

Answers to Assignment 8 Questions

NOTE: These answers are provided to give students a basic understanding of acceptable types of responses. They often are not the only valid answers and are not intended to provide an exhaustive response to the questions.

Educational Objective 1

- 1-1. A general agent has broad powers within underwriting guidelines. A special agent has more restricted authority than a general agent; it is restricted by express agreement with an insurer. A soliciting agent has narrow authority derived directly from an agency contract.
- 1-2. An insurance agent represents an insurer. An insurance broker usually represents an insurance customer.
- 1-3. An insurance broker typically assists large insureds to obtain coverage from competing insurers. Some insurance brokers have expanded their roles to become risk consultants who advise clients how to handle their loss exposures. Brokers may also offer risk control or claim services, or assist insurers in obtaining reinsurance coverage.

Educational Objective 2

- 2-1. Actual authority is that which the principal (insurer) intentionally confers upon the producer or allows the producer to believe he or she possesses.
- 2-2. Typically, express authority is granted through a formal written contract that establishes the terms of the principal/agent relationship between the insurance producer and the insurer. This agency contract states the producer's powers and authority and specifies any restrictions on that authority. The parties, however, can agree to a relationship by less formal means, creating implied authority. For example, an agent's submission of an insurance application can create an agency relationship if the producer has solicited and forwarded insurance applications to the insurer previously, and if the insurer has accepted them.
- 2-3. An insurer does not give apparent authority to the producer (nor does the producer create this authority), but appearances may lead a third party to believe that a producer has authority.
- 2-4. Apparent authority usually arises in one of two overlapping circumstances. First, an insurer may grant less actual authority to the producer than producers in the same position in that business usually have. Second, the method of operation of the principal's business differs from the method of operation of other businesses of the same kind in the principal's area.
- 2-5. Wanda likely had apparent authority to tell Manny and Jill that their bees would be covered by InsureCo. InsureCo differs from the other insurers Wanda represents by not using the standard ISO policy forms. Wanda's authority from most of the insurers she represents includes binding coverage. Because Wanda appeared to Manny and Jill to have authority to represent InsureCo's coverage, and because the coverage for bees was typical of farm insurance policies issued in that town, Wanda likely had apparent authority from InsureCo to make representations regarding that coverage.



Educational Objective 3

- 3-1. The extent of a producer's authority varies depending on whether the producer is a general agent, special agent, or broker. The general agent represents an insurer and has the broadest authority of all insurance agents. Any action the general agent takes according to the agreed-on authority binds the insurer. A special agent's authority is usually restricted to soliciting and forwarding prospective business to an insurer. Any action the special agent takes beyond soliciting and forwarding business will usually not bind an insurer unless an insured can establish apparent authority. A broker has no authority to act on behalf of an insurer because brokers represent insureds, not insurers. A broker typically has authority to bind an insured.
- 3-2. General agents typically can accept loss exposures, agree on and settle the terms of insurance, waive policy provisions, issue and renew policies, collect premiums, and adjust claims. A broker's typical duties include procuring insurance for the insurance customer-principal, selecting the insurer to provide the desired coverage, arranging for the payment of premiums, canceling and receiving unearned premiums on a policy the broker has obtained, and obtaining a new policy upon cancellation of one previously obtained.
- 3-3. First, through apparent authority, the broker is legally the insurer's agent if the insurer allows the broker to act in a manner leading a reasonable third party to believe that the broker is the insurer's agent. Second, some state statutes provide that, for specific purposes, such as receipt of premium payments, a broker is the insurer's agent.
- 3-4. In agency law, any knowledge possessed by an agent, general or special, is considered to be possessed by that agent's principal as well. In an insurance context, the authorized agent's knowledge is imputed to the insurer—whether the insurer actually receives the information from the agent is irrelevant.
 - a. An agent's knowledge is not imputed to an insurer if no agency relationship exists between them. Under most circumstances, an insurance broker's knowledge is not imputed. The broker's agency relationship is with the insured, not the insurer.
 - b. The agent's decision to act adversely to the insurer's interests breaks the agency relationship, which is the basis of the imputed knowledge rule.
 - c. If an agent is unaware that information provided by an insurance customer is false, no knowledge is imputed to the insurer. The insurer can avoid liability under the policy if it can prove fraud or misrepresentation.
- 3-5. The need for immediate insurance coverage arises frequently. However, insurers usually undertake an underwriting process that can take several weeks or longer to complete before issuing a policy. Because this delay leaves applicants unprotected, many insurers authorize producers to issue temporary oral or written policies pending acceptance of the application.
- 3-6. The doctrine of apparent authority can apply to subagents. To the public, an insurance producer's subagents appear to have authorization to act for the insurer, even when they do not have such authority. In many such circumstances, these subagents' acts bind the insurer under the doctrine of apparent authority.



- 3-7. InsureCo is most likely liable for Limo's loss. Julio had authority from InsureCo to bind coverage. Although Julio's assistant had not been granted this authority, the general public, including Limo, could not be aware of the limits on the assistant's authority. The assistant thus had apparent authority, and InsureCo is bound by the actions of this agency employee.

Educational Objective 4

- 4-1. A producer/insurer agency relationship usually terminates under circumstances specified in the contract. The relationship can also terminate when one of the parties acts in a way that the other party might reasonably construe as showing the intent to terminate. The agency relationship can also terminate by other means, including operation of law, the producer's death or insanity, or the insurer's insolvency.
- 4-2. Typically, termination occurs through a written or oral communication, which severs the producer's actual authority to bind the insurance principal.
- 4-3. If a third party who has dealt with the producer does not receive notification of the termination, the producer's acts might bind the insurer. The producer can also bind the insurer regarding third parties with whom he or she has not dealt with previously if these parties had prior knowledge of the former agency relationship, but no notice of the termination.
- 4-4. The safest way for an insurer to avoid the possible adverse consequences of apparent authority is for the insurer to notify all third parties known to have dealt with the producer and repossess from the producer any evidence of the agency relationship, such as application forms and insurer stationery.
- 4-5. InsureCo is likely bound to provide coverage to High Risk. Although InsureCo terminated Small Agency's agency contract and authority by written communication to Small, InsureCo did not notify any of Small's customers that the producer relationship had ended. Therefore, High Risk has no knowledge of the termination of the agency relationship, and Small has apparent authority to bind coverage.

Educational Objective 5

- 5-1. Insurance producers have a duty to exercise reasonable care and skill in performing their duties, to deal with their customers in good faith, and to exercise reasonable diligence on their customers' behalf. They also have a duty to have reasonable knowledge about the insurance policies they sell, the policy terms, and the coverages available in the areas for which their customers seek insurance protection. Insurance producers also have a duty to follow their customers' instructions.

There are five duties that producers owe their customers:

- Duty to follow instructions
- Duty to procure insurance
- Duty to maintain coverage
- Duty to place insurance with a solvent insurer
- Duty to advise



- 5-2. A producer must strictly follow the customer's instructions and is liable to the customer for any damages that result from not doing so. A producer who fails to add an available coverage requested by an insured is liable for a subsequent loss that the policy would have covered had the producer followed instructions. Also, a producer who fails to add newly acquired property to the list of the insured's covered properties at the insured's request would be liable for the financial consequences resulting from any uninsured loss involving the property.
- 5-3. The duty to follow instructions may involve nondiscretionary acts. However, the duty to procure insurance involves care, skill, effort, and diligence on the insurance producer's part. The producer has a duty not only to procure insurance, but also to procure the appropriate coverage.
- 5-4. The producer should make reasonable attempts to inquire into prospective insurers' solvency and should disclose to the customer any information revealing a weak financial condition. The producer should also document any disclosures made to a customer regarding an insurer's solvency.
- 5-5. Some state courts do not allow this defense, reasoning that the customer has the right to rely on the producer's expertise and that policy language is often difficult to understand.
- 5-6. An insurance producer who fails to fully disclose all material information concerning the risks and hazards of a prospective insured is liable to the insurer for damages resulting from the lack of full disclosure.
 - a. If the insurer establishes that it would not have issued the policy had it received the appropriate information, the producer is liable to the insurer for the amount of the loss the insurer must pay to the insured.
 - b. If the insurer would have issued the policy but with a higher premium, the producer would be liable to the insurer for the difference in the premium.
- 5-7. The responsibilities held by each of the parties will be decided by the contract in these ways:
 - a. The insurer is not responsible to pay the loss. The insurer was not notified of the operation in the nearby state as required by the policy provisions.
 - b. Paul, the producer, is liable for the loss. Paul had a duty to Dan and Pipefitters to procure appropriate coverage. Dan informed Paul of his new operation, and Paul had a duty to procure coverage appropriate for all of Dan's operations and employees.
 - c. Paul is not likely to be successful in a defense that Dan did not read the policy. Dan described his operations to Paul, and Paul delivered the policy to Dan. As a producer, Paul is presumed to be professional and knowledgeable about the insurance products he markets, and he has a duty to procure appropriate coverage.
 - d. Under general contract law principles, the parties to an agreement owe duties and obligations to each other, but not to third parties. That the third party could have collected had the producer discharged all duties appropriately, but now cannot collect, usually does not give the third party any rights against the producer. However, some courts have recognized the third-party right of injured workers to sue producers for failure to discharge a duty to procure workers compensation coverage because of the importance of injured workers receiving compensation and because workers are the intended beneficiaries of workers compensation or employer's liability insurance.

