

1 **13-402. Liability of principal.**

2 If you find there was a principal and agent relationship, the principal is liable for the acts
3 of ~~[[his][her][its]]~~ an agent when:

- 4 1. The agent was acting within the scope of ~~[[his][her]]~~ agency; and
- 5 2. The principal had the right to control the manner in which the details of the
6 work were to be performed at the time of the occurrence, even though the right of control may not
7 have been exercised.

8 USE NOTES

9 Always use this instruction with UJI 13-401 NMRA.

10 [As amended, effective November 1, 1991; as amended by Supreme Court Order No. S-1-RCR-
11 2025-00126, effective for all cases pending or filed on or after December 31, 2025.]

12 **Committee commentary.** — Fundamentally, and according to both the Restatement and the
13 American courts, there is no distinction to be drawn between the liability of a principal for the
14 tortious act of an agent and the liability of a ~~[master]~~ principal for the tortious act of ~~[a servant]~~ an
15 agent. In both cases, the tort liability is based on the ~~[master and servant,]~~ principal and agent
16 rather than any agency principle; the liability for the tortious act of the employee is grounded upon
17 the maxim of ~~[“]“respondeat superior[”]~~ and is to be determined by considering, from a factual
18 standpoint, the question of whether the tortious act was done while the employee, whether agent
19 or servant, was acting within the scope of employment. 3 Am. Jur. 2d Agency 267. *See also*
20 *McCauley v. Ray*, 1968-NMSC-194, ¶ 28, 80 N.M. 171, 453 P.2d 192, ~~[rehearing denied]~~ *reh’g*
21 *denied* (1969).

22 *Echols v. N.C. Ribble Co.*, 1973-NMCA-038, ¶ 20, 85 N.M. 240, 511 P.2d 566 ~~[(Ct. App.)]~~, ~~[cert.~~
23 ~~denied]~~ *cert. denied*, 85 N.M. 229, 511 P.2d 555 (1973), notes that when an agent is acting within

1 the scope of authority, the principal is liable for false representations made by the agent, even if
2 the principal was without knowledge of its ~~[agent's]~~ agent's fraud and otherwise innocent of
3 wrongdoing.

4 With respect to tort liability, the principal is liable for the acts of an agent only when the
5 ~~[principal's]~~ principal's relationship to the agent is actually that of ["“employer-employee[””]” at
6 the time of the occurrence in question and the principal has the [”“right of control[””]” on the
7 occurrence.

8 [~~Sutton v.~~] Chevron Oil Company v. Sutton, 1973-NMSC-111, ¶ 10, 85 N.M. 679, 515 P.2d 1283
9 [(1973)], involved the indicia of control necessary to find an oil company principal liable for the
10 tortious acts of a service station owner agent. The courts found that a factual issue, sufficient to
11 avoid summary judgment, existed as to the degree of control exercised by Chevron. Id.

12 Punitive damages are the subject of [~~Samadan~~] Samedan Oil Corp. v. Neeld, 1978-NMSC-028, ¶¶
13 10-20, 91 N.M. 599, 577 P.2d 1245 [(1978)], and Cornell v. Albuquerque Chem. Co., 1978-
14 NMCA-079, ¶¶ 39-45, 92 N.M. 121, 584 P.2d 168 [(~~Ct. App.~~ 1978)]. A ~~[master or]~~ principal is
15 liable for punitive damages if it can be shown that the principal is guilty of wrongful motives.

16 [As revised~~[, effective November 1, 1991]~~; as amended by Supreme Court Order No. S-1-RCR-
17 2025-00126.]

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