Global Technology and Modern Commercial Agency of Necessity [*]

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Abstract. In Anglo-Saxon common law, the courts have allowed agency of necessity to develop to meet the prevailing commercial needs, but also restricted its development through the imposition of demanding criteria. After summarising and distinguishing the basic principles applicable to the 'full' doctrine of agency of necessity and the 'more limited' sub-doctrine relating to reimbursement of agent's expense, this paper locates and analyses the current application of the doctrine's criteria in the age of ubiquitous mobile phones, synchronous internet communications, email, and immediate money transfers. It concludes by suggesting that the development of the doctrine is inhibited less by improved communication systems and more by the strict and narrow test applied to identify the required 'necessity'.

1. Introduction

Agency is based upon consensual obligations between the agent and the principal, but the emergent Georgian commercial community required judicial intervention to assist in achieving some desired commercial objectives. As McCardie J. explained in *Prager v. Blatspiel, Stamp and Heacock Ltd* [1924] 1 K.B. 566 at 570:

> 'The object of the common law is to solve difficulties and adjust relations in social and commercial life. It must meet, so far as it can, sets of fact abnormal as well as usual. It must grow with the development of the nation. It must face and deal with changing or novel circumstances. Unless it can do that it fails in its function and declines in its dignity and value. An expanding society demands an expanding common law.'

Agency of necessity addressed the problem articulated by Lynskey J. in *Munro v. Willmott* [1949] 1 K.B. 295 at 297:

> 'masters of ships who found themselves in foreign parts and unable to get immediate instructions from their owners when they needed money for expenses which had not been provided for'

Other jurisdictions have addressed the need merely by extending implied authority in an emergency (Reynolds, 1990 referring to Mechem, 1914) but English law plugged the gap by the doctrine of 'agency of necessity', a cousin of the law of salvage, permitting the sale of cargo or the pledging of a vessel to raise funds expressly to allow the voyage to continue - *Arthur v. Barton* (1840) 6 M & W 138. It curiously lacks coherence (Bowstead and Reynolds, at 4-002) and in *Re Banque Des Marchands De Moscou* [1952] 1 All ER 1269 (at 1277), Vaisey J. spoke of 'this strange notion of an agency of necessity'. Over the years, the courts have adapted it, and until August 1st 1970 it extended even into matrimonial relations (41(1) Matrimonial Proceedings and Property Act 1970). Whilst the courts normally seek some pre-existing contractual relationship between the principal and the agent, and evidence that the goods are perishable, there are instances where the doctrine has been applied notwithstanding the absence of either (or both). It enables one party (the agent) to bind another (the principal) in a contract with a stranger (the third party who consequentially acquires good title to property) where the agent lacks any other right to do so. The consequential devil is that the third party can be confident of the application of the doctrine only through satisfaction of all the criteria: but the third party lacks the means of ascertaining the satisfaction of those criteria – a problem epitomised in the requirement of the impossibility of the 'agent' to secure instructions. Whilst the third party may not know what steps the agent has taken to secure authority, he cannot rely on the agent's own assertions as to his authority (*Armagas Ltd v. Mundogas SA (The*

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Ocean Frost) [1986] A.C. 717). The consequential paradox is that the doctrine denies the parties the immediate certainty that the doctrine sought to provide.

This article summarises and distinguishes the basic principles applicable to the 'full' doctrine of agency of necessity and the 'more limited' doctrine relating to reimbursement of agent's expense. Through examination of some recent cases, it will then locate and analyse the current application of the doctrine in the age of ubiquitous mobile phones, synchronous internet communications, email, and immediate money transfers. By way of conclusion it will suggest that the principal bar to the further application of the doctrine is not the existence of enhanced communication through advanced technology, but the strict and narrow test applied to identify the "necessity" of action.

2. The Consensual Nature of Agency

The received view is that the operation of the law of agency is usually based on some element of consensus between the principal and the agent or some representation by the principal. According to Bowstead and Reynolds (at 4-002), it is:

> "the fiduciary relationship which exists between two persons, one of whom expressly or impliedly manifestly assents that the other should act on his behalf so as to affect his relations with third parties, and the other of whom similarly manifestly assents so to act or so acts"

Professor Fridman prefers to identify agency through its legal consequences:

> "the relationship which exists between two persons … in such a way as to be able to affect the principal's legal position in respect of strangers to the relationship".

This dichotomy of approach reflects the courts' traditional reluctance to impose any obligation unwillingly or unknowingly incurred. Bowen L.J. explained in *Falcke v. Scottish Imperial Insurance* (1886) 34 Ch D 234 at 248:

> "The general principle is, beyond all question, that work and labour done or money expended by one man to preserve or benefit the property of another do not according to English law create any lien upon the property saved or benefited, nor, even if standing alone, create any obligation to repay the expenditure. Liabilities are not to be forced upon people behind their backs any more than you can confer a benefit upon a man against his will."

Accordingly, the supposed doctrine of "agency of necessity" is a curiously rare exception; and fragmentally and imperfectly developed for several reasons of policy. It ranks as one of the three exceptions (the others are salvage and acceptance of a bill for honour supra protest) to the general rule that unrequested work will create no legally enforceable right to remuneration. Nevertheless it seeks to accommodate commercial realism within the constraints of a strict legal doctrine; and consequently the doctrine has, over the years, enwrapped a number of separate (and disparate) sub doctrines, some of which, such as the wife's agency of necessity, have been abolished. A ship's Master now has implied authority to enter salvage agreements for the cargo (The Choko Star [1990] 1 Lloyds's Rep 516); but, as Lynskey J. observed in Munro v. Willmott [1949] 1 K.B. 295 at 297,:

> "The master the always had power to sell or hypothecate the ship, in some cases to dispose of the cargo, and so forth as an agent of necessity."

Agency of necessity imputes to one party (the agent) the principal's authority to bind the principal in a contract with a stranger (the third party) though the 'agent' lacks any other right to so contract. As a consequence, one unusual characteristic of agency of necessity is that it operates without the knowledge or will of the principal or any representation by him; and whilst the courts will usually prefer evidence of some pre-existing contractual relationship between the principal and the agent, the doctrine is not conditional upon such a relationship.

Establishing the doctrine consequently validates the otherwise unauthorised acts of the agent, and thrusts the validity of the agent's actions upon the principal; and thereby creates two separate results in two separate

relationships as Lord Diplock explained in *China-Pacific SA v. Food Corpn of India. The Winson* [1982] AC 939 (at 958):

> "the effect of conferring on [the agent] authority to create contractual rights and obligations between that other person and a third party that are directly enforceable by each against the other."

This includes passing good title to goods to a third party, and (as usually the onus is on the agent to establish the application of the doctrine - *Gillespie Bros, Proprietary, Ltd v. Burns, Philp & Co., Ltd* 79 Ll L Rep 393) authorising a defence against the principal's action in conversion against the third party and, entitling the agent to fees, commission, and re-imbursement of expenses.

Given this lack of consensual agreement, it is understandable that the courts have exercised ambivalent caution in the development of the doctrine. The expansion of the doctrine favoured by McCardie J. in *Prager* was promptly and firmly rejected by Scrutton L.J. in *Jebara v. Ottoman Bank* [1927] 2 K.B. 254, at 270; and in *Sedgwick, Collins & Co Ltd v. Highton and Others* [1929] 34 Ll.L. Rep. 448 Wright J. denied the doctrine in respect of a policy of insurance:

> "The doctrine … has only been applied to the case of people who had in their possession, custody or control entrusted to them for one reason or another goods and property, and in certain limited cases it has been held that they were entitled to take steps for the preservation of that property in the case of urgent necessity and charge the cost of so doing to the principals or justify the so doing; for instance, if they sell the goods as against their principals in an action claiming damages."

Whilst recognising the need to adapt the principle for modern circumstances, Lord Goddard warned in *Sachs* v. *Miklos* [1948] 2 K.B. 23 at 36:

> "It is, however, fairly clear from Scrutton L.J.'s judgment in Jebara v. Ottoman Bank, and it is certainly my opinion, that the court should be slow to increase the classes of those who can be looked upon as agents of necessity in selling or disposing of other people's goods without the authority of the owners."

3. Sub-doctrinal Developments

The doctrine was originally maritime based but subsequently extended into terrene situations and where person seeks entitlement to recover reasonable expenses. As regards the former, Stoljar observed that a person may be faced with the same necessity to act on land as those at sea and Lord Goddard commented in *Sachs*, at 35:

> "There is no reason why, if it becomes commercially impossible, or extraordinarily difficult, for example, in the case of a strike or other breakdown of communications, for a carrier to communicate with the owner of goods, he should not be entitled to sell or dispose of them in the same way as a master of a ship."

Nevertheless, his Lordship warned (at 36) that the doctrine was not infinitely elastic and emphasised that the criteria for terrene and maritime applications were very different:

> "I know, however, of no case in which the doctrine of agency of necessity has been applied to carriers by land except where the goods are perishable or in a somewhat similar category, that is to say, livestock, which have to be tended, fed and watered."

As discussed below, the terrene cases do, however, provide guidance as to 'emergency' and 'necessity'

The second 'sub-doctrine', where an 'agent' seeks entitlement to recover reasonable expenses, fits uneasily into 'agency of necessity', since the 'agent' is not altering the position of the principal vis-à-vis any third party. As Lord Diplock commented in *The Winson* (at 958), this 'sub-doctrine' is based on

> "cases where the only relevant question is whether a person who without obtaining instructions from the owner of the goods incurs expense in taking steps that are reasonably necessary for their preservation is entitled to recover from the owner of the goods the reasonable expenses incurred by him in taking those steps"

In addition, the significant case law on the latter addresses only terrene situations, thereby muddling the two sub-doctrines. However, the starting point is that there is no fundamental principle entitling reimbursement. In *Binsted v. Buck* (1777) 2 Wm Bl 1117 the court refused reimbursement of expenses for caring for a stray animal or one found by a river, and in *Nicholson v. Chapman* 2 H BL 254, the court refused payment to the bailiff's man who recovered loose timbers from the Thames and stored them safely. Whilst the claim was not asserted under agency of necessity, Lord Eyre C.J. (at 259) refused to extend maritime principles to a tidal river:

> "it is better for the public that these voluntary acts of benevolence from one man to another, which are charities and moral duties, but not legal duties, should depend altogether fore their reward upon the moral duty of gratitude."

Similarly, in *Hawtayne v. Bourne* (1841) 7 M & W 595, the court refused reimbursement of a mine manager's borrowings to pay miners and avoid seizure of the employer's property. However, the suspicion remains of an expectation that agents should protect the principal's property, as in *Bank of New South Wales v.* Owston ((1879) 4 App. Cas. 270, at 290):

> "An authority to be exercised only in cases of emergency, and derived from the exigency of the occasion, is evidently a limited one, and before it can arise a state of facts must exist which shows that such exigency is present, or from which it might reasonably be supposed to be present. If a general authority is proved, it is enough to show, commonly, that the agent was acting in what he did on behalf of his principal."

So, the apparently divergent sub-doctrines become reconcilable where there is an existing agency relationship (typically master and servant), and the courts often bend 'implied authority' to meet the situation as in *Poland v. John Parr & Sons* [1927] 2 K.B. 236 where the court classified a servant's authority to protect his master's endangered property as implied rather than agency of necessity.

Some of the shortcomings from this narrow approach have been addressed by the Torts (Interference with Goods) Act 1977 and others by the development of restitution e.g. where the intervener is a professional performing a professional service (*Surrey Breakdown Ltd v. Knight* [1999] RTR 84*)*. Yet, the cases still warrant examination as providing a fruitful exposition of "necessity".

4. Principal Doctrinal requirements

The roots of the doctrine of 'agency of necessity' lie in a maritime context. Recently, in *The "PA Mar*" [1999] 1 Lloyd's Rep 338, at 341 Clarke J. re-iterated the four principal criteria for the application of the doctrine in the context of salvage:

> (i) it is necessary to take salvage assistance, and
> (ii) it is not reasonably practicable to communicate with the cargo-owners or to obtain their instructions; and
> (iii) the master or ship owners act bona fide in the interests of the cargo; and
> (iv) it is reasonable for the master or ship owner to enter into the particular contract…

In Brice, Maritime Law of Salvage, second edition, 1993, the author writes, after referring to this passage:

> 'There are of course countless situations which may arise so as to require that salvage assistance be provided to a ship and her cargo. It is probable that, at least in most cases, where the danger to the vessel is such that the services rendered would, in accordance with the ordinary principles of law be categorised as salvage services, that the degree of danger to which the ship and cargo are exposed will be such as to amount to an "emergency" giving rise to a "necessity" for taking action to protect ship and cargo in the form of engaging a salvor to perform salvage services.'

However, these criteria, only slightly refined, have found equal application in general commercial contexts.

Firstly, although in *The Bonita* (1861) 1 Lush 252, the court advanced 'emergency' as an alternative to 'necessity, in *The "PA Mar*" Clarke J. clearly endorsed a two stage test for necessity: an emergency and consequential necessity of action. 'Emergency' implies a compelling need for action to be effected and the urgency of such execution, rather than mere prudence, desirability, inconvenience or nuisance; but the

compelling need not be on the high seas. In *The Gratitudine* [1775-1802] All ER Rep 283, 3 Ch Rob 240, Sir William Scott applied the doctrine to a vessel and cargo in port:

> "Suppose the case of a ship driven into port with a perishable cargo where the master could hold no correspondence with the proprietor; suppose the vessel unable to proceed, or to stand in need of repairs to enable her to proceed in time. In such emergencies the authority of agent is necessarily devolved upon him unless it could be supposed to be the policy of the law that the cargo should be left to perish without care. What must be done? He must in such case exercise his judgment, whether it would be better to tranship the cargo, if he has the means, or to sell it."

The need to act is objectively tested (*Tetley & Co. v. British Trade Corp* (1922) 10 Ll L Rep. 678) as Wright J. commented, in *Sedgwick, Collins & Co Ltd v. Highton and Others* [1929] 34 Ll.L.Rep. 448 at 456:

> "I do not find anywhere any suggestion that to effect an insurance in circumstances like these could come within the scope of an agency of necessity. The question of whether a man should insure or not insure is essentially a matter for his own judgment."

In *Australasian Steam Navigation Co v. Morse* (1872) LR 4 PC 222, Sir Montague Smith described "emergency" (at 230) as:

> "an irresistible compelling power – what is meant by it in such cases is, the force of circumstances which determines the course a man ought to take" .

But that compelling power is unlikely to include commercial or financial pressures, as Singleton L.J. indicated in *John Koch, Ltd v. C. & H. Products Ltd* [1956] 2 Lloyd's Rep 59, at 65:

> "I do not consider that the question of agency of necessity arises upon the facts of this case. Storage charges were running. No one doubted the ability of the defendants to meet them …. It was not suggested by them that there was any question of the defendants' financial stability."

The emergency might derive from external events, the character of the assets, or the combination thereof, but it is clear that the 'necessity' must relate to the nature of the entrusted goods and the risks to which they were exposed to place them i.e. either or both of the vessel and the cargo needing protection or preservation from an immediate risk of loss (*Kleinwort, Cohen, & Co. v. The Cassa Marittima of Genoa* (1876-77) L.R. 2 App. Cas. 156*).* Thus, there is no 'emergency' where goods can be safely stored, as McCardie J. emphasised in respect of the furs in *Prager* (at 573):

> "The measure of deterioration depends on whether they are properly stored. If put into cold storage the deterioration is very little… I see no adequate reason for the sale by the defendants, for I am satisfied that there was nothing to prevent the defendants from putting them into cold storage, and certainly nothing to prevent them from keeping them with proper care in their own warehouse."

Underlining the point, his Lordship proceeded to advance a cost / benefit test:

> "The expense of cold or other storage would have been but slight compared with the value of the furs. The plaintiff had given nearly 1900l. for them, and they steadily rose in value. The contra account of the defendants was less than 400l. The margin therefore was of the most ample description."

Similarly, in Sachs, Miklos could not terminate the voluntary and gratuitous bailment of furniture (non – perishables) even though the continued storage hampered Miklos' business. The courts take a different approach in respect of living animals and to "non-perishable chattels" at risk (at 36):

> "In this particular case, whatever else there may have been, there was certainly no emergency. It was not a case where the house had been destroyed and the furniture left exposed to thieves and the weather. "

This approach was reiterated by Lynskey J. in Munro at 298:

> "There is no real evidence that there was any necessity for the defendant to dispose of the car. He may have found it inconvenient - to some degree a nuisance; but that is not an emergency which compels him to dispose of it."

The classic examples of compelling immediacy are the deteriorating soft produce (Springer v. Great Western Railway [1921] 1 K.B. 257); the disposal of rotting oranges (Freeman & Co. v. Macandrews & Co Ltd (unreported) KBD 1929); the stabling fees of the horse which could not be delivered due to no fault of the company (Great Northern Railway Co v. Swaffield (1874) LR 9 Exch 132); and the services of the veterinary surgeon for an injured dog (Palmer v. Stear (1963) 113 L.J. 420). Other situations must require prompt intervention such as effective traffic management (White v. Troups Transport [1976] C.L.Y. 33).

In contrast, in Surrey Breakdown, the Court of Appeal recognised the adaptability of the doctrine but rejected the contention that storing a stolen car under a statutory power constituted a compelling emergency. As Staughton J. admitted (at 88):

> "The doctrine of agency of necessity is not wholly settled in English law … However, the modern view is to be found at Ch 15 in Goff and Jones on the Law of Restitution 4th ed., and in particular at page 373. There it is said that to support an agency of necessity –
>
> "[it] must have compelled the intervention. The emergency must be so pressing as to compel intervention without the property owner's authority."

More recently, in The Winson (at 967), Lord Simon reinforced the need for immediate action by reference to goods being in "imminent jeopardy". Despite the variety of scenarios, common to all these cases is the court's demand that action needs to be taken.

The second requirement is an inability to secure instructions from the owner directly (or via an authorised local representative of the ship owners - Gunn) or, an absence of a reply (The Winson). However, this is predicated upon convenient communications and "an opportunity to consult" (per Lord Esher in Gwilliam v. Twist [1895] 2 Q.B. 84 at 87). The only excuse for failing to endeavour to communicate is commercial impracticality. Over two hundred years ago, Sir Montague Smith explained in Kleinwort, Cohen, & Co, at 157

And later

> "If according to the circumstances in which he is placed it be reasonable that he should-- if it be rational to expect that he may-- obtain an answer within a time not inconvenient with reference to the circumstances of the case, then it must be taken upon authority and principle that it is the duty of the master to do so, or at least to make the attempt."

In *Sims & Co v. Midland Railway Co.* [1913] 1 KB 103 at 112. Scrutton J. (as he then was) proposed a realistic test: "practically impossible to get the owner's instructions in time," and later, in *Springer*, Salter J. (at first instance) emphasised, at 262, that whilst each instance would turn on its own facts, the onus is upon the agent to show good reason for failing to secure instructions:

> "commercially impracticable to communicate with the plaintiff … but I think it is safe to say that if communication is physically possible without disproportionate expense, and if there is reason to expect that instructions can be obtained before a final decision must be made, then the carrier must at least attempt to obtain such instructions before he deals with the goods otherwise than under the express terms of the contract of carriage."

On appeal, Scrutton L.J. accepted (at 267) for cases of multiple principals (e.g. multiple cargo owners) a "commercially impossible" test – later confirmed in the *Choko Star*. However, within a half century, methods of communication, and therefore expectations, had changed, as Willmer L.J. indicated in *Blandy Brothers & Co. v. Nello Simoni Ltd*, [1963] 2 Lloyd's Rep 393 at 401:

> "It was pointed out (and I think it cannot be contested) that in this case, telegraphic communication between Funchal and London being readily available, no question of agency of necessity could possibly arise."

In *Sachs* Lord Goddard suggested that where the agent's repeated communications (letters correctly addressed and posted, and attempted telephone calls but without necessitating a personal local search) have elicited no response from the principal (at 37):

> "A court may possibly infer that the [owner] was so disinterested in it that he was impliedly assenting to the sale".

The flaw in this approach is that by admitting an absence of urgency, he is denying the 'emergency' – an essential ingredient for the doctrine.

Whilst failure to seek instructions is fatal to the application of the doctrine (*McVittie v. Bolton Corporation* [1945] KB 281), the principal is equally expected to respond to such request. In *Ridyard v. Roberts* (unreported) the Court of Appeal confirmed the application of the doctrine where a landowner had sold three ponies after their owners had failed to respond to numerous requests to remove them. There, Megaw L.J. explained:

> " 'It is apparently enough if the agent asked his principal for instructions but the principal ignored his request.' … it certainly is a matter which falls importantly to be taken into account … if he has taken reasonable steps to get instructions from his principal and he has received no such instructions, particularly where it is apparent that the absence of instructions is deliberate and ultroneous."

These cases emphasise that the impossibility to secure instructions, or where the principal ignores the need to decide, as distinct from a refusal of authority as explained, with limitations, by Evans J in *Graanhandel T Vink BV v. European Grain & Shipping Ltd* [1989] 2 Lloyd's Rep 531, Evans J.:

> "…no question of agency can arise if the necessary authority has been expressly refused. That was the effect of certain dicta in Morton v Chapman itself and there is a supporting passage in Benjamin on Sale (par 190). I would venture respectfully to doubt whether that is necessarily always the case: one can envisage circumstances where a buyer does establish the need to sell, where it might well be argued that the seller's refusal to acknowledge those facts would not prevent the buyer from alleging that the agency did exist."

Despite that obiter comment, the requirement remains that the agent has to be unable to secure instructions from his principal. The tests are strict and the courts have rightly interpreted them narrowly to protect the principal.

Thirdly, the putative agent has to act bona fide and with the intention to preserve or protect that property in the principal's best interests (*Prager*). As Sir William Scott explained in *The Gratitudine* (1801) 3 Ch Rob 240:

> "In all cases it is the prospect of benefit to the proprietor that is the foundation of the authority of the master."

Where motives are manifold, Lord Simon suggested in *The Winson* (at 966) that the dominant motive test is applied, and so, in *Prager*, McCardie J. observed at 572:

> "an alleged agent of necessity must satisfy the Court that he was acting bona fide in the interests of the parties concerned. In Ewbank v. Nutting [(1849) 7 C. B. 797, 804] … Coltman J. said during the argument:
> 'Does not the authority of the master extend to acts such as he, in the exercise of an honest judgment, thinks the best for the interest of the owner of both ship and goods?' "

Whilst Markesinis & Munday prefer the 'interest mainly served' test, in The Winson, Lord Simon mused, obiter, at 966, on whether the test should be 'the interest mainly served' or 'dominant motive':

> "The law does not seem to have determined in this context what ensues where interests are manifold or motives mixed: it may well be that the court will look to the interest mainly served or to the dominant motive."

Finally, the agent's action is reasonable and prudent, and therefore implicitly not unusual, e.g. borrowing money as in *Hawtayne*. However, the test is dependant upon the facts, as Lindley L.J. explained in *James Phelps & Co v. Hill* [1891] 1 QB 605 at 610:

> "in considering what is reasonably necessary any material circumstance must be taken into account, e.g. danger, distance, accommodation, expense time and so forth."

Whilst the courts have readily adapted the doctrine to new scenarios, they continue to apply the four main tests with considerable strictness.

5. Modern Communications

The doctrine's requirement that the agent has to be unable to secure instructions from his principal, was clearly essential to limit the application to true cases of necessity, and thereby protect the principal. The corollary is that where authority is refused, agency of necessity cannot arise, as Evans J. explained in *Graanhandel T Vink BV*:

> "[In] Morton v Chapman (1843) 11 M & W 534 … the defendants' initial response was to say that they would sell the goods for the account of the plaintiffs. In reply, the sellers made it clear that they refused authority. … the Court did not regard the case as one where the buyers could claim to be acting as agents of necessity on behalf of the sellers"

Given that the doctrine is intended to be applicable in extreme circumstances only, it is unsurprising that so many cases have turned on the failure to seek instructions. The problem is further compounded by technological advances. As Bowstead observes (at 4-007) the impossibility of securing instructions is rare in the modern world. Markesinis and Munday similarly comment (at p 56)

> "With today's improved communications, it may be difficult for the agent to establish that communication was practically impossible"

and Professor Fridman suggests (at p 135):

> "It must be impossible for the master to be able to communicate with the owners of the ship or cargo and ask for instructions [*The Australia* (1859) 8 Moo PCC 132] (which seems severely to limit the operation of this form of agency in the light of modern communications although it may be relevant where there are numerous cargo owners)."

A further point is that agency of necessity developed to address the problems of money transfer as Sir John Jervis explained in *The Oriental* 7 Moo. P. C. 398 at 411 :

> "electric telegraph will not carry money, but to send a communication on the one hand and receive an answer on the other."

However, the focus on the growth and ease of communication as influencing the development of agency of necessity risks blinding commentators to the modern ease of money transfer. The consequence is that today, if communications have all but eliminated the impossibility of obtaining instructions, those communication systems have also facilitated global money transfer almost to the extinction of agency of necessity.

6. Agency of Necessity in the Twenty-first Century

As agency of necessity was established some centuries ago, it is easy to argue that the basic principles applicable to the 'full' doctrine of agency of necessity and the 'more limited' doctrine relating to reimbursement of agent's expense characterise it as an anachronistic hang-over falling into disquietude. However, it must be remembered that much against the continuing prevailing ethos of agency, the doctrine of agency of necessity thrusts the validity of the agent's actions upon the principal. Accordingly, it is right that, to protect the principal and limit the doctrine only to instances where his property is truly endangered, the tests are strictly and narrowly interpreted.

Modern communication is ubiquitous and instantaneous: common. Technological advances in communication have effectively facilitated global money transfer – the lack of which was a significant contribution to the growth of agency of necessity. Unsurprisingly, major academic commentators have all questioned the future of the doctrine on reasoning that modern communications have eliminated one essential criteria – the impossibility of obtaining instructions.

Ironically, analysis of the cases demonstrates that in agency of necessity the courts have struggled with the concepts of "emergency" and "necessity" rather than communication. So, the principal bar to the further application of the doctrine is not the existence of enhanced communication through advanced technology, but the strict and narrow test applied to identify the "necessity" of action.

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