

Agency

- Fundamental Relationship: Principal and Agent.
 - Most common and important legal relationship.
 - Principals use agents to be able to conduct multiple business operations simultaneously in various locations.
 - Found all over business
 - Employer-Employee
 - Partnership
 - LLC
 - Corporations

1

Manifestation & Consent

- Creation of agency normally through 2 steps
 - Manifestation by Principal (of consent to have would-be agent act for would-be principal)
 - Consent by Agent (agreement to act)
- Example: The researcher asks her assistant, “Do you know anybody who is good at fact checking?” The assistant says, “Sure, George is great at that.” The researcher replies, “If you see him, ask him if he will fact check this chapter.” Later, the assistant sees George, and asks him if he would fact check for the researcher. George tells the assistant, “Yes.” Has an agency relationship formed?

2

Binding the Principal & Third Parties through Contract & Information

- The most important consequence of the agency label is the agent’s power to bind the principal to third parties, and to bind third parties to the principal.
- Agency power is essentially a concept of attribution: the agent’s conduct is attributed to the principal.
- George, acting as agent for the Zoo, contracts with Martha to procure a hippo for the Zoo. Later, Martha seeks to hold the Zoo to the contract. Can she?

3

Sources of Power for Agents

- Actual Authority
- Apparent Authority
- *Ratification (not on exam)*
- **Notes on Agency Power**
 - More than one category of power may apply in any situation.
 - Attribution is transaction specific and time sensitive.
 - There is a difference between the “power to bind” and the “right to bind.”

4

Actual Authority

- Creation of actual authority involves:
 - Objective manifestation by the principal
 - Followed by agent's reasonable interpretation of that manifestation
 - Which leads the agent to believe that it is authorized to act for the principal
- Notes
 - Manifestation can reach agent directly or indirectly.
 - Principal can cut back previously granted authority by making a manifestation that reaches agent

5

Examples

- Two traveling salespeople, Bernice & Joe, are in the hotel bar. As Joe gets up to get another bowl of pretzels, Bernice says, "It's happy hour. While you're up, order another round of drinks for us and charge them to me." Joe orders the round and charges the price to Bernice's room. Can he do this?
- Same situation. Joe finds happy hour is over and tells B this from the bar, and asks if he should still order drinks. Bernice thinks, and then puts her hand out with her thumb up. Can he charge drinks now?

6

Apparent Authority

- Power derives from the appearance of legitimate authority, and it exists to protect third parties who are misled by appearances.
- Creation involves:
 - Objective manifestation by the principal
 - Which somehow reaches a third party, and
 - Which leads the third party to reasonably believe that the apparent agent is authorized to act for the apparent principal

7

Examples

- Joe & Bernice from before. The bartender overhears Bernice's instructions. In this case, Joe has both actual and apparent authority.
- An art collector arranges for Broker to attend an art auction and bid on certain items on her behalf. Collector sends a letter to the auction house, stating, "At your upcoming auction, Broker will represent me and is authorized to bid on my behalf." In the past, Broker has often placed bids for Collector in excess of \$50,000. This time, Collector tells Broker (but not art house), "Don't bid more than \$25,000 on any item." Broker bids \$60,000 on an item. Is Collector bound to the bid?
- Same as before, except Collector tells Broker (but not art house), "I've changed my mind. Don't bid on anything for me." Broker bids \$60,000 on an item. Is Collector bound to the bid?

8

More examples

- Similar to before, except that instead of Collector sending the letter, Collector's personal secretary (acting on instructions from Collector) sends the letter.
- You operate a horse ranch. One day, Zelda approaches you and informs you that she buys horses on behalf of Acme (true at that time). The next week, she is fired. A day after being fired, she returns and claims to buy one of your horses for \$2000 for Acme. She walks off with the horse. Can you recover from Acme?

9

Attribution of Information

- Under agency law, you treat the principal as if the principal knows, receives, or communicates information that is actually known, received, or communicated by an agent.
- Rule: If agent has actual knowledge of fact concerning a matter within the agent's actual authority, the agent's knowledge is attributed to the principal.
 - Attribution occurs regardless of whether agent communicates the fact to the principal, unless
 - Agent was acting adversely to principal, and 3rd party knew or should know that agent was so acting.

10

When is Agent bound to Third Parties?

- If principal is disclosed, agent is not liable on the contract.
- If principal is partially disclosed (know working for someone else but not know who it is), agent is almost always liable on the contract.
- If undisclosed, agent is always liable, but has right of indemnification.
- Note: with undisclosed principals, sometimes the 3rd party may (1) insist on rendering performance to the agent, or (2) escape the contract entirely.

11

Respondeat Superior

- Imposes vicarious liability on a principal when:
 - Agent's tort has caused physical injury,
 - Agent is considered a "servant" (employee), and
 - Conduct occurred within the "scope of employment"
- When triggered, liability applies irrespective of whether principal
 - Authorized the misconduct,
 - Forbade the misconduct, or
 - Used all reasonable means to prevent it.

12

Employee versus Independent Contractor Relationships

- Employee
 - Employer controls the means/physical manner of the employee's performance of the work
- Independent Contractor
 - Employer controls only the result/output of the work, not the manner of performance

13

Servant vs. Independent Contractor

- A pizza shop contracts with a driver to provide home delivery. A written agreement between the shop and the driver has the following terms: it labels the driver an "independent contractor;" it permits the pizza shop to terminate the contract at any time without cause; it requires the driver to provide his own car and insurance; it provides for payment by delivery, not by hour. The driver has no other employment. The driver hits another car. Is the pizza shop liable under Respondeat Superior?

14

Scope of Employment

- Rationale: limit liability to risks associated with tasks
- Is act part of job (within scope) or not?
- Frolic (employee on own) versus detour (minor deviation in time and space)

15

Examples

- Dennis, the baker's assistant, stops by a bookstore after work one day, looking for a book on baking techniques. He wishes to improve his own skills so that he can do a better job. While browsing, he trips and bumps into another customer, knocking her down. Can the customer recover from the baker?
- The baker also employs Sarah, an expert wedding cake designer. The baker pays Sarah a weekly salary, and provides the location, equipment, and materials for her efforts. She also determines her working hours and tells her what cake orders to fill. However, the baker expects Sarah to use her own judgment in designing, baking, and constructing wedding cakes. On one occasion, Sarah leaves a small wire inside a part of the cake, and a customer is injured. Can the customer recover from the baker?
- Nick and Nora drive a delivery van for Acme. During their lunch break, they take the company truck and drive to the stadium to buy playoff tickets. While doing this, they injure a pedestrian. Can the pedestrian recover from Acme?
- On their way to make a delivery, Nick and Nora realize that they are hungry, and that the best deli in town is two blocks off their route. They are entitled to a lunch break. They stop at the deli. When pulling away from the deli, they injure a pedestrian. Can the pedestrian recover from Acme?

16

Franchisor Liability

- Courts Treat Franchisor Liability for the Tort of a Franchisee in an Analogous Manner to Respondeat Superior
- A Franchisor will be Vicariously Liable if the Act that Caused the Harm was within the “Scope of Control” of the Franchisor
- To Determine the Scope of Control, look to the Franchise Agreement.

17

Agent’s Duty of Loyalty

- Duty of Loyalty: Hallmark characteristic of agency status
 - Principal’s objectives and wishes are dominant
 - Agent is merely a means to accomplish principal’s ends
- Includes
 - No unapproved benefits
 - Must safeguard confidential information
 - No unapproved competition with the principal
 - No unapproved acting for others with conflicting interests
 - Cannot become the other party to a transaction with principal
- Does not include
 - Modifications mutually consented to (after informed)
 - Acting against the principal’s interests in the protection of own interests

18

Other Duties of the Agent

- Due care
 - Level of care depends on type of agent; professional agent (e.g., an attorney) held to professional standard of care
- Obedience to lawful instructions
 - Unauthorized contract or tort – agent liable to principal for loss
- To account
 - Account for property/money disbursed and received
 - Duty not to commingle assets of principal and personal assets of agent
 - Payment to agent considered payment to principal
- Information
 - Disclose “material” information to principal
 - Knowledge of agent is considered knowledge of principal

19

Examples

- Ralph works as a waiter in an upscale restaurant. None of his duties involve preparing food. One day, Ralph sees the restaurant’s secret recipe for stuffed mushrooms. Can he use the recipe or disclose it to others? What if he was a chef?
- A real estate broker agrees to help Sam locate & purchase a new house. The broker knows that Rachel is interested in selling her house. The broker contacts Rachel, and agrees to help her sell her house to Sam. Has the broker breached a duty of loyalty?
- Same as above, plus Rachel wishes not to disclose certain information (that she would normally be able to withhold). She tells the information to the broker, and tells the broker not to tell Sam. What conflict does the broker face here?
- The broker has agreed to help Sam. At this point, he already has in mind the house owned by Rachel. Without disclosing that information, the broker asks Sam, “If I find a house, would you mind if I also worked with the seller to work out a deal you both can live with?” If Sam agrees, has the broker fulfilled the duty of loyalty?

20