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ILLINOIS LAW MANUAL

CHAPTER VIII
VICARIOUS LIABILITY

A. MASTER/SERVANT - *RESPONDEAT SUPERIOR*

1. Basic Law

In a master/servant relationship, a principal can be held liable for the wrongful conduct of an agent if the conduct is committed within the scope of that relationship. Lang v. Silva, 306 Ill. App. 3d 960 (1999). This is known as the doctrine of *respondeat superior*. It most commonly arises in the context of an employer's liability for the negligent conduct of an employee. In limited circumstances, however, an employer may also be held vicariously liable for the intentional torts or other misconduct of an employee. Landrus v. Eagle Wings, 236 Ill. App. 3d 711 (1992); Bryant v. Livigni, 250 Ill. App. 3d 303 (1993).

2. The Master/Servant Relationship

The principal's or master's liability is derived from his or her relationship to the agent, or servant. A master is one who has the right to control the manner and method of work performed. A servant is one whose work is subject to the supervision or control of the master.

By contrast, an independent contractor is a person hired for a particular purpose or project, who is compensated on a project-by-project basis, and who exercises his own discretion over the manner and method of carrying out the work. Stewart v. Jones, 318 Ill. App. 3d 552 (2001). Whether the agent is a "servant" or an "independent contractor" is nearly always a question of fact to be determined by a jury.

3. Liability for Conduct of Independent Contractors

Generally, one who hires an independent contractor is not liable for the acts or omissions of the independent contractor. Schaugnessy v. Skender Construction Co., 342 Ill. App. 3d 730 (2003). However, Section 414 of the Restatement (Second) of Torts, adopted by Illinois courts, provides an exception to the general rule. Schaugnessy, 342 Ill. App. 3d at 736; see also Larson v. Commonwealth Edison Co., 33 Ill. 2d 316 (1965).

Section 414 of the Restatement (Second) of Torts states:

> One who entrusts work to an independent contractor, but who retains the control of any part of the work, is subject to liability for physical harm to others for whose safety the employer owes a duty to exercise reasonable care, which is caused by his failure to exercise his control with reasonable care.

The "retained control" concept is explored in comment (c) of Section 414. Comment (c) states:

> In order for the rule stated in this Section to apply, the employer must have retained at least some degree of control over the manner in which the work is done. It is not enough that he has merely a general right to order the work stopped or resumed, to inspect its progress or to receive reports, to make suggestions or recommendations which need not necessarily be followed, or to prescribe alterations and deviations. Such a general right is usually reserved to employers, but it does not mean that the contractor is

> controlled as to his methods of work, or as to operative detail. There must be such retention of a right of supervision that the contractor is not entirely free to do the work in his own way.

Restatement (Second) of Torts, Section 414, comment (c), at 388 (1965).

A reading of the cases which have applied Section 414 establishes that the authority to stop the work for safety reasons is the most important factor courts consider when determining whether a defendant has retained the requisite degree of control necessary to impose liability. In addition to the Schaugnessy case cited above, the following cases also appear to hold that retaining authority to stop the work for safety reasons is a sufficient retention of control to impose liability:

- Tsourmas v. Dineff, 161 Ill. App. 3d 897 (1987)
- Haberer v. Village of Sauget, 158 Ill. App. 3d 313 (1987)
- Ryan v. Mobil Oil Corporation, 157 Ill. App. 3d 1069 (1987)
- Schoenbeck v. DuPage Water Commission, 240 Ill. App. 3d 1045 (1993).

In Bokodi v. Foster Wheeler Robbins, Inc., 312 Ill. App. 3d 1051 (2000), despite the defendants' statement in the agreement that the subcontractors were to be in control of their work, the court found that the general contractor controlled the work and that the defendants went to great lengths to control the safety standards.

Several cases which have analyzed construction contracts in light of Section 414 have found that the owner or employer did not retain sufficient control for purposes of imposing liability. For example, in Schoenbeck v. DuPage Water Commission, 240 Ill. App. 3d 1045 (1993), the court found that there was no employer-independent contractor relationship. Without that relationship, Section 414 did not apply. In Fris v. Personal Products Company, 255 Ill. App. 3d 916 (1994), the court found that, even though the owner was acting as its own general contractor, it did not retain sufficient control over the

"operative" details of the plaintiff's employer's work to impose liability. The court in Conroy v. Sherwin Williams Company, 168 Ill. App. 3d 333 (1988), found that an owner (Sherwin Williams) retained control over the work and the authority to direct the overall work. The general contractor (Phillips), who had hired the independent contractor (Conroy), had not retained sufficient control over the work for Phillips to be found liable. Furthermore, the court found that, at the time of Conroy's injury, he was performing work for Sherwin Williams as opposed to the general contractor, Phillips.

In a ground-breaking First District case, the subcontract agreement stated:

> The General Contractor shall have the right to exercise complete supervision and control over the work to be done by the Subcontractor, but such supervision and control shall not in any way limit the obligations of the Subcontractor.

Rangel v. Brookhaven Constructors, Inc., 307 Ill. App. 3d 835 (1999). The court held that the general's reservation of the right of supervision was a general right and did not refer, directly or indirectly, to a right to manage the job. Id. The evidence showed that the general had not directed the "operative details" of the work performed. The subcontractor supplied the scaffold on which the plaintiff had been injured, and instructed the plaintiff to utilize the braces of the scaffold in an unsafe manner. Further, the unsafe method of performing the work was proposed just hours before the injury, and there was no evidence to suggest that the general knew or should have known of the unsafe method. Therefore, the court found that the general did not owe a duty to the plaintiff, an employee of the subcontractor, and summary judgment was granted. Id.

Following comment (c) of Section 414 of the Restatement, it can be argued that the lack of authority to control the means and methods of doing the work is evidence of insufficient control to impose liability, especially in light of the case law developed in past

years, including Bieruta v. Klein Creek Corp., 331 Ill. App. 3d 269 (2002), Kotecki v. Walsh Construction, 333 Ill. App. 3d. 583 (2002), Ross v. Dae Julie, Inc., 341 Ill. App. 3d 1065 (2003), Shaughnessy v. Skender Construction Co., 342 Ill. App. 3d 730 (2003), Martens v. MCL Constr. Corp., 347 Ill. App. 3d 303 (2004), Cochran v. George Sollitt Constr. Co., 358 Ill. App. 3d 865 (2005), Aguirre v. Turner Constr. Co., 2006 U.S. Dist. LEXIS 9816 (2006), and Pestka v. Town of Fort Sheridan Co., LLC, 371 Ill. App. 3d 286 (2007).

The Martens' decision clearly points to the fact that the trend is tending toward less liability for architects, owners, general contractors and co-subcontractors who do not control the "operative details" of the injured employee's work. As the Martens' Court states, "the party who retains control is the logical party upon whom to impose a duty to ensure worker's safety. Penalizing a general contractor's efforts to promote safety and coordinate a general safety program among various independent contractors at a large jobsite hardly serves to advance the goal of worksite safety." Martens, Id. at 318. See also, Downs v. Steel and Craft Builders, Inc., 358 Ill. App. 3d 201 (2005) (summary judgment in favor of general contractor appropriate where independent contractor contractually responsible for jobsite safety and general contractor takes no active role in ensuring safety, or where the general contractor reserves the general right of supervision over the independent contractor but does not retain control over incidental aspects of the independent contractor's work).

Similarly, in Moiseyev v. ROT's Bldg. & Dev., Inc., 369 Ill. App. 3d 338 (2006), the court held that the emphasis in determining whether one has sufficient control over subcontractors to trigger a duty of reasonable care should rest on the "degree of control

over the manner in which the work is done and is a highly factual inquiry into the degree of control over the routine and incidental aspects of the work."

Conversely, in Moorehead v. Mustang Constr. Co., 354 Ill. App. 3d 456 (2004), the Third District reversed a grant of summary judgment for a general contractor who agreed in its contract to be "fully and solely responsible for the jobsite safety" of the means, methods and techniques of construction, agreed to provide a safety director and could stop the work for safety reasons. The evidence showed that plaintiff had been using an extension ladder without proper feet and not blocked on its base for several weeks before the accident, and that the safety director had noticed same prior to the occurrence. The Court referenced the language of Restatement (Second) of Torts, Section 414 comment (b), previously not addressed specifically by other appellate decisions. Restatement 414(b) states:

> The rule stated in this Section is usually, though not exclusively, applicable when a principal contractor entrusts a part of the work to subcontractors, but himself or through a foreman superintends the entire job. In such a situation, the principal contractor is subject to liability if he fails to prevent the subcontractors from doing even the details of the work in a way unreasonably dangerous to others, if *he knows or by the exercise of reasonable care should know that the subcontractors' work is being so done, and has the opportunity to prevent it by exercising the power of control which he has retained in himself.* So too, he is subject to liability if he knows or should know that the subcontractors have carelessly done their work in such a way as to create a dangerous condition, and fails to exercise reasonable care either to remedy it himself or by the exercise of his control cause the subcontractor to do so.

Restatement (Second) of Torts, Section 414, comment (b) (emphasis added). Here, because the general contractor knew of the dangerous condition/unsafe work practice

involving the ladder before the accident, the court found the existence of a duty under 414 such to defeat a motion for summary judgment.

In Cochran v. George Sollitt Construction Co., 358 Ill. App. 3d 865 (2005), the First District affirmed summary judgment in favor of a general contractor. However, in doing so, the court seemed to carve out a niche for "direct negligence" actions under Restatement 414 that could become the exception that theoretically swallows the rule.

In Cochran, a sheet metal worker was injured when a ladder that had been placed on a sheet of plywood atop two milk crates shifted, causing injuries. The record revealed this was the plaintiff's first day on the job and he had only been working for less than an hour in a sub-basement mechanical room at a hospital. His employer's foreman set up and directed him to work on the unsafe ladder setup. No one from the general contractor had any contact with the sheet metal worker prior to the accident, nor instructed the worker as to how, when or where to do his work, nor provided any equipment.

The general contract, however, contained strong safety language that the general:

> shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract. The Contractor shall take reasonable precautions [over] the safety of, and shall provide reasonable protection to prevent damage, injury, loss to…employees on the Work and other persons who may be affected thereby.

The general contractor admitted it had "general control" over its subcontractors' work, but denied it had "specific control" over the subcontractors, including the sheet metal contractor. While the general had a field superintendent, he was not required to

perform a daily "walk-through," but would observe progress of the work and had the authority to stop the work for safety reasons. The primary responsibility for safety of the subcontractors' employees were the subs themselves, who were required to have their own safety protocol and tool box safety meetings. While the superintendent had seen the sub-basement room where the accident occurred the day before, he did not observe any unsafe conditions. He was unaware of the unsafe ladder usage the day of the accident.

The injured worker brought suit against the general contractor, claiming it was in control of the work site under Restatement (Second) of Torts, Section 414, which states:

> One who entrusts work to an independent contractor, but who retains the control of any part of the work, is subject to liability for physical harm to others for whose safety the employer owes a duty of reasonable care, which is caused by his failure to exercise his control with reasonable care.

In a motion for summary judgment, the general argued no duty was created under section 414 of the Restatement (Second). After the trial court agreed, the injured worker appealed.

The First District Appellate Court affirmed. Similar to the analysis seen in most Section 414 cases, the court first focused on the language of comment (c) of Section 414, which discussed the term "retained control." Comment (c) provides:

> In order for the rule stated in this Section to apply, the employer must have retained at least some degree of control over the manner in which the work is done. It is not enough that he has merely a general right to order the work stopped or resumed, to inspect its progress or to receive reports, to make suggestions or recommendations which need not necessarily be followed, or to prescribe alterations and deviations. Such a general right is usually reserved to employers, but it *does not mean that the contractor is controlled as to his methods of work, or as to operative*

> *detail. There must be such a retention of a right of supervision that the contractor is not entirely free to do the work in his own way.*

Restatement (Second) of Torts, Section 414, comment (c) (emphasis added). Under the above comment, sufficient "retained control" was not shown over the operative details of the plaintiff's work so as to impose a duty under Section 414.

Instead of ending its analysis there, the First District went on to address the concept of "direct liability" under comment (b) of Section 414. Comment (b) provides:

> The rule stated in this Section is usually, though not exclusively, applicable when a principal contractor entrusts a part of the work to subcontractors, but himself or through a foreman superintends the entire job. In such a situation, the principal contractor is subject to liability if he fails to prevent the subcontractors from doing even the details of the work in a way unreasonably dangerous to others, if *he knows or by the exercise of reasonable care should know that the subcontractors' work is being so done, and has the opportunity to prevent it by exercising the power of control which he has retained in himself.* So too, he is subject to liability if he knows or should know that the subcontractors have carelessly done their work in such a way as to create a dangerous condition, and fails to exercise reasonable care either to remedy it himself or by the exercise of his control cause the subcontractor to do so.

Restatement (Second) of Torts, Section 414, comment (b) (emphasis added).

The court thus reasoned that a general contractor's actual or constructive knowledge of a subcontractor's unsafe work methods or a dangerous condition is a precondition to "direct" liability under Section 414. In the Cochran case, there was no evidence in the record that any of the "competent persons" from the general had observed the unsafe setup during the short time period before the accident. As such, there could be no "direct" liability and summary judgment was proper as to the general.

This "direct liability" prong of Section 414 as laid out by the Cochran court has dangerous ramifications for general contractors. First, the court seemingly does an "end run" around the "retained control" analysis seen in other Section 414 cases. Typically, a court would first look to see a duty existed, i.e., analyze whether there were sufficient facts in the record to show that the general contractor had retained control over operative details of the work. If no such control existed, there was no duty and summary judgment was proper. Here, in what appears to be an expansion of 414, in situations where there was no "control," (and thus no duty), the court could also now look toward whether there was notice to the general contractor of any unsafe work practice by the subcontractor or dangerous condition created by the sub. In those situations, the court could impose "direct" liability by the contractor's failure to exercise its general retained right to stop the work for safety reasons.

Cochran may place general contractors in a difficult situation Clever plaintiff's lawyers, by either friendly co-worker's or their own client's testimony, can presumably create questions of fact to defeat summary judgment merely by offering testimony that the general contractor was present and witnessed unsafe work practices on occasions before the accident. In a case where there is no evidence of control by the general contractor, what previously would have been a relatively straightforward summary judgment motion, after Cochran, is now complicated by the fact that the very lack of exercise of control could now be the basis for imposing liability. See also, Joyce v. Mastri, et al., 371 Ill. App. 3d 64 (2007), Pestka v. Town of Fort Sheridan Co., LLC, 371 Ill. App. 3d 286 (2007) (finding no "direct negligence" by general contractor under

Section 414 given “dangerous condition” existed for very short time period and there was no evidence of actual or constructive knowledge of the dangerous condition).

4. Scope of the Master/Servant Relationship

If a master/servant relationship exists, the master can be held liable for the acts of the servant that occur within the scope of the agency relationship. Conduct will usually fall within the scope of the relationship when it is of the same general nature as the servant's work, and is committed at least in partial furtherance of the master's business at an authorized time and place. Conduct of a servant is not within the scope of employment if it is different in kind from that authorized, far beyond the time or geographic limits of the work, and not motivated by the purpose of serving the employer's interests. Montgomery v. Petty Management Corp., 323 Ill. App. 3d 514 (2001).

Whether a purported agent's acts are within the scope of the agency is usually a fact question to be determined by the trier of fact based on all the circumstances, but may be decided as a matter of law. Wright v. City of Danville, 174 Ill. 2d 391 (1996). Illinois follows the Restatement of Agency in analyzing scope of employment issues. Gaffney v. City of Chicago, 302 Ill. App. 3d 41 (1999). The following three factors guide the analysis: Conduct of a servant is within the scope of employment if, but only if:

(a) it is of the kind he is employed to perform;

(b) it occurs substantially within the authorized time and space limits;

(c) it is actuated, at least in part, by a purpose to serve the master.

Id.

As noted in Gaffney, "the term 'scope of employment' has been characterized as a 'highly indefinite phrase' which 'refers to those acts which are so closely connected with what the servant is employed to do, and so fairly and reasonably incidental to it, that they may be regarded as methods, even though quite improper ones, of carrying out the objectives of the employment.'" Gaffney, 302 Ill. App. 3d at 49 (quoting Prosser & Keeton on Torts.) See also, Pyskaty v. Oyama, 266 Ill. App. 3d 801 (1994).

a. Deviations

Minor deviations relating to time and place often fall within the scope of employment. A servant's deviation from routine time and geographic locations for personal reasons may still be sufficiently related to the master's business to subject the master to liability. The fact that a servant combines personal business with the master's business at the time of the negligent conduct will not necessarily relieve the master of liability for the act.

> **Example**: A U.P.S. deliveryman stops at a convenience store along his route to buy personal items. While backing out of a parking lot he injures a pedestrian. The act of stopping at this store will subject U.P.S. to liability for injuries to the pedestrian because the conduct (driving) is of the same general nature as the driver's work, driving the route was in furtherance of U.P.S.'s business, and a stop along the route is only a minor deviation from authorized limits of time and space.

In contrast, an unauthorized deviation far beyond those reasonably associated with the principal's business is commonly referred to as a “frolic.” It usually consists of the pursuit of the servant's personal business unrelated to his or her employment. A master will not be held liable for the acts of a servant committed on a frolic, unless a plaintiff can show that the servant had ended the frolic, and returned to the pursuit of the

principal's business when the negligent conduct occurred. Pyne v. Witmer, 129 Ill. 2d 351 (1989); Williams v. Hall, 288 Ill. App. 3d 917 (1997).

> **Example**: A U.P.S. deliveryman drives two miles outside of his route to attend a party during the work day. Any acts committed during this time will be considered a frolic and U.P.S. will not be liable.

Once an employee abandons a frolic and reenters the scope of employment, the employer will be vicariously liable for injuries caused by the employee's negligence after reentry. Prince v. Atchison, Topeka & Santa Fe Ry. Co., 76 Ill. App. 3d 898, 901 (1979). An employee may combine personal business with the employer's business at the time of negligence, yet the employer will not necessarily be relieved of liability on that account. Flood v. Bitzer, 313 Ill. App. 359, 365 (1942). The fact that an employee is not immediately and single-mindedly pursuing the employer's business at the time of negligence but has deviated somewhat therefrom or that the employee's conduct was not authorized does not necessarily take the employee out of the scope of employment. Pyne v. Witmer, 129 Ill. 2d 351 (1989), *citing*, Sauer v. Iskowich, 80 Ill. App. 2d 202, 206-09 (1967); Richard v. Illinois Bell Telephone Co., 66 Ill. App. 3d 825, 844-45 (1978).

Where an employee's deviation from the course of employment is slight and not unusual, a court may find as a matter of law that the employee was still executing the employer's business. Boehmer v. Norton, 328 Ill. App. 17, 21, 24 (1946). Conversely, when a deviation is exceedingly marked and unusual, as a matter of law the employee may be found to be outside the scope of employment. Boehmer, 328 Ill. App. at 21.

b. Unauthorized Acts

Even deliberate or criminal acts of a servant may result in vicarious liability upon the master if the master directed the use of force in the performance of the work, or

ratified the intentional misconduct. Mitchell v. Norman James Const. Co., 291 Ill. App. 3d 927 (1997). This may be true even where the servant commits an intentional tort with the dual purpose of furthering the master's interest and venting personal anger. Sunseri v. Puccia, 97 Ill. App. 3d 488 (1981); Webb v. Jewel Co. Inc., 137 Ill. App. 3d 1004 (1985).

Where the act is completely outside the scope of authority, the master will have no liability under the doctrine of *respondeat superior*. Whether the servant is acting purely for his own interest, rather than at least in part for his master, is normally a question for the jury.

> **Example**: A bouncer employed by a tavern punches an unruly patron before throwing him out the door. The tavern owner may be liable for the patron's injuries even though they were the result of an intentional act, if he authorized the use of physical force to maintain order in the establishment.

A master can still be held liable for the wrongful, unauthorized acts of a servant if it can be shown that the master hired or retained the servant when he or she knew or should have known that the servant was unfit for the position. Under these circumstances, the master can be sued directly for his or her own negligence in hiring or retaining the servant, a theory which has been recognized by Illinois courts. Strickland v. Communications and Cable, 304 Ill. App. 3d 679 (1999). Suits based on negligent hiring, negligent entrustment or negligent retention are separate and distinct from vicarious liability based upon *respondeat superior*.

> **Example**: An off-duty sheriff's deputy sexually assaults a woman jogging alone on a hiking trail. The Sheriff's Department is not liable for the deputy's conduct under the doctrine of *respondeat superior* because the act was not performed on the department's behalf and did not in any way further its business. However, the department could have liability for failing to use reasonable care in determining

> whether the deputy was fit for the job, was properly trained, or was properly supervised.

Likewise, in certain situations case law supports the concept that off-duty employees may be found to be acting within the scope of his employment. One regular area where this occurs is with off-duty police officers. See, e.g., Gaffney v. City of Chicago, 302 Ill. App. 3d 41, 52-54 (1998) (discussing *respondeat superior* liability for actions of off-duty officers); Bauer v. City of Chicago, 137 Ill. App. 3d 228, 232-33 (1985) (noting that "it is beyond dispute that the city can be held liable for the actions of an off-duty police officer"); Banks v. City of Chicago, 11 Ill. App. 3d 543, 550 (1973) (holding that since an officer is always obligated to attempt to prevent the commission of a crime in his presence, any action taken by him toward that end, even in his official off-duty hours, falls within the performance of his duties as a police officer).

However, certain actions by an employee are so obviously outside the scope of employment, that even evidence of the position of the employee is not enough to find liability. In this respect, in Bates v. Doria, 150 Ill. App. 3d 1025 (1986), the court granted Defendant's motion for summary judgment because an off-duty sheriff's conduct of raping and assaulting Plaintiff was so outrageous it was beyond the scope of his employment. In Bates, the court held the plaintiff's injuries for rape and assault were not in any way the result of the sheriff's employment when he was not on duty and out of uniform. See also, Carter v. Skokie Valley Detective Agency, Ltd., 256 Ill. App. 3d 77, 81 (1993) (murder by security guard held outside scope of employment); Johnson v. Mers, 279 Ill. App. 3d 372 (1996) (off-duty shooting by police officer held outside scope of employment given personal issues involved in shooting).

Likewise, maintenance of the master's property and the resulting misuse of the property can be seen as part of the employment, even during off-duty times. For example, gun storage has been found to serve a purpose of the master in certain instances. See, e.g., Dragovan v. City of Cresthill, 115 Ill. App. 3d 999 (1983); Gaffney v. City of Chicago, 302 Ill. App.3d 41 (1998). Both of these cases involve shooting incidents involving guns owned and/or in the possession of off-duty police officers. In Dragovan, the defendant police officer was the police chief and had brought a gun home in order to test the weapon to determine if it could be used in the police department's arsenal. After testing the weapon, he left it out in the open. The defendant's son and son's friend (plaintiff) were playing with the gun when plaintiff was shot. In Gaffney, the off-duty police officer placed his gun in a box in the stairwell of his home that was unlocked. The officer testified that he left the gun in an unlocked box so he could have easy access to the weapon. The police officer's son took the gun to a party and shot the plaintiff who was also in attendance at the party. Both courts found maintenance of the gun was part of the police officers' job duties and found liability against the employing police departments based on *respondeat superior* theories.

c. Agency

Agency is the relationship that arises when one person (the principal) appoints another person (the agent) to act on his or her behalf. The test of an agency relationship is whether the principal has the right to control the manner and method with which work is carried out by the agent, and whether the agent can affect the legal relationships of the principal. Kirckruff v. Wisegarver, 297 Ill. App. 3d 826 (1998). Such examples

include the attorney/client relationship and the customer/real estate broker relationship. The relationship may also be created by way of statute.

> **Example**: Charles is a resident of Arizona who was involved in an automobile accident while driving in Illinois. The Illinois nonresident motorist statute provides that the driving of a vehicle on the highways of Illinois amounts to an appointment of the Secretary of State as the agent of the non-resident driver for service of process in any action arising out of the operation of the vehicle. The Illinois Secretary of State will be deemed to be Charles' agent for this purpose.

The ability of an agent to bind or obligate a principal, both in contractual matters and in terms of the agents' tortious conduct, depends upon the extent of the authority granted by the principal to the agent. There are three types of binding authority arising from the agency relationship: (1) actual authority; (2) apparent authority; and (3), authority by ratification.

(1) Actual Authority

Actual authority is that authority the agent reasonably believes he has, based on the principal's communication or dealings with him. It can be broken down into two types: express authority and implied authority. FDL Foods, Inc. v. Kokesch Trucking, Inc., 233 Ill. App. 3d 245 (1992). Express authority is explicitly set out in either a written or oral communication from the principal to the agent:

> **Example**: "I authorize you to purchase office supplies."

Implied authority is not explicit, but arises out of necessity, general custom, or acquiescence. It is the power used to carry out the acts expressly authorized:

> **Example**: One authorized to make purchases has implied authority to pay for them.

(2) Apparent Authority

Apparent authority arises from the point of view of a third person. It operates when a principal, through words or conduct, creates a reasonable impression that an agent has authority to perform a certain act. Granite Properties, Ltd. v. Granite Investment Co., 220 Ill. App. 3d 711 (1991).

> **Example**: An insurance adjuster with limited authority to settle claims exceeds that authority in making an offer to a claimant. The insurance company will be bound by this offer because the claimant drew a reasonable inference that the adjuster had authority to make such an offer.

Apparent authority can also arise where there is no principal/agent relationship between the parties. In these cases, the actual relationship may be that of contractor/independent contractor, but that relationship is unknown to third parties. If the third party relies upon what he perceives is an actual principal/agent relationship, the contractor may be bound since he has created a reasonable impression that an actual agency exists.

(3) Authority by Ratification

Authority by ratification is power given to the agent after an otherwise unauthorized act has taken place. It allows the principal to adopt the act of the agent as if it had already been authorized to begin. For ratification to take place, the principal must have been able to authorize the act in the first place, must have full knowledge of the facts, and must have a choice of either accepting or rejecting the benefits of the transaction. Swader v. Golden Rule Ins. Co., 203 Ill. App. 3d 697 (1990). Ratification, like other authority, can be express or implied by the conduct of the principal.

5. Vicarious Liability of Corporate Officers & Directors

The law of agency applies to those acting for a corporation. Acts of corporate agents performed within the scope of their authority will be attributed to the corporation. Officers and directors generally do not have personal liability for wrongful acts of the corporation merely because of their status.

Authority can be actual (either express or implied) or apparent (inferred through communication or conduct), and unauthorized acts can be ratified by the corporation just as in any other principal-agent relationship. A corporation will be bound by the terms of any contract made on its behalf by its agents, and will be liable for misconduct and wrongful acts of its servants, agents or employees committed in the course of their employment. See, Baker v. Daniel S. Berger, Ltd., 323 Ill. App. 3d 956 (2001).

In contrast, officers, directors, and shareholders are not liable for the conduct of the corporation. However, they will not be shielded from liability for wrongful acts, authorized by them, in which they actively participated. National Acceptance Co. of America v. Pintura Corp., 94 Ill. App. 3d 703 (1981); Mannion v. Stallings & Co., 204 Ill. App. 3d 179 (1990); Fiumetto v. Garrett Entertainment, Inc., 321 Ill. App. 3d 946 (2001).

> **Example**: Statutes governing liability for the cleanup of toxic waste specifically impose personal liability on corporate officers or managing shareholders where they personally manage or arrange for the disposal of hazardous substances, or have authority to control the practice and policy of the corporation relative to disposal.