

### 3. CONTRACT OF AGENCY

#### QUESTION WISE ANALYSIS OF PREVIOUS EXAMINATIONS

No.	M-10 To N-10	M-11	N-11 To M-12	N-12	M-13 To M-14	N-14	M-15	N-15	M-16	N-16	M-17	N-17	M-18 (O)	M-18 (N)	N-18 (O)	N-18 (N)	M-19 (O)	M-19 (N)	N-19 (O)	N-19 (N)
THEORY QUESTIONS																				
T1	1	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
T5	1	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
T9	-	1	-	-	5	-	1	-	-	-	-	-	-	-	-	-	-	-	-	-
T10	-	-	-	-	-	-	-	-	4	-	-	-	-	-	-	-	-	-	-	-
T18	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	2	-	-
PRACTICAL QUESTIONS FOR CLASSROOM DISCUSSION																				
P1	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	4	-	-
P6	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	3	-	-	-	-
P7	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	4
P11	-	-	4	-	-	-	-	-	4	-	-	-	-	-	-	-	-	-	-	-
P16	-	-	-	-	-	4	-	-	-	-	-	-	-	-	-	-	4	-	-	-

#### CHAPTER OVERVIEW

SECTION	TOPIC	STARTING PAGE NO.
1.	THEORY FOR CLASSROOM DISCUSSION	3.1
2.	DIFFERENCES FOR STUDENTS SELF STUDY	3.17
3.	QUESTIONS FOR ACADEMIC INTEREST STUDENTS SELF STUDY	3.17
4.	PRACTICAL QUESTIONS FOR CLASSROOM DISCUSSION	3.18
5.	PRACTICAL QUESTIONS FOR STUDENTS SELF PRACTICE	3.23
6.	IMPORTANT SECTION NUMBERS	3.26
7.	TEST YOUR KNOWLEDGE	3.27

#### SECTION 1: THEORY FOR CLASSROOM DISCUSSION

- 1) In the modern business world, sometimes it is not possible to run a business without the help of agents. This is due to increasing volume and complexities of business. Therefore, it is necessary to know the law relating to agency.
- 2) The law of agency is covered from sections 182 to 238 of the Indian Contract Act, 1872.

**Q.No.1. Define the term Agency? What are the Essential features of Agency Contract? (B)**  
**(NEW SM, OLD SM, OLD PM, N10 - 1M)**

The Indian Contract Act, 1872 does not define the word 'Agency'.<sup>1 2 3</sup>

**AGENT & PRINCIPAL [SEC.182]:**

- 1) 'Agent' is a person, employed
  - a) To do any act for another or
  - b) To represent another in dealings with third persons.
- 2) The person for whom such act is done, or who is so represented, is called the 'Principal'.

**ESSENTIAL FEATURES OF AGENCY:**

- 1) **Principal is bound by the acts of agent:** The presumption under 'Law of agency' is "the principal is bound by the acts of the agent and he is answerable to third parties".
- 2) **Consideration is not necessary:** Contract of agency is still valid, even if there is no consideration. The acceptance of the office of an agent is regarded as a sufficient consideration for the appointment<sup>4</sup>.
- 3) **Capacity to employ an agent:**
  - a) Any person who is competent to contract can employ an agent.
  - b) In other words, a person who - (i) has attained age of majority and (ii) is of sound mind can appoint an agent.
- 4) **Capacity to be an agent:**
  - a) As between principal and the third parties, any person can become an agent.
  - b) Even a person who - (i) has not attained majority, or (ii) is of unsound mind, can become an agent of another. But such persons are not responsible to their principal.

**ADDITIONAL INFORMATION FOR ACADEMIC INTEREST:**

**TEST OF AGENCY:**

- a) If a person has a capacity to bind the principal and make him responsible to a third person by establishing a contract between them, he is said to be an agent.
- b) The agent can establish Privity of Contract between the principal and third parties.

*The Rule of Agency is based on the maxim "Qui facit per alium, facit per se" i.e., he who acts through an agent is himself acting.*

**SIMILAR QUESTION:**

1. Who can be called as agent and who can be called as principal? Can agent bind the principal for his actions?
- A. Refer above answer

**Q.No.2. Can a Minor act as an Agent?**

**(C) (NEW SM, OLD SM)**

- a) Section 184 of the Contract Act provides that any person can become an agent. In other words, even a minor can become an agent and the principal is held liable for his acts.
- b) Agent is a mere connecting link between the principal and the third party. Therefore it is immaterial, whether the agent is legally competent to contract or not. Thus, there is no bar to appoint minor as an agent.

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- 1) It only defines the words 'Agent' and 'Principal'. The relationship of agency arises when one person called the agent has authority to act on behalf of another person who is called as principal.
  - 2) Ex 1: A, who wishes to sell his house, appoints B to find a purchaser for it. Here A is Principal and B is an agent representing A.
  - 3) Ex 2: Mr. X, has appointed Mr. Y who is a legal practitioner, to present in the arbitral tribunal on his behalf for settlement of a case. In this Mr. X is principal and Mr. Y is an agent.
  - 4) Giving up or ceding or parting with by the principal is the consideration given by the Principal to Agent.

- c) Thus, if the agent is not having capacity to contract, the principal cannot hold the agent liable, in case of his misconduct or where the agent has been negligent in performance of his duties.

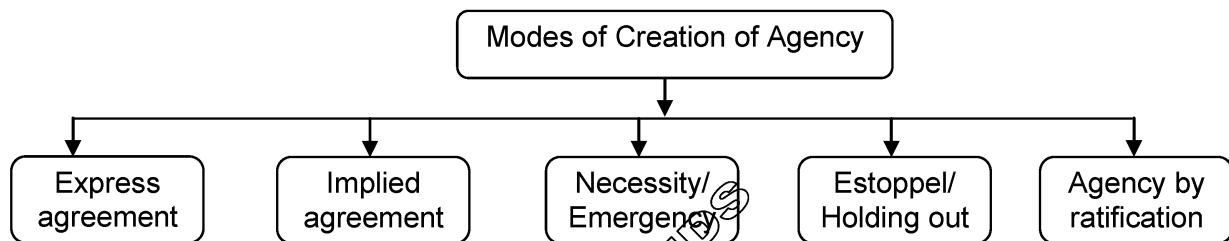
**(IMMEDIATELY REFER PRACTICAL QUESTION 1)**

**SIMILAR QUESTION:**

- Can any person who has not attained 18 years of age be appointed as an Agent? Comment.  
A. Refer above answer.
- P appoints Q, a minor, to sell his car for not less than Rs. 2,50,000. Q sells it for Rs. 2,00,000. Is the sale by Q binding on P? Can P recover amount of Rs. 50,000 being difference between amount authorized and the sale amount from Q? What would be your answer in case Q is not a minor and of unsound mind?  
A. P will be held bound by the transaction and further shall have no right against Q for claiming the compensation for having not obeyed the instructions, since Q is a minor and a contract with a minor is 'void-ab-initio'.  
The answer remains same even Q is not a minor but unsound mind.

**Q.No.3. Different modes of creation of Agency.**

**(B) (NEW & OLD SM)**



- AGENCY BY EXPRESS AGREEMENT (Sec 186):**
    - Agency by express authority arises, when authority is given by words spoken or written.
    - Such an agreement may be oral or in writing.
    - No particular form or words required for appointing an agent<sup>5</sup>.
  - AGENCY BY IMPLIED AGREEMENT (Sec 187):** An authority is said to be implied when it is to be inferred from the circumstances of the case.
  - AGENCY BY ESTOPPEL<sup>7</sup> / HOLDING OUT (Sec 237):**
    - Agency by estoppel arises, where a person by his conduct or words, induces another person to believe that a certain person is his agent,
    - Subsequently he can't deny the fact of agency.
  - AGENCY OF NECESSITY<sup>8</sup>/EMERGENCY (Sec. 189):** In some cases, law gives authority to one person to act as agent for another without any specific consent from the Principal. Such an agency is called an agency of necessity.
- 5) A is residing in Delhi and he has a house in Kolkata. A appoints B by a deed called the power of attorney, as a caretaker of his house. Agency is created by express agreement.  
If a customer of a bank wishes to transact his banking business through an agent, the bank will require written evidence of the appointment of the agent and will normally ask to see the registered power of attorney appointing the agent.
- 6) Eg: A owns a shop in Noida but lives in Delhi. He visits the shop occasionally which is managed by B. B usually orders goods from C in A's name for the shop, and pays them out of A's funds with A's knowledge. B has an implied authority from A to order goods from C in his name for shop.
- 7) 'Estoppel' means that a person is stopped or prevented from denying the truth of a statement, which he has made.  
E.g.1: If Piyal (the principal) has for several months permitted Sunil to buy goods on credit from Prasad and has paid for the goods bought by Sunil, Piyal cannot later refuse to pay Prasad who had supplied goods on credit to Sunil in the belief that he was Piyal's agent and was buying the goods on behalf of Piyal. Piyal is stopped from now asserting that Sunil is not his agent because on earlier occasions he permitted Prasad to believe that Sunil was his agent and Prasad had acted in that belief.
- 8) Example: Raja has a large farm on which Shyam is the caretaker. When Raja is in Canada, there is a huge fire on the farm. Shyam becomes an agent of necessity for Raja so as to save the property from being destroyed by fire. Raja (the principal) will be liable for any expenses, Shyam (his agent of necessity) incurred to put out the fire and save the farm from destruction during Raja's absence from the country.

**5) AGENCY BY RATIFICATION (Sec. 196):**

- a) Ratification means confirmation of the acts already done.
- b) Sometimes a person may do some acts on behalf of another person without his knowledge or authority. Later on, if that other person ratifies the acts done on his behalf then agency is created by ratification<sup>9</sup>.
- c) Ratification may be express or implied<sup>10</sup>.
- d) On ratification, Principal is responsible by the acts done by Agent.

**SIMILAR QUESTIONS:**

1. Mahesh informs Rahul in the presence of Pradeep that Pradeep is his agent. Later on, Rahul enters into agreement with Pradeep believing Pradeep to be the agent of Mahesh. Is Mahesh liable for the acts of Pradeep?
  - A. Yes, Pradeep is an agent to Mahesh by way of agency by estoppel. *(First write about Agency by Estoppel)*
2. X consigned some vegetables from Delhi to Mumbai by a truck. The truck met with an accident. The vegetable being perishable were sold by the transporter. Is this sale binding on X?
  - A. Yes, the sale is binding on X because the transporter became an agent by necessity. *(First write about Agency by Necessity)*
3. X allows Y, his servant, to purchase goods for him on credit from Z and later on pays for them. One day X pays cash to Y to purchase goods. Y misappropriates the money and purchases goods on credit from Z. Can Z recover money from X?
  - A. Z can recover the price of the goods from X because X had held out Z as his agent on earlier occasions. *(First write about Agency by Estoppel)*
4. A woman allowed her son to drive a car for her and she incurred all the maintenance and repair expenses. But the son caused an accident injuring their neighbor. Now neighbor wants to sue mother as she is the one who gave permission to drive the car. Can he do so?
  - A. Yes, neighbor can sue because there is an implied authority between mother and son. *(First write about Agency by Implied authority)*
5. A authorizes B to buy 500 pieces of sunlight soap for him but B buys 500 pieces sunlight and 200 pieces Henko at a total Price of Rs 5,000. A refused to pay to B. Can A cancel the contract?
 

Ans: A may cancel or ratify the whole transaction.
6. Mr. A bought some goods on behalf of Mr. P in excess of the price authorized by Mr. P from Mr. Z. But Mr. P objected to the purchase but sold some of the goods. Now can Mr. Z recover the amount from Mr. P or from Mr. A.
  - A. Recovery is possible from Mr. P as it is an implied ratification. *(First write about Agency by Ratification)*

<b>Q.No.4. What are the essentials to be fulfilled to create agency by estoppel.</b>	<b>(B) (NEW SM)</b>
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**MEANING:** Refer 3<sup>rd</sup> point in 3<sup>rd</sup> question

According to section 237 of the Contract Act, an agency by estoppel may be created when following essentials are fulfilled:

- 1) The principal must have made a representation;
- 2) The representation may be express or implied;
- 3) The representation must state that the agent has an authority to do certain act although really he has no authority;
- 4) The principal must have induced the third person by such representation; and
- 5) The third person must have believed the representation and made the contract on the belief of such representation.

9) X who is Y's agent has on 10th January 2019 purchases goods from Z on credit without Y's permission. After the purchase, on 20th January 2019, Y tells X that he will accept responsibility to pay for the purchases although at the time of purchase the agent had no authority to buy on credit. Y's subsequent statement on 20th January 2019 amounts to a ratification of the agent's (X's) purchase of goods on 10th January 2019.

10) Eg: A, without B's authority, lends B's money to C. Afterwards B accepts interest on the money from C. B's conduct implies a ratification of the loan.



**Q.No.5. What is meant by Agency by Ratification? State some rules for valid ratification. (Or) The relationship of Principal and Agent may be constituted by subsequent ratification by the Principal. (Sec.196)**  
**(A) (NEW SM, OLD PM, CMA D11 - 4M, N03 - 6M, N06 - 5M, M10 - 1M)**

**Agency by Ratification:** Refer Question 3 point (v).

**FOLLOWING ARE THE RULES OF RATIFICATION.**

- 1) **Existence of Principal:** Principal must be in existence at the time when contract was entered in his name.
- 2) **Express or Implied(Section 197):** Ratification may be expressed or may be implied by the conduct of the person on whose behalf the act was done.
- 3) **Full Knowledge (Section 198):** Ratification is valid only when the Principal who ratifies has a full knowledge of **the facts**.
- 4) **Ratification of Part transaction is not permitted and not allowed (Section 199):**
  - a) One can either ratify the act completely or reject the same completely.
  - b) When a person ratifies a part of the unauthorized transaction, it is treated as the ratification of whole transaction.
- 5) **No damage to third party (Section 200):**
  - a) Ratification cannot be made, which has the effect of –
    - subjecting a third party to damages, or
    - terminating any right or interest of a third person
  - b) In other words, when the interest of third parties is affected, the principle of ratification does not apply<sup>11</sup>.
- 6) **Reasonable Time:** Ratification must be made within a reasonable period of time. (*Reasonable time depends on the circumstances of each case*).
- 7) **Communication of ratification:** Ratification must be communicated to the other party.
- 8) **Lawful Act:** The act to be ratified must be a lawful one. Ratification of an illegal act or an act which is void-ab-initio, is not possible<sup>12</sup>.

**(IMMEDIATELY REFER PRACTICAL QUESTION 2)**

**SIMILAR QUESTIONS:**

1. X, without Y's authority buys 100 bales of cotton. Y wants to ratify this transaction to the extent of 60 bales and reject the rest. Can Y do so?  
A. No. If he does so, it will be treated as the ratification of whole transaction of 100 bales.
2. A has an authority from P to buy certain goods at the market rate. He buys at a higher rate but P accepts the purchase. Afterwards P comes to know that the goods purchased by A for P belonged to A himself. Is ratification done by P valid? Explain the rules for Valid Ratification.  
A. The ratification is not binding on P as Mr. P ratified without full knowledge of the facts.
3. Mr. X managing director of a company, without prior authority from the company accepted an offer made by Mr. Y on behalf of the company, but the company ratified Mr. X's acceptance. Mr. Y wants to revoke the offer because the company not directly accepted but ratified. Is the company ratification amounts to acceptance?  
A. Yes, ratification by company amounts to acceptance by company. Ratification will have retrospective effect.

**Q.No.6. Authority of an Agent**

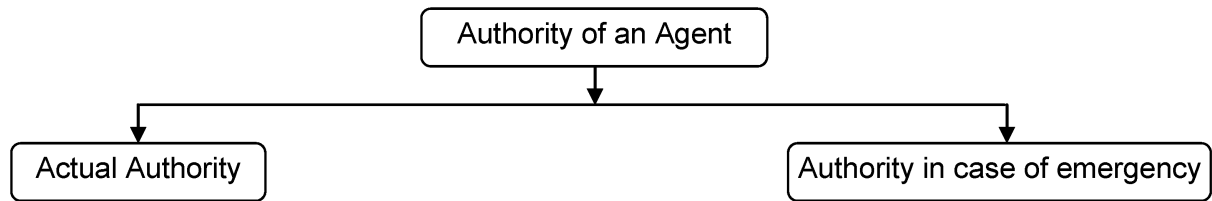
**(A) (NEW SM, OLD SM)**

**AGENT'S AUTHORITY:** It means capacity of the agent to make his principal responsible to third parties. The agent can bind the principal only if he acts within the scope of his authority.

- 11) X is in possession of a horse belonging to Y. Z without Y's authority demands on behalf of Y the delivery of that horse. X refuses to deliver the horse. Y cannot ratify the demand made by Z so as to make X liable for damages for his refusal to deliver.
- 12) Payment of dividend out of capital is void and cannot be ratified.

The extent of an agent's authority, whether expressed or implied is determined by:

- 1) The nature of the act or the business he is appointed to do
- 2) Things which are incidental to the business or are usually done in the course of such business,
- 3) The usage of trade or business.



The agent's authority is governed by two principles, namely (a) in normal circumstances and (b) in emergency.

- 1) **Agent's authority in normal circumstances [Section 188]:** If Agent is employed to do an act: An agent, having an authority to do an act, has authority to do every lawful thing which is necessary in order to do such act.

If Agent is employed to carry on business: An agent having an authority to carry on a business, has authority to do every lawful thing necessary for the purpose, or usually done in the course, of conducting such business<sup>13</sup>.

- 2) **Agent's authority in an emergency [Section 189]:** An agent has authority, in an 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, under similar circumstances.

To constitute a valid agency in an emergency, following conditions must be satisfied.

- a) The agent must have been in possession of the goods belonging to his principal and which are the subject of contract.
- b) The Agent was not in a position to communicate with principal.
- c) There was an actual and definite commercial necessity for acting on behalf of Principal.
- d) The act was done bonafide.
- e) The agent has exercised such reasonable care as a man of ordinary prudence would have exercised in his own case<sup>14</sup>.

**NOTE:** If agent acts beyond the scope of his authority then he will be personally liable and principal cannot be held liable.

**(IMMEDIATELY REFER PRACTICAL QUESTION 3)**

#### **SIMILAR QUESTIONS:**

1. Mr. K who is in Kolkata appointed Mr. Q in Mumbai as agent for the purpose of manufacture of furniture. For that purpose Mr. Q purchased timber and other raw materials. Is the purchase valid?  
A. Yes, an agent has implied authority to purchase materials to complete contract.
2. Amar is employed at London. To recover his debts at Bombay due to Bobby, he appoints Chetan to recover his debt. Can Chetan give discharge of debt?  
A. An agent has authority to do every lawful thing, which is necessary in order to do such act. Chetan, an agent has authority to take action to recover debts as well as on payment of debts; he can give valid discharge of debt.
3. What is agent's authority in case of an emergency? What are the essential conditions to be satisfied to constitute a valid emergency? Give your answer as per the provisions of the Indian Contract Act, 1872.  
A. Refer Point B

**(MTP1 M19 - 4M)**

- 13) A constitutes B as his agent to carry on his business of a shipbuilder. B may purchase timber and other materials, and hire workmen, for the purposes of carrying on the business.

- 14) An agent for sale may have goods repaired if it be necessary.

A consigns provisions to B at Kolkata, with directions to send them immediately to C at Cuttack. B may send the provisions at Kolkata, if they will not bear the journey to Cuttack without spoiling.

**Q.No.7. Who is a sub-agent? Is the appointment of Sub-agent valid? Discuss the implications on appointment of Subagent. (B) (NEW SM, OLD SM)**

**SUB – AGENT:** A ‘Sub-agent’ is a person:

- 1) Who is employed by original agent, **and**
- 2) Who is acting under the control of the original agent in the business of the agency<sup>15</sup>

**IS THE APPOINTMENT OF SUB-AGENT VALID?**

- 1) The appointment of sub agent is not lawful, because the agent is a delegatee and a delegatee cannot further delegate.
- 2) *This is based on the Latin principle “delegatus non potest delegare”.*

**EXCEPTIONS (SEC.190):** An Agent may appoint a sub-agent and delegate the work to him if-

- 1) There is custom of trade, or
- 2) The appointment of a subagent would be valid if the terms of appointment is originally required it.

**EFFECTS OF APPOINTMENT OF SUB-AGENT:**

BASIS	SUB-AGENT IS APPOINTED PROPERLY	SUB-AGENT IS NOT APPOINTED PROPERLY
<b>Is Principal bound?</b>	The Principal is bound by the acts of sub-agent	The Principal is not bound by the acts of sub-agent
<b>Is Original Agent responsible?</b>	The original agent <u>is responsible to the principal for the acts of the sub-agent</u> <sup>16</sup>	The original agent <u>is responsible for the acts of the sub-agent both to the Principal and to the Third Persons.</u>
<b>Is Sub Agent responsible?</b>	The <u>sub-agent is responsible for his acts to the agent, but not to the principal except in the cases of fraud or willful wrong.</u>	The <u>sub agent is responsible for his acts to the original agent but not to the Principal even in cases of fraud or willful wrong.</u>

**RATIFICATION OF SUB-AGENT’S ACTS:**

- 1) If the sub-agent purportedly acts in the name of first Principal then the first principal may ratify the act of sub agent.
- 2) However, if the sub agent acts in his own name or in the name of the agent who has without authority delegated to the sub agent the business which is in fact of the Principal then the Principal cannot ratify such acts of sub agent.

**(IMMEDIATELY REFER PRACTICAL QUESTION 4)**

**SIMILAR QUESTION:**

1. Principal is not always bound by the acts of a sub-agent. Comment (OLD PM, MTP N18)
- A. True. Refer the point “Sub-Agent NOT appointed properly” in the above table.
2. Mr. Ram entered into contract with Mr. Robert for construction of his house. Mr. Robert appointed Mr. Rahim for the purpose of construction of House. Discuss the implications on appointment of Mr. Rahim?
- A. If the appointment of sub agent is as per specific contract or as per tradition and custom, then the appointment is valid.
3. The acts of sub agent may be ratified by the principal when the sub agent acted in the name of agent. True or False?
- A. False.

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15) A authorizes B, a merchant in Kolkata, to recover the moneys due to A from C & Co. B instructs D, a solicitor, to take legal proceedings against C & Co. for the recovery of the money. D is not a sub-agent, but is a solicitor for A.

16) A, a carrier agreed to carry 60 bags of cotton waste from Chennai to Coimbatore, by a truck. A asked B, another carrier to carry the goods. The goods were damaged in transit. Held, A was liable even though it was proved that B was the carrier

**Q.No.8. Who is substituted agent? Explain the relationship between Principal and Substituted Agent (A) (NEW SM, OLD SM)**

**SUBSTITUTED AGENT:** Substituted Agent is a person appointed by the original agent to act for the Principal with the knowledge and consent of the principal<sup>17</sup>.

**RELATION BETWEEN PRINCIPAL AND PERSON DULY APPOINTED BY AGENT TO ACT IN BUSINESS OF AGENCY (SECTION 194):**

- 1) Substituted agent is not a sub-agent.
- 2) Because substituted agent is an agent of the principal for such part of the business of the principal which required another agent.
- 3) Substituted agent acts under the direct control of Principal and not under Principal's Agent.
- 4) Original Agent, who referred Substituted agent, is not concerned with the efficiency of the Substituted agent.

**AGENT'S DUTY IN NAMING SUCH PERSON (Section 195):** In selecting such agent for his principal, an agent is bound to exercise the same amount of discretion as a man of ordinary prudence would exercise in his own case; and, if he does this, he is not responsible to the principal for the acts or negligence of the agent so selected.

**(IMMEDIATELY REFER PRACTICAL QUESTION 5, 6)**

**SIMILAR QUESTION:**

1. A directs B, his solicitor, to sell his estate by auction, and to employ an auctioneer for the purpose. B appoints C, an auctioneer, to conduct the sale. Is A bound by the sale made by C? What is the relationship between A and C?  
A. Refer above answer. (C is a Substituted Agent)
2. Extending the above case, Is Mr. B responsible to Mr. A if Mr. C has misappropriated the money from sale of estate in auction?  
A. Mr. B is not responsible when Mr. B has exercised prudence in appointing Mr. C.

**Q.No.9. What is an Irrevocable Agency? When such agency is created?**

**(A) (NEW SM, N09, M11 - 1M, M15 - 1M)**

The term 'Irrevocable agency' means an agency that cannot be revoked or terminated by the Principal.

**1) AGENCY COUPLED WITH INTEREST (Sec 202):**

- a) Agency will be treated as agency coupled with interest where agent himself has interest in subject matter.<sup>18</sup>
- b) In the absence of an express contract, such agency cannot be terminated.
- c) Agency coupled with interest does not come to an end even after the death or insanity or insolvency of the Principal.
- d) The interest of an agent must exist at the time of creation of agency.

**2) WHERE THE AGENT HAS PARTLY EXERCISED HIS AUTHORITY (Sec 204):** If agency authority has been partly exercised by the Agent then the Principal cannot revoke it for the obligations that arises from acts already done in the Agency.

**3) WHERE THE AGENT HAS INCURRED PERSONAL LIABILITY:** The Principal cannot revoke the agent's authority for the authorized acts in respect of which the agent has already incurred a personal liability.

**SIMILAR QUESTION:**

1. A gives authority to B to sell A's land and pay to himself out of proceeds, the debt due to him from A. Consider the following circumstances and advise A:  
a) A wants to revoke his authority

<sup>17</sup> Substituted agents are not sub agents they are agents of the principal. Where the principal appoints an agent and if that agent identifies another person to carry out the acts ordered by principal, then the second person is not to be treated as a sub agent but only as an agent of the original principal

- b) If A becomes of unsound mind
- c) If A dies?

A Principal cannot terminate authority of an agent when it is coupled with interest. Such agency is irrevocable, unless there is contract to contrary. -Section 202

Therefore, A cannot revoke his authority. At the same time, it cannot be terminated due to insanity or death of A.

**(IMMEDIATELY REFER PRACTICAL QUESTION 7, 8, 9)**

**Q.No.10. State the duties and obligations of an Agent?**

**(A) (NEW SM, RTP M16, M16 - 4M)**

**FIRST WRITE ABOUT CONTRACT OF AGENCY AND DEFINITION OF AGENT:**

**DUTIES OF AN AGENT:**

**1) Duty to execute mandate:**

- a) The first and foremost duty of every agent is to carry out the mandate of his principal. He should perform the work which he has been appointed to do.
- b) Any failure in this respect would make the agent absolutely responsible for the principal's loss<sup>19</sup>.

**2) Duty to act in accordance with the Directions or Customs of Trade (Sec 211):**

- a) Agent is bound to conduct the business of his Principal as per the directions of his Principal.
- b) In the absence of any such directions, he is bound to conduct the business according to the customs which prevail at the place where the agent conducts such business.
- c) The agent is liable to the principal for any loss if he deviates from the above duty/ obligation.<sup>20</sup>

**3) Requirements as to skill and reasonable care (Sec 212):**

- a) An Agent is bound to conduct the business of the agency with reasonable care and skill.
- b) The standard of reasonable care required from the agent depends upon the nature of business and circumstances of each case<sup>21</sup>.

**4) Duty to render Accounts (Sec 213):**

- a) Agent has to maintain and render proper accounts to his Principal on demand.
- b) *He is bound to maintain accounts even if the contract is illegal or void. Rendering accounts does not mean showing the accounts but the accounts supported by vouchers.*

**5) Duty to communicate with Principal (Sec 214):** Agent is bound to use all reasonable diligence to establish contact with the principal in case of difficulties and obtain his instructions.

**6) Duty not to make secret profits<sup>22</sup>:** It is the duty of an agent not to make any secret profit in the business of agency. His relationship with the principal is of fiduciary nature and this requires absolute good faith in the conduct of agency.

19) Example: X, a commission agent purchased goods for his principal and stored them in a godown pending their dispatch. X was under instruction to insure them. He actually charged the premium for insurance but failed to insure the goods. The goods were lost in an explosion in Bombay harbor. X was held liable to compensate the principal for his loss minus the amount received under the Bombay explosion (compensation) ordinance, 1944. (Pannalal Jankidas V Mohanlal)

20) A employs B to recover Rs. 1,00,000 from C, and to invest it in good security. B recovers Rs. 1,00,000 and invested Rs. 90,000 in good security, but invested Rs.10,000 on security which is ought to have known to be bad, whereby A loses Rs.2,000. B is entitled to remuneration for recovering Rs.1,00,000 and for investing Rs. 90,000. However, He is not entitled to any remuneration for investing Rs. 10,000 and B must make repay the loss of Rs. 2,000 to A.

A, an agent engaged in carrying on for B a business, in which it is the custom to invest from time to time, at interest, the moneys which may be in hand, omits to make such investment. A must make good to B the interest usually obtained by such investment.

21) E.g.: A, an insurance-broker, employed by B to affect insurance on a ship, omits to see that the usual clauses are inserted in the policy. The ship is afterwards lost. In consequence of the omission of the clauses nothing can be recovered from the underwriters. A is bound to make good the loss to B.

22) Secret Profit means any advantage obtained by the agent over and above his agreed remuneration and which he would not have been able to make but for his position as agent.

**7) Duty not to deal on his own account (Sec 215 & 216):**

- a) An agent should not deal on his own account in the business of the agency, without first obtaining the consent of his principal<sup>23</sup>.
- b) If agent deals against to the above condition, then the principal may repudiate (cancel) the transaction, if the case shows either that any material fact has been dishonestly concealed (hidden) from him by the agent, or that the dealings of the agent have been disadvantageous to him.<sup>24</sup>
- c) If an agent, without the knowledge of his principal deals in the business of the agency on his own account instead of on account of his principal, the principal is eligible to claim from the agent any benefit which may have resulted to him from the transaction.

**8) Agent's duty to pay sums received for Principal (Sec 218):** Agent is bound to pay to his Principal, all sums received on his account. However, Agent can deduct lawful expenses incurred for agency work and remuneration due to him.**9) Protect Interests of the Principal (Sec 209):**

- a) Agency is terminated on the death or insanity of the Principal.
- b) In such case, it is the duty of Agent to take all reasonable steps to protect interest of Principal.

**10) Duty not to delegate authority (Sec 190):** Agent cannot employ another person to perform his act in express or implied manner unless custom of trade or nature of agency so requires<sup>25</sup>.**11) Duty not to use any confidential information received in the course of agency against the principal.****SIMILAR QUESTION:**

1. ABC Ltd sells its products through some agents and it is not the custom in their business to sell the products on credit. Mr. Pintu, one of the agent sold goods of ABC Ltd to M/s Parul Pvt. Ltd. on credit which was insolvent at the time of such sale. ABC Ltd, sued Mr. Pintu for compensation towards the loss caused due to sale of products to M/s. Parul Pvt. Ltd. Will ABC Ltd. succeed in its claim?  
A. Yes ABC Ltd will succeed in its claim as Mr. Pintu has not acted according to the directions of principal or custom of trade.
2. Mr. X directed Mr. Y an auctioneer to sell his goods. Mr. Y sold the goods to Mr. Z and received some secret commission from Mr. Z in addition to the normal commission from Mr. X. Is Mr. X can sue Mr. Y for recovery of secret commission?  
A. Yes Mr. X can sue for recovery of secret commission because Mr. Y has acted dishonestly.
3. A, an agent for the sale of goods, having authority to sell on credit, sells to B on credit, without making the proper and usual enquiries as to the solvency of B. B, at the time of such sale is insolvent. Is A liable to compensate to B?  
A. A must make compensation to his principal in respect of any loss thereby sustained.
4. A, a merchant in England, directs B, his agent at Mumbai, who accepts the agency, to send him 100 bales of cotton by a certain ship. B, having it in his power to send the cotton, omits to do so. The ship arrives safely in England. Soon after her arrival the price of cotton rises. Is A liable to compensate B for any profit which he may be made?  
A. B is bound to make good to A the profit which he might have made by the 100 bales of cotton at the time the ship arrived, but not any profit he might have made by the subsequent rise.
5. A, a merchant in Kolkata, has an agent, B, in London, to whom a sum of money is paid on A's account, with orders to remit. B retains the money for a considerable time. A, in consequence of not receiving the money, becomes insolvent. Is B liable to A?  
A. B is liable for the money and interest from the day on which it ought to have been paid, according to the usual rate, and for any further direct loss- as, e.g. by variation of rate of exchange-but not further.
6. Mr. Karna is the agent of Suyodhana. Mr. Karna has received money for sale of articles which are sent by Suyodhana. Before sending of the money Mr. Karna has been intimated about the death of Suyodhana. Now Mr. Karna wants to retain the money belonging to Mr. Suyodhana. Can Mr. Karna retain the money of Mr. Suyodhana?  
A. No, Mr. Karna cannot retain total money of Mr. Suyodhana. Mr. Karna should protect the interest of his principal Suyodhana.

**(IMMEDIATELY REFER PRACTICAL QUESTION 10, 11)**

23) A directs B, his agent, to buy a certain house for him. B tells A it cannot be bought, and buys the house for himself. A may, on discovering that B has bought the house, compel him to sell it to A at the price he gave for it.

24) A directs B to sell A's estate. B buys the estate for himself in the name of C. A, on discovering that B has bought the estate for himself, may repudiate the sale if he can show that B has dishonestly concealed any material fact, or that the sale has been disadvantageous to him.

25) If specifically provided in the agency agreement then the agent can delegate his authority to another person.

Q.No.11. State the rights of an Agent against his Principal.

(B) (NEW SM)

**FIRST WRITE ABOUT CONTRACT OF AGENCY AND AGENT****RIGHTS OF AN AGENT:**

- 1) **Right of Retention (Sec 217):** Agent can retain, out of the sums received on Principal's account, all monies due to him by way of –
  - (a) Advances made, or (b) Expenses incurred, or (c) Remuneration payable to him.
- 2) **Right to Remuneration (Sec 219):**
  - a) Agent has right to receive remuneration as per agreement.
  - b) In the absence of Contract to contrary, he is entitled to receive reasonable remuneration which is customary in the business.
  - c) However, he shall not be entitled to any remuneration if he is guilty of misconduct in the business.
- 3) **Right of lien (Sec 221):** In the absence of any contract to contrary, an Agent is entitled to retain the goods, properties, and books for any remuneration due to him. However, the possession of such property should be lawful.
- 4) **Right to indemnity:**
  - a) **Right of indemnification for lawful acts (Sec 222):** The principal is bound to indemnify the Agent against consequences of all lawful acts done within his authority<sup>26</sup>.
  - b) **Right of Indemnification against the acts done in good faith (Sec 223):**
    - i) Where the agent acts in good faith on the instruction of Principal, agent is entitled for indemnification of any loss or damage from the principal.
    - ii) However, agent cannot claim any reimbursement or indemnification for any loss etc. arising out of the acts done by him in violation of any penal laws of the country.
  - c) **Non-liability of employer of agent to do a criminal act (Sec.224):** If the principal employs an agent to do an act which is criminal, the principal is not liable to the agent, either upon an express or an implied promise, to indemnify him against the consequences of that act<sup>27</sup>.
- 5) **Right of Compensation (Sec 225)<sup>28</sup>:** Agent has right to receive compensation for the loss suffered due to Principal's negligence or want of skill.

**NOTE:** Rights of an Agent = Duties of Principal**SIMILAR QUESTIONS:**

1. Mr. B (a broker) by the orders of Mr. A purchases 10 drums of oil for A from Mr. C. Afterwards Mr. A refuses to receive oil. Mr. C sues Mr. B who informs Mr. A but Mr. A repudiates the contract. Although Mr. B defends but failed. Mr. B has to pay cost, damages and incurs expense. Can B recover any amount from A?
    - A. Mr. A (Principal) is liable to pay Mr. B (Agent) cost, damage and expenses incurred.
  2. Mr. X an agent introduced a customer to purchase the principal property. The sale was settled and an advance is received. The sale could not complete because the customer was unable to pay. State whether the agent is entitled to remuneration.
    - A1) The agent is entitled to remuneration if the agency agreement specifies to pay when the customer is introduced.
    - A2) The agent was not entitled to remuneration if the agency agreement specifies to pay when the sale completes.
  3. Mr. Cat is the Agent of Mr. Dog. Mr. Cat is given the responsibility to purchase furniture on behalf of Mr. Dog. Therefore Mr. Cat has made advance for the purchase of furniture. But Mr. Dog refused to pay for the furniture because of which Mr. Cat lost advance money and also sued for damages. Is Mr. Cat having right to recover money from Mr. Dog?
    - A. Yes Mr. Cat has right to recover both damages and advance money because Mr. Cat has acted lawfully and in good faith.
- 26) 'A' of Delhi appoints 'B' of Mumbai as agent to sell his merchandise. As a result 'B' contracts to deliver the merchandise to various parties. But A fails to send the merchandise to B and B faces litigations for non- performance. Here, A is bound to protect B against the litigations and all costs, expenses arising of that.
- 27) A employs B to beat C, and agrees to indemnify him against all consequences of the act. B thereupon beats C, and has to pay damages to C for so doing. A is not liable to indemnify B for those damages.
- 28) A employs B as a bricklayer in building a house, and puts up the scaffolding himself. The scaffolding is unskillfully put up, and B is in consequence hurt. A must make compensation to B.

4. Mr. S appointed Mr. R for taking sand from ground to roof but didn't mention that the steps to the roof is not in good condition. Therefore Mr. R injured for taking the steps to the roof. Is Mr. S liable for the compensation?
- A. Yes, because of negligence of Mr. S, Mr. R injured.

**(IMMEDIATELY REFER PRACTICAL QUESTION 12)**

**Q.No.12. State the conditions to be satisfied for an agent to exercise lien right? Also state the situations where agent's right of lien is lost.**

**AGENT'S LIEN ON PRINCIPAL'S PROPERTY [Section 221]:** In the absence of any contract to the contrary, an agent is entitled to retain the goods, papers and other property, whether movable or immovable, of the principal received by him, until the amount due to himself for commission, disbursement and services in respect of the same has been paid or accounted for him.

**CONDITIONS TO EXERCISE LIEN RIGHT:**

- 1) The agent should be lawfully entitled to receive from the principal a sum of money by way of commission earned or disbursement made or services rendered in the proper execution of the business of agency
- 2) The property over which the lien is to be exercised should belong to the principal and it should have been received by the agent in his capacity and during the course of his ordinary duties as agent.
- 3) The agent has only a particular lien.

**THE AGENT'S RIGHT TO LIEN IS LOST IN THE FOLLOWING CASES:**

- 1) When the possession of the property is lost.
- 2) When the agent waives his right. Waiver may arise out of agreement express or implied.
- 3) The agent's lien is subject to a contract to the contrary.

**Q.No.13. Agent liability to Third Party (or) What is the relationship between agent, third parties, and the Principal? (C) (NEW SM, OLD SM, PM, M05 - 6M)**

- 1) Principal is bound by the act of the Agent, if agent acts within the scope of his authority.
- 2) The position of Principal with respect to the contracts made by the Agent with Third party may be discussed under following heads:
  - a) Where agent contracts for named Principal
  - b) Where agent contracts for unnamed Principal
  - c) Where agent contracts for Undisclosed Principal

**Q.No.14. State the rights of an agent, principal and third parties if an agent acts for Disclosed principal/Named principal. (A)**

**WHERE AGENT CONTRACTS FOR NAMED PRINCIPAL/DISCLOSED PRINCIPAL:**

- 1) **Agent acts within Principal authority (Sec. 226):**
  - a) Principal is bound by all lawful acts of an Agent, which are done within the scope of his authority.
  - b) It means an act of an Agent is an act of Principal<sup>29</sup>.
- 2) **Agent acts beyond Authority (Sec. 227):** Principal is liable only for acts done within authority. The Principal's liability for the work done by an agent beyond his authority may be discussed under following points:
  - a) **When the work of an Agent is separable:** When an agent does some work beyond authority which is separable from authorized work, Principal is bound by the authorized work of an Agent.

<sup>29</sup> A, being B's agent with authority to receive money on his behalf, receives from C, a sum of money due to B. C is discharged of his obligation to pay the sum in question to B.



- b) **When the work of an Agent is not separable (Sec. 228):** When an agent does some work beyond authority which is not separable from authorized work, Principal is not bound by the whole of work. Principal may cancel the whole transaction.

3) **Notice given to Agent is Notice to Principal (Sec. 229):**

- a) Any notice given to or information obtained by the agent, shall have the same legal consequence as if it had been given to or obtained by the principal<sup>30</sup>.
- b) This means that the knowledge of the Agent is the knowledge of Principal<sup>31</sup>.

4) **Liability of Principal inducing belief that Agent's unauthorized acts are authorized (Sec. 237):**

The Principal is liable for the unauthorized acts of the agent, if the Principal by his conduct created an impression on the third party that the Agent has authority to do such act.

5) **Misrepresentation or Fraud by Agent (depends on facts & cases)(Sec. 238):**

- a) Principal is liable for misrepresentation or fraud committed by his Agent while acting in the course of his business.
- b) However, Principal is not liable for any misrepresentation or fraud of Agent, which do not fall within Agent's authority<sup>32</sup>.

**SIMILAR QUESTION:**

1. Mr. A, being agent of Mr. B for the sale of gold, induces Mr. C to buy them specifying that the gold is 99.9% pure but originally they are 90% pure. Mr. A also gave fake certificate that the gold is 99.9% pure. On knowing the fact of non-pure gold, Mr. C wants to sue Mr. B who is principal of Mr. A. But Mr. B is specifying that his agent Mr. A is liable. Is Mr. B's contention is valid?
- A. Mr. B's contention is not valid. Mr. B himself is liable for misrepresentation of Mr. A.

(IMMEDIATELY REFER PRACTICAL QUESTION 13, 14, 15)

**Q.No.15. Explain provisions relating to rights of an agent, principal and third parties if an agent acts for unnamed principal. (A)**

**WHERE AGENT CONTRACTS FOR UNNAMED PRINCIPAL:**

- 1) **Unnamed Principal:** When Agent contracts with Third party after disclosing the fact that he is an Agent but do not disclose the name of the Principal then the Principal is known as unnamed Principal.
- 2) **Liability of Unnamed Principal:**
- a) Principal is still liable for the contracts entered through the agents.
- b) Third party cannot sue Agent, if the name of Principal is not disclosed but he is aware about name of Principal.
- c) If an Agent refuses to disclose the identity of the Principal, when asked by third party, he will become personally liable on the contract.

**SIMILAR QUESTION:**

1. Mr. P is the agent of Mr. Q for the purpose of sale of toys and has the authority to sell goods on credit. So Mr. P sold toys worth of Rs 50,000 on credit to Mr. S to be payable in one month. Mr. S knew that Mr. P is agent, but doesn't know who is his principal and Mr. P has also not specified the same. After one month Mr. S paid entire amount of Rs 50,000. But Mr. P didn't paid the amount to Mr. Q. Therefore Mr. Q wants to sue Mr. S for recovery of Money. Can Mr. P recover from Mr. S?
- A. Mr. Q cannot recover amount from Mr. S even though Mr. Q is not known to Mr. S. The reason is, even though Mr. Q is unnamed principle but he is principal.

30) E.g.: A is employed by B to buy from C goods of which C is the apparent owner. A was, before he was so employed, a servant of C, and then learnt that the goods really belonged to D, but B is ignorant of that fact. In spite of the knowledge of his agent, B may set off against the price of the goods a debt owing to him from C.

31) X approached LIC agent for an insurance policy. LIC agent gave an insurance policy in favour of X. In this case, LIC (principal) is liable for the policy (which is issued by LIC agent). Any pre-existing diseases disclosed to LIC agent is equivalent to disclosure to Principal (LIC)

32) A, the captain of B's ship, signs bills of lading without having received on board the goods mentioned therein. The bills of lading are void as between B and the pretended consignor.

**Q.No.16. Specify the rules relating to the rights of an agent, principal and third parties if an agent acts for undisclosed principal. (A)**

**WHERE AGENT CONTRACTS FOR UNDISCLOSED PRINCIPAL:**

**1) Undisclosed Principal:**

- In certain cases, an Agent not only conceals the name of the Principal but also the fact that he is an agent. This is known as the 'doctrine of undisclosed principal'.
- In such cases, Agent creates an impression that he is contracting as a Principal himself, i.e. independent party.
- Relationship between Principal, Agent and Third party may be discussed as under:

POSITION OF PRINCIPAL	POSITION OF AGENT	POSITION OF THIRD PARTY
1. He may obtain performance of the contract subject to rights and obligations subsisting between the Agent and Third party	1. Since Agent has contracted in his own name, he is <u>personally liable</u> to Third party. 2. He has all rights of an agent as against Principal 3. He can sue and be sued by <u>Third party</u>	1. When third party comes to know of the Principal, then he can sue (a) Principal or (b) Agent or (c) Both.

**2) Rights of Third Party in case of Undisclosed Principal [Sec 231 & 232]:**

- If the third party comes to know the existence of the principal, he may sue either the Principal or Agent or Both
- Where one man makes a contract with another, neither knowing nor having reasonable ground to suspect that the other is an agent, the principal, if he requires the performance of the contract, can only obtain such performance subject to the rights and obligations subsisting between the agent and the other party to the contract<sup>33</sup>.
- If the principal discloses himself before the contract is completed, the other contracting party may refuse to fulfill the contract, if he can prove that he would have not entered into the contract if he aware of the true position or situation.
- Exception: Consequence of inducing agent or principal to act on belief that principal or agent will be held exclusively liable [Section 234]:** When a person who has made a contract with an agent induces the agent to act upon the belief that the principal only will be held liable, or induces the principal to act upon the belief that the agent only will be held liable, he cannot afterwards hold liable the agent or principal respectively.

**SIMILAR QUESTION:**

- Mr. E has entered into a contract with Mr. G for purchase of Cotton from him. Later on Mr. G has not supplied the Cotton and also came to know that Mr. G is an agent of Mr. L for the cotton. Now Mr. E wants to sue for recovery of damages from Mr. L. Is Mr. E has right to sue?
- A. Yes Mr. E has right to sue against Mr. L as he is an undisclosed principal.

**Q.No.17. Pretended Agent.**

**(C) (NEW SM)**

- PRETENDED AGENT (Sec 235):** A Pretended agent is the one who represents himself to be an agent of another, when in fact he has no authority from such person at all.
- LIABILITY OF PRETENDED AGENT:** He is personally liable to third party for the loss of damage suffered due to such dealing. However, he is not personally liable if the -
  - Principal ratifies the acts of the pretended agent.
  - Third party has already known about the truth.

33) Example: A, who owes 50,000 rupees to B, sells 1,00,000 rupees worth of rice to B. A is acting as agent for C in the transaction, but B has no knowledge or no reasonable ground of suspicion that such is the case. C cannot compel B to take the rice without allowing him to set off A's debt.

- 3) **Person falsely contracting agent not entitled to performance [Section 236]:** A person with whom a contract has been entered into in the character of agent, is not entitled to require the performance of it if he was in reality acting, not as agent, but on his own account.

**Q.No.18. When the agent is personally liable.**

**(A) (NEW SM, OLD PM, M05 - 6M)**

**GENERAL RULE - NO PERSONAL LIABILITY (SEC 230):**

In the absence of Contract to contrary, An Agent

- 1) Can't Personally enforce contracts entered into by him, on behalf of his principal
- 2) Can't be held personally liable for them
- 3) Neither sue nor be sued

**EXCEPTIONS:** However, in the following cases an agent is personally held liable

- 1) When an agent works for Foreign Principal
- 2) When an agent acts for an Unnamed Principal.
- 3) When an agent acts for Incompetent Principal. *e.g. when agent acts for minor.*
- 4) When the contract expressly provides for personal liability of the Agent.
- 5) When the agent acts for a Principal not in existence.
- 6) When the agent enters into a contract in his own name.
- 7) When the agent acts beyond his authority.
- 8) Where there is a misrepresentation or fraud by the agent.

**RIGHTS OF PERSON DEALING WITH AGENT PERSONALLY LIABLE (SEC. 233):** In cases where the agent is personally liable, a person dealing with him may hold either him or his principal, or both of them liable<sup>34</sup>.

**SIMILAR QUESTIONS:**

1. Ms. Sumathi has been appointed as agent of Ms. Zeaung of china for purchase contract up to Rs. 3 lakhs. Ms. Sumathi has entered into a purchase contract on behalf of Ms. Zeaung for an amount of Rs 1lakh with Ms. Damayanthi. But Ms. Zeaung has not paid the amount to Ms. Damayanthi. Therefore Ms. Damayanthi wants to sue Ms. Sumathi for recovery of the amount. Can she do so?
  - A. Yes Ms. Sumathi is personally liable to Ms. Damayanthi. Because Ms. Sumathi is acting on behalf of foreign principal.
  2. "An agent is neither personally liable nor can he personally enforce the contract on behalf of the principal." Comment. (M19 (NEW) - 2M)
  - A. According to section 230 of the Indian Contract Act, 1872, in the absence of any contract to that effect, an agent cannot personally enforce contracts entered into by him on behalf of his principal, nor is he personally bound by them. Thus, an agent cannot personally enforce, nor be bound by, contracts on behalf of principal.
 

**Presumption of contract to the contrary:** But, such a contract shall be presumed to exist in the following cases:

    - a) Where the contract is made by an agent for the sale or purchase of goods for a merchant resident abroad/foreign principal;
    - b) Where the agent does not disclose the name of his principal or undisclosed principal; and
    - c) Where the principal, though disclosed, cannot be sued.

**Q.No.19. When an Agency gets terminated as per Section 201 of the Indian Contract Act, 1872? (Or) Different modes of termination of Agency. (B) (M00 - 10M)**

Termination of Agency may take place in any of the following ways:

1) **By act of Parties:**

- a) **Agreement:** Agency can be terminated at any time by mutual agreement between Principal and agent
- b) **Revocation by Principal:** Principal can revoke the Agent's authority by giving notice to agent.

34) A enters into a contract with B to sell him 100 bales of cotton, and afterwards, discovers that B was acting as agent for C. A may sue either B or C, or both, for the price of the cotton.

- c) **Renunciation by Agent:** An Agent may renounce the business of Agency after giving reasonable notice to Principal.

2) **By Operation of Law:**

- a) **Completion of Business:** An Agency is automatically terminated when the Contract of Agency is completed.
- b) **On Expiry of Fixed Period:** An Agency is automatically terminated when the fixed term of agency expires even if business is not completed.
- c) **Insanity or Death of Principal or Agent:** An Agency is automatically terminated when the Principal or Agent dies or becomes unsound mind.
- d) **Insolvency of the Principal:** An Agency is automatically terminated when the Principal becomes insolvent because an insolvent person is incompetent to enter into a contract.
- e) **Destruction of the Subject matter:** An Agency is automatically terminated when the subject matter of the contract ceases to exist.
- f) **Dissolution of Company:** An Agency is automatically terminated when the Principal or Agent is a company and the company is wound up.
- g) **Principal or Agent becoming Alien enemy:** An Agency is automatically terminated when the Principal and Agent are citizens of two different countries and a war breaks out between those two countries.

**Q.No.20. When an agency can be Revoked by principal and specify the consequences of revocation? (B)**

**REVOCATION (Sec 201 & 202):** Agency can be revoked in various situations given above.

- 1) **When made? (Sec 203):** The Principal may revoke the authority granted to the Agent at any time but before the authority has been exercised so as to bind the Principal.
- 2) **Compensation for revocation (Sec 205):** Where the Principal revokes an Agency without proper cause; he shall compensate the Agent, particularly when there is an express or implied contract for continuation of Agency till a stipulated time.
- 3) **Notice of revocation or renunciation (Section 206):** Principal shall give reasonable notice of revocation. If Principal fails to give such reasonable notice then he shall make good any loss or damage arising out of such revocation.
- 4) **Express or Implied (Sec 207):** Revocation and renunciation may be express or may be implied from the conduct of Principal or Agent.
- 5) **When termination of agent's authority takes effect (Sec 208):** Termination of the authority –
- a) As regards the Agent, takes effect only when it comes to the Agent's knowledge<sup>35</sup>.
- b) As regards Third party, takes effect only when it comes to the knowledge of such third parties.
- 6) **Agent's duty on termination:** If an agency is terminated due to death or insanity of the Principal then the agent is bound to take all reasonable steps for the protection and preservation of the interests entrusted to him, on behalf of the representatives of his late Principal.
- 7) **Termination of sub-agent's authority (Section 210):** Termination of the Agent's authority causes the termination of the authority of all sub-agents appointed by him.

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35) Ex: A directs B to sell goods for him, and agrees to give B five per cent commission on the price fetched by the goods. Afterwards A revokes B's authority by letter. B sells the goods for 1,00,000 before he receives letter. The sale is binding on A, and B is entitled to Rs. 5,000 as his commission.

A, at Chennai, by letter directs B to sell for him some cotton lying in a warehouse in Mumbai, and afterwards, by letter, revokes his authority to sell, and directs B to send the cotton to Chennai. B, after receiving the second letter, enters into a contract with C, who knows of the first letter, but not of the second, for the sale to him of the cotton. C pays B the money, with which B absconds. C's payment is good as against A.

## SECTION 2: DIFFERENCES FOR STUDENTS SELF STUDY

### Q.No.1. Difference between SUB-AGENT and SUBSTITUTED AGENT (A) (NEW SM, MTP M18)

Both a sub-agent and a substituted agent are appointed by the agent. But, however, the following are the points of distinction between the two.

BASIS	SUB AGENT	SUBSTITUTED AGENT
<b>Meaning</b>	A sub-agent is a person - (a) employed by, and (b) acting under the control of the original agent in the business of agency.	Where an agent, holding an express or implied authority to name another person, has named another person accordingly, such person is not a sub-agent but an Agent of the Principal for such part of business as is entrusted to him.
<b>Appointing Authority</b>	A Sub-agent works under the control and directions of the Agent.	A Substituted agent works under the control and directions of the Principal.
<b>Delegation</b>	Agent delegates a part of his work to Sub-agent.	Agent does not delegate any part of his work to Substituted agent.
<b>Privity of Contract</b>	There is no privity of contract between the Principal and the Sub-agent.	There is privity of contract between the Principal and the Substituted agent.
<b>Accountability</b>	Sub-agent is responsible to the agent alone.	Substituted agent is responsible to the Principal.
<b>Responsibility</b>	Agent is responsible to the Principal for the acts of the Sub-agent.	Agent is not responsible to the Principal for the acts of the Substituted agent.
<b>Rights</b>	The Sub-agent has no right of action against the Principal for remuneration due to him.	The Substituted agent can sue the Principal for the remuneration due to him.
<b>Liabilities</b>	Agent is liable for acts of Sub-agent as long as sub-agency continues.	Duty of Agent ends when the Principal appoints a substituted agent.
<b>Example</b>	<i>K appoints L an agent to sell his car. L in turn appoints M to do the same. In this case, M is the Sub-agent.</i>	<i>P directs A, his seller to sell his estate by auction, and to employ an Auctioneer for the purpose. A names S, an Auctioneer, to conduct the sale. S is not a Sub-agent but is P's agent for the conduct of auction sale</i>

## SECTION 3: QUESTIONS FOR ACADEMIC INTEREST STUDENTS SELF STUDY

### Q.No.2. Principal Liability for Agent's criminal acts

(C) (NEW SM)

According to section 224, where one person employs another to do an act which is criminal, the employer is not liable to the agent, either upon an express or upon an implied promise, to indemnify him against the consequences of that act.

### Q.No.23. Can a Wife pledge her husband's credit? Explain.

(C) (NEW SM)

Case	Provision
1) Where wife lives with her husband	There is a legal presumption that a wife has authority to pledge her husband's credit for necessaries. But the legal presumption can be rebutted in the following cases: a) where the goods are purchased on credit are not necessaries.

	<b>b)</b> where the wife is given sufficient money for purchasing necessities. <b>c)</b> where the wife is forbidden from purchasing anything on credit or contracting debts. <b>d)</b> where the trader has been expressly warned not to give credit to his wife.
<b>2)</b> Where the wife lives apart from husband for no fault on her behalf	A wife has authority to pledge her husband's credit for necessities. This legal presumption can be rebutted only in the cases (a) and (b) above but not in the cases of (c) and (d).
<b>3)</b> Where the wife lives apart from husband for no fault on her husband's part	A wife has no authority to pledge her husband's credit even for necessities

(IMMEDIATELY REFER PRACTICAL QUESTION CRD 16)

### SECTION 4: PRACTICAL QUESTIONS FOR CLASSROOM DISCUSSION

**Q.No.1.** A appoints M, a minor, as his agent to sell his watch for cash at a price not less than Rs.700. M sells it to D for Rs.350. Is the sale valid? Explain the legal position of M and D, referring to the provisions of the Indian Contract Act, 1872. **(A) (OLD PM, RTP M17, MTP1 M19 (N) - 4M)**

**FACTS OF THE CASE:** M, a minor, as an agent, sells a watch for cash at a price less than the price fixed by his principal.

**PROVISION:** According to the provisions of Section 184 of the Indian Contract Act, 1872, as between the principal and a third person, any person, even a minor can become an agent.

But a person who is a minor and unsound mind cannot become an agent, so as to be responsible to his principal. Thus, if a person who is not competent to contract is appointed as an agent, the principal is liable to the third party for the acts of the agent.

**ANALYSIS AND CONCLUSION:** Thus, in the given case, D gets a good title to the watch. M is not liable to A for his negligence in the performance of his duties as he is a minor.

**Q.No.2.** Aditya holds a lease from Birla which is terminable on three months' notice. C, an unauthorized person gives notice of termination to Aditya. Examine with reference to the provisions of the Indian Contract Act, 1872, whether Aditya is bound by termination of Lease. **(A) (RTP M15)**

**FACTS OF THE CASE:** Aditya holds a lease from Birla which is terminable on three months' notice. C, an unauthorized person gives notice of termination to Aditya.

**PROVISION:** The given problem is based on section 200 of the Indian Contract Act, 1872 which deals with the provisions related to the ratification of unauthorized act cannot injure third person. Provisions says that an act done by one person on behalf of another, without such other person's authority, which if done with authority, would have the effect of subjecting a third person to damages, or of terminating any right or interest of a third person cannot, by ratification, be made to have such effect.

**ANALYSIS:** In the present case, Aditya holds a lease from Birla which is terminable on three months' notice. C, an unauthorized person gives notice of termination of lease to Aditya. Accordingly the notice given by C (unauthorized person) if, ratified, would terminate Aditya's right or interest in the lease property.

**CONCLUSION:** Such an unauthorized act of C cannot be ratified by Birla, so as to binding on Aditya.

**Q.No.3.** D, a carrier, discovers that a consignment of tomatoes owned by E has deteriorated badly before the destination was reached. D was not able to communicate with E. He, therefore, sold the consignment for what he can get, which was about one third of the market price for good tomatoes. E sues D for damages. D claims that he was an agent of necessity. Advise him. **(Or)**

Ramesh instructed Suresh, a transporter, to send a consignment of apples to Mumbai. After covering half the distance, Suresh found that the apples will perish before reaching Mumbai. He sold the same at half the market price. Ramesh sued Suresh. Will he succeed? **(A) (OLD PM, CMA D10 - 2M, RTP M18 (N), MTP N19 (N) - 4M)**

**FACTS OF THE CASE:** D is a carrier and he is carrying some tomatoes owned by E, discovered that goods were deteriorated before reaching the destination. D acting as an agent of necessity, sold the tomatoes for one third of the price for good tomatoes, which was the amount he could realize.

**PROVISION:** Sec.189 of the contract Act applies to the given problem, which says that – “ Agent’s authority in an emergency - “An Agent has authority, in an 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, under similar circumstances.

**ANALYSIS:** In the Present case, an act done in exercise of this extended authority would abide the Principal, if the Agent was not able to communicate with his Principal and the Agent acts in good faith in the interest of the parties concerned.

**CONCLUSION:** D, as an Agent of necessity, is not liable. Here in this problem, ‘D’ was an Agent of necessity. Therefore, he has authority to sell tomatoes which are in deteriorated condition to protect the Principal’s interest. Hence as an Agent in emergency, he is not liable to E for damages.

**Q.No.4.** GMR Ltd has obtained a contract from central government for constructing an airport at Mumbai which includes all infrastructure facility that needs an airport. There is nothing in the agreement for appointment of another person for completing a part of airport. But it is a custom to appoint another person for completing a tiles laying work. Therefore GMR Ltd has appointed PQR Ltd for completing tiles laying work in the newly constructed airport at Mumbai. Is the appointment Valid?

**FACTS OF THE CASE:** GMR Ltd appointed PQR Ltd for the purpose of completing tiles laying work.

**PROVISION: Is the appointment of Sub-Agent valid?**

- The appointment of sub agent is not lawful, because the agent is a delegatee and a delegatee cannot further delegate.
- This is based on the Latin principle “delegatus non potest delegare”.

**EXCEPTIONS (SEC.190):** An agent may appoint a sub-agent and delegate the work to him if-

- a) there is a custom of trade
- b) The appointment of a sub agent would be valid if the terms of appointment is originally required it.

**ANALYSIS AND CONCLUSION:** Based upon the above exceptions given, it is valid to appoint PQR Ltd as sub agent.

**Q.No.5.** Mr. Bheema instructs Arjun, a merchant, to buy a ship for him. Arjun employs a ship surveyor of good reputation to choose a ship for Mr. Bheema. The surveyor makes the choice negligently and the ship turns out to be unseaworthy and is lost. Now, Mr. Bheema holds Arjun responsible for the same. Examine as per the provisions of the Contract Act, 1872, whether Arjun is responsible to Mr. Bheema.

(A) (MTP M18 (N))

**PROVISION AND ANALYSIS:** According to section 194 of the Indian Contract Act, 1872, 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.

Further, as per section 195, in selecting such agent for his principal, an agent is bound to exercise the same amount of discretion as a man of ordinary prudence would exercise in his own case; and, if he does this, he is not responsible to the principal for the acts or negligence of the agent so selected.

**CONCLUSION:** Thus, in the present case, Arjun is not responsible to Mr. Bheema, but the surveyor is responsible to Mr. Bheema.

**Q.No.6.** Mahesh consigned electronic goods for sale to Rahul. Rahul employed Akhil a reputed auctioneer to sell the goods consigned to him through auction. Rahul authorized Akhil to receive the proceeds and transfer those proceeds once in 30 days. Akhil sold goods on auction for Rs.1,20,000 but before transferring the proceeds of the auction, became insolvent. Assess the liability of Rahul according to the provisions of the Indian Contract act, 1872.

(A) (N18 - 3M)

**PROVISION:** According to section 195 of the Indian Contract act, 1872, Agent's duty in selecting substituted agent for his principal, Agent is bound to exercise the same amount of discretion as a man of ordinary prudence would exercise in his own case; and, if he does this, he is not responsible to the principal for the acts or negligence of the agent so selected (Substituted agent).

**ANALYSIS:** In the present case, Rahul, agent of Mahesh, was authorized to sell the electronic goods. Rahul employed Akhil to sell the goods through auction. Here Akhil is treated as substituted agent.

**CONCLUSION:** Rahul is not liable to Mahesh, because Rahul exercised the reasonable care and skill in selecting a substituted agent.

**Q.No.7.** Sunil borrowed a sum of Rs. 3 lakh from Rajendra. Sunil appointed Rajendra as his agent to sell his land and authorized him to appropriate the amount of loan out of the sale proceeds. Afterwards, Sunil revoked the agency. Decide under the provisions of the Indian Contract Act, 1872 whether the revocation of the said agency by Sunil is lawful? **(A) (M14 - 5M, N19 (N) - 4M)**

**FACTS OF THE CASE:** Sunil borrowed sum 3 lakh from Rajendra and appointed him as his agent. Afterwards Sunil revoked the agency.

**PROVISION:** The given problem is based on the provision related to 'agency coupled with interest'. According to Section 202 of the Indian Contract Act, 1872 an agency becomes irrevocable where the agent has himself an interest in the property which forms the subject-matter of the agency, and such an agency cannot, in the absence of an express provision in the contract, be terminated to the prejudice of such interest.

**ANALYSIS:** In the instant case the rule of agency coupled with interest applies and does not come to an end even on death, insanity or the insolvency of the principal.

**CONCLUSION:** Thus, when Sunil appointed Rajendra as his agent to sell his land and authorized him to appropriate the amount of loan out of the sale proceeds, interest was created in favour of Rajendra and the said agency is not revocable. The revocation of agency by Sunil is not lawful.

**Q.No.8.** Amar consigned 100 bags of wheat to Akbar who had advanced Rs.10,000 to Amar. Amar authorized Akbar to sell the wheat and to pay himself Rs. 10,000, out of the proceeds of wheat. Later on, Amar directed Akbar not to sell the wheat. Ignoring Amar's directions, Akbar sold the wheat to recover Rs. 10,000. Is this sale binding on Amar? Would your answer changes if, Amar died before directing Akbar not to sell and after the fact of his death becomes known to Akbar, Akbar sold the wheat? **(A)**

**FACTS OF THE CASE:** Amar consigned 100 bags of wheat to Akbar who had advanced Rs.10,000 to Amar. Amar authorized Akbar to sell the wheat and to pay himself Rs. 10,000, out of the proceeds of wheat. Later on, Amar directed Akbar not to sell the wheat. Ignoring Amar's directions, Akbar sold the wheat to recover Rs. 10,000.

**PROVISION:** According to Section 202 of the Indian Contract Act, 1872 where the agent has himself an interest in the property which forms the subject-matter of the agency, the agency cannot, in the absence of an express contract, be terminated to the prejudice of such interest.

**ANALYSIS AND CONCLUSION:** In the instant case the doctrine of agency coupled with interest applies. Amar could not revoke his authority because the agency was coupled with Interest. This sale is binding on Amar.

No, the answer will not change. The sale is binding on Amar's executors, because an agency coupled with interest cannot be terminated by the death of the Principal.

**Q.No.9.** Ram authorizes Ravi to buy 100 bags of wheat on account of Ram and to pay for it out of Ram's money remaining in Ravi's hands. Ravi buys 100 bags of wheat and after the dealing, receives Ram letter revoking Ravi's authority. State the legal position (a) if Ravi buys in Ram's name. (b) If Ravi buys in his own name. **(B)**

**FACTS OF THE CASE:** Ram authorizes Ravi to buy 100 bags of wheat on account of Ram and to pay for it out of Ram's money remaining in Ravi's hands. Ravi buys 100 bags of wheat and after the dealing receives Ram letter revoking Ravi's authority



**PROVISION:** According to Section 204 of the Indian Contract Act, 1872, where the agent contracts in his own name and makes himself personal liability for his act. In such case, agency becomes irrevocable. Where the agent has partly exercised the authority, the authority cannot be revoked.

**ANALYSIS AND CONCLUSION:** In the instant case, the purchase is binding on Ram.

- a) The Principal cannot revoke the agent's authority after the authority has been partly exercised.
- b) The Principal cannot revoke the agent's authority for the authorized acts in respect of which the agent has already incurred a personal liability.

**Q.No.10.** X, the Principal, instructed Y, his Agent to put goods in Z's warehouse. Y puts half of the goods in Z's warehouse and the balance in another equally safe warehouse. All the goods were destroyed by fire without any negligence on the part of Y. Is Y liable to X? **(B)**

**FACTS OF THE CASE:** X instructed Y to put goods in Z's warehouse. Y put half of the goods in Z's warehouse and remaining in another equally safe warehouse. Without any negligence on the part of Y all the goods were destroyed in the fire.

**PROVISION:** According to Section 211 of the Indian Contract act, 1872, Agent is bound to conduct the business of his Principal as per directions of the principal. In the absence of any such directions, he is bound to conduct the business according to the custom which prevails at the place where the agent conducts such business. If he acts otherwise, he is held liable to the principal for loss, if any. The agent is liable to the principal for any loss if he deviates from the above duty/ obligation where he did not act according to instruction of the principal

**ANALYSIS:** In this case Agent (Y) was instructed to store his Principal's goods at a particular place. But he placed part of them at a different warehouse, where the goods got destroyed.

**CONCLUSION:**

- a) Y is not liable for the loss of goods put in Z's warehouse because he acted according to the directions of his Principal.
- b) Y is liable for the loss of goods put in another warehouse because he has not acted according to the directions of his principal.

**Q.No.11.** Mr. Ahuja of Delhi engaged Mr. Singh as his Agent to buy a house in West Extension area. Mr. Singh bought a house for Rs.20 lakhs in the name of a nominee and then purchased it himself for Rs.24 lakhs. He then sold the same house to Mr.Ahuja for Rs.26 lakhs. Mr.Ahuja later comes to know the mischief of Mr. Singh and tries to recover the excess amount paid to Mr. Singh. Is he entitled to recover any amount from Mr. Singh? If so, how much? Explain. **(Or)**

P appoints A as his agent to sell his estate. A, on looking over the estate before selling it, finds the existence of a good quality Granite-Mine on the estate, which is unknown to P. A buys the estate himself after informing P that he (A) wishes to buy the estate for himself but conceals the existence of Granite-Mine. P allows A to buy the estate, in ignorance of the existence of mine. State giving reasons in brief the rights of P, the principal, against A, the agent.

What would be your answer if A had informed P about the existence of mine before he purchased the estate, but after two months, he sold the estate at a profit of Rs. 1 lakh? **(A)**

**(OLD PM, RTP M13, RTP M16, RTP M18 (N), MTP N15, MTP2 M19 (N) - 4M, N05 - 4M, M08 - 4M, M12 - 4M, M16 - 4M)**

**FACTS OF THE CASE:** Mr. Ahuja of Delhi engaged Mr. Singh as his agent to buy a house. Mr. Singh bought a house for Rs.20 lakhs in the name of a nominee and then purchased it himself for Rs.24 lakhs. Later he sold the same house to Mr. Ahuja for Rs.26 lakhs.

**PROVISION:** Sec 216 - Principal's right to benefit gained by agent dealing on his own account in the business of agency.

If an Agent, without the knowledge of his Principal, in the business of his agency, deals on his own account, instead of an account of his Principal, the Principal is entitled to claim from the Agent any benefit which may have resulted to him from the transaction.

**ANALYSIS:** In the present case, Mr. Singh, without the knowledge of Mr. Ahuja, purchased the House and resold it to Principal (Mr. Ahuja) and made a profit of Rs.6,00,000 (26 lakhs – 20 lakhs)

**CONCLUSION:** According to the provisions of Sec.216, Mr. Ahuja is entitled to recover the excess amount of Rs.6,00,000/- paid to Mr. Singh.

**Q.No.12.** Y, the proprietor of a newspaper published at X's request a libel (false statement) upon Z in the paper and X agreed to indemnify Y against the consequences of the publication. Y was sued by Z and had to pay damages and also incurred expenses. Is X liable to pay for such damages and expenses? **(B)**

**FACTS OF THE CASE:** Y, the proprietor of a newspaper published at X's request a libel upon Z in the paper and X agreed to indemnify Y against the consequences of the publication. Y was sued by Z and had to pay damages and also incurred expenses.

**PROVISION:** According to the Section 224 of Indian Contract act, 1872, where one person employs another to do an act which is criminal, the employer is not liable to the agent, either upon an express or an implied promise, to indemnify him against the consequences of that act.

**ANALYSIS AND CONCLUSION:** In the present case, X employs Y to publish a libel upon Z which is a criminal act. X is not liable to Y for damages and expenses.

**Q.No.13.** X being owner of a ship and cargo authorizes Y to procure insurance on the ship. Y procures insurance on the ship as well as cargo. State the legal position in each of the following alternative cases

a) if two separate insurance policies are issued viz. one for ship and another for cargo.

b) if one comprehensive insurance policy is issued for both ship and cargo.

**(A)**

**PROVISION:** According to the Section 227 and Section 228 of Indian Contract act, 1872,

- **When work of an Agent is separable:** When an agent does some work beyond authority which is separable from authorized work, Principal is bound by the authorized work of an Agent.
- **When work of an Agent is not separable:** When an agent does some work beyond authority which is not separable from authorized work, Principal is not bound by whole of work. Principal may cancel the whole transaction

**ANALYSIS AND CONCLUSION:**

a) X is bound to pay the premium for the policy on the ship but not the premium for the policy on the cargo.

b) X is not bound to recognize the transaction

**Q.No.14.** Z owes Rs. 1,000/- to X. X instructs Y to buy Rs. 5,000/- worth of wheat from Z. Y buys the goods from Z. Y knows that the goods really belonged to M but X is ignorant of that fact. X claims setoff of Rs.1,000/- while making the payment of the price of the wheat. State the legal provisions in each of the following alternative cases

a) If in the course of dealing for sale, Y comes to know that goods really belonged to M.

b) If Y was, before he was employed by X, a servant of Z and then came to know that the goods really belonged to M. **(B)**

**PROVISION:** According to the Section 229 of Indian Contract act, 1872, any notice given to or information obtained by the agent, shall have the same legal consequence as if it had been given to or obtained by the principal. This means that the knowledge of the Agent is the knowledge of Principal.

**ANALYSIS AND CONCLUSION:**

a) X cannot claim setoff of Rs.1,000/- due from Z against the price of the goods because information obtained by the agent operates as information obtained by the principal.

b) X can claim setoff of Rs.1,000/- due from Z against the price of the goods because Y obtained the information as an employee of Z and not as agent of X and hence Y's knowledge doesn't operate as information obtained by X.

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**Q.No.15.** Amar offer to buy certain flats from Akbar. Amar made an enquiry from Anthony, the property manager of Akbar. Whether all the tenants were paying their rents regularly? Anthony informed that the tenants were paying rent regularly with immaterial exceptions. This statement was false. Is Akbar liable for Anthony's false statement? **(B)**

**FACTS OF THE CASE:** Amar offer to buy certain flats from Akbar. Amar made an enquiry from Anthony, the property manager of Akbar. Whether all the tenants were paying their rents regularly? Anthony informed that the tenants were paying rent regularly with immaterial exceptions.

**PROVISION:** According to the Section 238 of Indian Contract act, 1872, Principal is bound by Agent's acts when he induces others by word or conduct to believe that such acts were within authority.

**ANALYSIS AND CONCLUSION:** In the present case, Anthony informed that the tenants are paying their rent regularly which is false statement. Misrepresentation made by Anthony in respect of authorized acts operates as misrepresentation by the Principal. Thus, Akbar is liable for Anthony's false statement.

**Q.No.16.** R is the wife of P. She purchased some sarees on credit from Q. Q demanded the amount from P. P refused. Q filed a suit against P for the said amount. Decide in the light of provisions of the Indian Contract Act, 1872, whether Q would succeed? **(A) (OLD PM, Similar M13, M19 (N) - 4M)**

**FACTS OF THE CASE:** R, wife of P, purchased sarees on credit from Q. Later Q demanded P for such amount. P refuses to pay the amount.

**PROVISION:** The position of husband and wife is a special and significant case of implied authority.

According to Indian Contract Act, 1872, if wife lives with her husband, there is a legal presumption that the wife has authority to pledge her husband's credit for necessities. But the legal presumption can be rebutted in the following cases:

- Where the goods purchased on credit are not necessities.
- Where the wife is given sufficient money for purchasing necessities.
- Where the wife is forbidden from purchasing anything on credit or contracting debts.
- Where the trader has been expressly warned not to give credit to his wife.

If the wife lives apart for no fault on her part, wife has authority to pledge her husband's credit for necessities. This legal presumption can be rebutted only in cases (C) and (D).

**ANALYSIS AND CONCLUSION:** In light of above provisions, 'Q' will succeed; he can recover the amount from 'P' (Husband), if sarees purchased by 'R' (Wife) are necessities.

## SECTION 5: PRACTICAL QUESTIONS FOR STUDENTS SELF PRACTICE

**Q.No.1.** Can the following persons appoint an Agent?

- |   |                           |            |
|---|---------------------------|------------|
| a) A minor who is of sound mind             | b) A lunatic who is major | <b>(B)</b> |
| c) Guardian of a minor who is of sound mind | d) A lunatic who is minor |            |

**PROVISION:** According to Section 183, of the Indian Contract Act, 1872, "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." Thus a minor or a person of unsound mind cannot appoint an agent.

**ANALYSIS AND CONCLUSION:**

- No, because he is not of the age of majority and hence he does not have contractual capacity.
- No, because he is not of sound mind and hence he does not have contractual capacity.
- Yes, because he has contractual capacity.
- No, because he does not have contractual capacity.

**Q.No.2.** Can the following persons be appointed as an agent.

- a) A minor who is a sound mind
- b) A lunatic who is a major
- c) A guardian of minor who is of sound mind

(C)

**PROVISION:** As per of Section 184 of the Indian Contract Act, 1872, as between the principal and a third person, any person (even a minor) can become an agent.

But a person who is a minor and unsound mind cannot become an agent, so as to be responsible to his principal. Thus, if a person who is not competent to contract is appointed as an agent, the principal is liable to the third party for the acts of the agent.

**ANALYSIS AND CONCLUSION:** Yes, all the above are eligible to be appointed as an agent, because no person is debarred from being appointed as an agent whether he has contractual capacity or not.

**Q.No.3.** X the principal, instructed Y his agent to insure the goods. Y failed to do so and the goods are destroyed by fire. Is Y liable to X? (C)

**PROVISIONS:** As per Section 211 of the Indian contract Act, 1872, An agent is bound to conduct the business of his principal according to the direction given by the principal. In the absence of any such directions, he is bound to conduct the business according to the custom which prevails at the place where the agent conducts such business. The agent is liable to the principal for any loss if he deviates from the above duty/ obligation where he did not act according to instruction of the principal

**ANALYSIS AND CONCLUSION:** Agent has not acted according to the directions of his Principal. Y is liable to compensate X for the loss.

**Q.No.4.** X, a driver of a bus requested a passenger to drive the bus to its destination. He drove the bus negligently and injured X. is the owner of a bus liable (C)

**PROVISIONS:** As per Section 190 of the Indian Contract Act, 1872, Agent cannot employ another person to perform his act in express or implied manner unless custom of trade or nature of agency so requires

**ANALYSIS AND CONCLUSION:** In the given case, X, a driver of a bus requested a passenger to drive the bus to its destination. He drove the bus negligently and injured X. Since X (a driver of a bus) has delegated his authority, the owner of bus is not liable to Z. X is liable to Z.

**Q.No.5.** Y, a broker sold goods of X, his Principal on credit to Z. Before making the payment, Z became insolvent. State whether Y is liable to X in each of the following alternative cases:

- a) If X instructed Y not to sell on credit and Z was a reputed party.
- b) If X did not instruct Y whether or not to sell on credit but in the agency business it is not custom to sell the goods on credit.
- c) If Y having authority to sell on credit sold to Z after making proper enquiries as to the solvency of Z
- d) If Y having authority to sell on credit sold to Z without making proper enquiries as to the solvency of Z

**PROVISIONS:** As per section 211 of the Indian Contract act, 1872, Agent is bound to conduct the business of his Principal as per directions of the principal. In the absence of any such directions, he is bound to conduct the business according to the custom which prevails at the place where the agent conducts such business. The agent is liable to the principal for any loss if he deviates from the above duty/ obligation where he did not act according to instruction of the principal

As per section 212 of the Indian Contract act, 1872, 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.

**ANALYSIS AND CONCLUSION:**

- a) Agent was instructed not to sell the goods on credit, Y is liable to X for the loss.
- b) Y (Agent) has not acted according to the custom prevailing in the business of Agency, Y is liable to X for the loss.

- c) Y (Agent) has acted with reasonable care and skill, Y is not liable to X for the loss.
- d) Y has acted negligently, Y is liable to X for the loss.

**Q.No.6.** X directs Y his solicitor to sell his estate by auction. Y employs Z, an auctioneer, to sell the goods of X. Z became insolvent without having accounted for the proceeds of sale. Discuss the legal position

- a) If Y selected Z after Z after proper enquiries;  
b) If Y selected Z without making proper enquiries

(C)

**PROVISIONS:** According to section 195 of the Indian Contract act, 1872, Agent's duty in selecting substituted agent for his principal, Agent is bound to exercise the same amount of discretion as a man of ordinary prudence would exercise in his own case; and, if he does this, he is not responsible to the principal for the acts or negligence of the agent so selected (Substituted agent).

**ANALYSIS AND CONCLUSION:**

- a) Y exercised the reasonable care and skill in selecting a substituted agent.
- b) Y did not exercise the same amount of discretion as a man of ordinary prudence would exercise in his own case, in selecting a substituted agent.
- a. Z is responsible to X. b. Y is responsible to X

**Q.No.7.** Y under instructions from X, his Principal contracted with Z for the sale of 100 bags of wheat. Afterwards, X refused to deliver the wheat and Z sued Y for breach of contract. Y defended the suit and was compelled to pay damages, costs and incur expenses. Is X liable to Y for such damages, costs and expenses?

(B)

**PROVISIONS:** As per section 222 of the Indian Contract act, 1872, The principal is bound to indemnify the Agent against consequences of all lawful acts done within his authority.

**ANALYSIS AND CONCLUSION:** In the given case, under the instructions of X, Y contracted with Z for the sale of 100 bags of wheat. As X refused to deliver the wheat, Z sued Y for breach of said contract. As a result Y incurred damages, cost and expenses in defending the suit. X is liable to Y for such damages, costs, and expenses.

**Q.No.8.** Y under instructions from X, his Principal, sold 100 bags of wheat in possession of X which X had no right to dispose of. Y did not know this and handed over the proceeds of sale to X. Afterwards, Z the true owner of the goods sued Y and recovered the proceeds and costs. Is X liable to Y for proceeds and costs?

(C)

**PROVISIONS:** As per section 222 of the Indian Contract act, 1872, Where the agent acts in good faith on the instruction of principal, agent is entitled for indemnification of any loss or damage from the principal.

**ANALYSIS AND CONCLUSION:** In the given case, On the instructions of X, Y sold 100 bags of wheat which are in possession of X. Z the true owner of goods sued Y and recovered the proceeds and costs. X is liable to Y for proceeds and costs.

**Q.No.9** Amar consigned 100 bags of wheat and authorized Akbar to sell the wheat. Later on, Akbar advanced Rs.10,000 to Amar which Amar failed to pay. Amar directed Akbar not to sell the wheat. Ignoring Amar's directions, Akbar sold the wheat to recover Rs. 10,000. Is this sale binding on Amar? (B)

**PROVISIONS:** As per Section 202 of the Indian Contract Act, 1872 an agency becomes irrevocable where the agent has himself an interest in the property which forms the subject-matter of the agency, and such an agency cannot, in the absence of an express provision in the contract, be terminated to the prejudice of such interest.

**ANALYSIS AND CONCLUSION:** In the given case, the doctrine of agency coupled with interest does not apply. Amar could revoke his authority because the agency was not coupled with Interest. This sale is binding on Amar because the agent's authority arose after the creation of agency.

**Q.No.10.** ABC Ltd. sells its products through some agents and it is not the custom in their business to sell the products on credit. Mr. Pintu, one of the agents sold goods of ABC Ltd. to M/s. Parul Pvt. Ltd. (on credit) which was insolvent at the time of such sale. ABC Ltd. sued Mr. Pintu for compensation towards the loss caused due to sale of products to M/s. Parul Pvt. Ltd. Will ABC Ltd. succeed in its claim? **(M18 4M)**

**PROVISIONS:** As per section 211 of the Indian Contract act, 1872, Agent is bound to conduct the business of his Principal as per directions of the principal. In the absence of any such directions, he is bound to conduct the business according to the custom which prevails at the place where the agent conducts such business. The agent is liable to the principal for any loss if he deviates from the above duty/ obligation where he did not act according to instruction of the principal

**ANALYSIS AND CONCLUSION:** In the present case, Mr. Pintu, one of the agents, sold goods of ABC Ltd. to M/s Parul Pvt. Ltd. (on credit) which was insolvent at the time of such sale. Also, it is not the custom in ABC Ltd. to sell the products on credit.

Hence, Mr. Pintu must make good the loss to ABC Ltd.

**Q.No.11** R of New Delhi sends his agent M to purchase certain goods from Global Enterprise, Mumbai on credit for him. Later on R pays the amount for the goods purchased. On another occasion, he again sends M to purchase goods but this time pays sufficient cash to M for the purpose. M, however again purchases the goods from Global Enterprises but on credit and soon thereafter he dies. Global Enterprise files a suit against R for recovery of the said amount. Decide whether Global Enterprise would be given any relief by the Court under the provisions of the Indian Contract Act, 1872.

**PROVISION:** According to Section 237 of Indian Contract Act, 1872, if a person by his conduct or words, induces another person to believe that a certain person is his agent then Agency by estoppel arises. Subsequently he can't deny the fact of agency

**ANALYSIS AND CONCLUSION:** In the given case, R is liable to Global Enterprise for goods purchased by M, since on a previous occasion, purchase of goods by M on behalf of R, and subsequent payment for such goods by R, established that it was within the scope of authority of M to purchase goods on credit on behalf of R.

**Q.No.12** Rahul, a transporter was entrusted with the duty of transporting tomatoes from a rural farm to a city by Aswin. Due to heavy rains, Rahul was stranded for more than two days. Rahul sold the tomatoes below the market rate in the nearby market where he was stranded fearing that the tomatoes may perish. Can Aswin recover the loss from Rahul on the ground that Rahul had acted beyond Ms authority?

**PROVISION:** As per Sec.189 of the contract Act, agent has authority, in an 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, under similar circumstances.

**ANALYSIS AND CONCLUSION:** In the given case,

- i) There was an actual and definite necessity for Rahul to act on-behalf of Aswin; and
- ii) Rahul sold the tomatoes for the purpose of protecting the interest of Aswin.

Rahul shall be an agent of Aswin for sale of tomatoes, since an agency by necessity has come into existence, assuming that Rahul was not in a position to communicate' with Aswin and Rahul exercised such reasonable care as a man of ordinary prudence would have exercised in his own case.

## SECTION 6: IMPORTANT SECTION NUMBERS

CONCEPT	SEC NO.
Meaning of Agent and Principal	182
Minor can become Agent	184
Agency by Express Agreement	186
Agency by Implied Authority	187

Authority of Agency in Emergency	189
Agent may appoint Sub Agent	190
Agency by Ratification	196
Termination of Agency	201
Agency Coupled with Interest	202
Where the Agent Partly Exercised his Authority	204
Duty to act accordingly to the directions (or) Custom of Trade	211
Duty to Communicate With Principal	214
Right of Retention	217
Agents Duty to pay sums received for Principal	218
Right to Remuneration to Agent	219
Right of Lien	221
Right of Indemnification of Lawful Acts	222
Pretended Agent	235
Principal is Bound By Agent Acts When he Includes Others.	238

### SECTION 7: TEST YOUR KNOWLEDGE

- 1) Agency coupled with interest is irrevocable. (T) (CA May 2015)
- 2) An 'agency coupled with interest' may be terminated, at the instance of the principal at any time. (F) (CA November 2009)
- 3) Ratification of agency is valid even if knowledge of the principal is materially defective. (F) (CA May 2002, 2010)
- 4) No consideration is required to create an agency (T) (CA November 2001)
- 5) A agrees to work as an agent of B without remuneration. Later A refuses to work. Can B hold him guilty of breach of contract? **Hint:** Yes, for creation of Agency, Consideration is not necessary.
- 6) P without Q's authority lends Q's money to R. Later Q accepts interest on money from R. Discuss the rights of Q. **Hint:** Refer Q. No: 18
- 7) Y being X's agent for the sale of goods, induces Z to buy them by misrepresentation which he was not authorized by X to make. State the legal position. **Hint:** The contract is voidable at the option of Z
- 8) What is meant by an agent's implied authority? **Hint:** Refer Q. No. 5
- 9) Does the termination of agency terminate sub-agency? **Hint:** Yes
- 10) D engaged E, an auctioneer, to sell some property for a commission of Rs. 15,000. E however received secretly Rs. 1,500 also as commission from purchaser. Discuss the rights of D and E. **Hint:** Refer Q. No: 10.
- 11) X appoints the following persons. State whether they can be called as an Agent of X?
  - A to cook food for X and X's family on a monthly salary of Rs. 1,000
  - B to furnish kitchen in his house for Rs. 10,000
  - C to buy utensils for his kitchen for an agreed commission of 5% on purchases.
  - Mrs. X to buy provisions for his kitchen without any commission on purchases.
  - D to advice on financial matters.**Hint:** No, No, Yes, No

**THE END**

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