# **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. the Indian Contract Act, 182 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 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.

# **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 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.

# **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.

## **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.

## **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.

## **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