

# LAWS2301

# COMPANY LAW

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## Contracting with the Company

1. Is the company directly bound by the contract?
2. Is the company indirectly bound by the contract?
3. Can the third party rely on any statutory assumptions?
4. Has the company ratified the contract?
5. Who is liable on the contract?

### Is the contract binding on the company?

**Directly bound:** Company may be directly bound by the contract if it was entered into by “the directing mind and will of the company”: *Lennard’s Carrying Co v Asiatic Petroleum Co (1915)*.

- Does the person have such control and management over the company that they can be characterised as the ‘directing mind and will of the company’?
  - *HL Bolton (Engineering) Co v TJ Graham & Sons (1957)*: Consider the:
    - Nature of the matter under consideration.
    - Relative position of the officer or agent.
    - Other relevant facts and circumstances of the case.
- Organic theory → Organs of a company (board of directors and the members in general meeting) are more than mere agents.
  - When they act within the scope of the powers conferred on them by the company then they are treated as acting as the company itself: *Northside Developments v Registrar-General (1990)*.
  - **s198A**: Company acts through its directors.

Company can make a contract directly by executing a document: *195 Crown St v Hoare (1969)*.

- **s127**: Provides directions as to how a company may execute a document with or without a common seal.
  - **s123(1)**: Common seals are optional.

#### **s127: Execution of documents (including deeds) by the company itself**

- 1) A company may execute a document without using a common seal if the document is signed by:
  - a) 2 directors of the company; or
  - b) a director and a company secretary of the company; or
  - c) for a proprietary company that has a sole director who is also the sole company secretary--that director.

Note: If a company executes a document in this way, people will be able to rely on the assumptions in subsection 129(5) for dealings in relation to the company.

- 2) A company with a common seal may execute a document if the seal is fixed to the document and the fixing of the seal is witnessed by:
  - a) 2 directors of the company; or
  - b) a director and a company secretary of the company; or
  - c) for a proprietary company that has a sole director who is also the sole company secretary--that director.

Note: If a company executes a document in this way, people will be able to rely on the assumptions in subsection 129(6) for dealings in relation to the company.

- 3) A company may execute a document as a deed if the document is expressed to be executed as a deed and is executed in accordance with subsection (1) or (2).
- 4) This section does not limit the ways in which a company may execute a document (including a deed).

**Indirectly bound:** Company may be indirectly bound by the contract if it was entered into by an agent with actual or apparent authority: *Brick & Pipe Industries v Occidental Life (1992)*.

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**Actual authority:**

- **s126(1):** Company's power to make contracts may be exercised by an individual acting with express or implied authority and on behalf of the company.
  - **Express:** Exists where the principal has expressly given authority to the agent to act.
  - **Implied:** Conferred to do whatever is necessarily or normally incidental to an activity expressly authorised: *Brick & Pipe Industries v Occidental Life (1992)*.
    - Extends to all those acts customarily done by persons occupying that position: *Panorama Developments (Guildford) v Fidelis Furnishing Fabrics (1971)*.
      - Individual director does not have customary authority to make contracts on the company's behalf just because they are a director: *Northside Developments v Registrar-General (1990)*.
        - Refer to **s127** above.
      - Managing director has the customary authority to make contracts related to the day-to-day management of the company's business: *British Thomson-Houston Co v Federated European Bank (1932)*.

Secretary has customary authority to enter into contracts that are related to the administration of the company; limited to