

# Business Law

## Text & Exercises *6th Ed.*

Roger LeRoy Miller  
William Eric Hollowell



## Chapter 26: Agency

# Learning Outcomes

- LO1** • Describe how an agency relationship is created.
- LO2** • List the duties of agents and principals.
- LO3** • Define the scope of an agent's authority.

# Learning Outcomes

- LO4** • Identify the parties' liability in agency relationships.
- LO5** • Explain how an agency relationship is terminated.

# Agency

- **Agency: relationship between two persons in which, by agreement or otherwise, one (principal) is bound by the words and acts of the other (agency).**

# **Agent and Principal**

- **Agent: person authorized by another to act for or in place of him or her.**
- **Principal: person who, by agreement or otherwise, authorizes an agent to act on his or her behalf in such a way that the acts of the agent become binding on the principal.**

# Employer-Employee

- **An employee is one whose physical conduct is *controlled*, or subject to control, by the employer.**
- **Normally, all employees who deal with third parties are deemed to be agents.**
- **All employment laws apply only to the employer-employee relationship.**

# **Employer - Independent Contractor**

- **Independent Contractor: one who works for, and receives payment from, an employer but whose working conditions and methods are not controlled by the employer. An independent contractor is not an employee but may be an agent.**

- **Need not be in writing, with two exceptions:**
  1. The Statute of Frauds requires it.
  2. Powers of attorney.
- **A principal must have the legal capacity to enter into contracts.**



- **Agency by Agreement.**
- **Agency by Ratification: confirmation by one person of an act or contract performed or entered into on his or her behalf by another, who did so without express authority.**
- **Agency by Estoppel.**
- **Agency by Operation of Law.**

# **Rights and Duties in Agency Relationships**

- **In general, for every duty of the principal, the agent has a corresponding right, and vice versa.**
- **Agent's Duties.**
- **Principal's Duties.**

# Agent's Duties

- **Performance.**
- **Notification.**
- **Loyalty.**
- **Obedience.**
- **Accounting.**

# Principal's Duties

- **Compensation.**
- **Reimbursement and indemnification.**
- **Cooperation.**



# **Scope of Agent's Authority**

- **An agent's authority to act can be either actual (express or implied) or apparent.**
- **If an agent contracts outside the scope of his or her authority, the principal may still become liable by ratifying the contract.**

# Express Authority

- **Equal Dignity Rule**: In most states, a rule stating that express authority given to an agent must be in writing if the contract to be made on behalf of the principal is required to be in writing.
- **Power of Attorney**: document or instrument authorizing another to act as one's agent or attorney.

# Power of Attorney

## GENERAL POWER OF ATTORNEY

Be It Known That:

That I, \_\_\_\_\_, hereinafter referred to as PRINCIPAL, in the County of \_\_\_\_\_  
State of \_\_\_\_\_, do(es) appoint \_\_\_\_\_ as my true and lawful attorney.

In principal's name, and for principal's use and benefit, said attorney is authorized hereby;

- (1) To demand, sue for, collect, and receive all money, debts, accounts, legacies, bequests, interest, dividends, annuities, and demands as are now or shall hereafter become due, payable, or belonging to principal, and take all lawful means, for the recovery thereof and to compromise the same and give discharges for the same;
- (2) To buy and sell land, make contracts of every kind relative to land, any interest therein or the possession thereof, and to take possession and exercise control over the use thereof.
- (3) To buy, sell, mortgage, hypothecate, assign, transfer, and in any manner deal with goods, wares and merchandise, choses in action, certificates or shares of capital stock, and other property in possession or in action, and to make, do, and transact all and every kind of business of whatever nature;
- (4) To execute, acknowledge, and deliver contracts of sale, escrow instructions, deeds, leases including leases for minerals and hydrocarbon substances and assignments of leases, covenants, agreements and assignments of agreements, mortgages and assignments of mortgages, conveyances in trust, to secure indebtedness or other obligations, and assign the beneficial interest thereunder, subordinations of liens or encumbrances, bills of lading, receipts, evidences of debt, releases, bonds, notes, bills, requests to reconvey deeds of trust, partial or full judgments, satisfactions of mortgages, and other debts, and other written instruments of whatever kind and nature, all upon such terms and conditions as said attorney shall approve.

GIVING AND GRANTING to said attorney full power and authority to do all and every act and thing whatsoever requisite and necessary to be done relative to any of the foregoing as fully to all intents and purposes as principal might or could do if personally present.

All that said attorney shall lawfully do or cause to be done under the authority of this power of attorney is expressly approved.

Dated: \_\_\_\_\_ /s/ \_\_\_\_\_

State of California }  
County of \_\_\_\_\_ } SS.

On \_\_\_\_\_, before me, the undersigned, a Notary Public in and for said  
State, personally appeared \_\_\_\_\_

known to me to be the person \_\_\_\_\_ whose name \_\_\_\_\_ subscribed  
to the within instrument and acknowledged that \_\_\_\_\_ executed the same.

Witness my hand and official seal.

(Seal) \_\_\_\_\_  
Notary Public in and for said State.

# Implied Authority

- **Implied authority of an agent can be:**
  - (1) conferred by custom,
  - (2) inferred from the position the agent occupies, or
  - (3) inferred as being reasonably necessary to carry out express authority.



# Apparent Authority and Estoppel

- **Apparent authority exists when the principal, by either word or action, causes a *third party* reasonably to believe that an agent has authority to act, even though the agent has no express or implied authority.**



# **Apparent Authority and Estoppel**

- **If the third party changes his or her position in reliance on the principal's representations, the principal may be estopped (barred) from denying that the agent had authority.**

# Requirements for Ratification

1. The one who acted as an agent must have acted on behalf of a principal who subsequently ratifies.
2. The principal must know of all material facts involved in the transaction.
3. The agent's act must be affirmed in its entirety by the principal.



# Requirements for Ratification

4. The principal must have the legal authority to authorize the transaction.
5. The principal's affirmance must occur prior to the withdrawal or change in position of reliance of the third party upon the contract.
6. The principal must observe the same formalities as the agent used in the initial authorization.

# **Liability in Agency Relationships**

- **Liability for Agent's Contracts.**
  - Disclosed principal.
  - Partially disclosed principal.
  - Undisclosed principal.
- **Liability for Agent's Torts.**



# Disclosed Principal

- **A principal whose identity and existence as a principal is known by a third person at the time a transaction is conducted by an agent.**

# Partially Disclosed Principal

- **A principal whose identity is unknown by a third person, but the third person knows that the agent is or may be acting for a principal at the time the contract is made.**

# Undisclosed Principal

- **A principal whose identity is unknown by a third person, and the third person has no knowledge that the agent is acting in an agency capacity at the time the contract is made.**



# Parties' Liability

- **When contracting with a third party:**
  - A disclosed principal is liable to the third party.
  - A partially disclosed principal, as well as the agent, is liable to the third party.



# Parties' Liability

- **An undisclosed principal would be liable to the third party, unless:**
  1. He was expressly excluded from the contract.
  2. The contract is a negotiable instrument.
  3. The performance of the agent is personal to the contract.

# **Liability for Agent's Torts**

- ***Respondeat superior:* in Latin, “Let the master respond.”**
- **A principle of law whereby a principal or an employer is held liable for the wrongful acts committed by agents or employees while acting within the scope of their agency or employment.**

# E-Agents

- **E-Agent:**
  - Software used to independently initiate an action or to respond to electronic messages or performances without review by an individual.
- **E-Agents and the UETA.**

# Termination of Agency

- **An agency can terminate by an act of the parties or by operation of law.**
- **Once the relationship between the principal and agent has ended, the agent no longer has the right to bind the principal.**

# **Termination by Act of the Parties**

- **Lapse of Time.**
- **Purpose Achieved.**
- **Occurrence of a Specific Event.**
- **Mutual Agreement.**
- **Termination by One Party.**
- **Agency Coupled with an Interest.**

# **Termination by Operation of Law**

- **Death or Insanity.**
- **Impossibility.**
- **Changed Circumstances.**
- **Bankruptcy.**
- **War.**

# Notice of Termination

- **When an agency terminates by operation of law, there is no duty to notify third parties, unless the agent's authority is coupled with an interest.**





# Notice of Termination

- **If the parties themselves have terminated the agency, however, it is the principal's duty to inform any third parties who know of the existence of the agency that it has been terminated.**
- **No particular form is required.**