

UNIT - III

Agency

Sections 182-238 • Creation • Authority • Rights & Duties • Termination

Unit Structure

01

Definition & Creation of Agency

S. 182 – Agent & Principal, modes of creation

02

Kinds of Agents & Distinction from Servant

General, special, factor, broker, etc.

03

Authority of Agent

Actual, apparent, authority in emergency

04

Rights, Duties & Termination

Duties of agent & principal, personal liability, termination

Agent and Principal – Definition

Section 182: An “agent” is a person employed to do any act for another or to represent another in dealings with third persons. The person for whom such act is done, or who is so represented, is called the “principal”.

The relationship is based on consent (express or implied). The agent acts on behalf of the principal and can bind the principal in relation to third parties within the scope of his authority.

Any person who is of the age of majority and of sound mind may employ an agent (S. 183). Any person may become an agent, but a minor or person of unsound mind is not responsible to the principal for acts done as agent (S. 184).

Creation of Agency

By Express Agreement

Written or oral appointment of the agent by the principal.

By Implied Agreement

Agency inferred from the conduct of the parties or the circumstances of the case.

By Necessity / Emergency

Agent may do acts necessary to protect the principal's interest in an emergency (S. 189).

By Ratification

Principal may ratify acts done by a person without authority; ratification relates back (Ss. 196–200).

By Estoppel / Holding Out

Where the principal holds out a person as his agent, he is bound by that person's acts within the apparent authority.

Agent vs Servant / Independent Contractor

An agent is employed to bring the principal into contractual relations with third parties. A servant is employed under a contract of service and works under the direct control and supervision of the master.

Key differences:

- Agent can create contractual relations between principal and third parties; servant ordinarily cannot.
- Agent has more discretion; servant is under continuous control.
- Remuneration of agent is often commission; servant receives wages/salary.
- Principal is liable for contracts made by the agent within authority; master is liable for torts of servant committed in the course of employment.

An independent contractor is employed to produce a given result and is not under the control of the employer as to the manner of work.

Extent of Agent's Authority

Section 186: The authority of an agent may be expressed or implied.

Section 187: An authority is said to be express when it is given by words spoken or written. An authority is said to be implied when it is to be inferred from the circumstances of the case.

Section 188: An agent having authority to do an act has authority to do every lawful thing which is necessary in order to do such act.

Section 189: An agent has authority, in an emergency, to do all such acts for the purpose of protecting his principal from loss as would be done by a person of ordinary prudence, in his own case, under similar circumstances.

Apparent (ostensible) authority binds the principal even if the agent exceeds actual authority, where the third party acts in good faith.

Duties of the Agent

- To conduct the business of the principal according to the principal's directions (S. 211)
- To act with reasonable skill and diligence (S. 212)
- To render proper accounts (S. 213)
- To communicate with the principal in cases of difficulty (S. 214)
- Not to deal on his own account without the principal's consent (S. 215–216)
- Not to make secret profit (S. 216)
- To pay sums received on behalf of the principal (S. 218)
- Not to delegate (*delegatus non potest delegare*) except in authorised cases (S. 190–195)

Rights of the Agent

- Right to retain sums received on principal's account for remuneration and expenses (S. 217)
- Right to remuneration (S. 219) – subject to the terms of the contract
- Right of retainer for remuneration and expenses (S. 221) – particular lien on the principal's property in the agent's possession
- Right to be indemnified against consequences of lawful acts (S. 222) and against consequences of acts done in good faith (S. 223)
- Right to compensation for injury caused by the principal's neglect (S. 225)

Personal Liability of Agent

As a general rule an agent is not personally liable on contracts made on behalf of the principal. Exceptions (S. 230 and related principles):

- When the agent acts for a foreign principal
- When the agent does not disclose the name of the principal (undisclosed principal)
- When the agent acts for a principal who cannot be sued (e.g., minor)
- When the agent signs a contract in his own name without indicating that he is an agent
- When the custom of the trade makes the agent liable
- When the agent exceeds his authority and the principal does not ratify

In such cases the third party may hold the agent personally liable.

Termination of Agency

An agency is terminated (S. 201):

- By revocation of authority by the principal
- By renunciation of the business by the agent
- By completion of the business of the agency
- By death or insanity of the principal or the agent
- By insolvency of the principal (in certain cases)

Revocation and renunciation may be express or implied. Notice must be given to the other party and to third parties who have dealt with the agent (S. 208).

Agency coupled with interest cannot be terminated to the prejudice of the interest (S. 202).

Landmark Judgments

Lakshminarayan Ram Gopal v. Hyderabad Government (1954)

Distinction between agent and servant / independent contractor – control test.

Syed Abdul Khader v. Rami Reddy (1979)

On the nature of agency and the authority of the agent.

Keighley Maxsted & Co. v. Durant

On ratification – the act must be done on behalf of the principal.

Watteau v. Fenwick

Apparent authority of an agent even when the principal has limited the authority.

Key Takeaways – Unit III

- An agent is employed to represent the principal in dealings with third persons (S. 182).
- Agency may be created by express or implied agreement, necessity, ratification or estoppel.
- The agent must act with reasonable skill, diligence and good faith, and must not make secret profits.
- The principal is bound by acts of the agent within actual or apparent authority.
- The agent is generally not personally liable, subject to important exceptions.
- Agency terminates by revocation, renunciation, completion, death, insanity or insolvency, subject to agency coupled with interest.

Quick Reference – Important Sections

Definition of Agent & Principal	S. 182
Who may employ / be an agent	Ss. 183–184
Authority – Express & Implied	Ss. 186–188
Authority in Emergency	S. 189
Duties of Agent	Ss. 211–218
Rights of Agent	Ss. 217–225
Personal Liability of Agent	S. 230
Termination of Agency	Ss. 201–210

End of Unit – III

Agency – Sections 182–238 of the Indian Contract Act, 1872

Proceed to Unit-IV: Indian Partnership Act