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Liability of Third Person to Principal

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Chapter 10

LIABILITY OF THIRD PERSON TO PRINCIPAL

Topic 1. Contracts; Disclosed Agency

Section 292. General Rule.

The other party to a contract made by an agent acting within his power to bind a disclosed or partially disclosed principal is liable to the principal as if he had contracted directly with the principal, unless the principal is excluded as a party by the form or terms of the contract.

Annotation:

The rule stated in this Section is in accord with the law of Indiana. Sharpe v. Jones, 18 Ind. 314, 81 Am. Dec. 259 (1862); Deval v. Halstead, 16 Ind. 287 (1861).

Section 293. Principal Excluded from Transaction.

The other party to a contract made by an agent on behalf of a disclosed or partially disclosed principal does not become liable to such principal upon it in an action at law if the principal is excluded as a party by the form or terms of the contract.

Annotation:

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

Section 294. Orders of Several Principals Combined.

The other party to a contract made by an agent who has been authorized by several disclosed or partially disclosed principals to act for them separately, but who combines their or-
ders and purports to contract for them jointly, is not liable in an action at law brought upon the contract by one of them alone.

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

Section 295. Negotiable Instruments.

An obligor upon a negotiable instrument given to an agent on account of the principal is not liable in an action at law to a principal not named therein and not otherwise a holder.

Annotation:
The following cases illustrate the situation set out in comment (b): Dutch v. Boyd, Cashier, 81 Ind. 146 (1881); Nave v. Hadley, 74 Ind. 155 (1881).

IND. STAT. ANN. (Baldwin, 1934) §§ 12859; IND. ANN. STAT. (Burns, 1933) § 19-313; IND. ANN. STAT. (Burns, 1926) § 11401.

Section 296. Sealed Instruments.

An obligor named in a sealed instrument given to an agent on behalf of the principal is not liable to the principal upon it in an action at law unless the principal appears therein as a covenantee.

Annotation:
The effect of seals in the execution of instruments is governed by statutes.

IND. STAT. ANN. (Baldwin, 1934) §§ 243-246; IND. ANN. STAT. (Burns, 1926) §§ 492-495; IND. ANN. STAT. (Burns, 1933) §§ 2-1601—2-1604.

Section 297. Interpretation of Written Instruments as to Parties.

The rules with respect to the interpretation of written instruments as to the parties thereto in actions brought against the principal by the third person, as stated in §§ 154-158, are applicable in actions brought by the principal against the third person.

Annotation:
See the annotations to sections 154-158.

Section 298. Defenses of Third Person.

The other party to a contract made by an agent on behalf of a disclosed or partially disclosed principal has all the defenses which he would have had against the principal if the principal had made the contract under the same conditions.
Section 299. Rights Between Third Person and Agent.

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

Section 300. Agent's Conduct Subsequent to Transaction.

The liability of a person contracting with a disclosed or partially disclosed principal is affected by conduct of an agent in relation to the contract 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.

Section 301. Unauthorized Assignment of Contract by Agent.

If a document evidencing a contract which an agent has made with another on behalf of the principal is in such form that the principal has reason to believe that third persons may reasonably believe the agent to be the owner of the contract or to have power of disposition of it, and if the agent had power to bind the principal by a contract in that form the claim of the principal against the other party is destroyed by the agent's unauthorized transfer to a bona fide purchaser of the rights against the other party under the contract.
Topic 2. Contracts; Undisclosed Agency

Section 302. General Rule.

A person who makes a contract with an agent of an undisclosed principal, intended by the agent to be on account of his principal and within the power of such agent to bind his principal, is liable to the principal as if the principal himself had made the contract with him, except as stated in §§ 303-310.

Annotation: An undisclosed principal may sue upon a contract, subject to all equities growing out of the transaction. Moore v. Butler University, 83 Ind. 376 (1882); Nave v. Hadley, 74 Ind. 155 (1881); Johnson v. Hoover, 72 Ind. 395 (1880); Brooks v. Doxey, 72 Ind. 327 (1880).

Section 303. Principal Excluded from Transaction.

A person with whom an agent makes a contract on account of an undisclosed principal is not liable in an action at law brought upon the contract by such principal:

(a) if the contract is in the form of a sealed or negotiable instrument; or

(b) if the terms of the contract exclude liability to any undisclosed principal or to the particular principal.

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

Section 304. Agent Misrepresents Existence of Principal.

A person with whom an agent contracts on account of an undisclosed principal may rescind the contract if he was induced to enter into it by a representation that the agent was not acting for a principal and if, as the agent or principal had notice, he would not have dealt with the principal.

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

Section 305. Orders of Several Principals Combined.

The other party to a contract made by an agent for several undisclosed principals who have not jointly authorized him is not liable in an action at law upon the contract brought by one of them alone.
ANNOTATION:

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

Section 306. RIGHTS BETWEEN THIRD PERSON AND AGENT.

(1) If the agent has been authorized to conceal the existence of the principal, the liability to an undisclosed principal of a person dealing with the agent within his power to bind the principal is diminished by any claim which he may have against the agent at the time of making the contract and which he could set off against the agent if action were brought by the agent.

(2) If the agent is authorized only to contract in the principal's name, the third person does not have set-off for a claim due him from the agent unless the agent has been entrusted with the possession of chattels which he disposes of as directed or unless the principal has otherwise misled the third person into extending credit to the agent.

ANNOTATION:

Subsection (1). The rule stated in subsection 1 is in accord with the law of Indiana. An undisclosed principal of a contract has only such remedies against the third person as the agent could have had if he had been the principal. Moore v. Butler University, 83 Ind. 376 (1882); Nave v. Hadley, 74 Ind. 155 (1881); Johnson v. Hoover, 72 Ind. 395 (1880); Brooks v. Doxey, 72 Ind. 327 (1880).

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

Section 307. AGENT'S CONDUCT SUBSEQUENT TO TRANSACTION.

(1) Until the existence of a principal is disclosed, the liability of the other party in an action brought upon the contract by the principal is affected by:

(a) a notice to or demand upon the agent provided for in the contract, or default or repudiation by the agent in performing the terms of the contract;

(b) the cancellation of the contract made or consented to by the agent;

(c) payment or other performance rendered to the agent;

(d) a subsequently arising set-off against the agent, under the principles stated in § 306;

(e) a judgment obtained on the merits in a suit brought by or against the agent; or

(f) an assignment by the agent to a third person, under the principles stated in § 301.
(2) After the other party has notice of the existence of the principal, the other party in his dealings with the agent can affect his liability to the principal only as if the principal were originally a disclosed or partially disclosed principal.

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

Section 308. DEFENSES OF THIRD PERSON.

In an action by an undisclosed principal against the other party to a contract, the other party has all the defenses which he would have had against the principal had the principal made the contract under the same conditions.

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

Section 309. PRINCIPAL CANNOT OR DOES NOT GIVE REQUIRED PERFORMANCE.

Acts done or offered to be done by an undisclosed principal which, if performed by a person other than the agent, are not substantially those which the contract contemplates, are not effective as a performance or as a tender of performance of the contract.

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

Section 310. WHEN PERFORMANCE MUST BE RENDERED TO PRINCIPAL.

An undisclosed principal upon whose account an agent has acted within his power to bind the principal in making a contract, unless excluded by its terms, may require the other party to render performance to him instead of to the agent, except in the case of personal services or where performance to the principal would subject the other to a substantially different liability from that contemplated.

Annotation:
No Indiana cases dealing with the subject matter of this Section have been found.
Topic 3. Non-Contractual Liability

Section 311. Mistaken Dealing with Unauthorized Agent.

A person with whom an agent deals in excess of his power to subject the principal to liability or to affect the principal's interests under the rules stated in §§ 140-211 is not relieved from liability to the principal for interference with the principal's interests by such dealing because of a reasonable belief that the agent was authorized or was the owner.

Annotation:
The rule stated in this Section is in accord with the law of Indiana. Coon v. Gurley, 49 Ind. 199 (1874); Thomas v. Atkinson, 38 Ind. 248 (1871); Reits v. Martin, 12 Ind. 306, 74 Am. Dec. 215 (1859); Cathcart v. Dalton, 71 Ind. App. 650, 125 N. E. 519 (1919); Lucas v. Rader, 29 Ind. App. 287, 64 N. E. 488 (1902).

Section 312. Intentionally Causing or Assisting Agent to Violate Duty.

A person who, without being privileged to do so, intentionally causes or assists an agent to violate a duty to his principal is subject to liability to the principal.

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

Section 313. Adversely Employing Agent of Another.

(1) A person who, knowing that the other party to a transaction has employed an agent or servant to conduct the transaction for him, employs the agent or servant on his own account in such transaction is subject to liability to the other party unless the other acquiesces in the double employment.

(2) If, without knowledge of the common agency, two persons employ the same agent to conduct a transaction between them, the transaction is voidable at the election of either.

Annotation:
Subsection (1). The rule stated in subsection 1 is in accord with the law of Indiana. Sterling Fire Ins. Co. v. Comision Reguladora, 195 Ind. 29, 143 N. E. 2 (1924); Alexander v. The Northwestern Christian University, 57 Ind. 466 (1877); H. H. Woodsmall & Co. v. Steele, 82 Ind. App. 58, 141 N. E. 246, 144 N. E. 630 (1923); Bedford Coal & Coke Co. v. Park County Coal Co., 44 Ind. App. 390, 89 N. E. 412 (1909).

Subsection (2). The rule stated in subsection 2 is in accord with the law of Indiana. Cheney v. Unroe, 166 Ind. 350, 77 N. E. 1041, 114 Am. St. Rep. 391 (1906).
Related cases in which agents were not allowed to recover for services because of adverse employment are: *Simonds v. Hoover*, 35 Ind. 412 (1871); *Hammond v. Bookwalter*, 12 Ind. App. 177, 39 N. E. 872 (1895).

Section 314. Quasi-Contractual Liability.

A person who receives from an agent of another the principal's things, with notice that the agent is thereby committing a breach of a fiduciary duty to the principal, holds the things thus acquired as a constructive trustee or, at the election of the principal, is subject to liability to him for their value; one who receives such things without notice but who is not a bona fide purchaser is subject to liability as a constructive trustee or to the extent to which he has been unjustly enriched.

*Annotation:*

The rule stated in this Section is in accord with the law of Indiana. *Pearce v. Dill*, 149 Ind. 136, 48 N. E. 788 (1897); *Orb v. Coapstick*, 136 Ind. 313, 36 N. E. 278 (1894); *Riehl v. Evansville Foundry Ass'n*, 104 Ind. 70, 3 N. E. 633 (1885); *Pugh v. Pugh*, 9 Ind. 132 (1857); *McKay v. Corwine*, 69 Ind. App. 238, 118 N. E. 978 (1918); *Robards v. Hamrick*, 39 Ind. App. 134, 79 N. E. 386 (1906).

Section 315. Third Person Fraudulent.

A person who fraudulently obtains a contract through, or enters into a transaction with, an agent acting within the scope of his power to bind the principal, or who by fraud causes the agent to do what would be a violation of his duty to the principal if the agent knew the facts, is subject to liability to the principal whether the fraud is practiced upon the agent or upon the principal.

*Annotation:*

The rule stated in this Section is in accord with the law of Indiana. *Pattison v. Barnes*, 26 Ind. 209 (1866); *Cramer v. Wright*, 15 Ind. 278 (1860).

Section 316. Interference with Principal's Business.

A person who, not being privileged to do so, intentionally interferes with the performance of the principal's business by the agent is subject to liability to the principal under the conditions stated in the Restatement of Torts.

*Annotation:*

No Indiana cases dealing with the subject matter of this Section have been found.
Section 317. CONTRIBUTORY NEGLIGENCE OF AGENT.

The contributory negligence of an agent acting within the scope of his power to bind his principal by his conduct bars the principal from recovery against a third person to the same extent as if the principal had been negligent.

Annotation:

Topic 4. Servants and Subagents

Section 318. GENERAL RULE.

The rules stated in §§ 292-317, relating to the liability of a third person to a principal, are applicable to his liability:
(a) to a master on whose account a servant has acted or purported to act; and
(b) to a principal on whose account a subagent has acted or purported to act.

Annotation:
The annotations to sections 292-317 are applicable to this Section.

Topic 5. Effect of Ratification

Section 319. GENERAL RULE.

Where a purported servant or other agent has entered into a transaction with a third person, its ratification by the purported master or other principal has the same effect upon the liabilities of the third person to the principal as an original authorization, under the conditions stated in §§ 82-102.

Annotation:
See the annotations to sections 82-102.

Chapter 11

LIABILITY OF AGENT TO THIRD PERSON

Topic 1. Contracts and Conveyances

TITLE A. AGENT A PARTY TO CONTRACT

Section 320. PRINCIPAL DISCLOSED.

Unless otherwise agreed, a person making or purporting to make a contract with another as agent for a disclosed principal does not become a party to the contract.
Annotation:
The rule stated in this Section is in accord with the law of Indiana. Hawkins v. Dorst Co., 186 Ind. 430, 116 N. E. 577 (1917); Hayes v. Shirk, 167 Ind. 569, 78 N. E. 653 (1906); Cochran v. Brooks, 15 Ind. 343 (1860); Robeson v. Chapman, 6 Ind. 352 (1855); McHenry v. Duffield, 7 Blackf. 41 (1843); Pitman v. Kintner, 5 Blackf. 250, 33 Am. Dec. 461 (1839); Deming v. Bullitt, 1 Blackf. 241 (1823). Comment (d): Agents acting for merchants resident in a foreign country, are presumed to intend to become personally liable for contracts made by them for their employers, notwithstanding, they fully disclose at the time the character in which they act. However, this presumption can be rebutted by proving that the credit was given to the principal only. Vawter v. Baker, 23 Ind. 63 (1864). Comment (e): An agent of a disclosed principal may bind himself personally by superadding his own credit to that of the principal. Shordan v. Kyler, 87 Ind. 38 (1882).

Section 321. **Principal Partially Disclosed.**

Unless otherwise agreed, a person purporting to make a contract with another for a partially disclosed principal is a party to the contract.

Annotation:
No Indiana cases which make a distinction between undisclosed and partially disclosed principals have been found.

Section 322. **Principal Undisclosed.**

An agent purporting to act upon his own account, but in fact making a contract on account of an undisclosed principal, is a party to the contract.

Annotation:
The rule stated in this Section is in accord with the law of Indiana. Merrill v. Wilson, 6 Ind. 426 (1855); Polk v. Harworth, 48 Ind. App. 32, 95 N. E. 332 (1911).

Section 323. **Integrated Contracts.**

(1) If it appears unambiguously in an integrated contract that the agent is a party or is not a party, extrinsic evidence is not admissible to show a contrary intent, except for the purpose of reforming the contract.

(2) If the fact of agency appears in an integrated contract, not sealed nor negotiable, and there is no unambiguous expression of an intention either to make the agent a party thereto or not to make him a party thereto, extrinsic evidence may be introduced to show the intention of the parties.

(3) If the fact of agency does not appear in an integrated contract, an agent who appears to be a party thereto may not introduce extrinsic evidence to show that he is not a party, except:
(a) for the purpose of reforming the contract; or
(b) to establish that his name was signed as the business name of the principal and that it was so agreed by the parties.

Annotation:

Subsection (1). The rule stated in subsection 1 is in accord with the law of Indiana. This is inferable from the cases cited under subsections 2 and 3.

Subsection (2). The rule stated in subsection 2 is in accord with the law of Indiana. Taylor v. Angel, 162 Ind. 670, 71 N. E. 49 (1904).

Subsection (3). The rule stated in subsection 3 is in accord with the law of Indiana. George v. Smith, 190 Ind. 582, 129 N. E. 231 (1921).

Section 324. Negotiable Instruments.

(1) In the absence of reformation, an agent signing a negotiable instrument in his own name is a party to it although the fact of agency appears upon it, unless the name of the principal also appears.

(2) If the name of the principal appears upon a negotiable instrument, the agent is not liable if the document is interpreted as being executed by the agent only on behalf of such principal provided that the agent has power to bind the principal.

(3) If the name of the principal appears upon a negotiable instrument and the agent does not appear unambiguously as a party, extrinsic evidence of an understanding that the agent shall not be a party to it is admissible as against any holder of the instrument who has notice of the agreement or who is not a holder in due course.

Annotation:


Subsection (3). The rule stated in subsection 3 is in accord with the law of Indiana. Extrinsic evidence was held admissible to explain a promissory note where the name of the corporation was printed at the head of the note, and the note was signed by an individual with the word "President" following his name: Second Nat. Bank v. Midland Steel Co., 155 Ind. 581, 58 N. E. 333, 52 L. R. A. 307 (1900); First Nat. Bank of Worcester, Mass. v. Midland Steel Co., 157 Ind. 702, 59 N. E. 1134 (1901); Midland Steel Co. v. Citizens' Nat. Bank, 26 Ind. App. 107, 59 N. E. 211 (1901); See Bayh v. Hanna, 69 Ind. App. 348, 122 N. E. 7 (1919), holding that the real intention of the parties may be shown where a note, joint and several in form, was signed by the company and by the defendant with the word "President" following his name.
Section 325. Sealed Instruments.

An agent is not liable as a party to a sealed instrument unless he is named in the instrument as the covenantor and it also purports to be sealed by him. If this appears unambiguously, extrinsic evidence is not admissible to show that it was agreed that he should not be a party, except for the purpose of reforming the instrument.

Annotation:
See annotations for Section 296.

Section 326. Principal Known to be Nonexistent or Incapable.

An agent purporting to make a contract with another for a principal whom both know to be nonexistent or wholly incompetent does not necessarily become a party to the purported contract; unless otherwise agreed, the agent is a party to such a contract.

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

Section 327. Interpretation of Written Instruments as to Parties.

The rules with respect to the interpretation of written instruments as to the parties thereto in actions brought against the principal by the third person, as stated in §§ 154-158, are applicable in actions brought by the third person against the agent.

Annotation:
See: Hawkins v. Dorst Co., 186 Ind. 430, 116 N. E. 577 (1917); State v. Helms, 136 Ind. 122, 35 N. E. 893 (1893); Tousey v. Taw, 19 Ind. 212 (1862); Bayh v. Hanna, 69 Ind. App. 348, 122 N. E. 7 (1919). See, also, the annotations to sections 154-158.

TITLE B. Agent Not Party to Transaction Conducted by Himself

Section 328. Liability of Authorized Agent for Performance of Contract.

An agent, by making a contract only on behalf of a competent disclosed or partially disclosed principal whom he has power so to bind, does not thereby become liable for its non-performance.
Section 329. **Agent Who Warrants Authority.**

Except as stated in § 332, a person who purports to make a contract, conveyance, or representation on behalf of a principal whom he has no power to bind thereby becomes subject to liability to the other party thereto upon an implied warranty of authority, unless he has manifested that he does not make such warranty or the other party knows that the agent is not so authorized.

Annotation:

The rule stated in this Section is in accord with the law of Indiana. *Terwilliger v. Murphy*, 104 Ind. 32, 3 N. E. 404 (1885); *Newman v. Sylvester*, 42 Ind. 106 (1873); *Lewis v. Reed*, 11 Ind. 239 (1858); *Pitman v. Kintner*, 5 Blackf. 250, 53 Am. Dec. 469 (1839); *Deming v. Bullitt*, 1 Blackf. 241 (1823); *Sourwine v. McRoy Clay Works*, 42 Ind. App. 358, 85 N. E. 782 (1908); *Mendenhall v. Stewart*, 18 Ind. App. 262, 47 N. E. 943 (1897); *Houston v. Board of Commissioners of Clay County*, 18 Ind. 396 (1882).

Section 330. **Liability for Misrepresentation of Authority.**

A person who tortiously misrepresents to another that he has authority to make a contract, conveyance, or representation on behalf of a principal whom he has no power to bind thereby, becomes subject to liability to the other in an action of tort for loss caused by reliance upon such misrepresentation.

Annotation:


Section 331. **Agent Making No Warranty or Representation of Authority.**

A person who purports to make a contract, conveyance, or representation on behalf of a principal whom he has no power to bind thereby is not subject to liability to the other party thereto if he sufficiently manifests that he does not warrant his authority and makes no tortious misrepresentation.
Annotation:
The rule stated in this Section is in accord with the law of Indiana. *Newman v. Sylvester*, 42 Ind. 106 (1873); *Houston v. Board of Commissioners of Clay County*, 18 Ind. 396 (1862).

Section 332. **AGENT OF PARTIALLY INCOMPETENT PRINCIPAL.**

An agent making a contract for a disclosed principal whose contracts are voidable because of lack of full capacity to contract, or for a principal who, although having capacity to contract generally, is incompetent to enter into the particular transaction, is not thereby liable to the other party. He does not become liable by reason of the failure of the principal to perform, unless he contracts or represents that the principal has capacity or unless he has reason to know of the principal’s lack of capacity and of the other party’s ignorance thereof.

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

**TITLE C. DEFENSES AND EFFECTS OF SUBSEQUENT EVENTS**

Section 333. **RIGHTS BETWEEN THIRD PERSON AND PRINCIPAL.**

Unless otherwise agreed, the liability of an agent upon a contract between a third person and the principal to which the agent is a party is not affected by any rights or liabilities existing between the third person and the principal not arising from the transaction, except that, with the consent of the principal, the agent may set off a claim which the principal would have in an action brought against him.

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

Section 334. **DEFENSES OF AGENT.**

In an action against an agent upon a contract between a third person and the principal to which the agent is a party, the agent has all the defenses which arise out of the transaction itself and those which he personally has against the third person; defenses which are personal to the principal are not available to the agent.

Annotation:
No Indiana cases dealing with the subject matter of this Section have been found.
Section 335. Agent Surety for Principal.

In an action brought against an agent upon a contract to which the agent is a party but as to which the primary duty of performance rests upon the principal, the agent has the defenses available to a surety.

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

Section 336. Election by Third Person to Hold Principal; Agency Disclosed.

Unless otherwise agreed, the agent of a disclosed or partially disclosed principal who is a party to a contract made by another with such principal is not relieved from liability upon the contract by the determination of the other party to look to the principal alone, nor, unless the agent and the principal are joint contractors, by the fact that the other gets a judgment against the principal. He is relieved from liability to the extent that he is prejudiced thereby if he changes his position in justifiable reliance upon a manifestation of the other that he will look solely to the principal for performance.

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

Section 337. Election by Third Person to Hold Principal; Agency Undisclosed.

An agent who has made a contract on behalf of an undisclosed principal is not relieved from liability by the determination of the other party thereto to look to the principal alone for the performance of the contract. He is discharged from liability if the other obtains a judgment against the principal, or, to the extent that he is prejudiced thereby, if he changes his position in justifiable reliance upon the other's manifestation that he will look solely to the principal for payment.

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

Section 338. Effect of Ratification.

Ratification by a principal of a contract which an agent without authority purported to make for the principal termi-
nates the liability of the agent to the other party for the breach of warranty or misrepresentation of authority, under the rules stated in §§ 100-101.

Annotation:
See annotations to sections 100-101.

Topic 2. Things Received From or For Principal

TITLE A. THINGS RECEIVED FROM THIRD PERSON

Section 339. THIRD PERSON RESCINDS FOR CAUSE EXISTING AT TIME OF TRANSACTION; PRINCIPAL DISCLOSED.

An agent who has received things from another for a disclosed or partially disclosed principal has a duty to return them or their proceeds if the other rescinds the transaction by which they were received for a cause existing at the time of their receipt, to the extent that the agent has not, before notice of rescission and in good faith, changed his position.

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

Section 340. THIRD PERSON RESCINDS FOR CAUSE ARISING AFTER TRANSACTION; PRINCIPAL DISCLOSED.

Upon rescission by the other party of a transaction by which an agent has received things on behalf of a disclosed or partially disclosed principal, the agent is not thereby under a duty to return the things received to the other if the cause for rescission arises after their receipt.

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

Section 341. THIRD PERSON RESCINDS; PRINCIPAL UNDISCLOSED.

An agent who has received things from another on behalf of an undisclosed principal has a duty to return them or their proceeds upon rescission of the transaction, under the same conditions as if the agent had acted upon his own account, except that payment by the agent to the principal does not constitute such a change of position as relieves the agent from liability to the other.

Annotation:
The rule stated in this Section is in accord with the law of Indiana. Moore v. Shields, 121 Ind. 267, 23 N. E. 89 (1889).
Section 342. General Rule.

An agent who fails to deliver things given him by his principal for another person is not thereby liable to such person, unless:

(a) the agent, by a contract with the other, or with the principal for the benefit of the other, has agreed so to deliver them; or

(b) the other has legal or equitable rights in them, because of which he is entitled to possession of them or their proceeds.

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

Topic 3. Torts

Section 343. General Rule.

An agent who does an act otherwise a tort is not relieved from liability by the fact that he acted at the command of the principal or on account of the principal, except where he is exercising a privilege of the principal, or a privilege held by him for the protection of the principal's interests.

Annotation:
The rule stated in this Section is in accord with the law of Indiana. *Berghoff v. McDonald*, 87 Ind. 549 (1882); *McNaughton v. City of Elkhart*, 85 Ind. 384 (1882); *Wright v. Compton*, 53 Ind. 337 (1876); *Blue v. Briggs*, 12 Ind. App. 105, 39 N. E. 885 (1895); *Block v. Haseltine*, 3 Ind. App. 491, 29 N. E. 937 (1892).

Section 344. Liability for Directed Conduct or Consequences.

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

Annotation:
No Indiana cases dealing with the subject matter of this Section have been found.
Section 345. **Agent Exercising Privileges of Principal.**

An agent is privileged to do what otherwise would constitute a tort if his principal is privileged to have an agent do it and has authorized the agent to do it.

*Annotation:*

No Indiana cases dealing with the subject matter of this Section have been found. But, see, *Runyon v. State*, 52 Ind. 320 (1876); *Pickens v. State*, 20 Ind. 116 (1863).

Section 346. **Privilege to Protect Principal's Interests.**

An agent is privileged to give such protection to the person or property of his principal as is authorized by the principal to the same extent as the principal is privileged to act in the protection of himself or his property.

*Annotation:*

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

Section 347. **Applicable Immunities of Principal.**

An agent who is acting in pursuance of his authority has such immunities of the principal as are not personal to the principal.

*Annotation:*

See: *Runyon v. State*, 52 Ind. 320 (1876); *Pickens v. State*, 20 Ind. 116 (1863).

Section 348. **Fraud and Duress.**

An agent who fraudulently makes representations, uses duress, or knowingly assists in the commission of tortious fraud or duress by others, is subject to liability in tort to the injured person although the fraud or duress occurs in a transaction on behalf of the principal.

*Annotation:*

See: *West v. Wright*, 98 Ind. 335 (1884); *McHenry v. Duffield*, 7 Blackf. 41 (1843).

Section 349. **Conversion.**

An agent who does acts which would otherwise constitute conversion of a chattel is not relieved from liability by the fact that he acts on account of his principal and reasonably, although mistakenly, believes that the principal is entitled to possession of the chattels.
Section 350. NEGLIGENT ACTION.

An agent is subject to liability if, by his acts, he creates an unreasonable risk of harm to the interests of others protected against negligent invasion.

Section 351. DIRECTING OR PERMITTING NEGLIGENT CONDUCT OF OTHERS.

An agent who directs or permits conduct of another under such conditions that he should realize that there is an unreasonable risk of physical harm to others or to their belongings is subject to liability for harm resulting from a risk which his direction or permission creates.

Section 352. FAILURE TO PERFORM DUTIES TO PRINCIPAL; GENERAL RULE.

An agent is not liable to another because of his failure to perform his duties to his principal or because of the improper performance of such duties, except as stated in §§ 353-357.
their things by his failure so to act, if he refrains from acting for the purpose of causing such result.

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

Section 354. NEGLIGENT FAILURE AFTER UNDERTAKING PROTECTION OF OTHERS.

An agent who undertakes to act for the principal under such conditions that some action is necessary for the protection of the person of others or of their tangible things is subject to liability to such others for physical harm to them or to their things caused by his undertaking and subsequent negligent failure to act, if the need for action is so immediate or emergent that withdrawal from the undertaking is no longer possible without unreasonable risk to them, and the agent should so realize.

Annotation:
The rule stated in this Section is in accord with the law of Indiana. Lake Erie & W. R. Co. v. Charman, 161 Ind. 95, 67 N. E. 923 (1903); Illinois Central R. Co. v. Hawkins, 66 Ind. App. 312, 115 N. E. 613 (1917); Louisville & N. R. Co. v. Gollinthur, 40 Ind. App. 480, 82 N. E. 492 (1907).

Section 355. AGENT AS CUSTODIAN.

An agent who has the custody of land or chattels and who should realize that there is an undue risk that their condition will cause harm to the person, land, or chattels of others is subject to liability for such harm caused, during the continuance of his custody, by his failure to use care to take such reasonable precautions as he is authorized to take.

Annotation:
The failure of an agent employed to look after, rent, collect rents, pay taxes, and make the necessary repairs of certain premises, and keep them in a tenantable condition, is nonfeasance and not misfeasance, and does not render the agent liable to a third party. Dean v. Brock, 11 Ind. App. 507, 38 N. E. 829 (1894). But, see, Tippecanoe Loan & Trust Co. v. Jester, 180 Ind. 357, 101 N. E. 915, L. R. A. 1915E, 721 (1913), where a common carrier's liability was placed upon an agent in charge of a building for negligently allowing a passenger elevator to go without repair, to the injury of a third person. See, also, Adams v. Schneider, 71 Ind. App. 249, 124 N. E. 718 (1919).

Section 356. AGENT IN CONTROL OF THIRD PERSONS.

An agent who has taken control over the conduct of another who, as he should realize, is likely to cause physical
harm to the person or tangible belongings of third persons unless the conduct of the other is controlled, is under a duty to use reasonable care to take such measures of control as he is authorized to take.

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

Section 357. NEGLIGENT FAILURE TO ACT CAUSING HARM TO PECUNIARY INTERESTS.

An agent who negligently performs or who fails to perform a duty to his principal is not thereby liable for harm resulting to the pecuniary interests of a third person, although the agent realizes that there is an unreasonable risk that such harm will result.

Annotation:

Section 358. LIABILITY FOR CONDUCT OF OTHER AGENTS.

(1) The agent of a disclosed or partially disclosed principal is not subject to liability for the conduct of other agents unless he assists them in the performance of a tortious act or directs or permits them to commit it.

(2) An agent employing servants or other agents, not revealing to them the existence of the principal, is subject to liability to third persons for their torts as is any other principal; if he reveals the existence of the principal to them, but not to third persons, he is subject to liability for their torts only to persons who have dealt with such agents in reliance upon their apparent employment.

Annotation:
Subsection (1). The rule stated in subsection 1 is in accord with the law of Indiana. Lake Erie & W. R. Co. v. Charman, 161 Ind. 95 67 N. E. 923 (1903).
Subsection (2). No Indiana cases dealing with the subject matter of subsection 2 have been found.

Section 359. LIABILITY TO OTHER AGENTS.

An agent is subject to liability to fellow agents of the same principal as he is to third persons.
Section 360. Effect of Ratification.

Ratification releases a purported agent from liability to a third person for conduct which was tortious with respect to him only because the agent had no power to bind the principal thereby; ratification does not release the agent from liability for conduct which would have been tortious although authorized.

Annotation:
Both the principal and the agent were held liable for the conversion of wheat where a principal had ratified his agent's act of purchasing wheat from a farm hand who had taken it wrongfully from his employer. *Shearer v. Evans*, 89 Ind. 400 (1883).

Topic 4. Servants and Subagents

Section 361. Liability of Servants and Subagents.

The rules stated in §§ 320-360 as to the liability of agents to third persons are applicable to the liability of servants and subagents.

Annotation:
See annotations to sections 320-360 in which no discrimination is made between cases involving principal and agent and master and servant relationships.

Section 362. Liability of Agent for Conduct of Servants and Subagents.

An agent is liable to third persons for the conduct of subagents and of his servants under the same conditions which make a principal liable for the conduct of an agent or servant.

Annotation:
The rule stated in this Section is in accord with the law of Indiana. *Tippecanoe Loan & Trust Co. v. Jester*, 180 Ind. 357, 101 N. E. 915 (1913); *Lake Erie & W. Ry. Co. v. Charman*, 161 Ind. 95, 67 N. E. 923 (1903).

Chapter 12

LIABILITY OF THIRD PERSON TO AGENT

Topic 1. Actions By Agent on Behalf of Principal

TITLE A. WHEN AGENT CAN SUE IN HIS OWN NAME

Section 363. Contracts; General Rule.

An agent who makes a contract on behalf of a principal cannot maintain an action thereon in his own name on be-
half of the principal although authorized by the principal to bring suit, unless the agent is a promisee or transferee.

Annotation:
The rule stated in this Section is in accord with the law of Indiana. Rawlings v. Fuller, 31 Ind. 255 (1869); Heavenridge v. Mondy, 34 Ind. 28 (1870); Sharpe v. Jones, 18 Ind. 314 (1862).

Section 364. Contracts; Agent a Party Promisee.

A person with whom an agent makes a contract on behalf of a principal is subject to liability in an action brought thereon by the agent in his own name on behalf of the principal if the agent is a party promisee.

Annotation:
The rule stated in this Section is in accord with the law of Indiana. Rowe v. Rand, 111 Ind. 206, 12 N. E. 377 (1887); Fuller v. Curtis, 100 Ind. 237, 50 Am. Rep. 786 (1884); Beard v. Sloan, 38 Ind. 128 (1871); Sharp v. Jones, 18 Ind. 314 (1862); Owen v. Harriott, 47 Ind. App. 359, 94 N. E. 591 (1911).

Section 365. Agent as Transferee of Contract.

Subject to the defenses stated in §§ 368-371, an agent to whom a negotiable instrument or other contract has been transferred can maintain an action upon it for the principal's benefit as any other transferee may do, except so far as this is prevented by statutes providing that only the real party in interest can maintain an action.

Annotation:
The rule stated in this Section is in accord with the law of Indiana. Landwerlen v. Wheeler, 106 Ind. 523, 5 N. E. 888 (1886); Holmes v. Boyd, Cashier, 90 Ind. 332 (1883); Waddle v. Harbeck, 33 Ind. 231 (1870).

Section 366. Rescission or Reformation of Contracts.

The other party to a contract of which the agent is a party promisee is subject to liability in an action brought by the agent in his own name on behalf of the principal for its rescission or reformation, or in other actions based upon its rescission.

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

Section 367. Possessory Actions.

A person who tortiously interferes with the possession or right to possession of chattels held by an agent on behalf of
his principal is subject to liability in an action brought by the agent in his own name.

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

TITLE B. DEFENSES

Section 368. GENERAL RULE.

In an action brought by an agent in his own name on behalf of his principal, the other party to the contract has all the defenses which would be available to him if the action were brought by the principal, except procedural defenses based upon the personal want of capacity of the principal to maintain the action or, in the case of contracts, defenses based upon the fact that the principal is excluded as a party thereto by its form or terms.

Annotation:
See: Rowe v. Rand, 111 Ind. 206, 12 N. E. 377 (1887).

Section 369. AGENT WHO HAS ACTED WITHOUT AUTHORITY.

A person who, without power to do so, purports to bind a disclosed or partially disclosed principal as a party to a contract cannot, although he is a party thereto and offers to perform it, maintain an action thereon against the other party to it, unless the purported principal ratifies it.

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

Section 370. AGENT WITHOUT AUTHORITY TO MAINTAIN SUIT.

In an action upon a contract brought by an agent for the benefit of the principal, it is a good defense that the agent does not have authority from the principal to sue or to continue the action.

Annotation:
The rule stated in this Section is in accord with the law of Indiana. Rowe v. Rand, 111 Ind. 206, 12 N. E. 377 (1887) (in which an agency and the consequent right to sue were terminated by joint principals by a mutual release of claims).

Section 371. SET-OFF AGAINST AGENT.

In an action upon a contract brought by an agent for the benefit of the principal, the other party to the contract may
set off claims which he could set off against the principal if
the action were brought by him, and only such claims.

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

Topic 2. Actions By Agent on His Own Behalf

Section 372. Agent as Owner of Contract Right.

(1) Unless otherwise agreed, an agent who has or who ac-
cquires an interest in a contract which he makes on behalf of
his principal can, although not a promisee, maintain such ac-
tion thereon as might a transferee having a similar interest.

(2) An agent does not have such an interest in a contract
as to entitle him to maintain an action at law upon it in his
own name merely because he is entitled to a portion of the
proceeds as compensation for making it or because he is liable
for its breach.

Annotation:
The rule stated in this Section is in accord with the law of Indiana. An agent,
selling property for and by authority of his principal on credit, and having ac-
counted to and satisfied his principal therefor, may sue the purchaser in his own
Brush, 62 Ind. 156 (1878).

Section 373. Actions of Quasi Contract.

A person to whom an agent delivers money or goods be-
longing to his principal, or on account of his principal, is sub-
ject to liability to the agent for their retention if such person
is thereby unjustly enriched at the expense of the agent.

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

Section 374. Actions of Tort.

The fact that an act, otherwise a tort upon an agent, is
committed by another while the agent is conducting the affairs
of the principal or because of the agency relationship does
not prevent the agent from bringing an action against the
other on his own account.

Annotation:
No Indiana cases dealing with the subject matter of this Section have been
found.
Section 375. **Defenses.**

An agent who acquires the beneficial interest in a contract which he has made or purported to make for a principal is subject to the same defenses by the other party thereto as is any assignee of such contract.

*Annotation:*

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

Chapter 13

**DUTIES AND LIABILITIES OF AGENT TO PRINCIPAL**

**Topic 1. Duties**

**TITLE A. EFFECT OF MANIFESTATIONS OF CONSENT BETWEEN PRINCIPAL AND AGENT**

Section 376. **General Rule.**

The existence and extent of the duties of the agent to the principal are determined by the terms of the agreement between the parties, interpreted in light of the circumstances under which it is made, except to the extent that fraud, duress, illegality, or the incapacity of one or both of the parties to the agreement deprives the agreement of legal effect.

*Annotation:*

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

**TITLE B. DUTIES OF SERVICE AND OBEDIENCE**

Section 377. **Contractual Duties.**

A person who makes a contract with another to perform services as an agent for him is subject to a duty to act in accordance with his promise.

*Annotation:*

The rule stated in this Section is in accord with the law of Indiana. The relation between a corporation and its superintendent is that of principal and agent and therefore is one of confidence and trust. *Bedford Coal & Coke Co. v. Park County Coal Co.,* 44 Ind. App. 390, 89 N. E. 412 (1909); *Fast v. Judy,* 83 Ind. App. 85, 147 N. E. 728 (1925).

Section 378. **Gratuitous Undertakings.**

One who, by a gratuitous promise or other conduct which he should realize will cause another reasonably to rely upon
the performance of definite acts of service by him as the other's agent, causes the other to refrain from having such acts done by other available means is subject to a duty to use care to perform such service or, while other means are available, to give notice that he will not perform.

Annotation:

The rule stated in this Section is in accord with the law of Indiana. Where one has undertaken or entered upon a service although it be gratuitous, it is his duty to conform to the instructions given. The trust and confidence reposed in him furnish a sufficient consideration for the undertaking to obey instructions, and a failure to do so will subject him to liability for the loss or damage occasioned thereby. *Criswell v. Riley*, 5 Ind. App. 496, 30 N. E. 1101, rehearing denied, 5 Ind. App. 513, 32 N. E. 814 (1892).

Section 379. **Duty of Care and Skill.**

(1) Unless otherwise agreed, a paid agent is subject to a duty to the principal to act with standard care and with the skill which is standard in the locality for the kind of work which he is employed to perform and, in addition, to exercise any special skill that he has.

(2) Unless otherwise agreed, a gratuitous agent is under a duty to the principal to act with the care and skill which is required of persons not agents performing similar gratuitous undertakings for others.

Annotation:

The rule stated in this Section is in accord with the law of Indiana. Subsection (1). An agent is not responsible for an error in judgment in transacting the business of his principal but he would be held responsible for conducting the business negligently or failing to use proper skill and knowledge. *Union Mutual Life Ins. Co. v. Buchanan*, 100 Ind. 63 (1885); *Adolay v. Miller*, 60 Ind. App. 656, 111 N. E. 313 (1915); *Citizens Loan Fund & Sav. Ass'n v. Friedley*, 123 Ind. 143, 23 N. E. 1075, 7 L. R. A. 699, 18 Am. St. Rep. 320 (1889); *Moorman v. Wood*, 117 Ind. 144, 19 N. E. 739 (1888); *Rochester v. Levering*, 104 Ind. 562, 4 N. E. 203 (1886); *Hillegass v. Bender*, 78 Ind. 225 (1881); *Fisher v. Dynes*, 62 Ind. 348 (1878); *Babcock v. Orbison*, 23 Ind. 75 (1865); *Criswell v. Riley*, 5 Ind. App. 496, 30 N. E. 1101, rehearing denied, 5 Ind. App. 513, 32 N. E. (1892). Sub. section (2). See: *Criswell v. Riley*, supra.

Section 380. **Duty of Good Conduct.**

Unless otherwise agreed, an agent is subject to a duty not to conduct himself with such impropriety that he brings disrepute upon the principal or upon the business in which he is engaged. If the service involves personal relations, he has a duty not to act in such a way as to make continued friendly relations with the principal impossible.
Annotation:
No Indiana cases dealing with the subject matter of this Section have been found.

Section 381. Duty to Give Information.

Unless otherwise agreed, an agent is subject to a duty to use reasonable efforts to give his principal information relevant to affairs entrusted to him which, as the agent has notice, the principal would desire to have and which can be communicated without violating a superior duty to a third person.

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

Section 382. Duty to Keep and Render Accounts.

Unless otherwise agreed, an agent is subject to a duty to keep, and render to his principal, an account of money or other things which he has received or paid out on behalf of the principal.

Annotation:
The rule stated in this Section is in accord with the law of Indiana. An agent entrusted with his principal’s money to be employed for a definite purpose may be required to account in equity and in making the accounting the burden is on him to show that his duties have been performed and the manner of performing them. Holthouse v. Poling, 52 Ind. App. 568, 99 N. E. 810 (1912). It is the duty of an agent, when called upon, to make accurate report to his principal and pay over all sums due. Security Mutual Life Ins. Co. v. Frankel, 46 Ind. App. 212, 92 N. E. 183 (1910).

Section 383. Duty to Act Only as Authorized.

Except when he is privileged to protect his own or another’s interests, an agent is subject to a duty to the principal not to act in the principal’s affairs except in accordance with the principal’s manifestation of consent.

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

Section 384. Duty Not to Attempt the Impossible.

Unless otherwise agreed, an agent is subject to a duty to the principal not to continue to render service which subjects the principal to risk of expense if it reasonably appears to him
to be impossible or impracticable for him to accomplish the objects of the principal and he cannot communicate with the principal.

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

Section 385. Duty to Obey.

(1) Unless otherwise agreed, an agent is subject to a duty to obey all reasonable directions in regard to the manner of performing a service that he has contracted to perform.

(2) Except where he is privileged to protect his own or another's interests, an agent is subject to a duty not to act in matters entrusted to him on account of the principal contrary to the directions of the principal, even though the terms of the employment prescribe that such directions shall not be given.

Annotation:
Subsection (1). The rule stated in subsection 1 is in accord with the law of Indiana. An agent who violates his instructions is liable to the principal. Hasselman v. Carroll, 102 Ind. 153, 26 N. E. 202 (1885); Welsh v. Brown, 8 Ind. App. 421, 35 N. E. 921 (1893).

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

Section 386. Duties After Termination of Authority.

Unless otherwise agreed, an agent is subject to a duty not to act after the termination of his authority.

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

TITLE C. Duties of Loyalty

Section 387. General Principle.

Subject to and in accordance with the rules stated in §§ 388-398, an agent is subject to a duty to his principal to act solely for the benefit of the principal in all matters connected with his agency.

Annotation:
The rule stated in this Section is in accord with the law of Indiana. Cheney v. Unroe, 166 Ind. 550, 77 N. E. 1041, 117 Am. St. Rep. 391 (1906); Bevis v. Hefflin,
Section 388. Duty to Account for Profits Arising Out of Employment.

Unless otherwise agreed, an agent who makes a profit in connection with transactions conducted by him on behalf of the principal is under a duty to give such profit to the principal.

Annotation:
The rule stated in this Section is in accord with the law of Indiana. Lafferty v. Jelley, 22 Ind. 471 (1864); Brannan v. Kelley, 83 Ind. App. 250, 148 N. E. 157 (1925); Blanchard v. Jones, 101 Ind. 542 (1884); Beckett v. Bledsoe, 4 Ind. 256 (1853).

Section 389. Acting as Adverse Party Without Principal's Consent.

Unless otherwise agreed, an agent is subject to a duty not to deal with his principal as an adverse party in a transaction connected with his agency.

Annotation:
The rule stated in this Section is in accord with the law of Indiana. An agent employed to take care and manage his principal's property can not acquire any title thereto by purchase at a sheriff's sale, as against his principal, while such relation exists. Fountain Coal Co. v. Phelps, 95 Ind. 271 (1883). Loyalty to his trust is the agent's first duty and he must not put himself into a position antagonistic to his principal. Bedford Coal & Coke Co. v. Parke County Coal Co., 44 Ind. App. 390, 89 N. E. 412 (1909).

Section 390. Acting as Adverse Party With Principal's Consent.

An agent, in dealing with the principal on his own account in regard to a subject matter as to which he is employed, is subject to a duty to deal fairly with the principal and to communicate to him all material facts in connection with the transaction of which he has notice, unless the principal has manifested that he knows such facts or that he does not care to know of them.

Annotation:
The rule stated in this Section is in accord with the law of Indiana. The relation of principal and agent is confidential and fiduciary and binds the agent to the utmost good faith. Fast v. Judy, 83 Ind. App. 85, 147 N. E. 728 (1925); Rochester v. Levering, 104 Ind. 562, 4 N. E. 203 (1886).
Section 391.  ACTING AS ADVERSE PARTY WITHOUT PRINCIPAL'S CONSENT.

Unless otherwise agreed, an agent is subject to a duty to his principal not to act on behalf of an adverse party in a transaction connected with his agency.

Annotation:
The rule stated in this Section is in accord with the law of Indiana. See: Sterling Fire Ins. Co. v. Comision Reguladora Del Mercado De Henequin, 195 Ind. 29, 143 N. E. 2 (1924); Woodsmall & Co. v. Steele, 82 Ind. App. 58, 141 N. E. 246 (1923); Cheney v. Unroe, 166 Ind. 550, 77 N. E. 1041, 117 Am. St. Rep. 391 (1906).

Section 392.  ACTING FOR ADVERSE PARTY WITH PRINCIPAL'S CONSENT.

An agent who acts for adverse principals in a transaction is subject to a duty to act with fairness to each, and to disclose to each all facts which he knows or should know would reasonably affect the judgment of each in permitting such dual agency, except as to a principal who has manifested that he knows of such facts or that he does not care to know of them.

Annotation:
The rule stated in this Section is in accord with the law of Indiana. An agent may act for both parties where the parties have full knowledge of the facts and consent thereto. Bedford Coal & Coke Co. v. Parke County Coal Co., 44 Ind. App. 390, 89 N. E. 412 (1909).

Section 393.  COMPETITION AS TO SUBJECT MATTER OF AGENCY.

Unless otherwise agreed, an agent is subject to a duty not to compete with the principal concerning the subject matter of his agency.

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

Section 394.  ACTING AS AGENT FOR COMPETITOR.

Unless otherwise agreed, an agent is subject to a duty not to act or to agree to act during the period of his agency for persons whose interests conflict with those of the principal in matters in which the agent is employed.

Annotation:
The rule stated in this Section is in accord with the law of Indiana. Sterling Fire Ins. Co. v. Comision Reguladora Del Mercado De Henequin, 195 Ind. 29,
Section 395. Using or Disclosing Confidential Information.

Unless otherwise agreed, an agent is subject to a duty to the principal not to use or to communicate information confidentially given him by the principal or acquired by him during the course of or on account of his agency or in violation of his duties as agent, in competition with or to the injury of the principal, on his own account or on behalf of another, although such information does not relate to the transaction in which he is then employed, unless the information is a matter of general knowledge.

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

Section 396. Using Confidential Information After Termination of Agency.

Unless otherwise agreed, after the termination of the agency, the agent:

(a) has no duty not to compete with the principal; and

(b) is subject to a duty to the principal not to use or disclose to third persons, on his own account or on account of others, in competition with the principal or to his injury, trade secrets, written lists of names, or other similar confidential matters given to him only for the principal's use or acquired by the agent in violation of duty. The agent may use general information concerning the method of business of the principal and the names of the customers retained in his memory, if not acquired in violation of his duty as agent.

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

Section 397. When Agent Has Right to Patents.

Unless otherwise agreed, a person employed by another to do non-inventive work is entitled to patents which are the result of his invention although the invention is due to the work for which he is employed.
RESTATEMENT OF THE LAW OF AGENCY

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

Section 398. CONFUSING OR APPEARING TO OWN PRINCIPAL’S THINGS.

Unless otherwise agreed, an agent receiving or holding things on behalf of the principal is subject to a duty to the principal not to receive or deal with them so that they will appear to be his own, and not so to mingle them with his own things as to destroy their identity.

Annotation:
The rule stated in this Section is in accord with the law of Indiana. Dean v. State, 147 Ind. 215, 46 N. E. 528 (1897); Corya v. Corya, 119 Ind. 593, 22 N. E. 3 (1889); Naltner v. Dolan, 108 Ind. 500, 8 N. E. 289, 58 Am. Rep. 61 (1886); Williams v. Lowe, 62 Ind. App. 357, 113 N. E. 471 (1916); Baughman v. Lowe, 41 Ind. App. 1, 83 N. E. 255 (1908).