

Contract Law for Paralegals: Chapter 17

Chapter 17

The screenshot shows a digital textbook window titled "Contract Law for Paralegals: Chapter 17". On the left is a vertical navigation menu with buttons for "Chapter 17", "Third-Party Beneficiary Contracts", "Assignment of Rights and Duties", "Third-Party's Interference", "Chapter Review Answers", and "Chapter Quiz". The main content area displays the chapter title "Chapter 17" and "CHAPTER 17" above the section heading "Plaintiff's Remedies under Article 2 of the UCC". Below this is a paragraph of text: "Part VII of the text moves beyond the two parties to the contract. Part VII (Chapter 17) covers three types of third-party interests: third-party beneficiary; assignment and delegation (including novation); and tortious interference with contract rights."

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CHAPTER 17

Plaintiff's Remedies under Article 2 of the UCC

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Third-Party Beneficiary Contracts

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Third-Party Beneficiary Contracts

Assignment of Rights and Duties

Third-Party's Interference

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Third-Party Beneficiary Contracts

THIRD-PARTY BENEFICIARY CONTRACTS (521)

This section begins with a discussion, an example, and a diagram of a third-party beneficiary contract. Although the two contracting parties to the bilateral contract are both promisors and promisees, the party who owes the duty to the third-party is called the promisor (this party will be the defendant in the law suit), the party who has asked the promisor to perform the duty is the promisee, and the party who is to receive the promisor's performance is the third-party beneficiary. The point is emphasized that the third-party beneficiary has only a right and never a duty.

The third-party beneficiary contract is Exhibit 17-2 (522).

Third-party beneficiaries are categorized as: donee, creditor, or incidental. The incidental beneficiary has no court enforceable third-party rights. The "intent to benefit" test is presented to distinguish those third-party beneficiaries that have enforceable rights from those that do not. This test examines

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Third-party beneficiaries are categorized as: donee, creditor, or incidental. The incidental beneficiary has no court enforceable third-party rights. The "intent to benefit" test is presented to distinguish those third-party beneficiaries that have enforceable rights from those that do not. This test examines who the promisee intended to receive the performance of the contract.

PARALEGAL EXERCISE 17.1 (524) deals with the distinction among donee, creditor, and incidental beneficiaries.

1. Bill and George are the two contracting parties. Bill's offer is for a unilateral contract (promise for a performance). "I promise to buy you a new Corvette if you quit smoking cigarettes for one year." George accepts by full performance (quitting smoking for a year). At the time of contract formation, Bill has a duty to buy George a Corvette. George has the right to the Corvette. Since Bill's offer was for a unilateral contract, George has no duty to Bill and Bill has no right from George.
2. Chevrolet Motor Company is a third-party beneficiary. Under the "intent to benefit" test, George (the promisee) did not intend to benefit Chevrolet Motor Company even though they would be manufacturing the Corvette. George's intent was to benefit himself by receiving the Corvette.
3. Neither Bill nor Chevrolet Motor Company has a duty to the other. Chevrolet Motor Company, by being a third-party beneficiary would have no duties to Bill (and therefore Bill would have no rights). Chevrolet Motor Company, by being an incidental beneficiary would have no enforceable contract rights from Bill (and therefore Bill would have no duties to Chevrolet Motor Company).

PARALEGAL EXERCISE 17.2 (525) also deals with the distinction among donee, creditor, and incidental beneficiaries.

1. Alan and Graham are the two contracting parties. The offer was for a bilateral contract (promise for a promise). "I promise to sell for your promise to pay:

(1) \$10,000 to Calvin; (2) \$100,000 to Alan's Credit Company; and (3) \$140,000 to Margaret's broker, Benton." At the time of contract formation, Alan has a duty to sell Greenacre to Graham and Graham has the right to receive Greenacre. Graham has the duty to pay: (1) \$10,000 to Calvin; (2) \$100,000 to Alan's Credit Company; and (3) \$140,000 to Margaret's broker, Benton, and Alan has the right to have Graham pay. . . .
 2. Calvin, Credit Company, and Benton are third-party beneficiaries. The Credit Company is a third-party creditor beneficiary since Alan has a preexisting duty to pay them. Calvin and Benton are either donee or incidental third-party beneficiaries. Under the "intent to benefit" test, Alan (the promisee) would have an intent to benefit his nephew Calvin at graduation but no intent to benefit Margaret's broker. Therefore, the broker would be an incidental beneficiary.
 3. Calvin, the Credit Company, and Benton have no duties. They are third-party beneficiaries. Benton has no rights as an incidental beneficiary. Calvin has a right as a third-party donee beneficiary with Graham having the duty. The Credit Company has a right as a third-party creditor beneficiaries with Graham having the duty.
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Page 525 introduces “horizontal” and “vertical” privity. The discussion leads into warranties and the three alternatives to UCC § 2-318. PARALEGAL EXERCISE 17.3 (527) requires an application of the alternatives to UCC § 2-318.

The horizontal and vertical privity diagram is on page 526.

Coombes v. Toro Co. (528) asks students to determine which alternative to 2-318 was enacted in Connecticut, the jurisdiction of *Coombes*. Students also are asked to apply the other alternatives to the case. This gives them an opportunity to compare and contrast the alternatives. *Coombes* is a short case so emphasis can be placed on the Code section.

The material following *Coombes* raises one of the unsettling problems with third party beneficiary contracts. The contract must be formed and enforceable for the third-party beneficiary to have any rights.

The final point in this section involves the right of the beneficiary to enforce a third-party beneficiary contract when the contracting parties make a subsequent agreement to discharge or modify duties to the beneficiary.

Assignment of Rights and Duties

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Assignment of Rights and Duties

THE ASSIGNMENT OF CONTRACT RIGHTS AND DELEGATION OF CONTRACT DUTIES (530)

Assignment (530)
An assignment of a contract is the transfer to another of the contractual rights.

Example 17-7 (531) illustrates an assignment and includes obligor and obligee language.

PARALEGAL EXERCISE 17.4 (532) asks whether Samantha's right to work for one law firm was assignable to another. The answer requires an evaluation of whether the transfer will materially alter Samantha's duty to perform.

PARALEGAL EXERCISE 17.5 (533) illustrates the fact that defenses to the original contract will also be defenses to the assignment. The breach of warranty which justified Andre in withholding his time payments in the original contract would also justify Andre in withholding against the assignee.

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PARALEGAL EXERCISE 17.5 (533) illustrates the fact that defenses to the original contract will also be defenses to the assignment. The breach of warranty which justified Andre in withholding his time payments in the original contract would also justify Andre in withholding against the assignee.

The assignment diagram is transparency Exhibit 17-4 (531).

Delegation (533)

Assignments deal with rights, delegations deal with duties. A delegation of a duty is an authorization to another party to perform the delegator's duty. A delegation does not terminate the duty on the part of the delegator.

PARALEGAL EXERCISE 17.6 (534) refers back to Paralegal Exercise 17.4 and raises the question of whether Samantha could delegate her duty to work for the law firm. Whether a duty is delegable depends on whether the delegation will materially alter the right of the obligee, in this case the original law firm. We ask our students to describe how the right of the firm might be altered if Samantha delegates her duty to work for the firm.

The excerpt from *Rossetti v. City of New Britain* (535) is useful in following how a court might approach the delegation question. Students could be asked what factors were important to the court.

The delegation diagram is Exhibit 17-5 (533).

Substituting and Releasing a Contracting Party: The Novation (536)

The novation is a substitute of a noncontracting party for one of the original contracting parties and the release of one of the original contracting parties. The release is critical to a novation. A detailed coverage of novation is beyond the scope of this course but we have included this material so paralegals and legal assistants will have at least heard the term and have a reference. The novation may be simple or compound and may substitute obligors and obligees. We encourage students to diagram the facts of a problem and then match the diagram with one of the examples (536-538). This will identify whether there is a novation and, if so, what type.

Third-Party's Interference

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Third-Party's Interference

THIRD-PARTY'S INTERFERENCE WITH EXISTING CONTRACT RIGHTS (538)

The introductory material lists and explains the elements necessary for a tortious interference with a contract.

PARALEGAL EXERCISE 17.7 (539) requires students to apply the facts to these elements.

R.C. Hilton Associates, Inc. v. Stan Musial & Biggie's, Inc., (540) and *Ahern v. Boeing Co.* (541) are short cases that add perspective about how the courts deal with the tortious interference issue.

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Chapter Review Answers

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Chapter Quiz

Chapter Review Answers

TRUE/FALSE QUESTIONS

1. T
2. F
3. F
4. T
5. T
6. F
7. T
8. T
9. F
10. F
11. T
12. T
13. T
14. T
15. F
16. F
17. F

Tab Text

TRUE/FALSE QUESTIONS

1. T
 2. F
 3. F
 4. T
 5. T
 6. F
 7. T
 8. T
 9. F
 10. F
 11. T
 12. T
 13. T
 14. T
 15. F
-

16. F
17. F
18. T
19. F
20. T
21. T
22. F
23. T
24. T
25. T
26. F
27. T
28. F
29. T
30. T
31. F
32. T
33. T
34. T
35. F

FILL-IN-THE-BLANK QUESTIONS

1. Third-party beneficiary contract
2. Third-party beneficiary
3. Donee beneficiary
4. Creditor beneficiary
5. Intended beneficiary
6. Incidental beneficiary
7. Vertical nonprivity plaintiff
8. Horizontal nonprivity plaintiff
9. Assignment
10. Delegation
11. Novation
12. Simple novation
13. Compound novation
14. Tortious interference with a contract

MULTIPLE CHOICE QUESTIONS

1. a
 2. b
 3. d
-

SHORT ANSWER QUESTIONS

1. Courts often use the “intent to benefit” test that examines who is to receive the performance of the contract. The courts, however, are not in agreement in their application of the “intent to benefit” test. Some investigate whether both contracting parties intended to benefit the third-party. Others consider only the promisee’s intent. Still others emphasize the conferring of a right rather than a benefit.

2. A vertical nonprivity plaintiff is a buyer of goods. This buyer has a contract with his or her seller but not with his or her seller’s seller and therefore is not in privity of contract with his or her seller’s seller.

A horizontal nonprivity plaintiff is not a buyer but rather a consumer, user, or someone affected by the goods. The party has no contractual relationship with the buyer or with the buyer’s seller.

3. An assignment is a transfer of a contractual right. A delegation is the authorization of another to perform a contractual duty.

4. (1) Simple novation with substitution of obligors

(2) Simple novation with substitution of obliges

(3) Compound novation with one original contract

(4) Compound novation with two original contracts

5. The two essential elements of a novation are:

(1) the discharge of a party to the original contract; and

(2) the substitution of a new party in his or her place.

6. The elements for an action for tortious interference with a contract are:

(1) The existence of an enforceable contract.

(2) The party inducing the breach knew of the contract.

(3) The interfering party intentionally induced the breach.

(4) The interfering party induced the breach unjustifiably.

(5) The party claiming interference was damaged by the breach of contract.

Chapter Quiz

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Chapter Quiz

[Click Here to take a quiz based on this chapter.](#)

Tab Text

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