

Sections 182 to 238 of the Indian Contract Act, 1872 deal with Agency.

Definition of Agent and Principal

According to 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 act is done or who is so represented is called the 'principal'.

Who may employ an Agent?

According to Section 183,

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.

Who may be an Agent?

According to Section 184,

As between the principal and third persons, any person may become an agent. But if a minor or a person of unsound mind is appointed as an agent, he is not responsible to his principal. In the interest of the principal, it is, therefore, necessary that the person appointed as agent has contractual capacity.

Consideration Not Necessary

No consideration is necessary to create an agency (Section 185). The fact that the principal has agreed to be represented by the agent is a sufficient detriment to the principal to support the contract of agency.

Distinction between an Agent and a Servant

An agent may be distinguished from a servant as shown below:

Agent	Servant
1. An agent always brings his principal into contractual relations with third persons.	1. A servant is not employed to bring his principal into contractual relations with any one.
2. An agent is not subject to the direct control and supervision of the principal.	2. A servant acts under the direct control and supervision of his employer.

3. An agent may work for several principals at the same time.	3. A servant usually works for one master.
4. The principal is liable on the acts of the agent done within the scope of his authority.	4. A master is liable on the acts of the servant done in the course of his employment.

Test of Agency

A person is an agent if he—

- (a) the capacity to bring the principal into contractual relations with third persons and
- (b) bind the principal by his acts.

CREATION OF AGENCY

The different modes of creation of agency are shown below:

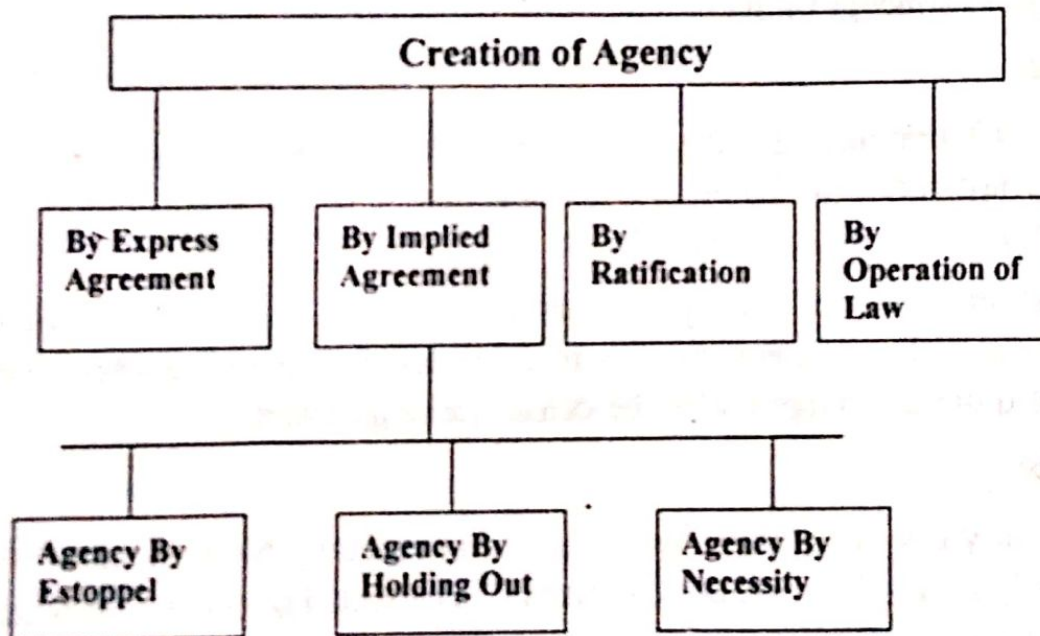


Figure 14.1

Let us now discuss these.

AGENCY BY EXPRESS AGREEMENT

According to Section 187,

‘An authority is said to be express when it is given by words spoken or written’. Normally, the principal appoints an agent by making an express agreement with him. It enables the agent to bind the principal by doing certain acts within the scope of his authority.

The principal may, by means of a ‘Power of Attorney’, appoint an agent.

AGENCY BY IMPLIED AGREEMENT

Implied agency may arise from the conduct of the parties, the situation or the circumstances of each case. Things spoken or written or the ordinary course of dealing may be accounted as circumstances of the case (*Section 187*).

Example:

A, who has agricultural lands in Tanjore, lives in Chennai. His cousin B lives in Tanjore and manages the lands of A. He remits periodically the amount realised to A. B is the agent of A although not expressly agreed.

Implied agency includes the following:

1. *Agency by Estoppel* : According to it, if a person, by his words or conduct induces a third person to believe that a certain person is his agent, he is estopped or prevented from denying the same later. Section 237 deals with the concept of agency by estoppel.

Example:

A tells T that he (A) is the agent of P. This he says in the presence P who does not refute it. Later, T, thinking that A is P's agent, enters into a contract with A. P is bound by it.

Thus, in agency by estoppel a person is held out as an agent although he is not actually an agent. Agency by estoppel may also arise when a person is held out as an agent after he ceases to be an agent.

Example:

The services of an agent have been terminated by his principal. But the principal has given no public notice to this effect. The agent, subsequently, purchases certain goods on credit in the name of his principal from a third party. The principal is liable to pay for the goods.

2. *Agency by Holding Out* : In the case of agency by holding out, a prior positive or affirmative act on the part of the principal establishes agency subsequently.

Example:

An agent habitually buys goods for his principal on credit from a supplier. Once the principal gives his agent cash to make the purchase. The agent misappropriates the money and buys as usual on credit. The supplier can recover the amount from the principal.

RULES REGARDING RATIFICATION

The rules in respect of a valid ratification are discussed below:

1. *Ratification may be express or implied in the conduct of the person on whose behalf the acts are done (Section 197).*

Example:

An agent, without his principal's authority, lends a certain amount to a third party from out of his principal's account. Afterwards, the principal accepts interest from the borrower. The principal's conduct implies ratification of the loan.

2. *Ratification must be made with full knowledge of facts (Section 198):* No valid ratification can be made by a person whose knowledge of the facts of the case is materially defective.

Example:

An agent, without authority from his principal, purchases certain goods at a price greater than the market price. The principal ratifies the purchase. Later, the principal comes to know that the goods purchased belonged to the agent himself. The ratification is not valid and, therefore, not binding on the principal.

3. *The whole transaction has to be ratified (Section 199) :* The principal has to ratify the whole transaction and not only a part of it that is beneficial to him.

Example:

An agent, without authority, sells goods to a party who agrees to pay 40% of the price in cash and the remaining 60% by means of a promissory note. The principal ratifies the sale but is not prepared to ratify the payment by promissory note. The ratification is not valid.

4. *Ratification cannot injure a third party (Section 200) :* Ratification that has the effect of subjecting a third party to loss or terminating his right or interest cannot be made.

Examples:

- (a) A holds a lease from B terminable on three months' notice. C, an unauthorised person, gives notice of termination to A. The notice cannot be ratified by B so as to be binding on A.
- (b) An agent, without authority from his principal, demands the delivery of a machine by X to whom it has been lent by the principal. This demand cannot be ratified by the principal so as to make X liable for damages for his refusal to deliver.

- Agency
5. *The act to be ratified must have been done in the name of the principal:*
An act done by the agent in his own name cannot be ratified by the principal.

Example:

An agent, without authority, gives 6 months credit to a client in respect of a transaction he has entered into with him in the agent's personal capacity. The principal cannot ratify this act.

6. *Ratification must be done within a reasonable time :* If it is done after the expiry of a reasonable time, it will not be valid.

Example:

An agent insures the principal's goods without authority from the latter. The principal comes to know of the policy only after the goods have been destroyed in a fire accident. The principal cannot ratify the policy after the fire accident has occurred so as to get the claim from the insurance company.

7. *The principal must have contractual capacity both at the time of the act and at the time of ratification :*

Examples:

- (a) A minor cannot ratify the acts done on his behalf during his minority.
- (b) A principal cannot ratify the acts of his agent done when the former was undergoing imprisonment. Likewise, a principal undergoing imprisonment cannot ratify the acts of his agent.

8. *The act to be ratified must be valid and lawful :*

Example:

An agent forges his principal's signature and obtains payment. The principal cannot ratify this act.

9. *The principal must have been in existence at the time when the act was done :*

Example:

A Company cannot ratify the acts of the promoters done before its incorporation.

10. *The act to be ratified must be such that the principal had the power to do :*

Example:

A Company cannot ratify the acts of the Directors that are ultra vires, i.e., beyond the powers of the Company.

AGENCY BY OPERATION OF LAW

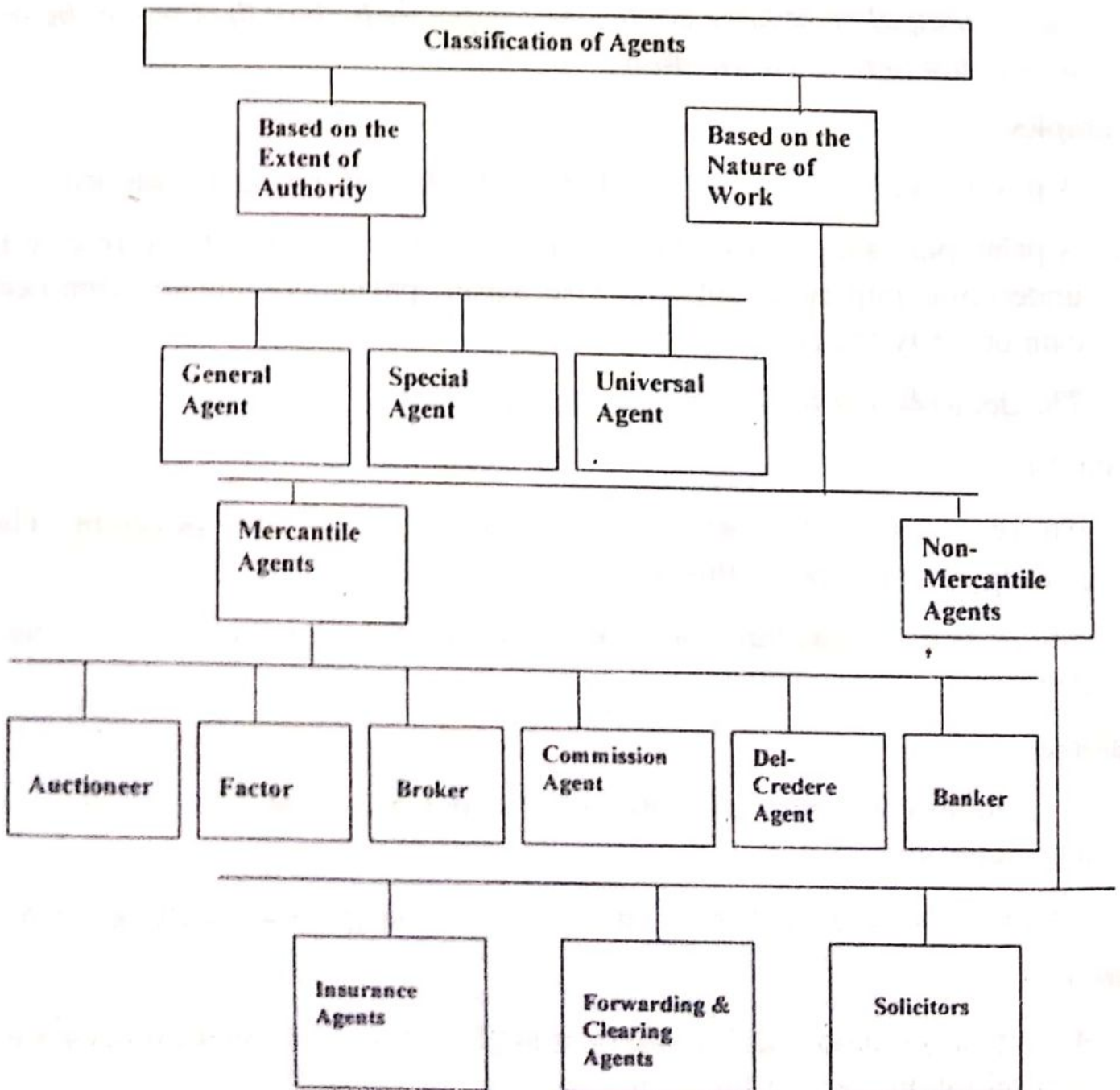
Law treats a certain person as an agent of another.

Example:

Every partner in a Partnership Firm is considered its agent under the Indian Partnership Act, 1932.

✓ CLASSIFICATION OF AGENTS

Agents may be classified as shown below:



Agency

Let us now discuss the different types of agents.

General Agent

A general agent has authority from his principal to do all acts in connection with a particular business or trade. The authority of such an agent is continuous, i.e., not restricted, until the principal puts an end to it.

Special Agent

A special agent is appointed to carry out a specific task. He represents his principal in a specific transaction only, e.g., an agent employed to sell a certain land or house. He has only limited authority that comes to an end once the task is carried out.

Universal Agent

The authority of a universal agent is unlimited. He can bind his principal by doing anything that is lawful and legal.

Mercantile Agents

A 'Mercantile Agent' is one who has authority to buy, sell or consign goods or to raise money on the security of goods. The following agents fall within the category of mercantile agents:

Auctioneer

An auctioneer is appointed by a seller to sell his goods by public auction. He is an agent of the seller. The auctioneer's reward is generally in the form of a commission. He has a particular lien on the goods for his charges.

Factor

He is an agent entrusted with the possession of goods for the purpose of effecting sale. He sells the goods in his own name and has the authority to receive the price and give a good discharge to the buyer. A factor has a general lien on the goods.

Broker

A broker is not entrusted with the possession of the goods in which he deals. He is employed to bring about a contractual relation between the principal and the third parties. As the broker does not have possession of the goods, he has no right of lien.

Commission Agent

He buys and sells goods or transacts business for others and receives for his services what is called a commission.

Del Credere Agent

He comes forward to bear the risk of bad debts for an extra commission that he receives from his principal called the 'del credere commission'.

the subject-matter.

TERMINATION OF AGENCY

The various modes of termination of agency have been shown below:

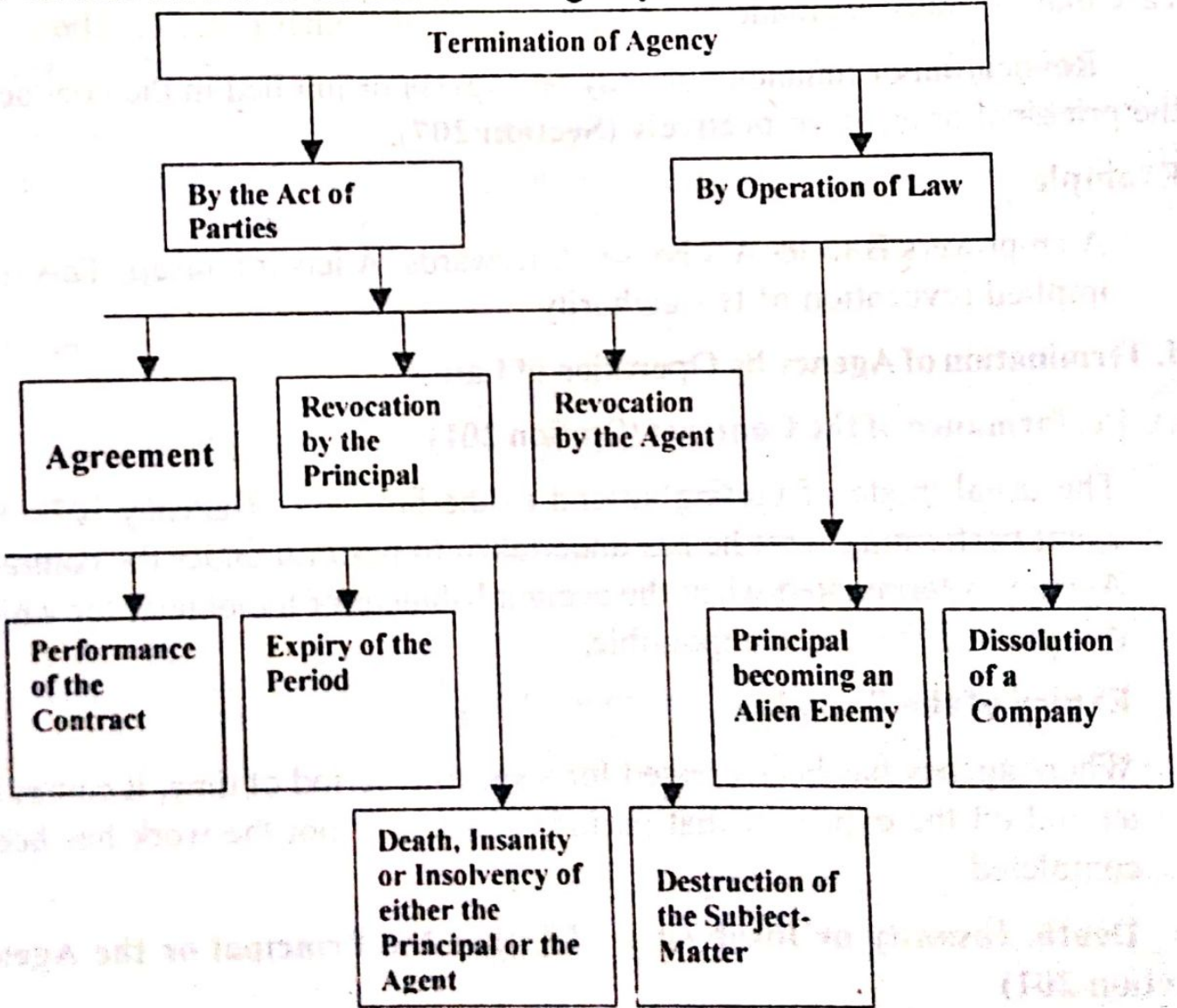


Figure 14. 4 – Various Modes of Termination of Agency

We will now discuss these.

I. Termination of Agency by the Act of the Parties –

(a) Agreement

The principal-agent relationship may be terminated by a mutual agreement between the two.

(b) Revocation by the Principal

The principal may revoke the agent's authority at any time before the agent has exercised his authority.

(c) Revocation by the Agent

The agent may renounce (give up) the business of agency by giving a reasonable notice to the principal.

Where there is an express or implied contract that the agency should be continued for any period of time, the principal must make compensation to the agent or the agent to the principal, as the case may be, in case of revocation or renunciation of the agency without sufficient cause (**Section 205**).

Reasonable notice must be given of such revocation or renunciation, otherwise the damage thereby resulting to the principal or the agent, as the case may be, must be made good to the one by the other (**Section 206**).

Revocation or renunciation may be express or implied in the conduct of the principal or agent respectively (**Section 207**).

Example:

A empowers B to let A's house. Afterwards, A lets it himself. This is an implied revocation of B's authority.

II. Termination of Agency by Operation of Law –

(a) Performance of the Contract (Section 201)

The usual mode of putting an end to the business of agency is by the agent performing what he has undertaken to perform under the contract. Agency is terminated when the accomplishment of the object, for which it is created, becomes impossible.

(b) Expiry of the Period

Where agency has been created for a specific period of time, it comes to an end on the expiry of that period, whether or not the work has been completed.

(c) Death, Insanity or Insolvency of Either the Principal or the Agent (Section 201)

The death, insanity or insolvency of either the principal or the agent puts an end to agency.

(d) Destruction of the Subject-Matter

Where the agency is created to deal with a certain subject-matter, it comes to an end by the destruction of the subject-matter.

IRREVOCABLE AGENCY

An agency that cannot be terminated becomes irrevocable. The following are the circumstances in which an agency cannot be terminated:

(a) Where the Agency is Coupled with Interest

Where the agent himself has an interest in the property that forms the subject-matter of the agency, the agency cannot, in the absence of an express contract, be terminated to the prejudice of such interest (Section 202).

Example:

X gives authority to sell his land to Y and to pay himself, out of the proceeds, the debt due to him by X. X cannot revoke this authority nor can it be terminated by his insanity or death.

