

Creating an Agency Relationship

Assent both parties manifest assent to work with one another

Benefit agent agrees to work for the principal's benefit

Control Agent agrees to work subject to the control of the principal

Consideration not required

Key component Manifestations of Assent

Principals

Principal person or legal entity with legal capacity

unincorporated associations cannot be principal because they lack legal capacity

Agents

Agent any person or entity with minimal capacity
this can include a minor

Minimal capacity assent to agency relationship, perform tasks on behalf of principal, subject to principal's control

Types of Agents

Servants/employees Employer has the right to control the agent's physical conduct of work

Independent contractor Principal does not control or have the right to control the agent's physical conduct of work

Characteristics of an Independent Contractor high level of independence, free to work for other people, paid on fixed fee, typically owns his own tool

Terminating an Agency Relationship

How to Either party can terminate an agency relationship unilaterally

Contract Liability

Is principal bound? Depends on authority

Actual Express Authority communication between agent and principal. need subjective and objective (reasonable) intent; terminates upon death (or knowledge of death)

Actual Implied Authority Communication between principal and agent. take whatever steps are necessary to achieve principal's objective. Implied authority to act within general trade usage or accepted business customs.

Apparent Authority Communication between principal and third party

Ratification No pre-act communication. Ratification requires that (i) the principal has knowledge of the material terms of the contract and (ii) the principal then accepts the contract's benefits.

Disclosure of Principals

Disclosed principal Third party knows agent is acting on behalf of principal and the principal's identity

Partially disclosed principal Third party knows the agent is working on behalf of a principal but not the principal's identity

Disclosure of Principals (cont)

Undisclosed Third party does not know agent's status as agent nor the principal's identity. Whether principal is party to contract depends on agent's authority

Principal's Liability for Torts

Vicarious Liability A principal may be liable for the tortious acts of his agent. Need sufficient control and action within scope of employment

Frolic Significant deviation from an assigned path; outside scope of employment

Detour De minimis deviation from an assigned path; within the scope of employment

Intentional Torts Generally, outside scope of employment

Fiduciary Duties- Agent

Duties Duty to exercise reasonable care
Duty to obey reasonable instructions

Duty of loyalty and care apply only to partners, not prospective partners or former partners

Duty of loyalty agent cannot usurp a business opportunity, take in secret profits, or compete in competing business with the principal

