

## 16. CONTRACT OF AGENCY

### QUESTION - WISE ANALYSIS OF PREVIOUS EXAMINATIONS

No.	ABC	M-09	N-09	M-10	N-10	M-11	N-11 To N-12	M-13	N-13	M-14	N-14	M-15	N-15	M-16	N-16	M-17	N-17
1.	B	-	-	-	1	-	-	-	1	-	-	-	-	-	-	-	-
2.	B	-	-	1	-	-	-	4	-	-	-	-	-	-	-	-	-
3.	A	-	-	1	-	-	-	-	-	-	-	-	-	-	-	-	-
4.	C	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
5.	A	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
6.	B	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
7.	A	-	1	-	-	1	-	-	-	5	-	1	-	-	-	-	-
8.	A	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
9.	C	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
10.	B	-	-	-	-	-	-	-	-	-	-	-	-	4	-	-	-
11.	A	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
12.	B	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
13.	A	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
14.	B	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
15.	B	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-

**Q.No.1. What is meant by Contract of Agency? State some features of contract of agency.**

(PM)(N10 – 1M)

**INTRODUCTION:** The person who acts on behalf of some other person is known as 'Agent'. The contract which creates such relationship is known as "Contract of Agency".

**AGENT [SEC. 182]:** An 'agent' is a person.

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

**E.g.:** A, who wishes to sell his house, appoints an Estate agent to find a purchaser for it. Here A is Principal and the Estate agent is an agent representing A.

#### **CONTRACT OF AGENCY:**

1. The Indian Contract Act, 1872 does not define the word 'Agency'.
2. 'Agency' is a comprehensive word used to describe the relationship between one person and another, where the first mentioned person brings the second mentioned person into legal relation with others.
3. 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.

A contract of agency has all the essentials of a contract, with some special features of its own, which are discussed below.

#### **SALIENT FEATURES OF CONTRACT OF AGENCY:**

- a) **Basis:** The basic essence of 'agency' is that the principal is bound by the acts of the agent and is answerable to third parties.
- b) **Consideration not necessary:** Unlike other regular contracts, a contract of agency does not need consideration. In other words, the relationship between the 'principal' and 'agent' need not be supported by consideration.

c) **Capacity to employ an agent:** A person who is competent to contract alone can employ an agent. In other words, a person in order to act as principal must be a major and of sound mind. Minor or unsound mind cannot employ an agent.

d) **Capacity to be an agent:** A person in order to be an agent must have authority to contract. So, minor has no capacity to contract but may have authority to act as agent. An agent brings about a contractual relationship between the principal and third persons and therefore his contractual capacity is immaterial.

**SIMILAR QUESTION:**

1. Agency cannot be created without consideration. Comment.

(N 10, 13 – 1M)

**Ans:** No. Refer above – Sec 185

**(IMMEDIATELY REFER PRACTICAL QUESTION NO. 1 & 2)**

**Q.No.2. Briefly explain different modes of creation of an agency relationship.**

(M10 – 1M, M 13 - 4M)

**THERE ARE FIVE GENERAL METHODS OF CREATING AGENCY THEY ARE:**

1. **Agency by Actual authority (Sec. 186 & 187):** A contract of agency can be
  - a) Express or implied or
  - b) It can be in the form of words spoken or written.
  - c) While the express contract is often expressed in clear terms,
  - d) Implied contracts are created by circumstances.
2. **Agency by ratification- Refer Question No. 3**
3. **Agency by ostensible authority:** Where the authority of the Principal is inferred by the conduct of the Principal, there the agency through ostensible authority is born. It is further classified into:
  - a) **Agency by estoppels (Sec.237):** Where a person, either by his conduct or by words spoken or written, lead another person to believe that the person is his agent then he can't deny that fact subsequently.
 

**E.g.:** 'A' informs 'B', in the presence and within the audible distance of 'P' that 'P' is his agent. Later 'B' enters into contract with 'P' thinking that 'P' is the Agent of 'A'. In a situation like this, neither 'P' nor 'A' can refuse the obligations under the contract. 'P' had become the agent of 'A' by estoppel.
  - b) **Agency by Holding out:** Past positive or affirmative action on the part of the Principal is required to establish agency relationship under "holding out" principle. The following conditions are required to be present in case of Agency by Holding out:
    - i) Statement or conduct of misrepresentation.
    - ii) A genuine, not necessarily a fraudulent misrepresentation and
    - iii) The third person should prove that he entered into the transaction believing the statement so made to be true.

**E.g.:** 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. Z can recover the price of his goods from X because X had held out Y as his agent in earlier occasions.
4. **Agency by necessity:** Sometimes circumstances would compel and a relation of agency would fall in place. This is often out of necessity. To constitute an agency by necessity, following conditions must be fulfilled.
 

(CMA D 09 – 4M)

- a) Agent should be in a position of not being able to communicate with the Principal.
- b) There must have been an actual and definite commercial necessity.
- c) The Agent must have acted bonafide and for the benefit of Principal.
- d) The Agent must have adopted most reasonable and practicable course of action.

*E.g.: A captain of a ship can borrow money at other ports where there are no agents to act on behalf of the owner, to carryout some repairs to the ship. In this case, the Captain becomes an agent by necessity.*

#### 5. Actual authority and apparent authority:

- a) Actual authority to act as agent stems from a consent. The consent to act may be oral or in writing.
- b) Some time the authority can also be 'implied authority'. The implied authority is incidental or usual or customary. It would depend on the circumstance of the case.
- c) The authority of the agent is 'apparent' where the principal represents or is regarded by law as having represented that another has, authority.
- d) Under the doctrine of 'apparent authority', the 'principal' is bound to third parties by the acts of that person though he had not given such authority or had limited the authority by instructions not made known to third party.

The notion of apparent authority is essentially confined to relationship between the principal and third party.

#### SIMILAR QUESTION:

1. P says to Q in the presence of and within the hearing of R that he (P) is the R's agent. Q supplied goods of Rs 20,000 to P considering him as R's agent. State the position of R in reference to the Indian Contract Act,1872.

**Ans:** Refer above question – Sec 237.

**(IMMEDIATELY REFER PRACTICAL QUESTION NO.3)**

**Q.No.3. 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) (CMA D 11 – 4M) (N 03 - 6M, N 06 - 5M, M10 – 1M) (PM)**

**MEANING:** Ratification is an approval of the previous act or contract.

Agency is also created by subsequent ratification or approach. The subsequent ratification becomes necessary because the agent acts without the knowledge or the approval of the principal.

#### FOLLOWING ARE THE RULES OF RATIFICATION.

1. Ratification can be made only by a person who was in existence at the time of act.
2. Ratification must be by a person for whom the act was done, professing him to be principal. This implies competency on the part of the person ratifying the act.
3. Ratification would date back to the date of the act, and validate it
4. Ratification may either be express or even implied by the conduct of the person on whose behalf the act was done.
5. Ratification must be of the whole act and not just for a part of the act.
6. Ratification [by the purported principal] of the acts of an agent cannot be such as to create any liability to third parties or cause any injury or damage to third parties
7. Ratification cannot be done if the person ratifying is in knowledge of facts which are materially defective.

8. ILLEGAL acts cannot be ratified.
9. Acts which are void ab initio cannot be ratified
10. Ratification would be restricted to certain limitations to which original acts are limited and ratification can be to that portion of exceeded authority by the agent.

**SIMILAR QUESTION:**

1. Ratification of agency is valid even if the knowledge of the Principal is materially defective. (True/False)

**Ans:** False. Valid ratification can't be made by a person whose knowledge of the facts of the case is materially defective.

**Q.No.4. A Delegate can't further delegate? (Or) State the provisions relating to Sub-agent. (Sec.190)** (N 00 - 5M, N01 - 10M)

1. Sub agency refers to case where an agent appoints another agent.
2. 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***".

3. The appointment of a sub agent would be valid if the terms of appointment originally contemplated it.
4. Sometimes customs of the trade may provide for appointment of sub agents.

In both these cases the sub agent would be treated as the agent of the principal.

Position of sub agent Vis Vis third parties where the sub agent is properly appointed

**a) Where the sub-agent is properly appointed:** Where a sub agent is properly appointed, The principal is bound by his acts and is therefore responsible to third parties as if he were an agent originally appointed by the principal.

**b) In the case of appointment without authority:**

- i) In case where the appointment of sub agent takes place without authority, the principal is not bound by the acts of sub agent and sub agent is not bound to the principal.
- ii) It is the agent who is the principal of sub agent.
- iii) Where the sub-agent purportedly acts in the name of first principal, that first principal may ratify the act of sub agent.
- iv) 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, the principal cannot ratify such acts of sub agent.

**(IMMEDIATELY REFER PRACTICAL QUESTION NO.4)**

**Q.No.5. Write briefly about 'Substituted Agent'.**

1. Substituted agents are not sub agents. They are agents of the principal.
2. Where the principal appoints an agent and if that agent identifies another person to carry out the acts ordered by principal, than the second person is not to be treated as a sub agent but only as an agent of the original principal.

*For example, 'A' directs 'B' his solicitor to sell his property by auction and 'B' appoints 'C' an auctioneer. In this regard, 'C' is an agent of 'A' and not a sub agent.*

3. While selecting a "substituted agent" the agent is bound to exercise same amount of diligence as a man of ordinary prudence and if he does so he will not be responsible for acts or negligence of the substituted agent.

*For example 'X' consigns goods to 'Y' a merchant for sale. 'Y' in due course employs an auctioneer in goods to sell goods of 'X' and also allows him to receive the proceeds of sale. The auctioneer becomes insolvent afterwards without handing over the proceeds. Here 'Y' will not be responsible to 'X' as he has discharged his duties as a man of ordinary prudence and diligence.*

**Q.No.6. State the position of Undisclosed Principal and agent towards third parties.**

Particulars	Principal existence	Principal name
Named principal	Disclosed	Disclosed
Un Named principal	Disclosed	Not disclosed
Un Disclosed principal	Not Disclosed	Not disclosed

An 'undisclosed principal' comes into play where an agent having the authority to contract, Does not disclose the fact, concealing not only the name of the principal but also the fact that There is a principal; here the agent gives an impression that he acts on his own.

In 'undisclosed principal', the mutual rights, of principal, agent and third party are as follows:

- The liability of the agent is his own since he has not disclosed that there is a principal
- Where the third party comes to know about the existence of the principal he can sue the agent or the principal.
- The third party's interest would stand protected even, and would not suffer even if the principal surfaces and intervenes at a later date.
- Third party has a right to refuse, if the principal discloses himself, on the ground that had he known about the principal he would not have entered into the contract.

**Q.No.7.What is an Irrevocable Agency? When such agency is created? (N09, M11 - 1M, M15 - 1M)**

Where the agency cannot be terminated, it is called irrevocable agency.

- Where agency is coupled with interest then it is a case where the agent has interest in the subject matter of agency.

In this case, agency cannot be terminated except where there is an express provision, to cause prejudice to the interest of the agent. For the agency coupled with interest does not come to an end on the death, insanity, or the insolvency of the principal.

- Where the agent has incurred personal liability, principal cannot revoke the agency leaving the agent to face the liability.

*For instance where 'A' appoints 'B' as his agent and 'B' purchases as per orders of 'A' some rice in his personal name, A cannot revoke the authority*

- Where the agent has partly exercised the authority, the authority cannot be revoked, where 'A' appoints 'B' as his agent to procure 10 bags of rice and 'B' procures in the name of 'A' then 'A' cannot revoke his authority.

**SIMILAR QUESTION:**

- 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?

(M 14 – 5M)

**Ans:** 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. In the instant case the doctrine of agency coupled with interest applies. Therefore, A cannot revoke the authority delegated to B.

**2. State whether the following statement is correct or incorrect:**

(M 15 1M)

Agency coupled with interest is irrevocable

**Ans:** correct

**(IMMEDIATELY REFER PRACTICAL QUESTION NO.5)**

**Q.No.8. Discuss the extent of Agent's authority.**

(N 99 - 5M)

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

**LET US EXAMINE THESE TWO SITUATIONS -**

**1. Agent's authority in normal circumstances:** An agent has the power and authority to do all acts lawful and necessary in the normal circumstances in discharge of his functions.

*For instance, where 'A' who lives in Andamans employs 'B' as his agent to collect his debts in Kanyakumari, 'B' has all the authority including the authority to pursue legal proceedings.*

*Similarly 'B' can also give valid discharge. Again for example, where 'A' executes a power of attorney in favour of 'B' in running a silk factory, but the power of attorney did not authorize 'B' to borrow and if 'B' borrowed, it was stated to be an act in excess of his authority [Ferguson vs. Uma Chand Bold (1905) 33 Cal. 343]*

**2. Agent's authority in emergency:** An agent has the authority in an emergency to do all such acts as a man of ordinary prudence would, for protecting his principal from losses under similar circumstances.

*A typical case is where the 'agent' who handles perishable goods like 'mangoes' can decide the time, date and place of sale, not necessarily as per instructions of the principal but with the intention of protecting the principal from losses. Here the agent acts in an emergency and acts as a man of ordinary prudence.*

**Notice to an agent:** Any notice given to an agent or information obtained by him will be deemed to be given to the principal. Ex T took out a policy with P, an insurance company against accidental injury. The proposal form contained a declaration that the proposer did not suffer from any physical infirmity. T was blind in the eye. This fact was known to the agent. T was illiterate and the agent filled in the form without disclosing T's infirmity. It was held that the policy was good, as P was bound by the knowledge of the agent. [Bawden vs. The London Insurance Co.]

**Q.No.9. State the liability of named Principal for the contracts entered by the agent on his behalf?**

(PM)

**THE LIABILITY OF THE PRINCIPAL TO THIRD PARTIES WOULD FALL UNDER FOLLOWING CATEGORIES -**

- When agent acts within the scope of his authority:** The principal is liable for the acts of the agent done within the scope of his actual or apparent authority. Where there are specific restrictions on the authority of the agent, then the principal is not bound by it.
- Principal is bound by notice given to agent:** The principal is bound by the notice given to the agent. Knowledge of the agent is knowledge of the principal. Knowledge of a bank manager is knowledge of the bank. Therefore the principal is bound except where the agent does acts that are fraudulent.

- c) **Liability by estoppels:** Where the agency is by the doctrine of estoppel, the principal is bound by the same doctrine.
- d) **Liability for misrepresentation:** The principal is liable for any fraud or misrepresentation done by the agent within his authority regardless of the fact that the act has resulted in benefit to the agent or the principal.

No liability where agent exceeds the authority: The principal is not liable for acts of agent done in excess of authority. Sometimes the acts can be separated as 'within the authority' and 'beyond the authority'. Principal is bound for those acts which are within the authority. But where acts are not separable, the principal may repudiate the entire transactions.

- e) **Unnamed principal:** Where the existence of the principal is known but his name is not known, the principal is liable for the acts of the agent. Third parties can sue the principal for the acts of the agent, unless agent refuses to disclose the identity of the principal.

**Q.No.10. State the duties of an Agent against his Principal?**

RTP - M16, (M - 16) 4M

#### **FOLLOWING ARE THE DUTIES OF AN AGENT:**

1. **Duty in conducting principal's business:** The agent should conduct the business of the principal as per directions of the principal or in the absence of any directions as per the custom prevalent in the business
2. **Liable for loss:** 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. It was held by the Supreme Court in a case that the agent had to compensate the principal where the agent did not act according to the instructions of the principal.

In the given case the agent was under instruction to insure the goods of the principal but he did not. There was an explosion in the Bombay dock and as a result all the goods of the principal, along with others, was destroyed.

The Government passed an ordinance that where ever there was a fire insurance policy, full amount would be paid to the owners and where there was no insurance cover, half the amount would be repaid. The principal was paid half the losses and he sued the agent for the balance loss and the agent was ordered by court to pay the balance amount to compensate him for loss.

3. **Requirements as to skill and diligence:** Agent must act always as a person with diligence and skill normally exercised in the trade. He would otherwise be responsible to compensate the principal for any loss suffered by the principal for want of his skill.

*Where 'A' acts as an agent for 'B' and sells rice to 'C' in the usual course of business without verifying about C's solvency and if 'C' goes insolvent, then 'A' is responsible for losses arising to 'B'.*

4. **Agent's duty to account:** The agent has to maintain and render proper accounts to principal whenever demanded. He is bound to pay the principal all sums received. He is bound to maintain accounts even if the contract is illegal or void.
5. **Duty to communicate:** The agent must in order to obtain instruction, communicate and contact the principal as a man of ordinary diligence.

**(IMMEDIATELY REFER PRACTICAL QUESTION NO. 6, 7)**

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

#### **FOLLOWING ARE THE RIGHTS OF AN AGENT:**

- a) **Right of lien on principal's property:** An agent is entitled to retain the goods, properties and books for any remuneration, commission etc due to him. The possession of such property should be however lawful.

b) **Right of indemnification for lawful acts:** The principal is bound to indemnify the agent against all consequences of lawful acts done in exercise of his authority.

*For example '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 out of that.*

c) **Right of indemnification against acts done in good faith:** 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.

*Where 'P' appoints 'A' as his agent and directs him to sell certain goods which in fact turned out to be not those belonging to 'P' and if third parties sue 'A' for this act, 'A' is entitled for reimbursement and indemnification for such act done in good faith.*

However the agent cannot claim any reimbursement or indemnification for any loss etc arising out of acts done by him in violation of any penal laws of the country.

d) **Right of retention:** The agent can retain, out of the sums received from the principal, such amounts towards reimbursement of expenditure, remuneration and advances paid by him on account towards the business and render accounts only for the balance.

e) **Right of remuneration:** The agent in the normal course is entitled for remuneration as per the contract. In the absence of any agreed amount of remuneration, he is entitled for usual remuneration which is customary in the business. However he is not entitled for any remuneration for acts done through misconduct/negligence.

#### Q.No.12. Enumerate the rights and duties of Principal in a Contract of Agency?

The following are the rights and duties of Principal in a Contract of Agency:

**Rights of a principal:** The rights of Principal are based on the duties of an Agent. These are:

1. He can enforce various duties of an Agent.
2. He can recover compensation from Agent for any breach of duty by him.
3. He can forfeit agent's remuneration where the Agent is guilty of misconduct in the business of agency.
4. Principal is entitled to get any extra or secret profit that an agent makes out of his agency.
5. 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, then:
  - a) The Principal may repudiate the transaction (Sec 215) or
  - b) Principal is entitled to claim from the agent any benefit which may have resulted to him from the transaction.(Sec 216)
6. Principal is entitled to receive all sums that agent receives on Principal's account.

**Duties of Principal:** Duties of principal are similar to rights of an Agent. They are:

1. It is the duty of the Principal to pay agreed remuneration to the Agent. However, where the Agent is guilty of misconduct in the business of agency, the Principal can forfeit the Agent's remuneration for such work.
2. It is the duty of the Principal to indemnify the Agent for the consequences of all lawful acts entrusted to him, and for all such acts which he performs in good faith. However, he is not bound to compensate the Agent against the consequences of unlawful acts.
3. It is the duty of the Principal to compensate the Agent for any loss or damage incurred by him Due to principal's negligence or lack of skill.

**Q.No.13. State the position of an Agent towards third parties (Or) State the rules relating to the personal liability of an Agent for a contract entered into by him on behalf of his Principal.**

(M 05 - 6M) (PM)

Under certain circumstances like, where the agent exceeds his authority, or has no authority or the principal does not ratify the act of the agent, the agent is personally liable. This is known as doctrine of implied warranty of authority.

The rules with regard to personal liability of an agent are set out hereunder.

- i) Where the contract expressly provides for personal liability of the agent
- ii) Where the agent signs the negotiable instrument without indicating that he is signing it for the principal
- iii) Where the agent works for a foreign principal
- iv) Where the agent acts for a principal who cannot be sued viz., Ambassador of a country etc.
- v) Where a Govt. servant enters into a contract on behalf of Union of India in disregard of Article 299(1)
- vi) Where according to usage in trade in certain kinds of business agents are personally liable.
- vii) **Agency coupled with interest:** where the agency is coupled with interest. An agency will be treated as such where the agent himself has interest in the subject matter. The 'interest' of the agent to come under this category should not be an ordinary 'interest' like towards remuneration etc., but should be a special interest.

#### **SIMILAR QUESTION:**

1. Briefly explain when the principal is liable for the acts of an agent and state under what circumstances an agent is personally liable. (MTP – 8M)

**Ans:** Principal liability for the acts of an agent – Refer Q.no: 11 Full

Personal liability of an agent – Refer above question & Answer any 4 points

**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**

(M 00 - 10M)

The termination of the agency arises and is based on the doctrine of revocation.

In terms of Section 201 of the Act, following are the circumstances when the authority conferred on the agent gets terminated:

- a) Revocation of authority by the principal
- b) Renunciation of agency by the agent
- c) Completion of business of agency
- d) Death or insanity of principal or agent and
- e) Insolvency of the principal

The rights of the principal to revoke the authority of the agent and the right of the agent to renounce are each exercised at their will and pleasure.

Following are the general principles in this regard:

- a) Even where the agent gets interested in the subject matter, that would not be a ground for the principal to terminate the agency. The agency becomes an agency coupled with interest.
- b) The principal cannot revoke the authority after the authority has been exercised.

- c) The agent's authority cannot be revoked if the agent has partially exercised the authority.
- d) Where there is an implied or express contract, agency may continue for a period of time. The agency cannot be terminated without compensation.
- e) Reasonable notice must be given for termination; otherwise the agent is entitled for compensation.
- f) Revocation and Renunciation must be express or implied.

**SIMILAR QUESTION:**

1. When termination of agent's authority takes effect as to agent and as to third persons (Sec 208)?

**Ans:** Refer the heading Revocation by Principal, above.

**QUESTIONS FOR ACADEMIC INTEREST**

**Q.No.15. State the position of Unnamed Principal towards third parties.**

**Introduction:**

1. Unnamed Principal is a Principal whose existence is disclosed by the Agent but identity is not disclosed.
2. Even though he has not disclosed the name of the Principal, the person acting as an agent is able to bind the Principal by his acts with third parties, if they are within the scope of his authority.
3. The legal position of an Unnamed Principal is the same as that of a named Principal except that in certain cases, the Agent is personally liable:
  - a) Where there is a custom of trade making the Agent personally liable. E.g., in case of stock exchange transactions.
  - b) If Agent declines to disclose the identity of the Principal, he becomes personally liable on the contract.
  - c) If the Principal stops existing (say die) before the disclosure of his identity by his Agent then the Agent will be liable to third parties for the agency transaction.

**PRACTICAL QUESTIONS**

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

a. A minor who is of sound mind	b. A lunatic who is major
c. Guardian of a minor who is of sound mind	d. A lunatic who is minor

Applicable Section: Sec.183.

**Decision and Reason:**

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

**Q.No.2. 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.** **(PM, RTP M17)(For students self study)**

**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:** Section 184 – Who can be an agent?

**Analysis:** 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.

**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.3.** 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? **(M 08, Similar M – 13, PM)**

**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. Whether the husband is liable to pay for the saree?

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

**Analysis:** 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 (iii) and (iv).

**Conclusion:** 'Q' will succeed; he can recover the amount from 'P' (Husband), if sarees purchased by 'R' (Wife) are necessities.

**Q.No.4.** 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?

**(PM) (CMA D 10 – 2M) (For students self study)**

**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 realise. Is 'D' liable for damages to 'C' (Principal) (Or) Is 'D' agent of necessity?

**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:** Sec. 189 of Indian Contract Act, 1872 states that this section creates a special authority in emergency and constitutes the agent into an agent of necessity to counter any emergency situation. An act done in the 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.5.** 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? **(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.6.** 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? **(For students self study)**

**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. Is 'Y' liable to 'X' for the loss?

**Provision:** Sec.211 – "Agent duty in conducting Principal's business. An Agent is bound to conduct the business of his Principal according to the directions given by the Principal or in the absence of any such directions, according to the customs which prevail in doing the business of the same kind at the place where the agent conducts such business. When the agent acts otherwise, if any loss be sustained, he must make it good to his Principal and if any profit accrues, he must account for it.

**Analysis:** Sec.211 of the Indian Contract Act, 1872 states that it is the duty of the Agent to conduct the business of his Principal according to the directions of his Principal and abide to keep himself within his authority. When the Agent acts otherwise, if any loss is sustained then he must make it good to his Principal and if any profit accrues, he must account for it. 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.No7.** 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 lac?

**(MTP N15, N 05 - 4M) (PM) (RTP M13,RTP M16: M08,12)(M -16 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. Whether Mr.Ahuja is entitled to recover the excess amount paid to Mr.Singh?

**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:** As per Sec.216 an agent occupies fiduciary position and therefore, it is his duty not to do anything which would bring his personal interest and his duty to the principal in conflict with each other. This conflict invariably arises when the agent is personally interested in the Principal's transaction. This is what happened in the given problem. Here 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.8.**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. **(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:** According to the given situation, 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:** So such an unauthorized act of C cannot be ratified by Birla, so as to binding on Aditya.

### 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?
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.
3. A person appointed by the original agent to act in the business of agency, but under the control of original agent, is known as-----
4. Which of the following agency is irrevocable?
  - a) agency for fixed period
  - b) agency for single transaction
  - c) agency coupled with interest
  - d) continuing agency
5. X appoints the following persons. State whether they can be called as agent of X:
  - a) A to cook food for X and X's family on a monthly salary of Rs. 1,000
  - b) B to furnish kitchen in his house for Rs. 10,000
  - c) C to buy utensils for his kitchen for an agreed commission of 5% on purchases.
  - d) Mrs. X to buy provisions for his kitchen without any commission on purchases.
  - e) D to advice on financial matters.
6. Can the following persons appoint an agent
  - a) A minor who is of sound mind.
  - b) A lunatic who is major
  - c) Guardian of minor who is of sound mind
  - d) A lunatic who is minor
7. Can the following persons be appointed as an agent?
  - a) A minor who is of sound mind
  - b) A lunatic who is a major
  - c) A guardian of a minor who is of sound mind
8. Mrs. X purchased some goods forming part of necessities 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. Y

**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.
9. 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?
10. 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?
11. Y, the proprietor of a newspaper published at X's request a libel upon X in the paper and X agreed to indemnify Y against the consequences of the publication. Y was sued by X and had to pay damages and also incurred expenses. Is X liable to Y for such damages and expenses?
12. 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?
13. 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.

14. What is meant by an agent's implied authority?
15. Does the termination of agency terminate sub-agency?
16. Define 'agent' and 'principal'
17. Who may be an agent?
18. Who can employ an agent?
19. Is consideration for agency necessary?
20. What is the true test of agency?

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**THE END**

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