AGENCY RELATIONSHIPS: OVERVIEW

- **Agency** is:

  The *fiduciary relationship* which results from the manifestation of consent by one person to another that the other shall act *in his or her behalf* and *subject to his or her control*, and consent by the other so to act.

**RESTATEMENT (SECOND) OF AGENCY § 1(1).**

- **Fiduciary**: A person who undertakes to act on behalf of and primarily for the benefit of another.

- **Fiduciary Duty**: A duty arising from the trust and confidence placed in a fiduciary by those on whose behalf and for whose benefit he or she acts.

- **Principal**: The person or entity on whose behalf and subject to whose control an agent acts.

- **Agent**: A person who agrees to act on behalf of and instead of his or her principal, subject to the principal’s control.
EMPLOYEE-INDEPENDENT CONTRACTORS

- **Employee:** One who works for, and receives payment from, an employer, whose working conditions and methods are controlled by the employer. The employer is liable for the employee’s acts and omissions occurring in the scope of employment.

- **Independent Contractor:** One who does work for, and receives payment from, an employer, but whose working conditions and methods are not controlled by the employer, and for whose acts and omissions the employer is not liable.

Whether a worker is an employee or an independent contractor may be determined by:

1. How much **direction** and **control** the employer exercises over the details of the person’s work;

2. Whether the person is engaged in an occupation or business **distinct** from that of the employer;

3. Who supplies **tools** used at the place of work;

4. What degree of **skill** is required of the worker; and

5. **Duration** of employment and **method** of payment.

AGENCY RELATIONSHIPS: FORMATION
- **Agency by Agreement:** An agency relationship based on an *express or implied agreement* that the agent will act for the principal.

- **Agency by Ratification:** When a principal gives legal force to an act or contract performed or entered into on his or her behalf by another, who acted as his or her agent without authority.

- **Agency by Estoppel:** If a principal holds out to a third party that another is authorized to act on the principal’s behalf, and the third party deals with the other person accordingly, the principal may not later deny that the other was the principal’s agent for purposes of dealing with that third party.

- **Agency by Operation of Law:** Agencies recognized by courts -- e.g., family relationships, emergency situations -- in the absence of any formal agreement, confirmation, or act or omission by the principal that implied the agent’s authority.
AGENT’S DUTIES TO THE PRINCIPAL

- **Performance:** An agent impliedly agrees to use **reasonable diligence and skill** (except for a specialist, who is held to a higher degree of skill) in performing the task in its entirety.

- **Notification:** An agent is required to **notify the principal** of all matters that come to the agent’s attention concerning the subject matter of the agency.

- **Loyalty:** An agent has the duty to act **solely for the benefit of his or her principal**, and not in the interest of the agent or a third party. Moreover, any information or knowledge obtained in the course of the agency is **confidential**.

- **Obedience:** An agent has the duty to **follow all lawful and clearly stated instructions** of the principal.

- **Accounting:** Unless otherwise agreed, an agent has the duty to keep and make available to the principal an **account of all property and money received and paid out on the principal’s behalf**, including gifts received from third persons.
PRINCIPAL’S DUTIES TO THE AGENT

- **Compensation:** When a principal requests certain services from an agent, the principal has a duty to pay the agent, in a timely manner, for those services rendered.

- **Reimbursement:** Whenever an agent disburses sums of money to fulfill the principal’s request or to pay for necessary expenses incurred in the reasonable performance of his or her duties, the principal has the duty to reimburse the agent.

- **Indemnification:** Subject to the terms of the agency agreement, the principal has a duty to compensate, or indemnify, the agent for liabilities arising from the agent’s lawful and authorized acts on the principal’s behalf.

- **Cooperation:** A principal has the duty to cooperate with the agent and to assist the agent in performing his or her duties.

- **Safe Working Conditions:** A principal has the duties (i) to provide its agents and employees with safe working premises, equipment, and conditions, and (ii) to inspect working conditions and warn agents and employees of unsafe areas.
ACTUAL AUTHORITY

- **Express Authority:** Authority declared in clear, direct, and definite terms, orally or in writing.

- **Equal Dignity Rule:** If a contract being executed by an agent on the principal’s behalf is in writing, most states require that the agent’s authority must also be in writing; otherwise, the contract executed by the agent is *voidable* at the principal’s option.

The equal dignity rule *does not* apply when the agent acts in the principal’s presence or when the agent’s act is *merely perfunctory*.

- **Power of Attorney:** A written document, usually notarized, authorizing an agent to act for a principal.

- **Implied Authority:** Actual authority that is:
  
  (i) conferred by *custom*,
  
  (ii) inferred from the *position* the agent occupies, or
  
  (iii) inferred as being *reasonably necessary* to carry out express authority.
APPARENT AUTHORITY

- **Apparent Authority:** Authority that arises when a principal, by either words or actions, causes a third party to believe that an agent has authority to act, even though the agent has no express or implied authority to act with regard to the particular matter at hand.

- If the third party changes his or her position in reliance on the principal’s representations regarding the agent’s authority, the principal may be estopped from denying that the agent had authority to act.

- By contrast to agency-by-estoppel, where the principal may be estopped from denying that a non-agent is acting on the principal’s behalf, here the person acting on the principal’s behalf is an agent -- just not one who has express or implied authority to act with regard to the particular matter at hand.
RATIFICATION

- **Ratification**: The express or implied affirmation of a previously unauthorized contract made by a purported agent. In summary:

1. The purported agent must have acted **on behalf of the principal** who subsequently ratified the action;

2. The principal must know **all material facts** involved in the transaction;

3. The agent’s act must be **affirmed in its entirety** by the principal;

4. The principal must have the **legal capacity** to affirm the transaction **both** (a) at the time the agent acts, and (b) at the time the principal ratifies;

5. The principal must affirm **before** the third party withdraws from the transaction; and

6. The principal must observe the **same formalities** when he or she ratifies the act as would have been required to authorize it initially.
AGENCY RELATIONSHIPS: LIABILITY FOR CONTRACTS

■ A disclosed or partially disclosed principal is liable to a third party for a contract made by an agent who is acting within the scope of his or her authority.

■ Disclosed Principal: A principal whose identity is known to the third party at the time the agent makes a contract for the principal with the third party.

■ Partially Disclosed Principal: A principal whose identity is not known to the third party, but the third party does know that the agent is representing some principal at the time the agent makes a contract with the third party.

■ Undisclosed Principal: When neither the fact of agency nor the identity of the principal is disclosed by an agent to the third party at the time a contract is made, the agent is presumed to be acting on his or her own behalf, and will be liable as a party to the contract.

■ If, in fact, the agent was authorized to act on behalf of the undisclosed principal, then the principal will also be liable on the contract.
LIABILITY FOR AGENT’S TORTS

- **Respondeat Superior:** The doctrine by which an employer or other principal is liable, along with the agent or employee, for any tort committed by the agent or employee while acting within the scope of their agency or employment.

- To determine whether a tort was within the scope of agency or employment, courts look at the following:

  (1) whether the act was **authorized**;
  
  (2) the **time**, **place**, and **purpose** of the act;
  
  (3) whether the act was one **commonly performed** by employees on behalf of their employers;
  
  (4) whether the **employer’s interest** was advanced;
  
  (5) whether the **employee’s interests** were involved;
  
  (6) whether the employer furnished the **means or instrumentality** by which the injury was inflicted;
  
  (7) whether the employer had **reason to know**; and
  
  (8) whether the act involved a **serious crime**.
AGENCY RELATIONSHIPS: TERMINATION

- **By Act of the Parties:** An agency may be terminated by any of the following:

  1. lapse of time;
  2. accomplishment of particular purpose for agency;
  3. occurrence of a specific event;
  4. mutual agreement of the agent and principal; and
  5. renunciation (by the agent) or revocation (by the principal) of the agent’s authority.

- **By Operation of Law:** An agency may also terminate as a matter of law due to:

  1. death or incompetence of the agent or principal;
  2. impossibility of performance;
  3. materially changed circumstances; and/or
  4. bankruptcy of the principal or agent.