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Privity of Contract

Introduction

- The relationship shared by two or more contracting parties is defined as privity of Contract.
- This act is defined under Indian Contract Act under sec2(d) .
- It is an agreement which is enforceable law
- It means that only two parties have the right to do an agreement between them, no third person has the right to do an agreement.
- When this act drew out it imposed a special kind of duty and obligation.

Essential Elements

Privity Contract cases

The main point of the doctrine of privity raised by the case of Tweddle vs Atkinson case.

1. In this case Tweddle and Willam Guy both agreed to pay a sum of money to Tweddle's daughter.
2. But Willam passed away before making any payment.
3. Tweddle's son sued Mr.Guy's estate for promised money .
4. But in this case the court ruled that a third party cannot impose any agreement that one contracting party had made .

The definition of privity of Contract establish clearly by case of Dunlop Pneumatic tyre Co. Ltd vs Selfridge & Co. Ltd .

1. In this case Dunlop manufactured tyres and wanted to maintain standard market price
2. They enter into a contract with the dealers Dew & Co not to sell any product below its retail price.
3. This Contract also mentions that Dew and Co need an agreement if the latter sells a product below agreed retail price and they would have to pay a certain amount per tyre to Dunlop.
4. Consequently when Selfridge & Co.Ltd sold the tyre below retail price Dunlop immediately sued them and claimed damages.
5. Court held that since Dunlop is a third party between Dew & Co. and Selfridge & Co. Contract so it cannot claim any damages according to doctrine of privity

- As this case also establishes the doctrine of consideration which states that in order to the completion of a contract a promisee must provide something to the promisor.
- As according to Indian Contract Act the definition of privity of Contract and consideration is different .
- According to Indian Contract Act 1872 it states that consideration can shift to third parties also which means both promisee and third party so provide consideration .
- This also means that a third party also sued one of the parties according to Indian Contract Act 1872.

Exception

There are some exceptions in which a third party can sue one of the contracting parties.

- Trust

When an agreement between several parties results in the creation of the trust in favor of a third party, the latter can take legal action against the contracting party as the exception of a privity contract .

Eg: If A has trust to his younger brother for his minor daughter that after A's death his property transfers to his daughter but after his death A's younger brother does not agree to give property to her then she can file a case against him.

- Contract through an Agent If an agent enters a contract

If an agent enters into a contract on behalf of the principal or third party , then in this case the third party has the right to file a case against the contracting party.

- Family Settlement

In certain cases, like a marriage settlement, a third party or beneficiary may have the right to sue the individuals who signed the contract to enforce the agreement. This deviates from the usual Doctrine of Privity of Contract exceptions.

- Beneficiaries under trust or charge or another arrangement

If someone has a charge or interest in a specific property created in their favor by 'A,' they can enforce it, even if they aren't directly involved in the contract. The case of Nawab Kwaja Bombad Khan v Nawab Hussaini Begum, as decided by the Privy Council, exemplifies this principle.

- Conduct, Acknowledgement or Admission

There is a situation in which there may be no privity of Contract between two parties but if one of them by his conduct recognised the right of other he may be liable on the basis of law of estoppel.

Eg: If A enters into a contract with B that A will pay Rs 5000 every month to B during his lifetime and after that to his Son C. A also acknowledges this transaction in the presence of C. Now if A defaults C can sue him, although not being directly a party to the contract.

Conclusion

While traditionally only parties to a contract could sue each other, legal developments over time have allowed for exceptions. In certain circumstances, even a third party or stranger can now sue to protect their interests, marking an evolution in the law to accommodate such situations.

