**Contracts: assignment and third-party rights**

**Reading 1**: Introduction to contract assignation

The following text deals with a specific aspect of the law of contracts, explaining basic concepts associated with assignment and third-party rights.

1 Read through the text quickly and decide whether these statements are true or false.

1 A **third-party beneficiary contract** is one which intends for someone who is not a party to that contract to benefit from the contract.

2 The term **privity of contract** refers to the relationship which exists between the immediate parties to a contract.

3 The transfer of rights under a contract is known as **delegation**.

4 **Novation** is the renewal of a contract by the contracting parties.

Generally, a contract operates to **confer** rights and **impose** duties only on the parties to the contract and no other parties. The principle that follows from this is that third parties have no rights and, as such, cannot enforce contractual provisions. This contractual relationship is summed up in the term **privity of contract**. However. in many jurisdictions. there are two exceptions to this general rule: the first is when the original contract provides for rights to be conferred on a third party, and the second is when contractual **rights** **and** *duties* are transferred to a third party at a later date.

When speaking of the first type of situation, lawyers generally refer to **third-party beneficiary contracts**. The most common form of this type of contract is where party A enters into a valid contract with party B which stipulates that party B shall render performance for the benefit of party C, i.e. the third-party beneficiary. No problems arise if party B performs. But what happens when party B fails to perform? Have rights been **vested** in party C such that C can enforce the contract, or must party A do so? In many jurisdictions, this problem is addressed through a determination of whether the contract expresses an **intent** to create a legally enforceable right in the third party. However, must the intent be from both parties to the agreement (A and B) or just the recipient of the promise to be enforced, i.e. the **promisee** (A) as opposed to the **promisor** (B)? The courts usually look to the intent of the promisee and ask the question: According to the contract, who was to receive the benefit of the promise. the promisee or a third party directly?

In deciding the promisee's intent. the courts look at the following factors: (1) is the third party identified in the contract?; (2) is performance to be made directly to the third party?; (3) does the third party have any rights (specific or general) under the contract?: and (4) is there any relationship between the promisee and the third party such that it could be inferred that the promisee wished to enter into a contract for the benefit of the third party? Of course, the greater the number of times the court answers 'yes' to the above questions. the more likely it is that the court will rule that the third party is an **intended beneficiary**, and thus entitled to enforce the contract. as opposed to an **incidental beneficiary**.

In the second case mentioned above, rights and duties are transferred after the original contract has been signed. If in the original contract the transferring party (A) is owed a right by the nontransferring party (B), then A is known as the **obligee** and B is the **obligor**. However, if in the original contract A owes B a duty, then A is known as the obligor and B the obligee, When it is not specified whether rights or duties are being transferred, the term **assignor** can be used for A, who attempts to transfer his rights and/or duties under the contract to a third party (C, the **assignee**), If a right is being transferred, C becomes the obligee in place of A, (Although this does not necessarily release A from any obligations to B under the original contract.) If a duty is being transferred, A is known as the **delegator**, while C is referred to as the **delegate** . The term **assignment of contract** can mean several different things. This term is ambiguous, as it does not indicate whether there is both an assignment of rights and a delegation of duties. In everyday usage. it generally means that both are applicable. However, in the interests of precision, the term **'to assign'** should really be reserved specifically for the transfer of rights, and the term 'to **delegate'** should be used in connection with the transfer of duties (and therefore with performance). This distinction is crucial because, while an obligee can rid himself of a right merely by making an effective assignment, an obligor cannot rid himself of a duty by the same means. Generally, in order for the obligor to **discharge** his duties under the contract through assignment, the obligee must first **release** him from his obligations under the contract. When this takes place, there is a **novation** of the original contract. in which the obligor's position is taken on by a new party. The right to assign is generally governed by an assignment clause in the contract. the enforceability of which depends on many factors, including the particular wording of the clause, the nature of the obligations to be performed and the nature of the contract.

**Exercise 1**: Complete the text below using the following words:

assignment (x3), benefits, novation (x4), parties, third party

1)………………………….. is a means by which one party to a contract totally removes himself from the contract by transferring not only all of the 2)…………………………… conferred by that contract, but also all of the obligations. The 3)………………………….. replaces the original party as a party to the contract. Following 4)…………………………, the other contracting party is left in the same position as he was in before it was carried out. except that there is a new obligor. A 5)…………………………. , requires the agreement of all three parties, In contrast. an 6)……………………………. refers to transfer of a right (and sometimes, in general speak, obligations) of one person to another. 7)…………………………. differs from novation in that the 8)…………………… to the contract do not change. Most rights and obligations are capable of 9) …………………………... but not all are capable of 10) ……………………………………….. .

**Exercise 2**: Complete these verb-noun collocations as they appear in Reading 1.

1 confer …………………

2 impose d……………..

3 enforce c…………… p………………….

4 render p…………....

5 delegate d ..............

6 assign r………………….

**Nouns ending in -or and -ee**

Words ending in --or and -ee (such as *promisor/promisee*) are commonly found in legal texts of all kinds, but particularly in contracts. In these words, the -**or** ending indicates the person initiating the action, and the -**ee** ending the one receiving it. Thus promisor refers to a person making a promise, while the promisee is the recipient of the promise, or the person to whom something has been promised. Note that words of this type are also found in everyday English (for example employer. someone giving employment: employee. someone receiving employment).

**Exercise 3**. Complete these pairs of -or/-ee words from Reading 1.

1. Promisor P……………………….
2. D…………. D……………………….
3. O…………. O……………………….
4. A………….. A……………………….