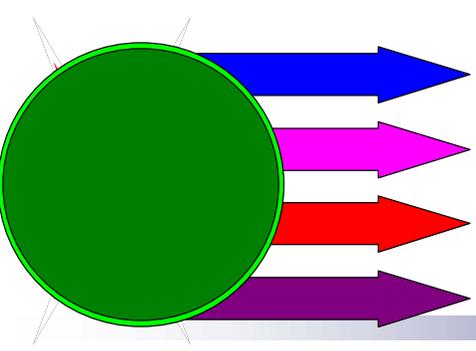


Employment Relationships -Agency

Chapter 14



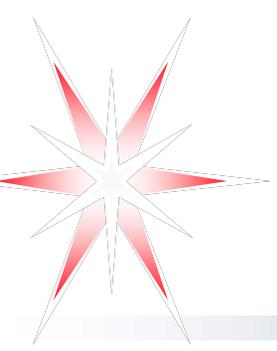
Chapter Issues

- **The nature of an agency relationship**
- **Creation of an agency**
- **Legal constraints on its formation & function**
- **The agent's authority to act for the principal**
- **The principal's liability in contracts of the agent**
- **The principal's liability in torts of the agent**
- **Terminating an agency relationship**
- **Agency and the master-servant relationship**
- **Agency and the employer-independent contractor relationship**



Definition of an Agency Relationship

- Agency is created when a person or company (*agent*) agrees to act on behalf of, and subject to the control of, another person or company (*principal*)
- 1. The principal creates authority in an agent
- 2. The agent receives authority & carries out the principal's instructions
- 3. Third parties make a *contract* or are involved in a *tort* with the agent



Types of Agency Liability

- Contract
- Tort
- Criminal



Contract Liability

➤ Actual Authority – Authority the agent has.

Two ways to get it.

➤ Express Authority – What the agent was told.

➤ Implied Authority –

➤ What is necessary to accomplish the express authority;

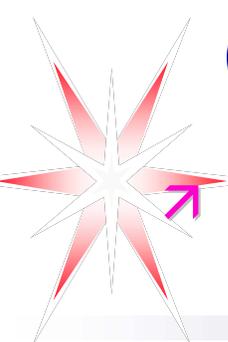
➤ What is customary for persons in that position.

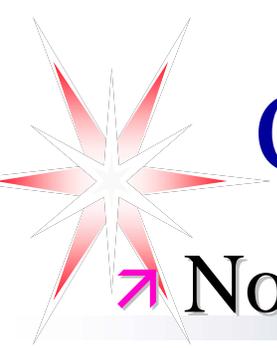
➤ Ex. A manager can fire an employee.

➤ P is liable to 3rd party; A is not liable.

➤ Emergency Doctrine – An agent may have a duty to act contrary to instructions of principle.

Contract Liability

- 
- Apparent Authority – Authority that the agent does NOT have, but a reasonable 3rd party would think he had. Always based on principle's actions.
 - Major situations:
 - P limits A's authority to less than customary;
 - P terminates A but does not give adequate notice.
 - Individual notice to people A actually dealt with.
 - General notice to people who knew of agency.
 - No notice to those who did not know.
 - Bread seller example.
 - P is liable to 3rd party; A is liable to P.



Contract Liability

➤ No Authority

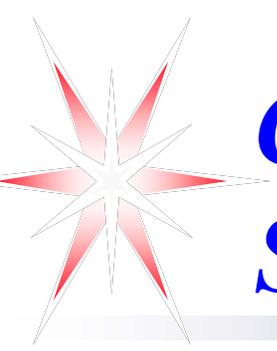
➤ A is liable to 3rd party; P is not liable.

➤ Ratification: P takes the unauthorized action as his own.

➤ Ratification may be either express or implied.

➤ If ratification, P is liable to 3rd party; A is not liable.

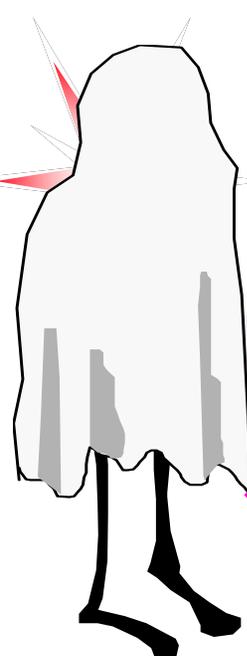
➤ Must take both the benefits and the burdens.



Contract Liability: Watson v. Schmidt - Implied Ratification.

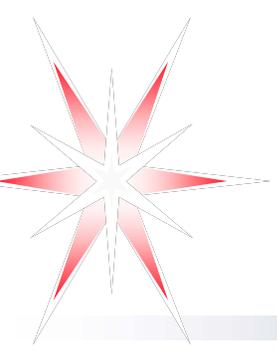


- **Watson wires her agent, Holman, to sell a horse named Easter for \$300**
- **On Oct. 16, Holman sells Kadiak instead (who had only raced once from Aug. 30 to Oct. 15) for \$2000**
- **Kadiak runs at least 6 times and wins 4 races in November and December after the sale**
- **On Dec. 26, Watson sues, saying Holman had no authority to sell Kadiak**
- **Court found for Watson**
- **Schmidt appealed**
- **Held: Judgment is annulled and reversed**
- **Watson ratified the sale**
- **Rule of Law: Silence of a principal, after knowledge of the agent's act, is equal to *ratification* of the act**
- **Rule of Law: An owner who receives whole or part of the proceeds of a sale, ratifies the sale and cannot "disturb the purchaser"**



Liability for Contracts if Principals are Disclosed or Partially Disclosed

- ***A disclosed or partially disclosed principal is liable to a third party for the contract of the agent if the agent has actual authority.***
- ***If there is apparent authority, the principal is contractually liable to a third party. However, the principal may sue the agent for losses if agent has breached a duty.***
- ***An agent is liable to a third party if there is an undisclosed principal***



Contract REVIEW - Agent's Authority to Act for the Principal

“The Sending Of Signals”

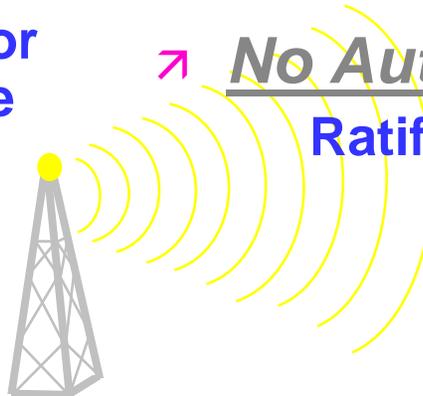
➤ Actual Authority:

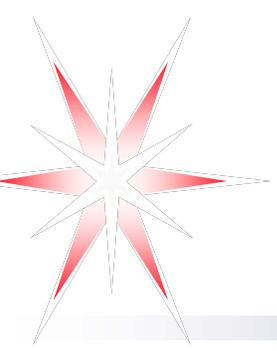
- Principal sends signals to the agent to do something with a third party
- Express Authority:
Oral or written instructions create the authority
- Implied Authority:
Principal's conduct or trade customs create authority

➤ Apparent Authority:

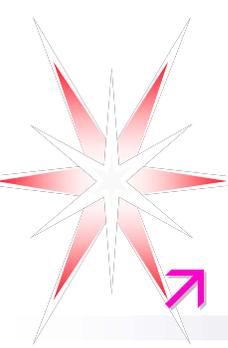
- Principal sends signals to the third party that what the agent does binds the principal
- There is the appearance of authority that a third party could reasonably conclude

➤ No Authority Ratification



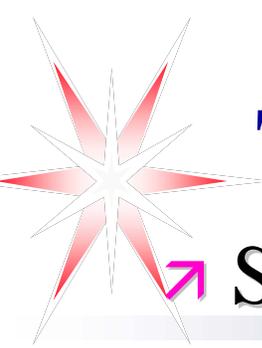


-
- Plan on test on Wed., April 14 over ch. 13, 14, 20
 - Business Organizations
 - Agency
 - Securities Regulation



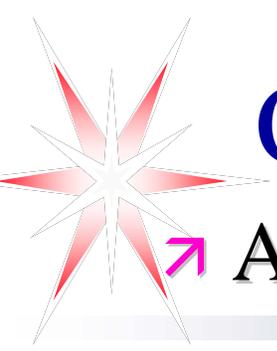
Tort Liability

- Agent is always liable for his own torts.
- Issue is when if the principle liable also.
 - P is liable when the tort was committed “within the scope of employment” of the A and A was an employee.
 - Then, both P and A are liable.
 - Principles are generally not liable for the torts of an independent contractor.
 - Hire someone to build a house for you.
 - Franchises



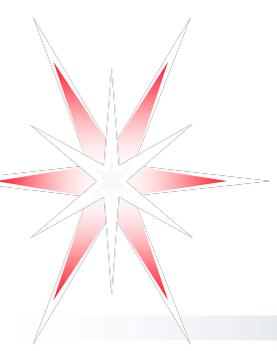
Tort Liability - Examples

- Sears delivery man runs red light.
- Blackjack dealer hits customer.
- Bouncer roughs up patron.
- Car repossession person hits owner.
- Police beat up speeder.
- Delivery man rapes customer (civil, not criminal).
- Salesman misrepresents a product.
 - Spreading of risks: employer is in best position to select and train the proper people. If employer not liable, no incentive for safety.



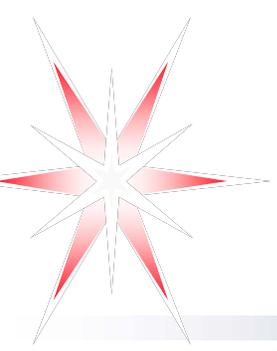
Criminal Liability

- Agent is always liable for own crimes
 - ~~Following orders/threat of firing – no defense.~~
- Issue is when P is liable also.
- P is liable
 - 1. If crime P orders crime (Conspiracy Theory);
 - 2. OR, If
 - A) Crime is within scope of employment;
 - B) Employer benefits from crime; and
 - C) A is not adequately supervised.
 - Variety store gun case.



Types of Agency Liability

- Contract
- Tort
- Criminal



Principal's Duties To Agent



- Cooperation--with the agent in fulfilling the agency purpose
- Compensation--for services rendered
- Reimbursement--of "reasonable" expenses
- Safe Working Conditions--as required by law and meet legal obligations
- Indemnify (pay back)--for legal liabilities incurred by the agent

Fiduciary Duties of Agents

(*Fiduciary* occupies a position of trust & honesty)



➤ Loyalty--to place the principal's interest above the agent's interests

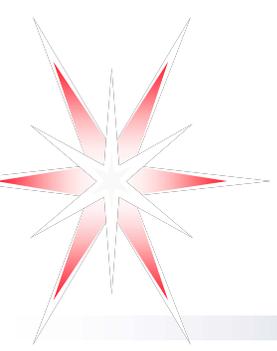
- No secret profits.
- No competition with P.
- No appropriating P's opportunities.
- No dealing w/ P w/o disclosure.

➤ Obedience and Performance --to perform in compliance with the principal's instructions

➤ Reasonable Care & Skill--to perform as is "reasonable under the circumstances" (including emergencies)

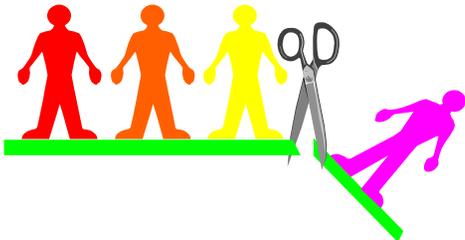
➤ Account--for the funds and property of the principal (avoid mixing personal funds with the principal's)

➤ Notify--as to all facts of the agency purpose

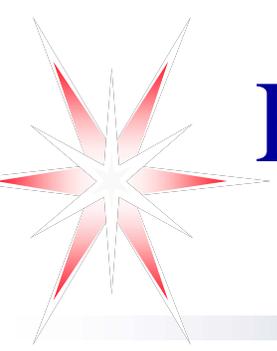


Termination of Agency

- **Either party may terminate (unilateral termination)**
 - Agent says, “I quit!”
 - Principal says, “You’re fired!”
- **Notice of termination must be made to 3rd parties to end an agent’s apparent authority**

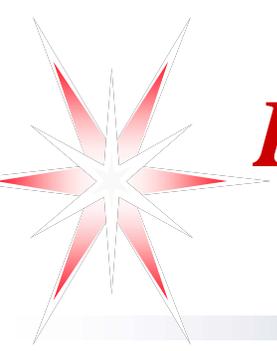


- **Termination by *operation of law***
 - Principal or agent dies
 - Subject matter of agreement is lost or destroyed
 - Economic conditions make subject matter unreasonable
 - Bankruptcy of principal or agent terminates the agency *if* agent then unable to perform necessary duties

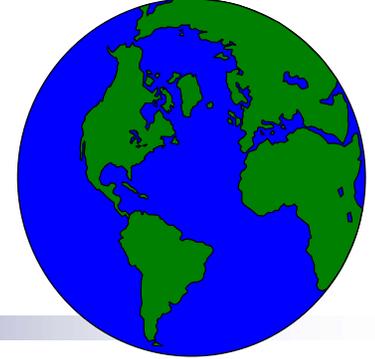


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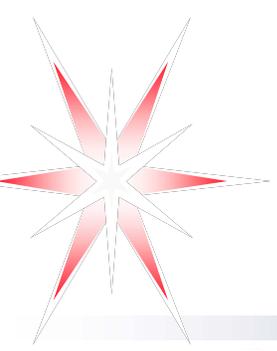




Principals and Agents under a Civil-Law System



- Under common law, undisclosed principles are bound to K's with 3rd parties if there is actual authority. Also the principal is able to hold the 3rd party to the contract
- In civil law, principal cannot hold the 3rd party liable to contract unless that party knew of principal's existence.
- In common law, if agent enters into contract with the principal, and then enters into a contract with a 3rd party, and later the agency is invalid: Outcome is that the principal is not liable to the 3rd party (unless principal created apparent authority in agent)
- In most civil law countries, agent's power to perform is independent of contract between the principal and the agent. The principal is liable to the 3rd party.



Burch v. Hancock



- Burch is president of Deja Vu, corp. that owns Rocking D Ranch. Burch hires Hancock to help convert land to cattle pasture. Hancock assumes Burch owns the ranch.
- Burch refuses to pay a \$2,405 invoice; Hancock sues him. Burch argues he can't be held individually liable for work done for Deja Vu.
- Trial court orders Burch to pay. Burch appeals.
- **HELD: Affirmed. Burch is individually liable. He did not disclose that he had a principal. Agent has duty to disclose the existence of a principal. Nondisclosure creates liability in the agent.**



Types of Relationships

(Whether a person acts as an agent or independent contractor determines liability of the parties)

➤ Principal-Agent

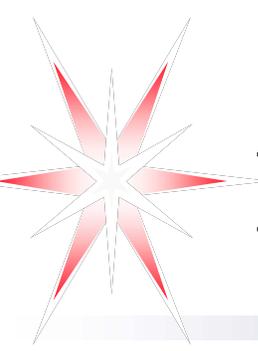
- Agent acts on behalf of the principal
- Agent has a degree of personal discretion
- Principal is usually liable

➤ Master-Servant

- Employer-Employee
- Servant's conduct is controlled by employer
- The servant can also be an agent (distinction is sometimes blurred)
- Employer usually liable

➤ Employer-Independent Contractor (I/C)

- Not an employment relationship
- Employer has no control over the details of the I/C's performance
- The contractor is usually not an agent (though may be, i.e. attorneys & auctioneers)
- Usually employer is not liable for the I/C's torts



Employment-At-Will

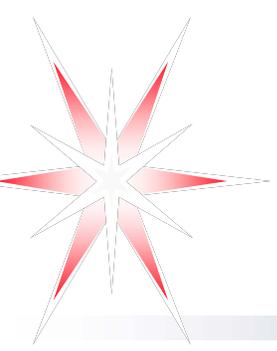


- **Free market concept that dominates traditional employment relations**
- **Employers: Can hire & fire who you want**
- **Employees: May work-at-will & quit when they want**
- **Contractual limits to at-will and public policy exceptions—next chapter.**

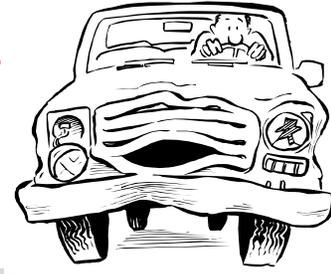


Geary v. United States Steel

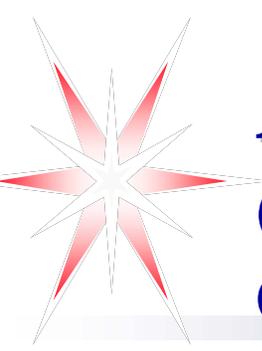
- Geary sold oil & gas pipe for U.S. Steel for 14 years.
- He believed a new pipe for high pressure use “constituted a serious danger” and told his supervisor about the problem. He is told to “follow directions.”
- He reveals the problem to company Vice President who evaluates the product and pulls it from the market.
- Geary’s supervisor fires him; Geary sues for loss of reputation, mental anguish and financial harm.
- Trial court dismisses the suit. Geary appeals.
- **HELD:** Affirmed. Either party may terminate at will absent a contract or statute to the contrary. Even if Geary’s intentions were good, the employer has right to terminate him.



Principal's Liability For Torts



- If the principal orders the agent to do tortious acts, then the principal is liable
- Vicarious Liability: Liability for the unauthorized acts of the agent
 - Was the agent acting “*within the scope of his/her employment*”?
 - Courts use the doctrine of *respondeat superior*
- Commuting? Principals are usually not liable for normal commutes
- Deviations Rule: When the agent departs from his employment to the point that he is no longer within the scope of his employment, principal is no longer liable
 - Jurisdictions differ on the deviations rule



Agent's Liability

(When Agents' Torts Are Unauthorized and Outside of the Scope of Employment)

- **Crimes**: Agents liable for own crimes; principals are NOT liable for their agents' crimes
 - Principal may be liable for *conspiracy*
- **Unauthorized Deviations**: Agents are liable
- **Torts/Contracts**: Agent must indemnify the principal for *wrongful acts* resulting in injury to the principal
 - Q: Did the agent breach a duty?
 - A: If yes, then the agent will be liable
- Employers often try to define the independent contractor relationship
 - Sometimes a ploy to avoid state and federal taxes, social security, workman's compensation, etc.



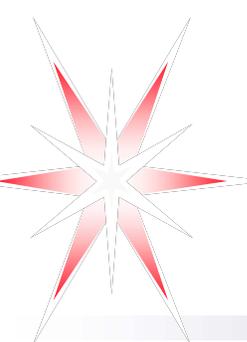
Santiago v. Phoenix Newspapers, Inc.

- Frausto delivers *Arizona Republic* for PNI; “Delivery Agent Agreement” states he is independent contractor
- Frausto’s car hits a motorcycle driven by Santiago; he sues PNI, claiming Frausto is PNI’s agent; PNI says no
- Trial court grants summary judgment that Frausto is an independent contractor; appeals court affirms
- **HELD:** Language of the contract does not determine the relationship; extent of *control* by PNI and other factors do
 - Control; nature of worker’s business, specialization & skill
 - Materials/place of work; duration of employment
 - Payment method; relationship of work done to the business of the employer; belief of the parties
- Case is remanded for a jury to determine if Frausto was an independent contractor or not



Are Senior Executives Employees or Principals?

- Executives are employees of companies. Article discusses when executives act as if they are principals of companies and have too much control, or too little oversight.
- Recent abuses within companies illustrate problems of lack of diligence by principals over their agents/employees.
- Critics note the maintenance of traditional roles of responsibility may have prevented some of the problems that emerged.



Creating An Agency

(An affirmative indication must be made by the parties of the agency)



➤ Agreement of the Parties

- May be oral or written
- The legal document called a *power of attorney* establishes agency and creates an *attorney-in-fact*

➤ Ratification by the Principal

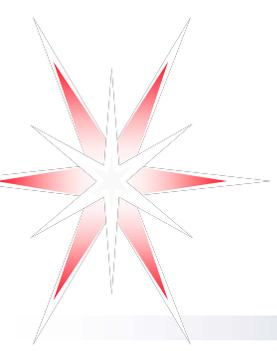
- A principal accepts responsibility for an agent going beyond her authority

➤ Agency by Estoppel

- Actions of the principal lead others to believe an agency exists--the principal is *estopped* from denying the agency's existence

➤ Agency by Operation of Law

- The agent's acts w/out the principal's authority
- Necessity or emergencies exist
- Agent may act and bind the principal by *operation of law*



Classification of Agents

(Agents are classified on the basis of the authority they are provided)

- **Universal agents** : Do all acts that can be legally delegated, i.e. General Power of Attorney
- **General agents**: Execute all transactions in connection with a business, i.e. managers
- **Special agents**: Execute a specific transaction or series of transactions, i.e. a real estate agent
- **Agency coupled with an interest**: Agent has paid for the right to exercise authority for a business
- **Gratuitous agent**: No payment is made to the agent, i.e. a favor or a volunteer
- **Subagents**: Agent delegates authority to other agents

