

CONTRACT OF AGENCY

Meaning and Definition

A person cannot do every business transaction himself due to shortage of time and business problems. Therefore, some people perform many activities through another person.

According to Sec. 182, "An agent is a person employed to do any act for another or to represent another in dealings with third persons. The person for whom such act is done or who is so represented is called the principal."

A person who acts on behalf of another person is called an agent. The person who authorizes another person to act is called a principal. The contract which creates the relationship of principal and agent is called an agency.

EXAMPLE

C appoints B to buy 10 bags of sugar on his behalf. C is the principal and B is the agent. The contract between the two is agency.

Essentials of Agency

The essentials of agency are as follows:

1. Agreement

The relationship of agency is the result of an agreement between the principal and agent. The contract of agency may be express or implied from the conduct of the parties.

2. Who can be Principal (Sec-11)

Any person, who is of the age of majority according to law to which he is subject and who is of sound mind, may employ an agent. [Sec. 183]

3. Who can be Agent

Any person may become an agent. It means that a minor or person of unsound mind can be appointed as an agent. A minor as agent can bind the principal to third parties. But minor is not himself liable to his principal. [Sec. 184]

4. Consideration not Necessary

In order to create an agency, the consideration is not necessary. Consideration may or may not exist in an agency. The fact that principal has agreed to be represented by the agent is consideration for principal to support the contract. [Sec. 185]

5. Intention

The agent must have intention to act on behalf of the principal. When the

agent enters into a contract for himself, then the principal is not liable. The principal is liable only when the agent contracts with the intention to act on behalf of the principal.

Test of Agency

Agency exists whenever a person can bind another by acts done on his behalf. When this power does not exist, the relationship is not that of agency.

Purpose of Agency

An agency is created to perform any act which the principal himself can lawfully do. The object of agency should not be criminal in nature or against public policy. There are certain acts which must be performed by a person himself and cannot be delegated to an agent.

General Rules of Agency

The following are rules regarding agency:

1. Whatever a person competent to contract can do himself, he can do through an agent except for the acts involving personal skill, e.g. painting
2. The acts of the agent are the acts of the principal. It means he who acts through an agent acts himself.

Kinds of Agents

The following are various kinds of agents:

1. General Agent (Particular transaction)

A general agent has the authority to perform all acts in connection with a particular business, e.g. person appointed as general manager is a general agent. A general agent can do any lawful acts regarding that business.

2. Special Agent :

A special agent has the authority to do a particular transaction, e.g. person appointed to purchase a particular house. A special agent has the authority only to do that particular act. His authority comes to an end when the act is performed by him.

3. Universal Agent

A universal agent is the person whose authority is unlimited. He enjoys powers to transact every kind of business on behalf of his principal. A universal agent is authorized to perform all acts that can be delegated to him.

4. Mercantile Agent (He can pledge the goods)

A mercantile agent is the agent who has authority to sell or buy goods or to raise money on the security of goods. He is generally appointed by a manufacturer or a seller to assist in the sale of goods.

5. Factor

A factor is an agent to whom goods are provided for sale. He usually sells

the goods in his own name without disclosing to the principal. He may sell on credit. He can receive payments and issue valid receipts. He is entitled to pledge the goods in his possession. He has general lien on the goods.

6. Commission Agent

Commission agent buys or sells goods in his own name for his principal on the best possible terms. He receives commission for his services. Commission agent may or may not have possession of goods.

7. Del Credere Agent

Del credere agent is an agent who, in consideration of an extra remuneration called the Del credere commission, gives guarantee to his principal that third persons with whom he enters into contract shall perform their obligations. Del credere agent undertakes to bear the risk of bad debts on credit sales made by him. *as well as surety*
he will liable for loss.

8. Broker

A broker is an agent who negotiates and makes contracts for sale and purchase of goods on behalf of principal. He does not have the possession and control of goods. He cannot act in his own name. The commission a broker receives for his services is called brokerage. *Not having possession*

9. Auctioneer

An auctioneer is an agent who is appointed to sell goods to the highest bidder at a public sale. He gets commission for his services. He acts as an agent of the buyer as well as of the owner.

10. Indenter

An indenter is an agent one who buys or sells goods on behalf of his principal. The indenter buys goods from foreign countries. He gets commission for services.

11. Banker

The relationship between a banker and customer is that of a creditor and debtor. However, when the banker buys or sells securities, collects cheques, pays dividends etc. on behalf of his customer, he acts as an agent.

12. Advocate

An advocate can also act as an agent. He does not buy or sell goods but appears before the court on behalf of his principal. He also performs other acts on behalf of his client.

Creation of Agency

A contract of agency may be created in any of the following ways:

1. Agency by Express Agreement

Generally, an agency is created by an express agreement. When an authority is given by principal to his agent by words spoken or written, it is called

express agency. The usual form of written contract of agency is the power of attorney on stamped paper which gives authority to the agent to act on behalf of the principal. [Sec. 186]

EXAMPLES

- a. A appoints B as his agent to sell his house. It is an express agency.
- b. A writes a power of attorney in favour of B authorizing him to sell his plot. It is written express agency.

2. Agency by Implied Agreement

It does not arise as a result of express agreement. An implied agency arises from conduct, situation or relationship of the parties. [Sec. 187]

EXAMPLES

- a. X & Y are brothers. X lives in Lahore and Y in Multan. Y, with the knowledge of X, gives his land on lease. He collects the rent and remits to X. Y is the implied agent of X.
- b. M allowed her son to drive a car for her and promised to pay expenses of maintenance. The son caused an accident and injured his wife. Held, the wife could sue the mother as the son was an implied agent of the mother. (Smith vs. Mose)

An implied agency may be of the following types:

a. Agency by Estoppel

⇒ to stop

Estoppel means to prevent a person from denying a fact. When a person by his conduct or statement induces others to believe that a certain person is his agent, he is stopped from subsequently denying it.

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. [Sec. 237]

EXAMPLES

- a. A tells B in presence of P that he is P's agent. P does not object to the statement and remains silent. Later, B enters into a contract with A thinking that A is P's agent. P is bound by this contract.
- b. P terminated the services of his agent A. No notice to this effect was given by P. Subsequently, A purchased some goods from T on behalf of P. It was held that P was liable to pay the price to T. (Truman v. Loder)

b. Agency by Holding Out

⇒ Previously work / routine work

The principal is bound by the acts of the person if, on an earlier occasion, the principal gave an impression to other persons that the person doing some

acts on his behalf is doing with authority. An agency by holding out is the kind of agency by estoppel. The principal is bound by the acts of certain person, if the prior conduct of the principal indicates that a certain person has already become his agent.

EXAMPLE

B is a servant of A. B buys goods on credit from C and A pays for them regularly. B buys the goods from C on credit for personal use. A is liable to C for payment.

c. Agency by Necessity

Agency by necessity gives an authority to a person to act as an agent for another without any consent of other person. The person can act as an agent under the following conditions:

- i. There must be an emergency
- ii. There must be a real necessity to act on behalf of the principal.
- iii. It must be impossible to get the principal's instructions.
- iv. The agent has acted honestly in the interest of the principal.

Generally, the agency by necessity arises in the following cases:

- i. When the agent exceeds his authority bonafide in an emergency.
- ii. When carrier of goods does anything to protect the goods in an emergency.
- iii. When a husband improperly leaves his wife without providing proper means for her substance.

EXAMPLES

- a. A asks B to deliver fruits to a store in Karachi. B finds that the fruits are perishing and sells them at Multan. The sale is binding on the principal.
- b. S & Co. consigned butter to a railway Co. It was delayed in transit. Being perishable, the company sold the butter. S & Co. was held bound by the sale. (Sims & Co. vs. Midland Rly. Co.)

3. Agency by Ratification

either own or disown
Contract

Agency by ratification arises where a person does some act on behalf of another without his authority and his act is approved by the latter. If his act is not approved, there is no agency.

Where acts are done by one person on behalf of another without his knowledge or authority, he may ratify or disapprove such acts. If he ratifies the acts, there is agency by ratification. On ratification, the principal is bound by the acts done by the agent. [Sec. 196]

EXAMPLES

- a. A buys 5 bags of wheat without the authority of B. B ratifies A's act & becomes his agent.

b. A bought goods on behalf of P above the price authorized by P. P objected to purchase but sold the goods. Held, he had ratified the purchase by selling the goods. (Cornwal vs. Wilson)

4. Agency by Operation of Law

→ firm (20 Partner max)
→ company (after 20 Partner)

An agency arises by operation of law. Under Partnership Act, every partner is an agent of the firm and the act of a partner to carry on business of the firm binds the firm. Similarly, under Companies Act, the directors are agents of the company.

EXAMPLE

Director act as a agent.

D, director of a company, contracts S to buy machinery for the company. D acts as an agent of the company. The company as a principal is liable for D's acts.

Duties of Agent

An agent has the following duties towards the principal:

1. Duty to Follow Directions or Customs

The agent is bound to conduct the business of agency according to the directions of the principal. If the principal does not give any directions, then he should follow the custom of trade. If he does not act according to the prevailing customs of trade, he will be held liable for any loss sustained by the principal.

[Sec. 211]

EXAMPLES

- P, the principal, instructs his agent A to insure the goods. A neglects to do so. A is liable to compensate P if the goods get damaged.
- A works as an agent for B's business in which it is the custom of trade to invest at an interest, the money which is in hand. A omits to do so. A must compensate B for the interest usually obtained by such investments.

2. Duty to Work with Reasonable Skill

The agent must act with reasonable skill and care. A reasonable skill means skill that can be possessed by the ordinary man. If the agent does not work with reasonable skill and care, he must compensate his principal in case of loss arising there from. [Sec. 212]

EXAMPLES

- A, an agent, sells goods on credit to B without making proper enquiry about solvency of B. B is insolvent at the time of sale. A must compensate his principal for loss.
- A, in England, directs his agent B in Karachi to send cotton by a certain ship. B omits to do so. The price of cotton rises. B is bound to pay A, the profit which he might have earned.

3. Duty to Render Accounts

An agent is bound to render proper accounts to his principal on demand. It is duty of an agent to keep true accounts regarding all the property or money belonging to his principal. He should produce them to his principal on demand. [Sec. 213]

EXAMPLE

P sends goods to his agent A to sell on credit. A must keep proper accounts of sale and render to P on his demand.

4. Duty to Communicate

It is duty of an agent, in case of difficulty, to make reasonable efforts to communicate with his principal and obtain his instructions. But in case of emergency, if there is no time to communicate with the principal, the agent may act in good faith and in interest of his principal. [Sec. 214]

EXAMPLE

P sends goods to his agent R in Karachi for export. R finds that some goods are damaged. R must inform P and get instructions in this regard.

5. Duty on Termination of Agency

When an agency terminates due to death or insanity of principal, the agent must take reasonable steps for the protection of interests of the legal representatives of late principal. [Sec. 209]

EXAMPLE

Y, an agent, sells the goods of his principal, P to X on credit. P dies. The agency terminates. Y must collect and remit the amount to legal representatives of P.

6. Duty not to Deal on his Own Account

An agent should not deal on his own account. If an agent deals on his own account without proper permission of his principal, the principal may reject the contract. If the agent has concealed any material fact or earned any profit, the principal may claim such profit. [Sec. 215]

EXAMPLE

A directs his agent B to buy a certain house. B buys it for himself. A can cancel the contract.

7. Duty not to Make Secret Profit

An agent should not make any secret profit out of the agency. If the agent earns any secret profit, the principal can recover it from the agent. Moreover, the principal may refuse to pay commission and terminate the agency. [Sec. 216]

EXAMPLE

P directs his agent A to buy a certain land. A buys the land and receives secret commission. A is liable to pay the secret commission to P.

8. Duty to Pay Sums Received

Any amount which an agent receives on behalf of the principal must be paid to the principal. However, an agent can deduct from it his expenses and remuneration regarding business of the agency. [Sec. 217-8]

EXAMPLE

A appointed B to collect rents from X. B collected the rents and incurred Rs. 200 as traveling expenses. B must remit the amount to A after deducting his traveling expenses.

9. Duty not to Delegate Authority

can delegate with the permission of principal

An agent must perform the work of agency himself. An agent must not delegate his authority to another person. However, the following are some exceptions to this rule. [Sec. 190]

- a. When the principal has permitted to delegate authority.
- b. When by ordinary custom of trade, a sub-agent can be appointed.
- c. When the nature of agency makes it necessary to appoint a sub-agent.
- d. When an emergency arises that permits delegation of authority.

EXAMPLE

P appoints A as his agent to buy a certain house. A delegates the authority to X to buy a house for P. A is not authorized to delegate authority to X.

Rights of Agent

The following are rights of an agent:

1. Right to Retain Money

An agent may retain out of sums received on account of the principal all his claims in respect of remuneration, advances or reasonable expenses incurred by him in the business of agency. [Sec. 217]

EXAMPE

P employs A to sell some old furniture and agrees to pay him Rs. 200 as commission. A sells the furniture for Rs. 2,000. A can retain Rs. 200 as his commission and pay the balance to P.

2. Right to Receive Remuneration

An agent has a right to receive the agreed remuneration. If remuneration is not fixed, an agent is entitled to reasonable remuneration. He can receive remuneration only when it becomes due. If an agent is guilty of misconduct, he is not entitled to any remuneration. [Sec. 219, 220]

EXAMPLE

P employs A to recover Rs. 1 Lac from T. Due to A's misconduct, the money is not recovered. A is not entitled to any remuneration.

3. Right of Lien

An agent can retain goods, documents and other property whether movable or immovable of the principal until the amount due to him for commission, services and expenses has been paid to him. This right is subject to a contract between the principal and agent. [Sec. 221]

EXAMPLE

P employs A to sell 100 books. A sells 50 books. P becomes insolvent. The official receiver of P claims the remaining 50 books from A. A can refuse to give the books until he receives his commission.

4. Right to be Indemnified for Lawful Acts

An agent has the right to be indemnified against the consequences of all lawful acts done by him in exercise of the authority conferred upon him. However, an agent cannot claim indemnity in respect of the acts which are apparently unlawful or criminal. [Sec. 222]

EXAMPLE

A employs B to beat C and agrees to indemnify him against the consequences of the act. B beats C and has to pay damages to C for such act. A is not liable to indemnify B.

5. Right to be Indemnified for Acts 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 third persons. [Sec. 223]

EXAMPLE

B, at the request of A, sells goods which A has no right to sell. B does not know this and sends the money to A. Afterwards C, the true owner of the goods, sues B and recovers the money. A is liable to indemnify B.

6. Right to Compensation for Injury

An agent has the right to be compensated for injuries sustained by him due to the principal's neglect or want of skill. Thus, where the principal keeps any dangerous premises and the agent meets accident, the principal is liable to pay compensation to the agent. [Sec. 225]

EXAMPLE

A employs B as mason for building a house. A assembles the scaffolding himself. The scaffolding is unskillfully assembled. As a result, B falls and gets

injured. A must make compensation to B.

7. **Right of Stoppage of Goods**

An agent has the right to stop the goods in transit to the principal like an unpaid seller, if he has bought the goods with his own money and the principal has become insolvent. [Sec. 228]

EXAMPLE

A buys goods for his principal P with his own money. A delivers the goods to carrier for transmission to P. Afterwards, A comes to know that P has become insolvent. A can stop the goods in transit.

Rights of Principal

The rights of a principal against the agent are as follows:

1. **Right to Recover Damages**

If the principal suffers any loss, he has the right to recover from his agent. The agent is liable for loss if he does not act according to the directions of his principal and does not follow the customs of trade. The agent is also liable if he does not perform his duties with skill, care or diligence. [Sec. 211]

EXAMPLE

P asks his agent A to sell goods on cash basis. A sells goods on credit and the amount becomes irrecoverable. P can recover the amount from A.

2. **Right to Obtain Secret Profit**

If the agent, without knowledge and consent of the principal, makes any secret profits out of agency, the principal has a right to recover them from the agent. In such a case, the agent loses his right of commission. [Sec. 216]

EXAMPLE

P asks his agent A to sell his house. A sells the house for Rs. 10 Lac but tells P that he sold it for Rs. 8 Lac. P can recover the balance from A.

3. **Right to Refuse to Indemnify Agent**

If the principal shows that agent has acted as a principal himself and not as agent, he has a right to refuse to indemnify the agent against the loss suffered by the agent in such transaction. [Sec. 215]

EXAMPLE

P directs his agent A to buy a certain plot from X for him. A makes an agreement with X for himself and pays Rs. 1 Lac as advance. X becomes insolvent. A has to suffer a loss. P can refuse to compensate A.

Duties of Principal

The duties of a principal against the agent are as follows:

1. Duty to Indemnify for Lawful Acts

The principal is bound to indemnify the agent against the consequences of lawful acts done by such agent in exercise of authority conferred upon him [Sec. 222]

EXAMPLE

Y, on the direction of his principal P, sells goods to X on credit. X does not pay. Y sues X but is compelled to pay damages. P must indemnify Y.

2. Duty to Indemnify for Acts in Good Faith

When one person employs another to do an act, and the agent does the act in good faith, the principal is liable to indemnify the agent against the consequences of the act though it causes injury to the rights of the third person [Sec. 223]

EXAMPLE

P employs an agent A to buy a car from M. A buys the car from M which belongs to W. Afterwards, W recovers the car from A. P is liable to indemnify A.

3. Duty to Indemnify for Injury 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. [Sec. 225]

EXAMPLE

P employs M, a mason, to build a house. P puts up the scaffolding unskillfully. As a result, M falls down and gets hurt. P is liable to compensate M.

4. Duty to Pay Remunerations and Dues

It is duty of the principal to pay the agent all of his dues, remuneration, commission and to reimburse all expenses incurred by him in case of his authority. [Sec. 219]

EXAMPLE

C, an agent, spent Rs. 500 while performing his duties for B. B is liable to pay such expenses to C.

Termination of Agency

An agency may be terminated in any of the following ways:

1. Agreement

The agency can be terminated at any time by mutual agreement between the principal and his agent. Therefore, the authority of an agent terminates when the principal and agent agree to terminate it. [Sec. 201]

EXAMPLE

P employs A as his agent for 5 months. P and A with the mutual consent can terminate the agency before the expiry of 5 months.

2. Revocation by Principal

The principal can revoke the authority of his agent at any time before the agent has exercised his authority. In continuous agency, the principal can revoke the authority of his agent for future. It cannot be revoked with regard to the acts already done by the agent. In order to revoke the authority for future, a reasonable notice should be given to the agent. If reasonable notice is not given, the principal will be liable to compensate the agent for damages. [Sec. 201]

EXAMPLE

P employs A to rent out his house. Afterwards, P rents the house to himself. This is a revocation of A's authority.

3. Revocation by Agent

The agency can be terminated by the agent because a person cannot be compelled to work as an agent. But the agent must give a reasonable notice of revocation to the principal, otherwise he will be liable to compensate the principal for any loss resulting thereby. [Sec. 201]

EXAMPLE

A is appointed as an agent of P for 1 year. After 6 months, A can terminate the agency by giving a reasonable notice to P.

4. Completion of Business

The agency comes to an end automatically when the business of agency is completed. When an agency is formed for the purpose of sale of particular property, the agency terminates on the completion of the sale. [Sec. 201]

EXAMPLE

P appoints A as his agent to sell his house. A sells the house. The agency is terminated.

5. Expiry of Time

If the agent is appointed for a fixed period of time, the agency comes to an end on the expiry of fixed period even though the business of agency may not have been completed.

EXAMPLE

A is appointed as an agent for 1 year by P. The agency terminates after the expiry of 1 year.

6. Death of Principal or Agent

The agency terminates automatically on death of the principal or the agent. On death of the principal or agent, the agency is automatically terminated because a person cannot act on behalf of a non-existent person. [Sec. 201]

EXAMPLE

P appoints A as his agent for 1 year. If either P or A dies, the agency

7. Insanity of Principal or Agent

The agency terminates automatically when the principal or agent becomes of an unsound mind. The agent cannot act for a person of unsound mind. [Sec. 201]

EXAMPLE

P appoints A as his agent for 1 year. If either P or A becomes insane, the agency terminates.

8. Insolvency of Principal

The agency is terminated by insolvency of the principal. Since an agent is a mere connecting link with the third parties, his insolvency may not terminate the agency in some cases. [Sec. 201]

EXAMPLE

P appoints A as an agent for 2 years. P becomes insolvent after 6 months. The agency comes to an end.

9. Destruction of Subject matter

The agency terminates on destruction of subject matter of the contract of agency.

EXAMPLE

P appoints A to sell his horse. The horse died before A could sell it. The agency comes to an end.

10. Becoming an Alien Enemy

If the principal and his agent are nationals of two different countries and war breaks out between the two countries, the contract of agency is terminated.

EXAMPLE

M is appointed as an agent by P for 1 year. M lives in India and P lives in Pakistan. War breaks out between the two countries. The agency terminates.

11. Change of Law

If a change in the law makes the agency or performance of the authority act illegal, the authority of the agent is terminated when he comes to know of the change.

EXAMPLE

S sells the toys manufactured by P. The government declares that toys are dangerous and puts a ban on them. S's authority terminates when he comes to know about this ban.