



Modes of Termination of Principal – Agent Relationship under the Indian Contract Act, 1872

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Abstract

Agency may be brought to an end either by the act of the parties, or by operation of law. Where the agency was created by agreement, it will be determinable in the same way. A continuing agency may also be determined by giving such period of notice as is specified in any agreement, or failing that, reasonable notice. Finally, if either party acts in a way which is inconsistent with the continuation of the agency then it will be terminated though of course this may well give rise to rights of action for breach of contract. As regards termination by operation of law, if an agency is for a particular transaction, the relationship will terminate when that transaction is completed. If it is for a specified period, it will cease at the end of that period.

Keywords: Agency, termination, bankruptcy, operation of law

Introduction

Agency may be terminated by subsequent events. These may be physical, as where, for example, the subject matter is destroyed, or the principal or agent dies, or becomes insane. Alternatively, they may be legal, as where the principal or agent becomes bankrupt, or the relationship becomes illegal (for example, if the principal becomes an enemy alien).

The effects of termination are that as far as principal and agent are concerned, rights vested at the time of the termination will subsist, but no new rights can be created, at least once the agent has notice of the termination.

In relation to the third party, again rights accrued against either principal or agent will remain. New rights against the principal will only arise on the basis of ostensible authority. Otherwise, the agent will be liable, either directly on the contract, or for breach of the implied warranty of authority. In relation to commercial agents falling within the Commercial Agents (Council Directive) Regulations 1993 there are special provisions as to termination provided by the Regulations. These cover such matters as the minimum periods of notice which must be given, and the rights of the agent to compensation when an agreement is terminated. It was held in *Hackett v Advanced Medical Computer Systems Ltd*¹⁻⁴ that no particular formality was required for giving notice under the Regulations.

Several cases have considered the rights to compensation for the termination of a commercial agency, which was one of the main areas with which the European Directive on which the Regulations are based was concerned. The aim was to ensure that commercial agents were not treated unfairly, and to harmonise the provisions in this area.

Under the Regulations the agent is entitled to compensation for 'damage' suffered as a result of the termination. Two types of damage are specified: first, damage incurred where the termination has deprived the agent of commission. This will depend on an estimation of the work on which the agent would have been expected to earn commission over the remainder of the contract⁵. The second type of damage is that arising from the agent's costs and expenses incurred in the performance of the agency contract⁶.

The entitlement to payment on the indemnity basis, if this is what has been provided for in the contract, will arise where the agent has either brought in new customers, or has significantly increased the volume of the principal's business, and the principal continues to derive 'substantial benefits' from this. The payment of an indemnity may take account of the fact that the agent has lost commission on the new business which has been brought in. If circumstances exist where an indemnity is appropriate, the amount is governed by Regulation 17(4), which limits the amount of the indemnity to a figure based on the agent's average annual earnings over the preceding five years⁷. The maximum amount of the indemnity will be the equivalent of one year's remuneration.

In operating these provisions, it is as yet unclear how far English courts should have regard to the principles operating under French and German law in deciding how they should be applied. In *Page v Combined Shipping and Trading*⁸ the Court of Appeal appeared, *obiter*, to suggest that common law principles could be applied to the 'compensation' provisions. In *Moore v Piretta*⁹ however, the judge had no doubt that in applying the 'indemnity' provisions account had to be taken of the way in which these operated under German law. The Scottish cases of *Roy v MR Pearlman Ltd*¹⁰ and *King v*

Tunnock¹¹ have shown the appeal courts in that jurisdiction looking to French law in applying the 'compensation' provisions. In the most recent English decision, however, *Barret McKenzie and Co Ltd v Escada (UK) Ltd*,¹² the High Court did not accept the *King v Tunnock* approach (which was based on a two year 'tariff') and seemed to advocate a separate 'English' way of dealing with these issues. The matter awaits clarification by the appeal courts¹³. There are many other ways also according to which an agency can be terminated. These are as follows:

By the principal revoking the agent's authority: Notice of revocation must be given by the principal to the agent. This is without prejudice to any claim for damages which the principal or agent may have against the other for breach of the contract of agency, if any. Section 206, Contract Act, says that if such notice is not given, the damage resulting to the principal or the agent must be made good to the one by the other. Notice of revocation given by one joint principal is good so also where co-agents are appointed to act jointly. In some cause the agent may be appointed on the basis that no notice of revocation is required. As to implied revocation by act inconsistent with the continuation of the agency¹⁴, as to verbal revocation of authority conferred by deed¹⁵, Contract of agency cannot be specifically enforced.

Agency is terminated when the agent is discharged by the principal: If the agency is at will or the agent has been guilty of misconduct, the principal may discharge the agent. If, where the agency is for a specified period the principal is liable if he discharge the agent wrongfully.

Revocation by principal: Notice to agent is necessary: As revocation and renunciation of agency may take place in a myriad ways, the right and obligation that flow from such termination can only be after the party, who intends to snap such good relationship, puts the other aggrieved party on reasonable notice. This is also justified on principles of natural justice. Where there is a contract, express or implied that agency should be continued for any period of time, a reasonable notice of such revocation or renunciation, as the case may be, is necessary.

Agent wrongfully discharged by principal: If the agent is wrongfully discharged by the principal, the former can treat the contract as non-existing and sue the principal for the reasonable value of his services to the date of discharge or he may treat the contract as existing and sue immediately for the damages he has sustained, he can file an action to recover actual damages. If the agent does not use proper diligence in obtaining other employment, the amount he would have earned will be deducted from the damages.

When the agent's authority is irrevocable: Where the agent's authority is by deed or for valuable consideration or securing any interest of the agent, it is irrevocable during the subsistence of any such security or interest. This is known as agency

"coupled with interest." But it is not irrevocable merely because the agent has an interest in the exercise of it, or has special property in or lien for advances upon the subject matter thereof. An authority coupled with interest is not determined by the death, insanity or bankruptcy of the principal or by the dissolution of the company, if it is the principal. The above principle is contained in section 202 of the Indian Contract Act which says that 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.

By the death of the principal or the agent: The death of the agent terminates his authority. If the principal dies, the agent is liable for loss caused to the estate if he acts otherwise. The rule applies also to a partnership and the death of one of the partners terminates the agency. But in *In re Sital Prasad*¹⁶ it has been held that this is not an inflexible rule in India and in the case of a H.U.F. the death of one of its members does not put an end to the power-or-attorney. In India the presumption is that the agency is joint and several and the death of one of two joint agents does not terminate the agency so far as the other is concerned.

By the bankruptcy of the principal or the agent: The authority of any agent is automatically revoked by the bankruptcy of his principal in so far as by the bankruptcy of a different principal, the trustee in bankruptcy is created. This is not so where the authority is irrevocable or in the case of purely ministerial matters. If an agent continues to act after notice of act of bankruptcy he may be liable to the trustee, or to the third party for breach of warranty of authority. The onus of proving wants of notice is one the person seeking to establish it. Termination of the authority of the agent by the bankruptcy of the principal is by operation of law while the termination of the authority by the bankruptcy of the agent turns on the interpretation of the agency agreement.

Termination by act of parties

The parties to an agency contract may at any time mutually agree to bring it to an end. There is normally a right in both the principal and the agent unilaterally to revoke the agency contract at any time before the agency has been completely performed by giving notice. Revocation requires no formality so that even a deed containing a power of attorney can be revoked orally. However, such unilateral withdrawal or revocation of agent's authority may be a breach if the agency contract and principal can be made liable in damages to agent for such breach.

Termination by operation of law

Unless there are special terms in the appointment contract or the contract is of an irrevocable type, an agency is normally terminated automatically when: i. End of fixed period in the

contract or if no fixed period, contract terminates after the agent has completed all he has been authorized to do. ii. Death, mental incapacity or bankruptcy of either party. Notice of such event to the other party is immaterial.

Conclusion

Agency may be brought to an end either by the act of the parties, or by operation of law.

Where the agency was created by agreement, it will be determinable in the same way.

A continuing agency may also be determined by giving such period of notice as is specified in any agreement, or failing that, reasonable notice. Finally, if either party acts in a way which is inconsistent with the continuation of the agency then it will be terminated though of course this may well give rise to rights of action for breach of contract.

As regards termination by operation of law, if an agency is for a particular transaction, the relationship will terminate when that transaction is completed. If it is for a specified period, it will cease at the end of that period.

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