Restatement (First) of Agency § 220 (1933)

Restatement of the Law - Agency | May 2022 Update

§ 220 Definition

Comment on Subsection
Case Citations - by Jurisdiction

(1) A servant is a person employed to perform service for another in his affairs and who, with respect to his physical conduct in the performance of the service, is subject to the other's control or right to control.
(2) In determining whether one acting for another is a servant or an independent contractor, the following matters of fact, among others, are considered:
(a) the extent of control which, by the agreement, the master may exercise over the details of the work;
(b) whether or not the one employed is engaged in a distinct occupation or business;
(c) the kind of occupation, with reference to whether, in the locality, the work is usually done under the direction of the employer or by a specialist without supervision;
(d) the skill required in the particular occupation;
(e) whether the employer or the workman supplies the instrumentalities, tools, and the place of work for the person doing the work;
(f) the length of time for which the person is employed;
(g) the method of payment, whether by the time or by the job;
(h) whether or not the work is a part of the regular business of the employer; and
(i) whether or not the parties believe they are creating the relationship of master and servant.

***Comment on Subsection* (1):**

a. *Servants not performing manual labor.* The word "servant" does not exclusively connote a person rendering manual labor, but one who performs continuous service for another and who, as to his physical movements, is subject to the control or to the right to control of the other as to the manner of performing the service. The word indicates the closeness of the relationship between the one giving and the one receiving the service rather than the nature of the service or the importance of the one giving it. Thus,

ship captains and managers of great corporations are normally superior servants, differing only in the dignity and importance of their positions from those working under them. The rules for determining the liability of the employer for the conduct of both superior servants and the humblest employees are the same; the application differs with the extent and nature of their duties.

b. *Generality of definition.* The relationship of master and servant is one not capable of exact definition. It is an important relationship in that upon it depends the liability of the master to third persons and to his employees under the provisions of various statutes as well as under the common law; the relationship may prevent liability, as in the case of the fellow servant rule. It cannot, however, be defined in general terms with substantial accuracy. The factors stated in Subsection (2) are all considered in determining the question, and it is for the triers of fact to determine whether or not there is a sufficient group of favorable factors to establish the relationship. Where the inference is clear that there is, or is not, a master and servant relationship, it is made by the court; otherwise the jury determines the question after instruction by the court as to the matters of fact to be considered.

c. *Independent contractors.* It is important to distinguish between a servant and an agent who is not a servant, since ordinarily a principal is not liable for the incidental acts of negligence in the performance of duties committed by an agent who is not a servant (see § 250). One who is employed to make contracts may, however, be a servant. Thus, a shop girl or a traveling salesman may be a servant and cause the employer to be liable for negligent injuries to a customer or for negligent driving while traveling to visit prospective customers. The important distinction is between service in which the actor's physical activities and his time are surrendered to the control of the master, and service under an agreement to accomplish results or to use care and skill in accomplishing results. Those rendering service but retaining control over the manner of doing it are not servants. They may be agents, agreeing only to use care and skill to accomplish a result and subject to the fiduciary duties of loyalty and obedience to the wishes of the principal; or they may be persons employed to accomplish or to use care to accomplish physical results, without fiduciary obligations, as where a contractor is paid to build a house. An agent who is not subject to control as to the manner in which he performs the acts that constitute the execution of his agency is in a similar relation to the principal as to such conduct as one who agrees only to accomplish mere physical results. For the purpose of determining liability, they are both "independent contractors" and do not cause the person for whom the enterprise is undertaken to be responsible, under the rule stated in § 219.

Illustrations:

1. P employs A as a broker to sell Blackacre, A, while driving T, a prospective customer, to inspect the premises, negligently injures him. P is not liable to T.

2. The salesman of a real estate broker, while driving T, a prospective customer, to view a house, negligently injures him. The broker may be liable to T.

Comment on Subsection* (1), *continued:

d. *Statutory use of "servant."* Statutes have been passed in which the words "servant" and "agent" have been used. The meaning of these words in statutes varies. The context and purpose of the particular statute controls the meaning which is frequently not that which the same word bears in the Restatement of this Subject.

***Comment on Subsection* (2):**

e. *Effect of custom.* The custom of the community as to the control ordinarily exercised in a particular occupation is of importance. This, together with the skill which is required in the occupation, is often of almost conclusive weight. Unskilled labor is usually performed by those customarily regarded as servants, and a laborer is almost conclusively a servant in spite of the fact that he may nominally contract to do a specified job for a specified price. If, however, one furnishes workmen to do work for another, it is not abnormal to find that the workmen remain the servants of the one supplying them (see § 227). Even where skill is required, if the occupation is one which ordinarily is considered as a function of the regular members of the household staff or an incident of the business establishment of the employer, there is an inference that the actor is a servant. Thus, highly skilled cooks or gardeners, who resent and even contract against interference, are normally servants if regularly employed. So, the skilled artisans employed by a manufacturing establishment, many of whom are specialists, with whose method of accomplishing results the employer would have neither the knowledge nor the desire to interfere, are servants. On the other hand, the question of the degree of skill requisite for the job is often determinative where the actor is employed temporarily to enter the household or establishment and render incidental assistance. Thus, one employing a laborer for a specific job is normally, as stated above, his master; while one engaging a plumber to repair a boiler is not, in the absence of a special arrangement for supervision. The fact that the State regulates the conduct of an employee through the operation of statutes requiring specific acts to be done or not to be done does not prevent the employer from having such control over the employee as to constitute him a servant.

Illustrations:

3. P, who knows little of social affairs, employs A as a social secretary to instruct P in her own deportment and the conduct of all social events, it being agreed that A is to live at P's home and to have complete management within her sphere. P is subject to liability for A's conduct within the scope of employment.

4. P, a hospital, employs a house surgeon, putting him in charge of all operations within the hospital, except where patients require another surgeon. The inference is that the house surgeon is not the servant of the hospital in the conduct of surgical operations.

5. P, a college organized for profit, employs A as a professor of chemistry to teach during specified periods, and B, a skilled laboratory assistant, to render service in connection with the lectures and experiments. The inference is that A is not P's servant while conducting classes. The inferences are that B (except when following directions of A) is P's servant, for whose conduct, within the scope of employment, P is subject to liability.

Comment on Subsection* (2), *continued:

f. *Period of employment and method of payment.* The time of employment and the method of payment are important. If the time of employment is short, the worker is less apt to subject himself to control as to details and the job is more likely to be considered

his job than the job of the one employing him. This is especially true if payment is to be made by the job and not by the hour. If, however, the work is not skilled, or if the employer supplies the instrumentalities, the workman may be found to be a servant.

g. *Ownership of instrumentalities.* The ownership of the instrumentalities and tools used in the work is of importance. The fact that a worker supplies his own tools is some evidence that he is not a servant. On the other hand, if the worker is using his employer's tools or instrumentalities, especially if they are of substantial value, it is normally understood that he will follow the directions of the owner in their use and hence this indicates that the owner is a master. This fact is, however, only of evidential value.

Illustration:

6. P employs A to drive him around town in A's automobile at $4.00 per hour. The inference is that A is not P's servant. If P supplies the automobile, the inference is that A is P's servant for whose conduct within the scope of employment P is responsible.

Comment on Subsection* (2), *continued:

h. *Control of the premises.* If the work is done upon the premises of the employer with his machinery by workmen who agree to obey general rules for the regulation of the conduct of employees, the inference is strong that such workmen are the servants of the owner, and this inference is not necessarily rebutted by the fact that the workmen are paid by the amount of work performed or by the fact that they supply in part their own tools or even their assistants. If, however, the rules are made only for the general policing of the premises, as where a number of separate groups of workmen are employed in erecting a building, mere conformity to such regulations does not indicate that the workmen are servants of the person making the rules.

Illustrations:

7. P conducts a manufacturing establishment for the manufacture of woolen goods. Certain factory employees normally arrive at eight in the morning and leave at five in the afternoon, but are not required to work a fixed number of hours or during specified periods, provided they accomplish a specified amount of work during the week, for each unit of which they receive compensation. Such employees are servants.

8. P is the owner of a coal mine employing miners. He provides them with the larger units of machinery and the means of ingress and egress. The miners supply their own implements, the powder necessary, and their own helpers, being paid for each ton mined and brought to the surface. The miners, including the assistants, are the servants of the mine owner.

Comment on Subsection* (2), *continued:

i. Belief as to existence of relationship. It is not important that the parties believe or disbelieve that the relationship of master and servant exists, except as such belief indicates an assumption of control by the one and submission to control by the other.

Illustration:

9. A, employed by a taxi company, is sent by P, his employer, to drive B from X to Y, and it is agreed between A, P, and B that for the purposes of the trip A is to be B's servant, although B is to exercise no more control over A's conduct than is normal in the ordinary case of passengers in taxicabs. A is not B's servant.

Law Reviews

30 C.L.R. 65 (Cal.)

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

39 C.L.R. 1412 (N.Y.)

40 C.L.R. 301 (N.Y.)

16 I.L.J. 478 (Ind.)

16 I.L.J. 482 (Ind.)

16 I.L.J. 497 (Ind.)

26 I.L.R. 420 (Iowa)

36 I.L.R. 588 (Ill.)

36 I.L.R. 875 (Ill.)

29 K.L.J. 90 (Ky.)

29 K.L.J. 184 (Ky.)

30 K.L.R. 311 (Ky.)

30 K.L.J. 312 (Ky.)

30 K.L.J. 313 (Ky.)

5 M.L.R. 107 (Md.)

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

28 M.L.R. 484 (Minn.)

38 M.L.R. 189 (Mich.)

38 M.L.R. 200 (Mich.)

38 M.L.R. 1065 (Mich.)

19 N.C.L. 501 (N.C.)

15 N.D.L. 251 (Ind.)

8 Pitt.L.R. 272 (Pa.)

18 T.L.R. 72 (Tex.)

18 T.L.R. 73 (Tex.)

20 T.L.R. 507 (Tex.)

41 W.L.R. 274 (Wis.)

41 W.L.R. 275 (Wis.)

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

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U.S.

U.S.1947. Cit. and rejected. Since the aim of the NLRA was the elimination of labor disputes, "employees" included workers who were such as a matter of economic reality and the "power of control" test was rejected; and coal unloaders paid at agreed price per ton, with no opportunity to gain or lose except from work of their own hands and picks and shovels, and who were under supervision by coal retailer were "employees", but truck driver-owners, hiring own helpers, not hauling for a single business were independent contractors within the Social Security Act. United States v. Silk, 331 U.S. 704, 67 S.Ct. 1463, 1468, 91 L.Ed. 1757.

U.S.1944. Sec. and subsec. 1 cit. in footnote in dictum. Meaning of "employee" as used in National Labor Relations Act must be determined by underlying economic facts rather than previously established legal classifications. National Labor Rel. Board v. Hearst Publications, 322 U.S. 111, 120, 128, 64 S.Ct. 851, 855, 859, 88 L.Ed. 1170, 1179, 1183, rehearing denied in 322 U.S. 769, 64 S.Ct. 1148, 88 L.Ed. 1595.

U.S.1944. Sec. cit. in footnote and subsec. 1 cit. in footnote in comparison. "Newsboys" distributing respondents' papers on the streets of the city are employees under the National Labor Relations Act determined not exclusively by reference to common-law standards, local law or legal classifications made for other purposes, but with regard also to the history, context and purpose of the Act. National Labor Relations Board v. Hearst Publications, Inc., 322 U.S. 111, 120, 128, 64 S.Ct. 851, 855, 859, 88 L.Ed. 1170, 1179, 1183, rehearing denied in 322 U.S. 769, 64 S.Ct. 1148, 88 L.Ed. 1595.

U.S.1944. Sec. cit. in dictum in ftn.; subsec. 1 quot. in pt. in dictum in ftn. Newsboys were employees for purposes of collective bargaining within meaning of Nat. Labor Relations Act even though under the common law "control test" they might not be regarded as employees of the publishers. N.L.R.B. v. Hearst Publications, 322 U.S. 111, 64 S.Ct. 851, 855, 859, 88 L.Ed. 1170.

C.C.A.1

C.C.A.1, 1941. Cit. in sup. Statutory clerk of corporation, who is also its attorney, is employee of corporation even though he receives no compensation for services as clerk. Deecy Products v. Welch, 124 F.2d 592, 599, 139 A.L.R. 916.

C.A.2

C.A.2, 2003. Subsec. (1) quot. in disc. Garment workers employed by contractors who were hired by garment manufacturers sued manufacturers, alleging that they were joint employers. District court granted manufacturers summary judgment as to joint-employment issue, holding that pursuant to pertinent four-factor test manufacturers did not violate Fair Labor Standards Act (FLSA) or New York statutes. This court vacated and remanded, holding that entity's exercise of employer's formal prerogatives of hiring and firing, supervising schedules, determining rate and method of payment, and maintaining records might be sufficient, but was not necessary, to establish joint employment under FLSA. Four-part test was too narrow, as it focused solely on formal right to control physical performance of work. While that right was central to common-law employment relationship, four-factor test did not reconcile with "suffer or permit" language in statute, which reached beyond agency law. Zheng v. Liberty Apparel Co. Inc., 355 F.3d 61, 69, on remand 2004 WL 1746772 (S.D.N.Y.2004).

C.A.2, 1978. Subsec. (2)(b) cit. in sup. and sec. cit. in diss. op. in disc. Appeal by attorney defendant from a criminal conviction of violating the Labor Management Reporting and Disclosure Act of 1959, § 501(c), which provides criminal sanctions for "any person who embezzles, steals, or unlawfully and willfully obstructs or converts to his own use or the use of another, any of the moneys, funds, securities, property, or other assets of a labor organization of which he is employed, directly or indirectly…." Defendant, who was not an in house attorney, was hired by union officers to represent members arrested for strike activities. Defendant described himself as chief counsel to the union and submitted an affidavit indicating that he was at the local office daily and working on union business. He received 76% of his professional income in 1976 from the union through separate

billings to the union following referrals of members to defendant by union officers. The court found that defendant fraudulently billed and received payment for services never rendered in violation of § 501(c), emphasizing that the common law distinction between employee and independent contractor was irrelevant, and holding that Congress intended, by use of the broad language of the act, to extend coverage outside the common law meaning of employee to any person employed by the union. The court also looked to the purpose of the act, that is to prevent looting, "which would not be served by excluding from coverage a trusted legal advisor." The dissent argued that when Congress intends to extend coverage of a criminal statute to independent contractors, it specifically enumerates the extent of further coverage. Furthermore, attempts by the courts to extend coverage of such criminal statutes beyond the common law meaning of employee, though upheld by the state's Supreme Court, have been legislatively frustrated. United States v. Capanegro, 576 F.2d 973, 977, certiorari denied 439 U.S. 928, 99 S.Ct. 312, 58 L.Ed.2d 320 (1978).

C.A.2, 1951. Com. f cit. in sup. Where evidence showed that power of direction and control of circus performers remained in circus management, evidence sustained finding that such performers were employees rather than independent contractors, and hence circus had to pay unemployment taxes. Ringling Bros., Barnum & Bailey Combined Shows, Inc. v. Higgins, 189 F.2d 865, 869.

C.C.A.2

C.C.A.2, 1939. Subsec. 1 and com. c cit. in dictum. An owner of a business which drums up subscriptions for magazines is not liable for injuries caused an automobile passenger when the owner farmed out part of the work to one who had complete control of the details and manner of driving the automobile although the driver of the automobile had been sent by the owner to stimulate the crew. Still v. Union Circulation Co., 101 F.2d 11, 13.

C.C.A.2, 1937. Cit. in sup. The counsel to the County Clerk is an "employee" and not an "independent contractor" and is not subject to the federal income tax. Helvering v. Curren, 90 F.2d 621, 622.

C.A.3

C.A.3, 1958. Subsec. (1) quot. in ftn. com. b. cit. in ftn. and in text in sup. In an action under Federal Employer's Liability Act, where plaintiff's deceased husband had been employed and paid by a third party, but had been engaged exclusively in servicing products sold by third party and owned by defendant and had been partially under direction and control of defendant, plaintiff's husband was termed an employee of defendant to allow recovery. Byrne v. Pennsylvania Railroad Co., 262 F. 2d 906, 911, 912, certiorari denied 359 U.S. 960, 3 L.Ed.2d 766, 79 S.Ct. 798.

C.A.3, 1957. Sub. 2 cit. in ftn. in dict. Where there was evidence that defendant's engineer was in constant supervision of excavation work being performed on defendant's premises by an independent contractor who had discussed with the engineer the need for certain safety precautions, there was a question for the jury whether the defendant had retained such control over the operation as to be responsible for the death of one of the contractor's employees caused by the collapse of the ditch in the absence of the required shoring. Spinozzi v. E.J. Lavino & Co., 243 F.2d 80, 82.

C.A.3, 1957. Subsec. (2) cit. in ftn. in dictum. Where there was evidence that defendant's engineer was in constant supervision of excavation work being performed on defendant's premises by an independent contractor who had discussed with the engineer the need for certain safety precautions, there was a question for the jury whether the defendant had retained such control over the operation as to be responsible for the death of one of the contractor's employees caused by the collapse of the ditch in the absence of the required shoring. Spinozzi v. E. J. Lavino & Co., 243 F.2d 80, 82.

C.A.3, 1954. Cit. in dict. Where evidence possible of inconsistent inferences that a full-time nurse employed by an industrial firm who negligently treated a third-party employer's worker was the servant of either her general employer or a part-time

doctor, or both, the question of the imputation of liability to the general employer was for the jury. Dickerson v. American Sugar Refining Co., 211 F.2d 200, 203.

C.A.3, 1954. Cit. in dictum. Where evidence, from which inconsistent inferences could be drawn, that a fulltime nurse employed by an industrial firm, who negligently treated a third-party employer's worker, was the servant of either her general employer or of a part-time doctor, or both, the question of the imputation of liability to the general employer was for the jury. Dickerson v. American Sugar Refining Co., 211 F.2d 200, 203.

C.A.3, 1953. Cit. in sup. Where employee worked predominately on steel company's premises with steel company's equipment on intra-plant railroad and was paid by steel company on the day of injury, he could not recover from railroad under Federal Employers' Liability Act. Shaw v. Monessen Southwestern Ry. Co., 200 F.2d 841, 843.

C.A.3, 1951. Sec. and com. b quot. in sup. in ftn. In action under National Labor Relations Act, evidence as to trucker's control over drivers sustained finding that drivers were employees of respondent, rather than independent contractors, and therefore National Labor Relations Act applied. National Labor Relations Board v. Nu-Car Carriers, Inc., 189 F.2d 756, 758, certiorari denied 342 U.S. 919, 72 S.Ct. 367, 96 L.Ed. 687.

C.C.A.3

C.C.A.3, 1946. Cit. 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, 32.

C.C.A.3, 1943. Sec. and Pa. annot. cit. in sup. In determining whether truck contractor or general contractor was master of truck driver who ran into and killed foreman of general contractor so as to determine whether remedy by tort action or under Workmen's Compensation Act lay, the test is the right to control in regard to work done and manner of performing it. Funk v. Hawthorne, 138 F.2d 686, 688.

C.C.A.3, 1943. Sec. cit. in sup. Where ship agents, to avoid liability for escape of detained alien seaman, arranged for guard service of libelant, ship's master specified number of guards needed, but libelant selected guards, determined which guards went off duty when smaller number were needed, determined working hours and shifts, and payments were made to libelant, guards were “servants” of libelant who was liable for breach of contract where detained seaman escaped. Ring v. The Dimitrios Chandris, 133 F.2d 124, 126.

C.C.A.3, 1941. Cit. in dictum. Ordinarily, it is a jury question whether relationship is servant and master or employer and independent contractor. Venuto v. Robinson, 118 F.2d 679, 682.

C.C.A.3, 1940. Subsec. 2, clause i and com. b cit. in sup. A person hired to repossess automobiles for a finance company, who makes daily calls to his employer and who receives instructions in each transaction is an employee and not an independent contractor. Waggaman v. General Finance Co., 116 F.2d 254, 258.

C.A.4,

C.A.4, 2017. Subsec. (1) cit. in case quot. but dist. Former employees of now-defunct subcontractor filed a collective action against subcontractor's owners and general contractor for which subcontractor (and thus plaintiffs) worked almost exclusively, alleging that defendants willfully failed to pay overtime and other wages to plaintiffs in violation of the Fair Labor Standards Act and the Maryland Wage and Hour Law. The district court granted summary judgment for general contractor on the ground that it was not plaintiffs' employer. Reversing and remanding, this court held that defendants jointly employed plaintiffs. The court

adopted a new test for determining whether entities constituted joint employers, noting that existing tests improperly relied on common-law agency principles set forth in Restatement of Agency § 220, which were more appropriately used in determining whether an agency relationship existed. Salinas v. Commercial Interiors, Inc., 848 F.3d 125, 136.

C.A.4

C.A.4, 1957. Cit. in sup. When plaintiff was injured while a passenger in car driven by one defendant, and owned by other defendant but loaned to be driven to Florida for advantage of both, trial court correctly submitted to jury issue of whether driver-defendant was agent of owner-defendant and thus general verdict for owner-defendant was not disturbed. Perlick v. Vick, 246 F.2d 144, 147.

C.A.4, 1949. Cit. in sup. Where insured was under obligation to do all welding in connection with elevator repair work to be done by defendant independent contractor, welder supplied by insured was insured's agent although independent contractor told welder where to weld, so that when insured's building caught fire due to negligence of welder and independent contractor, insurance company who was subrogated to insured's rights had no cause of action against independent contractor. Liverpool & London & Globe Ins. Co., Ltd. v. Otis Elevator Co., 175 F.2d 832, 833.

C.C.A.4

C.C.A.4, 1938. Subsec. 2 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, 873, 116 A.L.R. 449, 455, 456.

C.C.A.4, 1937. Cit. in sup. A powder company is not liable for injuries caused another by a driver of a truck who was employed by the trucking company with whom the powder company had an arrangement for the delivery of powder. Craige v. Austin Powder Co., 91 F.2d 664, 665.

C.A.5

C.A.5, 1990. Subsec. (2) cit. in disc. An engineer who had returned to work for an engineering corporation after his previous employment there was terminated requested the payment of his accrued benefits under the corporation's pension plan following the corporation's termination of the plan. The corporation notified the engineer that he had forfeited his rights under the plan because he had quit his position earlier and had been rehired as an independent contractor. The engineer then filed this suit against the corporation seeking the recovery of his benefits. The district court entered judgment for the defendant. Affirming, this court held, inter alia, that the plaintiff was an independent contractor, not an employee, at the time of the plan's termination and therefore could not claim the vesting of benefits. The court stated that the plaintiff was not an employee because he was largely in control of the hours he worked. Penn v. Howe-Baker Engineers, Inc., 898 F.2d 1096, 1103.

C.A.5, 1963. Cit. in sup. In personal injury action arising from automobile collision, evidence supported finding that electrician, who spent most of his time performing electrical work for general contractor who maintained his own place of business, tools, automobile, who was not under supervision and control of general contractor, and who was returning from handling complaint on work already completed when involved in automobile collision with plaintiff, was not general contractor's agent or employee for purposes of tort liability. Gullett v. Best Shell Homes, Inc. of Tenn., 312 F.2d 58, 61.

C.A.5, 1961. Quot. in case quot. in sup. In government's suit to determine whether remunerations of cab drivers constituted "wages" within Federal Insurance Contributions Act, court held that they were within scope of Act, even though several drivers were self-employed. United States v. Fleming, 293 F.2d 953, 957.

C.A.5, 1954. Sub. 2 quot. in ftn. in sup. United States not liable under the Tort Claims Act for damages due to fire set as specified by an individual who undertook to clear a reservoir area for a federal dam under a standard form government contract which regulates some details of performance, since considering the total situation he was an independent contractor, not an employee of the Government. Strangi v. United States, 211 F.2d 305, 308.

C.A.5, 1954. Subsec. (2) quot. in sup. in ftn. In an action under the Federal Tort Claims Act against the United States for damage caused by fire which escaped from area which was being cleared as a reservoir the United States was not liable, as the Act covers only employees of the government and the fire here was negligently allowed to spread by an independent contractor. Strangi v. United States, 211 F.2d 305, 307, 308.

C.A.5, 1948. Cit. in ftn. but not followed. In a suit to recover taxes paid under the Social Security Act, the test for determining whether there existed an employer-employee relationship was not the common law concept of control, but rather the presence of persons who, as a matter of economic reality, were dependent upon the business to which they render service. Fahs v. Tree-Gold Co-Op. Growers of Florida, 166 F.2d 40, 44.

C.A.6

C.A.6, 1995. Cit. in case quot. in sup., cit. generally in ftn., subsec. (2) cit. in ftn. Insurance salesman who filed amended federal tax returns to reflect his status as an independent contractor sued government when Internal Revenue Service denied his claimed refund. The district court entered judgment awarding plaintiff his refund and this court affirmed, holding that, in light of the relevant factors, plaintiff was more properly considered an independent contractor than an employee of the insurer that put him in business. The court took a flexible approach to defining the principal-agent relationship, noting that it depended upon the legal rights and liabilities of the parties, and explained that the facts that plaintiff furnished most of his own tools, controlled and supervised his assistants, worked entirely on commission, could realize a profit or risk a loss on his efforts, and worked away from the insurer's premises all militated in favor of labeling him an independent contractor. Ware v. U.S., 67 F.3d 574, 577.

C.A.6, 1955. Sub. 2 cit. in sup. Where property owner's supervisory agent exercised no control over contractor's means of performing construction job, owner was not liable for death of such independent contractor's employees resulting from contact of crane they were using with high tension wires. Sullivan v. General Elec. Co., 226 F.2d 290, 291.

C.A.6, 1955. Subsec. (2) cit. in sup. Where property owner's supervisory agent exercised no control over contractor's means of performing construction job, owner was not liable for death of such independent contractor's employees resulting from contact of crane they were using with high tension wires. Sullivan v. General Elec. Co., 226 F.2d 290, 291.

C.C.A.6

C.C.A.6, 1945. Cit. in sup. Where railroad company contracted with construction company for the latter to construct in railroad's yards a temporary place for war material in transit, evidence adduced from various details of work, as from authority of railroad's superintendent to select time and place of unloading, approval of purchases and costs, etc., supported finding that construction company was not an independent contractor and hence railroad was liable under the Federal Employers' Liability Act for injuries to construction company's employees, even though contract stated that the construction company was to perform the work as an independent contractor. Cimorelli v. New York Cent. R. Co., 148 F.2d 575, 577.

C.A.7

C.A.7, 1955. Sub. 2 cit. in sup. Where subdistributor of vending machine employed for an indefinite period was under no supervision as to the time and place he worked or as to his sales methods and was remunerated only by discounts which were not subject to tax deductions, manufacturer not liable in damages for his misrepresentations to plaintiff who, in any event, had contracted away his right to damages for even an employee's fraud. Koehler v. Ellison, 226 F.2d 682, 685.

C.A.7, 1955. Subsec. (2) cit. in sup. Where alleged agent of vending machine manufacturer, employed for an indefinite period, was under no supervision as to the time and place he worked or as to his sales methods and was remunerated only by discounts on machines sold which were not subject to tax deductions, manufacturer was not liable in damages for his misrepresentations to plaintiff-distributor, because the evidence supported a finding that the alleged agent was in fact an independent contractor, and further, that plaintiff had specifically agreed to release manufacturer from any liability for dealers' misrepresentations. Koehler v. Ellison, 226 F.2d 682, 685.

C.A.8

C.A.8, 1956. Com. c quot. in case quot. in sup. Where a food processor contracted to pay a trucker for the use of his equipment in purchasing chickens from farmers and delivering them to its plant but in all other respects permitted the trucker complete freedom in his operations, the trucker did not bind the defendant in a contract he executed in his own name to purchase plaintiff's chickens nor make him liable for his fraudulent procurement of plaintiff's indorsement of defendant's draft given in payment for part delivery. Farm Bureau Co-Operative Mill & Supply, Inc. v. Blue Star Foods, 238 F.2d 326, 334.

C.A.8, 1956. Com. (c) quot. in case quot. in sup. Where a food processor contracted to pay a trucker for the use of his equipment in purchasing chickens from farmers and delivering them to its plant but in all other respects permitted the trucker complete freedom in his operations, the trucker did not bind the defendant in a contract he had executed in his own name to purchase plaintiff's chickens nor make him liable for his fraudulent procurement of plaintiff's indorsement of defendant's draft given in payment for part delivery. Farm Bureau Co-Operative Mill & Supply, Inc. v. Blue Star Foods, 238 F.2d 326, 334.

C.C.A.8

C.C.A.8, 1939. Cit. in sup. An insurance agent who is primarily engaged to solicit industrial life insurance policies and collect the premiums in a “debit” area and who is also permitted to solicit ordinary life insurance is not an agent of the insurance company when he was transporting prospective life insurance purchasers in his own car and negligently caused an accident injuring the prospects. Metropolitan Life Ins. Co. v. Gosney, 101 F.2d 167, 169.

C.A.9

C.A.9, 1957. Sub. 2, cl. c cit. in ftn. in dict. Where the defendant sold a trade course in interstate commerce through salesmen 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. (2)(c) 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 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.A.9, 1950. Sec. quot. in sup. in ftn. and sub. 2 (e) and (g) cit. in sup. Where general contractors leased trucks from truck owners for use of their trucks on an hourly, load or yard mile basis, the trucks being operated by owners or drivers, and all work was under supervision of contractors as to work to be done and manner of doing it, and contractors could discharge drivers or truck owners at will, drivers and truck owners were servants, rather than independent contractors, and hence they were not liable for transportation tax which applied to amounts paid to persons engaged in the business of "transporting property for hire." Earle, Collector of Internal Revenue v. Babler et al. (Earle, Collector of Internal Revenue v. Conley et al.) (two cases), 180 F.2d 1016, 1018.

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.

U.S.Ct.Cl.

U.S.Ct.Cl.1959. Cit. in sup. When plaintiff brought action for damages arising out of breach of contract by applicators who were employed to finish a job, question whether defendant-applicators were employers was for jury under evidence presented. Edwards v. United States, 144 Ct.Cl. 158, 168 F.Supp. 955, 957.

W.D.Ark.

W.D.Ark.1956. Sub. 2 cit. in case quot. in sup. Where plaintiff's decedent died in a fire resulting from the operation of a machine handling highly inflammable material, which was built and installed by her employer who was operating naval ordinance facilities under Government contracts reserving to the Government only the right of inspection and not of control; no recovery was permitted from the United States under the Tort Claims Act, since the cause of the fire was the result of the activities of the employees of an independent contractor and not of the Government as required by the act. Hopson v. United States, 136 F.Supp. 804, 812.

W.D.Ark.1956. Subsec. (2) cit. in case quot. in sup. Where plaintiff's decedent died in a fire resulting from the operation of a machine handling highly inflammable material, which was built and installed by her employer who was operating naval ordinance facilities under Government contracts reserving to the Government only the right of inspection and not of control, no recovery was permitted from the United States under the Tort Claims Act, since the cause of the fire was the result of the activities of the employees of an independent contractor and not of the Government as would be required for liability under the act. Hopson v. United States, 136 F.Supp. 804, 812.

C.D.Cal.

C.D.Cal.2001. Cit. generally in case cit. in ftn. Music composer sued television networks, production company, and cruise line, alleging that defendants infringed copyrights in music he composed for a television series. This court granted defendants' motion to dismiss plaintiffs' copyright claims, holding, inter alia, that plaintiff's compositions were works for hire commissioned by production company. Plaintiff alleged that he did not intend to create a work-for-hire relationship; however, while plaintiff's intent would be relevant if the contract language were ambiguous, and if certain contractual terms were reasonably susceptible of an interpretation consistent with his purported intent, such was not the case here. The court noted that plaintiff was an independent contractor. Warren v. Fox Family Worldwide, Inc., 171 F.Supp.2d 1057, 1070.

N.D.Cal.

N.D.Cal.1946. Cit. in discussion. Vendors engaged by newspaper publishers to sell papers at particular street locations were employees within meaning of social security legislation though they also sold other articles and though contracts provided that relationship of buyer and seller existed; for vendors were subject to control of publishers, had no business risks. Hearst Publications v. United States, 70 F.Supp. 666, 669.

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.

D.Conn.

D.Conn.1961. Cit. in sup. Where plaintiff was injured while performing repairs on defendants' engine because he was not on their payroll, nor subject to their control, but rather was employed by the maker of the engine, he was not entitled to recovery under Federal Employer's Liability Act. DePaola v. New York, New Haven & Hartford Railroad Co., 198 F.Supp. 12, 14.

D.Del.

D.Del.1956. Cit. in ftn. in sup. Where in an action under the F.E.L.A. the plaintiff alleged that he was injured while under the control of the railroad's safety expert as to the place, manner and means of performance of his work in the repair of an overpass bridge, the railroad could not obtain a summary judgment because the plaintiff had previously filed and settled a workmen's compensation claim against his general employer who had contracted to do the work for the railroad. De Maree v. Pennsylvania R.R., 147 F.Supp. 656, 659.

D.Del.1956. Cit. in ftn. in sup. Where in an action under the Federal Employers' Liability Act the plaintiff alleged that he was injured while under the control of the railroad's safety expert as to the place, manner and means of performance of his work in the repair of an overpass bridge, the railroad could not obtain a summary judgment even though the plaintiff had previously filed and settled a workmen's compensation claim against his general employer who had contracted to do the work for the railroad. De Maree v. Pennsylvania R. R., 147 F.Supp. 656, 659.

D.Del.1942. Cit. in sup. Exclusive sales agents of firm were not its employees when they shared profits of each job with firm, paid own help's salaries, and in case of dispute with firm as to methods of operation, problem was referred to arbitrator. Crom v. Cement Gun Co., 46 F.Supp. 403, 404.

N.D.Ill.

N.D.Ill.1947. Cit. and not fol. Taxicab drivers who retained fares and paid owner fixed rate for cab and for gas and oil, but who operated under hack licenses issued to owner and under oral agreement for day to day use were employees and not independent contractors for social security tax purposes. Party Cab Co. v. United States, 75 F.Supp. 307, 309.

N.D.Iowa

N.D.Iowa, 1948. Cit. and not fol. Salesmen engaged in house to house selling and renting of household furnishings for dealer on commission at prices and terms fixed by dealer, and engaged in collecting rentals and purchase price, using samples furnished

by dealer under contract of bailment, were employees and not independent contractors for social security tax purposes. Tapager v. Birmingham, 75 F.Supp. 375, 382.

W.D.Ky.

W.D.Ky.2013. Subsec. (2) cit. in case cit. in sup. Homeowners who lived within a one-mile radius of commercial swine barns brought nuisance and other tort claims against, among others, hog producers that contracted with farmers to raise hogs in the barns, alleging that producers were vicariously liable for farmers' tortious activities in creating noxious odors and water contamination in the surrounding area. Denying in part defendants' motion to dismiss, this court held that plaintiffs' claims against producers could proceed under a vicarious-liability theory. The court concluded that, although the contracts were not terminable at will and stated that farmers were independent contractors, it was appropriate to consider producers as farmers' employers, because producers supplied the feed, propane, and medicine for use in raising the pigs, farmers were not paid by the job but were paid a yearly flat services fee in 12 monthly installments, and producers exercised an extensive degree of control over material details of farmers' hog-raising work. Powell v. Tosh, 929 F.Supp.2d 691, 700.

W.D.La.

W.D.La.1952. Quot. in sup. Plaintiff sales representative for cosmetic firm who paid her own expenses, was paid by commission with no minimum compensation and worked from own house on own time without customer leads from company was not employee of company under common law test of employer-employee relationship set forth in Social Security Act. Rambin v. Ewing, 106 F.Supp. 268, 271.

D.Mass.

D.Mass.1958. Illus. 7 cit. in sup. One can be an employee even though he supervises himself as to details, and the question is not so much whether the person for whom the work is being done finds it necessary to intervene and supervise the details of the performance, but whether it is understood that he has the right to do so. Security Roofing & Constr. Co. v. United States, 163 F.Supp. 794, 796.

W.D.Mich.

W.D.Mich.1969. Quot. in sup. This was an action by an auto dealer's property damage insurance carrier against an aerial spraying company for property damage sustained when chemical spray harmful to certain automobile finishes was released directly adjacent to the auto dealer's property. The spraying company impleaded its contractor, the Department of Agriculture. The court held, inter alia, that the spraying company breached its duty to use reasonable care under the circumstances to avoid harm to the automobile dealer's property, that the Dept. of Agriculture likewise breached its duty of care owed to the auto dealer in not taking precautions to avoid injury to the dealer's property, and that the spraying company, subject to control of the Dept. of Agriculture with respect to details of performance of the contract, was an employee of the United States. Motors Ins. Corp. v. Aviation Specialists, Inc., 304 F.Supp. 973, 977.

E.D.Mo.

E.D.Mo.1972. Cit. in sup. Plaintiffs, driver-owners of tractors financed by defendant carrier, claim entitlement to pension fund benefits arising out of their claimed employment by defendant. Applying the “right to control” test, the court found that plaintiffs were employees of defendant based on the fact that (1) plaintiffs were required to follow routes assigned by defendant and to sign in at check points along the routes; (2) plaintiffs were subject to call for work by defendant during most of the time they were not driving; (3) plaintiffs could refuse a trailer only if it were overweight, unsafe, or otherwise violated ICC requirements; (4) plaintiffs were instructed by defendant as to all points and times of pick-up and delivery; (5) plaintiffs were required to call

defendant in case of any delay, and excessive or unwarranted delays could result in termination. Hayes v. Morse, 347 F.Supp. 1081, 1084, aff'd, 474 F.2d 1265 (8th Cir. 1973).

W.D.Mo.

W.D.Mo.1970. Cit. in sup. in ftn. The plaintiff insurance company sought recovery of employment taxes paid. The issue is whether the agents of the plaintiff who were "financed" as opposed to "regular" agents, were employees or independent contractors. The plaintiff exercised detailed control over the activities of its financed agents, specifying procedures and requiring daily reports; the agents were engaged in selling plaintiff's policies, an integral part of plaintiff's business, while the work of insurance agents is generally that of specialists operating without supervision; plaintiff's "financed" agents were trainees requiring more supervision than "regular" agents; no specialized skill was required for one to become a financed agent; plaintiff supplied its financed agents with such "tools" as insurance policies, but not with cars or office space; the amount of compensation paid a financed agent was unrelated to his job performance, and plaintiff retained complete control over employment tenure. Although the contract referred to financed agents as "independent contractors", the court held that the above factors, no one of which is determinative, lead to the conclusion that the financed agents were employees. M. F. A. Mutual Insurance Company v. United States, 314 F.Supp. 590, 594, 598, 599, 600, 601.

W.D.Mo.1946. Cit. in sup. Terminal operator for bus company, although paid on commission basis and required to pay his own help, was an employee of bus company within Fair Labor Standards Act and was not an independent contractor, even under common law standards, in view of retention of control by bus company over terminal operator as to details of duties performed by him in operation of bus depot. Walling v. Southwestern Greyhound Lines, 65 F.Supp. 52, 55.

D.Mont.

D.Mont.1958. Com. (c) 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.N.J.

D.N.J.1955. Cit. in case quot. but dist. on facts. Where personnel assigned available work by insulating company were trained by company for whom they worked exclusively, used its equipment, were subject to its instructions and right to discharge and were paid by the hour, company could not recover federal insurance and unemployment tax assessments made on the basis of these employees. Bonded Insulation & Const. Co. v. United States, 131 F.Supp. 635, 637.

D.N.J.1952. Cit. in case quot. in sup. Where home builder interested only in results contracted with skilled individuals to perform the actual construction work at their own time and with their own tools and employees, compensating each by a lump sum payment determined by competitive bidding, he was entitled to recover social security payment assessed against him on the basis that these contractors were employees. Levin v. Manning, 124 F.Supp. 192, 194.

D.N.J.1952. Cit. in case quot. in sup. Where home builder interested only in results contracted with skilled individuals to perform the actual construction work at their own time and with their own tools and employees, compensating each by a lump sum payment determined by competitive bidding, he was entitled to recover social security payment which had been assessed against him on the basis that these contractors were employees. Levin v. Manning, 124 F.Supp. 192, 194.

E.D.N.Y.

E.D.N.Y.1948. Cit. in sup. Where corporation contracted with War Shipping Administration to perform all functions of a terminal operator at certain piers, and corporation accepted delivery of cargo belonging to United States which was on a scow and allowed scow to remain in an unsafe position at end of pier, corporation was liable to United States for loss of cargo when scow floated away. Roah Hook Brick Co. v. Erie R. Co. et al., 77 F.Supp. 840, 845, affirmed in part and reversed in part, C.A., 179 F.2d 601.

S.D.N.Y.

S.D.N.Y.1982. Cit. in disc. A retired employee brought an action against his former employer, a New York corporation, to recover for an ERISA violation which allegedly resulted when the employer's chief executive officer sold the corporation to another concern whose board of directors terminated the plaintiff's retirement benefits. The plaintiff claimed that his right to pension benefits was nonforfeitable under the Employment Retirement Income Security Act (ERISA) because he had reached the normal retirement age and had at least ten years of service with the corporation. The defendant contended that the ERISA protections were not available to the plaintiff because the plaintiff was not an employee of the corporation as of January 1, 1976, the date the ERISA provisions became effective. The defendant also alleged that its pension plan for executives was exempted from ERISA. This court entered judgment for the defendant, finding that the plaintiff had not been an employee of the defendant after the effective date of the ERISA provisions. In determining employment status, the court found the following factors relevant: the degree of control or supervision, the existence and nature of the remuneration for services rendered, the permanency of the relationship, whether the services were rendered in the normal course of business, and the conduct of the parties evidencing an employment relationship. The court stated that the degree of control over the employee was the most significant factor. After the plaintiff retired, he was never under the control or supervision of anyone at the corporation, and the majority of his post-retirement contacts with the corporation consisted of unsolicited consultations with his former colleagues. The court also found that the payments received by the plaintiff after retirement were not conditioned upon his performing any services to the corporation, and that the plaintiff was not retained under a consulting agreement with the corporation after his retirement. The court concluded that, as he was not an employee of the corporation after his retirement in 1973, he was not entitled to prospective ERISA protections. Cohen v. Martin's, 537 F.Supp. 766, 772, judgment affirmed 694 F. 2d 296 (2d Cir. 1982).

W.D.N.Y.

W.D.N.Y.1943. Cit. in sup. Where evidence disclosed complete lack of direction or control of corsetieres by manufacturer, corsetieres were not “employees” of manufacturer so as to make it liable under Federal Unemployment Tax Act for assessments based on their earnings notwithstanding written contract between them and manufacturer. Spirella Co., Inc. v. McGowan, 52 F.Supp. 302, 306.

E.D.Pa.

E.D.Pa.1971. Subsec. (1) quot. in sup. A mentally ill person presented himself for admission to a state hospital but the doctors in charge, although knowing this person to be dangerous, delayed his admission. During this delay, the mentally ill person left the hospital and assaulted the plaintiff. The plaintiff brought an action against the assistant superintendent of the hospital, the clinical director, and clinical director or standby, and the doctor on duty for injuries resulting from the assault. The court held that while an action could be maintained against the doctors on duty, no action could be brought against the supervisors, since the doctors on duty had not acted under the control of or in the interests of the supervisors. Greenberg v. Barbour, 322 F.Supp. 745, 748.

E.D.Pa.1960. Com. (b) cit. in sup. In wrongful death action by personal representative of decedent against railroad, evidence supported finding that under Delaware law he had been employed by railroad during 14 months preceding his death, and it was liable. Byrne v. Pennsylvania Railroad Co., 169 F.Supp. 655, 659, affirmed (C.A.3) 262 F.2d 906, certiorari denied 359 U.S. 960, 79 S.Ct. 798, 3 L.Ed.2d 766.

E.D.Pa.1944. Cit. in sup. In Pennsylvania where contract is let for work to be done by another with no control over means of accomplishment, relation of contractee and contractor is established. Young v. Wilky Carrier Corporation, 54 F.Supp. 912, 915.

W.D.Pa.

W.D.Pa.1956. Cit. in sup. and cit. in case quot. in sup.; ill. 4 cit. in sup. Private sanatorium 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.

W.D.Pa.1956. Cit. in sup. and cit. in case quot. in sup.; illus. 4 cit. in sup. Private sanatorium was 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 in improperly diagnosing and treating his injuries sustained in the resulting fall. Brown v. Moore, 143 F.Supp. 816, 821.

W.D.Pa.Bkrtcy.Ct.

W.D.Pa.Bkrtcy.Ct.1986. Subsec. (1) quot. in case quot. in disc. After a debtor filed for bankruptcy, the trustee commenced this action to avoid a transfer of property against the purchasers of the property and third-party defendant public officials who had misindexed the deed. This court granted the third-party defendants' motion for summary judgment on the basis of governmental immunity, reasoning that public officers acting in a supervisory capacity should not be held liable under a theory of respondeat superior. The court also granted summary judgment for the purchasers because it found that the trustee had had constructive notice of the sale of the land. In re R.A. Beck Builders, Inc., 66 B.R. 666, 668.

E.D.Tenn.

E.D.Tenn.1962. Quot. in part 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 third party tortfeasor. Mahoney v. United States, 216 F.Supp. 523, 528, 529.

S.D.W.Va.

S.D.W.Va.1946. Cit. in sup. Partners who operated hotel, and who entered into contract with telegraph company to establish and maintain branch office of telegraph company for certain percentage of charges on telegrams, were independent contractors and not employees within Fair Labor Standards Act, where no substantial control was exercised by telegraph company over partners as to mode of operating office, and partners were at liberty to delegate the greater portion of their duties to others. Blankenship v. Western Union Telegraph Co., 67 F.Supp. 265, 267, affirmed, C.C.A., 161 F.2d 168.

Ariz.

Ariz.2012. Cit. in case cit. in sup. Motorcyclist who was hit by a car sued driver of the car and driver's employer, alleging that employer was vicariously liable for plaintiff's injuries. The trial court granted summary judgment for employer; the court of appeals affirmed. Affirming, this court held that employer was not liable for employee's alleged negligence, because employee, who was on an extended away-from-home assignment, was not acting within the scope of his employment when he and a co-worker, while returning to their hotel from a restaurant after work hours, were involved in the accident with plaintiff; employee was not serving employer's interests in traveling to and from the restaurant during his off hours, and employer did not control where, when, or even if employee chose to eat dinner. Engler v. Gulf Interstate Engineering, Inc., 280 P.3d 599, 602.

Ariz.1959. Quot. in case quot. in sup. Church member who worked as unpaid volunteer helper in cafeteria of church's school was a "servant" with respect to her right to recover against church for injuries she sustained when working in cafeteria and evidence on issue of defendant's negligence in failing to provide a safe place to work was for jury. Vickers v. Gercke, 86 Ariz. 75, 340 P.2d 987, 990.

Ariz.1958. Quot. in case quot. in sup. In action arising out of crossing collision between plaintiff's vehicle and a truck hauling gravel for use by defendants in resurfacing highway pursuant to contract with State, the contract required resurfacers to place warning devices only in areas where actual work was taking place and did not impose obligation to warn traveling public of increase of vehicular traffic at intersection four or five miles from the resurfacing work; the evidence presented a jury question as to whether driver was an employee of defendant. Larsen v. Arizona Brewing Co., 84 Ariz. 191, 325 P.2d 829, 834.

Ariz.1947. Cit. in sup. Where a partnership employed an individual to harvest onions, with payment based on number of sacks of onions harvested which were to meet a government standard, and such individual regularly engaged in the business of harvesting with as many as 200 pickers, all facts, together, showed that such individual was an "independent contractor"; therefore, an injured employee of his was not an employee of partnership and was not covered by partnership's workmen's compensation policy. Blasdell v. Industrial Commission, 65 Ariz. 373, 181 P.2d 620, 622.

Ariz.1947. Cit. in sup. Quarrymen employed under written contracts with owner of sand rock quarries, whose regular business was operating quarry, to quarry rock of specified quality at stated price per ton payable bi-monthly for tonnage actually produced by them, were not independent contractors but were employees within Workmen's Compensation Act in view of employer's right to control work, his right to terminate contract on one day's notice, and other indicia of an employee status. Industrial Commission v. Meddock, 65 Ariz. 324, 180 P.2d 580, 585.

Ariz.1937. Subsec. 1, clauses a, c, e, and g of subsec. 2, and com. c quot. in sup. Automobile dealer is liable to guest in automobile for injuries caused by his salesman's negligent driving only if the jury finds the salesman, intending to investigate a prospective customer and to attend a dance, was within the scope of his employment. Consolidated Motors v. Ketcham, 49 Ariz. 295, 305, 306, 66 P.2d 246, 250.

Ariz.1937. Subsec. 1 quot. and com. c quot. in part in sup. Truck owner who rented truck with service of driver to highway contractor to haul gravel would be liable for driver's negligence to the exclusion of highway contractor, if the jury found the owner had the right to control the manner of performance. Lee Moor Contracting Co. v. Blanton, 49 Ariz. 130, 134, 140, 65 P.2d 35, 37.

Ariz.App.

Ariz.App.1976. Quot. in part in sup. On petition for certiorari, the issue was the correctness of the denial of compensation by the Industrial Commission upon finding that claimant was an independent contractor. The court affirmed. Crucial to the determination was the question of "right to control" by claimant's franchisor. Since the agreement could not be terminated without liability, and since provision was made for arbitration of disputes concerning arbitration, a finding that claimant was an independent contractor was proper especially where claimant was under a lease for a term of years, was under an obligation to maintain the premises at his own expense, was personally liable for all taxes, and was specifically deemed an independent contractor by the terms of the agreement. Fry v. Industrial Commission, 26 Ariz. App. 140, 546 P.2d 1149, 1151.

Cal.

Cal.1989. Cit. in diss. op. A deputy labor commissioner issued a stop order/penalty assessment against a cucumber grower for failure to secure workers' compensation coverage for the 50 migrant harvesters of its crop. The grower contended that the workers were independent contractors excluded from the workers' compensation law because they managed their own

labor, shared in the profits or loss of the crop, and agreed in writing that they were not employees. The division of labor standards enforcement rejected these contentions, and the trial court found the division's findings supported by the evidence. The intermediate appellate court reversed. This court reversed, holding that all the meaningful aspects of the business were controlled by the grower, and that the remedial purposes of the state workers' compensation act mandated that the workers be protected. The dissent argued that the majority twisted well-established law to reach its conclusion that the harvesters were the grower's employees; under the statutory control test, the dissent found that the harvesters were independent contractors as a matter of law. Borello & Sons v. Dept. of Indus. Rel., 48 Cal.3d 341, 256 Cal.Rptr. 543, 559, 769 P.2d 399, 415.

Cal.1958. Com. (h) quot. in part in sup. In determining whether country clubs were subject to assessment under Unemployment Insurance Code based upon amount caddies had been paid by players using clubs, merely because a person was allowed access to golf course solely by sufferance of the club, so that he could become a caddy, an employer-employee relation was not created so that the golf clubs were not susceptible to the assessment. Manchester Avenue Co. v. Stewart, 50 Cal.2d 307, 325 P.2d 457, 461.

Cal.1951. Com. a-h, quot. in sup. Where Presbytery placed minister in charge of church mission, and minister obtained aid of divinity student in running Bible school, and both minister and student were negligent in operating motor vehicles while transporting children attending Bible school to recreational center, so that child in one of automobiles was injured, because minister and student were agent and sub-agent of Presbytery, Presbytery could be liable for injuries caused as a result of such negligence. Malloy v. Fong et al., 37 Cal.2d 356, 232 P.2d 241, 250.

Cal.1947. Sec. and Cal. annot. cit. in sup. Owner of string of horses could not recover contributions paid under protest in accordance with Unemployment Insurance Act on remuneration received by free-lance jockeys, on ground that jockeys were independent contractors rather than employees. Jockeys were employees under Act under which the principal test was right of control and owner's control could be shown by wages and customs; and control was shown by fact that jockeys could be discharged by owner, though they were hired especially for each race and received a fixed sum. Isenberg v. California Employment Stabilization Commission, 30 Cal.2d 34, 180 P.2d 11, 15.

Cal.1947. Sec. and California annot. cit. in sup. in case quoted. In determining whether an independent contractor status or an employer-employee relationship exists factors to be considered are: existence of right of control, right to end services at will, skill required, who supplies tools and place of work, method of payment and the like. Perguica v. Industrial Accident Commission, 29 Cal.2d 857, 179 P.2d 812, 814.

Cal.1947. Cit. in sup. Though contract expressly stipulated it was one of rental only, where “lessees” engaged in placing and servicing amusement vending machines owned by partners who had right to control methods and who might terminate relationship at any time without cause, and by threatening to recall machines could further control “lessees”, such “lessees” where “employees” with respect to whom the partners were obliged to pay unemployment insurance contributions. Tomlin v. California Employment Commission, 30 Cal.2d 118, 180 P.2d 342, 345.

Cal.1946. Sec. (and Cal.Ann.) cit. in sup. Persons to whom mining company leased particular areas and who were independent from any supervision by company of method, manner or details of mining operations, and who carried on mining activities at their own risk, in their own way and for their own profit, were independent contractors and were not employees for whom company must make unemployment compensation contributions. Empire Star Mines Co. v. California Employment Commission, 28 Cal.2d 33, 168 P.2d 686, 692.

Cal.1944. Sec. et seq. cit. in dictum. Longshoremen assigned through central office to work at various docks are employed during interims between work assignments within provision of Unemployment Insurance Act relating to leaving employment during labor dispute. Matson Terminals v. California Employment Commission, 24 Cal.2d 695, 151 P.2d 202, 207.

Cal.1941. Com. c quot. in part in sup. A jockey is an employee of the horse owner even though his conduct is regulated by the Horse Racing Board. Drillon v. Industrial Accident Commission, 17 Cal.2d 346, 355, 110 P.2d 64, 69.

Cal.App.

Cal.App.2010. Cit. in case quot. in sup. Injured motorcyclist sued city and owner/operator/driver of a dump truck that collided with plaintiff's motorcycle shortly after delivering a load of asphalt to city's work site. The trial court entered judgment on a jury verdict in favor of plaintiff. Reversing in part and remanding, this court held, among other things, that the trial court erred when it instructed the jury that the right of control, by itself, gave rise to an employer-employee relationship, and it was reasonably probable that this error prejudiced the jury's conclusion. The court noted that, while the right of control was the "primary" factor to be considered in determining whether a worker was an employee or an independent contractor, a group of "secondary" factors derived principally from the Restatement Second also had to be considered. Bowman v. Wyatt, 186 Cal.App.4th 286, 300, 111 Cal.Rptr.3d 787, 796.

Cal.App.2007. Cit. in case quot. in sup. Courier service sued state employment development department to recover employment taxes it paid for drivers it employed to pick up and deliver packages, asserting that the drivers were independent contractors rather than employees. After a bench trial, the trial court ruled in favor of the department. Affirming, this court held that the evidence supported the trial court's conclusion that the drivers operated as plaintiff's employees. The court reasoned that plaintiff exerted control over the drivers to coordinate and supervise its basic function, namely, timely delivery of packages, and that other factors to be taken into consideration also pointed to a finding of employee status. Air Couriers Intern. v. Employment Development Dept., 150 Cal.App.4th 923, 933, 59 Cal.Rptr.3d 37, 43.

Cal.App.1982. Cit. in case quot. in disc. An employee brought a common-law damage action against his employer's parent corporation to recover for injuries sustained in a conveyor belt designed and manufactured by parent. The trial court granted the parent's motion for summary judgment on the grounds that the parent corporation was in effect the plaintiff's employer at the time of his injury, and therefore was immune from tort liability pursuant to the exclusive remedy provisions of the state labor code. This court noted that the principal test of the employment relationship was the right to control over the manner and means of accomplishing the result desired and that strong evidence of this right was shown by the principal's right to discharge the worker. The court then specified eight secondary tests to be considered in determining the employment relationship: whether the purported employee was engaged in a distinct occupation or business; whether the work involved was usually done under an employer's direction or by an unsupervised specialist; the skill involved; who supplied the instrumentalities and place of work; the length of employment; the method of payment; whether the employment was part of the employer's regular business and/or necessary to it; and the intent of the parties creating the relationship. Where a parent corporation claimed immunity from common-law tort liability for injuries to the employees of a kindred corporation, the labelling by the parent of the kindred corporation as a "division" was not to be determinative. The court held that it was the reality of the relationship which should determine whether the corporation was in fact separate and distinct and therefore, under the statutory scheme, not the employer for workers' compensation law purposes. The judgment was reversed. Gigax v. Ralston Purina Co., 186 Cal.Rptr. 395, 400.

Cal.App.1963. Cit. case quot. in sup. Where mill operators did not control logger's work methods but only furnished tractor and paid for timber cut, logger was independent contractor, whose knowledge of title status of timber land could not be imputed to mill operators. Sills v. Siller, 218 Cal.App.2d 735, 32 Cal. Rptr. 621, 624.

Cal.App.1963. Cit. case quot. in sup. Partner, who was killed while operating a bulldozer under an arrangement with the contractor whereby the bulldozer was furnished by partnership with an operator for $10.50 per hour, was an independent contractor rather than an employee of the contractor. Sparks v. L. D. Folsom Co., 217 Cal.App.2d 279, 31 Cal.Rptr. 640, 643.

Cal.App.1962. Cit. in case quot. in sup. In review of compensation award, the principal test of the employment relationship was the right to control over the manner and means of accomplishing the desired result, as well as the right of the principal to fire the worker, and the relationship intended by the parties. Durae v. Industrial Accident Commission, 206 Cal.App.2d 691, 23 Cal.Rptr. 902, 906.

Cal.App.1958. Cit. in case quot. in sup. In action to collect compensation for injuries sustained because of vehicular collision, evidence sustained finding that driver was an independent contractor, and not an employee, of catering firm, and he was not entitled to compensation. Bates v. Industrial Accident Commission of Cal., 156 Cal.App.2d 713, 320 P.2d 167, 171.

Cal.App.1957. Cit. in sup. Caddies under direction of golf players and paid and employed by them for one round of golf were held employees of operators of golf course. Manchester Ave. Co. v. Stewart, 319 P.2d 467, 468, superseded 50 Cal.2d 307, 325 P.2d 457.

Cal.App.1956. Subsec. (2) quot. in case quot. in sup. Where, among other indicia of an employment relationship, a distributor of vacuum cleaners retained the right to discharge summarily his house-to-house salesmen and crew managers, although permitting them a great freedom in their activities, he was liable to pay state unemployment tax, the salesmen being employees, rather than independent contractors. Bevan v. California Employment Stabilization Commission, 139 Cal. App.2d 668, 294 P.2d 524, 533.

Cal.App.1956. Sub. 2 quot. in case quot. in sup. Where, among other indicia of an employment relationship, a distributor of vacuum cleaners retained the right to summarily discharge his house-to-house salesmen and crew managers, although permitting them a great freedom in their activities, he was liable to pay state unemployment tax. Bevan California Employment Stabilization Commission, 139 Cal.App.2d 668, 294 P.2d 524, 533.

Cal.App.1956. Cit. in sup. A jury could find that a college district was liable to student for injuries caused by the negligence of flying school pilot with whom it had arranged, subject to its right of discharge, to give certain detailed instructions during the optional practical training students were to receive from him as part of the college's aeronautical course. Grover v. San Mateo Junior College District, 146 Cal.App.2d 86, 303 P.2d 602, 606.

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Cal.App.1956. Sub. 1 cit. in sup. Air line not liable for damages caused by mechanic's operation of private vehicle on his day off while moving to a new place of work for the air line which had no right to control the details of the transportation. McVicar v. Union Oil Co., 138 Cal.App.2d 370, 292 P.2d 48, 50.

Cal.App.1956. Subsec. (1) cit. in sup. An airline was not liable for damages caused by mechanic's operation of private vehicle on his day off while moving to a new place of work for the airline which had no right to control the details of the move. McVicar v. Union Oil Co., 138 Cal.App.2d 370, 292 P.2d 48, 50.

Cal.App.1956. Sub. 2 quot. in case quot. in sup. Where the witness, in answer to a help wanted ad, agreed to work for the defendant in the servicing of his dispensers at the locations he chose to place them and subject to his right of discharge, the fact that in later receipting the money she gave him by way of a cash bond he stated she was leasing the dispensers could in no way effect the trial court's finding him criminally liable under a statute for mishandling employment bond money. People v. Keefer, 146 Cal.App.2d 726, 304 P.2d 243, 247.

Cal.App.1956. Subsec. (2) quot. in sup. When witness, who, in answer to a help-wanted ad, had agreed to work for defendant in the servicing of his dispensers and who had agreed to put up a bond to cover the money and stock she would be handling, discovered, upon payment of the bond, that she had been defrauded and signed a three-year lease for the dispensers, the defense that witness was an independent contractor was of no avail. People v. Keefer, 146 Cal.App.2d 726, 304 P.2d 243, 247.

Cal.App.1953. Com. c, subsec. 1 quot. in part in sup. Trucker who owned his own line and rig and who was free to employ other to drive it and who carried his own public liability insurance, and who was free to terminate contract upon completion

of the haul in question, was held to be an "independent contractor" and not an employee of company. Skelton v. Fekete, 120 Cal.App.2d 401, 261 P.2d 339, 344.

Cal.App.1952. Cit. in sup. The employee-employer relationship is basis of requirement for contribution under Unemployment Insurance Act, and principal for whom services are rendered by independent contractor did not come within such act. Bemis v. People, 109 Cal.App.2d 253, 240 P.2d 638, 644.

Cal.App.1950. Sec. and com. i cit. in sup. In action for personal injuries as a result of being struck by automobile operated by wholesale and retail newspaper distributor, jury could properly find that operator of vehicle was servant, rather than independent contractor, of defendant newspaper publisher and that operator was within scope of employment at time of accident, even though at precise moment of accident operator had just taken companion who accompanied him on his route home and was going in opposite direction from his home in order to get magazines. Moeller v. De Rose et al., 222 P.2d 107, 111.

Cal.App.1948. Quot. in case which is cit. in sup. Evidence that hotel manager supervised work and was able to fire workmen sustained finding of Industrial Accident Board that two men hired by the hour to clean and replant hotel garden were employees of the hotel and not independent contractors, though they considered themselves "partners". California Compensation Ins. Co. v. Industrial Accident Commission et al., 192 P.2d 477, 481, affirmed on rehearing 86 Cal.App.2d 861, 195 P.2d 880, 884.

Cal.App.1948. Quot. in sup. Where workmen were hired to clean and replant hotel garden and hotel manager who paid them by the hour retained power to discharge them and supervise their work, workmen were employees rather than independent contractors, although they considered themselves partners. California Compensation Ins. Co. v. Industrial Accident Commission et al., 86 Cal.App.2d 861, 195 P.2d 880, 884.

Cal.App.1946. Cit. in sup. Where real estate brokers and salesmen entered into an agreement with company to devote their entire time and energies to sell company's properties, and company could discharge them at will without cause, company furnishing instrumentalities and place of work, the brokers and salesmen were employees within Unemployment Insurance Act for whom company was required to make employment compensation contributions. California Employment Stabilization Commission v. Norins Realty Co., 169 P.2d 955, 958.

Cal.App.1946. Quot. in sup. Former employees to whom garageman leased space to conduct automobile repair and paint business and sheet metal business at their own risk and without supervision by lessor, furnishing their own hand tools and supplies, were independent contractors and not employees, even though lessor received 50 percent of gross income weekly, could inspect books and control extension of credit, and lessees were required to repair all automobiles requested by lessor. California Employment Stabilization Commission v. Lund, 76 Cal.App.2d 567, 173 P.2d 379, 382.

Cal.Super.

Cal.Super.1980. Quot. in sup. The plaintiff model sued the defendant photographer for damages when the defendant failed to pay the plaintiff promptly. The defendant had told the plaintiff that he would be fired unless he followed instructions. The plaintiff worked for two hours, according to the defendant's instructions. The plaintiff billed the defendant immediately after the session but, despite repeated requests, did not get paid until five months later. The trial court rendered judgment for the defendant because it found that the plaintiff was an independent contractor, rather than an employee, and that the plaintiff could not expect payment upon completion of the job because of the habit and custom of the profession. This court reversed and held that the plaintiff was an employee. The court found that because the defendant had a right to exercise complete control over the plaintiff's work including control of movement, dress, hours, place of work and firing, the plaintiff should be characterized as an employee and not as an independent contractor. The court further found that the employer had a duty to pay wages promptly according to statutes, case law and public policy. Zaremba v. Miller, 113 Cal.App.3d Supp. 1, 169 Cal.Rptr. 688, 689.

Conn.

Conn.1998. Cit. in diss. op., cit. in ftn. to diss. op. Surviving spouse of murdered taxicab driver filed workers' compensation claim to recover survivor benefits. Workers' compensation commissioner's denial of benefits was affirmed by the compensation review board, and the appellate court also affirmed. Affirming, this court held that, under the "right to control" test, decedent, who drove his cab pursuant to an owner-operator agreement with taxicab company, was an independent contractor, rather than an employee, within the meaning of the Workers' Compensation Act, and thus plaintiff was not entitled to survivor benefits. The dissent argued that reversal was required because the workers' compensation commissioner did not properly review, under Restatement (Second) of Agency § 220(2), which was substantially the same as its predecessor in the first Restatement, all of the circumstances of decedent's work relationship to determine decedent's true status at the time of his fatal injury. Hanson v. Transportation General, Inc., 245 Conn. 613, 628, 629, 716 A.2d 857, 865.

Conn.1941. Cit. in sup. Salesmen of a brokerage house who obtain orders, are paid on a commission basis and use the facilities of brokerage house, are employees under Unemployment Compensation Act. Robert C. Buell & Co. v. Danaher, 127 Conn. 606, 610, 18 A.2d 697, 699.

Conn.1939. Sec. cit. and com. c quot. in part in sup. The general agent of a life insurance company who pays all his expenses, exercises his own judgment as to insurance prospects, receives as compensation a commission on the premiums paid, and permits the company to prescribe general rules of conduct in representing the company, is an independent contractor. Northwestern Mutual Life Ins. Co. v. Tone, 125 Conn. 183, 190, 195, 4 A.2d 640, 643, 645, 121 A.L.R. 993, 999, 1001.

Del.

Del.1968. Cit. in sup. The plaintiffs, husband and wife, sued the defendant used car dealer for injuries received by the plaintiff wife in an auto collision in negligence. The defendant had hired an unknown man to drive an auto he had purchased at an auto auction in Bordentown, New Jersey, to his lot in Wilmington, Delaware, for $10.00. This man ran the auto into the rear of the plaintiffs' auto during the trip and subsequently disappeared. Although the defendant hired the man for a single job, paid him a flat rate, and did not dictate any special route for him to follow, the court held that the defendant had a sufficient right to control the man to render the latter his servant, and it affirmed a judgment for the plaintiffs. Melson v. Allman, 244 A.2d 85, 87.

Fla.

Fla.1995. Cit. generally in ftn. A street vendor who was injured when struck by a car while selling a certain publisher's newspapers sued the newspaper for workers' compensation benefits. Trial court held that vendor was not entitled to benefits because he was neither a direct nor a statutory employee of the newspaper. Appellate court affirmed. Answering a certified question, this court held that a prior case, which held that a newspaper was not vicariously liable for personal injuries to a third party caused by the negligence of a newspaper delivery person while delivering papers on his motorcycle because the delivery person was an independent contractor, remained viable. There was insufficient evidence of an agreement or a practice by the parties, particularly the vendor and the newspaper, to mandate a finding as a matter of law that there was an employer-employee relationship between them. Keith v. News & Sun Sentinel Co., 667 So.2d 167, 169.

Fla.1945. Cit. in sup. One who contracted to cut and load logs on corporation's trucks for $25 per 1000 feet and to furnish his own help and tools was an independent contractor and not an employee within Workmen's Compensation Act. Peterson v. Highland Crate Co-op., 156 Fla. 539, 23 So.2d 716.

Fla.1941. Sec. and coms. a and b quot. and fol. Purchaser of citrus fruit for fruit packing company was employee and not independent contractor when company determined price, amount, time of delivery and paid for fruit purchased. Magarian v. Southern Fruit Distributors, 146 Fla. 773, 776, 1 So.2d 858, 860.

Fla.App.

Fla.App.1990. Subsec. (2)(b) cit. in case quot. in conc. op. In a lawsuit against a newspaper, the trial court directed a verdict for the defendant, on the ground that its home delivery carrier was an independent contractor and not an employee of the defendant. This court affirmed. The specially concurring opinion suggested that the amount of control of the delivery person by the business entity should be the key factor in distinguishing an employee from an independent contractor and that the degree of control was so considerable in this case that if such a standard were applied to all other business entities today there would be very few true employees and a vast number of independent contractors. Walker v. Palm Beach Newspapers, Inc., 561 So.2d 1198, 1199, dismissed 576 So.2d 294 (Fla.1990).

Fla.App.1983. Quot. in case quot. in sup. A physician was affiliated part-time with a medical clinic for two years without an employment agreement, and full-time for the following four years with an employment agreement. Upon termination, he tendered his shares of stock in the clinic to the clinic for repurchase. They were worth the price he paid if he was considered to be employed for less than five years, but worth the fair market value if he was considered employed for more than five years. The trial court disallowed evidence showing independent contractor status for the first two years of affiliation. This court reversed, holding that the primary test for an employer-employee relationship was whether the person being served exercised control over the performer's manner of work, not just the result. Moles v. Gotti, 433 So.2d 1380, 1381-1382.

Fla.App.1969. Cit. in ftn. in sup. In a traffic accident case, the plaintiffs sued, among others, the defendant, who had supplied a trailer part of a tractor trailer rig to another co-defendant, Hart. The court reversed the entry of summary judgment for the defendant on the grounds that there was an issue of fact whether an employer-employee relationship existed between the defendant and Hart. Foster v. Lee, 226 So.2d 282, 284.

Fla.App.1963. Quot. in case quot. in diss. op. When all the factors necessary to determine the relationship between defendant and driver-owner of a truck were established, and factors led to the conclusion that, as a matter of law, defendant was not an employer of driver-owner, trial court was correct in granting summary judgment for defendant in suit by plaintiff who had been involved in collision with truck. Bassell v. Al Landers Dump Trucks, Inc., 148 So.2d 298, 299.

Fla.App.1963. Cit. in sup. In action against defendants' grocery store operator and security guard for injuries sustained by plaintiff when shot by guard when manager of grocery store operator called in guard to detain plaintiff on suspicion of shoplifting, issue of whether guard was an independent contractor or employee of store operator should have gone to jury. Gregg v. Weller Grocery Co., 151 So.2d 450, 451.

Ga.App.

Ga.App.1936. Subsec. 1 quot. and com. c quot. in part in sup. Railroad was not liable to a striker who, in picketing cotton mill, was obstructing the railroad siding and who was injured by the application of reasonable force administered, at the request of railroad conductor, by police. Kent v. Southern Ry. Co., 52 Ga.App. 731, 736, 184 S.E. 638, 640.

Idaho

Idaho, 1949. Com. c quot. in sup. 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 98, 212 P.2d 397, 402.

Ill.

Ill.1954. Com. b cit. in sup. Where claimant injured repairing door for garage operator, was employed only for that task, remained unrestricted in the means of accomplishing his result, supplied his own tools and charged materials purchased to the operator pursuant to the custom of local contractors, he was an independent contractor and not entitled to workmen's compensation benefits. Henn v. Industrial Commission, 3 Ill.2d 325, 121 N.E.2d 492, 494.

Ill.1954. Com. (b) cit. in sup. Where plaintiff was injured while building a garage for defendant and sued him under state workmen's compensation statute, because plaintiff was left entirely unrestricted as to methods and materials to be employed and was to work at his own convenience, plaintiff was an independent contractor and was not entitled to compensation. Henn v. Industrial Commission, 3 Ill.2d 325, 121 N.E.2d 492, 494.

Ill.1954. Sub. 2 cit. in sup. Where intern's contract with hospital provided that, in consideration for maintenance and an allowance he was to devote his full time to hospital's work and be subject to its regulations, control and right to discharge, he was an employee of hospital entitled to workmen's compensation benefits for injuries received due to hospital's negligence while assisting a surgeon in the operating room and, therefore, precluded from bringing a tort action against hospital. Nordland v. Poor Sisters of St. Francis, 4 Ill.App.2d 48, 123 N.E.2d 121, 126.

Ill.1952. Com. (1) b and sub. 2 (a-i) cit. in sup. In proceeding under workmen's compensation act by employee-claimant against service company and individual as alleged employers, evidence sustained finding that service company, to which individual contracted to furnish carpenter help in remodeling its grain elevator, was employer of claimant, who was one of carpenters furnished by individual. Henry et al. v. Industrial Commission et al., 412 Ill. 279, 106 N.E.2d 185, 187.

Ill.App.

Ill.App.1954. Subsec. (2) cit. in sup. In action to recover for injuries sustained by plaintiff while he was an intern assisting surgeons in an operation conducted at defendant hospital when an anesthetic machine exploded, plaintiff was found to be an employee of defendant, rather than an independent contractor, and the suit was properly dismissed by the trial court for want of jurisdiction, since no controverted question of fact was involved, because workmen's compensation law controlled plaintiff's recovery. Nordland v. Poor Sisters of St. Francis Seraph of Perpetual Devotion, 4 Ill.App.2d 48, 56, 123 N.E.2d 121, 126.

Ill.App.1950. Quot. in sup. Contractor hired by railroad to repair piling clusters under railroad bridge was independent contractor and not servant of railroad for purposes of determining whether Federal Employers' Liability Act applied in railroad's employee's action against railroad as a result of contractor's negligence, where contractor was to, and did, furnish all labor, tools, equipment and other materials, and railroad, who had no facilities of its own to do work, agreed to furnish pilings and steel walkway. Lees v. Chicago & N.W. Ry. Co., 339 Ill.App. 227, 89 N.E.2d 418, 421, cause remanded 409 Ill. 536, 100 N.E.2d 653.

Ill.App.1938. Subsec. 2 quot., com. c quot. in part and com. b cit. as the leading authority on the subject. A towing company, which runs an independent repair business of its own, and which is frequently engaged by a finance company to tow repossessed automobiles to the garage of the finance company, and which tows the cars in any manner it deems best, is an independent contractor and not a servant of the finance company. Ryan v. Associated Inv. Co., 297 Ill.App. 544, 549, 550, 18 N.E.2d 47, 50.

Ind.App.

Ind.App.1942. Subsec. 2 quot. and fol. 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, 543, 39 N.E.2d 822, 829.

Iowa

Iowa, 1970. Cit. in sup. After working on the plaintiff's car gratuitously and with the plaintiff's knowledge and consent, the plaintiff's son and a friend took the car out on a highway at night to test it. They drove onto the highway at a low speed, with the friend following the plaintiff's son at a short distance in his own car. The defendant hit the friend's car, which hit the plaintiff's car. The trial court found the plaintiff's son negligent for failing to keep a lookout. The court held that the son was an agent of the plaintiff, so that the son's negligence could be imputed to the plaintiff to bar recovery. Duffy v. Harden, 179 N.W.2d 496, 502, 503.

Iowa, 1954. Sec. and sub. 2, cl. g cit. in sup.; com. b quot. in sup.; sub. 2, cl. i cit. in dict. Where owner of trucks contracted to perform for construction company at a fixed rate per trip, supplying his own drivers and paying all expenses, there was sufficient evidence to support commissioner's finding that owner was an independent contractor not entitled to workmen's compensation benefits for injuries sustained while driving one of the trucks. Hassesbroch v. Weaver Const. Co., 246 Iowa 622, 67 N.W.2d 549, 553, 555.

Iowa, 1954. Sec. and subsec. (2) (g) cit. in sup.; com. b quot. in sup.; subsec. (2)(i) cit. in dictum. Where owner of truck contracted to perform for construction company at a fixed rate per trip, supplying his own drivers and paying all expenses, there was sufficient evidence to support commissioner's finding that owner was an independent contractor not entitled to workmen's compensation benefits for injuries sustained while driving one of the trucks. Hassessbroch v. Weaver Const. Co., 246 Iowa 622, 67 N.W.2d 549, 553, 555.

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

Iowa, 1941. Cit. in sup. Taxicab driver is employee of cab company and not independent contractor when driver pays sum for use of cab and retains all collections above that sum but company regulates details of service. Kaus v. Unemployment Compensation Commission, 230 Iowa 860, 864, 299 N.W. 415, 418.

Kan.

Kan.1942. Subsec. 1 and subsec. 2 (e-h) quot. in sup. Truck driver was not servant of owner of posts when driver transported one load and was paid by job. Sims v. Dietrich, 155 Kan. 310, 313, 124 P.2d 507, 509.

Ky.

Ky.1971. Subsec. (2) cit. in sup. The plaintiff, administratrix of the estate of the deceased mechanic who was killed when struck by a car on a return trip to his garage, brought this action against the defendant insurance company to recover the benefit of a policy, issued to a timber company, which provided a benefit for accidental death of any employee of the timber company. The court affirmed a judgment dismissing the claim because the following facts indicated that the deceased was not an employee of the timber company: the specific work for which the deceased was hired was the welding of broken parts of a bulldozer; the timber company did not purport to exercise control over the details of how the welding was done, but only over what result was desired; and the return trip to the deceased's garage was for the purpose of accomplishing the specific work project satisfactorily. Mullins v. Western Pioneer Life Insurance Company, 472 S.W.2d 494, 495.

Ky.1963. Cit. in disc. Crane operator was servant of defendant engaged in business of renting mobile cranes and furnishing operators, when, at construction site, he was operating crane rented to contractor. Fisher Equipment Co. v. West, 365 S.W.2d 319, 321.

Ky.1961. Subsec. (2) cit. in disc. In a workmen's compensation proceeding the court held that claimant, a coal mine foreman, who entered into contract with the defendant coal company, whereby foreman and another, after paying wages to miners, received balance of fund based on amount of coal removed from the mine and delivered to the company, was an employee of the company under the Workmen's Compensation Act and the approach used in determining the relationship is broader and more favorable to the employer than the approach used in determining relationship of principal and agent in tort actions. Cove Fork Coal Co. v. Newcomb, 343 S.W.2d 838, 839.

Ky.1958. Cit. in sup. Where plaintiff was injured by defendant's truck while parties were engaged in work-swapping to harvest their tobacco crops, it was a jury question whether control or the right of control by defendant existed, in order to determine existence of employer-employee relationship. Kentucky Farm Bureau Mutual Ins. Co. v. Snell, 319 S.W.2d 462, 464.

Ky.1957. Cit. in dict. Where a coal company contracted with groups of miners to mine its coal rights with its capital equipment in return for a rate per ton of merchantable coal only, permitting the men complete freedom as to how, when and as to what part of the mine to work, the company was not required to pay the state unemployment tax. Sturgill v. Barnes, 300 S.W.2d 574, 577.

Ky.1956. Sub. 2 quot. in sup. stressing cl. b, d and h. Where there was evidence that the owner of a crane as part of its business leased a crane and skilled operators to a manufacturer for his use in constructing plant facilities in which operation the manufacturer coordinated the crane's activities with the mechanical assembly, the jury could find that the owner was still liable for injuries to another workman caused partly by the negligence of its operator. Ambrosius Industries v. Adams, 293 S.W.2d 230, 236.

Ky.1956. Subsec. (2) quot. in sup. stressing cl. b, d, and h. In action brought by mechanic against two corporations, for personal injuries received while assembling machinery purchased by one of the corporate defendants from mechanic's general employer, the court held that the servant of the machinery-purchasing corporation was negligent, but regarding the second corporation, which had leased a crane to the machinery purchasing corporation and supplied operators the court held that the crane operators were not loaned employees of the lessee of the crane and the lessor was liable for their negligence. Ambrosius Industries v. Adams, 293 S.W.2d 230, 236.

Ky.1955. Sub. 2 cit. in sup. Professional architect, hired by tobacco sales company to design and supervise the construction of a warehouse in consideration for a lump sum to be paid on basis of an amount of hours and at a rate to be set by himself which was not to be diminished by payroll deductions, was an independent contractor not covered by workmen's compensation upon which roles he had not registered during his employment. New Independent Tobacco Warehouse, No. 3, Inc. v. Latham, 282 S.W.2d 846, 848.

Ky.1955. Subsec. (2) cit. in sup. Professional architect, hired by tobacco sales company to design and supervise the construction of a warehouse in consideration for a lump sum to be paid on basis of an amount of hours and at a rate to be set by himself which was not to be diminished by payroll deductions, was an independent contractor not covered by workmen's compensation for which he had not registered during his employment. New Independent Tobacco Warehouse, No. 3, Inc. v. Latham, 282 S.W.2d 846, 848.

Ky.1955. Quot. in sup. Car dealer liable for the negligent operation of automobile taken out by salesman for demonstration purposes, although in violation of the dealer's general rules conditioning the use of vehicles for this purpose. Sam Horne Motor & Implement Co. v. Gregg, 279 S.W.2d 755, 756, 153 A.L.R.2d 626.

Ky.1955. Quot. in sup. Car dealer was liable for the negligent operation of automobile taken out by salesman for demonstration purposes, although in violation of the dealer's general rules conditioning the use of vehicles for this purpose. Sam Horne Motor & Implement Co. v. Gregg, 279 S.W.2d 755, 756, 153 A.L.R.2d 626.

Ky.1943. Com. c quot. in part in sup. Cab owner who collected papers at station and delivered them to different places is independent contractor and publishers who hired him are not liable for injuries sustained through his negligence. Courier Journal & Louisville Times Co. v. Akers, 295 Ky. 745, 748, 175 S.W.2d 350, 352.

Ky.1939. Cit. in sup. A consignee of an oil company is not an employee of the company under the Unemployment Compensation Act when the consignee markets the products, bears all the expenses, pays such wages to his employees as he desires and receives a fixed commission on his sales. Barnes v. Indian Refining Co., 280 Ky. 811, 818, 134 S.W.2d 620, 624.

La.App.

La.App.1958. Quot. as relied on by defendant. Where defendant life insurance company's salesman was engaged in making call upon prospective policyholder when automobile he drove was in collision with automobile driven by plaintiff wife, he was acting in course and scope of employment and thus met essential requirement of employment relationship. Martin v. State Farm Mutual Automobile Ins. Co., 108 So.2d 21, 23, 24.

La.App.1953. Quot. in sup. Dump truck operator whom gravel pit operators hired to haul gravel on per yard basis, and for number of hours and on days chosen by dump truck operator, and who was given no instructions by operators of gravel pit other than suggestion that headlights be allowed to burn during daylight because of dusty road conditions, and from whose pay gravel pit operators made no deductions other than for workmen's compensation coverage, was not an employee of gravel pit operators, and gravel pit operators were not liable for operator's negligent operation of truck. Amyx v. Henry & Hall, 69 So.2d 69, 73, affirmed in part and reversed in part 227 La. 364, 79 So.2d 483.

Md.

Md.1958. Cit. in sup. In action for injuries sustained by plaintiff when pinned between front end of truck and guardrail of parking lot, truck driver was liable under law of respondent superior, for negligence of mechanic who started truck. Greer Lines Co. v. Roberts, 216 Md. 69, 139 A.2d 235, 240.

Md.1958. Cit. in case cit. in sup. In workmen's compensation case, alleged fact that bargain for performance of work had been made with “team,” of which claimant was senior member, was not controlling, and it was for jury to say whether claimant was an independent contractor or an employee of defendant from whom he had solicited work as a sheetrock fastener. Snider v. Gaultney, 218 Md. 332, 146 A.2d 869, 871.

Md.1956. Cit. in dict.; sub. 2, cl. h and i quot. in sup. Where there was evidence that the deceased, who died in a logging accident, was engaged exclusively by a lumber company for twenty-two years in the cutting of its timber over which operation the company exercised the right to control the area to be cut, the specifications and the wastage, was paid on a tonnage basis rather than contract rate per job and was subject to the right of discharge at will, his wife's right to recover workman's compensation benefits was properly submitted to the jury. Charles Freeland & Sons v. Couplin, 211 Md. 160, 126 A.2d 606, 611.

Md.1956. Sec. cit. in dictum; subsec. (2)(h) and (i) quot. in sup. Where there was evidence that the deceased, who died in a logging accident, was engaged exclusively by a lumber company for twenty-two years in the cutting of its timber over which operation the company exercised the right to control the area to be cut, the specifications and the wastage, was paid on a tonnage basis rather than contract rate per job and was subject to the right of discharge at will, his wife's right to recover workman's compensation benefits was properly submitted to the jury. Charles Freeland & Sons v. Couplin, 211 Md. 160, 126 A.2d 606, 611.

Md.1948. Com. i cit. in sup. Where hauling contractor hired trucker who owned his own truck to haul materials for third party with whom contractor had contract, jury could properly find that trucker was servant of contractor and not independent contractor, thus rendering contractor liable for negligence of trucker. Maryland Casualty Co. v. Sause, 190 Md. 135, 57 A.2d 801, 803.

Md.1942. Com. c quot. and fol. Insurance agent was not in employ of company for which he sold industrial insurance in debit area when he injured pedestrian while driving car owned by his wife and for which he paid all expenses. Henkelman v. Metropolitan Life Ins. Co., 180 Md. 591, 601, 26 A.2d 418, 423.

Md.1936. Cit. in sup. A salesman who maintained his own automobile and solicited orders whenever he wished under no control of dealer, and whose compensation was commission only, was an independent contractor, and dealer was not responsible for negligent operation of automobile. 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.1954. Cit. in diss. op. In a workmen's compensation case where a truck owner operated his own truck in hauling gravel and was found not to be covered by the workmen's compensation statute, degree of control and factual indicia of control required to constitute one an employee as that term is used in the compensation statute involve considerations not present when confronted with the same issues pertaining to the vicarious liability of the master for the acts of his servant. Ferullo's Case, 331 Mass. 635, 121 N.E.2d 858, 864.

Mass.1954. Sub. 2 cit. in diss. op. Statute extending workmen's compensation coverage to any person using any vehicle, with his employer's consent in performance of employer's business only applies where there is an existing general employment relationship between the parties and not where it was clear that injured truck owner was an independent contractor as to defendant to whom he hired the use of his truck and services. Ferullo's Case, 331 Mass. 635, 121 N.E.2d 858, 864.

Mass.1953. Cit. in sup. Where an action against a racing association for an assault made upon the plaintiff, a business invitee, at the defendant's track, by the racing commission's steward and two police officers, is tried with an action against the police officers involved, a charge which does not distinguish between the liability of the defendant as a principal and of the police as individuals, and which fails to instruct that the defendant is not liable unless it had the right to control the steward or officers, is inadequate, misleading and prejudicial. Sowan v. Eastern Racing Ass'n, 330 Mass. 135, 111 N.E.2d 752, 756.

Mass.1945. Cit. 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. Barnes, 317 Mass. 721, 60 N.E.2d 82-84.

Mass.1943. Subsec. 2 cit. in sup. Employer was not liable for personal injuries sustained by woman engaged to do the laundry and close a summer home, although injuries were sustained through negligence of employer's servants, since duties were subject to control and direction of employer and hence injured woman was not an independent contractor. Bell v. Sawyer, 313 Mass. 250, 252, 47 N.E.2d 1, 2.

Mass.1940. Subsec. 1 and com. c cit. in sup. Medical examiner for life insurance company is agent of company but not its servant. Giannelli v. Metropolitan Life Ins. Co., 307 Mass. 18, 20, 29 N.E.2d 124, 126.

Mass.1940. Com. c 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.

Mich.

Mich.1956. Not. fol. in case quot. in sup. of diss. op. Photograph retoucher who performed piecework for a photograph studio at home with her own equipment and was required only to meet studio's time deadlines and standards of quality not an employee within the meaning of state unemployment statute. Powell v. Appeal Board of Mich. Employment Security Commission, 345 Mich. 455, 75 N.W.2d 874, 886.

Mich.1956. Cit. in sup. in diss. op. Where a photograph negative retoucher did retouching at her home for owner of photograph studio, the retoucher was an independent contractor within the meaning of the Michigan Employment Security Act. Powell v. Appeal Board of Michigan Emp. Sec. Comm'n, 345 Mich. 455, 75 N.W.2d 874, 876.

Mich.1955. Not. fol. in case quot. in sup. of diss. op. Where trucking company, who contracted with truck owners to use their services as drivers in the furtherance of its business, paid in return a percentage of the tariff received per haul leaving to the owners the payment of operation expenses and choice of routes and permitted owners to reject his non-profitable hauls and accept loads from others, there was sufficient evidence to find that company was not subject to pay state unemployment contributions. Pazan v. Michigan Unemployment Compensation Commission, 343 Mich. 587, 73 N.W.2d 327, 331, certiorari denied Deskin v. Pazan, 350 U.S. 1014, 76 S.Ct. 659, 100 L.Ed. 873.

Mich.1955. Cit. in case quot. in diss. op. When plaintiff's liability for unemployment compensation contributions on services of truckers who operated their own trucks in furtherance of plaintiff's business turned on question whether truckers were “employees” or “independent contractors,” court concluded on basis of evidence presented that truckers were independent contractors, whose service was not included as employment. Pazan v. Michigan Unemployment Compensation Comm'n, 343 Mich. 587, 595, 73 N.W.2d 327, 331, certiorari denied 350 U.S. 1014, 100 L.Ed. 873, 76 S.Ct. 659.

Mich.1955. Sub. 2 cit. in dict. Company in business of renting cranes and experienced operators over whom it retained the normal employment controls of compensation and termination was liable for operator's negligence in injuring employee of lessee contractor while moving the crane pursuant to directions of employees of another contractor on the same job to whom he was loaned for a short time. White v. Bye, 342 Mich. 654, 70 N.W.2d 780, 782.

Mich.1955. Subsec. (2) cit. in sup. In an action by employee of general contractor against lessor of crane and operator and against independent contractor for injuries sustained when struck by main boom load line of crane, when independent contractor borrowed crane and operator for a few minutes to transfer a reel of cable and independent contractor's employee directed movements of crane with hand signals, the ultimate test for the existence of the master-servant relationship was: “Whose work is being done?” White v. Bye, 342 Mich. 654, 70 N.W. 2d 780, 782.

Minn.

Minn.2020. Cit. in case cit. in ftn. Graduate student who participated in an unpaid clinical psychology practicum at hospital in order to complete university's graduation requirements sued hospital and university, alleging that the practicum training director discriminated against her based on her race and sex. The trial court granted hospital's motion to dismiss and university's motion for judgment on the pleadings. This court reversed in part and remanded, holding that student stated a claim against hospital for employment discrimination under the Human Rights Act. The court concluded that, while some courts had read into the common-law agency factors set forth in Restatement of Agency § 220 a requirement that a worker be compensated in order to be considered an employee, the absence of compensation did not bar student's employment-discrimination claim under the Human Rights Act as a matter of law. Abel v. Abbott Northwestern Hospital, 947 N.W.2d 58, 75.

Minn.1963. Cit. in sup. in ftn. In action of trustee for death of deceased against contractor, because deceased was a part-time truck driver, who drove his own truck for contractor on hourly basis, he was an “employee” who came within Workmen's

Compensation Act, rather than an independent contractor. Lindberry v. J. A. Danens & Son, Inc., 266 Minn. 420, 123 N.W.2d 695, 697.

Minn.1956. Sub. 2, cl. c and com. e cit. in ftn. in sup. Hospital liable for negligent burning of patient during the course of heat lamp treatments which, although prescribed by patient's physician, were administered by its employees pursuant to routine hospital procedures. Swigerd v. City of Ortonville, 246 Minn. 339, 75 N.W.2d 217, 222.

Minn.1956. Subsec. (2)(c) and com. (e) cit. in sup. in ftn. Hospital was liable for negligent burning of patient during the course of heat lamp treatments which, although prescribed by patient's physician, were administered by its employees pursuant to routine hospital procedures. Swigerd v. City of Ortonville, 246 Minn. 339, 75 N.W.2d 217, 222.

Minn.1955. Sub. 2, cl. g 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, 908.

Minn.1955. Subsec. (2)(g) 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, 908.

Minn.1951. Sec. cit. in sup. and com. b cit. in sup. in ftn. 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, 487.

Minn.1951. Sub. 2 quot. in sup. Where claimant for workmen's compensation had arrangement with store which obtained roofing job to do actual roof installation work, and claimant was paid for each job on completion, and materials for job were supplied and delivered by store, and, although claimant furnished his own tools, ladders and scaffolding and transported them from job to job in his own vehicle, store retained control over work and when it was to be performed, claimant was “employee” of store within meaning of Workmen's Compensation Act, rather than independent contractor. Graf v. Montgomery Ward & Co., 234 Minn. 485, 49 N.W.2d 797, 801.

Minn.1949. Cit. in sup. Contract carrier who operated commercial airline pursuant to contract with United States was not thereby rendered an agent or employee of United States so as to have benefit of governmental immunity, where jury, by examining contract as well as the acts of the parties to the contract, could have found that carrier was independent contractor. Gill v. Northwest Airlines, Inc., 228 Minn. 164, 36 N.W.2d 785, 788.

Minn.1946. Quot. in sup.; subsec. 2 cit. in sup. Where consulting engineer was retained to perform specialized services outside his regular full-time employment as a university instructor, and he rendered similar services for other firms at the same time, and determined himself whether service would be performed at home or at employer's plant, and work was done entirely without supervision and subject to control only as to results, no master-servant relationship existed between employer and engineer to bring employment within terms of the Employment and Security Act so as to require contribution to unemployment compensation funds. Castner v. Christgau, 222 Minn. 61, 24 N.W.2d 228, 231.

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 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.1958. Cit. and quot. in part in sup. In workmen's compensation proceeding against gravel company and its insurance carrier, evidence established that truck owner who was engaged by gravel company to haul gravel at so much per cubic yard was an employee and not an independent contractor. Wade v. Traxler Gravel Co., 232 Miss. 592, 100 So.2d 103, 108.

Miss.1954. Quot. in sup. Where plumbing company which engaged laborer to unload cars, had right to control laborer, exercised that right, and the unloading was part of company's regular business, relationship of master and servant existed. Mississippi Employment Security Comm'n v. Plumbing Wholesale Co., 219 Miss. 724, 731, 69 So.2d 814, 818.

Miss.1945. Quot. in sup. Where bank regularly employed janitor for wages on part-time basis, furnishing tools and supplies to be used by him, court could not find bank interested merely in net result of the employment, which would have established janitor as an independent contractor, but janitor was an employee within Unemployment Compensation Act notwithstanding that under terms of the contract bank had no control over details of the work, and that during the time janitor was not working for the bank he worked for another. Oxford v. Mississippi Unemployment Compensation Commission, 199 Miss. 97, 23 So.2d 534, 536.

Miss.1940. Cit. in sup. An independent contractor relationship and not one of agency was created when the principal was interested only in the result of the work and he had nothing to do with the manner and instrumentalities used in its performance. Parks v. Lynch, 195 So. 331.

Miss.1939. Com. c 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, 886.

Miss.1936. Sec., com. b and com. i cit. in sup. Petroleum company was liable to employee injured in driving defective delivery truck furnished by commission agent in charge of petroleum company's bulk sales station. Texas Co. v. Jackson, 174 Miss. 737, 751, 165 So. 546, 550.

Miss.1934. Sec. cit., clauses a, b, d, e, f, g, and h quot., and com. h cit. in sup. A commission agent in charge of petroleum company's bulk sales station was not an independent contractor, and the petroleum company was liable to driver of defective delivery truck although the agent furnished his own assistants and delivery truck. Texas Co. v. Mills, 171 Miss. 231, 243, 156 So. 866, 869.

Mo.

Mo.1957. Subsec. (1) quot. in dictum; com. c quot. in sup. Although the employee's superior requested an engineer to pick up his employer's radio broadcasting schedule on his trips from home to its transmission station where he officially began his work, he did so only if it was convenient, so the employer was not liable for plaintiff's injuries caused by the engineer's

negligent operation of his private automobile over which the employer had no right of control after he had picked up the next day's program. Stokes v. Four-States Broadcasters, Inc., 300 S.W. 2d 426, 430.

Mo.1957. Sub. 1 quot. in dict.; com. c quot. in sup. Where, although his superior requested an engineer to pick up his employer's radio broadcasting schedule on his trips from home to its transmitter station where he officially began his work, he did so only if, and at times, convenient, the employer was not liable for plaintiff's injuries caused by the engineer's negligent operation of his private automobile over which the employer had no right of control after he had picked up the next day's program. Stokes v. Four-States Broadcasters, Inc., _ Mo. _, 300 S.W.2d 426, 430.

Mo.1953. Sub. 2, cl. b cit. in sup. A contract between a distributor and a refining company entitled a "Bailment agreement", does not make the distributor an independent contractor as a matter of law because of the descriptive nomenclature of the contract, but the relationship depends upon the actual facts of the relationship. Frank v. Sinclair Refining Co. (Feilich v. Sinclair Refining Co.), 363 Mo. 1054, 256 S.W.2d 793, 798.

Mo.1953. Cit. in sup. A soliciting agent of a fire insurance company is an independent contractor and not an employee of the company and therefore the company is not liable to one who is injured when struck by an automobile driven by the soliciting agent. Glynn v. M.F.A. Mut. Ins. Co., 363 Mo. 896, 254 S.W.2d 623, 624.

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. 788, 792.

Mo.1953. Cit. in disc. In action by corporate employee, who was riding in corporate truck being driven by his father, who was also an employee of the corporation, against the corporation president for injuries sustained in accident which occurred during trip made at president's direction to pick up president's personalty on a non-working day, where compensation was made by president and the right to control the course of conduct on the trip was exercised by the president, jury could have found that the father was the agent of the president, thus making the president liable for the negligent torts of the servant in the course of his employment. Leidy v. Taliaferro, 260 S.W. 2d 504, 507.

Mo.1943. Cit. 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 with master and servant existed. Smith v. Fine, 351 Mo. 1179, 1194, 175 S.W.2d 761, 765.

Mo.1941. Clauses a and h cit. in sup. Driver of tractor owned by individual who leased it, with driver, to WPA is not servant of individual when operating on project where right to control is in foreman of WPA. McFarland v. Dixie Machinery & Equip. Co., 348 Mo. 341, 350, 153 S.W.2d 67, 71, 136 A.L.R. 516.

Mo.1941. Subsec. 2 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, 460.

Mo.1939. Com. c quot. in part in sup. An insurance company is not liable for the negligence of a salesman after he has finished his prescribed debit and is engaged in a personal errand preparatory to visiting a prospective applicant for life insurance. Snowwhite v. Metropolitan Life Ins. Co., 344 Mo. 705, 709, 127 S.W.2d 718, 721, citing sec. 485 but the quotation is from sec. 220, com. c.

Mo.1938. Cit. in sup. A life insurance agent employed on a regular debit but permitted to go outside this debit to sell insurance, who negligently injures another while returning from a trip outside the debit does not make his principal liable. Vert v. Metropolitan Life Ins. Co., 342 Mo. 629, 631, 632, 639, 117 S.W.2d 252, 256, 257, 116 A.L.R. 1381, 1387, 1388.

Mo.1937. Subsec. 2 quot. in full and com. c quot. in part 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, 845, 110 S.W.2d 726, 730.

Mo.1936. Subsec. 1 quot. and com. a, b, and c cit. and disting. Insurance company which engaged adjusting company to settle its claims was not liable for injuries negligently inflicted by adjusting company's president while driving to make an investigation. Kourik v. English, 340 Mo. 367, 377, 378, 100 S.W.2d 901, 905.

Mo.App.

Mo.App.1972. Subsec. (1) com. c cit. but dist. Plaintiff sought to recover for injuries sustained when a tractor owned by defendant struck him. The court held that there was no master-servant relationship between the tractor-owner, who was a concessionaire at a public park, and the tractor driver, who had appeared on the scene by chance and who had offered to assist the plaintiff in pulling a stalled vehicle without contemplation of pecuniary benefit from defendant, but rather out of concern over the advisability of defendant's driving the tractor while recovering from surgery. Cloninger v. Wolfe, 477 S.W.2d 440, 443.

Mo.App.1954. Cit. in disc. Where automobile dealer's actions in releasing attached vehicle and having it repaired were inconsistent with recognition of unauthorized contract with driver hired to drive vehicle across the country, under which he promised to be responsible for any damage, the court held that there was no ratification of such contract, and it was therefore inadmissible as evidence of dealer's right to control driver's means of operation in an action for injuries arising out of driver's negligence within the scope of his employment. Davison v. Farr, 273 S.W.2d 500, 505.

Mo.App.1954. Cit. in dict. Where automobile dealer's actions in releasing attached vehicle and having it repaired were inconsistent with recognition of unauthorized contract with driver hired to drive vehicle across the country, under which he promised to be responsible for any damage, there was no ratification of such contract, therefore making it inadmissible as evidence of dealer's right to control driver's means of operation in an action for injuries arising out of driver's negligence within the scope of his employment. Davison v. Farr, _ Mo.App. _, 273 S.W.2d 500, 505.

Mo.App.1948. Cit. in sup. in diss. op. Where landlord-owner of mule employed blacksmith to shoe mule under direction of tenant, landlord-owner was liable for injuries to blacksmith caused by tenant's negligent handling of mule. Panke v. Shannon, 207 S.W.2d 854, 860, 861, reversed 357 Mo. 1195, 212 S.W.2d 792.

Mo.App.1942. Subsec. 1 quot. and com. c quot. in part and fol. Manager of gasoline station is agent of gasoline company and not independent contractor when manager purchased all gasoline from oil company, advertised company's product and general manager of oil company supervised all details concerning operation of station. Brenner v. Socony-Vacuum Oil Co., 236 Mo.App. 524, 531, 158 S.W.2d 171, 174.

Mo.App.1941. Com. c and subsec. 1 quot. in sup. Debit collector for health and accident insurance company is not agent of company so as to impose liability on company for negligent operation of automobile owned and operated by collector when he has full discretion as to how to obtain business. Reiling v. Missouri Ins. Co., 236 Mo.App. 164, 174, 153 S.W.2d 79, 83.

Mont.

Mont.1939. Sec. cit. and com. c quot. in part in sup. A newspaper is not liable for the negligence of a carrier whose manner of delivering papers was limited only by a requirement that he be courteous and businesslike. Greening v. Gazette Printing Co., 108 Mont. 158, 170, 88 P.2d 862, 866.

Mont.1934. Cit. in sup. Employer is not responsible for injuries caused by its traveling salesman while driving an automobile which was owned by the salesman and operated at his own expense in his daily work and which, at the time of the accident, was being used to convey salesman's fiancee home from a dance. Harrington v. H.D. Lee Mercantile Co., 97 Mont. 40, 60, 33 P.2d 553, 558.

Neb.

Neb.1983. Cit. in case quot. in sup. A corporation brought this action against the state Department of Labor to relieve itself from unemployment compensation tax assessments resulting from the classification of a salesman as an employee. A written contract between the salesman and the corporation afforded the corporation almost no control over the salesman's activities. Consequently, when the salesman terminated the contract and filed a claim for unemployment compensation the corporation asserted that the salesman was an independent contractor and not an employee. After unsuccessfully petitioning the Department of Labor to recognize the salesman's independent contractor status the corporation appealed to the trial court. The trial court reviewed the facts and found the salesman to be an independent contractor. The Department of Labor appealed and this court affirmed the salesman's characterization as an independent contractor. The court rejected the Department of Labor's contention that the short list of statutory factors determining independent contractor status was controlling. The court found that the legislature had intended to codify the common law concept of independent contractor. The statutory definition was thus an illustrative, not exhaustive, list of the factors determining who was an independent contractor. The Restatement was quoted extensively to show other such factors and, after examining those factors, this court found the salesman to be an independent contractor. The corporation's lack of control over his activities proved decisive. The corporation was therefore not required to pay unemployment tax assessments for the salesman. A dissenting opinion would not have gone beyond the statutory language to define the meaning of independent contractor. Erspamer Advertising Co. v. Dept. of Labor, 333 N.W.2d 646, 649.

Neb.1956. Cit. in quot. from that part of former opinion upheld on substitution of new opinion. Peetz v. Masek Auto Supply Co., 161 Neb. 588, 74 N.W.2d 474, 477.

Neb.1955. Cit. in sup. Where there was evidence that auto supply company, although giving its salesman freedom in his activities, listed and for all purposes treated him as an employee, paying him a minimum monthly sum with travel expenses included and taxes deducted, jury could find company was liable for salesman's negligent operation of his private car while on his rounds of customers. Peetz v. Masek Auto Supply Co., 160 Neb. 410, 70 N.W.2d 482, 487.

Neb.1955. Cit. in sup. Whether salesman who operated his own automobile on the job at the time of collision with approaching truck driven by plaintiff's decedent was independent contractor or servant of auto supplier who was sued for damages arising out of the collision was a jury question, and court did not err in submitting evidence on this issue to the jury. Peetz v. Masek Auto Supply Co., 160 Neb. 410, 70 N.W.2d 482, 487, withdrawn 161 Neb. 588, 74 N.W.2d 474.

Neb.1942. Cit. in sup. Roofing team hired by lumber company to construct roofs was independent contractor when team employed own tools, was paid by finished product, and details of work were decided by them. Nollett v. Holland Lumber Co., 141 Neb. 538, 543, 4 N.W.2d 554, 557, citing pp. 485-487 which is s 220.

Neb.1940. Cit. in quotation in sup. Musician in an orchestra is not an employee of hotel where orchestra played. Hill Hotel Co. v. Kinney, 138 Neb. 760, 762, 295 N.W. 397, 398.

N.H.

N.H.1953. Cit. in sup. A lumberman who is subject to operator of lot's control or right to control and who works on said lot is an employee within the Workmen's Compensation Law in an action for injuries resulting in the death of the lumberman which was caused by a falling tree. Porter v. Barton, 98 N.H. 104, 95 A.2d 118, 119.

N.H.1939. Sec. and com. b cit. in sup. Where the facts are clear, it is a question for the court to determine whether an X-ray technician is the servant of a hospital or an independent contractor. Welch v. Frisbie Memorial Hospital, 90 N.H. 337, 340, 9 A.2d 761, 763.

N.J.

N.J.1991. Subsecs. (2)(a)-(2)(i) quot. in disc., subsecs. (2)(b), (2)(e), and (2)(h) and com. (c) cit. in disc. A company, alleging that its workers were not employees but independent contractors, disputed an audit by the state department of labor concluding that the company owed money to the unemployment compensation fund. The administrative law judge held that the workers were independent contractors and denied the department's claim, but the commissioner of the department ruled that the workers were employees. The intermediate appellate court affirmed. This court reversed and remanded, holding that there was insufficient evidence to support the commissioner's determination that the workers were employees operating under the company's control, since they were free to accept or reject jobs from the company or to work for the company's competitors, and the company did not select the workers for the job, provide them with fringe benefits, or withhold taxes. Carpet Remnant Warehouse v. Dept. of Labor, 125 N.J. 567, 593 A.2d 1177, 1183-1187, 1189.

N.J.Super.

N.J.Super.1979. Cit. in disc. The plaintiff sued a hospital for malpractice because he had been told by a doctor at the hospital that his wrist had not been fractured so he should go home but several months later, it was determined that the plaintiff had in fact fractured his wrist. The hospital moved for summary judgment arguing that whatever negligence existed was that of the physicians involved and because they were independent contractors it was entitled to a dismissal as a matter of law. The court stated that, in New Jersey, employment status is usually determined by the degree of control involved. However, in this instance, the issue of apparent authority was more applicable. The court held that in those cases where it is shown that a hospital, by its own actions, has held out a particular physician as its agent and/or employee and that a patient has accepted treatment from that physician under the reasonable belief that it is being rendered on behalf of the hospital, then the hospital will be liable for the physician's negligence. In this particular case, there was at least a permissible inference that the hospital held out these physicians as its employees. Therefore the defendant had not, as a matter of law, established that the physicians herein were independent contractors and the defendant's motion for summary judgment was accordingly denied. Arthur v. St. Peters Hospital, 169 N. J.Super. 575, 405 A.2d 443, 445.

N.J.Super.1958. Quot. in sup. Dealer who handled seller's trailers exclusively, but did not represent seller in any other way and received no compensation from seller, was not servant for service of process. Miklos v. Liberty Coach Co., 48 N.J. Super. 591, 138 A.2d 762, 768.

N.J.Super.1954. Sec. and com. i cit. in sup.; com. g cit. as a factor considered. Where drivers for local distributor of national soft drink manufacturer were subject to close supervision as to their time spent, appearance, and conformity to uniform conduct and practices in making their round of distributor's customers, they were employees for purposes of the State Anti-Injunction Act despite the existence of the factors, many of them contracted for, that would lead to the conclusion of an independent contractor relationship between the parties. Galler v. Slurzberg, 31 N.J.Super. 314, 106 A.2d 312, 314, 315, 316, affirmed 18 N.J. 466, 114 A.2d 260.

N.J.Super.1954. Cit. in dictum. In action for injunctive relief against picketing, salesman retained by distributor of soft drinks to service routes with trucks owned by defendant were employees within the contemplation of the Anti-Injunction Act, and injunctive relief was denied. Galler v. Slurzberg, 31 N.J. Super. 314, 106 A.2d 312, 316, affirmed 18 N.J. 466, 114 A.2d 266.

N.J.Super.1951. Cit. in sup. of conc. op. In action for injuries to plaintiff caused by alleged negligence of engineer in operating dinkey engine while moving freight cars on plaintiff's employer's property, whether engineer was servant of defendant, who was general employer of engineer, or plaintiff's employer depended on who had right to control how engineer ran engine, regardless of who directed which cars he should move and where he should move them. Devone v. Newark Tidewater Terminal Inc., 14 N.J.Super. 401, 82 A.2d 425, 428.

N.J.Super.1951. Cit. in sup. Where defendant employer leased crane to third party and supplied operator to operate it, and other employees of defendant were injured when boom appended to crane fell, and accident was due either to defect in crane at time of letting or negligence of operator, whether defendant was liable to plaintiff employees on theory of being negligent in supplying defective chattel which could become dangerous or theory of respondeat superior was for jury. Roberts et al. v. George M. Brewster, 13 N.J.Super. 462, 80 A.2d 638, 640.

N.J.Super.1950. Cit. in sup. Employee of service station operator was not agent or servant of owner of automobile so as to impose liability on owner for operator's employee's negligence in driving owner's automobile, where owner delivered automobile to operator for purpose of having automobile repaired and inspected, and employee of operator was driving automobile back to operator's service station after taking it for inspection. Ford et al. v. Fox et al., 8 N.J.Super. 80, 73 A.2d 270, 271.

N.J.Super.1950. Subs. 1 and 2(a-i) cit. in sup. and com. b quot. in sup. Designation of hauler as independent contractor in contract between hauler and dairy company as well as elements of hiring, control, direction and power of dismissal was sufficient to constitute hauler independent contractor; and thus dairy company was not liable for negligence of hauler's employees, notwithstanding fact that dairy company's name was painted on hauler's truck. Geary v. Simon Dairy Products Co., 7 N.J.Super. 88, 72 A.2d 214, 216.

N.M.

N.M.1940. Cit. in dictum. A life insurance agent traveling by automobile toward his district is not engaged in the company's business at that time. Stambaugh v. Hayes, 44 N.M. 443, 450, 103 P.2d 640, 645.

N.Y.

N.Y.2020. Quot. in conc. op., cit. in case cit. in conc. op. Delivery business that used a website and smartphone application to assign a courier to pickup and deliver customers' orders appealed a finding by the state board of unemployment insurance in favor of courier, arguing that it did not owe contributions to the unemployment fund on behalf of courier, because its couriers were independent contractors. The court of appeals reversed and remitted to the board for further proceedings. This court reversed and reinstated the decision of the board, holding that substantial evidence supported the board's determination that the delivery business exercised sufficient control over its couriers to render them employees. The concurrence argued for the application of the test set forth in Restatement of Employment Law § 1.01 for determining employee status, which considered factors such as whether a business effectively prevented its workers' entrepreneurial control over their services, noting that this test was based on similar tests set forth in Restatement of Agency § 220, Restatement Second of Agency § 220, and Restatement Third of Agency § 7.07. Matter of Vega, 149 N.E.3d 401, 411.

N.Y.1940. Cit. in dictum. The manner of payment may be considered in determining whether one is employee or independent contractor. In re Morton, 284 N.Y. 167, 171, 30 N.E.2d 369, 370.

N.Y.Sup.Ct.App.Div.

N.Y.Sup.Ct.App.Div.1958. Cit. in sup. in diss. op. In action to determine whether there is an arbitrable dispute within meaning of arbitration clause of collective bargaining agreement, where photographs of photographers were purchased by newspaper publisher, and photographers received no other remuneration from publisher, photographers did not come under collective bargaining agreement, which excluded from ambit of "employees" those whose photographs were purchased by the publisher, but were independent contractors under well-established legal principles. New York Mirror v. Potoker, 5 App.Div.2d 423, 171 N.Y.S.2d 748, 758, 761.

N.Y.Sup.Ct.App.Div.1958. Quot. in part in sup. In declaratory judgment proceedings by insurer against insured for decree that under terms of policy, which excluded coverage in employer-employee relationships, insurer was not obligated to defend any future action against the insured by the administratrix of a deceased infant and it was not liable for any damages which might be awarded in such action, evidence as to informal nature of relationship between insured and deceased was admissible. Travelers Indemnity Co. v. McDougall, 5 App.Div.2d 224, 171 N.Y.S.2d 460, 461.

N.Y.App.Div.

N.Y.App.Div.1938. Coms. a and b quot. in part in dissent in sup. An insurance salesman working in a debit area who injures another with his own automobile while returning home from making collections was not within the scope of his employment. Burdo v. Metropolitan Life Ins. Co., 254 App.Div. 26, 29, 4 N.Y.S.2d 819, 822.

N.Y.Cty.Ct.

N.Y.Cty.Ct.1955. Sub. 2, cl. d cit. in sup. Although paid on the tonnage basis rather than by the hour, unskilled dock workers who loaded and unloaded trucks at shipside under directions of truck drivers were not independent contractors subject to state business tax. People v. Caulfield, 207 Misc. 593, 139 N.Y.S.2d 869, 872.

N.Y.Sur.Ct.

N.Y.Sur.Ct.1944. Cit. in sup. Physician who was paid a monthly retainer by testatrix for professional services, but who remained free to maintain his office and to treat other patients, was not an employee of testatrix and was not included in provisions making bequest to each person in her employ at the time of her death. In re Walker's Estate, 185 Misc. 1046, 53 N.Y.S.2d 106, 111.

N.Y. City Ct.

N.Y. City Ct.1955. Subsec. (2)(d) cit. in sup. While fact that work performed by public loader is that of an unskilled common laborer is not necessarily conclusive in determining status of loader as an employee or business man subject to tax imposed on unincorporated business, great weight should be attributed to such fact. People v. Caulfield, 207 Misc. 593, 596, 139 N.Y.S.2d 869, 872.

N.C.

N.C.1963. Subsec. (2)(h) cit. in sup. A master, if he actually be such, cannot exonerate himself from his liability to a third person for injury resulting from negligence of a servant by the expediency of contracting with the servant that he is to be free of the master's control. Cooper v. Asheville Citizen-Times Publishing Co., Inc., 258 N.C. 578, 129 S.E.2d 107, 114.

N.C.1952. Cit. in sup. Evidence sustained finding that operator of bulldozer supplied by defendant construction company to clear plaintiff's land was employee of defendant rather than of plaintiff, and hence defendant was liable for damages incurred as result of negligent operation of bulldozer. Hodge et ux. v. McGuire et al. (Fingleton v. McGuire et al.), 235 N.C. 132, 69 S.E.2d 227, 229.

N.C.1939. Sec. and com. c quot. in part in dissent in sup. An insurance agent employed on a commission basis is not an employee within the meaning of the North Carolina Unemployment Compensation Act. Unemployment Compensation Commission v. Jefferson Standard Life Ins. Co., 215 N.C. 479, 489, 2 S.E.2d 584, 591.

N.D.

N.D.1941. Com. c quot. in sup. Life insurance "agent" who follows his own methods of obtaining business is independent contractor and not agent of company. Mutual Life Ins. Co. v. State, 71 N.D. 78, 85, 298 N.W. 773, 776, 138 A.L.R. 1115.

Ohio

Ohio, 1955. Cit. in dict. Defendant not liable on agency or estoppel grounds for injuries sustained as a result of the negligent operation of his car by a service station employee, who had previously performed this duty for defendant, driving vehicle from defendant's home to service station pursuant to prior agreement for servicing of the car. Councell v. Douglas, 163 Ohio St. 292, 126 N.E.2d 597, 600.

Ohio, 1955. Cit. in sup. Where owner arranged with service station for the servicing of his automobile, and it was agreed that an employee thereof would ride home with the owner and drive the automobile back to the station for servicing, the owner was not responsible for the negligence of the station employee in driving the automobile back to the station, because there was no control, and therefore no master-servant relationship, to make the owner liable under the doctrine of respondeat superior. Councell v. Douglas, 163 Ohio St. 292, 56 Ohio Op. 262, 126 N.E.2d 597, 600.

Ohio, 1943. Sec., Subsec. 1 and 2 and Subsec. 2, clauses a, b, c, d, e, f, g, h, and i 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.1940. Cit. in sup. An owner of properties who employs a workman during the workman's leisure time to repair the properties thereby enters into a master and servant relationship while the repairs are made. Ballato v. Industrians Sav. & Loan Co., 64 Ohio App. 339, 343, 28 N.E.2d 789, 791.

Ohio App.1936. Quot. in sup. In an action against interstate transportation company for injuries received in an accident the transportation company may introduce evidence to establish operator of truck was an independent contractor. Cushman Motor Delivery Co. v. Bernick, 55 Ohio App. 31, 36, 8 N.E.2d 446, 448.

Ohio App.1935. Sec. 220 et seq. cit. and sec. quot. in sup. Automobile salesman, who works on commission for company which does not control and has no right to control the selling methods, is an independent contractor and company is not liable to one injured by salesman's negligent driving of his own car bearing company's license plates on way to prospective purchaser at night. Plost v. Avondale Motor Car Co., 55 Ohio App. 22, 26, 8 N.E.2d 441, 443.

Okl.

Okl.1954. Cit. in dict. in case rel. on by plaint. but rejected by ct. Where operator of bulk petroleum station contracted with petroleum company to accept the responsibilities of an independent contractor yet to be still subject to company's control in

some details, there was a question for the jury whether the company was liable for the death of the operator arising out of a faulty heater supplied by company for operator's place of business. Keith v. Mid-Continent Petroleum Corp., 272 P.2d 371, 376.

Okl.1954. Cit. in dictum in case relied on by plaintiff but rejected. Where operator of bulk petroleum station contracted with petroleum company to accept the responsibilities of an independent contractor yet to be still subject to company's control in some details, there was a question for the jury whether the company was liable for the death of the operator arising out of a faulty heater supplied by company for operator's place of business. Keith v. Mid-Continent Petroleum Corp., 272 P.2d 371, 376.

Okl.1945. Cit. in sup. Newspaper distributor who by written contract agreed to perform acts contemplated in contract in such manner as he alone should determine, being responsible only for the result specified in the contract, was independent contractor and not servant of publisher, and hence publisher was not liable for injuries sustained by route carriers employed by distributor as result of distributor's negligent operation of his own automobile. World Publishing Co. v. Smith, 195 Okl. 691, 161 P.2d 861, 864.

Okl.1943. Subsec. (2), (a), and (h) cit. in sup. Where corporation in loaning servant and power shovel to state for use in connection with WPA project continued to pay servant, retained power of discharge but exercised no supervision over servant's performance of specific duties assigned by state and WPA and state had power to oust servant from its service and to supervise his immediate work, corporation was not liable for plaintiff's injuries resulting when servant negligently allowed rock to fall from shovel through cab of plaintiff's truck. Wylie-Stewart Machinery Co. v. Thomas, 192 Okl. 505, 510, 137 P.2d 556, 561.

Or.

Or.1948. Com. c quot. in sup. Where contract gave plaintiff exclusive right to sell defendant's products for which plaintiff was to receive a reasonable share of the profits above costs, but where due to plaintiff's financial weakness contract was modified to effect that defendant would assume costs of selling operations and plaintiff would receive 8% of sales prices, contract was sufficiently definite and modification did not reduce plaintiff's status from a joint venturer to an employee dischargeable at will; but because of his fiduciary duty to defendant, plaintiff had to account for secret profits received from other sales agent of defendant. Marnon v. Vaughan Motor Co., Inc., 184 Or. 686, 194 P.2d 992, 1021.

Or.1947. Cit. in dictum. Log hauler who furnished his own truck and hauled logs for logging company at stated prices per thousand, but who was subject to control of logging company which could terminate relationship at will without liability, who was not required to do specific piece of work but only such as company could provide from day to day when company wished to operate, and who rendered services exclusively for the company, was an employee rather than an independent contractor for workmen's compensation purposes. Bowser v. State Industrial Accident Commission, 182 Or. 42, 185 P.2d 891, 892.

Or.1936. Cit. in sup. Agreement between refining company and operator of truck to sell products and do servicing made the latter an agent of the company and not an independent contractor. Johnson v. Steele, 154 Or. 137, 152, 59 P.2d 237, 243.

Pa.

Pa.1958. Quot. in sup. Where prothonotary was not liable to one who was injured by negligence of indexing clerks in prothonotary's office in improperly indexing judgment note, bonding company, which signed prothonotary's bond as surety rather than as indemnitor, was not liable to the one injured. Commonwealth use of Orris v. Roberts, 392 Pa. 572, 141 A.2d 393, 398-399, 71 A.L.R.2d 1124.

Pa.1950. Sub. 2 cit. in sup. Where driver of truck hauled for anyone who engaged his services, was free to haul for others, even though he was hauling for defendant contractor, and paid for all expenses of operation of truck, for purposes of defendant contractor's liability to persons injured by truck owner's negligence, truck owner was independent contractor rather than agent of defendant contractor. Johnson v. Angretti et al. (Brown et al. v. Angretti et al.), 364 Pa. 602, 73 A.2d 666.

Pa.1948. Com. b and c quot. in sup. Sales, by independent contractor in West Virginia who maintained his office there, of Pennsylvania corporation's coal, were not sales effected by agent of Pennsylvania corporation out of premises maintained by corporation outside of commonwealth, with result that such sales were includable in computing franchise taxes levied on Pennsylvania corporations doing part of business outside of Pennsylvania. Com. v. Minds Coal Mining Corp., 360 Pa. 7, 60 A.2d 14, 20.

Pa.1945. Cit. in sup. Where the question was whether an employee of a partnership was acting as an independent contractor or as an employee in obtaining for the partnership the services of a trucker, the relation of master and servant could be shown both by the testimony of the employee himself and also by the circumstances in which the service was rendered. Kimble v. Wilson et al., 352 Pa. 275, 42 A.2d 526, 529.

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 Workers Ass'n, 343 Pa. 636, 638, 23 A.2d 470, 472.

Pa.1939. Com. h cit. in sup. A demonstrator employed by a steel company to sell stainless steel kitchen utensils in a department store who sustained an injury while working, due to the negligence of the department store, may recover in a trespass action against the store. Walters v. Kaufmann Department Stores, 334 Pa. 233, 237, 5 A.2d 559, 561.

Pa.1934. Cit. in sup. Negligence of husband, who ran a farm owned by wife, while driving a farm hand and products from the farm in automobile jointly owned by husband and wife did not impose liability on wife in absence of proof of her right to control operation of automobile. Cox v. Roehler et ux., 316 Pa. 417, 419, 175 A. 417.

Pa.Super.

Pa.Super.1969. Subsec. (2) cit. in sup. Plaintiff attempted to serve defendant, a Florida hotel, in Pennsylvania, by serving a travel agent who represented it and numerous other hotels. The agent could not confirm defendant's reservations. Defendant hotel did not supervise him. His only publicized contact with the hotel was the appearance of his phone number in an advertisement. The court held that the travel agent was an independent contractor and that he could not receive service for the hotel. DiLido Hotel v. Nettis, 215 Pa.Super. 284, 257 A.2d 643, 647.

Pa.Super.1955. Sec. and com. e cit. in case quot. in sup. Where all the elements of the employer-employee relationship were present and meat packing company exercised control of all other details of its ritual slaughterer's work, the fact that the company could not also control his choice, governed by religious law, of which meat was fit to eat did not prevent his recovery of workmen's compensation benefits for injuries received while at work. Potash v. Bonaccurso, 179 Pa.Super. 582, 117 A.2d 803, 806.

Pa.Super.1955. Cit. in case cit. in sup. Religious ritual slaughterer was a servant of a meat packer for workmen's compensation purposes, sufficient control existing, in spite of fact that packer had no control over slaughterer in regard to performance of his religious duties. Potash v. Bonaccurso, 179 Pa.Super. 582, 117 A.2d 803, 806.

Pa.Super.1949. Cit. in sup. Where coal operator used own trucks to haul coal from shovels to ramp and also used trucks of others which he paid for by the hour, and operator supervised all hauling, driver of his own truck who was injured while hauling was employee rather than independent contractor for purposes of workmen's compensation recovery. Felton v. Mellott et al., 165 Pa.Super. 229, 67 A.2d 727, 728.

Pa.Super.1946. Cit. in sup. Where carpenter was employed by landlords to repair leased premises, question of whether carpenter was independent contractor or agent of landlords, where evidence was conflicting as to landlords' right to control, was for the

jury in action by tenants against landlords for injuries due to negligent repairs. Bross v. Varner, 159 Pa.Super. 495, 48 A.2d 880, 881.

Pa.Super.1942. Cit. in sup. Electrician who performed work for macaroni company and conducted operations as he desired is independent contractor and not servant of company. Sechrist v. Kurtz Bros., 147 Pa.Super. 214, 220, 24 A.2d 128, 131.

Pa.Super.1941. Cit. in sup. Driver of truck is servant of truck owner and not of mining operator when driver was injured while carrying away debris which truck owner was engaged to haul at fixed price. Healey v. Carey, Baxter & Kennedy, 144 Pa.Super. 500, 504, 19 A.2d 852, 854.

Pa.Super.1939. Cit. in sup. A textile mill which employs a man to manufacture frieze for it, contributing the materials and tools, paying him a sum per yard of finished goods, and exercising no supervision over the people hired to help manufacture the frieze, thereby establishes a relationship of independent contractor and principal. Huck-Gerhardt Co. v. Davies, 134 Pa.Super. 430, 435, 3 A.2d 963, 966.

Pa.Dauph.C.P.

Pa.Dauph.C.P.1943. Paraphrased in sup. Where gas company borrowed personnel of parent company for consideration paid parent company, the work to be done as wanted and directed by gas company, personnel were pro tanto employees of gas company so that their wages and salaries were considered expended in Pennsylvania for purposes of franchise tax. Commonwealth of Pennsylvania v. American Gas Co., 54 Dauph.Co.R. 115, 138.

Pa.Lack.C.P.

Pa.Lack.C.P.1940. Com. c quot. in part and fol. Tenant in apartment who agreed to clean lawns and care for furnace was independent contractor when owner exercised no control over nature of performance. McCaffery v. Rafferty, 43 Lack.Jur. 97, 98.

S.C.

S.C.1950. Cit. in sup. Where evidence showed that person who was under contract with lumber company to cut and haul a large amount of logs over a period of two years owned a great deal of expensive equipment which was necessary to perform contract, had to pay all employees and subcontractors hired by him and controlled manner in which work was performed, evidence established as a matter of law that person was independent contractor, not servant of lumber company; and hence lumber company was not liable for negligence of individual who was driving truck under such person's direction. Norris v. Bryant et al., 217 S.C. 389, 60 S.E.2d 844, 847.

S.C.1948. Cit. in sup. Where defendant agreed to "book" minstrel show that producer was putting on by providing transportation, ticket takers, and ticket sellers in exchange for share of the profits after costs, producer who had control of all other management problems was independent contractor, and thus solely liable for cost of room and lodging that plaintiff provided for his troupe. Chatman v. Johnny J. Jones Exposition, Inc., 212 S.C. 215, 47 S.E.2d 302, 304.

S.D.

S.D.1974. Cit. in sup. The plaintiff, a passenger in an automobile, brought an action against the owner and driver of a truck and the operator of a feed lot to which the truck had been hauling silage for injuries sustained in a collision. The truck had been driven by the son of a farmer who, in addition to hauling silage for the feed lot operators, was employed to cut silage. The court held that the farmer's relationship with the feed lot was of a dual character. While he was an employee with respect to the cutting of the silage, the essential features of the hauling arrangement indicated that the farmer was acting in the capacity

of an independent contractor while engaged in hauling. The farmer was to be paid by the ton mile, and he retained control of the truck, as well as the driver, and the manner in which the hauling was done. The feed lot operator's only control over the hauling operation concerned the result to be attained. Since the accident occurred during the hauling of the silage, the farmer's son was acting in the capacity of an independent contractor, and the feed lot operator could not be held liable for the plaintiff's injuries. Jeitz v. Fleming, 217 N.W.2d 868, 871.

S.D.1953. Quot. in sup. Where owner of houses employed contractor to repair houses, and most of tools were supplied by contractor, all materials were ordered and paid for by contractor, and contractor hired and paid wages of several men employed to do work, and exercised complete control of details of all work, and owner exercised no control over details, court properly instructed jury that contractor was an independent contractor. Steen v. Potts, 75 S.D. 184, 61 N.W.2d 825, 827.

S.D.1952. Sub. 2 quot. in sup. In action for death of minor passenger in automobile which collided with truck at highway intersection, where inference was clear that owner and driver of truck, who were hauling gravel under oral agreement with partnership which was performing its oral agreement with township to gravel road, were independent contractors, partnership as a matter of law was not liable to plaintiff. Alborn v. Arms et al., 74 S.D. 277, 52 N.W.2d 101, 105.

S.D.1951. Sub. 2 cit. in sup. and com. a, b and i quot. in sup. Evidence was insufficient to establish that carpenter who was hired to construct addition to defendant's garage was servant of defendant, rather than independent contractor, with result that carpenter was not precluded from bringing action for negligence on alleged ground that workmen's compensation act precluded such action. Carlson v. Costello, 74 S.D. 36, 48 N.W.2d 825, 826.

Tenn.

Tenn.1947. Cit. 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, 185 Tenn. 499, 206 S.W.2d 897, 904.

Tex.

Tex.1949. Cit. in sup. Evidence was sufficient to establish fact that operator of filling station was servant of owner thereof rather than independent contractor, for purposes of owner's liability for negligence, even though parties considered themselves not as master and servant, and agreement between owner and operator took away from owner any and all control over operator's employees. Humble Oil & Refining Co. et al. v. Martin et al., 148 Tex. 175, 222 S.W.2d 995, 998.

Tex.Civ.App.

Tex.Civ.App.1963. Cit. in sup. Defendant's employee's testimony that he was acting for defendant in performing function of signalling crane operator and/or manually guiding steel plate into position, while amounting only to declaration by agent tendered to prove existence of agency and authority thereunder, was admissible against employer in view of antecedent evidence of its contract with owner in respect to construction. Pangborn Corp. v. Jacobs, 368 S.W.2d 852, 858.

Tex.Civ.App.1956. Sub. 2 and coms. cit. in sup. Where plaintiff was injured while helping truck owner's driver prepare his trailer to load plaintiff's employer's equipment pursuant to driver's unauthorized request, owner's lack of control over plaintiff's means of performance and plaintiff's purpose to further his employer's business permitted plaintiff to bring a common-law action for driver's negligence against the owner not subject to the fellow servant or workmen's compensation defenses. Stephens v. Mendenhall, 287 S.W.2d 259, 264.

Tex.Civ.App.1956. Subsec. (2) and coms. cit. in sup. Where plaintiff was injured while helping truck owner's driver prepare his trailer in order to load plaintiff's employer's equipment pursuant to driver's unauthorized request, owner's lack of control over plaintiff's means of performance and plaintiff's purpose to further his employer's business permitted plaintiff to bring a common-law action for driver's negligence against the owner not subject to the fellow servant or workmen's compensation defenses. Stephens v. Mendenhall, 287 S.W.2d 259, 264.

Tex.Civ.App.1940. Cit. in sup. An independent relationship was created when a lumber company contracted with a log-hauler whereby the latter had full control of the details of the hauling. Conner v. Angelina County Lumber Co., 146 S.W.2d 1093, 1095.

Utah,

Utah, 2014. Com. (c) quot. in case quot. in diss. op. Motorcyclist brought a negligence action against private university and its traffic cadet, alleging that he was injured in a motor-vehicle accident caused by cadet's negligent direction of traffic exiting a football-stadium parking lot. The trial court dismissed plaintiff's complaint on the ground that he failed to file a timely notice of claim with the city under Utah's Governmental Immunity Act. The court of appeals reversed in part. Reversing, this court held that defendants were servants, and therefore employees, of the city for purposes of applying the Act, because city retained the right to control the manner in which defendants directed traffic. Citing Restatement of Agency § 220, Comment *c*, the dissent argued that defendants were city's independent contractors, thus excluding them from the statutory definition of employee, because their relationship with city stemmed from a nonbinding ordinance that authorized university cadets to direct traffic in certain circumstances, but did not indicate that city reserved the right to control the physical manner in which the work was performed. Mallory v. Brigham Young University, 2014 UT 27, 332 P.3d 922, 933.

Utah

Utah, 1977. Cit. in sup. Plaintiff and its compensation insurer sought to review the decision of an Industrial Commission holding that the injured was its employee and entitled to recover compensation. Plaintiff's claim was that the injured claimant was an independent contractor. The claimant, who was a partner in a drywalling business, was hired individually by plaintiff after his company turned the job down. He received all his instructions and directions, along with other employees performing similar maintenance work, from plaintiff. Finding that plaintiff-employer had retained supervision and control of the work to be performed by the claimant, the court held that the claimant who had sustained injuries in a fall while on the job, was an “employee” as opposed to an independent contractor, and was, therefore, entitled to recover compensation. Judgment affirmed. Rustler Lodge v. Industrial Comm., 562 P.2d 227, 228.

Utah, 1959. Cit. in sup. In proceeding against partners doing business as roofing company, which had engaged applicators to do actual roofing at $4.50 per square foot, for workman's compensation by claimant, who had been told by one of partners to see “foreman” who was one of applicators about employment, had thereafter been put on as kettleman at $2 per hour by foreman to carry hot tar in trickets to men working on roof, but, after about half a day's work, had fallen from ladder and was burned by tar, evidence supported finding of Industrial Commission that claimant was employee of partners rather than applicators. Sutton v. Industrial Commission, 9 Utah 2d 339, 344 P.2d 538, 540.

Utah 1949. Sec. and com. c quot. in sup. Father who was asked by son to drive son's wife in son's car to son, and who did so taking son's mother along to assist him with the driving, was son's agent for a limited purpose in sole control as to how agency was to be carried out, with result that son was not liable for injuries sustained by mother as a result of father's negligence in driving the car. Dowsett v. Dowsett, 116 Utah 12, 207 P.2d 809, 811.

Utah 1948. Quot. in sup. Where decedent insurance salesman was under some degree of supervision by insurance company, but was free to exercise discretion as to when and where to work, his manner of traveling as well as paying for his traveling expenses, decedent was independent contractor rather than an employee, and thus his death was not compensable under the workmen's compensation act. Christean et al. v. Industrial Commission et al., 113 Utah 451, 196 P.2d 502, 505.

Utah App.

Utah App.2012. Sec. and com. (c) quot. in case quot. in sup. Motorcyclist brought a personal-injury action against university and university traffic cadet, among others, alleging that he was struck by an automobile after cadet directed him out of a university parking lot. The trial court dismissed the complaint, holding that, because cadet was directing traffic under color of city's authority, she was an employee of the city and was entitled to governmental immunity under the Governmental Immunity Act of Utah (GIAU). Reversing in part and remanding, this court held that the evidence was insufficient to determine if defendants were acting under city's control and direction while performing traffic-control activities, such that they were agents of the city acting as its employees and were expressly covered by the GIAU. Mallory v. Brigham Young University, 2012 UT App 242, 285 P.3d 1230, 1236, 1237, 1240.

Va.

Va.1941. Subsec. 2 cit. in sup. Gasoline distributor for gas company which pays former's taxes, approves all accounts, fixes prices of articles sold, and receipts are given in name of company, is agent and not independent contractor. Texas Co. v. Zeigler, 177 Va. 557, 569, 14 S.E.2d 704, 708.

Wash.

Wash.1957. Sub. quot. in sup.; cl. f and g and com. f not. fol. Where a boy hired on a day-to-day basis by an ice cream firm to drive its motor scooters and sell its products over a recommended route was subjected to as much directions in the performance of his duties as was practical and the right of discharge at will, he was an employee of the firm and expressly excluded from recovering under the firm's policy covering injuries resulting from the operation of the scooters. Cassidy v. Peters, 50 Wash.2d 115, 309 P.2d 767, 770, 771.

Wash.1957. Subsec. (2) quot. in sup.; cls. (f) and (g) and com. (f) not fol. Where a boy hired on a day-to-day basis by an ice cream firm to drive its motor scooter and sell its products over a recommended route was subjected to as much direction in the performance of his duties as was practical and the right of discharge at will, relationship was that of “master and servant” and not “independent contractor” and boy was not covered by public liability policy of the defendant excluding employees. Cassidy v. Peters, 50 Wash.2d 115, 309 P.2d 767, 770, 771.

Wash.1953. Sub. 2 com. e quot. in part in sup. In an action against a wrestling match promoter based on injuries to a patron when she was kicked by a wrestler, there is sufficient evidence of an employer-employee relation between the promoter and wrestler to take that question to a jury. Langness v. Ketonen, 42 Wash.2d 394, 255 P.2d 551, 554.

Wash.1945. Com. on subsec. 1, d, quot. in sup. Where real estate broker formed an association with associate broker for mutual benefit, under which broker contributed office facilities, and associate contributed services, and each was to receive half of commissions from sales of real estate and the share of each commission to which associate was entitled was never intended to become property of broker, and no contract of hiring was executed, there was no employment relationship within scope of Unemployment Compensation Act and broker was not liable for contributions to Unemployment Compensation Fund. Henry Broderick, Inc. v. Riley, 22 Wash.2d 760, 157 P.2d 954.

Wash.1942. Cit. in sup. Needy person given permission to cut wood owned by county was not its employee when county never supervised his work or ascertained if he actually cut wood. Clausen v. Department of Labor and Industries, 15 Wash.2d 62, 70, 129 P.2d 777, 781.

Wash.1941. Cit. in sup. Person who bought new car and was to deliver old car as part of purchase price was independent contractor and not servant of vendor of new car. Miles v. Pound Motor Co., 10 Wash.2d 492, 505, 117 P.2d 179, 184.

Wash.1939. Sec. and com. a, b, c quot. and fol. Carriers for a newspaper are independent contractors and not employees within the Unemployment Compensation Act when the carriers may deliver the papers in any manner they desire, they must pay a stated price for all papers received, and the written agreement states they are not employees of the newspaper. Washington Recorder Pub. Co. v. Ernst, 199 Wash. 176, 189, 91 P.2d 718, 724, 124 A.L.R. 667.

Wash.App.

Wash.App.1974. Com. (c) cit. in sup. This was an action brought by the parties injured in an automobile accident, which involved a vehicle being driven by a volunteer of a charitable organization, against the organization and the driver. The defendant-charity directed the defendant-volunteer as to the time, purpose, destination, and the means of the undertaking. After entry of summary judgment against the volunteer, the court entered a summary judgment in favor of the charitable organization. Upon appeal, held: Judgment in favor of the charitable organization reversed and case remanded for the entry of judgment against it on the issue of liability and for a determination of the amount of damages sustained. Where one volunteer agrees to assist another, to do something for the other's benefit or to submit himself to the control of the other, without an agreement for or expectation of reward, if the one for whom service is rendered consents to its being performed under his direction and control, then the service may be rendered within the scope of the master-servant relationship. Under the undisputed facts of this case the charitable organization had the right to control the activities of the volunteer, and a master-servant relationship existed. Baxter v. Morningside, Inc., 10 Wash.App. 893, 521 P.2d 946, 949.

W.Va.

W.Va.1937. Cit. in sup. A person who was instructed by a finance company's field representative to drive the company's car home and return next morning for the representative in order to help repossess another car was a servant of the company while driving home. O'Dell v. Universal Credit Co., 118 W.Va. 678, 681, 191 S.E. 568, 570.

Wis.

Wis.1943. Quot. in full 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, 498, 8 N.W.2d 393, 397.

Wyo.

Wyo.1941. Cit. in sup. Members of orchestra playing in hotel were not employees of hotel when they played their own instruments, were paid by their leader and contract was negotiated between leader and hotel. Unemployment Compensation Commission v. Mathews, 56 Wyo. 479, 506, 111 P.2d 111, 121.

Wyo.1933. Cit. in sup. Washing machine company was not responsible for injuries inflicted by selling agent while negligently driving his own automobile at his own expense. Stockwell v. Morris, 46 Wyo. 1, 8, 22 P.2d 189, 191, citing Tent.Dr. No. 5, pp. 30, 31 which have become sec. 220 and comments Official Draft.

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