

## Chapter 17 Agency and Private Employment Law

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Source: Bohlman/Dundas, The Legal, Ethical,  
& International Environment of Business

## Introduction

- Agency law
- Independent contractors
- Employment law

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Source: Bohlman/Dundas, The Legal, Ethical,  
& International Environment of Business

## Agency Formation

- The principal/agent relationship can be formed by:
  - Agreement (oral or express)
  - Ratification (by the principal)
  - Estoppel (principal leads third person to believe another person is his/her agent)

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& International Environment of Business

## Two Types of Agency Relationships

- Principal/Agent
- Employer/Employee

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Source: Bohlman/Dundas, The Legal, Ethical,  
& International Environment of Business

## Duties of Agents to Principals

- Fiduciary duty
- Duty of performance
- Duty of loyalty
- Duty of obedience
- Duty of accounting
- Duty of notification
- Any duties stated in the contract

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Source: Bohlman/Dundas, The Legal, Ethical,  
& International Environment of Business

## Duties of Principals to Agents

- Duty of compensation
- Duty of reimbursement and indemnification
- Duty of cooperation
- Duty to provide safe working conditions

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Source: Bohlman/Dundas, The Legal, Ethical,  
& International Environment of Business

## Liability of Principals and Agents to Third Parties

- Principal is disclosed
  - Principal is liable; agent is not liable
- Principal is partially disclosed
  - Principal is liable; agent is liable in most states
- Principal is undisclosed
  - Principal is liable once the third party discovers who he/she is; agent is liable

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Source: Bohlman/Dundas, The Legal, Ethical, & International Environment of Business

## Agent Lacks Authority

- If an agent lacks authority for an action or exceeds the scope of his authority, the agent is liable based on a breach of implied warranty of authority
- Principal is not liable

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Source: Bohlman/Dundas, The Legal, Ethical, & International Environment of Business

## Tort Liability

- Employer is liable for the torts of the employee, if the employee commits the torts within the scope of employment
- This is strict liability without regard to the fault of the employer
- But if the employee is deviating from his/her employer's business, the employee is liable for his/her own torts

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Source: Bohlman/Dundas, The Legal, Ethical, & International Environment of Business

## Agent's Misrepresentation

- The principal is liable based on the agent's actual or apparent authority

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Source: Bohlman/Dundas, The Legal, Ethical, & International Environment of Business

## Agent's Intentional Torts

- The employer is not responsible for an agent's intentional torts except:
  - Where the intentional tort was committed within the scope of employment
  - Where the employer knew or should have known the employee was unfit
  - Where the employer ratifies the intentional tort of the employee

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## Termination of Agency Relationship

- By act of the parties
  - Agreement duration
  - If no definite time, continues for a reasonable time
  - Particular objective achieved
  - Mutual agreement
- By operation of law
  - Mental incompetence
  - Death of principal or agent
  - Subject matter of agency lost or destroyed
  - War
  - Change in the law

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## Termination of Agency Relationship— Notice Required

- Termination by the parties
  - Actual notice to all third parties who dealt with the agent
  - Constructive notice to all third parties who have not dealt with the agent
  - Until notice is given, agent retains apparent authority
- Termination by operation of law
  - No duty exists to notify third parties

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## Independent Contractors

- An independent contractor is not an employee, but can be an agent under certain limited circumstances
- Key issues in determining whether someone is an independent contractor
  - Liability
  - Responsibility for payments to IRS

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Source: Bohlman/Dundas, The Legal, Ethical, & International Environment of Business

## Criteria for Determining Whether Someone Is an Independent Contractor

- Extent of employer control over details of the work
- Type of job
- Amount of skill required to perform job
- Who supplies equipment or tools?
- Length of employment
- Method of payment
- Method of filing tax returns

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## Employment Law

- Employment contracts
  - Oral or written
  - Statute of frauds
  - Covenant not to compete
- Employee leasing
  - PEO
  - Advantages
  - Disadvantages

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## Employment-at-Will

- Either party may terminate the employment arrangement with or without cause
  - Limits
    - Discrimination laws
    - Civil service laws
    - Whistleblower laws
    - State laws
    - Implied covenant of good faith
    - Implied covenant of fair dealing

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Source: Bohlman/Dundas, The Legal, Ethical, & International Environment of Business

## International Considerations

- U.S. Companies fairly free environment
- Other countries different attitude
- Often two-tiered board
- Must adhere to countries' regulations affecting employee rights

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## Summary

- Agency Formation
- Two Types of Agency Relationships
- Duties of Agents to Principals
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- Liability of Principals and Agents to Third Parties
- Agent Lacks Authority
- Tort Liability
- Agent's Misrepresentation
- Agent's Intentional Torts
- Termination of Agency Relationship
- Independent Contractors
- Criteria for Determining Whether Someone Is an Independent Contractor
- Employment-At-Will

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