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GROUP 7

COURSE TITLE: COMMERCIAL LAW II

COURSE CODE: LPB 304

LEVEL: 300

ISSUE

1. The legal issue is to determine if Mr. Okon created an agency relationship of necessity with Mr. Hassan
2. The second legal issue is to determine if Hassan was liable to pay for the cost incurred

I assert these legal quagmires in the negative

RULE

Agents of necessity often arise in emergency situations when a person is often obliged to act in order to prevent an irreplaceable loss to the property or similar interest of the person on whose behalf the act is performed. In order for agency of necessity to be conferred, the following conditions must be satisfied

1. **Prior Contractual Relationship:** There must be a pre-existing contractual relationship between the parties and the act constituting the agency of necessity is a mere extension of the relationship with the agent, who in unforeseen circumstances has caused the agent to act in such a way that he exceeds his authority. In *Great Northern Rly Co v Swaffield*¹, the defendants were held liable to pay the plaintiffs the expenses incurred, and this decision was due to the already existence of contractual relationship between the railway company and the defendants
2. **There must be an actual or imminent commercial necessity or genuine emergency to warrant of the agency:** where goods are not of a perishable nature and are not likely to deteriorate in quality if properly stored, an agency of necessity would not will not easily be implied. In *Sachs v Miklos*², the defendant was held liable in conversion as there was no emergency.
3. **It must be impossible or impracticable to communicate with the owner of the goods in order to get his instruction:** The situation must be one that would make the agent impossible to get the principal's instruction. In *Springer v Great Western Railway Company*³, the railway company was held liable in damages to Mr. Springer as they should have communicated with him and asked for his instructions as soon as the ship arrived.
4. **The agent must act bonafide in the interest of all the parties:** the agent of necessity has to act in good faith with regards to the parties involved. In *Prager v Blastspiel Stamp & Heacock*⁴,

¹ (1874) L.R. Ex 132

² (1948) 2KB 23

³ (1921) 1KB 257

⁴ (1924) 1KB 566

it was held that as the skins were not likely to deteriorate in value if properly stored, the defendants had not acted bonafide in selling the skin.

APPLICATION

Prior Contractual Relationship: In the scenario presented, it can be inferred that there was no prior contractual relationship between the parties, so it cannot be said that an agency of necessity existed, and prior contractual relationship is important as one cannot claim agency of necessity without it.

Imminent commercial necessity: this requirement is usually strict and would apply in cases 'where the goods are perishable or consist of livestock which has to be tended, fed or watered'. The presented scenario, there was no good of perishable quality...

It must be impossible to communicate with the owner of the goods. In the scenario presented, Okon was said to be unable to communicate with Hassan as he (Hassan) left no address at which he could be contacted after he went on his holiday

The agent must act bonafide in the interest of all the parties

Okon's actions were however in Hassan's interest as he saw that his house had a missing slate that would have resulted in damage been done to the house if the slate was not replaced

Although some requirements of agency of necessity can be satisfied, the absence of contractual liability between Okon and Hassan would cause an action will fail. This is because apart from cases where prior contractual relationships exist, the doctrine of agency of necessity hardly applies. Thus where someone gratuitously interferes 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 principle is that benefits (or burdens) cannot be imposed on a person behind his back.

CONCLUSION

From the factual matric, it is clear that there was no agency created by necessity particularly due to lack of prior contractual relationship and so therefore Hassan is not bound to pay the cost which he contacted Jakutu to fix. As a general rule, "the law regards such a person as a volunteer who cannot claim any reward or commission. The general rule is that no liability may be imposed upon any person without his consent".

