

MLL215 – Commercial Law

Exam Notes and Cases

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Topic 1

Creation of Agency Relationship

Agency Law

Definition: An agent is a person who acts (or purports to act) on behalf of another person when dealing with a third party.

The Nature of Agency

Note: Agency is a set of legal relationships governed by common law principles

Where an agency relationship exists:

- The **agent** (A) has the authority to legally bind;
- The **principle** (P) in relation to;
- A **third party** (T)

Example

- You (Principle) say to your friend (Agent), "By me a Subaru up to \$20,000." Your friend (A) signs the contract with a third party (T).
- Result: A has bound P contractually to T.

Rights and Duties of Agents

- Pay or receive money for P
- Make or receive representation on behalf of P
- Impose liability on P for tortious acts of A

Why is the term agent used?

- Commercial convenience (salespersons)
- Necessity (corporations)
- Expertise (real estate, insurance)

Kerr, Law of Agency, Butterworths (1993): "The aim of the appointment of an agent is the performance of a service for the principal: what the principal finds it impracticable, inconvenient or difficult to do for himself, he proposed to do through another."

Terms often wrongly used in Business

Agents

Manufacturer → (Agent) → Customer

- Contract exists between Manufacturer and Agent
- No contract exists between Agent and Customer

Distributors

Manufacturer → Distributor → Customer

- Contract exists between Manufacturer and Distributor
- Contract exists between Distributor and Customer

Distributor: Buys goods from the principal on its own account and resells them to its own customers
→ acquires titles to any goods sold (buy low, sell high).

Agent: Does not buy/own the goods but acts for and negotiates the sale on behalf of the principal

Bailee: Person with whom some article is left, usually pursuant to a contract (contract of bailment), who is responsible for the safe return of the article to the owner when the contract is fulfilled.

Is an Employee an agent?

- Under control of employer
- May also be an agent (not always)
- Bottomley v Harrison (1952) 1 All ER 368

Specific Categories of General Agents

Brokers: Legal agent for only one of the parties and not entrusted with possession of goods

Factors: Entrusted with possession of goods to sell in own name

Commission agents: Appointed to buy or sell on behalf of principal

Del credere agents: Extra duty to principal in ensuring principal gets paid (*credere*, to trust)

Powers of attorney: Principal confers authority on agent to perform certain acts and is regulated by statute

Scope of Agency

Distinguish between agency and other relationships:

- Look at substance of relationship, not label (nomen juris)

Substance over form:

- Just because agent for one purpose, does not mean agent for all purposes

When considering whether A was agent of P ask:

- Was A the agent of P for this act?
- (Not) was A the agent of P?
- *Toll (FGCT) Pty Ltd v Alphapharm Pty Ltd* (2004) HCA 52; *Beazley v Seed & Grain Sales Moree Pty Ltd* (1988) 4 BPR 9529

Conditions:

1. Must relate to an act
2. Principal must have legal capacity to perform the act authorised to the agent
3. Agent must have authority for this act (*Peterson v Moloney*) (1951)

Beazley v Seed & Grain (1988)

Facts

- An agent, authorised to sell certain land, prepared a written record of an oral agreement between vendor and purchaser and sent copies to both the purchaser and the vendor.
- Vendors argued the written record constituted a written memo signed by them.

Issue: Was there an enforceable contract?

Held

- ***It is never sufficient to say of a person that he is an agent.***
- ***One must always ask for what purpose the person concerned was appointed agent,*** and one must always look to see whether the ***particular act*** was being done by the agent as agent or in some other capacity.
- At the time he sent the letter, the 'agent' was not actually an agent for this aspect of this particular transaction.

International Harvester v Carrigan's (1958)

Facts

- Carrigan visited IH's hay baler exhibit at show
- IH said it could be purchased from HK
- Sale between Carrigan and HK (Machinery and general agents)
- HK went broke after sale
- Machinery broke down

Issue

- Does calling someone an 'agent' make them an agent?
- Can C sue IH for the faulty hay baler

Held

- If HK = IH's agent, then yes
- If HK = independent contractor, then no
- **Not agent of IH despite description**
- **Just calling someone an 'agent' does not make them an agent**

Definitions of Agency by the High Court

In *International Harvester (1958)*: "Agency is a word used in the law to connote an authority or capacity in one person to create legal relations between a person occupying the position of principal and third parties. But in the business world its significance is by no means thus restricted (at 12)."

In *Petersen v Moloney (1951) 84 CLR 91*: "...An agent is a person who is able, by virtue of authority conferred upon him, to create or affect legal rights and duties as between another person, who is called his principal, and third parties (at 94)."

Capacity of Principle

- P must have the legal capacity to perform the act through A (*Christie v Permewan (1904 CLR)*)
- Whatever a person can do themselves can be done through an agent (i.e. minors can only do through an agent what they could do themselves)
- (I.e. if P is insane, agency is void whether sanity known or not)
- Section 124 *Corporations Act* provides that a company has legal capacity as a natural person

Capacity of Agent

- All persons of sound mind can be an agent
- Agent does not need contractual capacity (Watkins v Vince (1818) 2 Stark 368)
- Can an infant act as an agent?
- Capacity modified by statutory requirement to be licensed (i.e. auctioneers, real estate agents, stock brokers)

Authority of Agent

- Power an agent has (or appears to have) to act for P in relation to T
- May be actual or constructive

Constructive: Act or omission not directly expressed but inferred from other acts or omissions.

Estoppel: Or impediment preventing a party from asserting a fact or a claim inconsistent with a position that party previously took, especially where a representation has been relied or acted upon by others.

