

Week 4

Agency

- A word to connote an authority or capacity in one person to create legal relations between a person occupying the position of principal and third parties: *International Harvester Co of Australia Pty Ltd v Carrigan's Hazeldene Pastoral Co* (1958) 100 CLR 644, 652.
- 'Stepping into the shoes of the principal.'
- Types: Special (specific task), General (Solicitor), Universal (Power of Attorney), *Del Credere* (agent who sells products an/or services for another party for a fee, and guarantees payment to the seller), Factor (Mercantile Agent).
- Only actions performed with authority of the principal will be binding: *Toll (FGCT) Pty Ltd v Alphapharm Pty Ltd* (2004) 219 CLR 165.
- Creates a fiduciary relationship.
- Do not need to have legal capacity. Limited to the ability of the principal to bind themselves.
- Factors important to determining agency:
 - Important factors: Who determines mark ups or resale prices, is it the principal or the agent, is the principal aware of what the agent is charging on the resale? How does the purported agent deal with moneys received? Do they separate funds that they will account for to the principal?
 - *Hannaford (t/as Torrens Valley Orchards) v Australian Farmlink Pty Ltd* [2008] FCA 1591 Finn J: Agreement was verbal, was it principal and agent? Whether Sale of Goods Act 1895 SA or Vienna Convention would apply. Held Farmlink not an agent, purchaser for resale - means it bore the loss alone. Farmlink set the price secret and their margin also. Farmlink organised the transport and paid freight cost themselves, never counted to Torrens. Farmlink issued invoices to overseas customers, knew identity and location of customers themselves. Negotiated changes in price w/o checking or obtaining instructions from TVO
- Sources of Agency: authority (express, implied, or ostensible), ratification, operation of law.

- Authority:
 - Principal only liable for what the agent does within his or her authority. E.g. not having actual authority, nor ostensible in *UAERJ Pty Ltd v Jupiters Ltd* [2014] NSWCA 213/
 - Actual authority = when the principal grants authority for the performance of a specific task and the agent accepts this authority. Evidence of actual consent of both principal and agent must be found: *Poulet Frais Pty Ltd v Silver Fox Company Pty Ltd* (2005) 220 ALR 211. Consent may be express or implied. *Hely-Hutchinson v Brayhead Ltd* [1968] 1 QB 549 Lord Denning: It is express when it is given by express words...such as ...pass a resolution. It is implied when it is inferred from the conduct of the parties and the circumstances of the case, such as where the board of directors appoint one of their number to be managing director. They thereby impliedly authorise him to do all such things as fall within the usual scope of that office. Ostensible: ...is the authority of the agent as it appears to others. It often coincides with actual authority.
 - Ostensible Authority: A representation, either by words or conduct, made by or on behalf of the principal to the third party. Reliance on the representation by the third party to the knowledge of the principal party, and reliance leading to alteration of position of third party to their detriment.
 - *Freeman & Lockyer v Buckhurst Park Properties (Mangal) Ltd* [1964] 2 QB 480: *See p 314.*
 - *Crabtree-Vickers Pty Ltd v Australian Direct Mail Advertising & Addressing Co Pty Ltd* (1975) 133 CLR: *See p 314.*
 - *Egyptian International Foreign Trade Co v Soplex Wholesale Supplies Ltd and PS Refson & Co Ltd, The Rafaella* [1985] 2 Lloyd's Rep 36.
 - s 128 Corporations Act 2001 (Cth) - Entitlement to make assumptions: A person is entitled to make the assumptions in s 129 in relation to dealings with a company. The company is not entitled to assert in proceedings that any of the assumptions are incorrect. Assumptions can be made even if officer/agent fraudulently or forgers a document: s 128(3).
 - s 129: That the company's constitution and replaceable rules have been complied with, that if, from information provided by the company that is available from ASIC, someone appears to be a director/secretary of a company that they have been duly appointed and that they have authority to exercise the powers and duties customarily exercised or performed by a director or company secretary of a similar company. ALSO, that the officers and agents of the company properly perform their duties to the company.