CHAPTER SIX

LEGAL RELATIONSHIPS

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Instruction No. 6.1

MINOR --- DEFINED --- RIGHT TO SUE OR DEFEND

A minor child is a single person who has not attained the age of 18 years, and is required to [sue/defend] by a [insert appropriate description, e.g., "guardian," "next friend," "guardian ad litem," etc.].

Comments

Definition of Minor, see 15 O.S. 1991 § 13; Capacity of Minor to Sue or Be Sued, see 12 O.S. 1991 § 2017 (B),(C).

Instruction No. 6.2

AGENCY --- DEFINED

The relationship of agency is created from the conduct [and/or] agreement of the parties showing that one is willing for the other to act for [him/her] subject to [his/her] control and that the other consents to so act. An agency relationship may arise under such circumstances even when the parties may not have intended to create one. The person who acts for another is called the agent and the other is called the principal.

Comments

Instruction No. 6.3

**DISCLOSED, PARTIALLY DISCLOSED OR UNDISCLOSED PRINCIPAL --- DEFINED**

When a person dealing with an agent knows that the agent is acting for a principal and knows of the principal's identity, the relationship is a "disclosed principal."

When a person dealing with an agent knows of the agency but does not know the name of the principal, the relationship is a "partially disclosed principal."

When a person dealing with an agent does not know the agent is acting for a principal, the principal is undisclosed.

**Notes on Use**

Use only the paragraphs that are applicable.

Instruction No. 6.4

**Employer and Employee --- Defined**

An employee is a person who, by agreement with another called the employer, acts for the employer and is subject to [his/her/its] control. The agreement may be oral or written or implied from the conduct of the parties.

**Comments**

*Bouziden v. Alfalfa Elec. Coop., Inc.*, 2000 OK 50, ¶ 29, 16 P.3d 450, 459 ("The decisive test for determining whether one is an employee or an independent contractor is the right to control which the employer is entitled to exercise over the physical details of the work."); *Keith v. Mid-Cont. Petroleum Co.*, 1954 OK 196, ¶ 15, 272 P.2d 371, 377 ("[T]he decisive test for determining whether one party is a servant or an independent contractor is to ascertain whether the employer has the right
to control or purports and attempts to control, the mode and manner of doing the work.”).

(2020 Supp.)

Instruction No. 6.5

LOANED EMPLOYEE

When an employee is loaned, or hired out to another for some purpose, [he/she] becomes the employee of such other person, if the other person has the exclusive right to control the employee with respect to that purpose.

Notes on Use

This instruction is to be used in appropriate cases as an introductory instruction to Instruction 6.6.

When necessary, Instruction 6.4 should be given with this instruction.

Comments


Instruction No. 6.6

LOANED EMPLOYEE --- DETERMINATION OF

If you find that [name of employee] was loaned or hired by [name of general employer] to [name of alleged special employer] for a special service or transaction and that [name of alleged special employer] had the exclusive right to control [name of employee] with respect to that [work/service/job], then you must find that [name of employee] was the employee of [name of alleged employer].
Notes on Use

In appropriate cases, Instruction 6.5 should be given as an introduction to this instruction.

When necessary, Instruction 6.4 should be given with this instruction.

Use whichever word, "work," "service," or "job," is most appropriate.

Comments


Instruction No. 6.7

Scope of [Agency/Employment]

An [agent/employee] is acting within the scope of [his/her] [agency/employment] if [he/she] is engaged in the work which has been assigned to [him/her] by [his/her] [principal/employer], or is doing that which is proper, usual and necessary to accomplish the work assigned to [him/her] by [his/her] [principal/employer], or is doing that which is customary within the particular trade or business in which the [agent/employee] is engaged. [An [agent/employee] is acting within the scope of [agency/employment] if the [agent/employee] acted with a view to further the [principal’s/employer’s] business, or from some impulse or emotion which naturally grew out of or was related to an attempt to perform the [principal’s/employer’s] business, regardless of whether the [agent/employee] acted mistakenly or unwisely.]
Notes on Use

This instruction is to be used in cases in which the plaintiff is seeking to hold the defendant liable as an employer under the doctrine of respondeat superior. The last sentence should be included if there is evidence that the employee acted mistakenly or ill advisedly and was otherwise attempting to perform the employer’s business. If there is evidence that the employee deviated from the employer’s business for the employee’s own purposes, the trial court should give Instruction No. 6.12 in addition to this instruction.

Comments

The Oklahoma Supreme Court summarized the theory of respondeat superior in *Nail v. City of Henryetta*, 1996 OK 12, ¶ 11, 911 P.2d 914, 917, as follows: “Under the theory of respondeat superior, one acts within the scope of employment if engaged in work assigned, or if doing that which is proper, necessary and usual to accomplish the work assigned, or doing that which is customary within the particular trade or business.” An employee’s actions may be within the scope of employment if they are “‘fairly and naturally incident to the business’, and [are] done ‘while the servant was engaged upon the master’s business and [are] done, although mistakenly or ill advisedly, with a view to further the master’s interest, or from some impulse of emotion which naturally grew out of or was incident to the attempt to perform the master’s business.’” *Rodebush v. Okla. Nursing Homes, Ltd.*, 1993 OK 160, ¶ 12, 867 P.2d 1241, 1245 (quoting *Russell–Locke Super-Service Inc. v. Vaughn*, 1935 OK 90, ¶ 18, 40 P.2d 1090, 1094).

(2020 Supp.)

Instruction No. 6.8

Scope of Authority --- Defined

An agent is acting within the scope of authority if the agent is engaged in the transaction of business that has been assigned by the principal, or if the agent is doing anything that may reasonably be said to have been
contemplated as a part of the agent’s duties. It is not necessary that the principal expressly authorized an agent’s act or failure to act.

Comments

The scope and extent of the agent's authority are to be determined from all of the facts and circumstances in evidence. *Williams v. Leforce*, 1936 OK 666, ¶ 0, 61 P.2d 714, 714 (Syllabus by the Court). The principal is not bound by any act of the agent outside the scope of authority. *Cont'l Supply Co. v. Sinclair Oil & Gas Co.*, 1924 OK 1166, ¶ 4, 235 P. 471, 474. The Oklahoma Court of Civil Appeals summarized the agent’s scope of authority in *Elam v. Town of Luther*, 1990 OK CIV APP 7, ¶ 6, 787 P.2d 1294, 1296, as follows: “[A]n agent acts within the scope of his authority, as determined by the facts and circumstances of each case, if engaged in the transaction of business assigned, or if doing that which may reasonably be said to have been contemplated as a part of his duties.”

*(2020 Supp.)*

**Instruction No. 6.9**

**Incidental or Implied Authority --- Defined**

In addition to the express authority conferred on the agent by the principal, an agent has the authority to do acts that are incidental to, or reasonably necessary to accomplish, the purpose expressly delegated to the agent.

Comments

*See Ivey v. Wood*, 1963 OK 281, ¶ 16, 387 P.2d 621, 625 (“An agent's authority will be implied, where necessary to carry out the purpose expressly delegated to him.”). Citing *Ivey v. Wood*, *supra*, the Oklahoma Court of Civil Appeals explained in *Elam v. Town of Luther*, 1990 OK CIV APP 7, ¶ 6, 787 P.2d 1294, 1296: “In addition to express authority granted by the principal, an agent has such implied authority to perform such acts as are incidental to, or reasonably necessary to accomplish the intended result.”
Instruction No. 6.10

IMPLIED AUTHORITY BASED ON BUSINESS USAGE

In addition to the express authority conferred on [him/her] by [his/her] principal, an agent has the implied authority to do such acts as are usual and customary in the business, and of which the principal has knowledge or should have had knowledge.

Comments


Instruction No. 6.11

Apparent Authority Definition and Effect

If either the words or conduct of [Name of Principal] has caused [Name of Plaintiff] reasonably to believe that [Name of Principal] had authorized [Name of Agent] to take certain action on behalf of [Name of Principal], though in fact-[Name of Principal] may not have actually done so, the words or conduct of [Name of Principal] constituted apparent authority, and as to [Name of Plaintiff] were the same as if [Name of Principal] had authorized [Name of Agent] to take the action. The apparent authority of [Name of Agent] may not be based solely on the words or
conduct of [Name of Agent]. In addition, [Name of Plaintiff] must have changed position to [his/her] detriment in reliance on the apparent authority of [Name of Agent].

Notes on Use

This instruction should not be used when the principal is undisclosed, since by the definition of apparent authority, it cannot exist when the principal is undisclosed. Such may not be true when the principal is partially disclosed, as in the case of a partnership where the third person is dealing with the partnership and knows some of its members but not all of them.

The rule of apparent authority should not be confused with the rules governing implied or incidental authority. See Instructions 6.9 and 6.10.

The trial court should substitute the name of a defendant or another person for [Name of Plaintiff] in this Instruction in appropriate circumstances.

Comments

The Oklahoma Supreme Court set out the requirements for apparent authority in Sparks Brothers Drilling Co. v. Texas Moran Exploration Co., 1991 OK 129, ¶ 17, 829 P.2d 951, 954, as follows:

“Apparent authority” of an agent is such authority as the principal knowingly permits the agent to assume or which he holds the agent out as possessing. Three elements must exist before a third party can hold a principal liable for the acts of another on an apparent-agency principal: (a) conduct of the principal [which would reasonably lead the third party to believe that the agent was authorized to act on behalf of the principal], (b) reliance thereon by [the] third person, and (c) change of position by the third party to his detriment. (Citations omitted).

See also Weldon v. Seminole Mun. Hosp., 1985 OK 94, ¶¶ 4, 7, 8, 709 P.2d 1058, 1059–1060 (designating the theory as either ostensible agency or agency by estoppel); Ocean Accident & Guar. Corp. v. Denner, 1952 OK 395, ¶ 14, 250 P.2d 217, 220–21 (describing the theory in estoppel terms)

(2020 Supp.)
Instruction No. 6.12

SCOPE OF AUTHORITY OR EMPLOYMENT --- DEPARTURE

An [agent/employee] is acting outside the scope of [authority/employment] when the [agent/employee] substantially departs from the [principal’s/employer’s] business by doing an act intended to accomplish an independent purpose or for some other purpose that is unrelated to the business of the [principal/employer] and not reasonably included within the scope of the express or implied [authority/employment]. The departure may be for a short time, but during that time the [agent/employee] is not acting within the scope of [authority/employment].

Notes on Use

The trial court should use this instruction with the instructions defining scope of authority or employment.

Comments

In Baker v. Saint Francis Hospital, 2005 OK 36, ¶ 17, 126 P.3d 602, 607, the Oklahoma Supreme Court ruled that an employer should not be liable for the actions of an employee if the employee “had stepped aside from her employment at the time of the offending tortious act(s) on some mission or conduct to serve her own personal needs, motivations or purposes.”

(2020 Supp.)
Instruction No. 6.13

RATIFICATION --- DEFINITION AND EFFECT

When one person acts or purports to act as an agent for another, but does so without authority, and the person for whom [he/she] acted thereafter confirms such action, by words or conduct, with knowledge of all the material facts, such words or conduct are a ratification of the act, and are the same as if it had been authorized originally.
If the principal ratifies any part of the act, [he/she/it] ratifies all of it.

Comments

In *Amazon Fire Ins. Co. v. Bond*, 65 Okla. 224, 228, 165 P. 414, 418 (1917), ratification was defined as, "the express or implied adoption and confirmation by one person of an act or contract performed or entered into in his behalf by another, who at the time assumed to act as his agent in doing the act or making the contract without authority to do so." *See In re Brown*, 412 F. Supp. 1066, 1071 (W.D. Okla. 1975); *Beard v. Herndon*, 84 Okla. 142, 146, 203 P. 226, 229 (Okla. 1921).

"If a principal elects to ratify any portion of an unauthorized transaction by one purporting to act as his agent, he must ratify the whole of it." *Bradburn v. McIntosh*, 159 F.2d 935, 938 (10th Cir. 1947).


**Instruction No. 6.14**

**Knowledge of Agent Imputable to Principal**

Knowledge, or notice possessed by an agent while acting within the scope of the agent’s authority, is the knowledge of, or notice to, the principal.

Comments

The Oklahoma Supreme Court held in *Tiger v. Verdigris Valley Electric Cooperative*, 2016 OK 74, ¶ 16, 410 P.3d 1007, 1012, that “the knowledge or notice possessed by an agent while acting within the scope of authority is the knowledge of, or notice to the principal.” In *Bailey v. Gulf Insurance Co.*, 389 F.2d 889, 891 (10th Cir. 1968), the general rule was stated that “knowledge of an agent obtained within the scope of his authority is ordinarily imputed to his principal.”

If the knowledge is acquired by the agent prior to the agency, it will be imputed to the principal if otherwise imputable. *First State Bank of Keota v. Bridges*, 1913 OK 553, ¶ 5, 135 P. 378, 380. A principal is not
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Instruction No. 6.15

TERMINATION OF AGENT'S AUTHORITY

The authority of an agent to represent [his/her] principal is terminated if [insert the appropriate terminating event]. The party claiming that the authority of an agent was terminated has the burden of proving that [insert the appropriate terminating event].

Notes on Use

In certain cases, for example, a revocation by the principal, the agent's authority is terminated. However, this instruction is not applicable to agencies "coupled with an interest."

Comments

A partial list of the events that may terminate an agency is as follows: Revocation by the Principal, Shumaker v. Hazen, 372 P.2d 873, 876 (Okla. 1962); Death of Principal, Sauls v. Whitman, 171 Okla. 113, 116, 42 P.2d 275, 277 (1935); Death of Agent, Kimmell v. Powers, 19 Okla. 339, 343, 91 P. 687, 688 (1907).

Not applicable to agencies "coupled with an interest," Shumaker v. Hazen, supra (dictum); Sauls v. Whitman, supra (dictum).

Instruction No. 6.16

EMPLOYER LIABILITY - SUBSTANTIAL CERTAINTY TEST

For [Plaintiff] to recover from [Defendant] for his/her injury, [Plaintiff] must prove by the greater weight of the evidence:
1. The conduct of [Defendant] was intentional; and

2. [Defendant]'s conduct caused injury to [Plaintiff]; and

3. Either:
   A. [Defendant] desired to bring about the injury; or
   B. [Defendant] knew that injury to [Plaintiff] was substantially certain, and not merely likely, to occur. You may infer the knowledge of [Defendant] from the conduct of [Defendant] and all the surrounding circumstances.

**Notes on Use**

If either of the alternatives in Paragraph 3 is not supported by the evidence, that alternative should be omitted.

**Committee Comments**

This Instruction is based on *Parret v. Unicco Serv. Co.*, 2005 OK 54, ¶ 24, 127 P.3d 572, 579:

In order for an employer's conduct to amount to an intentional tort, the employer must have (1) desired to bring about the worker's injury or (2) acted with the knowledge that such injury was substantially certain to result from the employer's conduct. Under the second part of this standard, the employer must have intended the act that caused the injury with knowledge that the injury was substantially certain to follow. The issue is not merely whether injury was substantially certain to occur, but whether the employer knew it was substantially certain to occur. The employer's subjective appreciation of the substantial certainty of injury must be demonstrated. In most cases, however, it will be necessary to demonstrate the employer's subjective realization by circumstantial evidence. Thus, an employer's knowledge may be inferred from the employer's conduct and all the surrounding circumstances.

*(2009 Supp.)*