Contents

AGENCY: RATIFICATION

INTRODUCTION

General:

- ***Bedford Insurance Co Ltd v Instituto de Resseguros do Brasil***
  - Unauthorised act by an agent, whether lawful or unlawful, is capable of being ratified
  - Cannot ratify illegal transaction
- Possible where A exceeded authority or had no authority at all (***Firth v Staines***)
- Once ratified, P cannot withdraw

5 preconditions (***Firth v Staines***):

- 1) A must have purported to act for P
- 2) At time of A's act, P must have been competent (***Firth v Staines***)
- 3) Must ratify within reasonable time (***Life Savers Australasia v Frigmobile Pty Ltd***)
- 4) P must know all material facts
- 5) P must ratify whole transaction

Retrospective application:

- Ratification is retrospective (***Taylor v Smith***)
- Once ratified, it is valid and effectual from time of agent's act rather than time of ratification (***Danish Mercantile Co Ltd v Beaumont***)
- Treated as though agent had authority at the time (***Irvine v Union Bank of Australia***)
- Ratification must take place at a time when the ratifier might himself have lawfully done the act he is ratifying (***Bird v Brown***)
  - This has been criticized as too wide. See ***Bolton Partners Ltd v Lambert*** instead.

Benefits to principal:

- ***Hagedorn v Oliverson***
    - Not bound until ratification
    - Has the option to adopt or not

Subject to ratification:

- Not valid until ratification communicated to T by P (***Watson v Davies***)

PURPORTING TO ACT FOR P

General:

- A must have purported to act for P (***Byas v Miller***)
- Undisclosed principal cannot ratify (***Trident General Insurance v McNiece***)

Identity of P:

- ***Keighley, Maxted & Co v Durant***
    - A authorised to buy wheat at a lower price. Bought at a higher price without disclosing it was for undisclosed P.
    - **Where A does not purport to act for P, or appears to act for himself, P cannot ratify**
    - P need not be named, but must have reasonable designation of who will be bound (P must be known or ascertainable(e.g. description) at time of contract (***Lyell v Kennedy***)
        - Potential beneficiary not an ascertainable P (***Trident General Insurance v McNiece Bros***)

Fraud:

- Irrelevant whether A, in assuming to act for P, has fraudulent intent (***Tiedemann and Ledermann Freres***)
- Forgery not capable of ratification (***Brook v Hook***)
    - Exception: Can simply make a new agreement with consideration (***Rowe v B & R Nominees Pty Ltd***)
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P'S COMPETENCE

General:

GUIDE TO PASSING OF PROPERTY PROBLEM-SOLVING

WHERE GOODS ARE SPECIFIC

1) Look for an intention (s 22). If intention, property passes with that intention.
2) If no intention, then go to section 23 rules.
   a. Rule 1: Unconditional contract in a deliverable state. Passes when contract made.
   b. Rule 2: Goods not in a deliverable state. Property passes when in a deliverable state and buyer notified.
   c. Rule 3: Weighing/measuring to ascertain price. Property passes that is done and buyer notified.
   d. Rule 4: Contract for sale or return. Property passes when buyer indicates approval, adopts the act, or doesn't return after reasonable time.
3) Also look at passing of risk (s 25) if this is an issue
   a. If parties have stipulated this in the contract, that is what applies.
   b. If not, then risk passes when property passes, unless:
      i. Delay in delivery due to fault of one of the parties, which has caused damage/destruction; or
      ii. Seller holding goods at bailee and breached obligation to take reasonable care

WHERE GOODS ARE UNASCERTAINED

1) Have goods become ascertained? If not, property cannot pass (s 21)
2) If yes, look for parties' intention (s 22). Property passes with their intention if it can be given effect to (i.e. not before they became ascertained).
3) If no intention or intention cannot be given effect to, apply s 23 rule 5
   a. Passes when goods unconditionally appropriated to contract by seller with assent of buyer, or by buyer with assent of seller
   b. Deemed unconditionally appropriated when loaded onto delivery truck