

The revocation of authority law commercial essay

Law



At times all of us act as principals and agents. If I my friend ask me to deposit his water bill, then he is acting as principal and I am as agent. Agency Law is contained in Chapter X {Secs182 to 238} of the Indian Contract Act 1872. " 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 represented, is called the " principal". {sec182}. Who may employ agent - Any person who is of the age of majority according to the law to which he is subject, and who is of sound mind, may employ an agent. Who may be an agent ? - As between the principal and third persons, any person may become an agent, but no person who is not of the age of majority and sound mind can become an agent, so as to be responsible to the principal according to the provisions in that behalf herein contained. Consideration not necessary - No consideration is necessary to create an agency. Agent's authority may be express or implied - The authority of an agent may be express or implied. Definitions of express and implied authority - 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; and things spoken or written, or the ordinary course of dealing, may be accounted circumstances of the case. Illustration Aman owns a shop in Serampur, living himself in Calcutta, and visiting the shop occasionally. Bharat manages the shop, and he is in the habit of ordering goods from Chaman in the name of Aman for the purposes of the shop, and of paying for them out of Aman's funds with Aman's knowledge. Bharat has an implied authority from Aman to order goods from Chaman in the name of Aman for the purpose of the shop. Extent of agent's authority - An agent, having an

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authority to do an act, has authority to do every lawful thing, which is necessary in order to do such act. An agent having an authority to carry on a business has authority to do every lawful thing necessary for the purpose, or usually done in the course, of conducting such business. Illustrations(a) A is employed by B, residing in London, to recover at Bombay a debt due to B. A may adopt any legal process necessary for the purpose of recovering the debt, and may give a valid discharge for the same.(b) A constitutes B his agent to carry on his business of a shipbuilder. B may purchase timber and other materials, and hire workmen, for the purpose of carrying on the business. Agent's authority in an emergency - An agent has authority, in an emergency, to do all such acts for the purpose of protecting his principal from loss and would be done by a person of ordinary prudence, in his own case, under similar circumstances.

Sub Agent

When agent cannot delegate - An agent cannot lawfully employ another to perform acts, which he has expressly, or impliedly undertaken to perform personally, unless by the ordinary custom of trade a sub-agent may, or, from the nature of agency, a sub-agent must, be employed." Sub-agent" defined - A " sub-agent" is a person employed by, and acting under the control of, the original agent in the business of the agency. Representation of principal by sub-agent properly appointed - Where a sub-agent is properly appointed, the principal is, so far as regards third persons, represented by the sub-agent, and is bound by and responsible for his acts, as if he were an agent originally appointed by the principal. Agent's responsibility for sub-agents - The agent is responsible to the principal for the acts of the sub-agent. Sub-agent's

responsibility - The sub-agent is responsible for his acts to the agent, but not to the principal, except in case of fraud or wilful wrong. Agent's responsibility for sub-agent appointed without authority - Where an agent, without having authority to do so, has appointed a person to act as a sub-agent, the agent stands towards such person in the relation of a principal to an agent, and is responsible for his acts both to the principal and to third person; the principal is not represented, by or responsible for the acts of the person so employed, nor is that person responsible to the principal. Relation between principal and person duly appointed by agent to act in business of agency - When an agent, holding an express or implied authority to name another person to act for the principal in the business of the agency, has named another person accordingly, such person is not a sub-agent, but an agent of the principal for such part of the business of the agency as is entrusted to him. Agent's duty in naming such person - In selecting such agent for his principal, an agent is bound to exercise the same amount of discretion as a man of ordinary prudence would exercise in his own case; and, if he does this, he is not responsible to the principal for the acts of negligence of the agent so selected. Illustration A instructs B, a merchant, to buy a ship for him. B employs a ship-surveyor of good reputation to choose a ship for A. The surveyor makes the choice negligently and the ship turns out to be unseaworthy and is lost. B is not, but the surveyor is, responsible to A. Right of person as to acts done for him without his authority-effect of Ratification - Where acts are done by one person on behalf of another, but without his knowledge or authority, he may elect to ratify or to disown such acts. If he ratifies them, the same effects will follow as if they had been performed by his authority. Ratification may be expressed or implied - Ratification may be <https://assignbuster.com/the-revocation-of-authority-law-commercial-essay/>

expressed or may be implied in the conduct of the person on whose behalf the acts are done. Illustrations(a) A, without authority, buys goods, for B. Afterwards B sells them to C on his own account; B's conduct implies a ratification of the purchase made for him by A.(b) A, without B's authority, lends B's money to C. Afterwards B accepts interest on the money from C. B's conduct implies a ratification of the loan. Knowledge requisite for valid ratification - No valid ratification can be made by a person whose knowledge of the facts of the case is materially defective. Effect of ratifying unauthorized act forming part of a transaction - A person ratifying any unauthorized act done on his behalf ratifies the whole of the transaction of which such act formed a part. Ratification of unauthorized act cannot injure third person - An act done by one person on behalf of another, without such other person's authority, which, if done with authority would have the effect of subjecting a third person to damages, or of terminating any right to interest of a third person cannot, by ratification, be made to have such effect.

Revocation of Authority

Termination of agency - An agency is terminated by the principal revoking his authority, or by the agent renouncing the business of the agency; or by the business of the agency being completed; or by either the principal or agent dying or becoming of unsound mind; or by the principal being adjudicated an insolvent under the provisions of any Act for the time being in force for the relief of insolvent debtors. Termination of agency, where agent has an interest in subject-matter - Where the agent has himself an interest in the property, which forms the subject matter of the agency, the agency

cannot, in the absence of an express contract, be terminated to the prejudice of such interest. Illustration A, gives authority to B to sell A's land, and to pay himself, out of the proceeds, the debts due to him from A. A cannot revoke this authority, nor can it be terminated by his insanity or death. When principal may revoke agent's authority - The principal may, save as is otherwise provided by the last preceding section, revoke the authority given to his agent at any time before the authority has been exercised, so as to bind the principal. Revocation where authority has been partly exercised - The principal cannot revoke the authority given to his agent after the authority has been partly exercised; so far as regards such acts and obligations as arise from acts already done in the agency.

Compensation for revocation by principal, or renunciation by agent - Where there is an express or implied contract that the agency should be continued for any period of time, the principal must make compensation to the agent, or the agent to the principal, as the case may be, for any previous revocation or renunciation of the agency without sufficient cause. Notice of revocation or renunciation - Reasonable notice must be given of such revocation or renunciation, otherwise the damage thereby resulting to the principal or the agent, as the case may be, must be made good to the one by the other.

Revocation and renunciation may be expressed or implied - Revocation or renunciation may be expressed or may be implied in the conduct of that principal or agent respectively. Illustration A empowers B to let A's house. Afterwards A lets it himself. This is an implied revocation of B's authority.

When termination of agent's authority takes effect as to agent, and as to third persons - The termination of the authority of an agent does not, so far as regards the agent, take effect before it becomes known to him, or, so far

as regards third persons, before it becomes known to them. Agent's duty on termination of agency by principal's death or insanity - When an agency is terminated by the principal dying or becoming of unsound mind, the agent is bound to take on behalf of the representative, of his late principal, all reasonable steps for the protection and reservation of the interests entrusted to him. Termination of sub-agent's authority - The termination of the authority of an agent causes the termination (subject to the rules herein contained regarding the termination of an agent's authority) of the authority of all sub-agents appointed by him.

Agent's Duty to Principal

Agent's duty in conducting principal's business - An agent is bound to conduct the business of his principal according to the directions given by the principal, or in the absence of any such directions according to the customs, which prevails in doing business of the same kind at the place where the agent conducts such business. When the agent acts otherwise, if any loss be sustained, he must make it good to his principal and if any profit accrues, he must account for it. Skill and diligence required from agent - An agent is bound to conduct the business of the agency with as much skill as is generally possessed by person engaged in similar business unless the principal has notice of his want of skill. The agent is always bound to act with reasonable diligence and to use such skill as he possesses; and to make compensation to his principal in respect of the direct consequences of his own neglect, want of skill, or misconduct, but not in respect of loss or damage which are indirectly or remotely caused by such neglect, want of skill, or misconduct. Agent's accounts - An agent is bound to render proper

accounts to his principal on demand. Agent's duty to communicate with Principal - It is the duty of an agent in case of difficulty, to use all reasonable diligence in communicating with his principal, and in seeking to obtain his instructions. Right of principal when agent deals, on his own account, in business of agency without principal's consent - If an agent deals on his own account in the business of the agency, without first obtaining the consent of his principal and acquainting him with all material circumstances, which have come to his own knowledge on the subject, the principal may Repudiate the transaction, if the case shows, either that any material fact has been dishonestly concealed from him by the agent, or that the dealings of the agent have been disadvantageous to him. Illustrations(a) A direct B to sell A's estate. B buys the estate for himself in the name of C. A, on discovering that B has bought the estate for himself, may repudiate the sale, if he can show that B has dishonestly concealed any material fact, or that the sale has been disadvantageous to him.(b) A directs B to sell A's estate. B, on looking over the estate before selling it, finds a mine on the estate which is unknown to A. B informs A that he wished to buy the estate for himself but conceals the discovery of the mine. A allows B to buy, in ignorance of the existence of the mine. A, on discovering that B knew of the mine at the time he bought the estate, may either repudiate or adopt the sale at his option. Principal's right to benefit gained by agent dealing on his own account in business of agency - If an agent, without the knowledge of his principal, deals in the business of the agency on his own account instead of on account to his principal, the principal is entitled to claim from the agent any benefit which may have resulted to him from the transaction. Agent's right of retainer out of sums received on principal's account - An agent may retain, <https://assignbuster.com/the-revocation-of-authority-law-commercial-essay/>

out of any sums received on account of the principal in the business of the agency, all moneys due to himself in respect of advances made or expenses properly incurred by him in conducting such business, and also such remuneration as may be payable to him for acting as agent. Agent's duty to pay sums received for principal - Subject to such deductions, the agent is bound to pay to his principal all sums received on his account. When agent's remuneration becomes due 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; but an agent may detain moneys received by him on account of goods sold, although the whole of the goods consigned to him for sale may not have been sold, or although the sale may not be actually complete. Agent not entitled to remuneration for business misconduct - 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, which he has misconduct. Illustration A employs B to recover 1, 000 rupees from C. Through B's misconduct the money is not recovered. B is entitled to no remuneration for his services and must make good the loss. Agent's lien on principal's property - In the absence of any contract to the contrary, an agent is entitled to retain goods, papers, and other property, whether movable or immovable of the principal received by him, until the amount due to himself for commission, disbursements and services in respect of the same has been paid or accounted for to him.

Principal's Duty to Agent

Agent to be indemnified against consequences of lawful acts The employer of an agent is bound to indemnify him against the consequences of all lawful

acts done by such agent in exercise of the authority conferred upon him.

Agent to be indemnified against consequences of acts done in good faith -

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, though it may cause an injury to the rights of third persons. Non-liability of employer of agent to do a criminal act - Where one

person employs another to do an act which is criminal, the employer is not liable to the agent, either upon an express or an implied promise to

indemnify him against the consequences of that Act. Illustration A employs B to beat C, and agrees to indemnify him against all consequences of the act.

B thereupon beats C, and has to pay damages to C for so doing. A is not

liable to indemnify B for those damages. Compensation to agent for injury

caused by principal's neglect - 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. Illustration A employs B as a bricklayer in building a house, and put up the scaffolding himself. The scaffolding is unskilfully put up, and B is

in consequence hurt. A must make compensation to B.

Effect of Agency on Contracts with Third Persons

Enforcement and consequences of agent's contract Contracts entered into through an agent, and obligations arising from acts done by an agent, may be enforced in the same manner, and will have the same legal consequences as if the contracts had been entered into the acts done by the principal in person. Illustrations A buys goods from B, knowing that he is an agent for their sale, but not knowing who the principal is. B's principal is the person entitled to claim from A the price of the goods, and A cannot, in a suit by the

principal, set-off against that claim a debt due to himself from B. A, being B's agent; with authority to receive money on his behalf, receives from C a sum of money due to B. C is discharged of his obligation to pay the sum in question to B. Principal how far bound, when agent exceeds authority - When an agent does more than he is authorized to do, and when the part of what he does, which is within his authority, can be separated from the part, which is beyond his authority, so much only of what he does as is within his authority is binding as between him and his principal. Principal not bound when excess of agent's authority is not separable - Where an agent does more than he is authorized to do, and what he does beyond the scope of his authority cannot be separated from what is within it, the principal is not bound to recognize the transaction. Illustration A authorizes B to buy 500 sheep for him. B buys 500 sheep and 200 lambs for a sum of 6, 000 rupees. A may repudiate the whole transaction. Consequences of notice given to agent - Any notice given to or information obtained by the agent, provided it be given or obtained in the course of the business transacted by him for the principal, shall, as between the principal and third parties, have the same legal consequences as if it had been given to or obtained by the principal. Illustration A is employed by B to buy from C goods of which C is the apparent owner. A was, before he was so employed a servant of C, and then learnt that the goods really belonged to D, but B is ignorant of that fact. In spite of the knowledge of his agent, B may set-off against the price of the goods a debt owing to him from C. Agent cannot personally enforce, nor be bound by, contracts on behalf of principal - In the absence of any contract to that effect an agent cannot personally enforce contracts entered into by him on behalf of his principal, nor is he personally bound by them. Presumption of contract

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to the contrary - Such a contract shall be presumed to exist in the following cases-Where the contract is made by an agent for the sale or purchase of goods for a merchant resident abroad; Where agent does not disclose the name of his principal; Where the principal, though disclosed, cannot be sued.

Right of parties to a contract made by agent not disclosed - If an agent makes a contract with a person who neither, knows nor has reason to suspect, that he is an agent, his principal may require the performance of the contract; but the other contracting party has, as against the principal, the same right as he would have had as against if the agent had been the principal. If the principal discloses himself before the contract is completed, the other contracting party may refuse to fulfil the contract, if he can show that, if he had known who was the principal in the contract, or if he had known that the agent was not a principal, he would not have entered into the contract. Performance of contract with agent supposed to be principal -

Where one man makes a contract with another, neither knowing nor having reasonable ground to suspect that the other is an agent, the principal, if he requires the performance of the contract, can only obtain such performance subject to the right and obligations subsisting between the agent and the other party of the contract. Liability of principal inducing belief that agent's unauthorized acts were authorized - When an agent has, without authority, done acts or incurred obligations to third person on behalf of his principal, the principal is bound by such acts or obligations, if he has by his word or conduct induced such third person to believe that such acts and obligations were within the scope of the agent's authority. IllustrationsA consigns goods to B for sale, and gives him instructions not to sell under a fixed price. C, being ignorant of B's instruction, enters into a contract with B to buy the

goods at a price lower than the reserved price. A is bound by the contract A entrusts B with negotiable instruments endorsed in blank. B sells them to C in violation of private order from A. The sale is good. Effect, on agreement, of misrepresentation or fraud by agent - Misrepresentation made or fraud committed, by agent 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; but misrepresentations made, or frauds committed, by agents, in matters which do not affect their authority, do not affect their principals.

Illustrations A, being B's agent for the sale of goods, induces C to buy them by a misrepresentation, which he was not authorized by B to make. The contract is voidable, as between B and C, at the option of C. A, the captain of B's ship, signs bills of lading without having received on board the goods mentioned therein. The bills of lading are void as between B and the pretended consignor.