GROUP 12 COMMERCIAL LAW.ASSIGNMENT.

The legal issue for determination is whether a valid relationship of agency by necessity existed between Hassan and Okon, and whether by virtue of this, Hassan owed Jakatu, a third party payment.

Agency by necessity is an agency created by an emergency which makes it necessary for the agent to act without receiving the authorization of the principal, in order to prevent loss to the principal**.** It is created when a person is entrusted with another’s property and it becomes necessary to do something to preserve that property although he has no express authority to do so**.**In general, four conditions must be satisfied to create this agency.

**Prior Contractual Relationship**. The court usually admits that such agency exists when there is an existing contractual relationship between parties. Without such relationship, the doctrine of agency of necessity barely applies because the general principle is that a person cannot have benefits imposed on him behind his back. The cases of ***Great Northern Railway Co v Swaffield***and ***Binstead v Buck***are precedent.

**Actual/Imminent Commercial Necessity or Genuine Emergency**; There must be an actual commercial emergency that forces the agent to act, usually occurs where the goods are of perishable nature or consist of livestock that has to be fed, as in the ***Swaffield*** case.

**The agent must have acted in the bona fide interests of the parties:**The agent here must have engaged in an action leading to the general benefit or interests of the parties involved, as stated in the case of ***Prager v Blastspiel Stamp and Heacock.***

It must be **impossible to communicate** with the principal to get instructions from him. If it is not possible for the agent to reach the principal or receive instructions from him, if he acts, there can be said to be an agency of necessity.

Applying the rules to the facts before us, it is trite to first note that in a valid agency, a principal has the responsibility of payment to the third party.

However, we must examine the facts of the case to understand whether there was a valid agency of necessity between Okon and Hassan, first using the most important element of agency by necessity, which is a prior existing contract. **The scenario makes no mention of any prior existing contract between both neighbours,**and to this end, it would be unfair to impose liability upon him, as he entered no form of contractual relationship with his neighbour prior to the act done by Jakatu.

On whether the act done by Okon was necessary, the answer is yes. The act done was a necessary act and it was done to avert damage which would have occurred to Hassan’s house if the rain had gotten into his house (i.e. if the roof had not been fixed by Jakatu.) Moreover, it was an emergency, evident in the fact that the rain began right after the roof was fixed, but it can’t be said to be a commercial emergency.

In the case, Hassan left no address, making it difficult for him to be reached by Okon. Had he left any address, he would have been contacted and he would’ve told Okon about Shehu. However, he left no address. It should be noted that this element is becoming more difficult to prove due to modern technology and how it is much easier to reach people nowadays.

Okon can be said to have acted in the bona fide interest of all parties involved. His employing Jakatu to fix the roof was for the interest of Hassan who would have suffered greater damage when compared to the amount he will pay for the aversion of such loss.

It is however important to note that in as much as the last three elements may apply, the first does not, and the first is rather pivotal in the proving of agency by necessity. It can be said even that the last three elements are usually valid to the case where there already exists a prior contractual relationship between the parties.

It is vital to note that in other cases where these elements were said to validate an agency by necessity, (cases such as ***Great Northern Railway Co v Swaffield***and ***Sims and Co v Midnight Railway Co***) there already existed a prior contractual relationship between both parties, and the agent there was practically acting as an agent but without the authority of the principal.

In Conclusion, Hassan had no relationship of agency with Okon, as Okon acted without any prior contract with him. This in itself would mean that any liability incurred by Okon cannot be imposed upon Hassan as it would be unfair and against the decision in ***Binstead v Buck***to impose liability upon a person behind his back. **To this end, the third party,Jakatu will not be owed any payment by Hassan, as there exists no agent nor connection between them,** since the relationship of agency by necessity between his employer and Hassan cannot be proven.