

FEBRUARY 2020 MEE
QUESTION 5—AGENCY

Linda owned and operated a clothing store as a sole proprietorship. To increase sales, she decided to offer a same-day delivery service to local customers. Rather than hiring an employee to make deliveries, she decided to use a driver who was an independent contractor to make deliveries on an as-needed basis. Because she did not know anyone who could do this work, she searched a website that listed local delivery drivers.

The website included the drivers' names, their hourly rates, and customer reviews of their work. A driver on the list with the lowest hourly rate by a wide margin used his own delivery van for making deliveries. But 40 recent customer reviews of this driver on a scale of 1 (low) to 5 (high) rated him as 1.5, citing specific instances of misbehavior, untrustworthiness, and bad driving. The website also reported that in the last couple of years, the driver had been sued three times for negligent driving and had been found liable in each case. Nonetheless, Linda decided to use this driver to make deliveries because of his inexpensive hourly rate and because he had his own delivery van.

When she hired the driver, Linda told him that, when making deliveries for the store, he would have to place self-sticking, removable signs advertising the store on both sides of his delivery van. He agreed, but because such signs ranged in price from \$100 to \$500 per pair, he told Linda that she would have to purchase them for him to use. Because she was too busy to do that, Linda asked him to purchase the signs but not to spend more than \$300 for the pair when doing so. Linda gave the driver one of the store's cards, and as a means of identifying the driver as acting for the store, she wrote on the back, "This is my agent to purchase signs for my store."

The driver then went to a local sign shop, showed the shop owner the business card that Linda had given him (including her handwritten note on the back), and purchased a pair of custom-made signs for \$450 on credit. Because the signs were custom-made, they were not returnable or refundable. When the completed signs were delivered to Linda, she refused to take possession of them or pay the sign shop for them because their cost exceeded the amount she had told the driver to spend by \$150. The driver then made two smaller signs with the store name on them and, with Linda's approval, put them on his van when making deliveries.

Three weeks ago, Linda called a customer and told her, "My driver is on his way to make a delivery to you in a van with the store's name on its side." The customer kept watch at her window, and when she saw the van with the store's signs on it, she went out to the driveway through her garage. As she started to walk toward the van, the driver negligently hit the accelerator pedal, causing the van to hit the customer, who sustained substantial injuries.

Assume that there was an enforceable contract to buy the signs from the sign shop, that the driver's negligence proximately caused the customer's injuries, and that the driver was acting as Linda's independent-contractor agent.

1. Is Linda liable to the sign shop for the purchase price of the signs? Explain.
2. Is the driver liable to the sign shop for the purchase price of the signs? Explain.

3. Even though the driver was an independent contractor, is Linda vicariously liable to the customer for the injuries resulting from the driver's negligence? Explain.
4. Is Linda directly liable to the customer for the injuries the customer sustained? Explain.

Question Presented

Linda (a sole proprietor) hired a delivery driver as an independent contractor. She told him to buy van signs but not to spend more than \$300.

← private actual-authority limit
(unknown to third parties)

She gave him her business card, writing on the back: This is my agent to purchase signs for my store.

← a manifestation to third parties →
apparent authority

At a sign shop the driver showed the card and bought custom signs for \$450 on credit (signs run \$100 to \$500). Linda refused to pay.

← the shop reasonably relied on the
card

The driver's listing showed a 1.5/5 rating and three negligent-driving judgments; Linda hired him anyway for the low rate.

← negligent selection → direct
liability

Linda told a customer my driver is on his way; when the customer approached the marked van, the driver negligently injured her.

← the customer relied on the
appearance of agency

1. Is Linda liable to the sign shop for the signs?

← → apparent authority

2. Is the driver liable to the sign shop?

← → disclosed principal

3. Is Linda vicariously liable for the injury, though he was an independent contractor?

← → apparent-authority exception

4. Is Linda directly liable for the injury?

← → negligent selection

Question 1: Linda's Liability on the Sign Contract

Issue. Whether Linda is bound to the sign contract despite telling the driver not to spend over \$300.

Is the principal bound by the over-limit purchase?

Rule. An agent has actual authority when he reasonably believes, from the principal's manifestations to him, that the principal wants him to act. An agent has apparent authority when a third party reasonably believes the agent is authorized, based on the principal's

Actual authority = manifestations to the agent; apparent = manifestations to the third party (reasonable price, on credit) absent notice of limits.

manifestations to the third party; a third party may then assume authority to transact in the ordinary course, including buying goods at a reasonable price on credit, absent notice of a limit.

Analysis. Here, the driver lacked actual authority because Linda capped the spend at \$300. But the business card naming him her agent to buy signs was a manifestation traceable to Linda, on which the sign shop reasonably relied. The card stated no price limit, so the driver had apparent authority to buy at a reasonable price on credit, and \$450 was reasonable within the \$100 to \$500 range.

Conclusion. Therefore, Linda is liable to the sign shop on the contract.

Card = manifestation to the shop; no stated limit → apparent authority; \$450 reasonable.

Yes: bound by apparent authority.

Question 2: The Driver's Personal Liability

Issue. Whether the driver is personally liable to the sign shop.

Rule. When an agent with actual or apparent authority contracts for a disclosed principal, the contract is between the principal and the third party, not the agent. An agent who acts without authority may be liable for breach of the implied warranty of authority, but not where the principal is nonetheless bound by the agent's apparent authority.

Analysis. Here, Linda was a disclosed principal and the driver acted with apparent authority (Question 1), so the contract binds Linda, not the driver. Because Linda is bound, the driver is not liable for breach of the implied warranty of authority either, even though he lacked actual authority.

Conclusion. Therefore, the driver is not liable to the sign shop.

Does the agent owe the shop?

Disclosed principal + authority → only the principal is a party; no warranty-of-authority claim if the principal is bound.

Disclosed principal is bound → driver not a party and no warranty breach.

No: the disclosed principal is solely liable.

Question 3: Vicarious Liability for the Driver's Negligence

Issue. Whether Linda is vicariously liable for the driver's negligence even though he was an independent contractor.

Rule. Under respondeat superior, an employer is vicariously liable for an employee's torts within the scope of employment, but generally not for the torts of a non-employee (independent-contractor) agent. An exception makes the principal vicariously liable for a non-employee agent's tort committed while the agent acts with apparent authority, where the third party relied on the appearance of agency.

Can an IC's tort reach the principal?

No respondeat superior for an IC, but apparent-authority exception applies where the third party relies on the appearance of agency.

Analysis. Here, the driver was an independent contractor, so respondeat superior does not apply, but Linda had **told the customer 'my driver is on his way'**, so the customer reasonably believed he was Linda's agent and relied on that appearance, and the negligence occurred while he was making the delivery. That triggers the apparent-authority exception.

Conclusion. Therefore, Linda is probably vicariously liable to the customer.

Linda's 'my driver' statement + the customer's reliance during the delivery = apparent-authority vicarious liability.

Probably yes (apparent-authority exception).

Question 4: Linda's Direct Liability

Issue. Whether Linda is directly liable to the customer for her own conduct.

Rule. A principal who is negligent in selecting or retaining an agent is directly liable for harm caused by that negligence.

Analysis. Here, Linda knew from the listing that the driver had a **1.5 rating and three negligent-driving judgments**, yet hired him to drive for her store; choosing so plainly unfit a driver is negligent selection that led to the customer's injury.

Conclusion. Therefore, Linda is directly liable to the customer as well.

Is the principal independently at fault?

Negligent selection/retention of an agent → direct liability.

Hiring a driver with a known terrible driving record = negligent selection.

Yes: negligent selection.

Step-by-Step: Agency Authority & Liability

Trace authority for the contract, then separate the principal's vicarious liability from her own direct fault on the tort.

1. Contract: did the agent have actual authority (manifestations to the agent)?

→ No, the agent exceeded a limit → check apparent authority. **\$300 cap exceeded**



2. Apparent authority (principal's manifestations to the third party; reasonable price, on credit)?

→ Yes → the **principal is bound**; the disclosed agent is not liable and owes no warranty of authority. **Q1: Linda bound; Q2: driver not**



3. Tort by a non-employee (IC) agent: respondeat superior does not apply, BUT is there apparent authority with third-party reliance?

→ Yes → the principal is **vicariously liable**. **Q3: customer relied → Linda liable**



4. Principal's own fault: negligent selection or retention of the agent?

→ Yes → **direct liability.** Q4: bad driving record → negligent selection