

# Corporate Laws

BBA(FIA)

Lecture 15

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# Agency Definition



Sec 182

An “agent” is a person employed to any act for another, or to represent another in dealing with third persons. The person for whom such act is done, or who is so represented, is called the “Principal”.

# Basic Premise/General Rules of Agency



“He who does through another, does by himself”.

Whatever a person competent to contract may do by self, that may done through an agent except for acts involving personal skill and qualification.

“The acts of the agent are, for all legal purposes, the acts of the principal”

# Who may Employ an Agent



According to sec. 183

“any person who is of the age of majority according to the law to which he / she is subject, and who is of sound mind, may employ an agent”

# Who may be an Agent



According to sec. 184,

“as between the principal and third person, ***any person*** may become an agent”.

Thus even a minor or a person of unsound mind can be appointed as an agent.

# Distinction between Agent & Servant



- A servant acts under the direct control and supervision of his employer.
- A principal directs the agent as to “what is to be done”, while a master has the further right to direct “how the work is to be done”.

# Kinds of Agents



- I. From the point of view of Extent of Authority:
- II. From the point of view of Nature of Work:

# Kinds of Agents



## I. From the point of view of Extent of Authority:

1. General Agent: is granted authority to do everything necessary for a particular business or venture. e.g. Manager.
2. Universal Agent: is authorized to do all the acts which the principal can lawfully do & delegate. Agents enjoys extensive powers to transact every business on behalf of the principal.
3. Special Agent: is employed to do some particular act or represent the principal in some particular transaction.



# Kinds of Agents



## II. From the point of view of Nature of Work:

### 1. Mercantile Agents

- a) Factor: Accounts receivable
- b) Commission Agent
- c) Broker
- d) Auctioneer
- e) Del credere Agent: guarantor of credit

### 2. Non-mercantile Agents:

Advocates, bankers, insurance agents, attorney, AMC, wife etc.

# Creation of Agency



1. Agency by express agreement
2. Agency implied from circumstances
3. Agency by ratification

# Agency by Express Agreement



- Agency can be created either by word of mouth or by an agreement in writing.

# Agency Implied from Circumstances



- a) Agency by estoppel
- b) Agency by holding out
- c) Agency by necessity

## **(a) Agency by Estoppel**



An agency by estoppel is created when the alleged principal by the conduct or by words spoken or written, leads willfully the other contracting party into an honest belief that the supposed agent had authority to act as such and bind the principal.

## (b) Agency by Holding Out



- ‘Agency by holding out’ means creation of agency by projecting a person as agent without actual words to that effect.
- Agency by holding out requires some ***affirmative*** or ***positive*** act or conduct by the principal to establish agency subsequently.

## **(c) Agency by Necessity**



Generally agency by necessity arises in the following cases:

1. Where the agent exceeds his authority, bona fide, in an emergency.
2. A non-agent acts as agent.
3. Where a husband improperly leaves his wife without providing proper means for her sustenance.

### **3. Agency by Ratification (*ex post facto agency*)**



Ratification means the subsequent adoption and acceptance of an act originally done without instructions or authority.

Thus where a principal affirms or adopts the unauthorized act of his agent, he is said to have ratified that act and there comes into existence an agency by ratification retrospectively.



# Extent of Agent's Authority



The authority of an agent means his / her capacity to bind the principal to third parties. The agent can bind the principal only if he / she acts within the scope of his / her authority.

1. Actual or real authority
2. Ostensible or apparent authority
3. Authority in emergency.

# 1. Actual or real authority



It is the authority which is conferred upon the agent by the principal. It may be express or implied.

- Express authority includes the tasks expressly entrusted to the agents.
- Implied authority includes all those things, which would be necessary to accomplish the entrusted task.

## 2. Ostensible or Apparent authority



Ostensible authority means an authority which the third parties dealing with the agent can presume to be with the agent in relation to particular business ordinarily.

### 3. Authority in Emergency



An agent has authority in 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.

# **Delegation of Authority (appointment of sub-agent of agent)**



- General Rule: “delegatus non potest delegare”  
A delegate cannot further delegate.
- Sec 190: “an agent cannot lawfully employ another to perform acts which he / she has expressly or impliedly undertaken 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.”
- Sec 191: “A sub-agent’ is a person employed by, and acting under the control of, the original agent in the business of the agency.”

# **An agent may appoint a sub-agent in the following circumstances**



- Where expressly or impliedly permitted by the principal.
- Where the ordinary custom of the trade permits delegation.
- Where the nature of agency is such that it cannot be accomplished without the appointment of a sub-agent.
- Where the nature of the job assigned to the agent is purely clerical and does not involve the exercise of discretion.
- In an unforeseen emergency.

# Relationship between Principal and Agent (Properly Appointed)



- Principal liable to third parties.
- Privity of contract is established.
- Agent liable to the principal for the acts of sub-agent.
- Sub-agent responsible to agent but not principal.
- Sub-agent responsible to principal in fraud and willful wrong.

# Relationship between Principal and Agent (Not Properly Appointed)



- Principal not liable to third parties.
- Agent liable to the principal and third parties for the acts of sub-agent.
- Sub-agent is not responsible to principal even in fraud and willful wrong.



# Substituted Agent



Sec 194

“Where an agent, holding an express or implied authority to name another person to act for the principal in the business of the agency, has named another person accordingly, such person is not a sub-agent but an agent of the principal for such part of the business of the agency as is entrusted to him.”

# Distinction between Sub-Agent and Substituted Agent



Sub-agent	Substituted agent
1. Is appointed by the agent and also works under his control, i.e., a sub-agent is the agent of the original agent.	1. Is also appointed by the agent, he works under the control of the principal, i.e., the substituted agent is the agent of the principal.
2. Is appointed usually as an exception to the rule “delegates non protest delegate”	2. Is selected by virtue of authority express or implied vested in the agent.
3. Is responsible to the original agent alone, and not to the principal except for fraud or willful wrong.	3. Is responsible to the principal agent alone and not to the original agent.
4. The original agent is responsible to the principal for the acts of the sub-agent.	4. The original agent is not responsible to the principal for the acts of the substituted agent if he has taken reasonable care in appointing him.
5. There is no privity of contract between sub-agent and principal. Hence both cannot sue each other except in case of fraud & willful wrong.	5. There is a direct contract between the substituted agent and the principal, hence both can sue each other.

# Duties of an Agent



- Duty to follow Principal's instructions
- Duty to conduct the business with skill and diligence
- Duty to render proper accounts
- Duty to communicate with the principal
- Duty not to deal on his own account
- Duty not to make secret profit
- Duty to pay sums received
- Not to delegate authority
- Duty to protect and preserve the Principal's interest on his death or insanity

# Rights of an Agent



- Right of retainer
- Right to remuneration
- Right of lien
- Right to be indemnified against consequences of lawful acts
- Right to be indemnified against consequences of acts done in good faith
- Right to compensation

# Personal Liability of Agent to Third Party



1. When agent himself agrees to that effect.
2. Where trade usage or custom provides for it.
3. When agent exceeds his authority.
4. When agent acts for a foreign principal.
5. When agent acts for an unnamed principal.
6. When agent acts for an undisclosed principal.
7. When the principal cannot be sued. (foreign ambassadors etc.)
8. When agent signs a document in his own name.
9. Where agent's authority is 'coupled with interest'.
10. Where agent receives money by mistake or fraud.

# Termination of Agency



- By the act of parties:
  - By mutual agreement
  - By revocation by principal
  - By renunciation by agent
  
- By operation of law:
  - Completion of business
  - Expiry of time
  - Death or insanity of either party
  - Insolvency of principal
  - Destruction of the subject matter
  - Alien enemy
  - Termination of sub-agent authority
  - Supervening impossibility

# Irrevocable Agency



1. Where the agency is coupled with interest.
2. Where revocation would cause the agent personal loss.
3. Where the authority has been partly exercised by the agent.



THANK YOU