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WHAT IS HASSAN'S LEGAL POSITION?

ISSUE:

The issue for contemplation is whether Hassan is liable to pay Jakutu under agency of necessity.

RULE

An agency may arise in various situations, the necessary one in this case being agency arising from the operation of law under principle of agency by necessity.

The rule of agency of necessity arises when in emergency conditions, a person is obliged to act in order to prevent an irreparable loss to the property or similar interest of the person on whose behalf the act is performed. This is a very limited class and the courts are very reluctant to increase their number. However, if an agency of necessity is to be conferred, the following conditions must be satisfied:

1. **Prior contractual relationship:** an agency by necessity is implied in situations where there was already an existing contractual relationship and the agent is compelled to act

outside the scope or in excess of his authority in order to prevent harm to the principal or his property. Examples of such pre-existing contract is usually seen in the cases of common carriers entrusted with another's property like a master of a ship. In the case of *Great northern rly co v Swaffield*¹ It was held that the defendants were liable to pay the plaintiffs the expenses incurred as they had acted in an emergency as an agent of necessity and was therefore entitled to claim an indemnity from the owner of the horse. There already was a contractual relationship in existence between the railway company and the defendants.

It is important to note that the doctrine of agency by necessity hardly applies if a prior contractual relation is not present; so therefore a person who gratuitously interferes to protect another's property not bound by an existing contract with the owner, no liability will arise to reimburse such a person. In *Binstead v Buck*² The court held that the defendant was bound to return the dog to the plaintiff without any remuneration/restitution which implies the defendant had no lien over such dog.

2. **There must be an imminent commercial necessity or emergency to warrant the agency:** This requirement is often construed strict and so would usually apply in cases where the goods are perishable or consist of say livestock which must be tended to. So, the reason for the decision in *Swaffield*³ was therefore the need to look after the horse which otherwise might have perished through lack of food and care. Where therefore goods are not of a perishable nature and are not likely to deteriorate in quality if properly stored, an agency of necessity will not easily be implied.
3. **It must be impossible to communicate with the owner of the goods in order to get his instructions:** There must have been insufficient time or means for the agent to seek the principal's directions or authority regarding the matter. In *Springer v. Great Western Railway Company*⁴ The court was held that plaintiff was entitled to damages because defendant ought to have communicated with the plaintiff when the ship arrived at Weymouth to get instruction.
4. **The agent must act bonafide in the interest of the principal:** This means that the agent must have acted not for his benefit but for the benefit of the principal. *Prager v Blastspiel Stamp & Heacock Ltd*⁵ It was held that as the skins were not likely to

¹ (1874) L.R. Ex 132

² (1776) 2 W B1 1117

³ Supra

⁴ [1921] 1 KB 257

⁵ [1924] I K.B 566

deteriorate in value if properly stored, the defendant had not acted bonafide in selling the skin.

APPLICATION

Looking at the hypothetical scenario, the first condition which states that there must be a prior contractual relationship was not fulfilled as there was no prior contractual relationship between Hassan and Okon because they are not bound by any existing contract which will make Okon to exceed his authority. In the second condition states there was a genuine emergency and as a result of inconvenience to replace the slate missing from the roof by Okon because of a predicted rain by the weather forecasters. The emergency act done by Okon may warrant to agency, although the good in this context was not perishable. The third condition was satisfied because it was impossible to communicate to Hassan because he didn't leave an address at which he could be contacted in order to get his instructions. Lastly, Okon acted bona fide and in the Hassan's interest by the replacing of the slate.

In **CONCLUSION**, the doctrine of agency by necessity arises where a person carries out moral duty of another and there must be a subsisting principal agent relationship at the time of the act in question. Therefore, there must be a prior contractual relationship. However, there is no prior contractual relationship between Hassan and Okon, with the absence of prior contractual relationship, the doctrine of agency by necessity can hardly arise. Therefore, Hassan can't be held liable to pay Jakutu under agency of necessity because there was no subsisting principal agent relationship between Hassan and Okon.

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