1-1-1936

Restatement of the Law of Agency with Annotations to the Indiana Decisions

State of Indiana Legislators

Follow this and additional works at: http://scholarship.law.nd.edu/ndlr

Part of the Law Commons

Recommended Citation
Available at: http://scholarship.law.nd.edu/ndlr/vol11/iss2/3

This Article is brought to you for free and open access by NDLScholarship. It has been accepted for inclusion in Notre Dame Law Review by an authorized administrator of NDLScholarship. For more information, please contact lawdr@nd.edu.
Section 57. Limitation of Authority to Identified Subject Matter.

(1) Authority to buy or to sell is limited to authority to deal with a subject matter which is sufficiently described to be identified with reasonable certainty by the agent in the light of facts of which he has notice, or which the principal intended to describe.

(2) Unless otherwise agreed, authority to buy or sell a particular thing includes authority to buy or sell that which is appurtenant to it.

Comment on Subsection (1):

a. The degree of particularity with which the subject matter must be described depends upon its nature. If the authority has reference to specific things, the description must be so definite that, with the knowledge which the agent has, he should have no substantial doubt as to the subject matter, except that if the description is ambiguous and the agent acts in accordance with the principal’s intent, the agent is authorized so to act. In the absence of statute, it is not necessary that the authorization be as definite as is required in a conveyance of the subject matter. Extrinsic facts not appearing in the principal’s instructions may cause the description to be definite or ambiguous. If the description is free from substantial doubt in the light of facts of which the agent has notice, the agent is authorized to act upon it, although he thereby mistakes the subject matter intended by the principal. If the subject matter is specified only by a general description, it may be inferred that the agent may use his discretion in making a selection.

* * *

*Continued from November, 1935, issue and to be continued in subsequent issues.
b. If the description is in terms of ownership, as where the directions are to “sell all my land” or “all my cattle,” it is ordinarily inferred that the authorization is only to sell that which is owned at the time of the authorization with the accretions at time of sale, such as matured crops or subsequently born calves. However, if the principal is a dealer in land or cattle, the authorization may be interpreted as including that acquired in the future. It is inferred that such a description would include the land or cattle of the principal anywhere, unless the authority is given in connection with a business, or other facts indicate a more limited meaning, as where there have been previous negotiations concerning the sale of all the principal’s property in a particular locality, or where the agent does business only in a particular locality. An authorization to sell given by an individual presumptively does not include authorization to sell property owned by him in common with others; conversely it is inferred that an authorization to sell given by co-owners jointly includes only the sale of land of which they are co-owners. In both cases, however, the attendant circumstances may rebut the inference, as where one owning no coal land except as a tenant in common authorizes the sale of “all my coal land,” or where co-owners of a single lot, who also severally own other lots, authorize the sale of “all our lots,” as a preliminary to moving away.

Comment on Subsection (2):

c. Whether or not an agent is authorized to sell or to purchase a thing other than that specifically described may depend upon whether the other thing is physically connected with the thing described, or was specially made for use with it, or is commonly regarded as a part of the other or the two are commonly used or sold as a unit, and upon other similar factors. An agent authorized to purchase or sell land would be authorized to include the easements which are appurtenant as well as such things connected with the structures
upon the land as, by custom, are regarded in the locality as part of them, such as removable shutters, or in some localities, kitchen stoves. Authority to sell a second-hand automobile ordinarily includes authority to sell the tools which happen to be in it at the time; an agent to purchase a yacht would have authority to include in the purchase the boats in the davits, or those commonly used by its owner to reach the land.

On the other hand, it is inferred that a direction to buy or to sell a number of things which are commonly regarded as a unit includes authority only to deal with them as a unit, and not to buy or sell them separately or a portion of them. Thus, authority to sell a pair of matched horses does not include authority to sell one of them, at least unless the price received for the one is as great as that authorized for both; an agent authorized to purchase a designated menagerie would not be authorized to buy all but the elephants.

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

Section 58. Authority to Make Unspecified Terms.

Unless otherwise agreed, the specification of particular terms in an authorization to buy or to sell does not exclude authority to make additional terms not inconsistent with those prescribed, nor terms which diminish the duties or increase the rights of the principal beyond those specified.

Comment:

a. Except where the principal prepares and furnishes to the agent a form to be adopted in the making of contracts, specific directions to the agent are usually not intended to be a complete statement of his authority and he is authorized to offer or accede to terms which are not unusual, nor disadvantageous to his principal, nor contrary to the orders or purposes of the principal of which the agent has notice. Likewise, if an agent finds that he can accomplish his principal’s purpose on terms or conditions more favorable than
those named, ordinarily he has both authority and a duty to do so. The principal, however, may have manifested his desire to maintain uniform terms or conditions and not to have them varied even for more favorable ones.

* * *

Annotation:
The rule stated in this section is in accord with the law of Indiana.
The provision in a seller's printed order form that no representations or guaranties have been made by the salesman on behalf of the seller which are not expressed therein warrants an inference that the salesman is authorized to make changes in the contract or make representations of a kind not expressed therein. King v. Edward Thompson Co., 56 Ind. App. 274, 104 N. E. 106 (1914).

Section 59. Duration of Authority to Buy or Sell.
Authority to buy or to sell exists only when, from the manifestations of the principal or from the happening of events of which the agent has notice, the agent reasonably believes that the principal desires him to buy or to sell.

Comment:
a. Beginning. If the agent is directed to buy or to sell only after a lapse of time or upon the happening of an event, he is authorized to buy or to sell 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 to buy or to sell may terminate by lapse of time, by the fact that the agent or another has bought or sold the subject matter for the principal, by the happening of conditions specifically stated in the authorization, or by the occurrence of other events from which the agent should infer that the principal no longer desires him to buy or to sell, or would not desire him to do so if he knew the facts. In some cases, the authority of the agent terminates only when the agent has knowl-
edge 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 original manifestation by the principal, as where it is terminated by revocation or renunciation, or 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:

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

An agent employed to drive live stock from one place to another has no power, by virtue of such employment, to sell the stock, if some or all of it becomes foot-sore and unable to travel; and in case of a sale under such circumstances, the owner may recover his property from the purchaser. *Reitz v. Martin*, 12 Ind. 306, 74 Am. Dec. 215 (1859).


Where one having custody of goods for sale has no authority to sell except at a certain price, the fact that another claimed to act as his subagent in making a sale does not defeat the claims of the principal to recover the goods from the buyer. *Lucas v. Rader*, 29 Ind. App. 287, 64 N. E. 488 (1902).


Section 60. Authorized Methods of Buying or Selling.

Unless otherwise agreed, authority to sell includes only authority to sell at private sale and not at auction; authority to purchase includes authority to purchase at private sale or auction.

Comment:

a. Except where the subject matter sold is put into the hands of an auctioneer, it is ordinarily inferred that the sale of either land or chattels is to be made by private negotiation, and not at auction even though an upset price is fixed. In some markets, however, it is customary to auction certain commodities and an agent authorized to sell would be au-
authorized to act in accordance with the usage; in such case, the agent, if not himself an auctioneer, is authorized to employ one. It is inferred that agents to purchase are authorized to exercise discretion as to whether it is better to purchase at auction or at private sale.

* * *

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

Section 61. Amount of Price to be Paid or Received.

(1) Unless otherwise agreed, authority to buy or sell with no price specified in terms includes authority to buy or sell at the market price if any; otherwise at a reasonable price.

(2) Unless the agent has notice that the principal has a fixed-price policy or unless other facts indicate that the principal's directions are to be followed implicitly, an agent authorized to buy or sell at a fixed price or at the market price is authorized to buy or sell at a price more advantageous to the principal.

Comment:

a. The rules stated in this Section apply only to the interpretation of the agent's authority. Except where there is a definite market price, one known to be the buying or selling agent for the principal or entrusted with the principal's goods for sale ordinarily has apparent authority to bind the principal by a contract at any reasonable price, unless the third person has notice of the specified price. If there is a definite market price, there is apparent authority, in such cases, to buy or sell only at that price or at one more advantageous to the principal (see Comment on § 49).

Comment on Subsection (1):

b. Whether or not there is a market price and, if not, what is a reasonable price, are questions of fact to be determined in view of all the circumstances. Ordinarily, land has no definite market price; the range within which a price is considered reasonable is wide. On the other hand, the price
range for chattels frequently sold, even in the absence of a definite market price, is ordinarily narrow, as is also the range of discounts for conservative trade acceptances and similar paper. For listed securities and graded commodities, in cities in which there is an exchange, the current price on the exchange is the market price. Whether or not the agent is authorized to use discretion in awaiting a more favorable market depends upon the imperativeness of his instructions, as does also his authority to reconsign the goods to a different market where the price is better.

c. If the agent is entitled to deduct his commission from the amount to be paid by or to the principal, he is ordinarily authorized to purchase for an amount more than that directed or to sell for an amount less, if he makes a corresponding deduction from his commission; except where the principal has a fixed price policy, the principal is interested only in the net amount paid or received.

Comment on Subsection (2):

d. Ordinarily, where the price is fixed by the buyer, he intends it as the maximum price to be paid by the agent; except in sales at retail by business organizations, the price named by the seller is usually intended as the minimum price. In both cases, the agent is usually expected to use discretion in obtaining better terms and if so it would be a breach of duty to his principal for him to pay more or to sell for less than that which he should know is acceptable to the third person. There may be, however, reasons of policy which require only the specified price to be paid or received. Thus, manufacturers, interested in maintaining stable prices, may fix prices which their agents are to pay in buying through regular trade channels. Stores habitually set prices at which their commodities are sold to the public at retail. In all such cases, if the agent has notice of the business policy of the principal he is authorized to sell only at the specified price.
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. *Lucas v. Rader*, 29 Ind. App. 287, 64 N. E. 488 (1902).

Section 62. Authority to Pay or Receive Purchase Price.

(1) Unless otherwise agreed, authority to contract for a purchase or sale or to make or receive a conveyance on terms by which part or all of the price is payable at the time when the contract or conveyance is made includes authority to pay or to receive so much of the price as is payable at such time.

(2) Unless otherwise agreed, authority to purchase chattels or choses in action includes authority to pay for them if, but only if, the agent is authorized to receive possession of them or of the documents representing them; authority to sell chattels or choses in action does not include authority to receive the purchase price unless the agent has been entrusted with them or with the documents representing them.

Comment on Subsection (1):

a. If an agent is authorized to contract for a transfer or to make or to receive a transfer upon specified terms, it is ordinarily inferred that he is authorized to receive or to pay the price which the terms specify is to be paid at the time when he acts. Thus, an agent to contract for the sale of land, authorized to require a payment at the time of completion of the contract, is authorized to receive for the principal a payment then made. Likewise, a purchasing agent, supplied with his principal's funds, is prima facie authorized to use them for a payment at the time when the contract is made or, if not supplied with funds, to advance his own money, if he is also authorized to contract for such advance payment. Ordinarily, a selling agent is authorized to sell only for money to be paid when title is transferred, and a purchasing agent is ordinarily authorized to pay only on transfer of title (see § 65).

Authority to make or receive payment at the time of contract or of the transfer does not include authority to make or receive payments due at a later time.

* * *
Comment on Subsection (2):

b. The words "documents representing" a chattel or chose in action mean documents such as bills of lading, negotiable paper, and share certificates which, by law or custom, so far represent the interests of the owner of the things to which they refer that his interests therein are transferred by a transfer of the documents. The entrusting to the agent of such an instrument in a form such that it may be negotiated by him is equivalent to an entrusting of the thing itself for the purposes of the rule stated in this Section.

An agent to purchase movables, not authorized to receive possession of them, ordinarily is authorized only to purchase on credit, or for a price to be paid when title is subsequently transferred. A selling agent, not entrusted with the possession of movables or of the documents representing them, ordinarily has no authority to do more than conclude a contract of sale and has not authority to receive payment. There may, however, be a usage, in certain types of transactions, to make payment when the contract is made and before the transfer of title, as where articles are to be manufactured or shipped to the purchaser's order; in such cases the amount to be paid in advance is usually specifically stated in the authorization to the agent.

Annotation:
The rule stated in this section is in accord with the law of Indiana. Ulrich v. McCormick, 66 Ind. 243 (1879); Hachleman v. Moat, 4 Blackf. 164 (1836).

Section 63. Authority to Warrant or Represent.

(1) Unless otherwise agreed, authority to sell includes authority to make such promises operating as warranties, and only such, as are usual in such a transaction; authority to buy is limited to purchases accompanied by such warranties.

(2) Unless otherwise agreed, authority to sell includes authority to make such, and only such, representations as the agent reasonably believes to be true and as are usual with reference to such a subject matter or, in the absence of usage, representations concerning qualities of the subject matter which, at the time, are not open to inspection and as to which
the principal has reason to know the buyer will desire to be informed; authority to buy on credit includes authority to make such representations concerning the credit of the buyer as the buyer has reason to know will be required by the seller.

Comment:

a. A party to a contract of sale or a conveyance may include in his promises a warranty as to the present or future existence of a fact. Such promises may be made irrespective of any representation of fact. It is only as to warranties of this sort that the rule stated in Subsection (1) is applicable. In the sale of chattels, ordinarily a misrepresentation as to a material fact concerning the subject matter has the consequences of a breach of warranty as well as those of a misrepresentation. Statements of the agent interpreted as representations, whether or not having the effect of a warranty, are within the rule stated in Subsection (2).

b. Unless the circumstances or the terms of his authorization indicate otherwise, an agent has no authority to warrant what he has reason to believe the principal cannot perform, nor to make statements which he does not reasonably believe to be true. The principal may, however, be subject to liability to third persons to whom the agent makes such promises or representations.

Comment on Subsection (1):

c. In the absence of a usage or other indication of the principal's consent to do so, an agent authorized to sell either land or goods is not authorized to make promises as to the present or future existence of a fact in connection with the sale. If there is a usage, however, to give a warranty upon the sale of a particular subject matter, authority to give such a warranty is ordinarily inferred from authority to sell, if the agent has no notice that the warranty cannot be performed. On the other hand, no authority is inferred in a purchasing agent to purchase without a customary warranty.
It is not within the scope of the Restatement of this Subject to state what warranties are inferred in a sale, if not expressed.

* * *

Comment on Subsection (2):

d. Selling agents. Unless there is an indication that the principal does not desire him to do so, an agent authorized to sell is thereby authorized to give such description, reasonably believed by him to be true, of the things sold as is usual in transactions of that nature. If the sale is by description, as in the case of distant land or goods not in the agent's possession, he is authorized to give an adequate description, either from the description furnished him by the principal, or from his own knowledge. Such description includes: as to land, the character of its soil, woods, minerals, and contour, its location, boundaries and area; as to goods, the color, size, strength and other similar qualities. In the sale of corporate shares or securities by individual solicitation, the authorized representation would ordinarily include statements as to the business of the corporation, its profits, assets and general financial condition, and its affiliations and officers.

As to land or goods present at the time of sale, the agent is authorized to make such statements concerning qualities not open to the buyer's observation or simple test, as the principal has reason to know will be likely to be made in urging the sale, or in answering inquiries of the buyer. In determining what statements the principal has reason to know are likely to be made, the position of the agent in the business organization of the principal and the class of persons to whom the principal has reason to believe the agent will sell are considered. A sales manager ordinarily has wider discretion as to statements than a special agent; the principal has reason to believe that professional buyers purchasing large quantities will make their own tests, but that
persons not in business purchasing small quantities will largely seek information from and rely upon the statements of the agent.

**e. Buying agents.** Whether or not an agent authorized to purchase on credit is thereby authorized to make statements concerning the credit of the buyer depends largely upon the size of the transaction, the previous relations between the buyer and seller, the ability of the seller to secure through ordinary trade channels information concerning the buyer, the position of the agent in the buyer's business organization, and similar factors.

**f. Liability of the principal.** Although the principal has directed the agent not to make representations which otherwise would be authorized under the rule stated in this Section, a known agent has apparent authority to make them to persons having no notice of the limitations upon his authority (see § 49). Likewise, the principal is subject to liability for statements made by the agent which, if true, would be within his authority or apparent authority. Furthermore, the principal is subject to an action of deceit or to a bill for rescission if the agent makes statements which induce the transaction and which concern a matter which the principal has reason to know is likely to be the subject of representations. This liability of the principal is not necessarily based upon apparent authority in the agent; it is based upon a policy of requiring the principal to compensate third persons who have dealt with his agents for loss caused by the agents' wrongful conduct. See §§ 161, 162, 165, 256-264.

If the third person has notice of the limitations upon the agent's authority, as where there is a clause in the contract specifying the limits, the agent has no apparent authority or other power to subject the principal to liability for statements not within such limits because of their untruth, but
the transaction may be rescinded by the other party before
the principal has materially changed his position (see § 259).

* * *

Annotation:

Subsection 1. An agent upon whom general authority to sell is conferred will
be presumed to have general authority to warrant, unless the contrary appears. *Talmage v. Bierhause*, 103 Ind. 270, 2 N. E. 716 (1885).

Subsection 2. It will be presumed, in the absence of a showing to the con-
trary, that a warranty is not an unusual incident to a sale by an agent for a
dealer, where the thing sold is not present and subject to inspection by the pur-

See, also: *Brier v. Mankey*, 47 Ind. App. 7, 93 N. E. 672 (1911); *Richmond
Trading & Mfg. Co. v. Farquar*, 8 Blackf. 89 (1846); *Court v. Snyder*, 2 Ind.
App. 440, 28 N. E. 718 (1891).

Section 64. Employment of Assistants.

Unless otherwise agreed, it is inferred that authority to
buy or to sell includes authority to secure such professional
or other assistants as the proper performance of the transac-
tion requires.

Comment:

a. The authority to employ an assistant may be inferred
because it is usual to do so in transacting business of the
kind; because the principal has notice that the agent does
not have a license or other requirement for performing the
authorized act; because the transactions are so numerous
that the principal has reason to expect that the agent would
need to employ some one to assist him; or because of a
change of conditions which makes such an employment
desirable. If the agent is authorized to substitute another
agent for himself, the principal is responsible for the com-
ensation of such person, and the agent is not responsible to
the principal for the conduct of such a person carefully se-
lected; if he is authorized to employ another as his own
agent to assist him in the performance of work which he
undertakes for the principal, the agent is himself responsible
for such compensation, and to the principal and to third
persons for the conduct of such person (see §§ 77-81).

* * *
Section 65. Giving or Receiving Cash or Credit.

(1) Unless otherwise agreed, authority to sell includes only authority to sell for money payable at the time of the transfer of title.

(2) Unless otherwise agreed, authority to purchase includes:

(a) if the principal supplies the funds, authority to buy for money only and not on credit; or

(b) if the principal does not supply the funds, authority to pledge his credit upon usual or reasonable terms.

Comment on Subsection (1):

a. Unless otherwise agreed, authority to sell does not include authority to mortgage the subject matter, to exchange it, to make a gift of it, to grant an option of purchase, or to partition it. Likewise, the consideration receivable must be money payable at the time of the transfer of the title and payable to the principal or to an agent authorized to receive it.

b. Although the specific terms of the authorization do not direct the receipt of anything other than money by the agent, the previous course of conduct by the principal or the customs of the particular locality in reference to the sale of the subject matter in question may indicate that the agent may receive something else for it. Authority to contract for payment by certified check or bank draft payable to the principal is frequently inferred. Likewise, a sale on credit is frequently inferred from a previous course of dealing by the principal or others engaged in like business. Although the principal directs the agent to sell on credit, it would ordinarily be inferred that the agent is also authorized to sell for cash. Comment b on § 72 states the rule as to the receipt of things other than money, where the contract provides for payment in money.
Comment on Subsection (2):

c. If the principal supplies the agent with funds, ordinarily it is understood that the agent’s authority is limited to a cash purchase for an amount not exceeding that with which he is supplied by the principal. If it is understood that the funds supplied by the principal are but a first payment, the rule stated in Clause (b) is applicable.

d. In particular businesses, there are usually understandings in regard to credit including varying discounts for payments within specified periods. If no other terms are expressed, it is inferred that an agent not supplied with funds is authorized to contract in accordance with, and only in accordance with, the terms usual in the particular business, except that he may accept terms not increasing the burdens of the principal beyond those usually imposed in such cases.

e. If the principal directs specific terms to be made, ordinarily the agent is not authorized to vary these even though he reasonably believes that other terms are more favorable to the principal, except that he may accept terms giving the principal an alternative to those directed, or otherwise diminishing the principal’s burdens.

* * *

f. Authority to purchase upon the principal’s credit does not include authority to borrow money from a person other than the seller in order to effect such purchase, or to give negotiable paper in the principal’s name as security for or in payment of the price. As stated in §§ 74, 76, authority to borrow money or to execute negotiable instruments on behalf of the principal is not readily inferred.

Annotation:

Subsection 1. The rule stated in this subsection is in accord with the law of Indiana.

In the absence of a custom to the contrary, it is the duty of the agent to sell for cash only. Rich v. Johnston, 61 Ind. 246 (1878).

Similarly it is held that an agent who has authority to receive payment for a debt can not bind his principal by an arrangement short of actual collection. Kirk v. Hiatt, 2 Ind. 322 (1850).
Subsection 2.

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

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

Section 66. Authority after Purchase or Sale.

Unless otherwise agreed, authority to buy or to sell does not include authority to rescind or modify the terms of the sale after its completion nor to act further with reference to the subject matter except to undo fraud or to correct mistake.

Comment: 

a. Comment c on § 51, which deals with the agent’s authority where there has been fraud or mistake, is applicable.

Annotation: 

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

If an agent has authority to sell or to negotiate sales and to collect the purchase price, he has no authority to cancel the debt on surrender to him of the property constituting a security for the debt without some access of authority. Robinson & Co. v. Nipp, 20 Ind. App. 156, 50 N. E. 408 (1898); Springfield Engine & Thresher Co. v. Kennedy, 7 Ind. App. 502, 34 N. E. 856 (1893).

Title C. Authorization to Lease

Section 67. When Authority to Lease Is Inferred.

(1) Unless otherwise agreed, authority to lease land or chattels is inferred from authority to manage the subject matter if leasing is the usual method of dealing with it or if, in view of the principal’s business and other circumstances, leasing is a reasonable method of dealing with it.

(2) Authority to lease land or chattels is not inferred merely from an authority to sell the subject matter, to take charge of it, or to receive rents from it.

Comment: 

a. The authority to lease is the more readily inferred in the case of land or chattels ordinarily devoted to leasing purposes. Authority to manage a business upon land of the principal’s does not ordinarily justify an inference that the agent may lease it or a portion of it.

b. Authority to make conditional sales includes authority to make sales in the form of leases if that is a usual form.
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. The I. M. & C. Union v. The C., C., C. & I. R. W. Co., 45 Ind. 281 (1873); Indiana Natural Gas & Oil Co. v. Beales, 74 N. E. 551 (1905), reversed, 166 Ind. 684, 76 N. E. 520 (1906).

Section 68. Authority Inferred from Authority to Lease.

The rules of interpretation stated in §§ 52-66 as applicable to authority to sell are applicable to authority to lease.

Comment:

a. A direction to an agent "to lease" may mean, particularly if the agent is a broker, that the agent is to find a lessee with whom the principal is to make the final negotiations; or it may mean that the agent is to contract for a lease or is to execute a lease (see § 53).

b. Authority to find a lessee ordinarily includes authority to state the terms upon which the principal is willing to lease and authority to solicit offers (see § 54 and Comment thereon, dealing with authority to find a purchaser). Authority to contract for a lease ordinarily includes authority to negotiate the contract, making therein the usual terms and appropriate provisions to make the agreement effective and, if a writing is required or is usual, to execute such a writing in the usual form (see § 55). Unless otherwise agreed, authority to execute a lease of property includes authority to agree upon the usual terms of the lease, to make the usual representations and warranties, to execute instruments required for or manifesting the lease, and to surrender possession if the agent has been entrusted therewith (see § 56).

* * *

Annotation:

The rule stated in this section is in accord with the law of Indiana. Woodward v. Lindley, 43 Ind. 333 (1873); The I. M. & C. Union v. The C., C., C. & I. R. W. Co., 45 Ind. 281 (1873); Indiana Natural Gas & Oil Co. v. Beales, 74 N. E. 551 (1905), reversed, 166 Ind. 684, 76 N. E. 520 (1906).
Section 69. Authority of Agent in Charge of Things.

Unless otherwise agreed, authority to take charge of land, chattels, or securities includes authority to take reasonable measures appropriate to the subject matter, to protect the subject matter against destruction or loss, to keep it in reasonable repair, to recover it if lost or stolen, and, if the subject matter is ordinarily insured by owners, to insure it.

Comment:

a. If the subject matter is land, the agent ordinarily has authority and a duty to protect it from the depredations of third persons; if it is a structure, to make necessary repairs to keep out wind and weather, but not to make structural changes; if it consists of chattels or securities, to protect them from loss and theft by providing a reasonably safe place of storage.

b. If the subject matter is lost or stolen, the agent is ordinarily authorized to take reasonable measures for its recovery if it is necessary to act at once. This may include the institution of suit in the principal’s name against a converter. As in other cases where an unexpected event happens (see § 47), the agent is not authorized to incur any substantial outlay if it is possible to communicate with the principal and ascertain his wishes.

c. An agent authorized to take charge of land, chattels, or securities has thereby no authority to sell, mortgage, pledge, or otherwise transfer the subject matter; to apply it to the payment of debts or other obligations of the principal; or to apply it to his own debts or obligations.

Annotation:

An agent employed to drive live stock from one place to another has no authority to sell the stock in case it becomes foot-sore. Reitz v. Martin, 12 Ind. 306, 74 Am. Dec. 215 (1859).

Section 70. Authority to Make Investments.

Unless otherwise agreed, an agent authorized to make or manage investments is authorized to invest in, and only in,
such securities as would be obtained by a prudent man for his own account, having regard both to safety and income considering his means and purposes; and, if the agent's duties include management, to change investments in accordance with changes in the security of the investments, or the condition of the principal sum.

Comment:

a. The Comment on § 425, which deals with the duty of an agent to invest or manage investments, and which distinguishes between the duties of such an agent and of a trustee who is not an agent, is applicable.

Annotation:
The rule stated in this section is in accord with the law of Indiana. Rochester v. Levering, 104 Ind. 562, 4 N. E. 203 (1886) (Where an attorney as agent had control over and management of all of the principal's property and business.); Bronnenburg v. Rinker, 2 Ind. App. 391, 28 N. E. 568 (1891) (Where a broker loaned money on inadequate security, held, he must use such diligence as persons of common prudence are accustomed to use about their own business and affairs.).

TITLE E. AUTHORIZATION TO RECEIVE PAYMENT

Section 71. WHEN AUTHORITY IS INFERRED.

Unless otherwise agreed, authority to receive payment is inferred from authority to conduct a transaction if the receipt of payment is incidental to such a transaction, usually accompanies it, or is a reasonably necessary means for accomplishing it.

Comment:

a. Agents employed to sell have authority to receive payment under the conditions stated in § 62. Agents conducting a lending business also have authority to receive payment (see § 73 (e)). However, an agent has no authority to receive payment merely from the fact that he represented the principal in the transaction out of which the debt arose, although such an agent is frequently authorized to receive payment. Likewise, an agent who has been given possession of securities or other evidences of debts payable to the principal is not thereby authorized to receive payment. A bank or other business organization does not have authority to receive payment of a debt because payment is required to
be made at its place of business. In all of these cases, if such authority is present, it is because of the existence of prior relations between the principal and agent or other circumstances indicating such authority.

* * *

b. Interest. Interest is incidental to a debt, and it is inferred that an agent authorized to receive payment of the principal sum is authorized to receive interest due thereon when the debt is payable. On the other hand, authority to receive the principal sum is not inferred from authority to receive interest.

c. Apparent authority. The existence and extent of apparent authority is determined in accordance with the rules stated in Comments a and b (see § 49 and Comment f thereon). Thus, an agent who makes an authorized loan does not thereby have apparent authority to receive payment of the debt. Nor does the possession of a security or other evidence of debt payable to the principal of itself create apparent authority to receive payment of the debt in the person so having possession. However, a combination of these facts or of one of these facts with other facts which have a tendency to show authority may create apparent authority. Thus, if an agent is authorized to lend money upon negotiable instruments and is permitted by the principal to retain an instrument given for a loan, there is ordinarily apparent authority in the agent to receive either principal or interest when due.

* * *

Annotation:
Where an agent sells and delivers personal property, he has authority to receive payment. Howe Machine Co. v. Simler, 59 Ind. 307 (1877).

An attorney who negotiates a loan has authority to accept payment. Wagner v. McCool, 52 Ind. App. 124, 100 N. E. 395 (1913).
Section 72. Authority Inferred from Authority to Receive Payment.

Unless otherwise agreed, authority to receive payment includes authority:

(a) to receive payment in full in money when the debt is due; and

(b) to surrender to the payer any security for or evidence of the debt to which he is entitled and to give him such receipt as it is usual to give.

Comment on Clause (a):

a. Payment in full. Authority to collect does not include authority to compromise, to release any part of the debt, or to permit a deduction because of an alleged set-off or counterclaim. Nor is a collecting agent authorized to accept a part payment, even without extension of time or other consideration, if the part payment, as the agent has notice, would prejudice the collection of the residue, as where it affects the choice of an appropriate remedy or the court in which suit must be brought. The receipt of part payment, however, is authorized if such receipt does not prejudice the position of the principal, and in many situations it is also authorized because of the circumstances under which the agent is employed, as where an overdue claim against an impecunious debtor is given to a collection agency.

b. Payment in money. The money need not be legal tender; it must, however, be that which currently passes at par in the community as money. Unless there is a usage to the contrary, checks, whether or not certified, or bank drafts may be accepted only as conditional payment, and then only without the surrender of a lien or the conveyance of a title. Although the agent is authorized to accept only money, if he accepts a draft payable to himself which is paid, the payment is effective (see § 178). If the agent is authorized to accept only negotiable instruments, he is authorized to accept only those payable to the principal and he has thereby no authority to endorse them.
A general agent, such as a manager or an agent employed to collect a debt against a debtor of doubtful solvency, is frequently authorized to accept things other than money in payment. However, in the absence of special circumstances or a specific authorization to do so, an agent to collect is not authorized to accept in payment, at even the lowest valuation, land, chattels, the note of a third person, or other securities; nor, except where there is a commercial usage to do so, as in the case of banks, is the agent authorized to substitute himself as a debtor.

c. When due. The inference that an agent to collect a debt is not authorized to collect it before it is due is reinforced if its premature receipt cuts off the principal’s right to interest or imposes on him a duty of immediate performance, or if there are difficulties in transmitting the money to the principal or in holding the money for him, or if the money is collected by a bank which becomes a debtor until drawn upon by the principal. As in other cases, however, the circumstances surrounding the authorization may indicate that the principal desires the money as soon as he can get it. Likewise, if it is doubtful when payment is due, the agent ordinarily is authorized to accept it when it reasonably may be thought to be due.

d. Means of obtaining payment. Authority to receive payment does not include authority to institute legal proceedings, either by attachment or otherwise, nor authority to submit the claim to arbitration, nor authority to place it in the hands of an attorney for collection; nor is the agent authorized to endorse, in the name of the principal, the debtor’s note in order to enable him to obtain money for the payment, nor to purchase goods from the debtor to secure payment of the claim. If the debt is due and the debtor resides in a distant place, it is ordinarily inferred that the agent has authority to appoint either another agent or a subagent to collect the claim (see §§ 79-80). If he sends the
claim to a distant place for collection, he does not, however, aside from the statute or usage, have authority to send the evidence of the claim to the debtor himself, as where a bank in one city receives for collection a draft drawn or accepted by a bank in another city; nor, except where there is a usage to do so, as in the case of banks, does he have authority to authorize the collecting agent to remit as payment a draft drawn upon another person.

The agent is not authorized to assign the claim to a third person, even at its face value.

e. After payment. Whether or not authority to collect a debt includes authority to remit the amount collected to the principal depends upon the circumstances surrounding the authorization, including the relations of the parties. If authorized to remit, it is ordinarily inferred that the agent is to remit within a reasonable time and by the means ordinarily used for the transmission of funds. Authority to receive a check in payment of a debt does not of itself include authority to endorse the principal’s name on the check, although frequently an agent would be authorized to endorse it for deposit to an already existing account of the principal; if the agent is authorized to remit the amount in changed form, as where he is to deduct his commission, he would ordinarily be authorized to endorse the principal’s name for the purpose of obtaining the bank draft or other thing which he is to remit to the principal. An agent is ordinarily authorized to deposit money received in a bank, or other safe depositary, but not in his own name, unless he is authorized to become a debtor for the amount collected. One collecting for a number of principals is normally authorized to mix their funds in one bank deposit, if he indicates that the deposits are made by him as a fiduciary. In many cases, by commercial usage or agreement, the collecting agent is authorized to make himself a debtor of the amount collected, as in the case of factors or banks receiving drafts for collection.
f. Liabilities to principal. Section 426 states the duties and liabilities to the principal of agents authorized to collect.

Comment on Clause (b):

g. Surrender of securities and receipts. If the money is payable only upon a conveyance, an agent authorized to receive payment is authorized to deliver an instrument making the conveyance effective. If securities have been given by the debtor he is entitled to their return. If the debt is evidenced by a document, as in the case of a note or bond, the debtor is entitled to it. If the securities consist of instruments endorsed to the principal, the agent is authorized to endorse the principal’s name in so far as that is required to transfer them, although he is not authorized to endorse them in such a manner as to subject his principal to liability upon them.

The agent is also authorized to make any release of record which is required, as where a statute requires a mortgagee upon payment of the mortgage to enter a release in the office of the recorder. Likewise, it is ordinarily inferred that the agent is authorized to execute a document evidencing what he has received and the satisfaction of the claim of the principal, although the principal may be under no duty to give such a document.

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


An agent is not authorized to surrender the note of his principal and receive in payment a note payable to himself. *Robinson v. Anderson*, 106 Ind. 152, 6 N. E. 12 (1886).

An attorney to whom a note is sent for collection has no authority to transfer the property in it to a third person. *Russell v. Drummond*, 6 Ind. 216 (1855).

An agent to collect has no authority to receive notes of third persons by way of compromise. *Jones v. Ransom*, 3 Ind. 327 (1852); *Kirk v. Hiatt*, 2 Ind. 322 (1850). For other similar holdings, see: *Wakeman v. Jones*, 1 Ind. 517 (1849); *Corning v. Strong*, 1 Ind. 329 (1849); *Miller v. Edmonston*, 8 Blackf. 291 (1846).
An attorney to collect a judgment has no authority to receive anything but cash as payment; but where an attorney receives a check in line of his employment to collect a judgment, he has implied authority to indorse it. Brown v. Grimes, 74 Ind. App. 655, 129 N. E. 483 (1921).


An agent to collect has no authority to receive property in payment of a note. Robinson & Co. v. Nipp, 20 Ind. App. 156, 50 N. E. 408 (1898).

TITLE F. INTERPRETATION OF AUTHORIZATION TO MANAGE A BUSINESS

Section 73. WHAT AUTHORITY IS INFERRED.

Unless otherwise agreed, authority to manage a business includes authority:

(a) to make contracts which are incidental to such business, are usually made in it, or are reasonably necessary in conducting it;

(b) to procure equipment and supplies and to make repairs reasonably necessary for the proper conduct of the business;

(c) to employ, supervise, or discharge employees as the course of business may reasonably require;

(d) to sell or otherwise dispose of goods or other things in accordance with the purposes for which the business is operated;

(e) to receive payment of sums due the principal and to pay debts due from the principal arising out of the business enterprise; and

(f) to direct the ordinary operations of the business.

Comment:

a. Meaning of "manager." The words "manage" and "manager" are not of precise legal import. It is consistent with the idea of management that some one else shall determine plans and policies which the manager is to execute. Thus, the general manager of a corporation may exercise all of the operative functions of the corporation within the field or under the rules prescribed by the board of directors.

A manager may be an officer of a corporation whose office signifies general management, such as president, or one who
in fact manages although holding a subordinate office. Except for purposes of determining apparent authority, the name of the office held is unimportant; the functions performed with the consent of the principal are determinative.

A manager may be in charge of the entire business of the principal or of a part of it. The size of the unit of which the agent has charge is unimportant in defining the scope of his discretion to act within such unit. On the other hand, a person merely in charge of details or the physical conduct of servants, such as an overseer or a foreman, is not a manager within the meaning of this Section.

* * *

b. Acts not authorized. Prima facie, authority to manage a business does not include authority to make unusual or extraordinary contracts; to discontinue the business or any department thereof; to sell, pledge, or otherwise dispose of the business or any branch thereof, or the premises upon which it is conducted; or radically to change the nature of the business or to engage in a new business.

Prima facie, a manager has no power to borrow money in connection with the operation of the business or to issue negotiable instruments in the name of the principal, except where the business conducted is one involving the borrowing of money or the issuing of negotiable instruments, such as banking and other financial businesses (see §§ 74-76).

In all the above cases however, authority to act may be inferred from the circumstances of the authorization or from subsequent events, as where, in the absence of the principal, an emergency arises which can be met only by exceeding what is ordinarily the manager's authority.

* * *
Annotation:

(a) Officials of banks have authority to bind the banks by acts ordinarily connected with such business. *The First Nat. Bank of Indianapolis v. New*, 146 Ind. 411, 45 N. E. 597 (1896); *The Evansville Public Hall Co. v. The Bank of Commerce*, 144 Ind. 34, 42 N. E. 1097 (1896).

An agent has authority to do acts necessarily incident to the performance of a duty required of him by the principal. *Shackman v. Little*, 87 Ind. 181 (1882); *Cruzan v. Smith*, 41 Ind. 288 (1872); *Manning v. Gasharie*, 27 Ind. 399 (1866); *Tomlinson v. Collett*, 3 Blackf. 436 (1834).

The management of a business, such as a creamery, authorizes an agent to execute contracts in furtherance of the business. *Warren Creamery Co. v. Farmers' State Bank of Redkey*, 81 Ind. App. 453, 143 N. E. 635 (1924).

A general agent has authority to bind his principal by transactions and representations incidental to the business in charge of the agent. *Glazer v. Hooke*, 74 Ind. App. 497, 129 N. E. 249 (1920).

A general manager has authority to bind his principal in a contract releasing an injured employee's claim for damages. *American Quarries Co. v. Lay*, 37 Ind. App. 386, 73 N. E. 608 (1905).

(b) The rule stated in this division of section 73 is in accord with the law of Indiana. *American Telephone & Telegraph Co. v. Green*, 164 Ind. 349, 73 N. E. 707 (1905).

(c) It is not within the scope of the authority of the general manager of an ordinary manufacturing business to employ a physician to treat an injured employee except in case of absolute necessity. See *Chaplin v. Freeland*, 7 Ind. App. 676, 34 N. E. 1007 (1893).

(d) A power to sell at retail does not authorize the mortgaging of the property or selling at wholesale. *Kiefer v. Klimsick*, 144 Ind. 46, 42 N. E. 477 (1895); *Cathcart v. Dalton*, 71 Ind. App. 650, 125 N. E. 519 (1919).

Authority to buy and sell does not authorize the drawing or indorsing of bills and notes. *Smith v. Gibson*, 6 Blackf. 369 (1843).

**TITLE G. AUTHORIZATION TO BORROW**

**Section 74. WHEN AUTHORITY IS INFERRED.**

Unless otherwise agreed, an agent is not authorized to borrow unless such borrowing is usually incident to the performance of acts which he is authorized to perform for the principal.

**Comment:**

a. Even though an agent otherwise has wide discretion in the management of the principal's affairs, the authority to borrow is seldom inferred except where such authority is incidental to the position held by the agent. Authority to purchase on credit does not include authority to borrow from third persons to pay for the things purchased; authority to discount a note does not include authority to borrow, using the note as collateral security. One appointed to manage a business does not thereby have authority to borrow, al-
though such an authority may readily be inferred from the fact that in similar businesses such borrowing is regularly done or that in the particular business it has been the usage to borrow.

b. Although authority to borrow is not ordinarily incident to the performance of the work of the agent, the circumstances surrounding his authorization may indicate that he is authorized to borrow. Thus, where there are recurring needs for money to conduct a principal's business, as the principal knows, the fact that he does not supply sufficient funds for these is evidence that he intends the agent to borrow necessary amounts. Likewise, the authority to borrow may be inferred where an unexpected contingency arises and such borrowing is necessary to preserve the principal's business interests. In both cases, however, the authority to borrow is not inferred unless it is practically indispensable to the continuance of the principal's business or to prevent a very considerable loss to the principal and where it is impossible to communicate with the principal.

* * *

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

Section 75. Authority Inferred from Authority to Borrow.

Unless otherwise agreed, authority to borrow includes authority:

(a) to borrow from any lender, for delivery to or for the use of the principal, a reasonable amount in view of the purposes of the borrowing if no amount is specified, upon the terms which are usual, if any, or otherwise upon reasonable terms; if no time is specified, for a reasonable time;

(b) to execute in the name of the principal such evidences of debt as are usually given; and

(c) to make any reasonably necessary representations concerning the credit of the principal which the agent reasonably believes to be true.
Comment:

a. It is ordinarily inferred that a borrower is not interested in the personality of the lender; if, however, it has been the usage of the principal, as the agent has notice, to borrow only from, or to avoid, a particular person, the agent is authorized to act only in accordance with the usage. If no amount is specified, the agent is authorized to use reasonable discretion as to the amount required to carry out the principal’s purposes. Where authority to borrow is inferred because of an emergency, an agent is authorized to borrow only as much as reasonably can be expected to be required in taking care of the situation. If the amount or period of borrowing is specified, there is no authority to borrow a smaller or greater amount or for a shorter or longer time, except that an agent authorized to borrow a specific amount would ordinarily be authorized to borrow from different lenders smaller amounts making up the total, and an authority to borrow for a specified time includes authority to specify an option for prepayments or for an extension of time.

b. It is inferred that one having authority to borrow has authority to do what is reasonably necessary in obtaining the money, including the giving of negotiable instruments in the usual form, if that is required, and the making of such truthful representations concerning the financial position of the principal as may be demanded by the lender. Compare § 63, dealing with the power of a purchasing agent, whose powers, in these respects, are more limited than those of an agent authorized to borrow.

c. Authority to borrow does not include authority to apply the money received to any purpose, except delivery to the principal, unless the agent is otherwise authorized to spend the principal’s money or pay his debts. If the borrowing is authorized or is otherwise within the power of
the agent, however, the lender is not responsible for the pay-
ment of the amount to the principal or its application to the
principal's uses (see § 165).

d. As in all other agency situations, it is inferred that
the agent is authorized to borrow only for the purposes of
the principal, and a power of attorney, given for the benefit
of the principal, is so interpreted, even though expressed
in the broadest terms (see § 39). If an agent borrows for
an improper purpose, the principal is not liable to a lender
having notice of such purpose; to those who lend without
such notice or who become bona fide purchasers of a nego-
tiable instrument which the agent is authorized to draw for
a proper purpose, the principal is subject to liability (see
§ 165).

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

TITLE H. AUTHORIZATION TO MAKE NEGOTIABLE
INSTRUMENTS

Section 76. WHEN AUTHORITY IS INFERRED.

Unless otherwise agreed, an agent is not authorized to
execute or endorse negotiable paper unless such execution or
endorsement is usually incident to the performance of the acts
which he is authorized to perform for the principal.

Comment:

a. Consent to endorse for the purpose of deposit to the
principal's account is more readily inferred than authority
to endorse for other purposes. Authority to draw checks on
the principal's account for the payments of debts incurred
in the principal's business, if under the management of the
agent, is more readily inferred than authority to execute
negotiable promissory notes. An agent authorized to bor-
row money is thereby authorized to execute negotiable in-
struments to the authorized amount if this is usually re-
quired by lenders.

* * *
b. Circumstances creating authority. Although authority to make negotiable instruments is not usually incident to the performance of the acts which the agent is authorized to perform, such authority may be inferred from the circumstances which surround the authorization, as where the agent is authorized to borrow on account of the principal and the only feasible means of borrowing is by the execution of a negotiable instrument. Likewise, the authority to make a negotiable instrument may be inferred where authority to borrow is created in an emergency (see Comment b on § 74).

c. Improper motive of agent. It is ordinarily inferred that an agent is not authorized to make or endorse negotiable instruments except for the principal’s purposes. Thus, an agent is not authorized to execute instruments for his own account, nor, except for advertising or similar business purposes, without consideration; nor is an agent authorized, in the absence of special circumstances, to make accommodation endorsements in the principal’s name, even for the benefit of the principal’s business associates. If an agent makes a negotiable instrument for an improper purpose, one taking from him with notice has no rights thereon against the principal; one receiving with notice an instrument belonging to the principal endorsed by the agent for an improper purpose, is subject to liability to the principal (see §§ 166, 312). If the agent is otherwise authorized, however, the fact that the agent had an improper purpose in making or endorsing the instrument in the authorized form does not prevent a bona fide purchaser in due course, or a subsequent transferee from one, from having the same rights in the instrument and against the principal as if the agent’s act were authorized (see § 165).

d. Validation by receipt of proceeds. If an agent without authority endorses a negotiable instrument payable to the principal and the amount of the instrument is credited
to the principal or otherwise comes to his hands, the principal cannot retain the proceeds without validating the unauthorized act of the agent (see §§ 98-99).

Annotation:
The master and part owner of a boat has no authority to execute bills and notes for insurance, etc., for use of the boat. Holcroft v. Wilkes, 16 Ind. 373 (1861).
Authority to buy and sell goods does not authorize the drawing and indorsing of bills and notes. Smith v. Gibson, 6 Blackf. 369 (1843).

TITLE I. AUTHORIZATION TO DELEGATE OR APPOINT AGENTS AND SUBAGENTS

Section 77. General Rule.

The authority to appoint agents or subagents of the principal may be conferred in the same manner as authority to do other acts for the principal, and the interpretation of the manifestations of the principal is governed by the rules stated in §§ 32-48.

Comment:

a. Authority to appoint others to perform an act may result from formal writings or informal words, or may be inferred from an appointment to a position or from other conduct by the principal manifesting his consent.

An agent authorized to appoint another to perform an act as a servant or other agent of the principal may be one who is authorized to perform the act either personally or by directing another to perform it. Under these circumstances he has authority to delegate its performance. On the other hand, he may be merely an appointing agent with no authority personally to perform the act in question.

b. An agent authorized to appoint another to act for the principal may be authorized to appoint either an agent of the principal, whose relations with the principal are thereupon the same as if he were directly appointed by the prin-
principal, or a subagent who becomes an agent of the agent and who, although authorized to act for the principal, has no contractual relations with the principal (see § 5). Whether or not an agent is authorized to appoint another agent or a subagent depends upon the manifestations of the principal in light of all the circumstances (see §§ 79-80).

Annotation:
The appointment of a subagent is not binding on the principal unless expressly authorized, or afterwards ratified, or unless authority is reasonably implied. O'Connor v. Arnold, 53 Ind. 203 (1876); Lucas v. Rader, 29 Ind. App. 287, 64 N. E. 488 (1902).

Section 78. Inference as to Authority to Delegate Authority.

Unless otherwise agreed, authority to conduct a transaction does not include authority to delegate to another the performance of acts incidental thereto which involve discretion or the agent's special skill; such authority, however, includes authority to delegate to a subagent the performance of incidental mechanical and ministerial acts.

Comment:
a. The rule stated in this Section is a specific application of a more general rule that one upon whose discretion, judgment, or skill another relies cannot properly appoint a third person to perform the duties undertaken by himself (see § 18). The relation of principal and agent is a fiduciary one in which the principal ordinarily relies upon the personal qualities of the agent; unless the transaction includes no element of discretion, the one appointed to do the act cannot appoint another to perform it on account of the principal.

* * *

b. Even in the performance of purely mechanical or ministerial acts, an agent appointed to conduct a transaction is ordinarily not authorized to appoint another agent for the principal. He is authorized only to appoint a subagent responsible to the immediate agent, and for whose acts the agent is responsible to the principal.

* * *
c. An agent authorized to perform an act may be authorized to appoint other agents for the principal to assist in its performance under the conditions stated in § 79, or to appoint subagents to perform it under the conditions stated in § 80. For the authority of servants to delegate, see § 81.

Annotation:


Authority to sell personalty, such as law books, can not be delegated by a special agent. *Lucas v. Rader*, 29 Ind. App. 287, 64 N. E. 488 (1902).

Where a mayor makes a subscription for the city council, and the council only has authority to do so, it is held that the mayor is an instrument or amanuensis of the council. *The Evansville, Indianapolis & Cleveland Straight Line R. R. Co. v. The City of Evansville*, 15 Ind. 395 (1860).

Section 79. WHEN AUTHORITY TO APPOINT AN AGENT IS INFERRED.

Unless otherwise agreed, an agent is authorized to appoint another agent for the principal if:

(a) the agent is appointed to a position which, in view of business customs, ordinarily includes authority to appoint other agents;

(b) the proper conduct of the principal's business in the contemplated manner reasonably requires the employment of other agents;

(c) the agent is employed to act at a place where or in a business in which it is customary to employ other agents for the performance of such acts; or

(d) an unforeseen contingency arises making it impracticable to communicate with the principal and making such an appointment reasonably necessary for the protection of the interests of the principal entrusted to the agent.

Comment:

a. Whether or not the agent is authorized to employ agents of the principal depends upon the manifestations of the principal in light of the circumstances, including the usages of the business and of the parties inter se. The agents so employed are the agents of the principal and not of the employing agent, who is not responsible to them for their
compensation unless he so manifests, and is no more responsible for their conduct to third persons or to the principal than he is for the conduct of other agents of the principal, unless he is negligent in their selection (see §§ 358, 405).

b. The appointing agent may be authorized to appoint other agents subject to his orders as a superior agent or subject to orders of the principal or other agents of the principal; he may be authorized to appoint all agents needed in the principal's business or only agents of certain types. The variations in the authority of the appointing agents are so great that no more definite rules can be stated than those stated in §§ 32-48 as applicable to the interpretation of authority generally.

* * *

Annotation:
(a) No Indiana cases have been found dealing with the subject matter of this division of section 79.
(b) The rule stated in this division of section 79 is in accord with the law of Indiana. Tippecanoe Loan & Trust Co. v. Jester, 180 Ind. 357, 101 N. E. 915, L. R. A. 1915E, 721 (1913).
(c) No Indiana cases have been found dealing with the subject matter of this division of section 79.
(d) The rule stated in this division of section 79 is in accord with the law of Indiana.

It is within the authority of the general officers, such as conductors, of a railway company to supply medical services for injured employees in an emergency. Cincinnati, I., St. L. & C. Ry. Co. v. Davis, 126 Ind. 99, 25 N. E. 878 (1890); Louisville, N. A. & C. Ry. Co. v. Smith, 121 Ind. 353, 22 N. E. 775, 6 L. R. A. 320 (1889); Terre Haute & I. R. Co. v. Brown, 107 Ind. 336, 8 N. E. 218 (1886); Terre Haute & I. R. Co. v. McMurray, 98 Ind. 358, 49 Am. Rep. 752 (1883); Vandalia R. Co. v. Bryan, 60 Ind. App. 223, 110 N. E. 218 (1915); Toledo, St. L. & K. C. R. Co. v. Mylott, 6 Ind. App. 438, 33 N. E. 135 (1893); Evansville & R. R. Co. v. Freeland, 4 Ind. App. 207, 30 N. E. 803 (1892).

Section 80. WHEN AUTHORITY TO APPOINT A SUBAGENT IS INFERRED.

Unless otherwise agreed, authority to appoint a subagent is inferred from authority to conduct a transaction for the principal for the performance of which the agent is to be responsible to the principal if:

(a) the authorized transaction cannot lawfully be performed by the agent in person;
(b) the agent is an association or has an organization, the employees of which normally perform such transactions;

(c) the business is of such a nature or is to be conducted in such a place that it is impracticable for the agent to perform it in person;

(d) the appointment of subagents for the performance of such transactions is usual, or there has been a usage between the principal and the agent permitting it; or

(e) an unforeseen contingency arises in which it is impracticable to communicate with the principal and in which such an appointment is necessary in order to protect the interests of the principal entrusted to the agent.

Comment:

a. The inference stated in this Section exists only where the agent has undertaken the transaction by his own means and where he reasonably believes, in view of the circumstances under which he undertakes it or which arise during the performance, that the principal is willing that it be performed by one other than himself. Thus, although normally brokers, factors, or attorneys would be authorized to delegate to their employees the performance of the principal's business, this would not be true if they had reason to know that the principal was not aware of their business organization. Likewise, although ordinarily an agent not an attorney, if authorized to bring suit, could properly employ an attorney for this purpose, he could not do so if he should realize that the principal believes that he is an attorney. One employing a corporation as an agent necessarily knows that the corporation must act through agents and hence consents to the use of its employees as subagents.

* * *

b. For the distinction between agents and subagents, see § 5. For the termination of the subagent's authority, see § 137. For the rule as to the power of a subagent to create relations between the principal and third persons, see §§ 142,
318. For the liabilities between principal and subagent, see §§ 428 (1), 458. For the liabilities of the agent to the principal for the conduct of a subagent, see § 406; to third persons, see § 362. For the liabilities of the subagent to the agent, see § 428 (2); for those of the agent to the subagent, see § 459.

Annotation:

(a) No Indiana cases have been found dealing with the subject matter of this division of section 80.

(b) No Indiana cases have been found dealing with the subject matter of this division of section 80.

(c) The rule stated in this division of section 80 is in accord with the law of Indiana. Tippecanoe Loan & Trust Co. v. Jester, 180 Ind. 357, 101 N. E. 915, L. R. A. 1915E, 721 (1913); Irwin v. Reeves Pulley Co., 20 Ind. App. 101, 48 N. E. 601 (1897), rehearing denied, 50 N. E. 317 (1897).

(d) No Indiana cases have been found dealing with the subject matter of this division of section 80.

(e) No Indiana cases have been found dealing with the subject matter of this division of section 80.

Section 81. Authority of Servant to Delegate.

Unless otherwise agreed, a servant is not authorized to permit or employ another to perform acts of service which he is employed to perform.

Comment:

a. A servant is an agent employed to render service, whose physical conduct is subject to the control or right to control of the principal. Such a person ordinarily has no power to substitute another in the performance of services which it is his duty to render. However, persons such as managers or department heads, although within the class defined as servants (see § 220), ordinarily employ assistants in the prosecution of the master's work. In such cases the services they are employed to give include the employment of other persons to perform such subordinate acts as they do not choose to perform in person. Their authority in such cases may be to employ either servants or independent contractors. A servant may be employed primarily to conduct transactions with third persons, in which case the service he is required to give may not include the perform-
anc of the ministerial or mechanical acts connected therewith, and if it does not, the rule stated in § 79 is applicable. A servant employed to perform manual work ordinarily has no authority to direct or permit another to perform it, either as his servant, as an independent contractor, or as a servant of the master. Since the master is responsible to third persons for the torts of a servant in the scope of employment, in the situations in which a servant is authorized to secure assistance, ordinarily he would be authorized to employ only a person who becomes his servant or an independent contractor, and not a servant of the master.

* * *

b. If a servant is authorized to substitute another servant of the principal, such substituted servant has power to subject the principal to liability as would any other of the principal’s servants. On the other hand, if the servant is not authorized to substitute another for himself, the principal is not subject to liability to third persons for the conduct of such person, unless the agent has been negligent in entrusting an instrumentality of the principal to such person or if, surrendering its immediate control to the other, he retains supervision over him and is negligent in his supervision (see § 241).

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

Chapter 4

RATIFICATION

Topic 1. Definitions

Section 82. Ratification.

Ratification is the affirmance by a person of a prior act which did not bind him but which was done or professedly done on his account, whereby the act, as to some or all persons, is given effect as if originally authorized by him.
Comment:

a. The word "ratification" as defined in this Section is inapplicable to situations where the original act was authorized or where, although it was not authorized, the one acting had power to make the principal a party to the transaction because the act done was within his apparent authority or was otherwise within the scope of his agency or employment, under the rules stated in §§ 159-185. If an agent improperly has made his principal a party to a transaction or improperly has acquired property for his principal, the principal can affirm the transaction with the consequences stated in Comment b on § 416.

b. Ratification is not a form of authorization but its peculiar characteristic is that ordinarily it has the same effect as authorization; upon ratification the consequences of the original transaction are the same as if it had been authorized, except in favor of persons who, because of their wrongful conduct, are not entitled to benefit, and against persons who have meanwhile acquired interests with which it would be unjust to interfere (see §§ 100-102). It is not a contract and may result, therefore, from a subsequent affirmance without either consideration or a fresh consent by the purported agent or by the person with whom such agent has dealt (see § 92). It differs from equitable estoppel in that no change of position by the third person is required to subject the principal to liability, and where a contract is ratified there is a contract between the principal and the third person and not merely a liability created against the principal. Although there has been no ratification because of the lack of a required element, there may be estoppel (see § 103), or a contractual or quasi-contractual liability (see § 104).

c. There is not a change in legal relations as if there had been initial authorization, and hence there is no ratification unless an act has been done which the purported or intended
principal could have authorized (see § 84), by one who pur-
ported to act as agent or intended to act as servant (see
§ 85); and unless the act is affirmed (see §§ 93-99), while
still capable of ratification (see §§ 88-90), by a person who,
at the time of affirmance, knows the facts (see § 91), who
can authorize such an act (see § 86), and who is the person
for whom the agent purported or intended to act (see § 87).

Annotation:
A ratification is an agreement to adopt an act performed by another for the
one who agrees to adopt. Haggerty v. Juday, 58 Ind. 154 (1877).

Ratification means adoption of that which was done for or in the name of
App. 84, 121 N. E. 128 (1918); National Life Ins. Co. v. Headrick, 63 Ind. App.
54, 112 N. E. 559 (1916).

The acts, words and silence of the principal are sometimes spoken of as in
themselves constituting ratification; but this is not strictly accurate. They are
rather the evidence of ratification than the ratification itself. Minnick v. Darling,
8 Ind. App. 539, 36 N. E. 173 (1894).

Section 83. Affirmance.
Affirmance is a manifestation of an election by the one on
whose account an unauthorized act has been performed to
treat the act as authorized, or conduct by him justifiable only
if there is such an election.

Comment:

a. The affirmance results in ratification only if the act
is ratifiable and the affirmance is made under the proper
conditions and in the proper manner.

b. The affirmance may consist either of a manifestation
of consent to be a party to the previous transaction, or a
manifestation that such consent has been given. Such mani-
festation is effective when made although not communicated
to the third person or to others, except where the third per-
son changes his position believing that it has not been made
(see § 95). Conduct which is justifiable only if there is ratifi-
cation constitutes an affirmance under the conditions stated
in §§ 97-99.

Annotation:
A principal may affirm or disaffirm at his pleasure, when informed of the
fact; but his affirmance is not presumed, unless, from his conduct, his acts, or
his words, such an inference may reasonably be drawn. Wallace v. Morgan, 23
Ind. 399 (1864).
Topic 2. When Affirmance Results in Ratification

Section 84. What Acts Can Be Ratified.

(1) Subject to the rules stated in §§ 85-87, an act which, when done, the purported or intended principal could have authorized, he can ratify, except an act the ratification of which is against public policy.

(2) An act which, when done, the purported or intended principal could not have authorized, he cannot ratify, except an act affirmed by a legal representative whose appointment relates back to or before the time of such act.

Comment:

a. Nature of the act. If, by a manifestation of consent, one may create a power in another to affect him by doing an act on his account, and such an act is purported or intended to be done for another person, the act is subject to ratification. Since ratification, like authorization, affects the relations between the principal, agent, and third person, the same rules apply to the ratification of acts as apply to their authorization, as to which see §§ 17-19. Thus, if the performance of an act by one who has been directed to do it on account of another would, at the time of performance, have no legal consequences as to third persons, the affirmation of such act done without authority results in no legal consequences as to such third persons. It is immaterial that by reason of change of law at the time of affirmation such act, if then authorized, would have legal consequences, unless the change in law is, by statute, retroactive.

In the absence of retroactive legislation, if the act done would be illegal although authorized, it is affected by the illegality when it is affirmed, although at the time of affirmation such act could have been validly authorized (see § 100).

A transaction which, if authorized, would have been voidable because of mistake on the part of the purported agent or fraud by the other party to the transaction, is subject to ratification, the ratification normally having the double effect of making the principal a party thereto and preventing
subsequent rescission by him for the mistake or fraud; if the purported agent has defrauded the other party, the principal may ratify the transaction, but he is subject to the liabilities and defenses resulting from the fraud.

Upon the subsequent affirmance of a transaction which was tortious, criminal, or otherwise illegal because, and only because, the purported agent was not authorized, ratification results as if the act had not been illegal, as far as the legal relations between the parties are concerned, except to the extent that to permit the affirmance to result in ratification would have a tendency to obstruct criminal justice or otherwise be against public policy.

* * *

b. Incapacity of principal. Except in the case of a representative (see Comment c), an act is not capable of ratification unless the person acting purports or intends to act for a person who, at the time of the act, has capacity to authorize such an act. Thus, the affirmance by a person not in existence at the time of the original act does not result in ratification. Likewise, where a contract is purported to be made on account of one who, because of mental incompetency or coverture, has no capacity to authorize such contract, an affirmance after the disability has ceased does not result in ratification, since a transaction conducted by him personally while so incapacitated cannot subsequently be effectively affirmed. Such affirmance may, however, result in the same liabilities on the part of the purported principal as if there were ratification, because of estoppel (see § 103), or it may result in a new contract (see § 104).

Where an act is done for a person who is competent to authorize such a transaction but which, if authorized, he could avoid because of his partial incapacity, the act may be ratified by him, subject to the same voidability if the partial disability still remains; affirmance after the partial
disability is removed normally has the effect of preventing a subsequent disaffirmance by the purported principal (see Comment d on § 100).

* * *

c. Ratification by executors and similar representatives. An executor, administrator, assignee, trustee in bankruptcy, or other representative whose title, when appointed, relates back to an earlier time, can ratify acts which he could have authorized had he been appointed at such earlier time.

The capacity of an executor or administrator to ratify acts done in the lifetime of and for the decedent, or of an assignee in bankruptcy to ratify acts done by one purporting to act for the bankrupt before the bankruptcy, is not dealt with in the Restatement of this Subject.

The power of an agent to ratify an act done on account of his principal previous to his appointment is stated in Comment c on § 93.

Annotation:

Subsection 1. A contract that is ratified must be one that the parties might lawfully have made in the first instance. Minnich v. Darling, 8 Ind. App. 539, 36 N. E. 173 (1894).

Public officers clothed with statutory duties may not delegate such authority nor ratify the attempts of unauthorized persons to perform those duties, such as levying taxes. Shepardson v. Gillette, 133 Ind. 125, 31 N. E. 788 (1892).

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

Section 85. PURPORTING TO ACT AS AGENT AS A REQUISITE.

(1) Except as stated in Subsection (2), ratification does not result from the affirmance of an act, unless the one acting purports to act on account of another.

(2) An act of service not involving a transaction with a third person is subject to ratification if, but only if, the one doing the act intends or purports to perform it as the servant of another.
Comment on Subsection (1):

a. Under the rule stated in this Subsection, a ratification does not result from the affirmance of an unauthorized contract or representation made by a person intending to act for another whose existence is not disclosed to the third person. Likewise, under the rule stated in this Subsection, there can be no ratification where a person makes a contract in the name of another whom he impersonates, or when one signs a document representing that the signature is that of another person. In such case, however, if the person whose identity or signature is simulated leads the deceived person to believe that the transaction was as represented and consequently to change this position, he is subject to liability on the ground of estoppel (see § 103).

* * *

b. It is not necessary that the purported principal be identified; it is sufficient that the person acting should purport to act as agent for another. But if he describes the other by name or otherwise, only a person coming within the description so given, if any, can ratify. If the description applies to two persons equally, only the one on whose account he intends to act can ratify (see § 87).

c. Purporting to act on account of another does not necessarily mean that the agent represents to the third person that the principal has authorized him to act on his account in the transaction. A person purports to act on account of another if he undertakes to act on his behalf and to make the other a party to the transaction, although the person acting may also manifest to the third person that he does not know whether or not he is authorized, or even that he is not authorized. This situation should be distinguished from that in which one purports merely to undertake to transmit an offer to another. Whether in a particular situation there is
an intent to make a present agreement subject to ratification or a mere offer which may be accepted depends upon the understanding of the parties.

* * *

d. Two situations are to be distinguished. The first is where an agent tortiously sells to third persons, as his own, chattels belonging to the principal; the second, where an agent has defrauded a principal in contracting with him. In the first of these cases the principal has an election to bring an action for conversion against the agent or an action of assumpsit for the amount received by him from the purchaser. If the principal chooses the second alternative, his action is such an affirmation that thereafter he cannot maintain the action for conversion against the purchaser which he ordinarily would have. In the second case, the principal has an election to rescind the transaction with the agent or, affirming by keeping what he has received, to hold the agent responsible for damages, if any. In neither of these situations does the affirmation constitute a ratification as that word is used herein.

* * *

Comment on Subsection (2):

e. The affirmation of an isolated act, or of a transaction involving promises and representations to third persons, does not cause the person affirming to be subject to liability therefore, unless the one acting purported to act on account of another. On the other hand, if acts of service are rendered with intent, though unexpressed, to perform them as servant for another and the other affirms, the ordinary consequences of the relation of master and servant follow if the conditions stated in §§ 86-92 are satisfied. As to the necessity of knowing the facts in affirming unauthorized service, see § 91.

* * *
RESTATEMENT OF THE LAW OF AGENCY

Annotation:

Subsection 1. The person who acts as agent must purport to be the agent of the principal and the contract must be made on the faith and credit of the principal. Minnich v. Darling, 8 Ind. App. 539, 36 N. E. 173 (1894).

When the person making the contract has no authority to contract for the third person (principal), and he does not purport to act for the third person at the time, it seems that the subsequent assent of such third person, to bind him as principal, is of no operative effect. Crowder v. Reed, 80 Ind. 1 (1881).

"... no act is capable of ratification by the principal which was not performed by the agent as agent, and in behalf of the principal." 1 PARSONS ON CONTRACTS 346, quoted in Meiners v. Munson, 53 Ind. 138, 143 (1876).

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

Section 86. ILLEGALITY OR LACK OF CAPACITY AT TIME OF AFFIRMANCE.

(1) A transaction capable of ratification can be ratified if, but only if, the purported principal can authorize such a transaction at the time of affirmance, except as stated in Subsection (2).

(2) If, by a change in law, a transaction, lawful when done, has become so unlawful that an attempt thereafter to authorize it would be void, the transaction may nevertheless be ratified if it is not against the present public policy to enforce rights resulting from it.

Comment:

a. Nature of the act. If, by a change of law, an act which was capable of delegation when it was performed can no longer be delegated, there can be no ratification, except as stated in Subsection (2). Likewise, if an act is affirmed upon a day or at a place in which such act could not be authorized, the affirmance does not result in ratification.

Whether or not it is against public policy to enforce rights resulting from a transaction which, if now entered into, would be unlawful, but which was lawful at the time it was entered into, depends upon whether or not the unexecuted portion of the transaction offends the present public policy which makes such a transaction illegal. If it does offend present public policy, the affirmance of the transaction does not result in ratification; if it does not offend, the purported principal may ratify it. Thus, if a purported agent delivers and purports to sell goods of the principal on credit, a ratifi-
cation of the transaction after the enactment of a statute which prohibits the sale of such goods would not offend the policy of the law which is directed primarily against the sale and delivery, and not against the receipt of the price. On the other hand, if the purported agent had received a payment for the goods in advance but had not delivered them, his principal would not, by affirming, subject himself to liability for failure to make delivery.

* * *

b. Capacity of purported principal. A person has capacity to ratify an act if at the time of affirmance he has capacity to authorize such an act. If he has only partial capacity at the time, as in the case of an infant, his ratification is subject to the same limitations as would be his authorization. On the other hand, although, as stated in § 84, one of full capacity cannot ratify an act done when he had no capacity, a person who had only partial capacity when the act was done may, upon the removal of the partial incapacity, ratify as completely as if he had had full capacity at the time when the act was done (see Comment d on § 100).

* * *

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

Section 87. Who Can Affirm.

To become effective as ratification, the affirmance must be by the person identified as the principal at the time of the original act or, if no person was then identified, by the one for whom the agent intended to act.

Comment:

a. As stated in § 85, it is necessary for the ratification of a transaction with a third person that the person acting should purport to act as agent. If he then identifies the purported principal, it is only the affirmance of such person
which can result in ratification. If the agent purports to act for a partially disclosed principal and gives no description, only the person intended by the agent can ratify; if a partial description is given, only a person who comes within it and who was intended by the agent can ratify. Where one intends to act as servant, only the person on whose account the service was purported to be done or was intended can ratify it.

* * *

b. If the purported principal is identified, the fact that the agent intended to act entirely on his own account, making unauthorized use of the principal’s name for his own accommodations, does not prevent the purported principal from ratifying.

* * *

Annotation:
The rule stated in this section is in accord with the law of Indiana. Henry v. Heeb, 114 Ind. 275, 16 N. E. 606, 5 Am. St. Rep. 613 (1888); Crowder v. Reed, 80 Ind. 1 (1881); Meiners v. Munson, 53 Ind. 138 (1876); Reeves & Co. v. Miller, 48 Ind. App. 339, 95 N. E. 677 (1911).

Section 88. Affirmance after Withdrawal of Third Person or Other Termination of Original Transaction.

To constitute ratification, the affirmance of a transaction must be before the third person has manifested his withdrawal from it either to the purported principal or to the agent, and before the offer or agreement has otherwise terminated or been discharged.

Comment:

a. Withdrawal by third person. Until affirmance, the relationship of the third person to the purported principal is similar to that of an offeror to an offeree. Before such time, therefore, the third person is free to withdraw, either because he discovers that the principal has not authorized the transaction or for any other reason. This is so although the
agent has not represented that he is authorized, and although the other party has contracted with the agent that he will not withdraw.

An agreement with the purported agent to terminate the transaction, or other conduct manifesting to the agent or to the principal that the third person no longer consents to the transaction, constitutes a withdrawal. Action begun by the third person against the purported agent for breach of warranty of authority is such a manifestation unless at the time the third person indicates that the transaction is to remain open.

* * * 

b. Termination of transaction. The transaction may have terminated because there were no remaining rights or duties according to its terms, as where it has become impossible of execution or where other events have happened which discharge it.

The transaction between the purported agent and the third person may consist of an offer by one to the other; if the offer lapses, or is withdrawn, a later affirmation cannot result in a contract. If, however, the third person makes an offer to the purported agent which the latter purports to accept for the principal, it is not essential that the affirmation by the principal come within the time when the offer would have lapsed without such acceptance.

* * *

c. Death or loss of capacity of third person. The death or loss of capacity of the other party to a transaction with the purported agent terminates the power of the purported principal to ratify. If, at the time of the affirmation, the third person has such partial capacity that he can make a contract which can be avoided by him, the affirmation by the purported principal with knowledge of the facts creates a contract subject to avoidance by the third person.
Annotation:
No Indiana cases have been found dealing with the subject matter of this section.

Section 89. Affirmance After Change of Conditions.

At the election of the third person, an affirmance of a transaction with him is not effective as ratification if it occurs after the situation has so materially changed that it would be inequitable to subject him to liability thereon.

Comment:

a. The affirmance, in cases covered by the rule stated in this Section, results in ratification unless the third person upon learning the facts elects to withdraw from the transaction. If he does withdraw, the affirmance by the principal, in spite of such withdrawal, may have the effect of condoning the act of the agent, if the agent was subject to liability for having done an unauthorized act (see § 409 for the effect of condonation).

b. A material change in the situation of the third person may be caused by a conveyance by him of the subject matter between the time of the transaction and of its affirmance, or by his assumption of obligations to other persons with which the ratification will interfere.

* * *

c. A lapse of time with such a change in conditions that the promise of the principal is entirely disproportionate in value to that of the third person may make it inequitable to enforce the transaction against a third person. Likewise, if the transaction, had it occurred at the time of the affirmance, would have been substantially different from that entered into, this change being detrimental to the third person, the affirmance may not bind him as a ratification. In aleatory transactions, which are based upon the uncertainty of the existence or happening of events because of the lack of knowledge of the parties, the acquisition of knowledge by the purported principal that an event has occurred which
renders absolute the promise of the third person would make it inequitable to cause an affirmance thereafter to operate as ratification, unless before such time the third person has received the consideration for his promise or unless he assumed the risk that the agent was unauthorized.

* * *

d. A change in the situation after affirmance is immaterial, except that if the affirmance is not communicated and the third person changes his position in the belief that there has been no affirmance, he may avoid its effect.

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

Section 90. Affirmance of Demands and Notifications.

If the purported principal has a power to change his relations with a third person by the making of demand or the giving of notification before a specified time, the affirmance after such time of a demand or a notification purported to be made on his account before such time is ineffective at the election of the third person.

Comment:

a. The doctrine of ratification with its characteristic feature of relation back does not operate to deprive other persons of the protection to which they are entitled. This applies not only to persons who are not parties to the transaction (see § 101), but also to the other party to the transaction. If the purported principal has a right against another conditioned upon giving him a notification or making a demand upon him, the act of a purported agent who does not have power to act for the principal in giving the notification or making the demand is not the act which is required to make the principal's right effective. An affirmance given at a time when such a demand or notification would be ineffective is inoperative unless the third person acquiesces.
Thus, a notification of dishonor and a demand for payment given to an endorser by a person not a party to the negotiable instrument on behalf of a subsequent holder is ineffective if affirmed after the time when such demand or notification would operate to charge the endorser. Likewise, if a person has alternate rights against another which are determined by giving notification or making a demand, a stranger cannot make the choice effective; the affirmance of an election purported to be on behalf of the principal must be made within the time when the choice is to be made, as in the case of options, or notifications to or by landlords or tenants to terminate a lease.

* * *

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

Section 91. Knowledge of Principal at Time of Affirmance.

If, at the time of affirmance, the purported principal is ignorant of material facts involved in the original transaction, he may elect to avoid the effect of the affirmance, unless he then manifests a willingness to affirm regardless of the incompleteness of his knowledge.

Comment:

a. Where affirmance is not avoided. The fact that the purported principal has an election to avoid the transaction because of his lack of knowledge does not prevent the affirmance from resulting in ratification, the other requisites of ratification being present, if he does not elect to avoid it.

b. Mistake of fact by principal alone. In other consensual transactions, lack of knowledge by both parties as to the essential facts upon which the transaction is based constitutes a ground for rescission, but where manifestations of consent have been exchanged creating a contract, ordinarily the mistake of one of the parties not induced by a misrepresentation of the other is not a ground for rescission.
A contract which results from ratification, however, may be rescinded by the person affirming, if he affirms under a unilateral mistake as to a material fact; unless he assumes the risk of mistake, or unless the third person has changed his position in reliance upon the ratification.

c. Where principal has reason to know. The fact that the principal has reason to know or, for other purposes, should know the material facts of which he is ignorant, does not prevent him from electing to avoid the affirmance. However, knowledge by the purported principal may be inferred as in other cases; when he has such information that a person of ordinary intelligence would infer the existence of the facts in question, the triers of fact ordinarily would find that he had knowledge of such fact. Likewise, if the purported principal manifests that he affirms when he should know of the facts, it may be inferred that he assumes the risk of mistake (see Comment e). Furthermore, he may be estopped from rescinding the affirmance if the third person has changed his position in reliance thereon (see § 103).

A principal may be affected by the knowledge of an authorized agent under the rules stated in §§ 268-283. He is not, however, affected by the knowledge of the person who did the unauthorized act as to the facts involved in the transaction, even though such person is an agent whose duty it would be to report to the principal all the facts concerning the transaction.

* * *

d. What facts are material. There is no right to rescind a ratification for ignorance of facts, unless such facts so affect the existence and extent of the obligations involved in the transaction that knowledge of them is essential to an intelligent election to become a party to the transaction. Knowledge of the legal effect of the affirmance is not material; nor is knowledge of the legal effect of facts material,
except where a mistake of law causes a mistake of a material fact, such as a mistake as to ownership. Where the original transaction is a contract, the material facts include the parties, the conditions, the material representations of the agent or the third person when making the contract, and the consideration. Facts concerning the value of the subject matter of the contract but merely affecting the desirability of entering into the contract are not of themselves material. However, a misrepresentation by the third person, innocent or otherwise, which would permit the rescission of the contract, entitles the principal to avoid the effect of his affirmation based upon such representation. Likewise, if there is a mutual mistake as to a fact assumed as the basis of the transaction, such that there can be rescission of the contract under the rules stated in the Restatement of Contracts, § 502, the principal may avoid the effect of the affirmation.

In the case of transactions other than contracts, facts are material if their existence or non-existence would substantially alter the rights or liabilities of the parties if the transaction had been authorized.

* * *

e. When principal assumes risk of lack of knowledge. Where the purported principal is shown to have knowledge of the facts which would lead a person of ordinary prudence to investigate further, and he fails to make such investigation, his affirmation without qualification is evidence that he is willing to ratify upon the knowledge which he has. Likewise, if, learning that one who had no authority acted for him, he affirms without qualification and without investigation, when he has reason to believe that he does not know all the facts, it may be inferred that he is willing to assume the risks of facts of which he has no knowledge.
The unqualified affirmance of acts of service, during the course of which the purported principal has reason to believe that there may have been a variety of unknown incidents, raises the inference that he is willing to take the risk of the completeness and accuracy of such knowledge as he has, except as to events not likely to happen. Whether or not an event is so extraordinary that it is inferred that he did not intend to risk its occurrence is a question to be decided by the triers of fact.

Annotation:
The rule stated in this section is in accord with the law of Indiana. Metzger v. Huntington, 139 Ind. 501, 37 N. E. 1084 (1894), petition for rehearing overruled, 39 N. E. 235 (1894); Davis v. Talbot, 137 Ind. 235, 36 N. E. 1098 (1894); United States Exp. Co. v. Rawson, 106 Ind. 215, 6 N. E. 337 (1886).

As to the effect of a mistake in an architect's report to a board of county commissioners, see Eigemann v. Board of Commissioners of Posey County, 82 Ind. 413 (1882).

Where an agent is authorized to buy for cash only, and buys on credit, an acceptance and use of the goods by the principal, without knowledge that they were bought on credit, is not a ratification. Manning v. Gasharie, 27 Ind. 399 (1866); Gage v. Pike, Smith 145 (1848).

Authority to weigh and deliver goods to buyer does not give authority to warrant the quality of the goods; and an acceptance of the agent's report that he has weighed and delivered the goods is no evidence of a ratification by the principal of a warranty of which the principal was ignorant. Richmond Trading & Mfg. Co. v. Farquar, 8 Blackf. 89 (1846).

A corporation may be held to have ratified unauthorized acts of its officers, where the directors have knowledge, or in the discharge of their duties ought to have knowledge, of the facts. Seymour Improvement Co. v. Viking Sprinkler Co., 87 Ind. App. 179, 161 N. E. 389 (1928).

There can be no ratification of an unauthorized contract unless the principal has knowledge of all the material facts. Methodist Episcopal Hospital, etc., v. Ways Sanitarium Co., 85 Ind. App. 268, 149 N. E. 104 (1925); Evans v. Shephard, 81 Ind. App. 147, 142 N. E. 730 (1924); Kline v. Indiana Trust Co., 74 Ind. App. 351, 125 N. E. 434 (1929); Crumpacker v. Jeffrey, 63 Ind. App. 621, 115 N. E. 62 (1917); National Life Ins. Co. v. Headrick, 63 Ind. App. 54, 112 N. E. 559 (1916); Reeves & Co. v. Miller, 48 Ind. App. 339, 95 N. E. 677 (1911); Indiana Union Traction Co. v. Scribner, 47 Ind. App. 621, 93 N. E. 1014 (1911); Willison v. McKain, 12 Ind. App. 78, 39 N. E. 886 (1895).

Section 92. EVENTS NOT REQUIRED FOR AND NOT PREVENTING RATIFICATION.

The affirmance by the principal of a transaction with a third person is not prevented from resulting in ratification by the fact:
(a) that the third person does not give fresh consent to the transaction at or after the affirmance, or does not change his position because of it;

(b) that the purported principal, before affirming, had repudiated the transaction, if the third person has not acted or has failed to act in reliance upon the repudiation;

(c) that the third person had a cause of action against the agent because of a breach of warranty or a misrepresentation by the agent as to his authority to conduct the original transaction; or

(d) that the agent conducting the transaction has died or lost capacity.

Comment on Clause (a):

a. Where the transaction is a contract, the affirmance by the purported principal, like the acceptance of an offer, is the final act that brings the principal and the third person into contractual relations. The consent of the other has already been manifested to the purported agent, and except where there is affirmance without inquiry as to the transaction entered into, the consent has been communicated to the principal either by the agent or otherwise. In many cases the unauthorized act performed for the principal is unilateral, such as the giving of notice, in which the participation of the third person is purely passive.

* * *

Comment on Clause (b):

b. The fact that the principal repudiates the transaction and communicates this repudiation to the third person does not prevent a subsequent affirmance by him from operating as a ratification; the repudiation does not have the effect which a rejection or a counter offer has of destroying the power of an offeree to accept an offer. If, however, the third person, although desirous of terminating the transaction, has failed to give notification of his withdrawal, relying up-
on the continuance of the principal's repudiation, or has otherwise changed his position in reliance upon it, he may elect to treat the repudiation as final.

* * *

Comment on Clause (c):

c. If a person has a cause of action, ordinarily he does not lose it through the conduct of others for whose conduct he is not responsible. Furthermore, ordinarily if a transaction is effected by the deceit of a purported agent, the ratification by the purported principal does not prevent the disaffirmance of the transaction by the defrauded person. The rule stated in Clause (c) operates as an exception to both of these generally operative principles. Thus, the fact that the third person has a cause of action against the agent either for a breach of warranty of authority or for the agent's deceit, does not prevent an affirmation from operating as a ratification although the third person thereby loses the claim which he had against the purported agent. Likewise, the fact that the agent was fraudulent in representing that he was authorized does not prevent the transaction from being binding upon the third person when the principal affirms. In both of these cases, the conduct of the agent leads to no damage if the principal affirms, since the defect in the authorization is thereby cured, as stated in § 100. If the third person has indicated withdrawal from the transaction by instituting suit against the agent or by setting up a defense based upon the agent's lack of authorization, a subsequent affirmation is ineffective (see § 88).

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

Topic 3. What Constitutes Affirmance

Section 93. Methods and Formalities of Affirmance

(1) Except as stated in Subsection (2), affirmation may be established by any conduct of the purported principal mani-
festing that he consents to be a party to the transaction, or by conduct justifiable only if there is ratification.

(2) Where formalities are requisite for the authorization of an act, its affirmance must be by the same formalities in order to constitute a ratification.

(3) The affirmance may be made by an agent authorized so to do.

Comment on Subsection (1):

a. The affirmance may be expressed by a formal writing, as by a power of attorney, by spoken words, or by any other conduct indicating that the purported principal accepts the original act as having been done on his account. As stated in § 94, his failure to take action after knowing of the transaction may indicate his consent thereto. Where the purported principal takes a position which is unjustifiable unless he consents, such conduct in connection with his accompanying statements may or may not indicate his approval of the act and if not, ratification is effected at the election of the third person, not because of his consent, but in spite of non-consent (see §§ 98-99).

* * *

Comment on Subsection (2):

b. Where a seal, writing, or other formality is required for the authorization of an act, the same requirement is made for its ratification by consent.

Sections 28-30 state the situation in which particular formalities are required for authorization. As therein stated, if the transaction is a contract under seal, a sealed affirmance is necessary to validate the agreement as a covenant. But an oral affirmance, just as an oral authorization, may be sufficient to render the agreement binding as a simple contract, and an oral affirmance of a deed of land may be sufficient to render the deed binding on the purported principal as a memorandum of a contract to convey (see § 29).
NOTRE DAME LAWYER

* * *

Comment on Subsection (3):

c. An agent may be authorized to ratify for his principal the previous unauthorized act of himself or of another agent. Prima facie, an agent authorized to delegate to another the performance of a transaction or to effect a result is authorized to ratify the unauthorized performance of the transaction or accomplishment of a result by such other if the effect of the transaction is not apparently disadvantageous to the principal at the time of the affirmance. Likewise, one authorized to effect a result is normally thereby authorized to ratify a transaction conducted by another which accomplishes such result, if no greater burden is placed upon the principal than if the result had been accomplished as directed. An agent authorized to conduct a transaction is not, however, thereby prima facie authorized to ratify a prior unauthorized act of his own; if his unauthorized conduct created rights in the principal against him, as would be true where he had acted disobediently while employed as an agent or had misused the principal’s things, the principal is entitled to know the facts, as in other cases where the interests of the agent may be adverse to those of the principal.

* * *

Annotation:

Subsection 1. The methods by which a contract may be ratified are as numerous and various as the methods by which a contract may be made without the intervention of an agent. Minnick v. Darling, 8 Ind. App. 539, 36 N. E. 173 (1894).

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

Subsection 3. An agent who had authority to authorize the act in advance has been held to have authority to ratify the act so as to bind the principal. United States Express Co. v. Rawson, 106 Ind. 215, 6 N. E. 337 (1886).

An agent who had no authority to appoint subagents has been held not to have authority to ratify acts of his appointee so as to bind the principal. Thompson v. Michigan Mut. Life Ins. Co., 56 Ind. App. 502, 105 N. E. 780 (1914).

The act of one who purports to act as agent for a corporation can be ratified by the acts of the managing agent having authority to ratify. Indiana Union Traction Co. v. Scribner, 47 Ind. App. 621, 93 N. E. 1014 (1911).
Section 94. Failure to Act as Affirmance.

An affirmance of an unauthorized transaction may be inferred from a failure to repudiate it.

Comment:

a. Silence under such circumstances that, according to the ordinary experience and habits of men, one would naturally be expected to speak if he did not consent, is evidence, from which assent may be inferred. Such inference may be drawn although the purported principal had no knowledge that the third person would rely upon the supposed authority of the agent; his knowledge of such fact, however, coupled with his silence, would ordinarily justify an inference of assent by him. Whether or not such an inference is to be drawn is a question for the jury, unless the case is so clear that reasonable men could come to but one conclusion.

* * *

b. Acquiescence may be inferred from silence, even though the purported agent was theretofore a stranger to the purported principal. Nevertheless, the latter's silence is usually more significant where an agency relationship already exists and the agent in the particular case has exceeded his powers. If such an agent reports the matter to the principal at a time or in a manner calculated to call for dissent if the principal were unwilling to affirm, the latter's failure to dissent, if unexplained, furnishes sufficient evidence of affirmance.

* * *

c. If a third person, who has had dealings with a purported agent, reports these to the purported principal under circumstances which reasonably justify an inference of consent unless the principal discloses his dissent, the failure of the principal to dissent within a reasonable time is, unless explained, sufficient evidence of affirmance.

* * *


d. Although the circumstances are such that the silence of the purported principal does not indicate his affirmance, his failure to manifest a repudiation may subject him to liability to one who, as he knows, is acting in the belief that there has been authorization or ratification (see § 103).

e. Where ratification can be effected only by a formality (see § 93), acquiescence in an unauthorized act does not result in ratification. There may, however, be estoppel in such cases (see § 103).

Annotation:

Ratification by the principal of the acts of agent may be inferred from facts and circumstances. Public Savings Ins. Co. v. Greenwald, 68 Ind. App. 609, 118 N. E. 556 (1918).

Where the principal, when informed of all facts as to prices, etc., does not repudiate any unauthorized purchases made by the agent for him, this is a ratification. Welker v. Appelman, 44 Ind. App. 699, 90 N. E. 35 (1909).

Where a railway company had full information concerning employment of a physician by a conductor, and did not notify the physician of repudiation, failure to do so was held a ratification. Terre Haute & Indianapolis R. Co. v. Stockwell, 118 Ind. 98, 20 N. E. 650 (1889).


Silence by a party, with knowledge of what has been done for him in his name, is evidence of ratification, of more or less force according to the circumstances under which it occurs. Haggerty v. Juday, 58 Ind. 154 (1877), approved in City of Hammond v. Evans, 23 Ind. App. 501, 55 N. E. 784 (1899).

When fully informed of the facts, it is the duty of the principal either to affirm or disaffirm, and, if he fails to do so, affirmation may be inferred from his silence. Wallace v. Morgan, 23 Ind. 399 (1864).

Where the principal objected to his agent who had exceeded his authority, but did not repudiate to the third person, with whom the principal thought the agent was in communication, it was held that there was no ratification. Strong v. Ross, 33 Ind. App. 586, 71 N. E. 918 (1904).

Section 95. Necessity of Communicating Manifestation of Affirmance.

The manifestation of a definitive election by the principal constitutes affirmance without communication thereof to the agent, to the third person, or to other persons.

Comment:

a. To establish ratification, it is necessary to establish by competent evidence an election by the purported principal to be a party to the transaction. This evidence is or-
ordinarily supplied by his manifestation to the agent or to the third person. However, the essence of affirmance is the determination of the purported principal to adopt the initial transaction as his own; his conduct is only evidence of such determination. Thus, his affirmance may be shown by the fact that after knowing of the transaction he did nothing, if the circumstances are such that he could reasonably have been expected to dissent unless he were willing to be a party to the transaction (see § 94).

His election must, however, be definitive. Statements of consent made to the third person or to the agent usually indicate his final determination. Such statements made to persons not parties to the transaction and not to be acted upon by them do not usually indicate this, and hence, ordinarily, such statements are not sufficient evidence of a definitive election. Whether or not the conduct of the purported principal is sufficient to indicate such election is a question of fact.

* * *

b. If, although the principal has affirmed the transaction, the third person, upon learning that the agent was unauthorized and in ignorance of the affirmance, changes his position so that it would be inequitable to hold him, he may avoid the effects of the affirmance; the principal, however, is bound at the election of the third person (see § 89).

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

Section 96. Effect of Affirming Part of a Transaction.
A contract or other single transaction must be affirmed in its entirety in order to effect its ratification.

Comment:
a. The purported principal must take the transaction in its entirety, with the burdens as well as the benefits. He cannot affirm a sale and disavow unauthorized representations
or warranties which the purported agent made to induce it. He cannot affirm a contract and disavow unauthorized terms which the purported agent has included therein. If the principal says he is willing to accept the benefits resulting from a transaction but is unwilling to be subjected to its obligations, it is a question of fact whether or not he affirms. If he manifests that he intends to affirm the transaction and take the benefits, but does not intend to be subjected to the liabilities, he affirms the whole transaction and is subject to any liabilities it creates against him. If he manifests that he does not intend to affirm the transaction or to receive the benefits unless he can do so without assuming the obligation, he does not thereby ratify the transaction or any portion of it; except that if he brings or maintains an action upon, or receives or retains benefits of, an unauthorized transaction with knowledge of the facts, such conduct constitutes an affirmance of the entire transaction irrespective of a manifestation of intent not to be bound by the liability it imposes, if the other party elects to treat it as such (see §§ 97-99).

* * *

b. The rule stated in this Section applies only where the purported agent has entered into a single transaction; it has no application where he has conducted several independent transactions at approximately the same time or during the same general course of conduct.

* * *

c. Where a person affirms acts done on his account by one intending to act as his servant, he may affirm the entire conduct of the purported servant or only portions of it; he may not, however, affirm a part of a transaction without affirming that which is incidental to it.

* * *
Annotation:

A principal who adopts the act of one purporting to act for him must adopt it in toto, and he will not be allowed to claim the benefits arising therefrom and at the same time reject the burdens thereof. Public Sav. Life Ins. Co. v. Greenwald, 68 Ind. App. 609, 118 N. E. 556 (1918); Indiana Union Traction Co. v. Scribner, 47 Ind. App. 621, 93 N. E. 1014 (1911); Adams Exp. Co. v. Carnahan, 29 Ind. App. 606, 63 N. E. 245, 94 Am. St. Rep. 279 (1912).

The use as a defense of a release, procured by the fraud of the agent, by principal who knew of the fraud has been held to constitute a ratification of the fraud of the agent. Bailey v. London Guarantee & Accident Co., 72 Ind. App. 84, 121 N. E. 128 (1918); Carter v. Richart, 65 Ind. App. 255, 114 N. E. 110 (1916).

Bringing suit on a contract after knowledge of facts is a ratification of the contract and binds the principal to special conditions made by agent. Johnson v. Hoover, 72 Ind. 395 (1880).

A principal claiming the benefit of a contract waiving priority of lien, has been held bound by the unauthorized promises given in consideration by the agent. Wayne International Building & Loan Ass'n v. Moats, 149 Ind. 123, 48 N. E. 793 (1897).

A principal with knowledge of improper acts of agent in securing a compromise of a claim against the State, has been held not able to claim benefits of compromise and escape liability to agent because of illegality of agent's acts. Judah v. Trustees of Vincennes University, 16 Ind. 56 (1861).

Where one without authority has purported to act as agent for another person in two separate transactions, ratification of one does not prevent repudiation of the other. Benson v. Liggett, 78 Ind. 452 (1881).

Where one who received information concerning a contract from the other party ratified the contract thus communicated and accepted the benefits of it, this was held not to be a ratification of the terms of the contract as to which he had no knowledge. Willison v. McKain, 12 Ind. App. 78, 39 N. E. 886 (1894).

Section 97. Bringing Suit or Basing Defense as Affirmance.

There is affirmance if the purported principal, with knowledge of the facts, in an action in which the third person or the purported agent is an adverse party:

(a) brings suit to enforce promises which were part of the unauthorized transaction or to secure interests which were the fruit of such transaction and to which he would be entitled only if the act had been authorized;

(b) bases a defense upon the unauthorized transaction as though it were authorized; or

(c) continues to maintain such suit or base such defense.

Comment:

a. The suit may be against the third person for the purchase price of goods sold to him, or against the purported agent for money or other things received by him for the principal. The bringing of the suit or the basing of a de-
fense in such cases is a manifestation of an election by the principal which, having been made, cannot be retracted.

* * *

b. If the purported principal brings or maintains an action, or sets up or maintains a defense without knowledge of the material facts, he may elect to avoid the effect of a ratification, as in other cases where there is a manifestation of affirmance (see § 91). If he brings suit or sets up a defense without knowledge of the facts, there is ratification only if, after learning the facts, he continues to maintain the suit or defense. If, in the belief that the agent acted properly, he brings or maintains suit or sets up or maintains a defense based upon the transaction as the agent was authorized to conduct it, he does not ratify the unauthorized transaction although he knows that the third person claims that the transaction included, as it did, unauthorized terms.

* * *

c. If the purported principal, with knowledge of the facts, brings an action or sets up a defense against a person not a party to the original transaction, basing his claim or defense upon the original transaction, ordinarily he thereby manifests his affirmance of it. Such conduct, however, does not necessarily have conclusive effect as does a suit or defense against the agent or the person with whom the agent dealt.

* * *

Annotation:

(a) A suit for the consideration named in a contract is affirmance of the contract, and, the contract being thereby ratified, the true consideration promised by the agent to the third person can be shown. Moore v. Butler University, 83 Ind. 376 (1882).

Where a principal sues to recover money collected by the agent without authority, he thereby ratifies the collection. Knowlton v. School City of Logansport, 75 Ind. 103 (1881).
A suit for and recovery from the guardian and his bondsmen of the proceeds of a sale by the guardian is a ratification by the ward. Bevis v. Heflin, 63 Ind. 129 (1878).

A suit by the owner of a note brought against one who had collected without authority is a ratification, and a demand for the sum collected is necessary before the liability of the agent to account is fixed. Kyser v. Wells, 60 Ind. 261 (1877).


(c) No Indiana cases have been found dealing with the subject matter of this division of section 97.

Section 98. Receipt of Benefits as Affirmance.

The receipt by a purported principal, with knowledge of the facts, of something to which he would not be entitled unless an act purported to be done for him were affirmed, and to which he makes no claim except through such act, constitutes an affirmance unless at the time of such receipt he repudiates the act. If he repudiates the act, his receipt of benefits constitutes an affirmance at the election of the other party to the transaction.

Comment:

a. Ordinarily, the receipt by a purported principal who knows the facts, of things to which he would not be entitled unless the transaction were ratified and to which he makes no claim independently of the act of the purported agent, indicates his consent to become a party to the transaction as it was made. Even where he disclaims responsibility for the act of the purported agent, however, he becomes subject to liability to the third person from whom the things were obtained to the same extent as if he had consented to become a party to the transaction, if he receives its proceeds with knowledge of the facts. Thus, if an agent inserts in a contract a clause not binding on the principal and thereby obtains something from the other contracting party, the receipt of such thing by the principal with knowledge of the unauthorized clause in the contract subjects him to liability upon the contract as made. Likewise, if an agent or purported agent obtains goods or money by a fraud for
which the principal was not liable, the receipt of the proceeds of the fraud by the principal with knowledge of the facts subjects him to liability for the fraud.

* * *

b. Receipt of benefits without knowledge. The receipt of benefits by the purported principal without knowledge of the transaction between the purported agent and the third person or without knowledge of other material facts does not constitute affirmation unless the principal assumes the risk of his lack of knowledge (see § 91). The rule applicable where the purported principal later acquires knowledge and fails to return the things or their value is stated in § 99.

* * *

c. Where principal claims independently. If the purported principal is otherwise entitled to possession of the things, received as the result of the agent’s act, his receipt of them does not constitute affirmation, although in connection with other facts it may be evidence of it. Likewise, where the principal believes himself to be entitled to the things independently of the act of the purported agent, the fact that he knows of the material facts connected with the transaction as conducted by the agent does not necessarily cause his receipt of the things to constitute an affirmation. Thus, if he is mistaken as to his right to possession of the thing, whether the mistake is of law or of fact, the acceptance of the thing accompanied by a repudiation of the agent’s act does not result in an affirmation, if his claim to possession is based upon grounds other than a transaction originated by the agent, and the transaction conducted by the agent is not a compromise of a disputed claim concerning the subject matter. Thus, if the principal, knowing of its purported purchase for him by an agent, receives an automobile under the mistaken belief that it is one previously
stolen from him, such receipt is not an affirmance of the contract as made by the agent. On the other hand, a mistake of law as to the effect of his receipt of the thing where he claims no right to it independently of the agent's act, or a mistake as to his right to retain, without acceptance of the compromise, something given by way of compromise, does not prevent its receipt from being an affirmance of the compromise or other transaction.

* * *

d. Information without belief. If the principal receives the proceeds of a transaction, being mistaken as to its terms, he does not ratify it as made although he has been correctly told by the third person or by others of its true terms; the fact that such information has been given him is, however, evidence that he knows the facts. Thus, if he authorizes an agent to sell shares without the accrued dividends and the agent sells them including the dividends, the principal does not ratify the transaction by receiving the proceeds of the sale if he believes the agent to have acted in accordance with his authority, although told by the purchaser of the terms upon which the sale was made.

e. Election of third person. If the purported principal, although receiving the benefits, repudiates the act which was done on his behalf, the other party to the transaction has an election to rescind the transaction or to treat the transaction as ratified. Thus, if the purported agent obtains goods from the third person which are delivered to the principal who repudiates the agent's act, the third person is entitled to bring an action for conversion of the goods, or other actions which would be appropriate if there were no ratification.

f. Other requisites of ratification. Although there is an affirmance by a purported principal if he knowingly receives the proceeds of an act performed on his account, there is no
ratification unless the requisites for ratification stated in §§ 84-91 are present. Thus, where the original transaction was not purported to be done on account of the principal, the fact that the principal receives its proceeds does not make him a party to it.

Annotation:

The following cases hold that where an unauthorized agent has purported to act for a principal and the principal, with knowledge of the transaction, accepted the benefits thereof, there is an affirmance: Kostoff v. Meyer-Kiser Bank, 201 Ind. 396, 168 N. E. 527, 69 L. R. A. 796 (1929); Albany Land Co. v. Richel, 162 Ind. 222, 70 N. E. 158 (1904); Hawkins v. Fourth Nat. Bank of New York, 150 Ind. 117, 49 N. E. 997 (1898); The Bloomfield R. Co. v. Grace, 112 Ind. 128, 13 N. E. 680 (1887); Wallace v. Lawyer, 90 Ind. 499 (1882); Pouch v. Wilson, 59 Ind. 93 (1877); Hauss v. Niblack, 80 Ind. 407 (1881); Moore v. Pendleton, 16 Ind. 481 (1861); McCarty v. Pruett, 4 Ind. 226 (1853); Palmer v. Egbert, 4 Ind. 65 (1853); Ross v. City of Madison, 1 Ind. 281, 48 Am. Dec. 361 (1849); Public Savings Ins. Co. of America v. Greenwald, 68 Ind. App. 609, 118 N. E. 556, rehearing denied, 121 N. E. 47 (1918); Carter v. Richart, 65 Ind. App. 255, 114 N. E. 110 (1917); National Life Ins. Co. v. Headrick, 63 Ind. App. 54, 112 N. E. 559 (1916); Washburn-Crosby Milling Co. v. Brown, 56 Ind. App. 104, 104 N. E. 997 (1914); Indiana Union Traction Co. v. Scribner, 47 Ind. App. 621, 93 N. E. 1014 (1911); C. Aultman & Co. v. Richardson, 21 Ind. App. 211, 52 N. E. 86 (1898); Hunt v. Listenberger, 14 Ind. App. 320, 42 N. E. 240 (1896).

No Indiana cases have been found dealing with the effect of repudiation of unauthorized act at the time the benefits were received.

Section 99. Retention of Benefits as Affirmance.

The retention by a purported principal, with knowledge of the facts and before he has changed his position, of something which he is not entitled to retain unless an act purported to be done on his account is affirmed, and to which he makes no claim except through such act, constitutes an affirmance unless at the time of such retention he repudiates the act. Even if he repudiates the act, his retention constitutes an affirmance at the election of the other party to the transaction.

Comment:

a. The retention by the principal under the conditions stated in this Section operates in the same manner as does the receipt of benefits, and the Comment on § 98 is applicable. Ordinarily, when the principal has received benefits which he is entitled to retain only if the transaction by which they were obtained is ratified, and to which he makes no independent claim, his retention indicates his consent to
become a party to the transaction; if he disclaims, the person from whom they were obtained may enforce the transaction against him, or may elect to treat the retention as wrongful and maintain an action therefor. The effect of making a mistaken claim to retain the goods is the same as the effect of receiving them under a mistaken claim (see Comment c on § 98).

b. Destruction, use, or refusal to return. Except as stated in Comment c on this Section, there is a wrongful retention if, without mistake of fact, the principal uses the things, destroys them, refuses on demand to return them to the person entitled to them, or if, knowing such person is ignorant of the lack of authority of the agent, he retains them for an unreasonable length of time without offering to surrender them if the other will surrender things of the principal given in exchange.

* * *

c. Change of principal's situation. The principal is under no duty to return things received as the result of an unauthorized act if, before becoming aware of the facts, he receives title thereto as a bona fide purchaser, or he incorporates them in something from which they cannot be separated, or if they have become so mixed with his things that they are indistinguishable. Likewise, if the situation of the principal has so changed that it is inequitable to require their return under the changed conditions, their retention does not constitute an affirmance. In determining whether it is inequitable to require their return, the fact that the third person knew that the agent was unauthorized or in the exercise of care should have known of it, the amount of time which has elapsed between the original transaction and the time when the principal discovered the facts, the amount of loss which the principal would suffer if he were required to return the things, and other similar factors are
considered. If it is found that there has been no affirmance and the things cannot be returned in specie, the purported principal may be subject to quasi-contractual liability to the person from whom the things were obtained. A statement of such liability is not within the scope of the Restatement of this Subject.

* * *

Annotation:

Receiving and using property after knowledge of unauthorized contract of purchase is an affirmance of the contract. Wilson & Co. v. Mississippi Box Co., 76 Ind App. 103, 130 N. E. 127 (1921).

Retention of consideration after knowledge of an unauthorized assignment of an insurance policy is a ratification of the assignment. Hale v. Hale, 74 Ind. App. 405, 126 N. E. 692 (1920).

Acceptance and retention of money or property received by virtue of an unauthorized compromise of claims is a ratification of the settlement. Public Savings Ins. Co. v. Greenswald, 68 Ind. App. 609, 121 N. E. 47 (1918).

Retention of consideration for assignment of judgment after knowledge of facts is ratification of assignment. Wallace v. Lawyer, 90 Ind. 499 (1884).

A seller, who retains title with the right to take possession in case of default, and who receives possession through an agent who took the property from the buyer under an unauthorized agreement to accept it in satisfaction of the debt, and holds the property without knowledge of the contract, does not ratify the agent’s act. Reeves & Co. v. Miller, 48 Ind. App. 339, 95 N. E. 677 (1911).

No Indiana cases have been found wherein the effect of repudiation of an unauthorized act of an agent accompanied retention of the benefits.