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**LEVEL: 300**

**COURSE TITLE: COMMERCIAL LAW: COMMERCIAL II**

**COURSE CODE: LPB 304**

**ASSIGNMENT: 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 VIOLENT THUNDERSTORM. HASSAN RETURNED HOME LAST WEEK 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?**

**THE LEGAL ISSUE**

1. The first legal issue for determination is whether the actions of Mr Okon amount to an agency of necessity.
2. The second legal issue for determination is whether Mr Hassan is liable to pay Mr Jakatu for work done.

These issues will be resolved in the negative.

**RULE**

Agency by necessity is an agency created by an emergency arising from a situation making it necessary or proper for the agent to act without receiving the sanction or authorizing of the principal, in order to prevent harm to the principal. Agency of necessity often 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. For example,

To establish the existence of an agency of necessity, certain conditions must be satisfied. They are as follows;

1. Prior contractual relationship; This kind of agency is very implied in situations where there is in existence a prior contractual relationship between the parties 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. For example, in the case of a ship master and this can be seen in the case of ***Great Northern Rly Co V. Swaffield.*** It is important to note that apart from cases where prior contractual relationship exists, the doctrine of agency of necessity hardly applies. Thus where someone gratuitously interfere to protect another’s property, as for example, where a stranger, not bound by an existing contract with the owner, looked after a stray animal, no liability to reimburse the stranger could be imposed on the owner, for the general rule is that benefits or burdens cannot be imposed on a person behind his back. This has been established in ***Binstead V. Buck.***
2. There must be an actual or imminent commercial necessity or genuine emergency to warrant of an agency; This requirement is usually strict and it’s applicable to cases where goods are of a perishable nature. Mere inconvenience will not create an agency of necessity. This can be observed in the case of ***Munro V. Willmot.***
3. It must be impossible or impracticable to communicate with the owner of the goods in order to get his instructions; The case of ***Springer V. Western Rly Co.*** established that the modern means of communication where there is widespread use of telephone, telegram, telex and fax has greatly minimized the occasions where anyone can successfully claim to be an agent of necessity in this circumstance.
4. The agent must act bona fide in the interest of all parties; The party must act in such a way that it will be in the interest of both parties and not merely for the gain of the defendant. The case of Prayer V. Blastpiel Stamp & Heacock illustrates this condition.

Regarding the second legal issue, “undisclosed principal” involves a situation where a 3rd party does not know that the agent is contracting on behalf of a principal. Where the 3rd party is unaware that there was a principal and later discovers, the principle of undisclosed principal can be said to have occurred.

**APPLICATION**

Applying this rule to the given scenario, it can be concluded based on the first legal issue that there was no prior contractual relationship between Mr Okon and Mr Hassan. Thus, Mr Okon cannot be viewed as an agent who merely exceeds his already existing authority to protect Mr Hassan interest. **Mr Okon acted gratuitously and is not owed any reimbursement in accordance with the principle that burden or benefit cannot be imposed on a person behind the person’s back.** This principle is exemplified in ***Binstead V. Buck,*** where a stranger who took in a lost dog unsuccessfully claimed the right to retain it pending payment of expenses. Mr Hassan’s property was likely to be damaged by the rain if nothing was done so this means that genuine emergency to warrant of agency is present. It can also be observed that it was impossible to contact Mr Hassan because he did not leave any contact address. It can also be agreed that Mr Okon acted bona fide in the interest of the parties.

Applying the rule to the second legal issue, Mr Hassan in the absence of ratification, is not liable to pay Mr Jakatu for work done. This is because no contractual relationship exists between the two parties as it is evident that Mr Okon was not authorized by Mr Hassan to employ Mr Jakatu.

**CONCLUSION**

In conclusion, it is evident that one of the requirements meant to be satisfied to establish an agency by necessity is not present and owing to the fact that these requirements are important for the establishment, it can be said that no agency of necessity exists.