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State of Indiana Legislators

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

Chapter 3

CREATION AND INTERPRETATION OF AUTHORITY
AND APPARENT AUTHORITY

Topic 1. Methods of Manifesting Consent

Introductory Note: As stated in §§ 27 and 49, the principles generally applicable to the creation and interpretation of authority are applicable to the creation and interpretation of apparent authority, except that in apparent authority the manifestations of the principal are made to the third person and not to the agent. To avoid duplication, the rules with respect to authority are not repeated *seriatim* when dealing with apparent authority; to prevent confusion, cross references are frequently used and, where the situation requires it, specific statements are made pointing out that apparent authority may exist in a particular case although there is no authority.

Section 26. CREATION OF AUTHORITY; GENERAL RULE.

Except for the execution of instruments under seal or for the performance of transactions required by statute to be authorized in a particular way, authority to do an act may be created by written or spoken words or other conduct of the principal which, reasonably interpreted, causes the agent to believe that the principal desires him so to act on the principal's account.

Comment:

a. Manifestations as the sole requirement. It is not essential to the existence of authority that there be a contract between the principal or agent or that the agent promise or otherwise undertake to act as agent (see §§ 15-16).

The fact that the principal is willing that another shall act on his account and that the other so believes does not

*Continued from May, 1935, issue and to be continued in subsequent issues.

create authority; there must be a manifestation by conduct originating from the principal and coming to the knowledge of the agent. In accordance with the rule stated in the Restatement of Contracts, § 20, the manifestation and not the intention of the principal is important; hence, whenever the principal manifests to the agent that the agent is to act on his account, authority exists although the principal does not, in fact, consent.

* * *

b. Communication of manifestations. The manifestations to the agent may be made by the principal directly, or by any means intended to cause the agent to believe that he is authorized or which the principal should realize will cause such belief.

* * *

c. Ways of making manifestations. The authority to perform a particular act may be conferred by the specific words of a statement to the agent; it may be created by directing an agent to perform acts which involve the performance of the act in question; or it may be inferred from words or conduct which the principal has reason to know indicate to the agent that he is to do the act for the benefit of the principal. The rules for the interpretation of the principal's conduct are stated in §§ 32-81.

* * *

d. Silence as a manifestation. The manifestation of the principal may consist of his failure to object to unauthorized conduct. This is so where, in view of the relations between the principal and agent and all other circumstances, a reasonable person in the position of the principal knowing of unauthorized acts and not consenting to their continuance would do something to indicate his dissent. In such cases the agent may reasonably infer that the

principal wishes him to continue so to act. Thus, a secretary who, without previous authorization, purchases office supplies which are paid for without objection by the principal, may reasonably conclude that the principal wishes a continuance of this practice and hence would be authorized to continue to purchase similar supplies.

e. Authority varying with situation. Since the existence of authority is dependent upon the reasonable belief of the agent in view of the manifestations of the principal, authority is not static but varies with changing facts, so that where the principal gives fresh manifestations or where events occur which, as the agent has notice, would affect the principal's intent in regard to the agent's action, the authority may be extended, limited, or terminated as to particular acts (see § 33).

f. Formalities of executing authority. If, to make a transaction fully effective, a statute requires a formality for its execution, the construction of the statute determines whether or not the agent must be authorized with the same formality. If a statute requires a personal acknowledgment by the principal in order to make a transaction effective, as that a deed of land be acknowledged by the grantor before a notary, ordinarily the authorization of the agent to do the act must be acknowledged. If, by statute, the recording of an instrument evidencing a transaction has a specified effect, the authorization of an agent to conduct such a transaction must be recorded if the transaction consummated and recorded by him is to have such effect. On the other hand, a statute requiring a written memorandum to evidence the making of a contract ordinarily does not require written authorization of an agent directed to make it (see § 30).

The rules applicable to the authorization to execute sealed instruments are stated in §§ 28-29.

Annotation:

The rule stated in this section is in accord with the law of Indiana. The basic principle is stated in many Indiana cases: "It is well-settled that agency may be established by appointment in writing, by parol, or by circumstances." *Stockwell*

v. Whitehead, 47 Ind. App. 423, 94 N. E. 736 (1911); *Jewett v. The Lawrenceburgh, & c., R. R. Co.*, 10 Ind. 539 (1858); *The Columbus, Chicago, & I. C. Ry. Co. v. Powell, Adm'r.*, 40 Ind. 37 (1872); *Isbell v. Brinkman*, 70 Ind. 118 (1880); *The Indiana, B. & W. Ry. Co. v. Adamson*, 114 Ind. 282, 15 N. E. 5 (1888); *Metzger v. Huntington*, 139 Ind. 501, 39 N. E. 235 (1894); *International Building and Loan Ass'n v. Watson*, 158 Ind. 508, 64 N. E. 23 (1902); *Barnett v. Glutting*, 3 Ind. App. 415, 29 N. E. 927 (1892); *Fruchey v. Eagleson*, 15 Ind. App. 88, 43 N. E. 146 (1896); *Broadstreet v. McKamey*, 41 Ind. App. 272, 83 N. E. 773 (1908); *McCord v. Illinois Nat. Fire Ins. Co.*, 47 Ind. App. 602, 94 N. E. 1053 (1911); *Southern Ry. Co. v. Crone*, 51 Ind. App. 300, 99 N. E. 762 (1912); *Roper v. Cannel City Oil Co.*, 68 Ind. App. 637, 121 N. E. 96 (1918); *Ross v. Indiana Natural Gas & Oil Co.*, 78 Ind. App. 219, 131 N. E. 794 (1921).

Section 27. CREATION OF APPARENT AUTHORITY; GENERAL RULE.

Except for the execution of instruments under seal or for the conduct of transactions required by statute to be authorized in a particular way, apparent authority to do an act may be created by written or spoken words or any other conduct of the principal which, reasonably interpreted, causes a third person to believe that the principal consents to have the act done on his behalf by the person purporting to act for him.

Comment:

a. The Comment on § 26, stating the methods by which authority may be conferred, is applicable to the creation of apparent authority except that, since the manifestation is made to a third person and not to the agent, the relationship of the principal to such third person and the circumstances as known to the third person are considered rather than the relationship of the principal to the agent and the agent's background.

b. The apparent authority may be the same as, greater than, or less than the authority of the agent. To the extent that apparent authority is narrower than or commensurate with authority, its existence is immaterial. If, however, a person has notice that the principal does not consent to have the agent act for him, such person cannot acquire rights against the principal by dealing with the agent, although the agent reasonably believes that he has authority because of the principal's manifestations to him.

Annotation:

The rule stated in this section is in accord with the law of Indiana. "Where one represents to another that a designated person is his servant or agent, and

induces the person to whom such representations are made to confide therein, and he acts upon such belief that such relationship does in fact exist, an action may be maintained for the servant's negligence, although the relationship of master and servant did not exist." *Growcock v. Hall*, 82 Ind. 202 (1882).

Section 28. AUTHORITY TO EXECUTE SEALED INSTRUMENTS.

(1) Except as stated in Subsection (2), an instrument executed by an agent as a sealed instrument does not operate as such unless authority or apparent authority to execute it has been conferred by an instrument under seal.

(2) Sealed authority is not necessary to execute an instrument under seal where:

- (a) the instrument is executed in the principal's presence and by his direction;
- (b) the instrument is authorized by a corporation or partnership in accordance with the rules relating to the authorization of such instruments by such associations; or
- (c) a statute deprives seals of their efficacy.

Comment on Subsection (1):

a. The rule stated in this Section applies only to the complete execution of a deed by an agent. Authorization under seal is not essential for the manual handing over of a deed by an agent to a third person, and an instrument in the form of a deed executed without sealed authority but afterwards delivered by the principal operates as the deed of the principal.

* * *

b. If an instrument does not require a seal to be effective according to its terms, an instrument to which the agent, with authority not under seal, affixes a seal, is operative as an unsealed instrument.

* * *

c. A sealed instrument is necessary to authorize the filling of blanks in a deed which, when filled, would make the instrument of a different tenor. Thus, sealed authority must be given for the insertion of the name of the grantor or grantee or a description of the subject matter. On the other

hand, additional description not essential to the validity or tenor of the deed, or additional formal statements not changing the deed in substance, may be inserted by an agent not authorized under seal.

d. Apparent authority to make an instrument requiring a seal for its validity must be created by manifesting to a third person by a sealed instrument that the agent has authority. A principal may be estopped, however, by representations to a third person that his agent has been authorized under seal (see § 31).

* * *

Comment on Subsection (2):

e. An instrument is executed "in the presence of the principal" when he is in physical proximity to the agent and is aware of what the agent is doing. Statutes requiring personal signatures are commonly satisfied by an agent acting under these conditions.

* * *

f. It is not within the scope of the Restatement of this Subject to state the methods by which a corporation or partnership may properly authorize an agent to execute a sealed instrument.

g. Statutes in many states modify the effect of seals or make them unnecessary. It is a question of construction whether or not, under a statute of this sort, an instrument bearing a seal so differs in effect from an unsealed instrument as to require sealed authorization.

Annotation:

Subsection 1. The rule stated in this subsection is in accord with the law of Indiana. "An authority by deed is necessary in order to bind the principal under seal." *Rhode v. Louthain*, 8 Blackf. 413 (1847).

Subsection 2.

- (a) The rule stated in this division of subsection 2 is in accord with the law of Indiana. *Coy v. Busenbark*, 72 Ind. 48 (1880).
- (b) No Indiana cases have been found dealing with the subject matter of this division of subsection 2.
- (c) No Indiana cases have been found dealing with the subject matter of this division of subsection 2.

Section 29. DEFECTIVELY AUTHORIZED DEED AS MEMORANDUM OF CONTRACT.

(1) Where a statute requires a memorandum of a transaction to be evidenced by the signature of a party to be charged, a sealed instrument signed by an agent, ineffective as a deed because the agent's authority was not under seal, satisfies the requirements of the statute if the instrument is sufficiently definite and the agent is otherwise properly authorized.

(2) A sealed instrument incapable of taking effect as a covenant because made by an agent not authorized under seal is effective as a simple contract if the agent is otherwise authorized and the elements of a simple contract are present.

Comment on Subsection (1):

a. A sealed instrument purporting to convey an interest in land for consideration, but ineffective as a conveyance because executed by an agent not authorized under seal, constitutes a memorandum of a contract to convey which, if sufficiently definite and the agent is otherwise properly authorized, satisfies the requirements of the Statute of Frauds.

* * *

Annotation:

Subsection 1. No Indiana cases have been found dealing with the subject matter of this subsection.

Subsection 2. The rule stated in this subsection is in accord with the law of Indiana. *Joseph v. Fisher*, 122 Ind. 399, 23 N. E. 856 (1890).

Section 30. AUTHORITY TO EXECUTE WRITTEN CONTRACTS.

(1) Unless so provided by statute, a written authorization is not necessary for the execution of a writing.

(2) A statutory requirement that a memorandum of a transaction be signed by the parties in order to make it effective does not thereby impose a requirement of written authorization to execute such a memorandum.

Comment:

a. Aside from statute and except for instruments within the customs of merchants, a contract or other transaction evidenced by a writing has an effect not different from a similar transaction in which there is no writing. Even where a statute provides that there must be a writing in order to

make a transaction completely effective, as in the case of the Statute of Frauds, an agent may be authorized orally to execute such a writing unless, by express terms or otherwise, there are indications in the statute that written authorization is necessary. The English Statute of Frauds, § 3, which has been followed in some states, requires that an agent to assign, grant, or surrender leases, estates, or interests in land, be authorized in writing, but does not require written authorization for contracts for the sale of land. In some States by statute the authority to contract for the sale of land must be in writing.

Annotation:

Subsection 1. The rule stated in this subsection is in accord with the law of Indiana. *Boren v. Schweitzer*, 65 Ind. App. 475, 117 N. E. 526 (1917).

Subsection 2. The rule stated in this subsection is in accord with the law of Indiana. *Roehl v. Haumesser*, 114 Ind. 311, 15 N. E. 345 (1888); *Caley v. Morgan*, 114 Ind. 350, 16 N. E. 790 (1888); *Tewksbury v. Howard*, 138 Ind. 103, 37 N. E. 355 (1894); *Boren v. Schweitzer*, 65 Ind. App. 475, 117 N. E. 526 (1917).

Section 31. ESTOPPEL TO DENY AUTHORIZATION.

(1) A person who manifests to a third person that he has authorized an agent by an instrument under seal or by other formality is subject to liability to such third person as if the authorization had been by such means, if the third person changes his position in reasonable reliance upon the manifestation.

(2) If a principal entrusts to an agent an executed document containing blanks, and the agent fills the blanks without authority and delivers the document to a third person, who changes his position in reliance thereon without notice that the principal did not fill the blanks before execution of the instrument, the principal is subject to liability to the third person as if the instrument had been completed by the principal or by an agent properly authorized to fill the blanks.

Comment on Subsection (1):

a. Under the rules stated in this Subsection, the power of an agent not authorized under seal to bind the principal to a third person to whom the principal manifests that the agent is properly authorized is not based upon apparent authority. Apparent authority requires no change of position by the third person to subject the principal to liability upon its execution, and it gives to the principal rights against the

third person to the same extent as if the agent were authorized. If the manifestation to the third person is under seal, the agent has apparent authority (see Comment *d* on § 28); if it is by parol, the rule stated in this Subsection is applicable.

* * *

Comment on Subsection (2):

b. One who advances money or incurs liability upon the strength of an instrument apparently properly executed, changes his position by so doing under the rule stated in this Subsection. Merely offering credit which is not drawn upon is not, however, a change of position.

* * *

Annotation:

Subsection 1. The rule stated in this subsection is in accord with the law of Indiana. *Growcock v. Hall*, 82 Ind. 202 (1882).

Subsection 2. The rule stated in this subsection is in accord with the law of Indiana. BALDWIN'S IND. STAT. (1934) § 12831; IND. ANN. STAT. (Burns, 1933) §§ 19-114; IND. ANN. STAT. (Burns, 1926) § 11373.

Topic 2. Interpretation of Authority and Apparent Authority
TITLE A. AUTHORITY

Section 32. APPLICABILITY OF RULES FOR INTERPRETATION OF AGREEMENTS.

Except as stated in § 44, the principles of interpretation relating to contracts apply to the interpretation of authorizations.

Comment:

a. Authority results from the manifestations of consent by the principal to the agent. The interpretation of such manifestations is governed by the general principles of interpretation relating to contracts, except that where the language of the principal is ambiguous the agent is authorized if he acts reasonably and in good faith in his interpretation (see § 44). It is not within the scope of the Restatement of this Subject to state the rules of interpretation except so far as specially appropriate to this Subject.

Annotation:

The rule stated in this section is in accord with the law of Indiana. *Coquillard's Adm'r. v. French*, 19 Ind. 274 (1862); *Stockwell v. Whitehead*, 47 Ind. App. 423, 94 N. E. 736 (1911).

Section 33. TIME OF INTERPRETATION OF AUTHORITY.

An authorization is interpreted as of the time it is acted upon, in light of the conditions under which it was made and changes in conditions subsequent thereto.

Comment:

a. An authorization is interpreted in accordance with the circumstances under which it is given and the purposes which the principal has in mind of which the agent has notice (see § 34). Consideration is given not only to the circumstances under which the instructions are given but also to all other relevant facts of which the agent has notice at the time when he acts. Thus, a change of circumstances may increase, diminish, or terminate his privilege to exercise a power for the principal. When a substantial change in conditions has taken place, an agent normally has a duty to inquire of the principal, if available, as to whether or not the change affects the performance of the directed act, except where the agent has notice that the principal is aware of the change and its effect and is in a position to change his orders if he desires such change.

* * *

Annotation:

The rule stated in this section is in accord with the law of Indiana. *Coquillard's Adm'r. v. French*, 19 Ind. 274 (1862); *The Indiana, B. & W. Ry. Co. v. Adamson*, 114 Ind. 282, 15 N. E. 5 (1888); *Stockwell v. Whitehead*, 47 Ind. App. 423, 94 N. E. 736 (1911).

Section 34. CIRCUMSTANCES CONSIDERED IN INTERPRETING AUTHORITY.

An authorization is interpreted in light of all accompanying circumstances, including among other matters:

- (a) the situation of the parties, their relations to one another, and the business in which they are engaged;
- (b) the general usages of business, the usages of trades or employments of the kind to which the authorization relates, and the business methods of the principal;
- (c) facts of which the agent has notice respecting the objects which the principal desires to accomplish;

- (d) the nature of the subject matter, the conditions under which the act is to be performed and the legality or illegality of the act; and
- (e) the formality or informality, and the care, or lack of it, with which an instrument evidencing the authority is drawn.

Comment:

a. The enumeration in this Section of circumstances which are considered in determining the extent of authority is not intended to be exhaustive. All other matters throwing light upon what a reasonable person in the position of the agent at the time of acting would consider are to be given due weight, including facts which are relevant under the rules stated in §§ 35-48.

Comment on Clause (a):

b. If an agent has been previously employed, ordinarily he may assume that he is authorized to continue to do what he has been doing to the knowledge of the principal without objection from him. When a new situation arises, the amount of discretion which has been confided to him by the principal is of importance. In some organizations the authority of each individual is narrowly defined; in others there is more freedom. Newly engaged agents may reasonably assume that they have the authority which was possessed by those whom they replace, in the absence of special circumstances. A professional agent, such as a factor, broker or auctioneer, may assume that he has the authority usually exercised by such persons or which has been exercised previously by him when representing the principal, unless restrictions are imposed.

The fact that one is a general agent employed to conduct a part of the principal's business is an indication that the directions of the principal to him are intended merely as advice and not as limitations upon his authority. Thus, the directions to a general manager as to the amount of purchases which he should make or the type of men whom he is to employ would ordinarily be given to guide his discre-

tion rather than to limit it. On the other hand, the same directions given to one who is employed only for one transaction would ordinarily be intended to define the extent of his authority.

Comment on Clause (b):

c. The definition of and place of usages in the interpretation of authority are stated in § 36.

Comment on Clause (c):

d. All authority is granted for the accomplishment of certain purposes of the principal; an agent with notice of them must act with reference to them. A purchasing agent, given discretion as to the amount to be paid for goods, has great latitude if he knows that the goods to be purchased are immediately essential to the continuance of the principal's business. An agent to invest should consider whether the principal desires the investment for speculation or for security. Both the immediate purpose and the ultimate objectives of the principal are relevant in considering the authority. If a situation arises in which the known objects of the principal cannot be achieved by the directed act, the authority of the agent ordinarily ceases (see § 108).

Comment on Clause (d):

e. An agent entrusted with valuables may have authority to employ others to assist him in guarding them; a foreman directed to build an addition to a mill with authority to hire workmen would be authorized to employ skilled workmen, while if directed to build a temporary shack, he might well be limited to the employment of comparatively unskilled laborers. The manager of a branch office, out of direct communication with his employer, ordinarily has wider discretion than the home office manager. That the business is prosperous or failing and that it has been well or badly managed are facts to be considered in determining the authority of a newly employed manager.

Authority to do illegal or tortious acts, whether or not criminal, is not readily inferred. Thus, the appointment of a

person to act as manager does not thereby create authority in him to make trade agreements so opposed to public policy that they will not be enforced, or to inaugurate illegal black-lists or boycotts, or to make fraudulent statements concerning his principal's goods. If, however, the agent knows that action of this sort has been customary in his principal's business, he has reason to infer his principal's consent thereto, and hence he incurs no liability to the principal for so acting. The principal's liability to third persons for tortious conduct by his servants or other agents is stated in §§ 212-267. The duty of an agent to account where there has been an illegal employment is stated in § 412; the other rights and liabilities of principal and agent *inter se* when an illegal agreement has been made between them are stated in the Restatement of Contracts, §§ 512-609.

Comment on Clause (e):

f. The execution of a formal instrument containing technical language and apparently drawn by a skilled draftsman indicates that the limits of authority have been carefully drawn and that the instrument itself expresses the intended extent of authority and its limitations. On the other hand, a hastily drawn memorandum may be expected to contain only the outlines, and to indicate only in a general way the extent of the authority; the attendant circumstances may be used more freely to explain or interpret it.

Annotation:

(a) The rule stated in this division of section 34 is in accord with the law of Indiana. *The Columbus, Chicago, and Indiana Central Railway Co. v. Powell, Adm'r.*, 40 Ind. 37 (1872); *The Indiana, B. & W. Ry. Co. v. Adamson*, 114 Ind. 282, 15 N. E. 5 (1888); *Metzger v. Huntington*, 139 Ind. 501, 37 N. E. 1084 (1894); *Stockwell v. Whitehead*, 47 Ind. App. 423, 94 N. E. 736 (1911).

(b) The rule stated in this division of section 34 is in accord with the law of Indiana. *Isbell v. Brinkman*, 70 Ind. 118 (1880); *International Building and Loan Ass'n. v. Watson*, 158 Ind. 508, 64 N. E. 23 (1902).

(c) The rule stated in this division of section 34 is in accord with the law of Indiana. *The Indiana, B. & W. Ry. Co. v. Adamson*, 114 Ind. 282, 15 N. E. 5 (1888).

(d) The rule stated in this division of section 34 is in accord with the law of Indiana. *Stockwell v. Whitehead*, 47 Ind. App. 423, 94 N. E. 736 (1911); *Ross, Receiver, v. Indiana Natural Gas and Oil Co.*, 78 Ind. App. 219, 130 N. E. 440 (1921).

(e) The rule stated in this division of section 34 is in accord with the law of Indiana. *Andrews v. Peters*, 82 Ind. App. 200, 145 N. E. 579 (1924).

Section 35. WHEN INCIDENTAL AUTHORITY IS INFERRED.

Unless otherwise agreed, authority to conduct a transaction includes authority to do acts which are incidental to it, usually accompany it, or are reasonably necessary to accomplish it.

Comment:

a. Conversely to the rule stated in this Section, *prima facie*, an agent is not authorized to do acts not incidental to the transaction, nor usually done in connection therewith nor reasonably necessary.

b. The rule stated in this Section is one of most frequent and wide application. Under it, the appointment of a person to a certain position or a direction to him to do a specified act or to accomplish a specified result indicates, in the absence of countervailing circumstances, that the principal consents to the performance of acts on his behalf which are incidental to or usual or reasonably necessary in the position or in the doing of the act or in the accomplishment of the result.

c. The rule stated in this Section applies more frequently to the authorization of a general agent than to that of a special agent, but it applies in the latter case also. In either case, it is inferred that the principal is not doing a vain thing, but intends to give a workable and effective consent. It is not essential to the authorization of an act that the principal should have contemplated that the agent would perform it as incidental to the authorized performance.

* * *

d. In the absence of specific directions an agent is ordinarily authorized to act in accordance with usage, if there is one (see § 36), or if not, in accordance with what it is not uncommon to do. Thus, an agent directed to raise money upon his principal's goods is normally authorized either to pledge or to mortgage them, if there is no usage which prefers one kind of transaction to the other.

Annotation:

The rule stated in this section is in accord with the law of Indiana. An agent has implied authority as to all matters necessarily incident to the execution of the powers expressly conferred upon him. *Shackman v. Little*, 87 Ind. 181 (1882); *American Telephone & Telegraph Co. v. Green*, 164 Ind. 349, 73 N. E. 707 (1905); *Cleveland, C., C. & St. L. Ry. Co. v. Moore*, 170 Ind. 328, 82 N. E. 52 (1907); *American Quarries Co. v. Lay*, 37 Ind. App. 386, 73 N. E. 608 (1905).

Section 36. USAGE IN INTERPRETATION OF AUTHORITY.

Unless otherwise agreed, an agent is authorized to comply with relevant usages of business if the principal has notice that usages of such a nature may exist.

Comment:

a. Usage is habitual or customary practice. The principles dealing with the place of usage in the interpretation of contracts, as stated in the Restatement of Contracts, §§ 245-249, are applicable in the interpretation of the authorization of an agent. Only those rules which have special application to agency are herein stated.

b. Usage is not effective to contradict the specific terms of an authorization or the known desires of the principal; nor to make unnecessary a formality required by law.

* * *

c. Principal and agent in same community. A person carrying on business has reason to know, and hence has notice of, the usages of the place in which he does business with respect to the type of business which he conducts. If both principal and agent are in the same locality and are engaged in the same kind of business, it is inferred that the authorization is to act in accordance with such usages. If, however, the agent has notice that the principal does not know of the usages, the agent is not authorized to act in accordance with them if to observe them would result in a transaction different from that which the agent should know the principal would desire. If a non-professional principal employs a professional agent, as where a layman employs an attorney at law, the agent may properly observe the usages of his profession in the locality, so far as he reasonably believes that the principal knows that there are usages and intends that

he should observe them. This he may believe if the usages are reasonable and consistent with the best interests of the principal.

* * *

d. Principal and agent in different communities. A principal authorizing an agent to act in another community has reason to know that there are likely to be business usages which may differ from those of the place in which the principal does business. Unless the principal indicates otherwise, the agent may ordinarily infer that the principal intends that he shall act in accordance with the general usages of the place of performance if they are consistent with the declared purposes of the principal and are not unfair to him. The fact that the custom exists in a single town or a small community may indicate that it is unreasonable for the agent to believe that his principal intends that he shall act in accordance with it, or that it is so limited that it is unnecessary for the agent to observe it in order to properly perform his duties. Ordinarily, the agent should not act in accordance with a usage which not merely affects the execution of his authority with respect to the subject matter but which, in addition, enlarges the functions which he is to perform, unless he has reason to believe that the principal appointed him with such custom in mind.

* * *

e. Notification of usage. A principal may have notice of a usage because of a notification to him from the agent, although he has no reason to know of its existence, as where he receives a communication from the agent stating the existence of the usage with a request for instructions. In this event, the fact that the principal does not heed the agent's communications does not prevent him from having notice of the usage nor the agent from being authorized to act in accordance with it.

f. Unfair or illegal usage. A usage which operates unfairly against the principal or involves the doing of illegal acts is disregarded in interpreting authority, unless the principal having knowledge of it does not provide against it in the authorization.

* * *

g. Proof of usage. Courts take judicial cognizance of the general usages of business; the existence of local or limited usages must be proved.

Annotation:

The rule stated in this section is in accord with the law of Indiana. *Indiana Die Casting Development Co. v. Newcomb*, 184 Ind. 250, 111 N. E. 16 (1916); *Cleveland, C., C. & I. Ry. Co. v. Closser*, 126 Ind. 348, 26 N. E. 159 (1890).

Section 37. GENERAL EXPRESSIONS AND PARTICULARIZED AUTHORIZATIONS.

(1) Unless otherwise agreed, general expressions used in authorizing an agent are limited in application to acts done in connection with the act or business to which the authority primarily relates.

(2) The specific authorization of particular acts tends to show that a more general authority is not intended.

Illustrations of Subsection (1):

1. P gives A a power of attorney to convey Blackacre, containing a clause: "giving and granting to my said attorney authority to do all acts as fully as I might, or would do, if personally present." A has authority only to convey Blackacre in a usual manner.

2. P operates separately a lumber mill in town X and a shoe store in town Y, a hundred miles away. P appoints A, a local collector in town X, "to collect all of my accounts." Nothing else appearing, this is interpreted as applying only to accounts in connection with the lumber mill.

Illustration of Subsection (2):

3. A manufacturer of automobiles directs his selling agents to warrant the cars against defects in such

parts as have been manufactured in his factory. It is inferred that his agents are not authorized to warrant the car as a whole or those parts which have been purchased from other manufacturers.

Annotation:

Subsection 1. The rule stated in this subsection is in accord with the law of Indiana. *Coquillard's Adm'r. v. French*, 19 Ind. 274 (1862).

Subsection 2. The rule stated in this subsection is in accord with the law of Indiana. *Robinson v. Bank of Winslow*, 42 Ind. App. 350, 85 N. E. 793 (1908); *Buchanan v. Caine*, 57 Ind. App. 274, 106 N. E. 885 (1914).

Section 38. INTERPRETATION AS TO DURATION OF AUTHORITY.

Authority exists only when, from the manifestations of the principal and the happening of events of which the agent has notice, the agent reasonably believes that the principal desires him to act.

Comment:

a. Beginning. If the agent is directed to do an act only after a lapse of time or upon the happening of an event, he is authorized to do the act only after such time or after the event happens, or perhaps (see § 45) after he reasonably believes the event has happened. It would, however, ordinarily be inferred that the agent would be authorized to make reasonably necessary preparations before this.

* * *

b. Termination. The authority of an agent may terminate by lapse of time, by the accomplishment of the object for which the agency was created, by the happening of a condition specifically stated in the authorization, or by the happening of other events from which the agent should infer that the principal no longer desires him to act or would not desire him to act if he knew the facts. In some cases, the authority terminates only when the agent has notice of such events; in other cases, the authority may terminate before this. See §§ 105-116 for statements concerning the inferences to be drawn in specific situations.

Authority may also be terminated irrespective of the interpretation of the original manifestation by the principal,

as where it is terminated by revocation or renunciation, by the death or loss of capacity of one of the parties, or by impossibility (see §§ 117-124).

c. Apparent authority. If the authority terminates otherwise than by the death or loss of capacity of one of the parties or by impossibility, there may remain apparent authority which subjects the principal to liability (see §§ 125-132).

Annotation:

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

Section 39. INFERENCE THAT AGENT IS TO ACT FOR PRINCIPAL'S BENEFIT.

Unless otherwise agreed, authority to act as agent includes only authority to act for the benefit of the principal.

Comment:

a. Authority is conferred to carry out the purposes of the principal and not those of someone else. These purposes, as manifested to the agent, constitute the benefit for which, as the agent should realize, the agency is created. In business enterprises, an agent normally has no authority to seek personal advantage otherwise than through the faithful performance of his duties, nor to conduct his principal's business with a mind to the benefit of others. If his principal's business consists of pleasing others, as in the case of hotels, or of giving help, as in the case of charitable organizations, the agent serves others only as a means of forwarding the principal's objects. An enumeration of the agent's duties of loyalty, which ordinarily limit the agent's authority, is given in §§ 387-398.

* * *

Annotation:

The rule stated in this section is in accord with the law of Indiana. *Benson v. Liggett*, 78 Ind. 452 (1881); *New v. Germania Fire Ins. Co.*, 171 Ind. 33, 85 N. E. 703 (1908); *Criswell v. Riley*, 5 Ind. App. 496, 30 N. E. 1101 (1892); *Fast v. Judy*, 83 Ind. App. 85, 147 N. E. 728 (1925).

Section 40. INFERENCE AS TO AUTHORITY TO DISCLOSE PRINCIPAL.

Unless otherwise agreed, an agent is authorized to disclose the existence and identity of his principal; his authority to act

is conditioned upon such disclosure if nondisclosure would, as the agent has notice, subject the principal to disadvantage.

Comment:

a. Ordinarily, agents do business for principals known to the persons with whom they deal. An agent is authorized to reveal who his principal is unless he has notice that the principal wishes his identity to remain unknown.

b. It may or may not be of importance to the principal to have his existence or his identity known. The position of the partially disclosed and of the undisclosed principal is somewhat different from that of the disclosed principal (see §§ 144-211, 292-310). A third person buying the principal's goods on credit from an agent of an undisclosed principal ordinarily may set off claims held against the agent personally (see § 306). A selling agent should not subject his principal to such risk nor, if he is in possession of goods of the principal, to the risk of attachment by his own creditors. While many factors do not disclose the identity of their principals, it ordinarily would be contrary to the intention of their principals for the factors to purport to be selling their own goods. An agent depositing in a bank money collected for the principal ordinarily has authority to do so only in the name of the principal or with some indication of the agency (see § 398).

Annotation:

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

Section 41. INTERPRETATION OF AUTHORITY WHERE PRINCIPALS OR AGENTS ARE JOINT.

(1) Unless otherwise agreed, authority given by two or more principals jointly includes only authority to act for their joint account.

(2) Unless otherwise agreed, authority given in one authorization to two or more persons to act as agents includes only authority to act jointly, except in the execution of a properly delegable authority.

Illustrations of Subsection (1):

1. P and B own a number of tracts of land as tenants in common; each also individually owns other tracts of land. P and B give A a written power of attorney, authorizing him to "sell and convey all our land." A is authorized only to sell the land held by P and B as tenants in common.

2. P and B constitute a partnership owning and using in the business several automobiles; each also individually owns other cars. Together they visit a second-hand car dealer, A, who knows the facts, and direct him to "sell all our automobiles." A is authorized to sell only the partnership cars.

Comment on Subsection (2):

a. Ordinarily, where one authorizes two or more persons to act for him, he expects that they will act as a group in the exercise of judgment. To the extent that an agent may properly delegate performance to another, however, as in the doing of ministerial acts or in the performance of acts requiring professional assistance, the group may delegate performance either to a member of the group or to others. Thus, the group may, in a proper case, appoint an attorney at law to conduct legal proceedings. The appointment of a business organization as agent ordinarily indicates that any of the members of the organization regularly conducting matters similar to those entrusted to it are authorized to perform the business. See §§ 77-81 as to authority to delegate.

* * *

Annotation:

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

Section 42. INTERPRETATION BY THE PARTIES.

If the authorization is ambiguous, the interpretation acted upon by the parties controls.

Comment:

a. The subsequent conduct of the parties to an agreement with reference to it is determinative, unless it is so clearly expressed in view of the attendant circumstances that it cannot reasonably be given the interpretation which the parties indicate by their conduct. If their subsequent conduct is contrary to the terms of a clearly expressed document, it may be found either that the document did not express the agreement, in which case the document may be reformed, or that the subsequent conduct indicates a new agreement as to the authority. It may be important to ascertain whether the original agreement is being carried out or there has been a substituted agreement, as where the original transaction was evidenced by a required formality not present in the later negotiations.

Annotation:

The rule stated in this section is in accord with the law of Indiana. If a principal gives an order to an agent in such uncertain terms as to be susceptible to two different meanings and the agent in good faith adopts one of them, the principal will not be permitted to repudiate the act as unauthorized because he meant the order to be read in another sense. *Kirwan v. Van Camp Packing Co.*, 12 Ind. App. 1, 39 N. E. 536 (1895).

Section 43. ACQUIESCENCE BY PRINCIPAL IN AGENT'S CONDUCT.

(1) Acquiescence by the principal in conduct of an agent whose previously conferred authorization reasonably might include it, indicates that the conduct was authorized; if clearly not included in the authorization, acquiescence in it indicates affirmance.

(2) Acquiescence by the principal in a series of acts by the agent indicates authorization to perform similar acts in the future.

Comment:

a. Persons ordinarily express dissent to acts done on their behalf which they have not authorized or of which they do not approve. If the agent has been previously authorized and the extent of his authority is uncertain, the performance of acts by the agent which might reasonably be within the authorization and acquiescence therein by the principal,

indicates that the parties understood that such acts were authorized, and the rule stated in § 42 is applicable. If there was clearly no authorization to do the acts, the acquiescence by the principal indicates an affirmation which normally operates as ratification (see § 94).

b. Approval of a single authorized act does not, of itself, justify an inference of authority to repeat it. On the other hand, if the agent performs a series of acts of a similar nature, the failure of the principal to object to them is an indication that he consents to the performance of similar acts in the future under similar conditions. These inferences may be rebutted, however, and it may be shown that the agent was not authorized.

* * *

c. In the absence of other evidence as to the agent's authority, the fact that the principal acquiesces in the conduct of the agent is sufficient evidence to prove authorization or ratification. Where such conduct by the agent is known to a third person, as the principal has reason to know, and the principal makes no manifestation of his objection thereto, although he could easily do so, apparent authority is thereby created (see Comment *a* on § 49). The acquiescence of a principal may also result in ratification or estoppel (see §§ 94, 103).

* * *

Annotation:

Subsection 1. The rule stated in this subsection is in accord with the law of Indiana. *Terre Haute & I. R. Co. v. Stockwell*, 118 Ind. 98, 20 N. E. 650 (1889); *Louisville, N. A. & C. R. R. Co. v. Smith*, 121 Ind. 353, 22 N. E. 775 (1889); *Welker v. Appleman*, 44 Ind. App. 699, 90 N. E. 35 (1909).

Subsection 2. The rule stated in this subsection is in accord with the law of Indiana. *White v. Mann*, 110 Ind. 74, 10 N. E. 629 (1887).

Section 44. INTERPRETATION OF AMBIGUOUS INSTRUCTIONS.

If an authorization is ambiguous because of facts of which the agent has no notice, he has authority to act in accordance with what he reasonably believes to be the intent of the principal although this is contrary to the principal's intent; if the

agent should realize its ambiguity, his authority, except in the case of an emergency, is only to act in accordance with the principal's intent. If an authorization is not ambiguous, the agent is authorized to act only in accordance with its reasonable interpretation.

Comment:

a. The rule stated in this Section throws upon the principal the burden of reasonable mistakes by the agent in the interpretation of his authority due to the ambiguity of the authorization caused by facts of which the agent has no notice. Thus, where the principal directs the agent to charter a ship of a particular name and there are two ships of that name, the agent is authorized to charter the one not intended by the principal, if the agent has no notice of the existence of the other. This result is to be contrasted with the rule stated in the Restatement of Contracts, § 71, that where an agreement is ambiguous and the parties reasonably interpret it differently, there is no contract, which is also the rule applicable to apparent authority (see Comment *d* on § 49). The agent is not, however, authorized merely because he reasonably believes that he is following the directions of the principal. Except where the directions are ambiguous, he is unauthorized if he acts contrary to what is found to be the meaning of the authorization, even though he has exercised care in ascertaining its meaning. Thus, an agent acting upon the advice of counsel as to the interpretation of a power of attorney is not thereby authorized to act in accordance with erroneous advice so given him. If, however, he acts in good faith upon the advice of a person appointed by the principal to give him such advice, such person becomes the spokesman of the principal and the agent is authorized to act in accordance with his directions, as where the president of a corporation follows the advice of corporation counsel appointed by the directors.

b. *Where agent knows authorization is ambiguous.* If, at the time of acting, the agent should realize the possibility of conflicting interpretations, ordinarily he is not authorized

to act since it would be his duty to communicate with the principal and obtain more definite instructions. If, however, there is an emergency and it is not feasible for him to communicate with the principal, he may be authorized to act in accordance with the rule stated in § 47. Likewise, the agent is authorized to do that which the principal intended, although the manifestation of the principal's intent was not clear. A special application of this rule with reference to ambiguity as to subject matter is made in § 57.

Annotation:

The rule stated in this section is in accord with the law of Indiana. *Kirwan v. Van Camp Packing Co.* 12 Ind. App. 1, 39 N. E. 536 (1895).

Section 45. MISTAKE BY AGENT AS TO FACTS UPON WHICH AUTHORITY DEPENDS.

If authority is stated to be conditioned upon the existence of specified facts, whether or not the agent is authorized to act when he reasonably believes that such facts exist depends upon the agreement of the parties as to whether the agent or the principal shall bear the risk of mistake.

Comment:

a. If an agent has been directed in terms to act upon the happening of an event, it may be agreed that he is to act only if the event actually occurs, or it may be understood that he is to act if he reasonably believes that the event has occurred. In such cases, whether the principal or the agent takes the risk of a mistake of fact depends upon the interpretation to be given to the directions of the principal. If the agreement is that the agent is to render careful service in the ascertainment of facts, and that he is to act in accordance with his belief as to the facts, his subsequent action in accordance with what he reasonably but erroneously believes to be the facts is authorized. The fact that he is free to take what precautions he pleases in ascertaining facts tends to show that the risk of error is upon him, while the fact that he is required to follow the directions of the principal as to the precautions to be observed indicates that the risk is upon the principal. Servants are ordinarily authorized to act upon the facts as they appear to them to be after the

exercise of due care. As to agents not servants, the subject matter of the authorization, the language used in conferring it, the type of agent and the kind of business done by him are considered in determining whether or not he is authorized to act because of his reasonable belief. Thus, factors and similar agents directed to deliver goods to a designated person ordinarily are not authorized to deliver them to one whom they reasonably but mistakenly believe to be that person; but the circumstances of the employment or the terms of the agreement may indicate that the risk of reasonable mistake is upon the principal. On the other hand, the factor's servants ordinarily would be authorized to deliver the factor's goods to persons whom they reasonably believe to be designated by the factor to receive the goods. It may be found that an attorney directed to "pay debts" is authorized to send money to one whom he reasonably believes to be, but is not, a creditor.

b. The rule stated in this Section is to be distinguished from the rule stated in § 44. If the instructions of the principal are ambiguous as applied to the facts, an agent having no notice of the facts creating the ambiguity is authorized to act in accordance with what he reasonably believes to be the instructions of the principal. Thus, where the principal directs goods to be delivered to a person of a certain name, a delivery by the agent to the only person he has reason to know of by that name and without notice of another similarly named person, is authorized.

c. If the agent is authorized to act although mistaken as to the facts, a third person dealing with him and having no notice of the mistake is protected as in other cases of authorized conduct. If the agent is not so authorized but is authorized to represent that the facts on which his authority is based exist, he has apparent authority as to a third person relying upon his representation that they exist (see Comment *c* on § 49). Likewise, a master or other principal may be liable to a third person for the mistaken action of a

servant or other agent, whether or not authorized so to act, as where a servant by mistake cuts trees upon the land of another, or an attorney for a creditor directs a sheriff to take particular goods not belonging to the debtor (see § 244).

Annotation:

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

Section 46. INFERENCE OF AUTHORITY TO DISCLOSE FACTS UPON WHICH AUTHORITY DEPENDS.

Unless otherwise agreed, authority to enter into transactions with third persons includes authority to disclose to them such documents or facts indicating authority as it is reasonable for the principal to anticipate they will desire to see or know of for their own protection.

Comment:

a. Ordinarily, an agent is authorized not only to disclose the identity of his principal (see § 40), but also to disclose the manner of his authorization to those with whom he deals. This includes showing to them documents he has received for this purpose and also other documents which the principal should realize would be required by those dealing with him. If the authority is not evidenced by a writing, the agent may be authorized to repeat the words of the principal or relate their substance. A person holding a recognized position, such as a manager or treasurer, would be authorized to reveal his position and to state, if necessary, the kind of work he has been employed to perform. The authorized disclosure would not, however, include statements of matters commonly not revealed to third persons, such as the maximum price authorized to be paid for a specified article or conditions to which the principal is willing to accede, but which he hopes will not be required. An agent is not authorized to repeat the words of the principal if without their setting they would be misleading, nor, necessarily, to disclose the fact that he holds a position to which an authority is ordinarily attached but which he does not have.

b. The authority to disclose the method of authorization is important in determining the existence of apparent authority since, if an agent is authorized to disclose a document or to state the words of his principal to a third person, he has apparent authority in accordance with his authorized statements (see Comment *c* on § 49).

Annotation:

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

Section 47. INFERENCE OF AUTHORITY TO ACT IN AN EMERGENCY.

Unless otherwise agreed, if after the authorization is given, an unforeseen situation arises for which the terms of the authorization make no provision and it is impracticable for the agent to communicate with the principal, he is authorized to do what he reasonably believes to be necessary in order to prevent substantial loss to the principal with respect to the interests committed to his charge.

Comment:

a. The rule stated in this Section is a special application of the more general rule that the authority of the agent is interpreted in light of the circumstances at the time he acts and of the purposes of the principal of which he has notice (see §§ 33-34). It is the converse of the rule that an agent's authority terminates when he has notice of facts from which he should infer that the principal no longer wishes him to act (see § 108).

b. The rule stated in this Section is applicable only if the agent reasonably believes:

1. that the principal did not contemplate or forgot to provide for the situation in his directions to the agent;
2. that it is not feasible, bearing in mind the proportionate expense, to communicate with the principal or ascertain his wishes before action is necessary.
3. that it is necessary for him to run counter to or exceed the letter of his instructions or what, under ordinary circumstances, would be his inferred authority if the interests in his charge are to be adequately protected;

4. that if the principal knew the facts he would desire the agent to act; and
5. that the action taken is the best method of protecting the interests and carrying out the purposes of the principal, or the method which, from his knowledge of the principal, he should realize that the principal would desire him to use.

* * *

c. If the agent acts reasonably, the fact that he is mistaken as to the necessity of action does not prevent the existence of the authority to act. Furthermore, although he is at fault for the creation of a situation which causes him to depart from the letter of his instructions, he is authorized to act, under the conditions stated, although he may be responsible to the principal for the expense or loss caused by his prior wrongful conduct.

* * *

d. The fact that it is possible for the agent to communicate with the principal does not prevent his having authority to act if, in view of the nature of the transaction, the expense of such communication would be disproportionate, or would occasion undue delay in the performance of the principal's business.

* * *

Annotation:

The rule stated in this section is in accord with the law of Indiana. A conductor in a pressing emergency may employ a surgeon to attend a brakeman who is injured while on duty and in a proper case bind the company for the professional services rendered. *Terre Haute & I. R. Co. v. Brown*, 107 Ind. 336, 8 N. E. 218 (1886).

The agency of a conductor to employ assistance in case of an emergency arises and expires by such necessity. *Hunt v. Illinois Cent. R. Co.*, 163 Ind. 106, 71 N. E. 195 (1904); *Terre Haute & Indianapolis Railroad Company v. McMurray*, 98 Ind. 358 (1886); *Evansville & R. R. Co. v. Freedland*, 4 Ind. App. 207, 30 N. E. 803 (1892); *Chapin v. Freeland*, 7 Ind. App. 676, 34 N. E. 1007 (1893).

Section 48. PAROL EVIDENCE RULE.

The rules applicable to the contradiction or alteration of an integrated contract by extrinsic evidence apply to an in-

egrated agreement between principal and agent as to the agent's authority.

Comment:

a. The Restatement of Contracts, §§ 237-244, states the rules determining the effect of extrinsic agreements which add to or vary the terms of an integrated contract. Such rules are a special application of more general rules applying to all agreements. They apply to a written authorization which the principal and agent adopt as the final and complete expression of their agreement or of that part of their agreement to which the writing relates. Whether or not a writing purports to be a complete and final expression of agreement between principal and agent is determined by the form and content of the writing.

b. Admission of extrinsic evidence. If the agreement between principal and agent is integrated, evidence of contemporaneous oral agreements and of prior oral or written agreements contradicting or altering the tenor of the instrument is not relevant, and hence not admissible to prove the nature or extent of the authority, but evidence of the circumstances attending its making and of the other matters stated in § 34 is relevant and therefore admissible. Such evidence may also be admissible to prove fraud. Subsequent agreements varying the tenor of the instrument, or facts showing acquiescence by the principal in conduct unauthorized by its terms, may be introduced in evidence and are effective.

* * *

c. When a writing is an integrated agreement. A writing appearing to be an integration of authority may be intended to be a complete expression of the understanding of the parties as to the relations between them, or it may be intended only to be shown to third persons. Whether or not such a writing is an integrated agreement as to the extent of the agent's authority depends upon the reasonable under-

standing of the parties as to its purpose. If it is executed primarily to be shown to third persons, it is not necessarily an integration of the agreement between principal and agent, and, if not, prior or contemporaneous extrinsic agreements between the parties as to the extent of the agent's authority may be introduced to add to it or to contradict it. This may be done by the principal in actions between him and the agent or between him and the third person, either to show that a transaction conducted by the agent was authorized or was unauthorized. Such evidence may be introduced by the agent in an action between him and the principal or between him and the third person for the purpose of showing that, although apparently not authorized on the face of the writing, he was, in fact, authorized. Likewise, a third person with whom the agent has conducted a transaction may offer such evidence to show that although the writing purported not to authorize the agent to act, the agent, in fact, had authority so to do, or that, although it purported to give the agent authority, he was not authorized.

* * *

d. Persons not parties to the agreement. If the writing is found to be an integration of the agent's authority, the rule stated in this Section applies as to all persons claiming a right or defense through the authorization or lack of it. The writing, however, if shown to a third person may create apparent authority different from the authority (see Comment *e* on § 49).

Annotation:

No Indiana cases have been found in which the parol evidence rule has been applied to an integrated agreement between the principal and agent as to the agent's authority.

TITLE B. INTERPRETATION OF APPARENT AUTHORITY

Section 49. GENERAL RULE.

The rules stated in §§ 32-48 and 50-81, as applicable to the interpretation of authority, are applicable to the interpretation of apparent authority.

Comment:

a. Authority exists in accordance with the manifestations of the principal to the agent; as stated in § 27, apparent authority may be created in any of the ways by which authority is created and the rules stated in §§ 32-48 as to the interpretation of authority are applicable to the interpretation of apparent authority. Thus, there may be apparent authority created by the principal's acquiescence in the agent's conduct where this is known to the third person. Likewise, if the principal manifests to the third person that the agent is authorized to conduct a transaction, there is apparent authority in the agent to conduct it in accordance with the ordinary usages of business and to do the incidental things which ordinarily accompany the performance of such transaction, unless the third person has notice that the agent's authority is limited.

If the statements by the principal to the agent are identical with those which he makes to the third person, they are similarly interpreted in disputes between the principal and agent and in those between the principal and the third person if, but only if, there is no material difference in the circumstances under which they are made. In considering the interpretation to be given to the principal's statements, the facts of which the third person has notice, rather than those of which the agent has notice, are considered. Likewise, the previous relations between the principal and the third person as well as the relations between the principal and the agent of which the third person has notice may be important.

* * *

b. *Inferences from agent's position.* Acts are interpreted in the light of ordinary human experience. If the principal puts one into, or knowingly permits him to occupy, a position in which, according to the ordinary experience and habits of mankind, it is usual for the occupant to have authority of a particular kind, anyone having occasion to deal

with one in that position is justified in inferring that the person in question possesses such authority, unless the contrary is then made known. What such authority is, is a question to be determined from the facts, like other similar questions.

* * *

c. Statement of facts on which authority depends. To the extent that the agent is authorized to disclose a document or state the words of the principal or reveal the position which he occupies with the principal, he has apparent authority to act in accordance with what the third person, from such disclosure, would reasonably believe the agent's authority to be. In addition, there may be apparent authority if the principal entrusts an agent with indicia of authority which he directs him not to reveal but which he should know, if revealed, would mislead the third person and these the agent, contrary to his instructions, reveals.

* * *

d. Misinterpretation of agent's instructions. Although an agent who acts in accordance with a reasonable misinterpretation of ambiguous instructions is protected because of the relationship between the principal and agent, a third person who reasonably misinterprets the instructions is not necessarily protected on the ground that the agent had apparent authority, although he is protected to the extent that the agent has authority. There may be a mutual mistake which prevents the transaction from being effective (see Restatement, Contracts, § 71).

* * *

e. Parol evidence rule. If the writing is found to be an integration of the agent's authority, the rule stated in § 48 applies as to all persons claiming a right or defense through the authorization or lack of it. Whether or not it is an integration, however, a writing apparently containing the full

terms of an authorization creates apparent authority as to a third person to whom it is shown by the agent and who relies thereon, if the agent is authorized to show it or if it is in such form that it is likely to deceive third persons.

* * *

f. Particular apparent authorities. The rules stated in §§ 50-81 dealing with the interpretation of particular authorizations are applicable to the interpretation of particular apparent authorizations; and where in those Sections it is stated that unless otherwise agreed the agent is authorized to do an act or that unless otherwise agreed an authority to do a particular act includes authority to do other stated acts, there is apparent authority with respect to third persons to whom the principal has made similar manifestations as those made to the agent if the manifestations are made under similar conditions. Thus, where the principal manifests to a third person that an agent is authorized to buy or to sell and gives no indication that the agent's authority is different from that commonly given to other similar agents, the rules stated in §§ 52-66 are applicable. Statements as to specific situations in which apparent authority has been created have been made in the Comment on some of the Sections dealing with specific authorizations, in order to avoid the possible connotation that the principal is not liable to third persons except as therein stated. Such Comments are § 51, Comment *d*; § 55, Comment *c*; § 63, Comment *f*; § 71, Comment *c*; § 75, Comments *c* and *d*; § 76, Comment *c*.

Annotation:

An annotation of this section would involve a recapitulation of the sections cited and is therefore omitted.

Topic 3. Interpretation of Particular Authorizations

TITLE A. AUTHORIZATION TO CONTRACT

Section 50. WHEN AUTHORITY TO CONTRACT INFERRED.

Unless otherwise agreed, authority to make a contract is inferred from authority to conduct a transaction, if the making

of such a contract is incidental to the transaction, usually accompanies such a transaction, or is reasonably necessary to accomplish it.

Comment:

a. Authority to contract is inferred from such varying situations that no more definite statement of rules by which such authority is inferred can be made profitably. Specific applications of the rule stated in this Section are made in subsequent Sections of this Topic.

b. Authority to contract is not inferred from authority to solicit business for the principal nor from authority to perform acts of service for the principal. On the other hand, it is frequently inferred that persons whose chief function is to perform manual acts of service have authority to contract in connection with the work which they perform.

* * *

Annotation:

The rule stated in this section is in accord with the law of Indiana. *Adams Express Co. v. Byers*, 177 Ind. 33, 95 N. E. 513 (1911); *Adams Exp. Co. v. Carnahan*, 29 Ind. App. 606, 64 N. E. 647 (1902).

Section 51. AUTHORITY INFERRED FROM AUTHORIZING MAKING OF CONTRACT.

Unless otherwise agreed, authority to make a specified contract includes authority:

- (a) to make it in a usual form and with usual terms or, if there are no usual forms or terms, in an appropriate way; and
- (b) to do other acts incidental to its making which are usually done or which, if not usually done, are reasonably necessary for making it.

Comment:

a. The contracts which may be made vary so widely that no more definite statement of the authority which is inferred from authority to make contracts can be made profitably. Specific applications of the rule stated in this Section are made in the subsequent Sections of this Topic.

Comment on Clause (a):

b. Where there is a statutory requirement that a contract be made in a particular form, or there is a custom to use a particular form necessary to give adequate protection to the principal, it is inferred that the agent is authorized to make it only in such form; in the absence of usage, any appropriate form is authorized.

* * *

Comment on Clause (b):

c. What is usual, incidental, or necessary in the making of a contract depends upon the attendant circumstances.

Since such acts are not incidental to the making of a contract, it is not inferred that authorizing an agent to make a contract authorizes him to alter its terms; to waive its conditions or otherwise to diminish or discharge the obligations of the third person; to perform it or to accept performance; to transfer it; to bring suit upon it; or to rescind it. However, there may be acts incidental to the making of the contract which authorize an agent subsequently to act with respect to it. Thus, if the contract was obtained by misrepresentations which the agent was not authorized to make, it is inferred that he is authorized to return anything received from the third person as a result of the contract. If the contract was obtained by means of authorized misrepresentations, or as the result of the fraud of the principal, the agent has a right, as well as a duty to the third person, to return anything received thereby, although contrary to the directions of the principal (see § 339). If the written memorandum does not correspond to the contract as made by the parties, it would ordinarily be inferred that the agent is authorized to cause a correction to be made.

* * *

d. If the authorization is in writing and is required to be so, the third person is bound by directions contained in it

although he does not know of them (see § 167). Likewise, if the third person has reason to know of a limitation upon the agent's authority, or has reason to know that the agent's authority has been manifested by a writing intended to be shown to third persons, or that the agent is furnished by the principal with a form of contract to be used, the third person has notice of the limitation of the agent's authority (see § 166); otherwise, an agent may subject his principal to liability although not following directions, in accordance with the rules stated in §§ 159-185 and 194-211.

Annotation:

The rule stated in this section is in accord with the law of Indiana. An agent has implied authority as to all matters necessarily incident to the execution of the powers expressly conferred upon him. *Shackman v. Little*, 87 Ind. 181 (1882); *American Telephone & Telegraph Co. v. Green*, 164 Ind. 349, 73 N. E. 707 (1905).

TITLE B. AUTHORIZATION TO BUY OR SELL

Section 52. WHEN AUTHORITY TO BUY OR SELL INFERRED.

Unless otherwise agreed, authority to buy property for the principal or to sell his property is inferred from authority to conduct transactions for the principal, if such purchase or sale is incidental to such transactions, usually accompanies them, or is reasonably necessary in accomplishing them.

Comment:

a. Whether or not an agent who has not been specifically directed to buy or sell particular property for the principal is authorized to buy or sell it depends upon its nature, upon the relations between the parties, and upon all other relevant facts (see §§ 32-48). The rule stated in this Section is applicable if other facts negating the existence of the authority do not appear. The authority of a manager to buy and sell is stated in § 73.

* * *

b. Land. Unless otherwise agreed, authority to act in the principal's business does not include authority to sell the principal's interests in land, unless the business entrusted to the agent includes the selling of land. Authority to sell

leaseholds is determined by the same considerations which determine the authority to sell other interests in land. Statutes ordinarily require written authorization for conveyances of interests in land required to be in writing, and statutes sometimes require authority to make contracts for the purchase or sale of land to be in writing (see § 30).

* * *

c. Sale of things essential to the conduct of the business. Ordinarily, an authority to conduct a business, no matter how general, does not include authority to sell things necessary for the operation of the business as it is ordinarily conducted. Thus, where the premises upon which a business is conducted are owned by the principal, it is inferred that a manager of the business has no authority to sell them or any portion of them. Likewise, it is inferred that the manager of a business is not authorized to sell the fixtures and chattels used as a means of conducting the business, except so far as this may be done in the course of making replacements.

* * *

d. Sales in gross. It is inferred that an agent employed to sell his principal's goods at retail has no authority to sell them in bulk or in other than the usual retail manner.

Annotation:

No Indiana case exactly in point has been found. But see: *Reitz v. Martin*, 12 Ind. 306 (1859) (Holding that one employed to drive stock from one town to another has no authority to sell any animal that becomes footsore, and his sale passes no title.); *Cleveland, C., C. & St. L. Ry. Co. v. Moline Plow Co.*, 13 Ind. App. 225, 41 N. E. 480 (1895) (Holding that an agent merely for the storage and shipment of goods has no authority to sell them.); *Cathcart v. Dalton*, 71 Ind. App. 650, 125 N. E. 519 (1919); *Coquillard's Adm'r. v. French*, 19 Ind. 274 (1862).

Section 53. MEANINGS OF "TO BUY" AND "TO SELL."

Authorization "to buy" or "to sell" may be interpreted as meaning that the agent shall:

- (a) find a seller or a purchaser to whom the principal may buy or sell;
- (b) make a contract for purchase or sale; or
- (c) accept or make a conveyance for the principal.

Comment:

a. The phrases "to buy" and "to sell" are ambiguous. The language used in connection with them, the relations of the parties, the usages of the business of the principal or agent, and other circumstances determine what meaning is to be given to them. The fact that the conditions, the amount and terms of payment, including the methods of security for deferred payments, if any, are completely set out is an indication that there is more than authority to find a customer. An agent of a nonresident principal is likely to have wider authority than if the principal were nearby. On the other hand, the fact that the business of the agent is primarily that of soliciting, or that such agents ordinarily solicit and do not sell, indicates that he is authorized to do no more than find a customer. The inference that the agent has authority to contract for sale or to convey is more easily made in the case of chattels than in the case of land.

b. Land. Unless the price and other terms have been completely stated by the principal, it is the normal inference that an agent employed "to buy" or "to sell" land and not given a formal power of attorney is authorized merely to find a seller or a purchaser with whom the principal is to conduct the final negotiations. This inference is strengthened if the agent is a broker who ordinarily merely solicits; even where the complete terms have been set out, it is ordinarily inferred that such a person is employed merely to find a customer. Authority to accept or to make a conveyance of land for the principal is found only if clearly expressed in the authorization or clearly indicated by the circumstances.

In determining which of the three meanings is to be given, the form of the authorization, whether oral, written, or under seal, is to be considered. Thus, if authority to contract for the conveyance of land or to make the conveyance is required to be in writing, authority given without such a formality is interpreted ordinarily as including only authority to find a purchaser.

c. Things other than land. Ordinarily, a commercial traveler or other agent not entrusted with the possession of goods or documents of title has authority only to solicit orders or to produce a buyer with whom the principal may deal, especially if the goods are not specific but are to be sold by description. That the goods are bulky and of such a nature that agents to make contracts for their sale are not ordinarily entrusted with possession of them is, however, a fact which may tend to negative an inference that the authority is only to obtain a purchaser. An agent who has possession of specific goods "for sale" is ordinarily authorized to convey them and not merely to make a contract for their conveyance.

Annotation:

(a) The rule stated in this division of section 53 is in accord with the law of Indiana. A letter to a real estate agent by the owner of a lease stating that the writer had paid a specified amount for the lease and would not sell for less than another specified amount and all over that the agent could have, authorizes the agent to find a buyer but not to sell the lease. *Campbell v. Galloway*, 148 Ind. 440, 47 N. E. 818 (1897).

(b) No Indiana cases have been found dealing with the subject matter of this division of section 53.

(c) The rule stated in this division of section 53 is in accord with the law of Indiana. The power to sell and convey implies a power to deliver possession of the property to the purchaser. *Indiana Central Canal Co. v. The State*, 53 Ind. 575 (1876).

Section 54. AUTHORITY TO FIND SELLER OR PURCHASER.

Unless otherwise agreed, it is inferred that authority to find a seller or a purchaser includes authority to state the terms upon which the principal is willing to buy or to sell; to solicit offers in accordance therewith; and, in the case of agents to sell, to describe the subject matter.

Comment:

a. The usual employment of an agent to find sellers or purchasers or to solicit offers is substantially an offer to him to pay him a commission for the production of a person ready and willing to sell or to buy on the principal's terms. The right of the agent to compensation in such cases is dependent upon the rules stated in §§ 441-449.

b. The authority of a person employed only to solicit orders is chiefly to make representations concerning the subject matter. The extent of his authority to make representa-

tions depends upon the subject matter and the customs of business in reference thereto. Frequently, especially in the case of the sale of chattels, the order blank to be signed by the purchaser contains a statement of restrictions upon the agent's authority. A purchasing agent may have authority to make representations as to the solvency of his principal (see § 63). The power of the agent to subject the principal to liability for his misrepresentations, their effect in enabling the third person to rescind the transaction, and the effect of restrictive statements as to the authority of the agent made in the contract of sale, are stated in §§ 256-264.

c. Land. The typical case to which the rule stated in this Section is applicable is that of the real estate broker who ordinarily acts as agent for the seller, but who is sometimes employed by prospective purchasers. His authority to find a person willing to deal with the principal need not be in writing; in many jurisdictions, however, an agent for a seller can recover his commissions only if he has been authorized in writing (see § 468(2)).

d. Chattels. The commercial traveler either working on commission or for a salary is the typical illustration of a person employed to find purchasers of chattels, although commercial travelers not infrequently have authority to make contracts of sale.

Annotation:

The rule stated in this section is in accord with the law of Indiana. *Talmage v. Bierhause*, 103 Ind. 270, 2 N. E. 716 (1885); *Lucas v. Rader*, 29 Ind. App. 287, 64 N. E. 488 (1902); *King v. Edward Thompson Co.*, 56 Ind. App. 274, 104 N. E. 106 (1914).

Section 55. AUTHORITY TO CONTRACT FOR PURCHASE OR SALE.

Unless otherwise agreed, authority to contract for a purchase or sale includes authority to enter into negotiations for and to complete the purchase or sale, including therein usual or other appropriate terms, and, if a writing is required or is usual, to execute such writing.

Comment:

a. If an agent has no notice that his principal requires particular terms, he is authorized to make terms which are

sanctioned by usage or, if there is no one usage, terms which are not unusual in such transactions. In the absence of precedents, the agent is authorized to make any terms which reasonably protect the interests of the principal. The inference as to the authority of an agent to make terms as to price is stated in § 61; as to payment, in § 62; as to warranties, in § 63.

b. If, under the Statute of Frauds, or a similar statute, it is necessary to have a contract in writing signed by the buyer or seller, an agent authorized to make a contract of purchase or sale is authorized to sign his principal's name to such a memorandum. A broker or auctioneer may properly sign "bought and sold" notes, and may make the usual book entries, which are binding upon the principal.

c. If the authorization is in writing and is required to be so, the third person is bound by directions contained in it although he does not know of them (see § 167). Likewise, if the other party has reason to know of a limitation upon the agent's authority or has reason to know that the agent's authority has been manifested by a writing or that the agent is furnished by the principal with a form of contract to be used, the third person has notice of the limitation of the agent's authority (see § 166); otherwise, an agent may subject his principal to liability, even though he does not follow the principal's directions, in accordance with the rules stated in §§ 159-185, 194-211.

Annotation:

The rule stated in this section is in accord with the law of Indiana. An agent having general authority to sell machinery has authority to bind the seller by a promise to the purchaser that if the machinery does not work satisfactorily it will be taken back. *Marion Mfg. Co. v. Harding*, 155 Ind. 648, 58 N. E. 194 (1900).

Authority by shipper to agent to deliver article to carrier for shipment carries authority to fix valuation and to contract with the carrier to limit latter's liability to the value fixed in the contract. *Adams Express Co. v. Byers*, 177 Ind. 33, 95 N. E. 513 (1911); *Rahm v. Deig*, 121 Ind. 283, 23 N. E. 141 (1889); *Cruzan v. Smith*, 41 Ind. 288 (1872).

Defendants purchasing a set of books from plaintiff's salesman whose printed order provided that no representations or guaranties had been made by the salesman on behalf of the seller which were not therein expressed, held to have a right to presume the salesman was authorized to make such representations as

to the books and the order as were usually incident to such transactions. *King v. Edward Thompson Co.*, 56 Ind. App. 274, 104 N. E. 106 (1914).

Section 56. AUTHORITY TO ACQUIRE PROPERTY BY PURCHASE, OR TO CONVEY.

Unless otherwise agreed, authority to acquire property for the principal by purchase or to transfer the principal's property by sale includes authority to agree upon the terms; to demand or to make the usual representations and warranties; to receive or execute instruments required for the transfer or manifesting it in the usual form; to pay or receive so much of the purchase price as is to be paid at the time of the transfer; and to receive possession of the subject matter, or, in case of a selling agent, to surrender possession of it if he has been entrusted with it.

Comment:

a. The Comment on § 55 is applicable.

b. If the subject matter is land not subject to a lease, it is inferred that unless there is an agreement to the contrary, possession of the land is to pass at the time of the transfer and that neither the buyer's agent nor the seller's agent is authorized to agree otherwise. If the subject matter consists of chattels, and the selling agent has possession of them or of documents of title representing them, it is inferred that he is authorized to deliver possession upon receipt of the purchase price then payable by the terms of the contract. As stated in § 65, it is usually inferred that a selling agent is not authorized to contract for a conveyance or to convey except upon the condition of receiving the entire price in money at the time of the transfer of title.

Annotation:

The rule stated in this section is in accord with the law of Indiana.

The cases cited in section 55 are applicable.

The power to sell and convey implies a power to deliver possession of the property to the purchaser. *Indiana Central Canal Co. v. State*, 53 Ind. 575 (1876).

An agent who is authorized to sell is authorized to make a warranty. *Tal-mage v. Bierhause*, 103 Ind. 270, 2 N. E. 716 (1885); *Richmond Trading & Mfg. Co. v. Farquar*, 8 Blackf. 89 (1846); *H. B. Smith Co. v. Williams*, 29 Ind. App. 336, 63 N. E. 318 (1902).

An agent authorized to sell goods at retail can not mortgage them to secure the purchase price. *Kiefer v. Klinsick*, 144 Ind. 46, 42 N. E. 447 (1895).

An agent authorized to accept a deed of land for his principal has no authority to agree to the insertion of a clause whereby the principal assumes a mortgage on the land. *Metzger v. Huntington*, 139 Ind. 501, 39 N. E. 235 (1894).