

CHAPTER 10: THE LAW OF AGENCY

QUESTION 1

Explain the different methods by which an agency relationship may be established.

Answer:

- An agency is the relationship which exists between two persons (natural or legal) the agent and the principal.
- It may be created by express agreement, implied agreement, necessity, estoppel or ratification.
- The most common method of creating an agency relationship is by an express agreement. The relationship that the parties have with each other may give rise to an implied agency agreement. It is assumed that the principal has given the agent authority to act on his behalf because of the particular position held by the agent.
- An agency of necessity will only arise if all the following conditions are met: the agent is in control of the principal's property, and a genuine emergency has arisen requiring the agent to take particular action to protect interests of the principal. It is impossible for the agent to get the principal's instructions. The agent must act in good faith in the best interests of the principal. *Great Northern Railway v Swaffield* (1874), *Springer v Great Western Railway* (1921), *Sachs v Miklos* (1948).
- Estoppel is where the principal's words or actions give the impression that he has consented to a person acting as his agent. *Freeman & Lockyer v Buckhurst Park Properties Ltd.* (1964).
- Ratification must take place within a reasonable time of the contract being made and the principal must adopt whole the contract with full knowledge of what it entails. The principal must have had legal capacity to make the contract when the agent made it and when it was ratified, *Kelner v Baxter* (1866), *Borvigilant (Owners) v Owners of the Romina G* (2013).

QUESTION 2

Discuss the rights and duties of an agent.

Answer:

- An agent is given various rights by the law of agency. The law also imposes fiduciary duties on an agent.
- Right to indemnity for any expenses or losses incurred when carrying out their authorised duties as agents.
- Right to indemnity for any expenses or losses incurred when carrying out their authorised duties as agents. Although there is no automatic right to payment, usually a contract will provide for payment. A right to reasonable remuneration is implied in a commercial agency unless expressly agreed otherwise.
- Right to a lien over principal's property in the agent's possession until the principal's debt to the agent is paid.
- Duties of a contractual agent include the duty to perform agreed tasks and follow instructions, usually personal performance is required, *Bertram, Armstrong & Co v Godfrey*

(1830). A gratuitous agent has no duty to act as no consideration has been provided by the agent but if he does act he must do so in accordance with the instructions set out by the principal.

- All agents must carry out their tasks with due care and skill, *Keppel v Wheeler* (1927). An agent must maintain the standard of skill and care to be expected of a reasonable person in his profession, trade or claimed expertise.
- Agents have a duty to account meaning that they must provide full information of the transactions carried out on behalf of the principal. They owe their principal a duty of confidentiality and must keep the principal's business confidential even after agency has ceased.
- Agents have a duty to avoid a conflict of interest, *Armstrong v Jackson* (1917), *Rossetti Marketing Ltd v Diamond Sofa Co Ltd* (2012) *Boardman v Phipps* (1967) and have a duty not to make a secret profit, or take a bribe, *FHR European Ventures v Cedar Capital Partners* (2014)).

QUESTION 3

Jenny authorises Sam, her agent, to sell Jenny's antique diamond ring for not less than £3,000 and to purchase twenty plasma screens for Jenny's business for up to £6,000. Sam buys the ring herself for £3,000 using a nominee and then sells it on to a dealer for £4,000. Sam keeps the £1,000 she has made. Sam, who is well known at Dixons plc as an agent for Jenny, contracts to buy ten plasma screens from them for £7,500. Advise Jenny.

Answer:

- All agency relationships are fiduciary ones, which mean that they are based upon faith and trust. The law imposes various fiduciary duties on an agent, such as requiring an agent to act honestly in good faith, to avoid conflicts of interest, not to make secret profits or take bribes.
- With regard to the ring Sam has broken the duty to account for all profits, the duty to avoid a conflict of interest and the duty not to make a secret profit. He has acted in his own interests, not the principal's. An agent owes a duty to his principal not to put himself in position where a conflict of interest may arise, without informing the principal of that possibility. *Armstrong v Jackson* (1917).
- Sam has made a secret profit of £1000. Jenny will be able to take legal action against Sam for breach of duties and recover the £1,000, *Boardman v Phipps* (1967).
- With regard to the purchase of the plasma screen, Sam is in breach of his duty to perform the agreed undertaking according to the instructions of the principal, *Bertram, Armstrong & Co v Godfrey* (1830).
- Sam has exceeded actual authority but has apparent authority, (*Racing UK Ltd v Doncaster Racecourse Ltd and Doncaster Metropolitan Borough Council* (2005)). Therefore although Jenny can take action against Sam for breach of duty, Jenny is bound by the contract with Dixons.

QUESTION 4

Harry appoints Lin, as an agent, to sell his microlight aeroplane and agrees to pay her 5 per cent commission. Lin sells the aeroplane to Paul for £50,000 and Harry pays her £2,500 commission. As Paul has got the plane cheaply, he gives Lin a commission of £1,000. Lin does not disclose this to Harry.

Harry appoints Alice as his agent to sell two paintings. He tells her to sell the paintings for at least £10,000 each. Alice sells one painting to Kiri for £8,000. Unknown to Harry, Alice buys the other painting herself for £13,000, and sells it on to Prad for £18,000.

Advise Harry, who has now learnt of the £1,000 Lin received from Paul, and of Alice's dealings on the paintings.

Answer:

- All agency relationships are fiduciary ones, which mean that they are based upon faith and trust. The law imposes various fiduciary duties on an agent, such as requiring an agent to act honestly in good faith, to avoid conflicts of interest, not to make secret profits or take bribes.
- A bribe is where an agent accepts a secret commission or other inducement given by a third party in return for completing contracts between the third party and the principal.
- A bribe does not necessarily have to mean corruption, and may include circumstances where an agent buyer is given financial or other inducements to favour a particular supplier. Lin has breached her duty as an agent in not disclosing the £1,000 commission she received from Paul. Harry will be able to claim the secret commission.
- In selling a painting to Kia for £2,000 less than instructed, Alice has breached her duty to perform the agreed undertaking according to the instructions of the principal, *Bertram, Armstrong & Co v Godfrey* (1830).
- Alice has breached her duties as an agent in purchasing one picture herself and selling it on to Prad. She has broken the duty to account for all profits, the duty to avoid a conflict of interest and the duty not to make a secret profit, *FHR European Ventures v Cedar Capital Partners* (2014)
- Harry will be able to take legal action against Lin and Alice for breach of duties.