AGENCY

50.00
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INTRODUCTION

This set of agency instructions has been drafted for use in tort cases in which there is an issue of vicarious liability based on principles of agency. It is equally applicable in cases involving *respondeat superior* liability based on an employer-employee ("master-servant") relationship. *Warren v. LeMay*, 142 Ill.App.3d 550, 575-76, 491 N.E.2d 464, 480; 96 Ill.Dec. 418, 434 (5th Dist.1986). The Committee has not attempted, however, to determine whether and to what extent these instructions may be accurate in cases based on other theories of liability, such as contract. They should be used outside the tort area only with great caution.

50.01 Both Principal And Agent Sued--No Issue As To Agency

The defendants are sued as principal and agent. The defendant [principal's name] is the principal and the defendant [agent's name] is [his] [its] agent. If you find that the defendant [agent's name] is liable, then you must find that the defendant [principal's name] is also liable. However, if you find that [agent's name] is not liable, then you must find that [principal's name] is not liable.

Notes on Use

This instruction should not be given where there is an issue of fact as to agency or where there is an independent basis of liability of the principal apart from the agency. It is proper when agency is not an issue. *Baikie v. Luther High School South*, 51 Ill.App.3d 405, 409-410; 366 N.E.2d 542, 545-546; 9 Ill.Dec. 285, 288-289 (1st Dist.1977) (agency admitted in pleadings and proved by agent's own testimony); *Casey v. Baseden*, 131 Ill.App.3d 716, 721; 475 N.E.2d 1375, 1378; 86 Ill.Dec. 808, 811 (5th Dist.1985), *aff'd*, 111 Ill.2d 341, 490 N.E.2d 4, 95 Ill.Dec. 531 (1986).

If either the existence of the agency, or the scope of the agency at the particular time, is in dispute as an issue of fact and both principal and agent are sued, then IPI 50.03 should be used, but if the principal is sued alone, then IPI 50.04 should be used.

If by the pleadings and evidence there is an issue of fact as to the liability of the principal for his own acts independent of acts of the agent, then a separate instruction appropriate to such independent basis of liability should also be used and the last sentence of this instruction should be modified or stricken accordingly.

Comment

A principal is bound by the acts of his agent committed or performed within the course and scope of the agency. The use of the instruction is not limited to tort cases but may also be used in various contract situations as appropriate. *Hogan v. City of Chicago*, 319 Ill.App. 531, 536; 49 N.E.2d 861, 863 (1st Dist.1943) (action for personal injuries); *Fox River Distilling Co. v. Andrichik*, 175 Ill.App. 305, 307 (2d Dist.1912) (action for balance due for goods sold).

50.02 Principal Sued But Not Agent--No Issue As To Agency

[agent's name] was the agent of the defendant [principal's name] at [and before] the time of this occurrence. Therefore, any act or omission of the agent at that time was in law the act or omission of the defendant [principal's name].

Notes on Use

This instruction should not be given where there is an issue of fact as to agency. This instruction may be used where the principal is sued alone. *See* Notes on Use to IPI 50.01.

If negligence rests on acts or omissions before the time of the occurrence, the bracketed words should be used.

If either the existence of the agency or the scope of the agency at the particular time is in dispute as an issue of fact and both principal and agent are sued, then IPI 50.03 should be used, but if the principal is sued alone, then IPI 50.04 should be used.

If the agent is the officer of the defendant corporation, IPI 50.11 may be given in lieu of this instruction. *Schmidt v. Blackwell*, 15 Ill.App.3d 190, 196; 304 N.E.2d 113, 118 (3d Dist.1973).

50.03 Both Principal and Agent Sued--Agency Denied— Principal Sued Under Respondeat Superior Only

Defendant [principal's name] is sued as the principal and the defendant [alleged agent's name] as his agent. [It is denied that any agency existed.] [It is (also) denied that [alleged agent's name] was acting within the scope of his authority as an agent of the defendant [principal's name] at the time of the occurrence.]

If you find that the defendant [alleged agent's name] [was the agent of the defendant [principal's name]] [and] [was acting within the scope of his authority] at the time of the occurrence, and if you find [alleged agent's name] is liable, then both are liable. If you find that [alleged agent's name] is not liable, then neither defendant is liable.

If you find that the defendant [alleged agent's name] is liable but was not acting [as an agent of the defendant [principal's name]] [or] [within the scope of his authority as an agent of the defendant [principal's name]] at the time of the occurrence, then the defendant [principal's name] is not liable.

Notes on Use

This instruction should be used only where agency or the scope of the agency or both are in dispute as an issue of fact and where principal and agent are both sued in the same case. If there is a basis of liability against the principal independent of the agency, this instruction should be modified accordingly or replaced by other instructions.

If the principal is sued alone and the agency is in dispute as an issue of fact, IPI 50.04 should be used. When agency is not disputed use IPI 50.01.

If the negligence charged includes acts or omissions prior to the act or omission at the time of the occurrence, then the phrase "at the time of this occurrence" should be modified to read "at and before the time of this occurrence."

Comment

This instruction applies where both principal and agent are parties defendant and the agency is the only basis of liability against the principal, but some phase of the agency is in dispute as an issue of fact. *Hogan v. City of Chicago*, 319 Ill.App. 531, 536; 49 N.E.2d 861, 863 (1st Dist.1943); *Fox River Distilling Co. v. Andrichik*, 175 Ill.App. 305, 307 (2d Dist.1912); *Drury v. Barnes*, 29 Ill.App. 166, 169 (3d Dist.1890). *See Baikie v. Luther High School South*, 51 Ill.App.3d 405, 409-410; 366 N.E.2d 542, 545-546; 9 Ill.Dec. 285, 288-289 (1st Dist.1977) (not error to refuse this instruction when agency is admitted in pleadings and proved by evidence, and IPI 50.01 was given).

50.04 Principal Sued, But Not Agent--Agency Denied— Principal Sued Under Respondeat Superior Only

The defendant [principal's name] is sued as the principal and the plaintiff claims that [alleged agent's name] was acting as [principal's name] at the time of the occurrence. The defendant [principal's name] denies that [alleged agent's name] [was acting as his agent] [and] [was acting within the scope of his authority as an agent of the defendant] at the time of the occurrence.

If you find that [alleged agent's name] [was the agent of the defendant [principal's name]] [and] [was acting within the scope of his authority as the agent of the defendant], at the time of the occurrence, then any act or omission of [alleged agent's name] at that time was in law the act or omission of the defendant.

If you find that [alleged agent's name] [was not acting as the agent of the defendant] [or] [was not acting within the scope of his authority as an agent of the defendant] at the time of the occurrence, then the defendant is not liable.

Notes on Use

This instruction should be used only where a principal is sued for the acts of an alleged agent who is not sued and the existence or scope of the agency is denied. If the negligence charged includes acts or omissions prior to the act or omission at the time of the occurrence, then the phrase "at the time of this occurrence" should be modified to read "at and before the time of this occurrence."

This instruction should not be given where there is no issue of fact as to the agency or where the alleged agent is also a party defendant.

50.05 Agent--Definition

An agent is a person who, by agreement with another called the principal, represents the principal in dealings with third persons or transacts business, manages some affair or does some service for the principal, with or without compensation. The agreement may be oral or written, express or implied.

[If you find that one person has the right to control the actions of another at a given time, you may find that the relation of principal and agent exists, even though the right to control may not have been exercised.]

Notes on Use

This instruction should be given only where there is an issue as to the existence of an agency. It should not be given in those circumstances where a person is estopped to deny agency as a matter of law or if there is a question of fact as to the estoppel.

The bracketed second paragraph should be used only if the right to control the purported agent is an issue.

In a proper case, both IPI 50.05 and 50.10 may be given. *Pease v. Ace Hardware Home Center*, 147 Ill.App.3d 546, 498 N.E.2d 343, 101 Ill.Dec. 161 (2d Dist.1986) (not redundant).

Comment

An agent is a person who acts for a principal in accordance with a consensual arrangement and who is subject to the control or right to control by the principal. *Olympic Commissary Co. v. Industrial Comm'nr*, 371 Ill. 164, 171; 20 N.E.2d 86, 89 (1939) (control by right of termination or discharge); *Postal Telegraph Sales Corp. v. Industrial Comm'n*, 377 Ill. 523, 37 N.E.2d 175 (1941) (same); *Hartley v. Red Ball Transit Co.*, 344 Ill. 534, 539; 176 N.E. 751, 753-754 (1931) (control by right to supervise acts and manner of performance); *Lawrence v. Industrial Comm'n*, 391 Ill. 80, 87; 62 N.E.2d 686, 689 (1945) (same); *Shannon v. Nightingale*, 321 Ill. 168, 151 N.E. 573 (1926) (same); *Sacks v. Helene Curtis Industries*, 340 Ill.App. 76, 86; 91 N.E.2d 127, 131-132 (1st Dist.1950) (defense of lack of agency); *see generally*, Restatement of Agency §1; *Mosby v. Kimball*, 345 Ill. 420, 427; 178 N.E. 66, 68 (1931); Black v. Texas Co., 247 Ill.App. 301 (4th Dist.1928).

This instruction should not be given if there is no proof of an agency relationship but there is proof of "holding out" from which an agency is sought to be established by estoppel. *Feitl v. Ricker*, 287 Ill.App. 329, 335-340; 4 N.E.2d 907, 909-911 (1st Dist.1936) (because the purchaser of the property did not rely on the mortgagee when he assumed that the person to whom he made mortgage payments was the mortgagee's agent, the mortgagee was not estopped to deny that an agency existed and prove that he had never received the final mortgage payment); *Indemnity Ins. Co. v. Midwest Transfer Co.*, 184 F.2d 633, 635 (7th Cir.1950) (the fact that the insurance company designated a broker as its agent on certain binders and policies presented a question of fact as to whether it would be estopped to deny the agency although in fact none existed).

50.06 Agent--Issue As To Scope of Authority of Agent Only

One of the questions for you to determine is whether or not [alleged agent's name] was acting within the scope of his/her authority.

An agent is acting within the scope of his/her authority if he/she is engaged in an activity which has been assigned to him/her by his/her principal, or if he/she is doing anything that may reasonably be said to have been contemplated as a part of that activity which benefits the principal. It is not necessary that an act or failure to act must have been expressly authorized by [principal].

Instruction, Notes and Comment revised September 2009.

Notes on Use

If both principal and agent are sued and the scope of the agency is in dispute, IPI 50.03 should accompany IPI 50.06. If the principal alone is sued and he disputes the scope of the agency relation, IPI 50.04 should accompany IPI 50.06. If scope of employment is at issue, use IPI 50.06.01. If apparent agency is at issue in a medical malpractice action, use 150.10.

Comment

The statements of the alleged agent, made outside the presence of the principal and not subsequently approved by him, do not establish the existence of the principal-agent relationship. The principal is the source of the power and the agent's authority can be proved only by tracing it to that source in some word or act of the alleged principal. *Yugoslav-American Cultural Ctr., Inc. v. Parkway Bank & Trust Co.*, 289 Ill. App. 3d 728, 682 N.E.2d 401, 224 Ill. Dec. 840 (1st Dist. 1977).

The party asserting agency has the burden of proving the existence of agency but may do so by inference and circumstantial evidence. The agent may bind his principal by acts which the principal has not given the agent actual authority to perform, but which the agent appears authorized to perform. *Lundberg v. Church-Farm, Inc.*, 151 Ill. App.3d 452, 502 N.E.2d 1240, 104 Ill. Dec. 309 (5th Dist. 1986).

Where the principal places an agent in a situation to act for the principal, the principal is estopped as against a third person from denying the agent's apparent authority. *Sakun v. Taffer*, 268 Ill. App.3d 343, 643 N.E.2d 1271, 205 Ill. Dec. 644 (1st Dist. 1994); *see also Martinez v. Knochel*, 123 Ill. App.3d 555, 462 N.E.2d 1281, 78 Ill. Dec. 927 (4th Dist. 1984).

An existing agency relationship may be determined not to exist when the agent fails to act for the benefit of the principal, *Cheatem v. Cook*, 8 Ill. App.3d 425, 290 N.E.2d 707 (1st Dist. 1972), or when the acts of the agent are determined to have exceeded the scope of the agent's authority. *In re Estate of Romanowski*, 329 Ill. App. 3d 769, 771 N.E.2d 966, 265 Ill. Dec. 7 (1st Dist. 2002); *see also Lombard Pub. Facilities Corp. v. Dep't. of Revenue*, 378 Ill. App. 3d 921, 881 N.E.2d 598, 317 Ill. Dec. 430 (2d Dist. 2008).

50.06.01 Employee--Issue As To Scope of Employment

One of the questions for you to determine is whether or not [alleged employee name] was acting within the scope of his/her employment.

An employee is acting within the scope of his/her employment if each of the following is shown by the evidence:

a. The employee's conduct is of a kind he/she is employed to perform or reasonably could be said to have been contemplated as part of his/her employment; and

b. The employee's conduct occurs substantially within the authorized time and space limits of his/her employment; and

c. The employee's conduct is motivated, at least in part, by a purpose to serve the employer.

Instruction, Notes and Comment created September 2009.

Notes on Use

This instruction has been drafted to conform with the Supreme Court's decision concerning the scope of employment in *Bagent v. Blessing Care Corp.*, 224 Ill.2d. 154, 862 N.E.2d 985, 308 Ill. Dec. 782 (2007). If agency is unrelated to employment, IPI 50.06 should be used. If apparent agency in a medical malpractice action is at issue, IPI 150.10 should be used.

Comment

Each of the criteria listed in the *Restatement 2nd of Agency* §228, for determining whether an employee's acts were within the scope of employment, must be met to conclude that an employee was acting within the scope of employment for purposes of a respondeat superior claim. A hospital phlebotomist who exceeded the scope of employment by disclosing confidential patient information at a tavern was not the kind of conduct an employee of the hospital was employed to perform nor was such conduct motivated to serve her employer. Such employee's conduct was beyond the scope of her employment. *Bagent*, *supra*; *see also Adames v. Sheahan*, 2009 WL 711297 (Ill. 2009).

50.07 Inference of Agency--Agency and Scope of Employment Inferred From Ownership of Automobile

If you decide that the automobile being driven by [driver's name] was owned by the defendant, you may infer from such evidence that [driver's name] was acting as the agent of the owner and within the scope of his authority, unless you find that inference is overcome by other believable evidence. You may consider that inference [and any other evidence in the case] in deciding whether [driver's name] was acting as agent and within the scope of his authority as the defendant's agent.

Notes on Use

This instruction may be given only where existence of agency is in issue and it is sought to be established from evidence of ownership of a motor vehicle. The bracketed phrase may be used if there is evidence other than ownership on the agency issue.

Comment

The inference of agency from proof of ownership of the vehicle has long been recognized in the law. *Paulsen v. Cochfield*, 278 Ill.App. 596, 603 (2d Dist.1935).

50.08 Inference of Agency--Ownership of Automobile and Employment or Agency Admitted, But Scope of Authority Denied

At the time of the occurrence, the automobile being driven by [driver's name] was owned by the defendant and [driver's name] was the employee of the defendant. You may infer from this fact that [driver's name] was acting within the scope of his authority, unless you decide that the inference is overcome by other believable evidence. You may consider this inference [and any other evidence in the case] in deciding whether [driver's name] was acting in the scope of his authority as the defendant's agent.

Notes on Use

This instruction may be given only where ownership and agency are not in issue, but it is denied that the agent was acting within the scope of his authority at the time of the occurrence. *See* Comment to IPI 50.07. The bracketed phrase may be used if there is evidence other than the employment relationship on the issue of scope of authority.

50.09 Deviation

No instruction has been drafted on this subject.

Comment

No instruction has been drafted on this subject. The resolution of the question whether a deviation by an agent from the scope of his employment is casual or so substantial in kind or area that in fairness the principal should not be held for the actions of his agent depends on many detailed circumstances which vary widely from case to case. Because of this fact, the Committee was unable to draw an instruction for deviation more concrete than IPI 50.06 which relates to the scope of an agent's authority. The Committee suggests that that instruction may be used as a basis for the contention that an agent has deviated far enough from the scope of his employment to relieve the principal from liability for his actions.

The court approved this approach in *Fischer v. Ross*, 79 Ill.App.2d 372, 377; 223 N.E.2d 722, 724-725 (2d Dist.1967).

50.10 Agent or Independent Contractor

The question has been raised whether at the time of the occurrence [alleged agent's name] was the agent of the defendant [defendant's name] or was an independent contractor. An agent is a person who by agreement with another, called the principal, represents the principal in dealings with third persons or transacts some other business, manages some affair, or does some service for the principal, with or without compensation. The agreement may be oral or written, express or implied. [The term "agent" is broader than either "servant" or "employee." A servant or employee is an agent, but one may be an agent although he is neither servant nor employee.]

[If you find that one person has the right to control the actions of another at a given time, you may find that the relation of principal and agent exists, even though the right to control may not have been exercised.]

An independent contractor is one who undertakes a specific job where the person who engages him does not have the right [to discharge him] [or] [to direct and control the method and manner of doing the work].

In determining whether at the time of the occurrence [alleged agent's name] was the agent of the defendant [defendant's name] or was an independent contractor, you may also consider [the method of payment;] [the right to discharge;] [the skill required in the work to be done;] [who provides tools, materials or equipment;] [whether the worker's occupation is related to that of the employer;] [whether the employer deducted for withholding tax;] [and] [[other relevant factor(s)].

The principal is liable to third persons for the negligence of his agent in the transaction of the business of the principal, if the agent himself is liable. But one who engages an independent contractor is not liable to others for the negligence of the contractor.

Notes on Use

The bracketed material in the first paragraph should be used only where there is need to point out that a person may be an agent without being a servant or employee.

The bracketed material in the second paragraph should be used only if the right to control the purported agent is an issue.

Only such elements of the bracketed material in the fourth paragraph should be used as may be supported by the evidence. *See Wenholdt v. Industrial Comm'n*, 95 Ill.2d 76, 447 N.E.2d 404, 69 Ill.Dec. 187 (1983).

In a proper case, both IPI 50.05 and 50.10 may be given. *Pease v. Ace Hardware Home Center*, 147 Ill.App.3d 546, 498 N.E.2d 343, 101 Ill.Dec. 161 (2d Dist.1986) (not redundant).

Comment

Generally, a principal is liable for the acts of an agent within the course and scope of the agent's employment, but not for the acts of an independent contractor. The principal difference between the two relationships is that the principal has the right to control the agent, but not the independent contractor. For control by right of termination or discharge, *see Olympic Commissary Co. v. Industrial Comm'nr*, 371 Ill. 164, 171; 20 N.E.2d 86, 89-90 (1939); *Postal Telegraph Sales Corp. v. Industrial Comm'n*, 377 Ill. 523, 37 N.E.2d 175 (1941). For control by right to supervise acts and manner of performance, *see Hartley v. Red Ball Transit Co.*, 344 Ill. 534, 539; 176 N.E. 751, 753-754 (1931); *Lawrence v. Industrial Comm'n*, 391 Ill. 80, 87; 62 N.E.2d 686, 689 (1945); *Shannon v. Nightingale*, 321 Ill. 168, 151 N.E. 573 (1926). *See generally*, Restatement of Agency, §1; *Mosby v. Kimball*, 345 Ill. 420, 427; 178 N.E. 66, 68 (1931); *Richardson v. United States Mortgage & Trust Co.*, 194 Ill. 259, 62 N.E. 606 (1901); Black v. Texas Co., 247 Ill.App. 301 (4th Dist.1928); *City of Moline v. McKinnie*, 30 Ill.App. 419, 424 (2d Dist.1888).

However, in certain types of cases the duty to exercise ordinary care cannot be delegated. *City of Joliet v. Harwood*, 86 Ill. 110 (1877) (work inherently dangerous); *Frost v. Andes Candies, Inc.*, 329 Ill.App. 535, 69 N.E.2d 732 (1st Dist.1946) (abstract) (hazard accompanies work); *People ex rel. Hepburn v. Maddox*, 340 Ill.App. 34, 38; 91 N.E.2d 107, 109 (3d Dist.1950) (work creates public nuisance); *Girdzus v. Van Etten*, 211 Ill.App. 533 (1st Dist.1918) (duty imposed by statute); *Kennerly v. Shell Oil Co*., 13 Ill.2d 431, 150 N.E.2d 134 (1958) (same); *Orange v. Pitcairn*, 280 Ill.App. 566, 572 (4th Dist.1935) (nondelegable corporate power); *City of Chicago v. Murdoch*, 113 Ill.App. 656 (1st Dist.1904), *aff'd*, 212 Ill. 9, 72 N.E. 46, 103 Am. St. Rep. 221 (1904) (same); *Starr v. Stanard-Tilton Milling Co.*, 183 Ill.App. 454 (4th Dist.1913) (injury resulting from acts rendered necessary by the contract); *Raxworthy v. Heisen*, 191 Ill.App. 457 (1st Dist.1915), *aff'd*, 274 Ill. 398, 113 N.E. 699 (1916) (duty of furnishing employee safe place to work); *Chicago Economic Fuel Gas Co. v. Myers*, 168 Ill. 139, 48 N.E. 66 (1897) (exercise of powers granted under franchise); *Louis v. Youngren*, 12 Ill.App.2d 198, 138 N.E.2d 696 (1st Dist.1956) (same).

50.11 A Corporation Acts Through Its Employees

The [(plaintiff) (defendant) is a corporation] [the parties are corporations] and can act only through [its] [their] officers and employees. Any act or omission of an officer or employee within the scope of his employment is the action or omission of the [plaintiff] [defendant] corporation.

Notes on Use

If the agent is the officer of the defendant corporation, this instruction may be given in lieu of IPI 50.02. *Schmidt v. Blackwell*, 15 Ill.App.3d 190, 196; 304 N.E.2d 113, 118 (3d Dist.1973).

When the requirements for holding a corporate master liable for punitive damages have not been fulfilled, this instruction may not be given in this form when its effect would be to permit vicarious liability for punitive damages, since it would impute liability for *any* act done by an employee, rather than only those specifically ordered, participated in or ratified by a superior officer. *Pendowski v. Patent Scaffolding Co.*, 89 Ill.App.3d 484, 488-489; 411 N.E.2d 910, 913-924; 44 Ill.Dec. 544, 547-548 (1st Dist.1980).

50.12 Partner--Liability of--No Issue As To Partnership, Agency, or Scope of Authority

The defendants [1st partner's name] and [2d partner's name] are partners. [allegedly negligent partner's name] was acting on behalf of the partnership and within the scope of his authority. Therefore, if you decide for the plaintiff, your verdict must be against all the defendants.

Notes on Use

This instruction should be used only where there is no issue as to the existence and scope of a partnership. If the partnership is a plaintiff, the instruction should be modified accordingly, or applied to both sides, if the suit is by one partnership against another.

Comment

A partnership is a contract of mutual agency, each partner acting as a principal in his own behalf and as agent for his co-partner. 805 ILCS 205/9 (1994). *Schumann-Heink v. Folsom*, 328 Ill. 321, 159 N.E. 250 (1927). Like any other agency relationship, the act or omission of a partner must be within the scope of the undertaking in order to charge it to the other partners. *McDonald v. McDonald*, 408 Ill. 388, 394; 97 N.E.2d 336, 339 (1951).

50.13 Partnership--Existence Admitted--Scope of Authority In Issue--Consequence of Relationship

[1st partner's name] and [2d partner's name] are partners.

If you find that [1st partner's name] action in [insert action or inaction of 1st partner] was [apparently] in furtherance of the partnership business, then [2d partner's name] is responsible for [1st partner's name]'s action.

Notes on Use

This instruction should be used only when the existence of the partnership is admitted but the scope of the partner's authority is in issue.

Comment

The instruction is based on §9 (1), (2) of the Uniform Partnership Act. 805 ILCS 205/9(1), (2) (1994); *Crane Co. v. Tierney*, 175 Ill. 79, 83; 51 N.E. 715, 716 (1898) (an instruction that the partnership would be liable only for purchase of goods within the apparent scope of the partnership articles or within the apparent scope of business warranted by the articles was held to be erroneous; liability extends to the apparent scope of the business actually transacted).

Where it was shown that the act giving rise to the debt was apparently done in carrying on the business of the partnership in the usual way, plaintiff could recover without evidence that the partner had given express authority to contract. It was defendant's burden to establish absence of authority. *Stratemeyer v. West*, 125 Ill.App.3d 597, 466 N.E.2d 306, 80 Ill.Dec. 854 (5th Dist.1984).

50.14 Partnership--Existence of Relationship And Scope of Authority In Issue--Consequence of Relationship

The act or omission of one partner [apparently] in furtherance of the partnership business is, in law, the responsibility of all the partners [even though they did not know of the act or omission].

If you find that [1st partner's name] and [2d partner's name] were partners and that [1st partner's name]'s act or omission in [insert action or inaction of partner] [apparently] was in furtherance of the partnership business, then [2d partner's name] is responsible for [1st partner's name]'s act or omission.

Notes on Use

This instruction should be used only when the existence of the partnership and the question of the scope of the partner's authority are in issue.

Comment

If the action of a partner is apparently in furtherance of the partnership business, it binds the other partners. 805 ILCS 205/9(1), (2) (1994); *J.L. Gardenhire Drilling Co. v. Ray*, 302 Ill.App. 268, 274; 23 N.E.2d 927, 929-930 (4th Dist.1939). An act by a partner within his authority binds the partnership even though the other partners do not know of the act. *Swannell v. Byers*, 123 Ill.App. 545 (1st Dist.1905); Schwabacker v. Riddle, 84 Ill. 517 (1877); *Stratemeyer v. West*, 125 Ill.App.3d 597, 466 N.E.2d 306, 80 Ill.Dec. 854 (5th Dist.1984).

50.15 Partnership--Definition

One of the issues in this case is whether [1st partner's name] and [2d partner's name] were partners. Persons who join together or agree to join together in a business or venture for their common benefit, each contributing property, money, or services to the business or venture and having a community of interest in any profits, are partners.

Notes on Use

This instruction should be used only where the existence of a partnership is in issue.

Comment

A partnership is defined in paragraph 6 of the Uniform Partnership Act as an "association of two or more persons to carry on as co-owners a business for profit." The existence of a partnership is a question of intention to be gathered from all the facts and circumstances surrounding a transaction. A partnership may exist under written or verbal agreement. When persons associate to carry on a business or venture for their common benefit, contribute property or services to the business and have a community of interest in the profits, they are partners. Uniform Partnership Act, §6, 805 ILCS 205/6 (1994); *Peck v. Peck*, 16 Ill.2d 268, 280; 157 N.E.2d 249, 257 (1959); *Rizzo v. Rizzo*, 3 Ill.2d 291, 298; 120 N.E.2d 546, 550 (1954); *Swannell v. Byers*, 123 Ill.App. 545, 549 (1st Dist.1905).

What constitutes a partnership under an uncontested set of facts may be a question of law. *Sharp v. Gallagher*, 94 Ill.App.3d 1128, 419 N.E.2d 443, 50 Ill.Dec. 335 (1st Dist.1981), *rev'd on other grounds*, 95 Ill.2d 322, 447 N.E.2d 786, 69 Ill.Dec. 351 (1983).

50.16 Apparent Agency

Comment

The Committee has prepared instructions dealing with these issues which can be found at 105.10 and 105.11.