

## Chapter 14

### Agency

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#### Introduction

This essay seeks to address the legal concept of agency and, in particular, the basis for imposition of liability in the law of agency, by reference to legal history. Questions of liability arise within three distinct relationships: between principal and agent; between principal and third party; and between agent and third party. Many of these questions have been considered by the courts in the course of developing agency principles in the 19th and 20th centuries. However, an understanding of the early law of agency is important as it sheds much light on the origination of core principles of agency, such as authority, and on the nature of the three relationships inherent in agency. The early history of agency also demonstrates the antiquity of the concept and its important role in facilitating commerce from at least the feudal period in England and, before that, under Roman law. Agency continues to play a fundamental role in modern commercial life.<sup>1</sup>

#### Meaning of agency

The primary legal conception of agency is “to connote an authority or capacity in one person to create legal relations between a person occupying the position of principal and third parties”.<sup>2</sup> Usually, the legal relations so created (that is, between the principal and the third party) are contractual in nature.<sup>3</sup> This reflects the historical development of agency principles particularly through the law of debt and assumpsit. It also identifies that the purpose of agency is to create

- 1 See Watts & Reynolds, *Bowstead & Reynolds on Agency* (19th ed, Sweet & Maxwell, London, 2010), [31-012]–[31-019], for the myriad examples of agency relationships that arise in modern commercial law. See also Goode & McKendrick, *Commercial Law* (4th ed, Penguin, London, 2010), Ch 5 “Agency in Commercial Transactions”.
- 2 *International Harvester Co of Australia Pty Ltd v Carrigan’s Hazeldene Pastoral Co* (1958) 100 CLR 644, 652. See also *Petersen v Moloney* (1951) 84 CLR 91, 94; Watts & Reynolds, *Agency*, [1-001]–[1-005], [1-027].
- 3 *Scott v Davis* (2000) 204 CLR 333, [228] (Gummow J).

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