

# PRIVITY OF CONTRACT

- As a general rule, only the parties to a contract – the promisor and the promisee – owe any duties and enjoy any rights arising from the contract. Common law recognizes three exceptions:
  - **Assignment (of Rights):** A transaction whereby an *obligee* (the *assignor*) transfers her rights to some third party (the *assignee*). As a consequence, the **assignor’s contract rights are extinguished**, and the assignee may demand any performance due to the assignor.
  - **Delegation (of Duties):** A transaction whereby an *obligor* (the *delegator*) frees himself from his duties by having some third party (the *delegatee*) perform those duties. Despite his delegation, the **delegator remains liable** for his contract duties if the delegatee fails to perform.
  - An “**assignment of all rights**” implies both an assignment and a delegation.
  - **Third-Party Beneficiary:** A third party, X, is intended, by the terms of the contract between Y and Z, to benefit from Y’s and Z’s performance of the contract.

## SCOPE OF ASSIGNMENT

- As a general rule, **all contract rights may be assigned, except** where:
  - (1) a **statute prohibits** the assignment;
  - (2) the contract to be assigned is for **personal services**, unless all that remains under the contract is a money payment for services previously rendered;
  - (3) the assignment would **significantly increase the obligor's risk or alter the obligor's duties**; or
  - (4) the **contract specifically forbids assignment**.
- There are exceptions to this final exception – namely, the contract may not prevent the assignment of
  - (a) the right to **receive money**,
  - (b) rights in, or the alienation of, **real property**,
  - (c) **negotiable instruments**, or
  - (d) the right to **recover damages** for breach of contract or for payment of an account under the UCC.

## NOTICE OF ASSIGNMENT

- Once a valid assignment of rights has been made, the **assignee** should notify the **obligor** of the assignment.
  - The assignment is effective immediately, **whether or not** the assignee gives notice to the obligor.
  - However, until the obligor receives notice of the assignment, he may satisfy his contractual obligations by performance to the **assignor** – even if the assignor has already assigned her rights to the assignee.
- If the assignor assigns the same rights to two or more parties, the obligor may not know to whom his duty to perform is owed. There are two general rules:
  - **The “Majority” Rule:** The first assignment made takes priority over any subsequent assignment; and
  - **The “English” Rule:** The first assignment recorded or otherwise made known to the obligor takes priority – even over an assignment made before it.
- **Assignment of “All Rights”:** Courts generally treat language by which a party assigns a contract, or all of her rights under a contract, simultaneously, as both assigning her rights and delegating her duties.

## SCOPE OF DELEGATION

- As a general rule, **all contract duties may be delegated, except** where:
  - (1) performance depends on the **personal skills or talents** of the delegator (*e.g.*, Peyton Manning cannot delegate his quarterbacking duties to Serena Williams);
  - (2) the delegator owes the obligee **fiduciary duties** or other duties arising from a **special trust** in the delegator;
  - (3) performance by the delegatee would **vary materially** the performance expected by the obligee (*e.g.*, Sue Smith contracts with Paula Creamer to give her golf lessons; Paula cannot delegate those duties to her caddie because Sue wanted Paula's personal performance); or
  - (4) the **contract specifically forbids delegation**.
- If the delegation is enforceable, the **obligee must accept** performance by the delegatee.
- But, if the delegatee fails to perform adequately, the **delegator remains liable for the delegatee's breach**.

## INTENDED BENEFICIARIES

- **Intended Beneficiary:** A third party *for whose benefit a contract is formed*.
  
- **Creditor Beneficiary:** A third party who benefits from a contract in which the promisor promises to pay a debt owed by the promisee to the third-party beneficiary.
  
- **Donee Beneficiary:** A third party for whose benefit a contract was made whereby the promisor promised the promisee to make a gift to the third-party beneficiary.
  
- An intended third-party beneficiary's rights **vest** (*i.e.*, become enforceable), subject to any reservation of rights to the contracting parties, when one of the following occurs:
  - (1) the third party demonstrates **manifest assent** to the contract (*e.g.*, sends a letter acknowledging awareness of and consent to the contract for her benefit);
  
  - (2) the third party **materially alters** her position in **detrimental reliance** on the contract (*e.g.*, sells her automobile in anticipation of receiving a new automobile pursuant to the contract); or
  
  - (3) some **condition for vesting** occurs (*e.g.*, an insured dies vesting the policy beneficiary's rights).

# INCIDENTAL BENEFICIARIES

- **Incidental Beneficiary:** A third party *who benefits from the performance of a contract*, but whose benefit was not the reason the contract was formed.
  
- Courts generally ask whether a **reasonable person** would believe that the promisee intended to confer on the third party
  - (1) the **right to bring suit** to enforce the contract, and, thereby,
  - (2) the **right to benefit** from the contract.
  
- In so doing, courts consider whether:
  - (1) performance was rendered **directly** to the third party;
  - (2) the third party has the **right to control** details of the performance; and
  - (3) the third party is **expressly designated** in the contract.