

CREATION OF AGENCY

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Introduction to Agency

Agency can be created by involvement of three parties. They are:

1. **Principal**: Who has the authority to ask agent to act.
2. **Agent**: He is the person who acts as per principal and affects the relation between third party and the principal.
3. **Third Party**: With which business is carried.

Creation of an agency

The intention of the parties can be inferred through their activities if it is not implied. It is important for the Principal that the act of agent are in accord with him. If any one of the party losses control over the other the relationship of Agent and Principal comes to an end.

An agency can only be traced by the act of the agent which are to be under the authority of the Principal. Agency can be divided into two broad categories:

1. Express Agency
2. Implied Agency

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Express Authority

Section 187 of the Indian Contract Act defines “*An authority is said to be express when it is given by words spoken or written.*”²

- a. An agency is created by express appointment when the principal appoints the agent by express agreement with the agent. This express agreement may be an oral or written agreement between the principal and the agent.
- b. Contract law principles apply to an agency agreement. An agent may agree to act in consideration for a reward. On the other hand, an agency is gratuitous if the agent agrees to act for no consideration.
- c. The general rule is that agency may be created orally and there is no formality for the creation of agency by express agreement, except for one situation which is discussed below. This general rule applies even to cases of appointing agents for the signing of agreements for sale and purchase of immovable property, whether on behalf of the vendor or the purchaser.

The one exception is where an agent is appointed to execute a deed on behalf of the principal.

In this case, the agent will have to be appointed by deed, which is called a power of attorney.

Implied Authority

“*An authority said to be implied when it is to be inferred from the circumstances of the case*”³

This can be inferred by the conduct of a when a person by his words or conduct holds out another person as having authority to act for him it can be called implied agency.

² Section 187 of the Indian Contract Act.

³ Section 187 of the Indian Contract Act.

It can be inferred by the:

a) Circumstances of the Case: A person holds a shop in place where he is not residing but occasionally visits the shop. The shop is taken care by Mr. B who has a habit of ordering products from Mr. C in name of the owner of the shop for the purpose of shop. He has the authority of paying for them out of A's fund with A's acknowledge. Mr. B has implied authority from shopkeeper to order goods from C in his name for the purposes of the shop.

b) Relationship between Husband & Wife: It is implied that the wife has authority to pledge the husband's credit in a contracts that are necessities and suited to their condition and

style of living. Impliedly, the wife is an agent to the husband. The wife has an implied authority to make contract on behalf of the husband. The husband as the Principal liable upon such contracts that are necessities and suited to their condition and style of living.

However, the husband can rebut by proving that:

- 1) Expressly forbid his wife from pledging his credit.
- 2) Expressly warned the tradesman not to supply his wife with goods or credit.
- 3) His wife was sufficiently provided with the goods .
- 4) His wife was given a sufficient allowance for buying goods without having to pledge her husband's credit.
- 5) The contract was unreasonable, taking into consideration her husband's income.

c) The Partnership Act 1961: Section 7 of the Partnership Act each partner in a partnership is an agent to the firm or other partners in the firm, when contracting the course of the partnership's business. Each partner is an implied agent to the firm. The firm/ other partners are the implied Principal to any one of the partners. The firm/ other partners are liable to whatever contracts which has been entered into by any of the partners.

IMPLIED AUTHORITY INCLUDES:**Necessity:**

Where an agent can be appointed during an emergency even in the very beginning the agent is not appointed by the Principal to act on his behalf. 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. This is created when a person is entrusted with another's property and it becomes necessary to do something to preserve that property although he has no express authority to do so. There must be already some existing contractual relationship between the principal & the person who acts on his behalf. There three condition whereby it may be created if the conditions are fulfilled. They are:

1. It must be impossible for the agent to get the principal's instruction.
2. The agent's action is necessary.
3. Agent of necessity has acted in good faith.

Effect of agency by necessity:

- The agent will be protected from any claims by the Principal
- The agent will be entitled to the additional payment for his effort to protect & to preserve the safety and interest of the Principal
- A contract exists between the Principal and & third party.

Estoppel

Ordinarily, a person is not bound by a contract made on his behalf without his Authority. But if a person, by his words and conduct, allows a third party to believe X is his agent, when X is not and the third party relies on it, he will be estoppels from denying the existence of X's authority.

Agency by estoppel arises when A makes a representation to a third party, whether by words or conduct, that B is his agent, and subsequently that third party deals with B as A's agent in reliance on such representation. A will not be permitted (is estopped) to deny the existence of the agency if to do so would cause damage (usually financial loss) to that third party.

The person who makes such representation is treated as having created an agency relationship between himself as the principal and the other person as his agent, although there is in fact no agreement between the two parties as to the creation of the agency relationship. Agency by estoppel is sometimes called implied appointment of agent.

In agency by estoppel, the authority of the agent is described as only apparent or ostensible but not actual, as the principal has, in fact, not granted the agent such authority to act on the principal's behalf.

The extent of apparent or ostensible authority of the agent in an agency by estoppel depends largely upon the contents of the representation made by the principal to the third party who relies and acts on the representation. The principal is said to "hold out" a person as his agent with such authority as the principal may induce the third party to believe and is estopped from denying the existence of agency.

RATIFICATION

Certification/ acceptance by the Principal for an act done without authority or exceeding the authority given.

Agency by ratification arises when a person ratifies an act which has already been done in his name and on his behalf by another person who in fact, had no actual authority to act on his behalf when the act was done.

Ratification by itself only creates an agency relationship between the principal and the agent in respect of the act ratified by the principal, but not in respect of any other act, whether past or future.

The person who ratifies an act of another person must have been in existence and have the legal capacity to carry out that act himself both at the time when the act was done and at the time of ratification. A person may lack legal capacity on grounds of bankruptcy, infancy or mental incapacity.

Essentials⁴

1. *Ratification should be given within reasonable period after the activity the concept of reasonable period depends upon nature of the situation.*
2. *Ratification must be absolute. To entire activity ratification is to be given. Partial ratification carries no validity.*
3. *The fact of ratification must be communicated to all parties in connection with the activity.*
4. *Ratification attains validity only when it is given with full knowledge of facts relating to the activity.*
5. *The activity which is going to be ratified must be a lawful activity.*
6. *The person who is going to give ratification should have right to do such activities.*
7. *Ratification relates back to date of activity. Though ratification takes place after the date of activity, it will be assumed that ratification is given on the date of activity*
8. *Ratification should not lead to breach of contract. In other words ratification should not be harmful to third party.*
9. *The person who is going to give ratification should have capacity to contract, at the time of activity as well as at the time of ratification.*

⁴ Available at: www.lawsofbusiness.com.

CASES:

Mohd. Moinuddin Vs. Mir Ahmed Ali⁵: As per the facts of the case, to make the contract binding on the plaintiff it was necessary to prove that there was under Section 25 of the Act. In that view I think, the lower court was not justified in overlooking the lacuna in the defence by holding that it was open to the defendant to take up the plea by way of; having regard to the circumstances of the case that there was an express plea that the plaintiff- petitioner had agreed to work without accepting the remuneration, the plaintiff could not be deprived of his legal fees once it has been established that he had actually worked and appeared for the respondent in more than one case.

Sushila Devi Vs. State of Bihar and Ors⁶: There is no insurance agent as defined in the regulations and the Insurance Act, the general principles of the law of agency as contained in the Contract Act are to be applied. Agent in Section 182 means a person employed to do an act for another, or to represent another, in dealings with third persons and the person for whom such act is done, or who is so represented, is called the principal. Under Section 185 no consideration is necessary to create an agency. It was held that Liability to make payment of the insured amount lied with the Insurance Company. It was clarified that in case the Insurance Company feels that it had suffered damage due to default of its agent, the Police Headquarters/Supdt. of Police, it was open to it to bring such action against them as may be permissible under law but that would not absolve it from making payment of the insured amount to the petitioner. Writ petition was allowed .

Chairman, Life Insurance Corporation and Ors. Vs. Rajiv Kumar Bhasker⁷: Life Insurance Corporation (LIC) Salary Savings Scheme. Scheme providing for tripartite arrangement Employers accepting responsibility of deducting premium from salaries of employees and sending same to L.I.C. Agency can be created expressly or by necessary implication. L.I.C. not to deal with employees directly. Employers clearly having role to play on behalf of L.I.C. For all intents and purposes, employees to treat their employers as agents of

⁵ AIR1965AP409.

⁶ 2005(1)PLJR344.

⁷ AIR2005SC3087.

L.I.C. Scheme clearly demonstrating that not only contract of insurance entered into between employee and insurer through employer. But even terms and conditions of policy to be performed only through employer. Hence, employers would be treated as agents of insurer L.I.C.

Tashi Delek Gaming Solutions Ltd. and Anr. Vs. State of Karnataka and Ors.⁸: 'Agent' has been defined in Section 182 of the Indian Contract Act, 1872, to mean 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' Section 185 of the Contract Act postulates that no consideration is necessary to create an 'agency'. The authority of an agent may be express or implied in terms of Section 186.

Krishna v. Ganapathi⁹: Every person who acts for another is not an agent. It is only when he 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 the third persons, that he is an agent. Representative character and derivative authority may briefly be said to be the distinguishing feature of an agent.”

CONCLUSION

Relationship between a principal and an agent in which the principal confers his or her rights on the agent to act on principal's behalf is known as Agency. Such a relationship is based on an agency contract. For agency the consent of the agent as well that of Principal is necessary. The duties and rights of the principal and the agent differ according to the nature of the terms of contract.

⁸ AIR2006SC661.

⁹ AIR 1955 Mad 648.