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COMMERCIAL LAW ASSIGNMENT

GROUP 4

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**Legal issue**

Whether Hassan was liable to reimburse his neighbor, Okon for the payment of the slate replacement by Jakatu.

**Rule**

According to ***section 142 contract Act 1950***, agency of necessity often arises in an emergency situation where a person is obliged to act in order to prevent an irreparable loss to the property or similar interest of the person in whose behalf the act is performed. It arises when a duty is imposed on a person to act on behalf of another apart from contract and to prevent irreparable injury. Such an agency relationship is recognized by the court.

However, to confer agency of necessity, certain conditions have to be met. These conditions are:

1) Existence of a prior contractual relationship: This was held in the case of ***Great Northern Rly Co v Swaffield (1874) L.R. Exch 132*** where the court held that the defendants were liable as there was already a contractual relationship in existence between the railway company and the defendants.

2) Presence of an actual or imminent commercial necessity or genuine emergency to warrant the agency: This was comprehensively stated in in the case of ***Springer v Great Western Railway Company [1921] 1 KB 257*** where the defendant sold the plaintiff’s tomatoes which were as at that time bad and also in the case of ***Great Northern Railway CO. v Swaffield*** where the court held the defendant liable for reimbursement to the plaintiff for the horse’s stable charges.

3) It must be impossible or impracticable to communicate with the owner of the goods in order to get his instructions: This can be said as the agent’s action is to prevent loss to the principal with respect of goods, such as perishable goods.In ***Great Northern Railway Co. vs. Swaffield (1874) LR 9 Exch 132,*** the court held that the plaintiff’s claim succeeded even though he is involved in the extension of doctrine of agency of necessity to include carriers of goods by land. There was an agency of necessity because the plaintiff was found to have had no choice but to arrange for the proper care of the horse.

4) The agent must act bona fide in the interest of all the parties: This implies that the act must not have been done for the benefit or convenience of the agent. This was held in the case of ***Munro v Wilmott*** [1949] 1 KB. 295 where A Allowed P to park her car in his garage while she went shopping. She left it there and after some years, A who could not locate her sold the car. The court held that A was liable as he didn’t act in the interest of the owner but rather in the interest of himself.

**Application**

The first condition to be met to determine whether Mr Hassan and Mr Okon’s relationship falls under agency of necessity is that they must have had in existence a contractual relationship. The only form of relationship that is however seen between Mr Hassan and Mr Okon is that of neighbours. They did not have any contractual relationship and so one can say that the first requirement had not been met.

The second requirement was that there was an actual emergency. Mr Hassan’s house would have been damaged but for the intervention of Mr Okon. One can safely say that the second requirement of necessity was met.

The third condition is that it must be impossible or impracticable to communicate with the owner of goods. From the scenario, it is seen that Mr Okon could not communicate with Mr Hassan because of the bad weather and so the third condition is met.

And the final requirement is that the plaintiff should have acted in good faith. Mr. Okon evidently acted in good faith. He was Hassan’s neighbour and he acted as a considerate neighbour.

**Conclusion**

For a person to be liable under agency of necessity, all of the requirements stated above must be met. In other words, for Mr Hassan to be liable for the money Mr Okon spent on the repair, all the requirements must be met however, the first requirement was not met and so Mr Hassan will not liable and he is under no obligation to reimburse Mr Okon.