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TOPIC : CONTRACT OF AGENCY

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# OBJECTIVES OF THE PRESENTATION

1. Introduction
2. Sec. 182, Indian contract Act , 1872
3. Rules of Agency
4. Principal
5. Agent
6. Agent & Servant
7. Essentials of Agency
8. Modes of Creation of Agency
9. Kinds of Agents
10. Duties & Rights of Agent
11. Duties & Rights of Principal
12. Liabilities of Agent & Principal
13. Agent's Authority
14. Delegation of Authority
15. Termination of Agency



# INTRODUCTION

- Modern business is becoming complex with the passage of time. Due to vast expansion in the modern business, it is not possible for a person to carry on all the business transactions himself.
- Certain circumstances of the business requires the businessperson to depend upon another person to transact his/her business.
- For the smooth running of the business a businessman can depend on others.
- Therefore, a businessman should delegate some of his powers to another person.
- The another person who acts on behalf of the businessman is known as **an agent**.
- The person or the businessman who is so represented is called **the principal**.
- The contract which creates the relationship between the principal and the agent is called the agency.**
- When X appoint Y to sell his motor bike on his (X's) behalf, X is the principal and Y is his agent. The relationship between X and Y is called agency.

# SECTION 182 - INDIAN CONTRACT ACT, 1872

## ◎ DEFINITION :

**SECTION 182 of the Act**, defines that “ an agent is a person employed to do any act for another, or to represent another in dealings with third person. The person for whom such act is done, or who is so represented , is called the principal.”

- ◎ The function of an agent is to bring about contractual relations between the principal and the third parties . The acts of the agent is to bind his principal with the third parties .
- ◎ The acts of the agent also give right to third persons against the principal. The function of an agent is to bring his principal into contractual relationship with third parties.
- ◎ The agent is merely a contracting link between the principal and the third parties.
- ◎ His work is to connect the principal and the third contracting party , after which he takes an exit from the scene.
- ◎ The agent has the power to make the principal answerable to the third parties for his authorised conduct.
- ◎ The relationship between the principal and the agent is known as agency, and the contract between them is referred to as the **contract of agency**, which may be either expressed or even implied .

# EXAMPLE

- ⦿ A appoints B his agent to sell his house on his behalf. Here A is the 'principal', B is the agent, the relationship between A and B is that of 'agency', and the contract between the two is known as 'contract of agency'.
- ⦿ The function of an agent is to establish a contractual relationship between the principal and the third persons/ parties.
- ⦿ Agents serves as a connecting link ( a conduit pipe) between his principal and the other party.
- ⦿ When an agent acts on behalf of his principal, within the scope of his authority given to him by the principal, and transacts some business deal with the third party, he binds the principal with such business deal, as if the principal himself had transacted the deal, though through his agent, authorised by him on that behalf. This is based on the dictum: 'He who does through another does by himself.' ('qui facit per alium facit per se'). The act of the agent is the act of the principal himself.

# RULES OF AGENCY / TEST OF AGENCY

1. Agency exists whenever a person can bind another by acts done on his behalf. That is, when acted upon by the agent, it connects the principal with third persons; the principal acquires rights and liabilities, and the agent drops out and ceases to be a party to the contract.

**SECTION 226 :** The acts of the agent are considered as the acts of his principal. Contracts entered into through an agent, and obligations arising from acts done by the agent, may be enforced in the same manner, and will have the same legal consequences, as if the contracts had been entered into and the acts done by the principal in person."

**Example-** A being B's agent, with authority to receive money on B's behalf, receives from C a sum of money due to B. C is discharged of his obligation to pay the sum in question to B.

2. Whenever a person can lawfully do himself, he may also do the same through an agent. According to the principle of agency - "**Qui facit per alium facit per se**" which means "He who does through another (agent) does by himself. This rule is subject to some exceptions, for example, contracts involving personal skills or services, such as marriage, singing, painting etc.

- ⦿ A wife is not the agent of the husband except under special circumstances and for special purposes.
- ⦿ A guardian is not an agent of a minor.

# WHO CAN APPOINT AN AGENT ? ( WHO MAY BE A PRINCIPAL ? )

## Competence to Appoint an Agent :

- ⦿ **Section 183** : “Any person who is of the age of majority according to the law to which he is subject , and who is of sound mind , may employ an agent”.
- ⦿ The contractual capacity of the principal is an important element. Therefore, a person who has not yet attained the age of majority or who is of unsound mind cannot appoint an agent. Thus, he cannot be a principal.
- ⦿ A person who cannot enter into a contract himself , also cannot enter into a contract of agency, and cannot appoint even an agent, therefore, he cannot enter into any contract through an agent.
- ⦿ Person who contracts as agent of a minor or a lunatic cannot bind the third parties thereby. The agent will be himself bound by such a deal as against the third party.
- ⦿ An individual or group of persons like a partnership firm or a company can appoint an agent and they can enter into contractual obligations through an agent.



# WHO MAY BE AN AGENT ?

## COMPETENCE TO BECOME AN AGENT :

- ⦿ **SECTION 184 :** “As between the principal and third persons any person may become an agent, but no person who is not the age of majority and of sound mind can become an agent, so as to be responsible to his principal according to the provisions in that behalf , herein contained”.
- ⦿ Agent is merely a connecting link (conduit pipe ) between the principal and third party . It not material whether agent is legally competent to contract or not . There is no bar to the appointment of minor as an agent. Therefore, the agent to be competent to contract is not necessary.
- ⦿ **THUS, EVEN A MINOR OR A PERSON OF UNSOUND MIND CAN BE APPOINTED AS AN AGENT.**
- ⦿ BUT, personally such person will not be responsible to the principal like an adult agent.
- ⦿ The principal is liable to third person for the acts of minor or lunatic agent.
- ⦿ The contract entered into by an incompetent agent can very well bind the principal with the third party.
- ⦿ The principal can never recover any compensation form an incompetent agent for loss caused by misconduct or unauthorised acts of such agent.
- ⦿ Example – P appoints A (a minor ), as his agent to sell his house for a minimum price of Rs. 10 lac. A, however, sells P's house to B for Rs. 9 lac, instead. Under such a contract , P will be bound by the transaction of the sale of his house to B for Rs. 9 lac only. But then, P cannot hold A liable for compensation for disobeying the instructions of P ( for having sold the house for an amount lesser by the minimum stipulated price by Rs. 1 lac). This is so because A is a minor, and any contract with a minor is void-ab-initio.



# AGENT AND SERVANT

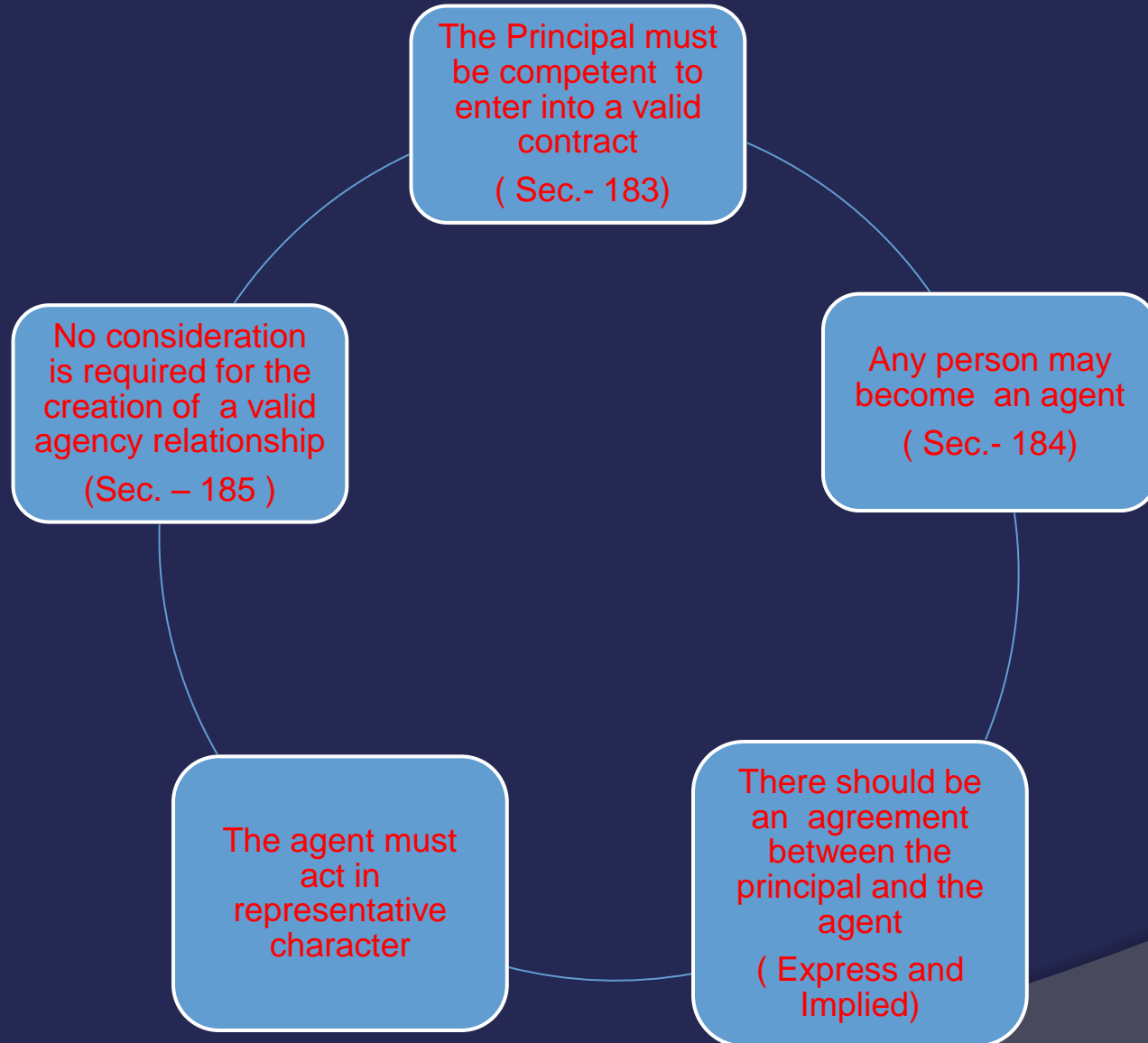
## EVERY PERSON WHO ACTS FOR ANOTHER IS NOT AN AGENT

### OBSERVATIONS OF JUSTICE RAMASWAMY :

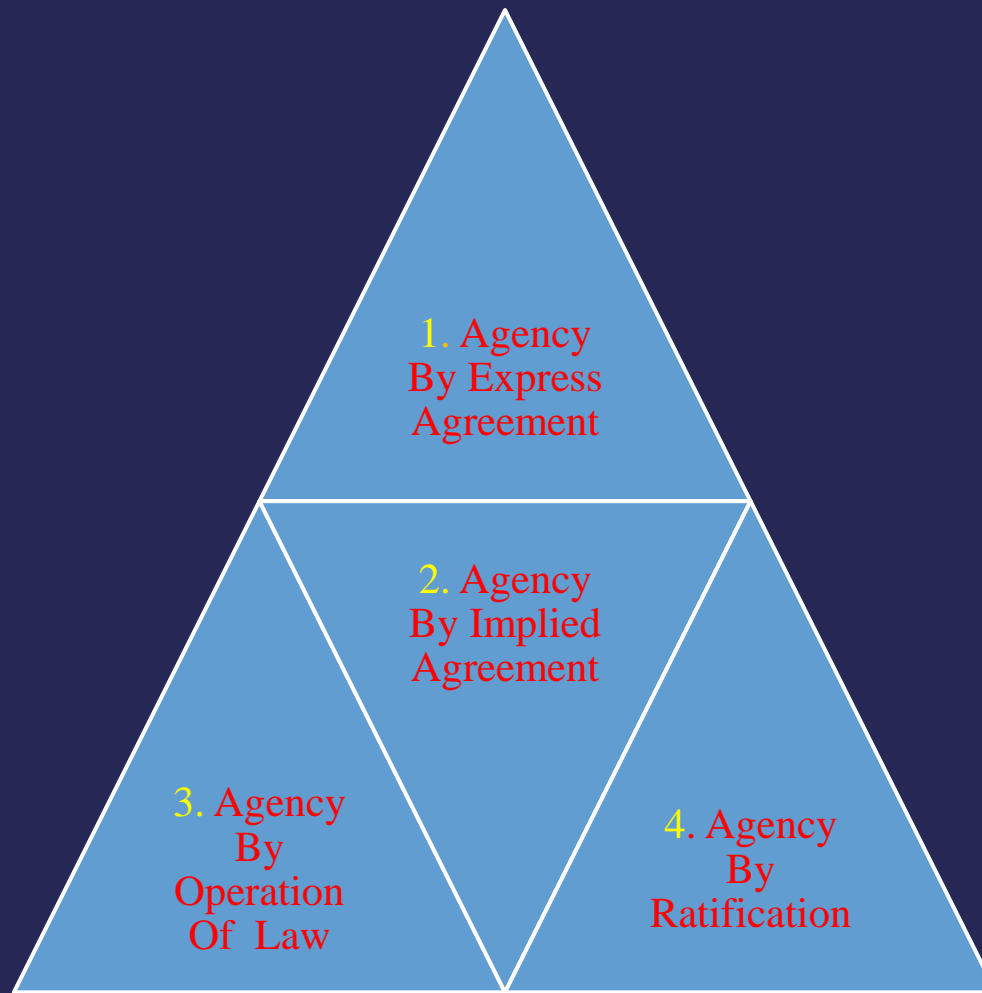
“ In legal phraseology , every person who acts for another is not an agent. A domestic servant renders to his master a personal service ; a person may till another person’s field or work in his shop or factory or mine or may be employed upon his roads or ways . In none of these capacities , he is an agent and he is not acting for another in dealings with third persons. It is only when he acts as a representative of the other in business negotiations , that is to say, in the creation, modification or termination of contractual obligations between the other and the third persons , that he is an agent. Representative character and derivative authority may briefly be said to be the distinguishing feature of an agent.”

AGENT	SERVANT
1.An agent is authorised to act on behalf of his principal and has power to create legal relations between the principal and third persons.	1. A servant has no representative character. He has no authority to make contract on behalf of his master.
2.The principal directs the agent “ as to what is to be done”.	2. The master has the right to direct not only “ what work is to be done” but also “how the work is to be done”.
3. The principal is liable only for the authorised acts of the agent.	3. An employer is liable only for the wrongful acts of the servant committed in the course of employment.

# ESSENTIALS OF AGENCY



# DIFFERENT MODES OF CREATING AGENCY



# MODES OF CREATION OF AN AGENCY

## 1.AGENCY BY EXPRESS AGREEMENT (SECTION 187)

A contract of agency may be created or entered into by express words, written or oral. It may be verbal or in writing, in both these cases agreement will constitute an express agency. The authority given by the principal to his agent is normally an express authority, which enables the agent to bind his principal by the acts done within the scope of that authority. There is no specified prescribed format of an agency agreement. The agreement to create the contract of agency is based on the execution of 'power of attorney' on a stamped paper [sec. 187].

## 2.AGENCY BY IMPLIED AGREEMENT (SECTION 187)

According to sec. 187, “An authority is said to be implied when it is to be inferred from the circumstances of the case; and things spoken or written, or the ordinary course of dealing, may be accounted circumstances of the case”.

Where an agency emerges from the conduct, situation or relationship, of the two parties, it is referred as the implied agency. It arises when there is no express agreement appointing a person as an agent.

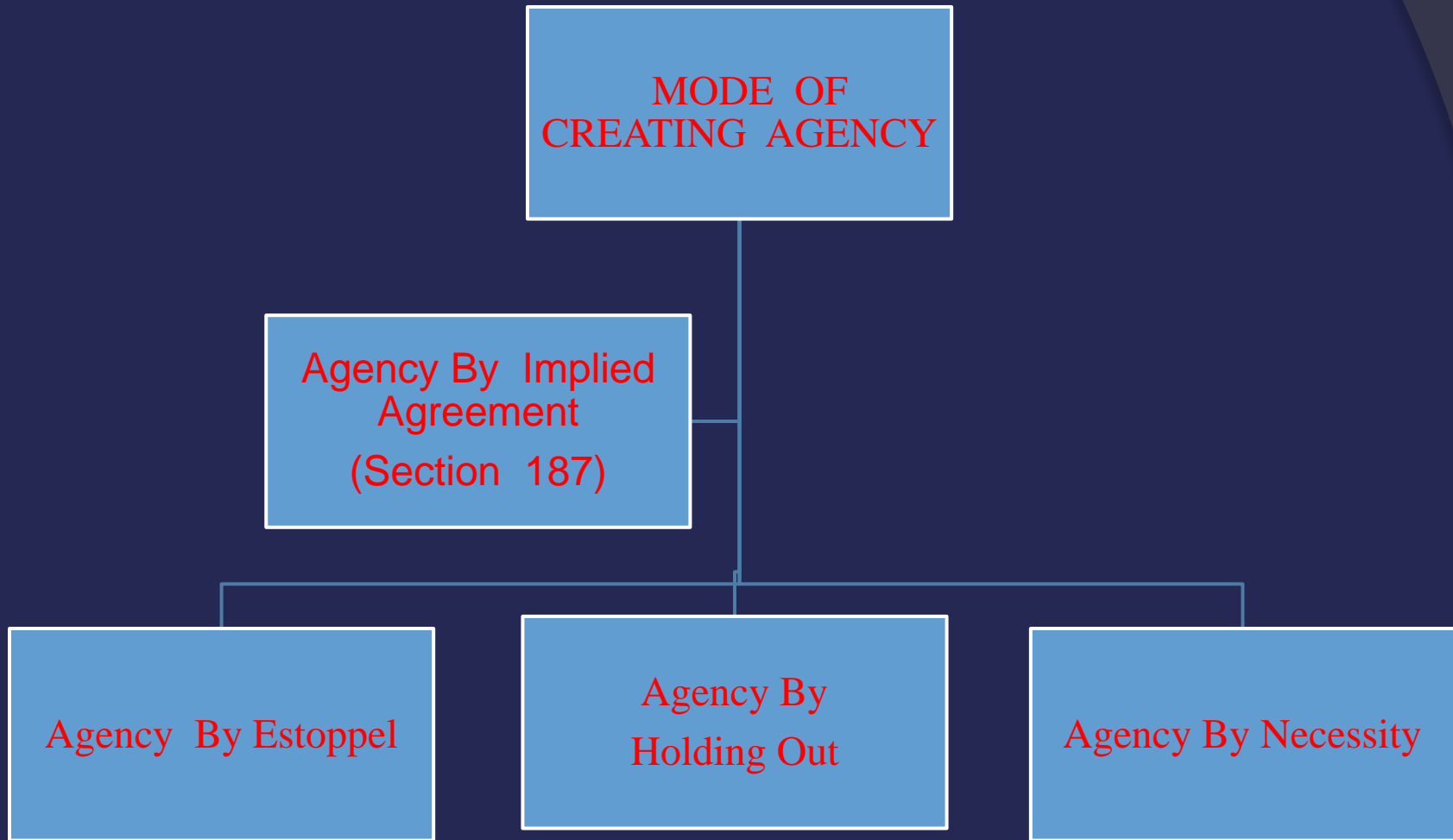
The authority to act as agent can be inferred from the nature of business, the conduct of the principal or course of dealing between the parties.

Partners, wives, etc., are considered as agents by implications of their relationship.

Implied agency may generally be classified into three types, viz.,

(a). Agency by Estoppel (b). Agency by Holding Out (c). Agency by Necessity

# CREATION OF AGENCY BY IMPLIED AGREEMENT



# AGENCY BY IMPLICATION : IMPLIED AGENCY

## a) Agency by Estoppel

When a person by his statement or behaviour , induces the other person to believe that a certain person is acting as his agent, he is estopped from denying it at any later stage, irrespective of the fact whether it is true or otherwise [section 237].

Example – P lives in Bangalore. He owns a shop in Pune also, which is being taken care and looked after by A. Accordingly, A has to place orders to S, on behalf of P , for the supply of goods required for the shop. He also makes the payment for the purchase to S periodically, out of the account of P , with the full knowledge of P. Occasionally, P pays his visit to his shop in Pune also. In the foregoing circumstances, A has an implied authority from P to place orders with S, in the name of P, for supply of the goods required for the shop.

Example - A consigns goods to B for sale , and gives him instructions not to sell under a fixed price. C, being ignorant of A's instructions enters into a contract with B to buy the goods at a lower price than the reserved price. A is bound by the contract.

# AGENCY BY HOLDING OUT

## b) Agency by Holding Out

Though being a part of estoppel, some affirmative [positive] conduct is necessarily required to be performed by the Principal for the purpose of creating an agency by way of holding out. Thus, A, who is a domestic servant of B, generally purchase goods from C and pays them regularly. C can assume that A is B's implied agent. Subsequently A uses B's authority to purchase goods for his own use. C files suit against B to recover the cost of goods which were actually consumed by A. In this case B is bound by his prior conduct in holding out that A was his agent. C can recover the price from B. Similarly if a husband recognises and takes upon himself the liability in respect of his wife's past dealings with tradesmen, he holds her out to be his agent and to have his authority to contract on his behalf even for articles of luxury.



# AGENCY BY NECESSITY

## c) Agency by Necessity

Sometimes one may be confronted with certain special situations and circumstances where, despite there being no express or even implied appointment of a person as an agent of another person, the emergency of situation may demand certain urgent action on the part of the person to act on behalf of the other person as his agent. [Reference - **Great Northern Railway vs. Swaffield**, 1874].

**Bowstead observed** : “ An agency by necessity is conferred by law in certain cases, where a person is faced with an emergency in which the property or interest of another are in imminent danger , and it becomes necessary in order to preserve the property or interest, to act before the instructions of the owner can be obtained. The law assumes the consent of the owner to the creation of the relationship of principal and agent”.

Example in reference to the case : **G.N. Railway Vs. Swaffield (1874)**

Where a horse sent by railway was not taken delivery by the owner , the station master had to feed the horse. It was held that the station master became the agent of necessity and the owner who had to take the delivery of horse is liable for the charges incurred by the station master in respect of the horse ( implied agent in this case).

Other References: **Sims & Co. Vs. Midland Railway Co.** (1913) & **Munro Vs. Willmont** (1948).

# AGENCY BY OPERATION OF LAW & AGENCY BY RATIFICATION

## **3. AGENCY BY OPERATION OF LAW**

An agency is also constituted by operation of law . For ex- a partner is the agent of the firm and the act of the partner to carry on the business of the firm in the usual way binds the firm and its partners. A promoter of a new company is also an agent of the company. In all such cases the agency exist by the operation of law.

## **4. AGENCY BY RATIFICATION (SECTION 196)**

Ratification means subsequent acceptance by the principal in respect of an act done by the agent without authority. It can also be referred as a subsequent adoption and acceptance of an act originally done without authority or instructions of the principal. Ratification is the approval of the previous act or transaction by a person as agent . It has got the retrospective effect .

For example - A buys certain goods on behalf of B . B did not appoint A as his agent. B may, upon hearing the transaction accept or reject it, If B accepts it , the act is ratified and A becomes his agent with retrospective effect. On ratification, the principal is bound by the acts already done on his behalf.

# AGENCY BY RATIFICATION

- ◉ Section 196 of the Act provides, “ Where acts done by one person on behalf of another but without his knowledge or authority , he may elect to ratify, or to disown such acts . If he ratify them, the same effects will follow as if they had been performed by his authority .”
- ◉ In such cases , a valid agency is created by ratification.
- ◉ It is also known as “**expost facto agency**”.
- ◉ The agent who possesses limited authority, but exceeds his authority ( and does some additional work other than what was assigned to him) , may bind the principal, if his act done in excess of the authority is later ratified by the principal.
- ◉ Agency comes into existence from the moment the agent acted and not from the time when principal ratified. This reflects the meaning that the agent has the retrospective effect.
- ◉ Every ratification has a retrospective effect and is equal to a previous mandate.
- ◉ **Reference to Bolton Partners Vs. Lambert (1881).**

# CASE LAW

Example : **BOLTON PARTNERS VS. LAMBERT (1881)**

The managing director of a company, purporting to be an agent of the company but without its authority, accepted an offer by the defendant for the purchase of some sugar works belonging to them. The defendant then revoked his offer, but the company ratified the manager's acceptance. The defendant was held bound by the contract. If the acceptance was conditioned, the agent saying "subject to ratification", then the revocation would be valid if made before ratification.

# ESSENTIALS OF VALID RATIFICATION

RATIFICATION BECOMES VALID ONLY IF THE FOLLOWING CONDITIONS ARE SATISFIED :

1. The agent must act on behalf of the principal [**Keighley Maxsted & Co. Vs. Durant (1901)** ].
  2. The principal must be in existence at the time of contract.
  3. The principal must have the contractual capacity.
  4. The principal must have full knowledge of material facts (Sec. 198).
  5. Whole transaction must be ratified [ partial acceptance & partial denial is not possible ( Sec. 199)]
- 
1. Ratification must be made within reasonable time.
  2. Act to be ratified should not be void or illegal.
  3. Ratification must not injure a third person (Sec. 200).
  4. Ratification may be express or implied (Sec. 197).

# IMPLIED AUTHORITY BETWEEN HUSBAND AND WIFE

## WIFE AS THE AGENT

- ⦿ The authority may be express or implied or that of necessity between husband and wife.
- ⦿ As a general rule, husband can be held liable, only for what he has expressly or impliedly sanctioned.
- ⦿ Wife has an implied authority by necessity to pledge her husband's credit under certain circumstances.

# KINDS / TYPES OF AGENTS

AGENTS MAY BROADLY CLASSIFIED UNDER THE FOLLOWING CATEGORIES -

## I. ACORDING TO THE EXTENT OF THEIR AUTHORITY :

- ❖ General, Special and Universal Agent.

## II. ACCORDING TO THE NATURE OF WORK PERFORMED :

- ❖ Mercantile and Non- Mercantile Agent.



# I. KINDS OF AGENT : ON THE BASIS OF EXTENT OF AUTHORITY

## GENERAL AGENT

- General agent represents the principal in all the matters related to a particular business.
- He is generally appointed by execution of power of attorney.

## SPECIAL AGENT

- Special agent is appointed to represent principal for a particular transaction or special purpose.
- He has limited authority, which ends as soon as that special work is performed.

## UNIVERSAL AGENT

- A universal agent is authorised to transact all the business of his principal.
- He can perform all acts which the principal can lawfully do and can delegate.

## II. KINDS OF AGENT : ON THE BASIS OF THE NATURE OF WORK PERFORMED

### 1. MERCANTILE AGENTS :

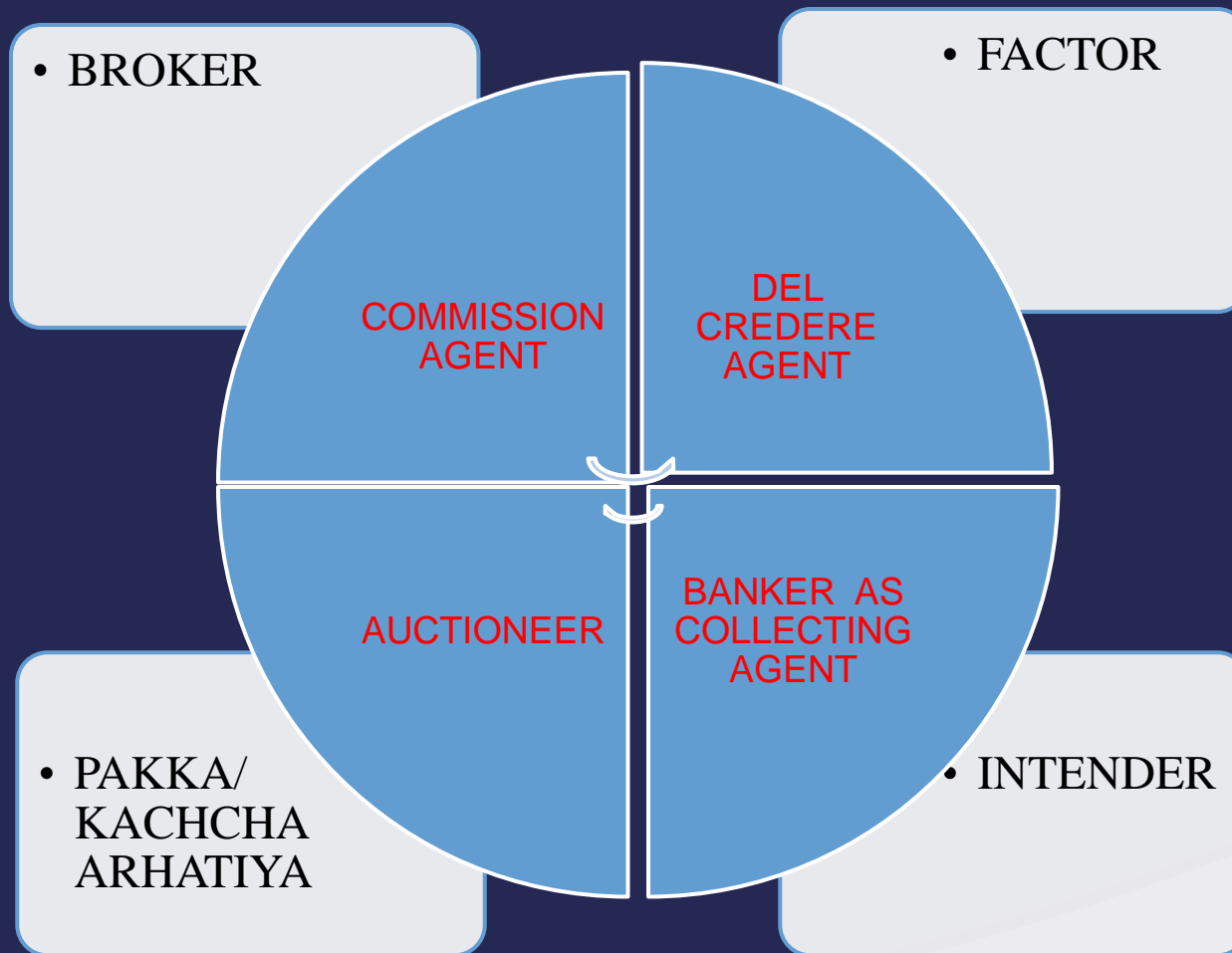
Mercantile or Commercial agent has been defined under Section 2(9) of the Sale of Goods Act, 1930, as the one who, in the usual course of business, has the authority as such an agent either to sell goods or to consign goods for the purpose of sale or to buy goods or to raise money on the security of goods. The different types of mercantile agents are- Broker, Commission Agent, Factor, Del Credere Agent, Auctioneer, Banker, Pakka Arhatia, Kachcha Arhatia , Intender etc.

### 2. NON- MERCANTILE AGENTS :

Advocates (Counsels), Attorneys, Estate Agents, etc., fall under the category of ‘non-mercantile’ or ‘ non- commercial’ agents.

The wife is supposed to be most prominent and pertinent example of non- mercantile agent of her husband.

# MERCANTILE / COMMERCIAL AGENT



# SUB - AGENT AND SUBSTITUTED AGENT

SUB – AGENT ( Sec. 191, 192, 193)	SUBSTITUTED AGENT (Sec. 194, 195 )
1. He is appointed by the agent and the sub-agent works under the control of the agent. He is the agent of the original agent.	1. He is appointed by the agent. The substituted agent works under the control of principal. Substituted agent is the agent of the principal.
2. The agent is responsible for the acts of his sub-agent.	2. The agent is not liable for the acts of substituted agent.
3.A sub - agent is appointed and remunerated by the agent	3. A substituted agent is appointed by the agent as per authority by the principal but he (substituted agent) is remunerated by the principal.
4. Principal is not responsible to the third parties for the acts of sub-agent provided he is not appointed by the approval/ consent of the principal	4. The principal is bound to all the acts of a substituted agent in the same way and extent as he is liable to the acts of his agent.

# DUTIES ( OBLIGATIONS ) OF AN AGENT

1. Under section 211 , the agent is obliged to conduct the business of agency in accordance to the specific directions and instructions given by the principal.

Reference to - *Lilley Vs. Doubleday* (1881) & *Paul Bier Vs. Chottalal*, 30 ,Bombay.

2. The agent is expected to conduct the business with enough required skill and diligence needed for the act , except , in the cases where the principal knows that his agent lacks in such skills and proficiency (Section 212).

For example- In case a solicitor files a suit by citing a wrong section in the plaint, he will be held personally liable for the loss sustained thereby.

3. To submit in detail the proper accounts of all his work done on behalf of the principal with all the supportive evidences and vouchers ( *Anandprasad Vs. Dwakanath*, 6 Cal 574).

4. Not to leave any stone unturned in trying to establish contact with the principal in times of difficulty or emergency (Section 214).

5. Not to make any secret profit out of his agency.

6. Agent represents the principal and bind him with the third party, so, he (agent) should not deal on his own account. (Refer - *H. Wilson and Co. vs. Bata*, 1927 & *Harvalabh Vs. Jivanji*, 1902).

7. Agent is not entitled to receive the remuneration for the business misconducted by him. (Refer Sec .220).

8. Not to disclose any confidential information about his principal to third party or anybody else, [*Weld Blundell Vs. Stephens* (1920) ].

9. On termination of the agency caused by the death of the principal or on becoming of unsound mind, agent is bound to take all reasonable steps ,on behalf of the representative of the deceased principal, to safeguard the interest in the matters entrusted to him by the deceased principal (Section 209 ).

# RIGHTS OF AN AGENT

1. **Right to Remuneration (Section 219- 220)** - The agent has the right to receive the amount of his remuneration or commission at the agreed rate, and in the absence of any agreement on this point, he is entitled to receive a reasonable amount by way of his remuneration or commission . Refer – Sheikh farid Baksh Vs. Hasgural Singh (1937) & Raja Ram Vs. Ganesh Pd. (1959).
2. **Right of Retainer (Section 217)** - Agent can rightfully retain with himself the entire amount, received by him on behalf of his principal in the business of agency, and he will be legally required to handover to his principal only the balance amount that remains., after deducting and retaining with himself the amount of remuneration and commission payable to him as an agent, as also the amount of loan, if any, taken by him, and any expenses properly and duly incurred by him, in connection with the discharge of his responsibilities as an agent.
3. **Right of Lien (Section 221)** – An agent is entitled to retain goods , papers and other property of the principal received by him, until the amount due to him in respect of his services and acts have been paid or accounted for to him. The agent has the right to retain the possession of goods but he has no right to sell those goods.
4. **Effect of Misconduct ( Section 220)** - An agent who is guilty of misconduct in the business of agency is not entitled to any remuneration in respect of that part of the business which he has misconducted. And he is also liable to compensate the principal.

# RIGHTS OF AN AGENT (Continued..)

5. Right to be indemnified against consequences of lawful acts (Sec. 222) -  
The employer (principal) to an agent is bound to indemnify him against the consequences of all lawful acts done by such agent in exercise of the authority conferred upon him.
6. Right to be indemnified against consequences of acts done in good faith (Sec. 223) .
7. To do lawful acts (sec 188) - An agent having authority to do an act has the authority to do every lawful thing which is necessary in order to do such act.
8. In emergency (sec 189) - In emergency an agent has the authority 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.
9. Right to compensation (Sec 225) – The principal is required to make compensation to his agent in respect of injury caused to the agent by neglect or lack of skill of the principal.
10. Right of stoppage of goods - If the agent has bought goods for agency either with his own money or by incurring a personal liability for the price and eventually if the principal is adjudicated as insolvent then the agent has the right of stoppage of goods in transit.



## DUTIES OF PRINCIPAL

1. The principal is legally bound to indemnify the agent for all the consequences arising out of all the lawful acts performed by the agent in the exercise of his authority conferred upon him by his principal, (Sec. 222).
2. He is also bound to indemnify the agent for all the consequences arising out of authorised exercise performed by such agent in good faith, even if it causes injury to the rights of the third persons ( Sec. 223).
3. Non- liability of the principal to compensate the agent for any of his acts which are of criminal nature, even if it were done by the agent at the instance of the principal himself , (Sec . 224).
4. The principal is bound to compensate to the agent for any injury suffered by him (agent ) due to the lack of skill or neglect on the part of the principal (Sec.225).
5. It is the duty of the principal to pay all the dues , remuneration, commission, etc., to his agent and also to reimburse all advances & expenses incurred by agent in exercise of his authority.

# RIGHTS OF THE PRINCIPAL

1. The principal is entitled to enforce all the duties of the agent.
2. Principal has the right to repudiate (cancel) the transaction if any dishonest concealment of material fact has been done by the agent or any disadvantageous dealing has been deliberately done by the very agent.
3. Principal is entitled to compensation from the agent for any loss or any profit accruing, owing to non-adherence to instructions given by the principal (Sec.211).
4. The principal is entitled to demand proper accounts from the agent (Sec 213).
5. The principal is entitled to compensation in respect of the direct consequences of the agent's negligence, want of skill or misconduct (Sec. 212).
6. The principal has the right to refuse the payment of remuneration to the agent if he is guilty of misconduct.
7. The principal has the right to either ratify or to disown the unauthorised act of the agent (Sec. 196).
8. The principal may revoke the authority given to the agent at any time but before the authority being exercised by the agent so as to bind the principal (Sec. 203).
9. The principal has the right to give instructions in cases of difficulty when contacted by the agent. (Sec. 214).

## PERSONAL LIABILITY OF THE AGENT

As per provision of sec 230 of the Contract Act an agent is not personally liable unless he has undertaken personal liability. An agent can be held personally liable in the following cases –

1. When an agent acts for a foreign principal.
2. When agent does not disclose the name of his principal.
3. When the agent expressly agrees to be personally liable.
4. When the principal cannot be sued ( ex- if principal is foreign sovereign or minor).
5. Where it is customary in trade (ex- broker as agent in stock exchange).
6. When the agent exceeds his authority and goes beyond its limitations.
7. When the agent commits mistake, fraud or misrepresentation (Sec. 238).
8. Where the agent appoints the sub-agent without authority, then he is liable to both the principal and the third parties ( sec. 193).
9. When the agent signs the contract in his own name.

# PRINCIPAL'S LIABILITY FOR THE ACTS OF AGENT

An agent who acts on behalf of the principal, creates liability of the principal to third parties as it is general rule of agency. An agent acting within the scope of his authority, binds the principal. And the principal has the liability towards the third parties for the acts done by agents . The liability of the principal for the acts of agent –

1. Where the agent contracts for named principal,
2. Where the agent contracts for unnamed principal,
3. Where the agent contracts for undisclosed principal.

# AGENT'S AUTHORITY

Authority of an agent means his capacity or power to bind the principal with the third parties. The principal is bound by the acts of his agent performed within the scope of his authority. **Section 226 of the Indian Contract Act** provides that “Contracts entered into through an agent, and obligations arising from acts done by an agent, may be enforced in the same manner, and will have the same legal consequences, as if the contracts have been entered into and the acts done by principal in person”.

**1. Actual or Real Authority** - It is the authority which is conferred on the agent by the principal. **Sections 186** states that – “Authority may be expressed or implied.”

Expressed – when it is in words written or spoken.

Implied - when it is to be inferred from the circumstances of the case.

**2. Ostensible authority or Apparent Authority** - It is the authority of the agent as it appears to others. If a principal creates an appearance that reasonably leads another to believe that the agent has the authority to make contracts for him, then he cannot deny this authority when third party relies upon this appearance by making a contract with that agent.

**Agent's Authority in Emergency** - **Section 189** provides that the agent has the 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.

# DELEGATION OF AUTHORITY

- ⦿ An agent cannot generally lawfully employ another to perform acts which he has expressly or impliedly undertaken to perform personally. An agent who has the authority from another to do an act must do it himself and cannot delegate his authority to another. Agency comes into existence on certain parameters based on trust and confidence. The work which is undertaken to be done by the agent himself cannot be entrusted to another person by agent.
- ⦿ The principal enjoys some confidence on the agent, thus, it becomes the grassroots of their relation due to which it cannot be referred to another person. This is based on the maxim- delegatus non potest delegare (a delegate cannot further delegate)
- ⦿ According to Sec. 190- “An agent cannot lawfully employ another to perform acts which he has expressly or impliedly undertaken to perform personally, unless by the ordinary custom of trade a sub- agent may, or from the nature of agency, a sub- agent must be employed.”
- ⦿ Appointment of sub- agent is lawful :
  - a) where the principal has expressly authorised the appointment of sub-agent.
  - b) where principal is aware of agent's intention of appointment of sub-agent.
  - c) appointment under ordinary custom of trade, permissible nature of work, emergencies, etc.are valid and these are exceptions to the rule.

# TERMINATION OF AGENCY

The legal provisions relating to the termination of agency are contained in the **Sections 201 to 210 of the Indian Contract Act, 1872.**

According to Section 201 of the Act “ An agency is terminated by the principal revoking his authority; or by the agent renouncing the business of the agency; or by the business of the agency being completed, or by either the principal or agent dying or becoming of unsound mind, or by the principal being adjudicated as insolvent under the provisions of any Act for the time being in force for the relief of insolvent debtors.”

There can be various modes of terminating agency, classified as :

1. By the act of the parties
2. By the operation of law



# TERMINATION OF AGENCY

## TERMINATION OF AGENCY BY THE ACT OF THE PARTIES

- Agreement
- Revocation by the Principal
- Renunciation by the Agent

## TERMINATION OF AGENCY BY THE OPERATION OF LAW

- Completion of Agency Business & Expiry of Time
- Death / Insanity of Either Party
- Insolvency of the Principal
- Destruction of the subject-matter, etc.,

# TERMINATION OF AGENCY BY THE ACTS OF PARTIES

- a) **Agreement** : The relation between the principal and agent , like any other agreement, may be terminated at any time, and at any stage by the mutual agreement between the principal and the agent.
- b) **Revocation by the principal** : A principal is empowered to revoke or cancel the authority of the agent as per his discretion. The agency relationship is put to an end by revocation. The revocation may be express or implied. But the principal cannot revoke the authority if the agent has partly exercised the authority (Sec. 204). If an agency is for a fixed period of time , and the contract of agency has been revoked by the principal without giving sufficient cause for such revocation, the agent is required to be compensated by the principal ( Sec. 205).
- c) **Renunciation by the agent** : Just like the right of revocation by the principal , the agent also has the right to renounce the business of agency. An agent is required to serve a reasonable notice regarding such renunciation, otherwise the loss or damage caused to principal by such renunciation is required to be compensated by the agent (sec.206). In a case where the agency is for a fixed period of time, and the contract of agency has been renounced by the agent, before the expiry of the fixed period , and without giving sufficient cause for such renunciation of the agency, then the agent is required to pay compensation to the principal (Sec. 205)

# TERMINATION OF AGENCY BY OPERATION OF LAW

An agency comes to an end automatically by operation of law in the following cases :

## a) On the Performance of the Specific Purpose / completion of agency business Sec 201 -

In the case where the agent is appointed for a specific purpose or for a particular agency business , the contract of agency comes to an end when the act concerned is done ,or the purpose is achieved . The agency is also terminated when the performance of such act becomes impossible.

## b) On the Expiry of fixed Period of Time -

Where the agency is created for a fixed period of time , it automatically comes to an end on expiry of that fixed (stipulated ) period of time.

## c) Death of the Principal or Agent -

The contract of agency comes to an end on the death of either the principal or the agent. But, in the event of the death of the principal , the agent is bound to take all the necessary reasonable steps for the protection and preservation of the property entrusted to him and also to consider the interest on behalf of the legal representative of the deceased principal.

## TERMINATION OF AGENCY BY OPERATION OF LAW (Continued...)

- d) **Insanity of either Principal or Agent** - An agency is automatically terminated by either principal or agent becoming insane or of unsound mind. (Sec. 201).
- e) **Insolvency of the Principal** -The Contract of agency also comes to an end when the principal is adjudicated to be an insolvent ( insolvency is a state where principal will not be able to meet his obligations & liabilities due to inadequacy of his current assets and liquid resources.)
- f) **When the subject-matter is either destroyed or is rendered unlawful** – An agency is created to deal with certain subject-matter . Thus, the contract of agency is automatically terminated on the destruction of the subject-matter or when it is rendered unlawful. For example, if an agent is asked to sell a motor bike and the bike is destroyed by fire, then the agency comes to an end, because sale of bike was the subject matter after bike is destroyed by fire, the subject matter also extinguishes.
- g) **Principal or Agent becomes Alien Enemy** - When the principal and the agent belong to different countries and a war breaks out between the two countries, the contract of agency will definitely come to an end.
- h) **Dissolution of a Company** - When the Company which is either the principal or the agent is wound up, the agency is terminated.
- i) **Termination of sub- agent's authority** – As per the provision of section (210) of the Act, the termination of the authority of an agent causes the termination of the authority of all the sub-agents appointed by him.

Thank You!

