CHAPTER 19
CHAPTER SUMMARY

NATURE OF AGENCY

Definition of Agency consensual relationship authorizing one party (the agent) to act on behalf of the other party (the principal) subject to the principal’s control

Scope of Agency Purposes generally, whatever business activity a person may accomplish personally he may do through an agent

Other Legal Relationships

- Employment Relationship one in which the employer has the right to control the manner and means of the employee’s performance of work

Independent Contractor a person who contracts with another to do a particular job and who is not subject to the other’s control over the manner and means of conducting the work

CREATION OF AGENCY

Formalities though agency is a consensual relationship that may be formed by contract or agreement between the principal and agent, agency may exist without consideration

- Requirements no particular formality usually is required in a contract of agency, although appointments of agents for a period of more than one year must be in writing

- Power of Attorney written, formal appointment of an agent

Capacity

- Principal if the principal is a minor or an incompetent not under a guardianship, his appointment of another to act as an agent is voidable, as are any resulting contracts with third parties

Agent any person able to act may act as an agent, as the act of the agent is considered the act of the principal

DUTIES OF AGENT TO PRINCIPAL

Duty of Obedience an agent must act in the principal’s affairs only as actually authorized by the principal and must obey all lawful instructions and directions of the principal

Duty of Good Conduct within the scope of the agency relationship, an agent must act reasonably and refrain from conduct that is likely to damage the principal’s interests

Duty of Diligence an agent must act with reasonable care, competence, and diligence in performing the work for which he is employed

Duty to Inform an agent must use reasonable efforts to give the principal information material to the affairs entrusted to her

Duty to Account an agent must maintain and provide the principal with an accurate account of money or other property that the agent has received or expended on behalf of the principal; an agent must not mingle the principal’s property with any other person’s property
**Fiduciary Duty**

An agent owes a duty of utmost loyalty and good faith to the principal; it includes:

- **Conflicts of Interest**
- **Self dealing**
- **Duty Not to Compete**
- **Misappropriation**
- **Confidential Information**
- **Duty to Account for Financial Benefits**

**Contractual Duties**

- **Compensation** a principal must compensate the agent as specified in the contract, or for the reasonable value of the services provided, if no amount is specified
- **Reimbursement** the principal must pay back to the agent authorized payments the agent has made on the principal’s behalf
- **Indemnification** the principal must pay the agent for losses the agent incurred while acting as directed by the principal

**Tort and Other Duties**

Include (1) the duty to provide an employee with reasonably safe conditions of employment and (2) the duty to deal with the agent fairly and in good faith

**Termination of Agency**

- **Acts of the Parties**
  - **Lapse of Time**
  - **Mutual Agreement of the Parties**
  - **Revocation of Authority**
  - **Renunciation by the Agent**

- **Operation of Law**
  - **Death** of either the principal or the agent
  - **Incapacity** of either the principal or the agent
  - **Change in Circumstances**

**Irrevocable Powers**

A power given as security—including an agency coupled with an interest—is irrevocable