

LAW OF AGENCY  
"AGENCY OF NECESSITY" . ITS ' SCOPE IN MALAYSIA

MEGAT M3HAMAD ANUAR BIN HAJI MEGAT NOH

Submitted in partial fulfillment of the requirement  
for the Diploma in Law  
At the School of Law, MARA Institute of Technology  
Shah Alam,  
SELANGOR DARUL EHSAN.

Author's signature^:

Certified by

[E«<iik Abu Bakar)  
Supervisor

## TABLE OF CONTENTS

	<u>Page</u>
PREFACE	
ACKNOWLEDGEMENTS	
CHAPTER ONE	INTRODUCTION
CHAPTER TWO	CREATION OF AGENCY
	1 By Express Appointment
	2 Implied Appointment
	3 Agency of Necessity
	4 Agency by Ratification
	5 Agency of Estoppel
CHAPTER THREE	AGENCY OF NECESSITY
	Definition
	Rules To Create Agency of Necessity
	i) There must be an emergency
	ii) It must be impossible to communicate with the principal and to obtain his instructions
	iii) Action taken is necessary for the benefit of the principal
	iv) It was done bona fide
CHAPTER FOUR	SCOPE OF AGENCY OF NECESSITY
	1. Under Common Law
	2. Under Malaysian Law

CHAPTER FIVE	EFFECT OF AGENCY OF NECESSITY	54
	1. As Between The Principal and Agent	
	2. As Between The Principal and Third Party	
	3. Effect Between The Agent and Third Party	
CHAPTER SIX	CONCLUSION	71

## CHAPTER I

### INTRODUCTION TO LAW OF AGENCY

Agency is the relationship which exist between two parties, one of whom expressly or impliedly consented that the other should represent him or act on his behalf, and the other party is whom similarly consented to represent the former to act on certain task. The person on whose behalf the act is to be done is called the principal<sup>2</sup>, while the person who is to represent the principal is called the Agent.

There are certain circumstances that the use of agency is needed. Ball and Rose in principles of business law<sup>4</sup> has stated certain circumstances on which the role of agency is needed, such as for:

- i. physical necessity,
- ii. specialist knowledge,
- iii. in matter of identity
- iv. problems in transportation,
- v. emergency

However, not in all cases that an agency can be said to be as an agency within the meaning stated under the law. The term "agency" has a different meaning between the legal use and that from the commercial ones. Markesinis and Munday has stated that:

".....it should be clear that the law of agency does not come into play everytime one person represents another. For example, no rules of agency apply when a husband sends his wife to a wedding to congratulate the newly-weds ..... For the rules of agency to come into play the representation of one person by another must be meant to affect the principal's legal position ....."

This means that the legal means of the use of agency is that it must be used to create or will affect the legal position of his principal and not merely in a complimentary ways. As the court has decided the rules of agency will only be considered in cases where it was meant to affect the legal position of the principal with a third party or with the agent himself.

conception of agency is expressed in the maxim 'qui facit per alium facit per se'. Furthermore it was stated that an 'agent' is a person who is able, by virtue of authority conferred upon him, to create or effect legal rights and duties between another person who is called his principal and the third parties.

these dictinction that an "agency" has a different approach-between the legal means and the commercial use. The people still do not understand truly the meaning of "agency" in the sense of legal use.