

Business Associations Template

Agency-

1. Is there agency btw the parties?
 - a. Express agency (K)?
 - b. Implied agreement (customary)?
 - c. Apparent authority? P's conduct leads TP to believe A is P's agent and TP relies on this. APPLY TO FACTS
 - d. Operation of law- cohabitation (Pianta- necessities of life)
 - e. Necessity
 - i. Existing contractual rship- can be social K?
 - ii. Genuine emergency
 - iii. Impossible to communicate
 - iv. Good faith

Great Northern Railway v Swaffield- no one to collect horse, owner charged for stable costs

Springer v GWR- no one collected tomatoes, sold tomatoes, not necessary

- f. Did Pr ratify K?
 - i. Disclosure to TP?
 - ii. P in existence (or before incorporated **131 Corps Act**)
 - iii. P had capacity at time of K?
 - iv. Ratification of whole K?
 - v. Ratification made with full knowledge?

Metropolitan Asylums Board Managers v Kingham & Sons- A acted w/o authority. P tried to ratify K after a week. Ratification too late

Keighly, Maxstead & Co v Durant- TP unaware A was purchasing corn for P. Ratification ineffective as A didn't disclose he was acting for P

Bolton- agency can be created retrospectively

Trident General Insurance- ratification can take place even if subject matter destroyed

2. Does the agent have authority?
 - a. Actual authority?
 - i. Expressly given?
 - ii. Implied by agency itself?
 - iii. Arising by operation of law?
 - b. Implied actual authority?
 - i. Act incidental/ necessary for carrying out acts in A's actual authority?

Snowy Mountains Hydro case-

- c. Apparent authority?

Freeman & Lockyer v Buckhurst- A had no actual authority to bind co but had apparent authority as board knew he was acting as managing director
Pacific Carriers v BNP- doctrine of constr notice
Royal British Bank v Turquand- A must be acting within scope of actual/apparent authority
Essington Investments v Regency Property-

3. Did the agent comply with their duties?

- a. Follow P's instructions?

Bertram, Armstrong & Co v Godfrey- A didn't sell P's stock as instructed and P lost money

- b. Used reasonable care and skill?

Rawlinson & Brown v Witham- A personally liable as he acted on unverified information

- c. Act in person?

John McCann & Co v Pow- A gave details to subagent- can't delegate agent duties

- d. Act in P's best interests?

Hewson v Sydney Stock Exchange- brokers can't enter market in competition with their clients

- e. Did A make secret profits?

Regier v Campbell- Stuart- P recovered secret profits from A when she bought & sold property

- f. Did A divulge confidential information?

Consul Development v DPC Estates- clerk told family to invest in a scheme, not secret profit as it was family's profit and they didn't know

- g. Did A keep separate accounts?

CRIMINAL SANCTIONS APPLY TO SECRET PROFITS. Money to be held on constructive trust and recoverable by an account of profits (remedy).

4. Did P comply with their duties?

- a. Remuneration

Luxor v Cooper- real estate agent found buyer but seller didn't go through transaction= no commission to agent

Moneywood v Salamon Nominees- seller later went through with original transaction= commission to A

- b. Indemnity from P (as long as acting within their instructions)

5. Liability

- a. Is P liable?

- i. On the contract?

- ii. Vicariously liability for A?

GWR v Swaffield; Springer v GWR

- b. Is A liable?

- i. Did A contract personally?

Cooper v Fiskin- LL gave permission to fix driveway, A thought this meant contractor- this was reasonable so P liable

- ii. Custom/ trade usage, stock exchange rules, non-existent P (**Kelner v Baxter, Black v Smallwood**)

- iii. A executed deed? Liable if not appointed to do so under deed

- iv. A acted for foreign P?

- v. A signed off bill/ cheque? (Unless agency made clear)

vi. Breach of warranty of authority?

Doctrine of undisclosed P-

1. A acted in authority?
2. Evidence as to P's identity admissible?

Humble v Hunter- A described himself as owner, thus P couldn't enforce the K

3. Rights of P consistent with terms of K?

Said v Butt- nature of objection was personal, doctrine of undisclosed P didn't apply

4. TP suing in reasonable amount of time?
 - a. If P sues TP, A cannot sue
5. If agency r/ship may deter TP from contracting, failure to disclosure the r/ship?
May be misleading and deceptive conduct

Abigroup Contractors v Peninsula Balmain-

6. Has the agency been terminated?
 - a. By acts of parties- mutual agreement/ revocation by P of A's authority/ withdrawal of A/ receipt of secret commission/ completion of purpose/ expiry of time?
 - b. By law- performance of agency agreement/ lapse of time/ death of P/ insanity/ bankruptcy/ frustration