

Agency and Employment Relationships

Agency

- Principal and Agent
 - Fiduciary Relationship
- Principals use agents to conduct multiple business operations simultaneously in various locations
- Principal has right to control agent in matters entrusted to the agent
- Distinguish Employee and Independent Contractor

Employee and Independent Contractor

- Does Employer exercise a great degree of control over the details of the work?
- Is worker engaged in an occupation or business distinct from Employer?
- Is the work usually done under Employer's supervision?
- Does Employer provide the tools?
- Has the worker been employed long?
- Is worker paid at end of job?

Employer Liability

- Tax Liability
 - Employer liable if employee
- Contract Liability
 - Employer not necessarily liable
- Tort Liability
 - Employer liable for torts of employee within scope of employment
- Works for Hire

Formation of Agency Relationship

- Consensual Agreement
- No consideration required
- Principal needs contractual capacity
 - Agent does not
- For any legal purpose

Types of Agencies

- Agency by Agreement
 - oral, written or implied
- Agency by Ratification
 - Principal's Act or Agreement
- Agency by Estoppel
 - Principal causes third party to believe agency relationship
- Agency by Operation of Law
 - Necessaries for family
 - Emergency

Duties: Agent to Principal

- Performance
 - reasonable diligence and skill (special skills)
- Notification to Principal
- Loyalty
 - no conflict of interest
- Obedience
- Accounting

Duties: Principal to Agent

- Compensation
 - express or implied
- Reimbursement and Indemnification
- Cooperation
- Provide safe working conditions

Rights and Remedies: Agents

- Rights
 - Compensation
 - Reimbursement
 - Indemnification
 - Cooperation
- Remedies
 - Agent can withhold performance and demand accounting
 - Agent can recover damages for past services and future damages

Rights and Remedies: Principals

- Principal's remedies for breach of fiduciary duty and performance
 - Can sue in tort
 - libel, slander, trespass, deceit, fraud
 - Constructive Trust
 - money/property Agent steals from Principal
 - Avoidance of contract if agent does not do as told
 - Indemnification

Scope of Agent's Authority

- Principal is liable for acts entered into by Agent when he gives Agent either actual or apparent authority
 - Actual Authority
 - express or implied
 - inferred or conferred by custom
 - Apparent Authority
 - estoppel, emergency and ratification

Apparent Authority and Estoppel

- Principal, by either word or act, causes third party to reasonably believe Agent has authority to act for Principal
- If third party changes legal position by relying on Principal's representations, Principal is estopped from denying Agent had authority to contract

Ratification

- Agent must act on behalf of Principal
- Principal must affirm entire deal
- Principal must affirm before third party withdraws from transaction
- Principal and third party must have legal capacity to contract when Agent made deal
- Principals must know all the material facts involved in transaction

Liability for Authorized Acts

- Principals are classified as:
 - Disclosed
 - identity known to third party
 - Agent has no liability, Principal liable
 - Partially Disclosed
 - third party knows he's dealing with Agent, but not whose
 - Agent may be liable, Principal liable
 - Undisclosed
 - third party does not know he is dealing with an Agent, Principal's identity totally unknown
 - Principal liable unless expressly excluded, Contract a negotiable instrument, agent's performance personal, third party would not have contracted if knew Principal's identity (and agent and principal knew this and third party rescinds contract)

Liability for: Unauthorized Acts

- Acts outside of Agent's express, implied or apparent authority
- If Agent has no authority, Principal is not liable, but Agent is liable

Liability for Agent's Torts and Negligence

- Agent is liable to third party for his own torts
- Principal 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
- Liability for negligence applies only to Employer-Employee relationships
 - Doctrine of Respondeat Superior: Employer vicariously liable for Employee's negligent torts committed within the Agent's "course and scope of employment."

Liability for Agent's Intentional Torts

- Principal liable for intentional torts committed with scope of employment
- Employee is a tortfeasor as well
- Employer liable for Employee's acts which Employer knew or should have known the Employee had propensity to commit
- Employer not liable for intentional torts of independent contractor
 - except hazardous activities

Liability for Agent's Crimes

- General Rule: Agent is liable, Principal is not, unless
 - Principal authorized or participated in crime
- Some jurisdictions hold Principal liable for violating statutes

Termination of Agency

- Agency can be terminated by:
 - Act of the Parties
 - lapse of time, purpose achieved, occurrence of specific event, mutual agreement, termination by one party, notice of termination; or
 - Operation of Law
 - death or insanity of Principal or agent, impossibility, changed circumstances, bankruptcy, war
- On termination, Agent has no actual authority to bind Principal, but may have apparent authority to bind Principal
 - Notification, both actual and constructive, required of termination of agency

Employment Relationships

- Historically, employment law governed by common law doctrine of “employment at will,” where either employer or employee could terminate the relationship at any time, for any reason
- Now, employment law is heavily regulated by state and federal statutes

Whistle-blowing

- Employee tells supervisor or press that employer is engaged in some unsafe or illegal activity
- Protection under federal and state law
- *Whistleblower Protection Act*

Wage and Hour Laws

- Hours and Wages
 - Davis-Bacon Act
 - the prevailing wage act
 - Walsh-Healey Act
 - beginning of minimum wages
 - Fair Labor Standards Act (FLSA)
 - extends wage and hour regulation to workers in interstate commerce [Know what's involved]
- Child Labor
 - FLSA prohibits oppressive child labor practices [Know what these are]

Worker Health and Safety

- *Occupational Safety and Health Act* (OSHA)
 - fundamental federal law aimed toward safety in the workplace
 - Enforced by OSHA, NIOSH, and OSHRC

State Workers' Compensation Laws

- Purpose
 - Reduce employer liability to employees for workplace injuries
 - Provide measure of assurance of compensation for workplace injuries, regardless of solvency of employer
- by requiring that
 - Injured employees make claim against employer's workers' compensation insurance policy, instead of suing employer
 - Most employers carry workers' compensation insurance

Income Security

- Primary provisions
 - Social Security and Welfare [Know definition]
 - Private Pension Plans [Know definition]
 - Employee Retirement Income Security Act (ERISA)
gives employee vested right to receive pension benefits in future when stops working
 - Unemployment Compensation [Know definition]

COBRA

- Prohibits discontinuance of insurance benefits of workers who have voluntarily or involuntarily been separated from work
 - unless involuntary separation due to gross misconduct
- Employers must comply if have more than 20 employees

Family and Medical Leave Act

- Requires employers
 - with over 50 employees to provide unpaid leave to employees who need to care for a spouse, child, or parent suffering with a serious medical condition [Know what's involved]
- Employee cannot be terminated for taking leave under policy, and has right to restoration to same or similar position upon return to work [Know remedies]

Employee Privacy Rights

- Laws Protecting Employee Privacy Rights
 - Constitutional and Tort law
 - ECPA

Monitoring

- Lie Detector Tests [Know exceptions]
- Drug Testing
 - Most government employees subject to testing; rights of private employees vary from by state [Know other exceptions]
- AIDS Testing
 - some states restrict
- Electronic Performance Surveillance
 - Most limitations can be avoided if employer informs employees that surveillance will occur
- Screening Procedures
 - Questions must have reasonable connection to job

Employment Related- Immigration Law

- Immigration Reform and Control Act
 - prohibits hiring of illegal aliens
