

Law of Agency (Section 182-238)

The law of agency is an area of commercial law dealing with a set of contractual, quasi-contractual and non-contractual fiduciary relationships that involve a person, called the agent, that is authorized to act on behalf of another to create legal relations with a third party. Section 182 of the Indian Contract Act defines Principal and Agent as follows :

An “agent” is a person employed to do any act for another, or to represent another in dealing with third persons. The person for whom such act is done, or who is so represented, is called the “principal”.

To constitute Agency the following ingredients are to be satisfied.

1. Principal :

To constitute Agency there must be Principal, who appoints another person as agent to represent or work on his behalf.

2 Principal must be competent :

According to Section 183 principal must be competent to contract. Section 183 says that 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.

3 There must be an Agent :

In a Contract of Agency, Agent is a person one who is appointed by Principal to work on his behalf. According to Section 184 any person may become an agent, but no person who is not of the age of majority and sound mind can become an agent.

4. Consideration not Necessary

Section 185 of the Indian Contract Act 1872 says that, no consideration is necessary to create an agency. It is exception to the general rule - a contract without consideration is void. but as per this exception, it can be say that a contract without consideration is valid.

Kinds of Agents

On the point of view of the extent of their authority and the nature of the work performed by them agents may be Classified under the following heads : -

1) Universal Agent :

A Universal agent is one who is authorised to do all the acts which the Principal can lawfully do and can delegate.

2) Special Agent:

A Special Agent is one who is employed to do some particular act or represent his Principal in some particular transactions.

for example, An agent employed to sell a Bike. If the special agent does anything outside his authority, the principal is not bound by it and third parties are not entitled to assume that the agent has unlimited powers.

3) General Agent:

A General Agent is one was employed to do all acts connected with particular business or employment.

For example, A manager of a firm. He can bind the principal by doing anything which Falls within the ordinary scope of that business. Whether he is actually authorised for any particular act or not, is immaterial provided that third party acts bona fide.

4) De Credere Agent:

He is one who in consideration of an extra commission guarantee his Principal that the third person with whom he enters into contracts on behalf of the principal shall perform their financial obligations that is, if the buyer does not pay, he will pay. Thus he occupies the position of a surety as well as an Agent. He is not answerable to his principle for the failure of the third person to perform the contract. A del credere agent constituted an exception to this rule.

5) Broker :

He is one who is employed to make contracts for the purchase and sale of goods. He is not entrusted with the possession of goods. He simply act as a connecting link and bring it to parties together to bargain and if the circumstances materialise he becomes entitled to his commission called brokerage. He makes a contract in the name of his Principal. Thus, a broker is an agent primarily employed to negotiable a contract between two parties where he is a broker for sale he has no position of the goods to be sold.

6) Factor :

A factor is a mercantile agent to whom goods are entrusted for sale. He enjoys wide discretionary powers in relation to the sale of goods. A Factor is an agent who is entrusted with the possession and control of the goods to be sold by him for his Principal.

He has possession of the goods, authority to sell them in his own name and a general discretion as to this sale. He may sell on the usual terms of credit, may receive the price and give a good discharge to the buyer.

7) Commission Agent:

Commission Agent is a mercantile Agent who buys or sells goods for his Principal on the best possible terms in his own name and who receives Commission for his labours. He may have possession of goods or not.

8) Auctioneers :

An auctioneer is an agent to sell property at a public auction. He is primarily an agent for the seller, but upon the property being knocked down he becomes also the agent of the buyer. He is a mercantile agent within the meaning of Section 2(9) of the Sale of Goods Act.

Difference between General Lien and Particular Lien

Lien is the right of one person to retain possession of goods owned by another until the possessor's claims against the owner have been satisfied.

Types of Lien

There are two types of Lien

- (i) Particular Lien
- (ii) General Lien

Difference between Particular Lien and General Lien

Particular Lien

General Lien

Section 170 of the Indian Contract Act, 1872 which confers on the Bailee, the right of particular lien.

Section 171 of the Indian Contract Act, 1872 confer on Bailee the right of General Lien.

A particular lien gives the right to retain possession only of goods in respect of which the charges or dues have arisen.

General Lien is one which gives right to possession until the whole balance of the amount is paid.

The right of particular lien can be successfully claimed if by the exercise of labour or skill, there has been some improvement of the goods.

It is not necessary in case of general Lien.

The Right of Particular Lien can be claimed only in respect of goods upon which labour or skill has been exercised by the Bailee.

The right of General lien, can be claimed in respect of any goods for any charge due in respect of other goods.

Difference between Sub-Agent and Substituted-Agent

	<u>Sub-Agent</u>	<u>Substituted-Agent</u>
1	According to Section 191 of the Indian Contract Act, 1872 - A “sub-agent” is a person employed by, and acting under the control of, the original agent in the business of the agency.	A Substituted agent is a person who is named by the Agent for performing such part of the business of the agency as is entrusted to him.
2	Sub-Agent works under the control of the Agent. He is the agent of the Principle.	Substituted Agent works under the control of the Principle and he is an agent of the agent.
3	Sub-Agent is responsible to the Agent.	Substituted Agent is responsible to the principal
4	The Agent is responsible for the acts of the sub-agent.	The agent is not responsible for the acts of the substituted-agent
5	There is no Privity of contract between the Principle and sub-agent.	There is privity of Contract between the Principal and substituted-agent.

Termination of Agency -

Termination of agency means putting end to the legal relationship between principal and agent. Section 201 to 210 of the Indian Contract Act 1872 lay down the provision relating to the termination of Agency.

Section 201, Indian Contract Act 1872 provides for termination of an agency

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 an insolvent under the provisions of any Act for the time being in force for the relief of insolvent debtors.

Agency may be terminated in two ways -

- 1) By the Act of the Parties**
- 2) By Operation of Law**

By the act of the parties

- i) **By Mutual agreement** - The Contract of Agency can be terminated at any time by mutual agreement between the principal and agent
- ii) **By revocation of the principal** - The Principal revoke agency at any time by giving notice to the agent
- iii) **By Renunciation of an agent** - Renunciation which means withdrawing from responsibility as Agent. Like Principal, Agent can also renounce the agency. According to Section 206 of the Indian Contract Act 1872, the agent must give to his Principal reasonable notice of renunciation. Otherwise, he will be liable to make good for the damage caused to the principal for want of such notice.

By operation of law

- i) **By the completion of the Business of agency** - Agency can come to an end after the completion of work for which the agency is created.
- ii) **By expiry of fixed Period** - Agency can also be terminated by the expiry of time. If the agency is created for the specific period, it is terminated after the expiry of the time.
- iii) **Death or insanity of principal or agent** - Section 209 of the Indian Contract Act 1872 imposes an agent, duty to terminate the contract of agency on the death of the principal. In other words, Agency comes to an end on the death or insanity of the principal or agent.
- iv) **Insolvency of principal** - According to Section 201 of the Indian Contract Act 1872, an insolvent or bankrupt is a person who is unable to run the business due to Excess of liabilities over assets. In this way, if the principal becomes an insolvent agency can be terminated.
- v) **Destruction of the subject matter** - If this subject matter of the agency is destroyed agency comes to an end.
- vi) **Principal becoming an alien enemy** - If the Principal becomes an alien enemy the contract of agency comes to an end.
- vii) **Dissolution of company** - A Firm or company may be regarded as a Principal in the contract of Agency. If the company or firm is dissolved the agency comes to an end

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Thank you...