**AFE BABALOLA UNIVERSITY**

**COLLEGE OF LAW, 2019/2020 ACADEMIC SESSION**

**LPB 304: COMMERCIAL LAW II**

**CONTINOUS ASESSMENT (GROUP ASSIGNMENT)**

**LECTURER(S) IN-CHARGE:**

 **PROF. FOGAM**

 **DR. IFEOLUWA A. OLUBIYI**

 **DR. PATRICK IKE**

**Question**

Hassan went on holiday to the obudu Ranch without leaving an address at which he could be contacted. Two days after Hassan had left; his neighbour okon noticed that there was a slate missing from the roof of Hassan’s house. In the evening on the same day okon heard a weather forecast which predicted rain and thunderstorms for the next two days. Okon called Jakatu a jobbing builder and asked him to come at once and replace the slate. Jakatu Completed the Job just before the start of a violent thunderstorm, Hassan returned home last week and is refusing to pay Jakatu for his work and is refusing to pay Jakatu for his work on the grounds that he had already arranged for his brother shehu to replace the slate without charge when he had time. What is the legal position?

**GROUP 5**

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| **S/N** | **MATRICULATION NUMBER**  | **NAMES**  |
| 1. | 17/LAW01/012 | ADEKOLA SHINA OLAWALE |
| 2. | 17/LAW01/016 | ADELEKE OLUBUKOLA WISDOM |
| 3. | 17/LAW01/049 | ALADE ONAOPEMIPO OLWATOBI  |
| 4. | 17/LAW01/054 | ALUKO OLUWADABIRA DESOLA |
| 5. | 17/LAW01/064 | ANYANWU UZOAMAKA RALUCHUKWU |
| 6. | 17/LAW01/071 | ASU-OBI MARK USHAR |
| 7. | 17/LAW01/091 | DIKE RUBY OROMA |
| 8. | 17/LAW/01/141 | IGBOCHI RUTH ENYO-OJO |
| 9. | **17/LAW01/149** | **ILOBUN JOY OSEDEBAMEN** |
| 10. | 17/LAW01/ 181 | MURAINA OREOLUWA PRECIOUS |
| 11. | 17/LAW01/201 | ODIACHI OLIVIA CHIAKASIE |
| 12. | 17/LAW01/202 | ODUBA MORENIKE ONAOPEMIPO |
| 13. | 17/LAW01/207 | OGUEJI FAITH CHINWENMERI |
| 14. | 17/LAW01/226 | OLOWOOFOYEKU OLAMIDE JAMES |
| 15. | 17/LAW01/295 | YAQUB MARIAM OLUWAFUNMILOLA |
| 16. | 17/LAW01/296 | YUNANA PRECIOUS SHEKWOKPELO |
| 17.  | 17/LAW01/298 | ZAKARI MARY HANSATU |
| 18. | 16/LAW01/106 | IKISIKPO MEGAN CLEVER |

**ANSWER:**

**Issues** :

The legal issues emanating for this legal quagmire are; Whether Okon is an agent of Hassan, whether not getting express instruction to act as an agent is legal, Whether Jakatu is entitled to the sum demanded?

I resolve this legal quagmire in the negative.

**Rules**

Before we delve into the issue at hand we must first understand what constitutes an agency relationship and how this relationship can be created.

Agency, like every other legal concept cannot be adequately capped into one definition however some attempts have been made to succinctly summarise the concept.

Agency according to **Bowstead,** is “…the relationship which exists between two persons, one of whom expressly or impliedly consents that the other act on his behalf, and the other of whom similarly consents to represent the former or so to act. The one who is to be represented o on whose behalf the act is to be done is called the principal. The one who is to represent or act is called the agent. Any person other than the principal and the agent may be referred to as a 3rd party”

An agency relationship can only be created by parties who have capacity in law (the general rules of capacity in contract law). This relationship may arise either by; agreement of the parties either expressly or impliedly, ratification by principal of acts done on his behalf, the doctrine of estoppel, the operation of law under the principles of agency of necessity and matrimony. From the afore-mentioned, the only form of agency that may arise here is that of necessity.

The agency of necessity arises in emergency conditions where a person is obliged to act to prevent irreparable loss or damage to the property of the person who he is acting for .Even though the person who acts on behalf of the other has no authority to do so, yet because of the urgent need, the law regards what has been done by someone as having been done with the authority of some other person, and therefore as his agent. However, for an agency of necessity to arise, the following conditions must be fulfilled;

* **Prior contractual relationship**: There must have been a prior contractual relationship and the act constituting the agency of necessity is a mere extension of that relationship by the agent who in the unforeseen circumstances that have arisen is compelled to exceed his authority. In the case of ***Great Northern Railway Co v Swaffield[[1]](#footnote-2)***, it held that Mr Swaffield was liable to the railway company as they acted in bonafide interest of Mr Swaffield. In some rare circumstances however, the doctrine of agency of necessity may arise out of moral duty as seen in the case of ***Langan v Great western railway co[[2]](#footnote-3).***
* **Actual or imminent necessity or emergency:** There must be an emergency; mere inconvenience will not create an agency. This condition is strict and may apply in cases with perishable goods as seen in the case of ***Sachs v Miklos[[3]](#footnote-4)***.
* **Impossibility to communicate with the owner of the goods:** An attempt to communicate with the owner of the goods must have been made which proved impossible and impracticable. In the case of **Springer v Great western railway co[[4]](#footnote-5)**.. The court held that there was no attempt to communicate with the owner; therefore they were liable for damages to Mr Springer as the tomatoes were going bad and they sold them.
* **Bona fide interests of all the parties:** In the case of ***Prager v Blast Spiel Stamp & Heacock Ltd[[5]](#footnote-6)*** .It was held that as the skins were not likely to deteriorate in value if properly stored, the defendant was therefore liable.

**Application:**

In the first issue as to whether Okon can be considered as an agent, it is pertinent to note that agency of necessity more often than not arises from cases where prior contractual relationship exists as seen in the case of ***Great Northern Railway Co v Swaffield (supra[[6]](#footnote-7))***. There was no prior contractual relationship between Hassan and Okon. It is a general principle that benefits (burdens) cannot be imposed on a person behind his back[[7]](#footnote-8). Hassan was not aware of the actions Okon so it can be presumed that it was done behind his back. Okon was merely acting out of moral obligation and as such Hassan is not liable of paying the cost of the work done.

**Conclusion:**

 After a thorough and comprehensive analysis of the scenario and the agency of necessity, we can conclude that okon was not an agent of Hassan due to the fact that there was no express or implied agreement between the parties. Agents are not meant to act where they haven’t been given express instruction but they may be obliged to act in certain emergency situations where the conditions for agency by necessity exist, which in this scenario there was no emergency. It is abundantly clear to see that Hassan is not liable to pay any sum of money.

1. (1874) L.R. Ex 132 [↑](#footnote-ref-2)
2. (1873) 30 LT 173 [↑](#footnote-ref-3)
3. [1948] 1 All ER 67, [1948] 2 KB 23 [↑](#footnote-ref-4)
4. [1921] I K.B 257 [↑](#footnote-ref-5)
5. [1924] IK.B 566 [↑](#footnote-ref-6)
6. (1874) L.R. Ex 132 [↑](#footnote-ref-7)
7. Binstead v Buck(sssss1777) 2 WN BL 1117S [↑](#footnote-ref-8)