

# Business & Contract Law



## Week 5

## PART 3: CONTRACTUAL LAW

### F/Contracts of Representation

22. Agency contracts

23. Mandates

## 22 – Agency Contracts

A        When we speak of a contract of agency, two parties are involved, namely:

- The principal who is represented and who gives another person authorization to represent.
- The agent who represents and is given the authority to represent.

## 22 – Agency Contracts

B We can distinguish the following instances of agency:

1. Agency (CO art 32 ff)
2. Mandates (CO art 394 ff)
3. Brokerage contract (CO art 412 ff)
4. Commercial agency (CO art 418 ff)
5. Representation of businesses e.g. :
  - General partnership (CO art 555)
  - Corporations (CO art 718)

## 22 – Agency Contracts

C A commercial agent is a person who assumes on a continuous basis the obligation to negotiate business transactions for one or more principals or to conclude agreements on their behalf for their account, without being bound by an employment contract with them

*Source:*

<http://www.admin.ch/ch/e/rs/220/a418a.html>

*Guide:*

[http://www.amcham.ch/key\\_topics/p\\_business\\_ch.asp?s=2&c=1](http://www.amcham.ch/key_topics/p_business_ch.asp?s=2&c=1)

6

## 23 - Mandates

### 23-1/ Essential Elements

A A mandate is a contract of representation whereby the mandatory/agent (*mandataire*) takes the responsibility to perform business in the name of the mandator/principal (*mandant*) ([CO art 394](#)):

B A mandate is deemed concluded when the mandatee accepts representation ([CO art 395](#)). The end result of the service is not guaranteed – unlike contracts of work that they are.

## 23 - Mandates

### 23-2/ Obligations

#### C Mandatary

- To carry out the contract with diligence – in the same manner as a contract of employment ([CO art 398](#))
- To provide information on the activities ([CO art 400](#))
- To render sums of money ([CO art 401](#))

#### D Mandator

- To pay fees as per the contract ([CO art 402](#))

## 23 - Mandates

### 23-3/ Termination

E A mandate can be terminated at any time; if the time is inopportune, damages can be claimed ([CO art 404](#)).