Indian Contract Act, 1872 (Special Contracts)

Chapter 2B

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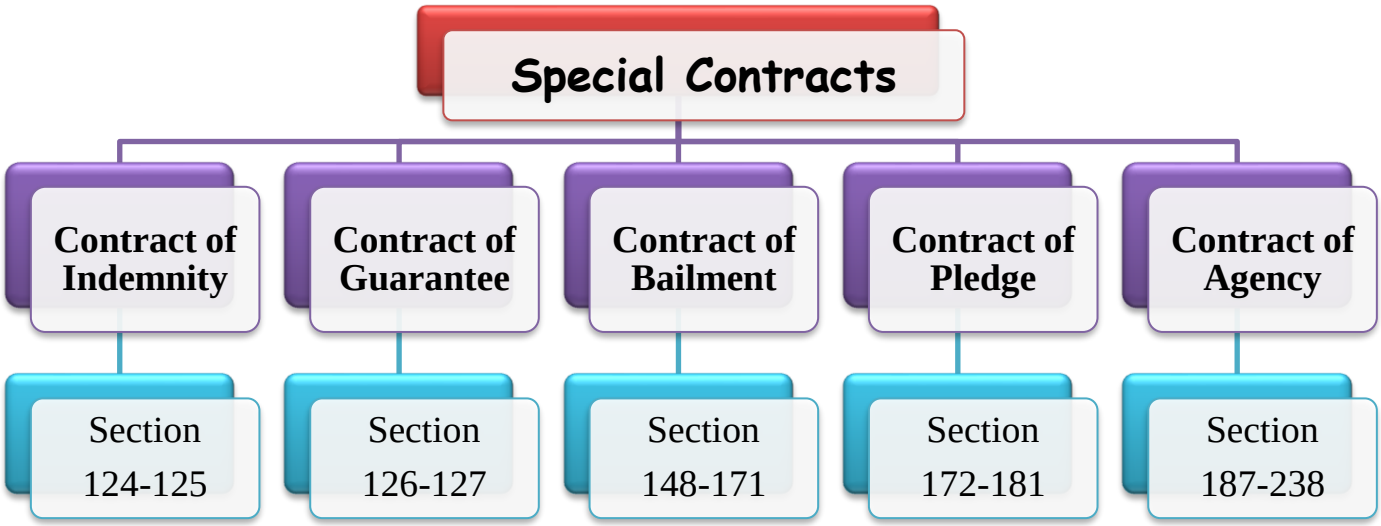
❖ Introduction:

The law relating to contract is governed by the Indian Contract Act, 1872. The Act came into force on the first day of September, 1872. The preamble to the Act says that it is an Act "to define and amend certain parts of the law relating to contract". It extends to the whole of India. The Act is by no means exhaustive on the law of contract.

The Indian Contract Act mostly deals with the general principles and rules governing contracts. The Act is divisible into two parts. The first part (Section 1-75) deals with the general principles of the law of contract, and therefore applies to all contracts irrespective of their nature. The second part (Sections 124-238) deals with certain special kinds of contracts, namely contracts of Indemnity and Guarantee, Bailment, Pledge, and Agency.



❖ Contract of Indemnity:

Definition (Section 124):

A contract, by which one party promises to save the other from loss caused to him by the conduct of the promisor himself, or by the conduct of any other person, is called a "contract of indemnity."

There are two parties in this form of contract

1. The party who promises to indemnify/ save the other party from loss is known as **'indemnifier'**,

2. The party who is promised to be saved against the loss is known as **'indemnified' or indemnity** holder.

Example 1: A may contract to indemnify B against the consequences of any proceedings which C may take against B in respect of a sum of Rs. 5000/- advanced by C to B. In consequence, when B who is called upon to pay the sum of money to C fails to do so, C would be able to recover the amount from A.

Example 2: X, a shareholder of a company lost his share certificate. He applied for the duplicate. The company agreed to issue the same on the term that X will compensate the company against the loss where any holder produces the original certificate. Here, there is contract of indemnity between X and the company.

Rights of Indemnity—holder when sued (Section 125):

The promisee in a contract of indemnity, acting within the scope of his authority, is entitled to recover from the promisor/indemnifier—

1. all damages which he may be compelled to pay in any suit in respect of any matter to which the promise to indemnify applies;

2. all costs which he may be compelled to pay in any such suit if, in bringing or defending it, he did not contravene the orders of the promisor, and acted as it would have been prudent for him to act in the absence of any contract of indemnity, or if the promisor authorised him to bring or defend the suit;

3. all sums which he may have paid under the terms of any compromise of any such suit, if the compromise was not contrary to the orders of the promisor, and was one which it would have been prudent for the promisee to make in the absence of any contract of indemnity, or if the promisor authorised him to compromise the suit.

❖ Contract of Guarantee:

Definition (Section 126):

A 'contract of guarantee' is a contract to perform the promise, or discharge the liability, of a third person in case of his default.

There are three parties in this form of contract

1. The person who gives the guarantee is called the **'surety'**.
2. The person in respect of whose default the guarantee is given is called the **'principal debtor'.**
3. The person to whom the guarantee is given is called the **'creditor'.**

Example 1: When A requests B to lend Rs. 10,000 to C and guarantees that C will repay the amount within the agreed time and that on C falling to do so, he will himself pay to B, there is a contract of guarantee. Here, B is the creditor, C the principal debtor and A the surety.

Example 2: Where 'A' obtains housing loan from LIC Housing and if 'B' promises to pay LIC Housing in the event of 'A' failing to repay, it is a contract of guarantee.

Example 3: X and Y go into a car showroom where X says to the dealer to supply latest model of Wagon R to Y. In case of Y's failure to pay, X will be paying for it. This is a contract of guarantee because X promises to discharge the liability of Y in case of his defaults.

Consideration for guarantee (Section 127):

What constitutes consideration in a case of guarantee is an important issue and is laid down in Section 127 of the Act. As per Section 127 of the Act, "anything done, or any promise made, for the benefit of the principal debtor, may be a sufficient consideration to the surety for giving the guarantee."

Example 1: B requests A to sell and deliver to him goods on credit. A agrees to do so, provided C will guarantee the payment of the price of the goods. C promises to guarantee the payment in consideration of A's promise to deliver the goods. This is a sufficient consideration for C's promise.

Example 2: A sell and delivers goods to B. C afterwards requests A to forbear to sue B for the debt for a year, and promises that if he does so, C will pay for them in default of payment by B. A agrees to forbear as requested. This is a sufficient consideration for C's promise.

Essentials of a valid Guarantee

1. Existence of a principal debt.
2. Benefit to principal debtor is sufficient consideration, but past consideration is no consideration for a contract of guarantee.
3. Consent of surety should not be obtained by misrepresentation or concealment of a material fact.
4. Can be oral or written.
5. Surety can proceeded against without proceeding against the principal debtor first.
6. If the co-surety does not join, the contract of guarantee is not valid.

❖ Distinction Between Contract of Indemnity and Contract of Guarantee

Point of distinction	Contract of Indemnity	Contract of Guarantee
Number of parties/ Parties to the contract	There are only two parties namely the indemnifier [promisor] and the indemnified [promisee]	There are three parties creditor, principal debtor and surety.
Nature of liability	The liability of the indemnifier is primary and independent	The liability of the surety is secondary as the primary liability is that of the principal debtor.
Time of liability	The liability of the indemnifier arises only on the happening of a contingency.	Liability is already in existence but specifically crystallizes when principal debtor fails.
Time to Act	The indemnifier need not necessarily act at the request of indemnified	Surety must act by extending guarantee at the request of debtor
Right to sue third party	Indemnifier cannot sue a third party for loss in his own name as there is no privity of contract. Such a right would arise only if there is an assignment in his favour.	Surety can proceed against principal debtor in his own right because he gets all the right of a creditor after discharging the debts.
Purpose	Reimbursement of loss	For the security of the creditor
Competency to contract	All parties must be competent to contract	In case of a contract of Guarantee, where a minor is a principal debtor, the contract is still valid.
Number of Contracts	Only one original and independent contract between indemnifier and indemnified.	There are 3 contracts made between– ● Creditor and principal debtor ● Creditor and Surety ● Surety and Principal debtor

❖ Nature of Surety's Liability (Section 128):

The liability of the surety is co-extensive with that of the principal debtor unless it is otherwise provided by the contract.

Analysis:

1. The term "co-extensive with that of principal debtor" means that the surety is liable for what the principal debtor is liable.
2. The liability of a surety arises only on default by the principal debtor. But as soon as the principal debtor defaults, the liability of the surety begins and runs co-extensive with the liability of the principal debtor, in the sense that the surety will be liable for all those sums for which the principal debtor is liable.
3. Where a debtor cannot be held liable on account of any defect in the document, the liability of the surety also ceases.
4. Surety's liability continues even if the principal debtor has not been sued or is omitted from being sued. In other words, a creditor may choose to proceed against a surety first, unless there is an agreement to the contrary.

Example: A guarantees to B the payment of a bill of exchange by C, the acceptor. The bill is dishonoured by C. A is liable not only for the amount of the bill but also for any interest and charges which may have become due on it.

Nature of Surety's liability can be summed up as

1. Liability of surety is of secondary nature as he is liable only on default of principal debtor.
2. his liability arises immediately on the default by the principal debtor
3. The Creditor has a right to sue the surety directly without first proceeding against principal debtor.

❖ Continuing Guarantee (Section 129):

A guarantee which extends to a series of transactions is called a "continuing guarantee". The essence of continuing guarantee is that it applies not to a specific number of transactions but to any number of transactions and makes the surety liable for the unpaid balance at the end of the guarantee.

Example 1: A, in consideration that B will employ C in collecting the rents of B's zamindari, promises B to be responsible, to the amount of Rs. 5,000 rupees, for due collection and payment by C of those rents. This is a continuing guarantee.

Example 2: A guarantees payment to B of the price of five sacks of flour to be delivered by B to C and to be paid for in a month. B delivers five sacks to C. C pays for them. Afterwards B delivers four sacks to C, which C does not pay for. The guarantee given by A was not a continuing guarantee, and accordingly he is not liable for the price of the four sacks.

In the continuing guarantee, the liability of surety continues till the performance or the discharge of all the transactions entered into or the guarantee is withdrawn.

❖ Liability of two persons, primarily liable, not affected by arrangement between them that one shall be surety on other's default (Section 132)

Where two persons contract with a third person to undertake a certain liability, and also contract with each other that one of them shall be liable only on the default of the other, the third person not being a party to such contract, the liability of each of such two persons to the third person under the first contract is not affected by the existence of the second contract, although such third person may have been aware of its existence.

Example: A and B make a joint and several promissory note to C. A makes it, in fact, as surety for B, and C knows this at the time when the note is made. The fact that A, to the knowledge of C, made the note as surety for B, is no answer to a suit by C against A upon the note.

❖ Discharge of Surety

Surety is discharged from liability on a guarantee under the following circumstances

A) By revocation of the contract of guarantee
B) By the conduct of the creditor
C) By the invalidation of the contract of guarantee

A) By revocation of the contract of guarantee

1. Revocation of continuing guarantee (Section 130):
The continuing guarantee may at any time be revoked by the surety as to future transactions by notice to the creditors.

Example 1: A, in consideration of B's discounting, at A's request, bills of exchange for C, guarantees to B, for twelve months, the due payment of all such bills to the extent of 50,000 rupees. B discounts bills for C to the extent of 20,000 rupees. Afterwards, at the end of three months, A revokes the guarantee. This revocation discharges A from all liability to B for any subsequent discount. But A is liable to B for the 20,000 rupees, on default of C.

Example 2: A guarantees to B, to the extent of 100,000 rupees, that C shall pay all the bills that B shall draw upon him. B draws upon C. C accepts the bill. A gives notice of revocation. C dishonours the bill at maturity. A is liable upon his guarantee.

2. Revocation of continuing guarantee by surety's death (Section 131):
The death of the surety operates, in the absence of any contract to the contrary, as a revocation of a continuing guarantee, so far as regards future transactions.

The estate of deceased surety is, however, liable for those transactions which had already taken place during the lifetime of the deceased. Surety's estate will not be liable for the transactions taking place after the death of surety even if the creditor had no knowledge of surety's death.

B) By the conduct of the creditor

3. By variance in terms of contract (Section 133):
Where there is any variance in the terms of contract between the principal debtor and creditor without surety's consent, it would discharge the surety in respect of all transactions taking place subsequent to such variance.

Example 1: A becomes surety to C for B's conduct as a manager in C's bank. Afterwards, B and C contract, without A's consent, that B's salary shall be raised, and that he shall become liable for one-fourth of the losses on overdrafts. B allows a customer to overdraw, and the bank loses a sum of money. A is discharged from his suretyship by the variance made without his consent, and is not liable to make good this loss.

Example 2: A guarantees C against the misconduct of B in an office to which B is appointed by C, and of which the duties are defined by an Act of the Legislature. By a subsequent Act, the nature of the office is materially altered. Afterwards, B misconducts himself. A is discharged by the change from future liability under his guarantee, though the misconduct of B is in respect of a duty not affected by the later Act.

4. By release or discharge of principal debtor (Section 134):
The surety is discharged by any contract between the creditor and the principal debtor; by which the principal debtor is released, or by any act or omission of the creditor, the legal consequence of which is the discharge of the principal debtor.

Example: A contracts with B for a fixed price to build a house for B within a stipulated time, B supplying the necessary timber. C guarantees A's performance of the contract. B omits to supply the timber. C is discharged from his suretyship.

5. Discharge of surety when creditor compounds with, gives time to, or agrees not to sue, principal debtor [Sector 135]:
A contract between the creditor and the principal debtor, by which the creditor makes a composition with, or promises to give time to, or not to sue, the principal debtor, discharges the surety, unless the surety assents to such contract.

6. Surety not discharged when agreement made with third person to give time to principal debtor [Section 136] :
Where a contract to give time to the principal debtor is made by the creditor with a third person, and not with the principal debtor, the surety is not discharged.

Example: C, the holder of an overdue bill of exchange drawn by A as surety for B, and accepted by B, contracts with M to give time to B. A is not discharged.

7. Creditor's forbearance to sue does not discharge surety [Section 137] :
Mere forbearance on the part of the creditor to sue the principal debtor or to enforce any other remedy against him does not in the absence of any provision in the guarantee to the contrary, discharge the surety.

Example: B owes to C a debt guaranteed by A. The debt becomes payable. C does not sue B for a year after the debt has become payable. A is not discharged from his suretyship.

8. Discharge of surety by creditor's act or omission impairing surety's eventual remedy [Section 139] :
If the creditor does any act which is inconsistent with the rights of the surety, or omits to do any act which his duty to the surety requires him to do, and the eventual remedy of the surety himself against the principal debtor is thereby impaired, the surety is discharged.

Example 1: B contracts to build a ship for C for a given sum, to be paid by instalments as the work reaches certain stages. A becomes surety to C for B's due performance of the contract. C, without the knowledge of A, prepays to B the last two instalments. A is discharged by this prepayment.

Example 2: A puts M as apprentice to B, and gives a guarantee to B for M's fidelity. B promises on his part that he will, at least once a month, see that M make up the cash. B omits to see this done as promised, and M embezzles. A is not liable to B on his guarantee.

C) By the invalidation of the contract of guarantee

9. Guarantee obtained by misrepresentation invalid [Section 142]:
Any guarantee which has been obtained by means of misrepresentation made by the creditor, or with his knowledge and assent, concerning a material part of the transaction, is invalid.

10. Guarantee obtained by concealment invalid [Section 143] :
Any guarantee which the creditor has obtained by means of keeping silence as to material circumstances is invalid.

Example 1: A engages B as a clerk to collect money for him, B fails to account for some of his receipts, and A in consequence calls upon him to furnish security for his duly accounting. C gives his guarantee for B's duly accounting. A does not acquaint C with B's previous conduct. B afterwards makes default. The guarantee is invalid.

Example 2: A guarantees to C payment for iron to be supplied by him to B for the amount of Rs. 2,00,000 tons. B and C have privately agreed that B should pay five rupees per ton beyond the market price, such excess to be applied in

liquidation of an old debt. This agreement is concealed from A. A is not liable as a surety.

11. Guarantee on contract that creditor shall not act on it until co- surety joins (Section 144):
Where a person gives a guarantee upon a contract that the creditor shall not act upon it until another person has joined in it as co-surety, the guarantee is not valid if that other person does not join.

❖ Rights of Surety

Rights of surety may be classified as under:
A) Rights against the creditor,
B) Rights against the principal debtor,
C) Rights against co-sureties.

A) Right against the principal debtor

1. Rights of subrogation [Section 140]:
Where, a guaranteed debt has become due, or default of the principal debtor to perform a guaranteed duty has taken place, the surety, upon payment or performance of all that he is liable for, is invested with all the rights which the creditor had against the principal debtor.
This right is known as right of subrogation. It means that on payment of the guaranteed debt, or performance of the guaranteed duty, the surety steps into the shoes of the creditor.

2. Implied promise to indemnify surety [Section 145]:
In every contract of guarantee there is an implied promise by the principal debtor to indemnify the surety. The surety is entitled to recover from the principal debtor whatever sum he has rightfully paid under the guarantee, but no sums which he has paid wrongfully.

Example 1: B is indebted to C, and A is surety for the debt. C demands payment from A, and on his refusal sues him for the amount. A defends the suit, having reasonable grounds for doing so, but is compelled to pay the amount of the debt with costs. He can recover from B the amount paid by him for costs, as well as the principal debt.

Example 2: C lends B a sum of money, and A, at the request of B, accepts a bill of exchange drawn by B upon A to secure the amount. C, the holder of the bill, demands payment of it from A, and, on A's refusal to pay, sues him upon the bill. A, not having reasonable grounds for so doing, defends the suit, and has to pay the amount of the bill and costs. He can recover from B the amount of the bill, but not the sum paid for costs, as there was no real ground for defending the action.

B) Right against the Creditor

3. Surety's right to benefit of creditor's securities [Section 141]:
A surety is entitled to the benefit of every security which the creditor has against the principal debtor at the time when the contract of suretyship is entered into, whether the surety knows of the existence of such security or not; and, if the creditor loses, or, without the consent of the surety, parts with such security, the surety is discharged to the extent of the value of the security.

Example 1: C advances to B, his tenant, 2,00,000 rupees on the guarantee of A. C has also a further security for the 2,00,000 rupees by a mortgage of B's furniture. C cancels the mortgage. B becomes insolvent, and C sues A on his guarantee. A is discharged from liability to the amount of the value of the furniture.

Example 2: C, a creditor, whose advance to B is secured by a decree, receives also a guarantee for that advance from A. C afterwards takes B's goods in execution under the decree, and then, without the knowledge of A, withdraws the execution. A is discharged.

Example 3: A, as surety for B, makes a bond jointly with B to C, to secure a loan from C to B. Afterwards, C obtains from B a further security for the same debt. Subsequently, C gives the up the further security, A is not discharged.

C) Rights against co-sureties

4. Co-sureties liable to contribute equally (Section 146):
Equality of burden is the basis of Co-suretyship. This is contained in section 146 which states that "when two or more persons are co-sureties for the same debt, or duty, either jointly, or severally and whether under the same or different contracts and whether with or without the knowledge of each other, the co-sureties in the absence of any contract to the contrary, are liable, as between themselves, to pay each an equal share of the whole debt, or of that part of it which remains unpaid by the principal debtor".

Example 1: A, B and C are sureties to D for the sum of 3,00,000 rupees lent to E. E makes default in payment. A, B and C are liable, as between themselves, to pay 1,00,000 rupees each.

Example 2: A, B and C are sureties to D for the sum of 1,00,000 rupees lent to E, and there is a contract between A, B and C that A is to be responsible to the extent of one-quarter, B to the extent of one-quarter, and C to the extent of one- half. E makes default in payment. As between the sureties, A is liable to pay 25,000 rupees, B 25,000 rupees, and C 50,000 rupees.

5. Liability of co-sureties bound in different sums (Section 147):
The principal of equal contribution is, however, subject to the maximum limit fixed by a surety to his liability. Co-sureties who are bound in different sums

are liable to pay equally as far as the limits of their respective obligations permit.

Example 1: A, B and C, as sureties for D, enter into three several bonds, each in a different penalty, namely, A in the penalty of 1,00,000 rupees, B in that of 2,00,000 rupees, C in that of 4,00,000 rupees, conditioned for D's duly accounting to E. D makes default to the extent of 3,00,000 rupees. A, B and C are each liable to pay 1,00,000 rupees.

Example 2: A, B and C, as sureties for D, enter into three several bonds, each in a different penalty, namely, A in the penalty of 1,00,000 rupees, B in that of 2,00,000 rupees, C in that of 4,00,000 rupees, conditioned for D's duly accounting to E. D makes default to the extent of 4,00,000 rupees; A is liable to pay 1,00,000 rupees, and B and C 1,50,000 rupees each.

Example 3: A, B and C, as sureties for D, enter into three several bonds, each in a different penalty, namely, A in the penalty of 1,00,000 rupees, B in that of 2,00,000 rupees, C in that of 4,00,000 rupees, conditioned for D's duly accounting to E. D makes default to the extent of 7,00,000 rupees. A, B and C have to pay each the full penalty of his bond.

❖ Contract of Bailment:

Definition (Section 148):

Bailment is the delivery of goods by one person to another for some purpose, upon a contract, that the goods shall, when the purpose is accomplished, be returned or otherwise disposed of according to the directions of the person delivering them.

There are two parties in this form of contract

1. The person delivering the goods is called the **"bailor".**
2. The person to whom they are delivered is called the **"bailee".**

Example: Where 'X' delivers his car for repair to 'Y', 'X' is the bailor and 'Y' is the bailee.

The essential characteristics of bailment

1. Bailment is based upon a contract. Sometimes it could be implied by law as it happens in the case of finder of lost goods.
2. It involves the delivery of goods from one person to another for some purposes.
3. Delivery involves change of possession from one person to another, and not change of ownership. In bailment, bailor continues to be the owner of goods as there is no change of ownership.
4. Bailment is only for moveable goods and never for immovable goods or money.
5. In bailment, possession of goods changes. Change of possession can happen by physical delivery or by any action which has the effect of placing the goods in the possession of bailee.

6. Bailee is obliged to return the goods physically to the bailor. The bailee cannot deliver some other goods, even not those of higher value.

In bailment, both custody and possession must change but not the ownership. But where a person is in custody without possession he does not became a bailee. For example servants of a master who are in custody of goods of the master do not become bailees.

Possession and custody do not however mean physical delivery of goods. Constructive delivery could also create a bailor and bailee relationship. This arises in situations where the bailee is already in possession of goods but agrees to be a bailee through a contract.

Deposit of money in a bank is not bailment since the money returned by the bank would not be identical currency notes. Similarly depositing ornaments in a bank locker is not bailment, because ornaments are kept in a locker whose key are still with the owner and not with the bank. The ornaments are in possession of the owner though kept in a locker at the bank.

Following are the popular forms of bailment

1. Delivery of goods by one person to another to be held for the bailor's use.
2. Goods given to a friend for his own use without any charge.
3. Hiring of goods.
4. Delivering goods to a creditor to serve as security for a loan.
5. Delivering goods for repair with or without remuneration.
6. Delivering goods for carriage.

❖ Types of Bailment

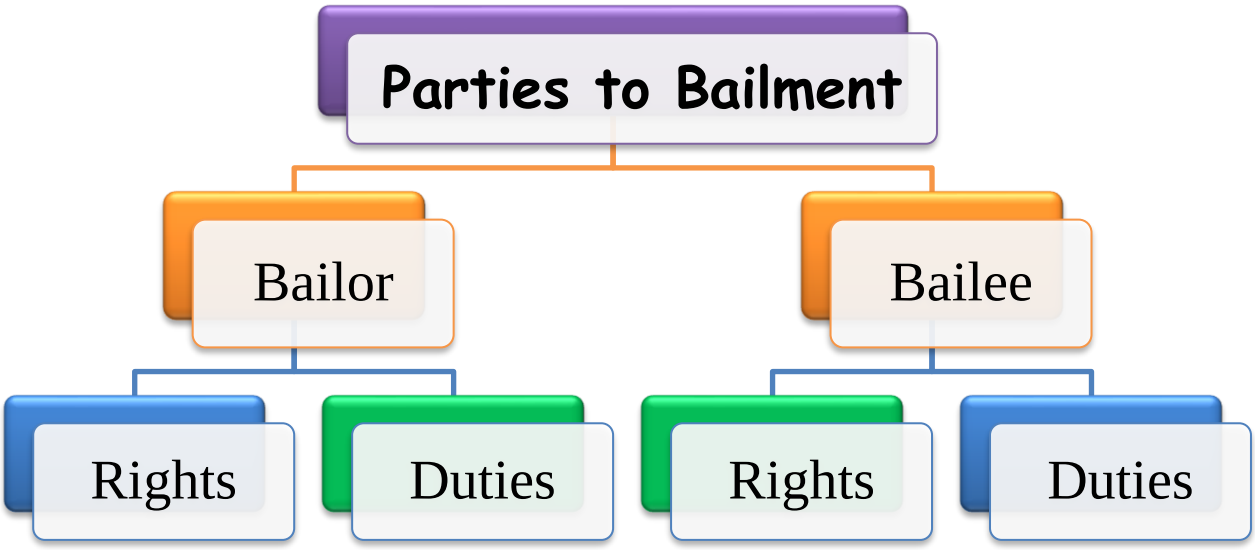
A. Gratuitous Bailment

A gratuitous bailment is one in which neither the bailor nor the bailee is entitled to any remuneration. Such a bailment may be for the exclusive benefit of the bailor, e.g., when A leaves his dog with a neighbour to be looked after in A's absence on a holiday. It may again be for exclusive benefit of the bailee, e.g., where you lend your book to a friend of yours for a week. In neither case any charge is made.

B. Bailment for Reward

This is for the mutual benefit of both the bailor and the bailee. For example, A lets out a motor-car for hire to B. A is the bailor and receives the hire charges and B is the bailee and gets the use of the car. Where, A hands over his goods to B, a carrier for carriage at a price, A is the bailor who enjoys the benefit of carriage and B is the bailee who receives a remuneration for carrying the goods.

❖ Rights & Duties of Bailor & Bailee



Duties of Bailor

1. Bailor's duty to disclose faults in goods bailed:
The bailor is bound to disclose to the bailee faults in the goods bailed, of which the bailor is aware, and which materially interfere with the use of them, or expose the bailee to extraordinary risks; and if he does not make such disclosure, he is responsible for damage arising to the bailee directly from such faults.
If the goods are bailed for hire, the bailor is responsible for such damage, whether he was or was not aware of the existence of such faults in the goods bailed.

Example 1: A lends a horse, which he knows to be vicious, to B. He does not disclose the fact that the horse is vicious. The horse runs away. B is thrown and injured. A is responsible to B for damage sustained.

Example 2: A hires a carriage of B. The carriage is unsafe, though B is not aware of it, and A is injured. B is responsible to A for the injury.

2. Repayment by bailor of necessary expenses:
Where, by the conditions of the bailment, the goods are to be kept or to be carried, or to have work done upon them by the bailee for the bailor, and the bailee is to receive no remuneration, the bailor shall repay to the bailee the necessary expenses incurred by him for the purpose of the bailment.

3. Bailor's responsibility to bailee:
The bailor is responsible to the bailee for any loss which the bailee may sustain by reason that the bailor was not entitled to make the bailment, or to receive back the goods or to give directions, respecting them.

4. Duty to indemnify the bailee in case of premature termination of gratituous bailment:

The bailor must compensate the bailee for the loss or damage suffered by the bailee that is in excess of the benefit received, where he had lent the goods gratuitously and decides to terminate the bailment before the expiry of the period of bailment.

5. Duty to receive back the goods

The bailor is bound to accept the goods after the purpose is accomplished. If bailor fails, he is responsible for any loss or damage to the goods and has to reimburse for expenses incurred by the bailee for keeping the goods safely.

Rights of Bailor

1. Liability of bailee making unauthorised use of goods bailed:

If the bailee makes any use of the goods bailed, which is not according to the conditions of the bailment, he is liable to make compensation to the bailor for any damage arising to the goods from or during such use of them.

Example 1: A lends a horse to B for his own riding only. B allows C, a member of his family, to ride the horse. C rides with care, but the horse accidentally falls and is injured. B is liable to make compensation to A for the injury done to the horse.

Example 2: A hires a horse in Calcutta from B expressly to march to Benares. A rides with due care, but marches to Cuttack instead. The horse accidentally falls and is injured. A is liable to make compensation to B for the injury to the horse.

2. Effect of mixture, with bailor's consent, of his goods with bailee's:

If the bailee, with the consent of the bailor, mixes the goods of the bailor with his own goods, the bailor and the bailee shall have an interest, in proportion to their respective shares, in the mixture thus produced.

3. Effect of mixture, without bailor's consent, if the goods can be separated:

If the bailee, without the consent of the bailor, mixes the goods of the bailor with his own goods, and the goods can be separated or divided, the property in the goods remains in the parties respectively; but the bailee is bound to bear the expenses of separation or division, and any damage arising from the mixture.

Example: A bails 100 bales of cotton marked with a particular mark to B. B, without A's consent, mixes the 100 bales with other bales of his own, bearing a different mark; A is entitled to have his 100 bales returned, and B is bound to bear all the expenses incurred in the separation of the bales, and any other incidental damage.

4. Effect of mixture, without bailor's consent, if goods cannot be separated:

If the bailee, without the consent of the bailor, mixes the goods of the bailor with his own goods, in such a manner that it is impossible to separate the goods bailed from the other goods and deliver them back, the bailor is entitled to be compensated by the bailee for the loss of the goods.

Example: A bails a barrel of Cape flour worth Rs. 45 to B. B, without A's consent, mixes the flour with country flour of his own, worth only Rs. 25 a barrel. B must compensate A for the loss of his flour.

5. Termination of bailment by bailee's act inconsistent with conditions:
A contract of bailment is voidable at the option of the bailor, if the bailee does any act with regard to the goods bailed, inconsistent with the conditions of the bailment.
Example: A lets to B, for hire, a horse for his own riding. B drives the horse in his carriage. This is, at the option of A, a termination of the bailment.

6. Bailor entitled to increase or profit from goods balled:
In the absence of any contract to the contrary, the bailee is bound to deliver to the bailor, or according to his directions, any increase or profit which may have accrued from the goods bailed.
Example: A leaves a cow in the custody of B to be taken care of. The cow has a calf, B is bound to deliver the calf as well as the cow to A.

7. Premature termination of Gratuitous bailment:
Bailor in the case of gratuitous bailment has a right to demand the goods back even before the expiry of the period of bailment. If in the process, loss is caused to the bailee, bailor is bound to compensate.

Duties of Bailee

1. Duty to take utmost care of goods:
The bailee must take as much care of the goods bailed to him as a man of ordinary prudence.

2. No unauthorized use of goods:
Bailee has no right to make unauthorized use of goods bailed. If Bailee does, Bailor can cancel the bailment.

3. No right to mix the goods bailed:
Bailee has no right to mix the goods bailed with his own goods without the consent of the bailor. If bailee does, bailor can ask damages.

4. Return of goods bailed on expiration of time or accomplishment of purpose:
It is the duty of bailee to return, or deliver according to the bailor's directions, the goods bailed without demand, as soon as the time for which they were bailed, has expired, or the purpo.se for which they were bailed has been accomplished.

5. Bailee's responsibility when goods are not duly returned:
If, by the default of the bailee, the goods are not returned, delivered or tendered at the proper time, he is responsible to the bailor for any loss, destruction or deterioration of the goods from that time.

6. Bailment by several joint owners:
If several joint owners of goods bail them, the bailee may deliver them back to, or according to the directions of, one joint owner without the consent of all, in the absence of any agreement to the contrary.

7. Duty to return any income or increase over goods:

Bailee has a duty to return any extra profit accruing from goods bailed. Where A bails his cow to 'B' and if the cow gives birth to a calf, 'B' must return both the cow and the calf to 'A'

Rights of Bailee

1. Right to claim compensation for non-disclosure of defect

Right to claim compensation for any loss arising from non-disclosure of known defects in the goods.

2. Indemnification of loss due to defective title

Right to claim indemnification for any loss or damage as a result of defective title.

3. Right to deliver the goods back to bailor

Right to deliver back the goods to bailor according to the agreement or directions.

If the bailor has no title to the goods, and the bailee, in good faith, delivers them back to, or according to the directions of, the bailor, the bailee is not responsible to the owner in respect of such delivery.

4. Right to exercise lien over the goods

Right to exercise his 'right of lien'. This right of lien is a right to retain the goods and is exercisable where charges due in respect of goods retained have not been paid. The right of lien is a particular lien for the reason that the bailee can retain only these goods for which the bailee has to receive his fees/remuneration.

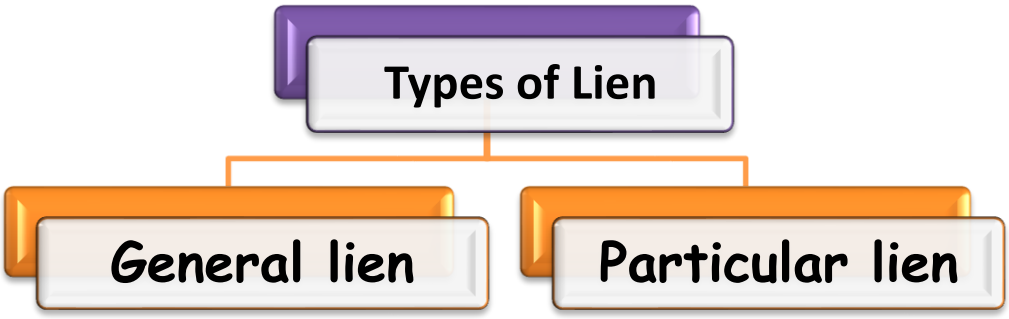
5. Right against third parties

Right to take action against third parties if that party wrongfully denies the bailee of his right to use the goods

❖ Lien:

A claim upon a part of another's property that arises because of an unpaid debt related to that property and that operates as an encumbrance on the property until the debt is satisfied.

❖ Types of Lien:



1. A general lien is a right to detain any property belonging to the other and in the possession of the person trying to exercise the lien in respect of any payment lawfully due to him. Thus, a general lien is the right to retain the property of another for a general balance of accounts but

Example: 'A' borrows Rs. 500/- from the bank without security and subsequently again borrows another Rs. 1000/- but with security of say certain jewellery. In this illustration, even where 'A' has returned Rs. 1000/- being the second loan, the banker can retain the jewellery given as security to the second loan towards the first loan which is yet to be repaid.

2. A particular lien is a right to retain only for a charge on account of labour employed or expenses bestowed upon the identical property detained. The right of general lien is expressly given by Section 171 of the Indian Contract Act to bankers, factors, warfingers, attorneys of High Court and policy-brokers, provided there is no agreement to the contrary.

Example 1: A delivers a rough diamond to B, a jeweller, to be cut and polished, which is accordingly done. B is entitled to retain the stone till he is paid for the services he has rendered.

Example 2: A gives cloth to B, a tailor, to make into a coat. B promises A to deliver the coat as soon as it is finished, and to give a three months' credit for the price. B is not entitled to retain the coat until he is paid.

❖ Distinction Between general lien and particular lien

Point of distinction	General Lien	Particular Lien
Meaning	It is a right to detain/retain any goods of the bailor for general balance of account outstanding.	It is a right exercisable only on such goods in respect of which charges are due.
Recognition	A general lien is not automatic but is recognized through on agreement. It is exercised by the bailee only by name	It is automatic.
When Exercisable?	It can be exercised against goods even without involvement of labour or skill.	It comes into play only when some labour or skill is involved.
Example	Bankers, factors, wharfingers, policy brokers etc. are entitled to general lien.	Bailee, finder of goods, pledgee, unpaid seller, agent, partner etc are entitled to particular lien.

❖ Contract of Pledge:

Definition (Section 172):

The bailment of goods as security for payment of a debt or performance of a promise is called "pledge".

There are two parties in this form of contract

1. **Pawner** – The bailor in this case is called as pawner;
2. **Pawnee** – the bailee in this case is called as pawnee.

Pledge is a variety or specie of bailment. It is bailment of goods as security for payment of debt or performance of a promise. The person who pledges [or bails] is known as pledgor or also as pawnor, the bailee is known as pledgee or also as pawnee. In pledge, there is no change in ownership of the property. Under exceptional circumstances, the pledgee has a right to sell the property pledged. Section 172 to 182 of the Indian Contract Act, 1872 deal specifically with the bailment of pledge.

Example: A lends money to B against the security of jewellery deposited by B with him i.e. A. This bailment of jewellery is a pledge as security for lending the money. B is a pawnor and the A is a pawnee.

The essential characteristics of Pledge

1. There must be bailment for security for payment of debt/ performance of a promise
2. Goods must be the subject matter of the contract of pledge.
3. The goods pledged must be in existence
4. There must be a delivery of goods from pawnor to pawnee

❖ Rights of Pawnor & Pawnee

Rights of a pawnor

1. Right to Redeem:
If a time is stipulated for the payment of the debt, or performance of the promise, for which the pledge is made, and the pawnor makes default in payment of the debt or performance of the promise at the stipulated time, he may redeem the goods pledged at any subsequent time before the actual sale of them; but he must, in that case, pay, in addition, any expenses which have arisen from his default.

2. Pledge where pawnor has only a limited interest:
Where a person pledges goods in which he has only a limited interest, the pledge is valid to the extent of that interest.

Rights of Pawnee:

1. Right of retainer:

The pawnee may retain the goods pledged, not only for payment of the debt or the performance of the promise, but for the interest, of the debt, and all necessary expenses incurred by him in respect of the possession or for the preservation of the goods pledged.

Example: Where 'M' pledges stock of goods for certain loan from a bank, the bank has a right to retain the stock not only for adjustment of the loan but also for payment of interest.

2. Right to retention of subsequent debts:

Pawnee has a right to retain the goods pledged towards subsequent advances as well, however subject to such right being specifically contemplated in the contract.

3. Pawnee's right as to extraordinary expenses Incurred:

The pawnee is entitled to receive from the pawnor extraordinary expenses incurred by him for the preservation of the goods pledged.

4. Pawnee's right where pawnor makes default:

If the pawnor makes default in payment of the debt, or performance, at the stipulated time of the promise, in respect of which the goods were pledged, the pawnee may bring a suit against the pawnor upon the debt or promise, and retain the goods pledged as a collateral security; or he may sell the thing pledged on giving the pawn or reasonable notice of the sale.

If the proceeds of such sale are less than the amount due in respect of the debt or promise, the pawnor is still liable to pay the balance. If the proceeds of the sale are greater than the amount so due, the pawnee shall pay over the surplus to the pawnor.

5. Pledge by person in possession under voidable contract:

When the pawnor has obtained possession of the goods pledged by him under a contract voidable under section 19 or section 19A, but the contract has not been rescinded at the time of the pledge, the pawnee acquires a good title to the goods, provided he acts in good faith and without notice of the pawnor's defect of title.

❖ **Pledge by Mercantile Agents**

Where a mercantile agent is, with the consent of the owner, in possession of goods or the documents of title to goods, any pledge made by him, when acting in the ordinary course of business of a mercantile agent, shall be as valid as if he were expressly authorised by the owner of the goods to make the same; provided that the pawnee acts in good faith and has not at the time of the pledge notice that the Pawnor has no authority to pledge.

Analysis: Though generally only a owner of goods can pledge, the Act recognizes the right of certain mercantile agents to pledge provided it is done with the consent of the owner of the goods. Such a pledge done in the ordinary course of business is valid.

Pledge in this case can be effected through pledge of documents like a bill of lading or a railway receipt etc.

❖ Distinction Between Bailment & Pledge

Basis of Difference	Bailment	Pledge
1. Meaning	It's a contract where goods are entrusted upon by the bailor to the bailee for the fulfillment of certain objective after which the good/s is returned to the owner.	It's a peculiar kind of bailment for security for a debt owed to that person or performance of a contract owned to that person.
2. Parties	In this case, there are two parties; Bailor - who gives the goods for a certain purpose & Bailee- who is the receiver of the good.	In this case, there are two parties; Pawnor - who gives his good as security for debt & pawnee-who receives the good.
3. Sections	It's defined under section 148.	It's defined under section 172
4. Considerations	In the contract of bailment, consideration may be involved or may be missing. It depends upon the contractual terms.	Since the whole concept of the pledge is that it's a security for a debt so the involvement of consideration is important or else there will be no contract of pledge.
5. Right to sell the good	The bailee has no right to sell the good but has the duty to return it after the fulfillment of the purpose.	If the debt is not paid then pawnee can sell the good and recover the amount due.
6. Purpose	The purpose of undertaking a bailment contract can be anything.	The main purpose of undertaking this contract is for ensuring security against the payment of the debt.

7. Use of goods	The bailee can use the goods to the extent allowed by the bailor for the specified purpose only.	In this case, the pawnee can never use the good/s for any purpose.
8. Lien	Bailee can use the lien over the good/s but only for labour and service	Pledgee also exercises the lien over the goods but for the non-payment of the interest.

❖ Contract of Agency:

A contract of agency is nothing but relation between two person where by one is known as principal and other as agent. The relationship of agency arises whenever one person called the agent has authority to act on behalf of another called the principal. An agent is not a mere connecting link between principal and third party. He has the power to make the principal answerable to third parties for his conduct.

The Indian Contract Act, 1872 does not define the word 'Agency'. However the word '**Agent'** is defined as "a person employed to do any act for another or to represent another in dealings with third persons". The person for whom the act is done or who is so represented is called "**Principal**".

❖ Appointment and Authority of Agents

Who may employ 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." Thus a minor or a person of unsound mind cannot appoint an agent.

Who may be an agent: Section 184 provides that "as between the principal and third persons any person may become an agent, but no person who is not of the age of majority and of sound mind can become an agent, so as to be responsible to his principal according to the provisions in that behalf herein contained.

Section 184 of the Contract Act provides that any person may become an agent. In other words, even a minor can become an agent and the principal can be bound by his acts.

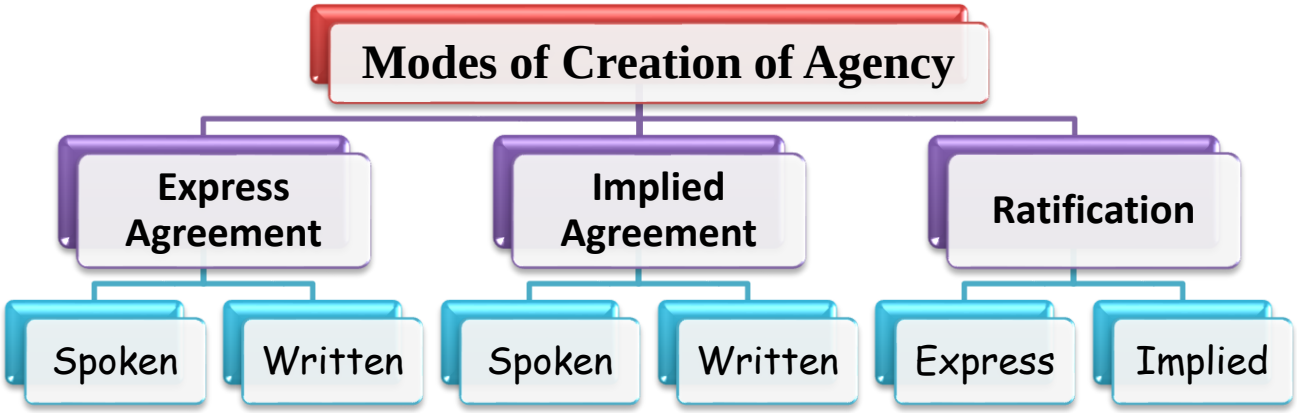
Since, agent is a mere connecting link between the principal and the third party, it is immaterial whether or not the agent is legally competent to contract. Thus, there is no bar to the appointment of a minor as an agent. However, in considering the contract of agency itself (i.e. the relation between principal and agent), the contractual capacity of the agent becomes important.

Thus, if the agent happens to be a person incapable of contracting, then the principal cannot hold the agent liable, in case of his misconduct or where the agent has been negligent in performance of his duties.

Example: P appoints Q, a minor, to sell his car for not less than Rs. 2,50,000. Q sells it for Rs. 2,00,000. P will be held bound by the transaction and further shall have no right against Q for claiming the compensation for having not obeyed the instructions, since Q is a minor and a contract with a minor is 'void-ab-initio'.

Consideration not necessary: According to Section 185, no consideration is necessary to create an agency. The acceptance of the office of an agent is regarded as a sufficient consideration for the appointment.

❖ Modes of Creation of Agency:



According to Section 186, the authority of an agent may be express or implied.

Express Authority: An authority is said to be express when it is given by words, spoken or written.

Example: A is residing in Delhi and he has a house in Kolkata. A appoints B by a deed called the power of attorney, as a caretaker of his house. Agency is created by express agreement.

Implied Authority: 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.

Example: A owns a shop in Serampore, living himself in Kolkata and visiting the shop occasionally. The shop is managed by B, and he is in the habit of ordering goods from C in the name of A for the purposes of the shop, and of paying for them out of A's funds with A's knowledge. B has an implied authority from A to order goods from C in the name of A for the purposes of the shop.

❖ Extent of Agent's Authority

The extent of an agent's authority, whether expressed or implied is determined by:

(a) the nature of the act or the business he is appointed to do

(b) things which are incidental to the business or are usually done in the course of

such business,
(c) the usage of trade or business.

Whatever be the nature or extent of the agent is authority, it will always include the authority to do:
(1) every lawful thing necessary for the purpose of carrying it out,
(2) every lawful thing justified by various customs of trades,
(3) in an emergency, all such acts for the purpose of protecting the principal from loss as will be done by a person of ordinary prudence in his own case under similar circumstances.

The agent's authority is governed by two principles, namely
(a) in normal circumstances and .
(b) in emergency.

(a) Agent's authority in normal circumstances: An agent having an authority to do an act has authority to do every lawful thing which is necessary in order to do such act.
An agent having an authority to carry on a business has authority to do every lawful thing necessary for the purpose, or usually done in the course, of conducting such business.
Example 1: A is employed by B, residing in London, to recover at Mumbai a debt due to B. A may adopt any legal process necessary for the purpose of recovering the debt, and may give a valid discharge for the same.
Example 2: A constitutes B as his agent to carry on his business of a shipbuilder. B may purchase timber and other materials, and hire workmen, for the purposes of carrying on the business.

(b) 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.

To constitute a valid agency in an emergency, following conditions must be satisfied. Agent should not be a in a position or have any opportunity to communicate with his principal within the time available.

1. There should have been actual and definite commercial necessity for the agent to act promptly.
2. the agent should have acted bonafide and for the benefit of the principal.
3. the agent should have adopted the most reasonable and practicable course under the circumstances, and
4. the agent must have been in possession of the goods belonging to his principal and which are the subject of contract.

Example 1: An agent for sale may have goods repaired if it be necessary.

Example 2: A consigns provisions to B at Goa, with directions to send them immediately to C at Mumbai. B may sell the provisions at Goa, if they will not bear the journey to Goa without spoiling.

❖ Sub-Agents

A "Sub-agent" is a person employed by, and acting under the control of, the original agent in the business of the agency.

Analysis: Sub agency refers to case where an agent appoints another agent. The appointment of sub agent is not lawful, because the agent is a delegatee and a delegatee cannot further delegate. This is based on the Latin principle **"delegatus non potest delegare".**

A contract of agency is of a fiduciary character. It is based on the confidence reposed by the principal in the agent and that is why a delegatee cannot further delegate.

When agent cannot delegate: An agent cannot lawfully employ another to perform acts which he has expressly or impliedly undertaken to perform personally, unless by the ordinary custom of trade a sub-agent may, or from the nature of the agency, a sub-agent must, be employed.

Exception where an agent can appoint Sub-agent:

1. The appointment of a sub agent would be valid if the terms of appointment originally contemplated it.
2. Sometimes customs of the trade may provide for appointment of sub agents. In both these cases the sub agent would be treated as the agent of the principal.
3. Where in the course of the agent's employment, unforeseen emergency arise which make it necessary for him to delegate authority.

Representation of principal by sub-agent properly appointed:
Where a sub-agent is properly appointed, the principal is, so far as regards third persons, represented by the sub-agent, and is bound by and responsible for his acts as if he were an agent originally appointed by the principal.

(1) Agents responsibility for sub agents: The agent is responsible to the principal for the acts of the sub-agent.

(2) Sub-agents responsibility: The sub-agent is responsible for his acts to the agent, but not to the principal, except in case of fraud or wilful wrong.

Agent's responsibility for sub-agent appointed without authority: Where an agent, without having authority to do so, has appointed a person to act as a sub-agent,

(1) the agent stands towards such person in the relation of a principal to an agent, and is responsible for his acts both to the principal and to third persons;

(2) the principal is not represented by or responsible for the acts of the sub agent, the sub agent is not responsible to the principal at all. He is answerable only to the agent.

❖ Substituted Agent

Substituted Agent is a person appointed by the agent to act for the principal, in the business of agency, with the knowledge and consent of the principal.

Substituted agents are not sub agents. They are agents of the principal. Where the principal appoints an agent and if that agent identifies another person to carry out the acts ordered by principal, then the second person is not to be treated as a sub agent but only as an agent of the original principal.

Relation between principal & person duly appointed by agent to act in business of agency: Where an agent, holding an express or implied authority to name another person to act for the principal in the business of the agency, has named another person accordingly, such person is not a sub-agent, but an agent of the principal for such part of the business of the agency as is entrusted to him.

Example 1: A directs B, his solicitor, to sell his estate by auction, and to employ an auctioneer for the purpose. B names C, an auctioneer, to conduct the sale. C is not a sub-agent, but is A's agent for the conduct of the sale.

Example 2: A authorizes B, a merchant in Kolkata, to recover the moneys due to A from C & Co. B instructs D, a solicitor, to take legal proceedings against C &Co. for the recovery of the money. D is not a sub-agent, but is a solicitor for A.

Agent's duty in naming such person: In selecting such agent for his principal, an agent is bound to exercise the same amount of discretion as a man of ordinary prudence would exercise in his own case; and, if he does this, he is not responsible to the principal for the acts or negligence of the agent so selected.

Analysis: While selecting a "substituted agent" the agent is bound to exercise same amount of diligence as a man of ordinary prudence and if he does so he will not be responsible for acts or negligence of the substituted agent.

Example 1: A instructs B, a merchant, to buy a ship for him. B employs a ship surveyor of good reputation to choose a ship for A. The surveyor makes the choice negligently and the ship turns out to be unseaworthy and is lost. B is not, but the surveyor is, responsible to A.

Example 2: A consigns goods to B, a merchant, for sale B, in due course, employs an auctioneer in good credit to sell the goods of A, and allows the auctioneer to receive the proceeds of the sale. The auctioneer afterwards becomes insolvent without having accounted for the proceeds. B is not responsible to A for the proceeds.

❖ Difference Between Sub-Agent And Substituted Agent

Both a sub-agent and a substituted agent are appointed by the agent. But, however, the following are the points of distinction between the two.

1. A sub-agent does his work under the control of agent but a substituted agent works under the instructions of the principal.

2. The agent not only appoints a sub-agent but also delegates to him a part of his own duties. The agent does not delegate any part of his task to a substituted agent.

3. Privity of contract is established between a principal and a substituted agent. But

there is no privity of contract between the principal and the sub-agent.

4. The sub-agent is responsible to the agent alone and is not generally responsible to the principal. But a substituted agent is responsible to the principal and not to the original agent who appointed him.

5. The agent is responsible to the principal for the acts of the sub-agent, but he is not liable for those of the substituted agent, provided he has taken due care in selecting him.

6. In the case of a substituted agent, the agent's duty ends once he has named him, but in the case of a sub-agent the agent remains answerable for the acts of the sub-agent as long as sub-agency continues.

❖ Ratification

Where acts are done by one person on behalf of another, but without his knowledge or authority, he may elect to ratify or to disown such acts. If he ratifies them, the same effects will follow as if they had been performed by his authority.

Essentials of a valid Ratification:

1. Ratification may be expressed or Implied [Section 197]:

Ratification may be expressed or may be implied in the conduct of the person on whose behalf the acts are done.

Example 1: A, without authority, buys goods for B. Afterwards B sells them to C on his own account; B's conduct implies a ratification of the purchase made for him by A.

Example 2: A, without B's authority, lends B's money to C. Afterwards B accepts interest on the money from C. B's conduct implies a ratification of the loan.

2. Knowledge requisite for valid ratification [Section 198]:

No valid ratification can be made by a person whose knowledge of the facts of the case is materially defective.

Example: A has an authority from P to buy certain goods at the market rate. He buys at a higher rate but P accepts the purchase. Afterwards P comes to know that the goods purchased by A for P belonged to A himself. The ratification is not binding on P.

If however the alleged principal is prepared to take the risk of what the purported agent has done, he can choose to ratify without full knowledge of facts.

3. Effect of ratifying unauthorized act forming part of a transaction [Section 199]:

A person ratifying any unauthorized act done on his behalf ratifies the whole of the transaction of which such act formed a part.

There can be ratification of an act in entirely or its rejection in entirely. The principal cannot ratify a part of the transaction which is beneficial to him and reject the rest.

4. Ratification of unauthorized act cannot injure third person [Section 200]:

An act done by one person on behalf of another, without such other person's authority, which, if done with authority, would have the effect of subjecting a third person to damages, or of terminating any right or interest of a third person, cannot, by

ratification, be made to have such effect. In other words, when the interest of third parties is affected, the principle of ratification does not apply. Ratification cannot relate back to the date of contract if third party has in the intervening time acquired rights.

Example 1: A, not being authorized thereto by B, demands on behalf of B, the delivery of a chattel, the property of B, from C, who is in possession of it. This demand cannot be ratified by B, so as to make C liable for damages for his refusal to deliver.

Example 2: A holds a lease from B, terminable on three months' notice. C, an unauthorized person, gives notice of termination to A. The notice cannot be ratified by B, so as to be binding on A.

5. Ratification within reasonable time:

Ratification must be made within a reasonable period of time.

6. Communication of Ratification:

Ratification must be communicated to the other party.

7. Act to be ratified must be valid:

Act to be ratified should not be void or illegal, for e.g. payment of dividend out of capital is void and cannot be ratified.

❖ Modes of Termination of Agency:

1. By the performance of the contract of agency;
2. By an agreement between the principal and the agent;
3. By expiration of the period fixed for the contract of agency;
4. By the death of the principal or the agency;
5. By the insanity of either the principal or the agent;
6. By the insolvency of the principal, and in some cases that of the agent;
7. Where the principal or agent is an incorporated company, by its dissolution;
8. By the destruction of the subject-matter;
9. By the renunciation of his authority by the agent;
10. By the revocation of authority by the principal.

Termination of agency, where agent has an interest in subject-matter [Section 202]:

Where the agent has himself an interest in the property which 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.

Example 1: A gives authority to B to sell A's land, and to pay himself, out of the proceeds, the debts due to him from A. A cannot revoke this authority, nor can it be terminated by his insanity or death.

When principal may revoke agent's authority [Section 203]:

The principal may, save as is otherwise provided by the last preceding section, revoke the authority given to his agent at any time before the authority has been exercised so as to bind the principal.

Revocation where authority has been partly exercised [Section 204]:

The principal cannot revoke the authority given to his agent after the authority has been partly exercised so far as regards such acts and obligations as arise for acts already done in the agency.

Example 1: A authorizes 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 so far as regards payment for the cotton.

Example 2: A authorizes 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 A's name, and so as not to render himself personally liable for the price. A can revoke B's authority to pay for the cotton.

Compensation for revocation by principal, or renunciation by agent [Section 205]:

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, for any previous revocation or renunciation of the agency without sufficient cause.

Notice of revocation or renunciation [Section 206]:

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.

Revocation and renunciation may be expressed or implied [Section 207]:

Revocation and renunciation may be expressed or may be implied in the conduct of the principal or agent respectively.

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

When termination of agent's authority takes effect as to agent, and as to third persons [Section 208]:

The termination of the authority of an agent doesnot, so far as regards the agent, take effect before it becomes known to him, or, so far as regards third persons, before it becomes known to them.

Example 1: A directs B to sell goods for him, and agrees to give B five per cent commission on the price fetched by the goods. A afterwards, by letter, revokes B's authority. B, after the letter is sent, but before he receives it sells the goods for Rs. 1,00,000. The sale is binding on A, and B is entitled to ` 5,000 as his commission.

Example 2: A, at Chennai, by letter directs B to sell for him some cotton lying in a warehouse in Mumbai, and afterwards, by letter, revokes his authority to sell, and directs B to send the cotton to Chennai. B, after receiving the second letter, enters into a contract with C, who knows of the first letter, but not of the second, for the sale to him of the cotton. C pays B the money, with which B absconds. C's payment is good as against A.

Example 3: 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.

Agent's duty on termination of agency by principal's death or insanity [Section 209]:

When an agency is terminated by the principal dying or becoming of unsound mind, the agent is bound to take, on behalf of the representatives of his late principal, all reasonable steps for the protection and preservation of the interests entrusted to him.

Termination of sub-agent's authority [Section 210]:

The termination of the authority of an agent causes the termination (subject to the rules herein contained regarding the termination of an agent's authority) of the authority of all sub-agents appointed by him.

❖ Duties And Obligations of An Agent

1. To conduct the business of agency according to the principal's directions [Sec 211]:

An agent is bound to conduct the business of his principal according to the direction given by the principal, or, in the absence of any such directions, according to the custom which prevails in doing business of the same kind at the place where the agent conducts such business. When the agent acts otherwise, if any loss be sustained, he must make it good to his principal, and, if any profit accrues, he must account for it.

Example 1: A, an agent engaged in carrying on for B a business, in which it is the custom to invest from time to time, at interest, the moneys which may be in hand, omits to make such investment. A must make good to B the interest usually obtained by such investment.

Example 2: B, a broker, in whose business it is not the custom to sell on credit, sells goods of A on credit to C, whose credit at the time was very high. C, before payment, becomes insolvent. B must make good the loss to A.

2. The agent should conduct the business with skill and diligence that is generally possessed by persons engaged in similar business:

According to section 212, an agent is bound to conduct the business of the agency with as much skill as is generally possessed by persons engaged in similar business, unless the principal has notice of his want of skill.

The agent is always bound to act with reasonable diligence, and to use such skill as he possesses; and to make compensation to his principal in respect of the direct consequences of his own neglect, want of skill or misconduct, but not in respect of loss of damage which are indirectly or remotely caused by such neglect, want of skill or misconduct.

Example 1: A, a merchant in Kolkata, has an agent, B, in London, to whom a sum of money is paid on A's account, with orders to remit. B retains the money for a considerable time. A, in consequence of not receiving the money, becomes insolvent. B is liable for the money and interest from the day on which it ought to have been paid, according to the usual rate, and for any further direct loss- as, e.g. by variation of rate of exchange-but not further.

Example 2: A, an agent for the sale of goods, having authority to sell on credit, sells to B on credit, without making the proper and usual enquiries as to the solvency of B. B, at the time of such sale is insolvent. A must make compensation to his principal in respect of any loss thereby sustained.

Example 3: A, an insurance-broker, employed by B to effect an insurance on a ship, omits to see that the usual clauses are inserted in the policy. The ship is afterwards

lost. In consequence of the omission of the clauses nothing can be recovered from the underwriters. A is bound to make good the loss to B.

Example 4: A, a merchant in England, directs B, his agent at Mumbai, who accepts the agency, to send him 100 bales of cotton by a certain ship. B, having it in his power to send the cotton, omits to do so. The ship arrives safely in England. Soon after her arrival the price of cotton rises. B is bound to make good to A the profit which he might have made by the 100 bales of cotton at the time the ship arrived, but not any profit he might have made by the subsequent rise.

3. To render proper accounts [Section 213]:

An agent is bound to render proper accounts to his principal on demand. Rendering accounts does not mean showing the accounts but the accounts supported by vouchers.

4. Agent' duty to communicate with principal [Section 214]:

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.

5. Repudiation of the transaction by principal [Section 215]:

If an agent deals on his own account in the business of the agency, without first obtaining the consent of his principal and acquainting him with all material circumstances which have come to his own knowledge on the subject, the principal may repudiate the transaction, if the case shows either that any material fact has been dishonestly concealed from him by the agent, or that the dealings of the agent have been disadvantageous to him.

Example 1: A directs B to sell A's estate. B buys the estate for himself in the name of C. A, on discovering that B has bought the estate for himself, may repudiate the sale if he can show that B has dishonestly concealed any material fact, or that the sale has been disadvantageous to him.

Example 2: A directs B to sell A's estate. B, on looking over the estate before selling it, finds a mine on the estate which is unknown to A. B informs A that he wishes to buy the estate for himself, but conceals the discovery of the mine. A allow B to buy, in ignorance of the existence of the mine. A, on discovering that B know of the mine at the time he bought the estate, may either repudiate or adopt the sale at his option.

6. Not to deal on his own account [Section 216]:

If an agent, without the knowledge of his principal deals in the business of the agency on his own account instead of on account of his principal, the principal is entitled to claim from the agent any benefit which may have resulted to him from the transaction.

Example: A directs B, his agent, to buy a certain house for him. B tells A it cannot be bought, and buys the house for himself. A may, on discovering that B has bought the house, compel him to sell it to A at the price he gave for it.

7. Agent's duty to pay sums received for principal [Section 218]:

Subject to such deductions, the agent is bound to pay to his principal all sums received on his account.

❖ Rights of An Agent

1. Right of retain out of sums received on principal's account [Section 217]:

This section empowers the agent to retain, out of any sums received on account of the principal in the business of the agency for the following payments:

(a) all moneys due to himself in respect of advances made
(b) in respect of expenses properly incurred by him in conducting such business
(c) such remuneration as may be payable to him for acting as agent.

2. Right to remuneration [Section 219]:

The agent in the normal course is entitled for remuneration as per the contract. In the absence of any agreed amount of remuneration, he is entitled for usual remuneration which is customary in the business. However he is not entitled for any remuneration for acts done through misconduct/negligence.

Example 1: A employs B to recover Rs. 1,00,000 from C, and to lay it out on good security. B recovers the Rs. 1,00,000 and lays out Rs. 90,000 on good security, but lays out Rs. 10,000 on security which he ought to have known to be bad, whereby A loses Rs. 2,000. B is entitled to remuneration forrecovering the Rs. 1,00,000 and for investing the Rs. 90,000. He is not entitled to any remuneration for investing the Rs. 10,000, and he must make good the Rs. 2,000 to B.

Example 2: A employs B to recover Rs. 1,00,000 from C. Through B's misconduct the money is not recovered. B is entitled to no remuneration for his services, and must make good the loss.

3. Agent's lien on principal's property [Section 221]:

An agent is entitled to retain the goods, properties and books for any remuneration, commission etc. due to him. The possession of such property should be however lawful.

4. Right of indemnification for lawful acts [Section 222]:

The principal is bound to indemnify the agent against all consequences of lawful acts done in exercise of his authority.

Example: 'A' of Delhi appoints 'B' of Mumbai as agent to sell his merchandise. As a result 'B' contracts to deliver the merchandise to various parties. But A fails to send the merchandise to B and B faces litigations for non performance. Here, A is bound to protect B against the litigations and all costs, expenses arising of that.

5. Right of indemnification against acts done in good faith [Section 223]:

Where the agent acts in good faith on the instruction of principal, agent is entitled for indemnification of any loss or damage from the principal.

Example: Where P appoints A as his agent and directs him to sell certain goods which in fact turned out to be not those belonging to P and if third parties sue A for this act, A is entitled for reimbursement and indemnification for such act done in good faith. However, the agent cannot claim any reimbursement or indemnification for any loss etc. arising out of acts done by him in violation of any penal laws of the country.

❖ Non-Liability Of Employer Of Agent To Do A Criminal Act

According to section 224, where one person employs another to do an act which is criminal, the employer is not liable to the agent, either upon an express or an implied promise, to indemnify him against the consequences of that act.

Example 1: A employs B to beat C, and agrees to indemnify him against all consequences of the act. B thereupon beats C, and has to pay damages to C for so doing. A is not liable to indemnify B for those damages.

Example 2: B, the proprietor of a newspaper, publishes, at A's request, a libel upon C in the paper, and A agrees to indemnify B against the consequences of the publication, and all costs and damages of any action in respect thereof. B is sued by C and has to pay damages, and also incurs expenses. A is not liable to B upon the indemnity.

❖ Compensation to Agent for Injury Caused By Principal's Neglect

Section 225 provides that 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.

Example: A employs B as a bricklayer in building a house, and puts up the scaffolding himself. The scaffolding is unskilfully put up, and B is in consequence hurt. A must make compensation to E.

❖ Agent's Liability to Third Parties

An agent does all acts on behalf of the principal but incurs no personal liability. The liability remains that of the principal unless there is a contract to the contrary. This is because there is no priviity of contract and passing of consideration between the agent and third party. An agent also cannot personally enforce contracts entered into by him on behalf of the principal.

1. Principal's liability for the Acts of the Agent:

Principal liable for the acts of agents which are within the scope of his authority. Contracts entered into through an agent, and obligations arising from acts done by an 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.

Example 1: A buys goods from B, knowing that he is an agent for their sale, but not knowing who is the principal. B's principal is the person entitled to claim from A the price of the goods, and A cannot, in suit by the principal, set off against that claim a debt due to himself from B.

Example 2: 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. Principal not bound, when agent exceeds authority [Section 227]:

When an agent does more than he is authorised to do, and when 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 his principal.

Example: A, being owner of a ship and cargo, authorizes B to procure an insurance for Rs. 4,00,000 on the ship. B procures a policy for Rs. 4,00,000 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.

3. Principal not bound when excess of agent's authority is not separable [Section 228] :

Where an 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 to recognise the transaction.

Example: A authorizes B to buy 500 sheep for him. B buys 500 sheep and 200 lambs for one sum of Rs. 6,00,000. A may repudiate the whole transaction.

4. Consequences of notice given to agent [Section 229] :

Any notice given to or information obtained by the agent, provided it be given or obtained in the course of the business transacted by him for the principal, shall, as between the principal and third parties, have the same legal consequence as if it had been given to or obtained by the principal.

Example 1: A is employed by B to buy from C certain goods of which C is the apparent owner, and buys them accordingly. In the course of the treaty for the sale, A learns that the goods really belonged to D, but B is ignorant of that fact. B is not entitled to set off a debt owing to him from C against the price of the goods.

Example 2: A is employed by B to buy from C goods of which C is the apparent owner. A was, before he was so employed, a servant of C, and then learnt that the goods really belonged to D, but B is ignorant of that fact. In spite of the knowledge of his agent, B may set off against the price of the goods a debt owing to him from C.

5. Agent cannot personally enforce, nor be bound by, contracts on behalf of principal [Section 230]:

In the absence of any contract to that effect, an agent cannot personally enforce contracts entered into by him on behalf of his principal, nor is he personally bound by them.

Presumption of contract to the contrary : Such a contract shall be presumed to exist in the following cases :

i) Where the contract is made by an agent for the sale or purchase of goods for a merchant resident abroad/foreign principal;

ii) Where the agent does not disclose the name of his principal or undisclosed principal; and

iii) Where the principal, though disclosed, cannot be sued.

6. Rights of parties to a contract made by agent not disclosed [Section 231]:

If an agent makes a contract with a person who neither knows, nor has reason to suspect, that he is an agent, his principal may require the performance of the contract; but the other contracting party has, as against the principal, the same right as he would have had as against the agent if the agent had been the principal.

If the principal discloses himself before the contract is completed, the other contracting party may refuse to fulfil the contract, if he can show that, if he had known who was the principal in the contract, or if he had known that the agent was

not a principal, he would not have entered into the contract.

7. Performance of contract with agent supposed to be principal [Section 232]:

Where one man makes a contract with another, neither knowing nor having reasonable ground to suspect that the other is an agent, the principal, if he requires the performance of the contract, 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 50,000 rupees to B, sells 1,00,000 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.

8. Right of person dealing with agent personally liable [Section 233]:

In cases where the agent is personally liable, a person dealing with him may hold either him or his principal, or both of them, liable.

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.

9. Consequence of inducing agent or principal to act on belief that principal or agent will be held exclusively liable [Section 234]:

When a person who has made a contract with an agent induces the agent to act upon the belief that the principal only will be held liable, or induces the principal to act upon the belief that the agent only will be held liable, he cannot afterwards hold liable the agent or principal respectively.

10. Liability of pretended agent [Section 235]:

A pretended agent is a person who represents himself to be an agent of another, when infact he has no authority from him, whatsoever if the principal ratifies his acts as agent, he has no liability. But if the principal refuses to ratify his acts, he becomes personally liable to third party for any loss or damage caused to him. It is to be noted that where agent is personally liable, the third party can sue the principal or the agent or both the principal and the agent, as the liability of the principal and agent is joint and several.

11. Person falsely contracting agent not entitled to performance [Section 236]:

A person with whom a contract has been entered into in the character of agent, is not entitled to require the performance of it if he was in reality acting, not as agent, but on his own account.

12. Liability of principal inducing belief that agent's unauthorized acts were authorized [Section 237]:

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 third persons to believe that such acts and

obligations were within the scope of the agent's authority.

Example 1: A consigns goods to B for sale, and gives him instructions not to sell under a fixed price. C, being ignorant of B's instructions, enters into a contract with B to buy the goods at a price lower than the reserved price. A is bound by the contract.

Example 2: A entrusts B with negotiable instruments endorsed in blank. B sells them to C in violation of private orders from A. The sale is good.

13. Effect,on agreement, of misrepresentation or fraud by agent [Section 238]:

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; but misrepresentations made, or frauds committed, by agents, in matters which do not fall within their authority, do not affect their principals.

Example 1: A, being B's agent for the sale of goods, induces C to buy them by a misrepresentation, which he was not authorized by B to make. The contract is voidable, as between B and C, at the option of C.

Example 2: 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.

Important Notes: