

4015 AGENCY: RATIFICATION

Question _____ inquires whether _____ ratified the previously unauthorized acts of _____.

A person for whom another assumes or purports to act as his or her agent (a principal for whom his or her agent acted beyond his or her authority) may ratify, give effect to, and render binding upon himself or herself any act or transaction not previously authorized, by affirming the conduct of his or her (purported) agent.

A principal affirms the unauthorized acts of his or her agent if he or she indicates by his or her words or acts that he or she accepts and treats the conduct of his or her agent as authorized.

The ratification of an unauthorized act or transaction of a(n) (purported) agent must be based on the principal's knowledge of all of the material facts involved in the conduct of his or her (purported) agent.

Ratification can only be effected by one who has the power and the competency to accomplish it, and it must involve conduct which is capable of being ratified.

Ratification must relate to the entire act or transaction and not only to a part or parts thereof, since one may not make available to himself or herself the fruits and benefits of an act or transaction and avoid or reject their burdens and obligations.

You will carefully consider and weigh the credible evidence and the reasonable inferences from the evidence bearing on this inquiry, and, if you are satisfied that an unauthorized act or transaction of _____ was ratified and affirmed by _____, under the rules

which I have just stated, you will answer the question "yes"; otherwise you will answer it "no."

COMMENT

This instruction and comment were originally published in their present form in 1962. Editorial changes were made in 1994 to address gender references in the instruction. No substantive changes were made to the instruction.

Saros v. Carlson, 244 Wis. 84, 11 N.W.2d 676 (1943); Waldheim & Co., Inc. v. Mitchell St. Bank, 220 Wis. 552, 265 N.W. 561 (1936); Przybylski v. Von Berg, 211 Wis. 178, 248 N.W. 101 (1933); Bright v. City of Superior, 163 Wis. 1, 14-15, 156 N.W. 600, 605 (1916); Garlich v. Morley, 147 Wis. 397, 132 N.W. 601 (1911); Fisher v. Lutz, 146 Wis. 664, 132 N.W. 592 (1911); Callaghan's Wis. Digest Principal and Agent § 210-230 (1950); Restatement, second, Agency §§ 82-99 (1958).

Ratification is an issue for the jury, Garcia v. Samson's Inc., 10 Wis.2d 515, 103 N.W.2d 565 (1960), and ratification may be inferred from:

- (1) silence, acquiescence, or inaction [See Callaghan's Wis. Digest Principal and Agent § 219 (1950) and cases cited.];
- (2) failure to repudiate unauthorized acts [Home Savings Bank v. Gertenbach, 270 Wis. 386, 72 N.W.2d 697 (1954); Lechner v. Ebenreiter, 235 Wis. 244, 292 N.W. 913 (1940)];
- (3) the act of prosecuting or defending actions based on unauthorized acts [Smader v. Columbia Wisconsin Co., 188 Wis. 530, 205 N.W. 816 (1926); Chicago & N.W. R. Co. v. James, 24 Wis. 388 (1869); Weiseger v. Wheeler, 14 Wis. 109 (1861)].