

B.Com. part 2- Business Law

Contract of Agency

Definition: Agency can be defined as the relationship between two persons, wherein a person has the authority to act on behalf of another, bind him/her into a legal relationship with the third party. There are two parties in a contract of agency – principal and agent.

Contract of Agency is based on the fact that one person cannot perform all the transactions and so he can appoint another perform or act on his behalf.

Who is a Principal?

Any person who employs another person to perform an act and who is being represented by another person in dealing with the third party is the Principal.

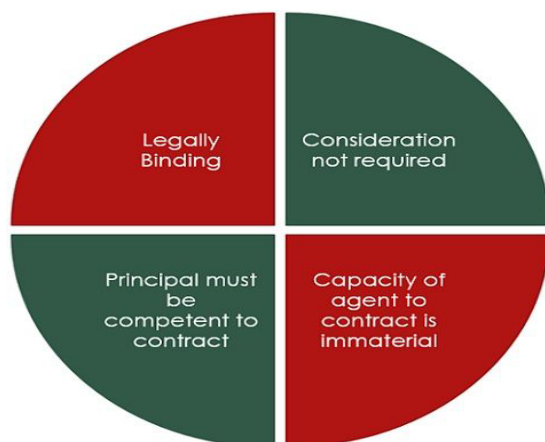
Who is an Agent?

A person employed by the Principal, to act on his behalf, represent him in the dealings with the third party and also to bring him into a contractual relationship with the third party, is called an Agent.

In a contract of agency, the agent is not just the bridge between the principal and the third party, but he can also make the principal answerable for the acts performed by him. Here it must be noted that while the agent is acting for the principal, he works in the capacity of principal.

Characteristics of the Agency

The basic characteristics of the contract of the agency are discussed as under:



Legal Binding: The crux of the contract of agency is that the principal is legally bound by the acts performed by the agent.

Consideration is not mandatory: There is no legal requirement of consideration, to support the relationship between the principal and agent.

Capacity of Principal: One who is legally competent to contract is eligible to employ an agent, i.e. he should have attained the age of 18 years and of sound mind.

Authority to contract: Authority to contract is the basic requirement to become an agent. So a minor can also act as an agent, though he is not having the capacity, however, he can have the authority to act as agent.

This is due to the fact that an agent initiates a contractual relationship amidst the principal and third party, and so the contractual capacity of the agent is irrelevant.

Creation of Agency

The agency can be created in the following ways:

Express Agency: One can enter into the contract of agency through an express agreement, i.e. oral or written. In a written contract of agency, the power of attorney is transferred in the name of the agent, conferring him the authority and power to act on behalf of the principal, subject to the terms and conditions specified in the contract.

When the purpose of creation of agency is to transfer the immovable property, it is required to be registered,

Implied Agency: When something is not directly or clearly stated, it is said to be implied. Therefore, the implied agency is created by way of conduct, the situation of the parties, i.e. principal and agent, or necessity of the case.

Agency by Estoppel: Suppose a person by his conduct informs another person that a particular person is his agent and the person who is signified as an agent is present and hearing at the time when it is intimated. Now, if the third person enters into a contract with that person thinking that he is the agent. This is the case of agency by estoppel, where the agent will be precluded from refusing his authority.

Wife as an agent: When a legally married couple lives together, the wife is supposed to have the authority of his husband to pledge his credit, in order to afford the basic necessities of life, according to their standard of living. However, it has certain exceptions, if the husband proves that:

He has explicitly warned the dealer not to give the goods on credit to his wife, or



He has explicitly forbidden his spouse to pledge his credit, or

He has already supplied the mentioned stuff in sufficient quantity to his wife or

He is providing sufficient allowance to his wife.

Agency of Necessity: There may be certain circumstances that compel the parties to enter into a contract of agency. Suppose a person is entrusted with property or goods of another person, he is obligated to take reasonable care of it as well as to incur necessary expenses so as to preserve and protect such property.

Agency by Ratification: Agency can also be created by ensuing ratification. When a person who does not have any authority claims to act as an agent or a legally employed agent performs an act which is beyond his authority, then the principal is not legally bound by the contract entered into on his behalf. However, he may ratify the act performed by the agent and accept the liability. This results in an agency by ratification.

In such a case, the parties i.e. the principal and agent will be in the same position if the acts were performed with authority.

In a contract of agency, the agent has to establish Privity of Contract, amidst the principal and the third party. Here Privity of Contract means that no right is conferred or obligations are imposed on any person who is not a party to the contract.

This means that the party to contract are entitled to sue each other to enforce the rights or claim damages, but prevents others from doing so.

