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# Liability of Principal to Third Persons, Contracts and Conveyances

State of Indiana Legislators

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THE AMERICAN LAW INSTITUTE'S  
RESTATEMENT OF THE LAW OF AGENCY WITH  
ANNOTATIONS TO THE INDIANA DECISIONS\*

Chapter 6

LIABILITY OF PRINCIPAL TO THIRD PERSONS;  
CONTRACTS AND CONVEYANCES

Topic 1. General Principles

Section 140. LIABILITY BASED UPON AGENCY PRINCIPLES.

The liability of the principal to a third person upon a transaction conducted by an agent, or the transfer of his interests by an agent, may be based upon the fact that:

- (a) the agent was authorized;
- (b) the agent was apparently authorized; or
- (c) the agent had a power arising from the agency relationship and not dependent upon authority or apparent authority.

*Annotation:*

The following cases are illustrative of liability imposed upon the principal because of authorized acts of the agent: *LaRue v. American Diesel Engine Co.*, 176 Ind. 609, 96 N. E. 772 (1911); *Wolfe v. Pugh*, 101 Ind. 293 (1885); *Rend v. Boord*, 75 Ind. 307 (1881); *Indiana Fibre Products Co. v. Cyclone Mfg. Co.*, 81 Ind. App. 682, 143 N. E. 169 (1924).

The following cases are illustrative of the liability imposed on the principal because of acts by the agent which were apparently authorized: *Shackman v. Little*, 87 Ind. 181 (1882); *King v. Edward Thompson Co.*, 56 Ind. App. 274, 104 N. E. 106 (1914); *Indiana Fibre Products Co. v. Cyclone Mfg. Co.*, 81 Ind. App. 682, 143 N. E. 169 (1924).

No Indiana cases dealing with the subject matter of division (C) of this Section have been found.

Section 141. LIABILITY BASED UPON OTHER THAN AGENCY PRINCIPLES.

Although an agent or apparent agent does not, under the rules stated in §§ 144-211, have power to bind his principal in

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a particular transaction, the transaction may nevertheless subject the principal to liability or to the loss of his interest where:

- (a) the principal has misled or has failed to undeceive the third person;
- (b) the principal has benefited from the transaction; or
- (c) the subject matter is a negotiable instrument which has been negotiated.

*Annotation:*

Obviously detailed citation under this Section is impossible.

**Section 142. LIABILITY FOR ACTS OF SERVANTS AND SUBAGENTS.**

The statements made in §§ 144-211, as to the power of an agent to subject the principal to liability, are applicable to the power of a servant or a subagent.

*Annotation:*

The cases cited in the annotations to Sections 144-211 make no distinction between agent, subagent and servant.

**Section 143. EFFECT OF RATIFICATION.**

Upon ratification with knowledge of the material facts, the principal becomes responsible for contracts and conveyances made for him by one purporting to act on his account as if the transaction had been authorized, if there has been no supervening loss of capacity by the principal or change in the law which would render illegal the authorization or performance of such a transaction.

*Annotation:*

See annotation under Section 100.

**Topic 2. Disclosed or Partially Disclosed Principal**

**TITLE A. CREATION OF LIABILITY BY AUTHORIZED ACTS**

**Section 144. GENERAL RULE.**

A disclosed or partially disclosed principal is subject to liability upon contracts made by an agent acting within his authority if made in proper form and with the understanding that the principal is a party.

*Annotation:*

The rule stated in this Section is in accord with the law of Indiana. *Bicknell v. Buck*, 58 Ind. 354 (1877); *Ward v. Maccoun*, 3 Ind. 407 (1852).

**Section 145. AUTHORIZED REPRESENTATIONS.**

In actions brought upon a contract or to rescind a contract or conveyance to which he is a party, a disclosed or partially disclosed principal is responsible for authorized representations of an agent made in connection therewith as if made by himself, subject to the rules in regard to knowledge and notice stated in §§ 256 and 268-283.

*Annotation:*

The rule stated in this Section is in accord with the law of Indiana. *Wolfe v. Pugh*, 101 Ind. 293 (1885); *Beem v. Lockhart*, 1 Ind. App. 202, 27 N. E. 239 (1891); *Teter v. Hinders*, 19 Ind. 93 (1862). See, also, *Du Souchet v. Dutcher*, 113 Ind. 249, 15 N. E. 459 (1888).

**Section 146. MANIFESTATIONS BY AGENT DETERMINING PARTIES.**

If an agent of a disclosed or partially disclosed principal makes an authorized contract with a third person, the liability of the principal thereon depends upon the agreement between the agent and the third person as to the parties to the transaction.

*Annotation:*

See: *Allen v. Davis*, 17 Ind. App. 338, 45 N. E. 798 (1897); *Crum v. Boyd*, 9 Ind. 289 (1857).

**Section 147. INFERENCE THAT PRINCIPAL IS A PARTY; SIMPLE CONTRACTS.**

Unless otherwise agreed, a disclosed or partially disclosed principal is a party to a contract, if not negotiable or sealed, made by his agent within his authority.

*Annotation:*

See: *Robeson v. Chapman*, 6 Ind. 352 (1855).

**Section 148. ORDERS OF SEVERAL PRINCIPALS COMBINED.**

Neither of two or more disclosed or partially disclosed principals, each of whom independently authorizes the same agent to make a contract, is liable upon a single contract made by the agent which combines the orders of the principals and calls for a single performance.

*Annotation:*

No Indiana cases dealing with the subject matter of this Section have been found.

**Section 149. WRITTEN CONTRACTS NOT CONTAINING PRINCIPAL'S NAME.**

A disclosed or partially disclosed principal is subject to liability upon an authorized contract in writing, if not negotiable or sealed, although it purports to be the contract of the agent, unless the principal is excluded as a party by the terms of the instrument or by the agreement of the parties.

*Annotation:*

The rule stated in this Section is in accord with the law of Indiana. *First National Bank v. Josejoff*, 57 Ind. App. 320, 105 N. E. 175 (1914); *Hawkins v. Dorst Co.*, 186 Ind. 430, 116 N. E. 577 (1917); *Hayes v. Shirk*, 167 Ind. 569, 78 N. E. 653 (1906).

**Section 150. CONTRACTS SPECIFICALLY INCLUDING OR EXCLUDING PRINCIPAL.**

If an integrated contract by its specific terms excludes the principal as a party, parol evidence is inadmissible to show that he is a party; if the integrated contract by its specific terms makes the principal a party, parol evidence is not admissible to show that it was agreed that he should not become a party.

*Annotation:*

No Indiana cases dealing with the subject matter of this Section have been found.

For application of the parol evidence rule to parol evidence to exonerate an agent from liability on a contract to which he appeared to be a contracting party, see *George v. Smith*, 190 Ind. 582, 129 N. E. 231 (1920).

**Section 151. SEALED INSTRUMENTS.**

A disclosed or partially disclosed principal is not a covenantor or grantor in a sealed contract or conveyance unless he appears upon the instrument to be such.

*Annotation:*

No difference in evidence exists between sealed and unsealed instruments, and there is now no difference in the force and effect of the same. IND. STAT. ANN. (Baldwin, 1934) §§ 243-246; IND. ANN. STAT. (Burns, 1926) §§ 492-495; IND. ANN. STAT. (Burns, 1933) §§ 2-1601—2-1604.

Seals are unnecessary to validity of conveyances by natural persons. IND. ANN. STAT. (Burns, 1926) § 13376; IND. ANN. STAT. (Burns, 1933) § 56-104; IND. STAT. ANN. (Baldwin, Supplement, 1935) § 14685.

**Section 152. NEGOTIABLE INSTRUMENTS.**

A disclosed or partially disclosed principal is not liable as a party to a negotiable instrument in which he is not named.

*Annotation:*

The rule stated in this Section is in accord with the law of Indiana. *Reddick v. Young*, 177 Ind. 632, 98 N. E. 813 (1912).

IND. ANN. STAT. (Burns, 1933) §§ 19-118—19-120; IND. ANN. STAT. (Burns, 1926) §§ 11377-11379; IND. STAT. ANN. (Baldwin, 1934) §§ 12835-12837.

**Section 153. TRANSACTIONS REQUIRED TO BE IN WRITING.**

For the purpose of satisfying the provisions of a statute requiring a note or memorandum to be signed by the party to be charged or by his agent, a memorandum signed by a properly authorized agent with or without indication of the existence or identity of the principal is sufficient to charge the principal.

*Annotation:*

The rule stated in this Section is in accord with the law of Indiana. *Reed v. Light*, 170 Ind. 550, 85 N. E. 9 (1908). See, also: IND. STAT. ANN. (Baldwin, 1934) §§ 8363, 14781; IND. ANN. STAT. (Burns, 1933) §§ 33-101, 33-105; IND. ANN. STAT. (Burns, 1926) §§ 8045, 13531. 4.

**TITLE B. INTERPRETATION OF WRITTEN INSTRUMENTS  
AS TO PARTIES****Section 154. GENERAL RULE.**

In determining the parties to an integrated contract made by an agent on account of his principal, the rules dealing with interpretation stated in §§ 226-249 of the Restatement of Contracts apply.

*Annotation:*

This Section has not been annotated.

**Section 155. INSTRUMENT IN WHICH PRINCIPAL APPEARS AS SUCH.**

In the absence of manifestations to the contrary therein, an unsealed written instrument is interpreted as the instrument of the principal and not of the agent if, from a consideration of it as a whole, it appears that the agent is acting as agent for a principal whose name appears therein as such.

*Annotation:*

The rule stated in this Section is in accord with the law of Indiana. *Avery v. Dougherty*, 102 Ind. 443, 2 N. E. 123, 52 Am. Rep. 680 (1885); *Freese v. Crary*, 29 Ind. 524 (1868); *Robeson v. Chapman*, 6 Ind. 352 (1855).

**Section 156. INSTRUMENT IN WHICH FACT OF AGENCY OR NAME OF PRINCIPAL APPEARS.**

In the absence of a manifestation to the contrary therein, an unsealed written instrument is interpreted as the instrument of the principal and not of the agent if, in the signature or description of the parties, the name of the principal and agent both appear, the agent indicating his agency. The addition of the word "agent" to the signature or description of the signer does not of itself prevent the inference that such person is a party to the contract.

*Annotation:*

The rule stated in this Section is in accord with the law of Indiana. *Avery v. Dougherty*, 102 Ind. 443, 2 N. E. 123, 52 Am. Rep. 680 (1885); *State v. Helms*, 136 Ind. 122, 35 N. E. 893 (1893); *Gaff v. Theis*, 33 Ind. 307 (1870); *Freese v. Crary*, 29 Ind. 524 (1868); *Tousey v. Taw*, 19 Ind. 212 (1862).

**Section 157. INSTRUMENT IN WHICH AGENCY SHOWN ONLY IN ONE PART.**

An unsealed written instrument, in one portion of which there is a manifestation that the agent is acting only for the principal, is interpreted as the instrument of the principal and not of the agent, although in other portions of the instrument or in the signature the agent's name appears without designation.

*Annotation:*

The rule stated in this Section is in accord with the law of Indiana. *Freese v. Crary*, 29 Ind. 524 (1868).

**Section 158. INTERPRETATION OF SEALED INSTRUMENTS AS TO PARTIES.**

The rules stated in §§ 154-157, which determine the interpretation of unsealed instruments as to parties, are applicable to the interpretation of sealed instruments as to parties, except that:

- (a) in order that a person should be bound as a covenantor or grantor in a sealed instrument he must be named as

such therein, and the instrument must purport to be sealed by him; and

- (b) in order that a person should be a covenantee or grantee in a sealed instrument he must appear as such in the instrument.

*Annotation:*

See annotation under Section 151.

**TITLE C. CREATION OF LIABILITY BY UNAUTHORIZED ACTS**

**Section 159. APPARENT AUTHORITY.**

A disclosed or partially disclosed principal is subject to liability upon contracts made by an agent acting within his apparent authority if made in proper form and with the understanding that the apparent principal is a party. The rules stated in §§ 144-158, dealing with the liability of a principal for authorized acts, are applicable to unauthorized acts which are apparently authorized.

*Annotation:*

The rule stated in this Section is in accord with the law of Indiana. *Cruzan v. Smith*, 41 Ind. 288 (1872); *Cleveland, C., C. & St. L. Ry. Co. v. Moore*, 170 Ind. 328, 82 N. E. 52 (1907); *Talmage v. Bierhause*, 103 Ind. 270, 2 N. E. 716 (1885); *Indiana Fibre Products Co. v. Cyclone Mfg. Co.*, 81 Ind. App. 682, 143 N. E. 169 (1924); *King v. Edward Thompson Co.*, 56 Ind. App. 274, 104 N. E. 106 (1914); *Adams Express Co. v. Carnahan*, 29 Ind. App. 606, 63 N. E. 245, 94 Am. St. Rep. 279 (1902).

**Section 160. VIOLATION OF SECRET INSTRUCTIONS.**

A disclosed or partially disclosed principal authorizing an agent to make a contract, but imposing upon him limitations as to incidental terms intended not to be revealed, is subject to liability upon a contract made in violation of such limitations with a third person who has no notice of them.

*Annotation:*

The rule stated in this Section is in accord with the law of Indiana. *Larue v. American Diesel Engine Co.*, 176 Ind. 609, 96 N. E. 772 (1911); *American Telephone & Telegraph Co. v. Green*, 164 Ind. 349, 73 N. E. 707 (1905); *Cincinnati, I., St. L. & C. R. Co. v. Davis*, 126 Ind. 99, 25 N. E. 878, 9 L. R. A. 503 (1890); *The Commercial Union Assur. Co. v. The State*, 113 Ind. 331, 15 N. E. 518 (1888); *Talmage v. Bierhause*, 103 Ind. 270, 2 N. E. 716 (1885); *Robbins v. Magee*, 76 Ind. 381 (1881); *Fatman v. Leet*, 41 Ind. 133 (1872); *Blackstone Theatre Corp. v. Goldwyn Distributing Corp.*, 86 Ind. App. 277, 146 N. E. 217 (1925); *Gasco v. Tracas*, 85 Ind. App. 591, 155 N. E. 179 (1927); *Jasper County*

*Farms Co. v. Holden*, 79 Ind. App. 214, 137 N. E. 618 (1923); *Gaar, Scott & Co. v. Rose*, 3 Ind. App. 269, 29 N. E. 616 (1892); *Manning v. Gasharie*, 27 Ind. 399 (1866).

### Section 161. UNAUTHORIZED ACTS OF GENERAL AGENT.

A general agent for a disclosed or partially disclosed principal subjects his principal to liability for acts done on his account which usually accompany or are incidental to transactions which he is authorized to conduct if, although they are forbidden by the principal, the other party reasonably believes that the agent is authorized to do them and has no notice that the agent is not so authorized.

*Annotation:*

The rule stated in this Section is in accord with the law of Indiana. *Lake Shore & M. S. Ry. Co. v. Foster*, 104 Ind. 293, 4 N. E. 20, 54 Am. St. Rep. 319 (1885); *Cruzan v. Smith*, 41 Ind. 288 (1872); *Longworth v. Conwell*, 2 Blackf. 469 (1831).

### Section 162. UNAUTHORIZED REPRESENTATIONS.

Except as to statements in relation to the agent's authority, in actions brought upon a contract or to rescind a contract, a disclosed or partially disclosed principal is responsible for unauthorized representations of the agent made incidental to it if the contract is otherwise authorized and if true representations as to the same matter are within the authority or the apparent authority of the agent, unless the other party there-to has notice that the representations are untrue or unauthorized.

*Annotation:*

The rule stated in this Section is in accord with the law of Indiana. *Larue v. American Diesel Engine Co.*, 176 Ind. 609, 96 N. E. 772 (1911); *Teter v. Hinders*, 19 Ind. 93 (1862); *United Coal Mining Co. v. Daugherty*, 51 Ind. App. 165, 96 N. E. 477 (1911); *Beem v. Lockhart*, 1 Ind. App. 202, 27 N. E. 239 (1891).

### Section 163. DISOBEDIENCE AS TO NAMING OR DISCLOSING PRINCIPAL.

(1) A principal who directs an agent to make a contract in the principal's name is subject to liability upon such a contract although made in the agent's name, unless the principal is excluded from it by its form or terms.

(2) If a principal directs the agent to make a contract in the agent's name, concealing the existence or identity of the

principal, he is subject to liability upon such a contract although the agent discloses the existence or identity of the principal or makes the contract in his name.

*Annotation:*

The rule stated in Subsection (1) of this Section is in accord with the law of Indiana. *Cleveland, C., C. & St. L. Ry. Co. v. Blind*, 182 Ind. 398, 105 N. E. 483 (1914); *Foellinger v. Leh*, 110 Ind. 238, 11 N. E. 289 (1887).

No Indiana cases dealing with the subject matter of Subsection (2) have been found.

**Section 164. CONTRACTS UNAUTHORIZED IN PART.**

If an agent, having the power to bind a disclosed or partially disclosed principal by certain terms in a contract, makes a contract including such terms and also other terms which are beyond the power which he has to bind the principal, the principal is not liable either upon the contract as made or the contract with the additional terms omitted.

*Annotation:*

The rule stated in this Section is in accord with the law of Indiana. *Longworth v. Conwell*, 2 Blackf. 469 (1831); *Davis v. Talbot*, 137 Ind. 235, 36 N. E. 1098 (1894); *Hammons v. Bigelow*, 115 Ind. 363, 17 N. E. 192 (1888); *Blackwell v. Ketchum*, 53 Ind. 184 (1876); *Fatman v. Leet*, 41 Ind. 133 (1872); *Cruzan v. Smith*, 41 Ind. 288 (1872); *Berry v. Anderson*, 22 Ind. 36 (1864); *Reitz v. Martin*, 12 Ind. 306 (1859).

**Section 165. AGENT ACTS FOR IMPROPER PURPOSE.**

A disclosed or partially disclosed principal is subject to liability upon a contract purported to be made on his account by an agent authorized to make it for the principal's benefit, although the agent acts for his own or other improper purpose, unless the other party has notice that the agent is not acting for the principal's benefit.

*Annotation:*

The rule stated in this Section is in accord with the law of Indiana. *First National Bank of Huntington v. Arnold*, 156 Ind. 487, 60 N. E. 134 (1901); *Craig School Township v. Scott*, 124 Ind. 72, 24 N. E. 585 (1890); *Miami County Bank v. State*, 61 Ind. App. 360, 112 N. E. 40 (1916).

**Section 166. THIRD PERSONS HAVING NOTICE OF LIMITATION OF AUTHORITY.**

If a third person has notice of a limitation of an agent's authority, he cannot subject the principal to liability upon a transaction with the agent in violation of such limitation.

*Annotation:*

The rule stated in this Section is in accord with the law of Indiana. *Longworth v. Conwell*, 2 Blackf. 469 (1831); *Hammons v. Bigelow*, 115 Ind. 363, 17 N. E. 192 (1888); *The Ohio & Miss. Ry. Co. v. Hatton*, 60 Ind. 12 (1877); *Bragg v. Bamberger*, 23 Ind. 198 (1864); *Hubbard v. Ranje*, 52 Ind. App. 611, 98 N. E. 314 (1912); *Strong v. Ross*, 33 Ind. App. 586, 71 N. E. 918 (1904); *Lucas v. Rader*, 29 Ind. App. 287, 64 N. E. 488 (1902).

**Section 167. THIRD PERSONS HAVING NOTICE OF LIMITATIONS OF WRITTEN AUTHORIZATIONS.**

If a third person dealing with an agent has notice that the agent's authority is created or described in a writing which is intended for his inspection, he is affected by limitations upon the authority contained in the writing, unless misled by conduct of the principal.

*Annotation:*

No Indiana cases dealing with the subject matter of this Section have been found.

**Section 168. POWER OF AGENT AS TO STATEMENTS OF HIS AUTHORITY.**

A disclosed or partially disclosed principal is not subject to liability because of untrue representations by an agent as to the existence or extent of his authority or the facts upon which it depends, except as stated in §§ 169-172.

*Annotation:*

The rule stated in this Section is in accord with the law of Indiana. *Blair-Baker Horse Co. v. First National Bank*, 164 Ind. 77, 72 N. E. 1027 (1905); *Bankers Surety Co. v. German Investment & Securities Co.*, 189 Ind. 311, 126 N. E. 6 (1920); *W. T. Rawleigh Medical Co. v. Van Winkle*, 67 Ind. App. 24, 118 N. E. 834 (1918).

**Section 169. AGENT AUTHORIZED TO DISCLOSE TERMS.**

A disclosed or partially disclosed principal who invites third persons to deal with the agent on terms to be disclosed by the agent is subject to liability upon contracts made with them by the agent, although the terms are not within the authority of the agent unless they have notice that the terms are not authorized.

*Annotation:*

No Indiana cases dealing with the subject matter of this Section have been found.

**Section 170. AGENT'S STATEMENTS OF FACTS ON WHICH HIS AUTHORITY DEPENDS.**

A disclosed or partially disclosed principal who invites third persons to rely upon the representation of an agent as to the happening of a contingency upon which the authority of the agent depends, is subject to liability upon contracts made with the agent by such third persons in reasonable reliance upon unauthorized and untrue representations of the agent that the contingency has happened.

*Annotation:*

No Indiana cases dealing with the subject matter of this Section have been found.

**Section 171. AUTHORITY DEPENDENT ON FACTS WITHIN AGENT'S PECULIAR KNOWLEDGE.**

Unless otherwise agreed, a disclosed or partially disclosed principal who manifests to third persons that a general agent is authorized to make a contract if an event happens or if a specified fact exists, the happening or existence of which is peculiarly within the agent's knowledge, is subject to liability as a party to a contract made with such persons who rely upon the untruthful representations of the agent that the event has happened or that the fact exists; unless otherwise agreed, the principal is not so subject to liability for such statements by a special agent.

*Annotation:*

No Indiana cases dealing with the subject matter of this Section have been found.

**Section 172. GENERAL AGENT AUTHORIZED TO ISSUE COMMERCIAL DOCUMENTS.**

Unless otherwise agreed, a disclosed or partially disclosed principal who authorizes a general agent in the regular course of his employment to issue documents representing chattels or chooses in action if an event happens or a specified fact exists, the happening or existence of which is peculiarly within the knowledge of the agent, is subject to liability to purchasers of such documents who have no notice that the agent has improperly issued them.

*Annotation:*

No Indiana cases dealing with the subject matter of this Section have been found.

**Section 173. UNAUTHORIZED ISSUE OF NEGOTIABLE INSTRUMENT.**

A disclosed or partially disclosed principal who employs a general agent in a position in which it is usual for such agents to issue negotiable instruments is subject to liability to a holder in due course of such an instrument issued by the agent in the name of the principal, although contrary to the principal's directions, as if the instrument were authorized.

*Annotation:*

The rule stated in this Section is in accord with the law of Indiana. *Warren Creamery Co. v. Farmers State Bank*, 81 Ind. App. 453, 143 N. E. 635 (1923).

**Section 174. AGENT ENTRUSTED WITH CHATTEL.**

A disclosed or partially disclosed principal who entrusts an agent with a chattel, other than a commercial document described in § 172, but who does not authorize him to transfer or otherwise affect the principal's interest therein, is not thereby affected by a transaction between the agent and a third person.

*Annotation:*

The rule stated in this Section is in accord with the law of Indiana. *Reitz v. Martin*, 12 Ind. 306, 74 Am. Dec. 215 (1859); *Cleveland C., C. & St. L. R. Co. v. Moline Plow Co.*, 13 Ind. App. 225, 41 N. E. 480 (1895).

**Section 175. AGENT AUTHORIZED TO DEAL WITH CHATTEL ENTRUSTED TO HIM.**

(1) A disclosed or partially disclosed principal who entrusts a special agent with the possession of a chattel other than a commercial document described in § 172, with directions to deal with it in a particular way, as by sale, barter, pledge, or mortgage, is not thereby affected in his interests by a transaction of a kind different from that authorized.

(2) The principal is affected in his interests by a transaction of the same kind as that authorized if it is conducted in the usual course of business by an agent dealing in such chattels with one who reasonably believes that the agent is authorized.

*Annotation:*

The rule stated in Subsection (1) of this Section is in accord with the law of Indiana. *Adams Express Co. v. Byers*, 177 Ind. 33, 95 N. E. 513 (1911); *Stultz v. Miltenburger*, 176 Ind. 561, 96 N. E. 581 (1911); *Kiefer v. Klincksick*, 144 Ind. 46, 42 N. E. 447 (1895); *Robertson's Music House v. Holy*, 82 Ind. App. 529,

146 N. E. 862 (1925); *Lowenstine v. Citro*, 74 Ind. App. 516, 129 N. E. 280 (1920); *Cathcart v. Dalton*, 71 Ind. App. 650, 125 N. E. 519 (1919).

No Indiana cases dealing with the subject matter of Subsection (2) have been found.

**Section 176. AGENT ENTRUSTED WITH COMMERCIAL DOCUMENT.**

A disclosed or partially disclosed principal who entrusts an agent with possession of, and a limited authority to deal with, a document representing a chattel or a chose in action in such form that possession thereof is commonly regarded as indicating a general power to dispose of it, is subject to the loss of his interests therein by the agent's unauthorized disposition of it if it comes to the hands of a purchaser without notice that the agent was not authorized to dispose of it.

*Annotation:*

The Uniform Sales Act and the Uniform Warehouse Receipts Act have been adopted in Indiana.

**Section 177. AGENT ENTRUSTED WITH NEGOTIABLE INSTRUMENTS.**

A disclosed or partially disclosed principal who entrusts an agent with the possession of a negotiable instrument not payable to bearer or endorsed to the agent is not thereby subject to the loss of his interests therein by the collection of the claim or the transfer of the document by the agent.

*Annotation:*

No Indiana cases dealing with the subject matter of this Section have been found.

The Negotiable Instruments Law has been adopted in Indiana.

**Section 178. AGENT AUTHORIZED TO COLLECT A DEBT.**

Where an agent is authorized to collect a debt but is not authorized to receive a check in payment, the principal is bound by payment to the agent by means of a check payable to the agent's order if the agent endorses the instrument and receives its face value in money from the bank upon which it is drawn.

*Annotation:*

No Indiana cases dealing with the subject matter of this Section have been found.

**TITLE D. DEFENSES AND LIABILITY AFFECTED BY  
SUBSEQUENT EVENTS**

**Section 179. RIGHTS BETWEEN THIRD PERSON AND AGENT.**

Unless otherwise agreed, the liability of a disclosed or partially disclosed principal is not affected by any rights or liabilities existing between the other party and the agent at the time the contract is made.

*Annotation:*

No Indiana cases dealing with the subject matter of this Section have been found.

**Section 180. DEFENSES OF PRINCIPAL.**

Personal defenses available to the agent if sued upon the contract are not available to the principal.

*Annotation:*

No Indiana cases dealing with the subject matter of this Section have been found.

**Section 181. AGENT'S CONDUCT SUBSEQUENT TO TRANSACTION.**

The liability of a disclosed or partially disclosed principal upon a contract is affected by conduct of an agent in relation to it subsequent to its making, if such conduct:

- (a) is authorized; or
- (b) comes within the rules stated in §§ 159-178, which state the conditions under which the principal is subject to liability for unauthorized conduct.

*Annotation:*

The rule stated in this Section is in accord with the law of Indiana. *Cole Carriage Co. v. Hacker*, 37 Ind. App. 368, 90 N. E. 923 (1910); *Springfield Engine & Thresher Co. v. Kennedy*, 7 Ind. App. 502, 34 N. E. 856 (1893).

**Section 182. PERFORMANCE BY THIRD PERSON BELIEVING AGENT AUTHORIZED.**

A disclosed or partially disclosed principal on whose account an agent purports to make a contract does not become liable as a party to the contract by reason of the fact that the third person performs the contract believing that the agent is authorized nor, unless there is ratification, by reason of the fact that the principal receives a benefit as the result of such a performance.

*Annotation:*

The rule stated in this Section is in accord with the law of Indiana. *Shearer v. Evans*, 89 Ind. 400 (1883).

**Section 183. SETTLEMENT WITH AGENT BY PRINCIPAL.**

A disclosed or partially disclosed principal is discharged from liability to the other party to the contract if, as the other party should have realized might happen, the principal pays or settles accounts with the agent in reasonable reliance upon conduct of the other party, not induced by the agent's misrepresentations, which indicates that the agent has paid or otherwise settled the account.

*Annotation:*

No Indiana cases dealing with the subject matter of this Section have been found.

**Section 184. JUDGMENT AGAINST AGENT.**

Recovery of judgment against the agent of a disclosed or partially disclosed principal upon a contract to which the agent is a party does not discharge the principal unless the agent and principal are joint contractors.

*Annotation:*

No Indiana cases dealing with the subject matter of this Section have been found.

**Section 185. SATISFACTION OF CLAIM BY AGENT.**

A disclosed or partially disclosed principal ceases to be liable to the other party upon a contract if the claim against him has been satisfied by an agent who has been authorized to do so or who is a party to the contract.

*Annotation:*

No Indiana cases dealing with the subject matter of this Section have been found.

**Topic 3. Undisclosed Principal**

**TITLE A. CREATION OF LIABILITY BY AUTHORIZED ACTS**

**Section 186. GENERAL RULE.**

An undisclosed principal is bound by contracts and conveyances made on his account by an agent acting within his

authority, except that the principal is not bound by a contract which is under seal or which is negotiable, as stated in §§ 191-192, or upon a contract which in terms excludes him, as stated in § 189.

*Annotation:*

The rule stated in this Section is in accord with the law of Indiana. *Beach v. Huntsman*, 42 Ind. App. 205, 85 N. E. 523 (1908). See, also, *Woodford v. Hamilton*, 139 Ind. 481, 39 N. E. 47 (1894).

**Section 187. ORDERS OF SEVERAL PRINCIPALS COMBINED.**

Neither of two or more undisclosed principals, each of whom independently authorizes the same agent to make a contract, is liable upon a single contract made by the agent which combines the orders of the principals and calls for a single performance.

*Annotation:*

No Indiana cases dealing with the subject matter of this Section have been found.

**Section 188. AUTHORIZED REPRESENTATIONS.**

In actions brought upon a contract or to rescind a contract or conveyance made by an agent for an undisclosed principal, the principal is responsible for authorized representations of the agent made in connection therewith as if made by himself, subject to the rules in regard to knowledge and notice stated in §§ 256 and 268-283.

*Annotation:*

The rule stated in this Section is in accord with the law of Indiana. *Du Souchet v. Dutcher*, 113 Ind. 249, 15 N. E. 459 (1888); *Teter v. Hinders*, 19 Ind. 93 (1862); *Beem v. Lockhart*, 1 Ind. App. 202, 27 N. E. 239 (1891); *Wolfe v. Pugh*, 101 Ind. 293 (1884).

**Section 189. CONTRACTS SPECIFICALLY EXCLUDING PRINCIPAL.**

An undisclosed principal does not become liable upon a contract which provides that he or any undisclosed principal shall not be a party to it.

*Annotation:*

No Indiana cases dealing with the subject matter of this Section have been found.

**Section 190. SIMPLE CONTRACTS IN WRITING.**

**An undisclosed principal may be liable upon a contract in writing, if neither negotiable nor sealed, although it purports to be the contract of the agent.**

*Annotation:*

The rule stated in this Section is in accord with the law of Indiana. *O. M. Cockrum Co. v. Klein*, 165 Ind. 627, 74 N. E. 529 (1905); *Tewksbury v. Howard*, 138 Ind. 103, 37 N. E. 355 (1894).

**Section 191. SEALED INSTRUMENTS.**

**An undisclosed principal is not liable as a party to a sealed instrument.**

*Annotation:*

No Indiana cases dealing with the subject matter of this Section have been found.

**Section 192. NEGOTIABLE INSTRUMENTS.**

**An undisclosed principal is not liable as a party to a negotiable instrument.**

*Annotation:*

The rule stated in this Section is in accord with the law of Indiana. *Reddick v. Young*, 177 Ind. 632, 98 N. E. 813 (1912).

**Section 193. TRANSACTIONS REQUIRED TO BE IN WRITING.**

**For the purpose of satisfying the provisions of a statute requiring a note or memorandum to be signed by the party to be charged or by his agent, a memorandum signed by a properly authorized agent on account of an undisclosed principal is sufficient to charge the principal.**

*Annotation:*

No Indiana cases dealing with the subject matter of this Section have been found.

**TITLE B. CREATION OF LIABILITY BY UNAUTHORIZED ACTS**

**Section 194. ACTS OF GENERAL AGENTS.**

**A general agent for an undisclosed principal authorized to conduct transactions subjects his principal to liability for acts done on his account, if usual or necessary in such transactions, although forbidden by the principal to do them.**

*Annotation:*

No Indiana cases dealing with the subject matter of this Section have been found.

**Section 195. ACTS OF MANAGER APPEARING TO BE OWNER.**

An undisclosed principal who entrusts an agent with the management of his business is subject to liability to third persons with whom the agent enters into transactions usual in such businesses and on the principal's account, although contrary to the directions of the principal.

*Annotation:*

This Section seems to be contrary to the law of Indiana. *Kiefer v. Klinsick*, 144 Ind. 46, 42 N. E. 447 (1895); *McGirr v. Sell*, 60 Ind. 249 (1877). This rule is disapproved in *Kiefer v. Klinsick*, 13 Ind. App. 253, 37 N. E. 1048 (1895), by the majority of the Appellate Court, which certified the case to the Supreme Court with the recommendation that *McGirr v. Sell*, *supra*, be overruled.

**Section 196. UNAUTHORIZED REPRESENTATIONS.**

In actions brought upon a contract or to rescind a contract, an undisclosed principal is subject to liability for unauthorized representations of the agent made incidental to it, if the contract is otherwise authorized and if true representations as to the same matter are within the authority of the agent, unless the other party has reason to know that they are untrue.

*Annotation:*

No Indiana cases dealing with the subject matter of this Section have been found.

**Section 197. DISOBEDIENCE AS TO DISCLOSING PRINCIPAL.**

A principal who directs an agent to make a contract in the principal's name or revealing the principal's existence becomes liable upon the contract although made by the agent in his own name with another who has no reason to know that a principal exists, if the contract is one to which an undisclosed principal may be a party.

*Annotation:*

No Indiana cases dealing with the subject matter of this Section have been found.

**Section 198. CONTRACT UNAUTHORIZED IN PART.**

If an agent having the power to bind an undisclosed principal by certain terms in a contract makes a contract including

such terms and also other terms which are beyond the power which he has to bind the principal, the principal is not liable either upon the contract as made or upon the contract with the additional terms omitted.

*Annotation:*

No Indiana cases dealing with the subject matter of this Section have been found.

**Section 199. ACTS NOT ON ACCOUNT OF PRINCIPAL.**

An undisclosed principal who authorizes an agent to make a particular contract on his account and in his business is not liable upon such contract if the agent makes the very contract authorized but does not intend to act on account of the principal.

*Annotation:*

No Indiana cases dealing with the subject matter of this Section have been found.

**Section 200. AGENT ENTRUSTED WITH CHATTEL.**

An undisclosed principal who entrusts an agent with a chattel, other than a commercial document described in § 202, but does not authorize him to transfer or otherwise affect the principal's interests therein, is not thereby affected by a transaction between the agent and a third person.

*Annotation:*

The rule stated in this Section is in accord with the law of Indiana. *Reitz v. Martin*, 12 Ind. 306, 74 Am. Dec. 215 (1859).

**Section 201. AGENT AUTHORIZED TO DEAL WITH CHATTEL ENTRUSTED TO HIM.**

(1) An undisclosed principal who entrusts a special agent with the possession of a chattel with directions to deal with it in a particular way, as by sale, barter, pledge or mortgage, is not thereby affected in his interests therein by a transaction of a kind different from that authorized.

(2) The principal is affected in his interests by a transaction of the same kind as that authorized if it is conducted in the usual and ordinary course of business by an agent dealing in such chattels with one who reasonably believes the agent to be owner.

*Annotation:*

No Indiana cases dealing with the subject matter of this Section have been found. For cases dealing with simliar situations, see: *Kiefer v. Klinsick*, 144 Ind. 46, 42 N. E. 437 (1895); *Pearce v. Dill*, 149 Ind. 136, 48 N. E. 788 (1897); *Reitz v. Martin*, 12 Ind. 306, 74 Am. Dec. 215 (1859).

**Section 202. AGENT ENTRUSTED WITH COMMERCIAL DOCUMENT.**

An undisclosed principal who entrusts an agent with possession of, and a limited authority to deal with, a document representing a chattel or a chose in action in such form that the possession thereof is commonly regarded as indicating a general power to dispose of it, is subject to the loss of his interests therein by the agent's unauthorized disposition of it if it comes to the hands of a purchaser who takes it, reasonably believing that the agent is the owner.

*Annotation:*

No Indiana cases dealing with the subject matter of this Section have been found. The Uniform Sales Act and the Uniform Bills of Lading Act have been adopted in Indiana.

**TITLE C. DEFENSES AND LIABILITY AFFECTED BY  
SUBSEQUENT EVENTS****Section 203. DEFENSES OF PRINCIPAL.**

Personal defenses available to the agent if sued upon the contract are not available to the principal.

*Annotation:*

No Indiana cases dealing with the subject matter of this Section have been found.

**Section 204. NOTICE TO PRINCIPAL OR AGENT.**

The liability of an undisclosed principal is affected by the knowledge which he acquires or notification given to him which is relevant to his liability, and also knowledge acquired or notification given to the agent with which he is chargeable under the rules stated in §§ 268-283.

*Annotation:*

No Indiana cases dealing with the subject matter of this Section have been found.

**Section 205. POWER OF AGENT TO MODIFY CONTRACT BEFORE DISCLOSURE OF PRINCIPAL.**

Until the existence of the principal is disclosed, an agent who has made a contract for an undisclosed principal has power to cancel the contract and to modify it with binding effect upon the principal if the contract or conveyance, as modified, is authorized or is within the power of the agent to make within the rules stated in §§ 194-202.

*Annotation:*

No Indiana cases dealing with the subject matter of this Section have been found.

**Section 206. POWER OF AGENT AS TO PERFORMANCE OF OR DEFAULTS IN CONTRACT BEFORE DISCLOSURE OF PRINCIPAL.**

Until his existence is disclosed, the principal is affected by performance rendered by the third person to the agent, by notifications given to the agent with respect to the contract, and by the performance or default of the agent.

*Annotation:*

No Indiana cases dealing with the subject matter of this Section have been found.

**Section 207. POWER OF AGENT AFTER DISCLOSURE OF EXISTENCE OR IDENTITY OF PRINCIPAL.**

After disclosure of the existence or identity of the principal, the power of the agent to deal with the other party with reference to a contract or conveyance made for the principal while undisclosed is the same as if the principal were originally a disclosed or partially disclosed principal.

*Annotation:*

No Indiana cases dealing with the subject matter of this Section have been found.

**Section 208. SETTLEMENT WITH AGENT BY PRINCIPAL.**

An undisclosed principal is discharged from liability to the other party to the contract if he has paid or settled accounts with an agent reasonably relying upon conduct of the other party, not induced by the agent's misrepresentations, which indicates that the agent has paid or otherwise settled the account.

*Annotation:*

No Indiana cases dealing with the subject matter of this Section have been found. However, the case of *Thomas v. Atkinson*, 38 Ind. 248 (1871), indicates that the rule stated will be followed when such a case arises.

**Section 209. CHOICE BY THIRD PERSON TO LOOK ONLY TO AGENT.**

An undisclosed principal is not discharged from liability upon a contract made for him by an agent by the fact that, after the discovery of his existence or identity, the other party looks only to the agent for payment or performance.

*Annotation:*

No Indiana cases dealing with the subject matter of this Section have been found.

**Section 210. JUDGMENT AGAINST AGENT.**

(1) An undisclosed principal is discharged from liability upon a contract if, with knowledge of the identity of the principal, the other party recovers judgment against the agent who made the contract.

(2) The principal is not discharged by a recovery of judgment against the agent by the other party before knowledge of the identity of the principal.

*Annotation:*

No Indiana cases dealing with the subject matter of this Section have been found.

**Section 211. SATISFACTION OF CLAIM BY AGENT.**

An undisclosed principal ceases to be liable upon a contract made on his account by an agent if the claim of the other party against the agent has been satisfied.

*Annotation:*

No Indiana cases dealing with the subject matter of this Section have been found.