Index

ADMISSIONS, REPRESENTATIONS, AND WARRANTIES

admissions, representations, and warranties given by agent, 149-152

- admissibility of agent's statement against principal, 151
- agency relationship, 149-151
- statements made within scope of authority, 149-150
- • proof of scope of authority, 150
- ••• authority to act vs. authority to speak, 150-151
- vicarious liability, 150

notice to agent, effectiveness of, 151-152

APPARENT AUTHORITY See REPRESENTATION, AGENCY BY; USUAL AUTHORITY

AGREEMENT, AGENCY BY See also CONTRACTUAL RIGHTS AND LIABILITIES OF PRINCIPALS AND AGENTS WITH THIRD PARTIES

creation, 7-15

- agency agreements created expressly or by implication, 7-8
- contractual agency agreements, 9-10
- •• capacity of principals, 9-13
- ••• corporations, 9-10
- ••• mentally incompetent person: Hill Estate case, 10-12, 308-324
- •••• agent lacking capacity, where, 13
- •••• criteria to determine whether mentally competent, 12-13
- •••• empowerment during lucid interval, 12
- ••• power of attorney, 10-12, 308-324
- •••• third parties unable to simply rely upon power of attorney, 11
- •••• whether contract void or voidable, 10-11
- ••• minors, 10
- •••• minor principals, 10
- •• consequences of contract, 9
- •• legality, 15
- •• written or oral agency agreements, 13-14
- ••• agency agreement or empowerment need not be in writing, 13
- ••• corporations appointing agents, 14
- •••• corporate seal not required, 13, 14
- ••• power of attorney, 13-14, 370-373
- •••• sealed power of attorney, 14
- •••• witnesses and affidavit of execution, 14-15
- ••• statute of frauds legislation, 13
- ••• witnessing of signing of agreement, 14-15
- ••• written agreement required where agent empowered to execute deed, 13-14
- •••• Registry System or Land Titles Office, 14
- •••• sealed power of attorney, 14

AGREEMENT, AGENCY BY- Continued

- implied agency agreement, 8-9
- •• implied agency agreement conferring actual authority, 8
- •• implied agency agreements difficult to establish, 9
- ••insurance agents acting as agent for applicant, 8-9
- ••• circumstances implying relationship, 9
- ••• common law characterization overcome by legislation, 9 express actual authority, 15-18
- limits on what agent able to be empowered, 18
- •• testamentary power of appointment, 18
- oral and written agreements, 15
- ordinary rules of construction applying, 15-17
- •• ambiguous language extending authority of agent, 16-17
- ••• terms construed within context of document, 17
- ••• uncertain terms given meaning that fairly and reasonably "susceptible", 16-17
- ••• what reasonably inferred from expressions of instrument, 16-17
- power of attorney, 17-18
- •• general wording followed by specific wording, where, 17
- •• specific wording followed by general wording, where, 17-18
- •• specific wording governing construction, 17 generally, 7

implied authority, 18-27

- cohabiting women, separated and deserted wives, 25-27
- •• cohabiting women, 25-26
- • deserted wives, 26
- •• deserting spouses, 26
- •• pledging credit of spouse for necessary goods and services, 25
- •• separated wives, 26-27
- •• statutory modification, 27
- implied actual, 18
- implied customary, 20-21, 295-299
- •• authority derived from custom or usage, 20
- ••• lawyer's authority to settle, 20
- ••• principal's deemed to know of lawful and reasonable custom, 21
- •• commercial areas, 21, 295-299
- implied incidental, 19-20
- •• conclusions, 20
- • examples of finding, 19-20
- ••• incurring reasonable expenses, 20
- ••• receiving payment, 19-20
- ••• sub-delegating authority, 19
- •• express actual authority vs. implied incidental authority, 19
- ••• express actual authority, scope of, 19
- ••• implied incidental authority, reluctance to find, 19, 20
- • incidental to agent's express authority, 19
- necessity, implied by, 21-25
- •• no pre-existing agency, 21-22, 24

AGREEMENT, AGENCY BY- Continued

- ••• acting to preserve property or care for health of another person, 21
- •••• assisted person's legal position with third party not affected, 21
- •••• examples, 21
- •••• necessitous intervention, 21
- ••• consequences of agency of necessity, 25
- ••• shipmasters dealing with cargos, 24
- ••• third party able to sue principal, 24
- ••• whether principal able to sue third party, 24
- • pre-existing agency or true agency, 21, 24
- ••• agent exercising presumed authority, 21-22
- •••• presumption of authority rebuttable, 22
- ••• Prager case, 22-24
- •••• agency of necessity not confined to carriers or acceptors, 22
- •••• requirements of agency of necessity, 22-23
- •••• agent acting bona fide in interests of parties concerned, 23
- •••• agent unable to communicate with principal, 22
- •••• sale being necessary, 22-23
- ••••• commercial necessity, 23
- ••• Semans case; indigent resident referred to private hospital, 23-24
- •••• agent's act being reasonable and prudent, 24
- •••• "impracticable" to communicate with principal, 24
- •••• necessitous intervention, 24
- •••• what agent doing being necessary, 23-24
- ••••• agent acting bona fide in interest of principal, 24

powers of attorney, general, specific, enduring, and springing, 27-30

- enduring powers of attorney, 27-29
- •• attorney not having exclusive control of donor's assets, 28
- •• costs of committeeship avoided, 28
- • powers of attorney not terminating upon mental incompetency of principal, 27-28
- •• substitute attorney or multiple attorneys, 29
- • typical legislative requirements, 28-29
- ••• Powers of Attorney Act of Manitoba, 28-29
- general powers of attorney, 27
- living wills and health care directives, 30
- specific powers of attorney, 27
- springing powers of attorney, 29-30
- •• effective on specified date or occurrence of stipulated event, 29

BAILMENT

agency and bailment, 3-4

- bailees and agents not mutually exclusive, 4 duty of agents, 167-169
- trustees and bailees of goods or money received from principals, 167-169 factors legislation, 110-118

CONFLICT OF INTEREST See DUTIES AND RIGHTS OF AGENTS

CONTRACTUAL RIGHTS AND LIABILITIES OF PRINCIPALS AND AGENTS WITH THIRD PARTIES See also UNAUTHORIZED DISPOSITIONS OF PROPERTY BY AGENT

election and merger, 102-107

- caution in obtaining default judgment, 105-106
- •• judgment against agent precluding pursuing principal, 105
- •• setting aside default judgment, 105-106
- disclosed principal, 103
- •• third party's judgment against one ceasing rights against other, 103
- merger occurring with judgment against agent or principal, 103, 104, 105
- partners, liability of, 106-107
- • Partnership Act of Manitoba altering common law, 106
- ••• doctrine of merger having no application where jointly liable, 106-107
- ••• partner and partnership jointly and severally liable, 106
- question of fact whether third party making election, 104
- •• non-partnership situations, 104
- •• "unequivocal act" of election, 104
- ••• note taken from agent not constituting election, 105
- undisclosed principal, 102-103, 105-106
- Clarkson v. Booker Ltd. v. Andjel, 103, 334-339
- •• no election prior to disclosure of undisclosed principal, 105-106
- •• Tedrick v. Big T Restaurant, 103, 105, 330-334
- •• third party required to elect whether to sue agent or principal, 102-103, 105
- ••• alternative liability continuing until election re debtor, 102-103
- where third party having discrete causes of action against agent or principal, 106 generally, 95-102
- disclosed principal, 95-99
- •• agent acting with apparent authority, where, 98-99
- ••• principal of agent of necessity unable to sue, 98-99
- ••• principal unable to sue third party, 98-99, 263-286
- •• agent liable or entitled to sue in certain circumstances, 95-96, 98
- ••• agent contracting in own name or personally guaranteeing, 95-96
- ••• agent revealing that acting on own behalf, 98
- ••• agent's personal liability: Barnet v. Rademaker, 286-292
- ••• collateral contract with agent or special property, 98
- • Bills of Exchange Act, 98
- •• collateral contract with agent or special property, 98
- •• contract between third party and principal, 95-96
- • contract embodied in deed, 96-97
- ••• principal bound by deed signed by agent in name of principal, 97
- ••• principal required to be described in deed as party, 96
- ••• whether principal or agent suable on contract under seal, 96
- • foreign principal, 96
- ••• circumstance to be taken into account in determining intention, 96
- •• named or unnamed, 95
- • Powers of Attorney Act modifying common law, 97-98
- ••• British Columbia, 97-98
- ••• United Kingdom, 97

CONTRACTUAL RIGHTS AND LIABILITIES OF PRINCIPALS AND AGENTS WITH THIRD PARTIES- Continued

- undisclosed principal, 99-102
- •• election by third party to sue agent or principal, 99-100, 102
- •• risk of agent being personally liable, 99, 102
- • Tedrick v. Big T Restaurant, 103-104
- •• time of contracting for determining whether principal undisclosed, 99
- •• undisclosed principal able to set off debt owed to third party, 101
- • undisclosed principal able to sue on contract made by agent with actual authority, 100-101
- ••• defences raised by third party, 101
- •••• set off of subsequent debt owed by agent, 101
- ••• exceptions, 100-101
- • undisclosed principal able to sue on contract made by agent of necessity, 102
- • undisclosed principal unable to sue on contract made by agent with usual authority, 102

mistaken payments by agent, 118-119 money applied by agent for benefit of principal, 119

CRIMES

crimes that statute applies to, 137 definitions, 137-138

- "representative", 137
- "senior officer", 137

introduction, 135

- corporate criminal liability, 135
- "organization", what constituting, 135-136
- agency-based relationships, 136
- "organization" defined, 135

substantive sections, 138-143

- organization as party to offence involving negligence: s. 22.1, 139-140
- • party to offence by assisting or encouraging commission of offence, 139
- •• representative acting within scope of authority, 139
- ••• aggregate course of decision making by several decision makers, 139
- senior officer responsible for aspect of organization failing to meet standard, 139-140
- • standard of criminal negligence, 139
- ••• "marked departure" standard, 139
- •• Westray mine disaster, 139
- ••• collective context, 139
- ••• complex mosaic of actions and mistakes, 139
- organization as party to offence other than negligence: s. 22.2, 140-143
- •• opening words, 140-141
- ••• scheme intended for benefit of organization, whether, 140
- ••• senior officer's activities related to those of organization, whether, 140-141
- ••• statutory defence applying if directing mind not intending to benefit corporation, 141
- •• organization liable for underlying offence: s. 22.2(a), 141

CRIMES- Continued

- • representative engaging in behaviour constituting underlying offence: s. 22.2(c), 142-143
- ••• senior officer aware of wrongdoing, 142
- ••• senior officer not taking reasonable measures to prevent offence, 142, 143
- •••• preventing commencement or continuation of offence, 143
- •••• "scope of authority" requirement not included, 142-143
- •• senior officer acting within scope of authority: s. 22.2(b), 142
- ••• senior officer directing representative to undertake actus reus of offence, 142
- ••• senior officer having requisite mens rea, 142
- text of sections, 138

summary, 143-147

- generally, 143
- mental fault, types of, 144
- organization as party to offence involving negligence: s. 22.1, 146-147
- • representative's conduct falling markedly below expected standard, 146
- organization as party to offence other than negligence: s. 22.2, 144-145
- • actus reus and mens rea, 144
- •• representative of organization about to be party to offence: s. 22.2(c), 145
- ••• senior officer required to take measures to stop representative, 145
- •• senior officer acting within scope of authority: s. 22.2(b), 146
- • senior officer having requisite mens rea: 22.2(b), 145
- •• senior officer intending some benefit to organization, 146
- "organization", meaning of, 143-144
- "representative", meaning of, 137, 144
- "senior officer", meaning of, 137, 144

DECEIT See **TORTS**

DEFINITIONS, 1-3 See also **OVERVIEW**

DUTIES AND RIGHTS OF AGENTS

duties of agent, 153-170

- attorneys of enduring powers of attorney being trustee of donor, 169-170, 369-370
- •• attorney owing fiduciary duties to donor, 170
- •• Banton v. Banton, 169-170, 369-370
- • Powers of Attorney Act: attorney owing duties of loyalty and good faith, 170
- conflict of interest with principal, obligation not to come into, 158-166
- •• conflict of interest activities, 158
- •• duty not to accept secret commission or bribe, 163-164
- ••• agreement to receive secret commission disentitling agent from recovery, 164
- ••• co-purchaser receiving secret commission from vendor, 163-164
- •• duty not to compete not requiring disclosure of information outside relationship, 162-163
- ••• remembered information vs. memorized information, 163
- •• fiduciary duty continuing after termination of agency relationship, 163
- •• gift made by agent to principal, 166
- ••• proof that principal acted independently of undue influence, 166

DUTIES AND RIGHTS OF AGENTS- Continued

- •• gift made by principal to agent, 166
- •• information not dependent on being confidential, 163
- •• information used to compete with principal or acquire benefit, 161
- ••• information gathered in course of relationship, 161-162
- ••informed consent of principal before event, 158-159
- ••• duty of disclosure extending to everything known regarding subject matter, 159-160
- •••• information likely to influence conduct of principal, 160
- ••••• failure to inform amounting to material non-disclosure, 160
- ••• full disclosure and advising of independent legal advice, 158
- ••• mortgage broker required to inform client if receiving finder's fee, 158
- •••• explaining to client how finder's fee to be calculated, 159
- ••• secret commission disentitling agent to any remuneration, 158-159
- power to sell, convey, or transfer not empowering sale without full disclosure, 160-161
- ••• fairness of price not curing failure of full disclosure, 161
- ••• power of attorney not empowering conveyance to attorney, 160, 369-370
- •••• Banton v. Banton, 160, 369-370
- ••• proof that price at market value, 161, 302-308
- •••• D'Atri v. Chilcott, 161, 302-308
- • precise instructions not followed in earning secret profit, 161
- • property entrusted by principal and used to make profit without consent, 162
- ••• agent accountable for profit to principal, 162
- • remedies for breach of duty, 164-166
- ••• Criminal Code consequences for bribe paid to agent, 165-166
- ••• option to adopt, repudiate, or rescind contract, 164-165
- ••• principal's remedies against agent of recovering bribe or damages, 164
- •••• agent not to be deprived of remuneration if honest but mistaken notion, 165
- ••• third party, consequences for, 165
- duty to account, 166-167
- •• duty of keeping and rendering proper accounts for all dealings, 166
- ••• illegal transactions included, 166
- ••• Mareva type injunction obtained, 166
- • period of power of attorney, 167
- exercise of delegated actual authority with due care, skill, and reasonable dispatch, 153-156
- •• contractual agent required to carry out undertaking, 154
- ••• liability for losses if disobeying instructions, 154
- •• due care and skill required of agent differing if contractual or gratuitous, 154-155
- •• duty of care to principal and third party, 155
- •• gratuitous agents not liable for non-feasance, 153-154
- •• imprudent instructions, no duty to advise against, 154
- •• lawful instructions to be followed, 154
- •• liability, tortious or contractual, 155
- exercise of delegated authority personally, 156-157
- •• implied authority to sub-delegate existing, 156-157

DUTIES AND RIGHTS OF AGENTS- Continued

- ••• four situations, 156
- •••• principal aware when appointment that agent intending to delegate, 156-157
- ••• principal able to ratify sub-delegation, 157
- • unauthorized delegation, 157
- ••• privity of contract between principal and sub-agent possibly existing, 157
- •• whether agent able to appoint sub-agent, 156-157
- generally, 153
- trustees and bailees of goods or money received from or for principals, 167-169
- •• collection agent keeping money collected in safe and money stolen, 167
- ••• debtor-creditor relationship vs. bailee and trustee of money, 169
- •••• debtor entitled to mix money and hand over equivalent sum, 168
- •••• trustee obligated to keep money as separate fund, 168
- ••• term of employment not requiring that collected money be kept separate, 168
- •••• agent being debtor to principal of moneys collected, 167-168
- •• money or goods traceable into property of agent, 169
- ••• creditor-debtor relationship, significant difference in obligations with, 169
- • principal's title to goods, money, or property, 169
- ••• agent's obligation being discrete duty, 169
- ••• agents unable to assert better title, 169
- •• travel agents depositing proceeds from sale of tickets into general accounts, 167
- ••• trust arrangement for ticket sales money, 167 rights, 171-180
- liens, 179-180
- • agent's possessory lien, 179
- •• lawyer's general (retaining) lien, 179-180
- •• lawyer's particular lien, 179
- reimbursement and indemnification, 178-179
- •• breach of agent's duties, where, 179
- ••• ratification of agent's actions, 179
- • entitlements stipulated in express terms or derived from implied term, 178
- •• payment made to discharge liability of principal, 178-179
- ••• agent not reimbursed where agent not obligated to pay, 178-179
- •• quasi-contract where non-contractual agency, reliance on, 178
- remuneration, 171-178
- •• actual authority conferred, whether performing, 175
- ••• "exact terms of the contract", 175
- ••• whether principal able to prevent agent from exercising authority delegated, 175-176
- •••• Burns Fry v. Khurana, 176, 345-357
- •••• term of contract defining whether principal able to interfere with execution, 176
- ••• whether principal agreeing to pay commission despite termination of agency, 176
- •••• agent expending time and money to obtain orders, 176-177
- •••• measure of damages, 177
- •• breach of agent's duties, where, 177
- •• contractual agreement: express term or implied term, 171
- •• express terms respecting remuneration, 171-172

DUTIES AND RIGHTS OF AGENTS- Continued

- ••• such further sum as considered right, 171
- •• illegal agency contract, 177
- ••• agent unable to enforce payment of remuneration, 177
- •• implication of term based on special facts of particular case, 173-175
- ••• person undertaking to place insurance on behalf of company, 173-175
- •••• contract of agency created between person and company, 174
- •••• company taking benefit of services and thereby becoming liable, 174
- •••• person entitled to commission if duties completed before end of agency, 174
- •••• person receiving commission from agent of insurer, 173
- •••• commission taken from premiums paid by company to insurer, 173
- • necessity, agents of, 178
- •• quantum meruit warranted, 171, 172, 345-357
- ••• Burns Fry v. Khurana: agent engaged to sell interest in business, 172, 175-176, 345-357
- •••• whether payment of commission able to be inferred, 175, 177
- ••• unavailable where contract expressly providing for payable remuneration, 172
- ••• where principal promising to do "square thing" for agent, 172
- •• real estate firm and former agents, 171-172
- ••• agent's commission at sole discretion of principal, 172
- •••• discretion not unbridled and controlled by objective standards, 172
- •••• discretion subject to requirement of honesty and good faith, 172

ELECTION AND MERGER, 102-107 See also CONTRACTUAL RIGHTS AND LIABILITIES OF PRINCIPALS AND AGENTS WITH THIRD PARTIES

FACTORS LEGISLATION, 110-118 See also UNAUTHORIZED DISPOSITIONS OF PROPERTY BY AGENT

HIMALAYA CLAUSES, 132-133 See also TORTS

IMPLIED AUTHORITY, 18-27 See also AGENCY BY AGREEMENT

LAWYER'S AUTHORITY TO SETTLE

generally, 20

civil litigation settlements, 83-89

- litigation settlements made pursuant to express or implied actual authority, 84
- litigation settlements where lawyer's authority limited or prohibited, 83, 86
- •• action to enforce settlement, considerations in bringing, 87-88
- ••• Morris v. Gilbert: lawyer client unrepresented, 88-89
- ••• Nelson v. Murphy, 88-89
- • perspective of client and actual authority, 85
- ••• non-lawyers having express authority, 87
- ••• retainer, need for written, 87
- ••• standard form retainer, 87
- • perspective of other party and apparent authority, 85-86
- ••• letter requesting assurances from other lawyer, 87
- •• ratification by client, 86
- ••• deemed ratification, 86

LAWYER'S AUTHORITY TO SETTLE- Continued

- pre-litigation settlements, 83-84
- arguable that binding on basis of apparent authority, 84
- •• binding if express actual authority or ratification, 83
- settlements not enforced due to lack of constituent elements, 84-85
- • overriding judicial discretion, 84-85

LIENS See also DUTIES AND RIGHTS OF AGENTS

agent's possessory lien, 179

lawyer's general (retaining) lien, 179-180

lawyer's particular lien, 179

MENTALLY INCOMPETENT PERSON See also AGREEMENT, AGENCY BY,

creation; RATIFICATION

Hill Estate case, 10-12, 308-324

- agent lacking capacity, where, 13
- criteria to determine whether mentally competent, 12-13
- empowerment during lucid interval, 12
- power of attorney, 10-12, 308-324
- third parties unable to simply rely upon power of attorney, 11
- whether contract void or voidable, 10-11

ratification by principal, 47-48

- executor of deceased mentally incompetent, 47
- power of attorney signed by mentally incompetent: Hill Estate case, 47-48
- •• contract made by agent enforceable as ratified, 47
- • contract void or voidable, whether, 48
- ratification during lucid interval, 47
- ratification not able to occur generally, 47

termination of enduring powers of attorney, 182-183

- mentally incompetent donor: statutorily stipulated events, 182-183
- ••appointment of committee or Public Trustee, 182
- •• death of attorney, 183
- •• subsequent inconsistent power of attorney, 182
- Powers of Attorney Act, 183
- •• judicial power to terminate, 183
- ••• court intervention not warranted where grantor remains competent, 183

MISTAKEN PAYMENTS BY AGENT, 118-119

NECESSITY, AGENCY OF, 21-25 See also AGENCY BY AGREEMENT remuneration. 178

OVERVIEW

agency and bailment, 3-4

- bailees and agents not mutually exclusive, 3 agency and sale relationships, 4-6
- agency or sale characterization of relationship, 5
- conduct of parties used to determine their intention, 5-6
- contexts where issue of agency or sale relationship, 4-5

OVERVIEW- Continued

- words suggesting some other relationship not determinative, 5 agents, servants, and independent contractors, 3-4 definitions of "agency", 1-3
- American Law Institute's Restatement of the Law, Third, Agency, 1-2
- • consensual aspect, 1
- •• control of agent by principal, 1
- •• fiduciary relationship, 2
- •• ratification, 1
- combining Restatement and Fridman definitions, 2-3
- •• consent, 2-3
- •• fiduciary relationship, 3
- •• liability issue, 3
- definitions not providing checklist for determining whether agency, 2
- fiduciary relationship, 1, 2, 3
- Fridman definition, 1, 2
- •• fiduciary relationship, 1, 2
- • power-liability relationship, 2
- policy considerations playing large role in case law, 2
- power-liability relationship, 2
- • affecting principal's legal position respecting strangers, 2 indicators, significant, 5-6
- agency or sale characterization of relationship, 5
- degree of control exercised, 5

kinds of agents, 3

• general vs. special agents: distinction obsolete, 3

PARTNERSHIPS

agency by representation

- partnerships, 89
- Partnership Act of Manitoba, 82-83
- •• each partner being agent of partnership and one of principals, 83 dealing with third parties, 202-213
- admissions and representations by partners: s. 16, 210
- •• use of section is highly sensitive to context in which it is sought to be used, 210
- continuing guarantees and suretyships: s. 19, 213
- holding oneself out as partner: s. 15, 208-210
- • exceptions, 209-210
- •• liability, 209
- joint and several liability: s. 13, 207-208
- liability of firm for wrongs: s. 11, 206
- liability of partners: s. 10(1), 205-206
- liability for debts, 211-213
- •• agreement discharging retiring partner: s. 18(3), 212-213
- •• liability commences with admission to firm: s. 18(1), 212
- •• liability for debts, etc., incurred before retirement: s. 18(2), 212
- mechanism for inclusive liability, 202-203
- • conditions for non-transacting partners to avoid liability, 202-203

PARTNERSHIPS- Continued

- • power of partner to bind firm: s. 6, 202
- misapplication of money or property received for or in custody of firm:
 s. 12, 206-207
- notice to one partner is generally notice to all: s. 17, 211
- partner using credit of firm for private purposes: s. 8, 204
- partners bound by acts on behalf of firm: s. 7, 203
- restricted partners: s. 9, 204-205
- trusteeship: s. 14, 208

definition of partnership, 191-194

- three explicit elements, 192-194
- • business, 192-193
- •• carried on in common, 193-194
- •• "with a view to profit", 194

dissolution of partnership, 229-252

- ability to apportion premium: s. 40, 241-242
- amount owing to deceased or retired partner is a debt: s. 43, 249-250
- continuing authority of partners for purposes of winding up: s. 38, 238-240
- •• carrying on business of partnership on ongoing basis once dissolved, 239-240
- dissolution by court: s. 35, 232-234
- •• circumstances where court may terminate, 233
- dissolution by death or insolvency of partner: s. 33, 231
- dissolution by expiry of term or notice: s. 32, 229-231
- entitlement to compensation of departing partner, 246-249
- •• option of remaining partners to purchase share: s. 42(2), 248-249
- •• right of outgoing partner as to share in profits after dissolution: s. 42(1), 246-248
- illegality: s. 34, 231-232
- misrepresentation: s. 41, 243-246
- additional remedies, 244-246
- •• elements of fraudulent misrepresentation, 243-244
- • innocent misrepresentation, 246
- notice to third parties to avoid apparent authority: s. 36, 234-237
- •• estates of deceased partners: s. 36(3), 235-236
- •• insolvent partners: s. 36(3), 236-237
- • notice: s. 36(2), 235
- •• retired partners not known to be partners: s. 36(3), 237
- •• rights of persons dealing with firm against apparent members: s. 36(1), 234-235
- ordering of payments on dissolution: s. 44, 250-252
- • payment out of firm assets, 251-252
- •• right to contribution from other partners to ensure proper division of losses, 251
- right to give notice of dissolution: s. 37, 237-238
- rights of partners as to application of partnership property: s. 39, 240-241
- • payment of debts, 240-241
- •• right of set-off, 241

dividing up Act, 190-191

- definitions: s. 1, 190
- dissolution of partnership: ss. 32-44, 190

PARTNERSHIPS- Continued

- general: ss. 45-46, 190
- history, 190
- limited-liability partnerships: ss. 44.1-44.4, 190
- nature of partnership: ss. 2-5, 190
- relationship of partners to one another: ss. 20-31, 190
- relationship of partners to persons dealing with them: ss. 6-19, 190
- relationship to other Acts or common law, 191 insolvency of buyer of goodwill or debtor, 200-201
- Canada Deposit Insurance Corp. case, 200-201
- insolvency: s. 4, 200 introduction, 189-190
- commonality of provincial and territorial statutes, 189
- partnership premised on law of agency as one of its cornerstones, 189 limited liability partnerships, 252-258
- analysis, 256-258
- • carrying on business, 256-257
- •• formation or continuance, 256
- •• liability issues, 257-258
- organization of Act with respect to limited liability partnerships, 252-253
- statutory sections: ss. 10(2)-(5), 44.1 through 44.4, 253-255 nature of firm, 201
- definitions essentially provide for collective referencing, 201
- meaning of "firm": s. 5, 201

nomenclature, 195-196

- joint venture, 195
- public-private partnership, 195-196 partners, liability of, 106-107
- Partnership Act of Manitoba altering common law, 106
- • doctrine of merger having no application where jointly liable, 106-107
- • partner and partnership jointly and severally liable, 106 power of partner to bind firm, 93-94
- corporate principal, holding out required by, 93
- Partnership Act (s. 8) of Manitoba, 93
- •• whether third party knew or believed person to be partner, 93
- Watteau v. Fenwick superseded by s. 8 of Partnership Act, 93 relationship of partners inter se, 213-229
- as between partners, realty that is partnership property is treated as personalty: s. 23, 218
- assignment of partnership interest: s. 31, 229
- basic rules for default partnership agreement: s. 24, 218-224
- • advance of non-capital funds, 222
- • equal capital, profits and losses, 219-220
- ••introduction of new partner, 223
- majority rules on ordinary matters, but nature of business is not "ordinary", 223-224
- •• no interest on capital, 222

PARTNERSHIPS- Continued

- • no remuneration, 223
- • partner indemnification, 220-221
- • place of books, 224
- •• right to manage, 223
- •• where no indemnification is necessary, 221-222
- continuation of partnership for fixed term following end of term: s. 27, 226-227
- •• arises from continuance of business: s. 27(2), 227
- • presumption of continuance after expiry of term: s. 27(1), 227
- default rules: s. 20, 213-214
- •• variation by consent of terms of partnership, 213
- expulsion: s. 25, 224-225
- partnership property, 214-217
- •• co-owners of land: 21(3), 216-217
- •• devolution of land: 21(2), 215-216
- • partnership property: 21(1), 214-215
- partnerships at will, 225-226
- • notice of retirement: s. 26(2), 226
- •• retirement from partnership at will: s. 26(1), 225-226
- purchases with firm money are on account of firm: s. 22, 217
- some of the obligations of being a fiduciary, 227-229
- • accountability for private profits: s. 29, 227-229
- •• duty as to rendering accounts: s. 28, 227-229
- •• duty of partner not to compete with firm: s. 30, 227-229

rules for determination of partnership, 196-200

- advance of money by lender, 199
- annuity or payment out of profit, 199
- debts varying with profit, 198
- determination of partnership: s. 3, 196-197
- general, 197
- • negative rule designed to avoid finding of partnership, 197
- joint tenancy, 197
- remuneration varying with profit, 199
- sale of goodwill, 199-200
- splitting of gross returns, 197-198
- splitting of share of profits, 198 torts, 131-132
- Partnership Act, 131
- •• tort liability of partners for torts of other partners, 131
- ••• acting in ordinary course of business of firm, 131
- ••• wrongful act or omission of any partner, 131

POWERS OF ATTORNEY

enduring powers of attorney, 27-29, 169-170

- attorney not having exclusive control of donor's assets, 28
- attorneys of enduring powers of attorney being trustee of donor, 169-170
- •• attorney owing fiduciary duties to donor, 170
- • Powers of Attorney Act: attorney owing duties of loyalty and good faith, 170

POWERS OF ATTORNEY- Continued

- costs of committeeship avoided, 28
- powers of attorney not terminating upon mental incompetency of principal, 27-28
- substitute attorney or multiple attorneys, 29
- typical legislative requirements, 28-29
- • Powers of Attorney Act of Manitoba, 28-29

express actual authority, 17-18

- general wording followed by specific wording, where, 17
- specific wording followed by general wording, where, 17-18
- specific wording governing construction, 17

living wills and health care directives, 30

Powers of Attorney Act modifying common law, 97-98, 122-123

- British Columbia, 97-98
- United Kingdom, 97

springing powers of attorney, 29-30

• effective on specified date or occurrence of stipulated event, 29

termination of enduring powers of attorney, 182-183

- mentally incompetent donor: statutorily stipulated events, 182-183
- • appointment of committee or Public Trustee, 182
- • death of attorney, 183
- •• subsequent inconsistent power of attorney, 182
- Powers of Attorney Act, 183
- •• judicial power to terminate, 183
- ••• court intervention not warranted where grantor remaining competent, 183 written or oral agency agreements, 13-14
- form, 370-373
- sealed power of attorney, 14
- witnesses and affidavit of execution, 14-15
- written agreement required where agent empowered to execute deed, 13-14
- • Registry System or Land Titles Office, 14
- •• sealed power of attorney, 14

PRE-INCORPORATION CONTRACTS See RATIFICATION

RATIFICATION

agent explicitly purporting to act for principal, 33-36

- conduct of principal creating estoppel, 35
- deal subject to approval of principal, 35
- •• conditional acceptance, 35
- •• withdrawal of offer before acceptance, 35
- named principal, 33-35
- • undisclosed principal, 33-35
- •• unable to ratify contract, 35-36
- ••• anomaly in law if ratification permitted, 34-35
- unnamed principal, 33-34
- • person capable of being ascertained, 33
- whether acting for itself for self-preservation, 33 agent's act capable of ratification, 59

RATIFICATION- Continued

- void or unlawful act in terms of agent or principal, 59
- whether act illegal or *ultra vires*, 59, 299-302 conditions for ratification generally, 32

principal in existence and competent, 36-50

- company existing when agent purporting to act, 48-50
- •• articles of incorporation and letters patent companies, 48
- ••• capacity of natural person, 48-49
- ••• Corporations Act of Manitoba, 48-49
- ••• ratifying acts done on their behalf despite restrictions in articles, 49
- • dormant company, 50
- • registration and statutory companies, 48, 49
- ••• Canadian provinces giving such companies capacity of natural person, 49
- ••• doctrine of *ultra vires* applying, 48
- ••• internal accountability, 50
- mentally incompetent principal, 47-48
- • executor of deceased mentally incompetent, 47
- • power of attorney signed by mentally incompetent: Hill Estate case, 47-48
- ••• contract made by agent enforceable as ratified, 47
- ••• contract void or voidable, whether, 48
- • ratification during lucid interval, 47
- • ratification not able to occur generally, 47
- minors, 48
- pre-incorporation contract not able to be ratified at common law, 36-37
- •• contract between promoter and third party, 36-38
- •• no contract where one party intending to create contract with corporation, 37-38
- • oral pre-incorporation contracts, 38
- • promoter's liability based on deceit or breach of warranty of authority, 38
- pre-incorporation transaction, parties to, 36
- written pre-incorporation transactions, 38-50
- •• common law changed by legislation generally, 38
- • legal advice for promoter, 46-47
- ••• exclusion of liability pursuant to s. 14(4) provision, 46
- ••• promoter in process of incorporating company of particular jurisdiction, 47
- ••• promoter named as personally liable and as agent for company, 47
- ••• promoter personally liable until adoption by solvent company, 47
- •• legal advice for third-party client, 46
- ••• oral transaction mandating corporation to be incorporated in Ontario, 46
- •••• enforceability of transaction at common law, 46
- ••• third party demanding assurance of capitalization of corporation, 46
- ••• third party ensuring that promoter having financial wherewithal, 46
- ••• third party never accepting s. 14(4) inclusion, 46
- ••• written transaction preferred, 46
- •• old statutory wording, 38-50
- ••• adoption of pre-incorporation contracts, 40, 41, 42-45
- •••• corporation having reasonable time after incorporation to "adopt", 41, 42
- •••• adoption not taking place prior to incorporation, 42

RATIFICATION- Continued

- •••• adoption occurring within reasonable time after incorporation, 42
- •••• apportionment of liability between promoter and corporation, 42-43
- •••• statutory provision not successfully invoked, 42
- ••• apportionment remedy being discretionary, 43
- •••• frustrating adoption of pre-incorporation transaction, 43
- •••• misleading third party being significant factor in favour of remedy, 43
- •••• third party must plead application of s. 14(3), 43
- ••• common law of contracts, application of, 41
- ••• corporation able to adopt transaction even if repudiated by other party, 44
- ••• corporation stepping into shoes of promoter where intention to be bound, 42
- ••• corporation's conduct signifying intention to be bound, 41
- ••• Corporations Act of Manitoba, 38-41, 125
- •••• no one suing on contract until adoption, 44
- •••• promoter disavowing benefits and burdens of transaction, 43
- •••• promoter personally liable on contract with third party, 38-40, 41
- ••• creation of corporation by individual who previously dealt with third party, 42
- ••• indication that transaction is on behalf of corporation, requirement for, 41
- ••• promoter's exemption from personal liability, 41, 43
- •••• express exemption in contract, 43
- •••• properly worded s. 14(4) inclusion, 43
- •••• statutory contract, 44
- ••• simultaneous liability of both promoter and corporation not contemplated, 41
- ••• third party not able to revoke offer where s. 14(4) inclusion, 44
- ••• third party personally bound to promoter under transaction, 41
- •• terms required to be included in contract, 45-46
- ••• choice of law term designating domestic corporate law, 46
- ••• choice of law term incorporating Canada Business Corporations Act, 46
- ••• promoter intending to sign for company to be incorporated, 45
- ••• statutory wording known only after incorporation, 45-46
- •• Westcom decision and potential flaw in old statutory wording, 44-45
- ••• importance of decision being open question, 45
- ••• lack of consensus ad item preventing contract, 44
- ••• new statutory wording remedying Westcom decision, 44-45
- ••• Ontario Court of Appeal overruling *Westcom* decision, 45 effect of ratification, 31-32

generally, 31

principal intending to ratify agent's act, 53-58

- extraordinary loan repayment guarantee, 53, 299-302
- •• illegal or *ultra vires* nature of manager's guarantee, 53, 59, 299-302
- principal having full knowledge of material facts, 54
- •• ratification not found if to do so not equitable to principal, 54
- principal only able to ratify agent's unauthorized act, 53
- principal's intention to ratify only part of what agent purported to do, 57-58
- • Canadian Laboratory Supplies case, 57-58, 263-286
- ••• whether two or more discrete transactions or one transaction, 57-58
- •••• initial purchases and subsequent resales being one transaction, 58, 263-286

RATIFICATION- Continued

- •••• purchases and sales being separate transactions, 58, 263-286
- principal's intention to ratify to be expressed or implied by conduct, 53, 54-57
- • express ratification, 53
- •• implied by conduct, 54-57
- ••• "clear and unequivocal", 54
- ••• conduct implying ratification, 55-56
- ••• conduct making it inequitable to deny ratification, 56-57
- •••• principal estopped from denying that conduct to be treated as ratification, 56
- ••• mistaken impression, 55
- ••• purpose of public relations, 54

principal's ratification not to affect fourth party rights, 59

principal's ratification to follow agent's act, 58-59

ratification not to wreak identifiable hardship on third party, 50-53

- act to be ratified existing at time of attempted ratification, 51
- •• client attempting to ratify unauthorized payment by lawyer, 51
- ••• payment returned prior to ratification, 51
- • offer purportedly revoked prior to ratification of acceptance of offer, 51-52
- ••• accepted offer treated as still in existence, 52
- liquidators of dissolved company ratifying unauthorized instruction, 52
- •• ratification effective although beyond limitation period, 52
- ••• distinguished from time limitation cases, 52
- •• third party suffering no hardship, 53
- ••• hardship beyond simply contract being enforceable, 53
- ratification to take place when ratifying party able to lawfully act, 50-51
- •• ratification not to divest vested rights, 51, 52
- •• time limitation cases, 50, 51, 52

REMUNERATION, 171-178 See also DUTIES AND RIGHTS OF AGENTS

REPRESENTATION, AGENCY BY

apparent authority and corporations, 73-83

- conditions for enforcing contract against company where agent had no actual authority, 75-78
- •• company not deprived of capacity to enter contract under articles, 74-75, 299-302
- • Corporations Act of Manitoba, 78-80
- ••• agent's actions being customary or usual for corporation, 81
- ••• authority of directors, officers, and agents, 79-80
- •••• express or implied representation that person being director or officer, 80
- ••• capacity of corporation, 79
- ••• representation by corporation, 80
- ••• representation of agent not sufficient, 80-81
- ••• third party able to allege actual authority, 80
- ••• whether third party having knowledge of agent's lack of authority, 81-82
- • Partnership Act of Manitoba, 82-83
- ••• each partner being agent of partnership and one of principals, 83
- •• representation made by person with "actual" authority, 75-78
- ••• Canadian Laboratory Supplies Ltd. case, 76-78, 263-286

REPRESENTATION, AGENCY BY- Continued

- •••• apparent authority of agent not to be built upon apparent authority of another. 77
- •••• Chief Justice Laskin's reasoning, 77-78
- •••• person required to have actual authority to bind corporation, 78
- •••• employee acting with apparent authority, 76
- •••• representations made by person with actual authority, 78
- •••• who within corporate structure in position to make representations, 78, 263-286
- ••• whether unit manager and general manager having ostensible authority, 75-76
- corporate contractual liability based upon proof of antecedent actual authority, 73-74
- •• actual authority conferred by constitution on board of directors, 74
- apparent authority by permitting agent to act in conduct of principal's business, 74
- ••• company estopped from denying that agent had authority, 74-75
- • Imperial Elevator Co. case, 74

apparent authority and Crown, 89-90

- agent exercising authority derived from legislation, 89
- Crown bound by apparent authority of agent, whether, 89 apparent authority, requirements for, 63-73
- essential elements for agency by estoppel, 63
- onus of proof on third party, 63
- reliance on representation by third party, 63
- •• whether actual reliance on representation, 63
- •• whether alleged representation being proximate cause of third party's action, 72
- representation by principal to third party, 63-73
- agent's representation able to be held against principal if agent having authority, 63-64
- •• no representation by agent amounting to "holding out" by principal, 63
- •• principal able to expressly authorize agent to make representation, 63
- • principal able to make representation as to agent's apparent authority, 63
- ••• courts not inferring representation of such authority from mere appointment, 64
- ••• Canadian Laboratories Ltd. case, 263-286
- ••• Freeman & Lockyer case, 260-261
- ••• Jensen v. South Trail Mobile Ltd., 64, 66, 261-262
- • principal vicariously liable for misrepresentation of authority, 64
- •• representation able to be made expressly or impliedly, 63-65
- ••• express representation, 63-65
- ••• implied representation, 63-65
- •••• apparent authority arising from course of dealing, 67-69
- •••• codification in legislation, 68-69
- •••• goods ordered in past by head steward, 67-68
- •••• apparent authority arising from principal mutely standing by, 66-67
- •••• equivocal representation not founding estoppel, 70
- ••••• certificate of title of one tenant in common not unequivocal, 70
- •••• negligent misrepresentation, 70-71, 324-327
- ••••• representation required to be intentional, 70

REPRESENTATION, AGENCY BY- Continued

- •••• principal clothing agent with apparent authority, 65-66
- •••• officers of church arranging loan in excess of authority, 66
- •••• third party not able to rely on authority if ought to have known of limitation, 71
- •••• three situations, 65-66
- summary of law, 72-73
- •• Crampsey v. Deveney: plaintiff covering all bases, 73, 324-327
- • Hastings v. Semans Village: implied actual authority of necessity, 73
- • ostensible or apparent authority not stemming from custom, 73 civil litigation settlements, 83-89
- litigation settlements made pursuant to express or implied actual authority, 84
- litigation settlements where lawyer's authority limited or prohibited, 83, 86
- •• action to enforce settlement, considerations in bringing, 87-88
- ••• Morris v. Gilbert: lawyer client unrepresented, 88-89
- ••• Nelson v. Murphy, 88-89
- • perspective of client and actual authority, 85
- ••• non-lawyers having express authority, 87
- ••• retainer, need for written, 87
- ••• standard form retainer, 87
- • perspective of other party and apparent authority, 85-86
- ••• letter requesting assurances from other lawyer, 87
- • ratification by client, 86
- ••• deemed ratification, 86
- pre-litigation settlements, 83-84
- • arguable that binding on basis of apparent authority, 84
- •• binding if express actual authority or ratification, 83
- settlements not enforced due to lack of constituent elements, 84-85
- • overriding judicial discretion, 84-85

criminal plea bargain, 89

generally, 60-62

- actual authority vs. apparent or ostensible authority, 60
- •• co-existence and co-incidence, examples of, 60
- •• usual authority, 60
- apparent authority cases, categories of, 61-62
- •• known agent exceeding actual authority delegated, 61-62
- ••• third party not affected by secret limitation of agent's actual authority, 62
- • principal allowing agent to continue to appear as agent after relationship ceasing, 62
- ••• agent's actual authority limited without notifying third party, 62
- • principal allowing person to appear as if principal's agent when no agency, 61 partnerships, 89

RIGHTS OF AGENTS See DUTIES AND RIGHTS OF AGENTS

SETTLEMENT THROUGH AGENT See also LAWYER'S AUTHORITY TO SETTLE

mistaken payments by agent, 118-119

SETTLEMENT THROUGH AGENT- Continued

principal satisfying debt owing to third party, 108 third party discharging obligation, 107-108

- payment to agent with actual (express or implied) authority, 107
- payment to agent with implied authority, 107
- payment to agent without authority not discharging obligation, 107
- recovery action for return of money against principal, 107-108 undisclosed principal, 108
- third party safely paying agent prior to disclosure, 108
- undisclosed principal paying third party through agent, 108
- •• cases worth mentioning, 109

STATUTE, AGENCY BY

generally, 30 Highway Traffic Act, 30-31 Sale of Goods Act, 31

TERMINATION OF AGENCY

enduring powers of attorney, 182-183

- mentally incompetent donor: statutorily stipulated events, 182-183
- • appointment of committee or Public Trustee, 182
- •• death of attorney, 183
- •• subsequent inconsistent power of attorney, 182
- Powers of Attorney Act, 183
- •• judicial power to terminate, 183
- ••• court intervention not warranted where grantor remaining competent, 183 generally, 181

irrevocable agencies, 181-182

- authority coupled with interest, where, 181-182
- •• agency created to secure or protect interest, 181-182
- • potential remuneration not sufficient interest, 181
- no termination when principal or agent mentally incompetent, bankrupt, dying, or dissolved, 182
- power of attorney, irrevocable, 181

revocable agencies, 184-186

- bankruptcy of agent, 186
- death of principal, 186
- • ratification by personal representative, 186
- expiry of term or fulfillment of delegated authority, 184
- mental incompetent principal, effect on contract of, 185-186
- •• agency not revoked with regard to unaware third party, 186
- •• where third party aware of principal's mental condition, 186
- ••• acts of attorney not effective, 185
- •• whether acts of agent void or voidable, 185
- notice by principal to agent and third parties, 184
- operation of law, 184
- •• frustration, 184
- • Powers of Attorney Act, 184

TERMINATION OF AGENCY- Continued

- ••• acts of attorney after authority terminating, 184
- ••• attorney's liability for act after termination, 184
- ••• "terminates", meaning of, 184
- • Trustee Act, 185
- power of attorney induced by fraud, 186
- •• whether power of attorney void or voidable, 186
- principal being free to terminate and agent free to renounce, 184 termination for cause, 187
- immediate termination by simple notice, 187 termination without cause, 187-188
- reasonable notice where bilateral agency contract, 187
- • exclusive sales distributorship, 187-188
- •• where expenditure of time and effort by agent, 187

TORTS

agent acting with authority, 126-132

- company, liability of, 130-131
- •• whether person acting as agent on behalf of company, 130-131
- partners, 131-132
- • Partnership Act, 131
- ••• tort liability of partners for torts of other partners, 131
- •••• acting in ordinary course of business of firm, 131
- •••• wrongful act or omission of any partner, 131
- principals vicariously liable (jointly and severally) with agents, 126-127
- vicarious tort liability, 126-131
- • company, vicarious liability of, 130-131
- ••• whether person acting as agent on behalf of company, 130-131
- • master-servant vs. employer-independent contractor relationship, 126-128
- ••• criteria for determining relationship, 127-128
- ••• employer of independent contractor generally not vicariously liable, 127, 128
- ••• illustration of various relationships, 128-129
- ••• master of servant vicariously liable, 127
- •••• scope of employment broader than scope of authority, 127
- • principal liable for torts committed by agent within scope of authority, 126, 127
- • principal liable for torts committed within exercise of unauthorized act, 126
- • principals' vicarious tort liability based on fraudulent misrepresentation, 129-130
- ••• whether agent's misrepresentation made within scope of authority, 129
- ••• whether liability where division of ingredients of fraudulent misrepresentation, 130
- •• principals' vicarious tort liability based on other torts, 130

agent acting without authority: deceit and breach of warranty of authority, 121-126

- agent acting with apparent authority, where, 121
- agent committing deceit when knowingly acting without authority, 122
- • measure of damages, 123-124
- agent signing for company vs. signing on behalf of company, 124-125
- • person signing for company not personally liable, 125
- ••• exception where non-existent company, 125

TORTS- Continued

- •••• measure of damages, 125
- person signing on behalf of company potentially personally liable, 125
- •• pre-incorporation contract and Corporations Act, 125
- breach of warranty of authority where agent mistakenly thinking presence of authority, 121-122
- • measure of damages, 123-124
- ••• deceit vs. breach of warranty of authority, 124
- ••• Wickberg v. Shatsky, 123, 125, 327-330
- ••• third party to be put in position would have been in if agent had authority, 123
- •• strict liability for breach of authority, 122-123
- ••• agent liable although acting in good faith, 122
- •• third party misled or induced by agent's warrant of authority, 122
- • warranty of authority express or implied, 122
- oral agreements, 125-126
- third party suing agent for deceit where acting without authority and not ratified. 121

Himalaya clauses, 132-133

- bills of lading extending carrier's exemptions from liability to described persons, 132
- ratification rationalization, problems with, 132-133
- whether carrier having authority to extend protection of exemption clause to third parties, 132, 133

UNAUTHORIZED DISPOSITIONS OF PROPERTY BY AGENT

apparent ownership, doctrine of, 109-110

- auctioneer as apparent owner, 110
- owner allowing person to have indicia of title, 109
- • mere possession not sufficient, 109
- •• unauthorized disposition by apparent owner being valid, 109
- Sale of Goods Act, 110
- •• sale by person not owner, 110

factors legislation, 110-118

- doctrine of apparent ownership extended to pledge, 110
- Factors Act of Manitoba, 110-113
- • possession and powers of agent, 111
- five requirements for which defendant having onus of proof, 113-118
- •• disposition of goods when acting within ordinary course of business, 113, 116-118
- ••• meaning of "acting in ordinary course of business of mercantile agent", 116, 117
- ••• object of Factors Act, 117
- ••• outside of ordinary course of business, disposing of goods, 117-118, 339-345
- •••• Thoresen v. Capital Credit Corp. Ltd., 127, 128, 339-345
- • mercantile agent, third party dealing with, 113-114
- ••• "agent", meaning of, 114
- ••• engaged in commercial business, 114
- •• possession of goods as mercantile agent, 113, 115-116
- • possession of goods with consent of owner, 113, 114-115
- •• third party acting in good faith, 113, 118

UNAUTHORIZED DISPOSITIONS OF PROPERTY BY AGENT-

Continued

• other issues, 118 generally, 109

• property passing to third party if within agent's actual or apparent authority, 109

USUAL AUTHORITY

agent acting within scope of usual authority for such agent, 90

- undisclosed principal bound by actions of such agent, 90
- undisclosed principal liable for agent's acts within usual authority, 90 power of partner to bind firm, 93-94
- corporate principal, holding out required by, 93
- Partnership Act (s. 8) of Manitoba, 93
- •• whether third party knew or believed person to be partner, 93
- Watteau v. Fenwick superseded by s. 8 of Partnership Act, 93 Sign-O-Lite Plastics case, 91-93, 292-295
- distinguishable from Watteau v. Fenwick on facts, 91-93
- facts analyzed on basis of actual authority, 93
- no prior course of dealing between third party and agent, 92
- • undisclosed principal not liable, 92
- questionable decision, 92-93
- reliance on *Miles v. McMcIIwraith* and, 92-93 summary, 94

undisclosed principal holding out person as principal and owner of business, 91

• person not to be divested of apparent authority by secret reservation, 91 usages of phrase, 90

usual authority as extension of apparent authority, 91 usual authority being discrete kind of authority, 94

- agent of undisclosed principal, 94
- implied empowerment of agent by undisclosed principal, 94
- third party assuming situation continuing as before, 94

VICARIOUS LIABILITY See TORTS