

B.Com Hons. (Part 2 Paper-4)  
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Topic:---AGENCY CONTRACT

# WHO IS AN AGENT?

An Agent is a person employed to  
do any act for another

or

represent another in **dealing**  
with third persons

# RULES OF AGENCY

1. Whatever a person competent to contract may do himself, he may do through an agent.
  2. He, who does through another, does by himself.
- *Therefore, the acts of an agent are the acts of the principal (subject to certain conditions\*)\* **where personal skill is involved.***

# CONCEPT OF AGENCY

- It is only when a person acts as a representative of the other in business negotiations, that is to say, in the **creation, modification or termination of contractual obligations**, between that other and third persons, that he is an agent...

# WHO IS A PRINCIPAL?

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

# WHO CAN BE A PRINCIPAL

- 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.

# WHO CAN BE AN AGENT

- As between the principal and third person, any person can become an agent, **even if he is not competent to contract** otherwise.
- If a person not competent to contract is appointed agent, principal is bound by his acts although such agent cannot be held liable by either the principal or third party.

# TEST OF AGENCY

➤ ACTS OF AN AGENT ARE ACTS OF THE PRINCIPAL



# TEST OF AGENCY

1. Whether the person has the capacity to bind the principal & make him answerable to the third parties.
2. Whether he can create legal relationship between the principal & such third parties & thus establish a privity of contract between the principal & third parties.

# Agent & Servant

- An agent has the authority to act on behalf of his principal and to create **contractual relations** between the **principal** & a **third party**.
- A principal has the **right to direct** what the agent has to do: but a master has not only the right, but also the **right to say how it is to be done.....**

# Agent & Servant

- While the servant is paid by way of **salary or wages**, the agent receives **commission** on the basis of work done.
- A master is responsible for the wrong of his servant if it occurs in **the course of employment**. A principal is liable for his agent's wrong done within **the scope of authority**.

# CONSIDERATION?

- No consideration is necessary to create an agency.

# RELATIONSHIP OF A PRINCIPAL AND AGENT

- A contract of agency is one of good faith.
- The relationship is fiduciary.

# KINDS OF AGENTS

## ➤ MERCANTILE:

- Brokers
- Commission Agents
- Bankers
- Factors

## ➤ NON MERCANTILE:

- Solicitors
- Insurance Agents\*
- Wife\*

# Insurance Agent

- LIC has regulations on the appointment & functions of agents. An agent may be authorised by the Corporation to collect and remit renewal premiums under policies on such conditions as may be specified.
- Harshad J Shah V LIC (1997)
  - 3rd semi-annual Premium paid to agent-bearer cheque-encashed-but did not deposit even after grace period-meanwhile insured dies-agent deposits premium the next day-by then the policy had lapsed-in his appointment letter agent was not authorized to collect premium.

# Wife as an agent

- There must be a domestic establishment for a wife to have an implied authority of the husband to buy articles of household necessity.
- Debenham V Mellon (1880)
  - Hotel manager's wife living with him in hotel incurring debt for clothes payment for which demanded from the husband-no domestic establishment; hence husband not liable



# CREATION OF AGENCY

- EXPRESS: Word of mouth or in writing.
- IMPLIED: By inference from the circumstances of the case.
  - Agency by estoppel.
  - Agency by holding out.
  - Agent out of necessity.

# Estoppel

## ➤ Pickering V Busk (1812)

- Purchaser of hemp-allows it to remain in custody of broker-ordinary business to buy and sell-broker sells it

## ➤ Kashinath Das V Nisakar Raut (1962)

- Landlord appoints tahsildar to manage agricultural lands-land let out to tenants on certain terms

# Necessity

- **Sims & Co V Midland Rly Co (1913)**
  - Butter consigned – delay in transit owing to strike – goods being perishable sold by the company
- **Great N Rly Co V Swafield (1874)**
  - Horse consigned not received at the destination-arrangement for horse to be placed with stable keeper-company allowed to recover the charges of stable-keeper

# Necessity

➤ Necessity arises only when:

## 1. Inability to communicate with principal

– Gwilliam V Twist (1895)

- Policeman thinking driver of bus is drunk orders him to discontinue driving-driver and conductor authorise a passerby to drive bus to company (defendant) yard quarter mile away-negligence of that person and injury is caused to plaintiff-Plaintiff's case failed as there was no necessity.

# Necessity

➤ Necessity arises only when:

## 2. Act should be reasonably necessary

- Sachs v Milkos (1948)
- Furniture allowed to be kept free of charge in defendants house – three years later space required- two letters sent to last known address of plaintiff- No reply, so furniture sold- six years later plaintiff claimed the furniture
- Munro V Willmott (1949)
- Car left in yard without payment-conversion of yard into garage- unsuccessful efforts to communicate –car repaired and sold.

# EXTENT OF AGENT'S AUTHORITY

1. Actual or real authority.
  1. Express.
  2. Implied.
2. Ostensible or apparent authority.
3. Authority in emergency.

# Ostensible Authority

## ➤ *Watteau v Fenwick* (1893)

– Manager of hotel –cigar purchase.

## ➤ *Kannelles v Locke* (1919)

– Act of a complete imposter at a small hotel, where the plaintiff arrived one night.

## • *DESU v Basanti Devi* (2000)

– Premium deducted from salary but not remitted to LIC. LIC contented that DESU was not its agent. For the employee, DESU was agent of LIC to collect premium.

- When an agent has incurred obligations to third persons on behalf of his principal, the principal is bound by such obligations
- *Terence Correya v MUL* (2005)
  - Booking of car with dealer-draft drawn on MUL-balance to be paid on delivery of car-dealership revoked-no car delivered-MUL contends that amount received from customer through dealer was duly credited in the account of the dealer-cars supplied to dealer-dealer responsible to deliver such cars to individual customer.



# RIGHTS OF AN AGENT

1. Right of retainer until he is paid in full.
2. Right of remuneration.
  - Green V Bartlett (1863)
  - Agent appointed to sell house -Auction to find purchaser for a house fails-person attending auction takes address of principal-purchases house without intervention of agent-since, the bargain was direct result of agent's effort, he was held entitled to commission

# RIGHTS OF AN AGENT

3. Right of lien. ( in addition to 1, above).
  - Confers no authority on the agent to sell or otherwise dispose of the property without the consent of the owner
4. Right of indemnification against the consequences of lawful acts.
5. Right of indemnification against the consequences of acts done in good faith.
6. Right of compensation.

# DUTIES OF AN AGENT

1. Work according to the directions given by the Principal.
  - Pannalal Jankidas V Mohanlal (1951)
    - Agent purchases goods on behalf of principal-stored in godown pending their dispatch-did not follow instructions of principal to insure them-goods lost in explosion in Bombay harbor – Govt paid 50% in respect of uninsured merchandise-rest to be borne by agent
2. Carry out the work with reasonable care skill and diligence...

# DUTIES OF AN AGENT

3. Render proper accounts.
4. Communicate with Principal in case of difficulty.
5. Not to deal on his own account
6. Pay Principal all sums received on his account.
7. Protect and preserve interests of Principal in case of death or insolvency.
8. Not to use information against the Principal

# DUTIES OF AN AGENT

9. Not to make any secret profit.

10. Not to put himself in a position where interest and duty conflict.

– De Busche V Alt (1878)

- Ship for sale through agent for £ 90,000-purchased by agent himself without disclosing to Principal-Sold later £ 160,000 to Japanese prince-agent was asked to account for the profit.

11. Not to delegate Authority.

# CAN AN AGENT DELEGATE AUTHORITY?

- A person to whom authority has been given cannot delegate that authority to another. (Reason being; when the Principal appoints a particular agent to act on his behalf, he relies upon the agent's skill, integrity & competence.)

# WHEN CAN A SUB - AGENT BE APPOINTED?

1. When there is a custom of trade.
2. Nature of work is such that a sub-agent must be appointed.
3. Express or implied permission.
4. Ministerial acts (clerical or routine work).
5. Emergency.

# SUBSTITUTED AGENT

- When an agent has an express or implied authority of his principal to name a person to act for him and the agent has accordingly named a person, such a person is not a sub-agent, but he becomes an agent for the principal in respect of the business entrusted to him.



# RIGHTS & DUTIES OF PRINCIPAL

- Duties of the Agent become the rights of the Principal
- Rights of the Agent become the duties of the Principal

# TERMINATION OF AGENCY

1. By Principal revoking the Agent's Authority.
2. By the Agent renouncing the business of agency.
3. Either the Principal or Agent dying or becoming of unsound mind.
4. When Principal is adjudged insolvent....

# IRREVOCABLE AGENCY

## WHEN:

- The agency is coupled with interest (the interest of the agent exists at the time of the creation of agency).
- The agent has incurred a personal liability.
- The agent has partly exercised his authority.

Thank you