

Types of Agents

by Sophia



WHAT'S COVERED

In this lesson, you will learn about the five different types of agents. Specifically, this lesson will cover:

1. General Agents

The **general agent** possesses the authority to carry out a broad range of transactions in the name and on behalf of the principal.

➔ **EXAMPLE** The general agent may be the manager of a business or may have a more limited but nevertheless ongoing role, such as a purchasing agent or a life insurance agent authorized to sign up customers for the home office.

In either case, the general agent has authority to alter the principal's legal relationships with third parties. One who is designated a general agent has the authority to act in any way required by the principal's business. To restrict the general agent's authority, the principal must spell out the limitations explicitly, and even so, the principal may be liable for any of the agent's acts in excess of his authority.

Normally, the general agent is a business agent, but there are circumstances under which an individual may appoint a general agent for personal purposes. One common form of a personal general agent is the person who holds another's **power of attorney**. This is a delegation of authority to another to act in his stead; it can be accomplished by executing a simple form, although states have particular legal language requirements.

The power of attorney is typically used for a special purpose, such as to sell real estate or securities in the absence of the owner. But a person facing a lengthy operation and recuperation in a hospital might give a general power of attorney and a medical power of attorney to a trusted family member or friend.



TERMS TO KNOW

General Agent

An agent with general authority to perform all acts associated with the overall purpose of the agency.

Power of Attorney

A written instrument authorizing a person to act on behalf of another.

2. Special Agents

The **special agent** is one who has authority to act only in a specifically designated instance or in a specifically designated set of transactions.

A real estate broker is usually a special agent hired to find a buyer for the principal's land.

➔ **EXAMPLE** Suppose Sam, the seller, appoints an agent, Alberta, to find a buyer for his property. Alberta's commission depends on the selling price, which, Sam states in a letter to her, "in any event may be no less than \$150,000." If Alberta locates a buyer, Bob, who agrees to purchase the property for \$160,000, her signature on the contract of sale will not bind Sam. As a special agent, Alberta had authority only to find a buyer; she had no authority to sign the contract.



TERM TO KNOW

Special Agent

An agent with limited authority to conduct one transaction or more than one related transaction.

3. Agency Coupled with an Interest

An agent whose reimbursement depends on his continuing to have the authority to act as an agent is said to have an **agency coupled with an interest** if he has a property interest in the business.

➔ **EXAMPLE** A literary or author's agent customarily agrees to sell a literary work to a publisher in return for a percentage of all monies the author earns from the sale of the work. The literary agent also acts as a **collection agent** to ensure that his commission will be paid.

In this scenario, by agreeing with the principal that the agency is coupled with an interest, the agent can prevent his own rights in a particular literary work from being terminated to his detriment.



TERMS TO KNOW

Agency Coupled with an Interest

An agency where the agent has an interest in the subject matter dealt with. This agency does not automatically terminate on death of the principal.

Collection Agent

An agent charged with the duty to collect a debt of another.

4. Subagent

To carry out her duties, an agent will often need to appoint her own agents. These appointments may or may not be authorized by the principal.

➔ **EXAMPLE** An insurance company might name a general agent to open offices in cities throughout a certain state. The agent will necessarily conduct her business through agents of her own choosing. These agents are **subagents** of the principal if the general agent had the express or **implied authority** of the principal to hire them.

For legal purposes, they are agents of both the principal and the principal's general agent, and both are liable for the subagent's conduct although normally the general agent agrees to be primarily liable.

**Subagent**

An agent of an agent authorized to work for the principal.

Implied Authority

A part of the actual authority of an agent that includes doing what is necessary to accomplish the agent's responsibilities.

5. Employees and Independent Contractors

Until the early nineteenth century, any **employee** whose work duties were subject to an employer's control was called a **servant**.

That term is now considered outdated and has been replaced by the term "employee" in The Restatement (Third) of Agency, which states in Section 2.04, "An employer is subject to liability for torts committed by employees while acting within the scope of their employment." This legal principle is also referred to as **vicarious liability**.

Not every contract for services necessarily creates a **master-servant** or **employer-employee relationship**. There is an important distinction made between the status of an employee and that of an **independent contractor**, defined in The Restatement (Second) of Agency, Section 2, as:

"...a person who contracts with another to do something for him but who is not controlled by the other nor subject to the other's right to control with respect to his physical conduct in the performance of the undertaking."

In the revised Restatement (Third) of Agency (which, as of 2006, supersedes the Second Restatement), the term independent contractor is no longer defined. The new Restatement, instead, concerns itself broadly with any relationship that might be perceived as an agency relationship but may or may not be intended as such.

Section 2.03 of the Restatement (Third) of Agency states:

"Apparent Authority is the power held by an agent or other actor to affect a principal's legal relations with third parties where the third party reasonably believes the actor has authority to act on behalf of the principal and that belief is traceable to the principal's manifestations."

This revision to the Restatement makes the independent contractor distinction less clear, implying that sometimes an independent contractor may be seen as an agent in terms of authority to act on behalf of a principal. It all depends on the reasonableness of a third party's belief and the principal's actions, if any, that support that belief.

Under the previous Restatement, the additional element of justifiable reliance had to be proven by a plaintiff in a tort case, showing that the plaintiff was justified in perceiving an independent contractor as one with authority to act on behalf of a principal. This is no longer the case under the revised Restatement, and a plaintiff now only needs to show reasonable belief in the agency relationship.

CASE STUDY: *Jones v. Healthsouth Treasure Valley Hospital*

This requirement was illustrated in *Jones v. Healthsouth Treasure Valley Hospital*, where the Supreme Court of Idaho allowed the plaintiff's wrongful death action to go forward against the hospital for the liability of its contractors.

The plaintiff died when an air embolus entered her bloodstream during surgery, resulting in a lawsuit against the hospital for alleged negligence of the technician employed by the hospital's autotransfusion contractor. The court stated that the hospital could be found liable for the contractor's negligence under the doctrine of apparent authority.

Jones v. Healthsouth Treasure Valley Hospital, 147 Idaho 109, 206 P.3d 473 (2009).

By contrast, there are situations where an independent contractor is clearly legally **autonomous**, and it would not be reasonable to believe the contractor is an agent of anyone.

➞ **EXAMPLE** A plumber salaried to a building contractor is an employee and agent of the contractor, but a plumber who hires himself out to repair pipes in people's homes is an independent contractor.

➞ **EXAMPLE** If you hire a lawyer to settle a dispute, that person is not your employee; she is an independent contractor.

Nevertheless, the terms "agent" and "independent contractor" are not necessarily mutually exclusive. In fact, by definition:

"... an independent contractor is an agent in the broad sense of the term in undertaking, at the request of another, to do something for the other. As a general rule the line of demarcation between an independent contractor and a servant is not clearly drawn."

Flick v. Crouch, 434 P.2d 256, 260 (OK, 1967).

For employers, this distinction between agent and independent contractor is not just about liability, but also about important legal consequences for taxation, **workers' compensation insurance**, and liability insurance, wholly aside from liability for torts.

➞ **EXAMPLE** Employers are required to withhold income taxes from their employees' paychecks, but payment to an independent contractor, such as a plumber that you might hire to work in your home, does not require such withholding.

Deciding who is an independent contractor is not always easy; there is no single factor or mechanical answer.

CASE STUDY: *Robinson v. New York Commodities Corp.*

In *Robinson v. New York Commodities Corp.*, an injured salesman sought workers' compensation benefits, claiming to be an employee of the New York Commodities Corporation. But the state worker's compensation board ruled against him, citing a variety of factors.

The claimant sold canned meats, making rounds in his car from his home. The company did not establish hours for him, did not control his movements in any way, did not reimburse him for mileage or any other expenses, and did not withhold taxes from its straight commission payments to him. He reported his taxes on a form for the self-employed and hired an accountant to prepare it for him. The court agreed with the compensation board that these facts established the salesman's status as an independent contractor.

Robinson v. New York Commodities Corp., 396 N.Y.S.2d 725, App. Div. (1977).

Neither the company nor the worker can establish the worker's status by agreement. Indeed, the Restatement (Third) of Agency makes this clear in Section 1.02, "Parties' Labeling and Popular Usage Not Controlling":

"An agency relationship arises only when the elements stated in §1.01 are present. Whether a relationship is characterized as agency in an agreement between parties or in the context of industry or popular usage is not controlling."

Or, as the North Dakota Worker's Compensation Bureau put it in a bulletin to real estate brokers:

"It has come to the Bureau's attention that many employers are requiring that those who work for them sign 'independent contractor' forms so that the employer does not have to pay worker's compensation premiums for employees. Such forms are meaningless if the worker is in fact an employee."

In addition to determining a worker's status for tax and workers' compensation insurance purposes, it is sometimes critical for decisions involving personal liability insurance policies, which usually exclude from coverage accidents involving employees of the insureds.

CASE STUDY: *General Accident Fire & Life Assurance Corp v. Pro Golf Association*

In this case, the insurance policy in question covered members of the Professional Golfers Association. Gerald Hall, a golf pro employed by the local park department, was afforded coverage under the policy, which excluded "bodily injury to any employee of the insured arising out of and in the course of his employment by the insured." That is, no employee of Hall's would be covered (rather, any such person would have coverage under workers' compensation statutes).

Bradley Martin, age thirteen, was at the golf course for junior league play. At Hall's request, he agreed to retrieve or "shag" golf balls to be hit during a lesson Hall was giving; he was - as Hall put it - to be compensated "either through golf instructions or money or hotdogs or whatever." During the course of the lesson, a golf ball hit by Hall hit young Martin in the eye. If Martin was an employee, the insurance company would be liable; if he was not an employee, the insurance company would not be liable.

The trial court determined he was not an employee. The evidence showed that sometimes the boys who "shagged" balls got paid, got golfing instructions, or got food, so the question of compensation was ambiguous. Martin was not directed in how to perform (the admittedly simple) task of retrieving

golf balls, no control was exercised over him, and no equipment was required other than a bag to collect the balls.

General Accident Fire & Life Assurance Corp v. Pro Golf Association, 352 N.E.2d 441 (Ill. App. 1976).



TERMS TO KNOW

Employee

A person who works for another (the employer) who has the right to control and direct how the work is to be materially performed.

Servant

An archaic term used to define an employee.

Vicarious Liability

Indirect legal liability, as in the liability of an employer for the acts of an employee.

Master-Servant Relationship

An archaic term for the employer-employee relationship.

Employer-Employee Relationship

The relationship between an employer and an employee.

Independent Contractor

A person who contracts to work according to his or her own methods, through which the employer controls the final result of the work.

Autonomous

Fully within one's own control and not subject to the control of another.

Workers' Compensation Insurance

Insurance required by statute for employers to cover expenses of employee injuries on the job.



SUMMARY

In this lesson, you learned that the five types of agents include general agents, special agents, agency coupled with an interest, subagent, and employees (or "servants"). A **general agent** has broad authority to alter the principal's legal relationships with third parties, and includes powers of attorney. **Special agents** have a much more limited authority. An **agency coupled with an interest** is one in which the agent has an interest in the subject matter dealt with. A **subagent** is an agent of both the principal and the principal's general agent, who appointed the subagent.

The final category of agent is an employee. **Employees and independent contractors** differ in that the former is an agent and the latter typically is not. An independent contractor is not an employee; his or her activities are not specifically controlled by the client, and the client is not liable for payroll taxes, worker's compensation, and the like.

Best of luck in your learning!

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