

AGENCY RELATIONSHIPS

- **Agency:** A *fiduciary relationship* arising when one person (the *principal*) manifests her consent that another person (the *agent*) act **on her behalf** and **subject to her control** and the agent manifests his consent to so act.
- **Fiduciary:** A person who undertakes to act on behalf of, and primarily for the benefit of, another.
- **Fiduciary Duty:** A duty arising from the trust and confidence placed in a fiduciary by those on whose behalf and for whose benefit she acts.

EMPLOYER-EMPLOYEE RELATIONSHIPS

■ **Employee:** A person

- (1) who **works for**, and receives **payment from**, an employer,
- (2) whose **working conditions** and **methods** are **controlled by the employer**, and
- (3) for whose acts and omissions within the scope of employment the **employer is liable**.

■ **Independent Contractor:** A person

- (1) who **works for**, and receives **payment from**, an employer,
- (2) but whose **working conditions** and **methods** are not controlled by the employer, and
- (3) for whose acts and omissions the **employer is not liable**.

■ **“Works for Hire”:** The Copyright Act of 1976 gives the employer the copyright in any work its employee creates (1) within the scope of her employment and (2) at the employer’s request.

DETERMINING EMPLOYEE STATUS

- To determine whether a worker is an employee or an independent contractor, courts consider the following:
 - (1) how much **direction** and **control** the employer exercises over the details of the worker's work;
 - (2) whether the worker is engaged in an occupation or business **distinct** from that of the employer;
 - (3) whether the worker usually performs his work under the employer's **direction** or supervision;
 - (4) who supplies **tools** the worker uses;
 - (5) **how long** the worker works for the employer;
 - (6) how the worker is **paid** for his work; and
 - (7) the degree of **skill** the worker's work requires.

- By contrast, the IRS determines whether a worker is an employee or an independent contractor using a single factor: the **degree of control** the business exercises over the worker.

AGENCY FORMATION

- Agency relationships are normally **consensual** and a principal and agent may agree to form an agency relationship for **any legal purpose**.
- **Agency by Agreement:** An agency relationship based on an **express or implied agreement** that the agent will act for the principal.
- **Agency by Ratification:** The principal's confirmation of another's act or contract performed or entered into, without authority, on the principal's behalf.
- **Agency by Estoppel:** If a principal holds out to a third party that another is authorized to act on the principal's behalf, and the third party deals with the other person accordingly, the principal may not later deny that the other was the principal's agent for purposes of dealing with that third party.
- **Agency by Operation of Law:** Agencies recognized by courts – *e.g.*, family relationships, emergency situations – in the absence of any formal agreement, confirmation, or act or omission by the principal that implied the agent's authority.

AGENT'S DUTIES TO THE PRINCIPAL

- **Performance:** An agent implicitly agrees to use **reasonable diligence and skill** (except for a specialist, who is held to a higher degree of skill) in performing the task in its entirety.
- **Notification:** An agent must **notify the principal** of all matters that come to the agent's attention concerning the subject matter of the agency.
- **Loyalty:** An agent must act **solely for the benefit of his or her principal**, and not in the interest of the agent or a third party. Moreover, any information or knowledge obtained in the course of the agency is **confidential**.
- **Obedience:** When acting on the principal's behalf, an agent must **follow the principal's lawful and clearly stated instructions**.
- **Accounting:** Unless otherwise agreed, an agent must keep and make available to the principal an **account of all property and money received and paid out on the principal's behalf**, including gifts received from third persons.

PRINCIPAL'S DUTIES TO THE AGENT

- **Compensation:** When a principal requests certain services from an agent, the principal must **pay** the agent, in a **timely manner**, for those services rendered.
- **Reimbursement:** Whenever an agent disburses sums of money to fulfill the principal's request or to pay for necessary expenses incurred in the reasonable performance of his or her duties, the principal must reimburse the agent.
- **Indemnification:** Subject to the terms of the agency agreement, the principal must compensate, or *indemnify*, the agent for liabilities arising from the agent's lawful and authorized acts on the principal's behalf.
- **Cooperation:** A principal must cooperate with the agent and assist the agent in performing his or her duties.
- **Working Conditions:** A principal must
 - (1) provide its agents and employees with **safe** working **premises, equipment, and conditions**, and
 - (2) **inspect** working conditions and **warn** agents and employees of unsafe areas.

AGENT'S REMEDIES

- Most principal-agent relationships are governed by some actual or implied **contract**; therefore, most of the remedies available to an agent are the same available to any plaintiff in a breach of contract case.

- Additionally, in the event that the principal violates a duty owed to the agent, the agent may
 - **withhold further performance**, and

 - **demand an accounting**.

PRINCIPAL'S REMEDIES

- In the event that the agent violates her fiduciary duties, the principal may, in addition to any remedies provided for in his contract with the agent, seek:
 - **Constructive Trust:** Anything an agent obtains by virtue of the agency relationship belongs to the principal; therefore, a principal may sue to recover any benefits retained by the agent.
 - **Avoidance:** In the event that the agent breaches her contract with the principal, the principal may elect to avoid any contract he entered into with the agent.
 - **Indemnification:** To the extent that the agent's breach causes harm to some third party, who then sues the principal, the principal may seek indemnification from the agent.