

Topic 3: Ratification, Agency by Operation of The Law, Undisclosed Principal, Rights and Obligations of Principal, Third Party and Agent

Ratification

- **The relationship of agency may also arise through ratification**
- **Where one person acts on behalf of another, without having authority to do the particular act, the person on whose behalf the act is done may, by ratifying it, render the act as valid and effectual as if it had been done by their duly authorised agent**
- Ratification: confirmation of an action which was not pre-approved and may not have been authorised, usually by a principal/employer who adopts the act of their agent/employee
 - In other words, an A does an act without the approval of P but by the virtue of P's subsequent approval, that act becomes authorised
- A has neither actual nor apparent/ostensible authority
 - P may ratify under some circumstances
 - Once ratified, T and P are bound as if A had authority
- Authority is granted retrospectively → **Taylor v Smith**
- P may ratify A's actions even though there was no authority at the time
 - It favours the principal → **Hagedorn v Oliverson**
- **Ratification is ineffective if the original transaction is void**
- **A contract 'subject to ratification' is not binding contract until ratified and is not the type of contract that this doctrine covers**
 - **Watson v Davies**- the former is well aware of the limits of the agent's authority
- The doctrine of ratification presupposes that the third party is unaware of the limits of the agent's authority
- **Once ratified, the principal cannot withdraw**
- Ratification may apply whether it was a situation where the agent exceeded his authority or had no authority at all: **Firth v Staines**

Pre-conditions of Ratification

1. Agent must purport to act for the principal → i.e. the acts must have been done as agent for and on behalf of the supposed principal; **Howard Smith v Varawa**
2. The principal must have the capacity and competence to make the contract at the date of the contract and the date of the ratification → **Firth v Staines**
3. The principal must ratify within a reasonable time → **Life Savers Australasia v Frigmobile**
4. The whole contract must be ratified. A principal cannot ratify that which is beneficial and reject the remainder → **Cox v Mosman**
5. The principal must know all the material facts i.e. ratification must be with full knowledge

Precondition One: Agent must act for the Principal

- Cannot apply with undisclosed principal (i.e. T does not know there is a P)
 - If this was possible the whole world could ratify as anyone could claim to be the P

- P must be identifiable although need not be named i.e. undisclosed only as far as name is concerned
- Fraudulent actions can be ratified, but a forgery cannot be as A is not purporting to act for P
- **Keighley, Maxted and Co v Durant**
 - Roberts (A) intended to purchase wheat from Durant (T) on behalf of himself and Keighley (P)
 - Durant set price but Keighley & Roberts counter offered
 - Durant refused
 - Roberts then bought at higher price. No mention of Keighley who had no knowledge of Robert's contract
 - Later, agent informed P of deal and P agreed
 - But contract price was not paid, and T had to sell off wheat at a lower price
 - T sued A and P on the basis that P had ratified
 - **HELD**
 - K could not ratify
 - Cannot ratify where:
 - A had no authority; and
 - A did not purport to act for P (undisclosed P)
 - Note: the doctrine of ratification cannot apply to the undisclosed principal – *Trident General Insurance v McNiece Bros* (1987) 8 NSWLR 270. The reason for this is that the doctrine of the undisclosed principal is based on the fact that the agent has actual authority.

Precondition 2 -Principal has the contractual capacity to ratify

- P existed and has contractual capacity to ratify
 - **Kelner v Baxter**
- Corporations
 - Corporations Act 2001, ss 131-133
- This precondition is mostly relevant to minors and bankrupts
- **If competency cannot be overcome, a new contract can be entered into:**
- **Kelner v Baxter**
 - **FACTS:**
 - Baxter entered a contract to purchase wine from Kelner: Signed "on behalf of the proposed Gravesend ... Co"
 - **HELD:**
 - company had existed when signed, Baxter would have been an agent for them
 - However, non-existent company so could not ratify when/if it came into existence
 - Baxter was personally liable for the wine
- Corporations Act 2001
 - If "A" enters into (or purports to enter into) contract on behalf of a company before registration, company can ratify if it does so:
 - Within time agreed by parties
 - Within reasonable time (if no agreed time)
 - "A" may be liable for damages if company doesn't ratify or perform: ss 131(2)-(4)

- Section 132: T may release A from liability under s 131
- Section 133: ss 131-132 override any common law rights that may exist

Precondition 3: The Principal must ratify within a reasonable time

- Varies depending on the circumstances
- P must be able to make a contract personally at the time of ratification
- E.g. if goods are destroyed before ratification, so cannot fulfil a contract
- **Ratification is not too late if it occurs within a reasonable time of the principal becoming aware → Bedford Insurance Co v Instituto de Resseguros do Brasil**
- Ratifying an insurance policy several years later is not a reasonable time → Trident General Insurance v McNiece Bros

Precondition 4: The Whole Contract must be ratified

- A principal cannot ratify only the favourable parts of a contract and disaffirm the rest. Otherwise tantamount to affecting a transaction which T did not intend to enter into.
- Thus, must either adopt or reject whole transaction.
- Note: If agent entered into several separate transactions, P could choose which contracts to ratify.

Precondition 5: The Principal must know all the material facts

- A principal can only ratify if they are aware of all the material facts at the time of ratification or have displayed an intention to ratify no matter what the circumstances → Taylor v Smith
- *Bayley v Fitzmaurice* (1856) 6 E1 & B1 868 – ‘What he has done for me I know not but I must support him in all he has done for me’ – effectively stating that he will ratify regardless of the circumstances surrounding the transaction.
- See also *Lederberger and Scheiner v Mediterranean Olives Financial Pty Ltd* [2012] VSCA 262