

## **INDIAN CONTRACT ACT,1872**

### **Ms. NIHARIKA**

Hope everyone is safe. Please be cautious and study well. May god bless you all. Feel free to mail your questions on nihar.rits@gmail.com.

## **AGENCY**

Chapter X of the Indian Contract Act,1872 deals with agency. Sections 182-238 deal with it.

### **Definition of agency**

The law of agency is based on the Latin maxim “*qui facit per alium, facit per se*”, which means, he who acts through another is deemed in law to do it himself. Agency has nowhere been defined in the Act but on the basis of this section 182, an ‘agency’ may be defined as a contract by which an agent is employed by a principal to act on his behalf or to represent him in dealings with the outside world. In other words, the relation of agency arises when one person (the agent) has authority to act on behalf of another (the principal). The relationship has its origin in contract. ‘Representation’ is an essential element of agency. It is also necessary that the representation must have reached a stage where legal position of the principal can be altered i.e., the principal can be held liable for agent’s act. See also Madras High court judgement in *P. Krishna v. Mundila Ganapathi* [AIR 1955 Mad 648] in which Ramaswami J has explained the concept of agency.

### **Section 182: It defines agent and principal**

**Agent**: any person employed to do any act for another or to represent another in dealings with third person. **Section 184** provides who may be an agent:

- has attained age of majority (a minor can also become an agent but he won’t be responsible to his principal.)
- Is of sound mind

### **Duties of an agent:**

- Duty to execute mandate
- Duty to follow instructions or customs
- Duty of reasonable care and skill
- Duty to avoid conflict of interest
- Duty not to make secret profit
- Duty to remit sums
- Duty to maintain accounts
- Duty not to delegate

### **Rights of an agent:**

- **Right to remuneration:** an agent is entitled to get an agreed remuneration as per the contract. If nothing is mentioned in the contract about remuneration, then he is entitled to a reasonable remuneration. But an agent is not entitled for any remuneration if he is guilty of misconduct in the business of agency.
- **Right of retainer:** an agent has the right to hold his principal's money till the time his claims, if any, of remuneration or advances are made or expenses occurred during his ordinary course of business as agency are paid.
- **Right of lien:** an agent has the right to hold back or retain goods or other property of the principal received by him, till the time his dues or other payments are made.
- **Right to indemnity:** an agent has the right to indemnity extending to all expenses and losses incurred while conducting his course of business as agency.
- **Right to compensation:** an agent has the right to be compensated for any injury suffered by him due to the negligence of the principal or lack of skill.

**Principal:** the person for whom the agent acts or the person whom the agent represents. **Section 183** provides who may employ an agent:

- Must have attained age of majority
- Must be of sound mind

**Note:** Consideration is not necessary for creation of an agency. (Section 185)

### **Creation of Agency**

An agency may be created in any one of the following ways:

1. **By express contract:** An express contract can be made orally or in writing. Therefore, creation of any agency by an express contract means an employment of agent by the principal either orally or in writing. An agency created by a contract gives rise to an authority, known as an 'actual authority' and is given to the agent. The word 'authority' signifies the power of the agent to affect legal relations of the principal. An agency created by an express contract may be termed as an 'express agency'. Under an express agency consent of principal and agent must be free and the object of agency must also be lawful. Ordinarily, an agent who has an express authority is required to act in accordance with terms of the contract. In other words, an express authority includes an implied authority to do every lawful thing which is necessary in order to do such act.

2. **By implied contract:** An implied contract is inferred from the conduct of offeror and acceptor. So, an agency may be inferred from the conduct of parties. Thus, an agency may also be created by an implied contract. Such agency may be called an implied agency. An authority is said to be implied when it is to be inferred from the circumstances of the case, and things spoken or written,

or the ordinary course of dealing, may be accounted circumstances of the case. [Sections 186-187] It is to be noted that an implied authority may arise in two ways: (1) in ordinary circumstances [Section 188] and (ii) in emergency [Section 189]

3. By ratification: Section 196 of the Indian Contract Act provides that an agency can be created by ratification. It says that when an act is done by one person on behalf of another without his knowledge or authority, the person on whose behalf such act is done may ratify the act. In case the act is ratified an agency by ratification comes into existence. The agency created by ratification is also called as an 'ex post facto agency'.

### **Termination of Agency [Section 201]**

An agency may be terminated in the following two ways:

1. By act of parties: An agency may be brought to an end by act of parties in any one of the following manners:
  - by mutual consent
  - by breach of contract
  - by revocation of authority by the principal
  - by renunciation of agency by agent
2. By operation of law: An agency terminates by operation of law in following ways:
  - On completion of business
  - On death of principal or agent
  - Insanity of either party
  - Insolvency of the principal
  - Efflux of time
  - Destruction or loss of subject-matter
  - Change of law
  - War

### **Relationship Under Agency**

An agency creates, the following three kinds of relationships or contracts:

1. Between principal and agent: The relationship between principal and agent is based on a contract which the principal makes with the agent. This aspect of agency indeed, supports the doctrine of privity of contract. [Section 182]
2. Between agent and third party: The relationship between agent and third party arises when the agent acting within the scope of his authority enters into a contract with the third party. According to first part of Section 230 of the Indian Contract Act, the general rule is that the agent can neither sue nor be sued by the third party on the contract made by him with the third party. But, when

there is a contract between the principal and the agent to the effect that the agent would be personally entitled to sue or bound by the contract, the agent can sue or be sued.

The second part of Section 230 of the Act provides that in following cases an agent can sue the third party:

(a) where contract is made by an agent for the sale or purchase of goods for a merchant residing abroad [Section 230(1)]

(b) where the agent does not disclose the name of the principal [Section 230 (2)]

(c) where the principal though disclosed, cannot be sued e.g. where the principal is non-existent or incompetent [Section 230 (3)]

3. Between principal and third party: Section 226 of the Indian Contract Act provides that contracts entered into through an agent and obligations arising from acts done by an agent may be enforced in the same manner and will have the same legal consequences as if the contracts had been entered into and acts done by the principal in person. This section makes it clear that as a general rule a contract made by an agent, within scope of his authority, with third party confers rights and imposes liabilities upon the principal.

**Difference between Agent and Servant:** The Supreme Court in *Lakshminarayan Ram Gopal and Sons Ltd v. Govt of Hyderabad* [AIR 1954 SC 364] laid down the distinction between ‘agent’ and ‘servant’:

<b>AGENT</b>	<b>SERVANT</b>
An agent is authorized to act on behalf of his principal and create contractual obligations between the principal and a third party	A servant does not have the authority to create contractual obligations between the principal and a third party
The principal has the authority to direct the agent as to what he has to do but he cannot direct how it is to be done	The master can direct a servant as to what has to be done and also how it should be done
An agent is paid in terms of commission	A servant gets his salary or wages
An agent can work for different principals at the same time	A servant usually works under one master at a given point of time
The agent offers and accepts new proposals from the third party on behalf of	A servant cannot create any such legal relations

his principal and thus new legal relations are created in law of agency	
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### **SUB-AGENT**

Section 191 of the Indian Contract Act, 1872 defines sub-agent. According to this section “a sub-agent is a person employed by, and acting under the control of, the original agent in the business of the agency”. The appointment of an agent may be done properly or improperly, which determines the relationship between the principal and the sub-agent. Thus, there are two types of delegation-

- Proper delegation-This comes under section 192 of the Indian Contract Act, 1872. This is when an agent having the authority to do so, appoints a sub-agent.
- Improper delegation-This comes under section 193 of the Indian Contract Act, 1872. This is when an agent without any authority appoints a sub-agent.

<b>AGENT</b>	<b>SUB-AGENT</b>
An agent is appointed by a principal and is under his control.	A sub-agent is appointed by an agent and as such is under the control of the agent.
An agent acts under the principal.	A sub-agent acts under an agent.
A privity of contract exists between a principal and an agent.	No privity of contract exists between a principal and a sub-agent.
An agent can ask for remuneration from the principal.	A sub-agent cannot ask for remuneration from the principal.

### **SUBSTITUTED AGENT**

Sections 194 and 195 talk about substituted agents. When an agent having the authority to do so, names another person to act for the principal in the business of the agency, then such a person is called a substituted agent and not a sub-agent. Thus, a contractual relation comes in existence

between the principal and the substitute agent and therefore the substituted agent is directly liable to the principal to perform his duties.

**DIFFERENCE BETWEEN SUB-AGENTS AND SUSTITUTED AGENTS:**

<b>SUB-AGENT</b>	<b>SUSTITUTED AGENTS</b>
An agent appoints a sub-agent and therefore a sub-agent is under the control of an agent.	A substituted agent is only named by the agent but is under the control of the principal.
A sub-agent acts under the agent.	A substituted agent acts independently for his principal.
A sub-agent cannot be held liable by the principal, except in case of fraud.	A substituted agent can be held liable by his principal.
A sub-agent is not entitled to any remuneration from the principal.	A substituted agent can ask for his remuneration from his principal.
No contract exists between a sub-agent and the principal.	A contractual relationship exists between the substituted agent and the principal.
An agent is liable for the acts of the sub-agent.	An agent is not liable for the acts of substituted agent.