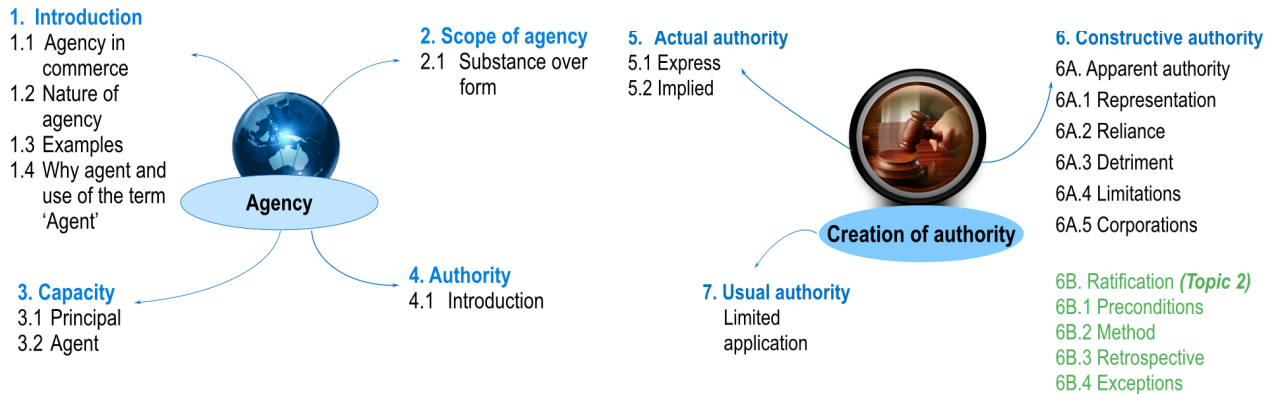


COMMERCIAL LAW

NOTES

1 AGENCY: The creation of an agency relationship and the authority of the agent	3
DEFINITION OF AGENCY	3
Definitions of agency by the High Court	3
CREATION OF AGENCY AUTHORITY	4
THE NATURE OF AGENCY	4
THE TERM 'AGENT'	4
Use of the term 'agent'	4

1 | AGENCY: THE CREATION OF AN AGENCY RELATIONSHIP AND THE AUTHORITY OF THE AGENT

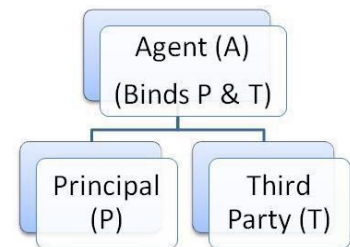


DEFINITION OF AGENCY

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

The concept of 'agency' involves three persons:

- i) a '**principal**' (P)
- ii) an '**agent**' (A)
- iii) a '**third party**' (T)



Agency is a relationship where **one party (P) authorises another party (A) to act on his behalf in his dealings with third parties (T).**

Agency — when one party enters into legal relations on behalf of another

- agent binds the principal legally
- agency works on behalf of principal
- allows principal to enter into lot of legal relationships at the sometime

This concept exists to enable P and T to enter into a contract/transaction without dealing with each other personally. Instead, the contract/transaction is brought about through A who acts, or purports to act, on behalf of P. The practical effect of the agency relationship is to increase the legal personality of the principal by allowing him to transact in different places at more or less the same time

Definitions of agency by the High Court

In *International Harvester* (1958) 100 CLR 644:

'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 significant is by no means thus restricted'. (at 12)

In *Peterson v Moloney* (1951) 84 CLR 91:

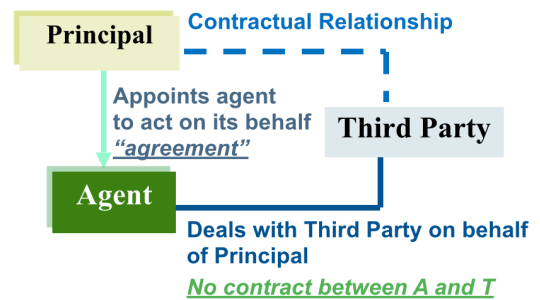
'... an agent is a person who is able, by virtue of authority conferred upon him, to create or affect legal rights and duties as between another person, who is called his principal, and third parties'. (at 94)

CREATION OF AGENCY AUTHORITY

Principal only bound by agent to the extent of the agent's authority.

An agency relationship can be created by:

- 1) Actual authority
 - express *agreement*
 - implied *agreement*
- 2) Constructive authority
 - apparent authority: *estoppel* through representation — also termed ostensible authority
 - usual authority (As part of your job; i.e. bank officer)
 - ratification of A's acts by P
- 3) Operation of law (e.g. necessity)



THE NATURE OF AGENCY

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 **principal** (P) in relation to;
- a **third party** (T).

Example: You (principal) say to your friend (agent), 'buy 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
- other rights/duties that can be created/affected by an agent:
 - pay or receive money for P
 - make or receive representation on behalf of P
 - impose liability on P for tortious acts of A

THE TERM 'AGENT'

Use of the term 'agent'

The term 'agent' is used for a number of reasons, including:

- 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 proposes to do through another.'