

### 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)
THEORY QUESTIONS																
T1	1	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
T2	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
T3	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
T4	1	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
T5	-	-	-	-	4	-	-	-	-	-	-	-	-	-	-	-
T6	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
T7	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
T8	-	1	-	-	5	-	1	-	-	-	-	-	-	-	-	-
T9	-	-	-	-	-	-	-	-	4	-	-	-	4	-	-	-
T10	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
T11	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
T12	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
T13	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
T14	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
T15	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
T16	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
T17	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
T18	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
T19	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
PRACTICAL QUESTIONS FOR CLASS ROOM DISCUSSION																
P1	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
P2	-	-	-	-	-	4	-	-	-	-	-	-	-	-	-	-
P3	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
P4	-	-	-	-	5	-	-	-	-	-	-	-	-	-	-	-
P5	-	-	-	-	-	-	-	-	-	-	-	-	-	4	-	-
P6	-	-	-	-	-	-	-	-	4	-	-	-	-	-	-	-
P7	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
P8	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
P9	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	3
P10	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
P11	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
P12	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
P13	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
P14	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
P15	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
PRACTICAL QUESTIONS FOR STUDENT SELF PRACTICE																
P1	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
P2	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
P3	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
P4	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
P5	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
P6	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
P7	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
P8	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
P9	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
P10	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-

- In the modern world it is not possible to run a business without the help of agents. Therefore, it is necessary to know the law relating to agency.
- The law of agency is covered from sections 182 to 238 of the Indian Contract Act, 1872.

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

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

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

1. An 'Agent' is a person, employed
  - To do any act for another or
  - 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'.

*Ex: 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.*

**ESSENTIAL FEATURES OF AGENCY:**

- i) **Basis:** The presumption under 'Law of agency' is "the principal is bound by the acts of the agent and he is answerable to third parties".
- ii) **Consideration is not necessary:** In the law of agency, the existence of consideration is not necessary.
- iii) **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.
- iv) **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.

**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 "Quis facit per alium, facit per se" i.e., he who acts through an agent is himself acting*

**(IMMEDIATELY REFER PRACTICAL QUESTION Self-Practice 1, 2, 3)**

**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.

<sup>1</sup> 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 called the principal.

b) Agent is a mere connecting link between the principal and the third party. It is immaterial, whether the agent is legally competent to contract or not. Thus, there is no bar to appoint minor as an agent.

c) However, the contractual capacity of the agent becomes important in considering the contract of agency itself (i.e. the relation between principal and agent),  
Thus, if the agent is incapable of having contractual capacity, 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 CRD 1)**

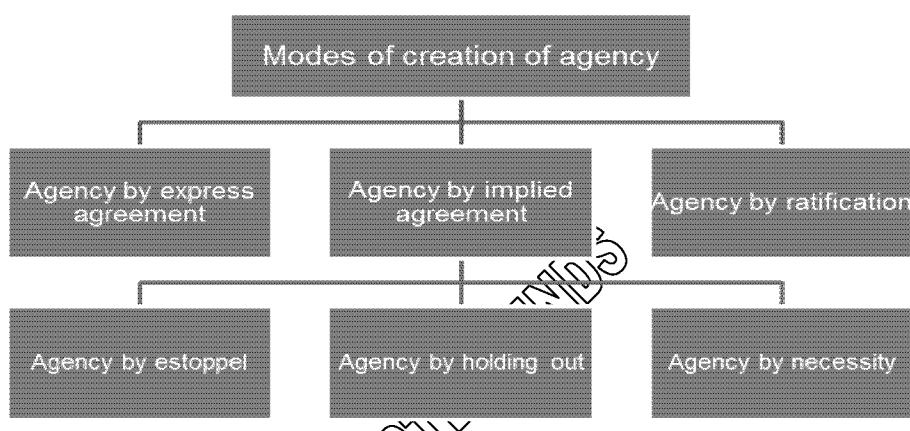
**SIMILAR QUESTION:**

1. Any person who has not attained 18 years can be appointed as Agent. Comment

A. Refer above answer.

**Q.No.3. Different modes of creation of Agency. (C)**

**(NEW & OLD SM)**



i) **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.

ii) **Agency by Implied Agreement (Sec187):** An agency by implied authority arises, when authority is derived from the conduct and behaviour of the parties<sup>2</sup>. It may happen in any of the following ways:

a) **Agency by estoppel<sup>3</sup>:**

- 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.

b) **Agency by holding out:** Agency by holding out is almost similar to agency by estoppel. In this case, there is some prior positive or affirmative conduct of the principal, which indicates that certain person has already his agent.

c) **Agency of Necessity:** 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.

<sup>2</sup> 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.

<sup>3</sup> 'Estoppel' means that a person is stopped or prevented from denying the truth of a statement, which he has made.

**To constitute valid agency by necessity, following conditions must be satisfied:**

- There should be a real necessity for acting on behalf of the Principal.
- It should be impossible to communicate with the principal within the time available.
- Agent should act bona fide in the best interest of the principal.

**iii) Agency by Ratification (Sec196):**

- Ratification means confirmation of the acts already done.
- 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.
- Ratification may be express or implied<sup>4</sup>.
- On ratification, Principal is bound by the acts done by Agent.
- *It is also known as ex-post facto agency i.e. agency arising after the event.*

**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 Holding out)

**Q.No.4. 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 (iii).

**FOLLOWING ARE THE RULES OF RATIFICATION.**

1. **Existence of Principal:** Principal must be in existence at the time when the act is done in his name.
2. **Express or Implied:** Ratification may be express or may be implied by the conduct of the person on whose behalf the act was done.
3. **Full Knowledge:** Ratification is valid only when the Principal who ratifies has a full knowledge of the facts.
4. **Ratification of Part transaction:**
  - One can either ratify the act completely or reject the same completely. Principal cannot ratify a part of the transaction which is beneficial to him and reject the rest.

<sup>4</sup> 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.

- 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:

a) Ratification cannot be made, which has the effect of –

- subjecting a third party to damages
- terminating any right to 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>5</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 Third party: 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>6</sup>.

#### SIMILAR QUESTIONS:

- 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?
  - No. If he does so, it will be treated as the ratification of whole transaction of 100 bales.
- 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.
  - The ratification is not binding on P. If, however the alleged principal is prepared to take the risk of what the purported agent has done, he can choose to ratify without full knowledge of facts.

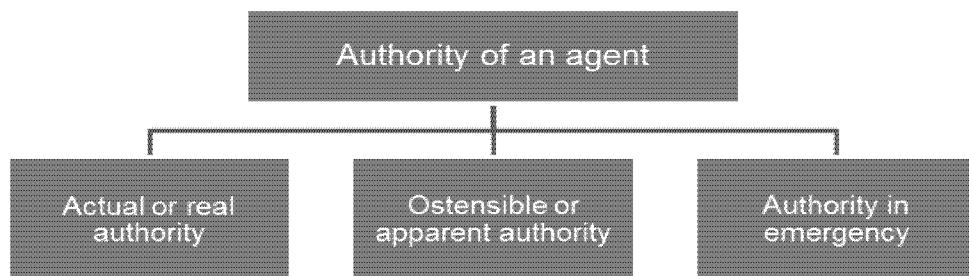
#### Q.No.5. Authority of an Agent (A)

(NEW SM, OLD SM)

**AGENT'S AUTHORITY:** It means capacity of the agent to bind his principal. The acts of an agent done within the scope of his authority will bind the Principal.

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

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



#### A. Actual Authority (Sec 186):

- Actual authority means that authority which has been really delegated to the agent. Authority of an agent may be express or implied.

<sup>5</sup> 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.

<sup>6</sup> Payment of dividend out of capital is void and cannot be ratified.

- An authority is said to be express when it is given by words spoken or written. An authority is said to be implied when it is to be inferred (=understood) from the circumstances of the case or the ordinary course of dealing between parties.
- Principal is bound by act of agent done within his express or implied authority<sup>7</sup>.

#### B. Ostensible or apparent authority:

- When an agent is employed for a particular business, persons dealing with him can presume that he has authority do all such acts as are necessary for such business. Such authority of an agent is called ostensible or apparent authority.
- Ostensible or apparent authority is the authority of agent as it appears to others. It often coincides with actual authority.

#### C. Authority in emergency (Sec 189):

- An agent has authority in emergency to do all such acts for the purpose of protecting his principal from loss as would be done by a person of ordinary prudence, in his own case, under similar circumstances.
- When the agent has acted beyond the authority in emergency, principal is bound by the act of an agent.
- To constitute a valid agency in emergency, following conditions must be satisfied:
  - a. There should be a real necessity for acting on behalf of the Principal.
  - b. It should be impossible to communicate with the principal within the available time.
  - c. Agent should act bona fide in the best interest of the principal.
  - d. Agent should have acted in the most reasonable and practicable manner.

**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 CRD 3)**

**Q.No.6. Who is a sub agent? Is the appointment of Subagent valid? Discuss the implications on appointment of Subagent. (B)** (NEW SM, OLD SM)

**Sub-Agent:** A 'Sub-agent' is a person:

- Who is employed by original agent, and
- Who is acting under the control of the original agent in the business of the agency

**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- protest delegate".*

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

- i) there is a custom of trade
- ii) the nature of work is such that a sub-agent is necessary.

<sup>7</sup> Example: A owns a shop in Dhanbad, living himself in Calcutta, and visiting the shop occasionally. The shop is managed by B, and he is in the habit of ordering goods from in the name of A for the purposes of the shop, and of paying for them out of A's funds with A's knowledge. B has an implied authority from A to order goods from C in the name of A for the purpose of the shop.

## 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 is responsible to the principal for the acts of the sub-agent <sup>8</sup> .	The original agent is responsible for the acts of the sub-agent both to the Principal and to the Third Persons.
<b>Is Sub Agent responsible</b>	The sub-agent is responsible for his acts to the agent, but not to the principal Exception: in cases of fraud or willful wrong	The sub agent is responsible for his acts to the original agent but not to the Principal even in cases of fraud or willful wrong.

Ratification of Sub-Agent's Acts:

- If the sub-agent purportedly acts in the name of first Principal then the first principal may ratify the act of sub agent.
- 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.

SIMILAR QUESTION:

1. Principal is not always bound by the acts of a sub-agent'. (OLD PM, MTP N18)  
A. Refer above answer.
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. Refer above answer.

**Q.No.7. 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 on behalf of Principal with the knowledge and consent of the principal<sup>9</sup>.
- Substituted Agent is also known as Co-Agent.

**Relation between principal and person duly appointed by agent to act in business of agency:**

- Substituted agent 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.
- Substituted agent acts under the direct control of Principal and not under Principal's Agent.
- Original Agent is not concerned with the efficiency of the Substituted agent.

<sup>8</sup> 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

<sup>9</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

**Agent's duty in naming such person:** 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<sup>10</sup>.

**(IMMEDIATELY REFER PRACTICAL QUESTION CRD 8, 9, Self-Practice 7)**

**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)

**Q.No.8. 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.

**a) Agency coupled with Interest (Sec 202):**

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

**b) 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.
- Thus, the Principal cannot revoke the Agent's authority for the acts already done.

**c) 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, who owes B Rs 10,000, appoints B as his agent to sell his landed property at Delhi and after paying himself (B) what is due to him, to hand over the balance to A. Can A revoke his authority delegated to B? **(M14 - 5M)**
- A. The doctrine of agency coupled with interest applies. Therefore, A cannot revoke the authority delegated to B.
2. A authorizes B to buy 1,000 bales of cotton on account of A, and to pay for it out of A's money remaining in B's hands. B buys 1,000 bales of cotton in his own name, so as to make himself personally liable for the price. Can A revoke the agency authority?
- A. A cannot revoke B's authority so far as regards payment for the cotton.

**(IMMEDIATELY REFER PRACTICAL QUESTION CRD 4, 15)**

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<sup>10</sup>Example: A instructs B, a merchant, to buy a ship for him. B employs a ship surveyor of good reputation to choose a ship for A. The surveyor makes the choice negligently and the ship turns out to be unseaworthy and is lost. B is not, but the surveyor is, responsible to A.

**Q.No.9. State the duties and obligations of an Agent? (A) (NEW SM, RTP M16, M16 - 4M)**

**First write about Contract of Agency and Agent**

**DUTIES OF AN AGENT:**

1. **Duty to act according to 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) If he acts otherwise, he is held liable to the principal for loss, if any.
  - d) 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<sup>11</sup>
2. **Requirements as to skill and diligence (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>12</sup>.
3. **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 pay all sums received to the Principal.
  - c) 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.
4. **Duty to communicate with Principal (Sec 214):** Agent is bound to use all reasonable diligence to establish contact with his Principal to obtain his instructions.
5. **Not to deal on his own account (Sec 215 & 216):**
  - a) Role of Agent is fiduciary in nature and therefore agent must conduct his business in good faith.
  - b) If agent deals on his account without knowledge of Principal then the Principal –
    - i) may cancel the contract<sup>13</sup>.
    - ii) can claim the benefits of such transaction from the Agent
6. **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.
7. **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.

<sup>11</sup> Eg: 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.

<sup>12</sup> Eg: 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.

<sup>13</sup> Eg: A directs B to sell A's estate. B, on looking over the estate before selling it, finds a mine on the estate which is unknown to A. B informs A that he wishes to buy the estate for himself, but conceals the discovery of the mine. A allow B to buy, in ignorance of the existence of the mine. A, on discovering that B know of the mine at the time he bought the estate, may either repudiate or adopt the sale at his option.

8. **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>14</sup>.

**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. Refer above answer

***(IMMEDIATELY REFER PRACTICAL QUESTION CRD 5, 6, Self-Practice 4, 5, 6)***

**Q.No.10. State the rights of an Agent against his Principal. (B)**

**(NEW SM)**

**First write about Contract of Agency and Agent**

**RIGHTS OF AN AGENT:**

a) **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.

b) **Right to Remuneration (Sec 219):**

- Agent has right to receive remuneration as per agreement.
- In the absence of Contract to contrary, he is entitled to receive reasonable remuneration which is customary in the business.
- However, he shall not be entitled to any remuneration if he is guilty of misconduct in the business.

c) **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.

d) **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.

e) **Right of Indemnification against the acts done in good faith (Sec 223):**

- 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.
- 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.

f) **Right of Compensation (Sec 225):** 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

***(IMMEDIATELY REFER PRACTICAL QUESTION CRD 10, Self-Practice 8, 9)***

**Q.No.11. Agent liability to Third Party (or) What is the relationship between agent, third parties, and the Principal? (A)**

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

• Principal is bound by the act of the Agent, if agent acts within the scope of his authority.

<sup>14</sup> If specifically provided in the agency agreement then the agent can delegate his authority to another person.

- The position of Principal with respect to the contracts made by the Agent with Third party may be discussed under following heads:
  1. Where agent contract for named Principal
  2. Where agent contract for unnamed Principal
  3. Where agent contract for Undisclosed Principal

## I. WHERE AGENT CONTRACT FOR NAMED PRINCIPAL:

1. **Agent acts within Principal authority:**
  - i) Principal is bound by all lawful acts of an Agent, which are done within the scope of his authority.
  - ii) It means an act of an Agent is an act of Principal.
2. **Agent acts beyond Authority:** 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:
  - i) **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.
  - ii) **When the 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 the whole of work. Principal may cancel the whole transaction.
3. **Notice given to Agent is Notice to Principal:**
  - i) 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>15</sup>.
  - ii) This means that the knowledge of the Agent is the knowledge of Principal.
4. **Liability of Principal inducing belief that Agent's unauthorized acts are authorized:** 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:**
  - i) Principal is liable for misrepresentation or fraud committed by his Agent while acting in the course of his business.
  - ii) However, Principal is not liable for any misrepresentation or fraud of Agent, which do not fall within Agent's authority.

## II. 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:**
  - i) Principal is still liable for the contract of the agents unless there is a trade, custom or a term of express or implied, to the effect, which makes the Agent personally liable
  - ii) Third party cannot sue Agent, if the name of Principal is not disclosed but he is aware about name of Principal.
  - iii) If an Agent refuses to disclose the identity of the Principal, when asked by third party, he will become personally liable on the contract.

<sup>15</sup> Eg: 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.

### III. WHERE AGENT CONTRACTS FOR UNDISCLOSED PRINCIPAL:

#### 1. Undisclosed Principal:

- i) 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'.
- ii) In such cases, Agent creates an impression that he is contracting as a Principal himself, i.e. independent party.
- iii) 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	<ul style="list-style-type: none"> <li>1. Since Agent has contracted in his own name, he is <u>personally liable</u> to Third party.</li> <li>2. He has all rights of an agent as against Principal</li> <li>3. He can <u>sue and be sued by Third party</u></li> </ul>	<ul style="list-style-type: none"> <li>1. When third party comes to know of the Principal, then he can sue (a) Principal or (b) Agent or (c) Both.</li> <li>2. If the third party decides to file a suit against the Principal, he must allow the Principal to receive benefit of all payments received by him from an agent.</li> </ul>

#### 2. Rights of Third Party in case of Undisclosed Principal [Sec 231]:

- i) If the third party comes to know the existence of the principal, he may sue either the Principal or Agent or Both
- ii) The third party is entitled to be placed in the same situation as if the agent had been contracting party<sup>16</sup>.
- iii) 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.

~~(IMMEDIATELY REFER PRACTICAL QUESTION CRD 7, 11, 12, 13)~~

**Q.No.12. Pretended Agent. (C)**

**(NEW SM)**

#### 1. 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.

#### 2. 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.
- The pretended agent has no right to proceed against the third party for performance of the contract.

**Q.No.13. 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

<sup>16</sup> 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.

- a) Can't Personally enforce contracts entered into by him, on behalf of his principal
- b) Can't be held personally liable for them

**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 Undisclosed 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 signs 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.
9. Where the agency is coupled with interest.

**Q.No.14. 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:

**A. By act of Parties:**

1. **Agreement:** Agency can be terminated at any time by mutual agreement between Principal and agent
2. **Revocation by Principal:** Principal can revoke the Agent's authority by notice.
3. **Renunciation by Agent:** An Agent may renounce the business of Agency after giving reasonable notice to Principal.

**B. By Operation of Law:**

1. **Completion of Business:** An Agency is automatically terminated when the Contract of Agency is completed.
2. **On Expiry of Fixed Period:** An Agency is automatically terminated when the fixed term of agency expires even if business is not completed.
3. **Insanity or Death of Principal or Agent:** An Agency is automatically terminated when the Principal or Agent dies or becomes unsound mind.
4. **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.
5. **Destruction of the Subject matter:** An Agency is automatically terminated when the subject matter of the contract ceases to exist.
6. **Dissolution of Company:** An Agency is automatically terminated when the Principal or Agent is a company and the company is wound up.
7. **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.15. Revocation of Agency. (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
  - b. as regards Third party, takes effect only when it comes to the knowledge of such third parties<sup>17</sup>.
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.

**(IMMEDIATELY REFER PRACTICAL QUESTION CRD14, Self-Practice 10)**

### DIFFERENCES FOR STUDENTS SELF STUDY

#### Q.No.16. 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 responsible to the Principal for the acts of the Substituted agent.

<sup>17</sup>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.

<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>

### QUESTIONS FOR ACADEMIC INTEREST - STUDENTS SELF STUDY

#### Q.No.17. 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.

**(IMMEDIATELY REFER PRACTICAL QUESTION CRD10)**

#### Q.No.18. Agent vs Servant? (C)

(NEW SM)

Basis	Agent	Servant
1. Power to bind the parties	Has authority to create contractual relationship between his Principal and third party.	Has no authority to bind his Master.
2. Principals	One person may act as Agent for several principals at the same time.	Usually serves only one master.
3. Remuneration	Remunerated by way of Commission	Paid Salary or Wages as remuneration.
4. Scope	Limited scope, since the Agent cannot act as a servant	Wider Scope, since he may be made to serve as an Agent also.

#### Q.No.19. Kinds of Agents based on Nature of work? (C)

##### 1. Commercial or Mercantile Agents:

- a) One who is authorized to sell goods or consign goods for the purpose of sale or to buy goods or to raise money on the security of goods
- b) Includes Banker, Factor, Auctioneer, Broker, Commission Agent, and Del Credere Agent.

##### 2. Non-Mercantile Agents:

- a) Not engaged in business of selling or buying goods, but act in their respective professional capacities, i.e. render professional services for their Principals.
- b) Includes Solicitors, Attorneys, C & F Agents, Insurance Agents, etc.

## PRACTICAL QUESTIONS FOR CLASS ROOM 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)

**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 may 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.** 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, M08, Similar M13)

**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 necessaries. But the legal presumption can be rebutted in the following cases:

- a) Where the goods purchased on credit are not necessaries.
- b) Where the wife is given sufficient money for purchasing necessaries.
- c) Where the wife is forbidden from purchasing anything on credit or contracting debts.
- d) 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 necessaries. 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 necessaries.

**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))

**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.** 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)

**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.5.** 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:**

- Y is not liable for the loss of goods put in Z’s warehouse because he acted according to the directions of his Principal.
- 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.6.** 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, MTP N15, N05 - 4M, RTP M13, RTP M16, M18(N); M08, 12, 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.7.** 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.8.** Mr. Bhalla instructs Aman, a merchant, to buy a ship for him. Aman employs a ship surveyor of good reputation to choose a ship for Mr. Bhalla. The surveyor makes the choice negligently and the ship turns out to be unseaworthy and is lost. Now, Mr. Bhalla holds Aman responsible for the same. Examine as per the provisions of the Contract Act, 1872, whether Aman is responsible to Mr. Bhalla. (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, Aman is not responsible to Mr. Bhalla, but the surveyor is responsible to Mr. Bhalla.

**Q.No.9.** 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.10.** 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. 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.11.** 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

- if two separate insurance policies are issued viz. one for ship and another for cargo.
- 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.12.** 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.

**Q.No.13.** 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 includes 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.14.** 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.15.** 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.

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

### PRACTICAL QUESTIONS FOR STUDENTS SELF PRACTISE

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

- A minor who is of sound mind
- A lunatic who is major
- Guardian of a minor who is of sound mind
- A lunatic who is minor

**Applicable Section:** Sec.183.

**Decision and Reason:**

- 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.** 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.

(C)

**Decision and Reason:**

- No, because A is a servant.
- No, because B is an independent contractor.
- Yes, because C is authorized to establish contract between X and a Third party i.e. supplier of utensils.

- d) Yes, because Mrs. X is authorized to establish contract between X and a Third party i.e. supplier of provisions
- e) No, because D is not authorized to establish contract between X and Third Party.

**Q.No.3.** 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)

Applicable Section 184

**Decision and Reason:** Yes, because no person is debarred from being appointed as an agent whether he has contractual capacity or not.

**Q.No.4.** 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)

Applicable Section 211

**Hint:** Y is liable to compensate X for the loss

**Reason:** Agent has not acted according to the directions of his Principal.

**Q.No.5.** 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)

Applicable section 190

**Hint:** X is liable to Z.

**Reason:** X (a driver of a bus) has delegated his authority; the owner of bus is not liable to Z.

**Q.No.6.** 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

Applicable section 211 and 212

**Hint:** a. Y is liable to X for the loss. b. Y is liable to X for the loss. c. Y is not liable to X for the loss. d. Y is liable to X for the loss.

**Reason:**

- a. Agent was instructed not to sell the goods on credit.
- b. Y (Agent) has not acted according to the custom prevailing in the business of Agency.
- c. Y (Agent) has acted with reasonable care and skill.
- d. Y has acted negligently.

**Q.No.7.** 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)

Applicable section 195

**Hint:** a. Z is responsible to X. b. Y is responsible to X

**Reason:**

- Y exercised the reasonable care and skill in selecting a substituted agent.
- 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.

**Q.No.8.** 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)

Applicable Section 222

**Hint:** X is liable to Y for such damages, costs, and expenses.

**Reason:** 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.

**Q.No.9.** 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)

Applicable Section 223

**Hint:** X is liable to Y for proceeds and costs.

**Reason:** 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.

**Q.No.10** 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)

Applicable Section: 202

**Hint:** This sale is binding on Amar because the agent's authority arose after the creation of agency.

**Reason:** The doctrine of agency coupled with interest does not apply. Amar could revoke his authority because the agency was not coupled with Interest.

## 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

### TEST YOUR KNOWLEDGE

1. 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.
2. 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
3. Mrs. X purchased some goods forming part of necessaries on Mr. X's credit from Y. state whether Mr. X. is liable to Y in each of the following alternative cases:
  - Case (a):** If Mrs. X lives with Mr. X
  - Case (b):** If Mrs. X lives apart for no fault on her part
  - Case (c):** If Mrs. X lives apart for no fault on part of Mr. X. **Hint:** Refer Practical Question CRD 2
4. X consigned goods to Y for sale and instructed him not to sell under a fixed price. Z being ignorant to X's instructions, enters into a contract with Y to buy the goods at a price lower than the reserved price. Is X bound by the contract? **Hint:** Yes, X is bound by the Contract.
5. 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
6. What is meant by an agent's implied authority? **Hint:** Refer Q. No. 5
7. Does the termination of agency terminate sub-agency? **Hint:** Yes
8. 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 & 18.