**COURSE CODE: LPB 304**

**COURSE TITLE: COMMERCIAL LAW II**

**GROUP 9**

**GROUP LEADER: ANDAWEI EMMANUELLA 17/LAW01/060**

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The issues for determination based on the highlighted scenario are: whether there is an agency relationship between Hassan and Okon, to render him an agent of necessity. Also, there is the issue of whether Hassan owes Jakatu remuneration for his services.

Like many concepts in law, it is inconceivable to give a composite definition of agency, given its wide nature. According to ***Bowstead***, agency is “the relationship which exists between two persons, one (principal) of whom expressly or impliedly consents that the other (agent) should represent him or act on his behalf, and the other of whom similarly consents to represent the former or so to act”. The relationship between the principal and agent may arise in the following cases: By agreement, whether express or implied in nature, by subsequent ratification by the principal of the agent’s act done on his behalf, by operation of law. However, there are instances that are unaligned with the status quo, particularly emergency situations. In such turning, an agency may exist in an unorthodox manner, agency of necessity being one of those instances. It is an aspect of an impliedly created agency, such that actions of a person without authority, when done on behalf of another, would attract liability on the other person, forming a principal to agent relationship in this course. The agent in this case takes action on the principal’s property to prevent imminent damage or loss.

Notwithstanding, in order to establish the legal issues, we must prove the elements of agency of necessity. First, there must have been a prior contractual relationship between the parties. In this instance, the act forming the agency of necessity would be regarded as a mere extension of that relationship by the agent, who in the unforeseen circumstance that may have come to being, is compelled to exceed his authority. In **Great Northern Railway v, Swaffield[[1]](#footnote-2)**, the court held that the defendant was liable as the plaintiffs’ actions were a mere extension of the authority they had. If there was no previous contractual relationship between the parties, there can be no liability, as liability cannot be imposed on a person behind his back.

Second, there must bean actual or imminent commercial necessity or genuine emergency**.** This requirement is strict and applies to cases where goods are perishable. Where goods are not likely to deteriorate in quality if properly stored, an agency of necessity will not easily be implied. Hence, mere inconvenience will not create an agency of necessity as was detected in **Prager v. Blatspiel, Stamp & Heacock Ltd[[2]](#footnote-3)**, where the court held that there was no agency of necessity as the skins were not likely to drop in value and could be preserved by proper storage.

Third, the agent must have acted bonafide in the interest of the principal. It usually comes to being when the agent has to bring his principal into a contractual relationship with a third party. The perfect example is the Shipmaster, who borrows money on behalf of the ship owner, or may even have to sell part of his cargo in his possession to defray expenses as highlighted in **Nolara v Henderson.** In such cases, he is said to have acted in good faith, for the benefit of the principal. The question that may arise is whether such a person is entitled to reimbursement or commission from the owner of property. As a general rule, the law regards such a person as a volunteer who cannot claim any reward.

Applying the rule in the highlighted scenario, we can identify that Hassan travelled and was out of reach, which prompted Okon’s decision to call Jakatu to repair the slate before the thunderstorm. However, he did so without relying on any authority as there was no existing contractual relationship between them. In the eye of the law, they were strangers. In the same vein, Okon could in no way be considered an agent of necessity, following the lack of this requirement. This emphatically proves that there was in fact, no agency relationship between Hassan and Okon in the scenario. Similarly, Hassan was a neighbour to Okon, who formed a contract of service with Jakatu out of freewill and moral duty. Although, he acted in good faith for Hassan’s benefit, the law purports to give no commission where one acts in such moral code. This is because the law will not impose liability on a person for a contract to which he is not a party to. Therefore no right of remuneration is available to Jakatu at the instance of Hassan.

In conclusion, I submit, based on the above laid-down principle, Hassan will not be liable to Jakatu because there is no agency relationship with Okon. However, Jakatu may sue Okon for remuneration for the services he rendered as the contract exists between them. Thus, Okon is the one liable to remunerate Jakatu, given that there is no agency relationship between Hassan and Okon.

1. (1874) L.R. Ex 132 [↑](#footnote-ref-2)
2. (1924) 1 K.B. 566 [↑](#footnote-ref-3)