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

State of Indiana Legislators

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

Topic 4. Liabilities

Section 100. Effect of Ratification; In General.

Except as stated in § 101, the liabilities resulting from ratification are the same as those resulting from authorization if, between the time when the original act was performed and when it was affirmed, there has been no change in the capacity of the principal or third person or in the legality of authorizing or performing the original act.

Comment:

a. The affirmance of the act of an unauthorized person by the purported principal, all conditions requisite for ratification being fulfilled, normally has the same effect as if such person had been originally authorized. There are a number of situations, however, where an affirmance results only in a ratification which the principal or the third person may avoid. Thus, as stated in § 91, a purported principal may rescind an affirmance made in ignorance of a material fact, with the consequence that no ratification finally results. Also, the third person may elect to avoid an affirmance made under conditions which would render it inequitable to bind him by it (see § 89) or an affirmance which results only from conduct of the purported principal inconsistent with a repudiation of the transaction by him (see §§ 97-99).

b. Persons affected. The effect of ratification upon the liabilities of the parties to the transaction is stated in subsequent Sections. The liabilities of the principal to the third person in the transaction are stated in §§ 143, 218, 290; of the third person to the principal in § 319; of the agent to the principal in §§ 408, 416; of the principal to the agent in § 462; of the agent to the third person in §§ 338, 360.

*Continued from January, 1936, issue and to be continued in subsequent issues.
Except as to interests acquired between the time of the transaction and the time of the affirmance (see § 101), persons not parties to the transaction are affected as if the transaction had been originally authorized, subject to the conditions as to capacity and legality stated in this Section.

* * *

c. Misrepresentation and duress. The effect of misrepresentation or duress by the third person in the original transaction is the same after an affirmance without knowledge of the fraud or duress as if the transaction had been authorized; the effect of misrepresentation or duress in obtaining the affirmance is the same as if an authorization had been similarly obtained. Thus, the principal can rescind a contract the making of which he has ratified, if it is obtained through a misrepresentation by the third person of an important collateral fact which affects the judgment of the agent or principal; if such fact is material within the meaning of § 91, the principal can avoid the affirmance because of ignorance of fact at the time of the affirmance. If the third person obtains the affirmance by misrepresentation or duress, the principal can avoid it, as he could an authorization so obtained. In either case, the principal has an election to maintain an action against the third person for the deceit or the duress.

If the agent makes misrepresentations to the third person other than as to his power to bind the principal, and this is known to the principal when he affirms, he is affected by the affirmance as if he had authorized the transaction with knowledge that the agent would make untruthful statements. If he is not aware of the statements of the agent, he may disaffirm upon learning the facts. Misrepresentation by the agent as to his power to bind the principal does not prevent the affirmance of the transaction from operating as ratification, and neither the principal nor the agent is liable there-
after to the third person for such misrepresentation. If the agent obtains an affirmance by making misrepresentations to the principal, the liabilities of the parties are the same as if the agent had obtained an authorization by means of similar misrepresentations, except that if misrepresentations made in obtaining affirmance prevent the principal from knowing the material facts of the prior transaction, the principal may disaffirm in accordance with the rule stated in § 91.

*d. Incapacity.* If, at the time of the original transaction, the purported principal had only partial capacity so that he could have avoided the appointment of an agent to perform the transaction, an affirmance while such partial incapacity remains is subject to the same power of avoidance. If, however, the partial incapacity has ceased at the time of the affirmance, the principal can affirm the conduct of the purported agent so that the relationship between himself and the purported agent becomes the same as if the agent had been originally authorized, and the principal thereby becomes a party to the transaction, retaining the power of avoidance. In addition, he may also affirm the transaction as a whole, in which case the relations between himself and the third person are the same as if he had been originally competent to bind himself in the transaction. An affirmance not indicating that it is limited to the act of the purported agent is interpreted as an affirmance of the transaction as well as of the appointment. As stated in Comment b on § 84, if, at the time of the original transaction, the purported principal had no capacity to appoint an agent or to enter into the transaction, an affirmance after the disability is removed is ineffective.

If, at the time of the original transaction, the purported principal had full capacity, but he affirms at a time when
his capacity is such that he could avoid an authorization or a transaction then authorized by him, he may avoid the affirmation or the transaction.

** * * *

e. Change of law. If, at the time of the original transaction, the appointment of the agent could have been avoided by the purported principal, or the transaction could have been avoided by him or by the third person because of illegality, the appointment or the transaction is equally subject to avoidance after an affirmation made without change of conditions. If, had the agent been authorized, his appointment or the transaction conducted by him would have been unlawful, and hence could have been avoided by the purported principal or by the third person, the transaction may be similarly avoided after affirmation, although the affirmation takes place when such an appointment or transaction would be lawful, in the absence of retroactive legislation. If, at the time of the original transaction, such an appointment or transaction would have had no legal effect, the affirmation is inoperative (see § 84); if, at the time of the affirmation, such an appointment or transaction would have no legal effect, the affirmation is inoperative except where the original transaction was lawful and it is not against public policy at the time of affirmation to enforce rights arising from it (see § 86).

Annotation:


No Indiana cases have been found involving change of capacity of the principal or third person or in the legality of authorizing or performing the original act.
Section 101. EXCEPTIONS TO NORMAL EFFECT OF RATIFICATION.

Ratification is not effective:

(a) in favor of a person who, by misrepresentation or duress, has caused the affirmance;

(b) in favor of the agent against the principal if the principal is obliged to affirm in order to protect his own interests; or

(c) in diminution of the rights or other interests of persons not parties to the transaction which were acquired in the subject matter before affirmance.

Comment on Clause (a):

a. The effect of fraud or duress in the original transaction by the purported agent or by the other party to the contract is stated in Comment c on § 100. Other persons who acquire rights as a result of a ratification which they have obtained by misrepresentation or duress cannot enforce such rights against the defrauded or coerced person.

* * *

Comment on Clause (b):

b. The liabilities of the principal to the agent and of the agent to the principal which result from ratification are stated in §§ 408, 416, 462.

Comment on Clause (c):

c. The rule by which ratification has the effect of authorization does not operate to destroy rights which have been created between the time of the original act and the affirmance, except the right of the third person to maintain an action against the purported agent because of his lack of authority. Where the other party to the transaction acquires rights, his change of position gives him an election to avoid the affirmance; where the rights have been acquired by other persons, an affirmance resulting in ratification is subject to such rights.

* * *
Annotation:

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

Section 102. Revocability of Ratification.

An affirmance not voidable for fraud, duress, illegality, or lack of capacity, and which cannot be avoided by the principal for lack of knowledge, or by the third person because of a change of position or other similar cause, is not affected by the subsequent attempted withdrawal of either party; an agreement between the principal and the third person to rescind the affirmance does not affect the rights of the agent, and such an agreement between the principal and agent does not affect the rights of the third person.

Comment:

a. An affirmance may result in a ratification which is voidable at the election of the principal (see § 91); or of the third person (see §§ 89, 90, 95, 98, 99). Except as to such avoidance, an affirmance resulting in ratification binds all parties; neither the principal nor the third person can, by a unilateral act, withdraw from the transaction, irrespective of whether or not, subsequent to the affirmance, there has been a change of position by the other.

An agreement between the principal and the third person to rescind a ratification operates as would an agreement to rescind a contract made by the authorized conduct of the agent. Such rescission does not make the agent liable to the third person, nor does it diminish his right, if any, to compensation from the principal. Likewise, an agreement between the principal and agent, whether before or after a manifestation to the third person, to rescind an affirmance already made does not affect the position of the third person.

* * *

b. Persons whose rights have accrued between the time of the ratification and the time of its rescission are not affected by a rescission even though this has been agreed to by the principal, agent, and third person.
Annotation:

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

Section 103. Estoppel to Deny Ratification.

A person who untruthfully manifests to a third person that an act purported to be done on his account was authorized or ratified in a manner sufficient for authorization or ratification, or that an act done by another who impersonates him was done by him, knowing or having reason to know that the third person is likely to act in reliance upon such manifestation, is subject to liability as if such act were authorized or ratified or had been done by him, if the third person so changes his position in reasonable reliance upon such manifestation that it would be inequitable not to impose such liability.

Comment:

a. The manifestation may be that one who purported to act as agent but who was without power to bind the principal was authorized, or that his act was ratified. Ordinarily, such a manifestation results in ratification (see § 93). Under some circumstances, however, ratification may be impossible, as where the purported principal had no capacity to contract at the time when a contract was purported to be made for him; in such case a statement by him, at a time when he could authorize such a contract, that he was competent when the original act was done brings him within the rule stated in this Section, if the third person changes his position in reliance thereon. Likewise, the purported principal may not have made the manifestation in the required form, where a formality is necessary; in this case a representation that the required form was used subjects him to liability as if there were ratification, to a person who changes his position in reasonable reliance upon the statement.

b. A person, such as a forger, may deceive another into the belief that he, the forger, is a different person or that
an act which he has done is the act of a different person. In such cases there is no purporting to act for another and hence the one whose act or person is simulated cannot ratify (see § 85); if, however, he assists in misleading the deceived person and such person changes his position in reasonable reliance upon the situation as he believes it to be, he may be bound under the rule stated in this Section.

* * *

c. The manifestation may be by affirmative conduct, as a statement to the third person, or it may consist of a failure to act. If a person knows or has reason to know that another has purported to be his agent or has simulated him or his act, or that a third person has been deceived thereby and is likely to act upon his erroneous belief, he must take such steps to correct the misinformation as would be taken by a reasonable person having ordinary regard for the interests of others if he is to avoid liability. If he fails to undeceive the third person, he becomes subject to liability to him as if the facts were as believed by him to be, provided that the deceived person changes his position in reasonable reliance upon their truth.

* * *

d. It is not within the scope of the Restatement of this Subject to state specifically the rules which determine whether or not there has been such a change of position that it is equitable to impose liability in accordance with the rule stated in this Section. The general principles of equitable estoppel are applicable.

Annotation:

No Indiana cases have been found dealing with an estoppel to deny a ratification.

The cases Barnett v. Gluting, 3 Ind. App. 415, 29 N. E. 927 (1891), and Growcoche v. Hall, 82 Ind. 202 (1882), deal with the related problem of estoppel to deny agency or master and servant relationship, when these relationships have been represented as existing.
Section 104. Liability Because of Adoption, Novation, or Quasi Contract.

Although there is no ratification, a person on whose account another acts or purports to act may become a party to a transaction similar to the original transaction by manifesting consent, or he may become subject to liability for the value of benefits received as a result of the original transaction.

Comment:

a. The fact that, because of the rules stated in §§ 82-99, a person for whom another acted or purported to act does not or cannot ratify, does not necessarily mean that he does not have rights and duties which are the same or similar to those which he would have had if there had been ratification. Comments b, c and d on the present Section state some of the situations in which such rights or duties arise.

b. Adoption. An affirmance of a contract by one on whose account it was purported to be made but which does not result in ratification, as where at the time of the transaction the purported principal was incapable of contracting, often results in a new contract between the parties at the time of or subsequent to the time of affirmance. If the third person knew the facts at the time of the original transaction, the purported contract may operate as an offer from him which becomes a contract when accepted by the purported principal. If the third person did not know that the original transaction was ineffective, the new contract becomes complete, in the terms of the original transaction except as to date, when the parties thereto consent. This consent may be manifested by their acquiescence or by other conduct indicating that they intend to accept the conditions of the transaction as originally entered into. As in the formation of other contracts, there must be consideration.

* * *

c. Novation. A person intending to act for another but without power to bind him may, inadvertently or otherwise, contract without disclosure that he intends to act as agent.
Upon discovery of the facts and the willingness of the intended principal to become a party to the transaction, the other party to the contract may accept him as a party thereto, either in addition to or in substitution for the person contracting. If he does so, the transaction is a contract made at the time of such subsequent agreement.

* * *

d. Quasi contract. A person not subject to liability because of ratification may have received benefits from the act of a purported agent under such conditions that it is inequitable for him not to pay a third person for their value. The liability in such cases is dependent upon the principles of quasi contract.

* * *

Annotation:

In the following cases corporations which have subsequently adopted contracts made by promoters were held bound: *Cushion Heel Shoe Co. v. Hartt*, 181 Ind. 167, 103 N. E. 1063, 50 L. R. A. (N. S.) 797 (1914); *Smith v. Parker*, 148 Ind. 127, 45 N. E. 770 (1897); *Bruner, Receiver, v. Brown*, 139 Ind. 660, 38 N. E. 318 (1894); *Mt. Pleasant Coal Company v. Watts*, 91 Ind. App. 501, 151 N. E. 7 (1926); *Outing Kumfy-Kab Company v. Trey*, 74 Ind. App. 286, 125 N. E. 234 (1919); *Davis and Rankin Building, etc., v. Hillsboro Creamery Co.*, 10 Ind. App. 42, 37 N. E. 549 (1894).

Chapter 5

TERMINATION

Scope Note: This Chapter deals with the events which terminate authority, apparent authority, and the powers created in the form of an agency authority termed "powers given as security." It does not specifically deal with the effect of the termination, although it is implicit that when the agent’s authority terminates he cannot rightfully make the principal a party to a transaction, and if both authority and apparent authority terminate he has no power to make the principal a party. The liability of the agent to a third person when his authority has terminated is stated in §§ 329-331. The liability of the principal and agent to each other when authority has terminated is stated in §§ 386, 450-456.
Topic 1. Termination of Authority

TITLE A. INFERRED FROM ORIGINAL MANIFESTATION IN LIGHT OF SUBSEQUENT EVENTS

Section 105. LAPSE OF TIME.

Authority conferred for a specific time terminates at the expiration of that period; if no time is specified, authority terminates at the end of a reasonable period.

Comment:

a. The time when authority is to terminate may be specified by reference to a particular day of the month or by reference to an event, such as Easter, which is fixed in relation to the calendar. Termination upon the happening of other events is dealt with in §§ 106-116.

Although authority to act can be exercised only within the time specified, an agent authorized to conduct a transaction before a certain time ordinarily would be authorized thereafter to do incidental acts usual in connection with it or required for its completion.

*   *   *

b. If no time is specified, what constitutes a reasonable time during which the authority continues is determined by the nature of the act specifically authorized, the formality of the authorization, the likelihood of changes in the purposes of the principal, and other factors. The time within which it is reasonable for the agent to act is not necessarily the same as that during which an offer to contract, unspecified as to time, would continue. A reasonable time is not limited to that in which the agent has had a reasonable opportunity to act, nor to a time beyond which it would be unreasonable for him to delay in acting; the agent has authority to act if, in view of all the circumstances, it is reasonable for him to believe that the principal still intends him to act. Authority may be kept alive beyond what otherwise would be a rea-
sonable time by the fact that the principal knows that the agent is continuing to make efforts to perform and acquiesces therein.

* * *

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

Section 106. Accomplishment of Authorized Act.

The authority of an agent to perform a specified act or to accomplish a specified result terminates when the act is done or the result is accomplished by the agent or by another, except that where the act is done or the result is accomplished by a person other than the agent, the manifestations of the principal to the agent determine whether the authority terminates at once or when the agent has notice thereof.

Comment:

a. Where an agent has been authorized to perform a specified transaction, his authority terminates when he has completed the transaction; he does not, because of such previous authority, have authority to deal further with the subject matter. If the agent’s authorization is less specific but he is appointed to accomplish a particular result, such as the draining of a swamp by whatever means he may select, his authority terminates when the result is accomplished. See § 66 for the specific application of the rule stated in this Section to the authority of a buying or selling agent.

Where authority is given in the alternative, the performance of one of the authorized acts terminates authority to perform the other. Where the authority is given to do several acts but the performance of one of them causes the performance of others to be contrary to the principal’s interests of which the agent has notice, his authority to act terminates.

The same rules apply where the result is accomplished by a third person, subject to the requirement of notice to the agent which exists in certain cases (see Comment c). The
fact that the principal violates a contract with the agent in so accomplishing the result by means other than the agent does not prevent the agent's authority from terminating.

* * *

b. The inference that an agent's authority is limited to the performance of an act or one of several acts, or to the accomplishment of a particular result, may arise from specific terms in the principal's manifestation to the agent or from the nature of the agent's employment and other relevant circumstances.

* * *

c. Accomplishment by another. Whether or not, when the authorized act is done or the result accomplished by some one other than the agent, his authority ceases at once depends upon the previous or contemporary manifestations of the principal, which control in spite of a contract to the contrary (see § 118). The interpretation of these manifestations in turn depends upon the circumstances known to both parties. In the absence of evidence to the contrary, it is inferred that the agent's authority does not terminate until the agent has notice of the accomplishment of the result. The conditions of the employment, however, may indicate that notice to the agent is not essential. The fact that the agent is employed only for the one transaction, or that it is agreed that his authority is not exclusive, indicates an agreement that his authority is to terminate without notice, as also does the fact that he is, and the principal is not, likely to know of the terminating event. On the other hand, the fact that the agent is a general agent or that he is given exclusive authority to do the act or accomplish the result, or that the principal has agreed not to act in person, or that the terminating event is more likely to be known to the prin-
c. Notice. The agent has notice of the terminating event when he has knowledge, reason to know, or should know of the terminating event, or has been given notification by the principal (See § 134). Notice of facts which give him reason to believe that the principal's purpose, as expressed to him, has been accomplished is notice that the purpose has been accomplished.

* * *

e. Facts known by principal to be unknown to agent. If the agent's authority is terminated by events which are known to the principal and which he has reason to know are unknown to the agent, the principal normally has a duty of informing the agent within a reasonable time that his authority has terminated, if the principal has reason to believe that the agent will continue to act for him in ignorance of the terminating event. Such information may be necessary to prevent the agent from incurring additional expense, from making unnecessary efforts, or from incurring liabilities because of entering into a transaction without power to consummate it. Thus, if the principal has authorized an agent to contract for the sale of a house, it being agreed that a sale by one other than the agent is to terminate the authority, and the principal himself sells the house, it would be the normal understanding that he is to use care to notify the agent of such sale; if the principal has this duty, he would be subject to liability to the agent for damage caused by a failure to use care in performing it.

Annotation:
The rule stated in this section is in accord with the law of Indiana. Bragg v. Bamberger, 23 Ind. 198 (1864); C. Callahan Co. v. Wall Rice Milling Co., 44 Ind. App. 372, 89 N. E. 418 (1909); Kingan & Co. v. Silvers, 13 Ind. App 80, 37 N. E. 413 (1894).
Section 107. Happening of Specified Events.

If the terms of the authorization specifically provide that an authority is to continue until a specified event happens or during the continuance of a specified condition, whether the authority terminates at once upon the happening of the event or the cessation of the condition or only when the agent has notice of such happening or cessation depends upon the interpretation of the principal's manifestation in light of all circumstances.

Comment:

a. The principles stated in §§ 32-48 dealing with the interpretation of authority are applicable, especially § 45, which deals with the effect of a mistake by the agent as to the facts upon which his authority depends. The statements in the Comment on § 106 with reference to termination by the accomplishment of the specified act or purpose are also applicable.

* * *

Annotation:

An agent with authority to bind a principal by accepting performance of a contract before the happening of a specified event, has no authority to bind the principal by acceptance of performance after the happening of that event. Longworth v. Conwell, 2 Blackf. 469 (1831).

Section 108. Happening of Unspecified Events or Changes; in General.

(1) The authority of an agent terminates or is suspended when the agent has notice of the happening of an event or a change in conditions from which he should reasonably infer that the principal does not consent to the further exercise of authority or would not consent if he knew the facts.

(2) The agent's authority revives upon the restoration of the original conditions within a reasonable time if the agent has no notice that the principal's position has been changed.

Comment:

a. Although the authority of the agent terminates under the conditions stated in this Section, his power to bind the principal may not terminate, either because he continues to
have apparent authority (see § 125), or because he has apparent ownership or other basis of a power to bind the principal.

*Comment on Subsection (1):*

b. Sections 109-116 are specific applications of the rules stated in this Section; and the Comment and Illustrations therein are applicable to this Section.

The rule stated in the present Section is applicable where there is a change in the situation which the principal and agent did not provide for, and as to which no limitation of authority was expressed in the terms of the agreement constituting the authorization. The termination is effected in accordance with terms which it may be inferred would have been made if the principal had anticipated the situation. Learning of conditions existing at the time of the authorization but then unknown to the principal or agent has the same effect as learning of a change of conditions.

If the agent has notice that the principal, when conferring authority, had the possibility of a change of conditions in mind and did not limit the authorization, the authority continues despite the change. Likewise, a change in conditions does not terminate the agent’s authority if the directions of the principal are peremptory, the principal manifesting that the agent is to act under any conditions which might eventuate.

If, from the facts of which the agent has notice, he should realize beyond doubt that the principal would not wish him to act, the authority terminates, although in fact the principal knows the facts and is willing that the agent should continue to act, and although the action by the agent proves beneficial to the principal. In such cases the consent of the principal to the agent’s act ordinarily would be a ratification of it.
c. Notice. The agent has notice of the change in conditions when he knows of it, has reason to know, or should know of it, irrespective of the source of his information. He also has notice if he is given notification of the change by the principal or by another agent of the principal, although he does not then become aware of the facts (see §§ 9-11 which state the rules applicable to notice, knowledge, and notification).

* * *

d. Authority to do several acts. Authority to perform a number of different acts may terminate as to some of them but not as to others. If, however, the proper performance of one of the acts is dependent upon the performance of another, authority to perform the first terminates with the termination of authority to perform the second.

* * *

e. Where agent in doubt. The change in conditions may be such that the agent is reasonably in doubt as to whether or not the principal would further consent to the exercise of authority. In such case, he is authorized to act unless it is reasonably clear that the principal would not desire him to do so. If he acts reasonably in the belief that the principal wishes his authority to continue under the conditions, his conduct is authorized although he does something which is contrary to what the principal in fact wishes. If he should realize that the principal may be in doubt as to whether he has or has not exercised his authority, he may have a duty to communicate the facts as to its exercise to the principal at once (see § 381). Where the principal and agent are in close communication with each other, as where the agent is a servant meeting the principal daily, and a change occurs which might affect the performance of the authority and of which, as the agent knows, the principal is aware, the agent
may properly assume that the principal will give new directions if he desires the agent not to act as originally contemplated and that, if new directions are not given, the authority is to be executed in accordance with the original orders.

* * *

Comment on Subsection (2):

f. The agent is privileged to exercise authority when, and only when, he has reason to believe the principal wishes it to be exercised. Conditions may change from day to day in such a way that authority is suspended, reviving later. Although the change in conditions is apparently permanent, yet if the situation again changes and the original conditions are restored, and if the agent has no notice that the principal's conduct has been affected by the temporary change, his authority to act revives. If it is doubtful whether or not the principal has changed his position in reliance upon the change in conditions, the agent may have a duty of ascertaining the facts before acting.

* * *

Annotation:

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

Section 109. Change in Value or Business Conditions.

The authority of an agent terminates or is suspended when he has notice of a change in value of the subject matter or a change in business conditions from which he should infer that the principal, if he knew of it, would not consent to the further exercise of the authority.

Comment:

a. The Comment on § 108 is applicable.

b. Where conditions unexpectedly change so that it becomes obviously poor business policy for a selling agent or a purchasing agent to act for the principal, the agent’s author-
ity ordinarily terminates or is suspended unless his orders are so peremptory that he should reasonably believe that the principal intends him to act in spite of the change. Thus, authority resulting from a direction to sell at the market price goods which it is possible for the agent to retain for a time may be suspended by temporary local conditions which make it impossible to obtain a satisfactory price.

c. A business agent is subject to a duty to the principal to use care and skill in ascertaining business conditions, and he is not authorized to do the directed act, unless his orders are peremptory, if he reasonably should realize in light of facts which he would ascertain by the use of the skill which he has or purports to have that the principal would not desire him to act if the facts were known.

* * *

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

Section 110. Loss or Destruction of Subject Matter.

Unless otherwise agreed, the loss or destruction of the subject matter of the authority or the termination of the principal's interest therein terminates the agent's authority to deal with reference thereto, either at once or when the agent has notice thereof, dependent upon the manifestation of the principal to the agent.

Comment:

a. The Comment on § 108 is applicable.

b. If the act authorized is a physical dealing with the subject matter, its loss or destruction makes it impossible for the agent to execute the authority. If the act authorized is a dealing with the interests of the principal in it, the agent may still, however, be authorized to make the principal a party to a contract relating thereto, although the physical subject matter or the principal's interests therein are gone. In the
absence of a manifestation to the contrary, however, it is inferred that where a principal authorizes an agent to sell something, the agent’s authority to act for the principal with respect to it terminates when the subject matter or the principal’s interests therein cease to exist, or when the agent has notice thereof.

* * *

c. When notice necessary. It may be agreed that the loss, destruction, or conveyance of the subject matter is to terminate the authority of the agent upon its happening or only when the agent has notice thereof. If the principal intentionally destroys or conveys the subject matter, his act amounts to a revocation and ordinarily the agent’s authority to bind the principal by a contract with respect thereto does not terminate until the agent has received notice thereof. If, however, it is understood that the principal may compete with the agent by selling the subject matter, in person or through another agent, it may be the agreement that the authority of the agent is terminated at once upon the sale of the principal even before the agent has notice (see Comment c on § 106).

* * *

d. Partial loss. The partial loss, destruction, or conveyance of the subject matter, if of such importance that the agent should realize that the principal’s original purposes will no longer be served by dealing with the remainder, terminates the agent’s authority to deal with the remainder.

* * *

Annotation:

The rule stated in this section is in accord with the dictum in Rowe v. Rand, 111 Ind. 206, 12 N. E. 377 (1887).

Section 111. Loss of Qualification of Principal or Agent.

The loss of or failure to acquire a qualification by the agent without which it is illegal to do an authorized act, or a similar
loss or failure by the principal, of which the agent has notice, terminates the agent's authority to act if thereafter he should infer that the principal, if he knew the facts, would not consent to the further exercise of the authority.

Comment:

a. The Comment on § 108 is applicable.

b. As stated in Comment e on § 34 it is ordinarily inferred that a principal does not intend an agent to do an illegal act; hence when an act, authorized when legal, becomes illegal because of a loss or failure to acquire a needed qualification by either principal or agent, ordinarily an agent with notice of the facts should infer that the principal does not wish him to continue to act. This is true even though the one not having the qualification is liable to the other for failing to have it.

   * * *

c. When authority continues. The agent is authorized to act in spite of a lack of qualification by himself or by the principal, if he reasonably believes that the principal intends him to act in spite of such lack, as where, at the time of the authorization, it is known that the qualification will not be acquired or will be lost. Likewise, where the lack of the qualification does not affect the transaction itself, but merely imposes a penalty upon the agent for acting without it, the circumstances would frequently indicate that the principal wishes the agent to continue to act.

   * * *

d. Assumption of qualification by principal. If a change of law requires the principal to have a qualification not previously required, such as a license, the agent may ordinarily assume that the principal will obtain it, unless he should know that the principal cannot.

Annotation:
The rule stated in this section is in accord with the dictum in Rowe v. Rand, 111 Ind. 206, 12 N. E. 337 (1887).
Section 112. Disloyalty of Agent.

Unless otherwise agreed, the authority of an agent terminates if, without knowledge of the principal, he acquires adverse interests or if he is otherwise guilty of a serious breach of loyalty to the principal.

Comment:

a. The Comment on § 108 is applicable as far as it is pertinent.

b. Agents are appointed to forward the principal's interests, and when the agent ceases to do this and prefers his own or another's interests, ordinarily the principal no longer would desire the agent to act for him, and this the agent should realize. Whether or not the disloyalty of the agent is such that he should realize that the principal would desire the termination of his entire authority at once is a question of fact. Where the agent acquires an interest adverse to that of the principal or acts for another principal, and this is not known to the principal, ordinarily he should realize that the principal would not desire him to continue to act, although he does exactly what he would have done otherwise. Sections 387-409 state the duties of loyalty of an agent and the consequences of the breach of such duties as between the principal and the agent.

c. Liability to third persons. If, after being so disloyal that his authority to act is terminated, the agent deals with a third person on account of the principal, the power of the agent to make the principal a party to the transaction is not affected (see §§ 165, 171), unless the third person has notice of the facts (see § 166), or unless the agent acts for another principal in the transaction, in which event the transaction is voidable by either principal (see § 313).
Section 113. Bankruptcy of Agent.

The bankruptcy or insolvency of an agent terminates his authority to conduct transactions in which the state of his credit would so affect the interests of the principal that the agent should infer that the principal, if he knew the facts, would not consent to the further exercise of the authority.

Comment:

a. The Comment on § 108 is applicable.

b. Ordinarily, the bankruptcy or insolvency of an agent is not of importance to the principal, and even where it is of some importance, ordinarily it would not be of such great importance as to prevent the agent from dealing with third persons or completing transactions which he has been authorized to conduct for the principal. The principal’s credit or standing may, however, be affected by the credit of the agent, and in cases where this is so the agent’s authority to act may terminate with the impairment of his credit. Likewise, in cases where the agent, having acted for the principal in the collection of money for the principal, would be normally authorized to mix the proceeds with his own money and to become a debtor for the whole amount, the agent, although authorized to collect, would not be authorized so to become a debtor in view of his supervening insolvency.

Annotation:
The rule stated in this section is in accord with the law of Indiana. First National Bank of Crown Point v. First National Bank of Richmond, 76 Ind. 561, 40 Am. Rep. 261 (1881).

Section 114. Bankruptcy of Principal.

The bankruptcy or the substantial impairment of the assets of the principal, of which the agent has notice, terminates his authority as to transactions which he should infer the principal no longer consents to have conducted for him.
Comment:

a. The Comment on § 108 is applicable.

b. An agent appointed to conduct business transactions for the principal should realize that an unanticipated disaster to the principal's business is likely to cause the principal to be unwilling to undertake many previously authorized transactions. If there is reasonable doubt as to this, the agent should communicate with the principal.

* * *

c. Upon the bankruptcy of the principal, most of his assets pass to the trustee in bankruptcy and the power of the agent to deal with these terminates at once irrespective of notice, under the rule stated in § 124; the agent's authority to bind the principal personally, however, is terminated only if he should know of the bankruptcy or has been given a notification by the principal.

* * *

Annotation:

There is a dictum in Rowe v. Rand, 111 Ind. 206, 12 N. E. 337 (1887), to the effect that bankruptcy of the principal terminates the authority of the agent.

Section 115. War.

The outbreak of a war of which the agent has notice terminates his authority if the conditions are thereby so changed that he should infer that the principal, if he knew the facts, would not consent to the further exercise of the authority.

Comment:

a. The Comment on § 108 is applicable.

b. The outbreak of war may be an event which causes the execution of the agent's authority to be illegal (see § 116) or, where the war is not between the respective countries of the principal and agent, it may be one which merely causes the transaction originally authorized to be hazardous or impracticable.

* * *
c. Authority continues or revives. If the authority has been conferred in contemplation of war or if the agent has reason to believe that the principal contemplated war as a contingency and did not specify that the agency should terminate upon its occurrence, the authority does not thereby terminate, even though it becomes illegal to execute it. If the outbreak of war does not cause the authorized act to be unlawful and the conditions of performance are not substantially changed, the authority is not affected. Likewise, although the authority may have been suspended during the period of a short war, it may be revived upon its termination, if the agent has no notice that the war has substantially affected the conditions under which he was authorized.

* * *

d. Notice. Ordinarily, the agent is charged with knowledge of the outbreak of war, either civil or foreign, in a country in which he resides. Where he is authorized to send goods to another country in which there is an outbreak of war, he has notice of such war, although in fact ignorant of it, if it is so notorious that persons in the careful performance of their business would learn of it.

* * *

e. The outbreak of war may cause the authorization or the transaction which the agent was authorized to perform to be entirely ineffective, in which case the rule stated in §124 is applicable.

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

Section 116. Change of Law.

A change of law of which the agent has notice and which causes the execution of his authority to be illegal, or which otherwise materially changes the effect of its execution, termi-
nates his authority, if he should infer that the principal, if he knew the facts, would not consent to the further exercise of the authority.

**Comment:**

a. The Comment on § 108 is applicable.

b. The change of law may be such that an execution of the agent's authority would give the principal no rights or other interests, or it may be such that its execution would be criminal or tortious. In either case, unless the agent has reason to believe that the authorization was given in contemplation of such a change, the agent should ordinarily reasonably believe that the principal no longer wishes to have him act. The change in law may be one which makes the performance by the principal more onerous, as where a statute is enacted which requires buildings, for the construction of which the agent is authorized to contract, to be made of fire-proof materials.

* * *

c. **Authority to do several acts.** Where the agent is authorized to do a series of acts and a change of law causes one or more of them to become illegal, the authority to do the remainder terminates if, but only if, the acts made illegal are acts upon the performance of which the accomplishment of the principal's purposes with respect to the remaining acts depends.

* * *

d. **Source of illegality.** The change of law making the execution of the authority illegal may result from a statute which requires the principal or agent to have a specified qualification which he does not have (see § 111).

e. **Notice.** An agent has notice of a change of law when he knows of it, or is given a notification of it, or when he would acquire knowledge of it in the performance of his
duties to the principal, using ordinary care and skill or that which he has or professes to have. It may be agreed between the principal and agent that his authority terminates upon a change of law without notice to him.

f. A change in law may cause the authorization, or a transaction which the agent was authorized to perform, to be entirely ineffective, in which case the rule stated in § 124 is applicable.

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

TITLE B. TERMINATION BY MUTUAL CONSENT, REVOCATION, OR RENUNCIATION

Section 117. MUTUAL CONSENT.

The authority of an agent terminates in accordance with the terms of an agreement between the principal and agent so to terminate it.

Comment:

a. As authority originally conferred continues, unless sooner terminated, in accordance with the original authorization, so authority may terminate at any time by agreement of the parties either at the time of such agreement or subsequently.

b. A power in the form of an agency authority but held for the benefit of a third person does not terminate by the mutual consent of the donor and the holder (see § 139).

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

Section 118. REVOCATION OR RENUNCIATION.

Authority terminates if the principal or the agent manifests to the other dissent to its continuance.

Comment:

a. Such termination by act of the principal is revocation; by act of the agent, it is renunciation.
b. Power to revoke or renounce. The principal has power to revoke and the agent has power to renounce, although doing so is in violation of a contract between the parties and although the authority is expressed to be irrevocable. A statement in a contract that the authority cannot be terminated by either party is effective only to create liability for its wrongful termination.

*   *   *

c. Liabilities. Where there is a contract between principal and agent that the authority shall not be revoked or renounced, a party who revokes or renounces, unless privileged by the conduct of the other or by supervening circumstances, is subject to liability to the other. The rules as to the liabilities of the agent to the principal are stated in § 400; the liabilities of the principal to the agent, in §§ 450-456.

d. Non-agency powers. A power in the form of an agency authority given for the protection of a person described as agent, but who is not one, is not an agency authority and cannot be revoked by the power giver; if such a power is held for the benefit of a third person, it can be terminated neither by revocation nor renunciation (see § 139). Likewise, where a statute provides that a person is to be affected by a notification given to another, designated an agent, the power of the person so designated is not terminated by an attempted revocation. In both of these cases, and in analogous situations, there is no agency as that word is used in the Restatement of this Subject.

*   *   *

Annotation:

The rule stated in this section is in accord with the law of Indiana. Honey v. Guillaume, 172 Ind. 552, 88 N. E. 973 (1909); Goss v. Meadors, 78 Ind. 528 (1881); Pickler v. State, 18 Ind. 266 (1862); Pursley v. Morrison, 7 Ind. 356, 63 Am. Dec. 424 (1855); Miller v. Miller, 4 Ind. App. 128, 30 N. E. 535 (1892).

A power of attorney to confess judgment was held irrevocable in Kindig v. March, 15 Ind. 248 (1860).
Section 119. Manner of Revocation or Renunciation.

Authority created in any manner terminates when either party in any manner manifests to the other dissent to its continuance or, unless otherwise agreed, when the other has notice of dissent in accordance with the rules stated in §§ 9-11.

Comment:

a. Except where a statute so provides and irrespective of whether or not the authority is under seal, the authority of an agent is revoked or renounced by written or spoken words or other conduct which, reasonably interpreted, indicates that the principal no longer consents to have the agent act for him or that the agent no longer consents so to act. An agreement that the authority is to be revoked or renounced only in a particular manner is ineffective; despite such an agreement any form of manifestation made known to the other party is effective.

* * *

b. Inconsistent conduct. The principal may manifest his termination of consent by conduct which is inconsistent with its continuance, as where he indicates that the agent is to do an act different from that originally authorized, or where he retakes possession of goods which he had authorized the agent to sell, or where he sells or disposes of the subject matter or of his interest therein, or voluntarily causes its loss or destruction. The inconsistent conduct may consist of authorizing another agent to act on his account; in such case, it is a matter of interpretation whether the principal intends to terminate the authority of the first agent or merely to authorize another agent also to act. The agent may manifest renunciation by conduct inconsistent with the continued performance of his duties to the principal.

* * *
c. Time of termination. The revocation or renunciation is effective when the principal or agent learns that the other no longer consents to the continuance of the authority. Ordinarily, it is also effective when either party has reason to know of it, in accordance with the rule stated in § 10, or when a notification has been given, in accordance with the rule stated in § 11. The parties may, however, agree that the revocation or renunciation shall not occur until there is knowledge of the withdrawal of consent, or they may specify particular acts which will constitute notification.

Until the time when the manifestation is effective, it may be withdrawn by a counter-manifestation; after such time a manifestation of withdrawal of dissent operates as an offer to enter a new relationship on the terms of the old.

* * *

Annotation:
A revocation becomes operative so far as the agent is concerned from the time the agent has actual notice thereof. Honey v. Guillaume, 172 Ind. 552, 88 N. E. 973 (1909); Miller v. Miller, 4 Ind. App. 128, 30 N. E. 535 (1892).

TITLE C. LOSS OF CAPACITY AND IMPOSSIBILITY
Section 120. Death of Principal.

The death of the principal terminates the authority of the agent.

Comment:

a. Upon the death of the principal, his former agent has no authority to act for the principal’s estate even though the authority was given in contemplation of the principal’s death and although the parties contracted that his death should not terminate it. It is only where a power, although in the form of an agency power, is given for the benefit of the agent or a third person that the power is not terminated by the death of the one giving it (see § 139).

Caveat: No inference is to be drawn from the rule stated in this Section that an agent does not have power to bind the
estate of a deceased principal in transactions dependent upon a special relationship between the agent and the principal, such as that of banker and depositor, or trustee and cestui que trust, or in transactions in which special rules are applicable, as in dealings with negotiable instruments.

* * *

b. Notice. The authority of the agent terminates upon the death of the principal although the agent has no means of knowing that the principal has died at the time and although the agent is doing an act which, but for the principal's death, he would be required by the agreement with the principal to perform. A contract, however, between the principal and the agent by which the principal agrees that such conduct of the agent is not tortious with respect to the principal and that the agent is to be indemnified for any losses suffered by him in acting without authority, is enforceable (see § 386).

* * *

Annotation:
The rule stated in this section is in accord with the law of Indiana. Supreme Lodge Knights of Honor v. Jones, 35 Ind. App. 121, 69 N. E. 718 (1904); Johnson v. Wilcox, 25 Ind. 182 (1865); Sawers Grain Co. v. Goodwine, 83 Ind. App. 556, 146 N. E. 837 (1925); Hawley v. Smith, 45 Ind. 183 (1873).

Section 121. Death of Agent.
The death of the agent terminates the authority.

Comment:
a. The rule stated in this Section is applicable to all agency powers; a power held by a person as security either for himself or for another survives in his representatives (see § 139).

b. The rule stated in this Section has practical consequences where the agent has appointed a subagent. In this case, as stated in § 137, the authority of the subagent to act for the principal ceases upon the death of the agent, unless the agreement with the principal is otherwise.

* * *
c. If the agent has done an act which constitutes the exercise of his authority, the fact that he dies before the act results in a contract or other transaction does not prevent the act from being effective in creating relations between the principal and the third person.

* * *

Annotation:

No Indiana cases dealing with death of agent as termination of simple agency powers have been found. The rule as stated in this section is acknowledged by implication in Todd v. Guffin, 55 Ind. App. 605, 104 N. E. 519 (1914).

Section 122. Loss of Capacity of Principal or Agent.

The authority of the agent to make the principal a party to a transaction is terminated or suspended upon the happening of an event which deprives the principal of capacity to become a party to the transaction or deprives the agent of capacity to make the principal a party to it.

Comment:

a. The principal may cease to have capacity to make a contract or to subject himself to liability because of mental incompetency, as where there is a judicial determination of his insanity, or because of other changes in condition which, by the law of the State which controls the transaction, create such incapacity. By becoming married, a woman, in some States, loses her capacity to enter into certain transactions. It is not within the scope of the Restatement of this Subject to state the rules relating to capacity.

b. Notice. The power of the agent terminates although he has no notice of the principal’s loss of capacity or of the event causing it. It also terminates although the contingency has been provided for and it has been agreed that the authority would not thereupon terminate.

* * *

c. Temporary incapacity. The rule stated in this Section applies to mental incompetency only when it creates
legal incapacity, as it may do in case of mental disease. Where the incapacity is only temporary, the authority of the agent may be merely suspended. Where the principal becomes mentally incompetent for but a short period, as where he has a delirium accompanying a fever, the agent’s authority is not necessarily affected unless the transaction requires communication between principal and agent during such period or unless the illness creates a change in condition such that the agent should realize that the principal would not wish him to act (see § 108 (2)).

* * *

d. Illegality. The effect of a statute which prohibits a transaction may be to make the performance of the transaction illegal but not inoperative. This is the normal operation of statutes requiring persons to be licensed. In such cases, the rules stated in §§ 111, 115-116 are applicable. The existence and extent of rights between the principal and the agent depend upon the construction of the statute in question.

The outbreak of war between the country of the principal and that of the agent ordinarily causes the parties to become alien enemies. In this event, as stated in § 115, war may create such a change in conditions that the authority is terminated because the agent should know that the principal no longer wishes him to act. If the authority is not thus terminated, its execution by the agent may be illegal because of the statutes relating to alien enemies. Such statutes may have the effect of making the transactions by the agent inoperative, in which case the rule stated in this Section is applicable. Normally, however, the effect of such statutes is to make the transactions by the agent criminal, such transactions having their normal effect with reference to innocent third persons but creating only such limited rights between
the principal and the agent as are created by the performance of other authorized but seriously criminal acts.

* * *

Annotation:
The rule stated in this section is in accord with the law of Indiana. Chase v. Chase, 163 Ind. 178, 71 N. E. 485 (1904).

Section 123. Death or Loss of Capacity of Joint Principals or Agents.
The death or loss of capacity of one of two or more joint principals terminates the authority of an agent to act on their joint account. The death or loss of capacity of one of two or more agents authorized to act only jointly terminates the authority of the survivor.

Comment:
a. An agent who is employed to act for two or more principals, one of whom dies or loses capacity, is not authorized to act for the estate of such person. If, therefore, he is authorized to act only on the joint account of all the principals, his authority terminates. Likewise, the authority of two or more agents which must be exercised by all of them terminates when one of them dies or loses capacity. Sections 120-122 and the Comments thereon, stating the effect of the death or loss of capacity of the principal or agent are applicable. Whether or not an agent is authorized to act only on the joint account of two principals or whether or not two agents are authorized to act jointly depends upon the manifestations of the principals. Section 41 states the inferences which may be drawn. The effect of the death or loss of capacity of a member of a partnership employing agents or acting as agents is not within the scope of the Restatement of this Subject.

* * *

b. An agent who has been authorized by two principals, one of whom dies, continues to be authorized to act for the
survivor if the authorization of the survivor so indicates. Likewise, authority may be given to agents to act jointly with a power in the survivor to exercise the authority. Where several authorities are separately created by two or more principals, notice of the death of one of them terminates authority to act for the other if, as the agent should know, the transaction is one in which the effect of the death is substantially to alter the contemplated transaction from the point of view of the surviving principal (see § 108). Authority given to two or more agents to be exercised jointly or severally is not terminated by the death of one of them.

* * *

Annotation:

The rule stated in this section is in accord with the law of Indiana. Rowe v. Rand, 111 Ind. 206, 12 N. E. 377 (1887); Johnson v. Wilcox, 25 Ind. 182 (1865).

Section 124. Impossibility.

There is a termination of the agent's authority:

(a) to create interests in or otherwise deal with a particular subject matter, when it is destroyed;

(b) to affect the interests of the principal in a particular subject matter, when the principal has lost his interests therein;

(c) to enter into transactions with particular persons when they die or lose capacity to become parties to such transactions; or

(d) to effectuate results when, by a change of law or other conditions, the transactions which the agent is authorized to conduct do not effectuate such results.

Comment:

a. If a principal authorizes an agent to conduct a transaction which becomes impossible of performance, whether or not the agent's privilege to attempt performance terminates thereby, either at once or when he has notice thereof, depends upon the interpretation of the principal's manifestation. Although the agent's power to accomplish the trans-
action is necessarily terminated in such cases, his privilege
to act, as between himself and the principal, may survive.
Authority, however, as defined in the Restatement of this
Subject, includes the power of the agent as well as his privi-
lege of acting, and hence there is a termination of his author-
ity to accomplish results which have become impossible of
achievement. The authority necessarily terminates at once,
irrespective of whether the agent has reason to know or
should know of its termination. The principal, however, may
be subject to liability to compensate the agent for efforts
made thereafter to execute the authority because it was
agreed that the risk of lack of knowledge should be upon the
principal or because the principal has failed in his duty to
notify the agent of the termination of authority (see § 435).
Also, in some cases, as stated in the following Comments, the
agent may have authority to bind the principal by a contract
which has become impossible of performance.

Comment on Clause (a):

b. Destruction of subject matter. Although authority to
deal specifically with the subject matter cannot be exercised
where it has been lost or destroyed, the agent may still con-
tinue to have authority to contract on behalf of the principal
with reference to it. This is true also where the agent has
been given authority to convey the interests of the principal
and the principal subsequently loses or transfers such in-
terests. In both cases, whether or not the agent continues to
have authority to contract for the principal with respect
thereto depends upon the rules stated in § 110.

* * *

Comment on Clause (b):

c. Bankruptcy. Upon the bankruptcy of the principal,
the power of the agent to affect things which pass to the
trustee in bankruptcy terminates without notice to him. A
power held for security by one not an agent does not, how-
never, so terminate (see § 139), even though the right of possession to the subject matter may pass to the trustee in bankruptcy. It is not within the scope of the Restatement of this Subject to state what property passes to the trustee in bankruptcy or when it passes. As to property not involved in the bankruptcy, the agent's authority is not terminated except to the extent that notice of the change in the financial condition of the principal affects his authority, as stated in § 114.

The bankruptcy of the agent does not necessarily terminate his power to deal with the goods of the principal in his possession, nor, in the absence of estoppel, do goods held in his name for the benefit of the principal pass to the trustee in bankruptcy. The effect of his bankruptcy upon his authority otherwise is stated in § 113.

* * *

Comment on Clause (d):

d. The rule stated in this Clause is applicable only if the change in law or in conditions is such that the act directed to be done is made inoperative or the result directed to be achieved cannot be accomplished, as where the principal directs the agent to make a contract of a specified sort which by statute cannot be made. A change in law which does not have such an effect nevertheless may be one which terminates the agent's authority under the rule stated in § 116, as where the directed transaction becomes illegal or, under the changed legal conditions, against the interests of the principal.

* * *

Annotation:

Dicta supporting the rules stated in the several divisions of this section are found in Rowe v. Rand, 111 Ind. 206, 12 N. E. 337 (1887).