

Principal-Agent Relationship

Important

Definition 2.1: Agent

An agent is a person who agrees to act on behalf of a principal.

An agent relationship is important because

- Principal may have **authority** to control some actions of agent
- Agent may have authority to **bind principal** to third party
- Agent and principal have **fiduciary duties** that govern their conduct

How we determine whether if an agent is an employee or an independent contractor is often dependent upon these **eight factors**, known as the **traditional majority rule**:

1. How much control does employer exercise over work?
2. Is worker engaged in an occupation distinct from that of employer?
3. Is work being done under direct supervision of employer or being done without supervision?
4. What degree of work skill is required for job?
5. Does employer provide tools and a place to work?
6. How long is worker employed?
7. Is worker paid on basis of time or by the job?
8. Does worker offer services to the general public?

These questions, however, are not weighted equally and could be subjective, meaning that it could be difficult at times to decide whether if a worker is an employee.

In 2019, the state of California launches the **ABC test** for the same purpose, replacing the old rules.

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Definition 2.2: ABC Test

Effective 2019, a worker is an employee **unless**:

1. Free from the control and direction of the hiring entity in connection with the performance of the work, both under the contract and in fact;
2. Performs work that is outside the usual course of the hiring entity's business; and
3. Is customarily engaged in an independently established trade, occupation, or business of the same nature as that involved in the work performed.

Except for certain gig workers.

Under the ABC test, workers are automatically considered as an **employee** to begin with.

The trade-off here is obvious: with employees an employer has more **control**, yet **higher costs** when compared with an independent contractor.

Fiduciary Duties

An agent has fiduciary duties to the principal, which includes

- Duty of loyalty: should put the interests of the principal **above all**
- Duty of obedience: should always follow **reasonable commands** of the principal
- Duty of care: avoid mistakes and negligence - **perform as dictated**

Principal's Liability for Agents

A principal have some authorities over an agent's action and their contract bound to a third party, which in turn means they may be liable for the actions took on their behalf.

Let's start by defining what authority is.

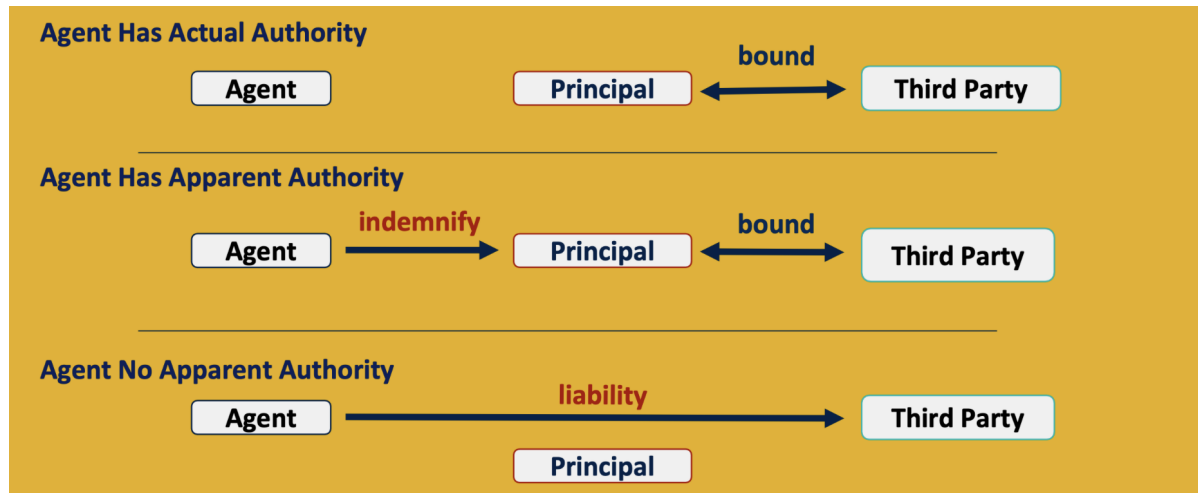
Authority

- **Actual authorities**: explicit or expressed permission for some action
- **Implied authorities**: authorities with a narrowing difference in behavior to fulfill actual authorities
- **Apparent authorities**
 - Mutually **inconsistent** with actual authorities
 - Valid only when third parties **believe** authority exists

Contractual Liability

Principal is bounded by the action of the agent if **authorities** above are present.

- However, principal has the legal capacity to **indemnify** the agent for mis-using apparent authorities



If **NO authorities** are given, the agent is **fully liable** for their action. An **undisclosed principal** is bound to the third party **only if** the agent has **actual authority**.

Tort Liability

When deciding tort liability, we follow the **doctrine of *Respondeat superior***.

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Definition 2.3: Respondeat Superior

A principal is responsible for acts of their agents performed within the **scope of employment**.

There are a few ways to decide what falls into the scope of employment.

- Detour & Frolic
 - Detour is viewed as within the scope as is a slight deviation from work
 - Frolic is viewed **NOT** within the scope as is a **sustained deviation** and sometimes purely personal
- Coming & Going
 - **NOT** considered course of employment

The *Respondeat superior* does **NOT** apply to independent contractors.

In general, refer to the chart below is pretty useful to determine tort liability of principal and agents.

