***AFE BABALOLA UNIVERSITY, ADO – EKITI, EKITI STATE***

***GROUP SIX {6} COMMERCIAL LAW CONTINUOUS ASSESSMENT***

***{GROUP ASSIGNMENT}***

***COURSE TITLE: COMMERCIAL LAW {II}***

***COURSE CODE: LPB 304***

***LECTURER{S}: PROF. FOGAM, DR. IFEOLUWA A. OLUBIYI, DR PATRICK IKE***

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GROUP ANSWER:

**THE LEGAL ISSUE:** The legal issue for determination is whether a valid agency relationship by necessity exists between Hassan and his neighbour Okon and whether by virtue of the aforesaid agency relationship, Hassan owes Jakatu. This issue will be resolved in the negative.

**THE RULE**

According to *Section 142 of the Contract Act 1950*, an agency may arise by necessity or in an emergency. Agency of necessity means a person may become the agent of another without being appointed as such under certain circumstances. Agency by necessity can also be defined as 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 authorization of the principal, in order to prevent harm or loss to the principal. The general principle governing this area of law is that a person is regarded as an agent of necessity if owing to an emergency; he enters into a contract on behalf of another person without authority, so as to protect the interest of that other person form loss or damage. For example, a deserted wife or a wife who is justified in leaving her husband and she has not working, can claim for the necessities of life from her husband according to the income and position of the husband even though her husband unwilling to fulfill this pledge. However, if she is has been given an adequate allowance and can support her own life either in money or in earning capacity, then there is no arise of agency by necessity as in case ***Biberfield v. Berens [1952] 2 All ER 237***.

***Prager v. Blatspiel, Stamp and Heacock Ltd [1924] 1 KB 566*** which was regarding there must be a genuine necessity and the agent must act bona fide.The court held that there was no agency of necessity because the plaintiff was willing to wait for goods which were appreciating in value and it is clear that defendant acted against bona fide when defendant sold off the furs which got higher value at that time.

There are various conditions that must be met for an agency of necessity to be created and they are:

1. There must be a prior contractual relationship: When there is 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 is in unforeseen circumstances that have arisen is compelled to exceed his authority.
2. There must be an actual, real or imminent commercial necessity or genuine emergency to warrant an agency for instance perishable property. .
3. It must have been impossible to communicate with the owner of the goods or property in order to get his instructions. ***Springer v. Great Western Railway Company [1921] 1 KB 257, Great Western Railway Company, 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. As defendant has failed to communicate with plaintiff when they could have done so, thus, there was no agency of necessity.***
4. The agent must act in bonafide interest of all the parties. We must take note that if in an urgent situation, an agent has authority to act in the best interest for the purpose of protecting his principal from losses. ***Povey v. Taylor (1966) 116 NLJ 1656, The court of appeal held that it was reasonable for the plaintiffs to infer that B was ordering the work with the defendant’s authority, so the defendants were stopped from denying that authority.***

**APPLICATION:** In applying this rule to the case study, we can say that Okon had no prior contractual relationship with Hassan whatsoever as we can see in the first condition; furthermore, as seen in the second condition, Okon merely acted as a good neighbor, but and also concerning the third condition, it was impossible to communicate Hassan, and fourth condition, Hassan never wanted Okon to repair his roof. Therefore, we can say that Hassan and his neighbor Okon were not in a contractual relationship of any sort. The only way Hassan would have been liable to pay Jakatu was if he and Okon were already in a contractual relationship then we would say that Okon acted as Hassan’s agent and the act was out of necessity but this is not the case. So we can say that Okon’s act was out of good faith but Hassan cannot be liable for that.

**In conclusion**, as a legal advisor, I would say that Hassan was not liable to pay Jakuta for his labor seeing as Okon’s act was not an act of agency of necessity. Because for an act to be seen as an agency of necessity all the conditions must be fulfilled and we can see that for Okon the 1st condition was not applied.