

Lesson : 20 & 21

DUTIES AND LIABILITIES OF AN AGENT

CONTENTS

- 2.4.0 Aims and Objectives
- 2.4.1 Principal's Duties to the Agent and his Liability to Third Parties
- 2.4.2 Personal Liability of Agent
- 2.4.3 Termination of Agency
- 2.4.4 Power of Attorney
- 2.4.5 Let Us Sum Up
- 2.4.6 Keywords

2.4.0 AIMS AND OBJECTIVES

After studying this unit, you will be able to:

1. Understand liabilities of agents.
2. Aware the power of attorney.
3. Understand the termination of agency.

2.4.1 PRINCIPAL'S DUTIES TO THE AGENT AND HIS LIABILITY TO THIRD PARTIES

Duties of a Principal

The rights of agent are in fact the duties of the principal. Thus a principal is (i) bound to indemnify the agent against the consequences of all lawful acts done by such agent in exercise of the authority conferred upon him (s.222); (ii) liable to indemnify agent against the consequences of an act done in good faith, though it causes an injury to the rights of third persons (s.223); (iii) bound to compensate his agent in respect of injury caused to such agent by the principal's neglect or want of skill (s.225).

The principal is, however, not liable for acts which are criminal in nature though done by the agent at the instance of the principal (s.224).

Liability of Principal to Third Parties

1. Agent being a mere connecting link binds the principal for all his acts done within the scope of his authority (s.226).

Example: 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.

2. The principal is liable for the acts of the agent falling not only within the actual authority but also within the scope of his apparent or ostensible authority.
3. Where agent exceeds his authority and 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 the principal (s.227).

Example: A, being the owner of a ship and cargo, authorises B to procure an insurance for Rs 4,000 on the ship. B procures a policy of Rs 4,000 on the ship and another for the like sum on the cargo. A is bound to pay the premium for the policy on the ship, but not the premium for the policy on the cargo.

However, where agent does more than he is authorised 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 by the transaction (s.228).

Example: Agent is authorised to draw a bill for Rs 5,000 but he draws a bill for Rs 10,000, the principal will not be liable even to the extent of Rs 5,000.

4. The principal will be liable even for misrepresentations made or frauds committed by agent in the business of agency for his own benefit provided these are done within the course of authority being provided to the agent. But misrepresentations made or frauds committed by agents in matters beyond their authority do not affect their principals (s.238).

Examples: (i) A, being B's agent for the sale of goods, induces C to buy them by a misrepresentation, which he was not authorised by B to make. The contract is voidable, as between B and C, at the option of C.

(ii) 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.

5. The principal remains liable to the third parties even where his name was not disclosed. The third parties, on discovering his name, can proceed against him on the contract.
6. The principal is bound by any notice or information given to the agent in the course of business transacted by him.

7. The liability of the principal continues even in cases where agent is held personally liable. As even in this case, there is no bar on the right of third party to sue the principal. Section 223 provides an option to the third parties to either sue the principal or agent or both.

Undisclosed Principal

Where agent, though discloses the fact that he is agent working for some principal, conceals the name of the principal, such a principal is called an undisclosed principal. The liability of an undisclosed principal is similar to that of a disclosed principal unless there is a trade custom making the agent liable. However, the undisclosed principal must exist and must also be the principal at the time the contract is made. He cannot be brought into existence as a principal after the contract has been concluded.

Concealed Principal

Where agent conceals not only the name of the principal but the very fact that there is a principal, the principal is called a concealed principal. In such a case, the third parties are not aware of the existence of the principal and regard the agent as the person contracting for himself. The third parties, thus, must look to the agent for payment or performance and the agent may sue or be sued on the contract. Legal position in this regard is as follows:

1. If the principal wishes to intervene, he may require the performance of the contract, but the other party has, as against him (principal), the same rights as he would have had as against the agent if the agent has been principal (s.231 para 1).
2. Para II of s.231 provides that in such a case, if the principal discloses himself before the contract is completed the other contracting party may refuse to fulfil the contract, provided he could prove that if he had known who was the principal in the contract, or if he had known that the agent was not the principal, he would not have entered into the contract.
3. If the principal requires performance of the contract, he can only obtain such performance subject to the rights and obligations subsisting between the agent and the other party to the contract.

Example: A who owes Rs 500 to B, sells 1,000 rupees worth of rice to B. A is acting as agent for C in the transaction, but B has no knowledge nor reasonable ground of suspicion that such is the case. C cannot compel B to take the rice without allowing him to set off A's debt.

4. In the usual practice of agency, it is only the principal who is personally liable to the contract however in contracts with a concealed principal, the agent is, in the absence of a contract to the contrary, personally liable to the third party. The party may hold either the agent or principal or both liable (s.223).

Example: A enters into a contract with B to sell him 100 bales of cotton and afterwards discovers that B was acting as agent for C. A may sue either B or C, or both for the price of the cotton.

2.4.2 PERSONAL LIABILITY OF AGENT

Agent is only a connecting link between the principal and third parties. Being only a medium, he can, in the absence of a contract to the contrary, neither personally enforce contracts entered into by him on behalf of his principal, nor is he personally bound by them (s.230).

From the above discussion, it may be inferred that agent can enforce contracts personally and be held bound for contracts entered into on behalf of his principal, if there is an agreement to the effect, express or implied. Section 230 enlists the following cases where a contract to this effect shall be presumed to exist: (1) where the contract is made by agent for the sale or purchase of goods for a merchant resident abroad; (2) where the agent does not disclose the name of his principal; (3) where the principal, though disclosed, cannot be sued, for instance, where principal is a minor. Besides, agent incurs a personal liability in the following cases:

1. ***Breach of warranty:*** Where agent acts either without any authority or exceeds his authority, he is deemed to have committed breach of warranty of authority in such a case. He will be held personally liable if his acts are not ratified by the alleged principal. Further, agent will be guilty of warranty of authority even where his authority is terminated without his knowledge, e.g., by death or lunacy of the principal.
2. ***Where the agent expressly agrees to be personally bound.*** This sort of stipulation may be provided particularly where principal does not enjoy much creditworthiness and the third parties wish to ensure the payment or performance.
3. ***Where agent signs a negotiable instrument in his own name.*** In case agent signs a negotiable instrument without making it clear that he is signing it as agent only, he may be held personally liable on the same. He would be personally liable as the maker of the note, even though he may be described in the body of the note as the agent (s.28, Negotiable Instrument Act, 1881).
4. ***Special interest of agent.*** Agent with special interest or with a beneficial interest, e.g., a factor or auctioneer, can sue and be sued personally.
5. ***Fraud or misrepresentation by agent:*** When agent is guilty of fraud or misrepresentation in matters which do not fall within his authority (s.238).
6. ***Trade usage:*** Where trade usage or custom makes agent personally liable.
7. Where the agency is one coupled with interest.

2.4.3 TERMINATION OF AGENCY

Circumstances under which Agency Terminates or Comes to an End (s.201)

1. ***On revocation by the principal:*** The principal may, by notice, revoke the authority of the agent at any time. Where the agent is appointed to do a single act, agency

may be revoked any time before the commencement of the act. In case of a continuous agency, notice of revocation should be given to both the third parties as well as to the agent.

Where agency is for a fixed period of time and the contract of agency is revoked without sufficient cause, compensation must be paid to the agent (s.205). However, the agency is irrevocable in two cases: (i) Where the authority of the agent is one coupled with interest; (ii) when the delegated authority has been partly exercised so far as regards such acts and obligations already done in the agency (s.204).

Examples: (i) A authorises B to buy 1,000 bales of cotton on account of A and to pay for it out of A's money remaining in B's hands. B buys 1,000 bales of cotton in his own name, so as to make himself personally liable for the price. A cannot revoke B's authority to pay for the cotton.

(ii) A authorises B to buy 1,000 bags of rice on account of A and to pay for it out of A's money remaining in B's hands. B buys 1,000 bags of rice in A's name, so as not to make himself personally liable for the price. A can revoke B's authority to pay for the rice.

2. ***Expiry of the fixed period:*** On the expiry of fixed period of time. When the agency is for a fixed period of time, it comes to an end on the expiry of that time.
3. ***On the performance of the specific purpose:*** Where agent is appointed to do a particular act, agency terminates when that act is done or when the performance becomes impossible.
4. ***Insanity or death of the principal or agent:*** Death or insanity of the principal or the agent, terminates the agency. But, agent, in such a case, should take all reasonable steps for the preservation of property, on behalf of the legal representatives of the principal (s.209).
5. ***Destruction of the subject matter:*** An agency shall also terminate in case the subject matter is either destroyed or rendered unlawful.
6. ***Insolvency of the principal:*** Insolvency of the principal, not of the agent, terminates the agency.
7. ***By renunciation of agency by the agent:*** If principal can cause termination of agency by revocation, agent may renounce his agency by giving a sufficient notice to that effect. Where, however, agency is for a fixed period and the agency is renounced without a sufficient cause, the principal must be compensated (s.205).

When Termination of Agency takes Effect?

1. The termination of the authority of agent does not, so far as regard the agent, takes effect before it becomes known to him (s.208).

2. As regards third parties, they can continue to deal with the agent till they come to know of the termination of the authority (s.208).

Examples: (i) A directs B to sell goods for him and agrees to give B 5% commission on the price fetched by the goods. A afterwards, by a letter revokes B's authority. B, after the letter is sent, but before he receives it, sells the goods for Rs 100. The sale is binding on A and B is entitled to five rupees as his commission.

(ii) A directs B, his agent, to pay certain money to C. A dies and D takes out probate to his will. B, after A's death, but before hearing of it, pays the money to C. The payment is good as against D, the executor.

3. The termination of the authority of agent causes the termination of authority of all sub-agents appointed by him.

2.4.4 POWER OF ATTORNEY

Meaning

A power of attorney is defined by s.2 (21) of the Stamp Act, as including "any instrument not chargeable with a fee under the law relating to court fees for the time being in force," which empowers "a specified person to act for and in the name of the person executing it". It is the Powers of Attorney Act, 1882, which deals with the subject, but does not define it. In common parlance, a power of attorney is an instrument or a deed by which a person is empowered to act for and in the name of the person executing it. The person executing the deed is known as the Principal or donor and the one in whose favour it is executed is the agent, or the power agent or the power of attorney agent.

Section 2 of the Powers Attorney Act, 1882, provides that the donee may execute any instrument in and with his own name and signature and his own seal, where sealing is required, by the authority of the donor of the power. And such an instrument shall be as effectual in law as if it had been executed by the donor.

As mentioned earlier, no consideration is necessary to create agency. Therefore, the deed of Power of Attorney may stipulate that the agent will not get any remuneration.

A Power of Attorney may be Special or General

If the deed conferring power by one to another relates to one single transaction, it is known as special power of attorney. If the deed conferring power relates to several transactions it is general power of attorney.

Registration

As a general rule, registration of power of attorney is not necessary but if it authorises the donee to recover the rents of an immovable property of the donor for the donee's benefit, it would require registration. And so also a power creating a charge in favour of the donee upon an immovable property referred to therein.

Further s.32 (c) of the Registration Act, 1908, requires that where a document is presented for registration by the agent of a person entitled to present it for registration, such agent must be duly authorised by power of attorney executed and authenticated in accordance to the provisions laid under section 33 of the Registration Act.

Such a power of attorney is to be executed before and authenticated by a registrar or sub-registrar. Unregistered power executed in a foreign country before a notary public can be used by the agent for presentation of document for registration. The power of attorney, however, executed before a notary public in India will not enable the agent to present any document for registration under the Registration Act, 1908.

The power of attorney is required to be engrossed on non-judicial stamp paper. The amount of stamp duty varies with different types of powers as described in the Stamp Act and varies among different States of India. Section 4 of the Power of Attorney Act, 1882 provides that the original deed of power can be deposited in the High Court in whose jurisdiction the principal resides and a certified copy of the deed can be obtained from the High Court. Such certified copies are equal to originals and are binding on all.

Further, s.85 of the Indian Evidence Act provides that the Court shall presume that every document purporting to be a power of attorney and to have been executed before and authenticated by a Notary Public, or any Court, Judge, Magistrate, was so executed

2.4.5 LET US SUM UP

The relationship of agency may be terminated in a number of ways. These are: (i) on revocation of agent's authority by the principal; (ii) on the expiry of the period for which the agency was created; (iii) on the performance of the specific purpose for which the agency was created; (iv) on the death or insanity of either the principal or the agent; (v) on the insolvency of the principal; (vi) on remuneration of agency by the agent.

Agent is only a connecting link between the principal and third parties. Being only a medium, he can, in the absence of a contract to the contrary, neither personally enforce contracts entered into by him on behalf of his principal, nor is he personally bound by them (s.230).

The principal may, by notice, revoke the authority of the agent at any time. Where the agent is appointed to do a single act, agency may be revoked any time before the commencement of the act. In case of a continuous agency, notice of revocation should be given to both the third parties as well as to the agent.

If the deed conferring power by one to another relates to one single transaction, it is known as special power of attorney. If the deed conferring power relates to several

2.4.6 KEYWORDS

Breach of Warrantee

Termination of Agency

Undisclosed Principal

Concealed Principal

Power of Attorney