

BSL CASE 整理

Agency (Lecture2,CHAPTER 15)

The principal can be deemed to act in person because who is acting has the authority of the principal.

- *Scott v Davis* (connote an authority or capacity in one person to create legal relations between a person occupying the position of principal and third parties.

When an agent is transacting with the third party, on behalf of the principal, there is no legal relationship between the agent and the third party.

- The agent is limited to the extent of the principal's *capacity*. Dealing through an agent does not expand a person's contractual capacity

✧ What are the implications of a principal/agent relationship?

- The principal becomes a party to the contract entered into by the agent with a third party on behalf of the principal.
- The binding nature of the agent's acts on the principal are **no greater than the liability that the principal would incur**, had the principal entered into the contract with the third party directly. Therefore, if the principal is a **minor** (under age) then the extent of the principal's liability to the third party would be the same as if the principal had entered into the contract with the agent himself. A minor can only be liable where a contract is entered into for necessities of the minor, such as for education of the minor which is deemed to be a necessity. If an agent enters into a contract with a third party for the buying of sports gear for the minor for recreational purposes (a non-necessity) then the minor cannot be held liable for payment.

✧ Nature of authority

Express authority: it is when the principal gives clear authority to the agent either in writing or orally.

Implied authority: it is determined by the courts. It is determined by the way that the principal and agent generally conduct themselves in order to determine whether there has been a conferral of such implied authority by the principal to the agent.

✧ Fiduciary dimension

- Always act in the principal's interests.(stockbroker and a client)
 - An agent cannot accept payment from any other party apart from the principal
- An agent is not permitted to accept a secret commission(need not to be cash, can be any way of services provided to the agent).It is a benefit given without the principal's knowledge or consent (*Industries v General Mortgage Co Ltd v Lewis*).It is not relevant whether or not the agent was influenced.(*Rv Nuttall*).

