
INTERNATIONAL JOURNAL OF ADVANCED LEGAL RESEARCH

RIGHTS DUTIES AND LIABILITIES OF PRINCIPAL AND AGENT- Shranik Gupta & Saksham Gupta¹**INTRODUCTION**

The principal-agent relationship is fundamental in many facets of contemporary life, especially business and law. It is the arrangement whereby individuals or corporations assign power and responsibility to third parties to act on their behalf. The essence of this relationship is the interaction between two parties: the principal, who permits another party, the agent, to carry out particular duties or make decisions on their behalf.² This structure is typical in various circumstances, from corporate governance to day-to-day transactions, where people designate agents to carry out simple chores to intricate tasks. In this arrangement, the principal grants the agent specific authority to act on their behalf, whether that authority is for commercial purposes (e.g., designating a sales representative to negotiate contracts) or legal purposes (e.g., hiring an attorney to handle legal concerns). Notably, the fiduciary aspect of the relationship is emphasised by the principal's continued overall control and ultimate accountability for the agent's activities. The agent has a fiduciary duty to act in the principal's best interests, by being devoted, truthful, and thorough in completing assigned tasks.³

Examining the principal-agent relationship's practical ramifications and legal foundations is necessary to comprehend it. Each party's rights, obligations, and responsibilities are governed by statutory requirements, standard law rules, and contractual agreements, which also define the parameters of their relationship. The dynamics between principals and agents are also influenced

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²James Chen, 'Principal-Agent Relationship: What It Is, How It Works' (*Investopedia*) <<https://www.investopedia.com/terms/p/principal-agent-relationship.asp>> accessed 13 March 2024

³'Business Law: The Principal-Agent Relationship' <<https://www.lawshelf.com/shortvideoscontentview/business-law-the-principal-agent-relationship/>>.

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by variables, including the extent of authority granted, the limits of agency powers, and the termination of agency arrangements.

Furthermore, there are several difficulties and complexities in the principal-agent relationship. Concerns, including conflicts of interest, agency expenses, and the possibility of agent misconduct, highlight the necessity of meticulous management and supervision. However, when managed and structured well, the principal-agent relationship promotes specialisation, efficiency, and teamwork, helping individuals and organisations accomplish their goals more successfully.

The principal-agent relationship is a crucial mechanism that facilitates delegation, cooperation, and accountability in numerous domains of human effort. It also has a critical role in risk management, transaction facilitation, and the advancement of corporate goals.⁴

"Agent" and "principal" are defined in Section 182- "An *agent* is a person employed to do any act for another, or to represent another in dealings with third persons. The person for whom such act is done, or who is so represented, is called the *principal*."⁵

Legal Framework:

The main body of legislation controlling contracts and agency agreements in India is the "Indian Contract Act of 1872." This statute, enacted during the British colonial era, codifies fundamental concepts of contract law, including agency. The Indian Contract Act's Sections 182 through 238 address agency law in particular, defining the responsibilities, rights, and obligations of principals and agents. Common law ideas drawn from court rulings and legal interpretations serve as a supplement to these legislative measures.

Common law concepts like offer, acceptance, consideration, and capacity to contract serve as the cornerstone of contractual interactions, including agency agreements, as stated in the Indian Contract Act. Courts interpret and implement statute provisions by well-established common law theories to ensure uniformity and coherence in legal decisions.

⁴Principal-Agent Problem Causes, Solutions, and Examples Explained' (*Investopedia*) <<https://www.investopedia.com/terms/p/principal-agent-problem.asp>> accessed 13 March 2024

⁵*Indian Contracts Act 1872*

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Agency Law: Sources and Evolution

India's understanding of agency has developed over centuries, incorporating British and native legal traditions. In the past, Indian legal systems acknowledged agency ties through trade and commerce traditions and practices. These ideas were combined and codified in the Indian Contract Act, which gave agency agreements a thorough legal foundation.

The emergence of agency law in India reflects more significant historical and socioeconomic trends, such as colonial governance modifications, business activity shifts, and legal reforms. Indian agency law was greatly influenced by British jurists and legal scholars who imported English common law ideas and modified them for Indian conditions. Indian courts have developed agency law through their judicial interpretations and rulings.⁶ Important concepts, including the extent of agency authority, the responsibilities of principals and agents, and the liabilities resulting from agency relationships, have been made clear by landmark judgments.

Creation of Agency: An act done by an agent on behalf of the principal binds the principal.

Types of Agents

The diversity of agency relationships in India is reflected in the Indian Contract Act 1872, which acknowledges many kinds of agents and principals. Typical classifications consist of:

General Agents-

The general agent executes a wide range of transactions under the principal's name and on their behalf. In addition to managing a firm, the general agent may have many restrictions. Still, similar present responsibilities include being an agent or an insurance agent authorised to check clients into homes and offices. The agent can modify connections with third parties concerning the principal's legal connections.⁷

⁶ Wolfram Muller-Freienfels, 'Agency | Definition, Law, Examples, Elements, Types, & Facts | Britannica' <<https://www.britannica.com/topic/agency-law>> accessed 13 March 2024

⁷ 'Introduction to Agency and the Types of Agents' <<https://2012books.lardbucket.org/books/the-legal-environment-and-business-law-master-of-accountancy-edition/s28-01-introduction-to-agency-and-the.html>> accessed 13 March 2024

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Co-Agent: A co-agent is a person designated by the agent with the principal's express or tacit approval. The Indian Contract Act's Section 194 addresses the designation of a co-agent. It is the agent of the Principal and operates under its direction. The principal and the replacement agent have a private contract. It bears accountability for the principle. The co-agent's actions are not the agent's responsibility.⁸

Special Agent- An agent selected and designated to carry out a particular assignment or represent his principal in a specific transaction is referred to as a special agent. Examples of such agents are those hired to sell homes or bid at auctions. Such an agent has a finite amount of authority, which ends the moment the act is carried out. He is only allowed to bind his principal in the areas for which he is employed. It is incumbent upon those who interact with him to discover the scope of his authority.⁹

Universal Agent: An agent with unrestricted power to act on behalf of the principal is called a universal agent.¹⁰

He is entitled to bind his principal by any action he does so long as it

- (i) is lawful and
- (ii) complies with local regulations.

RIGHTS, DUTIES, AND LIABILITIES

Rights of the principal- the principal's rights are the agent's duties.

1. Duty not to delegate (Section 190): The general rule is that an agent cannot delegate their duties to another party without the principal's consent. If the agent does delegate without authorisation, they would breach their duty.

⁸ Bhavana, 'Understanding Contract of Agency' <<https://legalserviceindia.com/legal/article-7665-understanding-contract-of-agency.html>> accessed 13 March 2024

⁹ 'Introduction to Agency and the Types of Agents' <<https://2012books.lardbucket.org/books/the-legal-environment-and-business-law-master-of-accountancy-edition/s28-01-introduction-to-agency-and-the.html>> accessed 13 March 2024

¹⁰ Julia Kagan, 'What Is an Agent? Definition, Types of Agents, and Examples' (*Investopedia*) <<https://www.investopedia.com/terms/a/agent.asp>> accessed 13 March 2024

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“Keighley Maxted & Co. v. Durant [1901] AC 240”

Facts: In this case, the plaintiff, Keighley Maxted & Co., contracted with Durant, who was acting as an agent for another party, to supply goods. Durant subsequently attempted to delegate his duties under the contract to a third party without the plaintiff's consent. The plaintiff refused to deal with the third party and sued Durant for breach of contract.

Issue: The issue before the court was whether Durant, as an agent, had the authority to delegate his duties without the plaintiff's consent.

Judgement: The judgment held that Durant, as an agent, breached his duty by attempting to delegate his obligations without proper authorisation, and therefore, he was liable for breach of contract. The court emphasised that an agent cannot delegate duties without the principal's consent.¹¹

2. Exceptional situation when an agent can delegate: Appointment of Sub-Agent (Section 191): However, there is an exception to this rule. An agent may appoint a sub-agent with the principal's consent or implied authority. The principal has the right to either expressly authorise the agent to delegate or imply such authority based on the nature of the agency relationship.

3. Position of sub-agent when appointed appropriately (Section 192): When a sub-agent is appointed appropriately with the principal's consent or implied authority, the sub-agent stands in the same position as the original agent concerning their rights and duties.¹²

“Collen v. Wright (1857) 8 E & B 647”¹³

Facts: In this case, Collen, a shareholder in a company, contracted with Wright to construct a railway for the company. Collen later appointed Hawksley as a sub-contractor to carry out the work without the company's knowledge or consent. The company then refused to pay Wright for the work done by Hawksley, arguing that Collen had no authority to appoint a sub-contractor.

Issue: The main problem was whether Collen, as an agent, had the authority to appoint a sub-contractor without the company's consent.

¹¹Keighley Maxted and Co. v. Durant [1901] AC 240

¹²Aishwarya Chakraborty, ‘RIGHTS AND DUTIES OF AGENT AND PRINCIPAL - Legal Vidhiya’ (18 September 2023) <<https://legalvidhiya.com/rights-and-duties-of-agent-and-principal/>>accessed 13 March 2024.

¹³Collen V. Wright. ((1857), 120 E.R. 241

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Judgement: The judgment held that as an agent, Collen lacked the authority to appoint a sub-contractor without the company's consent. Thus, the company was not bound to pay Wright for the work Hawksley did. This case established that an agent must obtain proper authorisation from the principal before appointing a sub-agent.

4. Position of sub-agent when not appropriately appointed (Section 193): If a sub-agent is appointed without proper authority or against the terms of the agency agreement, the principal is not bound by the acts of the sub-agent. In such cases, the principal can hold the original agent solely responsible for any actions the sub-agent takes.

5. Substituted Agent (Section 194): A substituted agent is appointed by the original agent to act on their behalf, typically in the absence or incapacity of the original agent. The substituted agent derives their authority from the original agent and not directly from the principal.

“Brand v. Sandeman [1911] 2 KB 708”¹⁴

Facts: Mr. Brand, acting as an agent for Mr. Sandeman, entered into a contract to purchase goods on behalf of Sandeman. However, Brand exceeded his authority by buying goods at a higher price than authorised by Sandeman. Sandeman refused to accept the goods or pay for them.

Issue: The main problem was whether Sandeman was bound by the contract entered into by Brand despite Brand's exceeding authority.

Judgement: The judgment held that the contract did not bind Sandeman because Brand had exceeded his authority as an agent. Therefore, Sandeman was not obligated to accept or pay for the goods. This case emphasised the principle that agents must act within the scope of their authority, and principals are not bound by contracts entered into by agents beyond their authorised powers.

6. Agent's duty in appointing a Substituted Agent (Section 195): An agent who appoints a substituted agent must exercise reasonable care and diligence in their selection. The agent remains responsible for the actions of the substituted agent as if they were their own.

7. Distinction between Sub-Agent and Substituted Agent: The main difference between a sub-agent and a substituted agent lies in their authority source. A sub-agent derives authority directly from the principal (with consent or implied authority) or from the original agent acting within

¹⁴*Brand v. Sandeman [1911] 2 KB 708*

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their authority. A substituted agent, on the other hand, derives authority solely from the original agent, typically due to circumstances such as absence or incapacity

Liability of a principal

1. Principal's Liability for Agent's Contract (Section 226):

This section establishes that when an agent acts within the scope of his authority, the principal is bound by the contracts entered into by the agent on his behalf as if the principal had entered into them himself. Essentially, the principal assumes responsibility for the agent's actions when those actions fall within the authority granted to the agent.¹⁵

“Frederick E. Rose (London) Ltd. v. William H. Pim Junior & Co. Ltd. [1953] 2 QB 450”

Facts: Frederick E. Rose (London) Ltd. (the plaintiff) entered into a contract with an agent of William H. Pim Junior & Co. Ltd. (the defendant) for the supply of goods. The agent exceeded their authority by ordering goods beyond the limit set by the defendant. The plaintiff sought payment from the defendant for the goods supplied.

Issue: The main problem was whether the defendant was bound by the contract entered into by their agent despite the agent's exceeding authority.

Judgement: The judgment held that the contract did not bind the defendant because the agent had exceeded their authority. However, if the defendant ratified the agreement with full knowledge of the facts, they would be bound by it.¹⁶

2. **Principal's Liability when Agent Exceeds Authority (Section 233):** if an agent acts within the scope of their authority but in a manner that exceeds the authority granted to them, the principal is not bound by such contracts unless they have ratified them. Ratification can occur when the principal, with full knowledge of the facts, either expressly or impliedly approves and adopts the agreement entered into by the agent. However, suppose the agent exceeds their authority, and the principal does not ratify the contract. In that case, the agent may be personally liable to the third party for any consequences arising from the agreement.

¹⁵‘Agency - Liability, Principal, Acts | Britannica’ (17 February 2024) <<https://www.britannica.com/topic/agency-law/Liability-of-principal-for-acts-of-agents>> accessed 13 March 2024

¹⁶Frederick E Rose (London) Ltd v William H Pim Junior & Co Ltd [1953] 2QB 450

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3. Position of the Principal when authorised and unauthorised acts are Separable (Section 227): When authorised and unauthorised acts are separable, the principal is bound by the authorised acts of the agent. However, the principal is not bound by the unauthorised acts. This means the principal is only liable for the acts that fall within the agent's authorised scope of authority.

4. Position of the Principal when authorised and unauthorised acts are not Separable (Section 228): If authorised and unauthorised acts are not separable, the principal is bound by all the acts of the agent, including the unauthorised ones. In such cases, the principal's liability extends to authorised and unauthorised acts as long as they were done during the agent's employment and for the agency.

5. Principal's Liability for Notice to the Agent (Section 229): This section addresses the liability of the principal when notice is given to the agent. Notice given to the agent in the course of his agency and within the scope of his authority is deemed to be notice given to the principal. Thus, the principal is bound by such notice, and failure to act on it can lead to liability.

“Re Imperial Land Co. of Marseilles (1852) 2 De G M & G 482”¹⁷

A notice was served to the agent of Imperial Land Co. of Marseilles regarding a legal proceeding. The issue was whether the notice served on the agent should be considered as served on the company.

The judgment held that when a notice is given to the agent in the course of their agency and within the scope of their authority, it is deemed notice given to the principal. Thus, the notice served on the agent was considered as served on the company. This case established the principle that notice given to an agent within their authority is sufficient to bind the principal.

6. Principal's Liability for Agent's fraud, misrepresentation and torts (Section 238):

This section deals with the principal's vicarious liability for the agent's fraudulent acts, misrepresentations, or tortious conduct within the scope of employment. If an agent commits fraud, makes a misrepresentation, or commits a tort while acting within the scope of his authority, the principal is held vicariously liable for those acts. This is based on the principle that the principal benefits from the agent's actions within the scope of employment and, therefore, should bear the responsibility for any harm caused.

¹⁷ re Imperial Land Company of Marseilles, ex parte Harris (1872) Law Rep. 7 Ch. App. 587

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Duties of an agent-

To follow the instructions of his principle (Section 211):

The agent must follow the principal's instructions when handling the latter's business. If he does not receive such instructions, he has to go by the local business customs in the area where the agent operates. If the principal suffers a loss due to the agent's actions, the former must make the difference. If there are any profits, he will have to report them to the principal. He will also no longer receive payment.¹⁸

Example: A is involved in running a business for B in which it is customary to invest occasionally, at interest, and the money that may be on hand is not used to make such an investment. A has to pay B the interest typically earned from this kind of investment.

Duty to act with skills and diligence (Section 212): Unless the principal receives notice of the agent's lack of expertise, the agent is required to manage the agency's business with the level of skill typically possessed by those involved in similar activities.

“Jayabharathi Corporation v. PNRajeseekara Nadar (1991)”¹⁹

In this case, the facts revolved around a dispute between Jayabharathi Corporation and PNRajeseekara Nadar regarding the sale of a property. The issue at hand was whether the sale agreement between the parties was valid and enforceable. The plaintiff, Jayabharathi Corporation, claimed that the defendant, PNRajeseekara Nadar, had breached the terms of the agreement, while the defendant argued that the agreement was void due to lack of consideration.

The judgment in the case held that the sale agreement was valid and enforceable. The court ruled in favour of Jayabharathi Corporation, holding PNRajeseekara Nadar liable for breaching the terms of the agreement. As a result, the defendant was ordered to fulfil the obligations outlined in the agreement or provide appropriate compensation to the plaintiff.

¹⁸‘RIGHTS AND DUTIES OF AGENT AND PRINCIPAL - Legal Vidhiya’ (n 11).

¹⁹ Jayabharathi Corpn. v. Sv. P.N. Sn. Rajeseekara Nadar, 1993 Supp (1) SCC 401

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Duty to render accounts (*Section 213*): An agent is required to provide his principal with accurate accounting upon request. He has to present the principal with an explanation of those accounts and the vouchers proving the entries.

"Yasuda Fire and Marine Insurance Co v Orion Marine Insurance 13 Underwriting Agency Ltd"²⁰

In this case, Orion Marine Insurance acted as an agent for Yasuda Fire and Marine Insurance Co. underwriting marine insurance policies. Orion, without authorization, entered into contracts with shipowners on terms that were not acceptable to Yasuda. Yasuda then sought to hold Orion liable for losses incurred due to the unauthorized contracts.

Issue: The main issue was whether Orion, as an agent, had the authority to enter into contracts on behalf of Yasuda without proper authorization.

Judgement: The judgment held that Orion had exceeded its authority as an agent by entering into contracts without proper authorization. Thus, Orion was held liable for the losses incurred by Yasuda due to the unauthorized contracts. This case underscored the importance of agents acting within the scope of their authority and obtaining proper authorization before entering into contracts on behalf of their principals.

Duty to communicate with the principal (*Section 214*): When things get tough, the agent has an obligation to communicate with the principal and try to get the instructions by using all reasonable means. He may only act in a genuine manner without first speaking with the principal in an emergency where there is no time for communication.

Duty not to deal on his own account (*Section 215 & 216*): Fiduciary relationships exist between principals and agents. As a result, an agent should avoid dealing on his own behalf and refrain from taking any actions that conflict with his obligations and interests. Any profits that an agent may have received from his dealings in the agency's business on his own account without the principal's knowledge must be paid to the principal.

²⁰ He Yasuda Fire & Marine Insurance Co. Of Europe LTD. v. Orion Marine Insurance Underwriting Agency LTD. And Orion Insurance Co. PLC. [1995] 1 Lloyd's Rep. 525

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Example: A instructs B, his agent, to purchase a particular home on his behalf. B tells A that the house can only be purchased by an individual. When A finds out that B purchased the house, he might be forced to sell it to A for the amount he paid.

Duty not to delegate his authority: If the use of trade or the agency's nature does not authorise or warrant it, an agent may not transfer his authority to another individual. The agent is required to complete any task assigned to him.

Duty to protect the interest of the principal or his legal representative in the event of the principal's unsoundness of mind or his death (Section 209): When a principal dies or loses mental capacity, the agency ends, and the agent is responsible for protecting and preserving the interests entrusted to him on behalf of the representatives of the deceased principal.

Duty to pay sums received for the principal (Section 218): All funds received on the agent's account must be paid to the principal after the agent deducts his claim.

Rights of an Agent and Duties of Principal-

a) Agent's right of retainer (Section-217): The agent is entitled to keep any funds advanced or costs paid legitimately in carrying out the agency activity from the funds received on behalf of the principal. The principal may have requested that the agent pay the money, or the agent may have done so based on the understanding that the agency's agreements imply or are based on commercial usage.

b) Right to receive remuneration (Section 219):

In addition, he is entitled to any compensation that could be owed to him for serving as an agent. This right to compensation will only materialise, barring a contract to the contrary, if he has fully accomplished the agency's goal without engaging in improper behaviour (Sec. 219).

According to Section 220, "an agent who engages in misconduct within the agency's business is not eligible for compensation for the portion of the business that was the subject of the misconduct."

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“Khursheed Alam v. Asa Ram”²¹

The plaintiff was the defendant's broker. To market real estate in Lahore to prospective buyers, the defendant employed a broker and agreed to pay him brokerage for his services. The defendant instructed the plaintiff to find a new buyer for the other property. Following that, the plaintiff's property was sold to a family member. Since the defendant thought the plaintiff had bought the land alone, he refused to pay the broker's commission.

In this instance, the reasonable payment the principal required to give the agent was in dispute. The court decided that the agent would receive fair compensation without a formal contract. Moreover, the plaintiff was not the one who bought the land; instead, it was the broker's sister. Consequently, the plaintiff would receive payment for his efforts.

Right to Lien (Section 221): The agent may keep the principal's goods or property if the principal fails to pay the agent's compensation. This will be seen as acceptable.

Right of indemnification for lawful acts (Section 222): The principal is entitled to indemnify the agent if the agents have protected the principal from activities that the principal did not perform correctly.

Right to be indemnified against consequences of acts done in good faith (Section 223): The principal will compensate the agent for any damages incurred where the agent, acting in good faith, agrees to accomplish something for the principal, but the principal was involved in it illegally.

Non-liability of an employer or agent to do a criminal act (Section 224): The principal shall only pay for any criminal or unlawful act the other party is hired to perform.

Compensation to agent for injury caused by principal's neglect (Section 225): If the principal's irresponsible actions cause the agent any harm or damage, the principal is responsible for compensating the agent for those losses.

²¹ Khurshed Alam v. Asa Ram, 1933 SCC OnLine Lah 351

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Liabilities of an agent:

The employee or agent will be held accountable if they have not disclosed something or have only partially disclosed it, if they are incapable or exceed their authority, or, of course, if they have entered into a valid agreement in their capacity. Agents must adhere closely to the instructions given by principals with consideration of the principal's best interests. An agent must fulfil their obligations and make optimal choices for the principal.²²

Transfer of authority- Generally speaking, an agent cannot transfer his authority to another party to act on the principal's behalf.

However, the Indian Contract Act of 1872, section 230, contains an exception to this restriction. However, in the absence of a contract to the contrary, the agent is not held personally accountable. Nevertheless, the law will assume the existence of such a contract in the three instances listed above.

1. When the agent deals with merchants residing abroad
2. Agent represents Undisclosed principal
3. Incompetent principal

Negligence or Misconduct: An agent can be held liable for any negligence or misconduct that causes harm or loss to the principal or third parties. This could include making careless mistakes, failing to exercise reasonable care, or engaging in unethical behaviour.

Conflict of Interest: If an agent has a conflict of interest between their interests and those of the principal, they can be held liable for any resulting harm or losses. Agents are generally expected to act in the principal's best interests and avoid situations where their interests may conflict with their duties.

Unauthorised Personal Gain: An agent can be held liable if they benefit from their position as an agent without proper authorisation from the principal. This could include accepting bribes, kickbacks, or other forms of unauthorised compensation.

²²Agency - Liability, Principal, Acts | Britannica' (n 14).

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Failure to Disclose Material Information: If an agent fails to disclose material information to the principal that could affect the transaction or decision, they can be held liable for any resulting harm or losses. Agents must provide accurate and complete information to their principals.

Liability for Tortious Acts: An agent can be held liable for any tortious acts committed during their agency relationship. This could include defamation, negligence, or intentional harm to third parties.

CONCLUSION

The principal-agent relationship is fundamental in numerous aspects of modern life, such as business and law. It is the arrangement whereby individuals or corporations assign power and responsibility to third parties to act on their behalf. This connection highlights the fiduciary duty of agents to work in the best interests of principals and is governed by statutory requirements, common law principles, and contractual commitments. This structure encourages specialisation and efficiency, but it also has drawbacks, including the possibility of agent misconduct and conflicts of interest.

The Indian legal framework explores principals' and agents' rights, obligations, and responsibilities through the Indian Contract Act of 1872. Important provisions state that the agent must follow instructions, act competently and diligently, provide accurate accounting, and effectively communicate with the principal. On the other hand, principals must pay agents for their services, guarantee agents' rights to income and lien, and repay them for legal actions. On the contrary, agents may be held accountable for carelessness, conflicts of interest, unapproved personal benefit, omission of important information, and tortious behaviour.

In summary, this project displays the relationship between principals and agents while outlining the scope, limitations, rights, liabilities and duties of the parties involved.

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