

Answers to Assignment 7 Questions

NOTE: These answers are provided to give students a basic understanding of acceptable types of responses. They often are not the only valid answers and are not intended to provide an exhaustive response to the questions.

Educational Objective 1

- 1-1. The usual method of creating an agency is by express appointment.
- 1-2. If a principal's words or conduct cause a third person to reasonably believe that an agency exists and to rely on that representation in dealing with the supposed agent, the principal is estopped (prevented) from denying the agency, resulting in agency by estoppel.
- 1-3. Ratification establishes the agency relationship. An estoppel does not create an agency relationship but only protects the third person from a loss that would result if the agency were denied.

Educational Objective 2

- 2-1. An agent's actual authority can be express or implied. Express authority applies to carrying out the principal's specific instructions and performing acts incident to carrying out those instructions. The most common source of implied authority is custom. Without different instructions, an agent's authority extends to, and is limited to, what a person in this agent's position usually does. Implied authority can also apply when an agent acts beyond the usual scope of authority in an emergency.
- 2-2. Unlike actual authority, a principal neither confers apparent authority on an agent nor creates it. Apparent authority is based on appearances and includes all the authority that a reasonable person, acquainted with the customs and nature of the business, could reasonably assume the agent has.
- 2-3. A third party is not entitled to rely on an agent's statements about the scope of the agent's authority. Only the actual authority the principal has given, or the apparent authority the principal has manifested to the third party, controls the extent of the agent's authority. If an agent acts in a way adverse to the principal's best interests, the third party has notice that the agent might be exceeding his or her authority. The third party must ascertain the scope of the agent's authority by a direct inquiry to the principal. If the third party fails to inquire, and the agent does not have authority, the transaction in question does not bind the principal.
- 2-4. High End is not bound to extend the credit to Jodie. A reasonable person would realize that Britany did not have the authority to extend credit in this situation.



Educational Objective 3

3-1. An agent's implied duties to a principal include these:

- Loyalty
- Obedience
- Reasonable care
- Accounting
- Information

3-2. These three exceptions apply to the nondelegation rule:

- Ministerial duties—If certain tasks do not require judgment or discretion, an agent can delegate their performance.
- Customary appointments—If custom and usage of a particular business involve the delegation of authority, the agent can delegate.
- Emergency appointments—In an emergency that requires the appointment of another to protect the principal's interests, the agent can make an emergency appointment.

3-3. The principal owes these duties to the agent:

- Agreed-on period of employment
- Compensation
- Reimbursement for expenses
- Indemnity for losses

3-4. An agent can sue for compensation, indemnity, or reimbursement and can also obtain a court order requiring an accounting from the principal. An agent discharged by a principal during a specified employment period can sue for compensation for the remainder of the period. An agent can also exercise a lien, or right to retain possession of the principal's goods, until the principal has paid the amounts due.

Educational Objective 4

4-1. To revoke an agency, the principal notifies the agent, by word or act, that the agent no longer has authority.

4-2. Death or incapacity can terminate an agency in these ways:

- The death of either principal or agent terminates the agency.
- The incapacity of the principal terminates the agency.
- The principal has the right to terminate the agency upon learning of the agent's incapacity.

4-3. If the principal appoints another agent to accomplish the authorized purpose, and if the new appointment conflicts with the first, the original agent's authority is terminated.



Educational Objective 5

- 5-1. An undisclosed principal is responsible for all contracts the agent enters into within the scope of the agent's actual authority. The third party can sue the principal when the principal's existence becomes apparent. Because the principal was originally unknown to the third party, the principal could not have created any apparent authority.
- 5-2. A third party cannot sue the principal if, having learned of both the principal's existence and the principal's identity, the third party expresses the intention to hold the agent liable for the contract. Election of the agent discharges the principal.
- 5-3. If a third party pays money to an agent who has no authority to collect it and the agent does not turn the money over to the principal, the third party can sue the agent for the money. The agent cannot avoid liability by subsequently paying wrongfully collected funds to a principal.
- 5-4. An agent who wrongfully injures a third party or is guilty of theft is personally liable. The fact that the agent was acting in good faith under the principal's direction is not a defense against personal tort or criminal liability.

Educational Objective 6

- 6-1. The two conditions that must be met are:
 - The agent must be an employee of the principal.
 - The tort must be committed while the agent is acting within the scope of his or her employment.
- 6-2. Generally, agents are considered to be acting in the scope of employment if they are performing work assigned by the employer or undertaking activities subject to the employer's control. The critical element is that the employer controls or has the right to control how the agent performs the assigned work.
- 6-3. The principal is responsible for selecting appropriate individuals as agents; giving them clear instructions; providing them with appropriate tools, equipment, or materials; monitoring their performance; and discharging those that do not perform appropriately.
- 6-4. The three exceptions to the rule that principals are not liable for the torts of independent contractors are these:
 - A principal who negligently enters into an agency with an independent contractor that is unsuitable or incompetent can be held liable for resulting harm to third parties.
 - Certain duties are considered so important that responsibility for them cannot be delegated to another party. If a principal hires an independent contractor to perform one of these important duties and the contractor fails to perform or performs inadequately, the principal may be liable for any resulting harm or damage to third parties.
 - A principal who hires an independent contractor to perform highly dangerous activities—for example, building demolition—must ensure that the contractor takes appropriate safety precautions.

