

A Few Facts About Agency

An *agency relationship* is created when one person (the *principal*) consents to another person (the *agent*) acting on his behalf, subject to the P's control, and the A agrees to do so. Agency most often comes up in relationship to business matters of some sort.

At common law this relationship was called "master-servant."

An example of a formal agency agreement is a *power of attorney*, and the A in this case is called an *attorney-in-fact*.

This relationship has two essential components:

- (1) the A has either express or implied authority to act for the P, &
- (2) the P controls the acts of the A.

An agency relationship requires the consent of both parties, and their intention to create the relationship "must find expression in either words or conduct."

Many agency agreements authorize the A to exercise some degree of discretion in carrying out the A's responsibilities.

Judicial officials are often required to determine whether a particular relationship involved acts by an *agent* or an *independent contractor* in determining liability in a particular case. The critical distinction between the two hinges on the degree of control retained by the P.

An agency relationship is categorized as a *fiduciary relationship* in the law, meaning that an agent has a legal responsibility to act as a good faith representative of the P: self-dealing is a violation of the agreement.

A common issue in cases involving an agency relationship is the scope of the agent's authority. *The law presumes that the scope of an agent's authority includes all necessary means of effectuating its exercise.*

The general rule is that an agency relationship is presumed to continue in existence until it is revoked, and that it may be revoked by either party at will, so long as revocation is in good faith. It is automatically terminated by the death of the P.

There is no legal presumption that one spouse is an A for the other. But if one spouse receives, retains, and enjoys benefits from contract negotiated by other spouse, "only slight evidence" is required to establish agency relationship, resulting in both spouses being liable for breach. Lake Mary Ltd. P'ship v. Johnston, 145 N.C. App. 525, 538, 551 S.E.2d 546, 556 (2001).

Rules of Liability in Cases Involving Contracts by Agent

When a contract is entered into by a known agent acting within the A's scope of authority for a disclosed P, nothing else appearing, P is liable and A is not.

But A may also bind herself personally. See e.g., contract by one spouse described above.

P is also liable if A contracts within scope of *apparent authority* and third party is not on notice that A lacks actual authority.

Statements of A alone are insufficient as matter of law to prove apparent authority; some action by principal is required.

P is also liable if A acts without actual authority but P *ratifies* contract subsequently.

Agent is liable if fact of agency is undisclosed and identity of principal is unknown to contracting party.

Only A is liable if A acts with neither actual nor apparent authority and P does not ratify.