that such acts and obligations were within the scope of the agent's authority".

Question Bank —> Chap 2 (Unit 9) - ICA, 1872

According to section 237 of the Contract Act, an agency by estoppel may be created when 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 no 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.

Question 2

Shiva appoints Ganesh as Shiva's agent to sell Shiva's land. Ganesh, under the authority of Shiva, appoints Gauri as agent of Ganesh. Afterwards, Shiva revokes the authority of Ganesh but not of Gauri.

What is the status of agency of Gauri? Advise whether the said agency shall be terminated as per the provisions of the Indian Contract Act, 1872.

(MTP 4 Marks Mar'22)

Answer 2

According to section 191 of the Indian Contract Act, 1872, a "Sub-agent" is a person employed by, and acting under the control of, the original agent in the business of the agency. Section 210 provides that, the termination of the authority of an agent causes the termination (subject to the rules regarding the termination of an agent's authority) of the authority of all sub-agents appointed by him. In the given question, Ganesh is the agent of Shiva, and Gauri is the agent of Ganesh. Hence, Gauri becomes a sub-agent. Thus, when Shiva revokes the authority of Ganesh (agent), it results in termination of authority of sub-agent appointed by Ganesh i.e. Gauri (sub-agent).

Question 3

Explain whether the agency shall be terminated in the following cases under the provisions of the Indian Contract Act, 1872:

1. A gives authority to B to sell A's land, and to pay himself, out of the proceeds, the debts due to him from A. Afterwards, A becomes insane.
2. A appoints B as A's agent to sell A's land. B, under the authority of A, appoints C as agent of B. Afterwards, A revokes the authority of B but not of C. What is the status of agency of C?

(4 Marks) (Oct 22) (PYP 4 Marks Jan 21)

Answer 3

1. According to section 202 of the Indian Contract Act, 1872, 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. In other words, when the agent is personally interested in the subject matter of agency, the agency becomes irrevocable.

In the given question, ^ gives authority to B to sell 's land, and to pay himself, out of the proceeds, the debts due to him from A.

As per the facts of the question and provision of law, A cannot revoke this authority, nor it can be terminated by his insanity.

2. According to section 191 of the Indian Contract Act, 1872, a "Sub-agent" is a person employed by, and acting under the control of, the original agent in the business of the agency.

Section 210 provides that, the termination of the authority of an agent causes the termination (subject to the rules regarding the termination of an agent's authority) of the authority of all sub-agents appointed by him.

In the given question, B is the agent of A, and C is the agent of B. Hence, C becomes a sub- agent.

Thus, when A revokes the authority of B (agent), it results in termination of authority of sub - agent appointed by Bi.e. C (sub-agent),

Question 4

Akash is a famous manufacturer of leather goods. He appoints Prashant as his agent. Prashant is entrusted with the work of recovering money from various traders to whom Akash sells leather goods. Prashant is paid a monthly remuneration of Rs. 15,000. Prashant during a particular month recovers Rs. 40,000 from traders on account of Akash. Prashant gives back Rs. 25,000 to Akash, after deducting his salary.

Examine with reference to relevant provisions of the Indian Contract Act, 1872, whether act of Prashant is valid.

(RTP May 21)

Answer 4

The given problem is based on the provision related to 'agency coupled with interest. According to Section 202 of the Indian Contract Act, 1872 an agency

Question Bank —> Chap 2 (Unit 9) - ICA, 1872

becomes irrevocable where the agent has himself an interest in the property which forms the subject-matter of the agency, and such an agency cannot, in the absence of an express provision in the contract, be terminated to the prejudice of such interest.

In the given instance, Akash appointed Prashant as his agent to recover money from various traders to whom Akash sold his leather goods, on a monthly remuneration of Rs. 15,000. Prashant during a month recovers Rs. 40,000 from traders on account of Akash. Prashant after deducting his salary give the rest amount to Akash. In the said case, interest was created in favour of Prashant and the said agency is not revocable, therefore, the act of Prashant is valid.

Question 5

Hari, authorises Bharat, a merchant in Mumbai, to recover dues from Bankey & Co. Bharat instructs Deepak, a solicitor, to take legal proceedings against Bankey & Co., for recovery of the money. Explain the legal position of Deepak, referring provisions of the Indian Contract Act, 1872, related to agency.

(PYP 2 Marks) (May '22)

Answer 5

As per section 194 of the Indian Contract Act, 1872, 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 shall be an agent of the principal for such part of the business of the agency as is entrusted to him.

In the instant case, Hari, authorizes Bharat, a merchant in Mumbai, to recover dues from Bankey & Co.

Bharat instructs Deepak, a solicitor, to take legal proceedings against Bankey & Co. for recovery of the money.

Here, Deepak, a solicitor, is a substituted agent to act for the principal in the business of the agency, to take legal proceedings for recovering of money.

Question 6

Mr. X owes Mr. Y \$50,000. He (Mr. X) afterwards appoints Mr. Y as his agent to sell his Flat at Bangalore and after paying himself (i.e., Mr. Y) what is due to him, hand over the balance to Mr. X. Examine, as per the provisions of the Indian Contract Act, 1872, can Mr. X revoke his authority delegated to Mr. Y?

Answer 6

According to Section 202 of the Indian Contract Act, 1872 an agency becomes irrevocable where the agent has himself an interest in the property which forms the subject-matter of the agency, and such an agency cannot, in the absence of an express provision in the contract, be terminated to the prejudice of such interest.

In the given question, Mr. X owed to Mr. Y Rs. 50,000.

When Mr. X appointed Mr. Y as his agent to sell his Flat and authorized him to appropriate the amount due to Mr. X out of the sale proceeds, interest was created in favor of Mr. Y and the said agency is not revocable. Thus, Mr. X cannot revoke his authority delegated to Mr. Y.

Note: The answer to the above question can also be given as per Section 203, section 204 and section 206 as follows:

Revocation of authority under the Indian Contract Act, 1872: An agency may be terminated by the principal revoking the authority of the agent. Principal may revoke the authority given to his agent at any time before the authority has been exercised so as to bind the principal [Section 203]. However, the principal cannot revoke the authority given to his agent after the authority has been partly exercised so far as regards such acts and obligations as arise for acts already done in the agency. [Section 204]

When the principal, having justification to do so, revokes the authority, he must give reasonable notice of such revocation to the agent, otherwise, he would be liable to pay compensation for any damage caused to the agent (Section 206).

Hence, Mr. X can revoke his authority delegated to Mr. Y if Mr. Y has not exercised any authority towards the act authorized by Mr. X and no obligation arises out of it.

Question 7

Akashia Steels is a famous manufacturer of steel products. Proprietor of Akashia Steels, Mr. S.K Jain appointed Mr. Satish as his agent. Mr. Satish is entrusted with the work of recovering money from various traders to whom firm sells its products. Satish has earned commission of Rs. 1,15,000 for his work. He recovers money from clients on behalf of Akashia Steels. During a particular month he

collects Rs. 4,00,000 but deposited in the firm's account only Rs. 2,85,000 after deducting his commission.

Examine with reference to relevant provisions of the Indian Contract Act, 1872, whether act of Mr.

Satish is valid?

(PYP 4 Marks, May'23)

Answer 7

According to section 202 of the Indian Contract Act, 1872 an agency becomes irrevocable where the agent has himself an interest in the property which forms the subject-matter of the agency, and such an agency cannot, in the absence of an express provision in the contract, be terminated to the prejudice of such interest.

In the instant case, the rule of agency is coupled with interest.

Here, Mr. S.K. Jain appointed Mr. Satish as his agent for recovering money from various traders to whom firm sells its products.

From the collection of Rs. 4,00,000, he deposited in the firm's account remaining amount (Rs. 2,85,000) after deductions of his share of commission that he has earned for work.

Here, the agency created is coupled with interest. When the agent is personally interested in the subject matter of agency, such an agency becomes irrevocable. and the act of Mr. Satish will be considered as valid.

Alternate answer

Right to retain out of sums received on principal's account (Section 217): This section empowers the agent to retain, out of any sums received on account of the principal in the business of the agency for the following payments:

- a. all moneys due to himself in respect of 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.

The right can be exercised on any sums received on account of the principal in the business of agency.

Here, Mr. S.K. Jain appointed Mr. Satish as his agent for recovering money from various traders to whom firm sells its products.

As per section 217, Mr. Satish has a statutory right to deduct his remuneration (i.e., commission) of Rs. 1,15,000 from the total amount of Rs. 4,00,000 collected on behalf

of his principal and remit the remaining amount of Rs. 2,85,000 to Mr. S.K. Jain. Hence, the act of Mr. Satish will be considered as valid.

Question 8

Rajesh obtained a loan of Rs. 10 lakh from Mahesh. Following this, Rajesh appointed Mahesh as his agent to facilitate the sale of his land, granting him the authority to deduct the loan amount from the proceeds of the sale. Later on, Rajesh wants to withdraw or cancel this agency arrangement. Assess the lawfulness of Rajesh's decision to revoke the above mentioned agency, taking into account the provisions of the Indian Contract Act, 1872.

(PYP 4 Marks Nov'23)

Answer 8

According to section 202 of the Indian Contract Act, 1872, an agency becomes irrevocable where the agent has himself an interest in the property which forms the subject-matter of the agency, and such an agency cannot, in the absence of an express provision in the contract, be terminated to the prejudice of such interest.

In the instant case, the rule of agency coupled with interest applies.

Thus, when Rajesh appointed Mahesh as his agent to sell his land and authorized him to appropriate the amount of loan out of the sale proceeds, interest was created in favor of Mahesh and the said agency is not revocable. The revocation of agency by Rajesh is not lawful.

Alternate Answer

Revocation of authority under the Indian Contract Act, 1872: An agency may be terminated by the principal revoking the authority of the agent. Principal may revoke the authority given to his agent at any time before the authority has been exercised so as to bind the principal [Section 203]. However, the principal cannot revoke the authority given to his agent after the authority has been partly exercised so far as regards such acts and obligations as arise for acts already done in the agency. [Section 204]

When the principal, having justification to do so, revokes the authority, he must give reasonable notice of such revocation to the agent, otherwise, he would be liable to pay compensation for any damage caused to the agent. [Section 206]

Hence, Rajesh can revoke his authority delegated to Mahesh if he (Mahesh) has not exercised any authority towards mentioned agency and no obligation arises out of it.

Question 9

A appoints M, a minor, as his agent to sell his watch for cash at a price not less than Rs. 700. M sells it to D for Rs. 350. Is the sale valid? Explain the legal position of M and D, referring to the provisions of the Indian Contract Act, 1872.

(Nov'21, March 19, 4 Marks) (SM)

Answer 9

According to the provisions of Section 184 of the Indian Contract Act, 1872, as between the principal and a third person, any person, even a minor may become an agent. But no person who is not of the age of majority and of sound mind can become an agent, so as to be responsible to his principal. Thus, if a person who is not competent to contract is appointed as an agent, the principal is liable to the third party for the acts of the agent. Thus, in the given case, D gets a good title to the watch. M is not liable to A for his negligence in the performance of his duties.

Question 10

A Ltd. sells its products through some agents and it is not the custom in their business to sell the products on credit. Mr. Pintu, one of the agents sold goods of A Ltd. to Parul Pvt. Ltd. (on credit) which was insolvent at the time of such sale. A Ltd. sued Mr. Pintu for compensation towards the loss caused due to sale of products to Parul Pvt. Ltd. Will A Ltd. succeed in its claim?

(4 Marks April 22)

Answer 10

According to section 211 of the Indian Contract Act, 1872, 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 custom which prevails in doing business of the same kind at the place where the agent conducts such business. When the agent acts otherwise, if any loss be sustained, he must make it good to his principal, and, if any profit accrues, he must account for it. In the present case, Mr. Pintu, one of the agents, sold goods of A Ltd. to Parul Pvt. Ltd. (on credit) which was insolvent at the time of such sale.

Also, it is not the custom in A Ltd. to sell the products on credit. Hence, Mr. Pintu must make good the loss to A Ltd.

Question 11

Explain the following as per the provisions of the Indian Contract Act, 1872

1. What is the meaning of 'Agent' and 'Principal'?
2. Who can appoint an agent.

(4 Marks April 22 & March '23)

Answer 11

1. **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.
2. **Who may employ an agent:** According to section 183 of the Indian Contract Act, 1872, "any person who has attained majority according to the law to which he is subject, and who is of sound mind, may employ an agent." Thus, a minor or a person of unsound mind cannot appoint an agent.

Question 12

Mr. Shiv, a cargo owner, chartered a vessel to carry a cargo of wheat from a foreign port to Tuticorin. The vessel got stranded on a reef in the sea 300 miles from the destination. The ship's managing agents signed a salvage agreement for Mr. Shiv. The goods (wheat) being perishable, the salvors stored it at their own expense. Salvors intimated the whole incident to the cargo owner. Mr. Shiv refuse to reimburse the salvor, as it is the Ship-owner, being the bailee of the cargo, who was liable to reimburse the salvor until the contract remained untermiated. Referring to the provision of The Indian Contract Act 1872, do you acknowledge or decline the act of salvor, as an agent of necessity, for Mr. Shiv. Explain?

(4 Marks)(Sep'22)

Answer 12

Section 189 of the Indian Contract Act, 1872 defines 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.

In certain circumstances, a person who has been entrusted with another's property may have to incur expenses to protect or preserve it. This is called an agency of necessity. Hence, in the above case the Salvor had implied authority from the cargo owner to take care of the cargo. They acted as agents of necessity on behalf of the cargo owner. Cargo owner were duty-bound towards salvor. Salvor is entitled to recover the agreed sum from Mr. Shiv and not from the ship owner, as a lien on the goods.

Question 13

Mr. Yadav, a cargo owner, chartered a vessel to carry a cargo of wheat from a foreign port to Chennai.

The vessel got stranded on a reef in the sea 300 miles from the destination.

The ship's managing agents signed a salvage agreement for Mr. Yadav. The goods (wheat) being perishable, the salvors stored it at their own expense. Salvors intimated the whole incident to the cargo owner. Mr. Yadav refuse to reimburse the Salvor, as it is the Ship- owner, being the bailee of the cargo, who was liable to reimburse the salvor until the contract remained unterminated. Referring to the provision of The Indian Contract Act 1872, do you acknowledge or decline the act of Salvor, as an agent of necessity, for Mr. Yadav. Explain?

(Nov '21)

Answer 13

Section 189 of Indian Contract Act 1872 defines 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.

In certain circumstances, a person who has been entrusted with another's property may have to incur unauthorized expenses to protect or preserve it. This is called an agency of necessity. Hence, in the above case the Salvor had implied authority from the cargo owner to take care of the cargo. They acted as agents of necessity on behalf of the cargo owner. Cargo owner were duty-bound towards salvor. Salvor is entitled to recover the agreed sum from Mr. Yadav and not from the ship owner, as a lien on the goods.

Question 14

Both a sub-agent and a substituted agent are appointed by the agent. But, however, there are some points of distinction between the two. Explain any three points.

(PYP 3 Marks Nov'23)

Answer 14

Following are the points of distinction between a sub-agent and a substituted agent:

Sr. 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 sub- agent 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 sub-agent.	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 sub-agent.	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 sub- agency continues.	The agent's duty ends once he has named the substituted agent.

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