

Chapter 18

Intended beneficiary - third person of a contract whom the contract is intended to benefit.

Third-party beneficiary - third person whom the parties to a contract intend to benefit by making of the contract and to confer upon such person the right to sue for breach of contract.

The third party person who is benefiting from the contract can sue if the contract fails due to the fact they are not receiving their benefits from the contract.

Intended beneficiary is sometimes classified as a creditor beneficiary when the promisee's primary intent is to discharge a duty owed to the third party.

A man sells his business and owes payments to a company. The buyer of the business agrees to pick up the final payments for the business. If the buyer fails to make the payments. The company due to receive the payments can sue as they were the intended creditor.

Donee beneficiary - promisee's primary intent in contracting is to give a benefit.

A third person does not have the status of an intended third-party beneficiary unless it is clear at the time the contract was formed the parties intended to impose a direct obligation with respect to the third person.

Description of third party beneficiary does not need to be identified by name. (Example a contract between the promoter of an automobile stock car race and the owner of the racetrack contains a promise by the owner to pay specified sums of money to each driver racing a car in certain races. A person driving in one of the designated races is a third-party beneficiary and can sue the owner of the contract for promised compensation.

Two parties can cancel a contract without consent of the intended third-party beneficiary, by acting in accordance with the contract provision as long as the contract allows change of a the promise beneficiary or allows the cancellation of the contract.

If the benefit was not intended, the third person is an incidental beneficiary.

Whether or not a third party is an intended or incidental beneficiary, therefore, comes down to determining whether or not a reasonable person would believe that the promise intended to confer on the beneficiary an enforceable benefit under the contract in question.

Assignment - transfer of a right; generally used in connection with personal property rights, as rights under a contract, commercial paper, an insurance policy a mortgage, or a lease.

The party owing a duty or debt under the contract is the obligor or debtor, and the party to whom the obligation is owed is the obligee.

Assignment takes effect the moment it is made. The assignee should give immediate notice of the assignment to the obligor, setting forth the obligor's duty to the assignee, in order to prevent improper payment.

If the obligor is notified in any manner that there has been an assignment and that any money due must be paid to the assignee, the obligor's obligation can be discharged only by making payment to the assignee.

The Uniform Consumer Credit Code (UCCC) protect consumer-debtors making payments to an assignor without knowledge of the assignment and imposes a penalty for using a contract term that would destroy this protection of consumers.

Assignments of contracts are generally made to raise money. Example - automobile dealer assigns a customer's credit contract to finance company and receives cash for it.

Cause of action - right to damages or other judicial relief when a legally protected right of the plaintiff is violated by an unlawful act of the defendant.

Person owes a painting company \$5,000 for painting her house, then painting company assigned the claim to Main Street Bank. Person refused to pay the bank because she never consented to the assignment. Irrelevant since the painting company owned the claim and could transfer it to the bank.

Future rights to money may be assigned. A building contractor may assign its rights to money not yet due under an existing contract's payment on completion-phase schedule.

A clear and specific contractual prohibition against the assignment of rights is enforceable at common law. However it is ineffective against (1) The assignment of rights to payment for goods or services including accounts receivable (2) assignment of the rights to damages for breach of sales contract.

If the transfer of a right would materially affect or alter a duty or the rights of the obligor, an assignment is not permitted.

Asking to have goods delivered to an unreasonable place would not be given effect. (ex not your place of business where the goods are specifically for causing your performance to slump)

Contracts for personal services are generally not assignable.

Some courts permit a successor employer to enforce an employee's noncompetition agreement as an assignee of the original employer. However a majority of states have considered this issue have concluded that restrictive covenants are personal in nature and non assignable.

When a transaction is based on extending credit, the person to whom credit is extended cannot assign any rights under the contract to another.

Jack contracted to sell summer camp to Pat for \$200,000, with \$100,000 in cash due at the closing and the balance due on installment basis secured by a mortgage. Several days after Pat finds a better property and his sister Meg was happy to take over the contract. Pat assigned rights to Meg. Jack found a better offer after contracting with Pat, refused to consent to the assignment. The assignment to Meg is prohibited because the assignee, Meg is, a different credit risk even though the property to serve as security remained unchanged.

Unless restricted by the terms of the assignment or applicable law, the assignee acquires all the rights of the assignor.

Example - When a contractor is not entitled to receive the balance of money due under the contract until all bills of suppliers of materials have been paid, the assignee to whom the contractor assigns the balance due under the contract is subject to the same condition.

The making of an assignment does not relieve the assignor of any obligation of the contract. In the absence of a contrary agreement, an assignor continues to be bound by the obligations of the original contract.

Example - Boatbuilder Derektor NY's assignment of obligations to a CT boatbuilder did not release it from all liabilities under its boatbuilding contract with NY Water Taxi; and NYWT was allowed to proceed against Derektor for breach of contract-design and breach of contract-workmanship.

Novation - substitution for an old contract with a new one that either replaces an existing obligation with a new obligation or replaces an original party with a new party.

The assignee is not subject to suit by virtue of the fact the assignment has been made.

Implied warranty - warranty that was not made but is implied by law

Delegation of duties - transfer of duties by a contracting party to another person who is to perform them.

Under certain circumstances, a contracting party may obtain someone else to do the work. When performance is standardized and non personal, so that it is not the material who performs, the law will permit the delegation (transfer to another of the right and power to do an act) of the performance of the contract.

However the contracting party remains liable in case of default of the person doing the work just as though no delegation had been made.

"an assignment of 'the contract' or of 'all my rights under the contract' or an assignment in similar general terms is an assignment of rights and, unless the language or the circumstances indicate the contrary, it is a delegation of performance of the duties of the assignor, and its acceptance by the assignee constitutes a promise... to perform those duties.

This promise is enforceable by the assignor or the other party of the original contract.

Chapter 19

Condition - stipulation or prerequisite in a contract, will, or other instrument.

Condition precedent - condition that must occur before a party to a contract has an obligation to perform under the contract.

Example - a condition precedent to a contractor's obligation to pay a subcontractor under a "pay if paid" by the owner clause in their subcontract agreement is the receipt of payment by the contractor from the owner. The condition precedent- payment by the owner- did not occur due to bankruptcy, and therefore the contractor did not have an obligation to pay the subcontractor.

Condition subsequent- event whose occurrence or lack there of terminates a contract