Chapter 7

LIABILITY OF PRINCIPAL TO THIRD PERSON; TORTS

Topic 1. Liability for Personal Violation of Duty

Section 212. Principal Intends Conduct or Consequences.

A person is subject to liability for the consequences of another's conduct which results from his directions as he would be for his own personal conduct if, with knowledge of the conditions, he intends the conduct, or if he intends its consequences, except where the one directing or the one acting has a privilege or immunity not available to the other.

Annotation:
The rule stated in this Section is in accord with the law of Indiana. Skeel v. Prest-O-Lite Co., 66 Ind. App. 635, 118 N. E. 601 (1918); Ogle v. Hudson, 30 Ind. App. 539, 66 N. E. 702 (1903).

Section 213. Principal Does Not Intend Conduct or Consequences.

A person conducting an activity through servants or other agents is subject to liability:
(a) if he is negligent in the conduct of such activity; or
(b) if he permits his servants or other agents to act negligently upon his premises or with his instrumentalities.

Annotation:

*The publication of the rules (not the Comment and Examples) of the Restatement of the Law of Agency, together with the Indiana Annotations, is continued in the Notre Dame Lawyer by an arrangement with the American Law Institute which holds the copyright privileges to that part of the Annotations not previously published in this Law Review. It is with the consent of the American Law Institute that the publication is continued in the Notre Dame Lawyer.

Section 214. Failure of Principal to Perform Non-Delegable Duty.

A master or other principal who is under a duty to provide protection for or to have care used to protect others or their property and who confides the performance of such duty to a servant or other agent is subject to liability to such others for harm caused to them by the failure of such agent to perform the duty.

Annotation:

Topic 2. Liability for Authorized Conduct or Conduct Incidental Thereto

TITLE A. IN GENERAL

Section 215. Conduct Authorized but Unintended by Principal.

A master or other principal who unintentionally authorizes conduct of a servant or other agent which constitutes a tort to a third person is subject to liability to such person.

Annotation:
The rule stated in this Section is in accord with the law of Indiana. Ogle v. Hudson, 30 Ind. App. 539, 66 N. E. 702 (1903).

Section 216. Unauthorized Tortious Conduct.

In accordance with the rules stated in §§ 219-267, a master or other principal may be liable to another whose interests
have been invaded by the tortious conduct of a servant or other agent, although the principal does not personally violate a duty to such other nor authorize the conduct of the agent causing the invasion.

Annotation:
See annotations to sections 219-267 inc.

Section 217. Principal or Agent Has Immunities or Privileges.

(1) A master or other principal is not liable for the consequences of the conduct of a servant or other agent for which the principal would not be liable if he were the actor, unless he has a personal immunity or privilege to act not available to the agent.

(2) A master or other principal is not liable for acts of a servant or other agent which the agent is privileged to do although the principal himself would not be so privileged; but he may be liable for an act as to which the agent has a personal immunity from suit.

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

Section 218. Effect of Ratification.

Upon ratification, a purported master or other principal becomes subject to liability for injuries caused by the tortious act of one acting or purporting to act as his agent as if the act had been authorized, if there has been no loss of capacity by the principal.

Annotation:
The rule stated in this Section is in accord with the law of Indiana. Muir v. Robinson, 205 Ind. 293, 186 N. E. 289 (1933); Bailey v. London Guarantee & Accident Co., 72 Ind. App. 84, 121 N. E. 128 (1918).

TITLE B. TORTS OF SERVANTS

Section 219. General Rule.

(1) Except as to fellow servants, a master is subject to liability for injuries caused by the tortious conduct of servants within the scope of their employment.

(2) Except as stated in §§ 212-214 and 265-267, a master is not liable for the tortious conduct of servants acting outside the scope of employment.
Section 220. **Definition.**

(1) A servant is a person employed to perform service for another in his affairs and who, with respect to his physical conduct in the performance of the service, is subject to the other's control or right to control.

(2) In determining whether one acting for another is a servant or an independent contractor, the following matters of fact, among others, are considered:

(a) the extent of control which, by the agreement, the master may exercise over the details of the work;

(b) whether or not the one employed is engaged in a distinct occupation or business;

(c) the kind of occupation, with reference to whether, in the locality, the work is usually done under the direction of the employer or by a specialist without supervision;

(d) the skill required in the particular occupation;

(e) whether the employer or the workman supplies the instrumentalities, tools, and the place of work for the person doing the work;

(f) the length of time for which the person is employed;

(g) the method of payment, whether by the time or by the job;

(h) whether or not the work is a part of the regular business of the employer; and

(i) whether or not the parties believe they are creating the relationship of master and servant.

Annotation:
See annotations under Section 2, subsection 2. In the following cases the application of the various tests for determining whether or not a master-servant relation exists were considered: *Prest-O-Lite Co. v. Skeel*, 182 Ind. 595, 106 N. E. 365, Ann. Cas. 1917A, 474 (1914); *Marion Shoe Co. v. Eppley*, 181 Ind. 219, 104 N. E. 65, Ann. Cas. 1916D, 220 (1914); *New Albany Forge & Rolling Mill v. Cooper*, 131 Ind. 363, 30 N. E. 294 (1892); *In re Duncan*, 73 Ind. App. 270,
Section 221. Master's Consent to Service.

To constitute the relationship of master and servant, the one for whom the service is rendered must consent or manifest his consent to receive the services as a master.

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

Section 222. Servants of Agent of Undisclosed Principal.

An undisclosed principal is subject to liability for conduct within the scope of employment of servants employed for him by an agent empowered to employ such servants.

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

Section 223. Servant Required To Be Taken From a Limited Class.

The relationship of master and servant may exist although the law requires the selection of persons for the particular work to be made from a limited class irrespective of how limited the class is, and the master is subject to liability for torts committed within the scope of employment by servants selected from such a class.

*Annotation:*
The rule stated in this Section is in accord with the law of Indiana. *Funk v. Bonham*, 204 Ind. 170, 183 N. E. 312 (1932); *Antioch Coal Co. v. Rockey*, 169 Ind. 247, 82 N. E. 76 (1907).

Section 224. Person Compelled to Serve.

One compelled by law or duress to render services to another has power to subject the other to liability as if there were a master and servant relationship.

*Annotation:*
No Indiana cases dealing with the subject matter of this Section have been found.
Section 225.  **Person Serving Gratuitously.**

One volunteering services without an agreement for or expectation of reward may be a servant of the one accepting such services.

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

Section 226.  **Servant Acting for Two Masters.**

A person may be the servant of two masters, not joint employers, at one time as to one act, provided that the service to one does not involve abandonment of the service to the other.

*Annotation:*
The rule stated in this Section is in accord with the law of Indiana. *Lieber v. Messick*, 92 Ind. App. 264, 173 N. E. 238 (1930).

Section 227.  **Servant Lent to Another Master.**

A servant directed or permitted by his master to perform services for another may become the servant of such other in performing the services. He may become the other's servant as to some acts and not as to others.

*Annotation:*

**SCOPE OF EMPLOYMENT**

Section 228.  **General Statement.**

(1) Conduct of a servant is within the scope of employment if, but only if:
   (a) it is of the kind he is employed to perform, as stated in § 229;
   (b) it occurs substantially within the authorized time and space limits, as stated in §§ 233-234; and
   (c) it is actuated, at least in part, by a purpose to serve the master, as stated in §§ 235-236.

(2) It is a question of fact, depending upon the extent of departure, whether or not an act, as performed in its setting
of time and place, is so different in kind from that authorized, or has so little relation to the employment, that it is not within its scope.

Annotation:
For cases illustrating the meaning of scope of employment, see annotations to sections referred to in subsection 1.

The rule stated in subsection 2 is in accord with the law of Indiana. Pittsburgh, C. & St. L. R. Co. v. Kirk, 102 Ind. 399, 1 N. E. 849, 52 Am. Rep. 675 (1885); Reamer v. Davis, 85 Ind. 201 (1882).

Section 229. Kind of Conduct Within Scope of Employment.

(1) To be within the scope of the employment, conduct must be of the same general nature as that authorized, or incidental to the conduct authorized.

(2) In determining whether or not the conduct, although not authorized, is nevertheless so similar to or incidental to the conduct authorized as to be within the scope of employment, the following matters of fact are to be considered:

(a) whether or not the act is one commonly done by such servants;
(b) the time, place and purpose of the act;
(c) the previous relations between the master and the servant;
(d) the extent to which the business of the master is apportioned between different servants;
(e) whether the act is outside the enterprise of the master or, if within the enterprise, has not been entrusted to any servant;
(f) whether or not the master has reason to expect that such an act will be done;
(g) the similarity in quality of the act done to the act authorized;
(h) whether or not the instrumentality by which the harm is done has been furnished by the master to the servant;
(i) the extent of departure from the normal method of accomplishing an authorized result; and
(j) whether or not the act is seriously criminal.

Annotation:
The rule stated in subsection 1 is in accord with the law of Indiana. Pittsburgh, C. & St. L. R. Co. v. Kirk, 102 Ind. 399, 1 N. E. 849, 52 Am. Rep. 675
In the following cases the application of the various tests determining whether or not the conduct was so similar to or incidental to the conduct authorized as to be within the scope of employment were applied: *Baltimore & Ohio S. W. R. Co. v. Burtch*, 192 Ind. 199, 134 N. E. 858 (1922); *Spice v. Astry*, 184 Ind. 1, 110 N. E. 201 (1915). See *Reamer v. Davis*, 85 Ind. 201 (1882).

Section 230. **Forbidden Acts.**

An act, although forbidden or done in a forbidden manner, may be within the scope of employment.

*Annotation:*

The rule stated in this Section is in accord with the law of Indiana. *Spice v. Astry*, 184 Ind. 1, 110 N. E. 201 (1915); *Pittsburgh, C. & St. L. R. Co. v. Kirk*, 102 Ind. 399, 1 N. E. 849, 52 Am. Rep. 675 (1885).

Section 231. **Criminal or Tortious Acts.**

An act may be within the scope of employment although consciously criminal or tortious.

*Annotation:*

The rule stated in this Section is in accord with the law of Indiana. *Wolfe v. Pugh*, 101 Ind. 293 (1885); *Godwin v. DeMotte*, 64 Ind. App. 394, 116 N. E. 17 (1917).

Section 232. **Failure to Act.**

The failure of a servant to act may be conduct within the scope of employment.

*Annotation:*

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

Section 233. **Time of Service.**

Conduct of a servant is within the scope of employment only during a period which is not unreasonably disconnected from the authorized period.

*Annotation:*


Section 234. **Area of Service.**

Conduct is within the scope of employment only in a locality not unreasonably distant from the authorized area.
Annotation:
No Indiana cases dealing with the subject matter of this Section have been found.

Section 235. CONDUCT NOT FOR PURPOSE OF SERVING MASTER.

An act of a servant is not within the scope of employment if it is done with no intention to perform it as a part of or incidental to a service on account of which he is employed.

Annotation:

Section 236. CONDUCT ACTUATED BY DUAL PURPOSE.

An act may be within the scope of employment, although done in part to serve the purposes of the servant or of a third person.

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

Section 237. RE-ENTRY INTO EMPLOYMENT.

A servant who has temporarily departed from the scope of employment does not re-enter it until he is again reasonably near the authorized space and time limits and is acting with the intention of serving his master's business.

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

USE OF INSTRUMENTALITIES BY SERVANTS

Section 238. INSTRUMENTALITIES NOT USED IN EMPLOYMENT.

Except as stated in §§ 212-214, a master is liable for harm caused by the use of instrumentalities entrusted by him to a servant only if they are used within the scope of employment.

Annotation:
The rule stated in this Section is in accord with the law of Indiana. Fame Laundry Co. v. Henry, 195 Ind. 453, 144 N. E. 545 (1924); Martin v. Lilly, 188 Ind. 139, 121 N. E. 443 (1919); Glenn v. Johnson, 91 Ind. App. 263, 171 N. E. 18 (1930); Bojrab v. B. & B. Sand & Gravel Co., 86 Ind. App. 556, 156 N. E. 519 (1927).
Section 239. **Use of Unauthorized Instrumentality.**

A master is not liable for injuries caused by the negligence of a servant in the use of an instrumentality which is of a substantially different kind from that authorized as a means of performing the master's service, or over the use of which it is understood that the master is to have no right of control.

*Annotation:*

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

Section 240. **Servant Leaves Instrumentality in Dangerous Situation.**

A master is subject to liability if his servant, entrusted with the possession of an instrumentality, leaves it while within the scope of employment under such circumstances that an undue risk of harm to third persons is created, although the servant leaves it to serve some purpose of his own.

*Annotation:*

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

Section 241. **Unauthorized Transfer of Custody of Instrumentality.**

A master who has entrusted a servant with an instrumentality is subject to liability for harm caused by its negligent management by one to whom the servant entrusts its custody to serve the purposes of the master, if the servant should realize that there is an undue risk that such person will harm others by its management.

*Annotation:*

The rule stated in this Section is in accord with the law of Indiana. *City of Indianapolis v. Lee*, 76 Ind. App. 506, 132 N. E. 605 (1921).

Section 242. **Liability to Invitee of Servant.**

A master is not subject to liability for the conduct of a servant towards a person harmed as the result of accepting or soliciting from the servant an invitation, not binding upon the master, to enter or remain upon the master's premises or vehicle, although the conduct which immediately causes the harm is within the scope of the servant's employment.
Annotation:
The rule stated in this Section in is accord with the law of Indiana. Pennsyl-

SPECIFIC TORTS OF SERVANTS

Section 243. NEGLIGENCE.

A master is subject to liability for physical harm caused by the negligent conduct of servants within the scope of employment.

Annotation:
The rule stated in this Section is in accord with the law of Indiana. Mast v. Borneman & Sons, 61 Ind. App. 325, 111 N. E. 949 (1916); Brudi v. Luhrman, 26 Ind. App. 221, 59 N. E. 409 (1901).

Section 244. TRESPASS AND CONVERSION.

A master is subject to liability for a trespass or conversion caused by an act done by a servant within the scope of employment.

Annotation:
The rule stated in this Section is in accord with the law of Indiana. Cox v. Reynolds, 7 Ind. 257 (1855).

Section 245. USE OF FORCE.

A master who authorizes a servant to perform acts which involve the use of force against persons or things, or which are of such a nature that they are not uncommonly accompanied by the use of force, is subject to liability for a trespass to such persons or things caused by the servant's unprivileged use of force exerted for the purpose of accomplishing a result within the scope of employment.

Annotation:
The rule stated in this Section is in accord with the law of Indiana. Dickson v. Waldron, 135 Ind. 507, 34 N. E. 506, 24 L. R. A. 483, 41 Am. St. Rep. 440 (1893); Evansville & Crawfordsville R. Co. v. Baum, 26 Ind. 70 (1866) Oak-
land City Agricultural & Industrial Society v. Bingham, 4 Ind. App. 545, 31 N. E. 383 (1892); Pennsylvania Co. v. Weddle, 100 Ind. 138 (1885); Evansville & Terre Haute R. Co. v. McKee, 99 Ind. 519, 50 Am. Rep. 102 (1885); American Express Co. v. Patterson, 73 Ind. 430 (1881).
Section 246. **Tortious Institution of Conduct of Legal Proceedings.**

A master is subject to liability for the tortious institution or conduct of legal proceedings by a servant acting within the scope of employment.

*Annotation:*

The rule stated in this Section is in accord with the law of Indiana. *Pennsylvania Co. v. Weddle*, 100 Ind. 138 (1885); *American Express Co. v. Patterson*, 73 Ind. 430 (1881). But, see, *Judy v. Gifford*, 33 Ind. App. 353, 71 N. E. 504 (1904).

Section 247. **Defamation.**

A master is subject to liability for defamatory statements made by a servant acting within the scope of his employment.

*Annotation:*

The rule stated in this Section is in accord with the law of Indiana. *Dunn v. Hall*, 1 Ind. 344, Smith 288 (1849).

Section 248. **Interference with Business Relationships.**

A master is subject to liability to persons injured in their business relationships by the tortious conduct of a servant acting within the scope of employment.

*Annotation:*

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

Section 249. **Misrepresentations.**

A master is subject to liability for misrepresentations of a servant committed within the scope of employment.

*Annotation:*

See annotations to sections 256-264 for the cases illustrating the rule stated in this Section.

**TITLE C. TORTS OF AGENTS WHO ARE NOT SERVANTS**

**IN GENERAL**

Section 250. **Non-Liability for Physical Harm.**

Except as stated in § 251, a principal is not liable for physical harm caused by the negligent physical conduct of an agent, who is not a servant, during the performance of the principal's
business, unless the act was done in the manner directed or authorized by the principal or the result was one intended or authorized by the principal.

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

Section 251. **Liability for Physical Harm Caused by Agent.**

A principal is subject to liability for physical harm to the person or the tangible things of another caused by the negligence of an agent who is not a servant:

(a) in the performance of an act which the principal is under a duty to have performed with care under the rule stated in § 214; and

(b) in the making of a representation which the agent is authorized or apparently authorized to make or which is within the power of the agent to make for the principal within the rules stated in §§ 160-162, 194-196, and §§ 256-264.

Annotation:
See annotations to named sections for the cases illustrating the rules in this Section.

Section 252. **Mistakes by Agent.**

If an agent not a servant, authorized to do an act provided certain conditions exist, and to determine whether or not such conditions exist, does the act in the erroneous belief that such conditions do exist and thereby commits a tort, the principal is subject to liability for the act.

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

Section 253. **Tortious Institution or Conduct of Legal Proceedings.**

A principal who authorizes an agent who is not a servant to institute or conduct such legal proceedings as in his judgment are lawful and desirable for the protection of the principal’s interests is subject to liability to a person against whom proceedings reasonably adapted to accomplish the principal’s purposes are tortiously brought by the agent.
Annotation:
No Indiana cases dealing with the subject matter of this Section have been found.

Section 254. Defamation.

A principal who authorizes an agent who is not a servant to make such statements concerning another as the agent believes to be true is subject to liability for untrue defamatory statements of the sort authorized, made by the agent concerning such other and made upon the principal’s account.

Annotation:
The rule stated in this Section is in accord with the law of Indiana. Dunn v. Hall, 1 Ind. 344, Smith 288 (1849).

Section 255. Acts of Subagents.

The rules stated in §§ 250-254 as applicable to the liability of a principal for the acts of agents, are applicable to his liability for the acts of subagents, as far as their conduct has relation to the principal’s affairs.

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

MISREPRESENTATIONS

Section 256. Knowledge of Principal Where Agent Misrepresents.

(1) A principal who authorizes an agent to conduct a transaction for him, intending that the agent shall make representations to another in the course of it which the principal knows to be untrue, is liable for such misrepresentations as if he himself had made them intentionally; if, although he does not intend that the agent shall make misrepresentations, he should know that the agent will do so, the principal is liable as if he himself had made them negligently.

(2) If a principal does not intend that an agent shall enter upon a transaction in which certain knowledge is important and has no reason to believe that the agent will do so or if, after receiving relevant information, he cannot communicate with the agent, the principal is not bound by the fact that he has such knowledge which, if known to the agent, would affect the principal’s liability in the transaction.
Section 257.  **Misrepresentations; in General.**

A principal is subject to liability for loss caused to another by the other's reliance upon a deceitful representation of an agent if the representation is:

(a) authorized;
(b) apparently authorized; or
(c) within the power of the agent to make for the principal within the rules stated in §§ 160-162 and 194-196.

Annotation:
The rule stated in this Section is in accord with the law of Indiana. *Nichols v. Colgan*, 130 Ind. 341, 30 N. E. 301 (1892); *Du Souchet v. Dutcher*, 113 Ind. 249, 15 N. E. 459 (1888); *Bailey v. London Guarantee & Accident Co.*, 72 Ind. App. 84, 121 N. E. 128 (1918). See the annotations to the sections referred to in Clause (c) of the *Restatement* for cases illustrating the rule stated in that clause.

Section 258.  **Incidental Misrepresentations.**

Except as stated in § 260, a principal authorizing an agent to enter into negotiations to which representations concerning the subject matter thereof are usually incident is subject to liability for loss caused to the other party to the transaction by tortious misrepresentations of the agent upon matters which the principal might reasonably expect would be the subject of representations, provided the other party has no notice that the representations are unauthorized.

Annotation:
The rule stated in this Section is in accord with the law of Indiana. *Godwin v. De Motte*, 64 Ind. App. 394, 116 N. E. 17 (1917); *Beem v. Lockhart*, 1 Ind. App. 202, 27 N. E. 239 (1891).
matter, made by an agent entrusted with its preliminary or final negotiations, is subject to rescission at the election of the person deceived.

Annotation:
The rule stated in this Section is in accord with the law of Indiana. Wolfe v. Pugh, 101 Ind. 293 (1885); Teter v. Hinders, 19 Ind. 93 (1862); The Union Central Life Ins. Co. v. Huyck, 5 Ind. App. 474, 32 N. E. 580 (1892).


(1) A principal may, by contract with another, relieve himself of liability in deceit for prior or subsequent frauds of an agent to such other.

(2) A contract obtained by an agent through fraudulent misrepresentations of facts may be rescinded by the other party although it provides that it shall not be affected by representations not contained therein.

Annotation:
No Indiana cases dealing with the subject matter of subsection 1 have been found.
See Orbison v. Lesh, 205 Ind. 340, 184 N. E. 771 (1933).

Section 261. Agent's Position Enables Him to Deceive.

A principal who puts an agent in a position that enables the agent, while apparently acting within his authority, to commit a fraud upon third persons is subject to liability to such third persons for the fraud.

Annotation:
The rule stated in this Section is in accord with the law of Indiana. Kostoff v. Meyer-Kiser Bank, 201 Ind. 396, 167 N. E. 527, 168 N. E. 863, 69 A. L. R. 796 (1929).

Section 262. Agent Acts for His Own Purposes.

A person who otherwise would be liable to another for the misrepresentations of one apparently acting for him, under the rule stated in § 261, is not relieved from liability by the fact that the apparent agent acts entirely for his own purposes, unless the other has notice of this.

Annotation:
The rule stated in this Section is in accord with the law of Indiana. Kostoff v. Meyer-Kiser Bank, 201 Ind. 396, 167 N. E. 527, 168 N. E. 863, 69 A. L. R. 796 (1929).
Section 263. Property Acquired for Principal by Fraud of Agent.

Unless he has changed his position, a principal whose agent has fraudulently acquired property for him, holds it subject to the interests of the defrauded person.

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

Section 264. Misrepresentations by Subagent.

The rules stated in §§ 256-263, as applicable to representations by agents, are applicable to representations by subagents made in connection with transactions conducted for the principal.

Annotation:
No Indiana cases dealing with the subject matter of this Section have been found.
Section 267. Reliance upon Care or Skill of Apparent Agent or Servant.

One who represents that another is his servant or other agent and thereby causes a third person justifiably to rely upon the care or skill of such apparent agent is subject to liability to the third person for harm caused by the lack of care or skill of the one appearing to be a servant or other agent as if he were such.

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

Chapter 8

LIABILITY OF PRINCIPAL TO THIRD PERSONS; NOTICE THROUGH AGENT

Topic 1. Notification To or By Agents

Section 268. General Rule.

(1) Except as stated in § 271, a notification given to an agent is notice to the principal if it is given:
(a) to an agent authorized to receive it;
(b) to an agent apparently authorized to receive it;
(c) to an agent authorized to conduct a transaction, with respect to matters connected with it as to which notice is usually given such agent, unless the one giving the notification has notice that the agent is not authorized to receive it;
(d) to an agent to whom by the terms of a contract notification is to be given, as to matters in connection with the contract; or
(e) to the agent of an unidentified or undisclosed principal with reference to transactions entered into by such agent within his powers, until discovery of the identity of the principal; thereafter as in the case of a disclosed principal.

(2) The rules as to the giving of notification to an agent apply to the giving of notification by an agent.

Annotation:
Subsection (1, a). Springfield Engine & Thresher Co. v. Kennedy, 7 Ind. App. 502, 34 N. E. 856 (1893); Brannon v. May, 42 Ind. 92 (1873); Marion Mfg. Co.
RESTATEMENT OF THE LAW OF AGENCY 197


Subsection (1, b). No Indiana cases dealing with the subject matter of this division of section 268 have been found.


(e) No Indiana cases dealing with the subject matter of this division of Section 268 have been found.

No Indiana cases dealing with the subject matter of subsection 2 have been found.

Section 269. TIME WHEN NOTIFICATION MUST BE GIVEN.

To be effective as notice, a notification must be given to or by an agent during the time when the agent has power to affect his principal by giving or receiving such notification, as stated in § 268.

Annotation:
The rule stated in this Section is in accord with the law of Indiana. Day v. Wamsley, 33 Ind. 145 (1870); Cleveland, C., C. & St. L. R. Co. v. Moore, 170 Ind. 328, 82 N. E. 52, rehearing denied, 170 Ind. 363, 84 N. E. 540 (1907); Field v. Campbell, 164 Ind. 389, 72 N. E. 260, 108 Am. St. Rep. 301 (1904); Blair v. Whittaker, 31 Ind. App. 664, 69 N. E. 182 (1903).

Section 270. TIME WHEN NOTICE RESULTS.

Notice results when the act or event constituting notification is performed or happens.

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

Section 271. NOTIFICATION; AGENT'S INTERESTS ADVERSE TO PRINCIPAL'S.

A notification by or to a third person to or by an agent is not prevented from being notice to or by the principal because of the fact that the agent, when receiving or giving the notifi-
carnation, is acting adversely to the principal, except where the third person has notice of the agent's adverse purposes.

Annotation:
The rule stated in this Section is in accord with the law of Indiana. Knowledge of an agent is imputable to a corporation but will not be imputed to an officer thereof in a transaction between him and the corporation in which he is acting for himself and not for it. *Peckham v. Hendren*, 76 Ind. 47 (1881). The rule that notice to the agent is notice to the principal does not apply when the circumstances are such as to raise a clear presumption that the agent will not transmit his knowledge to his principal as in cases where his interest is antagonistic to his principal. *Andrews v. Minter Coal & Coke Co.*, 90 Ind. App. 320, 168 N. E. 869 (1929).

**Topic 2. Knowledge of Agents**

Section 272. **General Rule.**

In accordance with and subject to the rules stated in §§ 273-282, the liability of a principal is affected by the knowledge of an agent concerning a matter as to which he acts within his power to bind the principal or upon which it is his duty to give the principal information.

Annotation:

Section 273. **Agent Having Apparent Authority.**

Except where there is reliance upon the appearance of agency, a principal is not bound by knowledge of an agent concerning matters as to which he has only apparent authority.

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

Section 274. **Agent Acquiring Property for Principal.**

The knowledge of an agent who acquires property for his principal affects the interests of his principal in the subject matter to the same extent as if the principal had acquired it with the same knowledge, except where the agent is privi-
leged, as stated in § 281, or a change in conditions makes it inequitable thus to affect the principal.

Annotation:
The rule stated in this Section is in accord with the law of Indiana. Notice to an agent for the purchase of land of the rights of another therein is notice to the principal. Blair v. Whitaker, 31 Ind. App. 664, 69 N. E. 182 (1903); Brannon v. May, 42 Ind. 92 (1873); Field v. Campbell, 164 Ind. 389, 72 N. E. 260, 108 Am. St. Rep. 301 (1904).

Section 275. AGENT HAVING DUTY TO REVEAL KNOWLEDGE.

Subject to the rules stated in § 282, and except where knowledge as distinguished from reason to know is important, the principal is affected by the knowledge which an agent has a duty to disclose to the principal or to another agent of the principal to the same extent as if the principal had the information.

Annotation:
The rule stated in this Section is in accord with the law of Indiana. Knowledge acquired by an agent while the agent is acting within the scope of his agency or authority is the knowledge of his principal, and the principal is bound by the acts of the agent. Shaffer v. Milwaukee Mechanics' Ins. Co., 17 Ind. App. 204, 46 N. E. 557 (1897).

Section 276. TIME, PLACE, OR MANNER OF ACQUISITION OF AGENT'S KNOWLEDGE.

Except as stated in § 281, the time, place, or manner in which knowledge of an agent or servant is obtained is immaterial in determining the liability of a principal or master because of it.

Annotation:
See Day v. Walmsley, 33 Ind. 145 (1870).

Section 277. AGENT WHO SHOULD BUT DOES NOT HAVE KNOWLEDGE.

The principal is not affected by the knowledge which an agent should have acquired in the performance of the agent's duties to the principal or to others, except where the principal or master has a duty to others that care shall be exercised in obtaining information.

Annotation:
No Indiana cases dealing with the subject matter of this Section have been found.
Section 278. **Time When Agent's Knowledge Affects Principal.**

The principal is affected by the knowledge which the agent has when acting for him or, if it is the duty of the agent to communicate the information and not otherwise to act, the principal is affected after the lapse of such time as is reasonable for its communication.

*Annotation:*

The rule stated in this Section is in accord with the law of Indiana. Knowledge obtained by the agent while the agent is acting within the scope of his authority or agency, is the knowledge of the principal and the principal is bound by the acts of the agent. *Shaffer v. Milwaukee Mechanics’ Ins. Co.*, 17 Ind. App. 204, 46 N. E. 557 (1897). See, also, *Day v. Wamsley*, 33 Ind. 145 (1870).

Section 279. **Agent Dealing With Principal as Adverse Party.**

The principal is not affected by the knowledge of an agent as to matters involved in a transaction in which the agent deals with the principal or another agent of the principal as, or on account of, an adverse party.

*Annotation:*

Where an attorney in whom trust and confidence is reposed by a client misleads the client by false statements or by fraudulent concealment of material matters the transaction will be annulled. *McLeod v. Applegate*, 127 Ind. 349, 26 N. E. 830 (1891). Knowledge is imputable to a corporation by the acts of its agent but will not be imputed to an officer thereof in a transaction between him and the corporation in which he is acting for himself and not for it. *Peckham v. Hendren*, 76 Ind. 47 (1881).

Section 280. **Agent's Knowledge of His Own Unauthorized Acts.**

If an agent has done an unauthorized act or intends to do one, the principal is not affected by the agent's knowledge that he has done or intends to do the act.

*Annotation:*

The rule stated in this Section is in accord with the law of Indiana. Where the plaintiff's agent fraudulently induced his employer to execute certain checks which were paid by defendant's bank, in an action by the plaintiff against defendant for making payments on forged paper it was held that the plaintiff-employer was not charged with any knowledge obtained by the employee in doing the unlawful acts, he not being within the scope of his employment while doing such acts. *Fletcher American Nat. Bank v. Crescent Paper Co.*, 193 Ind. 329, 139 N. E. 664 (1923).
Section 281. Agent Privileged Not to Disclose Knowledge.

Except to the extent that the principal benefits from such knowledge, he is not affected by the knowledge of an agent who is privileged not to disclose or to act upon it.

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

Section 282. Agent Acting Adversely to Principal.

(1) A principal is not affected by the knowledge of an agent in a transaction in which the agent is acting adversely to the principal and entirely for his own or another's purposes, except as stated in Subsection (2).

(2) The principal is affected by the knowledge of an agent although acting adversely to the principal:

(a) if the failure of the agent to act upon or to reveal the information results in a violation of a contractual or relational duty of the principal to a person harmed thereby;

(b) if the agent enters into negotiations within the scope of his powers and the person with whom he deals reasonably believes him to be authorized to conduct the transaction; or

(c) if, before he has changed his position, the principal knowingly retains a benefit through the act of the agent which otherwise he would not have received.

Annotation:
Subsection (1). The rule stated in subsection 1 is in accord with the law of Indiana. The rule that notice to the agent is notice to the principal does not apply when the circumstances are such as to raise a clear presumption that the agent will not transmit his knowledge to his principal, as in cases where his interest is antagonistic to his principal. Andrews v. Minter Coal & Coke Co., 90 Ind. App. 320, 168 N. E. 869 (1929).

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

Topic 3. Servants and Subagents

Section 283. General Rule.

The rules stated in §§ 268-282 dealing with the liability of a principal because of notice through an agent apply to the liability:
(a) of a master because of notice to the servant;
(b) of a principal because of notice to a subagent where the subagent has a duty to act or to communicate to the agent or to the principal on account of his employment or apparent employment in the principal’s business; and
(c) of a master or other principal because of a notification given by a servant or a subagent.

Annotation:
Clause (a). Notice to a foreman of a railroad company’s round-house of a defect in an engine is notice to the company. Ohio & M. R. Co. v. Stein, 140 Ind. 61, 39 N. E. 246 (1894).
City of Ft. Wayne v. Christie, 156 Ind. 172, 59 N. E. 385 (1901); Antioch Coal Co. v. Rockey, 169 Ind. 247, 82 N. E. 76 (1907); Indiana Union Traction Co. v. Long, 176 Ind. 532, 96 N. E. 604 (1911).
Clauses (b) and (c). No Indiana cases dealing with the subject matter of these divisions of Section 283 has been found.

Chapter 9
ADMISSIBILITY IN EVIDENCE OF STATEMENTS OF AGENTS

Section 284. Operative and Relevant Statements.

In actions between the principal and third persons, evidence of a statement by an agent is admissible for or against either party for the purpose of proving that such statement was made, if the fact that the statement was made constitutes, or is relevant in the proof of, one of the ultimate facts required to be established in order to maintain a cause of action or defense.

Annotation:
The rule stated in this Section is in accord with the law of Indiana. Tomlinson v. Collett, 3 Blackf. 436 (1834); Heller v. Crawford, 37 Ind. 279 (1871); Union Central Life Ins. Co. v. Thomas, 46 Ind. 44 (1873); Louisville, N. A. & C. R. Co. v. Henly, 88 Ind. 535 (1883); United States Exp. Co. v. Rawson, 106 Ind. 215, 6 N. E. 337 (1886); Lockwood v. Rose, 125 Ind. 588, 25 N. E. 710 (1890); Johnson v. Schrepsfeman, 67 Ind. App. 606, 119 N. E. 494 (1918).

Section 285. Statements as to Authority.

Evidence of a statement by an agent concerning the existence or extent of his authority is not admissible against the principal to prove its existence or extent, unless it appears by other evidence that the making of such statement was within
the authority of the agent or, as to persons dealing with the agent, within the apparent authority or other power of the agent.

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); American Tel. & Teleg. Co. v. Green, 164 Ind. 349, 73 N. E. 707 (1905); Johnston Harvester Co. v. Bartley, 81 Ind. 406 (1882); Union Central Life Ins. Co. v. Thomas, 46 Ind. 44 (1873); Columbus, C. & I. C. R. Co. v. Powell, 40 Ind. 37 (1872).

Section 286. Statements to Third Persons Constituting Admissions.

Statements of an agent to a third person are admissible in evidence to prove the truth of facts asserted in them as though made by the principal, if the agent was authorized to make the statement or was authorized to make, on the principal's behalf, true statements concerning the subject matter.

Annotation:
The rule stated in this Section is in accord with the law of Indiana. Rahm v. Deig, 121 Ind. 283, 23 N. E. 141 (1889); Adams Exp. Co. v. Harris, 120 Ind. 73, 21 N. E. 340 (1889); Pennsylvania Co. v. Nations, 111 Ind. 203, 12 N. E. 309 (1887); Pittsburgh, C. & St. L. R. Co. v. Theobald, 51 Ind. 246 (1875); Union Central Life Ins. Co. v. Thomas, 46 Ind. 44 (1873); Bellefontaine R. Co. v. Hunter, 33 Ind. 335, 5 Am. Rep. 201 (1870); Bennett v. Holmes, 32 Ind. 108 (1869); Lafayette & I. R. Co. v. Ehman, 30 Ind. 83 (1868); Hudspeth v. Allen, 26 Ind. 165 (1866).

Section 287. Reports to Principal.

Statements by an agent to the principal or to another agent of the principal are not admissible against the principal under the rule stated in § 286; such statements may be admissible in evidence under other rules of evidence applicable thereto.

Annotation:
The rule stated in this Section is in accord with the law of Indiana. In an action on a contract made by the defendant’s agent, evidence as to what communications passed between the agent and his superior officers, as to the contract, is inadmissible, there being no plea of ratification or estoppel. American Tel. & Teleg. Co. v. Green, 164 Ind. 349, 73 N. E. 707 (1905).

Section 288. When Agent Has Authority to Make Statements.

1. Authority to do an act or conduct a transaction does not of itself include authority to make statements concerning the act or transaction.
(2) Authority to make statements of fact does not of itself include authority to make statements admitting liability because of such facts.

Annotation:
The rule stated in this Section is in accord with the law of Indiana.

Subsection (1). Statements made by workmen as to the merits of machinery which was being placed by them in a factory for the seller are not binding upon the seller. Smith v. Barber, 153 Ind. 322, 59 N. E. 1014 (1899).

Subsection (2). The legal advisor or general counsel of a railway company has no authority by virtue of his general employment to bind the company by declarations or admissions outside of the business of the law department, unless it is shown that such counsel is vested with special or general authority concerning matters outside of such department. Ohio & M. R. Co. v. Levy, 134 Ind. 343, 32 N. E. 815, 34 N. E. 20 (1893).


Evidence of statements of agents, whether or not such statements are authorized, is admissible in favor of and against the principal, if admissible under the general rules of evidence as to the admissibility of such statements by persons not agents.

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

Section 290. Ratification of Agent's Statements.

The rules stated in §§ 284-288 are applicable to statements made by a person purporting to act for another or intending to serve the other if the conduct is ratified by the person on whose behalf they are made or purported to be made.

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

Section 291. Statements of Servants and Subagents.

The rules stated in §§ 284-290, dealing with the admissibility of statements of an agent, apply to the admissibility of statements of a servant, and of a subagent with reference to transactions conducted for the principal by him.

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

(To be continued.)