



# THIRD PARTY RIGHTS

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# Introduction

- In a contract we must determine rights and liabilities under the contract.
- There are two exceptions to the principle of privity of contract
  1. One exception allows a party to a contract to transfer the rights of duties arising from the contract of another person through an assignment of rights or a delegation
  2. The second exception involves a third party beneficiary, a contract in which the original parties intend to benefit a third party

# Assignments And Delegations

- Transfer of contractual Rights is an Assignment
- Transfer of contractual duties is Delegation
- An assignment requires valid notice to all parties
- No special form is required to create a valid delegation of duties as long as the delegator expresses an intention to make the delegation it is effective.
- Example of Assignment: Osvaldo owes Monserrat \$700 for a HP Pavilion laptop. Monserrat(Assignor) assigns her right to receive payment to Rachel. Rachel(Assignee) is entitled to enforce the payment in court if Osvaldo does not pay.

# Assignments and Delegations Exceptions

## Exceptions to Assignments

There are certain situations in which you cannot assign rights to a third party and here they are.

- The assignment is prohibited by statute
- The Contract is personal
- The Assignment significantly changes the risk or duties of the obligor
- The contract prohibits an assignment. A contract cannot prohibit an assignment if:
  1. A Contract cannot prevent an assignment of the right to receive funds.
  2. The assignment of rights in real estate often cannot be prohibited because such a prohibition is contrary to public policy in most states.
  3. The assignment of negotiable instruments (such as check and promissory notes) cannot be prohibited
  4. In a contract for the sale of goods, the right to receive damages for breach of contract or payment of an account owed may be assigned even through the sales contract prohibits such an assignment

## Exceptions to Delegations

There are certain duties that you cannot delegate.

- Duties cannot be delegated if
  1. Duties are personal in Nature
  2. When performance by a third party will vary Materially from that expected by the obligee
  3. When the Contract Prohibits Delegation

# Third Party Beneficiaries

- A person who will benefit from a contract made between two other parties. Under certain circumstances, the third party has legal rights to enforce the contract or share in its proceeds.

## 2 Types of Third Party

### Intended Beneficiary

- To whom the party is rendered directly
- who has the right to control the details of the performance
- who is designated a beneficiary in the contract

***CAN SUE TO ENFORCE CONTRACT***

- Incidental Beneficiary

- Who benefits from a contract but whose benefits was not of the reason for the contract
- Who has no rights in the contract

***CANNOT SUE TO ENFORCE THE CONTRACT***

# 2 Types of Intended Beneficiaries

- Creditor Beneficiary

- A creditor beneficiary is defined as one to whom the promisee owes or is believed to owe a duty which is discharged by the promisor's performance.

- Donee Beneficiary

- When a contract is made for the express purposes of giving gift to a third party

# Intended V. Incidental Beneficiary

## The Rights of an Intended Beneficiary Vest

- The third party materially changes his or her position in justifiable reliance on the promise
- The third party brings lawsuit on the promises
- The third party demonstrates her or his consent to the promise at the request of the promisor or promisee, such as by sending a letter or email indicating that she or he is aware of and consents to a contract formed for her or his benefit

The following factors strongly indicate that the third party is a beneficiary

1. Performance is rendered directly to the third party
2. The third party has the right to control the details of performance
3. The third party is expressly designated as a beneficiary in the contract