Principal’s Rights & Remedies Against Agent

- Contract remedies
  - for breach of fiduciary duty and performance.
- Can sue in tort
  - libel, slander, trespass, deceit, fraud.
- Constructive trust theory
  - For money/property Agent steals from Principal.
- Avoidance of contract if Agent doesn’t do as told
- Indemnification (agent protects Principal)
Agent’s Rights & Remedies Against Principal

- Right to compensation, reimbursement, indemnification and cooperation.
- Agent can withhold performance and demand an accounting.
- Agent can recover damages for past services and future damages.
Termination of Agency

- By agreement
  - Agreed term of relationship ends
  - Agreed purpose (e.g., house sale) is achieved
  - Mutual agreement
  - Agency at will (principal terminates agency)
    - Note: if one party’s departure from relationship violates the agreement, the termination is wrongful for which the remedy is damages
Termination of Agency

- By inability to perform
  - If agency requires license and Agent or Principal loses the license, agency ends
  - Bankruptcy of Agent or Principal ends agency if the bankruptcy affects ability to perform
  - Death/incapacity of Principal or Agent
  - Disloyalty of Agent
  - Changed circumstances
    - Destruction of subject matter; change of law
Effect of Termination

- Once agency ends, Agent has no authority to bind Principal
- Principal’s duty to indemnify Agent continues
  > For expenses/liability during agency
- Note! Agent’s duty of confidentiality continues indefinitely!
Some agency relationships are irrevocable.

Example: if Agent has power coupled with an interest (e.g., interest in land to be sold), only the Agent can terminate the agency.

Principal has neither power nor right to terminate!
Common Issues Re: Agency

- Is Principal liable for contracts entered into by Agent?
- Is Agent liable for contracts entered into for Principal?
- When is a third party liable to Principal and to Agent?
- When is Principal liable for the torts of Agent?
- When is Agent liable for torts committed while working for Principal?
Generally, Agent is not liable for contracts made on behalf of fully disclosed Principal.

However, a third party can recover from *either* Agent or Principal if Principal is only partially disclosed or undisclosed.
Liability: Authorized Acts

- Principal’s liability for Agent’s contract with a third party depends on whether Agent’s actions (contracts, representations) were authorized or unauthorized by Principal.
- In general, Principal is liable to 3rd party for contracts made by Agent if Agent acts within scope of authority.
Unauthorized Acts

- Unauthorized acts are acts outside of Agent’s express, implied or apparent authority.
- If Agent has no authority, Principal is not liable, but Agent alone is liable.

Manager, Cabella’s, Sidney, NE
Liability for Agent’s Crimes

- General Rule: Agent is liable for his/her crimes, Principal is not
  - Unless Principal authorized or participated in crime
  - Negligent hiring or supervision theories may be applicable to create Principal’s liability

- Some jurisdictions hold Principal liable for Agent’s crimes if Principal violated statute
Liability Analysis For Agent’s Tort

- A person is always liable for his or her own torts.
- To determine whether a Principal also is liable for Agent’s tortious conduct, first determine whether worker is employee or independent contractor.
Liability Analysis

Worker

- Independent Contractor
- Employee

Factors

- Principal Generally Not Liable (unless strict liability)
- Outside CSE-P Not Liable
- Within CSE -P Liable

“Course and Scope of Employment”
Agent is liable to 3rd party for his own torts.

Principal also may be liable for Agent’s torts if they result from:

- Principal’s own tort
- Principal’s authorization of tort
- Agent’s unauthorized but fraudulent conduct made within scope of agency
- An employment relationship
Let the master answer

Theory of liability that applies only to Employer-Employee relationships (master and servant)

Principal/Employer/Master is vicariously liable for Agent/Employee/Servant’s negligent torts committed within the Agent’s “course and scope of employment”
Example: Real Situation

- **Facts:** at construction site, an excavator bucket disconnected, fell, and crushed an employee of the construction company.

- **What questions arise?**
  - How could an employer prevent this type of lawsuit?
Liability for Employee’s Intentional Torts

- Principal liable for intentional torts committed with the scope of employment
- Employee is a tortfeasor as well
- Employer is liable for Employee’s acts which Employer knew or should have known the Employee had a propensity to commit (negligent hiring or supervision)
Duran v. Furr’s Supermarkets

- What were the facts?
- What was the issue?
- What did the court hold and why (reasoning)?
- How should an employer prevent this type of lawsuit?
Conner v. Magic City Trucking

- What were the facts?
- What was the issue?
- What should the court hold and why?
- How should an employer prevent this type of lawsuit?
Liability: Independent Contractor’s Torts

- General rule: Principal/Employer is not liable for acts of independent contractors because Principal/Employer has no right to control.
- Independent Contractor is liable for his/her own torts.
- Exception: hazardous activities.

Train derailment with fuel spill
Liability for Subagent’s Acts

- If Agent is authorized by Principal to hire subagents, Principal is liable for the acts of the subagent.
- If Principal undisclosed, Agent is responsible for wages of subagents and Principal liable for torts of subagents.
Cyberspace

- *Intelligent Agents*: autonomous or semi-autonomous internet programs that interact with people or other programs to execute specific tasks, including searching, ordering and delivery of goods via “point and click” electronic contracts on the internet.

- Generally, intell. agents have at least apparent authority to act for and bind Principal who is estopped from denying an electronic contract.
Brain Teasers

Let’s Test Your Agency IQ
Agent or Employee

- A realtor is the typical “agent.” When is a realtor your employee?
- Is a tavern the agent of a liquor distributor?
- Is a bartender an agent? Employee?
Agent or Indep. Contractor?

- When is a plumber an agent? An independent contractor?
- When is a person who delivers mail an Employee? Agent? Independent contractor?
Duties

- May the software engineer take his talents, along with confidential information about his employer, to a new employer?

- May the accountant refuse to work for a particular client of the Accounting Company if she doesn’t like the client?
True=A, False = B

- An agent is always liable for his own torts.
- The doctrine of *respondeat superior* means that a principal is liable for torts committed by employees acting within the course and scope of employment.
- If an agent contracts for a legally existing and competent principal but lacks authority to enter contracts, the principal is not bound.
True=A, False = B

○ A principal is never liable for an independent contractor’s torts.
○ Apparent authority arises if communications by principal to third party creates reasonable appearance of authority in the agent.
○ If a principal fails to inform the agent about a defect in the product, the principal will be directly liable for an agent’s torts.
Test Your Knowledge

Multiple Choice

Carl owned a pizza business and employed Zip to deliver pizzas. Carl knew that Zip occasionally drank beer while driving, but didn’t fire Zip. Zip injured Dan while delivering pizzas and driving drunk. Is Carl liable to Dan for Zip’s conduct?

(a) No, only Zip is liable. Drunk driving was not within the scope of employment.
(b) Yes, since Carl knew about Zip’s drinking and negligently retained Zip.
Multiple Choice

Carl’s Pizza hired Miller to be general manager. Miller hired Sam for pizza prep work. In general, would Carl’s Pizza be obligated to honor the contract with Sam?

• (a) No; only the owner of Carl’s Pizza can hire Sam, thus Sam’s contract is void

• (b) Yes; Miller acted with implied authority since he is general manager and Carl’s Pizza must honor Sam’s employment contract
NEXT

- Employment Law
- Securities Regulation