

EXAMINERS' ANALYSIS OF QUESTION NO. 15

This question presents legal issues concerning the relationship of principals and agents. 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). The authority of an agent to act on behalf of a principal such that the principal is bound by those actions, is either (1) actual or (2) 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.*

On the other hand, 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 examined 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. Moreover, a principal can be estopped from challenging the authority of an agent "[w]henver 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.

In the instant case, Andre clearly had no actual authority — express or implied — to bind Piper to the contract with Rocket Footwear. While the facts state that there once was an express agency relationship between the two, that agency ended prior to Andre's signing of the Rocket deal. Additionally, there is no factual suggestion that Andre reasonably believed he still had the authority to act on Piper's behalf after October 2017. It appears that Andre was merely taking advantage of a signing commission under the Rocket contract. Thus, there was no implied authority.

However, Rocket may be able to argue that Piper is bound by the contract because of Andre's apparent authority to act on her behalf. Considering the surrounding facts and circumstances, Piper and Andre had a public and widely known agency relationship. It would be reasonable for third parties like Rocket to believe that Andre still had such authority.

[T]hree elements are necessary to establish the creation of an ostensible agency: (1) the person dealing with the agent must do so with belief in the agent's authority and this belief must be a reasonable one, (2) the belief must be generated by some act or neglect on the part of the principal sought to be charged, and (3) the person relying on the agent's authority must not be guilty of negligence. [*Vanstelle v Macaskill*, 255 Mich App 1, 10 (2003) citing *Chapa v St Mary's Hospital of Saginaw*, 192 Mich App 29, 33-34 (1991).]

The actual dissolution of the agency was not publicized at all according to the facts, but accomplished "quietly." Piper's failure to announce the parting either publicly or in business circles, following such a shared knowledge of the relationship, helped to fuel the perception that the agency remained intact. Further, the Rocket contract was consummated within a month after the agency agreement was actually dissolved. There was nothing to suggest to others that Andre's routine of signing contracts for Piper had been disrupted. Accordingly, Piper would likely be legally committed to the Rocket contract. *Id.*