

RESTATEMENT OF THE LAW (SECOND) AGENCY (1958)
SELECTED PROVISIONS

RESTATEMENT OF THE LAW (SECOND) AGENCY (1958)	1
TOPIC 1. DEFINITIONS	7
'1 AGENCY; PRINCIPAL; AGENT	7
Comment on Subsection (1):	7
'2 MASTER; SERVANT; INDEPENDENT CONTRACTOR	7
Comment:	8
'3 GENERAL AGENT; SPECIAL AGENT	8
Comment:	8
'4 DISCLOSED PRINCIPAL; PARTIALLY DISCLOSED PRINCIPAL; UNDISCLOSED PRINCIPAL	9
Comment:	9
'7 AUTHORITY	9
'8 APPARENT AUTHORITY	9
'8A INHERENT AGENCY POWER	9
Comment:	9
§ 8B. ESTOPPEL--CHANGE OF POSITION	10
Comment:	10
Illustration:	11
§ 8C. RESTITUTION	11
Comment:	11
TOPIC 2. KNOWLEDGE AND NOTICE	11
'9 NOTICE	11
TOPIC 4. AGENCY DISTINGUISHED FROM OTHER RELATIONS	11
'14A AGENT AND PARTNER	11
Comment:	11
'14C AGENT OR DIRECTOR	12
Comment:	12
'14J AGENT OR BUYER	12

'14K	AGENT OR SUPPLIER	12
'14O	SECURITY HOLDER BECOMING A PRINCIPAL	12
CHAPTER 2: CREATION OF RELATION		13
TOPIC 1. MUTUAL CONSENT AND CONSIDERATION		13
'15	MANIFESTATIONS OF CONSENT	13
	Comment:	13
CHAPTER 3: CREATION AND INTERPRETATION OF AUTHORITY AND APPARENT AUTHORITY		13
TOPIC 1. METHODS OF MANIFESTING CONSENT		13
'26	CREATION OF AUTHORITY; GENERAL RULE	13
'27	CREATION OF APPARENT AUTHORITY; GENERAL RULE	13
TOPIC 2. INTERPRETATION OF AUTHORITY AND APPARENT AUTHORITY		13
TITLE A. AUTHORITY		13
'33	GENERAL PRINCIPLE OF INTERPRETATION	13
'34	CIRCUMSTANCES CONSIDERED IN INTERPRETING AUTHORITY	14
	Comment:	14
	Comment on Clause (a):	14
'35	WHEN INCIDENTAL AUTHORITY IS INFERRED	14
CHAPTER 4: RATIFICATION		15
TOPIC 1. DEFINITIONS		15
'82	RATIFICATION	15
'83	AFFIRMANCE	15
	Comment:	15
TOPIC 2. WHEN AFFIRMANCE RESULTS IN RATIFICATION		15
'85	PURPORTING TO ACT AS AGENT AS A REQUISITE FOR RATIFICATION	15

'91	KNOWLEDGE OF PRINCIPAL AT TIME OF AFFIRMANCE	15
TOPIC 3. WHAT CONSTITUTES AFFIRMANCE		16
'94	FAILURE TO ACT AS AFFIRMANCE	16
	Comment:	16
	Illustrations:	16
'95	NECESSITY OF COMMUNICATING MANIFESTATION OF AFFIRMANCE	16
	Comment:	16
	Illustrations:	17
'98	RECEIPT OF BENEFITS AS AFFIRMANCE	17
'99	RETENTION OF BENEFITS AS AFFIRMANCE	17
TOPIC 4. LIABILITIES		17
'100	EFFECT OF RATIFICATION; IN GENERAL	17
CHAPTER 6: LIABILITY OF PRINCIPAL TO THIRD PERSONS; CONTRACTS AND CONVEYANCES		17
TOPIC 2. DISCLOSED OR PARTIALLY DISCLOSED PRINCIPAL		17
TITLE A. CREATION OF LIABILITY BY AUTHORIZED ACTS		17
'144	GENERAL RULE	17
'146	MANIFESTATIONS BY AGENT DETERMINING PARTIES	18
	Comment:	18
	Illustrations:	18
§ 147.	INFERENCE THAT PRINCIPAL IS A PARTY; SIMPLE CONTRACTS	18
	Comment:	18
TITLE C. CREATION OF LIABILITY BY UNAUTHORIZED ACTS		19
'159	APPARENT AUTHORITY	19
'160	VIOLATION OF SECRET INSTRUCTIONS	19
'161	UNAUTHORIZED ACTS OF GENERAL AGENT	19
'161A	UNAUTHORIZED ACTS OF SPECIAL AGENTS	19
	Comment:	19
'165	AGENT ACTS FOR IMPROPER PURPOSE	20

'166	PERSONS HAVING NOTICE OF LIMITATIONS OF AGENT=S AUTHORITY	20
TOPIC 3. UNDISCLOSED PRINCIPAL		20
TITLE A. CREATION OF LIABILITY BY AUTHORIZED ACTS		20
'186	GENERAL RULE	20
	Comment:	20
	Illustrations:	20
	Comment:	21
TITLE B. CREATION OF LIABILITY BY UNAUTHORIZED ACTS		21
'194	ACTS OF GENERAL AGENTS	21
§ 195.	ACTS OF MANAGER APPEARING TO BE OWNER	21
	Comment:	21
	Illustrations:	21
	Comment:	22
'195A	UNAUTHORIZED ACTS OF SPECIAL AGENTS	22
'199	ACTS NOT ON ACCOUNT OF PRINCIPAL OR DONE WITH AN IMPROPER MOTIVE	22
CHAPTER 7: LIABILITY OF PRINCIPAL TO THIRD PERSON; TORTS		23
TOPIC 1. LIABILITY FOR PERSONAL VIOLATION OF DUTY		23
'212	PRINCIPAL INTENDS CONDUCT OR CONSEQUENCES	23
	Illustrations:	23
'213	PRINCIPAL NEGLIGENT OR RECKLESS	23
TOPIC 2. LIABILITY FOR AUTHORIZED CONDUCT OR CONDUCT INCIDENTAL THERETO		23
TOPIC A. IN GENERAL		23
'215	CONDUCT AUTHORIZED BUT UNINTENDED BY PRINCIPAL	23
	Comment:	23
'216	UNAUTHORIZED TORTIOUS CONDUCT	24
	Comment:	24
TITLE B. TORTS OF SERVANTS		24
	Introductory Note	24

'219	WHEN MASTER IS LIABLE FOR TORTS OF HIS SERVANTS	24
'220	DEFINITION OF SERVANT	25
'228	GENERAL STATEMENT	25
TITLE C. AGENTS= TORTSBLIABILITY NOT DEPENDENT UPON RELATION OF MASTER AND SERVANT		26
'250	NON-LIABILITY FOR PHYSICAL HARM BY NON-SERVANT AGENTS	26
CHAPTER 8: LIABILITY OF PRINCIPAL TO THIRD PERSONS; NOTICE THROUGH AGENT		26
TOPIC 1. NOTIFICATION TO OR BY AGENTS		26
	Introductory Note:	26
'268	GENERAL RULE	26
'270	TIME WHEN NOTICE RESULTS	27
'275	AGENT HAVING DUTY TO REVEAL KNOWLEDGE	27
	Illustrations:	27
CHAPTER 11. LIABILITY OF AGENT TO THIRD PERSONS		27
TOPIC 1. CONTRACTS AND CONVEYANCES		27
TITLE A. AGENT A PARTY TO A TRANSACTION CONDUCTED BY HIMSELF		27
§ 321.	PRINCIPAL PARTIALLY DISCLOSED	27
	Comment:	28
§ 322.	PRINCIPAL UNDISCLOSED	28
CHAPTER 13: DUTIES AND LIABILITIES OF AGENT TO PRINCIPAL		28
TOPIC 1. DUTIES		28
TITLE A. EFFECT OF MANIFESTATIONS OF CONSENT BETWEEN PRINCIPAL AND AGENT		28
'376	GENERAL RULE	28

TITLE B. DUTIES OF SERVICE AND OBEDIENCE 28

'379	DUTY OF CARE AND SKILL	28
	Comment:	28
	Comment on Subsection (1):	28
'380	DUTY OF GOOD CONDUCT	29
'381	DUTY TO GIVE INFORMATION	29
	Comment:	29
'383	DUTY TO ACT ONLY AS AUTHORIZED	29
'385	DUTY TO OBEY	29
'386	DUTIES AFTER TERMINATION OF AUTHORITY	29

TITLE C. DUTIES OF LOYALTY 30

'387	GENERAL PRINCIPAL	30
	Comment:	30
'388	DUTY TO ACCOUNT FOR PROFITS ARISING OUT OF EMPLOYMENT	30
'389	ACTING AS ADVERSE PARTY WITHOUT PRINCIPAL=S CONSENT	30
	Comment:	30
'390	ACTING AS ADVERSE PARTY WITH PRINCIPAL=S CONSENT	30
'391	ACTING FOR ADVERSE PARTY WITHOUT PRINCIPAL=S CONSENT	30
'392	ACTING FOR ADVERSE PARTY WITH PRINCIPAL=S CONSENT	31
'393	COMPETITION AS TO SUBJECT MATTER OF AGENCY	31
	Comment:	31
'394	ACTING FOR ONE WITH CONFLICTING INTEREST	31
'396	USING CONFIDENTIAL INFORMATION AFTER TERMINATION OF AGENCY	31

CHAPTER 14: DUTIES AND LIABILITIES OF PRINCIPAL TO AGENT 32

TOPIC 1. CONTRACTUAL AND RESTITUTIONAL DUTIES AND LIABILITIES 32

TITLE A. INTERPRETATION OF CONTRACTS AND LIABILITIES THEREUNDER 32

'432	DUTY TO PERFORM CONTRACT	32
------	--------------------------	----

'434	DUTY NOT TO INTERFERE WITH AGENT=S WORK	32
'437	DUTY OF GOOD CONDUCT	32
'438	DUTY OF INDEMNITY; THE PRINCIPLE	32
'441	DUTY TO PAY COMPENSATION	32

CHAPTER 1: INTRODUCTORY MATTERS

TOPIC 1. DEFINITIONS

'1 AGENCY; PRINCIPAL; AGENT

(1) Agency is the fiduciary relation which results from the manifestation of consent by one person to another that the other shall act on his behalf and subject to his control, and consent by the other so to act.

(2) The one for whom action is to be take is the principal.

(3) The one who is to act is the agent.

Comment on Subsection (1):

..

b. *Agency a legal concept.* Agency is a legal concept which depends upon the existence of required factual elements: the manifestation by the principal that the agent shall act for him, the agent=s acceptance of the undertaking and the understanding of the parties that the principal is to be in control of the undertaking. The relation which the law calls agency does not depend upon the intent of the parties to create it, nor their belief that they have done so. To constitute the relation, there must be an agreement, but not necessarily a contract, between the parties; . . . [an agency can exist] although the parties did not call it agency and did not intend the legal consequences of the relation to follow. . . .

When it is doubtful whether a representative is the agent of one or the other of two contracting parties, the function of the court is to ascertain the factual relation of the parties to each other and in so doing can properly disregard a statement in the agreement that the agent is to be the agent of one rather than the other, or a statement by the parties as to the legal relations which are thereby created. . . . It is the element of continuous subjection to the will of the principal which distinguishes the agent from other fiduciaries and the agency agreement from other agreements. . . .

'2 MASTER; SERVANT; INDEPENDENT CONTRACTOR

(1) A master is a principal who employs an agent to perform service in his affairs and who controls or has the right to control the physical conduct of the other in the performance of the service.

(2) A servant is an agent employed by a master to perform service in his affairs whose physical conduct in the performance of the service is controlled or is subject to the right to control by the master.

(3) An independent contractor is a person who contracts 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 physical conduct in the performance of the undertaking. He may or may not be an agent.

Comment:

a. *Servants and non-servant agents.* . . . Statements made in the Restatement of this Subject as applicable to principals or agents are, unless otherwise stated, applicable to masters and servants. The rules as to liability of a principal for the torts of agents who are not servants are stated [in different provisions of the Restatement than] those with respect to his liability in tort to such agents The duties of servants to masters and their liabilities to third persons are in general the same as those of agents who are not servants.

b. *Servant contrasted with independent contractor.* The latter term includes all persons who contract to do something for another but who are not servants in doing the work undertaken. An agent who is not a servant is, therefore, and independent contractor Thus, a broker who contracts to sell goods for his principal is an independent contractor as distinguished from a servant. Although, under some circumstances, the principal is bound by the broker's unauthorized contracts and representations, the principal is not liable to third persons for tangible harm resulting from his unauthorized physical conduct within the scope of the employment, as the principal would be for similar conduct by a servant [Likewise,] [n]ot all independent contractors are agents. Thus, one who contracts for a stipulated price to build a house for another and who reserves no direction over the conduct of the work is an independent contractor; but he is not an agent, since he is not a fiduciary, has no power to make the one employing him a party to a transaction, and is subject to no control over his conduct. . . .

'3 GENERAL AGENT; SPECIAL AGENT

(1) A general agent is an agent authorized to conduct a series of transactions involving a continuity of services.

(2) A special agent is an agent authorized to conduct a single transaction or a series of transactions not involving continuity of service.

Comment:

. . .

d. *Importance of distinction.* The distinction between a special agent and a general agent has several important consequences. Thus, the general agent may have a power to bind his principal in excess of his authority or apparent authority in many situations in which the special agent may not have such power. See " 161, 161A, and 194. . . . Furthermore, manifestations of the principal to a general agent in connection with his authority may be interpreted as merely advice or as instructions not intended to affect the rights of third

persons, when a similar manifestation made to a special agent would be interpreted as limiting his authority or power to bind the principal. See Comment *b* on ' 34.

'4 DISCLOSED PRINCIPAL; PARTIALLY DISCLOSED PRINCIPAL; UNDISCLOSED PRINCIPAL

(1) If, at the time of a transaction conducted by an agent, the other party thereto has notice that the agent is acting for a principal and of the principal's identity, the principal is a disclosed principal.

(2) If the other party has notice that the agent is or may be acting for a principal but has no notice of the principal's identity, the principal for whom the agent is acting is a partially disclosed principal.

(3) If the other party has no notice that the agent is acting for a principal, the one for whom he acts is an undisclosed principal.

Comment:

a. The classification of principals [in this manner] is for the purpose of simplifying the statement of the rules determining the legal relations of third persons with respect to the principal and the agent, The other party has notice of the existence or identity of the principal if he knows, has reason to know, or should know of it

'7 AUTHORITY

Authority is the power of the agent to affect the legal relations of the principal by acts done in accordance with the principal's manifestations of consent to him.

'8 APPARENT AUTHORITY

Apparent Authority is the power to affect the legal relations of another person by transactions with third persons, professedly as agent for the other, arising from and in accordance with the other's manifestations to such third persons. . . .

'8A INHERENT AGENCY POWER

Inherent agency power is a term used in the restatement of this subject to indicate the power of an agent which is derived not from authority, apparent authority, or estoppel, but solely from the agency relation and exists for the protection of persons harmed by or dealing with a servant or other agent.

Comment:

a. *Rationale.* The power of an agent to bind his principal is the distinctive feature of the Anglo-American agency relation. . . . [T]he liability of a principal for the authorized acts and contracts of an agent is responsive to the tort rule that one is liable for what he intentionally causes, and to the rule in contracts that one who manifests assent to another is bound by the resulting transaction. . . .

However, there are situations in which the principal is made liable because of an act done or a transaction entered into by an agent even though there is no tort, contract or restitutional theory upon which the liability can be rested. A principle which will explain such cases can be found if it is assumed that a power can exist purely as a product of the agency relation. . . .

The principles of agency have made it possible for persons to utilize the services of others in accomplishing far more than could be done by their unaided efforts. . . . [Thus, agency law=s] primary function in modern life is to make possible the commercial enterprises which could not exist otherwise. [However,] [i]t is inevitable that in doing their work, either through negligence or excess of zeal, agents will harm third persons or will deal with them in unauthorized ways. It would be unfair for an enterprise to have the benefit of the work of its agents without making it responsible to some extent for their excesses and failures to act carefully. The answer of the common law has been the creation of special agency powers or, to phrase it otherwise, the imposition of liability upon the principal because of unauthorized or negligent acts of his servants and other agents. These powers or liabilities are created by the courts primarily for the protection of third persons

§ 8B. ESTOPPEL--CHANGE OF POSITION

(1) A person who is not otherwise liable as a party to a transaction purported to be done on his account, is nevertheless subject to liability to persons who have changed their positions because of their belief that the transaction was entered into by or for him, if

(a) he intentionally or carelessly caused such belief, or

(b) knowing of such belief and that others might change their positions because of it, he did not take reasonable steps to notify them of the facts.

(2) An owner of property who represents to third persons that another is the owner of the property or who permits the other so to represent, or who realizes that third persons believe that another is the owner of the property, and that he could easily inform the third persons of the facts, is subject to the loss of the property if the other disposes of it to third persons who, in ignorance of the facts, purchase the property or otherwise change their position with reference to it.

(3) Change of position, as the phrase is used in the restatement of this subject, indicates payment of money, expenditure of labor, suffering a loss or subjection to legal liability.

Comment:

a. Nature of estoppel. Estoppel is fundamentally a doctrine in the law of torts, sometimes operating by creating liability, sometimes by denying a cause of action which might otherwise accrue. See the Restatement of Torts, §§ 872 and 894. It may result from a misrepresentation, or within a limited area, from a failure to reveal facts. Its operation may create a defense to an action or may give compensation to a person who otherwise would be harmed by action which he had taken in reliance upon an erroneous belief, either caused by the one estopped or not corrected by him when he should have done so. The situations in which estoppel works are limited by the peculiar procedural way in which it

operates, that is, by preventing the one against whom it operates from pleading the truth. . .

Illustration:

1. P learns that A, who has no authority or apparent authority to sell P's goods, is negotiating with T as P's agent for their sale. He does nothing although he could easily notify T. T pays A for the goods, as is customary in such a transaction. P is not entitled to recover the goods and is liable to T for the breach of any customary warranty given by A.

. . .

§ 8C. RESTITUTION

A person who has been unjustly enriched at the expense of another is required to make restitution to the other.

Comment:

a. This statement of the basic principle of restitution is made here in order to indicate that in many of the situations involving agency the result is reached not primarily by principles of agency but upon restitutional principles. Thus when a person who has no authority or apparent authority to act for another, purports to act as the agent of another in the acquisition of property, the purported principal may be liable for its value, not because of any agency principle but because he has been unjustly enriched. . . .

TOPIC 2. KNOWLEDGE AND NOTICE

'9 NOTICE

(1) A person has notice of a fact if he knows the fact, has reason to know it, should know it, or has been given notification of it. . . .

(3) A person has notice of a fact if his agent has knowledge of the fact, reason to know it or should know it, or has been given a notification of it, under circumstances coming within the rules applying to the liability of a principal because of notice to his agent.

TOPIC 4. AGENCY DISTINGUISHED FROM OTHER RELATIONS

'14A AGENT AND PARTNER

A partnership is an association of two or more persons to carry on as co-owners of a business for profit.

Comment:

a. . . . [T]he rights and liabilities of partners with respect to each other and to third persons are largely determined by agency principles. Thus, if, as is usual, a partner is a general agent for the other members of the group, rules with reference to his liability and to

the liability of the others because of his conduct both to third persons and to the others, are determined by the rules stated herein. . . .

When one of the partners is in active management of the business or is otherwise regularly employed in the business, he is a servant of the partnership. . . .

'14C AGENT OR DIRECTOR

Neither the board of directors nor an individual director of a business is, as such, an agent of the corporation or of its members.

Comment:

a. *The board of directors.* The government of a business corporation is ordinarily divided between the board of directors and the stockholders in general meeting, and neither body has a right to control the other in the exercise of their powers. Under modern corporation statutes, all powers of management, except those expressly reserved to the stockholders in general meeting, are vested in the board of directors Members of the board resemble agents in that they act on behalf of others and are fiduciaries owing duties of loyalty and care. However, these duties are owed to the corporation itself rather than to the shareholders individually or collectively, and normally they can be enforced only by an action in the name of the corporation

'14J AGENT OR BUYER

One who receives goods from another for resale to a third person is not thereby the other's agent in the transaction: whether he is an agent for this purpose or is himself a buyer depends upon whether the parties agree that his duty is to act primarily for the benefit of the one delivering the goods to him or is to act primarily for his own benefit.

'14K AGENT OR SUPPLIER

One who contracts to acquire property from a third person and convey it to another is the agent of the other only if it is agreed that he is to act primarily for the benefit of the other and not for himself.

. . .

'14O SECURITY HOLDER BECOMING A PRINCIPAL

A creditor who assumes control of his debtor's business for the mutual benefit of himself and his debtor, may become a principal, with liability for the acts and transactions of the debtor in connection with the business.

CHAPTER 2: CREATION OF RELATION

TOPIC 1. MUTUAL CONSENT AND CONSIDERATION

'15 MANIFESTATIONS OF CONSENT

An agency relation exists only if there has been a manifestation by the principal to the agent that the agent may act on his account, and consent by the agent so to act.

Comment:

a. *Manifestation by Principal.* . . . [C]onsent can be communicated by any of the means stated in Section 216, including acquiescence by the principal in a series of acts previously done by another as agent. . . . It is only where the person acting believes reasonably . . . that he is authorized so to act that there is an agency relation. . . .

b. *Consent by agent.* . . . A person may, by his sole act, create a power in another to act on his account, but since agency is a fiduciary relation, it can exist only if the other accepts the power. . . .

CHAPTER 3: CREATION AND INTERPRETATION OF AUTHORITY AND APPARENT AUTHORITY

TOPIC 1. METHODS OF MANIFESTING CONSENT

'26 CREATION OF AUTHORITY; GENERAL RULE

Except for the execution of instruments under seal or for the performance of transactions required by statute to be authorized in a particular way, authority to do an act can be created by written or spoken words or other conduct of the principal which, reasonably interpreted, causes the agent to believe that the principal desires him so to act on the principal's account.

'27 CREATION OF APPARENT AUTHORITY; GENERAL RULE

Except for the execution of instruments under seal or for the conduct of transaction required by statute to be authorized in a particular way, apparent authority to do an act is created as to a third person by written or spoken words or any other conduct of the principal which, reasonably interpreted, causes the third person to believe that the principal consents to have the act done on his behalf by the person purporting to act for him.

TOPIC 2. INTERPRETATION OF AUTHORITY AND APPARENT AUTHORITY

TITLE A. AUTHORITY

'33 GENERAL PRINCIPLE OF INTERPRETATION

An agent is authorized to do, and to do only, what it is reasonable for him to infer

that the principal desires him to do in the light of the principal's manifestations and the facts as he knows or should know them at the time he acts.

'34 CIRCUMSTANCES CONSIDERED IN INTERPRETING AUTHORITY

An authorization is interpreted in light of all accompanying circumstances, including among other matters:

(a) the situation of the parties, their relations to one another, and the business in which they are engaged;

(b) the general usages of business, the usages of trades or employments of the kind to which the authorization relates, and the business methods of the principal;

(c) facts of which the agent has notice respecting the objects which the principal desires to accomplish;

(d) the nature of the subject matter, the circumstances under which the act is to be performed and the legality or illegality of the act; and

(e) the formality or informality, and the care, or lack of it, with which an instrument evidencing the authority is drawn.

Comment:

a. The enumeration in this Section of circumstances which are considered in determining the extent of authority is not intended to be exhaustive. . . .

Comment on Clause (a):

b. If an agent has been previously employed, ordinarily he is entitled to assume that he is authorized to continue to do what he has been doing to the knowledge of the principal without objection from him. . . .

The fact that one is a general agent employed to conduct a part of the principal's business is an indication that the directions of the principal to him are intended merely as advice and not as limitations upon his authority.

. . .

'35 WHEN INCIDENTAL AUTHORITY IS INFERRED

Unless otherwise agreed, authority to conduct a transaction includes authority to do acts which are incidental to it, usually accompany it, or are reasonably necessary to accomplish it.

CHAPTER 4: RATIFICATION

TOPIC 1. DEFINITIONS

'82 RATIFICATION

Ratification is the affirmance by a person of a prior act which did not bind him but which was done or professedly done on his account, whereby the act, as to some or all persons, is given effect as if originally authorized by him.

'83 AFFIRMANCE

Affirmance is either:

(a) a manifestation of an election by one on whose account an unauthorized act has been done to treat the act as authorized, or

(b) conduct by him justifiable only if there were such an election.

Comment:

...

b. The affirmance may consist of a manifestation of consent to be a party to the previous transaction, or a manifestation that such consent has been given. Such manifestation is effective when made, although not communicated to the other party or to others, unless the other party changes his position believing that there has been no ratification. . . . An affirmance may be made by silence which indicated consent. . . .

c. Conduct which is justifiable only if there is ratification constitutes an affirmance . . . Thus, there is ratification if the purported principal with knowledge of the facts receives or retains property to which he is entitled only if the earlier transaction was validated, or brings or maintains an action or defense based upon its validity. . . .

TOPIC 2. WHEN AFFIRMANCE RESULTS IN RATIFICATION

'85 PURPORTING TO ACT AS AGENT AS A REQUISITE FOR RATIFICATION

(1) Ratification does not result from the affirmance of a transaction with a third person unless the one acting purported to be acting for the ratifier.

...

'91 KNOWLEDGE OF PRINCIPAL AT TIME OF AFFIRMANCE

(1) If, at the time of affirmance, the purported principal is ignorant of material facts involved in the original transaction, and is unaware of his ignorance, he can thereafter avoid the effect of the affirmance.

(2) Material facts are those which substantially affect the existence or extent of the obligations involved in the transaction, as distinguished from those which affect the values or inducements involved in the transaction.

TOPIC 3. WHAT CONSTITUTES AFFIRMANCE

'94 FAILURE TO ACT AS AFFIRMANCE

An affirmance of an unauthorized transaction can be inferred from a failure to repudiate it.

Comment:

a. Silence under such circumstances that, according to the ordinary experience and habits of men, one would naturally be expected to speak if he did not consent, is evidence from which assent can be inferred. . . . Whether or not such an inference is to be drawn is a question for the jury . . .

Illustrations:

1. Purporting to act for P but without power to bind him, A buys goods from T and pays the purchase price out of his own money. P, learning of this, does nothing. There is not sufficient evidence of affirmance.

2. Purporting to represent P but without power to bind him, A contracts to take care of T=s horse for a year. A places the horse in P=s stable and feeds it from P=s bin. P learns the facts, and does nothing for a week. There is evidence of affirmance.

3. A, a clerk employed by P but having nothing to do with advertising, places an order with T for advertising in P=s name for a period of six months. P learns of the act and although knowing that T is preparing copy, does nothing. There is evidence of affirmance.

'95 NECESSITY OF COMMUNICATING MANIFESTATION OF AFFIRMANCE

The manifestation of a definitive election by the principal constitutes affirmance without communication to the agent, to the other party, or to other persons.

Comment:

a. . . . [T]he essence of affirmance is the determination of the purported principal to adopt the initial transaction as his own; his conduct is only evidence of such determination. Thus, his affirmance may be shown by the fact that after knowing of the transaction he did nothing, if the circumstances are such that he could reasonably have been expected to dissent unless he were willing to be a party to the transaction.

His election must, however, be definitive. . . . [S]tatements made to persons not parties to the transaction and not to be acted upon by them do not usually indicate this, and hence, ordinarily, such statements are not sufficient evidence of a definitive election. Whether or not the conduct of the purported principal is sufficient to indicate such election is a question of fact.

Illustrations:

1. P, learning that A, without authority, has purported to contract for him, says to B: AThat was a good contract A made for me with T. @ There may not be sufficient evidence of affirmance.

2. Same facts as in Illustration 1, except that P adds to his statement to B: Alf you see A tell him that I am going through with it. @ There is sufficient evidence of affirmance.

'98 RECEIPT OF BENEFITS AS AFFIRMANCE

The receipt by a purported principal, with knowledge of the facts, of something to which he would not be entitled unless an act purported to be done for him were affirmed, and to which he makes no claim except through such act, constitutes an affirmance unless at the time of such receipt he repudiates the a t. If he repudiates the act, his receipt of benefits constitutions an affirmance at the election of the other party to the transaction.

'99 RETENTION OF BENEFITS AS AFFIRMANCE

The retention by a purported principal, with knowledge of the facts and before he has changed his position, of something which he is not entitled to retain unless an act purported to be done on his account is affirmed, and to which he makes no claim except through such act, constitutes an affirmance unless at the time of such retention he repudiates te act. Even if he repudiates the act, his retention constitutes an affirmance at the election of the other party to the transaction.

TOPIC 4. LIABILITIES

'100 EFFECT OF RATIFICATION; IN GENERAL

. . . [T]he liabilities resulting from ratification are the same as those resulting from authorizations if, between the time when the original act was performed and when it was affirmed, there has been no change in the capacity of the principal or the third person or in the legality of authorizing or performing the original act.

CHAPTER 6: LIABILITY OF PRINCIPAL TO THIRD PERSONS; CONTRACTS AND CONVEYANCES

TOPIC 2. DISCLOSED OR PARTIALLY DISCLOSED PRINCIPAL

TITLE A. CREATION OF LIABILITY BY AUTHORIZED ACTS

'144 GENERAL RULE

A disclosed or partially disclosed principal is subject to liability upon contracts made by an agent acting within his authority if made in proper form and with the understanding that the principal is a party.

'146 MANIFESTATIONS BY AGENT DETERMINING PARTIES

If an agent of a disclosed or partially disclosed principal makes an authorized contract with a third person, the liability of the principal thereon depends upon the agreement between the agent and the other party as to the parties to the transaction.

Comment:

a. There may be an agreement that the principal alone is a party, that the agent alone is a party, or that the principal and the agent are both to be parties. In the interpretation of the agreement, it is important to ascertain the facts which the agent or the third person knows and believes the other knows or has reason to know, since from these matters inferences are drawn as to the agreement between them. . . .

. . .

Illustrations:

1. A, dealing with T for the purchase of shares of stock for P, is told by T that he is unwilling to accept the responsibility of P. To this A replies: A I will be responsible. @ It is a matter of interpretation whether A is subject to liability as a sole promisor or as a surety for P, who is also to be a party to the transaction.

. . .

§ 147. INFERENCE THAT PRINCIPAL IS A PARTY; SIMPLE CONTRACTS

Unless otherwise agreed, a disclosed or partially disclosed principal is a party to a contract, if not negotiable or sealed, made by his agent within his authority.

Comment:

. . .

b. If it is agreed that the other party contracts solely with the agent, the principal does not become a party to the transaction; the agent becomes a trustee holding the contract for the principal's benefit, and the other party has rights against the principal only through the rights of exoneration which the agent may have against him, or on other restitutional grounds.

c. By the rule stated in this Section, it is inferred that the other party chooses to enter into contractual relations with the principal unless, at the time of the contract, he manifests otherwise. It follows, therefore, that if the principal is a party to the contract, the fact that the other party subsequently obtains judgment against the agent does not thereby terminate his rights against the principal unless both principal and agent were joint parties to the contract. See § 184. This result is to be contrasted with the result where an agent acts for an undisclosed principal, in which case the principal normally becomes liable upon the contract irrespective of any conscious choice by the other party, and the latter, upon discovery of the principal, is given merely an election to obtain judgment against the agent or against the principal. See § 210.

d. The agent for a disclosed principal is ordinarily not a party to the contract; the agent for a partially disclosed principal ordinarily is a party. For the inferences drawn in such cases, see Sections 320-321.

TITLE C. CREATION OF LIABILITY BY UNAUTHORIZED ACTS

'159 APPARENT AUTHORITY

A disclosed or partially disclosed principal is subject to liability upon contracts made by an agent acting within his apparent authority if made in proper form and with the understanding that the apparent principal is a party. . . .

'160 VIOLATION OF SECRET INSTRUCTIONS

A disclosed or partially disclosed principal authorizing an agent to make a contract, but imposing upon him limitations as to incidental terms intended not to be revealed, is subject to liability upon a contract made in violation of such limitations with a third person who had no notice of them.

'161 UNAUTHORIZED ACTS OF GENERAL AGENT

A general agent for a disclosed or partially disclosed principal subjects his principal to liability for acts done on his account which usually accompany or are incidental to transaction which the agent is authorized to conduct if, although they are forbidden by the principal, the other party reasonably believes that the agent is authorized to do them and has no notice that he is not so authorized.

'161A UNAUTHORIZED ACTS OF SPECIAL AGENTS

A special agent for a disclosed or partly disclosed principal has no power to bind his principal by contracts or conveyances which he is not authorized or apparently authorized to make . . . unless:

- (a) the agent=s only departure from his authority or apparent authority is
 - (i) in naming or disclosing the principal, or
 - (ii) in having an improper motive, or
 - (iii) in being negligent in determining the facts upon which his authority is based, or
 - (iv) in making misrepresentations;

Comment:

a. This Section lists the inherent powers of a special agent of a disclosed or partially disclosed principal in making contracts and conveyances. . . .

b. A special agent does not have the broad powers of a general agent, described in

Section 161, of binding the principal in making unauthorized terms in contracts and conveyances which he is authorized to make Aif they usually accompany or are incidental to such transactions and the other party reasonably believes that the agent is authorized to do them.@ Except in the special situations mentioned in this Section, the power of a special agent is strictly limited by his authority or apparent authority. . . .

'165 AGENT ACTS FOR IMPROPER PURPOSE

A disclosed or partially disclosed principal is subject to liability upon a contract purported to be made on his account by an agent authorized to make it for the principal=s benefit, although the agent acts for his own or other improper purposes, unless the other party has notice that the agent is not acting for the principal=s benefit.

'166 PERSONS HAVING NOTICE OF LIMITATIONS OF AGENT=S AUTHORITY

A person with notice of a limitation of an agent=s authority cannot subject the principal to liability upon a transaction with the agent if he should know that the agent is acting improperly.

TOPIC 3. UNDISCLOSED PRINCIPAL

TITLE A. CREATION OF LIABILITY BY AUTHORIZED ACTS

'186 GENERAL RULE

An undisclosed principal is bound by contracts and conveyances made on his account by an agent acting within his authority

Comment:

. . .

b. [A]n agent who makes a contract for an undisclosed principal is personally liable on the contract as a party to it. . . .

c. The principal becomes a party to the transaction only if it is proved that the agent intended to act upon his account. . . .

Illustrations:

1. P directs A to purchase 100 tons of coal for him. A purchases the coal from T through correspondence, not revealing that he is acting for the principal. P is subject to liability upon the contract.

2. P goes into the bookstore of A and asks for a certain book. A replies: AI am sold out of that book, but I can get a copy for you in a minute if you will wait.@ P says he will wait. A goes to the bookstore of T next door and obtains the book from T, telling T to charge it to him, and not stating his purpose in buying it. A delivers and charges the book to P. A does not pay T for it and T, discovering that P procured it from A, seeks to hold P as undisclosed principal. P is not so liable because A was not acting as P=s agent, but as

a seller.

3. P writes to A authorizing him to buy Blackacre. A does not reply, but contracts to buy Blackacre in his own name. Whether P is liable on the contract depends upon whether A intended to act for himself or for P.

Comment:

d. The liability of the principal extends to all usual or reasonably necessary contracts, the making of which is within the authority of the agent as incidental to the main contract.

TITLE B. CREATION OF LIABILITY BY UNAUTHORIZED ACTS

'194 ACTS OF GENERAL AGENTS

A general Agent for an undisclosed principal authorized to conduct transactions subjects his principal to liability for acts done on his account, if usual or necessary in such transactions, although forbidden by the principal to do them.

Comment:

a. Since apparent authority is the power which results from acts which appear to the third person to be authorized by the principal, if such person does not know of the existence of a principal there can be no apparent authority. . . .

b. *Where agent acts for his own purposes.* The undisclosed principal is not in general liable for acts by the agent intended by him to be wholly for his own account, since the principal becomes a party to a transaction conducted by the agent only because the agent so intends. . . .

§ 195. ACTS OF MANAGER APPEARING TO BE OWNER

An undisclosed principal who entrusts an agent with the management of his business is subject to liability to third persons with whom the agent enters into transactions usual in such businesses and on the principal's account, although contrary to the directions of the principal.

Comment:

a. *This Section is a special application of Section 194.* . . .

Illustrations:

1. P employs A to manage his public house, directing A to represent that he is the owner, and to purchase no goods for the business except ales and bottled water, all other goods to be supplied by P. A purchases cigars from T for the business. P is subject to liability to T for the price of the cigars.

2. P employs A to manage his transfer business, permitting A to appear as the owner. He directs A to make no settlements with patrons of losses in excess of twenty

dollars, until after consultation with him. T claims that he has suffered a loss by the negligence of one of the expressmen and A agrees, without consultation with P, to reimburse T by payment of \$50. P is subject to liability upon the agreement.

Comment:

b. Inherent agency powers of managers. Managers ordinarily have broad powers. Thus, they are usually given authority to make all contracts reasonably necessary for the business, to procure equipment, to employ assistants and do all other matters reasonably desirable for the business of which they have charge. Their inherent agency powers are correspondingly great. But there are limits. Thus, such powers do not include making unusual contracts, changing the nature of the business, disposing of its fixed assets; nor, unless the business involves borrowing or issuing negotiable instruments, do their powers include borrowing or making negotiable instruments. See Section 73 for the rules as to the extent of managerial authority, unless the circumstances in the particular case indicate that it is greater or less. The authority which is usually inferred and stated in that Section marks the limit of the manager's inherent powers to bind his undisclosed principal by an unauthorized act.

. . .

'195A UNAUTHORIZED ACTS OF SPECIAL AGENTS

A special agent for an undisclosed principal has no power to bind his principal by contracts or conveyances which he is not authorized to make unless:

- (a) the agent=s only departure from his authority is
 - (i) in not disclosing his principal, or
 - (ii) in having an improper motive, or
 - (iii) in being negligent in determining the facts upon which his authority is based, or
 - (iv) in making misrepresentations;

'199 ACTS NOT ON ACCOUNT OF PRINCIPAL OR DONE WITH AN IMPROPER MOTIVE

An undisclosed principal who authorizes an agent to make a particular contract on his account and in his business is not liable upon such contract if the agent makes the very contract authorized but does not intend to act on account of the principal. If the agent intends to act for the principal, the fact that he has an improper motive does not prevent the principal from being liable.

CHAPTER 7: LIABILITY OF PRINCIPAL TO THIRD PERSON; TORTS

TOPIC 1. LIABILITY FOR PERSONAL VIOLATION OF DUTY

'212 PRINCIPAL INTENDS CONDUCT OR CONSEQUENCES

A person is subject to liability for the consequences of another=s conduct which results from his directions as he would be for his own personal conduct if, with knowledge of the conditions, he intends the conduct, or if he intends its consequences

Illustrations:

1. P directs A to shoot any person entering premises belonging to P. A shoots T, who, as A knows, is rightfully entering the premises. P is subject to liability to T. . . .

'213 PRINCIPAL NEGLIGENCE OR RECKLESS

A person conducting an activity through servants or other agents is subject to liability for harm resulting from his conduct if he is negligent or reckless:

(a) in giving improper or ambiguous orders or in failing to make proper regulations; or

(b) in the employment of improper persons or instrumentalities in work involving risk of harm to others;

(c) in the supervision of the activity; or

(d) in permitting, or failing to prevent, negligent or other tortious conduct by persons, whether or not his servants or agents, upon premises or with instrumentalities under his control.

TOPIC 2. LIABILITY FOR AUTHORIZED CONDUCT OR CONDUCT INCIDENTAL THERETO

TOPIC A. IN GENERAL

'215 CONDUCT AUTHORIZED BUT UNINTENDED BY PRINCIPAL

A master or other principal who unintentionally authorizes conduct of a servant or other agent which constitutes a tort to a third person is subject to liability to such person.

Comment:

a. Whether or not an act is authorized depends upon the interpretation of the manifestation of the principal. The principal may authorize an act not intending and not advertent to such act, and having no reason to believe that the act will be done. If the agent reasonably misunderstands the principal=s meaning which is ambiguous in light of the circumstances, and acts believing that he is carrying out the principal=s instructions, the

act is authorized. . . . If the act is authorized, the master or other principal is subject to liability under the rule stated in this Section, and it is unnecessary to apply the rule stated in Section 219 dealing with liability for acts within the scope of employment.

'216 UNAUTHORIZED TORTIOUS CONDUCT

A master or other principal may be liable to another whose interests have been invaded by the tortious conduct of a servant or other agent, although the principal does not personally violate a duty to such other or authorize the conduct of the agent causing the invasion.

Comment:

a. A principal is often subject to liability for the unauthorized conduct of an agent with respect to matters which, under the agreement creating the relation, he has the right to direct. The range of conduct for which there may be liability is greater in the case of servants than in the case of agents who are not servants but, as to both classes, liability is normally based upon the fact that the tort brought about in the course of an undertaking for the benefit, and subject to the right, of the principal to control his servant or other agent.

...

TITLE B. TORTS OF SERVANTS

Introductory Note

...

Servant distinguished from non-servant agents. Another way to contrast the servant with the non-servant agent is to say that the servant is one within the personal or business household of the principal, whereas the non-servant is on the outside. The servant is, thus an integral part of his master's establishment; the non-servant aids in the business enterprise but is not a part of it. . . .

'219 WHEN MASTER IS LIABLE FOR TORTS OF HIS SERVANTS

(1) A master is subject to liability for the torts of his servants committed while acting in the scope of their employment.

(2) A master is not subject to liability for the torts of his servants acting outside the scope of their employment, unless:

(a) the master intended the conduct or the consequences, or

(b) the master was negligent or reckless, or . . .

(d) the servant purported to act or to speak on behalf of the principal and there was reliance upon apparent authority, or he was aided in accomplishing the tort by the existence of the agency relation.

'220 DEFINITION OF SERVANT

. . .

(2) In determining whether one acting for another is a servant or an independent contractor, the following matters of fact, among others, are considered:

(a) the extent of control which, by the agreement, the master may exercise over the details of the work;

(b) whether or not the one employed is engaged in a distinct occupation or business;

(c) the kind of occupation, with reference to whether in the locality, the work is usually done under the direction of the employer or by a specialist without supervision;

(d) the skill required in the particular occupation;

(e) whether the employer or the workman supplies the instrumentalities, tools, and the place of work for the person doing the work;

(f) the length of time for which the person is employed;

(g) the method of payment, whether by the time or by the job;

(h) whether or not the work is a part of the regular business of the employer;

(i) whether or not the parties believe they are creating the relation of master and servant; and

(j) whether the principal is or is not in business.

'228 GENERAL STATEMENT

(1) Conduct of a servant is within the scope of employment if, but only if:

(a) it is of the kind he is employed to perform;

(b) it occurs substantially within the authorized time and space limits;

(c) it is actuated, at least in part, by a purpose to serve the master, and

(d) if force is intentionally used by the servant against another, the use of force is not unexpected by the master.

(2) Conduct of a servant is not within the scope of employment if it is different in kind from that authorized, far beyond the authorized time or space limits, or too little actuated by a purpose to serve the master.

TITLE C. AGENTS= TORTSBLIABILITY NOT DEPENDENT UPON RELATION OF MASTER AND SERVANT

'250 NON-LIABILITY FOR PHYSICAL HARM BY NON-SERVANT AGENTS

A principal is not liable for physical harm caused by the negligent physical conduct of a non-servant agent during the performance of the principal=s business, if he neither intended nor authorized the result nor the manner of performance

CHAPTER 8: LIABILITY OF PRINCIPAL TO THIRD PERSONS; NOTICE THROUGH AGENT

TOPIC 1. NOTIFICATION TO OR BY AGENTS

Introductory Note:

. . .

In many of the cases which support the rules stated in this Chapter, the courts speak of *Imputed knowledge*, based upon the underlying fiction of agencyBthe identity of principal and agentBwhen the agent acts in the principal=s affairs. . . .

The rules included in this Chapter are stated in terms of the liability of the principal because the cases in which the language of imputed knowledge is used are those involving the principal=s liability for the conduct of the agent. However, the knowledge of an agent may be a source of benefit to the principal. . . .

'268 GENERAL RULE

(1) Unless the notifier has notice that the agent has an interest adverse to the principal, a notification given to an agent is notice to the principal if it is given:

- (a) to an agent authorized to receive it;
- (b) to an agent apparently authorized to receive it;
- (c) to an agent authorized to conduct a transaction, with respect to matters connected with it as to which notice is usually given to such an agent, unless the one giving the notification has notice that the agent is not authorized to receive it.
- (d) to an agent to whom by the terms of a contract notification is to be given, with reference to matters in connection with the contract; or
- (e) to the agent of an unidentified or undisclosed principal with reference to transactions entered into by such agent within his powers, until discovery of the identity of the principal; thereafter as in the case of a disclosed principal;

(2) The rules as to the giving of notification to an agent apply to the giving of notification by an agent.

'270 TIME WHEN NOTICE RESULTS

Notice results when the act or event constituting notification is performed or happens.

'275 AGENT HAVING DUTY TO REVEAL KNOWLEDGE

Except where the agent is acting adversely to the principal . . . , the principal is affected by the knowledge which an agent has a duty to disclose to the principal or to another agent of the principal to the same extent as if the principal had the information.

Illustrations:

1. P employs A, a real estate broker, to make preliminary negotiations and to investigate the title of land which P is considering purchasing and to report as to the existence of any unrecorded interests in the property. A, knowing of such an interest, negligently fails to report it to P. P takes the land subject to the unrecorded interest.

2. Same facts as in Illustration 1, except that A has been bribed by the seller not to reveal the facts. If P has paid for the land or has otherwise changed his position, he is not bound by the unrecorded interest.

3. P, a manufacturer, employs A to inspect machinery in his manufactory. A inspects but negligently fails to report a dangerous defect because of which the machine injures T, a business invitee upon the premises. P is bound by A=s knowledge.

CHAPTER 11. LIABILITY OF AGENT TO THIRD PERSONS

TOPIC 1. CONTRACTS AND CONVEYANCES

TITLE A. AGENT A PARTY TO A TRANSACTION CONDUCTED BY HIMSELF

§ 321. PRINCIPAL PARTIALLY DISCLOSED

Unless otherwise agreed, a person purporting to make a contract with another for a partially disclosed principal is a party to the contract.

Comment:

a. . . . The fact that, to the knowledge of the agent, the other party does not know the identity of the principal is of great weight in ascribing to the other party the intention to hold the agent liable either solely, or as a surety or co- promisor with the principal. The inference of an understanding that the agent is a party to the contract exists unless the agent gives such complete information concerning his principal's identity that he can be readily distinguished. If the other party has no reasonable means of ascertaining the principal, the inference is almost irresistible and prevails in the absence of an agreement to the contrary.

. . .

Comment:

b. Separate liability of agent. Unless agreed otherwise, the agent is subject to separate liability and may be sued individually without the joinder of the principal. . . .

§ 322. PRINCIPAL UNDISCLOSED

An agent purporting to act upon his own account, but in fact making a contract on account of an undisclosed principal, is a party to the contract.

CHAPTER 13: DUTIES AND LIABILITIES OF AGENT TO PRINCIPAL

TOPIC 1. DUTIES

TITLE A. EFFECT OF MANIFESTATIONS OF CONSENT BETWEEN
PRINCIPAL AND AGENT

'376 GENERAL RULE

The existence and extent of the duties of the agent to the principal are determined by the terms of the agreement between the parties, interpreted in light of the circumstances under which it is made

TITLE B. DUTIES OF SERVICE AND OBEDIENCE

'379 DUTY OF CARE AND SKILL

(1) Unless otherwise agreed, a paid agent is subject to a duty to the principal to act with standard care and with the skill which is standard in the locality for the kind of work which he is employed to perform and, in addition, to exercise any special skill that he has.

. . .

Comment:

. . .

b. The negligence for which an agent is subject to liability to the principal may consist of misconduct in negotiations with third persons, of conduct causing harm to the principal's tangible things in his custody, or of conduct causing the principal to be subject to liability for a tort, crime, or breach of contract. . . . In [actions for such negligence] the burden of proving negligence and damage therefrom is upon the principal. . . .

Comment on Subsection (1):

c. The paid agent is subject to a duty to exercise at least the skill which he represents himself as having. Unless the circumstances indicate otherwise, a paid agent represents that he has at least the skill and undertakes to exercise the care which is standard for the kind of employment in the community. . . .

'380 DUTY OF GOOD CONDUCT

Unless otherwise agreed, an agent is subject to a duty not to conduct himself with such impropriety that he brings disrepute upon the principal or upon the business in which he is engaged. If the service involves personal relations, he has a duty not to act in such a way as to make continued friendly relations with the principal impossible.

'381 DUTY TO GIVE INFORMATION

Unless otherwise agreed, an agent is subject to a duty to use reasonable efforts to give his principal information which is relevant to affairs entrusted to him and which, as the agent has notice, the principal would desire to have and which can be communicated without violating a superior duty to a third person.

Comment:

. . .

e. *Disclosure of confidential information.* . . . [I]t is normally understood that [an agent] is not to communicate to the principal any information which he already has, or which he acquires during the performance of the agency, the disclosure of which to the principal would be a breach of duty to a third person, as when an attorney, having acquired confidential information from a client, is subsequently employed by another client to conduct a transaction in which the information is relevant. If the attorney cannot perform his duty to the second client without disclosing such information or using it to the disadvantage of the first, he should decline to act. . . .

'383 DUTY TO ACT ONLY AS AUTHORIZED

[A]n agent is subject to a duty to the principal not to act in the principal=s affairs except in accordance with the principal=s manifestation of consent.

'385 DUTY TO OBEY

(1) Unless otherwise agreed, an agent is subject to a duty to obey all reasonable directions in regard to the manner of performing a service that he has contracted to perform.

(2) [A]n agent is subject to a duty not to act in matters entrusted to him on account of the principal contrary to the directions of the principal, even though the terms of the employment prescribe that such directions shall not be given.

'386 DUTIES AFTER TERMINATION OF AUTHORITY

Unless otherwise agreed, an agent is subject to a duty not to act as such after the termination of his authority.

TITLE C. DUTIES OF LOYALTY

'387 GENERAL PRINCIPAL

Unless otherwise agreed, an agent is subject to a duty to his principal to act solely for the benefit of the principal in all matters connected with his agency.

Comment:

a. Sections 388-398 are applications of the rule stated in this Section. . . .

'388 DUTY TO ACCOUNT FOR PROFITS ARISING OUT OF EMPLOYMENT

Unless otherwise agreed, an agent who makes a profit in connection with transactions conducted by him on behalf of the principal is under a duty to give such profit to the principal.

'389 ACTING AS ADVERSE PARTY WITHOUT PRINCIPAL'S CONSENT

Unless otherwise agreed, an agent is subject to a duty not to deal with his principal as an adverse party in a transaction connected with his agency without the principal's knowledge.

Comment:

a. The rule stated in this Section applies . . . to transactions in which the agent is acting entirely for himself and to those in which he has such a substantial interest that it reasonably might affect his judgment. . . .

. . .

e. *Burden of Proof.* The burden of proof is upon the agent to show that he has satisfied the duties required by the rules stated in this Section.

'390 ACTING AS ADVERSE PARTY WITH PRINCIPAL'S CONSENT

An agent who, to the knowledge of the principal, acts on his own account in a transaction in which he is employed has a duty to deal fairly with the principal and to disclose to him all facts which the agent knows or should know would reasonably affect the principal's judgment, unless the principal has manifested that he knows such facts or that he does not care to know them.

'391 ACTING FOR ADVERSE PARTY WITHOUT PRINCIPAL'S CONSENT

Unless otherwise agreed, an agent is subject to a duty to his principal not to act on behalf of an adverse party in a transaction connected with his agency without the principal's knowledge.

'392 ACTING FOR ADVERSE PARTY WITH PRINCIPAL'S CONSENT

An agent who, to the knowledge of two principals, acts for both of them in a transaction between the, has a duty to act with fairness to each and to disclose to each all facts which he knows or should know would reasonably affect the judgment of each in permitting such dual agency, except as to a principal who has manifested that he knows such facts or does not care to know them.

'393 COMPETITION AS TO SUBJECT MATTER OF AGENCY

Unless otherwise agreed, an agent is subject to a duty not to compete with the principal concerning the subject matter of his agency.

Comment:

. . .

e. Preparation for competition after termination of agency. After the termination of his agency, in the absence of a restrictive agreement, the agent can properly compete with his principal as to matters for which he has been employed. See '396. Even before the termination of the agency, he is entitled to make arrangements to compete, except that he cannot properly use confidential information peculiar to his employer's business and acquired therein. Thus, before the end of his employment, he can properly purchase a rival business and upon termination of employment immediately compete. He is not, however, entitled to solicit customers for such rival business before the end of his employment nor can he properly do other similar acts in direct competition with the employer's business.

The limits of proper conduct with reference to securing the services of fellow employees are not well market. An employee is subject too liability if, before or after leaving the employment, he causes fellow employees to break their contracts with the employer. On the other hand, it is normally permissible for employees of a firm, or for some of its partners, to agree among themselves, while still employed, that they will engaged in competition with the firm at the end of the period specified in their employment contracts. However, a court may find that it is a breach of duty for a number of the key officers or employees to agree to leave their employment simultaneously and without giving the employer an opportunity to hire and train replacements.

'394 ACTING FOR ONE WITH CONFLICTING INTEREST

Unless otherwise agreed, an agent is subject to a duty not to act or to agree to act during the period of his agency for persons whose interests conflict with those of the principal in matters in which the agent is employed.

'396 USING CONFIDENTIAL INFORMATION AFTER TERMINATION OF AGENCY

Unless otherwise agreed, after the termination of the agency, the agent:

- (a) has no duty not to compete with the principal;
- (b) has a duty to the principal not to use or to disclose to third persons . . . trade

secrets, written lists of names, or other similar confidential matters given to him only for the principal=s use The agent is entitled to use general information concerning the method of business of the principal and the names of customers retained in his memory . . .

CHAPTER 14: DUTIES AND LIABILITIES OF PRINCIPAL TO AGENT

TOPIC 1. CONTRACTUAL AND RESTITUTIONAL DUTIES AND LIABILITIES

TITLE A. INTERPRETATION OF CONTRACTS AND LIABILITIES THEREUNDER

'432 DUTY TO PERFORM CONTRACT

A principal is subject to a duty to an agent to perform the contract which he has made with the agent.

'434 DUTY NOT TO INTERFERE WITH AGENT=S WORK

A principal who has contracted to afford an agent an opportunity to work has a duty to refrain from unreasonably interfering with his work.

'437 DUTY OF GOOD CONDUCT

Unless otherwise agreed, a principal who has contracted to employ an agent has a duty to conduct himself so as not to harm the agent=s reputation nor to make it impossible for the agent, consistently with his reasonable self-respect or personal safety, to continue in the employment.

'438 DUTY OF INDEMNITY; THE PRINCIPLE

(1) A principal is under a duty to indemnify the agent in accordance with the terms of the agreement with him.

(2) In the absence of terms to the contrary in the agreement of employment, the principal has a duty to indemnify the agent where the agent

(a) makes a payment authorized or made necessary in executing the principal=s affairs or, unless he is officious, one beneficial to the principal, or

(b) suffers a loss which, because of their relation, it is fair that the principal should bear.

'441 DUTY TO PAY COMPENSATION

Unless the relation of the parties, the triviality of the services, or other circumstances, indicate that the parties have agreed otherwise, it is inferred that a person promises to pay for services which he requests or permits another to perform for him as his agent.