

CONTRACT BY AGENTS

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INTRODUCTION

Sec 182 of the Indian Contract Act, 1872 defines “Agent” and “principal” -“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.”¹

An agent is one who is:

- Employed by another (the principal);
- To do any act for that principal; or
- To represent him in dealing with third persons.

An agent is a person employed to do any act for another or to represent another in dealings with third persons.

“The Indian Contract Act of 1872 does not make any distinction between different classes of agents.”²

“On one hand an agent may be appointed by the principal, it also includes an employment by any authority authorised by law to make the employment.”³

There are different forms of Agents that is General Agent and Special Agent. A Special Agent is employed for a certain period of time and till the purpose of the employment is fulfilled. “A special agent has only authority to do some particular act for some special occasion or purpose which is not within the ordinary course of his business or profession.”⁴

¹ Section 182 of the Indian Contract Act, 1872.

² *Kalyanji Kuwarji v. Tirkaram Sheolal* AIR 1938 Nag 254.

³ *Sukumari Gupta v. Dharendra Nath Roy Chowdhury* AIR 1941 Cal 643

⁴ *Amrit Lal C Shah v. Ram Kumar* AIR 1962 Punj 325.

“A general agent has the full apparent authority due to his employment or position and the principal will be bound by his acts within that authority though he may have imposed special restrictive limits which are not known to the other contracting party. A special agent has no apparent authority beyond the limits of his appointment and the principal is not bound by his Acts in excess of those limits whether the other contracting party knows of them or not.”⁵

DUTIES AND RIGHTS OF AN AGENT

“An agent is bound to conduct the business of his principal according to the directions given by the principal, or, in absence of any such directions, according to the custom which prevails.”⁶ This means that the Agent is supposed to do the Principal’s bidding, in case the principal does not give specific instructions to the Agent then, the Agent is supposed to take such a decision which is in compliance to the customs of trade , if the principal faces loss due to the decision of the Agent, then the Agent has to make good the loss.

“It is the duty of every agent to carry out the mandate of his principal.”⁷

“An agent is bound to conduct the business of the agency with as much skill as is reasonable.”⁸

“An agent is bound to render proper accounts to his principal on demand.”⁹

“It is the duty of an agent, in cases of difficulty, to use all reasonable diligence in communicating with his principal, and in seeking to obtain his instructions.”¹⁰ The Agent has to take reasonable steps while conducting his duties.

“If an agent deals on his own account in the business of the agency, the principal may repudiate the transaction.”¹¹ So, the Agent is not supposed to keep confidential and vital information from the Principal and if the Agent fails to do so and faces loss then the Principal can

⁵ *Jacob v. Morris* [1902] 1 Ch 816.

⁶ Section 211 of the Indian Contract Act, 1872.

⁷ Singh, Avtar Law of Contract and Specific Relief Page 745 (Tenth Edition)

⁸ Section 212 of the Indian Contract Act, 1872.

⁹ Section 213 of the Indian Contract Act, 1872.

¹⁰ Section 214 of the Indian Contract Act, 1872.

¹¹ Section 215 of the Indian Contract Act, 1872.

“The important rights of an agent can be seen as well. In the absence of any special contract, payment for the performance of any act is not due to the agent until the completion of such act.”¹²

“An agent who is guilty of misconduct in the business of the agency is not entitled to any remuneration in respect of that part of the business that he has misconducted.”¹³

“An agent may retain all moneys due to himself in respect of advances made or expenses properly incurred by him in conducting such business.”¹⁴

The employer of an agent is bound to indemnify him against the consequences of all lawful acts done within the authority.”¹⁵

“Where one person employs another to do an act, and the agent does the act in good faith, the employer is liable to indemnify the agent against the consequences of that act.”¹⁶

“Where one person employs another to do an act which is criminal, the employer is not liable to the agent.”¹⁷

“The principal must make compensation to his agent in respect of injury caused to such agent by the principal’s neglect or want of skill.”¹⁸

“The agent is bound to pay to his principal all sums received on his account with being entitled to deduct his lawful charges.”¹⁹

“An agent receives money on his principal’s behalf under an illegal and void contract, the agent must account to the principal for the money so received and cannot set up the illegality of contract as a justification for withholding payment, which illegality the other contracting party has waived by paying the amount.”²⁰

¹² Section 219 of the Indian Contract Act, 1872

¹³ Section 220 of the Indian Contract Act, 1872

¹⁴ Section 217 of the Indian Contract Act, 1872.

¹⁵ Section 222 of the Indian Contract Act, 1872.

¹⁶ Section 223 of the Indian Contract Act, 1872.

¹⁷ Section 224 of the Indian Contract Act, 1872.

¹⁸ Section 225 of the Indian Contract Act, 1872.

¹⁹ Section 218 of Indian Contract Act, 1872.

²⁰ *Bhola Nath v. Mul Chand*, ILR (1901-03) 25 All 639

“An Agent will undoubtedly render appropriate records to his Principal on interest. The provisions of the Contract Act are not comprehensive concerning organization of a suit against the principal by the Agent. The privilege of an Agent to sue the foremost for records is an equitable right emerging under unique conditions, the one being the place every one of the records are in control of the Principal.”

“In situations where settlement of accounts alone can do the entire equity between the gatherings, the Agent is permitted to sue the Principal to account regardless of whether he is having some proof of the exchange with him.”

AUTHORITY OF AGENT

It has been seen in the case of *Palestar Electronics Private Limited v. Additional Commissioner*²¹ that the acts of the agent within the scope of his authority bind the principal. Contracts entered into through an agent, and obligations arising from acts done by the agent, may be enforced in the same manner, and will have the same legal consequences, as if the contracts had been entered into and the acts done by the principal in person.”²² It is necessary for this effect to follow that the agent must have done the act within the scope of his authority. The authority of an agent and more particularly its scope are subjects to some controversy.”²³

The uncertainty is largely due to the fact that the authority of an agent does not depend upon one source. It has been rightly held in the case of *Ramlesh v. Jasbir Singh*²⁴ that agency came into being to promote and not to hinder commerce.

The authority of an agent means his capacity to bind the principal. It refers to “the sum total of the acts it has been agreed between principal and agent that the agent should do on behalf of the principal.”²⁵ When the agent does any such acts, it is said he has acted within his authority as was seen in the case of *Nand Lal Thanvi v. LR of Goswami Brij Bhushan*.²⁶

“Agents are distinguished in respect of authority as general or special agents. The former

²¹ (1978) 1 SCC 636

²² Section 226 of the Indian Contract Act, 1872.

²³ *Municipal Corporation, Delhi v. Jagdish Lal* (1969) 3 SCC 389. *Sardar Gurucharan Singh v. Mahendra Singh* (2004) 1 MPLJ 252 (MP)

²⁴ AIR 2004 P&H 216

²⁵ Montrose, J.L. *Actual and Apparent Authority*, (1938)

²⁶ AIR 1973 All 302

expression includes brokers, factors, partners, and all persons employed in a business of filling a position of a generally recognized character, the extent of authority being apparent from the nature of employment or position; the latter denotes an agent appointed for a particular occasion or purpose, limited by the employment. A special agent has only authority to do some particular act for some special occasion or purpose which is not within the ordinary course of his business or profession. Every agent has the implied authority to act according to the customs and usages of a particular market or trade.”

“The custom or usage of trade must not be unlawful or unreasonable and shall not allow the agent to adjust his personal set-off. An agent was not allowed to set-off his personal debts to the underwriters against that money although a custom to that effect was alleged.”²⁷

“An agent has authority in an emergency to do all such acts that will render protection of his principal from loss as would be done by a prudent person in similar circumstances.”²⁸

“A factor is a mercantile agent who is put in possession of goods of his principal for sale. He has the authority to sell them in his own name,”²⁹ to fix the selling price and to receive payment. A broker may sell goods in his own name and may receive payment but won't receive any payment if he discloses the name of principal.”³⁰ “An auctioneer acts for both the seller and buyer but doesn't have the authority to sell by private contact or on credit”.³¹

“Implied authority is real authority, the exercise of which is binding not only as between the principal and the third party, but also between the principal and agent differing from express authority only in terms of expressive words. The term ‘ostensible authority’ denotes no authority at all. It is a phrase conveniently used to when a person is allowed to assume an appearance of authority to act on his behalf, without actually giving him any authority, by which appearance of authority a third party is misled into believing that a real authority exists.”³²

²⁷ Mahmud-Un-Nissa v. Barkat Ullah, AIR 1927 All 44

²⁸ Blackburn v. Mason , (1893) 9 TLR 286 (CA)

²⁹ Section 189 of Indian Contract Act, 1872

³⁰ Baring v. Corrie , (1914-23) All ER Rep 283

³¹ Bharat Survodaya Mills Co Ltd v. Shree Ram Mills ,AIR 1959 Bom 39

³² Valapad Coop Stores Ltd v. Srinivasa Iyer ,AIR 1964 Ker 176

“In a scheme of group insurance where the employer acts as an agent of the insurer, the insurer is bound to pay the insurance money to employee’s family in case of default in premium³³ and is also considered to have knowledge of death of employee within time the moment it is in knowledge of its agent i.e., the employer.”³⁴

“Where an agent exceeds his authority, actual or apparent, the principal is not bound by the excess work, but where it is separable from the authorized work the principal is bound to that extent.”³⁵ “Where the authorized work is not separable from rest, the principal may repudiate the whole of transaction.”³⁶ “The principal in certain situations may be liable for tort committed by the agent. The doctrine of respondent superior will be applied to make the principal liable where the agent commits a tort while engaged in the business of the principal or acting within the scope of agency.”³⁷

It should be the duty of the principal to apprise the agent of the whole situation else he will be responsible for creation of innocent misrepresentation on the part of agent.

AUTHORITY OF SPECIAL AGENTS

An auctioneer is an agent to see property at a public auction. He cannot sell by private contract as seen in the case of *Mews v. Carr*.³⁸ “Auctioneers have the authority to see but not to give warranties as to the property sold.”³⁹ He cannot sell on credit and has to act both for seller and buyer and, therefore, can sign the contract for both.”⁴⁰ A factor is an agent who has possession of the goods, authority to sell them in its own name, and a general discretion to their sale.”⁴¹ He can warrant them if it is usual to do so, and to fix the selling price and to receive payment.”⁴²

³³ LIC v. K.Rama Iyer, 2004 AIR Kant 594

³⁴ LIC v. Rajiv Kumar Bhaskar, AIR 2005 SC 3087

³⁵ Section 227 of Indian Contract Act, 1872

³⁶ Section 228 of Indian Contract Act, 1872

³⁷ Atlantic Die Casting Co v. Whiting Tubular Products Inc 337 Mich 414

³⁸ (1856) 1 H&N 484.

³⁹ Payne v. Leconfield (1882) 51 LJ QB 642.

⁴⁰ Emerson v. Heclis (1809) 11 RR 520.

⁴¹ Anson Law of Contract Page 673 (28th Edition)

⁴² Drinkwater v. Goodwin (1775) Cowp 251.

A broker is an agent primarily employed to negotiate a contract between two parties. A broker for sale has not got possession of the goods to be sold.”⁴³ A broker may sell the goods in his own name and receive payments but cannot disclose the name of the principal. He may sell on reasonable credit.”⁴⁴

AGENT EXCEEDING AUTHORITY

When an agent does more than he is authorised to do and when the two can be separated, so much only of what he does as is within his authority is binding as between him and his principal.”⁴⁵ “If the act cannot be separated from what is within it, the principal is not bound to recognize the transaction.”⁴⁶

“Any notice given to or information obtained by the agent, provided it be given or obtained in the course of business transacted by him for the principal, shall have the same legal consequences as if it had been given to or obtained by the principal.”⁴⁷

“Misrepresentations made, or frauds committed, by agents acting in the course of their business for their principals, have the same effect on agreements made by such agents as if such misrepresentations or frauds had been made or committed by the principals.”⁴⁸ “If the principal has authorised a false statement to be made, or knows that it is being made by the agent or keeps the real facts from the agent, the principal is liable.”⁴⁹

L.C.B. Gower has stated the position of English Law in the following words:

“The law is that a principal is not liable for fraud in respect of his agent’s acts unless-
a) He intends or knowingly permits the agent to make a false statement, or

⁴³ Anson Law of Contract Page 673 (28th Edition)

⁴⁴ Boorman v. Brown (1843) 3 QB 511.

⁴⁵ AIR 1950 SC 15.

⁴⁶ Section 227 of the Indian Contract Act, 1872.

⁴⁷ Section 228 of the Indian Contract Act, 1872.

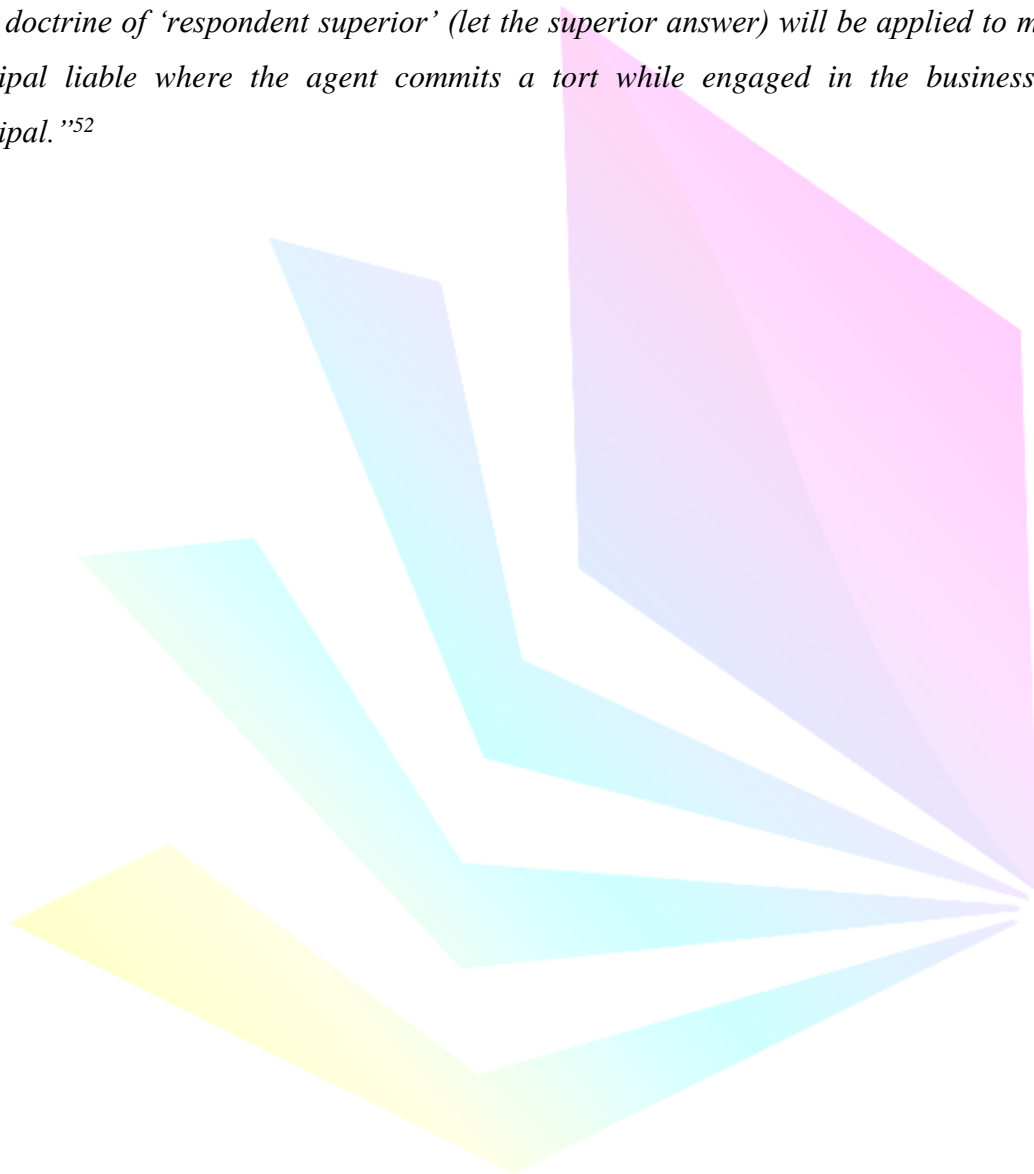
⁴⁸ Section 229 of the Indian Contract Act, 1872.

⁴⁹ Section 238 of the Indian Contract Act, 1872.

b) His agent acting within the actual or apparent scope of his authority makes a statement with knowledge of its falsity or recklessly not caring whether it be true or false.”⁵⁰

It is worthwhile mentioning the agent’s torts here as well. The case of *Atlantic Die Casting Company v. Whiting Tubular Products*⁵¹ gives us an idea about it:

“The doctrine of ‘respondent superior’ (let the superior answer) will be applied to make the principal liable where the agent commits a tort while engaged in the business of the principal.”⁵²



⁵⁰ Singh, Avtar *Law of Contract and Specific Relief* Page 794 (Tenth Edition)

⁵¹ Singh, Avtar *Law of Contract and Specific Relief* Page 796 (Tenth Edition)

⁵² Inc. 337 Mich 414.