

AGENCY

Agency arises where the agent has actual or apparent authority to contract on behalf of another (the principal)

How is agency created? *Freeman & Lockyer v Buckhurst Park [1964]:*

- **Actual authority** – express appointment by the principal
- **Apparent/ostensible authority** – where **P** has given the distinct, but false, impression that A has authority to enter into a particular contract. Such auth is said to arise by estoppel – P will be estopped from denying that A has authority. For this to arise, 3 conditions:
 1. At some stage, P must have **represented** that A had authority
 2. The 3rd party must **rely on this representation** believing that A had authority
 3. The 3rd party must **alter his position** (eg entering into contract)

Ratification (where P validates the contracts made by A when he had no authority)

Eg you say “buy me a car for up to £5000, and he gets you a bargain for £6000” You can accept this – ratification.

Limits on Ratification

- Must be done within reasonable time
- Agent must have purported to act as agent
- P cannot ratify if it would unfairly prejudice 3rd party (eg If 3rd party already sold car to someone else)

Who can sue who?!

	Relship of Principal & 3 rd Party	Relship of Agent & 3 rd Party
Where Actual Authority	P can sue & be sued by 3 rd party	A can't sue or be sued by 3 rd party
Where Apparent Authority	P can be sued by 3 rd party & P can sue (may need to ratify)	A can't sue or be sued by 3 rd party
Where No Authority	3 rd party can only sue or be sued by P if P ratifies	A can be sued by 3 rd party in tort of deceit or breach of promise that he was acting as an agent (warranty of authority) NB He can't be sued for actual contract as he purported to contract on behalf of another (as opposed to on his own)

Relship of Principle & Agent

Duties owed by A: to act with reasonable care & skill, not to act outside their auth, not to make secret profit, not to let their own interests conflict with the P's, account for money & property received

The Undisclosed Principal – where third party doesn't know whether A is an agent or not

P can intervene & treat contract as if made by him (and so sue 3rd party) if:

- A had actual authority
- Contract is consistent with A acting as an agent (NOT if terms suggest A acting on his own behalf)

3rd party can sue either A or undisclosed P, if he didn't know whether there was an agent. Once 3rd party has elected who to sue, he can't change his mind.

Termination of Agency

- By agreement
- By withdrawal of consent by P
- Death/loss of mental capacity/insolvency of A or P
- Lapse of time
- Breach of agency contract

Irrevocable Agencies

- Receivers
- Persons acting under powers of attorney

Contract – Unit 3.2 (1) – WS 5 – Performance & Discharge of a Contract

Doctrine of Complete Performance (vs Doctrine of Breach)

Doctrine of Breach - Structure

1. Breach?
2. Type of term?
3. Type of breach?
4. Remedies (damages usually)
5. Advance Payment? – Restitution only if total failure of consid

Doctrine of Complete Performance - Structure

1. Has work been done **completely & precisely**?
2. If no, **general rule – no payment**
3. Unless **exceptions** apply – run through them.
4. **Remedies** (quantum meruit usually) (Damages is NOT the remedy under DCP, if you want damages, go through doctrine of breach)

DOCTRINE OF COMPLETE PERFORMANCE

Cutter v Powell (1795) – general rule - obligation to pay arises only when work is **COMPLETED** precisely & exactly. If work not completed, no obligation to pay. Unless one of the exceptions applies:

(in this case man sailing ship home, was promised lump sum payment on arrival, died 2 weeks before. Wife tried to claim on quantum meruit basis, got nothing. Cutter had accepted the risk of only being paid if voyage completed.)

EXCEPTIONS

Wrongful prevention of performance by the other party

Eg if A stops B from finishing the contract & refuses to pay, even though B doesn't want to stop.

- A would be in **breach** & B could sue for damages under **doctrine of breach**. Court would put him in same position as if contract had been fulfilled.
Robinson v Harman (1848)
- OR B could claim a **quantum meruit** under **doctrine of complete performance** – **Planché v Colburn 1831**

Voluntary acceptance of partial performance by the other party

Sumpter v Hedges [1898] – where there is acceptance of partial performance, person can claim a **quantum meruit**.

This exception will NOT apply where the party has no option but to accept the benefit of the performance (in **Sumpter** there was no option – the work had been done on D's land and D had no option but to take the benefit of the work. But the builder did receive some money for the bricks he had left on site which had been used by D to complete the work)

Substantial Performance

A party who substantially performs may be able to claim some money for his work.

→ **The work must be FINISHED but DEFECTIVE** ←

D must normally pay the balance less the cost to put the defect right.

Hoenig v Isaacs [1952] – decorate flat for £750 but defective, costing £55. Court held substantial perf, D must pay £750 less £55.

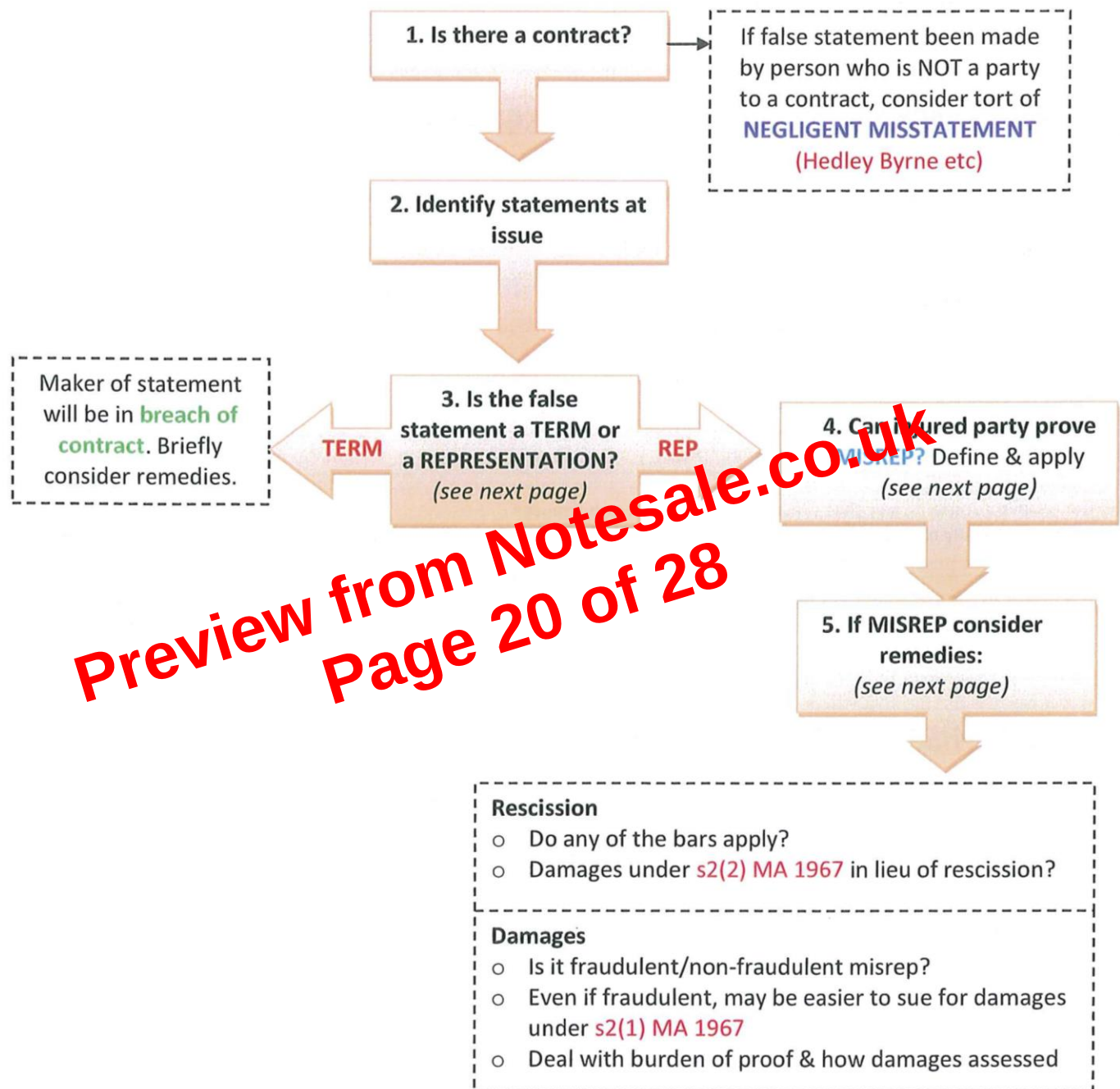
Bolton v Mahadeva [1972] – install central heating for £560, defects costing £174. Court held no substantial perf, as heating system didn't perform effectively the function it was intended to perform. Defects were extensive. Cost of repair is 1/3 contract price. If contractor had offered to repair, he could have claimed the contract price.

Divisible Obligations

Where parties have agreed payments for distinct parts, each stage is treated like separate contract. (eg £100 when kitchen finished, £200 when lounge finished)

Contract – Unit 4.1 – WS 7 – False Preliminary Statements

STRUCTURE FOR PROBLEM QUESTIONS:



In exam discuss what happens in both scenarios – if statement is a term AND a representation.

Contract – Unit 4.2 Part 2 – WS 9 - Undue Influence

STRUCTURE

1. Was there undue influence?
 - (a) *Actual undue influence*? Difficult to prove
 - (b) *Presumed undue influence*:
 - i. Fiduciary relationship of trust & confidence? (In law or on facts?)
 - ii. Does transaction call for explanation?
 - iii. Can presumption be rebutted? (eg did C seek independent advice?)
2. **Position of the bank** – if there's been undue influence, will this affect the bank?
 - (a) Bank should be regarded as put on inquiry in every case where relship between a surety & a debtor is non-commercial (*RBS v Etridge*)
 - (b) Did bank take reasonable steps to satisfy itself that the implications of the transaction were known to the party alleging undue influence? (Bank meeting / independent legal advice)
 - (c) If bank did take reasonable steps, it can claim the money. If not, undue influence.
3. **Effect of undue influence** – contract voidable, remedy = rescission. No damages.
If third party, Bank can still sue original party (husband) on the original loan, but can't sue the surety.

ACTUAL UNDUE INFLUENCE

- C must prove D used undue influence. The threat may be entirely legal, such as court action, as in:
- *Daniel v Drew* [2005] – Actual undue influence is "Twisting the mind". Elderly lady intimidated by nephew into signing contract (threatened court action if she didn't)

PRESUMED UNDUE INFLUENCE

There must be:

1. A fiduciary relationship (one of trust & confidence)

- **In law** – certain categories of relship irrebuttably presumed:
(- solicitor/client - doctor/patient, - parent/minor child - religious adviser/follower.
NOT husband/wife)
- **On facts** – eg
 - *Tate & Williamson* (1886) – D was Oxford undergrad's financial adviser, bought Oxford undergrad's house for £7000 without disclosing it was worth double that amount. HELD: sale set aside, D had wrongfully exploited his position, Oxford boy had accepted his advice without question.
 - *O'Sullivan v Management Agency Ltd* [1985] – Gilbert O'Sullivan moved in with his manager, trusted him, babysat his daughter. Gilbert signed contract giving him only pocket money of £10 even though he was biggest selling artist in world (for one week!) HELD: Relship of trust & confidence.

2. The transaction must call for an explanation (ie look suspicious)

- Transaction must be such that it is not readily explicable by the relship between the parties
(*RBS v Etridge* (No 2))

If these elements are present, the burden shifts back to D to rebut the presumption of undue influence