

Liabilities and principals of agents: authorized and unauthorized



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This paper was prepared for Business 206, Business Law I, taught by Professor Wagner. Liabilities of Principals and Agents If a person knowingly and without objection permits another to act as his agent, the law will find in this conduct an expression of authorization to the agent, and the principal will not be permitted to deny that the agent was in fact authorized.

In other words, the principal is "estopped" from denying the agency, thus protecting the third party who dealt with the agent in good faith (Valof, 2000) when addressing the specific rules regarding the liabilities of the principals and agents there are duties which both parties should use to govern their conduct. Both parties expect from each other a relationship to be fiduciary in that it exercises good faith and trust as the basis for its formation. Generally, the agent owes the principal five duties: performance, notification, loyalty, obedience, and accounting (Clarkson, 2012). Conversely, the principal has duties which are owed to the agent. Those duties include; compensation which might be payment for the performance of services by the agent when requested by the principal, reimbursement for expenses for which the agent may have had to pay out of pocket in order to carry out the request of the principal, to indemnify the agent for any liabilities encountered, to assist the agent in carrying out their duties through cooperation, and to ensure safe working conditions for a premises so far as any warnings of hazards or conditions which the agent should be made aware of.

Authorized Acts Authorized acts by an agent are reliant upon the agent acting within the scope of the authority granted by the principal. This is

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regardless of disclosure or nondisclosure of the principal's obligation to perform the contract. If the agent acts outside of the request of the principal the agent may be held liable for the performance of a contract if one exists. When the principal makes a disclosure to an agent, whether fully disclosed or partially disclosed, the principal is liable to the third party when it comes to a contract formed by the agent and therefore it is assumed that the agent has no contractual requirement to perform. In the case of a partial disclosure, depending upon the state, the agent can be held liable as a contractual party. In so far as nonperformance is concerned. If the principal's identity is undisclosed and there is no recognizable agency relationship the principal is held liable for performance as if a full disclosure existed at the creation of the contract.

Indemnification by the principal can be sought by the agent if the agent is made to pay out of pocket for anything to the third party. In the situation of an undisclosed identity of the principal, failure to perform is not excusable so far as liability is concerned. If the identity of the principal is revealed the third party could be faced with deciding whether the liability for the contract is on behalf of the principal or the agent. On the other hand unless a written contract expressly excludes the disclosure of the principal (making her or him undisclosed) and the agent signed the contract with no identifiable capacity for representation or the agent acts in a manner such that the agent is personal to the contract, the contract is a negotiable instrument for which the principal could ultimately be held liable.

Unauthorized Acts If in the absence of authority by the principal, an agent contracts with a third party, the liability of the contract created cannot be
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held liable toward the principal regardless the degree of disclosure or lack thereof. If there is disclosure, even partially of the principal, the third party can hold the agent liable as long as they can prove that the agent was relied upon. If the failure to follow the instructions clearly stated by the principal the agent has failed to adhere to the duty of obedience unless the principal was not available. If the principal is for some reason not available and circumstances of dire need of attention should arise, the agent may act in good faith to carry out the instructions of the agent if the instructions are not completely understandable.

In this case the principal is still held liable. An agent can be held liable to the principal for failure to perform should they create an awareness of certain skills and they do not exercise them, for failure to inform the principal of important subject matter, for failure to exercise undivided loyalty to the principal, and for failure to account to the principal for all property as well as all funds paid out and received on behalf of the principal. Provided that the agent acts within the authority of the principal on these matters the agent should maintain a lack of guilt in these actions or lack thereof and they should not be included in a suit by the third party. Rules Regarding Liability; Fair or Unfair? In its simplest form agency law determines the rights and responsibilities between parties when one party conducts business on behalf of another. Fiduciary duties such as loyalty, obedience, confidentiality, full disclosure and reasonable care are similar for many forms of industry (http://www.irsbo.com/agency_relationships.htm).

I do believe that the outlining factors for this subject matter are fair. There is always room for discovery in every <https://assignbuster.com/liabilities-and-principals-of-agents-authorized-and-unauthorized/>

case. How the contract is written, interpreted and presented is always critical in ensuring a fair and firm judgment on behalf of all parties involved.

I believe that the agent typically wants to avoid any and all possibility of blame, whether it be by the principal or the third party, whenever the formation of a contract comes about and with due diligence it is entirely possible. Should an agent strictly adhere to rules, the principal be clear and concise in their instructions and the third party be in complete agreement every step of the way there may be no cause for a lawsuit to begin with.

Works Cited [http://www. nanosft. com/igc/AnatomyofAnAgencyRelationship. html](http://www.nanosft.com/igc/AnatomyofAnAgencyRelationship.html)