AGENCY LAW – Part A

Call center, Cox Comm., Garland, TX

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Agency: fiduciary relationship based on express or implied agreement by which one person (agent) is authorized to act under the control of and for another (principal) in negotiating and making contracts with third persons
In other words, 

- Agency = Principal and Agent
- Express or implied agreement requires mutual consent (in other words, genuine assent)
  - Mutual consent means that agent agrees to act on behalf of principal and be subject to principal’s control
- Fiduciary relationship -- duty of loyalty & trust
Who May Be an Agent?

- Any competent person, including minors and those with a natural or legal disability
  - Contracts with minors & those w/disability are void or voidable as with any contract
Agency Does Not Require...

- A written agreement
  - unless agent is to enter contract that must be in writing (*equal dignities rule*)

- A formal agreement
  - agency may be implied by conduct

- Consideration
  - money irrelevant
Agency is the most common and most important legal relationship

KEY: all employees are agents, but not all agents are employees

Agent inspecting wafer at Intel
The Details . . .

- Consent
- Control
- Fiduciary Duty

Piano manufacture, Steinway
CONSENT

- Principal must ask agent to act & agent must agree
  - express (written or oral) agreement
  - implied agreement because of conduct of the parties

Employees in training at Pfizer
Authority inferred or conferred by custom, Agent’s position or what is reasonably necessary to carry out express authority.

What the Agent reasonably thinks the Principal means.

What is her authority?
Principal, by either word or act, causes 3rd party to reasonably believe that Agent has authority to act for Principal.

If 3rd party changes legal position by relying on Principal’s representations, Principal is estopped from denying Agent had authority to contract.

What is this man’s apparent authority?
Also applies to partnerships
Courts may deem a relationship to be “agency” if the principal causes a third person to believe that another person is the Principal’s Agent, and the third person acts to her detriment in reasonable reliance on that belief.

Hospitals may be liable for the negligence of doctors who are not its employees if a patient looks to the hospital for medical care.
Be careful not to "cloak" a person with "apparent authority" because you may create agency.

If agency relationship created, principal is liable for agent’s actions.

Don’t create a Mini-Me unless you intend it!
A principal is liable because s/he controls the agent: no control, no agency

Distinguish Employee vs. Independent Contractor Relationships
## “Reid” Factors to Aid Decision

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<th>Factors Courts Consider:</th>
<th>E’ee</th>
<th>I.C.</th>
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<tr>
<td>Does the Employer exercise a great degree of control over the details of the work?</td>
<td>Yes</td>
<td>No</td>
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<tr>
<td>Is the worker engaged in an occupation or business distinct from Employer?</td>
<td>No</td>
<td>Yes</td>
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<td>Is the work usually done under Employer’s supervision?</td>
<td>Yes</td>
<td>No</td>
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<td>Does Employer provide the tools?</td>
<td>Yes</td>
<td>No</td>
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<td>Has the worker been employed a long time?</td>
<td>Yes</td>
<td>No</td>
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<td>Is the worker paid at the end of the job?</td>
<td>No</td>
<td>Yes</td>
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<tr>
<td>Is there a great degree of skill required?</td>
<td>No</td>
<td>Yes</td>
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Eisenberg sued for sexual harassment & company denied claim due to her short tenure.

Court disregarded Eisenberg’s short tenure and found that she was an employee because she loaded trucks for a moving company that supplied all tools and paid her hourly wage, and company controlled the way she performed her assigned tasks.

As an employee, Eisenberg had the right to file a sexual harassment lawsuit under Title VII of the Civil Rights Act.

Company rebranded
Determining whether the worker is an employee or an independent contract affects liability of Principal/Employer.

Liability is related to tax, contract, and tort issues.
Employer Liability

- **Tax**: If employee, then employer liable
- **Contracts**: Employer generally liable for contracts made by an agent, but not necessarily
- **Torts**: Employer liable for torts of employee committed within scope of employment
Yelverton v. Lamm

Facts

- Yelverton died when struck by auto owned/driven by Lamm
- Yelverton’s executor sued Lamm plus Lamm’s alleged employer, Premier
- Premier’s defense was that Lamm wasn’t agent or employee, but independent contractor
  - Premier requested dismissal
Trial judgment for Premier
  > Yelverton’s estate appealed

Appellate Court
  > Distinguished independent contractor from employee
  > Test: whether employer has the right to control the worker re: manner or methods of doing the work
  > If control exists, then employer liable for negligent acts of agent or employee
Yelverton v. Lamm

Evidence

- Lamm represented Premier for 20+ yrs under “Independent Agent” K giving Lamm right to sell Premier’s products via “orders”
- Premier not bound by orders until accepted
- Lamm paid by commission, paid his own expenses, and controlled his work schedule

Holding: Premier not liable; affirmed
Vizcaino v. Microsoft (1999) Ninth Circuit Court of Appeals ruled that 10,000+ “temporary” workers were not independent contractors but rather employees entitled to all Microsoft benefits (stock options & healthcare)

Known as “Permatemp” case

Plaintiff Chris Miller needed health insurance for brain tumor treatment
Agents have a fiduciary duty to principals

**Definition:** relationship in which one party (principal) places special trust and confidence in the fiduciary (agent), who is obligated to act in good faith and candor with loyalty to the trusting party.
Duty of Loyalty

Agent must act solely for benefit of principal for all matters related to the agency, including:

› Disclose receipt of profits (including gifts)
› Maintain confidentiality
› Refrain from competition with principal
› Avoid conflict of interest
› Refrain from self-dealing
› Refrain from inappropriate behavior
**Facts:**

› 1971: George Harrison, managed by ABKCO Music (A.B. Klein), was sued by the copyright holder of the hit song, “He’s So Fine” (Bright Tunes) who claimed Harrison’s song, “My Sweet Lord,” infringed on their copyright

› Klein tried unsuccessfully to settle the suit, then his contract with Harrison expired

› After agency termination, Klein used Harrison’s confidential info in negotiations to purchase Bright Tunes; this action prolonged litigation
Facts:

- At copyright trial in 1976, Harrison found liable for infringement; damages issue remained.
- 1978: ABKCO bought Bright Tunes and all rights to the infringement suit making ABKCO the plaintiff in the 1979 trial for damages.
- At trial, Harrison counterclaimed for damages from ABKCO's breach of the duty of loyalty.
- Trial court found a breach of duty and reduced ABKCO's recovery; ABKCO appealed.
Legal Reasoning and Issue:

- An agent has duty *not* to use confidential knowledge acquired in employment to compete with principal and duty exists after employment.
- However, using information based on general business knowledge is not covered by the rule.
- Did Klein use confidential information from his agency to purchase Bright Tunes?
Holding:

- Evidence showed that Klein gave Bright Tunes confidential earnings schedules belonging to Harrison and that Klein’s former position aided in his purchase of Bright Tunes pending litigation.
- Sufficient evidence exists that Klein’s conduct didn’t meet standard of former fiduciary.
- Judgment affirmed.
Other Agent Duties

- **Duty to obey principal’s instructions**
  - Unless illegal or unethical act

- **Duty to act with reasonable care**
  - Special skills ⇒ higher standard of care
  - E.g., lawyer, real estate agent

- **Duty to inform**
Remedies for Agent’s Breach

- Principal may recover actual damages
- For agent’s breach of duty of loyalty, principal may
  - Recover agent’s profits from wrongdoing
  - Rescind the transaction
1. Principal must reimburse (indemnify) agent for expenses reasonably incurred
2. Principal must cooperate with agent in performing directed tasks
Duty to Reimburse

- **Payments by agent in course of duty**
  - Even unauthorized payments if agent reasonably believed payment required and principal received benefit

- **Torts committed by agent**
  - If principal authorized agent’s behavior and agent didn’t realize s/he was committing a tort

- **Contractual liability**
  - If made in good faith on principal’s behalf
Duty to Cooperate

- Furnish agent with opportunity to work
- Cannot unreasonably interfere with agent’s ability to perform
  - Note: unless specified by contract, principal may compete with agent
- Perform principal’s part of contract
  Generally, this means pay agent’s fee
Generally, burden of proving agency rests on person who seeks to benefit by the agency
e.g., third person who desires to bind principal because of alleged act of agent

Ambulance crashed on way to hospital in Denmark. Who will be sued?
True=A, False = B

Agency is a contract in which an agent is authorized to act on behalf of, and under the control of, a principal.

All employees are agents, and all agents are employees.

Agents may bind a principal on the basis of apparent authority.

Agency may be created unintentionally.
Test Your Knowledge

True=A, False = B

- All duties are delegable.
- An agent’s duty of confidentiality continues after the agency ends.
- To be considered actual authority, the authority must be expressed in words orally or in writing.
- Agency is a fiduciary relationship.
Multiple Choice

- Principals have the following duties to agent:
  - (a) Duty to compensate
  - (b) Duty to reimburse for reasonable expenses for doing agency business
  - (c) Duty to indemnify the agent for losses suffered due to agency’s business
  - (d) Both A and B
  - (e) All of the above
Training an Indian call center worker to sound “American” for Microsoft