**Alternate Case Problems**

*Chapter 17*

**Agency Relationships in Business**

**17-1. Principal’s Duties.** Brenda Tarver worked as an independent contractor with Dianne Landers’s real estate agency. The agents in the firm worked on a commission basis, and Tarver’s contract read that she would receive 30 percent of the agency’s com­missions to which she was “entitled as either listing and/or selling agent” in connection with a sale. In the spring of 1984 Charles Smith and his wife contacted the agency and advertised in the local newspaper. The Smiths were referred to Tarver, who showed them the property and handled their offer to purchase the property and the seller’s coun­teroffer. In all, Tarver negotiated three offers and three counteroffers between the seller and the buyer. Later, however, the Smiths returned to the agency and, because Tarver was out of the office, negotiated with Dianne Landers concerning the last coun­teroffer they had rejected. After some modifications were made, they reached an agree­ment with the seller and purchased the property. Landers would not pay Tarver a commission for the sale because Tarver had not negotiated the final purchase. Tarver sued to recover her commission on the ground that it was customary in the real estate office that when the initial selling agent was absent from the office, another agent would handle negotia­tions—but not receive the commission if a sale resulted. Who will prevail in court? Explain. [*Tarver v. Landers,* 486 So.2d 294 (La.App. 1986)]

**17-2. Employee versus Independent Contractor.** Clifford Aymes was hired by Jonathan Bonelli of Sun Island Sales, Inc., to create a computer program for Sun Island to use in maintaining records of its cash receipts, inventory, sales, figures, and other data. No agreement was reached as to ownership rights in the program that Aymes de­veloped, called CSALIB. Aymes did most of his programming at the Sun Island office. Although Bonelli gave Aymes frequent instructions as to what he wanted from the pro­gram, Aymes generally worked alone and enjoyed considerable autonomy in his work. He worked fairly regular hours, but he was not always paid by the hour—occasionally, he submitted bills (invoices) to Sun Island for his work. Aymes never received any em­ployee benefits, such as health insurance, and Sun Island never withheld federal and state taxes from Aymes’s paycheck; nor did it pay any Social Security taxes on Aymes’s earn­ings. When Bonelli unilaterally cut Aymes’s hours in violation of an alleged oral agree­ment, Aymes left Sun Island and demanded compensation for Sun Island’s use of CSALIB. Bonelli refused to pay Aymes for the program’s use and also stated that he would not pay Aymes $14,560 in back wages unless Aymes signed a form releasing all rights in CSALIB. Aymes then sued Bonelli and Sun Island for copyright infringement, and the court had to decide who owned the copyright in the program. Central to the de­termination of this issue was whether Aymes was an employee of Sun Island or an inde­pendent contractor. What should the court decide, and why? [*Aymes v. Bonelli,* 980 F.2d 857 (2d Cir. 1992)]

**17–3. Independent Contractors.**  Frank Frausto delivered newspapers for Phoenix Newspapers, Inc., under a renewable six-month contract called a “Delivery Agent Agreement.” The agreement identified Frausto as an independent contractor. Phoenix collected payments from customers and took complaints about delivery. Frausto was assigned the route for his deliveries and was required to deliver the papers within a certain time period each day. Frausto used his own vehicle to deliver the papers and had to provide proof of insurance to Phoenix. Phoenix provided him with health and disability insurance but did not withhold taxes from his weekly income. One morning while delivering papers, Frausto collided with a motorcycle ridden by William Santiago. Santiago filed a negligence action against Frausto and Phoenix. Phoenix argued that it should not be liable because Frausto was an independent contractor. What factors should the court consider in making its ruling? [*Santiago v. Phoenix Newspapers, Inc.,* 794 P.2d 138 (Ariz. 1990)]

**17-4. Employee versus Independent Contractor.** Stephen Hemmerling was a driver for the Happy Cab Co. Hemmerling paid certain fixed expenses and abided by a variety of rules relating to the use of the cab, the hours that could be worked, the solicitation of fares, and so on. Rates were set by the state. Happy Cab did not withhold taxes from Hemmerling's pay. While driving a cab, Hemmerling was injured in an accident and filed a claim against Happy Cab in a Nebraska state court for workers' compensation benefits. Such benefits are not available to independent contractors. On what basis might the court hold that Hemmerling is an employee? Explain. [*Hemmerling v. Happy Cab Co.,* 247 Neb. 919, 530 N.W.2d 916 (1995)]

**17–5. Liability for Employee’s Acts.** Federated Financial Reserve Corp. leases consumer and business equipment. As part of its credit-approval and debt-collection practices, Federated hires credit collectors and authorizes them to obtain credit reports on its customers. Janice Caylor, a Federated collector, used this authority to obtain a report on Karen Jones, who was not a Federated customer but who was the former wife of Caylor’s roommate, Randy Lind. When Jones discovered that Lind had her address and how he had obtained it, she filed a suit in a federal district court against Federated and the others. Jones claimed in part that they had violated the Fair Credit Reporting Act, the goal of which is to protect consumers from the improper use of credit reports. Under what theory might an employer be held liable for an employee’s violation of a statute? Does that theory apply in this case? Explain. [*Jones v. Federated Financial Reserve Corp.,* 144 F.3d 961 (6th Cir. 1998)]

**17-6. Agent’s Duties to Principal.** Ana Barreto andFlavia Gugliuzzi asked Ruth Bennett, a real estate salesperson who worked for Smith Bell Real Estate, to list for sale their house in the Pleasant Valley area of Underhill, Vermont. Diana Carter, a California resident, visited the house as a potential buyer. Bennett worked under the supervision of David Crane, an officer of Smith Bell. Crane knew, but did not disclose to Bennett or Carter, that the house was subject to frequent and severe winds, that a window had blown in years earlier, and that other houses in the area had suffered wind damage. Crane knew of this because he lived in the Pleasant Valley area, had sold a number of nearby properties, and had been Underhill’s zoning officer. Many valley residents, including Crane, had wind gauges on their homes to measure and compare wind speeds with their neighbors. Carter bought the house, and several months later, high winds blew in a number of windows and otherwise damaged the property. Carter filed a suit in a Vermont state court against Smith Bell and others, alleging fraud. She argued in part that Crane’s knowledge of the winds was imputable to Smith Bell. Smith Bell responded that Crane’s knowledge was obtained outside the scope of employment. What is the rule regarding how much of an agent’s knowledge a principal is assumed to know? How should the court rule in this case? Why? [*Carter v. Gugliuzzi,* 716 A.2d 17 (Vt. 1998)]

**17–7. Liability for Independent Contractor’s Torts.** Greif Brothers Corp., a steel drum manufacturer, owned and operated a manufacturing plant in Youngstown, Ohio. In 1987, Lowell Wilson, the plant superintendent, hired Youngstown Security Patrol, Inc. (YSP), a security company, to guard Greif property and “deter thieves and vandals.” Some YSP security guards, as Wilson knew, carried firearms. Eric Bator, a YSP security guard, was not certified as an armed guard but nevertheless took his gun, in a briefcase, to work. While working at the Greif plant on August 12, 1991, Bator fired his gun at Derrell Pusey, in the belief that Pusey was an intruder. The bullet struck and killed Pusey. Pusey’s mother filed a suit in an Ohio state court against Greif and others, alleging in part that her son’s death was the result of YSP’s negligence, for which Greif was responsible. Greif filed a motion for a directed verdict. What is the plaintiff’s best argument that Greif is responsible for YSP’s actions? What is Greif’s best defense? Explain. [*Pusey v. Bator,* 94 Ohio St.3d 275, 762 N.E.2d 968 (2002)]

**17–8. Employment Relationships.** William Moore owned Moore Enterprises, a wholesale tire business. William’s son, Jonathan, worked as a Moore Enterprises employee while he was in high school. Later, Jonathan started his own business, called Morecedes Tire. Morecedes regrooved tires and sold them to businesses, including Moore Enterprises. A decade after Jonathan started Morecedes, William offered him work with Moore Enterprises. On the first day, William told Jonathan to load certain tires on a trailer but did not tell him how to do it. Was Jonathan an independent contractor? Discuss. [*Moore v. Moore,* \_\_ Idaho \_\_, \_\_ P.3d \_\_, 2011 WL 310376 (Sup. 2011)]

**17–9. Disclosed Principal.** To display desserts in restaurants, Mario Sclafani ordered refrigeration units from Felix Storch, Inc. Felix faxed a credit application to Sclafani. The application was faxed back with a signature that appeared to be Sclafani’s. Felix delivered the units. When they were not paid for, Felix filed a suit against Sclafani to collect. Sclafani denied that he had seen the application or signed it. He testified that he referred all credit questions to “the girl in the office.” Who was the principal? Who was the agent? Who is liable on the contract? Explain. [*Felix Storch, Inc. v. Martinucci Desserts USA, Inc.,* 30 Misc.2d 1217, 924 N.Y.S.2d 308 (Suffolk Co. 2011)]

**17-10. A Question of Ethics**

Erwin Ernst was the sole shareholder and chief executive officer of Matchmaker Real Estate Sales Center, Inc., located in Chicago. During 1987 and 1988, the Leadership Council for Metropolitan Open Communities, a nonprofit corporation, conducted a series of tests to see if Matchmaker sales agents engaged in “racial steering”—that is, direct­ing white home buyers to homes in white neighborhoods and black home buyers to homes in black or mixed neighborhoods. In each test, one white couple and one black couple, evenly matched with regard to financial qualifications and housing needs, were sent to Matchmaker and told Matchmaker that they were looking for homes in south­west Chicago. Matchmaker agents consistently directed the white couples to higher-priced homes in white neighborhoods and the black couples to lower-priced homes in black or racially mixed neighborhoods. The city of Chicago, the Leadership Council, and the indi­vidual testers (the plaintiffs) all sued Matchmaker for violations of federal laws prohibit­ing racial discrimination and discrimination in housing. The court found the real estate agents to be employees, not independent contractors, and both Ernst and his corporation, Matchmaker, were held liable for compensatory damages under the doc­trine of respon­deat superior. The agents were held liable for both compensatory and pu­nitive damages. [*Chicago v. Matchmaker Real Estate Sales Center, Inc.,* 982 F.2d 1086 (7th Cir. 1992)]

**1.** In view of the fact that Ernst had specifically instructed his agents not to en­gage in discriminatory practices, is it fair to hold Ernst and Matchmaker liable for damages? Why or why not?

**2.** The court concluded that Ernst and Matchmaker should not be held liable for punitive damages in this case. Do you agree with this conclusion? Why or why not?

**3.** Ernst argued that the plaintiffs had no standing to sue because they had sus­tained no injury. The court, however, held that each of the plaintiffs had standing to bring suit. How might you justify the court’s conclusion that the plaintiffs had met the injury requirement for standing to sue?