**Chapter 19: Agency and Franchising**

**Agent** – a person acting for another person in contractual relations with third parties

**Principal** – the person on whose behalf the agent acts

**Dependent Agent** – an agent who acts exclusively, or mostly, for a single principal

**Independent Agent** – an agent who carries on an independent business and acts for a number of principals

**Commission Agent** – one who sells on behalf of a principal to third parties and receives compensation through commissions

Any person who has the capacity to contract may appoint an agent to contract on their behalf. An agent’s power to contract on behalf of her principal is limited to the capacity that the principal possesses.

**Agency Relationship** – the agreement between principal and agent whereby the agent undertakes to act on behalf of the principal

It is advisable for each party to have a written, signed copy of the agency agreement in order to minimize future misunderstandings about the terms of the arrangement. The agreement should clearly define the limits of the agent’s authority (how far can she go in making a contract with a third party without obtaining further instructions from the principal).

**Power of Attorney** – a type of agency agreement authorizing the agent to sign documents on behalf of the principal

The breach of any term in the agency agreement gives the aggrieved party the usual remedies against the other for breach of contract. An agent owes a duty of care to her principal, even when she acts without payment. Because of the high degree of confidence and trust implicit in an agency relationship, the general rule is that an agent cannot delegate her duties without the principal’s agreement.

A fiduciary relationships exists between principal and agent. The duty of good faith requires that an agent inform the principal of any information coming to her attention that might influence the principal’s decisions. If she has been authorized to buy property at a certain price and learns that it can be obtained for less, she is bound to inform the principal. If she buys at a lower price, she must pass the savings to the principal.

**Exclusive Listing Agreement** – an agreement by the client of a real estate agent to pay commission on any sale of property whether it is sold by the client, the agent, or some other agent

**Actual Authority** – the authority given expressly or impliedly to the agent by the principal

**Apparent Authority** – the authority that a third party is entitled to assume that the agent possesses

**Holding Out** – representing by words or conduct that a person is one’s agent or has a particular authority  
- when a business represents someone to be its agent, it will not be permitted to deny the existence of an agency

Summary:  
An agent’s authority may be:  
a) **actual**  
 - express  
 - implied from (1) commercial usage or (2) conduct  
b) **apparent**  
 - commercial usage  
 - holding out

**Ratification** – subsequent adoption by the proposed principal of a contract made by an agent acting without authority  
- need for ratification may arise either because the person purporting to act as agent has no authority to do so or because she has only a limited authority and has exceeded it

Summary  
An agent’s contract with a 3rd party may be ratified:  
- expressly or impliedly  
- within a reasonable time  
- by a named principal  
- if the rights of an outsider are not affected  
- if at the time of creation and ratification, the principal was capable of making the contract

Who is liable on the contract when an agent makes a contract on behalf of her principal with a 3rd party?  
a) the principal alone is liable on the contract  
b) the agent alone is liable   
c) either the principal or the agent may be held liable

The Principal Alone Is Liable on the Contract  
- an agent is not liable on contracts made for her principal when the agency relationship is functioning as intended

The Agent Alone Is Liable on the Contract  
- when an agent contracts on terms that she is the real contracting party, though she is in reality acting or intending to act for an undisclosed principal, the agent alone has rights and liabilities relative to the third party  
- the principal can neither sue nor be sued on the contract

Either the Principal or the Agent May Be Held Liable on the Contract  
- sometimes a person who is an agent does not mention her status, and deals with a third party without it being apparent that she is acting as an agent  
- in this case, the 3rd party is entitled to sue the agent on the contract

**Warranty of Authority** – a person who purports to act as agent represents that she has authority to contract on behalf of the principal

An agent’s authority may be terminated on any of the following occasions:  
- at the end of a time specified in the agency agreement  
- at the completion of the particular project for which the agency was formed  
- on notice by either the principal or the agent that he or she wishes to end the agency  
- on the death or insanity of either the principal or the agent  
- on the bankruptcy of the principal  
- on an event that makes performance of the agency agreement impossible