

Privity of contract assignment

Law



The basic answer to this question is 'NO', as the following literature supports and explains this fact effectively. A contract is an agreement between two or more parties that creates an obligation to do or not to do something. The parties to the contract are under an obligation to perform the terms and conditions as laid down in the contract.

Thus a contract can confer rights or impose obligations arising under the contract on the parties to the contract. Third parties cannot be under such an obligation to perform or demand performance under a contract. This is referred to as Privity of contract. The Doctrine of Privity of Contract under English Law The doctrine of " Privity of Contract" which means that a contract is a contract between the parties only and no stranger to the contract can sue even if the contract is avowedly made for his benefit.

Thus a stranger to the consideration cannot sustain the action on the promise made between two persons unless he has in some way intervened in the agreement. As the plaintiff was to be married to the daughter of G and in consideration of this intended marriage G and the plaintiff's father entered into a written agreement by which it was agreed that each would pay the plaintiff a sum of the money. G failed to do so and the plaintiff sued his executors.

Thus, although the sole object of the contract was to secure a benefit to the plaintiff, he was not allowed to sue as the contract was made with his father and not with him The two basic principles under the English Law as can be ascertained from the above cases are that firstly consideration should move from the promisee only and secondly that a contract cannot be enforced by a

person who is not a party to the contract even if it is made for his benefit.

The Doctrine in India

There has been a divergence of opinion in India as to whether the Doctrine of Privity of Contract, which prevails in the English Courts, is applicable to the Indian Courts. The Indian Contract Act, 1872 (here in after referred to as “the Act”) codifies the methods of entering into a contract, executing a contract; rules to implement provisions of a contract and effects of breach of a contract. The provisions of the Act prevail over any usage or custom or trade however the same will be valid as long as it is not inconsistent with provisions of the Act.

Section 2(d) of the Act says that “ when, at the desire of the promisor, the promisee or any other person has done or abstained from doing, or does or abstains from doing, or promises to do or to abstain from doing, something , such act or abstinence or promise is called a consideration for the promise” It is clear from this section that the consideration for a contract can proceed from any person and not necessarily the parties to the contract. A promise is enforceable if there is some consideration for it and it is quite immaterial whether it moves from the promisee or any other person.

However there is no specific provision in the Act which either for or against the Doctrine of Privity of Contact. It is through a series of case laws that the Doctrine has evolved. There are two aspects of this doctrine. Firstly, no one but the parties to the contract are entitled under it. Rights or benefits may be conferred upon a third party but such a third party can neither sue under

the contract nor rely on defenses based on the contract. The second aspect is that the parties to a contract cannot impose liabilities on a third party.

Conclusion The Act does not specifically provide for the doctrine of Privity of Contract, however through a series of case laws the doctrine is now applicable in India along with various exceptions. With reference to consideration of a contract the position in India and England are however different. Under the English law only a party to the contract can pay the consideration. If he doesn't pay the consideration he becomes a stranger to the contract. Under the Indian Law, it is not necessary that consideration should be paid by the promisee.

Though there are no express provisions as to assignment of rights and obligations under a contract in the Act, the Principle of assignment has been recognized and developed by the courts through its various decisions. A person may not give any consideration, but is a party to the contract may enforce the contract A stranger to a contract cannot sue : Suppose A and B enter into a contract for the benefit of C. The agreement between and A and B cannot be enforced by C. e. g. Two father entered into an agreement to pay a new couple money on their marriage. The couple cannot sue for enforcement of the contract between the fathers.