

December 1927

## Principal and Agent--Liability of Principal--Scope of Employment

Lester C. Hess

*West Virginia University College of Law*

Follow this and additional works at: <https://researchrepository.wvu.edu/wvlr>



Part of the [Agency Commons](#), and the [Criminal Law Commons](#)

---

### Recommended Citation

Lester C. Hess, *Principal and Agent--Liability of Principal--Scope of Employment*, 34 W. Va. L. Rev. (1927).  
Available at: <https://researchrepository.wvu.edu/wvlr/vol34/iss1/21>

This Student Notes and Recent Cases is brought to you for free and open access by the WVU College of Law at The Research Repository @ WVU. It has been accepted for inclusion in West Virginia Law Review by an authorized editor of The Research Repository @ WVU. For more information, please contact [ian.harmon@mail.wvu.edu](mailto:ian.harmon@mail.wvu.edu).

cized by the best text authority. See 1 WYMAN PUBLIC SERVICE CORPORATIONS, §653, where it is said, "Logical though it may be, it (the rule for natural gas) seems to the writer to be lacking in appreciation of the situation as a whole. A rule which may result in satisfactory service to none, not even to the applicant in question is hardly consistent with public service for all. Certainly where the supply now available is not sufficient to meet the proper demands of present customers, it would seem that later applicants could not demand the reduction of the taking of older customers." See also an article by Thomas P. Hardman in 26 W. VA. L. QUAR. 224, 231, where the question is discussed with reference to the constitutional right of a state to prohibit the exportation of its natural resources. It will be noticed that the natural gas rule is based on the theory of unjust discrimination. Admitting that there is discrimination in favor of prior consumers, should the rule against discrimination be invoked? It is apparent that such a rule is opposed to the common law theory that a public utility must render adequate service. To require a public utility to render service to tardy applicants, when the supply is sufficient for present customers only, results in inadequate service for all. Such a rule of law seems unjust, unreasonable, and uneconomic.

—Hugh R. Warder.

---

PRINCIPAL AND AGENT—LIABILITY OF PRINCIPAL—SCOPE OF EMPLOYMENT.—The plaintiff, while shopping in the store of the defendants, was seen by a clerk to fold up some small dresses, and to attempt to make away with them. The clerk brought her back, rescued the goods, and turned her over to the manager. No further search was made, but the manager detained the plaintiff while awaiting the arrival of an officer for whom he had sent. The plaintiff, attempting to escape, gained the sidewalk, but the manager pursued her, and by shoving her, forced her back into the store. The plaintiff alleges that she was injured by the acts of the manager, and asks damages for said injuries, as well as for nervousness suffered by her daughter, who had accompanied her, in consequence of such acts. *Held*, that the defendants were not liable for these acts of the agent,

since he acted without the scope of his employment. But the court in deciding the case, gives as one general reason for its decision, that "an agent cannot be said to be acting within the scope of his agency, if the act complained of, if done by the master would be unlawful." *Pruitt v. Watson, et al.*, 138 S. E. 331 (W. Va. 1927).

It would seem that such a proposition, when stated in the form of a general rule, is rather too broad when applied to all cases arising under this category. And, judging from the current of authority, this unqualified statement has failed to meet with approbation. 18 R. C. L. 804; 26 Cyc. 1525; 39 C. J. 1283, 1284; 26 Cyc. 1529. The principal is held liable in cases of assault committed within the scope of the agent's employment. *Davis v. Merrill*, 133 Va. 69, 112 S. E. 628; *Vance v. Frantz*, 83 W. Va. 671, 99 S. E. 12; *Railway Company v. Cooper*, 6 Ind. App. 202, 33 N. E. 219. The principal is also held civilly liable for criminal acts of the agent, committed within the scope of the agent's employment. *Great Southern Lumber Company v. Williams*, 17 F. (2d) 469; *E. I. DuPont Company v. Snead's Administrator*, 124 Va. 177, 97 S. E. 812; *Merrill v. Coates*, 101 Minn. 43, 111 N. W. 836; *Caswell v. Cross*, 120 Mass. 545; *Rose v. Imperial Engine Company*, 195 N. Y. 515, 88 N. E. 1130; *Cincinnati, Hamilton & Dayton Railway Company v. Klute*, 73 Oh. St. 380, 78 N. E. 1120; 18 R. C. L. 804, 805, 806. The same may be said of cases of false imprisonment. *Staples v. Schmid*, 18 R. I. 224, 26 Atl. 193; *Martin v. Golden*, 180 Mass. 549, 62 N. E. 977; *Mosely v. McCrory Company*, 101 W. Va. 480, 133 S. E. 73; *Palmeri v. Manhattan Railway Company*, 133 N. Y. 261, 30 N. E. 1001. Such has also been held in libel cases. *Barwick v. English Joint Stock Bank*, L. R. 2 Exch. 259 (1867); *Fogg v. Boston Railroad Company*, 148 Mass. 513, 20 N. E. 109; *Philadelphia Company v. Quigley*, 21 How. (Pa.) 202; and so for the acts of negligence of the agent. *Walker v. Strosnider*, 67 W. Va. 39, 67 S. E. 1087; *Lamarre v. Guarantee Construction Company*, 214 Mass. 326, 101 N. E. 990; *Joel v. Morrison*, 6 C & P 501; STOREY, AGENCY (6th ed.) §452; *Gregory's Administrator v. Ohio River Railroad Company*, 37 W. Va. 606, 614, 16 S. E. 819. It has also been held that in cases of mixed motive, the principal may be held liable for violation of statutes or ordi-

nances, and that, even though there were implied orders that the agent was not to violate such statutes or ordinances. *Howe v. Newmarch*, 94 Mass. 49; *Sadler v. Henlock*, 4 E. & B. 570; *Healy v. Johnson*, 127 Ia. 237, 103 N. W. 92; *State v. Nichols*, 67 W. Va. 659, 69 S. E. 304; *State v. Denoon*, 31 W. Va. 122, 5 S. E. 315. Similarly in public carrier cases, *Weed et al., v. Panama Railroad Company*, 17 N. Y. 362, 72 Am. Dec. 474; *Seymour v. Greenwood*, 6 N. & R. 359. In *Christie v. Mitchell*, 93 W. Va. 200, 116 S. E. 715, it was held, where the plaintiff was a trespasser, that even wilful and reckless acts injuring the plaintiff were in the scope of the agent's employment, and the principal was held liable. In all of these cases the tort committed by the agent, for which the principal was held liable, would be a tort (and hence unlawful) none the less if committed by the principal. Therefore, the above-mentioned proposition is too broad to be used as a set general rule. "The test is not whether the act is lawful or unlawful, but is whether or not such measures were so far incident to the employment as to come within its scope." *Voegeli v. Pickel Marble and Granite Company*, 49 Mo. App. 643. See also *Dolan v. Hubinger*, 109 Ia. 408, 80 N. W. 514; 39 C. J. 1283, 1284 and note in 27 L. R. A. 161.

The conclusion of the court in the case is, however, correct, since in the absence of a clear authorization, a principal is not liable in such a case, as the assault was made not in furtherance of the principal's business, but for the unauthorized purpose of vindicating the law, and is, hence, not an act impliedly within the scope of the agent's employment. MECHEM, AGENCY, §1974, and cases there cited. To designate this line of distinction more clearly let us illustrate. (a) An agent detains the supposed thief for the purpose of recovering the goods; (b) after recovery, the agent detains the suspect solely for the purpose of turning him over to an officer of the law. In (a) the agent is only acting to recover the goods of the principal, there being an implied duty on the part of the agent to protect his principal's property from pilfering, and to recover stolen property rightfully belonging to his principal. *Staples v. Schmid, supra*. Thus the act was within the scope of the agent's employment, and for the act the principal

would be liable (except for unreasonable acts of the agent) whether the act was lawful or unlawful.

But in (b) we enter the domain of the agent's attempt at a vindication of the law (*i.e.*, holding the suspect after his principal's property has been recovered.) In the absence of authorization the agent acts as a good citizen, rather than for his principal, and therefore the act is not within the scope of his employment. MECHEM, AGENCY (2nd ed.) §1974. In such a case, the principal has not employed the agent for the purpose of vindicating the law, and such act is in no way incident to the agent's employment, or within its scope.

—Lester C. Hess.

---

COUNTY COURTS — CONTRACTS — INTEREST OF MEMBERS THEREIN.—Plaintiffs seek an injunction to prevent the purchase of certain land by the county court for use as a site for courthouse and jail. It is shown that this land adjoins land owned by a member of the county court; that that member moved to purchase the land; and, that the vote on the question was two for and one against the purchase. It is alleged that the contract is illegal in contemplation of Ch. 39, §8b of the WEST VIRGINIA CODE (1923) which provides: "and it shall be unlawful for any member of the county court, or any other tribunal established in lieu thereof, to be directly or indirectly interested in any contract for furnishing supplies for the poor, or in any other contract for any purpose whatever, in which the county shall be in any way interested." *Held*, Where the county court proposes to buy land for public use, the fact that one of the members of the county court owns adjoining property will not disqualify him for voting for the purchase on the ground of interest, where it is not shown that the purchase will increase the value, or necessitate the purchase of his property. *Beall et al. v. Brooke County Court*, 138 S. E. 730 (W. Va. 1927).

It is submitted that this sort of statutory provision, so generally found in the laws of the states, is for the purpose of securing to the public as large a measure of freedom from political corruption as possible. *Lumber Co. v. McIntyre et al.*, 100 Wis. 245, 75 N. W. 964. If this is the reason for the law it might well be held that any interest of a member of the county court, direct or indirect, large or small, would