

***College:*** *Law*

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***Lecturers:*** *Professor Fogam, P. T;* *Dr Ifeoluwa A. Olubiyi; Dr. Patrick Ike*

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**ISSUES**

Whether an agency of necessity exists between Hassan and Okon andWhether Jakatu is entitled to recover money from Hassan

I assert to this legal quagmire in the negative.

 **Fridman** defines agency as “the relationship that exists between two persons when one, called the agent, is considered in law to represent the other, called the principal, in such a way as to be able to affect the principal’s legal position in respect of strangers to the relationship by the making of contracts or the disposition of property.” An Agency can be created in different ways, one of which is **agency of necessity**.

Agency of necessity often arises when in emergency conditions a person is obliged to act in order to prevent an irreplaceable loss to the property or similar interest of the person on whose behalf the act is performed. A person, who acts to save the property of another or gives some other form of assistance, may as a matter of law is regarded as an agent of necessity. There are four conditions in order to establish agency of necessity and they include;

1. **Prior contractual relationship:** there must have been a relationship between the two for the person acting on behalf of the other to be classified as an agent. For instance, relationship between the owner (principal) and the master of a ship (agent) & relationship between an owner (principal) and a carrier of goods (agent) are examples that show existing contractual relationship between principal and the person who acts on his behalf.
2. **It must be a situation that impossible for the agent to get the principal’s instruction**: this means that it would be nearly impossible for the “agent” to contact the “principal” and the test for that is usually not whether it was inconvenient for the agent to contact but whether a reasonable man would be able to communicate with the principal if he was in the place of the agent. The case of ***Springer v. Great Western Railway Company*** the defendants agreed to transport tomatoes for the defendant from Point A to Point B, due to some delays during transportation the defendants sold the goods due to the perishable nature of the goods, the plaintiff sued for damages & won on the ground that the plaintiff sold the goods without communicating with the plaintiff.
3. **The agent’s action is necessary**: This can be said as the agent’s action is to prevent loss to the principal with respect of goods, such as perishable goods. However, agency of necessity does not arise when goods are merely sold because of inconvenience. The case of ***Great Northern Railway Co. vs. Swaffield***, the plaintiff railway company transported a horse to a station on behalf of defendant. When the horse arrived, there was nobody to collect it. So, the plaintiff sent it to a stable. A number of months later, the plaintiff paid the stabling charges and then sought to recover what he paid from the defendant. The court held that the plaintiff’s claim succeeded even though he is involved in the extension of doctrine of agency of necessity to include carriers of goods by land. There was an agency of necessity because the plaintiff was found to have had no choice but to arrange for the proper care of the horse.
4. **The agent has acted in good faith (Bona fide):** It means that this was not just done for the convenience or benefit of the agent. ***Prager v. Blatspiel*** ***Stamp and Heacock Ltd***  the plaintiff contracted the defendant to buy some furs on his behalf and had largely paid for it, due to some problems they were unable to communicate, the furs that were stored were increasing in value. The defendant decided to sell the furs. 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.

 In the scenario, there was no contractual relationship between Okon and Hassan so although it might have been impossible to communicate with Hassan, and Okon might have fixed the roof to prevent his neighbour’s possessions from being destroyed which would have been irreparable & it might have been for the benefit of the Hassan, but the first condition which is the most important is the existence of a contractual relationship has not been met consequently no agency of necessity exists between Okon and Hassan. This is because apart from the cases where prior contractual relationship exists, the doctrine of agency of necessity hardly applies. As a result Jakatu is not entitled to be paid by Hassan because he had no contract with Hassan but rather Okon as Okon is not an agent of Hassan remember only an agent can bring about a relationship between a person and a third party. Thus, where someone gratuitously interferes to protect another’s property, no remedy reimburses for the general principal is that benefits cannot be imposed on a person behind his back.

It is clear that there is no agency created by necessity between the parties. Hassan cannot be asked to pay Jakatu as there exist no contract between the two, he should therefore claim his payment from Okon as it is he that he contracted with.

**Bibliography**

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