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NOTES

Agency Under the Indian Contract Act, 1872: A Complete Guide for CLAT PG

Hanspal Bakul · 14 Aug 2026

Agency forms one of the most practical chapters of contract law. It explains how one person can act on behalf of another and bind that person legally. For CLAT PG aspirants, this topic blends theory with everyday commercial reality, making it a favourite among examiners.

Sections 182 to 238 of the Indian Contract Act, 1872 deal exclusively with agency. Understanding this framework helps you connect classroom concepts to real-world business transactions like sales, banking, and insurance.

What Is Agency

Section 182 defines an agent as a person employed to do any act for another or to represent another in dealings with third persons. The person for whom such an act is done is called the **principal**. This relationship is the backbone of modern commerce.

Unlike an ordinary contract of service, agency creates a *unique triangular relationship*. It involves the **principal, the agent, and the third party.** The agent essentially becomes a connecting link, and their actions create legal consequences for the principal.

Therefore, agency differs fundamentally from a contract of sale or a contract of employment. An agent does not buy goods for themselves; they act for someone else.

Essential Elements of Agency

1. There must be an agreement between the principal and the agent. This agreement need not always be formal or written. Conduct alone can establish an agency relationship in many situations.
2. Consideration is not mandatory to create an agency. Section 185 clarifies this position clearly. The reason lies in the fact that the agent usually earns compensation through commission

rather than direct consideration for the agency contract itself.

3. The principal must be a person competent to contract as per Section 11. However, interestingly, even a minor can act as an agent under Section 184, though the principal cannot hold the minor personally liable.

Modes of Creating Agency

Agency can arise in several distinct ways-:

1. Express agency arises when the principal appoints the agent through clear words, spoken or written.
2. Implied agency arises from the conduct, situation, or relationship between parties. Section 187 covers this concept. Partners in a firm, for instance, are implied agents of each other under partnership law principles.
3. Agency by ratification occurs when a person acts on behalf of another without prior authority, and the principal later approves those acts. Sections 196 to 200 govern this doctrine, and ratification relates back to the date of the original act.
4. Agency by estoppel arises when the principal’s conduct leads a third party to reasonably believe that a person has authority to act as agent. Once this belief is created, the principal cannot later deny the agency.
5. Agency by necessity emerges in emergency situations where a person must act to protect another’s property or interests without prior authorisation. Classic examples include a carrier selling perishable goods to prevent total loss.

Duties of an Agent

An agent owes several duties toward the principal, and these duties ensure that the relationship remains one of trust and good faith throughout its operation.

1. Section 211 requires the agent to conduct business according to the principal’s directions. If no directions exist, the agent must follow the custom prevailing in that particular business or trade.
2. Section 212 mandates that the agent must work with reasonable skill and diligence. Any negligence resulting in loss makes the agent liable to compensate the principal for such loss.

3. Section 213 obligates agents to render proper accounts whenever the principal demands them. This duty maintains transparency and prevents misuse of the principal's funds or property.
4. Section 215 and 216 prevent an agent from dealing on their own account without the principal's consent. If the agent secretly earns profit through such dealing, the principal can claim that benefit entirely.

Rights of an Agent

Just as duties exist, agents also enjoy certain rights that protect their interests while performing their functions honestly and diligently for the principal.

1. Section 217 grants the agent a right to retain, out of sums received, all money due to them by way of remuneration, advances made, and expenses incurred while conducting the principal's business.
2. Section 219 gives the agent a right to receive remuneration only after completing the agreed act, unless a special contract provides otherwise. This links payment directly to performance.
3. Additionally, Section 222 obliges the principal to indemnify the agent against consequences of lawful acts done in exercise of the authority conferred. This protects agents acting in good faith.

Extent of Agent's Authority

Section 188 explains that an agent having authority to do an act has authority to do every lawful thing necessary for doing such act.

Beyond this, **Section 189** introduces the *concept of authority in an emergency. An agent can take all reasonable actions to protect the principal from loss during unforeseen circumstances,* even without explicit instructions.

Termination of Agency

Agency, like any contractual relationship, can come to an end through various methods listed under **Sections 201 to 210 of the Act.**

1. Agency terminates by the principal revoking their authority, or by the agent renouncing the business of the principal. Both parties retain this right, though reasonable notice is often

required to avoid liability.

2. It also terminates by completion of the business for which the agency was created, or by the expiry of a fixed time period, if any was set at the time of appointment.
3. Death or unsoundness of mind of either the principal or the agent automatically terminates the agency. Similarly, if the principal becomes insolvent, the agency comes to an end under the Act.

An important exception exists under **Section 202**, dealing with agency coupled with interest. Here, *the agent has some personal interest in the subject matter, and such agency cannot be terminated to the agent's prejudice.*

Sub-Agents and Substituted Agents

Section 190 states that an agent cannot lawfully employ another to perform acts which they have expressly or impliedly undertaken to perform personally, unless the ordinary custom of trade permits it.

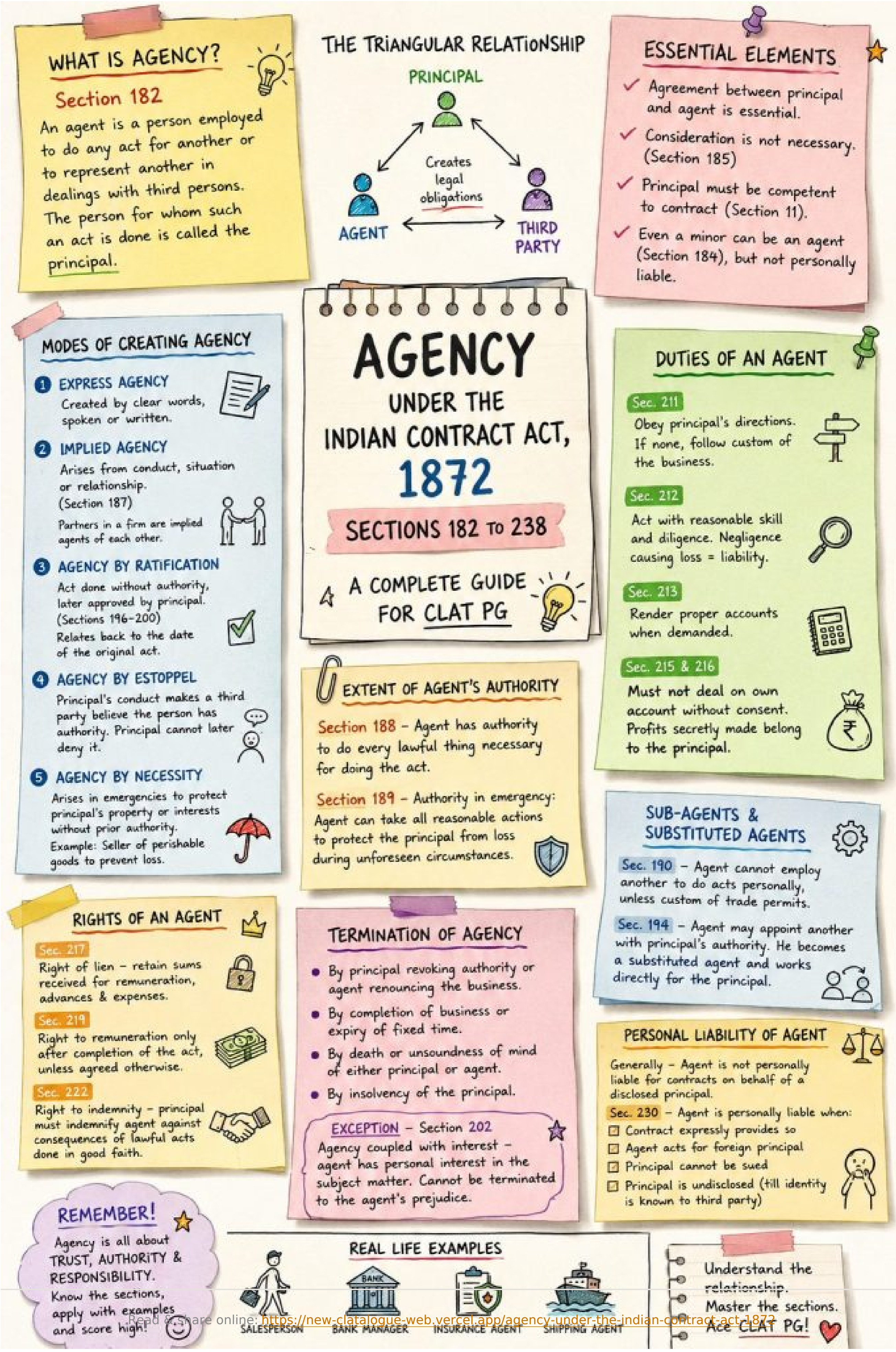
However, Section 194 allows the agent to name another person to act for the principal in the business of the agency, when the principal has expressly or impliedly given such authority. This person becomes a ***substituted agent, not a sub-agent, and works directly for the principal.***

Personal Liability of the Agent

Generally, an agent is not personally liable for contracts made on behalf of a disclosed principal, since the principal alone bears responsibility for such acts.

However, exceptions exist. **Section 230** lists situations where an agent becomes personally liable, such as when the *contract expressly provides for it*, or when the *agent acts for a foreign principal, or represents a principal who cannot be sued.*

Similarly, when an agent works for an undisclosed principal, the agent may face liability until the principal's identity becomes known to the third party involved in the transaction.


WHAT IS AGENCY?
Section 182
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 an act is done is called the principal.
THE TRIANGULAR RELATIONSHIP
PRINCIPAL
Creates legal obligations
AGENT
THIRD PARTY
ESSENTIAL ELEMENTS
Agreement between principal and agent is essential.
Consideration is not necessary. (Section 185)
Principal must be competent to contract (Section 11).
Even a minor can be an agent (Section 184), but not personally liable.
MODES OF CREATING AGENCY
1 EXPRESS AGENCY
Created by clear words, spoken or written.
2 IMPLIED AGENCY
Arises from conduct, situation or relationship. (Section 187)
Partners in a firm are implied agents of each other.
3 AGENCY BY RATIFICATION
Act done without authority, later approved by principal. (Sections 196–200)
Relates back to the date of the original act.
4 AGENCY BY ESTOPPEL
Principal's conduct makes a third party believe the person has authority. Principal cannot later deny it.
5 AGENCY BY NECESSITY
Arises in emergencies to protect principal's property or interests without prior authority.
Example: Seller of perishable goods to prevent loss.
AGENCY
UNDER THE INDIAN CONTRACT ACT, 1872
SECTIONS 182 TO 238
A COMPLETE GUIDE FOR CLAT PG
DUTIES OF AN AGENT
Sec. 211
Obey principal's directions. If none, follow custom of the business.
Sec. 212
Act with reasonable skill and diligence. Negligence causing loss = liability.
Sec. 213
Render proper accounts when demanded.
Sec. 215 & 216
Must not deal on own account without consent. Profits secretly made belong to the principal.
EXTENT OF AGENT'S AUTHORITY
Section 188 – Agent has authority to do every lawful thing necessary for doing the act.
Section 189 – Authority in emergency: Agent can take all reasonable actions to protect the principal from loss during unforeseen circumstances.
SUB-AGENTS & SUBSTITUTED AGENTS
Sec. 190 – Agent cannot employ another to do acts personally, unless custom of trade permits.
Sec. 194 – Agent may appoint another with principal's authority. He becomes a substituted agent and works directly for the principal.
RIGHTS OF AN AGENT
Sec. 217
Right of lien – retain sums received for remuneration, advances & expenses.
Sec. 219
Right to remuneration only after completion of the act, unless agreed otherwise.
Sec. 222
Right to indemnity – principal must indemnify agent against consequences of lawful acts done in good faith.
TERMINATION OF AGENCY
By principal revoking authority or agent renouncing the business.
By completion of business or expiry of fixed time.
By death or unsoundness of mind of either principal or agent.
By insolvency of the principal.
EXCEPTION – Section 202
Agency coupled with interest – agent has personal interest in the subject matter. Cannot be terminated to the agent's prejudice.
PERSONAL LIABILITY OF AGENT
Generally – Agent is not personally liable for contracts on behalf of a disclosed principal.
Sec. 230 – Agent is personally liable when:
Contract expressly provides so
Agent acts for foreign principal
Principal cannot be sued
Principal is undisclosed (till identity is known to third party)
REMEMBER!
Agency is all about TRUST, AUTHORITY & RESPONSIBILITY.
Know the sections, apply with examples and score high!
REAL LIFE EXAMPLES
SALESPERSON
BANK
BANK MANAGER
INSURANCE AGENT
SHIPPING AGENT
Understand the relationship.
Master the sections.
Ace CLAT PG!