



CAIIB PAPER-4

Module-D Unit-6

BANKING REGULATIONS AND BUSINESS LAWS (BRBL)



CAIIB Paper 4 (BRBL) Module D Unit 6- Contract Of Agency

Contract Of Agency

- A 'Contract of Agency' stems from the need which arises sometimes for a person to employ another person to do an act for him/her or to represent him/her in dealing with third persons.
- **In terms of Section 182 of Indian Contract Act:** "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"**."
- Contract of agency is created when right is given to a person to represent the principal in dealing with third persons or to do something for the principal.

Essential Characteristics of Contract Of Agency

Principal should be Competent to Contract:

- In terms of Section 183 of the statute "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". Moreover whatever a person can do personally he can do through an agent.

Agent should also be Competent to Contract:

- In terms of Section 184 "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 of sound mind can become an agent, so as to be responsible to his principal according to the provisions in that behalf herein contained."

Consideration for appointment not Necessary:

- No consideration is necessary to create an agency. This is provided in Section 185 of the Act. According to Section 185 "No consideration is necessary to create an agency."
- Authority given to the Agent may be express or implied. An authority is express when it is given by words oral or written and the authority is said to be implied when it is inferred from the circumstances of the case.

Rules Of Agency

The two important rules of agency are -

- The first rule of agency is that whatever a person can do personally can also be achieved through an agent, subject of course to certain exceptions such as when the act to be performed is personal (e.g. marriage) or official.
- The second rule is that he who does an act through another does it himself. This means the acts of an agent, subject to certain conditions, are acts of the principal. This has also been emphasized by Section 226 of the Act which states "**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 and the acts done by the principal in person”.

Types Of Agents

There are two ways of classifying an agent

- On the basis of extent of their authority.
- On the basis of nature of work performed by them

Classification on the basis of extent of authority

- **Special Agent:** An agent appointed to perform a particular act for the principal or represent the principal in a particular transaction This agent cannot bind the principal in any other matter than that for which he has been appointed.
- **General Agent:** A general agent is one who is authorized to do all acts in respect of a particular line of business, trade or employment. Such authority of the agent generally continues until it is terminated. If the principal wants to restrict the authority of a general agent he may do so but has to put persons dealing with the agent to notice regarding the curtailment. If he does not do so the principal becomes bound by the action of the agent.
- **Universal Agent:** Universal agent is one whose authority to act for the principal is unlimited. He/ she has authority to bind the principal by any act which he/she does, provided the act is legal.

Classification on the basis of nature of work performed

- **Mercantile or Commercial Agent:** A Mercantile agent as defined in Section 2(9) of the Sale of Goods Act 1930, However the definition does not cover all types of mercantile agents such as Factors, Auctioneer, Broker, Commission Agent and Del Credere Agent who are also mercantile agents.
- **Banker:** The relationship between a banker and a customer is basically that of a debtor and creditor for most of the transactions.
- **Non-Mercantile Agent:** These type of agents include solicitors, attorneys, insurance agents, forwarding agents etc.

Duties Of Agents

- To carry out the work undertaken as agent as per the directions given by the principal and in the absence of any special/specific directions, the agent must carry out the work in accordance to the prevailing practices in the line.
- To carry out the work rationally and with care, skill and diligence.
- To render proper accounts to the principal on demand and not cause loss due to misappropriation or fraud.
- To communicate with the principal if he/she faces any difficulty in the discharge of their function and seek instructions.

- To pay to the principal all sums received for him after deducting therefrom all moneys due to himself from the principal or expenses properly incurred by him as well as any remuneration payable to him for acting as agent. (Section 217)
- **In terms of Section 215 of the Indian Contract Act, 1872:** If an agent, without the knowledge of his principal, deals in the business of the agency on his own account instead of on account of his principal, the principal is entitled to claim from the agent any benefit which may have resulted to him from the transaction.
- To protect and preserve the interest of the principal in case of his/her death or insolvency.
- Not to use information which may come to his knowledge in the course of his function, as an agent, against the principal.
- Not to make undisclosed secret profit from the agency.
- An agent must not set up his own title or that of a third party, to the goods that he receives from the principal. If he does he may become liable for conversion.
- Not to put himself in a position where interest and duty suffer. For example P employed A, a stockbroker, to buy some shares for him. A sold shares belonging to him to P without disclosing that the shares belonged to him. When the case was referred to a court of law it was held that P could rescind the contract.
- An agent cannot delegate his/her authority and depute another person to do what he has himself undertaken to do. However, sub agent can be appointed in accordance with the provisions contained in the Act.

Rights Of Agents

- **In terms of Section 217** of the statute “An agent may retain, 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”
- **As per Section 219** “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.”
- In the absence of contract to the contrary, an agent may retain goods, papers etc. whether movable or immovable, belonging to the principal received by him or in his possession until the amount due to him in respect of such goods etc. has been paid or accounted for to him. **(Section 221)**
- An agent is indemnified against the consequences of all lawful acts done by him in exercise of the authority conferred upon him. **(Section 222)**

- The agent has to be compensated for injuries sustained by him due to neglect or want of skill on the part of the principal.

Duties Of Principal

- To indemnify the agent against the consequences of all lawful acts (**section 222**).
- To indemnify the agent against the consequences of all acts done in good faith (**Section 223**).
- To indemnify the agent for any injury caused by the principal's neglect (**Section 225**).

Rights Of Principal

- All duties of the agent, are the rights of the principal such as right to recover damages in case the agent neglects to follow the directions of the principal which causes damage to the principal, to recover secret profits of the agent not disclosed to the principal after obtaining a full account for them, to resist the agent's claim for indemnity against liability incurred under certain circumstances.

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