



**AFE
BABALOLA
UNIVERSITY
ADO-EKITI (ABUAD)**

KM. 8.5, AFE BABALOLA WAY,
ADO-EKITI, EKITI STATE, NIGERIA.
P.M.B 5454 ADO-EKITI.

GROUP 1

CONTINUOUS ASSESSMENT

COURSE CODE: COMMERCIAL LAW II

COURSE TITLE: LBP 304

S/No	NAMES	MATRIC NUMBERS
1.	ABAH Susan Onyemowo	17/LAW01/001
2.	ADELEKE Divine Tosin	17/LAW01/015
3.	ADESINA Busayo Faith	17/LAW01/020
4.	AJIBOYE Ayotomiwa Opeyemi	17/LAW01/039
5.	BALOGUN Gbemisola Oyinlola	17/LAW01/077
6.	BIAMBO Alawari Emmanuella	17/LAW01/080
7.	EJUE Onenu Bassey	17/LAW01/108
8.	FARO Oluwaseyi Sharon	17/LAW01/123
9.	IDIATA Benedict Osemudiamen	17/LAW01/135
10.	IDIM Inem-esit Friday	17/LAW01/136
11.	IFEANYICHUKWU Ezinne Maryanne	16/LAW01/099
12.	JOHN-SHEDRACK Shalom Adaoma	17/LAW01/159
13.	MBAKAOGU Kaosisochukwu Lynda (Group Head)	17/LAW01/174
14.	ODENIGBO Emmanuel Olochukwu	17/LAW01/200
15.	OMOYENI Oluwaseyi Faith	17/LAW01/235
16.	ORELU Tegi Alexie	17/LAW01/249
17.	NSUHORIDEM Udeh Godwin	17/LAW01/282
18.	UMEAKA Alice Chibundom	17/LAW01/286

From the hypothetical case scenario provided, we can identify two legal issues which are:

- Whether the case scenario brings about an agency of necessity relationship
- Whether Hassan is liable to pay Jakatu for the work done

The members of this group will resolve in the negative.

AGENCY OF NECESSITY

Agency of necessity often arises when¹, 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. In such a situation, even though the person who so acts, 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.

REQUIREMENTS FOR PROVING AN AGENCY OF NECESSITY

Agency of necessity has four requirements to be satisfied before one can bring a claim for agency by necessity which are:

1. **There must be an actual or imminent commercial necessity or genuine emergency to warrant the agency:** This is one of the key requirements or conditions that must be satisfied before an agency of necessity can arise in any given situation. Seeing that, the doctrine of agency of necessity is to apply strictly, this requirement has been made mostly applicable to cases in which goods consigned are: of perishable quality; not likely to deteriorate in quality and value if properly stored: of livestock, which has to be tended, fed, or, watered². In other words, for this requirement to be fulfilled, the goods must come under one of the above listed categories. Accordingly, it is settled law that cases which involve goods that are not of a perishable nature, or, likely to deteriorate if not stored properly are not likely to give rise to an agency of necessity. However, this principle will not operate to rid a defendant of liability, when he or she, takes mere inconvenience as the doctrine of agency of necessity. In an

¹ Sec 142 Contract Act (1950)

² *Great Northern Rly Co v. Swaffield* (1874) L. R Ex 132, where the court said rightly that an agency of necessity had been created, seeing that, the goods was livestock, which needed to be tended to, watered and fed, in order to prevent it from perishing.

attempt to expatiate this, recourse must be had, to the case of *Sachs v. Milkos*³. Applying this laid down rule to the hypothetical scenario, this group is of the belief that the latter does not meet the condition of the former. The rule, which is construed strictly cannot be held to have occurred in the hypothetical scenario. Although, it is evident to a reasonable man that Hassan would have suffered some form of loss because of the thunderstorm, yet, this loss could not be proven to be commercial, or, in other words, the hypothetical scenario did not involve perishable goods, or, goods that deteriorate quickly, or, livestock that needs to be tended to. Consequently, the hypothetical scenario has failed to meet this condition. This may seem harsh, but it is apparent that it must be applied strictly. Hence, Okon acted gratuitously, and the principle concerning gratuitous acts is this: benefits or burdens cannot be imposed on a person behind his back, thus, where someone gratuitously interferes to protect another's property, no liability to reimburse the former could be imposed on the latter.⁴ It operates to the end that no liability can ensue on Hassan.

2. **It must be impossible or impracticable to communicate with the owner of the goods in order to get his instructions:** In the scenario illustrated above, if it was possible for Okon to reach Hassan, when he noticed the missing slate, he would have gotten instructions from Hassan before calling Jakatu to fix the roof. There was however, no way in reaching Hassan. This is because, in the case, it was stated the Hassan left without leaving an address with which he could be contacted. In the case of *Springer v. GT Western RLY CO*⁵, the company was held liable in damages to Mr. Springer, as they should have communicated with him as soon as the ship arrived. We must note that the person has to try to communicate first before taking any action.

3&4. **The agent must act bonafide in the interest of all parties and The existence of a prior contractual relationship:** In this case scenario, if Okon had not fixed the slate, the rain would have flooded the house and destroyed the things inside Hassan's house. It was undeniably impossible to communicate with Hassan thus Okon had to exceed his authority and acted in the

³ (1948) 1 All ER 67 where furniture stored *gratis* from 1940, was sold by the bailee in 1944 after ineffectual attempts to communicate with the bailor. It was held that there was no commercial emergency and the bailee was liable in conversion. (1948) 2 KB 23 & *Munro v. Willmot* (1948) 2 All E.R 983

⁴ *Binstead v. Buck* (1777) 2 WN BL 1117

⁵ (1921) 1 KB 257

genuine interest of Hassan as in the case of *Prager v Blastspiel Stamp & Heacock Ltd*⁶. However, in the case of *Jebara v Ottoman Bank*⁷, the court considered that the doctrine should only be applied where there was a subsisting principal agent relationship at the time of the act in question. Looking at the facts of this hypothetical scenario, there were no subsisting principal-agent relations that existed between Hassan and Okon. Thus, this requirement cannot be used to bring liability against Hassan to indemnify Okon or remunerate Jakatu.

The elements must be proven to succeed in a claim for agency of necessity. However, if the plaintiff cannot provide sufficient evidence, and one element cannot be proven, the claim will fail. Having been able to prove some of the elements, one important element “prior contractual relationship” cannot be established in this scenario. From the scenario, Okon has never performed any duty of an agent before. He was merely trying to help his neighbor gratuitously.

In conclusion, this group is of the opinion that an agency of necessity does not exist in the total sense and that Hassan is not liable to pay/indemnify Jakatu for the job carried out, only Okon can pay remuneration to Jakatu.

⁶(1924) 1 K.B 566; It was held that as the skins were not likely to deteriorate in value if not properly stored, the defendant had not acted bonafide in selling the skin. In this question, the fourth condition for an agency of necessity is satisfied as it was impossible to communicate with Hassan and Okon acted bona fide in the interest of all the parties.

⁷(1927) 2 KB 254

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