AGENCY

Under the common law there are only two reasons for distinguishing between agents of a principal who are "servants" or "employees" of the principal and agents who are independent contractors. The most common is to determine the possible liability of the principal for torts of the agent within the scope of employment. The second purpose is to determine the obligations, rights and immunities between the principal and the agent. Earlier common law rules making distinctions for this purpose have for the most part been supplanted by social legislation such as workers' compensation, fair labor standards, social security, minimum wage and income tax laws. Rauzi v. FSM, 2 FSM R. 8, 15 (Pon. 1985).

The emphasis in governmental tort liability cases has been on the special status of government, its functions and its officials rather than on the degree of control tests commonly employed in nongovernmental cases. Even those commentators who specifically note that the *respondeat superior* doctrine applies to the government analyze governmental liability issues in terms of public policy considerations rather than through a degree of control analysis which distinguishes between closely supervised and high-ranking officials. Rauzi v. FSM, 2 FSM R. 8, 16 (Pon. 1985).

The excavation of large holes on the land of private citizens, in areas where children play, and near a public road, is inherently dangerous and calls for special precautions. One who causes such work to be undertaken may not escape liability simply by employing an independent contractor to do the work. Ray v. Electrical Contracting Corp., 2 FSM R. 21, 25 (App. 1985).

When a state government is acting on behalf of the national government by virtue of the joint administration of law enforcement act, the state's officers and employees are agents of the national government and are acting "under color of authority" within the meaning of 6 F.S.M.C. 702(5). Plais v. Panuelo, 5 FSM R. 179, 209-10 (Pon. 1991).

A party to a foreign fishing agreement voluntarily assumes primary liability and responsibility for its own failure to comply with the law, and for similar failures on the part of its fishing vessels and vessel operators within the FSM. Such a party also assumes a legal duty to ensure that the operators of its licensed vessels comply with all applicable provisions of FSM law. FSM v. Cheng Chia-W (II), 7 FSM R. 205, 212 (Pon. 1995).

A person can be criminally liable for the conduct of another if having a legal duty to prevent the commission of an offense, he fails to make proper effort to do so. FSM v. Cheng Chia-W (II), 7 FSM R. 205, 212 (Pon. 1995).

The acts of agents, illegal or otherwise, are the acts of the principal itself provided that those acts are in the ordinary course of the agent's business relationship with its principal because under accepted principles of agency law a principal is responsible for the criminal acts of its agents provided that those acts where committed in furtherance of the agents' business relationship with the principal. FSM v. Cheng Chia-W (II), 7 FSM R. 205, 212-13 (Pon. 1995).

The principal is bound by, and liable for, the acts which his agent does with or within the actual or apparent authority from the principal, and within the scope of the agent's employment. Black Micro Corp. v. Santos, 7 FSM R. 311, 315-16 (Pon. 1995).

Under the law of agency, a principal is liable not just for the expressly authorized acts and contracts of his agent, but also, with respect to third parties who deal with his agent in good faith, for actions his agent takes with apparent authority to act on behalf of the principal. Apparent authority may be implied where the principal passively permits the agent to appear to a third person to have authority to act on his behalf. Kosrae Island Credit Union v. Obet, 7 FSM R. 416, 419 n.2 (App. 1996).

A principal is bound by, and liable for the acts of its agent if done with or within the actual or apparent authority from the principal and within the scope of the agent's employment. Bank of the FSM v. O'Sonis,

8 FSM R. 67, 69 (Chk. 1997).

An agency relationship is based upon consent by one person that another shall act in his behalf and be subject to his control. Bank of the FSM v. O'Sonis, 8 FSM R. 67, 69 (Chk. 1997).

The existence of an agency relationship is not negated merely because the agent is named by someone other than the principal. Bank of the FSM v. O'Sonis, 8 FSM R. 67, 69 (Chk. 1997).

A party may require another to appoint an agent as a condition to an agreement. Bank of the FSM v. O'Sonis, 8 FSM R. 67, 69 (Chk. 1997).

When a bank requires, as a condition of the loan, that a borrower have his employer make the loan repayments out of the borrower's paycheck the borrower's employer is acting as the agent of the borrower. Bank of the FSM v. O'Sonis, 8 FSM R. 67, 69 (Chk. 1997).

When a fishing boat captain knows that he has caught fish and retained possession of fish while he had not maintained the required daily catch log in English that knowledge is attributable, under agency law principles, to the foreign fishing agreement party through which the boat was authorized. FSM v. Ting Hong Oceanic Enterprises, 8 FSM R. 79, 91 (Pon. 1997).

A principal is bound by, and liable for, the acts of its agent done with or within the actual or apparent authority from the principal and within the scope of the agent's employment. Agency relationships are based upon consent by one person that another shall act in his behalf and be subject to his control. FSM v. Ting Hong Oceanic Enterprises, 8 FSM R. 79, 91-92 (Pon. 1997).

The duties of an agent for the service of process are not the same as those of an attorney. Practically anyone may serve in the capacity as an agent. It may entail little more than receiving legal papers and promptly forwarding them on to the principal. Fabian v. Ting Hong Oceanic Enterprises, 8 FSM R. 93, 94 (Chk. 1997).

When a law firm has been designated as an agent for service of process by a foreign corporation required to appoint one in the FSM, the law firm may remain the corporation's agent for service even if the corporation has left the FSM and the firm is no longer its attorney. Fabian v. Ting Hong Oceanic Enterprises, 8 FSM R. 93, 94-95 (Chk. 1997).

A principal is bound by, and liable for, the acts of its agent, if those acts are done with actual or apparent authority from the principal and are within the scope of the agent's employment. FSM v. Ting Hong Oceanic Enterprises, 8 FSM R. 166, 176 (Pon. 1997).

Because a corporate principal may be held criminally liable for its agent's conduct when the agent acts within the scope of its authority for the principal's benefit, a foreign fishing agreement party may be held criminally liable for the conduct of its authorized vessel. FSM v. Ting Hong Oceanic Enterprises, 8 FSM R. 166, 176 (Pon. 1997).

An authorized vessel's master's knowledge is attributable to its foreign fishing agreement party because knowledge held by an agent or employee of a corporation may be attributed to its principal. FSM v. Ting Hong Oceanic Enterprises, 8 FSM R. 166, 180 (Pon. 1997).

An agent and principal may be sued in the same action for the same cause of action even when the principal's liability is predicated solely on the agency. Kaminanga v. FSM College of Micronesia, 8 FSM R. 438, 442 (Chk. 1998).

An agency relationship is based upon consent by one person that another shall act in his behalf and be subject to his control. A principal is bound by, and liable for the acts of its agent if done with or within the actual or apparent authority from the principal and within the scope of the agent's employment. Sigrah v. Timothy, 9 FSM R. 48, 52 (Kos. S. Ct. Tr. 1999).

When a general manager's actions in hiring, supervising and paying the employees of a sawmill were within the scope of authority granted to him by the principals, the sawmill's joint owners, the principals are bound by their agent's actions in hiring or authorizing the hiring of a sawmill employee. Sigrah v. Timothy, 9 FSM R. 48, 52 (Kos. S. Ct. Tr. 1999).

Under the common law, there are only two reasons for distinguishing between agents of a principal who are "servants" or "employees" of the principal and agents who are independent contractors. The most common is to determine the principal's possible liability for torts of the agent within the scope of employment. The second purpose is to determine the obligations, rights and immunities between the principal and the agent. Sigrah v. Timothy, 9 FSM R. 48, 53 (Kos. S. Ct. Tr. 1999).

A fishing association is not liable under a general theory of agency when the complaint does not make a general agency allegation, and instead asserts liability based on an agreement's language, and nothing in the agreement renders the other defendants the agents of the fishing association such that the association is liable under the respondeat superior doctrine for the damages flowing from a vessel's alleged negligent operation. Dai Wang Sheng v. Japan Far Seas Purse Seine Fishing Ass'n, 10 FSM R. 112, 115 (Kos. 2001).

Generally, a principal is bound by, and liable for, the acts of its agent done with or within the actual or apparent authority from the principal and within the scope of the agent's employment. FSM v. National Offshore Tuna Fisheries Ass'n, 10 FSM R. 169, 174 (Chk. 2001).

Agency relationships are based upon one person's consent that another shall act on his behalf and be subject to his control. FSM v. National Offshore Tuna Fisheries Ass'n, 10 FSM R. 169, 174 (Chk. 2001).

Acting for another is the act of an agent. FSM v. National Offshore Tuna Fisheries Ass'n, 10 FSM R. 169, 174 (Chk. 2001).

Someone acting on another's behalf is someone who is acting as an agent for that other. FSM v. National Offshore Tuna Fisheries Ass'n, 10 FSM R. 169, 174 (Chk. 2001).

There is no authority by which an agent may be held liable to a third party for its principal's actions when they are not also the agent's own actions or when the agent has not expressly agreed to be liable for those actions. FSM v. National Offshore Tuna Fisheries Ass'n, 10 FSM R. 169, 174 (Chk. 2001).

Corporations of necessity must always act by their agents. Kosrae v. Worswick, 10 FSM R. 288, 292 (Kos. 2001).

When the defendants provide documents signed by both Naiten and Linda Phillip showing them to be co-owners of the business; Kolonia Town municipal records showing that they were recorded as the business=s co-owners for business license purposes; an affidavit concerning times that both had come in together to make the original insurance application and that later dealings with the business were always with Linda Phillip; and the rental agreement for the damaged pickup, which was signed by Linda Phillip as "company agent" and when the plaintiff offers no evidence, argument, or affidavit that Linda Phillip did not have authority to act as the business=s agent in this regard, the court must conclude that there is no genuine issue of fact that Linda Phillip had the actual or apparent authority to act as agent concerning payment of the insurance premium. Phillip v. Marianas Ins. Co., 12 FSM R. 464, 469 (Pon. 2004).

A principal is bound by, and liable for, the acts which his agent does with or within the actual or apparent authority from the principal, and within the scope of the agent's employment. Phillip v. Marianas Ins. Co., 12 FSM R. 464, 469 (Pon. 2004).

Under the law of agency, a principal is liable not just for the expressly authorized acts and contracts of his agent, but also, with respect to third parties who deal with his agent in good faith, for actions his agent takes with apparent authority to act on the principal's behalf. Apparent authority may be implied where the principal passively permits the agent to appear to a third person to have authority to act on his behalf. Phillip v. Marianas Ins. Co., 12 FSM R. 464, 469 (Pon. 2004).

A principal is liable not just for his agent's expressly authorized acts and contracts, but also, with respect to third parties who deal with his agent in good faith, for actions his agent takes with apparent authority to act on the principal's behalf. Apparent authority may be implied where the principal passively permits the agent to appear to a third person to have authority to act on his behalf. Hartman v. Krum, 14 FSM R. 526, 530 (Chk. 2007).

When an agent had neither the actual nor the apparent authority to bind the principal to make rental payments since the principal did not give the agent actual authority to agree to rental payments for a cement mixer=s use, and since the agent informed the plaintiffs that he would have to discuss their proposed rental amount with the principal, the agent did not have the apparent authority to agree to rental payments and bind the principal. Hartman v. Krum, 14 FSM R. 526, 530 (Chk. 2007).

A principal is bound by, and liable for his agent's acts if done with or within the actual or apparent authority from the principal and within the scope of the agent's employment, but when agreeing to pay rent for a cement mixer was not within the scope of the agent's "employment" as the principal's agent, no contract was formed between the principal and the plaintiffs through agency. Hartman v. Krum, 14 FSM R. 526, 530-31 (Chk. 2007).

A principal is bound by the acts of the agent that the agent performs with the principal's actual or apparent authority. Helicopter Aerial Survey Pty., Ltd. v. Pohnpei, 15 FSM R. 329, 335 (Pon. 2007).

When the defendants' local agent – prior to defendants' fishing activities on August 18th, 19th, and 20th – had actual knowledge that NORMA would not be issuing the fishing permit, the knowledge of the defendants= agent is imputed to the defendants under the law of agency. FSM v. Katzutoku Maru, 15 FSM R. 400, 404 (Pon. 2007).

The FSM Development Bank, in administering an IDF loan, is statutorily an agent of the Federated Development Authority and of the Investment Development Fund, not of the State of Pohnpei, even though the loan funds came from Pohnpei's earmarked subaccount. The mere fact that Pohnpei=s approval was also needed if the loan funds came from the subaccount earmarked for Pohnpei, is not enough to make the Bank Pohnpei's agent because, by statute, the IDF, not the State of Pohnpei, profits from the repayment of an IDF loan since all repayments of principal and interest and penalties on loans made from the Fund, all cash assets recovered on loans made from the Fund, and all fees, charges, and penalties collected in relation to administration of the Fund must be deposited into the Fund and the money deposited into the Fund is then available for lending to other entrepreneurs or developers, who are the ultimate beneficiaries of any loan repayment. FSM Dev. Bank v. Arthur, 15 FSM R. 625, 634-35 (Pon. 2008).

When confronted with a situation where a principal may be held vicariously liable for its agent's acts, a plaintiff, at the plaintiff's option, may sue either the principal, the agent, or both. Thus, an agent is not an indispensable or necessary party to a vicarious liability claim against the principal. Nakamura v. Mori, 16 FSM R. 262, 268 (Chk. 2009).

Since an agent is not an indispensable party to a vicarious liability claim against the principal, the principal would not be prejudiced if leave were granted to amend the complaint against it to include a vicarious liability claim against it for an agent's acts even if the plaintiffs do not also sue the agent. Nakamura v. Mori, 16 FSM R. 262, 268 (Chk. 2009).

When a contract expressly provides that a party is responsible to the other party for its employees' acts, the party is contractually liable to the other for its employee's actions. Individual Assurance Co. v. Iriarte, 16 FSM R. 423, 437 (Pon. 2009).

A principal is liable for the acts of his or her agent when acting under the principal's authority within the scope of the agent's employment. Individual Assurance Co. v. Iriarte, 16 FSM R. 423, 437 (Pon. 2009).

Employers are responsible for the actions of their employee under the law of agency, which binds the principal for the acts of the agent. Individual Assurance Co. v. Iriarte, 16 FSM R. 423, 438 (Pon. 2009).

An employee is herself jointly and severally liable with her employers for the checks she converted by cashing them while she was their employee because, under the doctrine of respondeat superior, an agent=s act within the scope of his or her agency is the act of the principal, and the result is that both the principal and the agent are jointly and severally liable to the person injured by the wrongful act. Individual Assurance Co. v. Iriarte, 16 FSM R. 423, 438 (Pon. 2009).

An agent is not relieved from responsibility for tortious conduct merely because he acted at the request, or even at the command or direction, of the principal. Individual Assurance Co. v. Iriarte, 16 FSM R. 423, 438 (Pon. 2009).

An employee or agent is liable to a third person for injuries resulting from the breach of any duty which the employee or agent owes directly to such third person, and is not liable to a third person for injuries resulting from a breach of duty which the employee or agent owes only or solely to his employer. Individual Assurance Co. v. Iriarte, 16 FSM R. 423, 438-39 (Pon. 2009).

Even as an insurance agency's employee, the employee had a duty not to cash premium checks without first confirming with the insurer that she had the authority to cash the checks. By failing to do so, the employee intentionally deprived the insurer of its property, and is thus liable for the conversion of the checks that she cashed while she was an the agency's employee. The employers and the employee are jointly and severally liable for the checks that the employee cashed during the time that the employers were acting as the insurer's general agents. Individual Assurance Co. v. Iriarte, 16 FSM R. 423, 439 (Pon. 2009).

By definition, the relationship between an agent and principal is a fiduciary one. Agency is the fiduciary relation which results from the manifestation of consent by one person to another that the other shall act on his behalf and subject to his control, and consent by the other so to act. Individual Assurance Co. v. Iriarte, 16 FSM R. 423, 441 (Pon. 2009).

An agent is a fiduciary with respect to the matters within the scope of his agency. The very relationship implies that the principal has reposed some trust or confidence in the agent, and the agent or employee is bound to the exercise of the utmost good faith, loyalty, and honesty toward his principal. Individual Assurance Co. v. Iriarte, 16 FSM R. 423, 441 (Pon. 2009).

Both principal and agent are jointly and severally liable for the torts that the agent commits in the course and scope of the work performed for the principal. Individual Assurance Co. v. Iriarte, 16 FSM R. 423, 446 (Pon. 2009).

A subcontractor is one who is awarded a portion of an existing contract by a contractor. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 571 (Pon. 2011).

An independent contractor is one who is entrusted to undertake a specific project but who is left free to do the assigned work and to choose the method for accomplishing it. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 571 (Pon. 2011).

The two terms – subcontractor and independent contractor – are not mutually exclusive. A subcontractor may or may not have an agency relationship with the contractor and that relationship does not control whether or not a subcontract has been struck. A party might be both an independent contractor and a subcontractor. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 571 (Pon. 2011).

A subcontractor=s status, when compared to that of an employee, is ordinarily that of an independent contractor. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 571 (Pon. 2011).

Subcontracting is merely "farming out" to others all or part of work contracted to be performed by the original contractor. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 572 (Pon. 2011).

When an Hawaii-based architect undertook to perform part of the contractor=s existing contract but his initial designs were never used and his later conceptual design work was not actually used since the final designs were prepared by an employee of the contractor and not by an independent contractor or other subcontractor, this transaction might better be described as an unsuccessful attempt to subcontract part of the contract. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 573 (Pon. 2011).

The FSM Development Bank was not Pohnpei's agent in making the loan, in receiving the loan repayments, or in suing the guarantors when the borrower defaulted because until FSM Public Law No. 12-75 was enacted over the President's veto, Pohnpei could not even consider that any IDF funds might be its own money. If it had been Pohnpei's money, then Congress would not have had to enact a law to give it to Pohnpei. That Congress later decided to wind up IDF subaccount activity and allow the transfer of those funds to the states does not magically and retroactively relieve the guarantors of their judicially-determined liability to the bank and it does not create a new cause of action or cause a new claim to accrue upon which the plaintiffs can now sue for the first time. AHPW, Inc. v. Pohnpei, 18 FSM R. 1, 10 (Pon. 2011).

When nothing in the record contradicts the trial court finding that Actouka was acting as an insurance broker and that the national government acted as an agent for Chuuk (and the other states) in dealing with the insurance broker Actouka until it came time for the ship operators to pay their respective shares of the agreed premiums due, the trial court's finding that Actouka and Chuuk entered into two separate agreements for Actouka to seek and obtain insurance and that various writings to that effect were signed on the behalf of Chuuk, the party to be charged, was thus not clearly erroneous. Chuuk v. Actouka Executive Ins. Underwriters, 18 FSM R. 111, 118 (App. 2011).

A principal is certainly liable to a third party for the acts of its subagent and a subagent is liable to the principal for the subagent's own acts. But it would be odd indeed if an agent could instruct or authorize a subagent to do something and then escape all liability to the principal because the subagent, not the agent, did the act. Iriarte v. Individual Assurance Co., 18 FSM R. 340, 355 (App. 2012).

Unless otherwise agreed, an agent is responsible to the principal for the conduct of a subagent with reference to the principal's affairs entrusted to the subagent, as the agent is for his own conduct; and as to other matters as a principal is for the conduct of an agent. Iriarte v. Individual Assurance Co., 18 FSM R. 340, 355 (App. 2012).

An agent who employs a subagent is the latter's principal and is responsible both to third persons and to his principal for the subagent's derelictions. Thus the agent is subject to liability to the principal for harm to the principal's property or business caused by the subagent's negligence or other wrong to the principal's interests. Iriarte v. Individual Assurance Co., 18 FSM R. 340, 355 (App. 2012).

The agents were responsible to their principal for the subagent's derelictions or defalcations concerning the principal's premium checks. Iriarte v. Individual Assurance Co., 18 FSM R. 340, 355 (App. 2012).

Agency is the fiduciary relation which results from one person's manifestation of consent to another that the other shall act on his behalf and subject to his control, and consent by the other to so act, and fiduciary is defined as relating to or founded upon a trust or confidence. Iriarte v. Individual Assurance Co., 18 FSM R. 340, 355 (App. 2012).

An agent is a fiduciary with respect to the matters within the scope of his agency and the agent is bound to the exercise of the utmost good faith, loyalty, and honesty toward his principal. Iriarte v. Individual Assurance Co., 18 FSM R. 340, 355 (App. 2012).

Since handling the principal's premium checks was within the scope of their agency and since the agents did not exercise the utmost good faith, loyalty, and honesty toward the principal when they were its agents because they did not immediately remit all premium checks to the principal, the agents breached the fiduciary duty they owed to the principal and were properly found liable under a breach of fiduciary duty theory. Iriarte v. Individual Assurance Co., 18 FSM R. 340, 355 (App. 2012).

It is not logical that any individual would have apparent authority to cash a check with a corporate payee, especially a foreign corporation. The corporation's agents may have had apparent authority to perform a number of acts on the corporation's behalf, but cashing checks with the corporation as the payee was not one of them. One who pays out on such a check does so at his own peril. Iriarte v. Individual Assurance Co., 18 FSM R. 340, 359 (App. 2012).

The promises made by the insurer's agents bind the insurer and must be enforced in order to avoid manifest injustice because if the plaintiff had enrolled her daughter under a separate cancer policy, she would have been covered under her own policy, but instead, the agent's misrepresentation caused her to keep her daughter under her cancer policy, making the daughter ineligible at the time she was diagnosed with cancer because she did not qualify as a covered family member under that policy's provisions. Johnny v. Occidental Life Ins., 19 FSM R. 350, 359 (Pon. 2014).

A principal is bound by, and liable for, the acts which his agent does with or within the actual or apparent authority from the principal, and within the scope of the agent's employment, and an insurance company's general agent is one who has authority to transact all the business of an insurance company of a particular kind, or in a particular place, and whose powers are coextensive with the business entrusted in the agent's care. Agents have been regarded as general agents when they fully represent the insurance company in a particular district and are authorized to solicit insurance, receive money and premiums, issue and renew polices, appoint subagents, and adjust loses. Johnny v. Occidental Life Ins., 19 FSM R. 350, 362-63 (Pon. 2014).

When an agent has been employed by the insurer for approximately 25 years and, although he may not have had the power to unilaterally amend policies, he informed the plaintiff that cancer coverage was up to 25 years of age; and when, because he was the manager of the insurer's office in Pohnpei and aside from a subordinate he was the only insurer's representative whom the plaintiff was in contact with, the plaintiff had ample reason to rely and accept his statements as the truth. Johnny v. Occidental Life Ins., 19 FSM R. 350, 363 (Pon. 2014).

A principal is bound by and liable for the acts of its agent if done within the scope of this agent's employment. Setik v. Mendiola, 20 FSM R. 236, 243 (Pon. 2015).

When, assuming the allegations in the complaint about the defendants named individually, along with the inferences drawn therefrom, are true; when the plaintiffs are precluded from bringing the present cause of action against the individuals' employer on several grounds; and when, given the individual defendants were all acting on their employer's behalf and within the scope of their employment, vicarious liability is not available and the claims leveled against the individual defendants must also fall. Setik v. Mendiola, 20 FSM R. 236, 243-44 (Pon. 2015).

While it may be true that an agent and a principal may be sued in the same case for the same cause of action even when the principal's liability is predicated solely on the agency, when the principal's liability is not based on the agency but is based on a statute, the Chuuk Health Care Act of 1994, that imposes the liability only on the principal – the employer – and absolves the employee from any liability, the employee agent is not a proper party to the litigation. Chuuk Health Care Plan v. Waite, 20 FSM R. 282, 284 (Chk. 2016).