

## 14.4: Liability to Third Parties

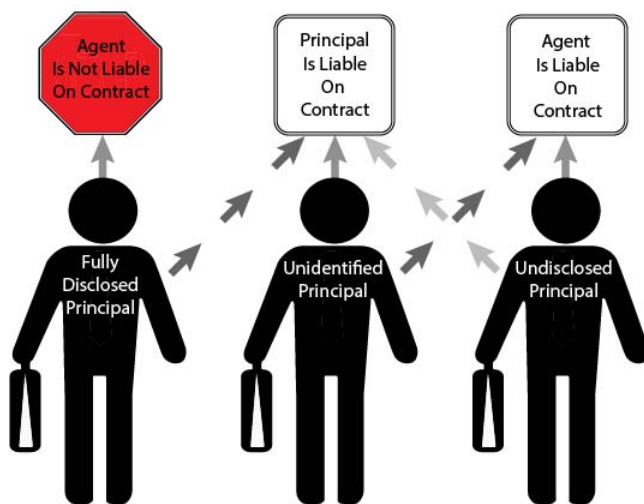
An agency relationship affects liability to third parties. The scope of liability depends on the type of principal involved, the type of authority involved, and the nature of the dispute.

### Contractual Liability

A principal is always liable on a contract if the the agent had authority. However, the agent's liability on a contract depends on how much the third party knows about the principal. Disclosure, when allowed by the principal, is the agent's best protection against legal liability.

Figure 15.4 When Agents are Liable on Contracts

15.4 Contractual Liability



An agent is not liable for any contracts he or she makes with authority on behalf of a fully disclosed principal. Therefore, if a third party knows the existence and identity of the principal, then all legal liability lies with the principal. The only exception to this is when an agent exceeds his or her authority. In that case, the agent has not acted with authority and becomes personally responsible to the third party. If the agent did not have authority, but the principal later ratifies the contract, then the principal will be liable for the contract.

If a principal is partially disclosed, then the third party may recover from either the principal or agent. In this situation, the principal and agent are jointly and severally liable, and the third party may sue either or both of them to recover the full amount of damages owed. However, the third party cannot seek "double damages" and recover more than the total amount owed for the contractual breach.

In the event of an undisclosed principal, a third party may recover from either the agent or the principal. The fact that a principal's existence or identity is hidden from third parties does not change the nature of the agent-principal relationship. Therefore, undisclosed principals may become liable for contracts entered into by agents acting with actual authority. An undisclosed principal has no liability to an agent or third party when the agent exceeds the actual authority granted by the principal. In addition, the type of contract must be the type that can be assigned to the undisclosed principal. If the contract is for personal services, then liability cannot be assigned to the principal in case of a breach.

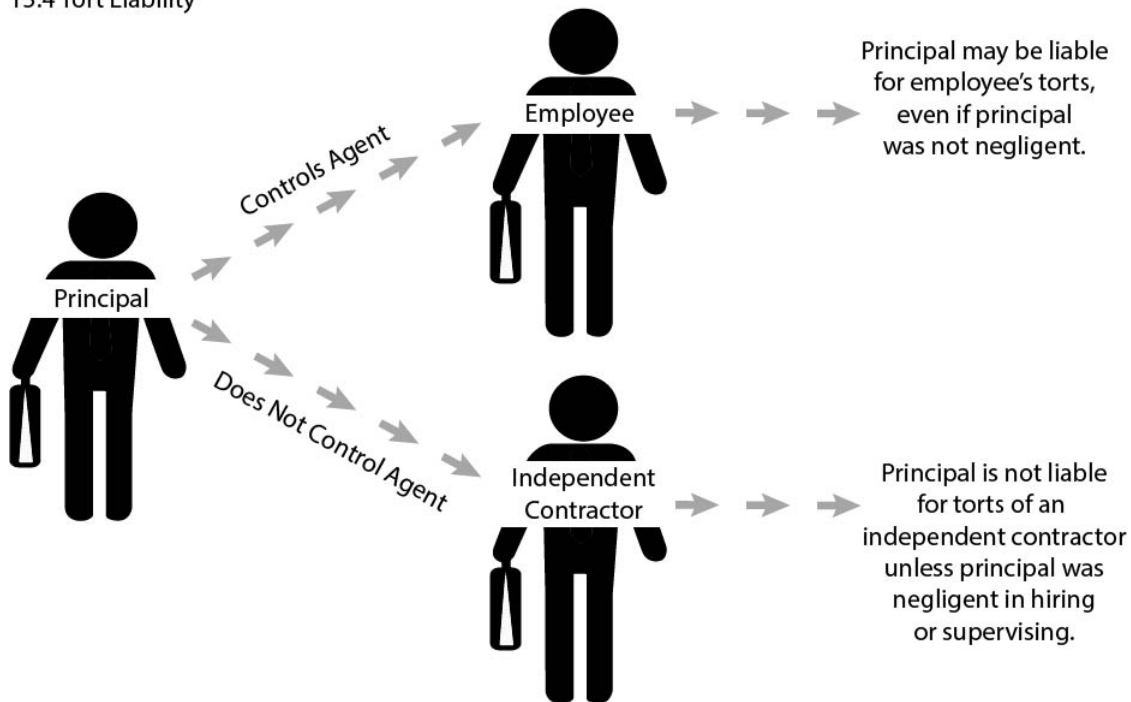
### Tort Liability

Agents, employees, and independent contractors are personally liable for their own torts. This concept is rooted in the notion that every individual who commits a tort is personally liable to the party who is damaged by the tortious act. The law holds wrongdoers personally accountable.

However, the reverse is not true. Agents, employees, and independent contractors are not liable for the torts of the principal or employer. If a principal or employer is engaged in tortious behavior, its liability cannot be passed down to its agents and employees.

Figure 15.5 When Principals Have Tort Liability for Employees and Independent Contractors

#### 15.4 Tort Liability



An employer is liable for the torts of an employee if the employee is acting within the scope of employment. This doctrine is called **respondeat superior** and imposes vicarious liability on employers as a matter of public policy. Even if the employer does not direct its employees to act negligently or intentionally, the employer is responsible because employers are usually in a better position to pay for damages than employees. There is also a strong public policy consideration to not allow employers to turn a blind eye to an employee's bad behavior. By making an employer responsible for an employee's actions, it incentivizes the employer to address situations promptly that could lead to potential liability.

Conversely, a principal is not usually liable for the torts of an independent contractor. Independent contractors have the power to control the details of the work they perform and generally are only responsible to a principal for the results of their work. Therefore, independent contractors are not directed and controlled by a principal as employees are by their employers. As a result, the doctrine of respondeat superior does not apply to independent contractors.

Two exceptions exist that may impose liability on a principal for the work of an independent contractor. The first exception is where the work is inherently dangerous. Public policy prevents principals from insulating themselves from the risks of liability by selecting an independent contractor rather than an employee to perform the dangerous work. The second exception is where the work is illegal. Public policy also prevents principals from hiring independent contractors to perform a task that is illegal.

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