

## STANDARD 5a

### **Respondeat Superior Liability** **(for use in cases where Defendant's legal responsibility** **for employee's/agent's acts is not disputed)**

In this case, [*name of defendant*] is responsible for the actions of its [employee] [agent], [*name of person claimed to be agent*].

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**SOURCE:** *Engler v. Gulf Interstate Engineering, Inc.*, 230 Ariz. 55 (2012); RESTATEMENT (THIRD) OF AGENCY § 7.07; *Higginbotham v. AN Motors of Scottsdale*, 228 Ariz. 550 (App. 2012); *Love v. Liberty Mut. Ins. Co.*, 158 Ariz. 36 (App. 1988); *Duncan v. State*, 157 Ariz. 56 (App. 1988); *Robarge v. Bechtel Power Corp.*, 131 Ariz. 280 (App. 1982); *Scott v. Allstate Ins. Co.*, 27 Ariz. App. 236 (1976); *Olson v. Staggs-Bilt Homes, Inc.*, 23 Ariz. App. 574 (1975); ARS 12-2506(D)(2).

**USE NOTE:** This instruction is to be given in cases where the Defendant's vicarious liability for the acts of one or more of its employees or agents has been admitted or judicially determined. In cases where Defendant's vicarious liability for a purported employee/agent is a disputed issue of fact, RAJI Standard 5b should be given. In cases where vicarious liability is admitted or judicially determined as to certain employees/agents, and disputed as to others, both instructions (RAJI Standard 5a and 5b) should be given, placing the names of the persons claimed to be agents in the appropriate instructions.

## STANDARD 5b

### Respondeat Superior Liability (Use in cases where vicarious liability is a jury issue)

[Name of plaintiff] claims that [name of defendant] is responsible for the actions of [name of person claimed to be agent], as its [employee] [agent]. [Name of defendant] is responsible for the actions of [name of person claimed to be agent] if [name of person claimed to be agent] was acting within the scope of [his] [her] [employment][authority].

To establish the claim that [name of defendant] is responsible for [name of person claimed to be agent]'s actions, [name of plaintiff] must prove that when [name of person claimed to be agent] [describe allegedly tortious act], [he/she] was:

1. Performing a task or work assigned or authorized by [name of defendant], or
2. [Name of person claimed to be agent] was, at the time, subject to [name of defendant]'s control or right to control.

If the [describe allegedly tortious act] was an independent course of conduct not intended by [name of person claimed to be agent] to serve any purpose of [Name of defendant], then the act would be outside the scope of employment, and [Name of defendant] would not be responsible.

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**SOURCE:** *Engler v. Gulf Interstate Engineering, Inc.*, 230 Ariz. 55 (2012) (adopting RESTATEMENT (THIRD) OF AGENCY § 7.07); *Higginbotham v. AN Motors of Scottsdale*, 228 Ariz. 550 (App. 2012); *Tarron v. Bowen Mach. & Fabricating, Inc.*, 225 Ariz. 147 (2010); *Carnes v. Phoenix Newspapers Inc.*, 227 Ariz. 32, (App. 2011); *Simon v. Safeway, Inc.*, 217 Ariz. 330 (App. 2007); *Ruelas v. Staff Builders Personnel Services, Inc.*, 199 Ariz. 344 (App. 2001); *Baker v. Stewart Title & Trust of Phoenix*, 197 Ariz. 535 (App. 2000); *Ortiz v. Clinton*, 187 Ariz. 294 (App. 1996); *McDaniel v. Troy Design Services Co.*, 186 Ariz. 552 (App. 1996); *Love v. Liberty Mut. Ins. Co.*, 158 Ariz. 36 (App. 1988); *Duncan v. State*, 157 Ariz. 56 (App. 1988); *Robarge v. Bechtel Power Corp.*, 131 Ariz. 280 (App. 1982); *Scott v. Allstate Ins. Co.*, 27 Ariz. App. 236 (1976); *Olson v. Staggs-Bilt Homes, Inc.*, 23 Ariz. App. 574 (1975); A.R.S. § 12-2506(D)(2)

**Use Note:** This instruction is for use in cases where the jury is called upon to decide whether an employer or principal is vicariously liable for the act of an agent or employee. In cases where vicarious liability is admitted, RAJI Standard 5a should be given. In cases where vicarious liability is admitted or judicially determined as to certain

employees/agents, and disputed as to others, both instructions (RAJI Standard 5a and 5b) should be given, placing the names of the persons claimed to be agents in the appropriate instructions.

**COMMENT:** In some cases involving unique fact patterns, or where the defendant disputes that an agency or employment relationship existed, additional instructions may be necessary. (See RAJI Agency Instructions.) If an agency but not an employment relationship existed, this instruction may need to be modified to instruct the jury on issues of ratification and apparent authority. (See RAJI Agency Instructions.) An employer may also be liable for the torts of its agents acting outside the scope of their employment if: (a) the employer intended the conduct or the consequences; (b) the employer was negligent or reckless; (c) the conduct violated a nondelegable duty of the employer; or (d) the employee purported to act or to speak on behalf of the employer and there was reliance upon apparent authority, or the employee was aided in accomplishing the tort by the existence of the agency relationship. RESTATEMENT (SECOND) OF AGENCY § 219(2).

This instruction also does not apply in instances of an employer's alleged liability for an employee's tortious conduct toward a fellow employee.

In *Engler v. Gulf Interstate Engineering, Inc.*, 230 Ariz. 55 (2012), the Arizona Supreme Court adopted RESTATEMENT (THIRD) OF AGENCY § 7.07 as the appropriate test for evaluating whether an employee is acting within the scope of employment. This Restatement section is a consolidated treatment of topics covered in several separate sections of RESTATEMENT (SECOND) OF AGENCY, including §§ 219, 220, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, and 267. The Committee drafted the elements of proof in this instruction in an effort to follow *Engler*, Restatement § 7.07 and other Arizona cases.