

**A STUDY OF THE IMPORTANCE OF KNOWLEDGE OF  
FACTS TO THE PRINCIPAL FOR THE RATIFICATION  
IN THE LAW OF AGENCY**

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**Abstract**

As it is not possible by principal to do every deal by himself because it is very problematic to go to deal with every party at the time of forming agreements with them. So the importance and advantages of having a ratification clause in contracts increases and this study strives to bring focus on those advantages. The project will also look into the matter of whether parties can ratify the contracts or not which is done on the behalf of actual principal. So the researcher has concentrated the scope of study to analyze the validity of agreements with subject to ratification through different analysis of various agreements done under different situation and to know the validity of all those agreements done under those circumstances which are the subject of ratification.

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## INTRODUCTION

Ratification is a means by which the agency relationship is created retrospectively. Where the agent does not have actual authority, the principal cannot rely on the acts of the agent since the agent was not authorized to perform those acts. If the principal wishes to enforce the contract that the agent has entered into, the principal must adopt what the agent has done. The doctrine of ratification allows a principal to adopt his or her agent's past acts. By so doing, the principal retrospectively clothes his agent with authority and the law then proceeds on the basis that the agent had authority from the outset. The doctrine of ratification facilitates the utility of the law of agency as an agent who exceeds his authority can have his acts adopted if the principal wishes to affirm the agent's acts, albeit retrospectively. From the third party's perspective, the third party had consented to the transaction and ratification should generally be unobjectionable. In a great many cases, the third party will be completely unaware that the agent had not been clothed with authority and that ratification had taken place, because there is no need to communicate the act of ratification to the third party. The third party will only be unhappy with ratification if the market has moved against the third party, but there may be no compelling reason why a third party who finds itself bound to a contract because of ratification should be in a better position than any other contracting party.

For ratification to take place, the agent must have purported to act on behalf of a principal. If the agent did not make it clear that the agent was acting for a principal, and the agent was not properly authorized to so act, no ratification can take place. Since what the agent did was unauthorized, and the agent did not purport to act for anybody but himself, there is no basis to allow the principal to adopt the 'agent's' acts. A principal who wishes to ratify must also ratify the agent's acts in their entirety. A principal cannot pick and choose those parts of the contract that he likes and discard the rest. To allow him to do so would be to impose a different contract on the third party than the one to which he agreed.

Where an agent acts in an unauthorized manner, the agent breaches his duty to the principal. Thus, where a principal is liable to the third party because of apparent authority, the principal is entitled to recover his loss from the agent. However, where the principal ratifies the agent's acts, in general, the principal waives his rights against the agent for the breach of duty, since the principal has seen it fit to adopt the agent's acts. There may be circumstances though where the principal feels compelled to adopt the agent's acts, e.g. the principal's business reputation would

materially suffer if no ratification took place, and in such circumstances, it is possible that ratification will not absolve the agent from liability to the principal.

### Meaning and Application of Doctrine of Ratification

Ratification means according approval to act by a person on whose behalf the act is done. If the act done on behalf of a person although without the knowledge or the authority of that person is ratified, the person ratifying the act becomes the principal and the person who has done the act becomes the agent although no such relationship, in fact, existed at the time of doing the act. S.196 of the Indian Contract Act makes the provision regarding the right of the person to ratify on act which has been done on his behalf and also regarding the effect of ratification. The section clarifies that when an act has been done by one person on behalf of another though without his authority or knowledge the person on whose behalf the act is done has the following options:

- 1) To disown the act, or
- 2) To ratify the same

The doctrine of ratification, however, applies even when the third party has withdrawn from the agreement with the agent prior to the act of ratification taking place as has been held in *Bolton Partners v Lambert* [1]. This is in one sense a startling proposition as it effectively prevents the third party from withdrawing from the transaction even though the agent did not have any authority. The proposition has therefore been criticized severely on the basis that absent a valid contract, there should be nothing to prevent the third party from withdrawing. The retrospective nature of ratification ought not to be extended to situations where there has been a valid withdrawal since such a withdrawal would mean that there is no longer any outstanding transaction for the principal's retrospective consent to fix on. Nevertheless, this legal principle has been around for more than a hundred years and there may be reluctance to overrule it in view of its antiquity.

However, recognizing the capacity of the ratification doctrine to cause injustice to third parties, the law has developed limits to protect third parties. Without such limits, third parties may be in an invidious position. The principal can take his or her time to decide whether to ratify or not. If the market moves in the principal's favour, the principal will ratify; if not, the principal will not. In the meantime, the third party does not know whether he will be bound or not and will take the full risk of any adverse market movements. In a contract to sell goods, for example, the third party is potentially stuck with the merchandise until the principal decides whether to proceed

with the purchase or not. This is unfair to the third party. Such a substantial risk would undermine the utility of the law of agency.

### **Essentials of a valid ratification-**

- 1) Act must be done on behalf of another- The first essential to the doctrine of ratification, with its necessary consequence of relating back is that the agent shall not be acting of himself but shall be intending to bind a named or ascertainable principal. The agent must have done the act on the behalf of the supposed principal. And the motive with which the act done is immaterial [2].
- 2) Person ratifying must have been in existence at the time of act- It has been laid down that ratification, in order to be effective, can only be by an authority that is in existence on the date the transaction was entered into and it should also be competent to ratify [3].
- 3) The thing must exist- In order to recognise or ratify something it is necessary that thing must exist [4]. That is the contract, or some rights or obligations arising under it, must be subsisting on the date of Ratification.
- 4) Ratification must be with full knowledge of all facts in order to establish case of ratification it is essential that the party ratifying should be conscious.
- 5) Competency of Ratifier-The act to be ratified must be one which the person ratifying had himself power to do and the ratification must take place at a time, when and under circumstances under which the ratifying party might himself have lawfully done the act which he ratifies [5]. In *SurajNarain v. N.W.F. Province*, [6] it was held that where the responsibility for the passing of a particular kind of order is by statute vested in specific authority.
- 6) Ratification to be exercised within reasonable time. An option of ratification must be exercised within a reasonable time of the act purported to be ratified [7]. "Ratification" in every case should be within a reasonable time.
- 7) Communication of ratification to other side. There can be no ratification of contract unless it is communicated to the other side or subsequent action shows an approbation of the contract [8]
- 8) Act to be ratified must not be void or illegal. An act which is void or illegal cannot be validated by any amount of ratifications [9].
- 9) There must be relationship of principal and agent- Another condition to be satisfied is that there must be a relationship of principal and agent.

### **Limits to Ratification**

It must take place within a reasonable time after the agent's unauthorized acts. If ratification does not take place within such time, the principal loses the right to ratify as was held in *Metropolitan Asylums Board v Kingham & Sons* [10]. What is a reasonable time will depend on the nature of the contract and the circumstances. For example, if the contract is for the sale of perishable goods such as fruit and vegetables, the time for ratification must be relatively brief. In addition, if the third party knows that the agent is unauthorized, the third party can give a reasonable time limit to the principal to elect whether to ratify or not. If the principal chooses not to do so, the right to ratify will be lost.

Another limit on ratification is relate to time. It states that when an act is required to be done by a certain time, it cannot be ratified by the principal after that time. It is said that if a time is fixed for doing an act, whether by statute or agreement, the doctrine of ratification cannot be allowed to apply if it would have the effect of extending that time as was held in *Presentaciones Musicales S.A. v Secunda*[11]. Thus, if an option to purchase property has to be exercised within 14 days of the date of the option, and the agent without authority exercises the option, the principal cannot ratify the agent's act after the 14 days have expired. To do so would be to give the principal more time to decide whether to exercise the option.

A further limit on the doctrine of ratification is that the act of ratification must take place at a time, and under circumstances, when the ratifying party might himself have lawfully done the act which he ratifies as has been held in *Bird v. Brown* [12]. It means that a principal cannot ratify an act if, at the time of ratification, the principal lacks the legal capacity to authorize the act in question. A principal may also not be entitled to ratify certain acts that were lawful at the time they were entered into, but were no longer so at the time of ratification. Thus, if there is a change in the law such that a transaction, which was lawful when done, has now become so unlawful that an attempt thereafter to authorize it would be void, the transaction cannot be ratified unless perhaps there is nothing against public policy to allow the enforcement of rights that arose before the transaction became unlawful.

The last limit which can be imposed is that if property or contractual rights have vested in another person, ratification cannot divest such a person of his rights as again has been held in *Bird v. Brown*. Thus, if A and B have entered into a contract by which B agrees to sell his property to X for whom A purports to act, though he is not authorized, and B subsequently enters into a contract to sell the same property to Z, the subsequent ratification by X will not divest Z of the

latter's contractual rights which have already vested. This, however, does not prevent the principal from suing the third party for breach of contract if the ratification had taken place within a reasonable time. Ratification may be effective as between the parties, if not against others who are not privy to the contract or other transaction being ratified.

### **Ratification with full knowledge of facts**

The essentials which have been specified are the conditions which are need to be fulfilled for a valid ratification. Amongst them the most important essential is S. 198. It states that no valid ratification can be made by a person whose knowledge of the facts of the case is materially defective. In *Saveryv. King*, A entered into a mortgage agreement on B's behalf. The agreement was invalid. Without knowing this fact, B purported to ratify the transaction. It was held that since B was not knowing about the invalidity of agreement, the purported ratification of the same by him, was of no effect.

The principal must at the time of ratification, have full knowledge of all material facts, unless it can be shown that he intended to ratify the contract whatever the facts may be and assume responsibility from them. The principal must ratify the whole act or contract. The ratification must not injure the third party, i.e. it must not subject the third party to damages or terminated his right or interest[13]. A contract to buy a hotel made by an agent on behalf of the company which is about to be formed, could not be ratified by the company since it did not exist at the time. The agent therefore held for the contract unless the third party agreed to release him. The principal must have contractual capacity at the time when the contract is being made and at the time of ratification.

According to section 198 of Contract Act, the principal has the right to elect whether he will adopt the unauthorized act or not. But once doing a ratified act, upon a full knowledge of all the material circumstances, the ratification cannot be revoked or recalled, and the principal becomes bound as if he had originally authorized the act. So, the ratification of a lawful contract has a retrospective effect on the subject, and binds the principal from its date, and not only from the time of the ratification, but for the ratification is equivalent to an original authority, according to the maxim, that *Omnis rati habitio mandate aequiparatur*. Therefore such ratification in general meanings relieve the agent from all responsibility on the contract, when we would otherwise

have been liable for such kind of act. So an infant is not liable on his contracts but if after coming of age, he ratifies the contract by an actual or express declaration, he will be bound to perform it, as if it had been made after he attained full age. Hence it can be conferred that the ratification must be voluntary, deliberate, and intelligent, and the party must know that without it, he would not be bound to fulfil the obligation. But a confirmation or ratification of a contract may be implied from acts of the infant after he becomes of age; as by enjoying or claiming a benefit under a contract he might have wholly rescinded and an infant partner will be liable for the contracts of the firm, or at least such as were known to him, if he, after becoming of age, confirm the contract of partnership by transacting business of the firm, receiving profits, and the like.

In order that there may be ratification this is also necessary that the party who is defrauded must act with full knowledge of the facts. If A has obtained insurance by misrepresenting his age, and by misrepresentation as to the fact that other companies have rejected him as a risk, the fact that the insurance company received premiums from him after it had the means of knowing that such statements were false does not amount to a ratification if such means of knowledge was derived from information which was furnished by one who was assisting A in obtaining such insurance. The fact that the party who has been defrauded suspects, after the transaction is completed, that fraud exists, does not make his delaying rescission until he can determine the existence of such fraud amount to a ratification. Acts done before the discovery of the fraud can not constitute ratification. However, acts done after the fraud is discovered, but before the defrauded party has discovered all the evidence tending to prove fraud, may amount to a ratification. It is said that one who is induced to buy an orchard by false representations as to the returns there from during the preceding year, is put upon inquiry when he ascertains that the proceeds for the first season after the purchase are much less than the returns as represented; and if he delays rescission until the third year, such delay operates as a ratification.

### **Ratification by Receiving Benefits**

One who with knowledge of the facts accepts the benefits of an act done in his behalf will be held to have ratified the act as a whole. He cannot enjoy the benefits without assuming the burdens.

The most common instance of ratification is that afforded where the principal receives and enjoys the benefit of the act. If the acceptance is accidental or under a mistake of fact the principal will not be bound, but he cannot knowingly accept the benefits of the contract and not be bound upon the whole contract as made.

A in P's behalf makes a lease of P's property to T. P receives the rent a considerable period of time, but then deciding that the lease is not good enough, seeks to set it aside on the ground A had insufficient authority. Held, that P had ratified the act by receipt of the rents.<sup>33</sup>

If the principal is in ignorance of the facts, there is no ratification.

The question arises whether a retention of the benefits after he has discovered facts which he did not know at the time of the receipt of the benefits will constitute ratification. And it is held that such retention is ratification if the principal can return them without injury, but if he cannot, such retention will not be a ratification. P authorized A to obtain from T a release of T's interest in certain land. The agent obtained the release, but agreed, without authority, that P should assume a debt of T. P afterwards sold the land, not knowing of the assumption of the debt. Held, that there was not ratification in the failure to disaffirm.

#### **Ratification once made cannot be withdrawn.**

One cannot with knowledge of the facts ratify and then change his mind. Upon his ratification a contract arises and exists between the parties, and he cannot afterwards undo that contract. He is bound upon it. One can no more revoke a contract effective through ratification than he can revoke any other contract after it is made.

Ratification by the principal of the acts of his agent must be based on full, actual knowledge of the facts of the transaction, constructive or imputed knowledge being insufficient to make the principal liable by way of ratification. The erroneous instruction given by the court permitted the jury to find Gold Crown liable on the basis of ratification of its agent's acts if the approval or affirmation by Gold Crown, and the failure to promptly repudiate the transaction, and the failure to offer return of the purchases, occurred after Gold Crown should have known of the full facts of the transaction between the agent and Olson.

#### **Effect of death, disability, or incompetence of principal — Acts without knowledge.**



(1) The death, disability, or incompetence of any principal who has executed a power of attorney in writing does not revoke or terminate the agency as to the attorney-in-fact, agent, or other person who, without actual knowledge of the death, disability, or incompetence of the principal, acts in good faith under the power of attorney or agency. Any action so taken, unless otherwise invalid or unenforceable, binds the principal and the principal's heirs, devisees, and personal representatives.

(2) An affidavit, executed by the attorney-in-fact, or agent, stating that the attorney did not have at the time of doing an act pursuant to the power of attorney, actual knowledge of the revocation or termination of the power of attorney by death, disability, or incompetence, is, in the absence of a showing of fraud or bad faith, conclusive proof of the nonrevocation or nontermination of the power at that time. If the exercise of the power requires execution and delivery of any instrument which is recordable, the affidavit when authenticated for record is likewise recordable.

#### **Ratification of Unauthorized Acts**

If an unauthorized person acts as a business owner's agent, the business owner can ratify (accept) the unauthorized transaction. If the owner does this, he or she is bound by the act of the unauthorized agent. To ratify the act, the principal must know of the material facts involved in the transaction and accept the entire transaction. He cannot approve the part favourable to him and deny the unfavourable portion. A principal can ratify only legal acts.

The ratification of an agent's unauthorized acts may be by express approval, by acceptance of the benefits of the act, or by silence when the principal had a duty to speak. The third person can withdraw from the transaction if he notifies the principal before the principal ratified the transaction.

In this way a principal's express or implied affirmation of a previously *unauthorized* act by a purported agent can be summarized that

- (1) the agent must have acted on behalf of the principal who subsequently ratified the action;
- (2) the principal must know all material facts;

If the principal ratifies without full knowledge, he can rescind his ratification, but must reimburse the third party for any costs incurred as a result of reasonably relying on the apparent contract.

- (3) the principal must affirm the agent's act in its entirety;

- (4) the principal must have the legal capacity to affirm the transaction both
  - (a) at the time the agent acts, and
  - (b) at the time the principal ratifies; and
- (5) the principal must affirm before the third party withdraws from the transaction.

### **Ratification- Nature and Effect**

In addition to liability created originally by the contract of the agent, a principal may be liable by reason of his ratification of an unauthorized contract made by one who assumes to act as his agent, or who is his agent, but who exceeds his authority. Thus if a wife signs her husband's name to a note without authority, he is bound thereby if he subsequently ratifies it. The principal cannot ratify a contract which he could not have authorized originally. Thus where the principal is an administrator, she cannot ratify a contract of an agent which she could not have authorized. The principal has a reasonable time to ascertain the facts and return what he has received under such contract. Delay beyond a reasonable time amounts to acquiescence. Ratification once made with full knowledge of facts prevents subsequent disaffirmation. Since this is properly ratification, no new consideration is necessary. Mere omission to discharge the agent for other alleged misconduct is not ratification, nor is a repudiation of the contract for an erroneous reason.

Acts which never take effect, as signing and acknowledging a deed of assignment of partnership property, but withdrawing assent before delivery, or acts done under duress, as giving a purchase-money note under duress, are not ratification. If A and B have been induced by X to convey land to him for a small fraction of its value by means of false representations made by X as to the quality and condition of land which he conveys in exchange for the land belonging to A and B, such contract is not ratified by agreement of A and B after they discover the facts to take a small amount of money and worthless land in addition to the original consideration, if A is slow-witted and understands the English language imperfectly while B is excitable and at times insane.

### **No Ratification of a minor's agreement**

An agreement entered into by a minor is void ab initio. A minor can't ratify an agreement on attaining the age of majority validate the same. One of the reason for the rule that a minor cannot

ratify an agreement after attaining majority is that when the agreement was entered into during the minority there was no 'proper consideration' and the 'bad consideration' is not enough for validating that agreement by its ratification. This will be clear from the observation of SULAIMAN, C.J. of the Allahabad High Court:

“Under section 11 a minor is not competent to contract he is disqualified from contracting. He can, therefore, neither make a valid proposal nor make a valid acceptance as defined in section-2, clause (a) and (b). He cannot, therefore, for the purposes of this Act be strictly called a promisor within the meaning of clause (c). Nor can, therefore, anything done by the promisee be strictly called a consideration at the desire of a promisor as contemplated by clause (d). It may, therefore, be urged that an agreement by a minor cannot be strictly as being for “consideration’. If the part of the benefit was received by a person during his minority and the other part after attaining the age of majority, a promise by him after attaining majority to pay an amount in respect of both the benefits is enforceable, as that constitutes a valid consideration for the promise. A minor can't even enter into a contract through guardian or any other agent because it is void contract and the same is not capable of ratification by a minor, on his attaining majority. The Privy Council stated that “ratification in law is treated as equivalent to a previous authority, and it follows that as a general rule, a person or body of persons, not competent to authorise an act can't give validity after ratifying it”.

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