

A PAPER ON PRIVACY OF CONTRACT

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Abstract: *The overview of this principle is mainly basics a person who is considered a third party isn't really privy to a contract owing to the lack of requirement of consideration, but has an involvement in its implementation. As such, only parties to a contract are given rights and obligations. What this doctrine points to is that they should not sue or be sued by certain parties. Only an individual who is a "party to contractual relationship can sue on it and a stranger to a contract cannot sue" is a foundational concept of policy of contract arising from such interpretations. This concept is recognized as 'privity of contract,' which means that a contract only involves those who are privy to it or that contractual privacy for the compliance of contractual duties and privileges must exist. This paper discusses all the aspects of privity of contract in brief.*

Keyword: *Contract, Privity of Contract, Contractual rights, Consideration, privileges, Guidelines.*

Introduction

The theory of privity of contract specifies that a contract cannot, as a rule of thumb, grant rights or enforce responsibilities occurring under that contract on any individual who is not a participant. As artificial and contradictory to the purpose of the parties to support a third party, the doctrine has previously been questioned. As a consequence, to allow a third party to impose a profit conferred on it, the courts have often resorted to tools such as agency or confidence. By allowing for some particular exceptions, legislation has often made gradual inroads into the doctrine.

The theory of privity of contract signifies that the contract is meant to be enforced by the same individuals who are participants within that contract. A contract is imposed by outsiders to the contract even if the contract may have been entered into for its benefit. If a benefit has been bestowed on X in a contract between A and B, X may not bring a claim to enforce the contract because A and B are the only parties to the contract, while X is alien to the touch.

It has been around for over 150 years since evolution of privity of contract. Its roots are strongly founded on the premise that relinquishing to duties owed to third parties could theoretically affect third party responsibilities, resulting in some discordant tune as to the competing value which would arise from such commitments.¹ Through the passing of time, we have progressed from a circumstance in which the majority of business dealings were conducted out face-to-face, whether they were derived straight from production points, such as a retailer, dairy farmer, and so on.²

We will discuss the definition of privity of contract during the span of time, exemptions that actually facilitate its rigidity (been in the way of various legal principles, laws and the like), reasons for and against the rule of privacy. This theory/fitting article discusses trends in the field of privacy and offers a (robust) basis for determining whether it is still fundamentally in place or whether there are roots for a new philosophy to be created.

¹ David F. Tavella, Is Privity Dead? Should it be?

² https://www.academia.edu/27005341/Privity_of_Contract

Discussion

Doctrine of Privity in Contract: English Law

The principle of privity of contract implies that only those who are interested in a contract may enter into a contract thus enforce this. This is still the situation in particular. Only parties involved in contract may sue for violation of a contract. While the privacy law has deteriorated somewhat in recent times and third party recipients are now able to recover damages for contract violations, they have not been permitted to claim damages to the party. The transfer of the Contract (Rights of Third Parties) Act is a current example in England in 1999.

The principle of contract privacy was first recognized and developed in the decision of Tweddle v. Atkinson. Tweddle's father and Atkinson, Tweddle's father-in-law, signed into a deal to give Tweddle and his wife an amount of income each to sustain them. The father of Tweddle maintained his side of the agreement, but Atkinson died before paying something. Tweddle sued Atkinson's property's trustees.

His lawsuit was dismissed on reasoning that even if it appeared to be his gain, he himself was not really a party in this deal. The court concluded that, in the lack of consideration through Tweddle to Atkinson, this was not reasonable to assert that there was an implied contract between Tweddle and Atkinson. In this case, the claimant was indeed an outsider to the contract and a stranger to the consideration, and thus, his argument could not be implemented.

Privity in Contract: Indian Law

The 1872 Indian Contract Act is a copy of British law. Contract law in England can be split into two types, the normal form of contract between two or more parties, legally enforceable. If there exists. The Sealed Contract then no consideration is needed. In India, only one type of contract, which is known as a simple contract, is recognized.³

The Indian Contract Act 1872⁴ is concerned with general contract law concepts and some particular contracts. It should be mentioned, nevertheless, that the Indian Contract Act doesn't really expressly have a single clause referring to the principle of contractual privacy. Therefore, in the context of the different clauses of the Contract Act, the role of the principle can be envisioned.

Meaning of Privity of Contract

These two terms, i.e. 'privacy' and 'contract', are a combined product of the doctrine of contract privacy. The theory either implies something highly confidential about a contract, or it implies the secrecy of a contract between the parties. Contract protection implies the privacy or confidentiality of the contractual obligations. This ensures that just the parties involved in contract are obligated to abide by the terms of the contract and also that the contractual obligations are not required to be met by a third party. This implies that parties only, to a contract is entitled to benefit from the

³ https://shodhganga.inflibnet.ac.in/bitstream/10603/27361/7/07_chapter-1.pdf

⁴ Refer Indian Contract Act, 1872

contract, and no third party is eligible to benefit from it. The reason simply being that outsider has no connection with the particular contract.

Section 73 of the Indian Contract Act, 1872⁵ states that a party experiencing a contractual violation is entitled to obtain compensation from the other contracting party. It can be assumed, in view of section 74 of the Act⁶, that if in the contract, an amount is stated as the amount to be paid in the event of a violation. The party complaining of a violation is entitled to obtain a contract. Fair compensation that does not surpass the sum so called or as agreed to the penalty mentioned for this may be the case. Section 75 of the Act⁷ stipulates that a person who revokes a contract lawfully is entitled to claim and receive damages for any harm caused by the non-fulfillment of the agreement. This is in line with Sections 73, 74 and 75 (which deal with repercussions of contract breach) that only that person has the right to sue anyone who is a party to a contract and has experienced a violation of the contract damage due to an infringement of this kind.

Accordingly, a person who is not a party to the agreement accordingly, will not bring a suit for violation of the contract.

Exceptions to the Rule

1. Agency:

The term 'agent' is concluded from the term 'agency' and it refers to a circumstance in which an individual on behalf of someone else (who is alluded to as the 'principal') enters into a contract. He or she performs the position of a broker in nature and does not actually count as a party to the agreement.

Some requirements must have been complied with in order to be eligible as an agent; where explicit authorization is provided; where implicit authority is offered; and, finally, in which there is obvious (ostensible) authorization.

2. Collateral Contracts:

There is no quite clear definition of the expression 'collateral contract' within the law. It is commonly used as a mark for an agreement that is collateral, or on the side of another agreement. In a widest way, collateral are a large number of instances of implicit or constructive contracts produced by the courts.

While the usual assumption is that the parties consider a written contract to be definitive proof of their objectives, it is still open to a participant to demonstrate that, in fact, the written contract did not reflect their motives entirely because of a 'collateral' arrangement reached through the negotiations but not included in the written agreement as instrument.⁸

⁵ Refer section 73 of the Indian Contract Act, 1872

⁶ Refer section 74 of the Indian Contract Act, 1872

⁷ Refer section 75 of the Indian Contract Act, 1872

⁸ P.S. Atiyah, An Introduction to the Law of Contract

3. Assignment:

A transfer or transfer of land or of a right or interest within, from one person to another is identified as assignment; the term signifying not only the act of transfer, but also the mechanism by which it is carried out in that regard. In these respects the term is alternately used in law. A typical example is that small companies with financial issues sell off the debts owed to what are called factoring houses by others.

Conclusion

The Act doesn't really expressly furnish for the Privity of Contract theory, but the ideology as laid down in *Tweedle v Atkinson* is now made applicable in India together with different exemptions via a set of judicial decisions. It would indicate that true obedience to consideration determines that the parties to contract should be open at any time to alter their purposes. The Third Party Act 1999 agrees that the desire to prevent the injustice of disappointing fair standards should be taken into account. A third party, whether that third party has depended on or has depended on the contract, by transmitting its approval to the promisor, he approved it. The concept that no one other than a party to a contract could be held responsible underneath is typically considered to be just and reasonable. But the law which no one can impose, other than a party to a contract may trigger difficulty when it stops the person most involved in implementing from doing so, bond. In fact, the numerous exemptions to the doctrine make it bearable, but they addressed the issue of whether it might be safer to amend the doctrine further or to altogether eliminate it.

While there are no explicit regulations in the Act about the assignment of rights and responsibilities under a contract, through its numerous rulings, the Concept of Assignment has been accepted and established by the courts. There is no resistance to the Third Party Act 1999 acknowledging this. The need for consideration is not influenced at a deeper policy level and does not impact the need for consideration. Within the reach of the rights of third parties, this could represent a relaxation of the connected value of consideration. Pledges under agreement are, after all, promises permissible without the requirement for regard.