

The jewelry store  
sued software inc.  
essay sample



**ASSIGN  
BUSTER**

The jewelry store cannot recover from Software. Respondeat Superior is a legal doctrine, most commonly used in tort, that holds an employer or principal legally responsible for the wrongful acts of an employee or agent, if such acts occur within the scope of the employment or agency. Here C went to the mall to buy a present for his wife, not on the business of Soft.

Will Software Inc. be liable to the owners of Jimmy's Bar? What about Jimmy's mom? The same theory of Respondeat Superior would apply to both cases. Soft will argue that C was on a frolic and not on business. Jimmy's will argue that C was trying to impress John and Jimmy and as a traveling salesman meeting with clients is part of his job. We are expressly told that C was talking to Jimmy about business so Soft will be liable.

" The Court in *Bricker v. Snook*, (1989) Ohio App. LEXIS 1076 stated " It is the universally accepted rule that an employer is liable for personal injuries or the death of another person, or injury to another person's property caused by his employee's negligence, misconduct, misfeasance, or wrongful, improper, or unlawful acts, when done within the scope of his authority, whether the authority is express or implied, or inferred from the general course of business

" An employer may be liable for the intentional torts of its employees as the law now imposes liability whether the employee's purpose, however misguided, is wholly or in part to further the master's business." *State v Hoshijo ex rel. White*, 102 Hawaii 307, 318, FN 27 (Hawaii, 2003).

Employer/employee relationships are the most common area wherein respondent superior is applied, but often the doctrine is used in the agency

relationship. In this, the principal becomes liable for the actions of the agent, even if the principal did not directly commit the act. There are three considerations generally:

1. Was the act committed within the time and space limits of the agency? 2. Was the offense incidental to, or of the same general nature as, the responsibilities the agent is authorized to perform? 3. Was the agent motivated to any degree to benefit the principal by committing the act? The tortious (injurious) activity of an agent or employee falls outside the scope of employment if it is motivated by personal malice, or constitutes a substantial deviation from duties for personal purposes. As described by the appeals court, the following “two-prong test” is applied by courts to determine whether the particular conduct of an agent or employee falls within the scope of the individual’s agency or employment:

Either (1) the conduct was required by, or incidental to, the duties of the agent or employee and hence was not a substantial deviation from duties for personal reasons. Or (2) the conduct would reasonably have been foreseen by the principal or employer in any event. the court is likely to find that C was still an agent of Soft since he appeared to be motivated to benefit Soft and John did not know that C was no longer employed and Soft had not taken any steps to notify their customers that C was no longer employed. However, they are likely to find that Soft is not responsible since the act was motivated by personal reasons and there is no evidence that C had committed any such acts in the past and could not have been foreseen by Soft.

Apparent authority n. since under the law of agency the employer (the principal) is liable for the acts of his employee (agent), if a person who is not an agent appears to an outsider (a customer) to have been given authority by the principal then the principal is stuck for the acts of anyone he allows to appear to have authority. This “ apparent authority” can be given by providing Joe Slobovia (who has no authority to contract) with materials, stationery, forms, a truck with a company logo, or letting him work out of the company office, so that a reasonable person would think Joe had authority to act for the company. Then the contract or the price quote given by Joe and accepted by third party is binding on the company. Apparent authority may also arise when Joe works for the company, has no authority to contract, but appears to have been given that authority. Beware of the salesman who exceeds his authority or the hanger-on who claims to work for the boss.