Commercial Law Concentrate: Law Revision and Study Guide (6th edn)
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12. The creation of agency and the agent's authority

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Abstract

Each Concentrate revision guide is packed with essential information, key cases, revision tips, exam Q&As, and more. Concentrates show you what to expect in a law exam, what examiners are looking for, and how to achieve extra marks. This chapter focuses on the creation of agency and its three main parties: the agent, the principal, and the third party. The primary purpose of the agent is to bring the principal and the third party into direct contractual relations, with the principal taking on the rights and liabilities created by the contracts, provided the agent had authority to act. The chapter looks at several kinds of agent's authority, including actual authority, apparent authority, and usual authority, and also considers agency of necessity as well as cases where the principal may ratify a transaction.

Keywords: agency, agent, principal, third party, contracts, actual authority, usual authority, agency of necessity, apparent authority, ratification

Key facts

- The word 'agent' has a specific legal meaning and the law attaches special rules to the relationship of agency.
- Agency is crucial for the commercial world to operate.
- An agent can alter the legal position of their principal, most notably by entering into contracts on their principal's behalf.
- There are three main parties in the case of agency: the agent, the principal, and the third party.
- Broadly, the principal will take on the rights and liabilities created by contracts made by the agent, provided the agent had authority to act.

- The authority of the agent is therefore critical in understanding whether or not the principal will be bound by their acts.
- Authority need not be with the principal's consent or agreement.
- A principal may, in certain circumstances, ratify the acts of an agent who is not authorised to act.

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Introduction

The primary purpose of agency is for the **agent** to bring the **principal** and the third party into direct contractual relations. The negotiations are between the agent and the third party, but the contract is formed between the principal and the third party. This can be seen in Figure 12.1 and is encapsulated by the Latin maxim *qui facit per alium facit per se* ('He who acts through another acts for himself').

Figure 12.1 The agency relationship

The words 'agent' and 'agency' have specific legal meanings. They must not be confused with the words as used in everyday language, such as 'estate agent' or 'Sony agent', which are unlikely to be agents in the strict legal sense. An estate agent will generally not have the authority, without more, to bring the seller and buyer into direct contractual relations so as to conclude the contract on behalf of a seller. A shop displaying a notice saying, for example, 'Sony agent' is merely an authorised distributor or reseller of the manufacturer's goods rather than an agent in the legal sense.

Looking for extra marks?

You should explain that the word '**agent**' has a specific legal meaning and that the misuse of the word is nothing new. In ***Kennedy v De Trafford (1897)***, Lord Herschell stated that:

> No word is more commonly and constantly abused than the word 'agent'. A person may be spoken of as an 'agent', and no doubt in the popular sense of the word may properly be said to be an 'agent', although when it is attempted to suggest that he is an 'agent' under such circumstances as create the legal obligations attaching to agency that use of the word is only misleading.

The nature of agency

Many contracts are concluded by **agents**. This is because many contracts are made with limited companies which, being separate legal personalities, cannot act without the intervention of a human being. Thus, the sales assistant in your local store will act as agent when making a contract with the store (the **principal**). Even if the contract is not made with a limited company, unless the owner makes the contract personally it will be made by a member of their staff who will, in law, be an agent. Partners in a legal partnership will be agents for the partnership and for each other when transacting business on behalf of the partnership.

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The creation of agency

In the majority of cases, agency is the result of an agreement between **principal** and **agent**. This agreement may be express or implied. The majority of agency agreements will be contractual but, as we will see, this is not always necessary. For example, agency can arise as a matter of law or may be implied from the circumstances of the case. The same principles might also show that an agency relationship does not arise. For example, in ***Spearmint Rhino Ventures (UK) Ltd v Commissioners for HM Revenue and Customs (2007)***, Mann J held that the lap dancers who entertained customers at Spearmint Rhino's clubs were acting on their own behalf as principals and not as agents for the club when negotiating and receiving fees from customers. Accordingly, the club owner was not liable to account for VAT on the supply of the services provided by the dancers.

Agency may also be imposed where one party has acted on behalf of another during an emergency. This is known as 'agency of necessity' and will be considered later.

In the majority of cases, agency may be created without any formalities. This means that (unless exceptions apply) an agency may be created informally, even where the purpose of the agency is for the agent to perform some act on behalf of the principal which itself must conform to some formality such as where the act must be in writing or evidenced in writing.

Looking for extra marks?

You should explain that as it is the **principal** who is contracting with the third party, the principal themselves must possess the legal capacity to perform the transaction that their **agent** performs on their behalf. This simply means that provided the principal has capacity to act, then it does not matter that their agent does not. Therefore, a principal, with full capacity, may perfectly properly appoint a minor to contract on their behalf, even though the minor themselves lacks capacity in their own right.

The agent's authority

Revision tip

Questions on agency tend to focus on the extent of the **agent's** authority and how this affects any transactions made by them for their **principal**. You must be clear in your answer how the agent's authority arises, what kind of authority they have, and how this might affect the transaction concerned.

An **agent** can only bind their principal if they have some kind of authority to do so, otherwise the **principal** will not be bound to the contract with the third party. Provided there is some authority for the agent to act, then the principal will be bound to the third party and will be liable to them for their agent's acts.

p. 196 ↵ Authority is a legal concept. You should note that authority might exist even without the consent of the principal. It is important, therefore, to consider on what basis the agent has the authority to bind their principal and what happens where they act without authority or where they exceed their authority.

There are several kinds of authority which will be discussed in the following sections. It is important to appreciate that an agent's authority can exist either with or without the principal's consent or agreement (see Figure 12.2).

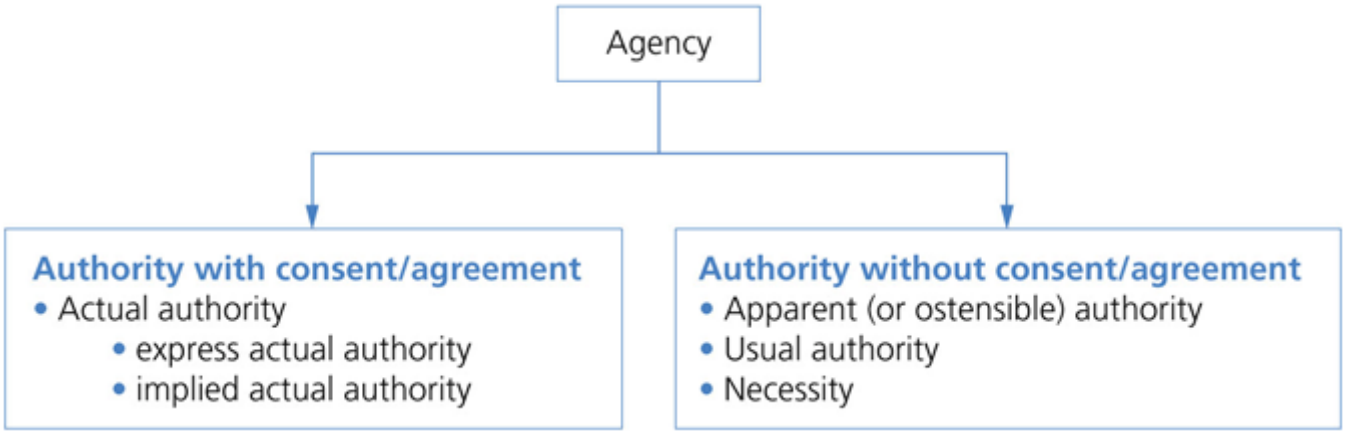

Figure 12.2 The agent's authority

Actual authority

Actual authority is where the **principal** gives the **agent** actual authority to enter into the arrangement with the third party on their behalf. This can either be express or implied.

Express actual authority

This is the most straightforward situation and arises where the relationship of agency is created by express agreement. This agreement, which need not be in writing, should also set out the scope of the agent's authority. In ***Freeman & Lockyer v Buckhurst Park Properties (Mangal) Ltd (1964)***, Diplock LJ explained actual authority as:

> … a legal relationship between principal and agent created by a consensual agreement to which they alone are parties. Its scope is to be ascertained by applying ordinary principles of construction of contracts, including any proper implications from the express words used, the usages of the trade, or the course of business between the parties.

The words 'any proper implications' refer to the other kind of actual authority, 'implied actual authority'.

Implied actual authority

As the word 'implied' suggests, this kind of authority comes about by implication rather than by express words. It is still actual authority in that there is agreement between principal and agent that the latter shall have authority, but the *scope* of the authority will be more difficult to determine. It will be left to the court to decide whether or not it had been agreed between ↵ the principal and the agent that the agent was authorised to do the act in question. It typically arises out of the *relationship* between principal and agent or as a result of the conduct of the parties. This can be seen from the following case:

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Hely-Hutchinson v Brayhead Ltd [1968] 1 QB 549

The chairman of a company acted as its managing director, although he had never been appointed to that role. He signed, on behalf of the company, contracts of guarantee and indemnity in favour of a third party's debts. When the company tried to avoid this liability, it was held that it was bound by the contracts because it had, by conduct, granted to the chairman the implied authority of a managing director to bind the company in such a way. Lord Denning MR explained that:

> *It is implied when it is inferred from the conduct of the parties and the circumstances of the case, such as when the board of directors appoint one of their number to be managing director. They thereby impliedly authorise him to do all such things as fall within the usual scope of that office* [emphasis added].

Looking for extra marks?

It will be impressive to demonstrate your understanding of the concept of implied actual authority by referring to the above decision of Lord Denning and, in particular, to quote the words emphasised in italics.

You should note that where the **principal** has expressly instructed an **agent** not to act in a particular way, then the agent will not have implied actual authority to act in that way as it is in direct contravention of the principal's instructions (***Waugh v HB Clifford and Sons Ltd (1982)***).

Apparent (also referred to as ostensible) authority

In ***Freeman & Lockyer v Buckhurst Park Properties (Mangal) Ltd (1964)***, Diplock LJ defined **apparent authority** as:

> a legal relationship between the principal and the [third party] created by a representation, made by the principal to the [third party], intended to be and in fact acted upon by the [third party], that the agent has authority to enter on behalf of the principal into a contract of a kind within the scope of the 'apparent' authority, so as to render the principal liable to perform any obligations imposed upon him by such contract .... The representation, when acted upon by the [third party] by entering into a contract with the agent, operates as an estoppel, preventing the principal from asserting that he is not bound by the contract. It is irrelevant whether the agent had actual authority to enter into the contract.

Looking for extra marks?

You should demonstrate your understanding of **apparent authority** by explaining that this is authority *without* the consent or agreement of the **principal**. It arises merely as a result of what is deemed ↵ to be a representation made by the principal to the third party to the effect that the **agent** has authority to act on their behalf whereas in fact they lack the authority to so act. Once the third party has this impression of authority, and acts in reliance on it, then the principal is estopped from denying that the agent has their authority and therefore will be bound by the agent's act.

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Whereas **actual authority** derives from an *agreement* between the principal and the agent, apparent authority arises where the principal makes a representation so as to give an impression to the third party that the agent has authority to act on their behalf. In other words, apparent authority arises where the third party has been induced into entering the contract with the principal by an agent who *appears* to have authority to act but in fact has no such authority.

Apparent authority is not authority in the strict meaning of the word. It is no more than an illusion of authority created by the principal's representation. It is the authority of the agent as it *appears* to the third party. It was described by Toulson J in ***ING Re (UK) Ltd v R&V Versicherung AG (2006)*** in the following terms:

> The doctrine of apparent or ostensible authority is based on estoppel by representation. Where a principal (P) represents or causes it to be represented to a third party (T) that an agent (A) has authority to act on P's behalf, and T deals with A as P's agent on the faith of that representation, P is bound by A's acts to the same extent as if A had the authority which he was represented as having.

Where apparent authority arises, the principal is estopped from denying that the agent had the authority to make it, with the result that the contract with the third party will be enforced against the principal. In other words, the principal is prevented (estopped) from asserting that they are not bound by the contract. The agent need not be aware of the existence of the representation, although they are likely to be aware of it.

Looking for extra marks?

You should explain that in ordinary business dealings, the third party will hardly ever rely on the 'actual' authority of the agent. The third party's information as to the authority will be derived either from the **principal** and/or the **agent**. This is because they alone know what the agent's actual authority is. All that the third party can know is what they tell them, which may or may not be true.

The representation that creates **apparent authority** may take a variety of forms. The most common is representation by conduct, that is, by permitting the **agent** to act in the conduct of the **principal's** business with third parties. By so doing, the principal is representing that the agent has their authority to enter into contracts with third parties of the kind which an agent usually has **actual authority** to make.

p. 199 ↵ There are three requirements for apparent authority to exist (per Slade J in ***Rama Corporation Ltd v Proved Tin and General Investments Ltd (1952)***):

1. The **principal**, or someone authorised by them, must have represented to the third party that the **agent** had authority to act on behalf of the principal. This representation, which may be of fact or law, may be made by words or conduct or may be implied by previous dealings between the parties or from the principal's conduct. In ***Armagas Ltd v Mundogas SA (1986)***, the House of Lords confirmed that the representation must come from the principal and not from the agent.
2. The third party must have relied on the representation.
3. The third party must have altered their position, although not necessarily to their detriment. This third requirement appears nowadays to be satisfied simply by the third party entering into the contract itself (see, e.g. the judgment of Diplock LJ in ***Freeman & Lockyer v Buckhurst Park Properties (Mangal) Ltd (1964)***).

A situation might arise where the third party knows, or ought to know, that the **agent** has no authority to do certain things. In this situation, it will be unlikely that the agent will have **apparent authority** to carry out those things.

First Energy (UK) Ltd v Hungarian International Bank Ltd [1993] 2 Lloyd's Rep 194

The bank appointed a senior manager (the **agent**) to one of its branches. The manager told the third party customer that he did not have the authority to grant a loan facility and that only his head office had such authority. Some time later, he told the customer that head office had authorised the loan. In fact, the manager had been mistaken and the head office had not granted the loan. The Court of Appeal held that by the bank appointing the senior manager to his role, the bank had represented to the customer that the manager had **apparent authority** to communicate to his customer the lending decisions of his head office. He did not have authority to grant the loan himself and made this plain to his customer. This means that had he told his customer that he had himself authorised the loan, no question of apparent authority would have arisen.

Revision tip

You should always consider whether or not the **agent** has **actual authority** (express or implied) before going on to consider other kinds of authority. If the agent has actual authority, you should then explain that there will generally be no need to consider the other kinds of authority.

But when will a third party be put on notice that the agent lacks authority? Despite some earlier uncertainty, the orthodox position is that a third party's reliance on an agent's apparent authority would be displaced if there are reasons to arouse the suspicion of the third party ↵ as to whether the agent has actual authority but then the third party fails to make enquiries which would have been made by a reasonable person. In ***Thanakharn Kasikorn Thai Chamkat (Mahachon) v Akai Holdings Ltd (2010)*** in the Hong Kong Final Court of Appeal, Lord Neuberger moved away from this position by stating that a third party's reliance on an agent's apparent authority would only be lost if the third party had actual knowledge of the agent's lack of actual authority or if the third party's belief in the agent's authority was dishonest or irrational. This move from a reasonableness standard to a more stringent one based on dishonesty or irrationality has been strongly criticised, both academically and by the Privy Council, in ***East Asia Co Ltd v PT Satria Tirtatama Energindo (2020)*** which reaffirmed the orthodox approach noted above.

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Usual authority

Whether 'usual authority' exists as a kind of authority in its own right has been the subject of much debate. In the majority of cases, usual authority can be seen as emanating from other kinds of authority, particularly implied **actual authority** and **apparent authority**, and is little more than an extension of these types of authority.

We saw under 'Implied actual authority', pp 196–197, that in ***Hely-Hutchinson v Brayhead Ltd (1968)***, Lord Denning MR stated that when the board of directors appoints one of their number to be managing director 'they thereby impliedly authorise him to do all such things as fall within the usual scope of that office'. Therefore, in cases where an agent belongs to a particular class of trade or profession, they will normally have the usual authority to do whatever is necessary in order for them to fulfil their express authority as **agent**.

A case that illustrates usual authority in the context of **apparent authority** is ***Panorama Developments (Guildford) Ltd v Fidelis Furnishing Fabrics Ltd (1971)***.

Panorama Developments (Guildford) Ltd v Fidelis Furnishing Fabrics Ltd [1971] 2 QB 711

A company secretary hired vehicles purportedly for his company but which were in fact for his own private use. The company refused to pay, arguing that it was not bound by the hire contracts. The Court of Appeal held that as company secretary he had **apparent authority** to enter into contracts that were connected with the administrative side of the business from which he had usual authority for tasks such as the hiring of vehicles. Because these sorts of contracts were within the usual authority of a company secretary, the company was therefore bound by these contracts and liable for the debt.

These cases illustrate usual authority as extensions of implied **Actual authority** and **apparent authority**. But does usual authority exist as an independent category of authority? The importance of this question can be seen in ***Watteau v Fenwick (1893)*** (the facts of which can be found under 'Key cases', p 205), where the court had to consider whether an **agent** could bind their **principal** to a contract in circumstances where they acted outside their actual authority ↵ (e.g. because their act was prohibited in the agency agreement) and no question of apparent authority arises (because the principal had not represented to the third party that the agent had authority to act on their behalf). The court held that usual authority was an independent category of authority in its own right and that the agent had usual authority to act on his principal's behalf and to bind him to a contract, even though the principal had expressly forbidden him to make it. There will be no usual authority where it would conflict with an express limitation or prohibition imposed by the principal. It may also be the case that, on the facts of a case, usual authority may be limited to acts engaged in in the ordinary course of business or transactions on reasonable commercial terms rather than terms that are considered to be onerous (***Taylor v Rhino Overseas Inc (2021)***).

Looking for extra marks?

It will be impressive to explain the bizarre decision in ***Watteau v Fenwick***, which was described by Bingham J in ***Rhodian River Shipping Co SA v Halla Maritime Corp ('The Rhodian River' and 'The Rhodian Sailor') (1984)*** as 'a somewhat puzzling case' and one whose 'true ratio is not altogether easy to perceive'. ***Watteau v Fenwick*** has been strongly criticised yet has never been overruled. Notwithstanding that the judgment was couched in terms of agency, it has been impressively argued that the decision can be justified on orthodox legal principles, 'provided one gets away from the idea that the law of agency has anything to do with it' (see Andrew Tettenborn, 'Agents, Business Owners and Estoppel' [1998] *CLJ* 274).

Revision tip

You should have in mind that the decision in ***Watteau v Fenwick*** is unlikely to be followed and in any event is restricted to the following circumstances:

1. the third party must be unaware of the existence of a '**principal**' and must think that the '**agent**' is acting on their own behalf rather than as agent for some principal;
2. the 'agent' has no actual authority to do the act because they have been forbidden to do so by the 'principal'; and
3. the contract made by the 'agent' must be usual for an agent in their position.

A good answer will explain:

- why there was no **Actual authority** (because the 'agent' had been forbidden to do the act);
- why there was no **apparent authority** (because the 'principal', or someone authorised by them, had not represented to the third party that the 'agent' had authority to act on their behalf. This must be the case because the third party must be unaware of the existence of a 'principal' and must think that the 'agent' is acting on their own behalf rather than as agent for some principal); and
- that even if the above criteria are met, it is still unlikely that the decision will be followed given the amount of criticism it has received.

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The agency of necessity

An **agency of necessity** might be imposed where one party (the **agent**) has acted on behalf of another (the **principal**) during an emergency. The emergency must have posed such an imminent threat to the principal's property or other interests that the agent needed to have acted immediately without there having been any time for them to have sought their principal's instructions. The agent's acts are, therefore, for the benefit of their principal.

Looking for extra marks?

You should explain that, with modern methods of communication, there are now far fewer instances where the agent cannot communicate with the principal in order to gain their express instructions, and therefore an agency of necessity is now much less likely to arise.

The following conditions must be satisfied before the law will impose an **agency of necessity**:

1. the **agent** must be in control of their **principal**'s property;
2. the agent's intervention must be a necessity;
3. it must be impossible (or at the very least, not reasonably practicable) for the agent to contact their 'principal' so as to get their instructions;
4. the agent's actions must be bona fide and in the interests of their principal;
5. the agent's actions must be reasonable and prudent in all the circumstances; and
6. the principal must be competent when the agent intervened.

A good example of a case concerning agency of necessity is ***Springer v Great Western Railway Co (1921)***.

Springer v Great Western Railway Co [1921] 1 KB 257

Bad weather and a strike delayed the delivery by sea of a consignment of tomatoes. The **agent** felt that he had to sell them before they perished. Because he could have communicated with the **principal** before selling the consignment, the court refused to impose an **agency of necessity** and he was therefore liable to the owners for the losses.

Looking for extra marks?

agency of necessity is highly likely to be restricted to maritime cases, although the door was left open by the Court of Appeal in ***Surrey Breakdown Ltd v Knight (1999)*** as to whether this kind of agency could extend to cases on land. Despite this, the courts have consistently refused to extend it beyond the maritime cases.

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Ratification

If an **agent** carries out an act in the name of a **principal** for which they were not authorised, the principal may decide to ratify the transaction. If the principal decides to ratify the transaction, then they adopt the agent's unauthorised acts, which then become authorised **ab initio**. In other words, **ratification** is equivalent to antecedent authority and the agent will be regarded as having retrospective **Actual authority**.

In ***Koenigsblatt v Sweet (1923)***, Lord Sterndale MR explained ratification in the following terms:

> Once you get a ratification it relates back; it is equivalent to an antecedent authority: *mandato priori aequiparatur*; and when there has been ratification the act that is done is put in the same position as if it had been antecedently authorised.

Looking for extra marks?

You should explain that **ratification** is an all-or-nothing principle. Therefore, a **principal** who ratifies only part of a transaction will be held to have ratified the whole: 'A party wishing to ratify a transaction must adopt it in its entirety' (***Smith v Henniker-Major & Co (2003)***, per Robert Walker LJ).

The following factors are important:

- Only the person on whose behalf the **agent** has acted may ratify. An undisclosed **principal** cannot ratify (***Keighley, Maxted & Co v Durant (1901)***).
- The principal must have been in existence at the time the contract was made. This requirement clearly relates to agents who are acting on behalf of companies. It means that if an agent acts for a 'company' before it has been incorporated, the company, once incorporated, cannot then ratify the transaction (***Kelner v Baxter (1866–67)***).
- The principal must themselves have been competent to perform the act at the time the agent acted on their behalf. This rule demonstrates that **ratification** relates to the time that the agent purported to act for the principal. Therefore, the principal must themselves have had the capacity to have performed the act at that time (***Boston Deep Sea Fishing and Ice Co Ltd v Farnham (1957)***).

- The principal must also be competent to perform the act at the time of ratification. Following on from the above rule, it might appear rather strange that the principal also needs to have capacity at the point they wish to ratify the agent's act. After all, the theory underpinning ratification is that the principal is deemed to have made the contract at the time the agent made it and, that being the case, it should not matter what their capacity to contract is at some later time. Nevertheless, it is established that the principal must *also* have capacity at the time of ratification (***Grover & Grover Ltd v Mathews (1910)***). There will be limited application for this rule and it is likely to be restricted to cases such as where an agent, without authority, enters into an insurance contract for the principal and that, after the insured property has been destroyed, the principal seeks to ratify the contract. They will not be allowed to do so.

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- The principal will not be permitted to wait and see whether the transaction is advantageous to them before deciding whether to approve it (***SEB Trygg Holding Aktiebolag v Manches (2005)***) (reversed on other grounds).
- The principal must ratify within a reasonable time of the agent's act. Lapse of time is relevant to whether ratification should be inferred. The longer the principal stands by and does nothing, while action is taken by the contracting third party (and others) under a false impression as to the agent's authority, the more compelling the inference of ratification becomes, irrespective of whether the principal came under any positive duty to speak (***SEB Trygg Holding Aktiebolag v Manches***) (reversed on other grounds).
- A void contract cannot be ratified.

Looking for extra marks?

It will be beneficial to explain the potential absurdity which requires the **principal** to have legal capacity both at the time the **agent** made the contract and when they seek to ratify it. You should explain this by pointing out that it is merely a legal fiction that the principal makes the contract from the outset. The reality is that they adopt the contract that the agent made some time earlier.

Key cases

CASE	FACTS	HELD/PRINCIPLE
Boston Deep Sea Fishing and Ice Co Ltd v Farnham [1957] 1 WLR 1051	A trawler owned by a French company was at an English port when France became occupied by enemy forces during the war. The English company carried on trade by using the trawler during the war period, purporting to act as agents of the French company, although without	The principal must themselves have been competent to perform the act at the time the agent acted on their behalf. It was held that the French company could not effectively ratify the English company's activities during the hostilities as the French company was at that time an alien enemy. Harman J explained that 'at the time the acts were

CASE	FACTS	HELD/PRINCIPLE
	authority from it for whom they had previously acted as managers. At the end of the war, the French company purported to ratify the English company's activities.	done the French company was an alien enemy at common law. It was therefore not a competent principal because it could not have done the act itself.'
p. 205 ↵ ***Freeman & Lockyer v Buckhurst Park Properties (Mangal) Ltd [1964] 2 QB 480***	The company's directors allowed one of their number to act as managing director but had not formally appointed him to that role. He then engaged a firm of architects to carry out some work for the company, even though he had no actual authority to do so. The company refused to pay the architect firm's invoice, arguing that they were not bound by the agreement because the director lacked actual authority to make the contract.	It was held that the company had represented to third parties that the director had authority. This form of authority is known as apparent or ostensible authority. The company was therefore bound by the contract with the architects.
Grover & Grover Ltd v Mathews [1910] 2 KB 401	An agent, without proper authority, insured a factory on behalf of the owner (the principal). After the factory was destroyed by fire, the principal sought to ratify the insurance contract so as to take its benefit. Clearly, the owner could not have insured the factory after it had been destroyed, and, for the same reason, it was held that he could not ratify the policy.	The principal must also be competent to perform the act at the time of ratification. Hamilton J held that where a contract of insurance is made by one person on behalf of another without authority, it cannot be ratified by the party on whose behalf it was made after and with knowledge of the loss of the thing insured.
Keighley, Maxted & Co v Durant [1901] AC 240	The agent purchased a consignment of wheat but did so outside the scope of his authority. He used his own name and did not disclose that he was acting as agent for a principal. The principal then decided that he would ratify the contract but later changed his mind.	Only the person on whose behalf the agent has acted may ratify. An undisclosed principal cannot ratify. The House of Lords held that a contract made by a person intending to contract on behalf of a principal, but without their authority, cannot be ratified by the 'principal' where the person who made the contract did not state at the time of making it to be acting on behalf of a principal.
Watteau v Fenwick [1893] 1 QB 346	H was the manager of F's pub. H's name appeared on the licence and was also painted above the door. F's existence was concealed. F expressly prohibited H from purchasing certain goods for the pub unless F supplied them. In contravention of this prohibition, H bought from W cigars on credit terms. W thought that H	F was liable for the debt, notwithstanding that he expressly prohibited H from purchasing the cigars. Wills J held that H had usual authority to make the contract: 'the principal is liable for all the acts of the agent which are within the authority usually confided to an agent of that character, notwithstanding limitations as between the principal and the agent put upon that authority'.

CASE	FACTS	HELD/PRINCIPLE
	was the owner. F refused to pay for the cigars, arguing that he was not bound by the contract to purchase them as he had expressly prohibited H from doing so.	This case suggests that where the 'principal', whose existence is concealed from the third party, restricts the usual authority of his 'agent', then the third party will be entitled to assume that the 'agent' has the authority that is usually possessed by such a person and will not be bound by the restriction placed on the 'agent' by the 'principal'.
p. 206 ↵ ***Waugh v HB Clifford and Sons Ltd [1982] Ch 374***	A firm of solicitors settled an action contrary to its client's express instructions. The Court of Appeal held that the settlement agreement was binding on its client.	The solicitors were agents of their client. They clearly didn't have express actual authority to act as they did. Solicitors would ordinarily have implied actual authority to settle a case for their client but no such authority arose in this case because of their client's contrary express instructions. The solicitors did, however, have apparent authority and therefore the settlement agreement was binding.

Key debates

TOPIC	THE SIGNIFICANCE OF GENERAL AND SPECIAL AUTHORITY IN THE DEVELOPMENT OF THE AGENT'S EXTERNAL AUTHORITY IN ENGLISH LAW
Author/ academic	Ian Brown
Viewpoint	Considers the basis of **apparent authority** and asks whether the concept has been distorted by artificial methods of ascertaining the existence and extent of the **principal's** liability.
Source	[1995] *Journal of Business Law* 360
TOPIC	**THE AGENT'S APPARENT AUTHORITY: PARADIGM OR PARADOX?**
Author/ academic	Ian Brown
Viewpoint	Traces the development of an agent's external authority under English law, highlighting the decline in the concept of general authority in favour of apparent authority.
Source	[2004] *Journal of Business Law* 391

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Exam question

Questions on the creation of agency, the agent's authority, and the relations created by the agency will frequently be asked together. For this reason, please see Chapter 13, 'Exam questions', p 227.

Online resources

This chapter is accompanied by a selection of online resources to help you with this topic, including:

- multiple-choice questions *<https://iws.oupsupport.com/ebook/access/content/baskind-concentrate6e-student-resources/baskind-concentrate6e-chapter-12-multiple-choice-questions?options=showName>*;
- key facts checklists *<https://iws.oupsupport.com/ebook/access/content/baskind-concentrate6e-student-resources/baskind-concentrate6e-chapter-12-key-facts-checklists?options=showName>*;
- interactive flashcards of key cases *<https://iws.oupsupport.com/ebook/access/content/baskind-concentrate6e-student-resources/baskind-concentrate6e-chapter-12-interactive-flashcards-of-key-cases?options=showName>*.

Related Links

Visit the online resources for this title *<https://learninglink.oup.com/access/baskind-concentrate6e>*

Test yourself: Multiple choice questions with instant feedback *<https://learninglink.oup.com/access/content/baskind-concentrate6e-student-resources/baskind-concentrate6e-diagnostic-test>*

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