

AGENCY

An "agent"

acts for and acts instead of the "principal"

when the agent acts

within the "agents" scope of authority.

The "agent" is not acting personally,
rather,
the "principal" is acting.

"PRINCIPAL"
principal
employer (master)
principal

"AGENT"
agent
employee (servant)
independent contractor

An agency is created by express or implied acts of the parties

the "principal" must act
agreement between the agent and principal
not necessarily a contract
capacity needed by "principal"
consideration not needed by either

Both
the "principal" and the "agent"
owe each other **fiduciary duties**.

Recall fiduciary's **utmost good faith**.

"agent's" duties to the "principal"

obedience

care

loyalty

disclose conflict of interest **and**
obtain "principal's" approval for conflict

inform

law assumes duty fulfilled

accounting

"principal's" fiduciary duties to the "agent"

contract compliance

power versus right

indemnification

With respect to
tax laws and laws to protect employees,
the courts look to the substance,
rather than the form, of an agency relationship
to categorize the "agent" as either an employee
or an independent contractor.

CRITERIA

skilled
own methods of the trade
hired by and paid by the task
supervision focuses on the deadline,
not the means of completing the task
separate business entities

"principal" is vicariously liable for "agent's"
contracts,
torts, and
crimes
if "agent" acting within the scope of authority.

reasonable expectations of the parties

Upon whom is the 3rd party justifiably relying ?
undisclosed principal

partially disclosed "principal"

fully disclosed "principal"
