



Contract Act 1872



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Course in charge



Breach Of Contract

Breach is
said to
occur when

When a party does
not fulfill his
contractual
obligation

By his own act makes it
impossible to discharge
his obligation

Types of Breach : Actual breach of contract OR
Anticipatory/Constructive Breach



Actual Breach and Its Consequences : An actual breach of contract on the due date or during performance enables the other i.e. the aggrieved party to obtain a right of action against the other party

In Case of Anticipatory Breach where the promisor declares his intention of not performing the contract even before the time stipulated for performance, In such a case, the other party may end the contract or may opt to wait till the due date.....

Remedies for Breach of a Contract :

- Novation
- Rescission
- Suit for Injunction
- Suit for Specific Performances
- Suit for Quantum Merit

- ❑ Novation : Two parties agree to resolve their differences and amend the contract into a new one
- ❑ Rescission: When one party breaches the contract , it absolves the other party of his obligations and entitles him to charge damages as compensation
- ❑ Suit for damages : Damages are monetary compensation allowed for loss suffered by the aggrieved party. This is contingent on compensation and not punishment



- ❑ Suit for specific performances: This is with regard to immovable property. It implies seeking a court order asking for the promise specified in the contract to be carried out. In such cases actual damages are indeterminate and monetary compensation is inadequate
- ❑ Quantum Merit : When the actions of a certain party prevent the other party from fulfilling his obligations, he is entitled to be compensated for the losses suffered in the course of his actions




Damages are essentially compensation for breach of contracts or for the nonperformance of the same.

The 5 types of Damages are :


- Ordinary
- Special
- Exemplary
- Liquidated
- Nominal



- ❑ Ordinary damages : Compensation suffered for loss in the normal course of events, based on the premise of opportunity cost
- ❑ Special Damages : Damages contingent on special circumstances which go beyond the purview of ordinary losses. Eg- Hadley vs Baxendale
- ❑ Exemplary Damages : Damages awarded to compensate for humiliation or loss of reputation suffered. Eg- Breach of promise to marry or wrongful dishonour of a cheque



□ Liquidated Damages : Damages specified in the drawing of the contract itself , i.e. the contract contains a quantitative specification of who is to pay whom how much in the instance of a breach. Specification may be one or many depending on the contract drawn up between the parties. Indian law does not differentiate between penalties and liquidated damages

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- ❑ Nominal Damages : Damages awarded as a token.
Costs incurred are often insignificant and the difference between nominal and ordinary damages lies in the availability of evidence of loss.

Contingent Contract(sec 31)

A contingent contract is a contract to do or not to do something, if some event, collateral to such contract, does or does not happen. It is also called a conditional contract.

Essential Elements of a Contingent Contract:

- ▶ There are two persons.
- ▶ There must be an uncertain future event.
- ▶ Some control over the event but not absolute control.
- ▶ There is no reciprocal promise between the persons.
- ▶ Others may be interested in the contract.
- ▶ It is a valid contract.

Rules Regarding Contingent Contracts

- ▶ Contingent contracts dependent on happening of an uncertain future event cannot be enforced until the event has happened.(Sec 32)
- ▶ Where a contingent contracts is to be performed if a particular event does not happen, its performance can be enforced when the happening of that event becomes impossible.(Sec 33)
- ▶ If a contract is contingent upon how a person will act at an unspecified time, the event shall be considered to become impossible when such person does anything which renders it impossible that he should so act within any definite time, or otherwise than under further contingencies.(Sec 34)

Rules Regarding Contingent Contracts

- ▶ Contingent contracts to do or not to do anything, if a specified uncertain event does not happen within a fixed time, may be enforced if the event does not happen or its happening becomes impossible before the expiry of that time.(Sec 35)
- ▶ Contingent agreements to do or not to do anything, if an impossible event happens, are void, whether or not the fact is known to the parties. (Sec 36)

Differences Between a Wagering Agreement and a Contingent Agreement:

- ▶ Wager agreement
 - ▶ There is a reciprocal promise.
 - ▶ It is a void contract.
 - ▶ Others are not interested in the contract.
 - ▶ It is contingent in nature.

- ▶ Contingent agreement
 - ▶ There is no reciprocal promise.
 - ▶ It is a valid contract.
 - ▶ Others are interested in the contract.
 - ▶ It may not be wagering in nature.

Quasi Contract

- **There is no offer, no acceptance, no consensus ad idem and in fact neither agreement nor promise.**
- **These contract constituted by the Law, and therefore termed as Quasi Contact.**

Kinds of Quasi Contracts (Sec. 68 to 72)

- 1. Supply of necessaries**
- 2. Payment by an interested person**
- 3. Obligation to pay for non-gratuitous acts**

e.g. Mr. X , a trader, leaves goods at Y's house by mistake. Y treats the goods as his own. He is bound to pay for them to X.

4. Responsibility of Finder of Goods

Mr. X picks up a diamond on the floor of Y's shop. He hands it over to Y to keep it till true owner is found out. No one appears to claim it for quite some weeks inspite of the wide advertisement in the newspapers. X claims the diamond from Y who refuse to return. Y is bound to return the diamond to X who is entitled to retain the diamond against the whole world except true owner.

The finder can sell the goods in the following cases:

- **1. When the things found is in danger of perishing**
- **2. When the owner cannot be found out**
- **3. When the owner is found out, but he refuse to pay the lawful charges of the finder**

5. Mistake or coercion

e.g. A and B jointly owe Rs. 100 to C. A alone pays the amount to C. and B not knowing this fact, and pays Rs. 100 to C again. C is bound to pay the amount to B.



Special Contracts

Bailment and Pledge

(Sections 148 to 181)

When a person

Delivers some goods to another person

For some purpose



With the understanding that

Goods shall be either returned to

Or disposed off



EXAMPLES OF CONTRACT OF BAILMENT

Sending T.V. to service centre for repairing

Delivering old jewellery to goldsmith for polishing

Handing over goods to transporter for transportation

Hiring of taxi for tour purposes

Giving clothes for Dry Cleaning



DUTIES OF BAILOR

- ***Duty to dispose faults:*** Bailor should disclose faults present in goods at the time of making delivery. Faults are of two types namely ; Known faults and Un-known faults. On the other hand bailments also are of two types namely Gratuitous bailment and Non-Gratuitous bailment. In case of gratuitous bailment, bailor is liable to compensate for bailee injuries arising out of known faults. In Gratuitous bailment, bailor is not answerable to un-known faults. In case of Non-Gratuitous bailment, bailor is answerable to both known faults and Un-known faults
- ***Duty to contribute for expenses:*** Bailor should Contribute for expenses incurred by bailee. In case of Gratuitous bailment, bailor need not contribute for ordinary expenses and extra ordinary expenses or to the contributed by bailor. In case of Non-Gratuitous bailment, bailor should contribute for both ordinary expenses and extra ordinary expenses
- ***Duty with regard to defective title:*** In case where bailor has delivered the goods with defective title, the bailee may come across suffering from the side of true owner due to bailors defective title. In such a case bailor with defective title should compensate bailee
- ***Duty to Indemnify:*** Principal of indemnity operates between bailor and bailee, where bailor becomes implied indemnifier and bailee becomes implied indemnity holder. So bailor has duty to indemnify bailee
- ***Duty to take the Goods back:*** After fulfillment of purpose bailee returns the goods to bailor. Then bailor should take them back. If bailor refuses to take the goods back, bailor has to compensate bailee



RIGHTS OF A BAILOR

- **Rights of taking back the goods bailed:** The bailor has right to take back the goods bailed as soon as the purpose of bailment is completed. If the bailee defaults in so returning, the bailor has right to receive compensation
- **Right in case of unauthorized use of goods:** The bailor is entitled to terminate the contract of bailment if the bailee makes the unauthorized use of the goods bailed
- **Right to goods bailed before stated period:** The bailor may get back his goods before the time stated in the contract of bailment with the consent of the bailee
- **Right to Dissolution of contract:** The bailor may dissolve the contract if the conditions of bailment are disobeyed by the bailee
- **Right to Gratuitous goods:** The bailor has right to terminate the contract of gratuitous bailment at any time even before the specified time, subject to the limitation that where such a termination of bailment causes loss in excess of benefit, the bailor must compensate the bailee
- **Right in share of Profit:** The bailor has share in the increase or profit gained from the goods bailed if there is provision in the contract



DUTIES OF A BAILEE

- **To take care of goods bailed:** The bailee is bound to take as much care of the goods entrusted to him as a man of ordinary prudence
- **To avoid the inconsistent act:** 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
- **The authorize use of goods:** If the bailee makes any unauthorized use of the goods bailed, he is liable to make compensation to the bailor for any damage arising to the goods from or during such use of them
- **Not to mix bailor's goods:** The bailee is bound to keep the goods of the bailor separate from his own where the mixture without the consent of the bailor is inseparable, the bailor is entitled to be compensated by the bailee for the loss of the goods
- **To return the goods:** It is the duty of the bailee to return, or deliver the goods bailed according to the bailor's directions
- **Responsibility in case of default:** If the goods are not returned, delivered or tendered due to default of the bailee, he is responsible to the bailor for any loss of the goods from that time
- **To return any profit from the goods:** 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



RIGHTS OF A BAILEE

- **Right to recover damages:** A bailee has right to recover damages from the bailor if he suffers any loss due to defects of the goods bailed
- **Right to receive compensation:** A bailee is entitled to receive compensation from the bailor for any loss resulting from the defect in the bailor's title
- **Right of Legal Action:** A bailee may take necessary legal action against the person who wrongfully deprives him of the use of goods bailed or does them any injury
- **Right to recover Bailment Expenses:** Bailee is entitled to be reimbursed for all legitimate expenses incurred for any purpose of bailment
- **Right of Lien:** Where the bailee has rendered any service for the purpose of bailment, he has right to retain such goods bailed until he receives due remuneration for his services in absence of contract to the contrary
- **Right of Indemnity:** The bailee has right to receive the amount of indemnity from bailor for any loss which he 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



RIGHTS OF FINDER OF GOODS

- **Right to receive compensation:** The finder of goods has right to recover compensation for the trouble and expenses incurred in preserving
- **Right of lien:** He can exercise his right of lien and may retain the goods until he receive the expenses incurred in preserving the property or for finding out the true owner
- **Right to Sue:** He can file a suit against the owner for any reward that might have been offered to give him
- **Right of legal Action:** The finder may take necessary legal action against third party who wrongfully deprives him of the possession of the goods
- **Right of Selling:** The finder has a right to sell the thing of another found by him under the circumstances given below :
 - a. The thing found is commonly the subject of sale.
 - b. The owner cannot be found with reasonable diligence.
 - c. The owner refuses to pay the lawful charges.
 - d. The thing is in danger of perishing or losing the greater part of the value or
 - e. When the lawful charges of the founder amount to two- third of the value of the thing found



DUTIES OF THE FINDER OF GOODS

- **Finding out the real owner:** It is the duty of the finder of the goods to make possible effort in order to find out the real owner of the goods. He may retain such goods until he finds true owner by advertisement in case of costly thing
- **Care to be taken by the finder:** The finder is bound to take as much care of the goods lost as a man of ordinary prudence would under similar circumstances take of his own goods of the same bulk, quality and value as the goods lost
- **Returning of goods:** It is the duty of finder to return the lost goods to real owner when he receives reasonable compensation for his services he has rendered in respect of them



General Lien

- It is a right to detain/ retain any goods of the bailor for general balance of account outstanding
- It is not automatic
- It can be exercised against goods even without involvement of labour or skill
- Banker, factors, wharfingers, policy brokers are entitled to general lien

Vs

Particular Lien

- It is a right exercisable only on such goods in respect of which charges are due
- It is automatic
- It comes into play only when some labour or skill is involved
- Bailee, finder of goods, pledgee, unpaid seller, agent, partner etc are entitled to particular lien

PLEDGE

- Pledge is a bailment of goods as security for payment of a debt or performance of a promise
- Bailor of goods is called pawnor
- Bailee of the goods is called pawnee

ESSENTIAL OF CONTRACT OF PLEDGE

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



RIGHTS OF A PAWNEE

- **Right of retainer** : Pawnee has right to retain the goods pledged not only for payment of debt or performance of a promise but also for recovery of debts and all expenses incurred for preservation of goods pledged. Where 'M' pledges stock of goods for certain loan from a bank, the bank has a right the stock not only for adjustment of the loan but also for payment of interest
- **Right to retention to subsequent debts** : Pawnee has a right to retain the goods pledged towards subsequent advances as well
- **Right to seek reimbursement of extraordinary expenses** : Pawnee has a right to seek reimbursement of extraordinary expenses incurred. However his right to retain the goods shall not exceed to such extraordinary expenses but is restricted to ordinary expenses
- **Right to sue** : In the event of pawnor failing to redeem the debt or perform the promise, the pawnee has a right to sue the goods which he has retained



RIGHTS OF A PAWNOR

- **Right to redeem** : Pawnor has a basic right to redeem the goods pledged by performing his promise
- **Right to sue** : Pawnor has a right to sue, but within a period of 3 years in view of provision of Limitation Act only in the event of pawnee refusing to return the goods even after payment of debt etc
- **Right to take care of the goods** : Pawnor has a right to demand a pawnee to take all reasonable care and preservation of the goods pledged
- **Right to receive increase or profit from the goods** : Pawnor is entitled to receive the increase or profit from the goods if there is any increase/ profit relating to it during the pledged period



PLEDGE

Vs

BAILMENT

Contract of Indemnity and Guarantee (Sections 124 to 147)

(sec. 124 of Indian contract act)—A Contract by which one party promises to save the another from losses caused to him by the conduct of the promisor himself or by the conduct of any other person , it is called a **contract of indemnity**.

It is an agreement between the indemnifier (who promises to make up the loss) and indemnity-holder or indemnified (whose loss is to be made).

Essential elements -

Essentials of a valid contract – enforceable/valid/consideration

1. There must be a loss- *Contingency*
2. The loss must be caused either by the promisor or by any other person.
3. Indemnifier is liable only for the loss.

Rights of indemnity holder-

1. Claim for damages
2. Claim for cost of suit
3. Recovery of sums paid under conditions of compromise



Contract of guarantee - contract to perform the promise, or to discharge the liabilities of a third person in case of his default.

The person who gives the guarantee is called Surety, the person in respect of whose default the guarantee is given is called Principal Debtor, and the person to whom the guarantee is given is called Creditor.

3 contracts

Between Principal Debtor & Creditor Between Principal Debtor & Surety Between Surety & Creditor

Essential elements -

1. Existence of Creditor, Surety, and Principal Debtor
2. Distinct promise of surety – Explicit or implied
3. Liability must be legally enforceable
4. Consideration - "Any thing done or any promise made for the benefit of the principal debtor may be sufficient consideration to the surety for giving the guarantee."
5. It should be without misrepresentation or concealment



Continuing Guarantee- As per section 129, a guarantee which extends to a series of transactions is called a continuing guarantee.

Revocation of Continuing Guarantee

1. When surety notifies creditor
2. Death of surety

Rights of surety

Right against principal Debtor

- 1.Right of subrogation:** Surety get the rights of the principal debtor
- 2. Right to Indemnity:** Every contract has an implied promise by the principal debtor to indemnify the surety, surety is entitled to cover from principal debtor what paid under guarantee

Rights against creditor

- 1.Right of set off :** If the creditor sues the surety, the surety may have the benefit of the set off, if any, that the principal debtor had against the creditor
- 2.Right to securities:** A surety is entitled to the benefit of every security which the creditor has against the principal debtor





Contract of Agency

Agent

- a person employed to do any act for another or to represent another in dealings with third persons

Principal

- Is the person for whom such act is done, or who is so represented

Agency

- The contract which creates relationship of 'principal' and 'agent'.

Basis: Principal is bound by the acts of the agent and is liable to the third party.

Consideration: The relationship is not necessarily supported with consideration.

Capacity to employ an agent: The principal must major and be of sound mind.

Capacity to be an agent: The agent must also be major and of sound mind in order to enter into contract.



MODES OF CREATION

Agency by actual authority: A contract of agency can be express or implied spoken or written.

Agency by ratification: When a person does something on behalf of another without their knowledge, the act may be ratified or disowned by the other person

Agency by ostensible authority

Agency by operation of law: in certain cases, it is the law which creates the relationship of agent and principal.

Agency by necessity: Sometimes circumstances would compel and a relation of agency would fall in place. This is often out of necessity.

By holding out: if a person holds himself as an agent of another and that person does not deny it, then it becomes agency relationship.

By Estoppel: if a person permits other to act on his behalf so that a reasonable person would believe it to be an agency, then he would be estopped from denying agent's authority.

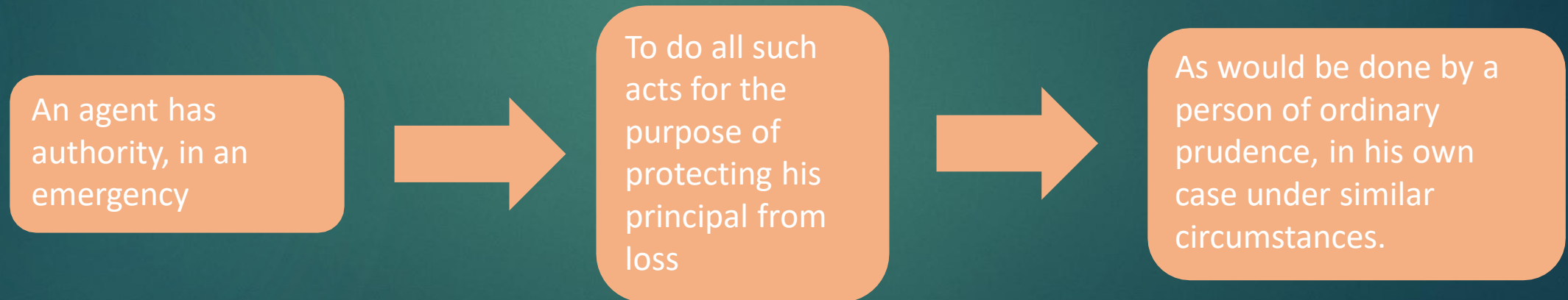


EXTENT OF AN AGENT'S AUTHORITY

- **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.

- **In an Emergency:**



DUTIES OF AN AGENT

- **Duty in conducting principal's business:** The agent should conduct the business of the principal as per directions of the principal or in the absence of any directions as per the custom prevalent in the business
- The agent is liable to the principal for any loss if he deviates from the above duty/ obligation where he did not act according to instruction of the principal. It was held by the Supreme Court in a case that the agent had to compensate the principal where the agent did not act according to the instructions of the principal
- **Requirements as to skill and diligence:** Agent must act always as a person with diligence and skill normally exercised in the trade. He would otherwise be responsible to compensate the principal for any loss suffered by the principal for want of his skill.
- **Agents duty to account:** The agent has to maintain and render proper accounts to principal whenever demanded. He is bound to pay the principal all sums received.
- **Duty to communicate:** The agent must in order to obtain instruction, communicate and contact the principal as a man of ordinary diligence.



RIGHTS OF AN AGENT

- **Right of lien on principal's property:** 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.
- **Right of indemnification for lawful acts:** The principal is bound to indemnify the agent against all consequences of lawful acts done in exercise of his authority.
- **Right of indemnification against acts done in good faith:** 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. 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.
- **Right of retention:** The agent can retain, out of the sums received from the principal, such amounts towards reimbursement of expenditure, remuneration and advances paid by him on account towards the business and render accounts only for the balance.
- **Right of remuneration:** 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.



PERSONAL LIABILITY OF AN AGENT

When the contract expressly provides for the agent's liability



where the agent works for a foreign principal



where according to usage in trade in certain kinds of business agents are personally liable.

where the agent signs the negotiable instrument without indicating that he is signing it for the principal



where the agent acts for a principal who cannot be sued viz Ambassador of a country



where the agency is coupled with interest. The 'interest' of the agent to come under this category should not be an ordinary 'interest' like towards remuneration etc., but should be a special interest.



PRINCIPAL'S LIABILITY FOR THE AGENT'S ACT TO THIRD PARTIES

- When the agent acts within the scope of his authority

Except in the case of specific restrictions.

- Principal is bound by the notice given to the agent

Except in the case of frauds done by agent.

- In case of any misrepresentation or fraud by the agent within his authority

Except where the agent exceeds the authority.

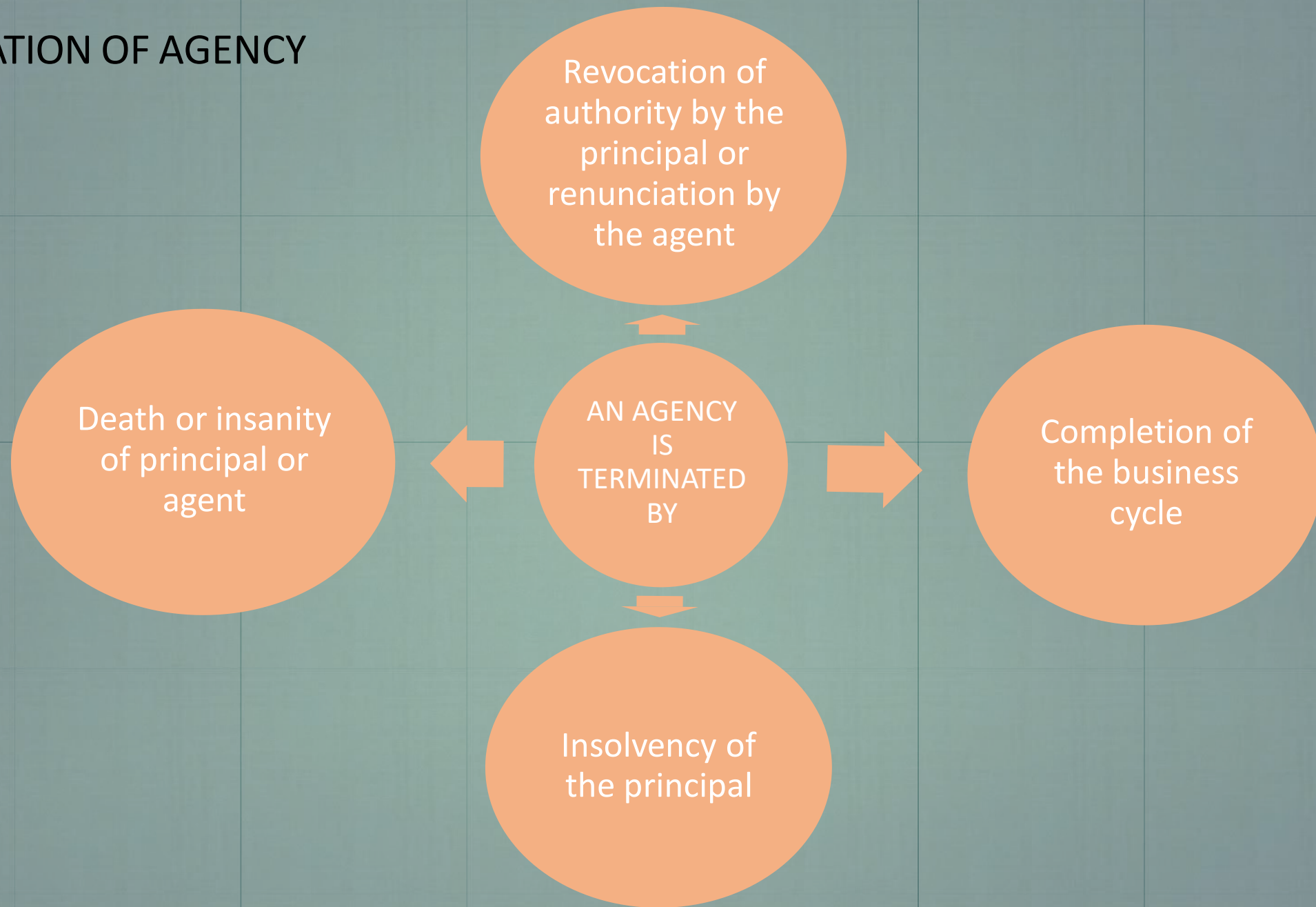
- Principal is bound by the doctrine of estoppel

- In case the name of the principal is not unknown but the existence is known to the third party

Unless the agent refuses to disclose the identity.



TERMINATION OF AGENCY



IRREVOCABLE AGENCY

The agency is irrevocable in
where

The agent has interest in the subject matter of the agency. It doesn't come to an end even in the case of death, insanity or insolvency of the principal

The agent has incurred personal liability

Agent has partially exercised the authority



SUB- AGENT

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.

The appointment of a sub agent would be valid if the terms of appointment originally contemplated it.

PRINCIPAL'S LIABILITY:

- **When the sub-agent is properly appointed:** The principal is bound by his acts and is therefore responsible to third parties as if he were an agent originally appointed by the principal.
- **When appointed without authority:** The principal is not bound by the acts of sub agent.

SUBSTITUTED AGENT

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, than the second person is not to be treated as a sub agent but only as an agent of the original principal.

- ❖ The agent while selecting substituted agent is expected to exercise same amount of diligence as an ordinary man of prudence. If he does, he will not be responsible for negligence of substituted agent.



Thank You