

Topic 2: Ratification

1. Defining Ratification

Professor Fisher: “Ratification has been defined as the approval by act, word, or conduct of that which was attempted (of accomplishment), but was improperly or unauthorized performed in the first instance.”

- Ratification converts an act which is unauthorized into one which is authorized •

The Ratification Scenario:

In short an agent does an act without the approval of the principal but by virtue of the latter’s subsequent approval that act becomes authorized.

1. The agent has entered into a contract with a third party, but without the principal’s authority to do so (without either actual, implied or ostensible authority)
2. Despite the fact that the agent has acted outside such authority, the principal nevertheless accepts such a contract
3. **If the principal does adopt the agent’s transaction, that act of adopting the transaction relates back to the date that the agent acted. In other words, ratification operates retrospectively.**

It is not necessary for the principal to be named, but it is important that he is in some way identified.

In other words, when the agent was committing the transaction, the third party must know he was acting for someone.

Principle’s godsend and major advantage

Professor Seavey: “In a changing market he has *the choice of accepting or rejecting the contract.*”

- The third party can sue the agent if ratification is rejected.
- Thus the third party has a basis for remedy after he/she has been brought into a position of reliance due to the representations of the agent.
- The principal has not injured the third party because at the time that the contract was entered into by the agent the latter lacked any authority to act.

Suppose if A purports to contract on behalf of P and enters a contract with T.

If circumstances in the market change and the contract comes to be tremendously advantageous to P and less advantageous to T, then P effectively gets a windfall.

The third party does not suffer a loss per se but they may be disadvantaged by having to forego an opportunity that they might have taken by abandoning the agent’s contract.

2. Preconditions for Ratification

(i) A must have purported to act for P

'A voluntary agent must expressly intend to benefit the person for whom he acts':

Byas v Miller

- Only possible if P was in some way nominated as A's principle when the transaction was entered into
- A must have **purported** to act on P's behalf –(for this reason an '*undisclosed principle*' cannot ratify even though A actually intended to act on P's behalf
- **The doctrine of ratification cannot apply to the undisclosed principal:**

Trident General Insurance v McNiece Bros.

The majority of the High Court of Australia recently decided that a company which was intended to be benefited by an insurance policy could, even though it was not a party to the contract of insurance and provided no consideration for it, recover from the insurance company the indemnity promised in the policy.

The reason for this is that the doctrine of the undisclosed principal is predicated on the basis that the agent has actual authority.

The identity of the principal