

Chapter 12 / Chapter 13

Assignment, Delegation and 3rd
Party Beneficiaries

Key Terms

- Third party: A party not a party to a contract but acquires rights or obligations under it.
- Assignment: transfer of some or all of a party's contract rights.
 - Assignor – contracting party who makes transfer of contract rights
 - Assignee – 3rd party who receives the contract rights
 - Obligor – other contracting party who remains obligated to render performance
- Delegation: Transfer of contract duties; an appointment of someone else to perform one's own contract duties.
 - Delegant / Obligor – Contracting party who makes transfer of duties to perform
 - Delegatee – 3rd party who receives transfer of contracting duties
 - Obligee – other original party to whom delegated duty is owed.

- Special rules:
 - Insured – cannot assign rights
 - Right to receive proceeds – fully assignable
 - Right to receive credit – cannot assign
- Delegation – if duty to perform is transferred, what issues could be raised?
- Novation – Full substitution of new party; requires consent of both original contracting party and 3rd party

- Requirements for Assignment:

1. Words indicating an intent to make an assignment under a contract that can be assigned;
 2. Adequate description of rights being assigned'
 3. Writing if S.O.F. issue
- No consideration is required → can be revoked or assigned to another
 - Unless, detrimental reliance before 2nd assignment or revocation
 - If so, 1st gets law suit; 2nd gets the assignment
 - If assigned with consideration – irrevocable
 - P. 256 non-assignment language

- **After assignment**
 - Assignee gets all rights to performance from obligor as to rights assigned
 - Obligor defenses:
 - » Validity of contract
 - » Defective performance
 - » Any and all of defenses had with original party

Priority of Assignees

- Order of preference given to competing assignees
 1. 1st Assignment w/ consideration – 2nd w/ notice of assignment → 1st prevails
 2. 1st Assignment w/ consideration – 2nd w/ consideration and w/o notice:
 - a. English rule: 1st person to give notice to obligor & Obligor performs
 - b. New York: 1st in time, 1st in right
 - c. Mass. Rule: 1st prevails unless successor assignee
 - » Obtains payment from obligor
 - » Recovers a judgment
 - » New contract w/ obligor
 - » Receives obligors item if required under contract

Assignment under UCC

- Article 9
 1. Chattel Paper – writing intended to create a debt and security interest for the creditor in specific goods
 2. Promissory note – contract creating a debt of one party to another
 - Think I.O.U.
 - Maker – debtor on the note
 - Holder – person who was possession of the note
 - Security – property where creditor acquired rights

3. Accounts

- a. Any right to receive payments for goods delivered or to be delivered
- b. Any right to receive payment for services rendered
- c. ONLY for payment not performance

4. Secured Transactions

- Debtor / Creditor relationship where creditor requires debtor to put up collateral
- Unsecured – no collateral
- Secured party – creditor in a secured transaction

5. Not covered by UCC – P. 261 (add these to your notes or you will be very unhappy come test time)

6. Personal property – p. 263 – 4 (know these too)

- **ALL UCC assignments must be in writing**
 1. Must adequately identify the subject matter of assignment
 2. Indicate a transfer is intended
 3. Signed by charging party
 4. Must have consideration – is irrevocable!!
- **Priority**
 1. File a financing statement w/ secretary of state to perfect a security interest
 2. Makes a public record of parties who have interest in property
 3. Filing = perfection
- **Negotiable instruments**
 1. A promise to pay a fixed sum of money at a particular time to the order or bearer, signed by the maker
 2. Check
 3. Holder in due course – party who holds the negotiable instrument with consideration, in good faith, w/o knowledge of any defenses

- **If an assignment is made assignor warrants:**
 1. Right is free from undisclosed claims or defenses
 2. All documents are genuine
 3. That the assignor will do nothing to interfere with assignee's rights

Chapter 13

Third Party Beneficiaries

- Two types of 3rd Party Beneficiaries
 1. Intended beneficiary
 - Someone who acquires rights under the contract
 - Donees
 - Creditors
 - A person whom the two contracting parties intended a benefit to run
 2. Incidental beneficiaries
 - No rights under the contract; not true 3rd party beneficiaries
 - Receives an unintended benefit because of a contract made between two other parties
 - Fox v. Lawrence
 - » Holly owed \$300 to Lawrence
 - » Fox went to Holly for a loan
 - » Holly told Fox would loan money if promised repay Lawrence
 - » Fox didn't pay Lawrence
 - » Lawrence sued Fox; Fox defended on no contract w/ Lawrence
 - » Court: Loan to fox from Holly was made for the benefit of Lawrence

- **Promissor v. Beneficiary**
 - Can raise any defense he or she could have raised against the promisee.
- **Beneficiary v. Promisee**
 - If B is creditor → B can enforce any of its rights that arise from the relationship
 - If B is donee → no enforcement rights against promisee

- ## Vesting

- Point in time where promisor and promisee lose rights to make changes to the contract that would adversely affect a 3rd party
- Once rights vest – prohibited from changes that damage the rights and expectations.
- Vesting Occurs:
 1. Beneficiary materially changes position in reasonable reliance on promised performance
 2. Beneficiary finds out and consents at the request of Promissor and Promissee
 3. Beneficiary files lawsuit to protect its rights

- What is the difference between 3rd Party Beneficiary and Assignment / Delegation?
 - 3rd party beneficiary arises as a function and intent of a particular contract
 - AT THE TIME OF CONTRACT FORMATION
 - Assignment / Delegation does not necessarily arise at contract formation
 - It arises because of actions of one party in privity who transfers contract rights and / or duties to another party.