

AGENCY INSTRUCTIONS

Introduction

These instructions are designed to be used when liability is sought to be imposed upon one person or entity for acts of a second person or entity on the basis that the second person or entity was acting as an agent of the other person or entity.

A principal/agent relationship can be established by express agreement or can arise from conduct on the part of the putative principal which causes a third party to reasonably believe another to be his agent. A.R.S. § 12-2506(D) provides that a party can be responsible for the fault of another person if the other person was acting as an agent or servant of the party.

Liability will not be imposed upon the putative principal for acts which are outside the scope of the principal/agent relationship.

RAJI (CIVIL) 7th already includes Standard 5, relating to Respondent Superior Liability. Users should continue to refer Standard 5 for that aspect of the relationship of principal and agent.

AGENCY 1
Agency Defined

Agency is a relationship in which one person (a “principal”) gives authority, by word or by conduct, to another person (an “agent”) to act on the principal’s behalf subject to the principal’s control.

SOURCE: RESTATEMENT (THIRD) AGENCY § 1.01 (2006); *Nava v. Truly Nolen Exterminating of Houston, Inc.*, 140 Ariz. 497, 500 (App. 1984); *J.K. By and Through R.K. v. Dillenberg*, 836 F. Supp. 694, 699 (D. Ariz. 1993); *Salt River Valley Water Users’ Assoc. v. Giglio*, 113 Ariz. 190, 195 (1976) RESTATEMENT (THIRD) AGENCY § 2.01 (2006); *Urias v. PCS Health Systems, Inc.*, 211 Ariz. 81, 88 (App. 2005); *Queiroz v. Harvey*, 220 Ariz. 273, 275 (2009); RESTATEMENT (THIRD) AGENCY § 6.01 (2006); *Patterson v. Home Depot, USA, Inc.*, 684 F. Supp. 2d 1170, 1180-81 (2010).

AGENCY 2

Agency

[*Plaintiff/Defendant*] claims that [*agent/employee*] is [*plaintiff's/defendant's*] agent.

[*Plaintiff/Defendant*] can prove the existence of an agency relationship by showing:

1. actual agency (express or implied);
2. apparent agency;
3. agency by estoppel; or
4. ratification.

SOURCE: *Goodman v. Physical Res. Eng'g, Inc.*, 229 Ariz. 25, 29-31 (App. 2011), *review denied* (2012); *Gulf Ins. Co. v. Grisham*, 126 Ariz. 123 (1980); *Salt River Valley Water User's Ass'n*, 113 Ariz. 190 (1976); *Canyon State Cannery v. Hooks*, 74 Ariz. 70 (1952); *Valley Nat'l Bank of Phoenix*, 74 Ariz. 290 (1952); *Brutinel v. Nygren*, 17 Ariz. 491 (1916); *Ruesga v. Kindred Nursing Centers, LLC*, 215 Ariz. 589 (App. 2007); *Premium Cigars Intern, Ltd. v. Farmer-Butler-Leavitt Ins. Agency*, 208 Ariz. 557 (App. 2004); *Fuqua Homes, Inc. v. Grosvenor*, 116 Ariz. 424 (App. 1977); *see also* RESTATEMENT (THIRD) AGENCY § 1.01 (2006); RESTATEMENT (THIRD) AGENCY §§ 2.01, *et seq.*

USE NOTE: Agency can be proven by any of the above theories, but the court may choose to instruct on less than all of them depending on the facts of the case.

AGENCY 3

Actual Authority

[*Plaintiff/Defendant*] claims that [*agent/employee*] had [*plaintiff's/defendant's*] actual authority to act on the principal's behalf. An [*agent/employee*] is acting within the scope of [*authority/employment*] if the [*agent/employee*] is performing duties which were assigned by word, conduct or circumstance to the [*agent/employee*] by the principal.

SOURCE: *Miller v. Mason-McDuffie Co. of S. Cal.*, 153 Ariz. 585, 589-90 (1987); *Jerger v. Rubin*, 106 Ariz. 114, 119 (1970); *Dawson v. Withycombe*, 216 Ariz. 84, 100-02 (App. 2007); *Gibraltar Escrow Co. v. Thomas J. Grosso Inc.*, 4 Ariz. App. 490, 495-96 (1966); RESTATEMENT (THIRD) AGENCY § 2.02 (2006); see RESTATEMENT (THIRD) AGENCY § 7.07 (2006). See also RESTATEMENT (THIRD) AGENCY § 7.08 (2006).

AGENCY 4

Implied Authority

Implied authority exists where the circumstances of the transaction, together with the words and conduct of the principal and agent, demonstrate that the agent had authority to act.¹

In order to establish an agent's implied authority the [*plaintiff/defendant*] must prove that the totality of the circumstances, combined with the words and conduct, demonstrate that agent was authorized to act in the manner in which he/she did.

Implied authority may exist even if the principal denies authority² and even if both the principal and agent did not believe authority existed.³

¹ **SOURCE:** *Ruesga v. Kindred Nursing Centers, L.L.C.*, 215 Ariz. 589, 598 (App. 2007) (“The test of whether implied authority exists is well-stated[.] The relation of agency need not depend upon express appointment and acceptance thereof, but may be, and frequently is, implied from the words and conduct of the parties and the circumstances of the particular case. If, from the facts and circumstances of the particular case, it appears that there was at least an implied intention to create it, the relation may be held to exist, notwithstanding a denial by the alleged principal, and whether or not the parties understood it to be an agency.”) (internal citations omitted); *O.S. Stapley Co. v. Logan*, 6 Ariz. App. 269, 272 (1967) (“the relation of agency need not depend upon express appointment and acceptance thereof, but may be, and frequently is, implied from the words and conduct of the parties and the circumstances of the particular case.”); RESTATEMENT (THIRD) AGENCY § 2.02 (2006) (“Scope of Actual Authority”) (“[I]mplied authority is actual authority proved circumstantially, which means it is proved on the basis of a principal’s conduct other than written or spoken statements that explicitly authorize an action.”).

² **SOURCE:** *Ruesga*, 215 Ariz. at 598 (“...notwithstanding a denial by the alleged principal...”).

³ **SOURCE:** *Ruesga*, 215 Ariz. at 598; *O.S. Stapley Co.*, 6 Ariz. App. at 272 (“...whether or not the parties understood it to be an agency.”).

AGENCY 5

Apparent Authority

Apparent agency is a relationship in which the principal has intentionally or unintentionally caused [plaintiff/defendant] to believe that a person was the principal's [agent/employee], although no actual authority was given to [him/her]. Apparent agency can never arise from the acts of the [agent/employee] alone.

In order to establish apparent agency, [plaintiff/defendant] must prove that:

1. The alleged principal caused [plaintiff/defendant] to believe [agent/employee] was principal's [agent/employee];
2. [plaintiff/defendant] relied on this representation to his/her detriment; and
3. such reliance was reasonably justified.

SOURCE: *Miller v. Mason-McDuffie Co. of S. Cal.*, 153 Ariz. 585, 589-93 (1987); *Reed v. Gershweir*, 160 Ariz. 230, 205 (App. 1989); *Curran v. Indus. Comm'n of Ariz.*, 156 Ariz. 434, 437 (App. 1988); RESTATEMENT (THIRD) AGENCY § 2.03 (2006); see *Zevon v. Tennebaum*, 73 Ariz. 281, 284 (1952).

AGENCY 6

Agency by Estoppel

Even if you do not find that [agent/employee] acted with actual or apparent authority, [plaintiff/defendant] may still be liable for [agent's/employee's] actions under the theory of agency by estoppel.

Agency by estoppel occurs if:

1. [plaintiff/defendant] reasonably believed that [agent/employee] was [plaintiff's/defendant's] [agent/employee];
2. [plaintiff/defendant] relied on this belief;
3. [plaintiff/defendant] intentionally or carelessly caused such belief and [plaintiff/defendant] knew that [plaintiff/defendant] believed that [agent/employee] was [plaintiff's/defendant's] [agent/employee];
4. [plaintiff/defendant] failed to take reasonable steps to correct the mistaken belief; and
5. [plaintiff/defendant] was injured because of [his/her] reliance of this belief.

SOURCE: RESTATEMENT (THIRD) AGENCY § 2.05 (2006); *Employers' Liability Assurance Corp., Inc. v. Glen Falls Insurance Co.*, 12 Ariz. App. 362, 364 (1970); *Fugua Homes, Inc., v. Grosvenor*, 116 Ariz. 424, 426 (App. 1977).

AGENCY 7

Ratification

Even if you do not find that [agent/employee] acted with actual or apparent authority, [plaintiff/defendant] may still be liable for [agent's/employee's] actions if [plaintiff/defendant] ratified the actions of [agent/employee].

Ratification is the approval by a principal of a previously unauthorized act by one claiming to act as an [agent/employee].

To prove that [plaintiff/defendant] ratified [agent's/employee's] actions, [plaintiff/defendant] must prove all of the following acts:

1. That [agent/employee] intended to act on [plaintiff's/defendant's] behalf;
2. That the principal learned of [agent's/employee's] action(s) after [it/they] occurred; and
3. That the principal approved by word or action [agent's/employee's] conduct.

SOURCE: *Jerger v. Rubin*, 106 Ariz. 114, 118 (1970); *Dawson v. Withycombe*, 216 Ariz. 84, 100-02 (App. 2007); *Fairway Builders, Inc. v. Malouf Towers Rental Co.*, 124 Ariz. 242, 256-57 (App. 1979); *Phoenix Western Holding Corp. v. L.D.A. Gleeson*, 18 Ariz. App. 60, 66 (1972); *Miller v. Boeger*, 1 Ariz. App. 554, 557-58 (1965); RESTATEMENT (THIRD) AGENCY §§ 4.01, *et seq.* (2006).