

COURSE NAME -

LAW

CLASS-

B.A.LL.B-2ND SEM

SUBJECT-

SPECIAL CONTRACT

TOPIC-

AGENCY

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INTRODUCTION

Agency system is very popular in the current business scenario. There are two parties in the agency system one is the principal and another the agent. An agent is a person acting on behalf of his principal. It's a connecting link between the principal and the third party. Herein we will discuss the concept of agency under the Indian Contract Act, 1872(SEC182-238).

INTRODUCTION TO CONTRACT OF AGENCY (Sec.182)

(Meaning of 'agent')

An 'agent' is a person employed to – • Do any act for another;
or • Represent another in dealings with third persons.

(Meaning of 'principal')

'Principal' is the person – • For whom an act is done by the agent; or • Who is represented by the agent in respect of dealing with third persons.

(Test of agency)

Where a person has the capacity to –

- Create contractual relations between the principal and a third party;
- Bind the principal by his own acts, there exists a relationship of agency.

SALIENT FEATURES OF AGENCY (Sec. 183, 184, 185 and 226)

Principal is liable for the acts of agent

- The principal is liable for all the acts of an agent which are lawful and within the scope of agent's authority.
- The contracts entered into by the agent on behalf of the principal have the same legal consequences as if these contracts were made by the principal himself.

Who may employ an agent?

Any person may employ an agent if –

- He is of the age of majority; and
- He is of sound mind.

Who can be an agent?

- Any person may become an agent.
- Even a minor or a person of unsound mind can become an agent

Liability of agent

- Generally an agent is liable to the principal
- An agent is not liable to the principal if he is a minor or is of unsound mind

Requirement of consideration

No consideration is necessary for creating an agency.

CREATION OF AGENCY (Sec.187, 189, 196, 214 and 237)

1.By Operation of Law

2.By Express Agreement

3.By Implied Agreement

- (a) Estoppel,
- (b) Holding Out,
- (c) Necessity

4.By Ratification of acts

1. Agency by operation of law

Agency by operation of law arises where the law treats one person as an agent of another for example a partner in a firm.

2. Agency by Express agreement

- A person may employ another person as his agent by entering into an express agreement with him
- . • The agreement may be either oral or written.

3. Agency by Implied agreement

Agency by estoppel

If –

- a person makes a representation (by his words or conduct) to a third person that a certain person is his agent; and - the third party believing such representation to be true, enters into a contract with the pretended agent.

Then –

- the person making the representation is prevented from denying the truth of agency. He may be held liable as a principal by such third party.

Agency of holding out

Such an agency comes into existence when a person by his affirmative or positive conduct leads third persons to believe that person doing some act on his behalf is doing with authority.

Agency by necessity – Conditions:-

- (i) There was an actual and definite necessity for acting on behalf of the principal.
- (ii) The agent was not in a position to communicate with the principal.
- (iii) The act was done for the purpose of protecting the interest of his principal.
- (iv) The agent has exercised such reasonable care as a man of ordinary prudence would have exercised in his own case.
- (v) The act was done bonafide.

4. Agency by ratification

Meaning

If –

- a person (viz., pretended agent) acts on behalf of another person (viz, the principal)
- the pretended agent acts without the knowledge or consent of the principal; and
- Afterwards, the principal accepts such act.

Then –

- Agency by ratification comes into existence.

Effects of ratification

- The principal is bound by the acts ratified by him as if such acts had been performed by his authority.
- Ratification relates back to the actual date of the act that is ratified and not from the date when the act ratified.

ESSENTIALS OF A VALID RATIFICATION

1. Full knowledge No valid ratification can be made by a person whose knowledge of the facts of the case is materially defective. In other words, the principal must have full knowledge of all the material facts.
2. Whole transaction It must be done for whole transaction in fact; ratification of the part of a transaction operates as a ratification of the whole transaction.
3. Act on behalf of another person The acts done by a person (i.e. pretended agent) on behalf of another person (i.e. pretended principal) can only be ratified.
4. By the principal Ratification can be made by only such person for whom the act was done.
5. Existence of principal The principal must be in existence at the time when the act was done in his name
6. Contractual capacity The principal must have contractual capacity both at the time of entering into the contract and at the time of ratification.
7. Lawful acts. Only those acts which are lawful can be ratified. Void, illegal, or ultra virus acts cannot be ratified.
8. Acts within principal's power Ratification can be made only for such acts which principal had the power to do.
9. Communication Ratification must be communicated to the third party so as to bind him
10. Within reasonable time Ratification must be made within reasonable time of the act purported to be ratified

TERMINATION OF AGENCY (Sec.201 to 210)

By the acts of parties

1. By agreement

The principal and the agent may mutually agree to terminate the agency, at anytime.

2. By revocation

- When the agency is coupled with interest, the principal cannot revoke the agency to the prejudice of such interest.
- The principal can revoke the authority at anytime before, the authority has been exercised so as to bind the principal.
- The principal cannot revoke the authority given to his agent after the authority has been partly exercised.
- When agency if for fixed period, the principal must make compensation to the agent for premature revocation of agency without sufficient cause. • Revocation may be expressed or implied from the conduct of the principal

3.By the agent renouncing the business of agency

- Renunciation may be expressed or implied from the conduct of the agent.
- When agency is for fixed period, the agent must make compensation to the principal for premature renunciation of agency without sufficient cause.

. By operation of law

1. Completion of business of agency
2. 2. Death or insanity of the principal or agent
3. 3. Where the principal or the agent, being a company is dissolved
4. 4. Destruction of subject matter of agency
5. 5. Principal becoming insolvent
6. 6. Expiration of period where agency was for a fixed period

THANK

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