1968

**Agency (1959-1967)**

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June 1959

1. W. W. Winslow, the owner of Winslow's Antique Car Co., hired Bill Stover to wash and polish the automobiles which were for sale on his lot. Stover was well educated but only mildly interested in working. The company dealt only in older model automobiles and on the windshield of each was written in chalk its price and the additional words "No Warranties." As a means of publicizing the business, all of Winslow's salesmen wore colorful clothing of the 1920's period, including white flannel trousers, colorful vests, blazers, straw boaters and the like.

Tom Travers came on the lot one Saturday and became interested in a 1932 Ford which Stover, in rubber coveralls and boots, was washing. Seeing Travers' interest and feeling an impulse to try out his selling ability, Stover began to extol the merits of the vehicle to Travers, but sensing that Travers' enthusiasm was waning, Stover impulsively told Travers that he was authorized to give Travers a five-year warranty of performance on the car. This promise convinced Travers to buy the car, and he paid Stover the purchase price in cash, for which Stover gave him the usual bill of sale at the bottom of which he added in pen the five-year warranty and signed the paper as agent of Winslow's Antique Car Company.

As Travers began to turn the starter crank of the car, Stover went into the company's office, turned over the money to Winslow and related the entire transaction to him, including the addition of the warranty, and the two of them watched through the window as Travers finally started the car and drove away. Winslow immediately fired Stover.

The following week the 1932 Ford broke down beyond repair and Travers made demand on W. W. Winslow to recover for breach of the five-year warranty. Winslow asks your advice as to whether he is responsible to Travers. How would you advise him?

(AGENCY) Winslow is responsible to Travers for he ratified Stover's originally unauthorized acts when he accepted the consideration given by Travers with full knowledge of the facts and made no attempt to return it.

December 1959.

1. Mason, a wholesale dealer, employed Nelson to take orders for the sale and delivery of t.v. sets. Because Mason feared that he might offend his retail dealers if it became known that he was selling directly to individual purchasers, he instructed Nelson to take the contracts in his own name and not to mention Mason's name in any way. Nelson, acting on these instructions, made a sale to Overly and took in payment Overly's non-negotiable note due in sixty days for $750. Nelson owed Parke a past due note for $750 which Parke considered of doubtful value and sold to Overly for $500. When Overly's note matured, he tendered Nelson this note in discharge of Overly's own note. He then learned for the first time that Mason was the real party in interest, and he now consults you as to his right to offset Nelson's note against his own note, now held by Mason. How ought you to advise him?

(AGENCY) He has a right to use the offset "If a third party, in contracting with the agent, did not know of the agency, and the circumstances were such that he ought not to be charged with knowledge of it, he is entitled, when sued by the principal, to be placed in the same position as if the agent had been the real party in interest, and hence to assert any setoff he may have against such agent." Burks Pleading and Practice(4th Ed)#68.
2 June 1960.

1. Abel Baker, a resident of New York City, is desirous of removing his garment factory from a location in New York City to a location in Virginia where he will have more room to expand his facilities at less cost. He employs Charlie Davis, a realtor in the City of Richmond, to purchase a suitable manufacturing site for him in or near Richmond. Davis owns a plant site of ten acres in Chesterfield County which is suitable and he sells this plant site to Baker for $50,000 cash. Davis informs Baker of all the relevant facts about the plant site, except he does not tell Baker that he had purchased this same plant site for $30,000 eight months previously. After the sale is completed Baker learns from a competitor of Davis that Davis had paid only $30,000 for the property eight months before.

Baker consults you as an attorney as to what rights, if any, he has against Davis. What would you advise?

(AGENCY) Baker has a right to recover $20,000 from Davis who was acting in a fiduciary capacity. He thus owed a duty to inform Baker of all relevant facts whether asked about them or not. The fact that he had paid only $30,000 for the site only a few months ago was a material fact.

2 December 1960

1. Trout is a dealer in antique furniture who resides in Chesterfield County.

Atwood, knowing that Trout had a rare Chippendale desk and believing he was acting for his friend Paul Post, went to Trout's place of business and stated, "I am here at the request of Paul Post to purchase for him your Chippendale desk, and I am authorized to say that he is willing to pay you the listed purchase price of $1,600 within 10 days after delivery." To this Trout replied, "The sale is made." Later in the day when Atwood told Post of the transaction, Post said, "You had no authority to buy that desk for me, but as I would very much like to have it, I approve what you have done. Here is my check for $1,600. Please give it to Trout and see that he delivers the desk to me tomorrow." The next afternoon, Atwood went to Trout's place of business, tendered Post's check, and asked that Trout promptly deliver the desk to Post. Trout then informed Atwood that he would not deliver the desk to Post as he had sold and delivered the desk to Stevens one hour before at a price of $1,800. Post now consults you and asks what rights, if any, he may have against Trout. What should you advise him?

(AGENCY) Post has an action against Trout for breach of contract. Post ratified the contract made by Atwood before Trout sold the desk to Stevens. This ratification related back and was equivalent to prior authority. Trout has no equity as he sold the desk after he knew that he had contracted for its sale to Post, and without even making inquiry. The damages would be at least $200 as the title to the specific desk passed to Post when he ratified. See #88 Restatement of Agency. Note: Post cannot recover the desk from Stevens as Post had left the article which formerly belonged to the dealer with the dealer in that type of property thereby giving that dealer the power to pass a good title to a bona fide purchaser for value.

2 June 1961.

1. The Ace Taxi Co., Inc., employs no drivers but merely receives orders from prospective passengers and puts "Ace Taxi Co., Inc." on cabs owned and operated by independent drivers. One of these drivers, while operating one of the cabs negligently, collided with another automobile, injuring one of the cab passengers who reasonably believes the Ace Taxi Co., Inc., to be the employer. The injured passenger and the owner of the other automobile each sues Ace Taxi Co., Inc., to recover.

(1) May the passenger recover? (2) May the owner of the other automobile recover?

(AGENCY) (1) Passenger may recover. Ace Taxi Co. is estopped to claim that the driver was not its servant since it has held itself out as the employer, and passenger has relied on such holding out.

(2) The owner of the other car cannot recover as he did not rely on Ace Taxi Co.'s supposed ownership and operation of the car in question. Hence one of the requisites of an estoppel is lacking.
Construction Co. was the general contractor for the construction of a dam on property of Red Cedar Works. Hodges was employed by Construction Co. as a dump truck driver, and his duties were to fill his truck with dirt at a pit three miles from the dam site, drive the truck to the site and dump it, and return for another load. The immediate site of the dam was enclosed by a high fence on which "no trespassing" signs were mounted at intervals of 100 feet. Hodges gained admittance to the dam site through a locked gate, to which gate he had a key.

On one trip to the site and as Hodges was unlocking the gate, Capps, who had no connection with the construction, asked Hodges for a ride in the truck to the dam itself, explaining that he was curious about the type of construction. Hodges acceded to this request, and as the truck neared the dam Hodges pointed out to Capps various parts of the work. While his eyes were thus diverted from the road and as he rounded a sharp curve at 60 miles per hour, Hodges lost control of the truck and it left the road, overturned, and Capps was injured.

Capps consults you and seeks your advice as to the liability, if any, of Construction Co. to him for the conduct of Hodges. How should you advise him?

(AGENCY) Construction Co. is not liable. Hodges did not have any authority to allow Capps to ride on the truck. Restatement Agency, Second § 242 reads "A master is not subject to liability for the conduct of a servant towards a person harmed as the result of accepting or soliciting from the servant an invitation, not binding upon the master, to enter or remain upon the master's premises or vehicle, although the conduct which immediately causes the harm is within the scope of the servant's employment." See Illustration 2, and 161 Va. 543, 220 S.E. 495, 1944 Va. L. Rev. 151, 1944 Va. L. Rev. 151.

2 June 1962.

Martin, a processor of meat in Smithfield, Va., in accordance with a custom of long standing, shipped a quantity of hams to Kelsey in Richmond as his factor and sales agent. The agreement was that Kelsey should sell the hams, deduct his commission, and remit the balance of the purchase money to Martin. Kelsey, as Martin knew, had built up a good business in selling Virginia hams and was considered the most experienced and best "ham man" in the East. Just before this shipment arrived in Richmond, Kelsey lost all his money on the stock market, turned his business over to his chief clerk, Dalton, telling him of the expected shipment of hams from Martin, instructed him to sell them for the best price he could get, and sailed for South America. Thrifty, to whom Kelsey was largely indebted, suspected the true facts, went to Kelsey's place of business and found Dalton in charge. Dalton confirmed Thrifty's suspicions, told him that the Martin hams had been sent to Kelsey to sell and then sold them to Thrifty, taking in payment a note Kelsey owed Thrifty. Martin discovered these facts and instituted an action against Thrifty to recover the hams.

On the above facts, ought Martin to recover the hams?

(AGENCY) Yes. Kelsey had no authority to substitute another agent (Dalton) for himself and hence Dalton had no power to pass title. Thrifty knew all the facts and was acting fraudulently when he paid Dalton with the obligations of an insolvent person. Even if Dalton was Martin's agent he had no authority to sell for anything but cash or solvent credits. Martin acted promptly after discovering the facts. See 11 Howard 209.
Miller went to Dealer's office and said: "I am in the market for 10,000 bushels of wheat, can you supply me?" Dealer answered, "I will sell it to you at $2.10 a bushel f.o.b. cars this place." Miller then said, "It is a deal, load the wheat and notify me when it is ready to move." Dealer loaded the wheat in railroad cars and then called Miller on the telephone and was instructed by him to ship the wheat to Superior Grain Co., freight collect, which he did. At lunch that day Dealer heard that Miller was very shaky financially and the next day he heard this rumor repeated. Superior Grain Co. was a large milling company of supposedly excellent financial standing, so Dealer went to see Miller and asked whether he had bought the wheat for himself or for Superior Grain Co., and upon Miller telling him that the purchase was really for Superior and that he was acting for it, Dealer said, "All right, I will just bill them for it," which he did. Superior, although admitting its liability, failed to pay and Dealer brought suit and obtained judgment against Superior for the full amount due. It then developed that Superior was insolvent and that the adverse reports on Miller's credit was untrue. Dealer now consults you as to whether he may sue Miller successfully for the purchase price of the wheat. How ought you to advise him.

(AGENCY) Dealer cannot hold Miller. When he prosecuted a suit against the undisclosed principal to final judgment he made a binding election to look to him only. See Restatement of Agency #337.

2 December 1962.

1. The Atomic Energy Electric Co. gave a list of delinquent accounts to B, an employee with instructions to discontinue electric service to the delinquent customers. Among those listed was Carter's Hatchery, then in the process of hatching chickens in a large electrically heated incubator.

B advised the Hatchery of his intention to discontinue the electric service and was told that the Hatchery did not consider delinquent its account with the Electric Company. B nevertheless cut the wires leading to the hatchery. The incubation process interrupted and considerable loss resulted.

Carter's Hatchery brought an action against B and obtained judgment against him for $5,000, which he paid. B now consults you as to whether he has any right of action against the Electric Company. How should you advise him?

(AGENCY) I would advise B that he had a right to be indemnified by his employer. He (B) is entitled to assume that acts which the principal directs him to perform and which the agent does not know to be and are not obviously unjustified or illegal, may be performed without incurring loss or legal liability to third persons, or, at least, that if such loss or liability is incurred in carrying out the principal's directions, the principal intends to assume the responsibility. The agent is therefore entitled to be indemnified by the principal for any liability so incurred ***.

Mechem's Outlines of Agency (3rd Ed)#422.

8. Truck Owner operated a fleet of trucks engaged in hauling stone. One of these trucks, operated by Driver No.1, ran into the rear of an automobile operated by Motorist and occupied by Motorist and his wife. The operators of both vehicles got out of their vehicles but Mrs. Motorist remained seated. An argument ensued between Motorist and Driver No. 1 as to who was at fault, and they got into a slight scuffle but separated and started to resume their places in their respective vehicles. Just at this point, another of Truck Owner's vehicles came up, operated by Driver No.2, who got out and said to Motorist, "Who fights my buddy, fights me." Heated words followed, and the three men engaged in a fight. Mrs. Motorist then got out of the car, and, in attempting to separate the combatants, was injured.

She consults you as to the liability of Truck Owner for her injuries. How ought you to advise her?

(AGENCY) I would advise her that Truck Owner was not liable. The Drivers were engaged in a personal argument over something that happened in the past. It is to be distinguished from the use of the bus crowding P's car while making a turn, and a fight ensued before the turn was completed. See 202 Va.326 on p.614 of the Agency Cases of these Notes.
1. James Ash interested several prominent citizens of the City of Richmond in forming and operating a corporation to engage in the manufacture of pre-fabricated dwellings, the corporation to be known as Pre-Fab, Inc. Before the corporation was created, and without the knowledge of its future incorporators, Ash prepared a written agreement by the terms of which Thrifty Floors, Inc. agreed to sell to Pre-Fab, Inc. 20,000 linear feet of oak flooring during the year 1963. This agreement was executed on May 1, 1963 by Thrifty Floors, Inc. and by Ash signing "on behalf of Pre-Fab, Inc." During the month of May, Thrifty Floors, Inc., relying on the agreement, purchased and stored in its warehouse large quantities of oak flooring. On June 20th, Pre-Fab, Inc. became incorporated and, at the first meeting of its Board of Directors held on the morning of June 21st, it was moved and seconded that the agreement with Thrifty Floors, Inc. be ratified. Such motion was unanimously carried.

However, having now learned that suitable oak flooring can be bought at a substantially lower price from a competitor of Thrifty Floors, Inc., Pre-Fab, Inc., inquires of you whether it must perform the agreement with Thrifty Floors, Inc.

What should you advise?

(AGENCY) I would advise that it must perform the agreement, but not on the theory of a ratification. The act cannot be ratified because ratification relates back at the time the act was done, the purported principal could not then have authorized it. Restatement of Agency (2d) §84. However Comment D reads, "Corporate promoters, Persons organizing a corporation may purport to contract for it, and frequently, upon organization, the corporation assumes the obligations created in its name.

** The corporation does not ratify the promoters' contracts by agreeing with their terms. The obligation of the corporation cannot have an effective date before the organization becomes a legal entity. If the agreement specifies a prior date ** the obligation may be the same as if there were ratification. Such transaction are properly termed adoptions or novations.

In the instant case the Corporation has adopted the original contract. There is also authority to support the analysis that there has been a continuing offer when the Corporation can accept as soon as it comes into existence.

2. Virgil Vested, a widower, entered into a written contract under seal with Harold Huckster, a prominent real estate broker, for the sale of "Hackney," Vested's plantation overlooking the James River. By the terms of the contract, Huckster was to have the exclusive right to sell the property for one year at a price not less than $75,000. Huckster was to pay all costs of advertising, etc., and was to receive, as his compensation, one-half of the net proceeds of the sale in excess of $75,000.

After extensive advertisement, Huckster found a prospective buyer, Carlton Carpetbag of New York. Before Carpetbag had an opportunity to examine the property, Vested died. A week following Vested's death, Carpetbag made a trip to Virginia and examined the property, and Huckster, though knowing of Vested's death, procured Carpetbag's signature to a written contract of sale, the contract providing that the purchase price of $100,000 would be paid in cash upon delivery of a deed. Vested's daughter, who was his Executor and his sole devisee, refused to sign the contract, stating that she would not convey the property to Carpetbag. Carpetbag, desiring to acquire the property, consults you as to his right to compel Vested's daughter to convey.

What would you advise?

(AGENCY) Carpetbag cannot compel Vested's daughter to convey. Huckster is a real estate broker, and even such language as "exclusive right to sell" does not authorize Huckster to complete the contract of sale. His function is to find a purchaser ready, willing and able to buy. His principal owes no duty to sell the land even though he would owe a commission. That Huckster understood that Vested, or his successor in interest, was to convey, and that he had no such power, is shown by the fact that Huckster has not signed any contract of sale, but has left that matter to Carpetbag's daughter. This is not an agency coupled with an in rem interest in the subject matter thereof, so, at common law the death of Vested would have revoked the agency, but, as pointed out above, even if the agency had not been revoked, Carpetbag still could not acquire specific performance from Vested's daughter. See 3 M.J. Brokers §§11 et seq.

Note: If we assume that there was other language clearly giving Huckster the right to sell, and that Carpetbag did not know of Vested's death, then under W'll-9.2 as adopted in 1962 Carpetbag would be entitled to specific performance.
1. Frank Dolan retained John East, a real estate agent, to find him a suitable lot on which to erect a store building. East said: "I know the very lot for you, #105 Broad Street; it is well located and reasonably priced, the owner is anxious to sell, and the trade can be closed for $5,000 plus my commission." Dolan replied: "I know the lot and will take it." A written memorandum agreeing to purchase the lot was signed by Dolan, and he gave East a check for $100 to use in binding the bargain. On the date set for closing the transaction, East tendered Dolan a deed to the lot from himself and his wife and demanded the balance of the purchase price plus his commission. Dolan refused to accept the deed, assigning as his reason that until the tender of the deed he didn't know that East was the owner of the lot.

What are the respective rights of the parties?

(AGENCY) Dolan is within his rights in refusing the deed, and is entitled to the return of his $100. It was the agent's duty as a fiduciary to disclose any and all facts to his principal of his conflict of interest in this transaction. See 138 Va. 2d. While Dolan could have ratified and confirmed East's acts after knowledge of the true facts he is under no duty to do so.

2 June 1965.

1. A sold goods to B in good faith, believing him to be a principal. B in fact was acting as agent of C and within the scope of his authority. The goods were charged to B, and on his refusal to pay, he was sued by A for the purchase price. While this action was pending, A learned of B's relationship with C. Nevertheless, 30 days after learning of that relationship, A secured judgment against B and had an execution issued which was never satisfied. Three months after securing that judgment, A sued C for the purchase price of the goods. Is A entitled to recover from C (AGENCY) No. When A prosecuted his suit to judgment against the agent, B, with knowledge of the fact that B was acting for an undisclosed principal he made a final and binding election to look to B. See Restatement of Agency 2d, Section 210 and 1 M.J. Agency #83.
1. Ben King owned twenty acres of undeveloped land in Powhatan County from which the timber had been cut and removed, but on which remained considerable undergrowth. The tract was in the center of a heavily wooded area. King wished to clear the land and convert it to agricultural use. On October 22, 1965, he entered into a contract with Sam Queen, a developer of good reputation, by the terms of which he agreed to pay Queen $500 in consideration of the latter clearing the cut-over land and making it suitable for cultivation. The contract provided that the tract be promptly cleared, either by burning or by use of bulldozers, but did not reserve to King any control over the manner in which Queen would perform the job. When the contract was made, King cautioned Queen to be careful if he cleared the land by burning as the fire might get out of control and damage adjacent property.

On November 4th Queen went to the property and began clearing it by burning off undergrowth. Because of an extended dry period and brisk winds, the fires got beyond the control of Queen and started a fire on the adjoining property of Peter Jack, destroying a valuable stand of his timber. Jack brought an action against King in the Circuit Court of Powhatan County seeking $9,000 as damage for the loss of his timber. On the trial Jack proved the foregoing facts and, when he rested his case, King moved the court to strike Jack's evidence on the grounds:

(a) That Queen was an independent contractor and not an agent or employee of King, and

(b) That any act of carelessness by Queen could not be made chargeable to him.

How should the court rule on each ground of King's motion?

(AGENCY) (a) Yes, Queen is an independent contractor since he has contracted for a result to be reached in his own way.

(b) While an employer of an independent contractor is ordinarily not liable for his torts these are well recognized exceptions to that rule, and the instant case comes within the exceptions, one of which is that an employer cannot escape liability for hazardous undertakings by getting an independent contractor to do them. Here the employer knew that the independent contractor was authorized by him to use fire. King merely asked Queen to be careful. It may very well be that even the careful use of fire may be hazardous under the circumstances. A principal cannot escape liability by merely telling his employees to be careful.

2. Tom Paul, a cattleman of Hanover County, on June 10, 1965, borrowed $5,000 from John Andrews. As a condition of the loan and in the presence of Andrews’s wife, Paul orally agreed with Andrews that should Paul not repay the loan on or before Nov. 15, 1965, Andrews was authorized to sell twenty head of the larger herd of Paul’s registered Black Angus cattle to repay Andrews the amount of the loan. On the morning of Nov. 16th, Paul being in default, Andrews took possession of twenty head of cattle in the herd for the purpose of selling them to satisfy the debt.

On the next day, when hearing of Andrews’s action, Paul became greatly excited and telephoned Andrews urgently requesting that he not sell the cattle but that he extend the time for payment. When Andrews refused the request, Paul died from heart failure.

On Nov. 26th, Andrews entered into a contract with Ed Thomas by which he agreed to sell Thomas the twenty head of cattle at a fair market price of $5,000. At the time this contract was made, Thomas knew of the death of Paul and that Andrews was relying on the agreement which Paul had earlier made with him. Before Andrews could deliver the cattle to Thomas and receive the agreed price, the administrator of the estate of Paul brought against Andrews an action in detinie alleging the foregoing facts, and praying for a judgment requiring Andrews to deliver back the cattle. Was the administrator entitled to the relief sought?

(AGENCY) No. After Andrews took possession of the cattle as per the power given him, there was an agency coupled with an interest which did not terminate on Paul’s death. When Andrews took possession the situation is like a completed pledge, and the pledgee is within his rights in selling the pledged property even though the pledgee has died before a sale has been completed. The U.C.C. does not require a writing of any sort where the collateral is in the possession of the creditor.
Hampton took his automobile to Auto Repair Shop, Inc., for repairs. A mechanic employed by that company drove the car out onto the highway for the purpose of locating the trouble that its owner had while driving it. Although the mechanic was exercising reasonable care in driving the car and making the test, Jim Hampton negligently drove his car into the rear of the Hampton automobile with the result that it was damaged in the amount of $1200. Auto Repair Shop, Inc., immediately commenced an action against Hampton to recover the full amount of the damage sustained by the car. Hampton defended on the ground that Hampton alone could maintain an action to recover the damage to the car. May Auto Repair Shop, Inc., recover in this action? (EMISSIONS) The bailee may maintain an action for the full amount of the damages. But, of course, is accountable over to his bailor for the recovery of same. Harris, 169 Va. 647.

Parker wrote a letter to Arthur, with copy to Tate, requesting him to act as his agent in purchasing for him a certain unique and valuable painting owned by Tate. Parker enclosed with his letter a proposed written contract of sale between Parker and Tate, the purchase price and the terms of payment being left blank. Parker signed the proposed contract before enclosing it with his letter. The day after Arthur and Tate received the letter from Parker, Arthur received a telegram from Parker telling him not to purchase the painting and to return the contract to him. At the time Parker sent the telegram he addressed and posted a letter to Tate advising him that he had decided not to purchase the painting and that he had cancelled Arthur's authority to act for him.

Upon receipt of the telegram Arthur immediately presented the written contract to Tate who signed it after the amount of the purchase price and terms of payment had been filled in. By the terms of the contract Tate agreed to deliver the painting to Parker five days later. A few hours after Tate signed the contract and delivered it to Arthur he received the letter sent to him by Parker, terminating Arthur's authority to act for him as his agent. Tate consults you, inquiring whether the contract is binding upon Parker. What would you advise?

(AGENCY) Principal's revocation of agency ineffective where 3rd party did not receive the notice of revocation before acting on the basis of agent's authorization previously conveyed to him. The agent still has apparent authority to bind principal until 3rd party receives actual notice. 1 Restatement of Agency 2nd #6.

AGENCY P 46

1. Dozier employed Elam, a dealer in second-hand auto parts and automobiles, to sell Dozier's automobile, and by the employment letter, Dozier specifically instructed Elam not to make any warranties but to sell the automobile "as is." Foster knew Elam was selling the automobile for Dozier, and when Foster expressed interest in the same, Elam, pursuant to the general custom in the area but in violation of his instructions, warranted that it was in first-class condition with each mechanical part in perfect running order. In fact, it had many defects which could not be discovered by casual inspection. Foster, relying on the warranty, purchased the automobile and paid Elam, who deducted his commission and forwarded the balance to Dozier.

Within a week, the automobile became inoperative because of its defective condition. Foster consulted Lawyer as to his rights against Dozier. What should Lawyer advise?

Elam had apparent authority to make the express warranty. The lawyer should advise Foster that he has a cause of action against Dozier for breach of the express warranty made by Elam. A general agent to sell personal property is presumed to have power to make such warranties with reference to the property as are usual and customary in like sales in that locality. While there is no customary law in Virginia which per se can vest a right in a party claiming under it, a usage or custom of trade may be shown. Furthermore, a restriction upon the power of the agent to make the usual warranties in effecting like sales, of which the buyer has no notice or knowledge, is not binding on him... 94 Va 321.
10. Slick approached Manufacturer, falsely representing himself as being the sales manager for Collier, and offered on behalf of Collier to sell and deliver to Manufacturer ten tons of coal at $15 per ton. Manufacturer accepted the offer and Slick, without Collier’s knowledge, went to Collier’s storage yard, loaded ten tons on his truck and while on the way to Manufacturer’s factory, negligently injured Pedestrian, but nevertheless delivered the coal to Manufacturer. Collier missed some coal and, upon investigation, learned the above facts, but coal having fallen in price he demanded payment of $15 per ton from Manufacturer, who declined to pay.

Thereupon, Collier instituted an action against Manufacturer for the purpose of the coal. Pedestrian, learning of the action, demanded damages from Collier, who now asks your advice as to his liability for Pedestrian’s injuries.

How ought you to advise Collier?

(AGENCY) You should advise Collier that he can be held liable for the injuries of pedestrian. When Collier instituted his action against M, this acted as a ratification of the unauthorized acts of Slick. Under the general restatement view which is accepted in Virginia, one cannot ratify those portions of an unauthorized activity which are beneficial and reject those which are not beneficial. (Restatement of Agency, 2nd, Sec. 97, illustration 2).

2 December 1967.

1. Falsely purporting to act as Parker’s agent, Abernathy makes an executory contract with Tuttle. Parker thereafter affirms it, but does not so advise Tuttle. While the contract remains executory and nothing has been done by either party toward performance, Tuttle learns the facts and promptly expresses to Parker his unwillingness to continue with the transaction. Parker consults you and asks if Tuttle is bound on the contract. What should your answer be?

(AGENCY) Tuttle is bound on the contract. The affirmance by the purported principal, like the acceptance of an offer, is the final act that brings the principal and the third person into contractual relations. Tuttle’s consent has already been manifested to the purported agent. Rest.2d.Par.92 p.237, Ill.1 on p. 238.