

LEGAL ASPECTS OF BUSINESS

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LAW OF AGENCY

Meaning

A person who has capacity to contract may enter into a contract with another 1) either by himself, or 2) through another person, when he adopts the latter course, he is said to be acting through an 'agent'. An 'agent' is a person employed to do any act for another, or to represent another in dealings with third person. The person for whom such act is done, or who is so represented is called the 'principal'. The function of an agent is to bring his principal into contractual relations with third persons. This means that an agent is merely a connecting link between the principal and third parties.

Essentials of relationship of agency

1. Agreement between the principal and the agent

Agency depends on agreement but not necessarily on contract. As between the principal and third parties, any person may become an agent. As such, even a minor or a person of unsound mind may be an agent. The principal is, however, liable for the acts of such an agent.

2. Intention of the agent to act on behalf of the principal

Whether a person does intend to act on behalf of another is a question of fact. Where a person does intend to act on behalf of another, agency may arise although the contract between the parties provides that there is no such relationship.

Who can employ an agent?

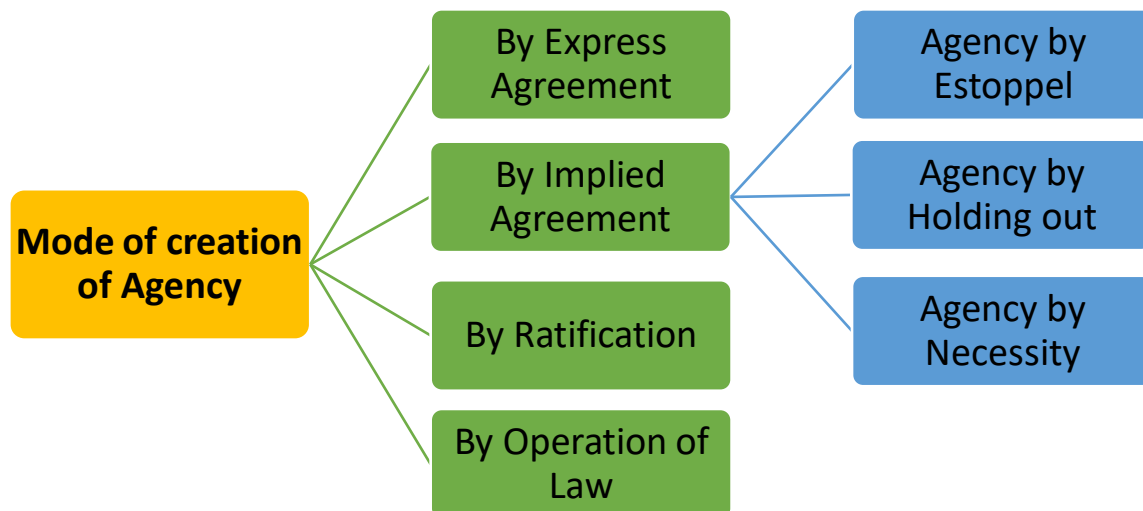
Any person who is of the age of majority according to the law to which he is subject, and who is of sound mind, may employ an agent. As such a lunatic or a minor or a drunken person cannot employ an agent.

Who may be an agent?

Any person who is authorized to act as such may be an agent. As the agent does not make contracts on his own behalf, it is not necessary that he should have contractual capacity. Even a minor may be an agent. If a person who is not-competent to contract is appointed an agent, he principal is liable to the third party for the acts of the agent. Thus as between the principal and a third party any person may become an agent. But no person who is not of the age of majority and of sound mind is responsible to his principal. It is therefore in the interest of the principal that the agent should have contractual capacity.

CREATION OF AGENCY

The relationship of principal and agent may arise –



1. Agency by express agreement

The authority of an agent may be expressed or implied. Normally, the authority given by a principal to his agent is an express authority which enables the agent to bind the principal by acts done within the scope of his authority. The agent may, in such a case, be appointed either by word of mouth or by an agreement in writing. The usual form of a written contract of agency is the power of attorney (a formal instrument by which one person empowers another to represent him, or act in his stead, for certain purpose) on a stamped paper.

2. Agency by implied agreement

Implied agency arises from the conduct, situation or relationship of parties,. It may be inferred from the circumstances of the case and things spoken or written or the ordinary course of dealing, may be accounted as circumstances of the case.

For example: P owns a shop in Serampur being himself in Kolkata, and visiting the shop occasionally. The shop is managed by A and he is in the habit of ordering goods from T in the name of P for the purposes of the shop, and for paying for them out of P's funds with P's knowledge. A has an implied authority from P to order goods from T in the name of P for the purposes of the shop.

Implied agency includes:

a) Agency by Estoppel

the doctrine of estoppels may be stated thus where a person by his conduct, or by words spoken or written, leads willfully another person to believe that a certain state of affairs exists and induces him to act on that belief so as to alter his previous position, he is precluded from denying subsequently the fact of that state of affairs.

For example: A tells T within the hearing of P that he A) is P's Agent. P does not object to this statement of A. later T supplies certain goods to A, who pretends to act as an agent of P. P is liable to pay the price to T. By keeping quiet, he P) had led T to believe that A is really his agent.

b) Agency by holding out:

Agency by holding out is a brand of the agency by estoppels; in this case, a prior positive or affirmative act on the part of the principal is required to establish agency subsequently.

For example: P allows his servant habitually to purchase goods for him on credit from T, and pays for them. On one occasion, he pays his servant cash to purchase the goods. The servant misappropriates the money and purchases goods on credit from T. T can recover the price from P as he had held out his servant as his agent on prior occasion.

c) Agency by necessity

In certain urgent circumstances the law confers an authority on a person to act as an agent by another, there being no opportunity to of communicating with that other. Such agency is called an 'agency of necessity.

For example: P consigns provision to A at Kolkata, with directions to send them immediately to T at Cuttack, A may sell the provisions at Kolkata, if they will not bear the journey of Cuttack without spoiling.

3. Agency by Ratification

A person may act on behalf of another without his knowledge or consent. For example, A may acts as P's agent though he has no prior authority from P. In such as case P may subsequently either accept the act of A or reject it. If he accepts the act of A, done without his consent, he is said to have ratified that act and it places the parties in exactly the same position in which they would have been if A had P's authority at the time he made the contract.

For example: A insures P's goods without his authority. In P ratifies A's act, the policy will be as valid as if A had been authorized to ensure the goods

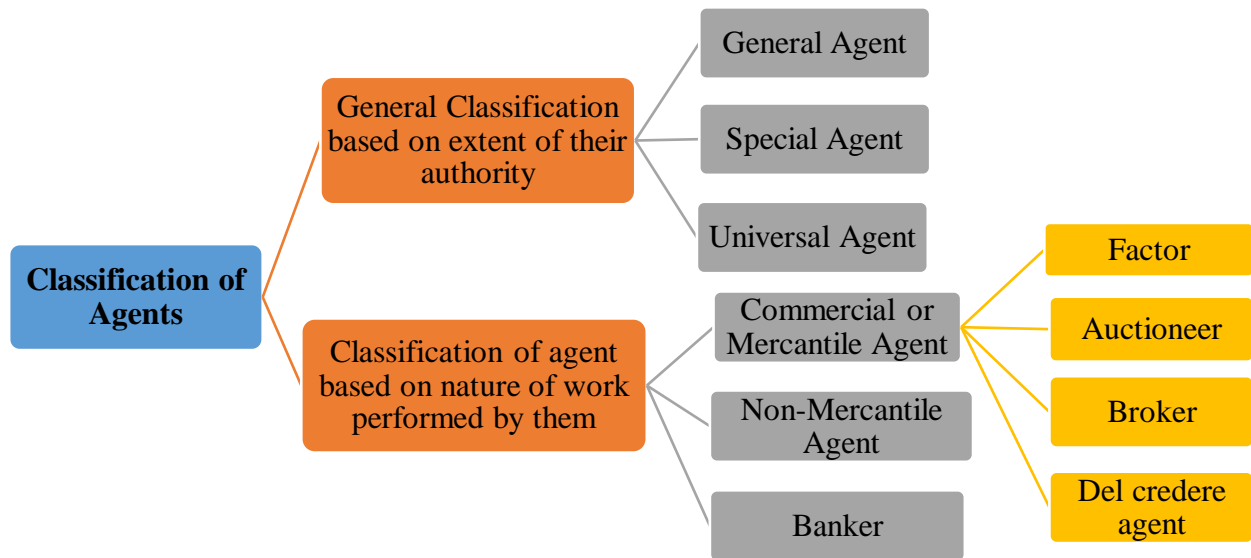
Requisites of valid ratification

- a) The agent must purport to act as agent for a principal who is in contemplation
- b) The principal must be in existence at the time of contract
- c) The principal must have contractual capacity both at the time of the contract and at the time of ratification
- d) Ratification must be with full knowledge of facts
- e) Ratification must be done within a reasonable time of the act purported to be ratified
- f) The whole transaction can be ratified
- g) Ratification must be communicated
- h) Ratification can be of the acts which the principal had the power to do
- i) Ratification should not put a third party to damages

4. Agency by Operation of Law

Sometimes an agency arises by operation of law. When a company is formed, its promoters are its agents by operation of law. A partner is the agent of the firm for the purposes of the business of the firm, and the act of a partner, which is done to carry on, in the usual way, business of the kind carried on by the firm, binds the firm. In all these cases, agency is implied by operation of law.

CLASSIFICATION OF AGENTS



General Classification based on extent of their authority

1. Special Agent

A special agent is one who is appointed to perform a particular act or to represent his principal in some particular transaction as, for example, an agent employed to sell a house or an agent employed to bid at an auction. Such an agent has a limited authority and as soon as the act is performed, his authority comes to an end.

2. General Agent

A general agent is one who has authority to do all acts connected with a particular trade, business or employment. For example, the manager of a firm has an implied authority to bind his principal by doing anything necessary for carrying on the business of the firm or which falls within the ordinary scope of the business. Such authority, of an agent is continuous until it is put to an end.

3. Universal Agent

A universal agent is one whose authority to act for the principal is unlimited. He has authority to bind his principal by any act which he does, provided that act i) is legal and ii) is agreeable to the law of the land.

Classification of agent based on nature of work performed by them

1. Commercial or Mercantile Agent

A Mercantile agent means who having in the customary course of business as such agent, authority either to sell goods, or to consign goods for the purpose of sale, or to buy goods, or to raise money on the security of goods.

a) Factor

A factor is a mercantile agent entrusted with the possession of goods for the purpose of selling them he has ostensible authority to do such things as are usual in the conduct of business. He sells the goods in his own name as an apparent owner upon such terms as he thinks fit. He can sell them on credit as well. He has also the authority to receive the price and give a good discharge to the purchaser.

b) Auctioneer

An Auctioneer is an agent appointed by a seller to sell his good by public auction for a reward generally in the form of a commission. He is primarily the agent of the seller, but after the sale has taken place, he becomes the agent of the purchaser also. He resembles a factor in all respects except that he has only a particular lien on the goods for his charges. He has authority to receive the price of the goods sold. He can also sue for the price in his own name.

c) Broker

A broker is an agent who is employed to buy or sell goods on behalf of another. He is employed primarily to bring about a contractual relation between the principal and the third parties. He is not entrusted with the possession of the goods in which he deals. He cannot act or sue in his own name. And as he has no possession, he has no right of lien.

d) Commission Agent

A commission agent belongs to a somewhat indefinite class of agents. He is employed to buy and sell goods, or transact business generally for other persons receiving for his labour and trouble a money payment, called commission.

e) Del credere agent

A del credere agent is one who, in consideration of an extra commission, guarantees his principal that the persons with whom he enters into contract on behalf of the principal, shall perform their obligations. He occupies the position of both a guarantor and an agent.

2. Banker

The relationship between a banker and his customer is really that of debtor and creditor. But there is a super-added obligation on the part of the banker to pay when called upon to do so by the draft or order of the customer.

3. Non-Mercantile Agents

These include attorneys, solicitors, insurance agents, clearing and forwarding agents, husband and wife, etc.

DUTIES AND RIGHTS OF AGENT

Duties of agent

1. To carry out the work undertaken according to the directions given by the principal

In the absence of any such directions, he must act according to the custom which prevails in doing business of the same kind at the place where he conducts such business. When he 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. If the agent's disobedience is material, the principal may even terminate the agency.

2. To carry out the work with reasonable care, skill and diligence

An agent is bound to conduct the business of the agency with as much skill as is generally possessed by persons engaged in similar business, unless the principal has notice of his want of skill. He is always bound to act with reasonable diligence, to use skill as he possesses, and to make compensation to his principal in respect of the direct consequence of his neglect, want of skill or misconduct.

3. To render proper accounts to his principal

An agent is bound to render proper accounts to his principal on demand

4. To communicate with the principal in case of difficulty

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.

5. Not to deal on his own account

An agent must not deal on his own account in the business of the agency without first obtaining the consent of the principal and acquainting him with all the material circumstances which have come to his knowledge.

6. To pay sums received for the principal

An agent is bound to pay to his principal all sums received on his account. He may deduct there from all moneys due to himself in respect of advances made or expenses properly incurred by him in conducting such business and also such remuneration as may be payable to him for acting as agent.

7. To protect and preserve the interests of the principal in case of his death or insolvency

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.

8. Not to use information obtained to the course of the agency against the principal

It is the duty of the agent to pass on any information which he receives in the course of the agency to his principal. Where he uses any such information against the interest of principal and the principal suffers a loss, he is bound to compensate the principal. The principal may also restrain the agent from using such information by an injunction.

9. Not to make secret profit from agency

An agent occupies fiduciary position. He must not, except with the knowledge and assent of the principal, make any profit beyond the agreed commission or remuneration.

10. Not to set up an adverse title

An agent must not set up his own title or the title of a third person (unless he proves a better title in that person) to the goods which he receives from the principal as an agent. If he does so, he will be liable for conversion (any act in relation to goods of another person which constitutes an unjustifiable denial of his title to them).

11. Not to put himself in a position where interest and duty conflict

An agent is under a duty, in all cases, to act in the interest of the principal. He must not put himself in a position where his duty to the principal and his personal interest conflict unless he has, made full disclosure of his interest to his principal, specifying its exact nature and obtained his assent.

12. Not to delegate authority

An agent must not, as a general rule, depute another person to do what he has himself undertaken to do. This is, however, subject to certain exceptions.

Rights of agent

1. Right of retainer

The agent may retain, out of any sums received on account of the principal in the business of the agency, all moneys due to himself in respect of his remuneration and advances made or expenses properly incurred by him in conducting such business.

2. Right to receive remuneration

The agent is entitled to his agreed remuneration, or if there is no agreement, to a reasonable remuneration. But in the absence of any special contract, payment for the performance of any act is not due to the agent until the completion of such act.

3. Right of lien

In the absence of any contract to the contrary, an agent is entitled to retain goods, papers and other property. Whether movable or immovable, of the principal received by him, until the amount due to himself for commission, disbursements, and services in respect of the same has been paid or accounted for to him.

4. Right of indemnification

The agent has a right to be indemnified against the consequences of all lawful acts done by him in exercise of the authority conferred upon him.

5. Right of compensation

The agent has a right to be compensated for injuries sustained by him by neglect or want of skill on the part of the principal.

6. Right of stoppage in transit

This right is available to the agent in the following two cases;

- i) Where he has bought goods for his principal by incurring a personal liability, he has a right of stoppage in transit against the principal, in respect of the money which he has paid or is liable to pay.
- ii) Where he is personally liable to the principal for the price of the goods sold, he stands in the position of an unpaid seller towards the buyer and can stop the goods in transit on the insolvency of the buyer.

DUTIES AND RIGHTS OF PRINCIPAL

Duties of principal

1. To indemnify the agent against the consequences of all lawful acts

The principal is bound to indemnify the agent against the consequences of all lawful acts done by such agent in exercise of the authority conferred upon him

2. To indemnify the agent against the consequences of acts done in good faith

Where one person employs another to do an act, and the agent does the act in good faith, the employer is liable to indemnify the agent against the consequences of that act, though it causes an injury to the rights of a third person.

3. To indemnify agent for injury caused by principal's neglect

The principal must make compensation to his agent in respect of injury caused to such agent by the principal's neglect or want of skill

4. To pay the agent the commission or other remuneration agreed

Rights of Principal

1. To recover damages

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

2. To obtain an account of secret profits and recover them and resist a claim for remuneration

If the agent without the knowledge and assent of the principal, makes any secret profits out of the agency, the principal has the right to recover them from the agent. Not only this, the agent also forfeits his right to any commission in respect of the transaction.

3. To resist agent's claim for indemnity against liability incurred

Where the principal can show that the agent has acted as principal himself and not merely as agent, he can resist the agent's claim for indemnity against liability incurred by him in such a transaction.

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. This means he is the agent of the original agent. The relation of the sub-agent, to the original agent is, as between themselves, that of the agent and the principal.

CO-AGENT OR SUBSTITUTED AGENT

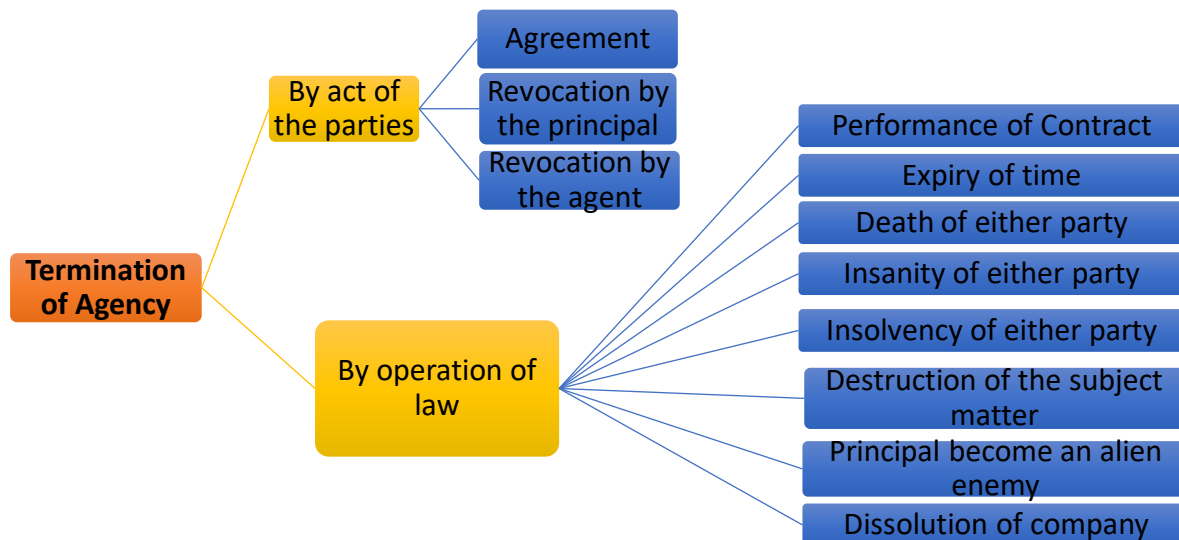
A co-agent or a substituted agent is a person who is named by the agent, on an express or implied authority from the principal, to act for the principal. He is not a sub-agent but an agent of the principal for such part of the business of the agency as is entrusted to him.

Difference between sub-agent and co-agent

Sl. No.	Sub-agent	Co-agent
1.	He works under the control of the agent	He works under the instructions of the principal
2.	There is no privity of contract between him and the principal.	There is a privity of contract between them
3.	Both can't sue each other directly for any amount or money	Both can sue each other.
4.	The agent is responsible to the principal for the acts of the sub-agent	The agent is not responsible to the principal for any act or negligence of the substituted agent.

TERMINATION OF AGENCY

Sec.201 deals with the modes of termination of agency. The termination of agency has been majorly classified into two, namely;



I. Termination of Agency by act of the parties

1) Agreement

The relation of principal and agent like any other agreement may be terminated at any time and at any stage by the mutual agreement between the principal and the agent.

2) Revocation by the principal

The principal may revoke the authority of the agent at any time before the agent has exercised his authority so as to bind the principal unless the agency is irrevocable. Where the agency is a continuous one, notice of its termination to the agent and also to the third parties is essential.

3) Revocation by the agent

An agency may also be terminated by an express renunciation by the agent after giving a reasonable notice to the principal, otherwise the damage thereby resulting to the principal or the agent, as the case may be, must be made good to the one by the other. Revocation and renunciation may be expressed or may be implied in the conduct of the principal or agent respectively.

II. Termination of agency by operation of Law

1) Performance of the contract

The most obvious mode of putting an end to the agency is to do what the agent has undertaken to do. Where the agency is for a particular object, it is terminated when the object is accomplished or when the accomplishment of the object becomes impossible.

2) Expiry of time

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 complete.

3) Death and Insanity

When the agent or the principal dies or becomes of unsound mind, the agency is terminated. When the termination thus takes place, the agent must take, on behalf of the representatives of his late principal, all reasonable steps for the protection and preservation of the interests entrusted to him.

4) Destruction of subject-matter

An agency which is created to deal with a certain subject-matter comes to an end by the destruction of the subject-matter

5) 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.

6) Insolvency

The insolvency of the principal puts an end to the agency though nothing is mentioned as regards insolvency of the agent. The insolvency of the agent, it is accepted, also terminates the agency unless the acts to be done by the agent are merely formal acts.

7) Dissolution of a company

When a company, whether principal or agent is dissolved, the contract of agency with or by the company automatically comes to an end.

8) Termination of sub-agent's authority

The termination of an agent's authority puts an end to the sub-agent's authority.

Termination of Sub-agency

The sub-agency will be terminated as soon as the main agency is terminated.

Termination of substituted agency

The authority of the substituted agent will not automatically be terminated if the authority of the agent is terminated.

Web Links

- <http://uputd.gov.in/site/writereaddata/siteContent/indian-contract-act-1872.pdf>
- Law of Agency: <https://www.youtube.com/watch?v=hmufOJc8hck&list=PLOvpsdL4-2727TLkWdPTe6rEMLsxdwHf&index=2>
- <https://www.youtube.com/watch?v=-IHhpbVAZ6U>
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