

EXAMINERS' ANALYSIS OF QUESTION NO. 10

Agency principles govern the analysis of this question. The issue is whether there was an agency relationship between Betty and Dessie's Design Company (DDC), such that Betty could bind DDC to liability for her negligence regarding the window damage. An agency is "a fiduciary relationship created by express or implied contract or by law, in which one party (the agent) may act on behalf of another party (the principal) and bind that other party by words or actions." *Logan v Manpower of Lansing, Inc*, 304 Mich App 550, 559 (2014) (citations omitted). An agent's authority in that regard may be either actual or apparent/ostensible. *Meretta v Peach*, 195 Mich App 695, 698 (1992). "Actual authority may be express or implied. Implied authority is the authority which an agent believes he possesses." *Id.*

In contrast, apparent authority may be found "when acts and appearances lead a third person reasonably to believe that an agency relationship exists." *Id.* at 698-699. While "all surrounding facts and circumstances" must be considered in determining whether an agent has apparent authority to engage in an act that binds the principal, "[a]pparent authority must be traceable to the principal and cannot be established by the acts and conduct of the agent." *Id.* at 699. Additionally, a principal can be estopped from challenging the authority of an agent "[w]henever a principal has placed an agent in such a situation that a person of ordinary prudence, conversant with business usages and the nature of the particular business, is justified in assuming that such agent is authorized to perform in behalf of the principal the particular act, and such particular act has been performed" *Id.* at 699-700 quoting *Central Wholesale Co v Sefa*, 351 Mich 17, 26-27 (1957).

The facts reflect that while an agency relationship existed between DDC (as principal) and Betty (as agent) in connection with performing the originally contracted work, there was an express limitation on Betty's authority to bind DDC beyond the original contract. Thus, Betty had no actual authority, express or implied, to act on behalf of DDC to contract with Lydia for any additional work like the window removal and repair unless she had prior approval from Dessie. No such prior approval was secured.

Lydia could make a strong argument, however, that Betty had apparent authority with respect to the window removal and repair given DDC's own insistence that Betty and her crew approach the project as the face of DDC with their uniformed appearance while performing the work. Further, Betty was interfacing with Lydia almost daily throughout the five-week renovation while performing and supervising the work, with Dessie apparently having little contact with Lydia during this phase. Also, the window agreement was added on a DDC form that was obviously accessible to Betty. Based on these facts and circumstances emanating from DDC's own actions, Lydia could have reasonably surmised that Betty had unlimited authority to bind DDC to expansion of the contract in connection with the window work. Such a conclusion would result in DDC's liability to Lydia for the window damage.