

# BUSINESS LAW



## AGENCY

<b>Principal-agent</b>	Agent may replace principal • Agent acts on own discretion
<b>Employer-employee</b>	Employer's right to manage employee's physical conduct
<b>Employer-independent contractor</b>	Contractor is not an employee • No control over details of physical performance

## PRINCIPAL-AGENT

<b>Agreement</b>	Formed by express consent or implied from conduct
<b>Ratification</b>	Principal, by act or agreement, ratifies conduct of third person who acted outside authority
<b>Estoppel</b>	Principal causes third person to act on the belief that another person is the agent
<b>Operation of law</b>	Social duty or emergency where principal not available

## TERMINATION OF AGENCY

<b>Act of the parties</b>	Lapse of time • Purpose achieved • Mutual revocation • Termination by one party
<b>Operation of law</b>	Death or insanity • Impossibility • Changed circumstances • Bankruptcy • War between trading countries

## AGENT'S AUTHORITY

<b>Express</b>	Expressly given to agent
<b>Implied</b>	Custom, or position of the agent through principal's actions
<b>Apparent</b>	Principal's conduct leads third party to follow agent

## CARELESS

<b>Contracts</b>	Principal bound where agent has authority • Agent bound by express agreement • Agent contracts without authority
<b>Agent's torts</b>	Principal's own tortious conduct • Principal authorizes tortious conduct • Doctrine of respondent superior • Managementism
<b>Independent</b>	Employer not liable
<b>Contractor's torts</b>	Except negligent activities
<b>Agent's crimes</b>	Employer not liable
<b>Subagent's acts</b>	Principal is liable where authority exists

## PARTNERSHIP

- Uniform Partnership Act governs the operation of partnerships in absence of express agreements
- Association of two or more persons acting as co-owners of business

### CREATION OF PARTNERSHIP

<b>Intent</b>	Consent of parties involved
<b>Formalities</b>	Oral, written, or implied by conduct
<b>Duration</b>	Term or at will
<b>Capacity</b>	Legally capable
<b>Estoppel</b>	Third party liability

### TAX STATUS

- Partners are taxed on proportional shares of income; taxes include accumulated & distributed earnings
- Proportionate share of capital gain; no tax on exempt income which is received from item
- Pension plan may vary (for example, 401k self-employment tax required)
- No exemption for payments to partner's beneficiaries; not subject to state taxes

### DISSOLUTION OF PARTNERSHIP

- Death of partner(s)
- Either partner may end it; winding up requires notice
- Bankruptcy, and so on

### TYPES OF PARTNERSHIPS

<b>General</b>	Created by mutual agreement of parties involved • Not treated as entity (limited partners) • Unlimited debt liability • Equal management unless agreement states otherwise • Capital contribution set by agreement
<b>Limited</b>	Comply with statutory requirements • One or more general partners, and one or more limited partners • Limited partners not involved in management • Liable for contribution amount only

## SOLE PROPRIETORSHIP

- Created at will by the owner
- Owner is the business; not separate entity
- Duration depends on owner; dissolved upon death
- Transfer of interest ends individual's ownership
- Management at owner's discretion
- Unlimited liability
- Owner pays personal taxes on business income
- Generally no limit on out-of-state business transactions

### PRIVATE FRANCHISE

- Distributorship, chain-style business, or manufacturing/processing plant
- Agreements: Franchisee pays for license • Serves specific territory by franchisor's firm • Purchases goods from franchisor • Abides by standards • Conditions provided for in franchise • Retail price of goods cannot change

### COMMON DUTIES

<b>Duty of Care</b>	Discharged in good faith with care in reasonable manner • Best interests of business entity • Liability limited to gross negligence or willful misconduct
<b>Duty of Loyalty</b>	Intrinsic, dispassionate • Not seeking business opportunities • Disclosed confidential information

Notes: Please be advised that this chart does not account for jurisdictional differences • It is an informational tool that should be supplemented by more comprehensive materials and/or professional legal counsel

# Quick Guides To Business Law

**Karin Nielsen-Saines**



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