

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 property, for example payment for property sold, on a principals' behalf.

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

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

Stage 1

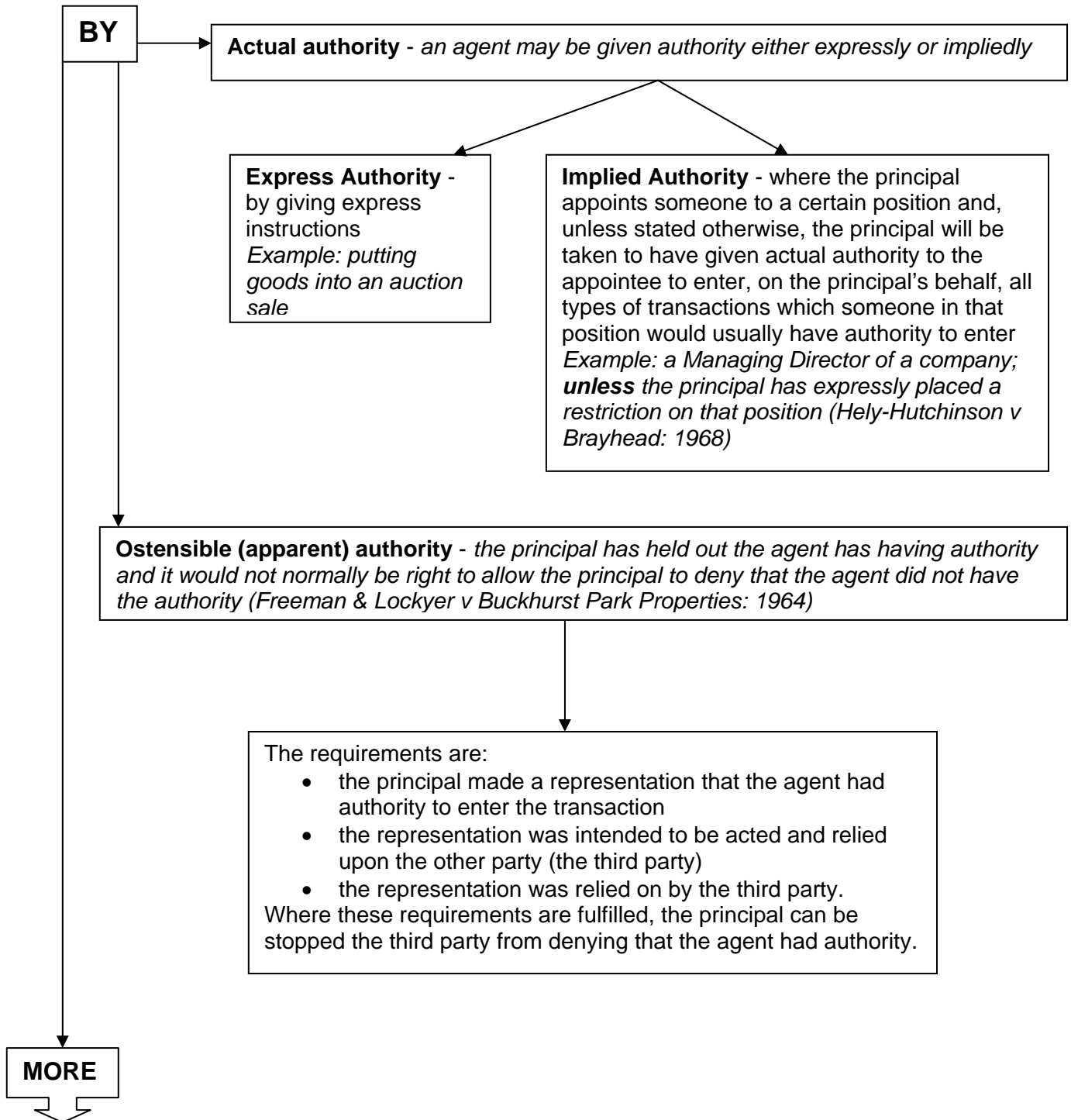
Before you look at the following chart, match these words to their correct definition.

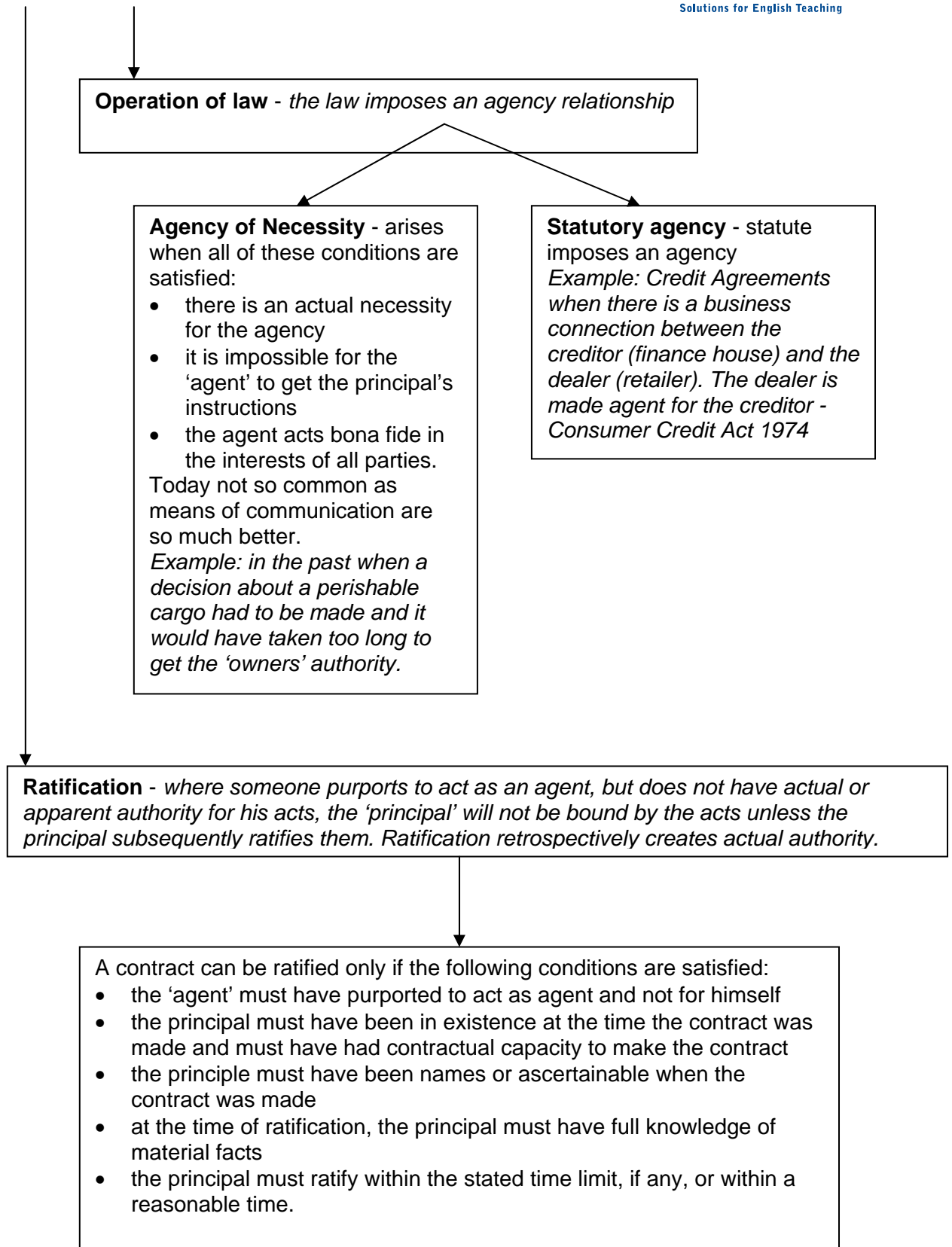
express authority	where someone purports to act as an agent, the principal will not be bound unless they subsequently ratify that person
implied authority	for example, its is impossible for the 'agent' to get the principal's instructions
apparent authority	created by legislation
necessity	the principal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

Stage 2

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

The creation on an agency





Stage 3

Read these examples and on the basis of the above chart give your advice.

1

The 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 payment 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?

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2

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, refused to reimburse the railway company.

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

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3

Andrew Smith was authorized 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?

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4

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?

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Stage 4

**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 - *be 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

RIGHTS	DUTIES

Stage 5

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.

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