Chapter 15
Third Parties

Chapter Opener: Detroit Institute of Arts v. Rose
✓ The Detroit Institute of Arts (DIA) was not a party to the contract between Rufus Rose and NBC. It was a “third party.”
✓ The DIA sued Christopher Rose for possession of Howdy Doody.
✓ Did they win? Why or why not?

Third Party Beneficiaries
✓ Intended beneficiaries vs. incidental beneficiaries
There are two types of intended beneficiaries:
1. Creditor beneficiaries, and
2. Donee beneficiaries
Restatement of Contracts, 2nd

“A beneficiary of a promise…may enforce a contract if the parties intended her to benefit and if either
a. enforcing the promise will satisfy a DUTY of the promisee to the beneficiary, or
b. the promissee intended to make a GIFT to the beneficiary.”

Another Example

✓ Disney Corporation contracts with Landowner to buy 200 acres to build a theme park in Arizona.
✓ Third Party owns land adjacent to the 200 acre tract.
✓ Disney Corporation backs out of the deal.
✓ May Third Party sue Disney for breach?

Another Example

✓ Ned purchases an insurance policy on his life from Rock Insurance Co.
✓ He names his sister Nell as the beneficiary.
✓ Ned dies while the policy is in effect but Rock does not pay.
✓ May Nell sue Rock for breach of contract?
Assignment and Delegation
✓ When a contracting party transfers some or all of his rights under a contract, we say that an assignment of rights has occurred.
✓ When a contracting party transfers some or all of her duties under a contract, we say that a delegation of duties has occurred.

Assignment and Delegation

The assignor: The one assigning some of his rights to another.
The assignee: The one receiving some rights from the assignor.
The delegator: The one delegating some of her duties.
The delegatee: The one taking on (receiving) the duties.

Assignment and Delegation: An Assymmetry
✓ When rights are assigned, the assignor permanently loses them.
✓ When duties are delegated, the delegator and delegatee will both be responsible for performance unless the obligee signs a novation.
Novation

“A three-way agreement in which the obligor delegates all duties to the delegatee and the obligee agrees to look only to the delegatee for performance. The obligee releases the obligor from all liability.”

Bruno and Lydia

Lydia and Coretta
What Rights are Assignable?
The Restatement (2nd) of Contracts says:
Any contractual right may be assigned unless assignment
a) Would substantially change the obligor’s rights or duties under the contract, or
b) Is forbidden by law or public policy, or
c) Is validly precluded by the contract itself.

How Rights are Assigned: Written or Oral?
✓ In general, an assignment may be either written or oral.
✓ However, when someone wants to assign rights governed by the statute of frauds, she must do it in writing.
✓ Example: Assigning one’s rights to land.

How Rights are Assigned: Consideration
✓ An assignment can be valid with or without consideration.
✓ An assignment done with consideration is irrevocable.
✓ A gratuitous assignment is generally revocable if oral and irrevocable if written.
How Rights are Assigned: Notice to Obligor

- The assignment is valid from the moment it is made, regardless of whether the assignor notifies the obligor.
- But if the assignor does not notify the obligor and the obligor delivers to the assignor, the assignor must perform.

Assignment of Rights Under UCC Article 2

In general, all rights of either seller or buyer can be assigned unless either:

a) The assignment would materially alter the duty of the other party, or
b) The assignment is barred by specific language in the contract.

Rights of the Parties After Assignment

- The assignee may sue the obligor for non-performance.
- The obligor, however, may in general raise the same defenses against the assignee that they would have been able to raise against the assignor.
**Rights of the Parties After Assignment: UCC Article 9**

- A security interest is a legal right in personal property that assures payment.
- The assignment of security interests is governed by **UCC Article 9**.
- The general rule in Article 9 is that the obligor on a sales contract may assert any defenses against the assignee that they could have asserted against the assignor.

**True or False?**

Under UCC Section 9-404, if an automobile dealer sells you a car on credit and then sells your loan to a bank, you may generally raise any defenses against the bank that you would have been able to raise against the automobile dealer. For example, if the automobile dealer's salesman lied to you about the condition of the car, and if those lies were fraudulent or material, you may withhold payments from the bank while you seek rescission of the sales contract between you and the dealer, and the bank may not repossess your car while that litigation is pending.

**Assignment of Unencumbered Security Interests**

Under UCC Sec. 9-403, an agreement by a buyer that he will not assert against an assignee any claim or defense that he may have against the seller is generally enforceable by the assignee if he:

- Took the assignment in good faith, and
- Paid good value for the assignment,
  ...provided the buyer is not a consumer.
Wells Fargo Bank Minnesota v. BrooksAmerica Mortgage Corporation

YOU BE THE JUDGE

✓ Review of facts
✓ Review of legal issue

Note: The case doesn’t tell you this, but Terminal Marketing Company went out of business shortly after executing this agreement!

✓ Vote: who do you think won?

What Duties are Delegable?
An obligor may delegate his duties unless:
1) Delegation would violate public policy, or
2) The contract prohibits delegation, or
3) The obligee has a substantial interest in personal performance by the obligor.

Substantial Interest in Personal Performance
Some kinds of work require personal performance, and obligors may not delegate these tasks.
✓ The services of lawyers, doctors, dentists, artists, and performers generally fall into this category.
What to do if someone delegates a duty they should not have

✔ Don’t allow the unauthorized subcontractor to work on the job site!
  ▪ If you do, you’ll be accepting the delegation.
✔ Then, if the delegator still fails to perform, they will have **repudiated** the contract and you can sue.

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**Rosenberg v. Son, Inc.**

✔ Rosenberg sold a Dairy Queen to Pratt. Pratt was to make payments for 15 years.
✔ Pratt delegated her duties to Son, Inc.
✔ Pratt got Rosenberg to sign a “Consent to Assignment” clause.
✔ Son, Inc. underpaid and Rosenberg sued Pratt. Who wins?