

# Agency

by Nigel Haines

Without agents, successful trade and commerce would probably not happen; agents are essential to business.

So, what do Agents do?

*Agents have the power to act as the legal representative on behalf of another party - the principal – and bring the principal into a legal relationship with a third party.*

This relationship exists in many areas from shop assistants selling their employers' goods to auctioneers acting on behalf of an owner of a property or goods in a sale to a Director representing a company.

As such agents have power to sell and dispose of their property and make contracts on their principals' behalf.

Agents can also receive goods or property, for example, payment for property sold on a principals' behalf.

There are six ways in which agency can be created, by:

- express authority
- implied authority
- apparent authority
- necessity
- statute
- ratification

**Aim: To practise the skills of**

- **guessing the meaning of specific vocabulary items related to the law of agency**
- **reading and understanding information about the differences between the various types of agencies**
- **using the information (including selected cases) to give legal advice about examples**
- **analysing the roles and duties of an agent and principal**
- ***optional* – writing a letter of advice**

**NOTES:**

- **there is a chart at the end of these notes which you might find useful to give to students to show the relationship between the Principal, the Agent and a Third Party**
- **this is quite a complex area of law and the chart format in Stage 2 is to simplify it without reading large amounts of text**

**Level:** Upper Intermediate and above

**Student profile:** It is envisaged that students will have a better than basic knowledge of their own country's legal and constitutional system

The lesson is in 5 stages and should take *at least* 90 mins

## Stage 1

**Procedure:** Students work out meanings of essential vocabulary used in this lesson.

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**Before you look at the following chart can you match these words to their correct definition:**

<b>express authority</b>	where someone purports to act as an agent, the principal will not be bound unless they subsequently ratify them
<b>implied authority</b>	for example, it is impossible for the 'agent' to get the principal's instructions
<b>apparent authority</b>	created by legislation
<b>necessity</b>	the principal has held out the agent as having authority
<b>statute</b>	by giving express instructions
<b>ratification</b>	the principal will be taken to have given actual authority

**Answers:**

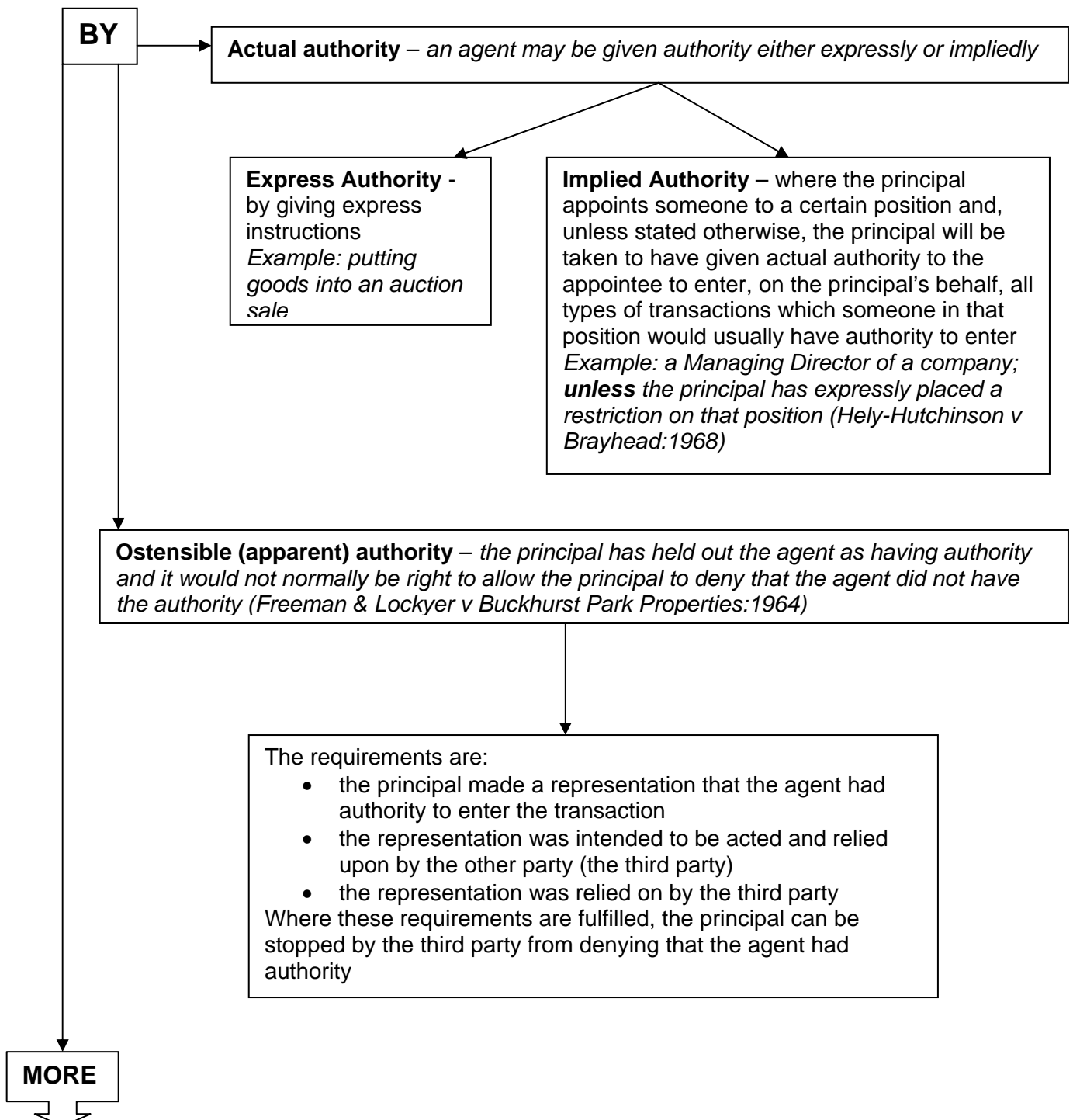
<b>express authority</b>	<i>by giving express instructions</i>
<b>implied authority</b>	<i>the principal has held out the agent as having authority</i>
<b>apparent authority</b>	<i>the principal will be taken to have given actual authority</i>
<b>necessity</b>	<i>for example, it is impossible for the 'agent' to get the principal's instructions</i>
<b>statute</b>	<i>created by legislation</i>
<b>ratification</b>	<i>where someone purports to act as an agent, the principal will not be bound unless they subsequently ratify them</i>

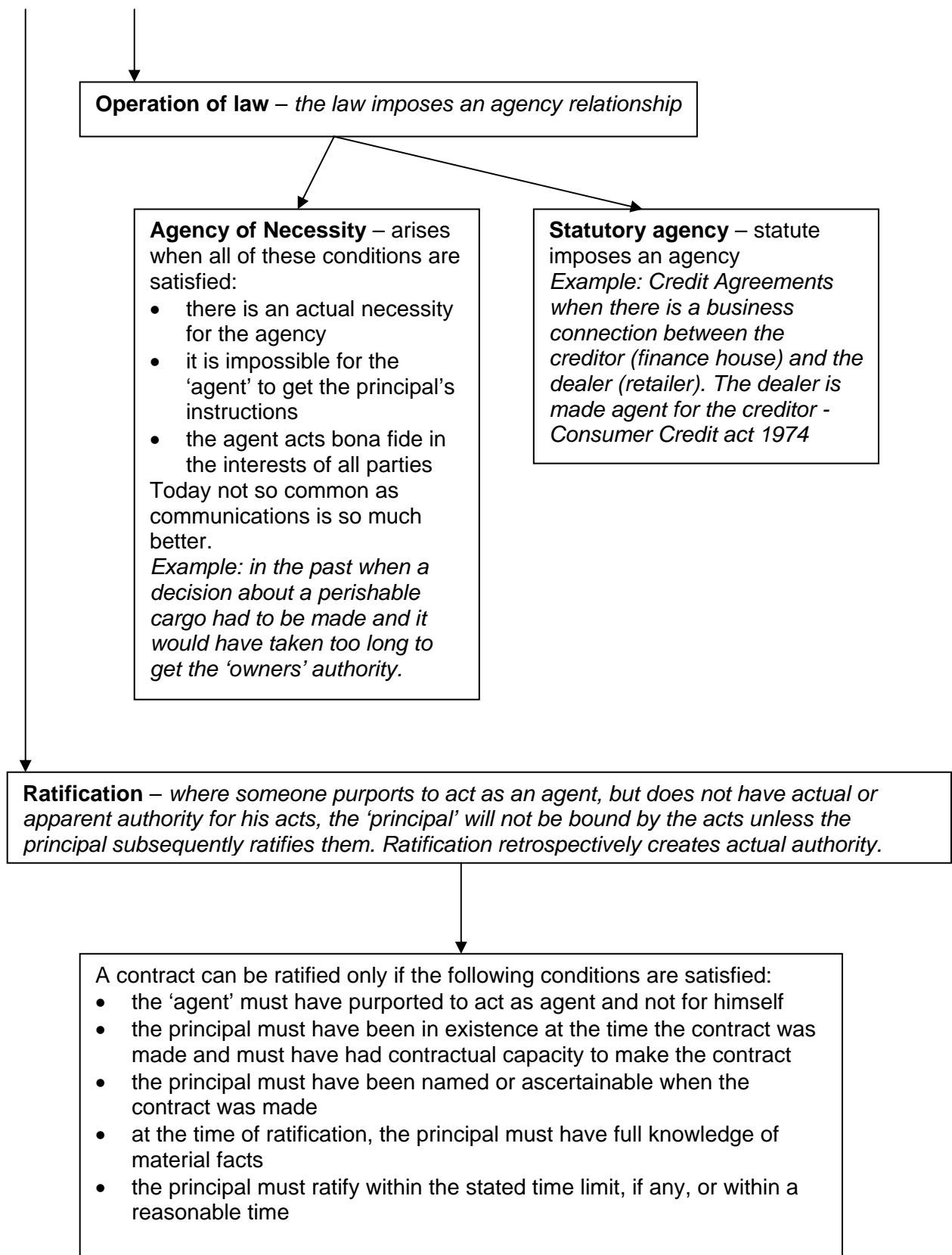
## Stage 2

**Procedure:** This chart is to be used as a way of further illustrating the differences between the different types of agency

**Study these charts carefully before moving on to the next stage**

### The creation of an agency





### Stage 3

**Procedure:** The students could either deal with all the examples or they could be cut up and distributed to individual groups.

At the end of this stage there are some relevant cases, which you might care to use – cut up possibly for matching or as a single sheet - particularly with weaker groups.

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#### **Suggested answers:**

*A company secretary of a company made a number of contracts over a period of time ordering minicabs to collect and take people to and from the Airport. He was in fact making these contracts to convey relatives of his. He was, however, ordering the cars in the name of his company.*

What do you think would be the outcome of a case taken by the minicab company for non-payment of the contracts by the company on the basis that the Director did not have the authority to act as its agent in this connection?

**He was ordering the cars in the name of the Company.  
The Company is liable to pay for the cabs because the making of such contracts was within the usual - and therefore ostensible – authority of a Director.**

Panorama Developments v Fidelis Furnishing Fabrics: 1971

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*A horse arrived at a railway station but nobody picked it up. The railway company felt obliged to feed the horse and put it into a stable. When the owner collected the horse he refused to reimburse the railway company.*

What would be your advice to the railway company, were they acting as agents for the owner?

**The owner would have to pay for the feeding and stabling as there was an agency of necessity**

Great Northern Railway Co v Swaffield: 1874

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*Andrew Smith was authorised to buy wheat on behalf of a partnership at a certain price. He bought wheat at a greater price, by telegram, intending it to be for the partnership. He did not tell the corn merchant that he was buying the wheat for the partnership, but this was always his intention. The partnership ratified the contract the following day. Later the partnership refused to accept delivery of the wheat.*

Was the ratification effective? What would be your advice?

**The ratification was not effective because the agent had not made it plain that he was acting as an agent when he bought the wheat**

*A wife agreed to sell her husband's house to the plaintiff. She did not have any authority to do this and so at this stage the contract was not binding on the husband. However, the husband then allowed the plaintiff's architect to work in the house and he allowed the plaintiff's builders to repair damage caused by damp. When the husband later sold the house to someone else, the plaintiff sued, claiming that the wife was the husband's agent, and that there was therefore already a binding contract to see the house.*

Was the wife the husband's agent?

**By implied authority the wife was the husband's agent. The husband had made a representation that his wife had the power to sell the house, the plaintiff had relied on this representation, and so the husband could not later deny that his wife had the power to sell the house.**

## Relevant cases

### **Hely-Hutchinson v Brayhead:1968**

The directors of a company allowed the Chairman to act as if he was Managing Director (MD) of the Company. The Chairman had never been appointed MD so had no express authority to bind the company, but the Court held that that the Chairman did have implied authority. The company, by its conduct, had impliedly agreed with the Chairman that he had the authority of a MD.

### **Great Northern Railway Co v Swaffield: 1874**

Swaffield arranged for a horse to be sent by train. When arrived it at the station, nobody picked it up and the railway company felt obliged to feed the horse and look after the horse as they could not contact Swaffield that night. Swaffield eventually collected the horse, but refused to reimburse the railway company for their expenses. The courts held that as there was an agency of necessity the owner had to reimburse for the expenses.

### **Keighley Maxted & co v Durant: 1901**

X was authorised to buy wheat on behalf a partnership at a certain price. He bought wheat at a greater price, by telegram, intending it to be for the partnership. He did not tell the corn merchant that he was buying the wheat for the partnership, as was his intention. The partnership ratified the contract the following day and later refused to accept delivery of the wheat. The court held that the ratification was not effective as the agent had not made it plain that he was acting as an agent when he bought the wheat.

### **Panorama Developments v Fidelis Furnishing Fabrics: 1971**

A company secretary hired luxury cars in the company name. The hirers supposed that the cars were being used to transport customers of the company, but in fact the secretary was using the cars for his own purposes. When the hirers sued for their hire fees it was held that the company was liable as the Secretary did have apparent authority to hire the cars on behalf of the company.

**Freeman & Lockyer v Buckhurst Park Properties:1964**

The Directors of a company formed to develop land. One of the Directors, Mr K, acted as if he had been appointed as Managing Director (MD). The other Directors knew this and did nothing about it even though he had never been a formal appointment. Mr.K made a contract engaging a firm of architects to do work on behalf of the company. When the architects sued the company for their fee, the company argued that Mr.K was not acting as their agent had no authority to engage the architects. Therefore the contract was not binding on the company.

The Court held that a MD would normally have the authority to employ architects and the company had given the impression that Mr.K was MD. Therefore Mr. K had the apparent or ostensible authority to bind the company and as the company had held him out to have such powers as if he was MD.

**Stage 4**

**Procedure:** Students divide duties and rights of an agent. Hopefully students having a clearer view of agency this exercise should not be too challenging.

**What are the duties of an agent to their principals and the agent’s rights?**

**Divide the list of duties and rights below into the appropriate column – careful, there are two that are the principal’s duties to the agent:**

1. exercise due care and diligence
2. *indemnify the other for all acts lawfully done and any liabilities incurred*
3. to claim indemnity for all legitimate expenses incurred
4. not to delegate without permission
5. claim remuneration or commission for services rendered
6. to perform and carry out instructions personally
7. to show an appropriate amount of skill and care
8. *pay the agreed remuneration or commission*
9. not to permit a conflict of interest to arise
10. hold the property of the principal until a debt is paid – a lien
11. obey instructions of the principal
12. not to disclose or make use of information obtained

**Answers:**

Principal's duties in italics

RIGHTS	DUTIES
5. claim remuneration or commission for services rendered 3. to claim indemnity for all legitimate expenses incurred 10. hold the property of the principal until a debt is paid – a lien	1.exercise due care and diligence 4. not delegate without permission 6. to perform and carry out instructions personally 7. to show an appropriate amount of skill and care 9. not to permit a conflict of interest to arise 11. obey instructions of the principal to account 12. not to disclose or make use of information obtained

## Stage 5

**This is an additional optional writing task that you may choose to give to students. They need to plan it carefully and you may wish to explore with students the various possibilities based on the law of agency in this lesson.**

Mr Rico tells his chauffeur, Bill, to sell his Rolls Royce as he wants to buy a new one.

Bill says he thinks the car is worth about £50,000. Mr Rico says he wants £70,000, but will accept £60,000.

Bill decides that he will sell the car at auction with a reserve of £55,000. The auctioneer will receive a commission of 10% of the selling price.

At the auction the car does not achieve the reserve, but later the Auctioneer sells the Rolls Royce to a dealer for £57,000.

What is the legal position of Mr Rico?

Imagine you are the solicitor acting for Mr Rico. What is your advice?

On the basis of what you have studied so far write a letter to Mr Rico.

### **Ask students to think about:**

- *the relationship between Mr Rico and Bill, Bill and the auctioneer and the auctioneer and Mr Rico*
- *what type of agency existed (if any)?*
- *what type of authority any of the agents had or the parties dealing with them thought they had?*
- *have all the rights and duties been followed?*
- *what contracts, if any are binding, and who are they binding on?*
- *who owes who, and what do they owe them?*



**Agency** – the relationship between the Principal, the Agent and a Third party

