

#### **EXAMINERS' ANALYSIS OF QUESTION NO. 14**

Agency principles govern the analysis of this question. The issue is whether there was an agency relationship between Chance and Sophia, such that Chance was bound to shoot the Henry wedding and is exposed to liability for his failure to do so. 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 . . . [*Meretta*, 195 Mich App at 699-700 quoting *Central Wholesale Co v Sefa*, 351 Mich 17, 26-27 (1957).]

The facts show that an agency relationship existed between Chance (as principal) and Sophia (as agent) with respect to Sophia performing a myriad of administrative, collection and logistical duties in connection with Chance's photography business. However, there was an express limitation on Sophia's authority to bind Chance to photograph events that he did not preapprove. Thus, Sophia had no actual authority, express or implied, to act on

behalf of Chance to contract with the Henry couple unless she had prior approval from Chance. Sophia obtained no such permission.

However, the Henrys could make a strong argument that Sophia had apparent authority to book Chance as their wedding photographer, given her publicly well-known reputation as Chance's assistant. Moreover, Chance himself directed potential clients to Sophia when approached about photo opportunities. Consequently, the Henrys could have reasonably assumed that Sophia had unlimited authority to bind Chance to photographing their wedding. This would likely result in Chance's liability to the Henrys for failure to do so.