

103.50 AGENCY - DEPARTURE FROM EMPLOYMENT.

The defendant (*name defendant*)<sup>1</sup> contends that at the time of [the collision] [(*describe other occurrence*)] (*name agent*) had departed from the course and scope of *his* employment and was not then acting as the defendant's agent.

I have already instructed you as to when an agent is acting within the course and scope of *his* employment; and it follows from what I have said that *he* is not so acting if *he* is engaged in some pursuit of *his* own or is carrying out some purpose of *his* own. While not every interruption of the strict performance of duty is such an interruption of the course and scope of employment as will suspend the principal's responsibility, if there is a total departure from the course and scope of employment, the principal is no longer answerable for the conduct of the agent.

Once there has been such a total departure, the principal does not again become responsible until the agent returns to the performance of *his* duty- that is, returns to the place of *his* departure or arrives at some other place where the performance of *his* duty would take *him*.

The burden is not on the defendant to prove that (*name driver*) had totally departed from the course and scope of *his* employment and had not returned to performance of *his* duty. Rather, the burden is on the plaintiff to prove, by the greater weight of the evidence, that (*name driver*) was acting as the agent of the defendant (*name defendant*) at the time of [the collision] [(*describe other occurrence*)].<sup>2</sup>

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1. A claim by plaintiff that his agent departed from employment is likely to be rare. Should it be made, this instruction must be adapted accordingly.

2. See *Hinson v. Chemical Corp.*, 230 N.C. 476 (1947).