

## AGENT'S AUTHORITY: JUDICIAL INTERPRETATION

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### ABSTRACT

*In legal terms, agency refers to a situation in which one person has the power or ability to establish a legal relationship between another party and a person holding the position of principal. The agent's role is to carry out contracts on the principal's behalf. He takes all principal payments. The agent has to follow all the instructions of the principal and in case he acts beyond the given power, then the performance of such an act can be declared void and either there will be termination of the agency as a consequence of the same or there will be some liability. The agent cannot satisfy his means or gains during the performance of the agency. There can be the dissolution of the agency by various factors like the death of the party, insanity of the party or the expiration of the tenure of the agency.*

**Keywords:** Agent, Principal, Agency, Contract, Third Party, Employment.

### WHO ARE AGENTS?

“An agent is a person employed to do any act for another or to represent another in dealing with a third person.”<sup>1</sup> Anyone who works as an agent is—

- Selected by other individuals
- need to do some action on their behalf.
- To appear for the other party in their dealings.

“The principal is a person for whom such act is done or who is so represented.”<sup>2</sup>

Agents are also divided into different categories based on the work they perform as regular or particular agents. A regular agent is a person who works to the extent of the authority given by the employer. The latter is a person who is to perform the task at a particular time and does not work in the usual course of employment. Apart from it, several other types of agents like substitute agents chosen by the delegator to work under him, co-agent is when two agents

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<sup>1</sup> Indian Contracts Act 1872, s 182

<sup>2</sup> Indian Contracts Act 1872, s 182

jointly perform a task, factor, broker, auctioneer, and commission agent. For any general agent's act, the delegator will be accountable for the same. "A special agent has no authority beyond the limit of work of his appointment and the principal will also not be bound by any of the acts done by him over his duty"- It is given in the case *Jacob v. Morris*.<sup>3</sup>

## **POWERS AND RESPONSIBILITIES OF AN AGENT**

In Indian Contracts Act, 1872 the agent has specific roles to perform. When an agent takes up any task, he is required to perform all the work assigned by him and is not permitted to assign his task to another individual. The agent must follow the directions given to him by the principal and is not allowed to go beyond the instructions. The agent is bound to show proficiency and care as that is shown by a prudent man. An agent is bound to present fair books to his principal on request.<sup>4</sup> It is also necessary for communicating with the principal about any problem and seek his instructions. The agent is restrained from dealing with books on his own and in case he performs the principal is required to cancel that. An agent is obligated to give back to the principal all money collected on behalf of the principal.<sup>5</sup>

The agent has certain rights as well which he can exercise against the principal. The agent has the right to withhold any of the belongings of the principal like papers, property or goods irrespective of the fact movable or immovable in case of non-payment by the principal for the services rendered by him. Also, the principal is to compensate the agent for all the damages he suffers in the due exercise of the duty. If the principal employs the task to the agent which is criminal, then he is not entitled to recover or indemnify anything. The agent also holds the privilege to recover damages for any wrong suffered due to the principal's neglect.

## **AGENT'S AUTHORITY**

As held in the judgement of "*Palester Electronics Pvt. Ltd. v. Additional Commissioner*"<sup>6</sup>- "The act of agent lying in the scope of the authority binds the principal. It means any of the acts or obligations done by the agent while acting in the scope of the order of the principal and done in the same manner as said by him makes the principal equally liable for a legal obligation as he has performed the task himself."

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<sup>3</sup>*Jacob v. Morris*[1902] 1 Ch 816

<sup>4</sup> Indian Contract Act 1872, s 213

<sup>5</sup> Indian Contract Act 1872, s 218

<sup>6</sup>*Palester Electronics Pvt. Ltd. v. Additional Commissioner*(1978) 1 SCC 636

When the “agent does any act, it is said he acted within the authority as said in the case *Nand Lal Thanvi v. L.R. of Goswami Brij Bhushan*.”<sup>7</sup> If the agent does any act exceeding his authority, he will be liable for the amount of the act done more than the duty. The power of the agent means his ability to legally commit to the principal. In short, it pertains to the total of all the actions of the principal and the agent on the principal’s behalf. “In the case of *Ramlesh v. Jasbir Singh*<sup>8</sup> it was held agency is to promote business and not to hinder it”.

### **TYPES OF AUTHORITIES OF THE AGENT**

“An agent who acts in the scope of the authority given by the principal in obligation they create against third parties”. There exist the following kinds of authorities:

**Actual Authority:** Actual authority refers to the capacity that the principal exercises over the agent. Actual authority is further divided as under-

- Express Actual Authority – Express actual authority is the authority specified by the verbal or non-verbal method.<sup>9</sup> “A similar point is discussed in the case of *Attwood v. Munnings* where the principal while going abroad authorizes his agent and partner to carry his business and gave his wife the power to accept bills of his personal business on his behalf. Now it was held he was not bound for his wife’s act of accepting the bills of the business under the care of agent the one that is different from his personal ones.”
- The agent does not have the power to borrow unless he has the instruction of the principal clearly to act in such a manner. Where the agent had the authority to raise money despite that he raised past his power so in this case third party cannot abstain from making the principal accountable as held in “*Withington v. Herring*.”<sup>10</sup>
- Implied Actual Authority –It mentions the power to carry out an action that is either incidental or required for carrying out the obligation. Moreover, it is understood based on the facts of the case and need not be verbal.

### **Apparent Authority**

When an agent appears to have authority –

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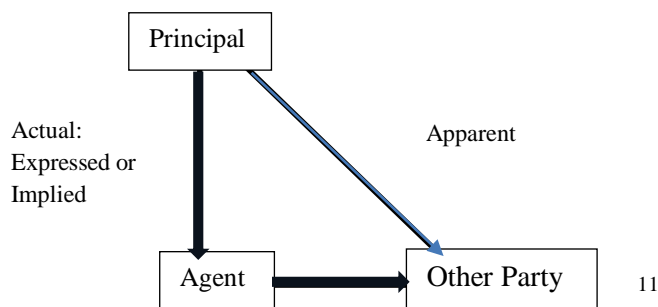
<sup>7</sup>*Nand Lal Thanvi v. L.R. of Goswami Brij Bhushan* AIR (1973) All 302

<sup>8</sup>*Ramlesh v. Jasbir Singh* AIR (2004) 216 (P&H)

<sup>9</sup> Indian Contract Act 1872, s187

<sup>10</sup>*Withington v. Herring* [1829] 5 (Bing) 442

- When the principal gave the third party the false impression that the agent had the power to act on his behalf, the latter did not have that power.
- The third-party believed the fact.
- So that third party acted on and made an obligation to the agent.



By this conduct, the agent makes himself liable in case of future discrepancy if any as shown in the case of *Summers v. Salomon*<sup>12</sup>. In this, the Hon'ble judge held that as principal made the third party believe that his nephew has the authority to deal on his behalf as done in the previous dealings from suppliers. But there was no such situation and so here the principal was held liable to pay for the jewellery.

Similarly, there was another case regarding this i.e., *Bissessardas Kasturchand v. Kabulchand*.<sup>13</sup>

Representation – “Apparent authority is based on the usage of the principle of estoppels”. There are three necessary things for representation – representation should lie within the authority of the principal. Another person should trust the fact plus the agent should be unaware of the fact.

**Usual or Incidental Authority:** An agent works as a representative of the principal and so any action of the agent makes the principal equally liable regardless of whether the other party is aware of the principal or not as in the case of *Watten v. Fenwick*<sup>14</sup> in which the other party was unknown to the principal and all the dealings were done by the agent. So here principal for any of the acts of the agent whether accidental or in the course of work will be liable.

<sup>11</sup> ‘Liability of Principal and Agent; Termination o Agency’ (Saylor) <[http://saylordotorg.github.io/text\\_business-law-and-the-legal-environment-v1.0-a/s42-liability-of-principal-and-age.html](http://saylordotorg.github.io/text_business-law-and-the-legal-environment-v1.0-a/s42-liability-of-principal-and-age.html)>, accessed 12 July, 2023

<sup>12</sup> *Summers v. Salomon* (1857) 7 (E&B) 879

<sup>13</sup> *BissessardasKasturchand v. Kabulchand* AIR (1945) 121(Nag)

<sup>14</sup> *Watten v. Fenwick* [1893] QB 346

**Agent's Power in Exigency:** Agent's power in case of crisis means the agent is capable of performing any action he can to secure the principal from suffering any loss but all that agent does should be reasonable as a prudent man would do in the ordinary course of business. This type of authority is generally used in the case of ships where there is no owner or principal but the agent has the power to dispose of the goods that got damaged or are perishable and are likely to get damaged if not used in a reasonable time or kept for a long period. As held in *Exhall v. Partridge*<sup>15</sup> agent's authority in an emergency is used when the agent is performing duty without seeking any permission and has incurred some expenditure while doing such an act.

**Employer's Authority to Pay Insurance Premium:** When an employer is associated with some of the insurance companies and has to pay the insurance premium monthly from his salary or wages. After the person died it will be governed the company has to give insurance amount to the employee's family. Moreover, if there is a lack of consideration b/w insurer and employer it is all immaterial as consideration is not considered at the time of the creation of the agency as held in *Naseem Bano v. Life Insurance Corp. of India*<sup>16</sup>. Similarly, there is another statement, by *Bowstead and Reynolds*<sup>17</sup> - "When some other person by his words or conduct allows some other person to act on his behalf. The other person is bound in his acts with whosoever he deals."

**Authority of Special Agent:** There are several types of special agents that a principal may hire only for some special tasks like a broker, auctioneer, or factor. Now the broker is a person who creates a contractual relationship between two parties.<sup>18</sup> But the broker does not get possession of the goods.<sup>19</sup> A broker makes sales and while doing so he can use his name and also receive payments. But he must not reveal the name of the principal in any case and also make a reasonable amount for the dealing. Further, an auctioneer is a type of agent who represents the principal in the auction as a seller. The auctioneer has to sell in the auction alone and so he cannot sell anything in private as discussed in the case of *Mews v. Carr*.<sup>20</sup> Moreover, he cannot sell any property on credit and acts for both parties and sign documents for both. Next the "factor is an agent who is paid by the commission for the services

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<sup>15</sup>*Exhall v. Partridge*[1799] 8 (TR) 308

<sup>16</sup>*Naseem Bano v. Life Insurance Corp. of India* (2004) 2 MPLJ 529

<sup>17</sup> Page 307 (7<sup>th</sup>edn)

<sup>18</sup>**Sneha Mahawar**, 'Judicial analysis on personal liability of agents' (iblogpleaders, 21 April, 2022) <<https://blog.ipleaders.in/judicial-analysis-on-personal-liability-of-agents/>> accessed on 11 July, 2023

<sup>19</sup> Anson Law of Contracts(28<sup>th</sup>edn, OUP Oxford) 673

<sup>20</sup>*Mewsv. Carr*[1856] 1 (H&N) 484

rendered.<sup>21</sup> The factor has the possession of the goods, authority to sell in his name and also in place to fix the selling price and even can receive payment as in case of *Drinkwater v. Goodwin*<sup>22</sup>.

## AUTHORIZED AND UNAUTHORIZED ACTS

As already discussed, the principal is liable for all the acts of the agent. In addition, there are various other reasons that give rise to the principal's liability –

- When an agent abuses his power.
- When the agent obtains notification on the principal's part.
- When an agent defrauds a third party or does something else unlawful.

Details –

**Agent abuses his power:** A principal is bound for all the doing of the agent. But if the agent exceeds the power, then the principal shall not be liable. If both of these tasks are separable like the one authorized and the other unauthorized then the principal will be liable only for the amount of the act done in authority as discussed in the case of *Ahammed v. MamadKunhi*<sup>23</sup> and if both the acts are inseparable then the principal is not required to acknowledge the transaction.<sup>24</sup>

**Principal liability for notice to agent:**<sup>25</sup> If the agent received any notice or any info. during the job that is to be transacted to the principal, it shall have legal consequences as that info is told to the principal himself.

**Principal's guilt for the agent's fraud or misrepresentation and torts:**<sup>26</sup> When an agent who acts during the employment of the principal does an act by fraud or misrepresentation it will have the same effect on the agreement as the fraud or misrepresentation is done by the principal. One illustration to show the wrongful act of an agent by misrepresentation or fraud is:

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<sup>21</sup> *Sneha Mahawar, 'Judicial analysis on personal liability of agents' (iblogpleaders, 21 April, 2022)* <<https://blog.ipleaders.in/judicial-analysis-on-personal-liability-of-agents/>> accessed on 11 July, 2023

<sup>22</sup> *Drinkwater v. Goodwin* [1775] Cowp 251

<sup>23</sup> *Ahammed v. MamadKunhi* AIR (1987) 228 (Ker)

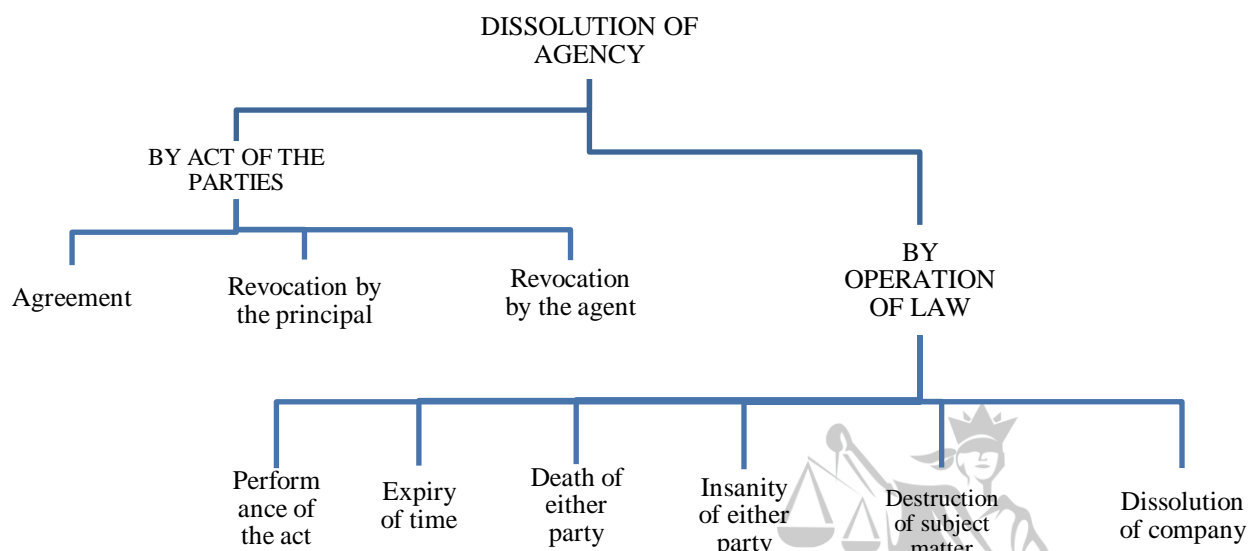
<sup>24</sup> Indian Contract Act 1872, s 228

<sup>25</sup> Indian Contract Act 1872, s 229

<sup>26</sup> Indian Contract Act 1872, s 238

“A is B’s agent for the sale of the car and he induced C to buy that by fraud which he was not authorized to sell. So, the contract is voidable at the option of C.”

## DISSOLUTION OF AGENCY



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**There are several ways to end the agency including as under:**

**By Cancellation of Agent’s Authority:** There are various ways of dissolution of the agency’s power. Firstly, the cancellation will either be express or implied. The revocation can also be done before the agent uses the authority. It means that the principal cannot remove the power after it has been exercised by the agent, but it can be cancelled when the authority has only been partially used. When the agency is time bound but there occurs premature revocation i.e., the principal revokes before the time it will make him liable to the agent. Also, the principal is to give reasonable notice with reasonable justification in the case of *M/s Om Prakash Pariwal v. Union of India*.<sup>28</sup>

**By Mutual Agreement:** The principal and agent may mutually decide to end the agency at any time. It is terminable at any time and any point.

<sup>27</sup>Govt. College for Women, Gandhinagar, “*Contract of Agency*” (2013)

<[http://gcwgandhinagar.com/econtent/document/15879601791COMTC0201\\_unit-V\\_.pdf](http://gcwgandhinagar.com/econtent/document/15879601791COMTC0201_unit-V_.pdf)>, 9, last accessed on 13 July, 2023

<sup>28</sup>*Om Prakash Pariwal v. Union of India* AIR (1988) 143 (Cal)

**On Completion of Business:** The agency is immediately terminated once the purpose of the business for which it was formed is fulfilled. Similar to when an agency is established for a certain period, it is revoked at the end of that time.

**By demise or lunacy of principal or agent:** When either of the party i.e., principal or agent dies due to any reason or gets insane the agency is immediately terminated.

**By bankruptcy of the principal:** When the court declares the principal bankrupt, the agency is also terminated.

**By subsequent impossibility:** There is also another reason that causes the agency to terminate after the agency is completed there occurs another reason that causes the agency to be unlawful:

- The matter of business of the agency gets unlawful.
- The matter of agency business is destroyed.

## CONCLUSION

It has been very often observed that an agent has to assume the role of principal to fulfil all his duties with proper care and as a prudent man thinking as if it is his own business. The agent needs to work within the power given by the principal but if he exceeds the authority, it makes him liable to the extent he exceeded. However, we observe that in the agent's contract in courts, especially in judicial interpretation agents will not be indemnified for their own mistakes but a third party will get the compensation for the same. Similarly principal can sue the agent for the mistake of the agent.