
Sole Proprietorships And Principal-Agent Liability

- a. Sole Proprietorship
 - a. Simplest form of organization
 - b. Relationships
 - i. A sole proprietor may hire employees to discharge various functions in the business so long as:
 - 1. one person owns business,
 - 2. is responsible for management decisions, and
 - 3. receives profits and bears losses
 - c. Liability
 - i. Owner has unlimited liability b/c the individual and the business are one and the same for legal liability purposes. Proprietor is responsible for debts of business
 - ii. Legal claimants can pursue all assets of owner
 - d. Taxes
 - i. Proprietorship does n/ pay taxes as a separate entity
 - ii. Individual reports all income and deductible expenses for the business on his personal income tax return
 - e. Must fill out a certificate of assumed name
 - i. When there is a split-up, the proprietor who leaves must file a termination of certificate so that the creditors no longer rely on that proprietor for his share of the debt

- b. Is there an agent-principal relationship?
 - a. There must be a manifestation of consent by the principal to the agent that the agent shall act on the principal's behalf, and
 - i. Can be verbal, in writing, or as a result of course of conduct
 - b. There must be consent by the agent to accept that undertaking, AND
 - i. Existence of agency relationship is *consensual*
 - 1. If agent responds, "Go get pizza yourself," the would-be agent has n/ accepted the undertaking. But if Agent says, "Okay," then he has accepted that undertaking. If agent fails to pick it up, the pizza maker, as the Third Party, can demand from the principal that he pay \$10. The Principal in turn is entitled to indemnification from his agent for his \$10 loss
 - ii. Agent's *course of conduct* satisfies acceptance
 - 1. Ex. If you give your roommate \$10 to pick up a pizza and he leaves w/ the \$10, your roommate can n/ subsequently argue that no agency relationship existed. Roommates' act of accepting \$10 makes him the principal's agent
 - iii. Whether an agency relationship exists does n/ hinge on whether the parties knew that they had established an agency relationship (i.e. whether they knew they were the principal or they were the agent)
 - c. Subject to principal's control
- c. What is the scope of authority under this relationship?
 - a. Actual Authority
 - i. Express
 - 1. Where principal has given clear authority to agent to undertake transaction w/ a third party

a. Created by manifestations from Principal to Agent

- i. Principal tells Agent that Agent may act on Principal's behalf in accomplishing some task

- b. Ex. Epstein tells his chauffeur, Freer, that Freer has authority to have the car serviced at the service station. Freer takes the car to the station for servicing. Epstein is obliged to pay for the service. Freer had actual authority to bind Epstein to the deal

ii. Implied

1. An agent has the authority to do what is reasonably necessary to get the assigned job done, even if Principal did n/ spell it out in detail

- a. Activities of agent are w/in the framework of the principal's instructions to the agent

- b. Ex. Freer asks his assistant to make travel arrangements for him to attend a law professor conference. Although he does n/ say anything specifically about airline reservations, his assistant has the implied actual authority to make such a reservation for him

b. Apparent authority

- i. Apparent authority is created by manifestations from Principal to third party. The manifestations MUST:

1. be attributable to Principal,
2. get to third party, and
3. lead third party to reasonably conclude that Agent is an agent for Principal

ii. Rule: Where words or conduct of the principal would lead a reasonable person in the third party's position to reasonably believe that the principal had authorized the agent to take the action that the agent took (can occur by words or conduct or both)

1. Focus on fact findings

iii. Ex. Principal tells third party, who runs a service station that Agent is Principal's agent for having the car serviced. Agent has apparent authority

iv. Ex. Principal tells third party, the owner of a used car lot, that Agent is Principal's agent for buying Principal a car. Agent has apparent authority and buys car. Third party can rely on that agent's purchase of a car since Principal told third party that Agent was Principal's agent for buying a car. Agent has apparent authority

v. Compare: Chef goes to newspaper to place ad. Is there any reason for the newspaper to believe that the chef has authority to place the ad? Question is whether there are any facts that exist between the principal and the newspaper to lead the newspaper to reasonably believe that the chef had apparent authority to place the ad. Depends on whether any instructions were given and who knew what. If no facts exist that could lead the newspaper to reasonably conclude that the Chef is Principal's agent and that the Chef had apparent authority to place the ad, then Principal is n/liable to pay for the newspaper ad

1. Compare: If the principal told the newspaper that the Chef was his agent for purchasing the ad, then the newspaper would be justified in concluding that the Chef was P's agent. In that case, the Chef would have apparent authority. If the owner subsequently tries to cancel the ad he'll be unable to recover damages from the newspaper for running the ad

c. A principal-agent relationship can be created by *estoppel*

i. Elements:

1. Principal changes his position,

2. Principal knows that his agent is improperly representing to a third party that the agent has authority to act on behalf of the principal, and
 3. Principal fails to notify third party that Agent no longer has authority
 4. * Principal can't sit by idly: Principal is estopped from denying that the agent was representing the principal
- ii. Ex. Agent is hired to buy a product and Principal changes his mind and notifies Agent but Agent buys the product anyway
 1. Only if Principal timely notifies the third party BEFORE Agent buys the product that Agent no longer has authority can Principal be relieved of any liability to the third party
 - iii. If Principal did n/ act in a timely manner and did n/ notify the third party and b/c of Agent third party incurs expenses, Principal will be liable to third party under theory of estoppel

d. Ratification

- i. Principal w/ knowledge of facts of what's going on between agent and third party, either:
 1. ratifies agent's conduct, or
 2. engages in conduct that is consistent w/ having accepted it
- e. Acquiescence: Principal knows what Agent's doing and never tells Third Party that Agent did n/ have authority to act on his behalf

d. Types of agents

- a. Gen'l agent: Has ongoing relationship w/ principal
- b. Special agent: Accomplishes specific undertakings for the principal

c. Respondeat Superior

- i. P can be liable even though P is n/ personally negligent
- ii. RS applies only to a subset of principal/agent relationships called “master/servant”
- iii. The master is liable for the torts of a servant only if:
 1. The master had the rt. to control the details of how the servant did the job AND
 - a. i.e. the day-to-day performance of the task over which the master has control
 2. the tort was committed w/in the scope of employment
 - a. Frolic v. detour
 - i. Frolic: When a servant leaves the appointed job to engage in personal business and commits a tort, a tort committed during such a period should n/ be a basis for vl
 - ii. Detour: When a servant deviates from the most direct route to work (i.e. to pick up breakfast or lunch) he is still on his way to do his master’s job so any torts committed during this period would create vl
- iv. Compare to agency
 1. agency relationship requires only basic control
 2. all agents are n/ servants but all servants are agents
- v. Independent contractors: Note that a servant is different from an independent contractor, who is hired but is n/ told specifically how to do

the job. The torts of an independent contractor generally are n/ attributable to the person who hired him

e. Liability

a. Liability of TP to Principal

- i. If TP enters into a contract w/ agent and subsequently reneges or doesn't perform, TP is liable to the principal
- ii. TP Defense: If TP knew the identity of the undisclosed principal he would never have dealt w/ the principal's agent
 1. Past history: "hell will freeze over before I deal w/ this person again"

b. Liability of Agent to TP

- i. The agent is n/ personally liable to the TP if:
 1. the principal is bound to the TP b/c the agent has actual, apparent, or inherent authority (by virtue of the authority granted to the agent by the principal to do something on his behalf) and
 2. the principal is fully disclosed to the TP (perhaps by the agent)
 - a. Undisclosed situation: If the principal is n/ disclosed to the TP the agent is still personally liable to the TP however, the agent can seek indemnification from the principal
 - b. Partially disclosed situation: if principal is partially disclosed (TP knows that the agent is operating under the authority of some principal but doesn't know that principal's identity) the TP can still make a claim against the agent and the agent can seek indemnification from the principal
 - i. Agent goes to lumber yard and tells the seller that he is there to buy lumber on behalf of his employer but neglects to disclose his employer's identity to the

seller. B/c the agent has n/ disclosed his principal's identity to the seller, the agent is still personally liable to the TP

ii. If agent wants to avoid liability to TP, the agent must disclose the identity of his principal to the TP (i.e. the name of his principal). If n/, the agent puts himself in the unenviable position of being personally liable to TP

ii. If represent agent, tell agent to disclose principal. If represent principal, tell principal to:

1. be clear of the scope of authority of the agent and
2. watch him like a hawk to avoid a pissing contest

c. Liability of Agent to principal

i. If the agent performs some action that goes beyond the scope of the authority granted to him by his principal (agent did smthg that he didn't have authority to do) the principal is still liable to the TP however he has a coa against the agent (agent has exposure)

1. Hayes: Agent did smthg that bound principal and principal was still obligated to honor the agreement w/ the TP but the Principal had a coa against the agent

ii. A third party is able to enforce a settlement agreement against a principal where the principal's agent (i.e. attorney) signs off on the deal (Hayes)

1. Lawyer wound up binding the principal
2. n/ end of relationship btwn client and atty. Client can file a malpractice suit putting atty's license in jeopardy. If client can prove that atty exceeded the scope of his authority then the client, as the principal, might be entitled to monetary relief

3. This case demonstrates how agent bound principal but how principal has recourse against agent
- iii. If principal pays the agent the money to consummate the deal but the agent fails to perform, the agent has exposure to the principal
- d. Liability of principal to agent
 - i. if agent acts w/in the scope of the actual and apparent authority that was granted to him by his principal resulting in the TP being harmed, the principal is under a duty to indemnify the agent for any judgment the TP wins against the agent
 1. Example: I did what you asked me to do, I did it on your behalf, I must be held harmless