

LIABILITY TO 3RD PARTIES

Contract Liability

- . Liability of Principal

Liability for contracts entered into by agents is imputed onto the principal if the agent had express, implied, or apparent authority or the contract was later ratified by the principal.

- Liability of Agent

a. When the agent is not liable personally on a third party contract, if the agent fully discloses that he's acting as an agent and identifies the principal.

b. The agent is personally liable on the contract if the principal was undisclosed, unidentified, or lacked capacity.

c. An agent may also be liable personally if he misrepresents the scope of the agency, that he was dealing for his own account, or guaranteed performance of the contract.

Undisclosed, Unidentified, and Disclosed Principal

- A principal is undisclosed if the agent does not represent that he's acting on behalf of a principal
- A Principal is unidentified if the agent acknowledges that he's acting on behalf of the principal but doesn't ID the principal
- A principal is disclosed if the agent fully discloses the principal agent relationship is and who the principal is.

Undisclosed, Unidentified, and Disclosed Principal

- Apparent Authority

- 1) If the principal is undisclosed, apparent authority is impossible.

- 2) When an agent acts with apparent authority on behalf of an unidentified/partially disclosed principal, both the agent and the principal may be liable for the contract.

Enforcement Power of an Undisclosed Principal

- In general, undisclosed principals can enforce contracts with third parties
- An agent may not intentionally conceal the principal's identity if it would be material to the third party. An agent may also not represent that he's acting on his own individual capacity.
- If a third party is sued by an undisclosed principal, the third party can raise all defenses it would have had against the agent.
- Where an agent acts on behalf of an undisclosed principal and the third party is unaware of the principal's existence, there is no reason that a third party would expect an undisclosed third party to be liable on the contract.
- Generally, an undisclosed principal is liable to a third party if: (1) the third party is induced to make a detrimental change in position by an agent without actual authority; (2) the principal knew of the agent's conduct and that it might induce others to change position; and (3) the principal did not take reasonable steps to notify the third party of the facts.
- Whether an undisclosed principal can be liable on a contract under a theory of ratification will depend on the approach taken by that jurisdiction.

Enforcement Power of an Undisclosed Principal

- Second Restatement Approach

An undisclosed principal cannot ratify a contract entered into by an agent without actual or apparent authority and therefore cannot be held liable.

- Third Restatement

Under the third restatement, an undisclosed principal may ratify contracts entered into by an agent without actual or apparent authority and therefore can be held liable.

- Under either approach, the agent will always be liable as a party to the contract

Tort Liability: Respondeat Superior

Liability of the Principal – “Respondeat Superior”

- The liability of the principal for tort is viewed under the Respondeat superior and principals can be responsible for the actions of their agents.
- Employment Nexus
 - 1) A principal is liable for the agent's torts if committed in the course or performance and within the scope of the agency or employment.
 - 2) If the agent made a small deviation from the agency the principal will still be liable; however, if the agent made a substantial detour of his own, the principal will likely no longer be held responsible.

Tort Liability: Respondeat Superior

- Independent Contractors

1) A principal is generally not liable for the torts of his independent contractors because while an agency relationship exists, the principal has limited ability to control or supervise the independent contractor's performance.

2) Characteristics of an I.C.

a) May work for multiple principals

b) Generally have own tools and equipment

c) Paid on piecemeal basis

3) Non-Delegable Duties

a) Use of an I.C. will not insulate a principal in the performance of non-delegable duties.

b) It is a non-delegable duty if it will affect the safety of the public at large.

i. Ex. Blasting

Tort Liability: Respondeat Superior

- Negligent Selection

Principal can be held negligent in the selection of the agent if the principal knew or should have known the unsuitability of the agent.

Liability of Agents

Agents are always liable for their own torts.

Criminal Liability

Criminal liability is not imputed to the principal unless the principal participated in the crime.

