

GROUP 14’S

COMMERCIAL LAW ANSWER



May 15, 2020

**MEMBERS LIST**

|  |  |  |  |
| --- | --- | --- | --- |
| S/N | NAME | MATRIC NUMBER | ROLE |
| 1 | ACHILEFU  Ikechukwu Okeoghene | 17/LAW01/007 | Group Participant |
| 2 | AMODEMAJA Damilola Oluwaseun | 17/LAW01/ 057 | Editor |
| 3 | GREEN Tamunokieibi | 17/LAW01/128 | Academic Contributor |
| 4 | HARUNA Saratu Notun Noel | 17/LAW01/130 | Academic Contributor |
| 5 | INYANG Vivian Victor | 17/LAW01/150 | Academic Contributor |
| 6 | LEMON Sanyiebari Precious | 17/LAW01/ 169 | Group Participant |
| 7 | **Muoghalu  Britney Ezinne** | 17/LAW01/180 | Leader |
| 8 | OBEGOLU Obinna Charles | 17/LAW01/197 | Group Participant |
| 9 | OGUNBANWO Oluwasetan Mowafoluwa | 17/LAW01/208 | Group Participant |
| 10 | ONOMITE Erutejiri Temiloluwa | 17/LAW01/242 | Group Participant |
| 11 | ORELU Tega Alexia | 17/LAW01/248 | Group Participant |
| 12 | ORU Uvie Zircon | 17/LAW01/254 | Academic Contributor |
| 13 | SALIFU Blessing Ene | 17/LAW01/269 | Academic Contributor |
| 14 | SODIYA Esther Oluwaseyitan | 17/LAW01/272 | Academic Contributor |
| 15 | TADESE Oluwakemi Margaret | 17/LAW01/274 | Group Participant |
| 16 | UNUGBUA Esther Boma | 17/LAW01/287 | Academic Contributor |
| 17 | **ADESOLA Taiwo Tobi** | 16/LAW01/007 | Assistant Editor |
| 18 | **NNAM Chioma Maureen** | 16/LAW01/133 | Group Participant |

**Question**:

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 a 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?

**INTRODUCTION**

The given Scenario above pivots on the subject of agency of necessity. These writers after consulting their academic materials will be attempting an answer through a brief approach rather than the famed IRAC approach. Not only does the question miss the phrase ‘advise’ which typically demands an IRAC approach to answer questions with it, this question particularly requires us to discuss the position of the law as regards this case and we shall do this with the aid of our understanding of classroom lessons and legal authority.

**ISSUES FOR DETERMINATION/ LEGAL QUAGMAIRE**

The legal quagmire is whether or not Okon’s act of contacting Jakatu to fix Hassan's roof is binding on Hassan?

**ANSWER**

Resultant of the circumstances of necessity (particularly the impracticability of the agent communicating with the principal), courts were prepared to treat the agent of necessity as though he or she had the necessary authority to do what was reasonably necessary to save the principal's property. If an agency of necessity was established, the agent would be reimbursed for the expense incurred in rescuing the principal's property.

Typically, an Agency of necessity arises where there is an emergency situation that needs urgent attention, to invoke this these three elements need be in the scenario:

1. **The situation must be such that the principal cannot be reached at the time**

Hassan leaving no address upon embarking on his Holiday trip to Obudu Ranch glaringly fulfills this condition.

1. **There must be an emergency**

Evidently, the emergency in this scenario is rain and thunderstorm predicted to occur in the next days. This is an emergency as a missing roofing tile in Hassan’s roof exposes the house and its contents to the harsh elements of the weather, these objects are at risk of damage.

1. **Such an agent must have acted in good faith**

Clearly, Okon acted in good faith, particularly out of goodwill and the lack of evidence that states otherwise further strengthens this fact.

Though different facts, there is a similarity of this scenario and the case of **Binstead v Buck (1776) 2 W B1 1117**, where a finder of a dog could not claim from the owner monies he has spent looking after it because the owner had never agreed to bailment. It was held that no agency cannot arise if someone takes it upon themselves to look after someone else’s property,

This legal authority states that Hassan has no liability to reimburse Okon since the general principle is that benefits (or burdens) cannot be imposed on a person behind his back.

Also, in the case of **Great Northern Rly Co v Swaffield (1874) L.R. Ex 132** where a horse was sent by rail and on its arrival at its destination there was no one to collect it. GNR incurred the expense of stabling the horse for the night. It was held that GNR was an agent of necessity and therefore had authority to incur that expense. Although the company had no express or implied authority to incur such charges, it had acted in an emergency as an agent of necessity and was therefore entitled to claim an indemnity from the owner of the horse.

Upon examination of the facts of the case above, one will see the presence of existing contractual relationship between the railway company and the defendants (this further connotes that one cannot successfully claim to be an agent of necessity without the element of ‘prior contractual relationship’

Furthermore, if a person acts on behalf of another person, albeit in an emergency, without a pre-existing contractual relationship, his/her act will not be covered under the doctrine of agency of necessity as it is in England.

This was elucidated upon by the Supreme Court in the case of **Serajuddin and Ors. v. The State of Orissa and Ors. (1971) AIR 1971 Cal 414** where it ruled that “…there is no principal and agent relationship between the appellant and the Corporation and in the absence of such relationship the agency of necessity does not arise.”

**CONCLUSION**

Though, one may be misled through a lacuna that since there is no contractual relationship between Hassan and Jakatu, there may be an agency of necessity between Hassan and Okon and this may give rise to third party rights which Okon may enforce on Hassan.

However, this would be incorrect due to the absence of the elements of a contract (offer, acceptance and consideration) between Okon and Hassan in the first instance, third party arise out of a contractual relationship between two other parties. So then what rights arise out of a non-existent contract? These writers posit none.

As regards the agency of necessity relationship between Hassan and Okon, it is pertinent to take into cognizance the absence of the vital element of ‘**Prior Contractual Relationship**’ in the scenario. This is one of the preceding elements that determines whether or not an agency of necessity arises.

Essentially, this element defines the strength of a plaintiff’s claim. If it were to be overlooked, there would be a plethora of claims at court stemming out of good Samaritans who contracted other parties to fix a problem their neighbor’s never asked them to fix to begin with.

These writers strongly posit that Okon’s act of goodwill towards Hassan though done out of compassion is not an agency of necessity and rather just an act of kindness, nothing more nothing less.

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