

BSB111 Business Law & Ethics

Summarised Notes

Week 7 – Agency & Business Structures

AGENCY

Agent: a person acting on behalf of another in dealing with a **third party**

Principal: authorises the agent to work for them

- Principal is bound by any deal made by the agent
- Binding agreement is between the principal and third party

Examples:

- Employer and employee
- Seller and auctioneer
- Client and solicitor/real-estate agent/stockbroker
- Corporation and director
- Partner and partner

SCOPE OF AUTHORITY

1. Express actual authority
2. Implied actual authority
3. Apparent authority
4. Authority by ratification

EXPRESS ACTUAL AUTHORITY

- Principal can expressly authorise the agent, in writing or verbal, to act on principal's behalf.
- Authorisation should clearly state the duration of the agent's appointment, precise scope of authority and entitlement to any commission/payment.

IMPLIED ACTUAL AUTHORITY

- Agency can also arise by implication
- When two people go into business as partners, there is an implied grant of authority by each partner to the other authorising them to act on behalf of each other in relation to matters incidental to the partnership business.

Example:

- I work in the coffee shop and I run out of milk, so I go and buy milk. Buying milk is incidental to running the coffee shop, even though there was nothing written or said to say I am allowed to buy milk.
- Buying a new expensive coffee machine is not incidental to running the coffee shop.

APPARENT AUTHORITY

- Agent did not actually have the authority to do what they did, but the law says the principal is still bound by the agent's actions.

An agent will have apparent authority to act on behalf of principal if ALL 3 are satisfied:

1. Third party did not know that the agent did not have actual authority.
2. Principal 'held out' the agent as having authority to act on principal's behalf (appointing agent to a certain position, or by having held the agent out as having authority in the past)
 - Eg. Coffee shop owner holds the barista out by employing them, giving them a uniform, and leaving them alone to run the shop.
3. Third party relied upon that holding out, and reasonably assumed the agent had actual authority.
 - Eg. Customer assumes that barista has authority, such as to collect the money, give change, etc.

Example:

- A particular coffee shop sells coffee machines and the barista sells one with a huge discount. Even though the owner is going to lose a lot of money, he is still bound to sell the machine as the customer wasn't aware that the barista didn't have the authority to sell it.
- As long as the third party relied on the authority of the agent and was not aware that they did not have actual authority, the principal is bound by it and will lose the money. Agent is employed by principal; therefore, the third party is going to trust that the agent knows what he is doing on behalf of the principal.

AUTHORITY BY RATIFICATION

- The agent didn't have authority to do something, but when the principal learns about it later on, he can authorise it retrospectively within a reasonable amount of time after it occurs.

THE AGENT'S DUTIES

Conflicts of Interest:

- Agent should not put themselves in a position where the best interests of the principal conflict with the agent's own personal interests.

- Eg. Agent should not sell their own property to the principal without informing them beforehand.

Secret Commission:

- Agent should not receive any money from the third party unless the principal is aware.

THE AGENT'S ENTITLEMENTS**Remuneration:**

- Agent is entitled to be paid
- Flat fee, commission based upon the application of a formal to a transaction amount, or some other arrangement.

Indemnity:

- Agent is entitled to be indemnified by the principal
- Reimbursed for any payments made, expenses incurred and liabilities the agent assumes while carrying out the principal's instructions
- Agent will be personally liable to third party where:
 - o Intentional liability
 - o Undisclosed principal (third party doesn't know that you're an agent for someone, and they think they're signing a contract with you)
 - o Breach of warranty

Liability of the Agent:

Agent will be liable to third party for breach of warranty if ALL 3 are satisfied:

1. Agent claimed they were making the contract on behalf of principal
2. But agent did not in fact have authority to act on behalf of principal
3. Third party relied upon the agent's representation and would not have entered into the contract in the absence of the representation.

Concluding the Agency – Termination:

- When the agent completes the tasks they were appointed by principal to complete
- Duration of appointment established by principal expires
- Principal and agent agree to terminate relationship
- Principal dismisses agent
- Principal revokes/limits authority of agent to act on their behalf

BUSINESS STRUCTURES

- Sole trader
- Partnership
- Trust
- Company
- (Can use more than one structure at the same time)

Consequences:

- Ease and cost of setting up the business
- Legal and financial liability
- The way they pay tax
- Ability to raise finance
- Ongoing regulatory obligations

Sole Trader:

- Own and operate the business by themselves
- May engage employees (contract) but they are the sole owner
- Sole responsibility for raising funds to start business
- Entitled to all profits
- Unlimited personal liability for debts and other legal obligations
- No formal legal requirements

Advantages:

- Very little formalities to comply with
- Full ownership = makes all decisions and gets all profits

Disadvantages:

- Personally liable for any business debts
- Limited sources of capital
- May not have all skills needed to be successful

Partnership:

- 'Mutual agency'
- Each partner is both the principal and the agent of the other partners.
- Each partner is liable for the actions, contracts and debts of other partners.
- Not a separate legal entity
- Each partner has unlimited personal liability – working with other people means increasing your liability depending on what they do too.

- No formal steps needed to form a partnership
- If all 3 elements are satisfied, a partnership exists regardless of the stated intentions of the parties:
 - o Carrying on a business (continuity/repetition of trading activities)
 - o In common (doing it together, acting on the behalf of others)
 - o With a view of profit
- Not the same as joint-venture – contract to cooperate in a project (not long term)

Advantages:

- Few formalities – ease and low cost of formation
- More people to contribute ideas, skills and capital
- Privacy – don't have to be registered with any government authority

Disadvantages:

- Unlimited personal liability
- Lack total control as an owner