



## Case Western Reserve Law Review

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Volume 6 | Issue 3

---

1955

# Agency

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### Recommended Citation

Hugh A. Ross, *Agency*, 6 W. Res. L. Rev. 211 (1955)

Available at: <https://scholarlycommons.law.case.edu/caselrev/vol6/iss3/6>

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applicable section of the General Code in full effect for such purposes, held that it was the legislative purpose that the statutes involved should have continuing force and effect. Thus, the rules and regulations of the Department of Liquor Control, as promulgated under the General Code, did not lapse or become void by reason of the revision but continued in full force and effect. The Revised Code is not considered as a new enactment but is a substitution for the existing statutory provisions as indicated by the plain language of Section 1.24.

MAURICE S. CULP

## AGENCY

During the past year the courts have dealt with a wide variety of problems in the master-servant and principal-agent areas. Most numerous were cases involving insurance and real estate agents.

### *Acts Within the Scope of Authority*

In theory the normal rules of agency apply to the insurance agent. In fact, insurance companies do most of their business through local independent agents; the home office is usually at a distant place; and the local agent is treated by the public as if he had authority not possessed by agents in other fields. Both the courts and the legislatures recognize this and recent decisions indicate that the courts may be developing a new area of law applicable to insurance companies only. The most common problems relate to the authority of an agent or sub-agent to issue an initial oral contract of insurance, binding until the written contract is issued, the so-called binder contract, and the authority orally to waive or modify an existing contract.

In *Nellas v. Manufacturers Casualty Ins. Co.*<sup>1</sup> the company was locally represented by a corporate general agent with authority to write policies. Hill was an independent insurance broker, or solicitor, who did not represent any specific company, but solicited business for a number of companies. The plaintiff called Hill and told him he wanted public liability

<sup>1</sup> 96 Ohio App. 196, 121 N.E.2d 651 (1953). A somewhat similar fact situation was before the court in *Patten v. Continental Casualty Co.*, 162 Ohio St. 18, 120 N.E.2d 441 (1954). In this case the insured was told by the agent that he was covered for polio insurance. He failed to recover from the company, primarily because he sued for tort damages, alleging unreasonable delay in the company's acceptance of his application. On the basis of the *Nellas* and *Coletta* cases above, and cases cited therein, the plaintiff would have been more likely to recover if he had sued on the policy alleging authority in the agent to make a binder contract. The *Patten* case is also discussed in the INSURANCE section *infra*.

coverage on his tavern. Hill and the president of the general agency visited the premises and fixed the premium rate. On leaving the tavern, the man from the general agency told the plaintiff, "When you are ready, let Hill know." The plaintiff later told Hill that he was ready, and Hill replied that the policy was now in effect. The insurable loss occurred before the written policy was issued and the company was held liable on the oral contract. The report does not indicate what authority, if any, the general agent had to make a binder contract, nor what authority he had to delegate the authority to an independent solicitor.

In *Coletta v. Ohio Casualty Ins. Co.*<sup>2</sup> the insured was covered by a burglary policy which required him to keep a burglar alarm system in operation and further provided that no modification of the policy contract could be made except by a written rider. Burglars broke in and destroyed the alarm system. The next day the loss was adjusted by Slusser, the vice president of the corporate local general agent. At that time Slusser told the insured that he would be covered until the alarm system was replaced. Ten days later, and before the alarm was repaired, burglars struck again. The court of appeals allowed the insured to recover on the policy for the second burglary loss. Again, there was no specific evidence of authority to modify the written policy. The court reasoned that the "no oral modification" provision could not disable the insurance company from orally modifying its contract, and since the general agent had broad powers, the agent was also precluded from relying on the policy provision and could delegate the right to modify to its sub-agent, Slusser.

The Ohio courts also passed on several other aspects of agency authority, none of which are unusual enough to merit detailed discussion.<sup>3</sup>

### Notice To the Agent

In *Griffin v. General Acc. Fire and Life Assur. Co.*<sup>4</sup> the insurer directed its local agent to mail a cancellation notice to the insured. This was done and the letter was returned. The agent had knowledge of non-delivery and also had knowledge of the insured's place of employment. The court held that notice to the agent was notice to the principal and thus the attempted cancellation was ineffective.

<sup>2</sup> 96 Ohio App. 70, 121 N.E.2d 148 (1953)

<sup>3</sup> *Brent v. Advance Scale Mfg. Co.*, 66 Ohio L. Abs. 259 (Ohio App. 1952) 116 N.E.2d 761 (President and treasurer of corporation had no implied authority to execute corporate chattel mortgage without directors' approval, where in previous instances they had obtained advance approval for each mortgage); *Gilbert v. Kemp*, 66 Ohio L. Abs. 140, 116 N.E.2d 213 (Ohio App. 1952) (agent who managed farm under power of attorney could bind principal to contract of employment); *Wolfson v. Horn*, 94 Ohio L. Abs. 530, 116 N.E.2d 751 (Ohio App. 1953) (husband had implied authority to bind his wife to contract for sale of land)

<sup>4</sup> 94 Ohio L. Abs. 403, 116 N.E.2d 41 (Ohio App. 1953).

*Raible v. Raydel*<sup>5</sup> involved the order of a trial court to a litigant to appear at a hearing on penalty of having his pleadings dismissed. It was held that notice of the order given to the litigant's attorney was valid notice to the litigant and his cause of action could be dismissed for disobedience of the order.

### *Relations Between Principal and Agent*

In *Connelly v. Balkwill*<sup>6</sup> the principal alleged that his agent had made a secret personal profit while engaged in the sale of the principal's property. The relief requested was an accounting and judgment for the amount of the profit. The supreme court held that the relation here involved was a fiduciary relation subject to equity jurisdiction. For this reason, the appeal from the court of common pleas to the court of appeals should be on questions of both law and fact.

Where a real estate agent's desire for a commission conflicts with his duty of full disclosure to his client, the courts will prefer the latter. In *McGarry v. McCrone*,<sup>7</sup> a case of first impression in Ohio, it was held that where the broker knew or suspected that the purchaser he produced was financially unable to purchase the property, the broker could not recover his commission, although a contract of sale was entered into between the seller and the prospective purchaser.

*Hubman Supply Co. v. Irvim*<sup>8</sup> concerned the continuing duty of loyalty after termination of the agency relationship. A salesman agreed with his employer not to work for a competitor for ten months after termination of his employment. The court refused to enjoin violation of the agreement on the ground that it was a restraint on trade and in violation of public policy.<sup>9</sup>

### *Master and Servant*

*Schoenmeyer v. Zahl*<sup>10</sup> involved the question of whether or not the driver of an automobile was, at the time of the accident, the agent or employee of the owner so as to charge the owner with liability. The defendant purchased an automobile for the use of her 18 year old son, but retained title in her own name. The son asked a friend to drop him off at his job

<sup>5</sup> 162 Ohio St. 25, 120 N.E.2d 425 (1954).

<sup>6</sup> 160 Ohio St. 430, 116 N.E.2d 701 (1954).

<sup>7</sup> 118 N.E.2d 195 (Ohio App. 1954).

<sup>8</sup> 67 Ohio L. Abs. 119, 119 N.E.2d 152 (Franklin Com. Pl. 1953).

<sup>9</sup> For a recent interesting discussion of the issues raised in similar cases see Note *Equitable Enforcement of Negative Covenants in Employment Contracts*, 6 WEST. RES. L. REV. 72 (1954).

<sup>10</sup> 120 N.E.2d 150 (Ohio App. 1954).