Restatement (First) of Agency § 2 (1933)

Restatement of the Law - Agency | May 2022 Update

§ 2 Master; Servant; Independent Contractor

(1) A master is a principal who employs another to perform service in his affairs and who controls or has the right to control the physical conduct of the other in the performance of the service.
(2) A servant is a person employed by a master to perform service in his affairs whose physical conduct in the performance of the service is controlled or is subject to the right to control by the master.
(3) An independent contractor is a person who contracts with another to do something for him but who is not controlled by the other nor subject to the other's right to control with respect to his physical conduct in the performance of the undertaking.

***Comment*:**

a. A master is a species of principal, and a servant is a species of agent. The words "master" and "servant" are herein used to indicate the relationship from which arises the tort liability of an employer to third persons for the tort of an employee (see §§ 219- 249), and the special duties and immunities of an employer to the employee (see §§ 473- 528). The factors which are of importance in determining whether or not the person is a servant or an independent contractor are stated in § 220. The distinction between servants and agents who are not servants is of importance only for the purposes of those Sections, and statements made in the Restatement of this Subject as applicable to principals or agents are, unless otherwise stated, applicable to masters and servants. The rules as to liability of a principal for the torts of agents who are not servants are stated in §§ 250- 267, and as to his liability to such agents in §§ 470- 472. The duties of servants to masters and their liabilities to third persons are the same as those of agents who are not servants. However, servants do not ordinarily have possession of goods entrusted to them by the master (see Comment *h* on § 339 and § 349), and a servant, because of his position, may not be responsible for mistakes made by him as to facts upon which his authority depends, where an agent not a servant would be (see Comment *c* on § 383).

b. The word "servant" is used in contrast with "independent contractor," a term which includes all persons who contract to do something for another and who are not servants with respect thereto. An agent who is not a servant is, therefore, an independent contractor when he contracts to act on account of the principal. Thus, a broker who contracts to sell goods for his principal

is an independent contractor as distinguished from a servant. Although, under some conditions, the principal is bound by the broker's unauthorized contracts and representations, the principal is not liable to third persons for tangible harm resulting from his unauthorized physical conduct within the scope of the employment, as the principal would be for similar conduct by a servant; nor does the principal have the duties or immunities of a master towards the broker. While an agent who contracts to act and who is not a servant is therefore an independent contractor, not all independent contractors are agents. Thus, one who contracts for a stipulated price to build a house for another who reserves no direction over the conduct of the work is an independent contractor; but he is not an agent since he is not a fiduciary, has no power to make the one employing him a party to a transaction, and is subject to no control as to his conduct.

The word “servant” is thus used to distinguish a group of persons for whose physical conduct the master is responsible to third persons. It is convenient to distinguish this group of persons from all other person, for whose physical conduct the employer is not responsible. These persons fall into two groups: those who are agents but do not respond to the tests for servants, and those who are not agents. For the purpose of determining whether or not the employer is responsible for their physical conduct, however, it is immaterial whether such persons are agents or are not agents. For this reason the term “independent contractor” is used to indicate all persons for whose conduct, aside from their use of words, the employer is not responsible.

c. The words “agent,” “master,” and “servant” are frequently used in statutes with a limited meaning. The definitions of these words in this Section are not applicable in the interpretation of such statutes.

Law Reviews

32 C.L.R. 290 (Cal.)

12 K.C.R. 82 (Mo.)

5 M.L.R. 106 (Md.)

6 M.L.R. 99 (Mo.)

25 M.L.R. 244 (Minn.)

28 M.L.R. 481 (Minn.)

21 N.L.R. 66 (Neb.)

90 Pa.L.R. 230 (Pa.)

8 Pit.L.R. 271 (Pa.)

20 T.L.R. 509 (Tex.)

51 Y.L.J. 120 (Conn.)

Case Citations - by Jurisdiction

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C.C.A.3

C.C.A.3, 1946. Sec. cit. in sup.; subsecs. 2, 3, quot. in sup. in ftn. Under contract between receivers, as managers of theater, and vaudeville performers, wherein only control retained by receivers over performances by performers was time of their appearance on program and power to delete objectionable matter, performers were independent contractors and not employees of receivers within the meaning of the Pennsylvania Unemployment Compensation Act. Vaughan v. Warner, 157 F.2d 26, 33.

C.C.A.4

C.C.A.4, 1938. Cit. in sup. An independent contractor relationship is not established when a gasoline company enters into an agreement with a distributor whereby the latter solicits customers, deposits receipts in an account of the company, the company has title to the gasoline until actual delivery, and the price charged customers was determined by the company, and the company is liable for the negligence of the distributor's employees. Gulf Refining Co. v. Brown, 93 F.2d 870, 874, 116 A.L.R. 449, 456.

C.C.A.5

C.C.A.5, 1943. Cit. in sup. and quot. in full in footnote. Where newspaper carriers were supplied with papers free of cost until their value equaled usual motor allowance but papers furnished never equaled such allowance, furnished own automobile and publisher never controlled physical details of their performance publisher was not liable for injuries inflicted by carrier's employee operating carrier's automobile. Great American Indemnity Co. v. Fleniken et al., 134 F.2d 208, 212, writ of certiorari denied in 319 U.S. 753, 63 S.Ct. 1167, 87 L.Ed. 1706.

C.A.9

C.A.9, 1957. Sub. 3, cit. in ftn. in dict. Where the defendant sold a trade course in interstate commerce through salesmen to whom he had furnished a sales kit and credentials as his representative and sent the materials to students with whom they had contracted, he was liable under the F.T.C. Act for their misrepresentations while selling the course although he may not have retained the right of control over their activities. Goodman v. F.T.C., 244 F.2d 584, 590.

C.A.9, 1957. Subsec. (3) cit. in ftn. in dictum. Where the defendant sold a trade course in interstate commerce through salesmen to whom he had furnished a sales kit and credentials as his representative and sent the materials to students with whom they had contracted, he was liable under the Federal Trade Commission Act for their misrepresentations while selling the course, although he may not have retained the right of control over their activities. Goodman v. Fed. Trade Comm'n, 244 F.2d 584, 590.

C.C.A.9

C.C.A.9, 1942. Cit. in comparison. Lessees of particular portion of mine, who were paid by amount and quality of ore mined, who were not treated as other employees and who had full control over their own operations, were independent contractors. Anglim v. Empire Star Mines Co., 129 F.2d 914, 917.

C.A.10

C.A.10, 1955. Cit. in sup. Where severance agreement provided for two lump sum payments to be paid within a year and that employee could remain on the employment roles for over a year so as to mature pension benefits, he was no longer an employee and could, therefore, absent an agreement otherwise, enter into competition with his ex-employer without having to return the second installment paid him after he had begun to compete. Safeway Stores, Inc. v. Wilcox, 220 F.2d 661, 665.

C.A.10, 1955. Cit. in sup. In action for money paid by plaintiff corporation to defendant as balance of amount agreed to be paid him when his employment by plaintiff was ended, defendant, though discharged prior to final payment, could compete against plaintiff, as defendant's employment status was retained only for the purpose of maturing the defendant's pension rights and relationship of employer and employee did not exist when the payment was made. Safeway Stores, Inc. v. Wilcox, 220 F.2d 661, 664.

C.A.D.C.

C.A.D.C.2018. Quot. in sup. After the National Labor Relations Board ruled that recycling-plant operator and staffing agency were joint employers for union-representation purposes, operator filed a petition for review. This court granted in part operator's petition, holding, inter alia, that, although the Board correctly stated the common law that the mere presence of an intermediary did not prevent an employer from being the master of its servants, it failed to correctly apply the facts of the case to the stated law. The court noted that the fact that the purported master had a right to control the purported servant was a critical factor in determining whether a master–servant relationship existed between the parties, as evidenced by Restatement of Agency § 2. Browning-Ferris Industries of California, Inc. v. National Labor Relations Board, 911 F.3d 1195, 1213.

U.S.Ct.Cl.

U.S.Ct.Cl.1959. Subsec. (3) cit. in sup. Plaintiff brought action for damages arising from breach of contract by applicators who were employed to finish a job, and question of whether defendant-applicators were employees was for jury under evidence presented. Edwards v. United States, 144 Ct.Cl. 158, 168 F.Supp. 955, 957.

S.D.Cal.

S.D.Cal.1946. Cit. in sup. A golf professional who occupied rent free a golf shop on golf club premises, who collected green fees, who gave golf instruction at price fixed by club, who was in charge of all tournaments and who could be discharged at any time by Board of Directors was not an independent contractor but had a “position in the employ of any employer” within Selective Service Act so as to be entitled to reinstatement upon receiving honorable discharge. MacMillan v. Montecito Country Club, 65 F.Supp. 240, 242.

N.D.Ga.

N.D.Ga.1943. Quot. in pt. in sup. Where defendant contracted with transit company for moving of truck from Georgia to Ohio and driver was selected and instructed by transit company, the transit company was an independent contractor and defendant was not liable for driver's negligence in operating truck on ground that he was defendant's servant. DeBord v. Proctor & Gamble Distributing Co., 58 F.Supp. 157, 159, affirmed, C.C.A., 146 F.2d 54.

D.Md.

D.Md.2017. Subsec. (2) quot. in sup. Guatemalan victims of a human-research experiment conducted by the United States and others, in which subjects were infected with sexually-transmitted diseases without their knowledge or consent, sued, among others, Maryland entities that employed certain individual experimenters, asserting claims under the Alien Tort Statute and Guatemalan law. This court denied in part entities' motion to dismiss, holding that victims sufficiently alleged that the experimenters were acting within the scope of their employment with and as agents of entities, rather than the United States government, under agency principles set forth in the Restatement of Agency. The court reasoned, in part, that the experimenters did not become federal employees as a result of serving on the advisory panel to the government agency that authorized and oversaw the experiments. Estate of Alvarez v. Johns Hopkins University, 275 F.Supp.3d 670, 693.

D.Mont.

D.Mont.1958. Com. (b) quot. in sup. While ordinarily a principal is not liable for the negligent acts of an independent contractor, when common carrier had independent contractor owning truck transport freight in Montana for a percentage of freight charges, carrier assumed liability for breach of its nondelegable duty. Thomas v. Warren, 162 F.Supp. 101, 105.

D.C.Neb.

D.C.Neb.1947. Subsec. 3 cit. in sup. Where defendants didn't make grain doors for others or hold selves out to public as contractors, but worked under contract in making such doors for railroad which didn't obligate railroad to provide defendants with any fixed amount of work or accept any designated number of doors and power of control over work rested in railroad, defendants were employees of railroads and exempt from application of Fair Labor Standards Act. Walling v. McKay, 70 F.Supp. 160, 173, affirmed, C.C.A., 164 F.2d 40.

D.C.N.H.

D.C.N.H.1945. Subsec. 3 quot. in sup. Where city police commission hired guards for manufacturing company engaged in interstate commerce under arrangement whereby company reimbursed commission for salaries of guards and paid additional service charge, and commission furnished guards with badges, revolvers etc. and supervised their work, except for occasional suggestions by company, commission was employing guards to act as independent contractors and not as agents of company, and hence guards were not employees of company within Fair Labor Standards Act. Dugas v. Nashua Mfg. Co., 62 F.Supp. 846, 850.

W.D.Pa.

W.D.Pa.1956. Cit. in case quot. in sup. Private sanitarium not liable for the death of a patient caused by the negligence of its sole physician and trained nurses in permitting the patient to walk about unaccompanied shortly after a shock treatment and improperly diagnosing and treating his injuries sustained in the resulting fall. Brown v. Moore, 143 F.Supp. 816, 821.

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W.D.Pa.1955. Sub. 3 cit. in sup. Where city housing authority operating federal housing development agreed to be liable for all tort claims, but was subject to a government contract which specified in detail the manner in which the operation was to be performed; the United States was liable under the Tort Claims Act to tenants injured as a result of an explosion of a water tank. Shetter v. Housing Authority of Erie, 132 F.Supp. 149, 152.

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W.D.S.C.

W.D.S.C.1957. Cit. in sup. Where foreign corporation manufacturing machinery contracted with two dealers who, in addition to selling the corporation's products, sold products of many other concerns, and the relationship of “independent contractor” was present between the corporation and dealers, corporation was not “doing business” within the state, so as to be subject to suit and service of process upon the Secretary of State. Spring Cotton Mills v. Machinecraft, Inc., 156 F.Supp. 372, 378.

E.D.Tenn.

E.D.Tenn.1962. Subsec. (3) quot. in case quot. in sup. In tort action against United States for injuries sustained by plaintiff as a result of exposure to radioactive poisoning while working at Oak Ridge, even though plaintiff's employer was an independent contractor at Oak Ridge, plaintiff could sue United States as a third-party tortfeasor. Mahoney v. United States, 216 F.Supp. 523, 528.

Ariz.App.

Ariz.App.1978. Cit. in case quot. in disc. Suit was brought against a shopping center by a car owner who alleged conversion of a car towed from defendant's parking lot. On appeal from a summary judgment for defendant, the court affirmed, holding that the towing did not constitute state action, and, therefore, no fourteenth amendment violation had occurred. The shopping center could not be held vicariously liable for the alleged tortious conduct of the towing company, since the company was an independent contractor rather than a servant, its method of effecting removals being left entirely to its own discretion. Nor did the court find anything in the record from which a jury could infer acquiescence by the shopping center in the towing company's conduct. Currie v. Sechrist, 119 Ariz. 466, 581 P. 2d 700, 703.

Ariz.App.1973. Subsec. (b) cit. in sup. The plaintiff bank brought this action against defendants, purchasers of a pickup truck, to recover on a note secured by the truck. The buyers counterclaimed on the grounds that the bank was liable for a tort committed by a repossession agency engaged by the bank to obtain possession of the truck. The court affirmed a summary judgment for the bank on the counterclaim and held that the bank was not liable for the tort of the agency, as the agency was an independent contractor, and the act of repossession did not involve a special danger to others so as to impose liability upon the bank for the acts of the independent contractor. Bible v. First National Bank of Rawlins, 21 Ariz.App. 54, 515 P.2d 351, 353.

Ark.

Ark.1955. Cit. in dict. Where insurance company supplied agent with list of policy holders from whom to collect premiums and granted him an allowance for gas and oil, there was evidence for a jury to determine company sufficiently controlled agent's use of his private car so as to be liable for his negligent operation of the car in the course of his employment. Southern Nat. Ins. Co. v. Williams, 224 Ark. 938, 277 S.W.2d 487, 491.

Ark.1955. Cit. in sup. Where one employed by insurance company to collect premiums in two adjacent towns left one town so that he would have been at other town an hour before it would have been time for him to have started collections and did not make his trip out of scope of employment, he did not relieve employer of liability for his negligence while driving from one town to the other. Southern National Ins. Co. v. Williams, 224 Ark. 938, 942, 277 S.W.2d 487, 491.

Cal.

Cal.1945. Com. b cit. in sup. Brokers to whom produce was consigned for sale by foreign corporation engaged in agriculture business, being authorized to receive payment from the purchasers, were independent contractors or factors, and not agents of the corporation, so as to subject the corporation to the franchise tax for doing business. Irvine Co. v. McColgan, 26 Cal.2d 160, 157 P.2d 847-852, 167 A.L.R. 934.

Cal.1944. Cit. in sup. Where publisher of a shopping news had right to exercise entire control of manner and time of distribution by minor carriers and had right to discharge at will, carriers were employees and not independent contractors. California Emp. Com'n v. Los Angeles D.T.S. News Corp., 24 Cal.2d 421, 150 P.2d 186, 188.

Cal.1941. Cit. in sup. An agency and not independent contractor relationship was created when owner of land leased it to tenant on such terms that the planting and distribution of the crop was in control of owner. S.A. Gernard Co. v. Industrial Acc. Comm., 17 Cal.2d 411, 414, 110 P.2d 377, 378.

Cal.App.

Cal.App.1948. Subds. 1 and 3 cit. in sup. Where defendant advertised that he had particular machine for sale representing to plaintiff that he was in position to furnish it, and plaintiff executed purchase order purporting to authorize defendant as agent to purchase the machine for specified sum, agreement was one whereby defendant had unconditional obligation to furnish specified machine and therefore had to return amount paid when machine failed to meet specifications. Anderson v. Badger, 84 Cal.App.2d 736, 191 P.2d 768, 771.

Cal.App.1941. Cit. in quotation in sup. Person who agreed to furnish crew to pick crop of olives for stated sum is independent contractor and not agent. State Compensation Ins. Fund v. Industrial Acc. Comm., 46 Cal.App.2d 526, 529, 116 P.2d 173, 175.

Del.

Del.1957. Subsec. (3) cit. but dist. on facts. Where there was evidence that the employees of a contractor engaged to erect duct work on plaintiff's roof were under the control of plaintiff's supervisor, the trial court could find that the contractor was not liable for the damage to the roof caused by the failure to replace a piece of the duct removed at the approval of the supervisor for the convenience of other workers on the roof, where the installer was not an independent contractor, but merely an agent of the owner. E. I. De Pont De Nemours & Co. v. I. D. Griffith, Inc., 11 Terry 19, 130 A.2d 783, 785.

Ga.App.

Ga.App.1949. Cit. in sup. Broker who was authorized by defendant to sell certain house had no authority to make representations to purchaser as to who owned house, with result that when vendor was unable to convey, purchaser had no cause of action against vendor for fraud and deceit with respect to broker's representations that vendor owned house. Stiles v. Edwards, 79 Ga.App. 353, 53 S.E.2d 697, 701.

Idaho

Idaho, 1949. Quot. but dist. on facts. Services rendered by general agent and soliciting agents of insurance company were not within definition of “covered employment” within meaning of Employment Security Law, where agents, although full time workers and subject to discharge on thirty days' notice, were not under control or supervision of insurance company as to performance of services. In re Pacific Nat. Life Assur. Co., 70 Idaho 473, 212 P.2d 397, 402.

Idaho, 1937. Cit. in sup. A teacher who, without compensation, permits the coach of a football team to drive the former's automobile to a game played by the team, constituted the coach an agent for the purpose of transporting the players. Gorton v. Doty, 57 Idaho 792, 798, 69 P.2d 136, 139.

Ind.App.

Ind.App.1942. Quot. in sup. Salesman of roofing and asbestos corporation was its servant when he had no business of his own, used corporation's office, his work was part of corporation's regular business, and his selling was under supervision of corporation. King v. Ransburg, 111 Ind.App. 523, 542, 39 N.E.2d 822, 829.

Iowa

Iowa, 1942. Quot. in sup. Magazine subscription door to door canvasser is not employee of magazine publisher. Meredith Pub. Co. v. Iowa Employment Sec. Comm., 232 Iowa 666, 6 N.W.2d 6, 11.

Kan.

Kan.1964. Subsec. (3) cit. in sup. A pipeline owner sued landowner for damages caused by alleged negligence of an excavator hired by landowner who broke a pipeline. Court held that the mere fact that the excavator was paid on an hourly basis was insufficient to show lack of independent contractor status. Therefore the landowner was not liable for the damage. Phillips Pipe Line Co. v. Kansas Cold Storage, Inc., 192 Kan. 480, 389 P.2d 766, 770.

Kan.1939. Sec. quot. in full and com. b quot. in part in sup. A newspaper is not liable for the negligence of a carrier employed by it to deliver papers in whatever manner and by whatever mode the carrier desires to use. Hurla v. Capper Publications, 149 Kan. 369, 376, 87 P.2d 552, 557.

Kan.1938. Subsec. 3 quot. and fol. A welding company, who sends one of its employee welders to fix a boiler owned by a customer, is an independent contractor and the welder is not an employee of the customer. Bittle v. Shell Petroleum Corp., 147 Kan. 227, 231, 75 P.2d 829, 832.

Kan.1938. Subsec. 3 quot. in sup. A cement company which sends an employee to an ice company to blast rock for the latter is jointly liable with the ice company for employee's injury caused while blasting when the ice company had the right to control the manner of the work but the cement company profited by charging the ice company a sum greater than the hourly wage of the employee. Mendel v. Fort Scott Hydraulic Cement Co., 147 Kan. 719, 723, 78 P.2d 868, 871.

Kan.1933. Com. a cit. in dictum. A cashier of a bank authorized to withdraw depositor's money and invest it was guilty of embezzlement when he converted the money withdrawn to his own use. State v. Rush, 138 Kan. 465, 470, 26 P.2d 581, 583.

Kan.1931. Quot. in dictum. One furnishing truck and hauling animal carcasses for another at piece rate was a servant. Shay v. Hill, 133 Kan. 157, 159, 299 Pac. 263, 265, quoting sec. 6 and com. a Tent. Dr. No. 1 which have been reduced into sec. 2 (3) and comments thereon.

Md.

Md.1953. Quot. in part & fol. Contractor who cut timber on electric company's easement was agent of electric company and not liable in trespass to landowners. Ivy H. Smith Co. v. Warffemius, 93 A.2d 764, 767, 201 Md. 367.

Md.1936. Subsec. 3 quot. in sup. A salesman who maintained his own automobile and solicited orders whenever he wished, without control by the company, and whose compensation was a commission only, was an independent contractor and not a servant. Washington News Co. v. Satti, 169 Md. 489, 492, 182 Atl. 286, 287.

Mass.

Mass.1957. Subsec. (2) cit. in sup. Where occupant of premises contracted for work which could be done under contract during usual business hours over a busy sidewalk, and plaintiff, a pedestrian, was injured as a result of falling debris, since contractor was an independent one, the building occupant was not liable for contractor's negligence. Doyle v. La Croix, 336 Mass. 484, 146 N.E. 2d 506, 509.

Mass.1945. Quot. in sup. A driver employed by a corporation is not necessarily the agent or servant of the president of the corporation when driving the president as a salesman, despite the fact that the president has the right to control the driver, unless it is shown that the driver is acting on behalf of the president and not of the corporation. Patterson v. Barne, 317 Mass. 721, 60 N.E.2d 82-84.

Mass.1940. Cit. in sup. A medical examiner for an insurance company is an agent of that company while he conducts the examination. Giannelli v. Metropolitan Life Ins. Co., 307 Mass. 18, 20, 29 N.E.2d 124, 126.

Minn.

Minn.1962. Cit. in case quot. in sup. Where insurance policy limited coverage to situations where a partner, stockholder, director, or employee of insured was driving one of the vehicles of insured with its permission, the term employee was held to include a friend of a part owner of insured who was returning one of the cars of insured after driving this part owner to the airport where part owner was to embark on a trip, half business and half pleasure. Lowry v. Kneeland, 263 Minn. 537, 117 N.W.2d 207, 211.

Minn.1955. Cit. in sup.; com. b quot. in dict. Manager of a substantial part of real estate corporation's property who had power to issue corporation's checks was as a matter of law an agent impliedly authorized to accept service on behalf of the corporation even as to an action arising out of injuries occurring on property he did not manage. Derrick v. Drolson Co., 244 Minn. 144, 69 N.W.2d 124, 128.

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Minn.1955. Sub. 2 cit. in ftn. in sup. Where there was evidence that a policeman permanently stationed at the entrance of a private parking garage was actually paid by the owner on the basis of time worked and received detailed instructions on how to conduct his operations from garage employees, jury could find that garage owner was liable, inter alia, for policeman's directing plaintiff to walk on a dangerous part of sidewalk. Graalum v. Radisson Ramp, Inc., 245 Minn. 54, 71 N.W.2d 904, 907.

Minn.1955. Subsec. (2) cit. in sup. in ftn. Where there was evidence that a policeman permanently stationed at the entrance of a private parking garage was actually paid by the owner on the basis of time worked and received detailed instructions on how to conduct his operations from garage employees, jury could find that garage owner was liable, inter alia, for policeman's directing plaintiff to walk on a dangerous part of sidewalk. Graalum v. Radisson Ramp, Inc., 245 Minn. 54, 71 N.W.2d 904, 907.

Minn.1952. Sub. 2, quot. in sup. Where plaintiff borrowed motorcycle from brother and took ride thereon with third person, and plaintiff permitted third person to operate motorcycle, but plaintiff retained right to control motorcycle's operation, third person was, as matter of law, servant of plaintiff and thus in action as result of collision between motorcycle and defendant, if third person was negligent, plaintiff would be barred from recovery. Tschida v. Dorle, 235 Minn. 461, 51 N.W.2d 561, 566.

Minn.1951. Sec. and sub. 3, com. a & b, cit. in sup. Where plaintiff's automobile, at time of intersectional collision with automobile operated by defendant, was driven by plaintiff's foster brother who, according to mutual understanding, was on his way to pick up plaintiff at his place of employment, even though foster brother was operating vehicle for purpose of his own simultaneously, question of whether foster brother was servant of plaintiff, so that his negligence would be imputable to plaintiff, was for jury. Frankle v. Twedt, 234 Minn. 42, 47 N.W.2d 482, 486.

Minn.1947. Cit. in sup. Where contract empowered exclusive agents to employ solicitors, a provision therein that solicitors should be independent contractors related to the extent of principal's control over solicitors and not to the nature of their services

which they or agents were to render under agency contract; the purpose of such provision was to protect principal against claim that solicitors were its agents. Egner v. States Realty Co., 223 Minn. 305, 26 N.W.2d 464, 471, 170 A.L.R. 500.

Minn.Dist.

Minn.Dist.1943. Paraphrased in sup. Gas company, which controlled hiring of labor foreman had contracted to supply, determined and paid wages, supplied necessary equipment, and gave orders with respect to work was workmen's employer within Fair Labor Standards Act and foreman was not an independent contractor. Brown (Elliot, Intervenor) v. Minngas Co., 51 F.Supp. 363, 367.

Miss.

Miss.1990. Cit. in ftn. to diss. op. (Erron. cit. as Agency 2d.) An employee of a trucking company rear-ended a woman's car while on a delivery for his employer, causing the woman extensive personal injuries. She sued the employee, the trucking company, and its owner, later adding the publisher for which the trucking company hauled newspapers. The trial court granted the publisher summary judgment. This court affirmed, holding that the scheduling of delivery of the newspapers at fixed times at several destinations and the terms of the hauling contract did not confer sufficient control by the newspaper publisher to convert the trucking company and its employees into employees of the publisher. A dissent argued that the plaintiff, not the publisher, should have been the party moving for partial summary judgment, since the publisher's right under the hauling contract to control timely delivery meant that the trucking company's drivers may not have been allowed to pull off the road and rest. Webster v. Mississippi Publishers Corp., 571 So.2d 946, 953.

Miss.1963. Cit. in sup. There was no liability on part of drilling company for any negligence of public hauler or its servants which might have contributed to injuries sustained by employee of hauler from electric shock when he was operating “A-Frame” truck equipped with gin poles and metal cable in close proximity to overhead uninsulated high-tension wires at drilling site as part of operation of loading and removing drilling equipment to new well site, because an employer is not liable for the torts of an independent contractor or the latter's servants. Mississippi Power & Light Co. v. Walters, 248 Miss. 206, 158 So.2d 2, 26, motion to correct judgment sustained 248 Miss. 268, 160 So.2d 908.

Miss.1958. Com. (b) cit. in case quot. in sup. In workmen's compensation proceeding, truck owner who was engaged by gravel company to haul gravel at so much per cubic yard was employee and not independent contractor. Wade v. Traxler Gravel Co., 232 Miss. 592, 100 So.2d 103, 107.

Miss.1954. Quot. in sup. In action for refund of state unemployment taxes paid by plumbing company, since company engaged laborer to unload cars, had right to control him and exercised such right when necessary, relationship of master and servant existed, and no refund was granted. Mississippi Employment Security Comm. v. Plumbing Wholesale Co., 219 Miss. 724, 731, 69 So. 2d 814, 817.

Miss.1953. Subs. 1, 2 & 3 quot. in sup. Where the production superintendent of one oil well drilling company, after completing his daily round of inspection, drove an automobile furnished for his use in the performance of his duties to an oil well site of another company, and, as an individual contractor, spliced a cable, during which operation he became ill, and then with his nephew driving the automobile, rode toward a town near his employer's well and died, en route, from a cerebral hemorrhage, his widow is not entitled to benefits under the Workmen's Compensation Act. Kughn v. Rex Drilling Co., 217 Miss. 434, 64 So.2d 582, 585.

Miss.1951. Cit. in sup. Where two brothers entered into a contract for cutting and hauling timber and used their own equipment and paid their own employees and received compensation on piecework basis, the death of one of the brothers was not compensable under the Workmen's Compensation Act since deceased was not an employee. Carr v. Crabtree, 212 Miss. 656, 55 So.2d 408, 411.

Miss.1939. Subsec. 2 and 3 quot. in sup. A taxicab company which gets 75% of the driver's gross income, directs their trips, and publishes rules to guide them on duty, and the owner of the cabs who exacted a daily rental and hired the drivers are both responsible for the negligent acts of the drivers. Meridian Taxicab Co. v. Ward, 184 Miss. 499, 508, 186 So. 636, 639, 120 A.L.R. 1346, 1349.

Miss.1939. Com. b cit. in sup. When an oil company and a consignee of its products enter into an agreement which requires the consignee to use trucks of a specified grade, to furnish a bond conditioned on prompt remittance of the money, grants to the oil company the use of the premises after the termination of the contract, and restricts the consignee in its business activities in that location after the termination of the contract, the employees of the consignee are not employees of the oil company within the meaning of the Unemployment Compensation Act. Texas Co. v. Wheeless, 185 Miss. 799, 816, 187 So. 880, 885, 886.

Miss.1938. Subsec. 2 and 3 quot. in sup. A trucking company which enters into a contract with a lumber company to haul cut timber to the mill pond of the lumber company and which has complete control of the method and means of the haul, is an independent contractor and not a servant. Crosby Lumber & Mfg. Co. v. Durham, 181 Miss. 559, 569, 179 So. 285, 287.

Miss.1934. Com. b cit. and subsec. 2 and 3 quot. in sup. A commission agent in charge of petroleum company's bulk sales station was not an independent contractor, although he furnished his own assistants and a delivery truck, and the petroleum company was liable to driver of this defective truck. Texas Co. v. Mills, 171 Miss. 231, 243, 156 So. 866, 869.

Miss.App.

Miss.App.2007. Cit. in case quot. in disc. Carpenter sued duplex owner for negligence, alleging that he was injured while working for defendant when a wood chip, propelled from the unguarded blade of defendant's table saw he was using, hit him in the eye. The trial court granted summary judgment for defendant. Affirming, this court held that plaintiff failed to show that defendant breached any duty owed to him; although the trial court did not err in applying the independent-contractor factors previously enunciated by this court, whether plaintiff was an independent contractor, an employee, or an invitee was of no moment, since, under the appropriate analysis for any of those three statuses, plaintiff, a carpenter with 25 years' experience, appreciated or should have appreciated the risks associated with using the table saw without the proper safety equipment, and his assumption of that risk absolved defendant of liability. Nofsinger v. Irby, 961 So.2d 778, 781.

Miss.App.2005. Cit. in case quot. in disc. Housekeeper filed a negligence claim against homeowners after she slipped on a wet bathroom floor and shattered her kneecap. The trial court granted summary judgment for homeowners. Affirming, this court held, inter alia, that, although it was unclear whether housekeeper was an independent contractor, an invitee, or an employee, she presented no evidence that homeowners breached any duty that they might have owed her; if classified as an independent contractor, wherein the manner of her work was not controlled by homeowners, there was no evidence that homeowners failed to provide a reasonably safe work environment or to warn her of any dangers on the premises. Grammar v. Dollar, 911 So.2d 619, 622.

Mo.

Mo.1966. Cit. in sup. The plaintiff sought recovery for damages to his car which he rented out as a taxicab as well as for loss of rental income resulting from a collision. This court reversed a verdict for the defendant and remanded the case, finding that, since a bailment for hire had been created, the negligence of the driver could not be imputed to the owner since the plaintiff retained no control over and received no fares and profits from the hirer. Jones v. Taylor, 401 S.W.2d 183, 187.

Mo.1955. Subsec. (2) quot. in sup. Company was liable for negligent operation of private vehicle by district sales manager on way home from sales meeting he had called on company's orders, although he had some discretion as to the place of meeting and his means of transportation thereto. Hammonds v. Haven, 280 S.W.2d 814, 818, 53 A.L.R.2d 992.

Mo.1955. Sub. 2 quot. in sup. Company liable for negligent operation of private vehicle by district sales manager on way home from sales meeting he had called on company's orders, although he had some discretion as to the place of meeting and his means of transportation thereto. Hammonds v. Haven, _ Mo. _, 280 S.W.2d 814, 818, 53 A.L.R.2d 992.

Mo.1955. Sub. 1 and 2 quot. in sup.; sub. 3 quot. in dict. Where state agent pursuant to statutory and executive authority took "possession" of a transportation utility to prevent a strike stoppage, but permitted the actual supervision of operations to be retained by the existing management without hiring or paying any employees, state was not vicariously liable for injury to plaintiff caused by negligent bus driver. Rider v. Julian, 313 Mo. 365, 282 S.W.2d 484, 493, 494.

Mo.1955. Subsecs. (1) and (2) quot. in sup., subsec. (3) quot. in dictum. Where state agent pursuant to statutory and executive authority took "possession" of a transportation utility to prevent a strike stoppage, but permitted the actual supervision of operations to be retained by the existing management without hiring or paying any employees, state was not vicariously liable for injury to plaintiff caused by negligent bus driver. Rider v. Julian, 313 Mo. 365, 282 S.W.2d 484, 493, 494.

Mo.1954. Subsec. (3) quot. and cit. in sup. Where telephone company's contract with tree trimmer to clear right of way for new lines, a nondangerous activity not required by statute, provided at most that the work was to be performed according to company's practices and in coordination with company's crews, and that waste was to be disposed as arranged for by company, company was not liable for injury caused by negligent operation of trimmer's truck being used to transport his crew, since tree trimmer was an independent contractor as a matter of law. Williamson v. Southwestern Bell Tel. Co., 265 S.W.2d 354, 358, 359.

Mo.1954. Sub. 3 quot. and cit. in sup. Where telephone company's contract with tree trimmer to clear right of way for new lines, a non-dangerous activity not required by statute, provided at most that the work was to be performed according to company's practices and in coordination with company's crews, and that waste was to be disposed as arranged for by company, company was not liable for injury caused by negligent operation of trimmer's truck being used to transport his crew. Williamson v. Southwestern Bell Tel. Co., _ Mo. _, 265 S.W.2d 354, 358, 359.

Mo.1953. Cit. in sup. In an action by a creditor against the principal and sureties to recover on an account when the surety was induced by the principal's fraud to become bound to the creditor, and the creditor relied on the surety without knowledge of the fraud, the sureties are liable to the creditor, but when neither the verdict nor the judgment against the principal includes interest from the date the account became due, the judgment against the sureties is limited to the amount of the judgment against the principal. J.R. Watkins v. Lankford, 363 Mo. 1046, 256 S.W.2d 788, 792.

Mo.1946. Subsec. 3 quot. in sup. Where farm wife with husband's permission drove his truck to town to market poultry produce which she handled separately from business of farming, and at husband's request purchased gasoline for use in tractor and in general business of farming, wife is not an independent contractor so as to relieve husband from liability for her negligent operation of truck. Foster v. Campbell, 355 Mo. 349, 196 S.W.2d 147, 151.

Mo.1943. Subsec. 1, 2 and 3 quot. in sup. and adopted. Bricklayer who became ill as result of smoke and gas leaking into smokehouse he was constructing was not an independent contractor but an employee who suffered an accident within meaning of the Workmen's Compensation Act precluding maintenance of common law action for injuries. McKay v. Delico Meat Products Co., 351 Mo. 876, 887, 174 S.W.2d 149, 156.

Mo.1943. Quot. as definition. In action against employer and employee for injuries sustained when pedestrian was struck by employee's automobile being used in making collections, it is for jury to say whether relation of master and servant existed. Smith v. Fine, 351 Mo. 1179, 1193, 175 S.W.2d 761, 765.

Mo.1941. Subsecs. 2 and 3 quot. in sup. A newspaper is not master of a paper delivery boy who uses his own automobile, has complete discretion of route he serves and is paid weekly salary. Bass v. Kansas City Journal Post Co., 347 Mo. 681, 687, 148 S.W.2d 548, 552.

Mo.1941. Subsec. 3 quot. in sup. An independent relationship was created when a farmer hired a trucker to transport loads of hay in the latter's trucks and the control of the movements remained with the trucker. State v. Shain, 347 Mo. 308, 313, 147 S.W.2d 457, 459.

Mo.1937. Quot. in sup. A "Real Silk" hosiery salesman who is given a certain door to door territory to cover and who receives a stated commission upon each sale is, as a matter of law, an independent contractor and not an agent of the Real Silk manufacturers. Barnes v. Real Silk Hosiery Mills, 341 Mo. 563, 568, 108 S.W.2d 58, 61.

Mo.1937. Quot. in sup. A newspaper deliverer, who delivered the papers in his own automobile, the expenses of which he paid himself, who purchased the papers and resold them to subscribers at a fixed price, the difference being his profit, who was responsible for all collections and could make no returns of papers, and who chose his own course of delivery, was an independent contractor and not an agent of the newspaper. Skidmore v. Haggard, 341 Mo. 837, 844, 110 S.W.2d 726, 729.

Mo.App.

Mo.App.1988. Subsec. (3) quot. generally in case quot. in disc. A tenant was injured when a stairway in a common area collapsed in her apartment building. She sued the developer of the building and the landlord for her injuries. The trial court dismissed three counts and granted the defendants summary judgment on the remaining counts. This court affirmed, holding, inter alia, that the trial court correctly granted summary judgment on the plaintiff's negligence counts, because no material issue of fact existed concerning the independent contractor status of the construction company that built the house. It determined that the defendants were not vicariously liable for the negligence of the construction company in improperly positioning nails that connected the stairway to the floor. The court noted that the construction company ran the construction site and the job, and that the developer's visits to the site to check on the progress of the work did not demonstrate sufficient control to affect the independent contractor status. Scott v. Missouri Inv. Trust, 753 S.W.2d 73, 75.

Mo.App.1967. Subsec. (3) quot. in sup. The plaintiff insured, a power company, sued the defendant insurer to obtain reimbursement for a payment of a settlement allegedly covered by the liability insurance policy running to the plaintiff. The payment was made to an employee of a tree trimming concern, who was severely burned when his shears came in contact with a high voltage line, concerning which the plaintiff had not warned him. The policy did not cover any work by independent contractors hired by the plaintiff unless they were "supervised" by it. However, although the plaintiff did not control the tree trimmer's operations in such a way as to prevent the trimmer's being an independent contractor, a designation of which trees were to be trimmed and a subsequent inspection were considered sufficient "supervision" to include the trimmer's work under the policy and to require the defendant to reimburse the plaintiff. Union Elec. Co. v. Pacific Indem. Co., 422 S.W.2d 87, 93.

Mo.App.1962. Quot. in sup. In determining whether claimant was employee under Missouri Workmen's Compensation Law or an independent contractor, the crucial factor was not whether alleged employer actually exercised control over claimant's work, but whether he had right to exercise such control. Pratt v. Reed & Brown Hauling Co., 361 S.W.2d 57, 62.

Mo.App.1958. Cit. in sup. Where helper hired by contractor, who was engaged to construct and remodel some buildings, was injured while helping employees, who had been hired by club, in erection of kennel fence while waiting for contractor to return, helper was mere volunteer and was not an employee of the club. Lawrence v. William Gebhardt, Jr. & Son, 311 S.W.2d 97, 102.

Mo.App.1945. Quot. in pt. in sup. In action against electrical power company for destruction by fire of plaintiff's dwelling allegedly caused by negligent installation of electric range, evidence on issue whether defendant was liable for alleged defective

installation of range, in that installer was subject to the control of the defendant even though installer was an independent contractor, was for the jury. Russell v. Union Electric Co. of Missouri, 238 Mo.App. 1074, 191 S.W.2d 278, 284.

Mo.App.1942. Quot. and fol. Salaried salesman of baking company was not its servant when he paid expenses for his own car while travelling over territory on route of his own choosing. Pfeifer v. United Bakers Supply Co., 160 S.W.2d 795, 800.

Neb.

Neb.1958. Quot. as relied on by defendant. In purchasers' action against vendors of house for fraud, it was held that defendant was liable for misrepresentations made by defendant's agent in selling the house and also for improper construction made by the contractor, who was working in consultation with the defendant. Dargue v. Chaput, 166 Neb. 69, 88 N.W.2d 148, 157.

Neb.1938. Subsec. 1 and 2 quot. in sup. The question whether a bus driver was the agent of the owner of a bus at the time of an accident is for the jury when the owner paid the driver by the mile, was in charge of a tour for which the bus was obtained, and told the driver where to go on the tour. Mackechnie v. Lyders, 134 Neb. 682, 690, 279 N.W. 328, 333.

Neb.1938. Subsec. 3 quot. in sup. A traveling salesman who has a definite territory, uses his own automobile, collects accounts and is paid a commission on his gross orders is an independent contractor. Peterson v. Brinn & Jensen Co., 133 Neb. 796, 803, 277 N.W. 82, 85.

N.J.Super.

N.J.Super.1948. Cit. in sup. Contract which gave distributor exclusive right to sell bakery's goods, but which neither fixed quantity or price of such goods and gave bakery right to fix wholesale and retail prices, was either void for indefiniteness so as to prevent wholesaler from enjoining bakery who sold to another, or if enforceable, unable to be sued upon because of wholesaler's breach by his selling bakery's products to subwholesalers at prices above those fixed by bakery. Montclair Distributing Co., Inc. v. Arnolds Bakers, Inc., et al., 1 N.J.Super. 568, 62 A.2d 491, 494.

N.Y.App.Div.

N.Y.App.Div.1937. Cit. in sup. A city surveyor who performed isolated assignments as directed by borough presidents, engaged his own assistants, maintained a private office and performed other work, and submitted vouchers on a per diem and lineal foot basis is an independent contractor. Hartmann v. Tremaine, 250 App.Div. 188, 192, 293 N.Y.S. 919, 924.

N.Y.App.Div.1935. Cit. in sup. Action for injuries sustained by woman while cleaning veranda was unsuccessful as she was servant of defendant and not an independent contractor in continuance of service, means used, and manner of performance. Keller v. Equitable Life Assur. Soc., 246 App.Div. 565, 282 N.Y.S. 841, judgment affirmed in 271 N.Y. 511, 2 N.E.2d 670.

N.Y.Misc.

N.Y.Misc.1935. Cit. in sup. An employer was liable for injuries caused by his salesman's negligent driving when the salesman was ordered to collect from plaintiff and drove plaintiff to collect one of her debts and also to collect other accounts of the salesman. Witaszek v. Drees, 155 Misc. 838, 841, 280 N.Y.S. 592, 596, judgment reversed in 247 App.Div. 90, 286 N.Y.S. 38.

Ohio

Ohio St., 1944. Cit. in sup. Trucking company which had no authority to hire or discharge employees of owner-operators of tractors was not "employer" of such employees within meaning of Ohio Unemployment Compensation Act. Commercial Motor Freight v. Ebright, State Treasurer et al., 143 Ohio St. 127, 135, 54 N.E.2d 297, 301, 151 A.L.R. 1321.

Ohio, 1943. Sec. and subsec. 1, 2, and 3 quot. in sup. Injuries sustained by truck owner under contract to haul certain lot of logs for certain price, choosing his own manner and means are not compensable since he is "independent contractor" and log owner's right to designate types and sizes of logs to be hauled as needed does not create "master and servant" relation as such control relates to result and not to manner or means of accomplishing result. Gillum v. Industrial Commission, 141 Ohio St. 373, 381, 48 N.E.2d 234, 237.

Ohio App.

Ohio App.2017. Quot. in case quot. in disc. Grocery-story customer brought a negligence action against grocery store and delivery man, alleging that she was struck in the back and knocked down by delivery man who was a store employee pushing a shopping cart piled high with boxes that he was delivering to the store, seeking damages for past and future medical expenses and noneconomic damages. The trial court granted defendants' motion for summary judgment. This court reversed and remanded, holding that there was a genuine issue of material fact as to whether delivery man was an employee or an independent contractor of store. The court quoted a Supreme Court of Ohio case that cited Restatement of Agency § 2 in explaining that the control over the manner and means of the work performed was an important factor in determining if a person was an employee or an independent contractor. Boyland v. Giant Eagle, 96 N.E.3d 999, 1007.

Ohio App.1959. Quot. in sup. in diss. op. Drivers of school buses owned and operated by contract carriers were such "employees" as were required by statute to be members of school employees' retirement system. Board of Ed. of City Sch. Dist. of Cincinnati v. Rhodes, 109 Ohio App. 415, 11 Ohio Op.2d 374, 81 Ohio L.Abs 513, 162 N.E.2d 888, 896.

Ohio App.1949. Sub. 2, cit. in sup. Defendant was not liable when defendant's employee negligently injured plaintiff during golf competition sponsored and financed by defendant for employees' recreation after working hours. Rogers v. Allis Chalmers Mfg. Co., 85 Ohio App. 421, 88 N.E.2d 234, 238, affirmed 153 Ohio St. 513, 92 N.E.2d 677, 18 A.L.R.2d 1363.

Ohio App.1939. Cit. in sup. A prospective purchaser of an automobile is under the control of the salesman while the salesman is demonstrating the automobile and permitted the prospect to drive it. Dahnke v. Meggitt, 63 Ohio App. 252, 254, 26 N.E.2d 223, 224.

Okl.

Okl.1948. Sub. 3 quot. in sup. In action against filling station owner and manager for injuries to pedestrian falling on oily sidewalk in front of station, evidence that manager was in exclusive control of operation of station established as a matter of law that he was independent contractor. Cities Service Oil Co. et al. v. Kindt, 200 Okl. 64, 190 P.2d 1007, 1012.

Pa.

Pa.1942. Cit. in sup. Driver of hay wagon is agent of summer camp which entertained guests by furnishing free hay rides when manager of camp supervised direction of ride and speed of horses. Joseph v. United States Workers Ass'n, 343 Pa. 636, 639, 23 A.2d 470, 472.

Pa.Super.

Pa.Super.1953. Cit. in sup. Mine worker who became totally disabled from working in same mine for 9 months prior to disability was not eligible for benefits under Occupational Disease Act which required 6 months employment under same employer where mine during his period of employment was owned by two different companies, neither of which operated the mine for 6 months. Hogg v. Kehoe-Berge Coal Co., 174 Pa.Super. 388, 101 A.2d 168, 170.

Pa.Cmwlth.

Pa.Cmwlth.1979. Cit. in sup. The plaintiff worked continuously for nineteen years at the same job site. During this time his company went through several changes in corporate structure. The plaintiff filed a petition pursuant to state law alleging total disability caused by exposure to a silica hazard during the course of his employment. The law provided that the employer who last exposed the employee to the hazard would be liable unless the employee was deemed to have multiple employers and then the state would pay all compensation. The administrative decision was that the plaintiff had multiple employers so the state was responsible for the costs. The lower court reversed this decision and found that the employee had only one employer and ordered him to pay most of the award. The appellate court reversed and held that a change in corporate structure, such as a merger, does constitute a change in employers. The Commonwealth was therefore liable for the compensation due. Fisher v. Com., 405 A.2d 1039, 1041.

Pa.Cmwlth.1978. Cit. in disc. The Commonwealth of Pennsylvania appealed from an order affirming a decision of the Workers' Compensation Appeal Board directing the Commonwealth to pay the entire amount of the award to the claimant, who was disabled from silicosis. The order was affirmed. The court held that even though the claimant's original employer's existence was terminated by a merger and the surviving corporation became the claimant's employer, the Commonwealth was not entitled to have 60 percent of the benefits apportioned to the employer under the statute providing for apportionment when there are successive employers. Under the statute, liability is imposed on the Commonwealth to pay all compensation where disability is not conclusively proven to be the result of the last exposure. The burden is upon the Commonwealth, not the last employer, to establish by conclusive proof that a claimant was disabled as the result of the last exposure, and the Commonwealth failed to meet this burden. Baughman v. Meadville Malleable Iron, 39 Pa. Cmwlth. 4, 394 A.2d 1058, 1060.

Tenn.

Tenn.1947. Subsec. 3 quot. in sup. Where defendant lumber company employed individual to do excavating for house, and individual employed plaintiff and other laborers to assist in excavation and defendant exercised control over plaintiff and other laborers, individual was an employee and not an independent contractor and plaintiff could recover from defendant in common-law action for injuries sustained during excavation. D.M. Rose & Co. v. Snyder, 206 S.W.2d 897, 904, 185 Tenn. 499.

Tex.Civ.App.

Tex.Civ.App.1956. Sub. 2 quot. in sup.; sub. 3 quot. but dist. on facts. Where newsboy was paid by the hour, was not responsible for customer's refusal to pay although penalized for incomplete deliveries, and received workmen's compensation benefits under a settlement with the insurer participated in by paper's agent, there was sufficient evidence for jury to find owner of newspaper responsible for injuries to plaintiff arising out of the negligent operation by the newsboy of his father's car, a reasonable instrumentality to use while delivering papers and teaching a new boy the route. Harris v. Cochran, 288 S.W.2d 814, 819, ref. n.r.e.

Tex.Civ.App.1956. Subsec. (2) quot. in sup., subsec. (3) quot. but dist. on facts. Where newsboy was paid by the hour, was not responsible for customer's refusal to pay although penalized for incomplete deliveries, and received workmen's compensation benefits under a settlement with the insurer participated in by paper's agent, there was sufficient evidence for jury to find owner of newspaper responsible for injuries to plaintiff arising out of the negligent operation by the newsboy of his father's car, a

reasonable instrumentality to use while delivering papers and teaching a new boy the route. Harris v. Cochran, 288 S.W.2d 814, 819.

Tex.Civ.App.1952. Cit. in sup. In action for damages resulting from fire which occurred when defendant's alleged agents broke or bent gas pipe on plaintiff's premises causing gas leak which ignited, evidence of agency and negligence was insufficient to justify setting aside an instructed verdict. Trotter v. McLennan County Water Control and Improvement Dist. No. 1, 252 S.W.2d 734, 738, error dismissed.

Tex.Civ.App.1940. Quot. and fol. Traveling salesman of independent contractor which sells dry goods made by manufacturer is not employee of manufacturer. R.E. Cox Dry Goods Co. v. Kellog, 145 S.W.2d 675, 679.

Tex.Civ.App.1936. Cit. in sup. A teamster using his own team and wagon and employing a helper at his own expense to return mules from pasture for ice company, which gave him no instructions as to how work was to be done and paid him a lump sum for his services, was an independent contractor. Easterwood v. Liberty Mutual Ins. Co., 93 S.W.2d 1173, 1175.

Tex.Civ.App.1934. Quot. in sup. One undertaking to deliver newspapers, employ help, and control means of delivery, is an independent contractor. Carter Publications, Inc. v. Davis, 68 S.W.2d 640, 644.

Wash.

Wash.1955. Sub. 3 cit. but dist. on facts. Where shopping center developer restricted heating contractor to a particular manufacturer's distribution system of definite specifications, contractor was only developer's agent in the purchase of the pipes so that there was the privity essential to sustain developer's action for breach of warranty against the manufacturer. Freeman v. Navarre, 47 Wash.2d 760, 289 P.2d 1015, 1019.

Wash.1955. Subsec. (3) cit. but dist. on facts. Where shopping center developer restricted heating contractor to a particular manufacturer's distribution system of definite specifications, contractor was only developer's agent in the purchase of the pipes, so that there was the privity essential to sustain developer's action for breach of warranty against the manufacturer. Freeman v. Navarre, 47 Wash.2d 760, 289 P.2d 1015, 1019.

Wash.1950. Sub. 3 quot. in sup. In suit in equity to foreclose liens filed by mechanics and materialmen in connection with construction job and to obtain personal judgments against owners and contractor, wherein contractor cross-complained against owners to recover additional compensation on alleged contract or quantum meruit, where ostensible relation between owners and contractor was that of owners and independent contractor, rather than principal and agent, materialmen were entitled to personal judgment against contractor. Losli et al. v. Foster et al., 37 Wash.2d 220, 222 P.2d 824, 832.

Wash.1938. Cit. in sup. A newsboy who has the privilege of delivering his papers in any manner he desires but who could be controlled in the details of his delivery by the newspaper is a servant of the publisher and not an independent contractor. Femling v. Star Pub. Co., 195 Wash. 395, 407, 81 P.2d 293, 298.

W.Va.

W.Va.1954. Sub. 3 cit. in sup. Owner of building was not responsible for electrocution of worker preparing to move building caused by the concurrent negligence of two separate installers of electrical equipment who had both contracted to perform their work free from all control by the owner. Roush v. Johnson, 139 W.Va. 607, 80 S.E.2d 857, 873.

W.Va.1954. Subsec. (3) cit. in sup. Owner of building was not responsible for electrocution of worker preparing to move building caused by the concurrent negligence of two separate installers of electrical equipment who had both contracted to perform their work free from all control by the owner. Roush v. Johnson, 139 W.Va. 607, 80 S.E.2d 857, 873.

W.Va.1937. Subsec. 3 quot. in sup. A general manager of a used car department of an automobile sales company is not an independent contractor even though he could sell cars wherever and whenever he pleased and could use the company's cars for private pleasure. Meyn v. Dulaney-Miller Auto Co., 118 W.Va. 545, 556, 191 S.E. 558, 564.

Wis.

Wis.1943. Subdiv. 2 and 3 and pertinent part of com. b quot. in sup. and fol. Attorney employed at a monthly stipend to assist general counsel for federal agencies with particular cases, subject to direction of general counsel and who could be discharged at any time, was an "employee" whose income was not subject to taxation by state and not an "independent contractor." Ryan v. Wisconsin Department of Taxation, 242 Wis. 491, 497, 8 N.W.2d 393, 396.

Wyo.

Wyo.1948. Cit. in sup. Wages paid by processor for services performed in processing, packing and marketing potatoes grown by others and purchased by processor or handled on consignment were not exempt from taxation under Employment Security Law, since such services were not performed in the employ of owner or tenant of farm as an incident to ordinary farming operations. Janssen v. Employment Security Commission et al., 64 Wyo. 330, 192 P.2d 606, 614.