

4005 AGENCY: APPARENT AUTHORITY

Question _____ involves the question of the apparent authority of _____ as agent for _____, the principal.

If a third person, because of appearances for which the principal was responsible, believed and had reasonable ground to believe, that the agent possessed power to act for the principal in the particular transaction, and if such third person was, in the exercise of reasonable prudence, justified in believing that the agent possessed the necessary authority, then the apparent authority of the agent is established and the principal is responsible to such third person the same as if the agent actually possessed all the power he or she assumed to possess.

The apparent authority for which the principal may be liable must be traceable to him or her and cannot be established solely by the acts and conduct of the agent. The principal is liable only for that appearance of authority caused by the principal. If, however, it is contended that the words, acts, or conduct of the agent were relied upon to establish the apparent authority, then it must be shown to your satisfaction that the principal had knowledge of and acquiesced in them.

Three elements are necessary to establish apparent authority:

- (1) acts by the agent or principal justifying belief in the agency;
- (2) knowledge thereof by the principal, sought to be held;
- (3) reliance thereon by the plaintiff, consistent with ordinary care and prudence.

You will carefully consider and weigh the credible evidence and the reasonable inferences from the evidence bearing on this inquiry, and, if you are satisfied that the

elements necessary to establish the apparent authority of the agent have been proved, you will answer the question "yes"; otherwise you will answer it "no."

COMMENT

This instruction and comment were originally published in their present form in 1962. Editorial changes were made in 1994 to address gender references in the instruction. No substantive changes were made to the instruction.

Apparent authority of an agent would arise only when there is no question or dispute that the agency exists. The relationship of principal and agent must be established, and the question may then arise as to whether or not the agent had apparent authority to transact the business he or she transacted.

This instruction is taken substantially from Hansche v. A. J. Conroy Co. Inc., 222 Wis. 553, 559, 269 N.W. 309, 311 (1936). Also see Idzik v. Reddick, 10 Wis.2d 547, 552, 103 N.W.2d 300, 303 (1960); Sater v. Cities Service Oil Co., 235 Wis. 32, 40, 291 N.W. 355, 359 (1940); Sell v. General Elec. Supply Corp., 227 Wis. 242, 248, 278 N.W. 442, 445 (1938); Weil-McLain Co. v. Maryland Cas. Co., 217 Wis. 126, 129, 258 N.W. 175, 176 (1935); Walter v. Four Wheel Drive Auto Co., 213 Wis. 559, 569, 252 N.W. 346, 349 (1934); Commonwealth Tel. Co. v. Paley, 203 Wis. 447, 450, 233 N.W. 619, 621 (1930); Zummach v. Polasek, 199 Wis. 529, 533, 227 N.W. 33, 34 (1929); Voell v. Klein, 184 Wis. 620, 621, 200 N.W. 364, 365 (1924); Weigell v. Gregg, 161 Wis. 413, 416, 154 N.W. 645, 646 (1915); Freeman v. Dells Paper & Pulp Co., 150 Wis. 93, 99, 135 N.W. 540, 543 (1912); Garlick v. Morley, 147 Wis. 397, 399, 132 N.W. 601, 602 (1911); Restatement, second, Agency § 8 (1958); Callighan's Wis. Digest Principal and Agent § 116 (1950).

Where there is conflicting evidence on the question of apparent authority, it is material error not to give an instruction on apparent authority. Saveland v. Western Wis. R. Co., 118 Wis. 267, 270, 95 N.W. 130, 131 (1903).