

## 9: UNDERSTANDING AGENCY LAW

- **agency:**
  - when one party acts on another's behalf, possibly exposing **both** to liab for each other's actions
  - in ins industry, 2 main types of producers who have agency relationship w/ ins co:
    - *ins agent*: sells ins as an authorized rep for ins co
    - *ins broker*: buys ins on behalf of an insd as their authorized rep
  - **principal**:
    - person that is being represented by the agent
    - (in this guide, Peter will be the principal)
  - **agent**:
    - person acting on the principal's behalf
    - (in this guide, Alan will be the agent)
- 3 ways an agency relationship is created
  - appointment
    - express appointment (explicitly designating an agent)
    - agent must consent to role for agency by appt to exist
    - **power of atty (written document naming an agent)**
  - estoppel
    - when a **principal's** actions led 3<sup>rd</sup> party to incorrectly but reasonably believe an agency exists & 3<sup>rd</sup> party relies on that assumption when completing transaction
    - ex: if 3<sup>rd</sup> party asks Peter to buy pol & Peter says 3<sup>rd</sup> party can arrange purchase w/ Alan, agency exists by estoppel even if Peter didn't officially give Alan any auth beforehand
    - if only **agent** leads 3<sup>rd</sup> party on to falsely believe there is agency relationship, principal is **not** liab for agent's actions
  - ratification
    - when principal accepts actions of a supposed agent who didn't have actual auth to be agent
    - ex: if Alan sells pol to 3<sup>rd</sup> party falsely claiming to be Peter's agent, Peter can **elect** to be accept being part of transaction (which creates agency by ratification)
    - 4 conditions
      - agent must have claimed to act for principal
      - principal must ratify **entire** transaction
      - **principal must ratify before 3<sup>rd</sup> party elects to withdraw from agreement**
        - 3<sup>rd</sup> party can usually rescind/withdraw contract if agent lied about auth
      - principal must have all material facts avail before ratification is binding
- scope of agent authority
  - agents should only act w/i scope of auth granted by principal
    - if agent does, principal usually is liab for agent's actions
    - if agent acts beyond scope, principal **might** still be liab in certain cases
  - actual/real auth (auth that principal intends for agent to have)
    - **express auth**
      - auth specifically granted beforehand
      - (ex: training an agent how to make something or use equip)
    - **implied auth**
      - auth not specifically stated, but principal is fine w/ agent having
      - (ex: waiter buys supplies when owners out of town)

- apparent auth
  - a 3<sup>rd</sup> party's **reasonable** belief that agent had auth to act for principal, even if there was no actual auth
  - (ex: mover tries to repair furniture they dmg'd)
  - (ex: agent restarts pol even though u/w guidelines said not to)
  - principal is bound by agent's actions only if principal had some sort of "wrongdoing"
    - ex: principal took away agent's auth but didn't tell 3<sup>rd</sup> parties who've done biz before
    - ex: principal was present & didn't say anything when agent falsely told 3<sup>rd</sup> party that agent represented principal
  - most often occurs when:
    - principal gives agent less auth than is customary in industry
    - principal's way of biz is different than industry standard for that area
- duties owed
  - by agent
    - loyalty (can't take biz that competes w/ or interferes w/ principal's biz)
    - **obedience (following principal's instructions)**
      - agent **cannot** delegate a principal's auth unless:
        - ministerial duties:
          - tasks that don't require delegate's judgment/discretion
          - ex: delivering pol documents to an insd
        - customary appts (custom of industry is to delegate)
        - emergency appts (emergency situation requires delegation to protect principal's interests/assets)
    - act w/ reasonable care (even if agent isn't being paid)
    - acct
      - keep record/accting of principal's assets
      - keep principal's assets separate from agent's assets
      - **if agent commits torts/breaches, principal can transfer prop that agent improperly held**
    - info
      - keep principal updated on pertinent info
      - **(ex: agent violates this duty if he doesn't disclose pertinent info on an insd's application)**
  - subagents
    - if agent is authorized to hire subagents:
      - owe same duties to the principal as primary agent
      - **agent** has obligation to compensate subagents
    - if agent is **not** authorized to hire subagents:
      - no agency relationship exists btwn subagent & principal
      - subagent owes no duties to principal
  - by principal
    - employment to agent for agreed-on period
    - compensation
    - reimburse for expenses
    - **indemnify for losses**

- ways an agency relationship can terminate
  - just cause (i.e., for valid reason due to outrageous/serious misconduct)
    - **fraud**
    - criminal activity
    - violation of contract
    - **changed circumstances (ex: principal goes bankrupt)**
  - lapse of time
    - if contract had specified time period, when stated period is over
    - if no specified period, when reasonable time has elapsed
  - **accomplishment of purpose** (ex: agent hired to sell 500 policies & meets goal)
  - **revocation**
    - **when principal tells agent that the agent no longer has auth**
    - if principal authorizes another agent to do the same thing:
      - if both agents can't simultaneously serve, first agency terminates (ex: hiring atty to represent you)
      - if either agent could do job and **neither had exclusive rights**, first agency can stay intact (ex: authorizing two people to sell your home; first to sell gets commission)
  - renunciation (when agent relinquishes auth)
  - **death/incapacity**
    - principal's **death**
      - terminates relationship
      - **even if agent/3<sup>rd</sup> party has no actual notice of death**
    - principal's **incapacity** – terminates relationship
    - agent's **death** – terminates relationship
    - agent's **incapacity** – principal has **option** to terminate
- liab in contracts w/ 3<sup>rd</sup> parties
  - overview:
    - in most **non-agency** contracts, only the 2 parties to transaction can sue each other for breaches
    - if agent does a transaction on principal's behalf, does that change who can sue who?
    - **key question 1 = what is extent of agent's auth?**
    - key question 2 = does 3<sup>rd</sup> party know agent was acting for principal?
      - disclosed: 3<sup>rd</sup> party knows agent is acting on principal's behalf & who the principal is
      - partially disclosed: 3<sup>rd</sup> knows there is a principal, but doesn't know who principal is
      - undisclosed: 3<sup>rd</sup> party was unaware that agent was acting for a principal
    - **an agent's liab is the focus of agent contract liab law**
  - when 3<sup>rd</sup> party can sue principal for breaches
    - **generally**, a 3<sup>rd</sup> party can sue a principal once the 3<sup>rd</sup> party discovers the principal's identity
    - 2 exceptions:
      - if principal already made good-faith settlement of 3<sup>rd</sup> party's acct w/ agent (i.e., principal already paid money owed to 3<sup>rd</sup> party to agent)
      - for **undisclosed** principals, if 3<sup>rd</sup> party expresses intent to hold agent liab instead
  - when principal can sue 3<sup>rd</sup> party for breaches
    - **generally**, 3<sup>rd</sup> party is liable to principal regardless of whether 3<sup>rd</sup> party knew about principal

- 5 exceptions, involving **undisclosed** principals:
  - if agent fraudulently said they were representing a different principal or that there was no principal
  - if agent withholds principal's identity b/c they knew 3<sup>rd</sup> party wouldn't want to do deal involving principal
  - if contract w/ principal would impose a much more substantial burden on 3<sup>rd</sup> party than contract w/ agent (ex: 3<sup>rd</sup> party agrees to supply goods for agent since agent is small biz, then learns contract is for principal who is a much larger biz that 3<sup>rd</sup> party can't handle)
  - if contract requires agent's personal performance, principal can't substitute their performance for agent's performance (ex: agent agrees to personally train 3<sup>rd</sup> party, then principal does personal training)
  - if 3<sup>rd</sup> party sues agent for breach of contract & wins judgment before principal's ID is known, principal no longer has rights to sue 3<sup>rd</sup> party
- when 3<sup>rd</sup> party can sue agent for breaches
  - **generally**, a **disclosed** principal (not the agent) is liable to 3<sup>rd</sup> party for breaches
  - 6 exceptions (when agent can be liable)
    - agent has no auth or exceeds granted auth from principal (unless 3<sup>rd</sup> party should have known agent was acting beyond auth)
    - agent acts on behalf of a minor or a mentally incompetent principal
    - 3<sup>rd</sup> party intended to contract w/ agent & agent intended to act on own behalf (not for principal)
    - agent voluntarily assumes to personally guarantee contract
    - 3<sup>rd</sup> party pays agent, but agent doesn't fwd pay to principal
    - agent acts fraudulently or maliciously
- when agent can sue 3<sup>rd</sup> party for breaches
  - if agent & 3<sup>rd</sup> party agree that contract obligates the agent (ex: agent offered to guarantee if principal didn't come through)
  - if principal is **undisclosed**, either agent or principal can sue 3<sup>rd</sup> party
  - if **partially or fully disclosed** principal gives permission, agent can assert defenses or counterclaims against 3<sup>rd</sup> party that normally only the principal could
    - (ex: 3<sup>rd</sup> party failed to perform their part of contract)
  - agent **cannot** sue if agent falsely represents their auth to act on principal's behalf
- principal's liab for agent's torts/negligence
  - respondeat superior
    - refers to when **employers** are liab for **employees'** actions
    - 2 conditions
      - agent is **employee** of principal
      - **tort committed while agent is acting w/i scope of employment**
      - ex: principal tells agent to deliver docs to insd & agent gets into car ax on the way
    - **main element is whether employer has control over how employee performs duty**
    - principal may also be liab if neg in hiring, training, or supervising agent
  - independent contractors
    - when agent is **not** principal's employee
    - **generally**, principal is **not** liab for contractors' torts

- 3 exceptions
  - principal negligently enters into agreement w/ unsuitable contractor
  - tort involves *non-delegable duties* (certain duties that are so important that their responsibility can't be delegated)
  - for highly dangerous duties, principal must ensure contractor takes appropriate safety precautions
- agent misrepresentations
  - 3<sup>rd</sup> party has right to rescind contract if agent misreps something
  - 2 situations where principal is liab too
    - principal intended for agent make misrep
    - when agent has actual or apparent auth to make statements about a subject and misreps, **even if principal didn't direct or condone misrep**
- agent's liab for own torts
  - **generally**, agents are liab if commits own torts & can't just turn responsibility over to principal
  - 4 situations where agent is **not** liab for committing a tort
    - if principal has been perm to do something, agent has same perm & not liab just b/c agent wasn't given specific perm
      - ex: if principal has perm to park, agent is **not** liab for trespassing if he parks
    - if principal legally entitled to take action to defend person/prop, agent can do same
    - if agent passed on info that principal misrep'd but agent didn't know & had no reason to know info was false
    - if principal supplies defective tools/instruments to agent didn't know & had no reason to know