



AFE BABALOLA UNIVERSITY ADO-EKITI (ABUAD)

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

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AGENCY OF NECESSITY**

**LECTURER(S):
PROF. FOGAM
DR. OLUBIYI A.
DR. PATRICK IKE**

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18	IBILOYE TOYIN PRECIOUS	17/ LAW01/132	RESEARCH

The legal quagmire for deliberation is whether a fiduciary relationship of agency was created between Hassan and Okon as a result of necessity. The question, therefore borders on our knowledge and understanding of the conditions necessary for the creation of an agency of necessity which would help determine the position of the law in the given scenario.

AGENCY OF NECESSITY

Agency of necessity often arises when 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. However, if an agency of necessity is to be conferred, some conditions must be satisfied. In essence, before Okon can bring an action against Hassan who has refused to pay for the work done, he must be able to satisfy the following conditions before an agency of necessity can be said to have been established;

1. **Prior contractual relationship:** There must be in existence 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 in the unforeseen circumstances that have arisen is compelled to exceed his authority. Comparing the facts in the case *Great Northern Rly Co v Swaffield*¹ with that of the given scenario, it is safe to say that there was no existing contractual relationship between Hassan and Okon, but merely a neighbor relationship.
2. **There must be an actual or imminent commercial necessity or genuine emergency to warrant of the agency:** There must be an emergency which poses an imminent threat to the interests or the property of another party which therefore compels the agent to act in a manner to protect the property of another party from irreparable loss. This requirement is strict and often applies in cases where the goods are perishable. This rule was applied in the case of *Prager v Blastspiel Stamp & Heacock Ltd*². It was held that the agent was not an agent of necessity, because he could have stored skins until the end of the war. There was no real emergency.

¹ *Great Northern Rly Co v Swaffield* (1874) L.R. Ex 132 It was held that the defendants were liable to the plaintiffs the expenses incurred.

² *Prager v Blastspiel Stamp & Heacock Ltd* [1924] I K.B 566 It was held that there was no real emergency the skin the skins were not likely to deteriorate in value if properly stored.

3. It must be impossible or impracticable to communicate with the owner of the goods to get his instruction: There must have been insufficient time or means for the agent to seek the principal's directions or authority regarding the matter. In *Springer v Great Western Railway Co*, a consignment of fruit was found by the carrier to be going bad. The carrier sold the consignment locally instead of delivering it to its destination. No attempt was made to communicate with the owner. It was held that the carrier was not an agent of necessity because he could have obtained new instructions from the owner of the fruit. He was liable in damages to the owner. Hassan left for the Obudu ranch without leaving an address at which he could be contacted as such it was difficult for Okon to communicate or trace him in the circumstances.

4. The agent must act bonafide in the interest of the principal and not merely for the benefit or convenience of the agent: This means the agents acts or acted on behalf and for the benefit of the principal. The agent has the principal's best interest at heart and did not act for his own personal gain or for secret profit. Okon can be said to have acted bona-fide in the interest of Hassan, as he is not stated to have gotten any benefit from him act. He did such act of contacting solely for Hassan's interest which is to prevent loss off Hassan's property.

In the above case there was firstly, no prior contractual relationship between Hassan and Okon, they were simply neighbors. Therefore the only relationship which existed was a neighbor relationship, no contractual or consensual basis. From Okon's perspective the issue of a missing slate and occurrence of a violent thunderstorm appeared to be an emergency, a crucial or grave issue. But the fact that Hassan intended for it to be repaired by Shehu when he had time means he was aware of it and that it wasn't actually a matter of urgency. Okon was unable to communicate with Hassan because he did not provide an address with which he could be contacted. Although Okon acted with Hassan best interest at heart, he did not satisfy all the conditions and one must prove all requirements to imply an agency of necessity exists. **In conclusion**, Okon who lacked the legal capacity and acted on his own behalf cannot make Hassan liable to pay Jakatu due to the absence of a contractual relationship. Okon does not represent Hassan as an "agent" he did not receive any instruction from Hassan to act as he did. Therefore, Hassan cannot be held liable.