



AGENCY

| | |
|--|---|
| Principal-agent | Agent may replace principal • Agent acts on own discretion |
| Employer-employee | Employer's right to manage employee's physical conduct |
| Employer-independent contractor | Contractor is not an employee • No control over details of physical performance |

PRINCIPAL-AGENT

| | |
|-------------------------|--|
| Agreement | Formed by express consent or implied from conduct |
| Ratification | Principal, by act or agreement, ratifies conduct of third person who acted outside authority |
| Estoppel | Principal causes third person to act on the belief that another person is the agent |
| Operation of law | Social duty or emergency where principal not available |

TERMINATION OF AGENCY

| | |
|---------------------------|--|
| Act of the parties | Lapse of time • Purpose achieved • Mutual revocation • Termination by one party |
| Operation of law | Death or insanity • Impossibility • Changed circumstances • Bankruptcy • War between trading countries |

AGENT'S AUTHORITY

| | |
|-----------------|--|
| Express | Expressly given to agent |
| Implied | Custom, or position of the agent through principal's actions |
| Apparent | Principal's conduct leads third party to follow agent |

CARELESS

| | |
|---------------------------|--|
| Contracts | Principal bound where agent has authority • Agent bound by express agreement • Agent contracts without authority |
| Agent's torts | Principal's own tortious conduct • Principal authorizes tortious conduct • Doctrine of respondent superior • Managementism |
| Independent | Employer not liable |
| Contractor's torts | Except negligent activities |
| Agent's crimes | Employer not liable |
| Subagent's acts | Principal is liable where authority exists |

PARTNERSHIP

- Uniform Partnership Act governs the operation of partnerships in absence of express agreements
- Association of two or more persons acting as co-owners of business

CREATION OF PARTNERSHIP

| | |
|--------------------|--------------------------------------|
| Intent | Consent of parties involved |
| Formalities | Oral, written, or implied by conduct |
| Duration | Term or at will |
| Capacity | Legally capable |
| Estoppel | Third party liability |

TAX STATUS

- Partners are taxed on proportional shares of income; taxes include accumulated & distributed earnings
- Proportionate share of capital gain; no tax on exempt income which is received from item
- Pension plan may vary (for example, 401k self-employment tax required)
- No exemption for payments to partner's beneficiaries; not subject to state taxes

DISSOLUTION OF PARTNERSHIP

- Death of partner(s)
- Either partner may end it; winding up requires notice
- Bankruptcy, and so on

TYPES OF PARTNERSHIPS

| | |
|----------------|--|
| General | Created by mutual agreement of parties involved • Not treated as entity (limited partners) • Unlimited debt liability • Equal management unless agreement states otherwise • Capital contribution set by agreement |
| Limited | Comply with statutory requirements • One or more general partners, and one or more limited partners • Limited partners not involved in management • Liable for contribution amount only |

SOLE PROPRIETORSHIP

- Created at will by the owner
- Owner is the business; not separate entity
- Duration depends on owner; dissolved upon death
- Transfer of interest ends individual's ownership
- Management at owner's discretion
- Unlimited liability
- Owner pays personal taxes on business income
- Generally no limit on out-of-state business transactions

PRIVATE FRANCHISE

- Distributorship, chain-style business, or manufacturing/processing plant
- Agreements: Franchisee pays for license • Serves specific territory by franchisor's firm • Purchases goods from franchisor • Abides by standards • Conditions provided for in franchise • Retail price of goods cannot change

COMMON DUTIES

| | |
|------------------------|---|
| Duty of Care | Discharged in good faith with care in reasonable manner • Best interests of business entity • Liability limited to gross negligence or willful misconduct |
| Duty of Loyalty | Intrinsic, dispassionate • Not seeking business opportunities • Disclosed confidential information |

Notes: Please be advised that this chart does not account for jurisdictional differences • It is an informational tool that should be supplemented by more comprehensive materials and/or professional legal counsel

Law And Business Manual

Clifford Lane



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