1-1-1957

Business Organization

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BOSTON UNIVERSITY

Property of Maynard H. Jackson, Jr.

Class Business Organization I (AGENCY)

LAW RECORD

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PROF. STICKLES

Notes: 1-23-57

References:
Mecham: Outline of Agency
Ferson: Agency
Mecham: 3 vols.
Tiffany: Agency (1921)
Mecham: Partnership
Craine: " (1954)

A - agent
P - Principal
y = there
ou = where
I C = Independent Contractor (or IKtr)
M = master
S = servant

Today, about 80% of Agency problems involve commercial transactions.

Agency - The relationship which results from the manifest. of consent from one to another That the other shall act on his behalf + subject to his control + consent by the other so to act. The other is the principal.

Master - A principal who employs another to perform service in his affairs & who controls or has the right to control the phy. conduct of the other in the performance of the service.

Indep Contractor - one who Ks with another to do something for him but who is not controlled by the other nor subject to the other's right to control with respect to his phy. conduct in his perform. of the undertaking.

General Contractor An agent authorized to conduct a series of transactions involving a continuity of servid.

Special " An agent author. to conduct a single action or a series not involving a continuity of service.

Sub-agent the agent of the agent.

Disclosed principal - one who is known to the third per. at the time of the act + the third person knows of the agent + for whom

the agent acts.

Partially disclosed - third per. knows there is an agent but does not know for whom the agent works.

Undisclosed agent - third person neither knows the agent nor for whom the agent works.

Partnership - an assoc. of 2 or more persons to carry on jointly the business in which they are concerned. A legal relation based upon the expressed or implied agreement of 2 or more competent people whereby they unite their profits and skills to carry on a pursuit of lawful biz for mutual pecuniary benefit. There can be a partner where in one indiv. contributes nothing and reaps all of the benefits

U.L.P.A. - Uniform Ltd. Partnership Acts

U.P.A. - Uniform Partnership Acts.

Limited Partnership - a p. formed by 2 or more persons under the provision of statute having as members 1 or more gen. partners and 1 or more ltd. partners. The ltd. partners are not bound by the obligations of the partnership

Qui facit per alium ~~per~~ facit per se.

Notes: 1-25-57

Jones v. Hart

Promulgated the doctrine of Respondeat Superior.

"For whoever employs another, is answerable for him, and undertakes for his care to all that make use of him. The act of the servant is the act of the master, where he acts by authority of the master."

The Hist. of Agency
O.W. Holmes, Jr.
Vicarious Liability-Baty

M-S doctrine grew out of family ties. The fiction, however, is the doctrine of Jones v. Hart. Did not agree with the "deep-pocket" doctrine, saying it would hurt industry. By bringing pressure to bear on the master, it can encourage greater safety in the choice of servants. The way of life of the times made this doctrine necessity.

Harold J. Laski →

Young B. Smith

Transfer of liability from an inferior to a superior risk bearer. The loss should be spread among society or a larger group.

Tiffany

This doctrine is an outgrowth of big and will hurt the same.

White v. Consumers Finance Co.

M → S ------ → S,

Are M-S and P-A relationships contractual?

There is no doubt that either S or S, can be held liable for their own torts. But, can M be held liable for the torts of S,? S can be held liable for the torts of S, (all other factors being equal). Here, the Ct. implies it is possible for S, to be held a servant of M. Authority to employ asts. may be implied from the circums, e.g. where extra help is necessary to carry out the biz and such help is not supplied by the Master.

108 N.E. 2d 650

Contractual and non-contractual relationships

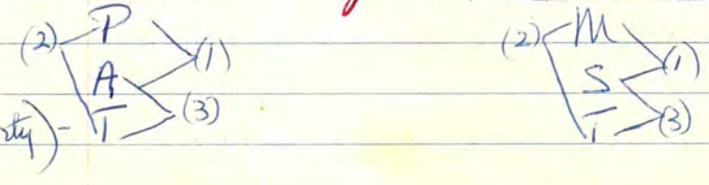
The nature of the M-S relationship here is contractual. The P-A " may be contractual, but is commonly a consensual relationship.

Mecham:

A K relation is one which under normal conditions the parties agree to it, which is terminable and changeable at will, and this is such as found in P-A Relationships.

{308 Mass. 369 Dorchester Movie Co.}

Relationships which exist



NOTES: 1-28-57

Potter v. Golden Rule Grocery Co.

Here there was a deviation from the scope of authority. The basis of liability was the negligence of the servant, Mack Free. Free did not exercise proper control over the situation.

280 Mass. 553
183 N.E. 555 *

Even absent M-S and P-A relationships, if the owner is present he must control due to the duty to control.

Palmer v. Miller

No M-S relationship here but possibly P-A. because no K and

" " " "

Therefore no liability under Jones v. Hart. Yet, on retrial, D was held liable due to a failure to control the driver. If D had been unconscious he could not have been held liable. In the absence of a Presumption statute this liability should be justified.

BENEFIT

Weatherman v. Ramsey

When a motor car is used by one to whom it was loaned, for his purposes, no liability attaches to the lender.

~~possibly~~ possibly unless, ~~possibly~~ where the lender knew that the borrower was incompetent, and that injury might occur while he was using the car because of his incompetency.

* Simply because you have loaned your car, you won't necessarily be liable. This might be a bailor-bailee relationship rather than a Master-Servant or Principal-Agent relationship.

Notes: 1-30-57

Rule/law * There is no liability in bailments in the absence of negligence in allowing the person to operate the car.

* Family Purpose (Car) Doctrine

King v. Cann

Actually, there is no M-S relationship here, but a P-A relationship in family circumstances. The father is made liable for any member of the family who uses the car for the purpose of the family.

White v. Seito

(211 Mass 269) * The ct. here held the D not liable, and in essence rejected the family purpose doctrine. * The majority of the states (14 to 9) reject the family purpose doctrine.

128 Conn. 20 (1942)

Corp. owned a car used by father and family for their own purposes. Daughter hits P. (Under Jones v. Hart, no liability due to absence of M-S) The corp. was held to be ~~guilty~~ under an extension of the family purpose doctrine. (The controlling element is the scope of the intended use rather than the fact that it is ~~used by the family~~ owned by the corporation.) Conn. has reversed the family-car doctrine. (This is a closed corp. The family car doctrine applies to all close members regardless of the age.

Note this carefully

(26 Mich. L. Rev)
(132 ALR 981)

6 Prosser, Sec. 62: Vicarious liability is the responsibility of one person, sans any wrongful conduct of his own, for the tort of another. Its modern justification is a policy which places such responsibility upon the party best able to bear and distribute the risk.

Howard v. Zimmerman

Here the son was sued. The so-called key to the liability of D here is supposedly based on joint-enterprise. Actually, there was no joint-
" nor did each have equal control. The suit is not based on the family car doctrine but on the liability of the boys and this is "based on" the concept of joint enterprise. This Joint-enterprise
" really went too far here.

*Vicarious Liability of Partners

(Jones v. Hart is ~~based on~~ included in the family car doctrine.) Partners held liable under P-A.

*Haase v. Morton & Morton (footnote p. 37)

The nurse is a servant of the hospital and not of the doctors. So, Morton, was negligent and caused, thereby, injury to P. Partners are jointly liable for things done in the course of the partnership business and the Ct. held that therefore Morton was as guilty or liable. Dissent held that the partnership biz of the two doctors terminated when the operation was over, and that P back (to) her room was wheeling voluntary.

P. liability
Rule of law

Notes: 2-1-57

Pg. 37

250 Mass. 103 (228 Mass. 458) →

Partnership (Risks ~~Its~~ of a Relationship)

Risks of a Relationship - extends beyond neg.

Truck registered for pleasure purposes. Truck owned by partners. The other partner said to the first to take the truck & have fun. — No liability because the injury was not caused during or within the scope of the partnership business. It must be within the scope of the part. biz.

Prosser, sec. 66. Vicarious Liability (the principle of) has been applied by some courts to: 7
(a.) The owner of an automobile who is present as a passenger when it is driven by another.
(b.) The owner of an automobile who permits a member of his household to drive it for a "family purpose." (over)

Fraud → The Wolfe Case in Illinois (dealt in sheep pelts and substituted inferior pelts upon delivery) stands for the proposition that fraud done by one partner, sans knowledge of such fraud by the other partner, makes both partners liable if the fraud is done within the scope of the partnership business.

Partners jointly liable for fraud perpetrated within scope of part. biz.

If partners do not participate jointly in a wrong + punitive damages are imposed, the partner not participating does not usually pay punitive damages but only lesser damages.

Damages on a part. when one partner acted.

220 Ill. App. 2d 221 → Even though Partner A was not sued, Partner B could be sued.
(Are Parts. liable jointly or severally?)
Yes; jointly
*Partners are jointly liable for those things provided in secs. 13 + 14 of the Uniform Partnership Act (UPA).

237 App. Div. 319 (N.Y.) → Partner B unintentionally runs over his own wife. Wife sues Part. A. Wife cannot maintain an action against her husband. The N.Y. Ct. said that partners are equally liable and since wife could not sue her husband, she could not sue the other partner.
The U.P.A. does not refer to joint liability re. contracts.

317 Mass. 721 → P was Pres., Gen. Mgr., etc. of his co. He incorporated a co. car and hired a chauffeur when the accident occurred. P testified that he was controlling the chauffer (P and his

(c.) Under statutes in a few states, the owner of an automobile who consents to its operation by any other person.

(d.) In occasional instances, other Ds made liable by statutes.

servant). In a tech. sense, S (the chauffeur) was a servant of the Co.

* The test of M-S is control. The Ct. held that it was improper as law for the lower Ct. to rule that:
  (1) S was servant of P.
  (2) Proof of due care was on P.
  (3) S was the agent of P.

* The Doctrine of Resp. Sup. does not apply to create liability for the agent even tho he employs other servants and contracts for the principal. (see § 358 of the Rest.)

Notes: 2-4-57

Hexamer v. Webb

The torts of an indep. contractor's servants are not imputed to the contractee.

Richman Bros. v. Miller

This goes beyond the Hexamer case because it was here held that the work or act need not be "inherently dangerous", for if a contractee can or should reasonably foresee that injury might result and he fails to take any proper precaution (s) which might thwart the possible injurious occurrence, the contractee will be held liable in most cases.

These rules will help to make contractees more careful in their selection of indep. contrs but still allow protection under the rule of the Hexamer Case.

War Emergency Co-Op. Ass'n. v. Widenhouse

Defendant - ~~the contractor~~
Plaintiff 1 - owner of the truck
Plaintiff 2 - } members of the public
Plaintiff 3 - }

Control test of the M-S relationship

One of the tests of the M-S relationship is the degree of the control exercised by the master over the servant. The court held the driver was the servant of A.C. Widenhouse. With respect to the "Co-Op," is not an indep. K or, but as to the customers he was an indep. K or. The court said that the negl. of the servant precluded the recovery by the master. Doctrine of estoppel here.

If a master is injured by S, may M recover? yes
Can a servant be liable to a fellow-servant? yes

Santise v. Martins

Notice the application of the doctrine of estoppel to these cases.

↓

Notes: 2-6-57

Santise v. Martins, Inc. A dept. store leased (K relationship) area to an independent shoe merchant. No M-S. The dept. store would be estopped to deny that there was a M-S relationship. J/P. In the estopped doctrine, you have a reliance on an apparent fact to the detriment of a P. [No reliance in tort cases, but it is found in K cases.] This doctrine is not technically estoppel and should not be applied to all hard cases. It is helpful in allowing widows to recover

Estoppel

10

[redacted]

for damages to her husband, but it is not good law always when used loosely. Here, the est. doctrine should not apply.

Harler v. Capper Publications

No M-S rel, no respondeat superior.

D employs a newspaper boy who throws a paper route. This case holds that if there is no servant-master relationship, the doctrine of respondeat superior would not necessarily apply. It is not sufficient to say that if there is agency, there is liability.

Peterson v. Brinn and Jensen Co.

Traveling salesman (under K to D) negligently collides with P. Where the employer has control over the employee, the fact that the employee uses his own auto is wholly immaterial if that auto is being used when the employee is in the course of his employment. i.e., the control of the man is the control of the car.

Majority view

275 Mass. 82 - Co. directed salesman to call on client & sell a truck to him. Salesman used his own car. The " had a flat salary and choice of routes. D held liable. Ct. said that one may be a servant at one time and not a " " another " , i.e., here the Ct. said control of the car is control of the man.

a dual relationship

Mass. view

(253 Mass) Another Mass. case held that

(263 Mass. 165 - Mass ct. found for 3rd party)

Gulf Refining Co. v. Brown

control of the man was control of the car.
There may be liability on Gulf, but it is very doubtful that this is usually true where the act occurs due to the neg. of the service station operator. Ct held that Gulf exercised such control over the gas station to find liability on them.

Notes: 2-11-57

Raschall v. Morra → can we impose liability upon the Sugar Co.? Is the driver a "borrowed-servant" used by the Sugar Co. The "borrowed-servant" doctrine." It would be error as a matter of law to find that the Sugar Co. is not a master wielding full or nearly full control. But, there would be nothing to stop the ct. from finding that Morra had control. If Morra were found, could he plead defense of the "borrowed-servant" doctrine? The doctrine may be used as a defense altho it may be dangerous and it is seldom used.

MacFarland Case Here, the WPA could not be sued because it was a govt. agency. The ct. here is talking about full control and uses "the whose big (?) test" (or the "scope of employment test" these two not being the same). However, the "control test" is the one most often used.

12 Prosser, sec. 67. Atch. the duty of an Emp to protect his Ss was ltd. to certain more or less specific obligations, beyond which the S was expected to assume all of the risks of his Emt. The M was required only to use reas. care to: (a) Provide a safe place to work. (b) Provide safe appliances and equipment. (c) Warn & instruct the S as to dangers of which he might be expected to remain in ignorance. (d) Provide a sufi no. of suitable and competent Ss. (e) Make reas rules for the conduct of the work.

Wills v. Belger — McFarland turned upon peculiar facts attesting to complete severance of the servant from ~~his~~ employer #1. [In a court, the odds are that you would use the "control test" but you would use the best test as suited to the circumstances involved.] Here, there was not the contention of complete severance.

Valentines:
(1) Janet V
(2) Jeanne
(3) Sandra
(4) Grandma
(5) Beulah Lewis

Gordon ~~[illegible]~~ v. S; Dr. Byers Motor Car Co. Driver employed by D but showing the truck on trial to Hazelett.

Notes: 2-15-57

314 Mass 540 — Landlord got someone to remove wallpaper with use of a steam machine. Injury. Mass.: (1) D may be liable if he used neg. in selection of S. (2) Things inherently dangerous must have proper guard & failure to provide such const. neg.

Summary of "Indep. Contractor"

Where one K's with an IC for performing certain work, not liable for torts of IC & in "" "" that "". Nor is he respon for torts of Ees of IC. Use of IC const an insulating device in favor of the person employing the IC. IC & his Ss are respon for their torts. Exceptions to the Rule are present. Def. of IC: (Rest. Torts, 409) Employer of IC isn't subj to liability for phy harm to another caused by tortious act or omis. of IC or his Ss. (See sec. 2 & 220) Exceptions:

(1) Inherently dang work - failure to provide precautions by employer makes him liable even if he employs an IC. This is not to say the IC is pers liability. (93 NE 2d 393, 282 Mass. 584, 288 Mass 213, 314 Mass. 556)

Prosser, sec. 68 (C.L. Defenses) the Ser's CL liab was subject to further restrictions by the defenses of: (a) Contrib neg of the part of the S. (b) Assn/risk, by remaining in the S'ship with knowledge of the Ser's neg and appreciation of the danger. (c) The fellow S. rule, by wh the Ser was not liable for the neg. of other Ss whose work was so associated with that of the P as to involve a special risk to him, if they were neg. The rule was not applicable to Ss chgd by the Ser with the performance of his own duties to the P.

(2) Liability by Estoppel - variation of the true estoppel doctrine. Best examples are the shoe store, etc. 310 Mass. 778.

(3) "Borrowed S" doctrine - employer may exercise such control over SC's S that S is construed to be S of employer. Liability may be imputed to either one. Some few cases hold both to be liable - joint liability. Maj opinion is one or the other - i.e. several liability.

(4) Where indiv authorized to use his own car in co. biz: Control of man is control of car & therefore the co. is liable (one view). Mass: you must have control of the car to have liability.

(5) Non-delegable franchise rights of a public utility - liable when it lines

TESTS

(1) Most popular is "The control test" What do we mean by control? — Different views:
- (a.) Control of indiv
- (b.) " " instrumentality used
- (c.) Right to control
- (d.) Control of the work

Cts. may shift from one concept to another. In 1c you must still deter whether this is a right to control the indiv., the instrumentality, or the work. (note 28 Mich. L.R. 365, 377) 28 mich L.R. 365, 377

(2) Type of work, intent of parties & their opinion of " " relationship, payment, etc. see sec. 220 of A.L.I. (In casebook)

(3) Entrepreneur (Douglas' law review article)
- (a.) Control - a policy making factor
- (b.) Who bears risk
- (c.) " " profit
- (d.) " controls the tools

(4) "Whose business" (scope of employment) is being performed. Peculiarly applicable to bor-Ser doctrine

However, it is still the general rule that the ~~contract~~ K^ee is not liable for the IC, even tho' this is flexible.

The Scope Of Employment

Mechem: No completely successful analysis of course of employment has ever been made. Doubtlessly, none will ever be made. However, most attempts tend to give two requirements:

(1) an intent by S to serve the M rather than seek S's own ends,

(2) a way of doing M's work that ~~doing the A~~ is typical, i.e., in the usual ambit of S's conduct.

* [Where M is liable for S, M may then recover from S. 303 Mass. 303; (124 A.L.R. 1292) A bill in eq. for sp. perform for a K not to sue + injunction against P by Amer. Sugar Co. while P driving truck for ASCo., D injured. P settled with D for $7,500 upon agreement not to further sue. D then sued the Master (ASCo.). Then this bill was brought. Issue: was this a valid release? Assumption of "yes." Why may M recover from S? M is in position of a surety. Therefore, the principal should be the S.: if M pays, he has a right of reimbursement by the principal. If the third party releases the prin., can he then sue the surety? No. If this Const a ~~set~~ release, the M not responsible. So held by the Mass. Ct.

102 N.E.2d 774 - Dns. co. sues servant because they paid M's loss. 3d person instituted the case for injury against S, M, + the landlord. At trial, P moved to dismiss against S + landlord. T/P. App.: recovery of amt of judg. T/R; for M. If M doesn't

give S ample opportunity to defend in case to recover and must prove:

P must prove these to recover against S
(1) Legal liability of the ~~P~~ S
(2) Opportunity by S to defend + notice by P to S.
(3) P must prove judg. was unavoidable

Notes: 2-18-57 (S/E) The Scope of Employment (Chap. 3)

307 Mass. 189 - Action to recover for per injuries against D (owner of a tavern) due to frolic of the bartender. Customer fell asleep after 1 bottle of beer. So, " set fire under seat of the P. Ct. held this to be a frolic + detour of the bartender + not within the scope of employ. So, D not liable but bartender may be, rather, is liable for his own frolic.

Joel v. Morison - (1834, p. 83) There may be a deviation from the prescribed route + liability can still be imputed to M. The M is only liable where the S is acting in the course of em. But, what extent the deviation?

Riley v. Standard Oil Co. - A S who has temp. departed de the S/E doesn't re-enter it until he is again reas. near the author space + time limits + is acting with the intention of furthering the M's biz. (Rest. Agency - sec. 297) The Ct. here implied that whereas going from point C to pt. B there would be liability, there should also be liability from pt. B going to pt. C.

Ficcco v. Carber - (1922, p. 87) The intent of the driver is très I and is a factor to be considered. But, it is not the mental attitude of the S which deter the case. The dominant purpose must be to re-enter the M's biz. From the facts there was nothing to substantiate S's statement of intention to return.

241 Mass. 293 - S went to interview prospective customer using M's car. Instead of returning, S accompanied friends to a dance. Leaving and on the way to get a bite to eat, accident. Ct. found for P! The S was on the way (M had lent car to S for S's own use!)

16 Read 38 Amer. Bar Assn. Jrnl. 1011

back to return the car + that the deviation was not great enuf. There was no assurance that the accident would not have happened anyway.

512 Mass. 433 - J/P/Revsd. Ct held the repairman had no authority to use the ~~vehicle~~ vehicle to get his breakfast. The S did not choose the quickest + best way to reach his destination (from his breakfast)!

Notes: 2-20-57

Nelson v. Amer.-W. African Line, Inc. (p. 90)
A person may be acting within the sc/employ but his motives may be mixed. Tiffany says:

(1) If the agent, in doing the act, was motivated at least in part by the employer + the sc/employ
(2) and if the act was not extreme deviation from the usual conduct of biz, then the acts of the A may be imputed to M.

Schloss v. Silverman - there is a distinction between this case and the Nelson Case: the instant act was willful and malacious (not within scope of partnership authority) and was unnecessary to carry out the purpose of the biz. 11 P. 56 - action for malicious prosecution. Will. + mal. acts not within sc/part unless done in furtherance of the biz of the partnership.

* Admission against Interest by a Partnership
84 N.H. 241, 149 A. 746, 73 A.L.R. 433 - (assigned) - D admitted the boy was on part biz. D was partner A. Was the statement of one partner uttered within the sc/part biz? No, held the court. There are some cases where the statements of one partner can + will bind the partnership.

(1) Can't use state of 1 part to show the exist

*Read Chapter V (Pgs. 126–160) - it is statutory material (note definitions)

of a partnership.

(2) You can use the statements of all parts. to show the existence of a part.

Unless you can show:

(1) The state is authorized by the part

or (2) It is within the sc/part, the statements will not be admissable. These " are statements MADE OUT OF CT and not under oath. But all direct statements made in Ct. are admissable. In this case, the Ct. held the depositions to be admissible since they were subpoenaed outside just like they would have been inside of court.

256 Mass 442 - (Reed v. A. & Biddle Co.) A Pres. of a corp held liable for fraud due to a willful act by him by advising a "friend" to sell a patent for $50,000, when it was actually worth $2 million.

Hooper - Holmes Bureau v. Dunn (Florida)

In a privileged communication, malice must be proved to find liability for slander. Ord, you don't have to prove malice but when you do so, the damages are increased (punitive). The P was held liable due to the act of the S because it was done within the sc/em, irrespective of malice. The S could be held liable for the punitive dams but not the corp. (case to contrary in California)

Pruitt v. Goldstein Millinery Co. The act of S was not within the ~~scope of~~ authority as given by M, even though the act or slanderous words might have been done in the sc/em.

Caswell v. Maplewood Garage, 149 A 746.

(1.) P[L] is a legal entity, for which P acts as A; P's reps, or misreps, in course of, and materially relating to, Transaction of firm biz, are binding on firm. P's actions and statements for himself alone are not chargeable to firm. P's character as Principal in P[L] biz is ltd. by sc/P[L].

Notes: 2-25-57

Derr v. Simplex Paper Box Corp. (p. 104)
Here if the neg. act was purely personal and not for the convenience of M nor in furtherance of his biz, then, T/D. However, T/P here.

J.C. Penney Co. v. McLaughlin
Here, the act tended to serve the interest of the M and was for his convenience (the restroom was for the " of customers and therefore for " " M). The case could well have been argued on the basis of the liability of M for neg. construction of the door.

Sec. 228 Rest. of Ag. → Conduct of S within s/em if + only if:
*(A.) it is of the kind he is employed to perform as in sec. 229;
*(B.) It occurs substantially within the time + space alloted by M.
*(C.) It is actuated at least in part by a purpose to serve M.

Sec. 229 → Examples.
① P, owner of apt. house in dist. where boys always pester the janitor. P fired one janitor for hitting boys. P hired Johnny janitor & he put glass (broken) on wall over which the boys usually climb. — If this was a sanctioned method of defense, it is w s/em + M liable.

Assume that Johnny did the act to hurt one boy due solely to vindictiveness. This additional factor makes the act outside of the scope of ∴ M not liable.

Koontz v. Messer — Just because the husband was joined as a D does NOT preclude the wife (P) from maintaining the action!

O'Leary v. Fash (p. 114) Mass.
Here, the woman rider in the truck (the P) was actually a trespasser. This is a case of ACTUAL (v. apparent) authority. No duty of care is owed to a tres. on a vehicle which is forbid from carrying passengers. (Conn. case holds there is a duty of care owed to the known tres. in similar circumstances).

Notes: 2-27-57

Fellow-S Doctrine (Mass. in accord)

Fellow-Servant Doctrine
Where a S is injured by neg. of a fellow-S, M not responsible.
Reasons:
(1) S assumes the risk
(2) S in best position to guard against neg. of fel-S.
(3) S does not think to work for M.
(4) S in better position to know what true state of affairs is.

Priestley v. Fowler (Mass. follows fel-S doctrine)
Crenshaw Bros Produce Co. v. Harper
There are exceptions to the fel-S Rule:
(1) Care + selection of the fel-S.
(2) Safe place to work + safe tools to work w/
(3) Duty to instruct + warn.

20 B.O. Prop. Ks Torts

EXCEPTION (1) — on M's negl. concurs w/ that of the fellow-S.

*(4) Superior S rule *(5) Vice Principal rule. This case falls into the vice " ". Where the M entrusts a dangerous instrumentality (truck) to a S, injury with " will not preclude recovery by the S.

Superior S rule - applies to S in a high position. If he is a supervisor, he is not a fellow-S to the janitor. S's in different depts. are not fellow Ss. The

(6) Different Depts. Rule is another exception.

Ex. of #2 - M required to furnish a safe place to work and safe tools with which to work.

Ryan v. Wadsworth (p.123) - P was an employee & he was working on the job when the Δ T occurred. Was P, at the moment, an employee (he was volunteering after normal working hours)? Could he have collected Workmen's Compensation? Ct. found that P was an employee and ∴ a fellow-S. Ct. held that M could use defense that P was a fel-S and the Work. Comp. Act would bear hereon.

Employment Relationship Chapter 6 (p.160) Under Labor Laws Now dealing with statutory material and the decisions must be based on the stats.

Harris v. Wabash Railroad Co. - Ct. held that under the Fair Labor Standards Act the engineers were executives. (There was a dissent).

U.S. v. Sick - Ct. said it could go beyond CL concepts and go & look at econ., soc. conditions.

Rule of law under W.C.A. Under the Workmen's Comp. Law, the K^or is the employer of the K^or's employees & K^ee is the " " " " " " " only for the sake of liability.

Bill Wright

*Workmen's Compensation (Chapter 7, p. 177)
(1.) Arising out of
(2.) In the course of
} must keep these two problems in mind when reading the cases.

Vice-Principal Rule or Doctrine

Vice P - one to whom a dangerous instrumentality is intrusted

... a qualification of the fel s doctrine which exempts Ss from the application of that doctrine where they are injured by the neg of persons to whom the M delegates the custody + control of a dangerous instrumentality, even though that instrumentality may not be dangerous per se, but only dangerous in its operation. An exception to immunity under the fel s rule. *The general rule applicable to dangerous agencies is that one who keeps on his poss, or employs in his biz, that which unless carefully guarded + used, is dangerous to others, is bound to exercise proper care to see that it is so kept + used as not to inflict injury; + the neg of any one into whose care it is committed by the owner, either in failing properly to guard it, or in improperly using it, is that of the owner.

(GET THIS LECTURE DOWN PAT.)

Notes: 3-1-57

Workmen's Compensation

I. "Arises out of" (Schneider's definition)

An injury arises out of the employment when there is a causal connect ~~betw~~ between the conds under which the work is to be perfor & the resulting injury. Also, an accid inj arises out/employ if it occurs in c/emp & results in a risk involved in the em or incident to it or to the conds under which it is to be performed. However, it must be remem that alth' the inj may occur in co/em, it would still not be compensable if it's result of a risk disassociated therefrom.

"Arises out of"

An inj arises out of em if it arises out of the natural conds, obligs or incidents of the employment. (305 Mass. 500)

II. "Course of"

(Schneider, sec. 1542, sub 3)

In the co/em points to the time, place & circums under wh an accident takes place & simply means while the em rela in progress.

"Course of" (Stickles)

An inj befalls a man in the co/em if it occurs.

Prosser, sec. 69 — All American jurisdictions have adopted workmen's comp acts, founded on a theory of strict liability of the Ees for injuries attributed to the risks of the Emt, with the losses distributed by liability insurance. // Some injuries not covered by the workmen's comp acts are still subject to the CL, which is, however, usually modified by various statutes enacted for the benefit of the employee. // The most important group of Ees not covered

while he is doing what a man so employed may reas. do within a time during wh he is empyd & at a place where he may reas. be during that time.

Schneider

There must be a caus conn between the following:

*(1) the empl't & accident or occup disease,

*(2) the accident & the injor disease.

*(3) the injy or disease & the disability for wh comp is claimed.

Causal chain: Employment → accident → injury → disability

*There is no set formula wh can be appld to all cases re the words used. e.g., sc/em ed/em

Glass v. Sullivan (p. 178) (Tenn., 1936)

WCA of Tenn., sec. 6861: "No compensation shall be allowed for an injy or death due to the Ees willful misconduct or intentional self-inflicted injury, or due to intoxication, or willful failure or refusal to use a safety appliance or perform a duty required by law..."

Neg, contrib neg, fel-s do not come under the wkmen's comp (WC) act. However, under FELA contrib neg applies slightly as a mitigant of damages. Here, the act was willful and intentional. But, was it willful under the WCA? No, not under the WCA. The act was done in protection of the P (the M), his boss.

Marks v. Gray (p. 180)

Award made to family of deceased under WCA. Held, the question

Covered by W.C. are RR workers in interstate commerce who are covered by the F.E.L.A. This act retains neg. of the Er as the basis of liability, but abrogates the fel S rule and the defense of assumption of risk. It divides the damages between the parties in cases of contributory neg.

"We do not say that service to the employer must be the sole cause of the journey, but at least it must be a concurrent cause. To establish liability, the inference must be permissable that the trip would have been made though the private errand had been cancelled."

arose re his (deceased) being in the co/em. He was on the way to pick up his wife & was asked to stop on the way & do a small plumbing job. Cardozo, J. said the test is this: If the work of the employee created the necessity for travel, he is in the co/of ~~the emp~~ his em, though he is serving at the same time some purpose of his own. Here, the family did not recover because deceased was off on a detour instead of the prescribed rte.

An inj person may sq against, in some juris, two people: Her Es. or the third person. There are time limits for filing a claim & quite often you have to choose between the two people.

A → B
A → C

Thomas v. Proctor & Gamble Mfg. Co.

"Ers are held liable for the results of horseplay which has grown into a custom." *

Outside case →

Moore's Case
110 N.E. 2d 764

This "course of" & "Incident of" are distinguished in this case.

A firm customarily had a Xmas party & on the day of the party no work was done. P tried to recover under the

W.C.A. even though she was [illegible] when the bar tried to pull her leg while she was drunkenly dancing on top of a table.

Tests imputing liability to the employer

Tests propounded here:

*1. Customary activity

*2. Employer's subsidization of the activity.

(See 110 N.E. 764)

Thomas v. Proctor and Gamble Mfg. Co. (cont'd)

Injuries have been held to arise out of the employment whenever they are "such as the character of the biz or the conditions under which it is carried on make likely, and the result either was or should have been in the contemplation of the employer."

"Such acts as are necessary to the life, comfort and convenience of the servant while at work, though strictly personal to himself, and not acts of service, are incidental to the service, and injury sustained in the performance thereof is deemed to have arisen out of the employment...."

4 March 57

110 N.E. 2d 764, 767

2 ESTS (supra, cont'd)

*3. The extent to wh employer urged or directed recr activity

*4. Presence of substantial pressure of actual compulsion upon Ee to attend or participate

*5. The fact that Ee expects or receives benefit from activity of Ee.

~~whether~~ All of these are to be taken into consid. (see chap. 152, sec. 26 Gen. Laws of Mass.) (See 121 NE 2d 858 for dissent on a point)

Ackerman v. Cardillo

"Horseplay case." Held, The inj was not compensable. Inj to an Ee in a personal difficulty with another employee of the same Er, having no relation to the employment itself, & in which there is no causal connection between the inj & the employment, are not compensable. The P here was the aggressor & therefore not allowed to recover. But, if the person aggressed upon were inj & sought compensation, he could probably recover under the reasoning of this case.

Rule of Law

Dillon's Case 324 Mass. 103

If the conduct is serious and willful then the P might well recover. Did the conduct causing the inj arise out of "the line of consequences" resulting from circumss & conditions of Smt & not who was the blame for it"? Yes. It is possible that the conduct did not break the chain or connection between the caus relationship & the Smt. The work itself gives rise to strain and friction and these are in the line of the Smt. ∴ allowing for recovery.

(41 Ill. L.R. 311)

Extraneous Risks:

Scott Cty. Sch. Bd. v. Carter

Her death **arose** in the c/em, but did it arise out of the c/em?

Caswell's Case 305 Mass. 500

Here, P recovered. Man closing windows of bldg. during hurricane & wall for bldg. fell on him. "An Ee who, in c/em, is hurt by contact with something directly connected with his em ~~even tho'~~ receives a personal injury arising out of em even tho' the force which caused the inj was not ~~a~~ related to the employment" arising out of the em.

Rule of Law

Cesel v. Industrial Commission

There is recovery if there is a connection (causal) between the work and the disease or sickness. Many cts. are saying that diseases are injuries. Stats provided for recovery for occupational diseases.

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Billiter, Miller & Mc Clure v. Hickman (p. 193)

Where did work begin or where did it stop? The nature of the problem may depend or bear on the question. Under WCA, he is entitled to compen while on the bus, but if he is 50 ft. away from the work shed he is not allowed compen. But on or under the wage and Hour laws he would not be allowed compen while on the bus. Is this particular act one which is prior to or preparatory to entry into employment? If so, it would

be said to be within the course & compen would be allowed. Many cases, under WCA, hold that one on company property he can recover. The mere fact that he is denied compen under WCA does not mean he is denied recovery (may sue in tort). The tests are propounded in Jewell Ridge Coal Corp. v. Local No. 6167, U.M.W.

Three essential elements of work as set forth in the Tennessee Coal Case, 321 U.S. at 598:

*(1.) Phy or mental exertion (whether burdensome or not)

*(2.) Exertion controlled or required by Emp.

*(3.) Exertion pursued necessarily & primarily for the benefit of the Emp & his biz.

*Definitions in WC acts should be noted because there may be certain excepted classes of people.

Caveat — Look for exceptions.

Mass. WCA, sec. 15 — Who may proceed for recovery. The amt. of recovery is based on the salary of the worker hurt or injured & extent of the injury.

Sec. 37 — Willful or malicious acts causing the injury.

Death benefits (to widows, etc.) vary from state to state.

Election of Remedies - either recover under WCA or sue in tort. The inj worker may prefer to have it found that he had not

yet getting into the "work area", for then he could go in tort to a jury & possibly recover more than provided, for the particular injury, by the particular WCA.

Rule of Construction — WCA is not based on fault. You may waive WCA in hiring but then you would still be liable in tort for defenses of fel-s rule, contributory negligence.

Waiver of WCA and assumption of risk, — If WCA applies, the Ee cannot sue the Er in tort. If he had not waived WCA upon hiring you cannot later sue the Er. You must file your claim within a matter of days, but the election of remedies must be made known usually within 4 to 6 mos.

Part III. — Contracts / The Principal-Agent Relationship (within the sc/authority)

The question from now on is whether there is authority. If you have a P-A relationship, what is the effect on liability?

Manchester Supply Co. v. Dearborn

Was there an undisclosed principal relationship here or was this a " " of indep. K or? If you have an I Kor relationship, there is NO agency.

Rule of Law

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ANOMALY IN THIS SITUATION IS THAT K TO THE 3rd PARTY IS DEALING ONLY W/ THE A AND K INTENDS ONLY TO EXTEND CREDIT TO THE A, THE 3rd PARTY MAY HAVE TO2 UNDISCLOSED P LIABLE UPON DISCOVERY

Manchester Supply Co. v. Dearborn (p. 208)

The Kee was not responsible for the acts of the IKor. There is obviously no personal responsibility for the IKor. But, if the Kee has liens, i.e. on construction work, the Kee will probably be liable for the acts of the IKor. Here, we can say the plumber was an IKor but it's possible for him to be an A. Look at the trade usage, the K itself, etc.

Rules of law re the liabilities of undisclosed Ps to As, and Kees to IKors

(1) If you have an IKor relationship, the Kee is not responsible unless involved in statutory liens.

(2) An undisclosed P is responsible for the Ks of the A made within the sc/his authority. Exceptions: A contracts saying that he alone is responsible for his acts.

Adams v. Barron G. Collier, Inc.

Where you have a K in writing, the terms may not be varied by parol evid. (Stat of Frauds) Where you have an undisc P, you may normally intro parol evid to that effect and this is not deemed to be a violation of written terms + ; not in the face of the S/F. The burden of proving the existence of an undisc P rests on the 3rd person. Here,

STATUTE OF FRAUDS K MADE IN THE NAME OF THE P SHOWN TO BE THAT OF THE P WHERE THE TRANSACTION RELATES TO THE AFFAIRS OF THE P AND NOT THE PERSONAL AFFAIRS OF THE A.

Ct held that circum and would suffice.

Beatrice Creamery Co. v. Garner

P manufacturer of dairy products + Ked with distributor B. An emp of B, G, was assigned the K by B. So, G was paying B and P sued G on the grounds that G is an unkis P of B and should, therefore, meet the payments for the products. *Can there be liability of an agency relationship formed subsequent to the time the orig K was had?

Issue:

(1.) Do we change the fact that the K still flowed thru B merely because the K was transferred to G?

(2.) Lower Ct found / there was no assignment, but a vendor-vendee relationship. Is, i., the vendee respon for the butter?

*(Does payment to the agent constitute payment to the third person? Not T.I. here, but is T.I. per se.)

How do you determine whether something is a ve-vee relationship?

(1) Did the type of biz make such a relationship imperative?

2est of the Ve-Vee relationship:

Kavalaris v. Cordalis (p. 218)

Joint Liability of Partners

Why are partners jointly liable for the torts or acts of each? They are each the A and the P of each other. He (a partner) is both a Principal & an Agent to the other partner. Here, they held themselves out to be partners. (Sec 16, U.P.A.)

EJECTION OF PARTIES TO SUIT IS W/ THE PARTY BRINGING THE ACTION

IN ORDER TO HOLD UNDISCLOSED P LIABLE, HE MUST HAVE HAD AN INTEREST IN THE K AT THE OUTSET

Martin v. Peyton (see below)
How do 2 determine what a partnership is? The main disadvantage is liability.
Waugh v. Carver (1793) Action of ass. for services rendered. Two men agreed that they would jointly foster biz but they specifically Ked that they would not be liable for each other. "sharing of the profits is the sharing of the losses." i.e., sharing profits essentially gives rise to a partnership. They said this was the only test.

Partnership - an assoc. of 2 or more persons as co-owners to carry on a biz for profit.

The various ~~sundry~~ elements of a partnership

(1) An assoc.
(2) Competent persons (between persons legally capacitated)
(3) To carry on biz
(4) For profit
(5) Co-ownership

Now, in Martin v. Peyton, K & H are partners in a firm. D loaned $2,000,000 in liquid securities. In return, Ps were to turn over to D's stocks (speculative) in their co., & 40% of the profits of the firm, & management, & right to inspect, & right to buy all securities for the firm, & anytime a ~~pa~~ member of the firm stepped out of line, his resignation would be accepted. But, they Ked that "they were not partners." Is there a partnership? Ct. held no. If we took

Waugh v. Carver, there would be a partnership.

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Martin v. Peyton - there were profits shared for the use of the loan. The big test here seems to be the one of control. In Cox v. Hickman, there was a P'ship engaged in iron biz. Financial difficulty was met, & it was decided that the trustees would have about the same amt. of control ~~as~~ in the main case exercising the similar functions. The trustees were the creditors, etc. The " " sued as being the partnership (P't). Three basic ways to do biz:

(1.) As an individual
(2.) As a P't
(3.) As a corporation

Were the creditors (trustees) liable for the debts of the partnership? Ct found for the creditors and that this was a creditors agreement & not a P't. The sharing of profits is often conclusive evid & often helpful evid; but, the real ground of liability is that you have biz being carried on by individuals on behalf of each other. i.e. The P-A relationship is the important thing. It was really a debt-securing device as shown by the intentions of the parties involved. Where the trustees were personally liable for the debts of the firm, they

could only escape liability by specifically showing the intention not to share liability. This was a rejection of Waugh v. Carver, but the common law rule is that the sharing of profits is prima facie evid of a P'ship. 192 Mass. 592 - Is it a proprietary interest or otherwise, like being for profits? 13 S.W. 2d. - a demurrer would not lie to a plea of sharing of profits.

C.L. Rule of Law

192 Mass. 592

Illustration of the Tests

251 Mass. 113 - A, B, C were Ps under the name of A Co., with agreement that the surviving P could use the name of the firm so long as he did business under the name. A dies, his exr. and X, Y, B use name A Co., paying B $5000 to allow them to use the name "A Co.," Ct. held there was no partnership here.

251 In 113

268 Mass. 365 - P's testator died. Latter had been a P & it had been agreed that upon the death of one P, the P's would continue & all would go to the surviving P. 6% was to be paid over to estate per year. Ct. held that the estate or ~~executrix~~ testator's executor was not a P. Ct. said the 6% was interest

Y must be intent to ~~contract~~ payments, not profits. No control of biz. The intent was to pay off the estate not to form the P.

To form a partnership and to share equally in the profits and losses of the mutually controlled biz.

287 Mass. 238, 241 — H + W were stock brokers. Wife sued as being a P. (UPA in Mass.) H + W cannot K due to a disability. U.P.A. did not specifically provide for H's + W's to K as P's." If this were a joint adventure, the P would not be in any better position. Joint adventure resembles a P but there is no K usually. [There is one fed. case upholding family (H+W) P in Mass.]

321 Mass. 57 — there was a K/profits, right to certain accounting, participation, but was there intent to form a P? NO! Corp. cannot be a ~~member~~ of a P + a corp is specifically excluded from the Mass. U.P.A. Did the mgr. intend to share losses? A Corp. cannot be a partner in Mass.

Partnership Contract

If parties specifically agree to be Ps, the ct. will usually uphold the contention (with exception of the internal revenue).

Section 7, U.P.A. - Persons who are not Ps as to each other are not partners as to

Sailors v. Nixon

third ~~parties~~ persons. An agreement to form a P'ship in the future is not the formation of a P'ship at the time the agreement is made.

Exemption from liability — If all elements of a P'ship are present but there was a specific agreement not to share liability, no P'ship.

24 O.S. 319 — 28 Ohio State 319 — Held to be a security device.

[See notes for 13 March 57 (infra)]

15 Mar 57 — Tests of P'ship relationship

Hypo: A, B+C decide to form a corp but don't file necessary papers even tho' they are drafted after A B+C told Atty. to do so. They do everything together but due to lack of filing of the papers there is no corp. What is the relationship here? A joint venture. Tendency is to shy if you have 2 or more persons engaged in biz for profit, you have the satisfaction of the def of a P'ship. But was there intent to form a P'ship? Ct would say yes, there was a joint venture. In a joint venture, the liab would not be the same as in a P'ship. The more mod. cases look to degree of participation before they decide re liability.

De facto corp.

(has a defect in it) De facto corp - something less than a de jure corp. but

(no defect here)

all rights, powers, etc. are the same. Stockholders are not liab. Has all of the powers of a de jure except that the Atty. Gen. may oust the de facto corp charter.

Corp. by Estoppel – application of the doctrine of " to a given set of facts. Not a corp.

Hypo: Mass. corp. has stockholders A B & C & intends to do biz with a corp. in Conn. But Mass corp. has no provision in its charter to do biz with foreign corps. The law of Conn. would rule the transactions. No liab.

Conflict of Law

Uniform Limited Partnership Act

U.L.P.A.

Limited Partnership – sec. 1, ULPA: a limited partnership is a P'ship formed by 2 or more persons under the provisions of stat. having as members 1 or more gen. partners & 1 or more ltd. partners. The latter are not bound by the obligations of the P'ship. At Ch, ~~not~~ no P'ship, it is under stat.

Definition of a limited Partnership

This act or these stats were adopted at a time when the cts were prone to interpret anything other than a corp. as a P'ship.

* A L Partner is like any other P. except for 2 things:

38 U.L.P.A., sec. 4 - the contributions of a ltd. ptnr may be cash or other property, BUT NOT SERVICES.

Two factors distinguishing an LP from a P

(1.) The right to participate in the conduct of the biz
(2.) Limited liab. ltd. to extent of the ~~dividends~~ ~~capital~~ ~~paid~~ by the ltd. P.

A certificate usually has to be filed with some state official (Sect. of state in Mass). Failure to file the papers will make him a gen. partner unless he is protected by Sec. 11 U.L.P.A. U.L.P.A.

Gen. Ptnr by Estoppel

Less than substantial compliance with sec. 2 will give rise to ltd. liab or make it a gen. P. unless protected by sec. 11

ltd P cannot contribute services to the P. (must be cash, property, etc. sec. 4.)

A LP may carry on just about any biz a gen. P may carry on. (sec. 3)

Sec. 5 - the LP's name (Smith, J.) will not appear in the P, except:
(a) where LP's name same as gen P's name.
(b) Prior to the time when the LP became such a biz had been carried on under a name in which his (LP's) name appeared.

* Sec. 7 (T. I.) LP not liable to creditors. (Much litigation on this section)

C.L. axiom { No control is best control for LP.

Sec 12 * A general P may also be a LP.

note | Punishment for viol of the stat is liab. of a gen. P.

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Ct. said: liability is predicated upon P-A. Show P-A you have a partnership.

"Community interest" "community of interests in profits" Any authority on B to accept debts? NO. It arises from an isolated transaction? Sharing profits? If so, it's said Ct says yes, but if its repayment of loan its another thing. Ownership. A has poss. Did A own or did B? Isn't A a pledgee? Could A ~~stick~~ sell hogs? NO.

held: Ct. held only a loan, + sharing profits was only a mode of payment of the loan. Interest.

Memo: Every P-A relationship doesn't give rise to a partnership, but every partnership has a P-A relation.

U.P.A.

Sec 7(4a) 7(4a) applies above. As a debt by installments or otherwise.

Can Co v. Sailer
152 Md. 303
136 Atl 624

D1 (canner) ⇒ D2 (a canner) certain, rec'd % of profits + exercised, amt of control.

Ct. said there were 4 tests:

(1) Intention
(2) Interest in profits

(3) Community of interests
(4) Control

250 N.W. 626
Says salient features of Pl are deter by:
(1) Community of interest in profit & losses
(2) Community of interest in capital employed!
(3) Community of power in administration

H. T. Hackney v. Robt. E. Lee Hotel
156 Tenn. 243
L rented to T a hotel 1 yr. 5% return on investment + 50% profit. T to manage hotel $X per mo. L to inspect books. U.P.A. is in force. Do we have a Pl? Wages & rent.
Ct = No community of interest in capital employed.
No community of interest in sharing profits, etc.

no partnership

Sec. 7(2) Tenancies by entirety, joint prop, common prop, joint tenancy, tenancy in common does not of itself estab. a Pl under this act.

Memo: Concurrent interests in land do not estab. per se, partnerships under this act.

Sec. 7(2)

French v. Strivey
2 C.B. 357 1857
P & D jointly purchased a horse

Here D pleads Pc to avoid a suit

sold for £20. P sues D for ½ costs of feed & care. D would contend he is a partner because 1 partner at law can not sue the other partner. Ct held tenants in common ∴ a share/profits. ∴ not a Pc.

Poor v. Dough K.B. (1780)
1 Doug 317. P advanced $ to broker who was purchasing tea for A, B, C. B + C insolvent. P sues A for entire price. A solvent. A common broker does not give rise to a Pc.

6 Pickering 120
Owner of ship. A share of cargo on outgoing voyage; on return silk & split. Was it a Pc? NO; a tenancy in common. As to the silk, etc.; one is not responsible for the other.

233/131 - P injured on schooner. 1 owner neg. Are all tenants neg? Question for jury to determine. Does not preclude a partnership.

"Intent"

126/480 - 2 people buy house & each wants to get a purchaser for it. ∴ others coment. Lack of consent was conversion - tenancy in Common.

Joint Venture

A joint venture (JV) is an

association ~~of~~ created by ownership of a biz venture differing from a P.C. in that it has a more limited scope of duration. The relationship is governed by the law of P.C. as to fiduciary degree.
105 N.E. 2d 843

ltd. scope/duration

Joint Enterprise

Prosser, sec. 65 As between two persons engaged in a joint enterprise, one will be vicariously responsible for the conduct of the other within the sc/the enterprise.

A joint enterprise is a relation ~~s~~ analogous to a P.C., having a limited number of objectives, commercial or otherwise. Its existence requires:

A. A mutual right to control the management or operation of the enterprise.

B. In some jurisdictions, a common purpose, in which all persons involved have a mutual interest.

Joint Adventure (same as JV)

Ct. said a J.A. is a P.C. of the sort, or at least it has many of its characteristics. It differs from a P.C. ~~it~~ in that it is ordinarily not ltd to a specific enterprise, whereas a P.C. is for one of gen biz. As between parties of a P.C. matters of a joint adventure is a matter of intent + arises only when they associate or such.

Parts of a Joint Venture (or Adventure)

① Law of P.C. applies
② Confined to one adventure - real estate speculations.
③ Co-ownership of biz.
④ Capital subject to use of enterprise.
⑤ No express agreement for JV necessary as in P.C.

2 Pac 2d 500 - recovery secret profit on sale of real property. P allowed to recover for br/fiduciary rel.

Rule of law re a J.V.

No one of the parties to a joint adventure can bind the other party thereto; unless specifically authorized.

18 Mar 57 U.L.P.A.

Found that they could cut down on C.L. construction:

(1) Supplement the C.L.

(2) Where it disagrees with the C.L., whenever possible interpretation shall favor the C.L.

Pretension of membership may produce liability.

Sec. 11 → Giles Case - 263 U.S. 553

263 U.S. 553
Giles v. Potter
44 S.Ct. 167

7 indivs. formed stock brokerage firm, A B C D & S being limtd. Ps, & X & Y being gen. Ps. But they found that you could not have more than 2 ltd. Ps to work on N.Y. stock exchange. So, X & Y became G Ps & A B became L Ps, with the others being trustees. The Pl should be resolved if the majority vote should say so. However, the Ill. U.L.P.A. was passed at that moment & under it stock brokerage biz could not be formed. Quaere: are A, B, C, D, E L Ps? Ill Ct held they were not responsible as G Ps. There was bona fide attempt to incorporate. They became protected when they returned the profits.

Sec. 12 One can be a GP and a LP. As to third persons the fact that a GP is also a LP makes no difference.

Sec 13 A LP may share with gen. creditors a pro rata share of the assets. A GP may not share with other creditors. A GP is liab for all debts of the PS whereas the LP is liab only for his share or the amt. of his dividends.

Sec. 14 Ps may specifically agree to about anything not contrary to pub. policy & the rights of creditors.

Sec. 15 They may agree as to how they will share profits.

Sec. 16. Cannot do anything that will impair the creditors. Dealt with distribution of profits.

Sec. 17 LP liab to PS for his capital contribs or for any agreed contrib which had not been made.

Sec. 18 Even if all of the prop of the PS is realty, the LP's interest (which is assignable) is PERSONAL.

Sec. 19 Assignment of LP's interest

Sec 20 Death, insanity or retirement normally dissolve a PS when it is a GP who does one of these things. LP does not effect the PS unless specifically provided for.

* Order of Distribution of Assets upon Dissolution:
(1) Creditors
(2) Return of profits to LPs
(3) Capital contrib. to LPs
(4) Return to GPs & other than capital & profits

SOC 1- 12 080

(5) Δ to GPs re profits
(6) " " " capital

Bond v. O'Donnell p. 227

This is a JOINT ADVENTURE. P suing for a deficiency judgment due to failure to pay remainder of the mtge. Here, They said this was a LP in the sense that it was ltd. as to liab. The liab. is as great as the authorization would indicate.

Does every member of a joint adventure have equal liab? Depends probably on the degree of authorization.

Rossman v. Marsh

This deals with a Biz Trust (or Mass. Trust).

20 MAR 57

Rossman v. Marsh. Dealing with the Mass. Biz Trust. The beneficiaries & the settlors were the same. The trustee could be held liable (personally) in tort. Unless the trustee specifically ~~to~~ Ks away liab, he will be liab personally in K. He can specifically limit his liab & if he doesn't, he is liab in K. Owners of the prop. are the trustees & they are individually liab, subject to limitations:

*(1) Entitled to reimburse themselves ~~to~~ from the estate for the damages due to liab. If the " exceed the amt of the estate, the trustees will have to supplement.

liability of beneficiaries

What is the liab of the beneficiaries. Normally, " " are not personally liable. They are considered shareholders.

All states don't sustain or recog. a big Trust.

Tax Code defines Pr as a corp., + for the purposes of the stat it is a corp.

Liability of Shareholders

Are the shareholders given protection under big Trusts, corps., etc.? Given ltd. liab. But, they may lose that ltd liab. of the organization. If the shareholders control the organ, then the ltd liab is lost. Control is the T.T. factor here. However, a degree of control is allowed so long as it is not active control. If the shareholders can control or direct policy, then ltd. liab is breached + they are fully liab. Power to elect + remove at will the mgrs, trustees etc. is not a breach of the ~~power of~~ ltd. liab. There is no arbitrary pt where you can divide. Right to control price at which the lots were sold

is very close to sufficient control to breach protection of the ltd. liab.

note carefully

Mass. goes far in sustaining the big trust. In the theory of the Big Trust, you should maintain a split of power + control.

cb 237

Moore v. Consolidated Products Co.

* Stat/Frauds - you cannot maintain an action on certain Ks unless the K is in writing. Is parol evid. admissable to vary the terms of a written K? NO! (Crowley v. Lewis, too) CL holds: when you have an undis Pal, parol evid does not vary the terms of the ~~decree~~ instrument. But, parol evid may be allowed to show an undis. principal. Where you have sealed, parol evid will not affect the instrument. This was at CL. Stats have altered this to some degree. (see p. 242 cb)

Effect of parol evid on instruments under the Statute of Frauds

CL
UNDISCLOSED P IS NOT LIABLE UPON A/K UNDER SEAL

Donner v. Whitecotton

Not sufficient evid of amt of dam involved.

Exchge Rlty Co et al v. Solomon Bines et al. (1939)

The parties to a sealed instrument are the only ones that can enforce its provisions or maintain an action for its breach.

302 Mass. 93, 98 - X not party to written sealed K, but K made for X. So, on the face, the K involved only P + A. Ct. held that this is not really an undis P situation because P knew of X + knew X's identity. Seal did

there can be no recovery on a K under seal against a person not a party to it. Nor can the seal be regarded as surplusage even if the validity of the K did not necessitate a seal. Y must be PRIVITY of K.

has validity even if it does not need a seal. Parol evid inadmissable (re the lack of necessity or need of seal) when in fact there is a seal. If the K had purported to have been made in the name or behalf of the D's or language showing ~~that~~ he acted solely in a rep capacity, then the seal is T.I.) UNDISCLOSED PRINCIPALS

Lady v. Thomas - UNIA

Re Uniform Neg Instruments Act. May one sue an undis P on a negotiable instrument? The neg instrs is the second exception to the parol evid rule. Under the UNIA, a suit may not be maintained on a promissory note against an undis P whose signature does not appear thereon, unless the note is signed by use of his trade or other assumed name.

Rule of law re negotiable instruments and the effect parol evid has thereon under the UNIA.

Parol evid is not admissable to show an undis P when involving:

(1) Negotiable instruments
(2) Ks under seal.

Two exceptions to the parol evid rule.

22 Mar 57

[Sic] Undisclosed Principals (cont'd)

Ellis Lumber Co. v. Lansing (p. 254)

To be sure the facts and circumstances in a given situation may impart knowledge of the P's existence & who he is, & where representative capacity ought reasonably to be deduced, it is unnecessary for an agent to state that he personally is not pledging his credit. Actual knowledge brought by the A, or, what is the same thing, that which a reasonable man is equivalent to knowledge, is the criterion of the law.

The A may be personally liab when he Ks for an undis principal even tho' he Ks with full authority.

There is personal liab re an A when he Ks for an undisclosed P because to the K'ing party the A seems to be the one who can be held liable. The A makes a representation to the other party, upon such representation the "relies" The third party essentially believed he was dealing with A.

Partial disclosure

Two types of undis P:

*(1) The undis P is not revealed even though the fact of representation is revealed. Partially Disclosed

No disclosure

*(2) The fact of representation is not ~~disclosed~~ told, neither is the undis P's identity. Undisclosed

Rule of Law

~~The A is not personally liab where he is acting within the scope of authority in behalf of an undis P.~~ NONSENSE - DO NOT !!!

Query

May one intro. parol evid. to show the existence of an undisP? Yes (2 exceptions)

Norfolk City Trust Co. v. Green

Parol Evidence

You can produce parol evidence in behalf of the P, but not " " " " A. If the instrument is, on its face, ambiguous, parol evid can be intro to clarify the terms

A not liable on the instrument if he was duly authorized. Sec. 20, UNIA

The simple addition of words like Agent, Trustee, etc., on a K, are not sufi to relieve the A of personal liability. (See NIL, sec. 20) These are cases where the A acted with authority.

Method by which A of an undisclosed P may escape liability

The A can K, even tho' he may not reveal the undis P, & escape personal liab by putting in an exoneration clause. NIL (Negotiable Instruments Law)

Cb 259 Sec. 20 - parol evid can be introduced.

discussed jointly

Cb. 259 (1) Zampa et. v. Taylor

Cb. 262 (2) Kegel v. McCormack

" case probably correct. But it is also said the Zampa case is not at conflict with sec. 20 of the N.I.L.

NIL rule of law

If a neg. instrument merely has the word "agent" etc., not sufi & parol evid cannot be introduced.

98 Mass. 101 - to exempt one from liab on the instrument, a description of the A is not sufi.

Situations where P held not liable:

(1) P, by A agent - not sufi
(2) P by A - sufi ?
(3) P by A - not sufi
(4) A, agent for P - not sufi
(5) for P, signed A - not sufi

Zampa Investment & Securities Co. v. Taylor

"W.t. of author holds that where the trustee

has authority, as between the parties or those taking the instrument with notice, it may be shown by parol that the P for whom the trustee was assuming to act was known. Where the note discloses the name of the P, as "We, the trustees of" a named church, and is signed by indiv names, the signors are not indiv liable. So far as innocent purchasers for value are concerned, however, the representative character of the party must be disclosed upon the face of the note."

Rule of Law

Kegel v. McCormack

Sec. 20, N.I.L., makes it clear that if a person signing an instrument adds to his signature words indicating that he signs for + on behalf of a P, he is not liable on the instrument if he was duly authorized & discloses his P.

Rule of Law

By the great wt/authors, if he adds after his name the descriptive words and does not disclose his P, he does become liable.

Rule of Law

Where the name of the P is disclosed, the wt/author appears to be that parol evid may be ~~and~~ rec'd to show that the parties did not intend the person signing as A or in a representative capacity to be bound.

Agency Rest. - sec. 324

(1) In the absence of reformation, an A signing a negotiable instrument

in his own name is a party to it although the fact of agency appears upon it, unless the name of the P also appears.

(2) If the name of the P appears upon a negotiable instrument, the A is not liable if the document is interpreted as being executed by the A only on behalf of such P, provided that the A has power to bind the P.

(3) If the name of the P appears upon a negotiable instrument and the A does not appear unambiguously as a party, extrinsic evid of an understanding that the A shall not be a party to it is admissable as against any holder of the instrument who has notice of the agreement or who is not a holder in due course.

The effect of the N.I.L. may be profitably considered to various forms of signature:

(1) Where the signature contains words indicating a representative capacity, and names the P; e.g. "John Adams, Pres. of the Adams Mfg. Co."

(2) Where the signature contains words indicating a rep capacity, but does NOT name the P; e.g. "John Adams, Pres."

(3) Where the signature names the P but does NOT contain words indicating a representative capacity; e.g.; "Adams Mfg. Co., John Adams," or "John Adams,

Holder in due course - a holder who has taken a bill/exchange (check or note) complete + regular on its face, under the following conditions, to-wit: (a) That he became the holder of it before it was overdue, & sans notice that it had been previously dishonored, if such was the fact. (b) That he took the bill (check or note) in good faith & for value, & that at the time it was negotiated to him he had no notice of any defect in the title of the person who negotiated it. NIL sec. 52

Adams Mfg. Co."

(4) where the signature contains a preposition indicating rep action, e.g., "per John Adams," or "Adams Mfg. Co., per John Adams."

Britton on Bills and Notes

Section 164 Personal Liability of an Authorized A - Types of Situations

Where an agent with authority to bind his P signs his own name, either accompanied or unaccompanied by words indicating that he signed in a rep. capacity, but where there is disclosed somewhere on the instrument the name of another person who might or might not be the P of the person who signed, parol evid is admissable for the purpose of exonerating the signing A and for the purpose of subjecting the other person whose name appears on the instrument to liability thereon. Some cases hold that the A cannot be exonerated from personal liability in the fact situations here disclosed.

Where an A with authority to bind his P signs his name thereon, and there is also disclosed on the instrument the name of another person, along with words which indicate that such person is the signing person's P and that the A signed in a representative capacity, the A is not liable on the instrument, or otherwise, and the P is liable thereon.

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1 April 57

Mass. Case
3 Gray 334

On the margin of a check there was "Aetna Mills" + was signed "John Doe, Agent." Held that this was supp to indicate a rep. capacity + that Aetna Mills would be liable.

Britton on Bills & Notes (see nb 53) Four Basic Situations (assuming there really is a P):

(1) "John Doe" – A liable
(2) "John Doe, Agent" – A liable. Parol not allowed
(3) part 1, sec. 164 – parol evid allowed
(4) " 2, sec. 164 – " " "

(B) Agent's Lack of Power to Bind the P

Griswold v. Haas

When one makes a representation that there is a P for whom he acts when, in fact, such is not the case, the A making this implied warranty of authority will be held liable personally when he does not really have the authority. Even if he reasonably believes that he has authority when such is not the case, he (A) is still personally liable. The A can protect himself: "In the event my authority is not existent, I will not be held personally liable." The reasoning that 3rd party may recover is that the latter relied on the representation.

IF A FALSELY AND KNOWINGLY REPRESENTS HIMSELF, 3RD PARTY HAS ACTION IN TORT FOR DECEIT

KEY ELEMENT HERE IS RELIANCE UPON THE OSTENSIBLE AUTHORITY OF A TO BIND P

3RD PARTY DOES NOT HAVE AN ACTION OVER V. THE PURPORTED PRINCIPAL

A v C/C THIS ACTION WOULD NORMALLY BE FOR BREACH OF IMPLIED WARRANTY OF AUTHORITY

Two factors to remember when pursuing this line of litigation:

(1) Not a suit on the K involved, but on a br/warr of author. (IMPLIED)
(2) May go into evid re the existence or non-existence of a reliance.

New Ga. Nat'l. Bank v. J & G. Lippman (cb 270)

What is the issue here? Is a person who signs same author

liable under sec. 20 of the NIL?

ADD TO SEC. 20 - P IS DISCLOSED

Sec. 20 holds that with authority (+ indicating a rep capacity), the signing A is not liable. It does not say that same authors there is liability, but Cardozo, C.J. said that this construe must be correctly assumed. There was liability here.

Haldeman v. Addison (cb 273)

Issue: When an A signs for an unincorporated organ + does not include an exoneration Clause to protect himself, is the said A liable on that instrument? YES.

Where there is ~~it~~ no P, the A is liable as the P. (The non-existent P idea).

3 April 57

Jenkins v. City of Henderson

Lack of authority predicated upon lack of power of the P.

Rules of Law

If a K is made with a known A acting within sc/his authority for a disclosed P, the K is that of the P alone, unless credit has been given expressly + exclusively to the A, + it appears that it was clearly his intention to assume the obligation as a personal liability + that he has been informed that credit has been extended to him alone.

Check on action of deceit and " " " " for/implied warranty.

No implied warranty by A re the capacity of the P. The only implied warr by A is the A has authority to make the K.

Rule of Law

Studeras Oil Co. v. Bienpang cb 279

Where you have a non-existent P, the A

is responsible as the P. Does the rule that an A does not impliedly warrant the capacity of the P apply here? You may warrant the existence of the P (as was so here), but there was no warranty of the capacity of the "P" here.

Rule of Law

* If the P is insolvent, will the A be liable to the third party? No. The A does not warr capacity of P. Exception: where the A knows of insufficient capacity of the P & still Ks with the third party.

The death of the P revokes the authority of the A. Can the A be held on deceit for br/imp warr? Mecham says yes; Tiffany say no. — If the third party knows of this but the A doesn't, 3rd party may not recover (there was no br/imp warr due to lack of reliance on it). There is probably no liability if the 3rd party does not know. (split of authority). These rules are true when the P is incapacitated due to insanity & others re lack of capacity. NO LIABILITY WITH LACK OF CAPACITY.

[see: A.L.I., sec. 329 et following.]

Election of Remedies

If X is an undisclosed P & the third party sues the A, may he subsequently sue the P? If the third party gets judgment against A,

may he go against P? Before trial but after start of litigation against P, may 3rd party go against A? Before trial but after start of litigation against A, may 3rd party go against P? During trial against A, may third party go against P? During trial against P, may third party sue A?

Wieselman v. Anderson cb 283 and cb 286

Rule of Law: Where there is an undisclosed agency, the A may not show the existence of a P as a defense. In the second case, the P-A rule would not apply due to the introduction of a novation and a debtor-creditor relationship between P & the brother.

The A may not use as a defense an undisclosed P-A relationship.

5 April 57

Where you have an undis P-A relationship, the third party may elect to go against either the P or the A.

Old Ben Coal Co. v. Universal Coal Co. cb 287

Liability is several in the sense of the alternative (depending upon the doctrine of election). It is several in distinction to jointly.

The mere fact that you have gone to judgment against A does not preclude a c/a against P.

58 One dealing with the A of an undisclosed P, can do no other than treat the A as the P, & he cannot be deprived of any rights which have attached during such dealings when later the real party in interest claims the benefit of the transactions.

(Read him in the library) Tiffany: Sec. 95 p. 265

Tiffany

Where you have made a judgment against A, knowing of the existence of P, you have made an election & will be precluded from going against P. (see 104/178, 229/576.)

Mass. view

Mass view holds that if the third party knew of the Plt still sued A, he will not be said to have made an election UNLESS a judgment had been rendered.

Klinger v. Modesto Fruit Co.

Best to wait until just before the case goes to the jury before you elect. You may waive the right of election & in a juris with permissive joinder. One of the two Ds would have to move to require the P to elect.

Third Party Liability

Now, we shall be concerned with the P and/or the A going against the third party.

American Enameled Brick & Tile Co. v. Brozek

An undisl may bring suit in its own name to collect for goods furnished by it on a/c made thru its a.

The mere fact that the third party did not want to deal with the P is no defense.

Hammon v. Paine

D may avail himself of any defense which existed in its favor against the A at the time of the disclosure to him of the existence of the real P.

If you have bonds & securities with a broker to handle them for you, this is essentially

a debtor-creditor relationship.

8 April 57

Heart of America Lumber Co. v. Belove ct 299

An undisP can neither sue nor be sued on a K in writing, if proof of the agency of the person actually signing that K would violate any of its provisions.

Does not say you cannot have an undisP on a lease. If the A acting for an " " so acts or Ks that a claim that he is the King party and not an A for an undisP appears to exist as an essential part of the K, or the relationship appears on the discussion of a material fact bearing on the interrelationship of the parties or the character in which they ked, the undisP will not be made or permitted to make himself a party.

Kelly etc. v. Barber etc. ct 301

An A who Ks in his own name for an undisclosed P does not cease to be a party because of his agency. Such an A, having made himself personally liable, may enforce the K though the P had renounced it. He is liable as P to the same extent as if he had not been acting for another.

Your rule: a K not under seal, made in the name of an A as ostensible party, may be sued on by the real P at the latter's election. The mere fact that the third party would not have dealt with the P does not preclude the P's ability to sue on the instrument. Cardozo, J.

Cohn v. Knabb ct 304

To constitute a misrepresentation which will prevent a decree for specific performance, the misrep must be shown to have operated to the prejudice of the D.

Special factor here is that you are dealing with competitors & to enforce the K here would be to reveal the secrets of one to the other.

Hontz v. Hellman

A K is enforceable by an undisP unless there is something on the face of the

lack of enforceability due to lack of mutuality.

If a K is fraudulent or inequitable because of concealment of the real ~~party~~ in interest, the obstacle is not surmounted by changing the caption of the suit.

instrument indicating absence of undis P or where it is on the face that the undis P is not a party to the K.

Here, a "straw man" was used. Not a P–A relationship. A "straw" is used, specific performance is denied. (such was the case here, anyway). Ct said they could not enforce the K due to lack of mutuality (both parties don't have equal power to enforce the K). "Straws" are legal. No duties are owed by a straw to the P as in the P–A rel. There is no intention to ~~establish~~ the P–A rel. The straw is really a conduit (a mere instrument thru which a P operates).

Gen. Rule: an undis P may sue on the K.

Undis P may not sue:
(1) On a sealed instrument if he is not a party to it.
(2.) On a negotiable instrument.
(3) Where 3rd party indicates on the face that he will not deal with the undis P.

Undis P subject to all defenses used against the D.

However, despite these exceptions, an undis P may generally sue on a K. Where a third party merely says that he did not know of the undis P, or that had he known he would not have K'd, the ~~P~~ undis P may

still sue. But where the third party indicates on the face of the K that he will not K with the undis P, the P may not sue.

Ch. 315 **The Powers of Agents - Chap 9**

Generally, the P-A rel need not be in writing. P-A relationship is generally consensual.

285/554 - lease for 5 yrs under seal. Assignment to D. Evid indicated that D had authority but that the lease, altho' sealed, was not enforceable; lease under 7 years does not need a seal. An instrument (wh does not need a seal is not binding merely because a **seal** was affixed.

108/855
146/36

Exception to the general rule: Where the sealed instrument is signed in the presence of the P, the D need not have authority. (exception to gen. rule).

Culbertson v. Cook

The primary ground of the doctrine of estoppel is that it would be a fraud to assert to the prejudice of another a state of facts to the contrary of that which he whom it is sought to estop had previously represented, on the faith of which the other had acted; the doctrine assumes a lack of knowledge by the party claiming the estopped.

The powers of atty are to be strictly construed. When thinking of these, think of "power" & "authority." Power may be greater than actual authority, but it does not follow that power is greater ~~that~~ than actual authority as defined by the cases. There are two major phases of authority:

(1) actual authority
   (a.) Express authorization
   (b.) Express limitations
(2) Apparent Authority

10 April 57

Two phases of authority:

(1) Actual authority
  (a.) Express authorization
  (b.) Express limitations
(2) Apparent authority
  (a.) May be implied by law from sources:
    (1) Nature of the agency or biz
    (2) " " rel of the parties
    (3) Custom usage, etc.

May be greater than your actual authos. & usually is.

An A author to sign the name of his P effectually binds him by simply affixing to the instrument the name of his P, as if it were his personal act.

Agents: (see 1st lecture)
(1) Special
(2) General

What is the difference between the two? Always ask the question: Does the A have authority?

Payne v. Jennings

A real estate A is generally a special A of ltd purs, & those dealing with him deal at their peril. Usually his only author is to secure a purchaser who will take the property at a price fixed by the owner. He cannot, unless expressly or impliedly authorized, execute a K of sale on behalf of his P.

The pur here was so general that it really meant nothing. Was it intended by the P that the A have the particular authority? What is the difference between pur of atty and the authority of an A? A broad pur/atty can be very effective. Broad construction. Cts usually give strict interpretation to author. of A.

Implications From Biz Usage

Ferro Concrete Construction Co. v. U.S.

The third person has the burden of proving the authority and he has the duty to ascertain whether

A person dealing with an alleged A is bound to ascertain his authority, and that, when suit is brought against the P in respect of an act of such A, the burden is upon the P to estab. not only the fact of agency, but that the act upon which he relies was within the the agents authority.

A party who seeks to charge a P for the Ks made by his A must prove that A's authority; and it is not for the P to disprove it.

the A has authority. If this is so (which it is), how can we rely on apparent authority? P responsible for any apparent authority of a. The O P M test is used in determining whether one ~~not~~ would have relied on the apparent authority of the particular situation.

Apparent authority: that which, though not actually grtd, the P knowingly permits the A to exercise under such circumstances as to preclude a denial of its existence.

His actual authority in the superintendent for changing the K. Would one the reas. expected to consider this apparent authority? No. ∴ the J.D.

Charleston & W.C. Ry. Co. v. Lassiter & Co. cb 340 (see nb 66)

Where one of two persons must suffer loss by the fraud or misconduct of a 3rd person, he who first reposes a confidence or by his neg conduct made it possible for the loss to occur, must bear the loss. The apparent authority, so far as third persons are concerned, is the real authority.

Distassio v. American United Life Ins. Co. cb 349

One who deals with an A, knowing that he is clothed with a circumscribed authority & that his act transcends his powers, cannot hold his P; & this is true whether the A is a general or a special one, for a P may limit the author of one as well as of the other. (see top of next page)

"One who deals with an A, knowing that he is clothed with a circumscribed author & that his act transcends his powers, cannot hold his P; & this is true whether the A is a gen or a special one, for a P may limit the author of one as well as of the other."

READ FURTHER ON GENERAL & SPECIAL AGENTS.

64 The A's authority was ltd, & Pl knew of the limitation. Under such circums, even if the A were clothed with apparent author to make Ks of ins., it could not affect the situation, as Pl was appraised of the ltd. author, & consequently Pl cannot rely upon any alleged oral K of ins. made by the A.

N.Y. Life Ins. Co. V. Smith

Secret limitations on the A's author, the P will be liable to the third party. But, if the third party knows of the "secret" limitations, then the P will not be liable.

Secret lims – third person not bound
Lims – third party is bound.

In a case of actual author, lims on that author would be perfectly binding.

In a case of apparent author, lims not disclosed will not be binding.

Similar to assumption of risk doctrine.

12 April 57

Sheenan v. Elliott Mfg. Co. ct 356

In re extra-hazardous activities and common carriers, there is implied authority in the superintendent or Conductor to call a doctor. (Mass in accord.) A couple of other fields (e.g., extreme emergency) allow this implied authority.

Loma Vista Development Co. V. Johnson ct 359

One may be found by the misrepresentation of his A, if it is made in the exercise of his apparent author, relates to a matter intrusted to his management or control, & the party dealt with has no knowledge of the misrepresentation.

Is P responsible for misrepresentations of the A? The knowledge of the A is imputed to the P, generally speaking. Where you have a misrep or a rep which is not authorized, we may have to apply the Act of apparent authority. (Check your own juris. on this.)

The A's Position or Titles (U.P.A.)

Reid v. Linder — ch 369

Under the U.P.A. There was a Pl here. Must look to see whether it is a trading or non-trading Pl. In a trading Pl, one P has the power to make or endorse a negotiable instrument & ∴ bind the other P. The other P may be sued on the note — not the debt. // In a non-trading Pl the other P would not be bound & the " " " " able to be sued on the note made by the signing P.

Trading Partnership

Non-Trading Partnership

171 Mass. 423

Worcester v. Furbush 171/423. Non-trading Pl here. Ct said the party receiving the note must prove (has the burden/proof) that the other P is bound on the note.

Trading Pl — one doing biz commercially or " which primary biz consists in buying & selling for profit. (see: 59 A. 410) (22 A. 681)

In a non-trading Pl if the P has author (implied or express) to bind the other, the second P will be liable on the note.

254/161 (Back Bay v. Brickley)

In a trading Pl, you could destroy the power, but this must be made known to the third party ~~notice~~ so as to avoid liability re apparent authority.

A non-trading P cannot bind the other P on a loan the 1st P makes.

Charleston & W. C. Ry. Co. v. Lassiter and Co. (cb. 340) cont'd from 6163

"While as between the P & A the scope of the latter's author is that author which is actually conferred upon him by his P, which may be ltd by secret instructions and restrictions, such instructions and restrictions do not affect third persons ignorant thereof, and as between the P and third persons, the mutual rights and liabilities are governed by the apparent scope of the A's author, which is that author which the P has held the A out as possessing, or which he has permitted the A to represent that he possesses, & which the P is estopped to deny. The apparent author, so far as 3rd persons are concerned, is the real author, and when a 3rd person has ascertained the apparent author with which the P has clothed the A, he is under no further obligation to inquire into the A's actual author. The author must, however, have been actually apparent to the 3rd person, who, in order to avail himself of rights thereunder, must have dealt with the A in reliance thereon, in good faith & in the exercise of reas prudence, in which case the P will be bound by the acts of the A performed in the usual & customary mode of doing such biz, although he may have acted in violation of private instruction, for such acts are within the apparent scope of his authority."

15 April 57
Cousin v. Taylor

If you have an unincorp. assn. not protected by the corporate code. An indiv member, participating in the particular transaction, will be held liable individually if he signed or ratified. In a P'ship, members are liable.

{119 Conn. 681, 02
178 A 201} →

Sec. 6, U.P.A.—
A partnership is an assn of two or more persons to carry on as co-owners a biz for profit.

as partners.

A person may author the obligation arising from a K either by becoming or remaining a member when the K is within the scope of the organization's activities, or, if without the scope, by assenting thereto & become liable as a result thereof.

Start with the idea that it is an agency theory. Here dealing with clubs, frats, etc., all that are unincorporated and do not operate for profit.

Rule of Law — Every agency is subject to revocation at will except where coupled with an affirmative obligation. (BUT TIED TO SOME INTEREST)

Memo: — Every member is liable for the full amt., but is entitled to contribution from the other members.

Meriwether v. Atkins

The mere ratification of the minutes does not constitute a ratification of the act.

Powers of Partners

Risk of PL rel rests on imposition of dual liability. (see sec. 9 of the U.P.A.). Any act not within the apparent author of the P does not bind the P. Know the lims on the powers of Partners as defined

in the U.P.A., Sec. 9[3(a)]

Iroquois Rubber Co. v. Griffin et al. (1919)
Here, no express authority + lack of appt author. Ptnr used stationery with letterhead. Customs of biz are T.

123 U.S. 490

3rd, a ptnr has no author to execute guarantees unless such are within the sc/biz of the PL.

123 U.S. 490
PL not responsible: no implied pwr or appt author.

270 P. 1077

270 P 1077

Ptnr would normally have the pwr to execute a lease if it is necessary + appropriate to the carrying on of the PL.

Use of the Name

110 U.S. 499

Irving v. Willard 110 U.S. 499
Would the PL be liable for future transactions?" "Dealer in Grain" did not imply they dealt in the future (like stock market) & therefore, they were not liable on the K where S thought so. The name of the PL did not make them secondarily liable.

U.P.A.

Ptnrs may unanimously amend the Charter of the PL and: change the nature of the biz.

Any act which tends to prevent the normal carrying on of

the biz of the Pr is held to be not binding on the Pr.

on personalty
Mtge executed by one ptnr: may well be binding + is. One ptnr may mtge the entire stock or goods of the Pr except the realty. Does it prevent the carrying on of the biz? (See Mechem, Sec. 267)

Right of ptnr to mtge the Pr prop.

(see 66 Fed 850: Ptnr had full right to execute a full chattel mtge of the prop of the Pr to satisfy the debts of the Pr + preferred creditors, so long as he does so absent fraud.

General Assignment

Generally a Ptnr cannot execute a gen assign, but there are exceptions.

17 April 57

Power of ptnr to assign

45 N.E. 3 - a ptnr does not have the power to make a general assign which will bind the Pr. Exception: where the other ptnr is out of the juris for a reas time.

Gen. Assignment: (definition) Conveyance of all prop to a trustee to pay off creditors.

Confession ~~of~~ judgment

49 N.E. 784 (47 N.E. 754)

U.P.A. & C.L. hold the ptnr does not have the pwr to confess a judgment. A ptnr, not confessing the judg, may use this as a defense, + only a ptnr can do this.

70

Ilona Urbach

Sealed Instruments at C.L., unless the pwr were specifically given, a ptnr cannot bind the Pls.

132 NE. 730

A ptnr cannot transfer Pl prop to satisfy personal debts. Can only do this to handle Pl biz (that is) transfer prop of the Pl. Creditors can only reach his interest in the Pl to satisfy his (ptnr's) debts, but not the prop per se.

Execution of Lease

140 Mass 178 - a ptnr can execute a lease. The C.L. is in accord.

140 m 178

Rule of Law

Kelly v. Citizens Finance Co. ch 374

Is the pres. of a corp also an A thereof? Yes.

The pwr to K is in the Bd of Drtrs. This case (dissolution) was an unusual matter.

Blue Goose Case

This was not an unusual matter. Title does not imply authority.

Powers of a Pres. of a Corporation

A pres. is deemed to have "general charge of the biz" and whether he can bind the corp depends to the particular facts of the case. If something is deemed an unusual matter, the pres. may not have the power to bind the corp. say, $5000 claim

against G.E. may not, & probably isn't, an unusual matter. whereas, a $5,000 case against a corp with $1,000 in capital would be unusual.

Campbell v. John Deere Plow Co. 60 380

Creation of the relation of P & A may be express, as where the A is specifically appld by the P & accepts such appt, or it may, sans any express appmt, be implied from the words & conduct of the parties & the circumstances of the particular case. There was actual knowledge here.

Metropolitan Club v. Hopper

Y was imputed knowledge here and Y was the application of the doctrine of estoppel here. She P did not know of the goings on, but the A knew.

The knowledge of the A is the knowledge of the P.

60 1857 Fletcher v. Pullam 60 A. 887

Minority C.L. view: if a party were held out to be a ptnr, he must do everything in his pwr to expel this idea. Majority view: if one is held out as ptnr, he has no duty to expel this idea. The U.P.A., sec. 16, goes along with the majority view.

Anderson v. Bank

Gen. Rule: "It is essential to be appctn of eq estoppel que le party claiming to have been influenced by le

conduct or declarations of another to his injury was himself not only destitute of knowledge of the state of the facts but was also destitute of any convenient means of acquiring such knowledge & the facts are known to both parties, or both have the same means of ascertaining the truth, there can be no estoppel."

265/362
Standard Oil Co (Thos. Henderson, Sr.)

Read the U.P.A. carefully.

Burden/proof

The third party has the duty or burden of proving the existence of a Pt.

22 April 57

Partnership By Estoppel

61 N.Y. 456 ~~61 N.Y. 456~~ - P^p (A & B under name of A - B + Co.). A withdrew + P^p was dissolved. Another indiv named A (referred to as A,) authorized the firm to use his name (last name which was same as orig. A). A, i.e., became a ptnr by estoppel because he allowed himself to be held out as a ptnr.

149 N.W. 20

Doulson Case 149 N.W. 20 - father + son Co. Father retired + son contd using the name (X + Son Co.). Father rented the place to son. There was a tort here. Does P^p estoppel apply in tort? CT said there would be liability on X, the father. where there is a holding out or representation + an

Partnership by Estoppel in Joint Cases

Know the U.P.A.

invitation to patronage & such is relied on by another, the retired ptnr would be liable, See A.L.I. on Agency, sec. 16

Appearances of Ownership and Non-Disclosure of Principal
cl. 395

Here, the A purports to be himself the P.

If P is simply a creditor, is he bound by agency principles?
NO. P is on entirely different rel.

Brooks v. Shaw cl. 399

Was P bound by the act of A? YES. An A's ostensible powers ~~two~~ are his real powers, and as such may bind the P.

Herbert-Meisel Trunk Co. v. Duncan cl. 395

"For most purposes the K of an A, who deals in his own name sans disclosing that of his P, is the K of the P. When discovered the P may be held liable. An A's apparent author is his real authority.

Darling-Singer v. Commonwealth et al.

An undis P may sue on a simple K (not under seal) made by his A even though the A appeared as P in the transaction sans disclosing his agency.

When prop is sold by an A purporting to act as P but in truth as A for an undis P, if before pymt the undis P gives notice to the purchaser to pay to him & not to the A, the purchaser is bound to pay the P subject to any equities of the purchaser against the A. The

purchaser, however, is protected in making pymt to le A at any time previous to notice of le agency, but not in making pymt after notice of the agency

Does poss of the thing per se give an A power or authority more que usual? Poss, int itself, is not sufi. Poss and the indicia of ownership will be sufi to bind the L and to make the sale valid. (See Stanton v. Hawley)

See Trust Receipts (p 183 - Blacks)
Powers v. Pacific Diesel Engine Co.

The mere poss. of chattels, by whatever means acquired, if it be not other evid of property or authority to sell from le true owner, will not enable le possessor to give a good title.

Disputed Control

Sec. 18, U.P.A.

The rights + duties of the ptnrs in rel to the ~~ptnrs~~ Pship shall be deter, subject to any agreement between them, by the following rules:

(a) All ptnrs have equal rights in the management + conduct of the Pship biz.

(b) (See cl. 616) Any difference arising in ord matters connected with the Pship biz may be decided by a majority of the Ptnrs; but no act in contravention of any agreement between le ptnrs may be done rightfully save le consent of all le ptnrs.

24 April 57

Powers of a Partnership

The majority will control matters of the Pt. The majority, however, does not have the power to override the minority on extraordinary matters.

Johnston + Co. v. Dalton's Admr 27 Ala. 245

Action on the note executed by one ptnr (A) in the name of the Pt. One of the ptnrs. (B) had given notice that he would not be bound on the note. — B and C (the other two ptnrs.) would be bound. The majority will control, whether by express or implied condition.

Rule of Law

Mason Case (202 S.W. 934) Cl-422

Overdraft by ptnr. A. Ptnr. B said he would not be bound by any other overdrafts. - No liability due to absence of a majority + notice of intention not to be bound. The money partially went to B, but he would have to return the money.

hypo: Agreement provides Ks can only be made by ptnr. A. X Ks with B. Under U.P.A., if X has no notice of the exclusive pwr of A, the K would be binding. The majority controls ordinarily, unless you are specific articles of the Pt which allow for something not decided by the majority. For A to tell B to go ahead + execute the K, no good because the articles of Pt are against the majority.

Morgan v. Harper cb 426 (case #110)

Rule of Law: Action for specific performance. Where you have a written instrument revoking the agency even though not used, The powers of the A as the agency are revoked. If y is an agency K in writing and such is not revoked, y is the danger of incurring liability.

Courtney v. G.A. Linaker Co.

Rule of Law: Where y is a revocation of the A's powers, but ostensibly the power remains, the P has to take specific steps to notify those with whom the A has usual contact. Otherwise, y is liability.

Rule of Law: The third person has the duty of ascertaining whether the authority has been terminated.

Morris v. Brown cb 431

No reliance on apparent authority & is no duty to ascertain the power of the A. Since they did not rely on it, no estoppel arises in their favor.

Partnership: Dissolution

Sec. 29, U.P.A. (cb 619)

(1) Dissolution
(2 Liquidation) Winding up

Upon dissolution, the remaining ptnr only has the power to carry on the Pt for the purpose of liquidation. Exception: specific provision of Pt that the

Know the U.P.A.

Section 29, U.P.A. — Dissolution defined - the change in the relation of the ptnrs. caused by any ptnr ceasing to be associated in the carrying on as distinguished from the winding up of ~~partnership affairs~~ the business.

Misconduct and unprofitability are included.

Pl biz will be carried on. Death dissolves the Pl but does not terminate it (power to wind up the affairs still remains). Under sec. 31, insanity as a grounds for dissolution is not provided. Sec. 32: insanity as a grounds requires (1) a declaration to that effect in a judicial proceeding and (2) an application to the ct. for a decree of dissolution.

311/309, 310

definition

Dissolution: a change in the rel of the ptnrs caused by one ptnr ceasing to relate himself with the biz of the Pl.

168 U.S. 328

Rule of Law

Sec. 38, U.P.A. - on dissolution the Pl is not terminated, but continues until the winding up of Pl affairs is completed.

Can you dissolve the Pl at the will of one of the ptnrs.? Yes, even when you have a Pl to run for a specified time, one of the Pl can dissolve the Pl at will. He can, however, be responsible for damages for br/k. (See secs. 38, 31, U.P.A.) (5 Ark. 270 - damages for breach of the Pl K.)

Continuance of the Partnership

If the remaining ptnr(s) desire to continue the Pl, he may offer a bond or security to the moving ptnr.

Rule of Law

A duty of personal "notice" is required to those who have had dealings with The Pl. (Notice is defined in sec. 3. Otherwise, there will be liability on The Pl.

26 April 57

Barkley v. Barrett 102 N.E. 602

Action to dissolve a Pl. One of the ptnrs had been ill for about 5 mos. but was however slowly improving from a brain hemorrage.

In the absence of Pl agreement, each ptnr is under a duty to give his full services. Here, the incapacitated ptnr did not even show in ct. Ct grtd dissolution due to the seriousness of the incapacity. Incapacity means:

(1.) Lasting instead of temporary
(2.) Serious instead of minor.

Misconduct U.P.A. sec. 32

Must be suff serious enough to allow dissolution.

66 Ill. 402 → Dissolution will NOT be grtd for trifling matters. The misconduct must pose a threat to the success of the Pl.

226 Mass 163

226/163

Rule of law in re fraud

On one of the parties has been induced to enter into a Pl thru fraud, the Pl will be dissolved even if the misrep will be insuff to sustain an action at law for deceit.

151 N.E. 275

151 N.E. 275

Rule of law

If a marriage or a Pl is annuled, it is void ab initio.

183 P 379, 382

183 P 379, 382

If you show fraud, you don't have to show damages.

320/217

Know the U.P.A.

Fairick v. Berry 320 Mass. 217

Here, Ptnrs. were so incompatible that the Pl. was jeopardized & it was suspicion among them. (see sec. 32)

In re Kellers Estate 178 A. 681

Pl note; & after a death of one of the ptnrs the note was redeemed. Ct said this was a part of the winding of process. Must show more.

244 N.W. 187 sec. 36 (3) U.P.A.

By the extension of the time of pymt, Ct held this was a renewal of the Pl or a continuance. Best way is to let the time run unless the limitation of time is about to expire.

166 Mass. 61

Ct said que they could not rule as a matter of law que le K was immediately dissolved by the death of a ptnr.

33 P. 975
Rule of Law

The estate of the deceased ptnr is responsible for the obligations of the deceased ptnr.

No assumption of obligations by new ptnr.

The new ptnr does not assume le obligations of the deceased ptnr. He does not assume the debts except from the time he takes office.

Money cannot be borrowed except for the purposes of liquidation (i.e.,

and chg the debts to the decedents estate.)

285 Mass. 120

285/120

Separate action on Pᴸ K.

Ⓒ ptrs cannot maintain a separate action on the Pᴸ K after the dissolution of the Pᴸ.

5 Neb. 368

Pᴸ about to be dissolved and 5/6 on Pᴸ about to run out one ptr gives part pymt of a Pᴸ debt. This act stayed the S/L.

84 Mass. 245

Ⓒ ptr may waive S/L if in line of Pᴸ biz.

Good Will

148 N.E. 776 Bailey v. Bettis

Musical quartet (Phonzellas) + 3 quit. The remaining one got three others. Good will depends on personal factors.

84/245

Schneider Mfg. Co. v. Schneider 43 N.E. 325

The name became a Pᴸ asset + was bought by A when ptrs A+B dissolved B (Schneider) was enjoined from using the name. Not good rule. Man should be able to use his own name.

See 195 Mass 292

30 N.E. 223

30 N.E. 223

There is a fiduciary duty in the remaining ptr to properly dispose of the Pᴸ prop.

Types of assets: (value)

(1.) Going concern value

(2.) Liquidation value

On the money & interest of the deceased ptnr are used even after said death, such cont'd use puts the risk on the remaining ptnrs & an obligation to properly account therefor.

167 N.E. 514

Rule of Law

The surviving ptnrs have a right to dispose of the prop & one buying gets good title even if the prop is misappropriated.

276 Mass. 464

A surviving ptnr may buy the prop of the decedent even tho' they are selling it. They must, however, make every thing above board & full notice must be given to all pertinent parties.

64 N.Y. 117

Surviving ptnrs may be held liable for the obligations of the P.L. If an incoming ptnr assumes the obligations of the P.L., he will be held liable therefor.

29 April 57

Trubey v. Pease

The agency is terminated by death as a matter of law. The remaining ptnr. does not have the power to give the prop. to a third party. The death of the P terminates the

power of the A. Some powers will continue after death.

(1.) Suretyship

Neither the third person nor the A need have notice of the death for the powers to be cut off anyhow.

A. L. I., sec. 85

If the bank has knowledge of the death & goes ahead & pays, the bank will be liable.

Hunt v. Rousmanier's Admr's (Chrysler Corp. v Blozic) Marshall, C.J.

An agency is not revoked by any of the normal things that may revoke or terminate it if it is coupled with an ownership interest.

What is an interest? It must be an interest in the subject of the agency. The "interest" is an interest in that which is to be produced by the exercise of the power.

Here, the interest was probably the giving of a present security interest.

A present right to convey in his own name would constitute an agency coupled with an interest.

The key word is ownership.

A future right to convey in his own name would not be an agency coupled with an interest.

Relation of Ptnrs. Among Themselves

I. Order of Distribution of Assets Upon Dissolution

U.P.A. Sec. 40

The first person that ~~that~~ debts will be paid will be the creditor.

Assets of the PL are:

(1.) The PL prop

(2.) The contributions of the ptnrs ~~shall~~ necessary for the pymt of all the liabilities specified in clause (a) of this paragraph.

In the absence of anything stated the ptnrs. share profits equally. The loss will be ~~so~~ shared in the same proportion. If nothing is said about sharing losses but something is said in re sharing profits, the losses will be shared in proportion.

hypo: (for a change) (have memorized)

Partners ~~Creditors~~	Loss = ₱15,000	Loss ~~₱30,000~~
A	- ₱20,000 (₱15,000)	₱10,000
B	- ₱10,000 (₱5,000)	—
C	- ₱ 5,000 (—)	₱5,000
	₱ 35,000 ~~owed~~	
	20,000	
	₱20,000	

Rules of Law

Firm assets are available for firm creditors; ~~personal~~ indiv assets are available for indiv creditors. However, the indiv creditors can reach firm assets & vice versa (when the indiv debt exceeds the indiv assets, the difference can be gotten from the firm & vice versa.)

20 N.Y. 3d Com. v. B
106 N.E. 321

II. Right of Participation

Fiduciary rel + duty to allow equal participation. There shall be equal participation. If one ptnr prevents another from equal participation, liability in cr/K. Ripples some way to Lts. ptnrs. Secret profits are recoverable by the other ptnrs.

III. Duty of Diligence

A ptnr. cannot sue another ptnr. in act. of law. Ordinary mistakes will not be actionable. But gross negl, etc., will be. No ptnr, absent special agreement, warrants his capacity.

60 N.W. 846

Pl had piece of realty. P-ner B suggested A get the title cleared up. Cost $70. B knew the title was ok. A recovered. Here, there is a duty to consult

170 A. 297

Construction ptnrs. A K is the prop of the Pl. Ptnr A had quit the P/S after they got the K but before the bldg was completed. A got his share.

A former partner is entitled to his share of all ptnrship property on hand at or prior to the time of his leaving.

1 May 57

EXAM: state the principle of law always. If y is an exception, state it if material.
Sustain your argument with legal principles.

A ptnr is not entitled to compensation other than by way of Pl profits. (18 A. 524)

198 P. 178 Farnay v. Hauser

Query — May a ptnr. deal with the P? Ptnr (P) here had put grain in the P's warehouse. Over a few years one of the other ptnrs had been pilfering grain & later burned the warehouse down. P is a creditor + ptnr but is less than the other creditors & can only recover what is left over after the creditors have been paid. P would bring a bill in Equity for an accounting. (see 165 A. 651)

Distribution among Creditors and Ptnrs.

165 A 651

Section 8: Disloyalty of Agents

Based on dual relations and the breach thereof.

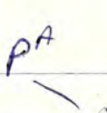
Olson v. Eulette cb 451

An agent cannot be both buyer and seller. (Exception: where he has made full disclosure to the P and deals above board.)

Once P later A to be a buyer gave disclosure to P, even tho' A pays more than market price, the P may rescind even sans showing damages. The A owes a duty of faithfulness & loyalty to the P.

Rule of Law — An A cannot serve two Ms.

P^A — A — P^B } neither P knows of the other.



P^B gives A secret profits. P^A may recover the secret profits from A (on the theory that A holds the money in trust for P^A.) If P^A rescinds the K, he still has a cause/a against A in tort.

hypo: A hired to look for minerals on land & he finds such. A leases land in his own name. - A is deemed to hold the lease in trust for P. The A owes a duty of loyalty & y is a fiduciary rel.

Duties of an A to P

Duties:
(1) To obey instructions
(2) To exercise skill, care & diligence
(3) To act in good faith
(4) To account & pay over.

Chapter 10
RATIFICATION AND CONFIRMATORY CONDUCT

Basis of this section: Here, no authority, but ratification or condoning the act after occurrence.

hypo: P non-existent when A acts. May you have ratification? Must the A intend to act for a particular P when he acts? If so, must the P exist?

Rule of Law

If A assumes to act for B sans precedent authority, and B subsequently affirms A's act, it is a ratification which relates back & supplies original authority for the act. B is bound then to the

same extent as if previous authority had been granted.

When you have ratification, the A must ~~not~~ be acting for the P.

3 May 57

Knapp v. Baldwin — You can't have ratification unless the A acted for the particular P who subsequently ratified.

Wilkins v. Waldo Lumber Co. 66 470.

What constitutes ratification?

(1.) Express ratification by the P.

(2) Ratification by conduct (implied by law)

RATIFICATION by silence:

(1) Duty to speak up.

(2) Full knowledge of the facts and the conduct of the A and the third party.

(3) Failure to speak up.

(a.) Active conduct
(b.) Silence
(c.) Failure to act, etc.
} examples

D (P) said he did not extend to bind the corp. The ct. said the acts speak louder than the words, & the conduct of D bound him & the corp. Where intent & conduct are inconsistent, the ct will be taken over the intent.

Rule of Law

Ct said this was a problem of estoppel: D was estopped to deny ratification since his conduct had led the P to rely on the agreement.

Estoppel

Watson v. Schmidt cb 473

There is no set time to determine when rati will be binding & when it would be nonexistent. This was rati by silence; the P waited 3 months to say this wasn't a valid sale of the horse & there was no rati. Ct said there was.

(1) Durst v. Carrico } cb 474
(2) Strauss Bros. v. Denton } cb 476

(1) Whether failure to respond to a statement or a chg, oral (1) or written, does amt to an acquiescence in it, & an admission of the fact, depends on the facts of each case. Mere silence alone does not have that effect.

(2) As a rule, a man not a party to a transaction is not estopped from asserting his status, because of silence. But, estoppel may operate on a party is under a duty to speak. (J/P)

Was this ratification? In (1+2), an essential element of ratification — Duty — was absent. Ct said there was no duty to speak up. Both (1+2) dealt with silence, & the cts. should have dealt with these thru estoppel. You cannot impose a duty on another. In (2) (Mississippi) there may be a duty to speak.

Magid v. Drexel Nat'l Bank cb 479

Here, Purnell was committing a criminal fraud with full knowledge of D, who was then under a duty to disclose. His failure to do so constituted an estoppel.

Forgery here; also, fraud, etc. We should look to the N.I.L. where a negotiable instrument is involved. This case is based on rati if you want to say so. Actually, based on the N.I.L.

Here, if the payee of a check, whose signature is forged, deals with the forger for a period of time, acquiescence and ratification maybe inferred from his conduct.

Section II: Partial Repudiation: Separability

Crute v. Burch cb 484

Rule of law may give rule to the particular act.

hypo: A, on way to deliver coal, negligently injures X. P knows not. 2 days later P ratifies the coal K. Is P liable?

Here, P author A to sell the mare for $60 & sold it for that amt. At same time, A sold a colt, which sale was unauthorized by P. Later, P learned, P ratified the K. Did ratification of the mare K mean rat. of the colt K? - No

(2) rule: Must have full knowledge before ratification will be effective. The A was probably acting for himself, so the theory of imputed knowledge to P is not applicable; this theory requires that an A be acting for the P & within the sc/author.

Doctrine of Imputed Knowl:
1. A must be acting for P
2. A must be acting within the sc/authority.

3 Cases: cb 487, 489, 491 - Stock cases

Conditions tied onto one issue:
(1) Corp. to purchase at a set price.
(2) The 3rd person should have ascertained the power of the person with whom he deals. Express.

Rule of Law

Of a corp. has no power to ① let pay ② a bonus ③ arrange for repurchase ④ set up agency power. Each case, the benefits were accepted. Is the K, i.i, binding?

Consensual ratification — If the 3rd party says that they know all of the facts & are still willing to deem the K binding, this would be ratification.

Cl-487 Murray v. Standard Packaging Co. Repurchase agreement. Ct held as long as the corp repudiated the agreement, the keeping of the money will not be ratification.

Cl 489

Rule of Law — You can't accept the benefits & refuse the disadvantages (or burdens) Rule here.

Cl 491

Retention of sale proceeds constituted ratification here. The 3 cases indicate a dispute among authority.

"The Stick": W/P/Author should be the corp, retaining the money should [redacted] be found & should be able to keep the money.

Harnischfeger — Sales Corp v. Coats Cl 493

Issue: Does a ~~Corp~~ ratify the K & the misreps when he sues on the K? The Ct

seemed to hold: P not bound by the ratis of the P is not bound. However, if you cannot accept & the benefits & reject the burdens, J/D.

Rule of Law

Sec. 3. Rights Acquired By Ratification

Rule of Law

A subsequent ratification equivalent to a prior demand.

6 May 57

Three theories:
(1) Adoption
(2) Ratification
(3) Novation (Mass.)

The A must be acting for a P. If a P does not exist, you cannot theoretically have rati. However, 2/3 of the states, in Corp. Law, say yes & Mass says yes, too, under theory of Novation.

ADOPTION — THE TAKING & RECEIVING AS ONE'S OWN THAT TO WHICH HE BORE NO PRIOR RELATION, COLORABLE OR OTHERWISE

Subsequent ratification is equivalent to a prior demand.

Watkins v. Clemmer, ch-500

H & W separated. Decree for separate maintainence with the custody of the kid with the mother.

Rule of Law

A rati can only be effectual between the parties, when the act is done by the A avowedly for, or on account of the P, & not when it is done for or on account of the A himself [redacted] or of some 3rd person.

Q2 Jaslick Case - A ratification can only be made when the P possesses at the time the power to do the act ratified, he must be able, at the time, to make the K to which by his ratification he gives validity. The ratification is the confirmatory act.

Here, P could not ratify the act of one who was not his A.

Rule of law — A party may not ratify the act of a person who is not the agent. At the time, Martinelli was a complete stranger to P.

Jaslick v. Industrial Commission ct-502

Rule of Law — You have ratification by the P provided the A could have executed it in the 1st instance.

Ratification is allowed to permit Ps to take advantage of the acts of the As.
Here, under the WCA.

S/Ls — Ratification within & without the period of the S/Ls makes a lot of difference

Kline Bros & Co. v. Royal Insurance Co. ct-504

Ins. Ks — The K of insurance is bilateral, ~~and it has been criticized~~ and, until the P ratifies, he is by hypothesis under no obligation to pay the premium.

Adoption — In adoption, you take up from the point you find out, & you don't go back.

Ratification — Ratification - you go back to the beginning.

PART III Rels Between Ps + As & Between Ptnrs

Regulation of Agents

What is the purpose of the statutes? Is it regulatory or is it revenue producing or is it penal?

Phelan v. Hilda Gravel Mining Co.

To earn a commission on the sale of real estate, the A is required in all cases to produce a purchaser who is able to perform.

Harriman v. Strahan

Compensation for strictly legal services cannot be recovered by one who has not been admitted to practice before the court or in the jurisdiction where the services were rendered.

Compensation + Reimbursement

294/236

Doctrine of Imputed Knowledge

The knowledge of one Ptnr is imputed to the other, except on:
(1) A operating Adversely
(2) A acquired knowledge before the relationship.

hypo: suit in Mass. on the note against ptnrs. A, B, & C. J/P but no recovery against A. Two years later, P v. B+C. Do P's entire liability is gone. see Mason Case, U.S. Sup. Ct. 73 U.S. 231.

Mason v. Eldridge
73 U.S. 231

U.P.A., secs 15 & 14. (cb 613, 614)

13 Mass. L.Q.
264/545 & Gen.
Laws, c. 177, sec. 8

8 May 57

1991 A. 773
264 Mass. 545
Chap. 197 sec 8

After death of a ptnr, under c2, the firm creditor should exhaust his remedies against the remaining ptnrs. before proceeding against the estate of the & the deceased ptnr. This has been much altered by statute. Mass holds you may proceed against the estate.

35/414

35 Mass. 414

If a remaining ptnr has already satisfied the creditors he will not be further liable to the creditor.

126 P 797

126 P. 797

All ptnrs should be joined. Failure to do so would warrant a plea in abatement. This deals with joint obligations.

Common Name Statutes

An action may be maintained by or against a corp in the corp name. Treats corp as an entity.

185 P 850
28 Cal. 2d 476

San Jose Scavenger Co.
185 P. 850
Demurrer & all parts of the

action should be in the Corp. name + not in one of the indiv's name.

Hess v. Pawloski (T.I.) JURISDICTION

Pl here. Is service upon one pltn service upon the whole Pl? This is constructive service + is binding.

Stoner v. Higginson 316 Penn. 481 (T.I.)

Pl in stock brokerage biz operating in several states. They close up an office on May 15, leaving only the phone connected until June 1. Statute provided service via an agent of the corp on Pl. - Penn. Ct held that service on the agent was binding + suff, + concerned the regulation of biz which is a police power.

Rule of Construction (actions in rem) Quasi in rem

Full faith + credit will normally be given where y is property in the state.

Mass. statute, sec. 5(a) chap 227

Any non-resident doing biz in the Commwlth will file notice of such + the clerk of the Court will be his agent.

In Stoner v. Higginson, + the ct said that the appointed (by ct) Agent will be valid + presumed to notify the D (Principal).

Chapter XII : Compensation & Reimbursement

Rules of Law — An A is entitled to compensation; & after performance is too late for the P to refuse pymt to A.

Rule of Law — If A is told to sell & then the P goes ahead & sells himself, the A will be entitled to compensation.
247 Mass, 243 (325 Mass 265)

Exclusive Agency — Exclusive agency is an offer accepted by performance.

Burden of Proof on A to show he accepted. — The burden is on the A to show that he accepted the offer by performance.

Attorney's Liens — You can terminate the rel of atty-client. Due to the intimately close rel of privacy. So, the client may discharge the atty at will, but the atty is not left out in the cold. The atty has a lien, & discharge of the atty is not discharge of the lien.

Fargo Glass & Paint Co. v. Globe American Corp. 201 534
An agency is always subject to revocation.

Breach of the Agency Relationship

Jansen v. Williams ch 558

Rule of Law (T.I.)

~~On~~ an A, in a position of trust to sell real prop, sells it to himself, he commits a br/trust for which he is liable.

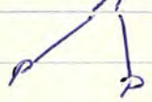
It is the A's duty to keep his P fully and promptly informed of all the material facts or circumstances which come to his knowledge.
Withholding information is a basis for forfeiture of the agency.

Glenn v. Rice ch 563

Dual-Principals

An A owes a fiduciary rel to P, and failure to provide such may result in br/agency rel.

Right of an A to collect his compensation.



Failure to disclose the dual rel to both P's will warrant forfeiture of the agency & the A cannot get compensation. This is true even where one P knows of the dual rel.

Duffy v. Colonial Trust Co. ch 568

Atty-Client Relationship

An atty's conduct must be irreproachable & he should not count on the client backing him up.

Ord, the conduct of the ~~atty~~ litigation is up to the atty. But, when the client gives specific instructions to the atty, eg. to attack property, the atty must abide thereby.

Rule of Law: An A is bound to exercise reas. care & diligence according to the best of his ability depending on the time, place, & circumstances.

An A has four primary DUTIES:
1. To obey instructions.
2. To act in good faith.
3. To exercise care, skill, & diligence.
4. To account and pay over.

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10 May 57

Smith v. Fidelity & Columbia Trust Co.
The A has the above four duties to his Pal.

Private Profit

Rule of Law: If an A for/trust of Pal he is responsible to report the profits to the the Pal

Whitten v. Wright cb 579

Rule of Law: On an A for/trust of his Pal, he holds the prop in trust for the Pal.

(Mass.) Essex Trust Co. v. Emwright cb 588
An Exe may not use information which he has learned during the course or by reason of his Exst to the detriment of his Ser.
The A holds the prop in trust for the Pal.

Metcalfe v. Bradshaw

Commissions rec'd by an atty for acting as an executor are not legal fees such as to become partnership money between lawyers.

Ptnrs cannot compete against each other. Here, law ptnrs in law firm. The ptnr was not held to hold the prop in trust

for the firm because the ct said that it is not incompatible to be an inventor + lawyer.

U. S. v. Dubilier Condenser Corp.

On an Eee does not have a K give assigns to be Er patent rights for an invention dealing with the subject of Emt, the patent remains the prop. of be Eee.
A patent is prop, + title to it can pass only by Assignment.
One employed to make an invention, who succeeds, during his term of service, in accomplishing the task is bound to assign to his Er any patent obtained.

If an Ee, while working on the job, invents something, the Er will not have prop rights to it, but can use the invention w/o chg.
J/D here. The K of Emt didn't contemplate invention.
[If the Eee is retained to invent, the invention will be the full prop of the Er.]

Competing after Quitting

C.J. dissent, the tendency was to say no recovery by the former Er.

Woolley's Laundry v. Silva

Mass. case

66 L.R.A. 602 (Mass)
E (former Ee) cont'd using the same customers. J/P/Rvsd for D:
A former employer may not restrain an employee, who sets up his own business and appeals to the employer's customers.
No legitimate business is run in such confidence that its customers are a secret. The information furnished D, while employed by P, was not confidential.

3 A.L.R. 2d 598

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The A's author can't be estab. by the A's admissions or acts but may be estab by his testimony. The testimony of the A is admissable.

Partnership Property

U.P.A., Sec. 8 (T.I.)

Did they intend for the prop to become Pl prop? If so, it will be Pl prop.

189 Mass. 173

Even though prop may be acquired not in the name of the Pl, if the ptnrs intend for such prop to later become Pl prop, such will be.

249 F. 840 - E.I. Prop. conveyed in Pl name

2-49 Fed. 840

Real prop acquired in the Pl name must be conveyed in the Pl name.

If property is acquired by one ptnr with pl funds, he holds the prop in trust for the Pl.

28 Mass. 768
Weber v. Rowberry

Real Prop does not have to be gotten in the Pl name, but may be. If so, it must be conveyed in the Pl names.

318 Mass 368

If the Pl had not dissolved, the Bill to Partition would not have lain. Bill/Par does not work with partnerships.

Rights of a Partner

(1.) Right to specific Prop (Ten in Common)
(2) Interest
(3.) Right to Participate in Management (see 175 P2d 430)

175 P.2d 430

(C.L. + modern law) Rule of Law

A ptnr may purchase prop in his name & may convey in the Pl name

Sec. 25, U.P.A.

Rule of Law

Wife does not acquire dower interest in H's rights of the Pl, same for H's Curtesy right.

C.L. said the Real Prop conveyed becomes personalty for the purpose of dower so that the W would not have the dower right.

Attachment & Conveyance

C.L. You could not attach any specific part, but had to attach the whole (1 Salk 392)

K.B. (1693) ~~K is this~~ + ~~Salk 392~~

Totto

Case V. Beauregard 99 U.S. 119

3 ptnrs: A, B & C. All 3 convey to X. Can the firm creditors

reach that prop for firm obligations? Ct. held no since all pr rights had been conveyed. The rights of the creditors were derivative & since all 3 had conveyed, the creditors had no rights.
The right is derivative in existence because not orig interest but is secondary; depends on something foregoing.

Uniform Fraudulent Conveyance Act →

If a conveyance of pr prop is made while insolvent (the pr) or the pr will be rendered insolvent thereby, the conveyance will be held fraudulent. If, however, there is sufficient consid (quid pro quo), this will be a valid conveyance.

Smith v. Brown 143 A. 914

Judgment liens of Creditors.

Lien obtained by a judgmt. by firm creditors against pr prop.
If an indiv creditor obtained judgmt against the indiv, the creditor has a lien on indiv prop., not pr prop. May have an interest in the firm's interest.

Fins!

Janet Estelle Webster