

VICARIOUS LIABILITY.

(a) Vicarious Liability for Agent

PLF claims that AGT [name of agent] was acting on DFT's behalf, and that DFT is legally responsible for AGT's actions or inaction. So, for each of PLF's claims of _____, you must consider whether PLF has proved that AGT acted as DFT's agent, and also that AGT had or appeared to have authority to act on DFT's behalf with respect to conduct at issue in this case.

PLF must prove that it is more likely true than not that DFT and AGT agreed that AGT would act as DFT's agent. The agreement can be written or oral, or it can be implied from the circumstances.¹

If you determine that AGT acted as DFT's agent, you will also need to determine if AGT acted with DFT's authority in this case. An agent may act with either actual authority or apparent authority. You must determine whether it is more likely than not that AGT acted with DFT's actual authority or apparent authority in order to determine whether DFT is responsible for AGT's actions or inactions.

To show that AGT acted with DFT's actual authority, PLF must show that DFT explicitly or implicitly – that is, through words or behavior – gave AGT permission to act on DFT's behalf. To show that AGT acted with DFT's apparent authority, PLF must show that DFT said or did something to indicate to others that AGT was acting on DFT's behalf.²

If you decide that AGT was acting as DFT's agent in connection with the events alleged in this case, and you also find that AGT had actual or

¹ *Fergus v. Ross*, 477 Mass. 564, 566–567 (2017); *Theos & Sons, Inc. v. Mack Trucks, Inc.*, 431 Mass. 736, 742 (2000); Restatement (Second) of Agency § 1 (1958); Restatement (Second) of Agency §§ 14, 15, cmts. a, b (1958).

² *Haufler v. Zotos*, 446 Mass. 489, 497 n.22 (2006). quoting from *Neilson v. Malcolm Kenneth Co.*, [303 Mass. 437](#), 441 (1939). *Licata v. GGNSC Malden Dexter LLC*, [466 Mass. 793](#), 801 (2014).

apparent authority to act on behalf of DFT, then DFT is responsible for things that AGT said, did, or didn't do on DFT's behalf.

(b) Vicarious Liability – Partnership

< if the case involves vicarious liability among partners, add the following three paragraphs.>

In this case, DFT and PTNR [name of partner] were both members of the same legal partnership, meaning they were each other's partners. PLF may prove that DFT is liable for the actions of PTNR in either of two ways.

First, PLF could show that the conduct of PTNR was within the scope of the partnership's purposes or activities and was motivated at least in part by an intent to serve or benefit the partnership.³

Second, PLF could instead show that PTNR acted with the partnership's actual or apparent authority. The concepts of actual authority and apparent authority, which I just described, apply to partnerships. If you determine that PTNR acted with DFT's actual or apparent authority, then DFT is liable whether or not PTNR acted to benefit the partnership.⁴

³ *Kansallis Fin. Ltd. v. Fern*, 421 Mass. 659, 662 & 670 (1996).

⁴ *Kansallis Fin. Ltd. v. Fern*, 421 Mass. 659, 670 (1996).