

**50.04 Issues and Burden of Proof — Principal Sued, But Not Agent — Agency Denied—
Principal Sued Under Respondeat Superior Only**

The defendant [principal's name] is sued as the principal and the plaintiff claims that [alleged agent's name] was acting as [principal's name]'s agent at the time of the occurrence. The defendant [principal's name] denies that [alleged agent's name] [was acting as his agent] [and] [was acting within the scope of his authority as an agent of the defendant] at the time of the occurrence. Plaintiff has the burden of proving that [[alleged agent's name] was the agent of defendant [principal's name]] [and] [[alleged agent's name] was acting within the scope of his/her authority as an agent of the defendant [principal's name]] at the time of the occurrence.

If you find that [alleged agent's name] [was the agent of the defendant [principal's name]] [and] [was acting within the scope of his authority as the agent of the defendant], at the time of the occurrence, then any act or omission of [alleged agent's name] at that time was in law the act or omission of the defendant.

If you find that [alleged agent's name] [was not acting as the agent of the defendant] [or] [was not acting within the scope of his authority as an agent of the defendant] at the time of the occurrence, then the defendant is not liable.

Instruction, Notes on Use and Comment revised July 2015.

Notes on Use

This instruction should be used only where a principal is sued for the acts of an alleged agent who is not sued and the existence or scope of the agency is denied. If the negligence charged includes acts or omissions prior to the act or omission at the time of the occurrence, then the phrase “at the time of this occurrence” should be modified to read “at and before the time of this occurrence.”

This instruction should not be given where there is no issue of fact as to the agency or where the alleged agent is also a party defendant.

This instruction should be used along with IPI 21.01.

Comment

This instruction has been modified in light of *Powell v. Dean Foods Co.*, 2013 IL App (1st) 082513-B, 7 N.E.3d 675, 379 Ill.Dec. 837 (2013).