

What is Agency?

When one party delegates some authority to another party whereby the latter performs his actions in a more or less independent fashion, on behalf of the first party, the relationship between them is called an agency. Agency can be express or implied. [Chapter X](#) of the Indian Contract Act, 1872 deals with the laws relating to Agency. It is important to know the law relating to agency because nearly all business transactions worldwide are carried out through agency. All corporations, big or small, carry their work out through agency. Therefore, laws relating to the agency are an important area of Business Law. Relationships relating to principal and agent involve three main parties: The Principal, the Agent, and a Third Party.

Who is an Agent?

The Indian Contract Act, 1872 defines an 'Agent' in [Section 182](#) as a person employed to do any act for another or to represent another in dealing with third persons.

Who is a Principal?

According to [Section 182](#), The person for whom such act is done, or who is so represented, is called the "principal". Therefore, the person who has delegated his authority will be the principal.

Illustrations

- A, a businessman, delegates B to buy some goods on his behalf. Here, A is the principal and B is the agent, and the person from whom the goods are bought is the 'Third Person'.
- Joe appoints Mary to deal with his bank transactions. In this case, Joe is the Principal, Mary is the Agent and the Bank is the Third Party.

- Lavanya lives in Mumbai, but owns a shop in Delhi. She appoints a person Susan to take care of the dealings of the shop. In this case, Lavanya has delegated her authority to Susan, and she becomes a Principal while Susan becomes an agent.

Who can appoint an Agent?

According to [Section 183](#), any person who has attained the age of majority and has a sound mind can appoint an agent. In other words, any person capable of contracting can legally appoint an agent. Minors and persons of unsound mind cannot appoint an agent.

Who may be an Agent?

In the same fashion, according to [Section 184](#), the person who has attained the age of majority and has a sound mind can become an agent. A sound mind and a mature age is a necessity because an agent has to be answerable to the Principal.

Creation of Agency

An agency can be created by:

Direct (express) appointment– The standard form of creating an agency is by direct appointment. When a person, in writing or speech appoints another person as his agent, an agency is created between the two.

Implication– When an agent is not directly appointed but his appointment can be inferred from the circumstances, an agency by implication is created.

Necessity– In a situation of necessity, one person can act on behalf of another to save the person from any loss or damage, without expressly being appointed as an agent. This creates an agency out of necessity.

Estoppel– An agency can also be created by estoppel. In a situation where one person behaves in such a manner in front of a third person, as to make someone believe he is an authorized agent on behalf of someone, an agency by estoppel is created.

Ratification– When an act of a person, who acted as another person’s agent (on his behalf) without his knowledge is later ratified by that person, this creates an agency by ratification between the two.

Types of Agents

1. Special Agent- Agent appointed to do a singular specific act.
2. General Agent- Agent appointed to do all acts relating to a specific job.
3. Sub-Agent- An agent appointed by an agent.
4. Co-Agent- Agents together appointed to do an act jointly.
5. Factor- An agent who is remunerated by a commission (one who looks like the apparent owner of the things concerned)
6. Broker- An agent whose job is to create a contractual relationship between two parties.
7. Auctioneer- An agent who acts a seller for the Principal in an auction.
8. Commission Agent- An appointed to buy and sell goods (make the best purchase) for his Principal
9. Del Credere- An agent who acts as a salesperson, broker and guarantor for the Principal. He guarantees the credit extended to the buyer.

Authority of an Agent

Authority of an agent can be both express or implied.

Express authority

According to Section 187, the authority is said to be express when it is given by words spoken or written.

Implied authority

According to [Section 187](#), authority is said to be implied when it is to be inferred from the facts and circumstances of the case. In carrying out the work of the Principal, the agent can

take any legal action. That is, the agent can do any lawful thing necessary to carry out the work of the Principal.

Implied authority is of four main types

1. Incidental authority- doing something that is incidental to the due performance of express authority
2. Usual authority- doing that which is usually done by persons occupying the same position
3. Customary authority- doing something according to the pre-established customs of a place where the agent acts
4. Circumstantial authority- doing something according to the circumstances of the case

Illustration

- Ali owns a shop in Bihar but lives in Mumbai. His shop is managed by a person named John. John takes care of the deals regarding the shop and buys goods from a person named Ram, with Ali's knowledge. In this case, John has *implied authority* from Ali to buy these goods.
- Soham employed Abhay, who is a shipbuilder to build ships for him. In doing so, Abhay may legally buy all the material necessary to build the ships.

Case

[Chairman L.I.C v. Rajiv Kumar Bhaskar](#)

In this case, as per the salary saving scheme of L.I.C, the employer was supposed to deduct the premium from the employee's salary and deposit it with L.I.C. Upon the death of the employee, it was found by his heirs that the employer has defaulted in doing so, causing the policy to lapse. A clause in the acceptance letter was referred to, in which the employer had said that he would act as the agent of the employee and not as that of L.I.C. It was held that the employer was acting as the agent of the company, thereby making the company (L.I.C) responsible as a Principal due to the fault of the Agent (the employer).

Difference between an Agent & Servant

1. **Authority to create contractual relationship**: Apart from acting on behalf of his/her principal, an agent has the authority to create contractual relations between the principal and a third party. A servant ordinarily, has no such authority.
2. **Control and Supervision**: A servant is bound to work under direct control and supervision of his employer. A 'principal' directs the agent as to what is to be done, but a master or employer of a servant not only has that right, but also the right to direct how it is to be done.
3. **Number of Masters**: A servant usually serves only one master, but an agent may work for several principals at the same time.
4. **Remuneration**: The mode of remuneration is usually different. Remuneration for a servant is paid by way of salary or wages, whereas an agent generally gets his remuneration in terms of commission calculated on the basis of the amount of business transacted.
5. **Duty Assignment**: A servant in certain cases to some extent may be assigned the duties of an agent, and may act as one. For example, the secretary of a company is regarded as the servant of the company, but in respect of the matters that come under his/her domain he/she becomes an agent in their dealings with third persons. An agent as such never occupies the position of a servant because whenever he acts, he acts on behalf of his principal and binds him/her (principal) to third parties.
6. **Liability**: A principal is liable on contracts made by his agent within scope of authority. But a master is answerable for any wrongful act of his servant if it is committed in the course of the servant's employment.

Agency between Husband and Wife

Generally, there exists no agency between a husband and wife, except in cases where it has expressly or impliedly been sanctioned that either of them would do certain acts or transactions as the agent of the other. That is, a relationship of agency can come into existence between the two through contract, appointment, or ratification. A husband is responsible for necessaries to his wife when they are living apart due to the husband's fault. This results in an agency of necessity where the wife can use her husband's credit for what is necessary for her to live. But in cases where they are separated because of the wife's own whims or faults, for no just reason, the husband is not liable for the wife's necessaries.

Agency by Ratification

A principal may subsequently ratify an act done by a person who acted on his behalf without his permission or knowledge. If the act is ratified, a relationship of the agency will come into existence and it will be as if he had previously authorized the person to act his agent. Ratification may be express (by speech or writing) or implied (by act or conduct).

Illustration

Steve bought apples on behalf of Mark, without his permission or knowledge. Mark later sold those apples to another person. This act of mark impliedly ratifies the purchase made by Steve.

Ratification is not allowed in the following cases

1. When the person's knowledge of the facts of the case is defective. That is, he only half knows things that he is ratifying to.
2. An act done on behalf of another person which would have the effect of injuring or harming the person or violating any of his rights if the act was done with his authority.

Termination of Agency

An agency can be terminated or is terminated in 5 different ways:

1. When the agent's authority is revoked by the Principal
2. When the agent renounces the business of the agency
3. When the business of the agency is completed
4. When either of the parties dies or becomes mentally disabled
5. When the Principal is adjudicated an insolvent

Revocation of Agent's authority

There are certain rules regarding the revocation of an agent's authority.

1. It can be revoked any time before the authority has been exercised.

2. If according to the terms of the contract between the two, the agency has to continue upto a certain time, any prior revocation by the Principal shall be compensated for, to the agent.
3. The termination does not take effect before it has been communicated to the agent.
4. Termination of the authority of an agent terminates the authority of all the sub-agents under him.

Agent's duties to Principal

An agent has 6 duties towards his Principal:

1. He has to conduct the business of the Principal according to the directions of the Principal.
2. An agent is bound to conduct the business he is supposed to conduct with as much skill as a person on his position ordinarily holds.
3. An agent is supposed to show the relevant accounts to the Principal as and when the Principal demands.
4. An agent has the duty to communicate any difficulty whatsoever he may come across while doing the Principal's business. He is supposed to perform due diligence in this regard.
5. If any material fact has been concealed or the business is not carried out in the manner that the Principal directed, the Principal can repudiate the contract between them.
6. If the agent carries out the business in the manner he wanted to perform it, rather than on the directions of the Principal, the Principal may claim from the agent any benefit he may have achieved through doing so.

Illustration

Hala directs her agent Saima to buy a certain house for her. Saima does not buy the house, and tells Hala that it cannot be bought due to certain reasons, but ends up buying the house herself. In this case, Hala has the right to claim the house from Saima at the price which Saima bought it for herself.

Principal's duties to Agent

The Principal has 4 duties towards the Agent:

1. The Principal is bound to indemnify the agent against any lawful acts done by him in the exercise of his authority as an agent.
2. The Principal is bound to indemnify the agent against any act done by him in good faith, even if it ended up violating the rights of third parties.
3. The Principal is not liable to the agent if the act that is delegated is criminal in nature. The agent will also in no circumstances be indemnified against criminal acts.
4. The Principal must make compensation to his agent if he causes any injury to him because of his own competence or lack of skill.

Liability of Principal for Agent's Fraud or Misrepresentation

According to [Section 238](#), The Principal is liable for any fraud or misrepresentation made by his agent during the course of his business, as if the fraud or misrepresentation was done by the Principal himself.

Rights of an Agent

An agent has the following 5 rights:

1. **Right of retainer**– An agent has the right to retain any remuneration or expenses incurred by him while conducting the Principal's business.
2. **Right to remuneration**– An agent, when he has wholly carried out the business of the agency has the right to be remunerated of any expenses suffered by him while conducting the business.
3. **Right of Lien on Principal's property**- The agent has the right to hold (keep with himself) any movable or immovable property of the Principal until his due remuneration is paid to him by the Principal.

4. **Right to be Indemnified**– The agent has the right to be indemnified against all the lawful acts done by him during the course of conducting the Principal's business.
5. **Right to Compensation**– The Agent has the right to be compensated for any injury or loss suffered by him due to the lack of skill and competency of the Principal.

Conclusion

Contracts establishing a relationship of the agency are very common in business law. These can be express or implied. An agency is created when a person delegates his authority to another person, that is, appoints them to do some specific job or a number of them in specified areas of work. Establishment of a Principal-Agent relationship confers rights and duties upon both the parties. There are various examples of such a relationship: Insurance agency, advertising agency, travel agency, factors, brokers, del credere agents, etc.