

Why U.S. Corporate Law?

- Parties can be freely determined the applicable law of disputes under contracts. Delaware Law and the other American state laws are common laws which are preferred by parties.
- The biggest companies in the world are incorporated under Delaware Law or the other American state laws.
- Venture capitals, angel investors or start-ups companies generally prefer to be incorporated under Delaware Law or the other American state laws.
- In Turkey, there are lots of American investors.
- English corporate terminology.

What is Business Association?

- A business association is a device through which individuals or entities conduct business.

For example; two students agree to sell lemonade and split the profits = business association. Amazon is a company, whose annual gross revenues last year exceeds USD 500 billion and its net income exceed USD 50 billion. It has world-wide operations, numerous subsidiaries and thousands of stockholders and employees. Amazon is also a business association.

- The term of business association is extremely broad.

What is the course of business associations about?

- Relationships among business associations.
- There are different types of business associations; (a) general and limited partnerships, (b) corporations and (c) limited liability companies.
- There are specific legal rules in order to govern for each different type of business associations.

Business Associations and Seperate Legal Persons

- A business association is not a real person and not blood human being. Bill Gates or Steve Jobs are not a business association.
- Rather, a business association is a device through which real people like Bill Gates conduct business.
- While business associations are not human being, legislatures and courts treat business associations as real persons or entities. For example, Apple can own its property, make contracts, sue and be sued, wholly separate and apart from its stockholders.

State and Federal Statutes

- Federal statute is enacted by Congress and applies to everyone in U.S.
- State statute is enacted by the legislative authority of that state and applies the people who live or work on the particular state.
- Most business associations are creatures of- state statutes.
- Different types of business associations are governed by different statutes.
- Each state has separate statutes governing each of the various types of business associations- corporate statutes, partnership statutes and LLC statutes.
- There are also federal statutes that effect business associations. The federal securities laws and federal tax laws are two most important federal statutes.
- However, as a general rule, federal statutes do not govern the establishment, or regulate the internal operation of business associations. This has been left to states.

State Statutes

- Mainly, the corporate, partnership and LLC statutes deal with:
 - 1- the relationships among the real people who are part of the business association and
 2. The relationship between these real people and the business association itself.
- The real people who create a business association have a choice not only as the form of business association but also as to the state in which they form the business association.
- The business association laws of the chosen state then control disputes concerning the internal affairs of business association (*internal affairs doctrine*)

Case Law and Contract Law

- Cases are significantly important to interpret the applicable law. Cases establish concepts and rules independent of the governing statutes or agreements.
- Contract law is also deeply involved in business associations. Having the power to enter into voluntary agreements and having legal remedy if those agreements are breached. Generally, state statutes that govern business associations establish <default rules>- rules that govern only if there is no contrary provision in any agreements of business associations. For example; a provision in the partnership agreement that says partner A shall be paid a salary of USD 200,000 per year for acting as managing partner, will prevail over a provision in the governing partnership statute which says a partner is not entitled to compensation for services performed for the partnership.

Business Associations and Accounting

- Many issues in business associations involve money, we need to determine (1) what money a business association has and 2) whether the business association is making money.
- Accounting is the process of recording, classifying and communicating financial information.
- Financial statements are prepared according to Generally Accepted Accounting Principles <GAAP>

Balance Sheet and Income Statement

- **Balance Sheet:** Providing information about what a business entity owns and owes as of a particular date. Kind like photo of the financial status of a business on a specific date.

The balance sheet reflects the basic accounting formula:

Assets- Liability = Equity

- **Income Statement:** Providing information about a business' revenues and expenses over a particular period of a time. Kind like video of the financial status of a business over a particular period of time.

The income statement reflects the basic accounting formula:

Revenue- Expenses= Income

Business Associations and The Law of Agency

- While business associations is considered as a person in the eyes of law, no business association can function without real people.
- Agency concepts are important in business associations- most of the work in the corporate world is performed by the agents such as board of directors, managers and employees.

Outline of the Lecture

Chapter 1. Agency

1. Who is an Agent?
2. Liability of Principal to Third Parties in Contract
3. Liability of Principal to Third Parties in Tort
4. Fiduciary Obligation of Agents

Chapter 2. Partnership

1. What is a Partnership? And Who are the Partners?
2. The Fiduciary Obligations of Partners
3. Partnership Property
4. The Rights of Partners in Management
5. Partnership Dissolution
6. Limited Partnership

Outline of the Lecture

Chapter 3. The Nature of Corporation

1. The Corporate Entity and Its Formation and Structure
2. The Corporate Entity and Limited Liability
3. The Role and Purposes of Corporations

Chapter 4. The Limited Liability Company

1. Formation
2. The Operating Agreement
3. Piercing the LLC Veil
4. Fiduciary Obligation
5. Additional Capital
6. Dissolution

Outline of the Lecture

Chapter 5. The Duties of Officers, Directors and Other Insiders

1. The obligations of Control: Duty of Care
2. Duty of Loyalty
3. The Obligation of Good Faith
4. Shareholder Derivative Actions
5. Disclosure and Fairness
6. Inside Information
7. Short- Swing Profits
8. Indemnification and Insuarence

Outline of the Lecture

Chapter 6. Problems of Control

1. Proxy Fights
2. Shareholder Voting Control
3. Control in Closely Held Corporations
4. Abuse of Control
5. Control, Duration and Statutory Dissolution
6. Transfer of Control

Chapter 7. Mergers, Acquisitions and Takeovers

1. Mergers & Acquisitions
2. Takeovers

Agency

What is agency?

Agency is the fiduciary relationship that arises when one person <principal> manifests assent to another <agent> that the agent shall act on the principal's behalf and subject to the principal's control, and the agent manifests assent or otherwise consents to so act.

➤ Parties of agency are:

- Principal: the one for whom action is to be taken.
- Agent: the one who is to act.

➤ The agency relationship is fiduciary relationship.

➤ The agency relationship based on consent.

➤ Agency empowers one person to act on behalf of another and causes the party for whom the action is taken to incur possible obligations and liability.

Aspects of Agency Law

1. Authority Issue – Is the agent duly authorized in order to act on behalf the principal?

If yes, the principal will be liable for the acts of the agent, acting within the scope of his authority.

2. Fiduciary Duty Issue – Agent must act in the best interest of the principal; in other words; principal should benefit from agent's act. Agent must not act his own interest. (*duty of care, duty of loyalty, duty of good faith, duty of confidentiality, duty of prudence and duty of disclosure*)

Actual or Apparent Authority

Authority can be either actual or apparent.

- **Actual Authority:** Under *Restatement of Agency (Third) Sec. 2.01*: The existence of actual authority depends on the principal's manifestation of intent to agent.

For example: The statement of intent is a provision in the partnership agreement that < the managing partner shall have the authority to enter into contracts binding the partnership to pay up to USD 10,000, without any obtaining approval of the other partners.>

- **Apparent Authority:** Under *Restatement of Agency (Third) Sec. 2.03*: The existence of apparent authority depends on manifestations from the principal to third parties.

For example: The partnership agreement contains this provision, but nevertheless the partnership has regularly paid X, a third party supplier, under contracts for more than USD 15,000 even though the managing partner did not obtain the approval of the other partners. X enters into a new contract for USD 15,000 with the managing partner to supply products to the partnership. Under *Restatement of Agency (Third) Sec. 2.03*, the partnership is liable under the contract. Even though the managing partner did not have actual authority, he had apparent authority.

Note that: Focus on the manifestation of the principal to the third party, not the agent's manifestation to the principal. For example, you cannot create an apparent authority to contract for Amazon simply by claiming you have that authority.

1. Who is an Agent?

Gorton v. Doty Case

- **Plaintiff:** R.S. Gorton, the father of Richard Gorton.
- **Defendant:** Doty
- **Subject Matter:** In order to recover expenses incurred by the father for hospitalization, physicians', surgeons', and nurses' fees, another by the son, by his father as guardian for injuries sustained as a result of an accident.
- **Facts:** The Respondent son was a high school football player who was traveling to a high school football game. The coach of the team was driving Respondent son in a car owned by Appellant teacher. The car was in an accident wherein Respondent son suffered injuries, and the coach was deemed negligent. Respondents claimed that Appellant was liable for the damages because a principal-agent relationship was formed between Appellate teacher and the coach once she loaned him the car.
- **Issue:** The issue is whether the driver coach was acting as an agent of Appellate car owner when the accident occurred.

Gorton v. Doty Case

- **Ruling:** Appellate is liable for damages because a principal-agent relationship was established between Appellate and the driver of her car. The agency was created once the agent coach consented to act on the behalf of Appellate teacher, and in turn Appellate consented to have the coach act on her behalf. In this case, Appellate consented for the coach to drive on her behalf, and she instructed that the coach drive.
- **Dissent:** There is no agency relationship in this case because agency requires more than “passive permission”; it requires a command or instruction. In this case, there was no connection between the parties other than a nice gesture on Appellant’s part to loan her car to the coach. Appellant’s instructions to the coach to personally drive were nothing more than a restatement of common sense that would not rise to the level of instruction normally considered a part of an agency relationship.
- **Discussion:** The Supreme Court of Idaho found an agency relationship despite the lack of a contract or a working, business-like relationship between agent and principal. Further, Appellant’s ownership of the vehicle established a presumption that the driver was acting as an agent.

2. Liability of Principal to Third Parties in Contract The Agent's Authority

Mill Street Church of Christ v. Hogan Case

- **Plaintiff** (Respondent) : Samuel Hogan
- **Defendant** (Petitioner): Mill Street Church
- **Subject Matter:** Worker's compensation benefit of Samuel Hogan
- **Facts:** Bill Hogan was hired on several occasions by Petitioner, and during the prior occasions Petitioner was aware that Bill Hogan would hire Respondent as a helper. During the current painting job, Petitioner requested that Bill Hogan use Gary Petty as a helper, but Petitioner warned Bill Hogan that Petty was difficult to reach. Petitioner never demanded that Petty be used, so Bill Hogan hired his brother again to help with a difficult portion of the church. Shortly after starting, Respondent broke his arm falling off a ladder. Bill Hogan was notified by a church elder that the church was insured, and the elder paid Bill Hogan for the hours worked: However, the Church did not pay Sam's compensation.
- **Issue:** The issue is whether Bill Hogan was an agent of Petitioner that had the implied power to hire Respondent.

Mill Street Church of Christ v. Hogan Case

- **Ruling:** Bill Hogan, as an agent for Petitioner, had the power to hire Respondent.

In order to distinguish *implied authority* and *apparent authority*:

Implied Authority: actual authority circumstantially proven which the principal actually intended the agent to possess and includes such powers as are practically necessary to carry out the duties actually delegated.

Apparent Authority: is not actual authority but it is the authority the agent is held out by the principal as possessing. It is a matter of appearances on which third parties come to rely. Apparent authority only exists when a 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.

Three-Seventy Leasing Corp. v. Ampex Corp *Case*

- **Plaintiff:** Three- Seventy Leasing Corp.
- **Defendant:** Ampex Corp
- **Subject Matter:** The breach of contract
- **Facts:** Plaintiff was a leasing company that approached Defendant company's representative, Kays, to purchase computer hardware. Plaintiff was going to act as a middle-man between Defendant and a second purchaser of the hardware that Plaintiff found. Defendants submitted an unsigned purchasing agreement to Plaintiff, and Plaintiff signed the agreement. The document was never executed by a representative of Ampex. Kays followed the exchange with a letter indicating that part of Plaintiff's order would be shipped directly to the second purchaser.
- **Issue:** The issue is whether Kays entered Defendant into a contract with Plaintiff under an apparent authority to act in that capacity.

Three-Seventy Leasing Corp. v. Ampex Corp *Case*

- **Ruling:** The United States Court of Appeals for the Fifth Circuit held that Kays had apparent authority to act on behalf of Defendant in contractual matters with Plaintiff, and that Kays did enter into an agreement when he promised shipment of the hardware. It was reasonable for Plaintiff to rely on Kays, a salesman, to conduct a sales transaction with Plaintiff. Defendant agreed to continue negotiations through Kays, and any evidence to demonstrate that Kays did not have that authority was never relayed to Plaintiff.

< An agent has apparent authority sufficient to bind the principal when the principal acts in such a manner as would lead a reasonably prudent person to suppose that the agent had the authority he purports to exercise... Further, absent knowledge on the part of third parties to the contrary, an agent has the apparent authority to do those things which are usual and proper to the conduct of the business which is employed to conduct..>

In this case, Kays was employed by Ampex in the capacity of a salesman. It is certainly reasonable for third parties to presume that one employed as salesman has the authority to bind his employer to sell. And Ampex did nothing to dispel this reasonable inference.

Ratification

Botticello v. Stefanovicz Case

- **Plaintiff:** Anthony Botticello
- **Defendants:** Mary and Walter Stefanovicz
- **Subject Matter:** the enforceability of an agreement for the sale of real property when that agreement has been executed by a person owning only an undivided half interest in the property
- **Facts:** Defendants, Walter and Mary Stefanovicz each owned one half of an undivided interest in a farm. Plaintiff and Walter discussed Plaintiff's potential purchase of the farm, and Mary told Walter she would never sell the farm for less than \$85,000. Plaintiff entered a lease with an option to buy the farm. Plaintiff dealt exclusively with Walter and did not know that Walter possessed only a half interest. Mary did not know the specifics of Walter and Plaintiff's agreement, and she never consented to the sale.
- **Issue:** The issue is whether Mary agreed to allow Walter to act as her agent by ratifying his conduct when she received the proceeds of the agreement at issue

Botticello v. Stefanovicz Case

- **Ruling:** Walter was not acting as an agent on behalf of Mary. No apparent authority existed because Plaintiff never knew that Mary was a principal. There was no ratification by Mary for Walter's conduct because she was unaware that the benefits she received from the agreement stemmed from a lease with an option to buy.
- **Discussion:** The court holds that a marriage cannot in itself prove an agency relationship, and no agency relationship is established by a joint ownership. One owner cannot bind the other owner through an agency relationship simply because they are joint owners.

Botticello v. Stefanovicz Case

- Three elements are required to show the existence of an agency relationship:
 - 1) A manifestation by the principal that the agent will act for him
 - 2) Acceptance by the agent of the undertaking; and
 - 3) Understanding between the parties that the principal will be in control of the undertaking.
- **Ratification:** The affirmance by a person of a prior act which did not bind him but which was done or professedly done on his account. Ratification requires <acceptance of the results of the act with an intent to ratify, and with full knowledge of all the material circumstances>
- Here, Mary did not know the material circumstances. At most, Mary observed the plaintiff occupying and improving the land, received the rental payments.

Estoppel

Hoddeson v. Koos Bros Case

- **Plaintiff:** Mrs. Hoddeson
- **Defendant:** Koos Bros
- **Subject Matter:** reimburse Plaintiff for money she gave an alleged salesman imposter at Defendant's store.
- **Facts:** Plaintiff entered Defendant's store to purchase bedroom furniture. A man approached Plaintiff purporting to be a salesman for Defendant store. Plaintiff gave salesman cash for furniture to be delivered to her home at a later date because the salesman said that it was out of stock. Plaintiff did not get a receipt for the transaction. After the delivery date lapsed without a delivery, Plaintiff contacted Defendant. Defendant did not have a record of the transaction, and Plaintiff and her family were not able to identify the salesperson from Defendant's staff
- **Issue:** The issue is whether Defendant can be held liable for the conduct of an imposter agent.

Hoddeson v. Koos Bros Case

- **Ruling:** Defendant can be estopped from asserting that no claim existed when there was no agency relationship established. Defendant, as a furniture store, still owed a duty of care to Plaintiff when she enters the store and has an expectation that she will be tend to by an actual salesperson rather than an impostor.
- < The tincture of estoppel that gives color to instances of apparent authority might in the law operate likewise to preclude a defendant's denial of liability. There is a duty of the store encircles the exercise of reasonable care and vigilance to protect the customer from loss occasioned by the deceptions of an apparent salesman!

Agent's Liability on the Contract

Atlantic Salmon A/S v. Curran Case

- **Plaintiff:** Atlantic Salmon A/S
- **Defendant:** Mr. Curran
- **Subject Matter:** The personal liability of an agent who was acting on behalf of partially or unidentified principal
- **Facts:** Defendant held himself out to Plaintiffs as a representative for one or more principals, all of them non-existent or dissolved at some point. Defendant gave false information regarding the principal, but also maintained false titles, falsely advertised and did not properly maintain corporate filings. Plaintiffs brought this action after Defendant owed Plaintiffs over \$250,000 combined. Defendant maintained that he was acting as an agent of a now-dissolved corporation, Marketing Designs, Inc. The trial court held that Plaintiffs could have found what principal Defendant represented through public records.
- **Issue:** The issue is whether an agent can be held personally liable if he does not disclose the principal to the other party.

Atlantic Salmon A/S v. Curran Case

- **Ruling:** Defendant is personally liable for the actions purportedly performed on behalf of a principal. It is the duty of the agent to inform the other party who the actual principal is, or else the agent is liable.
- <It is the duty of the agent, if he would avoid personal liability on a contract entered into by him on behalf of his principal, to disclose not only that he is acting in representative capacity, but also the identity of his principal. >

3. Liability of Principal to Third Parties in Tort

a. Servant vs. Independent Contractor

Restatement (Second) of Agency Sec. 219(1) provides: < A master is subject to liability for the torts of his servants committed while acting in the scope of their employment >

Under the doctrine of respondeat superior, a <master> (employer is liable for the torts of its servants (employees).

A master-servant relationship exists where the servant has agreed;

- To work on behalf of the master and
- To be subject to the master's control or right to control the physical conduct of the servant.

Distinction between Servant and Independent Contractor

Who is a Servant?

- Where the agent is more-or-less continuously employed by one employer,
- Possesses no professional or special technical skills,
- is subject to the minute control of the employer.

Distinction between Servant and Independent Contractor

Who is an Independent Contractor?

- Where the person is employed to do only one job,
- Possesses special skills,
- Does work for other employers and
- is subject to no control by the employer as to the manner of doing the work.

Distinction between Servant and Independent Contractor

The Control Test

- Control is the essential mark of <contract of service>
- The test is the existence of a right of *control over the agent in respect of the manner in which his work is to be done.*
- A servant is an agent who works under the supervision and direction of his employer.
- An independent contractor is a person engaged to do certain work, but to exercise his own direction as to the mode and time of doing it- he is bound by his contract, but not by his employer's orders.

Distinction between Servant and Independent Contractor

For example:

- The chauffeur is my servant; and by his negligent driving he runs over someone in the street, I am responsible.
- On the other hand, the taxi driver whom I engage for a particular journey is not my servant; he is not under my orders; he has made a contract with me, not that he will obey my directions, but that he will drive me to a certain place. – If an accident happens by his negligence he is responsible and not I.

Humble Oil & Refining Co. Vs. Martin Case

- **Plaintiff (Respondent):** George Martin
- **Defendants (Petitioners):** Humble Oil & Refining Co. and A.C. Love
- **Subject Matter:** Determining whether a master-servant relationship exists, rather than an independent contractor relationship. When the master exerts a considerable amount of control over the responsibilities of the servant, it will be master-servant relationship.
- **Facts:** Love left her car at a service station to get the brakes repaired. The station was operated by Schneider through a “Commission Agency Agreement” with Humble. Love did not correctly secure the car before handing control to the station, and the station did not check the car immediately to secure it. Love’s car rolled downhill, out of the station lot and into Plaintiff’s property, striking Plaintiff and his two children. Humble maintained that they were not liable because Schneider was an independent contractor.
- **Issue:** The issue is whether Schneider is an independent contractor or whether a master-servant relationship exists between Humble and Schneider.

Humble Oil & Refining Co. Vs. Martin Case

We need to look to the provisions of the Commission Agency Agreement to determine the relationship between Humble and Schneider. Some provisions are as the following:

- Any authority of Humble over the employees, are not conclusive.
- The employees were paid and directed by Scheineder and considered as their boss.

But...

Humble Oil & Refining Co. Vs. Martin Case

- the provision requiring Schneider <to make reports and perform other duties in connection with the operation of said station that may be required of him from time to time by Humble.>
- The other provision requires Schneider to pay all operational expenses, the schedule commissions forming part of the agreement which gives Schneider a 75% commission on the net public utility bills paid by him and thus requires Humble to pay three-fourths of one of the most important operational expense items.
- The main object of the enterprise was the retail marketing of Humble's products with title remaining in Humble until delivery to the customer.
- This was done under strict system of financial control and supervision by Humble, with little or no business discretion reposed in Schneider except as to hiring, discharge, payment and supervision of a few station employees of a more or less laborer status.
- Humble furnished the all important station location and equipment, the advertising media, the products and a substantial part of the current operating costs.
- The hours of operation were controlled by the Humble.
- The agreement which evidently was Schneider's only title to occupancy of the premise, was terminable at the will of Humble.

Humble Oil & Refining Co. Vs. Martin Case

- **Ruling:** A master-servant relationship exists between Humble and Schneider. Humble maintained considerable control over Schneider by dictating several important aspects of Schneider's business. Humble had significant financial control and supervision, rendering Schneider's station a retail marketing enterprise for Humble's products.

Dissent. The dissent disagreed with the court's decision to hold Love responsible for any damages since Love transferred control to the station.

Murphy vs. Holiday Inns, Inc. Case

- **Plaintiff:** Kyran Murphy
- **Defendant:** Holiday Inns, Inc.
- **Subject Matter:** When establishing an agency relationship through a contract, the nature and extent of the control agreed upon will determine whether the agency exists.
- **Facts:** Plaintiff slipped and fell on a puddle on an area of a walk where water draining from an air conditioning unit at the hotel. Plaintiff alleged that Defendant owned and operated the motel and Defendant, its agents, and employees, so carelessly, recklessly, and negligently, maintained the premises of the motel and wanted to hold Defendant accountable for her injuries. A third party owned the hotel, but they agreed to a franchise agreement with Defendant that dictated the name and look of the building and fixtures. The agreement also required the third party to submit reports and pay Defendant a certain amount per room per day.
- **Issue:** The issue is whether the franchise contract established a master-servant relationship.

Murphy vs. Holiday Inns, Inc. Case

We need to look the provisions of the franchise agreement:

- That licensee construct its model according to plans, specifications, feasibility studies, and locations approved by licensor;
- That license employ the trade name, signs, and other symbols of the system designated by licensor,
- That licensee protect and promote the trade name and not engage in any competitive motel business or associate itself with any trade association designated to establish standards for motels.

The license agreement of which these requirements were made a part is a franchise contract.

Franchising: A system for selective distribution of goods and/or services under a brand name through outlets owned by independent businessmen, called <franchisees>. Although the franchisor supplies the franchisee with know-how and brand identification on continuing basis, the franchisee enjoys the right to profit and runs the risk of loss. The franchisor controls the distribution of his goods/ services through a contract which regulates the activities of the franchisee, in order to achieve standardization.

- The fact that an agreement is a franchise contract does not insulate the contracting parties from an agency relationship. If a franchise contract so < regulates the activities of the franchisee> as to vest the franchisor with control within the definition of agency, the agency relationship arises even though the parties expressly deny it.

Murphy vs. Holiday Inns, Inc. Case

- **Ruling:** Considering all of the regulatory provisions in the agreement, there is <no control or right to control the methods or details of doing the work.>

Therefore, no principal-agent or master-servant relationship was created. While defendant was empowered to regulate the architectural style of the buildings and the type and style of furnishings and equipment, defendant was given no power to control daily maintenance of the premises.

Vandemark v. McDonalds' Corp. Case

Question?

An employee of a McDonald's franchise was injured when the restaurant was robbed. The employee sued McDonald's, claiming that the franchisee was an agent of the franchisor. In support of the claim, the employee pointed to the extensive franchise agreement governing the McDonald's franchisee relationship and argued that: McDonald's has maintained a continuous prescription of what franchisee shall and shall not do. McDonald's mandates compliance with the McDonald's System. McDonald's mandates particular methods for preparing foods, as well as food preparation and service times. McDonald's implement key success factors in their restaurants. Moreover, McDonald's sends out field consultants to ensure that McDonald's specifications are met.

Does McDonald have vicarious liability of a franchisor?

Vandemark v. McDonalds' Corp. Case

Answer:

We need to look the security measures dictated by McDonalds and obeyed by the franchisee.

The Court rejected the employee's agreement, holding that:

The weight of authority construes franchiser liability narrowly, finding that absent a showing of control over security measures employed by the franchisee, the franchiser cannot be vicariously liable for the security breach... Reasoning that the agreement was <primarily designed to maintain uniform appearance among its franchisees and uniform quality among their products and services to protect and enhance the value of the trademark.

b. Tort Liability and Apparent Agency

Miller v. McDonald's Corp. Case

- **Plaintiff:** Miller
- **Defendant:** McDonald's Corp.
- **Subject Matter:** Seeking damages for injuries she suffered while eating Big Mac that she bought at McDonald's.
- **Facts:** Miller, a customer, was injured when she bit into a sapphire found in her Big Mac sandwich at the 3K restaurant. Miller testified that she went to the restaurant because she believed that McDonald's owned, operated, and controlled it, relying on McDonald's reputation for quality service and a good standard of care. Miller sued McDonald's on the theory of negligence.
- **Issue:** Does a franchise agreement go beyond the stage of setting standards, and allocate to the franchisor the right to exercise control over the daily operations of the franchise?

b. Tort Liability and Apparent Agency

Miller v. McDonald's Corp. Case

We need to look into the provisions of the license agreement executed between 3K and McDonald's. Some provisions are:

- 3K owned and operated the restaurant under the license agreement with McDonald's that required it to operate in a manner consistent with the McDonalds System.
- The agreement described that system as including proprietary rights in trade names, service marks, restaurant buildings, signs, equipment layouts, formulas, methods of inventory and operational control, bookkeeping and accounting, and covering business practices and policies.
- The agreement described the way in which 3K was to operate the restaurant in considerable detail.
- The ingredients for the foods and beverages had to meet defendant's standards, and 3K had to use <only those methods of food handling and preparation.
- Despite these detailed instructions, the Agreement provided that 3K was not an agent of McDonalds for any purpose. Rather, it was an independent contractor and was responsible for all obligations and liabilities, including claims based on injuries, illness, or death, directly or indirectly resulting from the operation of the restaurant.

b. Tort Liability and Apparent Agency

Miller v. McDonald's Corp. Case

- (1) Plaintiff testified that she went to McDonalds because she relied on defendant's reputation and because she wanted to obtain the same quality of service, standard of care in food preparation, and general attention to detail that she had previously enjoyed at other McDonald's restaurants.
- The kind of actual agency relationship that would make defendant vicariously liable for 3K's negligence requires that defendant have the **right to control** the method by which 3K performed its obligations under the Agreement.
- (2) Plaintiff next asserts that defendant is vicariously liable for 3K's alleged negligence because 3K was defendant's apparent agent.

What is apparent agent?

Under the Restatement (Second) of Agency Sec. 267: < One who represents that another is his servant or other agent and thereby causes a third person justifiably to rely upon the care or skill of such apparent agent is subject to liability to the third person for harm caused by the lack of care skill of the one appearing to be a servant or other agent as if he were such.>

Apparent authority is a distinct concept from apparent authority. Apparent agency creates an agency relationship that does not otherwise exist, while apparent authority expands the authority of an actual agent.

c. Scope of Employment

Under the respondeat superior doctrine, employers are vicariously liable for negligent acts or omissions by their employees within the scope of employment.

RESTATEMENT (SECOND) OF AGENCY, SECTION 229

Kind of Conduct Within Scope of Employment

(1) To be within the scope of employment, conduct must be of the same general nature as that authorized, or incidental to the conduct authorized.

(2) In determining whether or not the conduct, although not authorized, is nevertheless so similar to or incidental to the conduct authorized as to be within the scope of employment, the following matters of fact are to be considered:

- whether or not the act is one commonly done by such servants,
- The time, place and purpose of the act,
- The previous relations between the master and the servant,

c. Scope of Employment

- The extent to which the business of the master is apportioned between different servants,
- Whether or not the act is outside the enterprise of the master or, if within the enterprise, has not been entrusted to any servant,
- Whether or not the master has reason to expect that such an act will be done.
- the similarity in quality of the act done to the act authorized,
- whether or not the instrumentality by which the harm is done has been furnished by the master to the servant,
- the extent of departure from the normal method of accomplishing an authorized result,
- Whether or not the act is seriously criminal.

Manning v. Grimsley Case

- **Plaintiff:** David Manning
- **Defendants:** Defendant-employee, Ross Grimsley and Defendant-employer, Baltimore Baseball Club, Inc.
- **Subject Matter:** An employer is liable for damages resulting from an assault by an employee when the assault was in response to a plaintiff's interference of the employee's duties.
- **Facts:** Grimsley was warming up in the bullpen at Fenway Park while fans heckled him. After three innings of the fans heckling him, Grimsley threw a ball at a ninety-degree angle from his normal pitching target and into the stands, hitting Plaintiff. Plaintiff contends that the Baltimore ball club is liable for damages because the pitch was thrown by Grimsley in an attempt silence the hecklers so he could warm up effectively.
- **Issue:** The issue is whether the Baltimore Baseball Club could be liable for Grimsley's pitch into the stands.

Manning v. Grimsley Case

- **Ruling:** The court reversed the trial judge's directed verdict for the Club because the Club could be held liable for Grimsley's actions. An employer is liable when an employee assaults a third party in response to the third party's interference of the employee's duties. It could be possible that a jury would interpret Grimsley's actions as an attempt to rid the hecklers so he could pitch more effectively.
- **Discussion.** An employer could be responsible for an employee's intentional assault, but the key limitation is that the assault must be in response to a third party's interference in the employee's duties.

d. Liability for Torts of Independent Contractors

- **As a general rule, an employer is not liable for the acts and defaults of an independent contractor.**

However, there is some special circumstances.

What are the special circumstances?

Majestic Realty Associates, Inc. v. Toti Contracting Co. Case

- **Plaintiffs:** Building owner Majestic Realty and tenant Bohem's Inc
- **Defendants:** Independent-contractor Toti Contracting and the Parking Authority of the city of Patterson.
- **Subject Matter:** Some actions are so inherently dangerous that a party can not delegate their liability for the duty of care to another party.
- **Facts:** The Parking Authority hired Toti to demolish several buildings near Plaintiffs to make room for a parking structure. Plaintiffs' property was damaged when Toti began demolishing the building that adjoined Plaintiffs' building. The Parking Authority hired Toti as an independent contractor and did not control the manner in which Toti demolished the buildings.
- **Issue:** The issue is whether the Parking Authority is liable for damages caused by the negligent actions of an independent contractor.

Majestic Realty Associates, Inc. v. Toti Contracting Co. Case

- **Ruling:** The Parking Authority is liable for Toti's negligence because the demolition work was so inherently dangerous that a party can not delegate the liability. Public policy dictates that the party hiring the contractor, although innocent of any direct negligence, should bear the burden of damages over a party that is completely innocent.