

AGENCY IN HEALTH CARE



OPUS COLLEGE OF BUSINESS

9/18/2023

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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?

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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.
- Difference between Power to Bind & Right to Bind.

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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

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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

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Actual & Apparent Authority 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? What if the bartender overhears Joe?
- 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?

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Binding the Principal in Tort: Respondeat Superior

- Imposes vicarious liability on a principal when:
 - Agent's tort has caused physical injury,
 - Agent is considered an employee, and
 - Conduct occurred within the "scope of employment"

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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

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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)

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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

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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

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