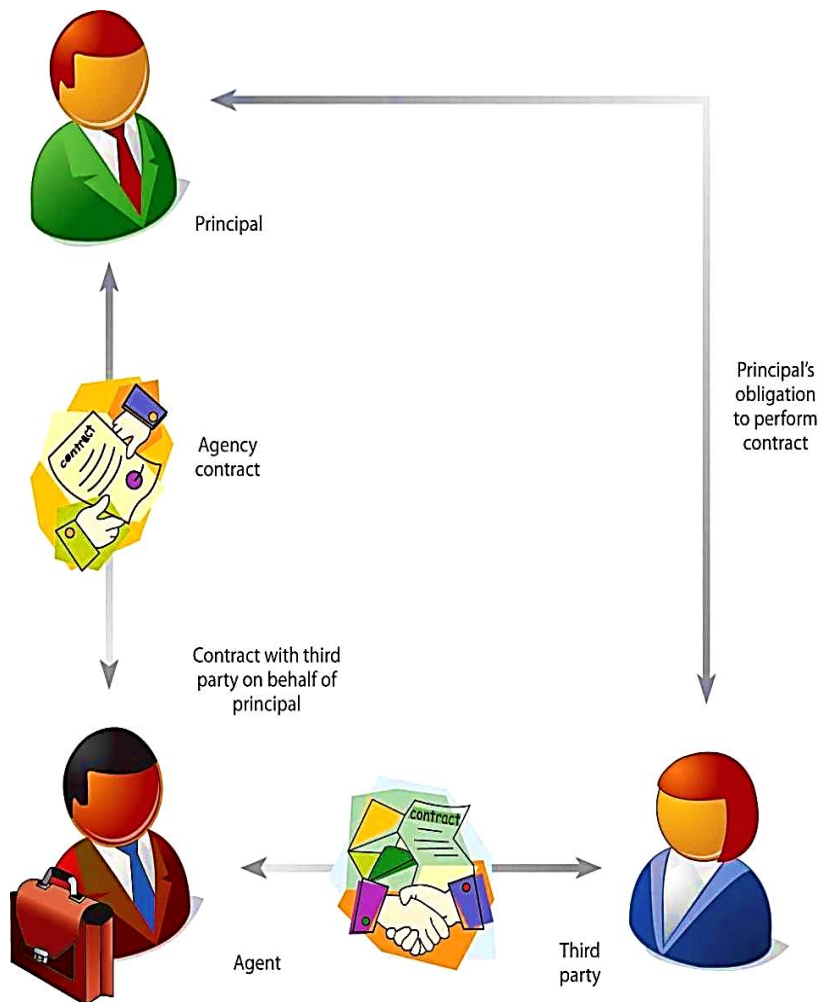


**PART II**  
**CONTRACT OF AGENCY**

A person who is competent to make a contract may do so (i) either by himself or (ii) through another person. When he makes contracts through another person, he is said to be making a contract through an agent. The person who acts on behalf of another or who represents a person in dealing with third parties is called as an 'agent' and the person on whose behalf he acts or who is thus represented, is called as 'principal'. The contract which creates the relationship of principal and agent is known as 'agency'. The legal provisions relating to agency are contained in Chapter X (Sections 182 to 238) of the Indian Contract Act, 1872.

**AGENT**

According to Section 182 of the Contract Act defines an 'agent' as "a person employed to do any act for another or to represent another in dealings with third parties".



## **PRINCIPAL**

The person for whom such act is done, or who is so represented, is called the principal.

## **AGENCY**

The relationship between an agent and the principal is called agency, which may be created by an express or implied agreement.

### **Example:**

X appointed Y to purchase 100 bags of rice on his behalf. In this case, X is the principal, and Y, the agent. And the relationship between X and Y is known as agency.

## **GENERAL RULE OF AGENCY**

There are two important rules of agency:

1. **Whatever a person can do personally, he can do through an agent:** Whatever a person competent to contract may do by himself, he may do through an agent except for acts involving personal skill and qualification such as painting, marriage, singing etc.
2. **He who does an act through another does it by himself:** This means that the acts of an agent are, for all legal purposes, the acts of the principal (Sec. 226).

## **ESSENTIALS OF A CONTRACT OF AGENCY**

1. **Existence of agreement:** There must be an agreement by which a person is appointed as an agent by the other. The agreement may be express or implied.
2. **Competency of the Principal:** According to Section 183, "any person who is of the age of majority according to the law to which he is subject and who is of a sound mind, may employ an agent". An appointment of an agent made by an incompetent person is void. An agent acting on behalf of an incompetent person will be personally liable to third parties.
3. **Any person may become an agent:** According to Section 184, any person may become an agent and he need not be competent to contract. For instance, a minor can bring about a contractual relation between the principal and third party without that agent being liable to the principal.
4. **No consideration is required to create agency (Sec. 185):** The detriment to the principal in consenting to be represented by the agent is sufficient to support the promise of the agent.

## **CREATION OF AGENCY**

The creation of an agency, i.e., creation of principal and an agent, may take place in any of the following ways:

1. **Agency by express agreement (Sec. 187):** An agency by express authority arises when an express authority is given to the agent by spoken or written words.

2. **Agency by implied agreement (Section 187):** When agency arises from the conduct of the parties, or inferred from the circumstances of the case, it is called an implied agency. Partners, servants and wives are usually regarded as agents by implication.
3. **Agency by estoppel (Section 237):** Where a person, by his words or conduct has wilfully led another person to believe that certain set of circumstances or facts exists, and that other person has acted on that belief, then he is estopped from denying the truth of such statements subsequently.
4. **Agency by holding out:** Agency by holding arises when a person by his past affirmative or positive conduct leads third person to believe that person doing some act on his behalf is doing with authority.
5. **Agency by necessity:** In certain circumstances, a person may be compelled to act as an agent of the other. In order to protect the interests of another, it may become necessary to take some action without waiting for the instructions of the owner. But the following conditions must be fulfilled before a person may act as an agent of necessity:
  - (a) There must be a real emergency to act on behalf of the principal,
  - (b) It may not be possible for the agent to communicate with the principal or to obtain his instruction,
  - (c) The person acting as agent must act bona fide and in the interest of the parties concerned,
  - (d) The agent must adopt a reasonable and practical course under the circumstances of the case.
6. **Husband and Wife relations:** The wife is considered an implied agent of the husband for the purpose of buying household necessities on credit, and the husband becomes bound to pay for the same.
7. **Agency by operation of law:** An agency may also come into existence by operation of law. In certain circumstances, the law treats one person as an agent of another. Example: Every partner is an agent of the partnership firm. Similarly, a legal advisor is the agent of his client.
8. **Agency by ratification:** Ratification means subsequent acceptance and adoption of an act by the principal originally done by the agent without authority. This is agency ex-post facto or agency arising after the event.

#### **SUB-AGENT [SECTION 191]**

A sub-agent is a person who is employed by the original agent and who acts under the control of the original agent in the business of agency.

Agent can appoint a sub-agent in the following circumstances:

1. If such appointment is permitted by the custom of the trade.
2. If the nature of the business makes such appointment necessary.
3. If the act to be done is purely ministerial and involves no exercise of discretion.
4. If principal agrees to such appointment.
5. In case of an unforeseen emergency.

#### **SUBSTITUTED AGENT [SECTION 194]**

A substituted agent is a person who, named by the original agent on the basis of an express or implied authority from the principal. He is taken as an agent of the principal for such part of the business of agency which is entrusted to him. A privity of contract is established between the principal and substituted agent.

#### **DIFFERENT KINDS OF AGENTS**

The relationship between the principal and agent and the extent of the authority of the latter are matters to be determined by agreement of the parties. A general classification of agents is as follows:

1. **General Agent:** A general agent is one who has authority to do all acts in the ordinary course of trade or profession. The authority of a general agent is continuous unless it is terminated.
2. **Special Agent:** A special agent is one who has authority to do a particular act in a particular transaction.
3. **Universal Agent:** A universal agent is one who has authority to do all acts which the principal can lawfully do and delegate. He has an unlimited authority to bind the principal.
4. **Commercial or Mercantile Agent:** A mercantile agent is a person having authority either to sell the goods or to consign the goods or to raise money on the security of goods. Mercantile agents may be of several kinds which are as follows:
  - a) **Broker:** He is an agent employed to make bargains and contracts in matters of trade, commerce, or navigation between other parties for a compensation commonly called brokerage.
  - b) **Factor:** A factor is one who is entrusted with the possession of goods and who has the authority to buy, sell or otherwise deal with the goods or to raise money on their security.
  - c) **Auctioneer:** An auctioneer is one who is entrusted with the possession of goods for sale at a public auction.
  - d) **Commission Agent:** The term 'commission agent' is a general term which is used in practice even for a factor or broker.
  - e) **Banker:** Banker acts as an agent of the customer when he collects cheques or drafts or bills or buys or sells securities on behalf of his customers.
  - f) **Del-credere Agent:** A del-credere agent is one who gives guarantee to his principal to the effect that the third person with whom he enters into contracts shall perform his obligation.

5. **Non-mercantile Agent:** An agent who does not deal in mercantile transactions. These include attorneys, solicitors, guardian, promoters, wife, etc.

#### DUTIES OF AN AGENT

The duties of an agent to his principal are as follows:

1. **To conduct business as per directions or custom of trade [Section 211]:** An agent is bound to conduct the business of his principal according to principal's directions or the custom of trade (in the absence of principal's directions).
2. **To act with reasonable care, skill and diligence [Section 212]:** An agent is bound to conduct the business of the agency with reasonable care and skill.
3. **Duty to render proper records [Section 213]:** An agent is bound to render proper accounts to his principal on demand.
4. **To communicate with principal [Section 214]:** It is the duty of an agent, in cases of difficulty, to use all reasonable diligence in communicating with his principal and obtain his instructions.
5. **Duty not to deal on his own account [Section 215 & 216]:** An agent is bound to disclose all material circumstances which have come to his knowledge on the subject, to the principal and obtain his consent if he desires to deal on his own account in the business of agency.
6. **Duty to pay sum received [Section 218]:** It is the duty of the agent to pay sum received on behalf of the principal subject to any lawful deductions for remuneration or expenses properly incurred.
7. **To protect and preserve the interest [Section 209]:** When an agency is terminated by the principal dying or becoming of unsound mind, the agent must take all reasonable steps for the protection and preservation of the interest entrusted to him.
8. **Not to delegate authority [Section 190]:** An agent cannot lawfully employ another to perform acts which he has expressly or impliedly undertaken to perform personally unless custom of trade or the nature of the agency so requires.
9. **Duty not to set up a rival business.**
10. **Duty to pass the information to the principal.**
11. **Duty not to make any secret profit from agency.**

#### RIGHTS OF AN AGENT

1. **Right of Retainer [Section 217]:** An agent has the right to retain, out of any sum received on account of the principal in the business of the agency such as remuneration and advances made or expenses properly incurred.
2. **Right to receive remuneration [Section 219 & 220]:** The agent has the right to receive agreed remuneration or usual remuneration as per the custom of the trade in which he has been employed.
3. **Right of lien [Section 221]:** An agent has a right to retain goods, papers and other movable or immovable property of the principal received by him until the amount due to him had been paid or accounted for.

4. **Right to indemnification [Section 222]:** The agent has a right to be indemnified against the consequences of all lawful acts done by him in exercise of the authority conferred upon him.
5. **Right to be indemnified against consequences of facts done in good faith [Section 223]:** An agent has right to be indemnified by the principal against the consequences of act done in good faith that causes an injury to the rights of third person.
6. **Right to compensation [Section 225]:** The agent has a right to be compensated for injuries sustained by him by neglect or want of skill on the part of the principal.

#### **DUTIES OF PRINCIPAL**

The main duties of principal are as follows:

1. To remunerate the agent for his services;
2. To indemnify the agent against the consequences of all lawful acts;
3. To indemnify the agent against the consequences of an act done in good faith, even though the act causes an injury to the rights of third persons; and
4. To make compensation to the agent in respect of injury caused to such agent by his negligence or want of skill.

#### **RIGHTS OF PRINCIPAL**

1. To get proper accounts on demand from his agent.
2. To see that the agency business is conducted according to his instructions, or in their absence, according to the custom which prevails in the place where similar business is conducted.
3. To be entitled to compensation in respect of the direct consequences of the agent's negligence, want of skill, or misconduct.
4. To give instructions in cases of difficulty, when contracted by the agent.
5. To be entitled to compensation for loss, or any profit accruing, owing to departure from instructions.
6. To claim the benefit, if any, arising from a transaction entered into by the agent on his own account.
7. To repudiate the transaction, if a material fact is concealed or the dealing by the agent on his own account is disadvantageous to him.
8. To receive all moneys due to him, subject to such deductions by the agent as are permissible.
9. To remunerate the agent only after the completion of the act.
10. To refuse to pay the remuneration if the agent is guilty of misconduct.

#### **LIABILITY OF AGENT TO THIRD PARTIES [Agent Personally Liable]**

In the absence of any contract to that effect, an agent cannot personally enforce contract entered into by him on behalf of his principal, nor is he personally bound by them. The circumstances under which an agent becomes personally liable are as follows:

1. **Where the agent acts for a foreign principal [Sec. 230(1)]:** The agent will be personally liable if he acts for a merchant who is resident abroad unless there is an intention to the contrary.

2. **Where the agent acting for a principal who cannot be sued [Sec. 230 (2)]:** The instances of principals who cannot be sued are sovereigns and their accredited agents, a company before its incorporation, or an incompetent person, etc. In such cases, the agent is personally liable.
3. **Where the agent acts for a principal who cannot be sued [230(3)]:** The instances of principals who cannot be sued are sovereigns and their accredited agents, a company before its incorporation, or an incompetent person, etc. In such cases, the agent is personally liable.
4. **Where an agent acts for a non-existent principal:** If the agent contracts for a fictitious principal, he shall incur personally liability.
5. **Where the agent acts for an undisclosed principal [Sec. 231]:** When the agent does not disclose that he is acting as an agent for someone and he contracts in his own name, he becomes personally liable to third parties.
6. **Where the agent expressly provides [Sec.230]:** The personal liability of agent may arise from express agreement to that effect.
7. **Where the agent is one coupled with interest:** If the agent has an interest in the subject matter of the contract, he will be personally liable thereon to the extent of his interest in the contract.
8. **Where the agent exceeds his authority:** If an agent exceeds his authority, or represents to have some kind of authority which he does not have, he commits breach of warranty of authority and is personally liable to third parties who have acted under such false representation.
9. **Where there is trade usage or custom:** The agent is personally liable where there is trade usage or custom to that effect.
10. **Where an agent receives money by mistake or fraud:** Where a third party pays to an agent under a mistake, there can be suits personally against the agent for the refund of the amount.
11. **Where the agent signs the negotiable instrument in his own name:** If an agent puts signature on a negotiable instrument, etc., without making it clear that he is signing on behalf of the principal, the agent will be personally liable.
12. **Pretended agent [Section 235]:** If he induces a third party to enter into a contract with him, he will be personally liable to compensate the third party in case his alleged employer does not ratify his acts.

#### LIABILITIES OF PRINCIPAL TO THIRD PARTIES

In the following cases the principal is liable to third parties for the acts done by his agent:

1. **Where the agent acts within the scope of his authority [Sec. 226]:** When an agent is appointed, then his principal is bound by the acts of the agent within the scope of his real or apparent authority. Such acts of the agent may be enforced in the same manner and will have the same legal effect as if they were the acts of the principal.
2. **Where the act within agent's authority is separable from that which is beyond his authority (Sec. 227):** In case the act which is within the agent's authority, can be separated from that which lies beyond his authority, only the act which is within his authority is binding between him and the principal.
3. **Liability of principal for misrepresentation or fraud of the agent (Sec. 238):** The principal is liable for and is bound by misrepresentation or fraud committed by the agent in respect of matters falling within his authority.
4. **Where the Agent Acts for an Unnamed Principal:** Where the agent discloses that he is an agent but does not disclose the name of the principal, the acts of the agent shall be binding on the principal. However, the agent will become personally liable if:
  - (a) the agent declines to disclose the identity of the principal, or
  - (b) the agent does not disclose his representative character, or (c)there is a trade custom to the contrary.
5. **Responsibility of principal even where the agent is personally liable:** In cases where the agent has rendered himself personally liable in respect of the transactions, a third person dealing with him may hold either him or his principal, or both of them, liable.
6. **Bound by notice given to agent [Section 229]:** Notice given to agent, in the course of business of agency is considered as a notice to the principal.

#### TERMINATION OF AGENCY

A contract of agency may be terminated in one of the following two ways:

##### 1. Termination by the act of parties:

A contract of agency may come to an end either on account of the act of the principal or agent or both. Thus, agency may be terminated.

- a) **By agreement between the parties:** An agency is terminated if the principal and agent mutually agree to do so.
- b) **By revocation of authority by the principal:** The principal has the power to revoke the authority given to his agent at any time before the authority has been exercised so as to bind the principal.
- c) **By renunciation of agency by the agent:** An agency may also be terminated by the agent by an express renunciation, but a reasonable notice must be given to the principal.

##### 2. Termination by operation of law:

Agency will come to an end by operation of law in the following cases:



- a) **Completion of the business of agency:** When the purpose for which the agency was created is completed, the agency comes to an end automatically.
- b) **Expiry of time:** Where the agent is appointed for a fixed period it will terminate on the expiry of that period, it is immaterial whether the purpose of agency has been accomplished or not.
- c) **Death or insanity of the principal or agent:** An agency comes to an end automatically on the death or insanity of the principal or agent.
- d) **Insolvency of the principal:** An agency comes to an end automatically on the insolvency of the principal.
- e) **Destruction of the subject matter:** If the subject matter of the agency is destroyed, the agency comes to an end.
- f) **Dissolution of company:** When the principal or agent is an incorporated company, the agency will come to an end on the dissolution of the company.
- g) **Principal becoming an alien enemy:** If the principal and the agent belong to two different countries, and war breaks out between the two countries, the authority of the agent ceases.
- h) **Termination of the sub-agent's authority:** The termination of the authority of an agent causes the termination of the authority of all sub-agents appointed by him.

