

CONTRACT OF AGENCY

Sub-Agent

BY –

SURBHI WADHWA

Assistant Professor (Law)

Jiwaji University,

Gwalior



Sub-agent

- A sub-agent is the agent of the original agent. He is a person employed and acting under the control of the original agent in the business of agency.



- The relation of the sub-agent to the original agent is as between themselves, that of agent and principal. A sub-agent is bound by all the duties of an ordinary agent.



- The general rule is '*delegatus non potest delegare*', i.e., an agent to whom another has delegated his own authority, cannot delegate that authority to a third person.



- This rule is based on the principal that agency is a contract based on trust and mutual confidence between the parties.



- A principal may have mutual confidence in his agent but not in the subsequent sub-agent appointed by the agent.



- Sub-agency is not generally recognized but there are two exceptions to the rule—
- Where the ordinary custom of trade permits employment of a sub-agent, or



- When the nature of agency demands that employment of a sub-agent is necessary by the agent.



- Section 190 of the Act provides that 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 the agency, a sub-agent must, be employed.



- Section 191 of the Act defines sub-agent as a sub-agent is a person employed by, and acting under the control of, the original agent in the business of the agency.



- Section 192 of the Act provides that where a sub-agent is properly appointed, the principal is, so far as regards third persons, represented by the sub-agent,



- and is bound by and responsible for his acts, as if he were an agent originally appointed by the principal.



- The agent is responsible to the principal for the acts of the sub-agent.
- The sub-agent is responsible for his acts to the agent, but not to the principal, except in cases of fraud or wilful wrong.



- Section 193 of the Act provides that where an agent, without having authority to do so, has appointed a person to act as a sub-agent,



- the agent stands towards such person in the relation of a principal to an agent, and is responsible for his acts both to the principal and to third persons;



- the principal is not represented, by or responsible for the acts of the person so employed, nor is that person responsible to the principal.



- Section 194 of the Act provides that where an agent, holding an express or implied authority to name another person to act for the principal in the business of the agency,



- has named another person accordingly, such person is not a sub-agent, but an agent of the principal for such part of the business of the agency as is entrusted to him.



For examples,

- 'A' directs 'B', his solicitor, to sell his estate by auction, and to employ an auctioneer for the purpose. 'B' names 'C', an auctioneer, to conduct the sale. 'C' is not a sub-agent, but is A's agent for the conduct of the sale.



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



- Section 195 of the Act provides that in selecting such agent for his principal, an agent is bound to exercise the same amount of discretion as a man of ordinary prudence would exercise in his own case;.



- and, if he does this, he is not responsible to the principal for the acts or negligence of the agent so selected.



For examples,

- 'A' instructs B, a merchant, to buy a ship for him. B employs a ship-surveyor of good reputation to choose a ship for 'A'. The surveyor makes the choice negligently and the ship turns out to be unseaworthy and is lost. 'B' is not, but the surveyor is, responsible to 'A'.



- 'A' consigns goods to 'B', a merchant, for sale. 'B', in due course, employs an auctioneer in good credit to sell the goods of 'A', and allows the auctioneer to receive the proceeds of the sale.



- The auctioneer afterwards becomes insolvent without having accounted for the proceeds. 'B' is not responsible to 'A' for the proceeds.





THANK
YOU

