DOCTRINE OF PRIVITY OF CONTRACT
EVOLUTION:

The doctrine of privity of contract is traced and established in the case, Tweddle V. Aktinston., 30 LJ QB 218, at the end of the 16th century in India. Before this case, there has been a difference of opinion displayed in the judgment of the court how far the rights of strangers can be enforced. Later, the rule in the case is applicable in India as it is in England. The doctrine of privity of contract is a principle of the common law.

DOCTRINE OF PRIVITY OF CONTRACT:

The Doctrine of Privity of Contract is the contract can be enforced only by the parties of the contract and the third parties cannot sue even if the contract is made for their benefit. The privity of contract means the strangers of the contract cannot sue. The rights and obligations arising out of the contract is applied only to the parties of the contract and not to the third party. There must be a consideration for the legal binding of the parties. If there is no consideration the contract would be void. The consideration is defined under Sec.2(d) of the Contract Act, 1872. Therefore, the party to the contract who suffers damages on breach of agreement on the contract can file a suit against the party under the contract. The parties to a contract can sue and be sued on breach or contrary appears on the contract. In this case, the stranger has no right to sue against the party to a contract.

WHO IS A THIRD PARTY?

A third party is a person who cannot sue against the parties to the contract and cannot be sued by the parties on breach or contrary appears on the contract. The agreements cannot be enforced against them. He cannot enforce the contract and there are no rights and liabilities arise upon him on such contract.
EFFECT OF THIRD-PARTY BENEFICIARIES:

The third party being the beneficiary and having the legitimate interest in the contract to enforce he can be the party to the contract and can add their name as a party or jointly with him or refuses to add him, by adding him as a defendant in such contract though he is not originally a party to the contract. The *Tweddle V. Aktinston* was affirmed in the case law *Dunlop Pneumatic Tyre V. Selfridge & Co Ltd.*, (1954) 70 LQR 467 - Held - The third party who cannot enforce the contract cannot sue the parties to the contract and the consideration must be transferred by the promisee.

EXCEPTIONS:

**Trust**
If the agreement between the trustee and the third party affects the owner.

**Agent**
When an agent appointed to make a contract with another party on behalf of the principle, he will not be released on the grounds of privity doctrine.

**Marriage Settlement, Partition or other Family Arrangements**
When an agreement is made for the benefit of the person is connected with the marriage, partition or other family arrangements, he can take the advantage even though he is not a party to it.

**Acknowledgment or Estoppel**
Whereby the contract the party is liable to make payment to the third party and the acknowledgment is made to enforce such obligation.

**Sale of Defective Goods**
The third party may sue the seller on selling the defective goods to its customers.
A Covenant Running With Land
The rule of privity is modified or altered when there is a sale of immovable property.

Negligence
If the personal injury is caused to the third person, the person who acted in negligence can be sued by such a third party.

Insurance Companies
In motor vehicle accident cases, the third party may sue the owner of the insured vehicle despite the insurance companies.

CASE LAWS

Case 1.
Donogue V. Stevenson, SC (HL) 31.

Held - There is no privity of contract between the manufacturer and the buyer but it was the duty of the manufacturer to be care owned to their customers and damages were awarded on tort.

Case 2.
Babu Ram Budhu Mal and Ors. V. Dhan Singh Bishan Singh and Ors., AIR 1957 PH 169.

The general principle is that a party who is not a party to a contract is not entitled to sue. But in case of trust is created the beneficiary is entitled to enforce it. The money is merely left with the mortgagee to pay off the mortgage debt of the first mortgage. There is no trust created in favor of the plaintiff. Therefore, the plaintiff being the stranger cannot sue.
Case 3.

Held - The doctrine of part performance as contemplated under Sec.53-A can be availed by the transferee against his transferor or any person claiming under and not the third party who does not have privity of contract. Thus, the transfer of immovable property by way of sale is affected only by way of deed of conveyance. In absence of the deed, no right title or interest in immovable property is transferred.

Case 4.

Held - There was no privity of contract between the drawer of the cheque and the complainant bank. Discounting of a cheque is a normal business operation of the bank. Therefore, the cheque drawn by the party does not lead to any privity of contract between the drawer of the cheque and the bank to attract criminal liability.

Case 5.

Held - The appellant has not produced any evidence on the record to show that the seller was responsible for the cancellation of the order. It is assumed that there must have been some privity of contract between the seller and the appellant company due to which the services of the appellant company were hired on a payment basis by the appellant company, which being an online portal was displaying the product of the seller.

Case 6.
Canara Bank V. Bengal Provincial Bank’s Contract Employee’s Asso. & Ors., 2018 SCC OnLine Cal 301.
Held - The respondent is not recognized by the petitioner. Therefore, there is no privity of contract between the plaintiff and the respondent.

Case 7.
Board of Trustees for the port of Kolkata and others V. APL (India) Pvt. Ltd. and others, 2019 SCC OnLine SC 249.

Held - It is not necessary that the persons owing the goods lying on the premises should be tenants or licensees. There is no need that there should be a privity of contract between the port trust and the third party to whom such goods and materials belong for disposing of the property by the Estate officer. Therefore, there is no privity of contract between the owner of the goods and the port trust.

Case 8.

Held - The corporate debtor was nowhere a party to the agreement, therefore as per the doctrine of privity of contract, the corporate debtor is not liable under the terms and conditions of the agreement.

Case 9.
DCM Shriram Ltd V. Rajasthan Electricity Regulatory Commission and Ors., APPEAL No. 70/2017.

Held - There is the existence of privity of contract only between the appellant company and the respondent, any act or omission on the part of the stranger to the power supply does not affect the rights and liabilities accruing out of agreements.
Case 10.
Bank of India V. Mr. Raj Kumar Yadav., Civil Suit No. 609597 of 16.

Held - As per the doctrine, a contract cannot confer rights or impose obligations arising under it on any person except the parties to it. There are certain exemptions Viz, Contract of Insurance, Family Settlement, Contract of Agency, Trust, etc. Wherein even a third party is a beneficiary under a contract can sue, despite being stranger to the contract. Therefore, the plaintiff does not come under the recognized exemptions of the doctrine of privity of contract.

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