

# AGENT'S AUTHORITY- JUDICIAL INTERPRETATION<sup>1</sup>

## Who Is An Agent?

An agent is one who is:

- Employed by another (the principal);
- To do any act for that principal; or
- To represent him in dealing with third persons.

An agent is a person employed to do any act for another or to represent another in dealings with third persons.<sup>2</sup> The person for whom such act is done, or who is so represented, is called the 'principal'.

The Indian Contract Act of 1872 does not make any distinction between different classes of agents.<sup>3</sup> On one hand an agent may be appointed by the principal, it also includes an employment by any authority authorised by law to make the employment.<sup>4</sup>

Agents are distinguished in respect of authority as general or special agents. The former expression includes brokers, factors, partners, and all persons employed in a business of filling a position of a generally recognised character, the extent of authority being apparent from the nature of employment or position; the latter denotes an agent appointed for a particular occasion or purpose, limited by the employment.<sup>5</sup> A special agent has only authority to do some particular act for some special occasion or purpose which is not within the ordinary course of his business or profession.<sup>6</sup> This distinction is made to determine the authority of that agent. It has been stated:<sup>7</sup>

*“A general agent has the full apparent authority due to his employment or position and the principal will be bound by his acts within that authority though he may have imposed special restrictive limits which are not known to the other*

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<sup>1</sup> Priyanshu Gupta, Hidayatullah National Law University, Raipur.

<sup>2</sup> Section 182 of the Indian Contract Act, 1872.

<sup>3</sup> *Kalyanji Kuwarji v. Tirkaram Sheolal* AIR 1938 Nag 254.

<sup>4</sup> *Sukumari Gupta v. Dharendra Nath Roy Chowdhury* AIR 1941 Cal 643.

<sup>5</sup> Leake, Page 323, 6<sup>th</sup> Edition

<sup>6</sup> *Amrit Lal C Shah v. Ram Kumar* AIR 1962 Punj 325.

<sup>7</sup> *Jacob v. Morris* [1902] 1 Ch 816.

*contracting party. A special agent has no apparent authority beyond the limits of his appointment and the principal is not bound by his acts in excess of those limits whether the other contracting party knows of them or not.”*

## **DUTIES & RIGHTS OF AN AGENT**

Under the Indian Law, the Agent has certain duties. An agent is bound to conduct the business of his principal according to the directions given by the principal, or, in absence of any such directions, according to the custom which prevails.<sup>8</sup> It is the duty of every agent to carry out the mandate of his principal.<sup>9</sup> An agent is bound to conduct the business of the agency with as much skill as is reasonable.<sup>10</sup> An agent is bound to render proper accounts to his principal on demand.<sup>11</sup> It is the duty of an agent, in cases of difficulty, to use all reasonable diligence in communicating with his principal, and in seeking to obtain his instructions.<sup>12</sup> If an agent deals on his own account in the business of the agency, the principal may repudiate the transaction.<sup>13</sup>

The important rights of an agent can be seen as well. 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.<sup>14</sup> 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 that he has misconducted.<sup>15</sup> An agent may retain all moneys due to himself in respect of advances made or expenses properly incurred by him in conducting such business.<sup>16</sup> The employer of an agent is bound to indemnify him against the consequences of all lawful acts done within the authority.<sup>17</sup> Where one person employs another to do an act, and the agent does the act in good faith, the employer is

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<sup>8</sup> Section 211 of the Indian Contract Act, 1872.

<sup>9</sup> Singh, Avtar *Law of Contract and Specific Relief* Page 745 (Tenth Edition)

<sup>10</sup> Section 212 of the Indian Contract Act, 1872.

<sup>11</sup> Section 213 of the Indian Contract Act, 1872.

<sup>12</sup> Section 214 of the Indian Contract Act, 1872.

<sup>13</sup> Section 215 of the Indian Contract Act, 1872.

<sup>14</sup> Section 219 of the Indian Contract Act, 1872.

<sup>15</sup> Section 220 of the Indian Contract Act, 1872.

<sup>16</sup> Section 217 of the Indian Contract Act, 1872.

<sup>17</sup> Section 222 of the Indian Contract Act, 1872.

liable to indemnify the agent against the consequences of that act.<sup>18</sup> Where one person employs another to do an act which is criminal, the employer is not liable to the agent.<sup>19</sup> 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.<sup>20</sup>

## AGENT'S AUTHORITY

It has been seen in the case of *Palestar Electronics Private Limited v. Additional Commissioner*<sup>21</sup> that the acts of the agent within the scope of his authority bind the principal. Contracts entered into through an agent, and obligations arising from acts done by the 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.<sup>22</sup> It is necessary for this effect to follow that the agent must have done the act within the scope of his authority. The authority of an agent and more particularly its scope are subjects to some controversy.<sup>23</sup>

The uncertainty is largely due to the fact that the authority of an agent does not depend upon one source. It has been rightly held in the case of *Ramlesh v. Jasbir Singh*<sup>24</sup> that agency came into being to promote and not to hinder commerce.

The authority of an agent means his capacity to bind the principal. It refers to "the sum total of the acts it has been agreed between principal and agent that the agent should do on behalf of the principal."<sup>25</sup> When the agent does any such acts, it is said he has acted within his authority as was seen in the case of *Nand Lal Thanvi v. LR of Goswami Brij Bhushan*.<sup>26</sup>

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<sup>18</sup> Section 223 of the Indian Contract Act, 1872.

<sup>19</sup> Section 224 of the Indian Contract Act, 1872.

<sup>20</sup> Section 225 of the Indian Contract Act, 1872.

<sup>21</sup> (1978) 1 SCC 636

<sup>22</sup> Section 226 of the Indian Contract Act, 1872.

<sup>23</sup> *Municipal Corporation, Delhi v. Jagdish Lal* (1969) 3 SCC 389. *Sardar Gurucharan Singh v. Mahendra Singh* (2004) 1 MPLJ 252 (MP)

<sup>24</sup> AIR 2004 P&H 216

<sup>25</sup> Montrose, J.L. *Actual and Apparent Authority*, (1938)

<sup>26</sup> AIR 1973 All 302.

With regards to contracts and acts which are not actually authorised, the principal may be bound by them, on the principle of estoppels, if they are within the scope of the agent's ostensible authority, but in no case is he bound by any unauthorised act or transaction with respect to persons having notice that the actual authority is being exceeded.<sup>27</sup>

## TYPES OF THE AUTHORITY OF AGENTS

### 1. ACTUAL AUTHORITY

The authority conferred on an agent by the principal is termed as the actual authority. It can be classified into two categories, namely express and implied.<sup>28</sup> An authority is said to be express when it is given by words spoken or written.<sup>29</sup> A power of attorney can be taken as an example of express authority as was seen in the case of *Syed Abdul Khader v. Rami Reddy*.<sup>30</sup> The scope of express authority is worked out by the construction of words used in the documents.<sup>31</sup> A case on this point can be that of *Attwood v. Munnings*<sup>32</sup> where a principal, while going abroad, authorised his agent and partner to carry on his business, and his wife to accept bills on his behalf for his personal business, he was not held bound when his wife accepted bills on his behalf for the business, which the agent was conducting and which was different from his personal business. In the case of *Reid v. Rigby*<sup>33</sup> where the agent obtained a loan outside his authority by signing a cheque on behalf of his principal to pay the principal's workmen, the principal was held bound.

But where the third party has knowledge of the limitation of the agent's authority or could have discovered it by reasonable examination, he would be bound by it as held in the case of *Ferguson v. Um Chand Boid*.<sup>34</sup> An agent cannot borrow on behalf of his

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<sup>27</sup> Mulla, Dinshah Fardunji *Mulla The Indian Contract Act* Page 344 (13<sup>th</sup> Edition 2011)

<sup>28</sup> Section 186 of the Indian Contract Act, 1872.

<sup>29</sup> Section 187 of the Indian Contract Act, 1872.

<sup>30</sup> AIR 1979 SC 553.

<sup>31</sup> Singh, Avtar *Law of Contract and Specific Relief* Page 775 (Tenth Edition)

<sup>32</sup> (1827) 7 B&C 278.

<sup>33</sup> (1894) 2 QB 40.

<sup>34</sup> (1905) 33 Cal 343.

principal unless he has clear authority to do so. Where the agent has the power to borrow, the fact that he borrowed beyond the authorised limit, does not prevent the third party from holding the principal liable as was held in the case of *Withington v. Herring*.<sup>35</sup> The fact that the agent has acted from improper motive does not take the case beyond the scope of authority as seen in the case of *Hambro v. Burnard*.<sup>36</sup>

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.<sup>37</sup> The distinction between express and implied authority depends merely on whether the authority is delimited by words or by conduct. In the case of *Ramanathan v. Kumarappa*<sup>38</sup> an estate agent was appointed to find a purchaser for a certain property. He accepted a deposit from a prospective customer and misappropriated it. The principal was held liable because an estate agent has an implied authority to take a deposit. However, he cannot receive payment or give any warranty unless actually authorised as held in the case of *Foujdar Kameshwar Dutt Singh v. Ghanshyamdass*.<sup>39</sup>

## 2. APPARENT AUTHORITY

*“Ostensible or apparent authority is the authority of an agent as it appears to others. It often coincides with actual authority. Thus, when the board (of directors) appoint one of their members to be a managing director they invest him not only with implied authority, but also with ostensible authority to do all such things as fall within the usual scope of that office.”*<sup>40</sup>

Willis J held that once it is established that the defendant was the real principal, the ordinary doctrine as to principal and agent applied, that the principal is liable for all the acts of the agent which are within the authority usually confined to an agent of that character, notwithstanding limitations, as between the principal and the agent, put

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<sup>35</sup> (1829) 5 Bing 442.

<sup>36</sup> (1904) 2 KB 10 (CA).

<sup>37</sup> See *Section 187* of the Indian Contract Act, 1872.

<sup>38</sup> AIR 1938 Cal 423.

<sup>39</sup> 1987 Supp SCC 689.

<sup>40</sup> Denning LJ

upon that authority. In the case of *Valapad Co-operative Stores Limited v. Srinivasa Iyer*,<sup>41</sup> it was held:

“The term ‘ostensible authority’ denotes no authority at all. It is a phrase conveniently used to describe the position which arises when one person has clothed another, or allowed him to assume an appearance of authority to act on his behalf, without actually giving him any authority either express or implied, by which appearance of authority a third party is misled into believing that a real authority exists.”

- **Apparent Authority is Real Authority.**

This statement portrays the truth in Lord Ellenborough’s observation in the case of *Pickering v. Busk*.<sup>42</sup> It depends upon the facts of the case.

- **Representation.**

The doctrine of apparent authority is really an application of the principle of estoppel, for estoppel means only that a person is not permitted to resist an inference which can reasonably be drawn from the principal’s words or conduct. A case on this point is that of *Egyptian International Foreign Trade Company v. Soplex Wholesale Supplies Limited (The Raffaella)*<sup>43</sup>. The person making the representation is estopped from denying the ostensible authority which was thus created.<sup>44</sup> Three things should be noted here. The representation must be made by or with the authority of the principal. Ostensible authority cannot be created by simply a representation of the agent.<sup>45</sup> The third party must rely on a representation of the agent’s authority to act as agent.<sup>46</sup> The agent’s want of authority must be unknown to the third party.<sup>47</sup>

### **Statutory Provision about Apparent Authority.**

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<sup>41</sup> AIR 1964 Ker 176.

<sup>42</sup> 1812 KB 15.

<sup>43</sup> [1985] 2 Lloyd’s Report 36.

<sup>44</sup> Anson *Law of Contract* Page 671 (28<sup>th</sup> Edition)

<sup>45</sup> *Attorney General for Ceylon v. Silva* [1953] A.C. 461.

<sup>46</sup> *Farquharson Brothers v. King and Company* [1902] A.C. 325.

<sup>47</sup> *Armagas Limited v. MundogasSA* [1986] 1 A.C. 717.

When an agent has, without authority, done acts or incurred obligations to third persons on behalf of his principal, the principal is bound by such acts or obligations if he has by his words or conduct induced such persons to believe that such acts and obligations were within the scope of the agent's authority.<sup>48</sup> A case on this point is that of *Bissessardas Kasturchand v. Kabulchand*<sup>49</sup> where the court said:

*“Their Lordships of the Judicial Committee of the Privy Council ruled that the right of a third party against the principal on the contract of his agent though made in excess of agent's actual authority was nevertheless to be enforced when the evidence showed that the contracting party had been led into an honest belief in the existence of the authority to the extent apparent to him.”*<sup>50</sup>

Where, however, a person contracting with the agent has actual or constructive notice of any restriction on the agent's ostensible authority, he is bound by the authority.<sup>51</sup> The ultimate question is whether the circumstances under which a servant has made a fraudulent misrepresentation which has caused loss to an innocent party conducting with him are such as to make it just for the employer to bear the loss.<sup>52</sup>

### 3. USUAL OR INCIDENTAL AUTHORITY

In certain circumstances, a principal may be liable for the unauthorized acts of an agent. In these cases, the existence of the principal was unknown to the third party, so that it could not be said that the principal held out the agent to have authority to act as agent and was estopped. In the case of *Watteau v. Fenwick*<sup>53</sup> it was said that an undisclosed principal who employs an agent to conduct business is liable for any act of the agent which is incidental to or usual in that business. Willis J. said-

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<sup>48</sup> Section 237 of the Indian Contract Act, 1872.

<sup>49</sup> AIR 1945 Nag 121.

<sup>50</sup> *Ram Pertab v. Marshall* ILR (1898) 26 Cal 701.

<sup>51</sup> *Sarshar Ali v. Roberts Cotton Association* (1963) 1 SC 244 (Pak).

<sup>52</sup> Singh, Avtar *Law of Contract and Specific Relief* Page 789 (Tenth Edition)

<sup>53</sup> [1893] 1 Q.B. 346.

*“The principal is liable for all the acts of the agent which are within the authority usually confided to an agent of that character, notwithstanding limitations as between the principal and the agent, put upon that authority.”*

#### **4. 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 as would be done by a person of ordinary prudence, in his own case, under similar circumstances.<sup>54</sup>

Under the English Law, an agency of necessity can arise in the case of a carrier of goods or a master of ship who, under certain circumstances of necessity, is empowered on behalf of the ship-owner or the owner of the goods carried to dispose of the goods or to enter into such other contract as may be necessary, and will be considered to have their authority to do so. The agency of necessity is frequently used to describe cases where one person, in an emergency, performs services or incurs expenditure to preserve the property or rights of another and seeks reimbursement,<sup>55</sup> or when a person claims to be protected against an action for wrongful interference with the property of another by pleading necessity.<sup>56</sup>

#### **5. EMPLOYER’S AUTHORITY TO PAY INSURANCE PREMIA**

When an employer, in a group savings linked insurance scheme, undertook to pay monthly premiums to the insurer from wages or salaries of employees, but when a worker died, it came to light that the premiums were in default, it was held that the insurer was bound to pay the insurance money to employee’s family. The employer had become the agent of the insurer for the agreed purpose. Lack of consideration between the insurer and employer was immaterial because no consideration is necessary at the time of creation of agency. Consideration in these cases is promotion

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<sup>54</sup> Section 189 of the Indian Contract Act, 1872.

<sup>55</sup> *Exall v. Partridge* (1799) 8 T.R. 308.

<sup>56</sup> *Sachs v. Miklos* [1948] 2 K.B. 23.



of business. This was seen in the case of *Naseem Bano v. Life Insurance Corporation of India*.<sup>57</sup>

In *Bowstead and Reynolds on Agency*,<sup>58</sup> it is stated-

*“Where a person, by words or conduct, represents or permits it to be represented that another person has authority to act on his behalf, he is bound by the acts of that other person with respect to anyone dealing with him as an agent on the faith of any such representation, to the same extent as if such other person had the authority that he was represented to have even though he had no such actual authority.”*

## 6. AUTHORITY OF SPECIAL AGENTS

An auctioneer is an agent to see property at a public auction. He cannot sell by private contract as seen in the case of *Mews v. Carr*.<sup>59</sup> Auctioneers have the authority to see but not to give warranties as to the property sold.<sup>60</sup> He cannot sell on credit and has to act both for seller and buyer and, therefore, can sign the contract for both.<sup>61</sup> A factor is an agent who has possession of the goods, authority to sell them in its own name, and a general discretion to their sale.<sup>62</sup> He can warrant them if it is usual to do so, and to fix the selling price and to receive payment.<sup>63</sup> A broker is an agent primarily employed to negotiate a contract between two parties. A broker for sale has not got possession of the goods to be sold.<sup>64</sup> A broker may sell the goods in his own name and receive payments but cannot disclose the name of the principal. He may sell on reasonable credit.<sup>65</sup>

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<sup>57</sup> (2004) 2 MPLJ 529.

<sup>58</sup> Page 307 (7<sup>th</sup> Edition)

<sup>59</sup> (1856) 1 H&N 484.

<sup>60</sup> *Payne v. Leconfield* (1882) 51 LJ QB 642.

<sup>61</sup> *Emerson v. Heclis* (1809) 11 RR 520.

<sup>62</sup> *Anson Law of Contract* Page 673 (28<sup>th</sup> Edition)

<sup>63</sup> *Drinkwater v. Goodwin* (1775) Cowp 251.

<sup>64</sup> *Anson Law of Contract* Page 673 (28<sup>th</sup> Edition)

<sup>65</sup> *Boorman v. Brown* (1843) 3 QB 511.

The judgement of the Supreme Court in the case of *Abdulla Ahmed v. Animendra Kissen Mitter*<sup>66</sup> makes the situation clear:

*“A house or estate agent is in a different position from a broker at the stock exchange owing to the peculiarities of the property with which he has to deal and which does not pass by a short instrument as stocks and shares do, but has to be transferred after investigation of title as to which various stipulations, which might be of a particular concern to the owner, may have to be inserted in a concluded contract relating to such property. The parties, therefore, ordinarily contemplate that the agent should have the authority to complete the transaction in such cases. That is why it has been held both in England and here, that the authority given to a broker to negotiate a sale and to find a purchaser, without furnishing him with all the terms means ‘to find a man willing to become a purchaser and not to bind him and make him a purchaser’.”*

## **AGENT EXCEEDING AUTHORITY**

When an agent does more than he is authorised to do and when the two can be separated, so much only of what he does as is within his authority is binding as between him and his principal.<sup>67</sup> If the act cannot be separated from what is within it, the principal is not bound to recognize the transaction.<sup>68</sup> Any notice given to or information obtained by the agent, provided it be given or obtained in the course of business transacted by him for the principal, shall have the same legal consequences as if it had been given to or obtained by the principal.<sup>69</sup> Misrepresentations made, or frauds committed, by agents 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.<sup>70</sup> If the principal has authorised a false statement to be made, or knows that it is being made by the agent or

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<sup>66</sup> AIR 1950 SC 15.

<sup>67</sup> Section 227 of the Indian Contract Act, 1872.

<sup>68</sup> Section 228 of the Indian Contract Act, 1872.

<sup>69</sup> Section 229 of the Indian Contract Act, 1872.

<sup>70</sup> Section 238 of the Indian Contract Act, 1872.

keeps the real facts from the agent, the principal is liable.<sup>71</sup> L.C.B. Gower has stated the position of English Law in the following words:

*“The law is that a principal is not liable for fraud in respect of his agent’s acts unless-*

- a) He intends or knowingly permits the agent to make a false statement, or*
- b) His agent acting within the actual or apparent scope of his authority makes a statement with knowledge of its falsity or recklessly not caring whether it be true or false.”<sup>72</sup>*

It is worthwhile mentioning the agent’s torts here as well. The case of *Atlantic Die Casting Company v. Whiting Tubular Products*<sup>73</sup> gives us an idea about it:

*“The doctrine of ‘respondent superior’ (let the superior answer) will be applied to make the principal liable where the agent commits a tort while engaged in the business of the principal.”*

## CONCLUSION

Over the years, it has been seen that an agent plays several roles in a contract. He has to step into the shoes of the principal, yet is excluded from liability for his actions in general. Hence, the limits of his authority have been a question of debate and pondering for several decades since the emergence of the Agent-Principal relationship idea. Several judges over a span of time, in various cases that have been covered in the research paper have expressed varying opinions and views regarding the authority of an agent. In lieu of simplifying the task of deciding this authority, several classes of agents were also identified. The responsibilities and underlying powers of these agents differ, depending on the work they carry out.

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<sup>71</sup> Singh, Avtar *Law of Contract and Specific Relief* Page 794 (Tenth Edition)

<sup>72</sup> Singh, Avtar *Law of Contract and Specific Relief* Page 796 (Tenth Edition)

<sup>73</sup> Inc. 337 Mich 414.

An agent is often seen as a person who steps into the shoes of his principal and carries out all tasks like the principal would do in similar circumstances, with his utmost diligence and vigilance. A general rule that has been evolved to check an agent's liability is his presence or lack of reasonable care and attention to the work at hand. His authority, if exceeded, can be challenged by the principal in a court of law; however, the third party which has entered into the contract in question shall have a binding right on it. Overall, after this extensive study of the elaborate and complex nature of the Agent's contract we can see that courts, especially in judicial interpretation do not seek to indemnify the agent against the losses caused due to his mistakes, but rather seek to indemnify the third party from the same. At the same time, the principal maintains the right to sue the agent and demand compensation in case the agent has exceeded his authority without a very reasonable and essential reason for the same.