The background features abstract, overlapping green geometric shapes, primarily triangles and polygons, in various shades of green, creating a modern and dynamic visual effect.

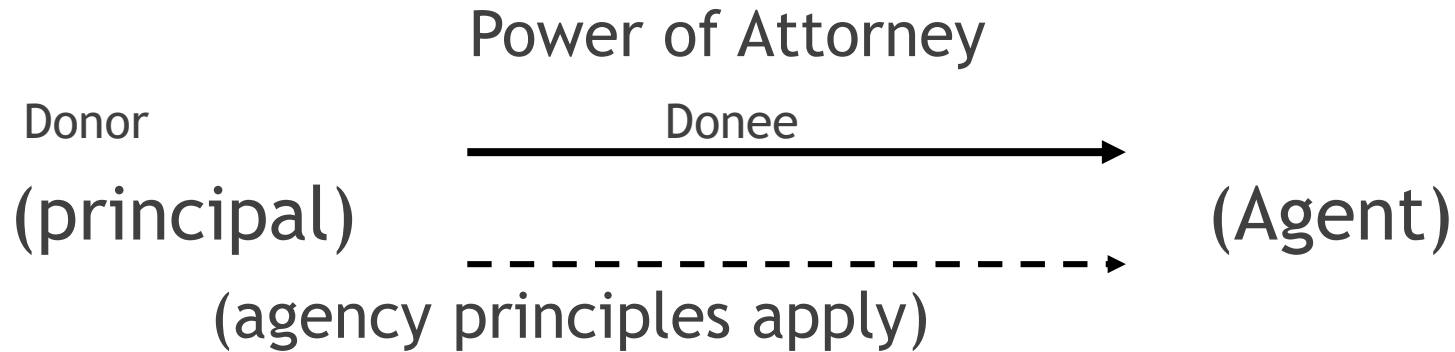
Chapter 5

Power of Attorney

Introduction

- ▶ a legal document whereby a person (donor) may authorize or empower another (donee or attorney) to act on his behalf
- ▶ the donee/attorney is said to be the agent of the donor

Introduction



- ▶ A Power of Attorney operates under agency principles.
- ▶ These legal principles are further expanded and regulated by the Power of Attorney Act 1949.

Competency of Donor (Principal)

The general rule: whatever a person is legally competent to do himself, he may do so by means of an agent.

Exceptions:

- i. Where the law specifically requires the signature of the Principal(Donor).
- ii. Where the competency of the Principal arises by virtue of him holding some position of authority, or that he has a special skill or discretion of a personal nature to exercise. Eg: a doctor cannot authorize his clerk to issue a medical report.

How Durable is a POA

A POA can be extinguished:

- i. It is revoked by the donor
- ii. It is renounced by the donee
- iii. The death of the donor or the donee
- iv. The donor has become of unsound mind or afflicted with mental illness
- v. The bankruptcy of the donor

How Durable is a POA

Exceptions:

- ▶ S 6 of POA Act 1949: if a POA is given for valuable consideration and is expressed to be irrevocable POA. This is relevant to estate planner where individuals are still alive but become mentally incapacitated.
- ▶ S 7 of POA Act 1949: when a POA is declared irrevocable for a fixed period.
- ▶ S 30(6) of the Trustees Act 1949: the POA is still valid despite the death of the donor. This section declares that any act done by the donee is still valid and effective if a 3rd party does not have actual notice of the death or incapacity of the donor.

Application of POA in Estate Planning

- ▶ Partnerships - power to manage partnership business.
- ▶ Transactions of immovable assets - eg: to authorize the donee to execute the necessary transfer of documents for the purpose of a sale.
- ▶ Probate and administration - where a donor who is an executor or administrator may grant a POA to a donee to deal with assets outside the country.
- ▶ Operating a business, bank accounts and transactions of immovable assets when the donor becomes incapacitated.

Documents and procedures of POAs

- i. A POA must be in writing and must be executed and authenticated before individuals who are qualified to do so.
- ii. A POA may be revoked by the donor or renounced by the donee. It must comply with S 5 of the Act.
- iii. Any person wishing to obtain information on any POA deposited with the High court may apply for and obtain such information.

Documents and procedures of POAs

Judicial precedents:

- ▶ The donee of a POA owes the donor fiduciary duties, eg to keep proper accounts, disclose any conflict of interest and not receive any secret commission or bribes.
- ▶ The intentions of a donor when he executes a POA must be specified in the documents.
- ▶ A donee may in turn delegate his powers to a third person, but he cannot give a greater power than what is conferred to him.