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**Blaw 321 - Law of Business Organizations**

Weekly Information Sheet 04

## ***Principles and Nature of Business Organizations***

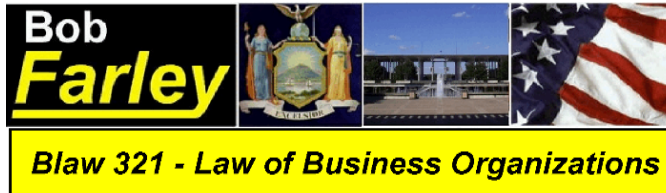
### **The Principles of Business Organization:**

1. Business Organizations are creatures of law;
2. Agents stand in the shoes of their Principles;
3. Sole proprietorships are the easiest and most prominent form of ownership, with 3/4 of all businesses operating in that form;
4. In a Partnership, your partner can be more important than your spouse;
5. Business Corporations are artificial persons under the law, with rights of a person. They are formed for one purpose: to conduct a business for profit. Profit is not a dirty word. It is one of the greatest human motivators, providing jobs, opportunities and innovation;
6. Limited Liability Companies are the child of Partnerships and Corporations;
7. Public Authorities are Corporations designed to do the work of Government;
8. Freedom is the most powerful form of human existence. True freedom is linked to the worth of the individual, and their ability to pursue life, liberty, and property (happiness).

### **The Nature of Business Organizations:**

- This is a class on the *Law of Business Organizations*
- One can not have a true understanding the *Law of Business* and the *Organizations* which are its vehicle to accomplish its goals, unless they have a true understanding of the *Law*.
- Moreover, to truly understand the *Law of Business*, we need to understand these *Organizations* as the vehicle which delivers the needs of Commerce.
- That requires us to have an *understanding* of the *Law* which governs the rules of the road upon which we drive that vehicle.





Weekly Information Sheet 04

## Law of Agency

### The Elements of the Agency Relationship:

1. A fiduciary relationship

2. Created:

- a. by express contract;
- b. by implied contract; or
- c. by law,

3. In which one party (the agent) may act

4. On behalf of another party (the principal)

5. and bind such principal (via their authority)

6. by words or actions.

### Agency In General – Agents you can think of

- Real Estate
- Insurance
- Sports
- Music / Theatrical / Publishing

### Agency In General – Contract Liability

Contract liability in agency refers to

**the legal relationship**

whereby one party (called an agent)

is authorized to represent

the other party (called a principal)

in business dealings with third parties.

A principal may appoint an agent to do any act

**EXCEPT** an act, which

by its nature, by public policy, or by contract,

**requires personal performance by the principal.**

# Law of Agency Continued

## NATURE OF THE AGENCY RELATIONSHIP

- *The agent stands in the shoes of the principal.*

## CREATION OF THE AGENCY RELATIONSHIP

### 1. Capacity:

A condition precedent to the creation of an agency relationship is that the respective parties must have capacity.

- **Principal Must Have Contractual Capacity**

Generally, one who has contractual capacity may be a principal and enter into a contract through an agent.

- **Agents Generally Need Not Have Contractual Capacity**

As a general rule, any person may be an agent, even if they have no contractual capacity. But there are limitations to this rule.

- **Disqualification of Agents**

A person, however, can be disqualified from being an agent.

### 2. Formalities:

#### A. Consent – Must Always Have Consent

*As the relationship is a contract, consent must be manifested by both the principal and the agent to create an agency relationship.*

#### B. No Consideration Required

*Unlike a standard contract, however, consideration is not necessary for the creation of an agency relationship.*

#### C. Writing – No Written Contract Required

*General Rule - No Writing Required: Another exception to this contractual relationship is that normally, the existence of the agency DOES NOT have to be evidenced by a writing.*

### 3. Modes of Creation of the Agency Relationship

#### A. By Act of the Parties

There are four ways in which the parties may create an agency relationship. They are as follows:

- **Actual Authority**

The principal may, by direct communication to the agent, orally or in writing, actually appoint and authorize the agent to act on the principal's behalf.

- **Apparent Authority**

The principal may, by communication to the third party, orally or in writing, indirectly authorize the agent to act on the principal's behalf.

# Law of Agency Continued

## CREATION OF THE AGENCY RELATIONSHIP Cont.

### 3. Modes of Creation Continued:

#### A. By Act of the Parties Continued

- **Inherent Authority**

The principal, by authorizing the agent to act, may be liable for acts of the agent, even if such acts are in violation of the principal's orders.

- **Ratification**

An agency relationship may be created by the principal's later, subsequent affirmation (ratification) of the actions of one who purported to be acting on behalf of the principal.

Basically, a ratification affirms a previously unauthorized act.

A transaction which involves a violation of law may not be ratified.

#### B. By Operation of Law

Under certain circumstances, the law may impose an agency relationship. Such is by **Estoppel** or by **Statute**.

## TERMINATION OF THE AGENCY RELATIONSHIP

### 1. Grounds for Termination

Once having determined that the requisite formalities exist and that there is express or implied actual authority, you should ask whether the authority has been terminated.

Termination of actual authority may occur in the following ways:

- **By Lapse of Time**
- **By Happening of Event**
- **By Breach of Agent's Fiduciary Duty**
- **By Change of Circumstances**
  - Destruction of the subject matter of the authority;
  - A drastic change in business conditions;
  - A change in relevant laws; and
  - Insolvency of the agent or principal, if relevant.
- **By Unilateral Act of Principal or Agent**
- **By Operation of Law**
  - Death;
  - Incapacity of Principal; or
  - Dissolution of Corporation, LLC or Partnership.

# Law of Agency Continued

## TERMINATION OF THE AGENCY RELATIONSHIP

### 2. Irrevocable Agencies

There are two types of agencies that may not be unilaterally terminated by the principal:

- **Subject Matter**

Where the agent has an interest in the subject matter of the agency

- **Security**

Where the agent has a power given for security.

## NATURE OF THE AGENCY RELATIONSHIP

### 1. Rights and Duties Between Principal and Agent:

What is Duty?

- **Duty Defined:**

Black's Law Dictionary defines "DUTY" as:

- "A person's action which is exactly conformable to the laws which require the person to obey them"; or
- A legal or moral obligation"; or
- Conduct or service which is obligatory; or
- A mandatory obligation to perform.

A Simple definition of "Duty" is:

*"A legally recognized obligation requiring certain conduct by one person to another."*

### 2. Duties Between Principals and Agents

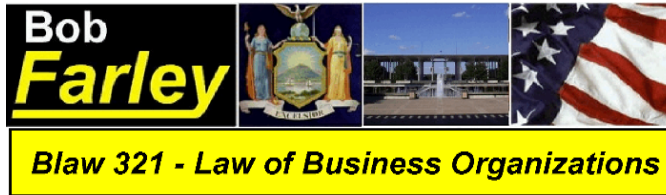
#### Duties of Agent to Principal

- **Duty of Loyalty**
- **Duty of Obedience**
- **Duty of Reasonable Care**

#### Duties of Principal to Agent

- **Duty of Compensation**
- **Duty of Reimbursement**
- **Duty to Cooperate**

Both Principals and Agents also have a duty to abide by any provisions of a contract that they make pursuant to the agency.



Weekly Information Sheet 04

# ***THE EMPLOYMENT RELATIONSHIP***

## ***The Elements of the Employment Relationship***

### **1. Employment Defined:**

***What is Employment?***

**Black's Law Dictionary defines "Employment" as:**

- Act of employing or state of being employed; or
- That which engages or occupies; or
- That which consumes time or attention; or
- An occupation, profession, trade, post or business.

**Labor Law Definition:**

"A relationship where someone is "permitted or suffered to work"

**Simple Definition:**

***"An act to engage or hire one's service, in return for payment for such service."***

### **2. Employment v. Independent Contractor**

***The Employer- Employee Relationship***

**Independent Contractor:**

A clear example of an independent contractor is one who has a calling of his own, is hired to do a particular job, is paid a given amount for that job, and who follows his own discretion in carrying out the job.

A principal has no right to control the manner and method in which an independent contractor performs the job.

# ***THE EMPLOYMENT RELATIONSHIP Continued***

## ***The Elements of the Employment Relationship Continued***

### **2. Employment v. Independent Contractor Continued**

#### **Employee:**

A clear example of an employee is one who works full-time for his employer, is compensated on a time basis, and is subject to the supervision of the principal in the details of his work.

An employer has the right to control the manner and method in which an employee performs the job.

#### **Determination of Right to Control:**

The single overriding factor in determining whether a person is an employee is whether the principal (employer) has the right to control the manner and method by which the individual performs his tasks.

### **3. Employment at Will v. Employment Contract**

#### **Employment at Will Concept**

New York State is an Employment at Will state.

This means that an employer can pay the employee what they wish (so long as it is above minimum wage), provide whatever benefits (if any) that they wish, and dismiss (fire/dismiss/discharge) an employee for any reason, or no reason at all, as long as it is not for an illegal reason (such as a violation of the Federal Civil Rights law or New York State Human Rights law).

#### **Employment Contract**

An exception to the employment of will doctrine is where the employee and employer have an employment contract.

In such instance, the contract terms will govern the parameters of the employment.

A collectively bargained employee is determined to have an employment contract as negotiated and approved by the employer and the employee's representative (union).

#### **What Constitutes An Employment Contract?**

Under certain circumstances whether an employment contact exists can be unclear.

With such circumstances, courts have imposed other documents (such as an employee manual) to constitute an employment contract.

# ***THE EMPLOYMENT RELATIONSHIP Continued***

## ***The Elements of the Employment Relationship Continued***

### **4. Employment Regulation**

#### **Equal Opportunity**

##### **Federal Civil Rights Law:**

The Federal Civil Rights Law prohibits employment discrimination on the basis of race, color, religion, sex, or national origin, age, gender, disability and pregnancy.

Such discrimination can be contested by means of a civil action under 42 U.S.C. Section 1983.

##### **State Human Rights Law:**

Section 290 of the NYS Executive Law provides that the “opportunity to obtain employment without discrimination because of age, race, creed, color, national origin, sexual orientation, military status, sex, marital status, or disability, is hereby recognized as and declared to be a civil right.”

##### **Either Venue Can Be Pursued:**

An aggrieved party can pursue a remedy under either the Federal Civil Rights Law or the State Human Rights Law. Under both laws, a person’s rights can be enforced either through administrative action or by a civil lawsuit.

#### **Collective Bargaining**

##### **National Labor Relations Act:**

The National Labor Relations Act (Wagner Act – 29 U.S.C Section 151 et seq.) provides that private sector employees have a right to collectively bargain.

##### **State Labor Relations Act:**

New York has a nearly identical law to the NLRA (Article 20 of the State Labor Law)

##### **Taylor Law:**

New York Law (Article 14 of the State Civil Service Law) grants public sector employees the right to collectively bargain.

#### **Health and Safety**

##### **Health and Safety Laws:**

Both the Federal and State Government have health and safety laws (Such as OSHA and the Labor Law) which regulate workplace conditions, minimum wages, and hours of employment.