

Chapter 2

This chapter addresses fundamental concepts necessary for understanding the remainder of the book.

One concept is the different forms of business organizations. Other than in the case of a sole proprietorship, the organization and the individuals within it have separate identities. Ask the student: What is the difference between a contract entered into by a business entity that is a sole proprietorship and a business entity that is a corporation? Would they prefer to sign that contract as the sole proprietor or as a corporate officer?

The legal status of a business organization as a separate legal entity becomes relevant again in Chapter 8 on licensing.

The second basic concept is the distinction between an agent and an independent contractor. Ask the student: If you own a business, what would be the advantages or disadvantages of hiring *only* employees (i.e., agents) or *only* independent contractors? When would a mix of the two types of hires be appropriate (e.g., independent contractors for occasional projects requiring expertise, and employees for the company's on-going business).

A third basic concept is the general (default) rule of liability for a hirer. An employer is vicariously (strictly) liable for the torts of its employees committed during the course of their job. By contrast, the hirer of an independent contractor is presumptively not liable to those injured by the independent contractor's torts. (This last topic of the independent contractor rule is more fully addressed in Section 5.7.)

The concept of an independent contractor returns in Chapter 7 when describing the central role of the prime contractor on a project: its obligations to the owner and its responsibilities for the conduct of subcontractors (themselves, independent contractors). The distinction between agent and independent contractor is also important in that chapter in the discussion of construction management.

Answers to Chapter Questions

- 1.) Which type of organization is the simplest form of business and is used by many private practicing design professionals and contractors?
 - a. Sole Proprietorships
- 2.) In the court case of *Christopher v. Sinyard*, what were the factors that the court noted that lead to the ruling of piercing the corporate shield and holding the principals personal liable?
 - a. The court noted that the owners of this two-person construction company did not follow corporate formalities, they intermingled their personal money

- with that of the corporation, the corporation had no assets, and they promised the homeowners that certain repairs would be done while knowing that the company was out of money.
- 3.) Which form of business organization is a hybrid of the corporate and partnership forms, containing the pass-through income tax benefits of a partnership with the limited liability protections of a corporation?
 - a. Limited liability company (LLC).
 - 4.) What type of authority exists when the principal's conduct reasonably-but erroneously-leads a third party to believe that the principal consents to acts done on its behalf by the person purporting to act for it?
 - a. Apparent authority
 - 5.) What is the essence of an employment relationship?
 - a. The employer has the right to completely control what work the employee does and how the employee performs that work, and the employer may terminate the employee for disobedience. The employee is also paid net wages after the deduction of federal and state employment taxes.
 - 6.) What is an employee guaranteed under workers' compensation laws?
 - a. Employees are guaranteed compensation without regard to fault – meaning that they need not prove their employer was negligent and the employees are compensated even if they themselves may have been negligent.
 - 7.) If a construction company needs a flexible workforce and finds it may be more economical to maintain a minimum permanent staff of employees and supplement its labor pool only when awarded a large project, what type of company would that contractor utilize?
 - a. Employee Leasing Companies, also called Labor Brokers.
 - 8.) What is a Project Labor Agreement (PLA)?
 - a. A PLA is a project-specific labor agreement that ensures uniform terms and conditions of employment for all workers, whether union or nonunion, covering such matters as working hours, shift times, scheduling, holidays, overtime, and premium pay. All contractors on that project are subject to the same collective bargaining agreement.
 - 9.) What are the elements developed by the courts of the multi-factor test to determine whether a hired person or business is an agent or independent contractor?
 - a. Control of manner work is to be done; responsibility for result only; terms of agreement between the parties; the nature of the work or occupation; skill required for performance; whether one employed is engaged in a distinct occupation or business; which party supplies the tools; whether payment is by time or by job; whether work is a part of regular business of the employer, and also the right of employer to terminate the employment at any time.
 - 10.) What is the difference between an arm's-length transaction and a fiduciary relationship?
 - a. An arm's length transaction is one wherein the parties are expected to protect themselves and no general duty is imposed on one party to protect the other party, nor is any duty imposed to disclose essential facts to the other party. A fiduciary relationship is one of trust and loyalty where one person relies on the integrity and fidelity of the other and the latter must not take unfair advantage of the trust in them by benefiting at the expense of the former.