



# Would These Star Wars Characters Be Contractors Or Employees Under The New “ABC” Test?

Insights

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May the 4th has become known as Star Wars Day, given the movie franchise’s most famous tag line. Today provides an opportunity for us to examine a recent employment law development of massive significance—a great disturbance in the Force, if you will—and how it would impact Star Wars characters if they were subject to modern misclassification principles.

A short time ago (Monday, to be exact), in a location not too far away (San Francisco), the California Supreme Court issued the monumental Dynamex v. Superior Court decision, raising the bar for businesses of all stripes when it comes to classifying their workers as independent contractors. As we noted in a blog entry, this decision will have planet-shattering implications for businesses operating in the gig economy. The California Supreme Court installed the “ABC” test for determining misclassification disputes. Under this new test, the burden will now be on the business to demonstrate that every worker is not an employee by proving all three of these elements:

1. the worker is **free from the control and direction** of the hirer in connection with the performance of the work, both under the contract for the performance of such work and in fact;
2. the worker performs work that is **outside the usual course** of the hiring entity’s business; and
3. the worker is **customarily engaged in an independently established trade, occupation, or business** of the same nature as the work performed for the hiring entity.

So let’s take a look at how two characters from a few of most recent movies would likely be characterized under this new test.

## Rey (The Force Awakens)

In *The Force Awakens*, Rey is a scavenger, pure and simple. Alone on an isolated desert planet, she spends her days in a junk field scavenging decaying starship wrecks for valuable technology. Once she acquires a piece of property, she travels to an outpost to sell her wares to a junk dealer named Unkar Plutt. Before offering her goods for sale or trade, Rey first visits a cleaning station to ready her scavenged items. According to The Force Awakens Visual Dictionary, Plutt rents the cleaning stations to scavengers like Rey and deducts the rental costs from the price he pays for the goods. Once presentable, Rey brings her goods to Plutt, who unilaterally sets a take-it-or-leave-it price for the merchandise. If Rey agrees, she receives payment in the form of food portions, which appear to be the main form of currency on the desolate planet.

If Rey were to bring a misclassification claim against Plutt's business (let's call it "Junkboss Of Jakku") using the ABC test, she might succeed in being classified as an employee. Junkboss would probably win **Prong A**, as it appears as if Plutt steers clear of controlling or directing the way Rey does her business. She owns her own equipment used to get the scavenging done (her trusty quarterstaff, her personal protective gear, her repelling equipment, etc.), and Plutt doesn't seem to require any sort of dress code for his workers. Moreover, much like a typical gig economy worker, she seems to come and go as she pleases, choosing to do work of her own accord and without a set schedule. But **Prong B** might be harder for Plutt to defeat. We don't know much about Junkboss of Jakku, but it appears it operates as a salvage and reclamation yard. No doubt there is more to the business than what we see in the movie—Plutt obviously profits from the goods he acquires from his scavenger workers, most likely moving them as part of an intergalactic trading ring—but no doubt that the acquisition of the goods is a big part of what he does. Therefore, Rey and her interstellar attorneys would contend that the work she performs is not outside the usual course of Plutt's business but instead an integral part of it. Plutt might argue that Junkboss of Jakku is merely the platform that connects willing scavengers with a trading opportunity, but California courts might look skeptically at such an argument. Finally, **Prong C** might also be difficult for Plutt to overcome. Although he would not necessarily need to prove that Rey has incorporated her own business, or advertised her services, or received a First Order scavenging license, or taken other similar steps in order to prove that she is customarily engaged in an independently established trade, he would need to make some sort of showing. And we see no evidence that Rey does scavenging work for any other business on the planet. It seems illogical that Plutt would be burdened with an employee misclassification conclusion for matters outside of his control, but because he can't control what Rey does on her free time and whether she performs scavenging work for other junk dealers, the new test adopted by the California Supreme Court might doom him.

### **Chewbacca (Solo: A Star Wars Story)**

From the previews, it appears that Chewbacca will play a central role in the soon-to-be-released standalone movie centering on Han Solo, Lando Calrissian, and the Millennium Falcon. We know from the prequels that Chewbacca got his start as a warrior during the Clone Wars, but he eventually became the first mate aboard Han Solo's spaceship. In this role, he helped Han with his smuggling operations. Although Han and Chewie were best friends, it's not out of the realm of possibility to think that the Wookiee might file a legal claim against Solo for misclassification, claiming that he's actually an employee of the Millennium Falcon and thus entitled to wage and hour protections. And if he were to bring such a claim, it might be very difficult for Han Solo to prevail. Under an examination of **Prong A**, we know that there are plenty of times that Han Solo directed and controlled the work that Chewbacca did as a crew member of the Millennium Falcon. Whether it's directing flight controls, forcing the Wookiee to dive into a garbage chute during a rescue mission, controlling the way in which he maintains and repairs the ship, or instructing him on the best way to steer a shuttle, Solo seemed to take a perverse sort of pleasure in ordering around his first mate. As for **Prong B**, Solo was a smuggler and that was the main function of the Millennium Falcon (witness its secret smuggling compartments). Chewbacca's work was aiding Han in his smuggling operations—which, although involved some diversions and side-trips across the galaxy—Solo did for

decades. It would be hard to argue that Chewie's work wasn't outside the usual course of Han's business. And as for **Prong C**, there is zero evidence that Chewbacca was engaged in an independently established trade. Once he joined Han as his first mate, that was his exclusive role and he never seemed to veer from it. So, again, under California's new test, it appears that Chewbacca would also win employee status.

What's the solution? Gig businesses in California will be sitting on pins and needles waiting to see how lower courts will interpret and apply the ABC test to their industries. The first opportunity may come sooner rather than later, as the plaintiff in the recent Grubhub misclassification trial has indicated that he will seek reconsideration of the matter in light of this new ruling. But court rulings are sometimes clumsy and random, so California gig companies may be forced to wait for legislation to clarify their workers' status, which might be an elegant solution for a more civilized age.

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