

Business Law

Text & Exercises *6th Ed.*

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Chapter 15: Third Party Rights

Learning Outcomes

- LO1** • Describe a contract assignment.
- LO2** • Define a contract delegation.
- LO3** • Identify noncontracting parties who have rights in a contract.

Learning Outcomes

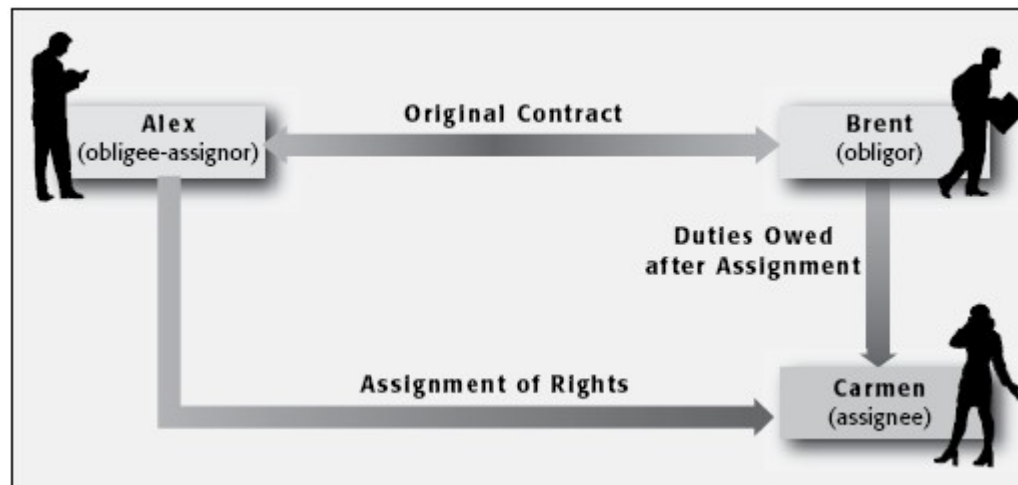
- LO4** • Explain when a third party beneficiary's rights in a contract vest.

Introduction: Privity of Contract

- **Privity of Contract: The relationship that exists between the promisor and the promisee of a contract.**

Assignments

- **Assignment: The act of transferring to another all or part of one's rights arising under a contract.**



Rights That Cannot be Assigned

- **All rights can be assigned, except:**
 1. If a statute expressly prohibits assignment.
 2. When a contract is personal in nature.
 3. If a contract will significantly increase or alter the risks to or the duties of the obligor.



Rights That Cannot be Assigned

- **All rights can be assigned, except:**
 4. If the contract stipulates that the rights cannot be assigned (ordinarily).
 - Exceptions: (i) Contract cannot prevent an assignment of the right to receive money.
(ii) Assignment of rights in real estate (restraints against alienation). (iii)
Assignment of negotiable instruments.

Notice of Assignment

- **Once a valid assignment of rights has been made to a third party, the third party should notify the obligor—the original party to the contract—of the assignment.**

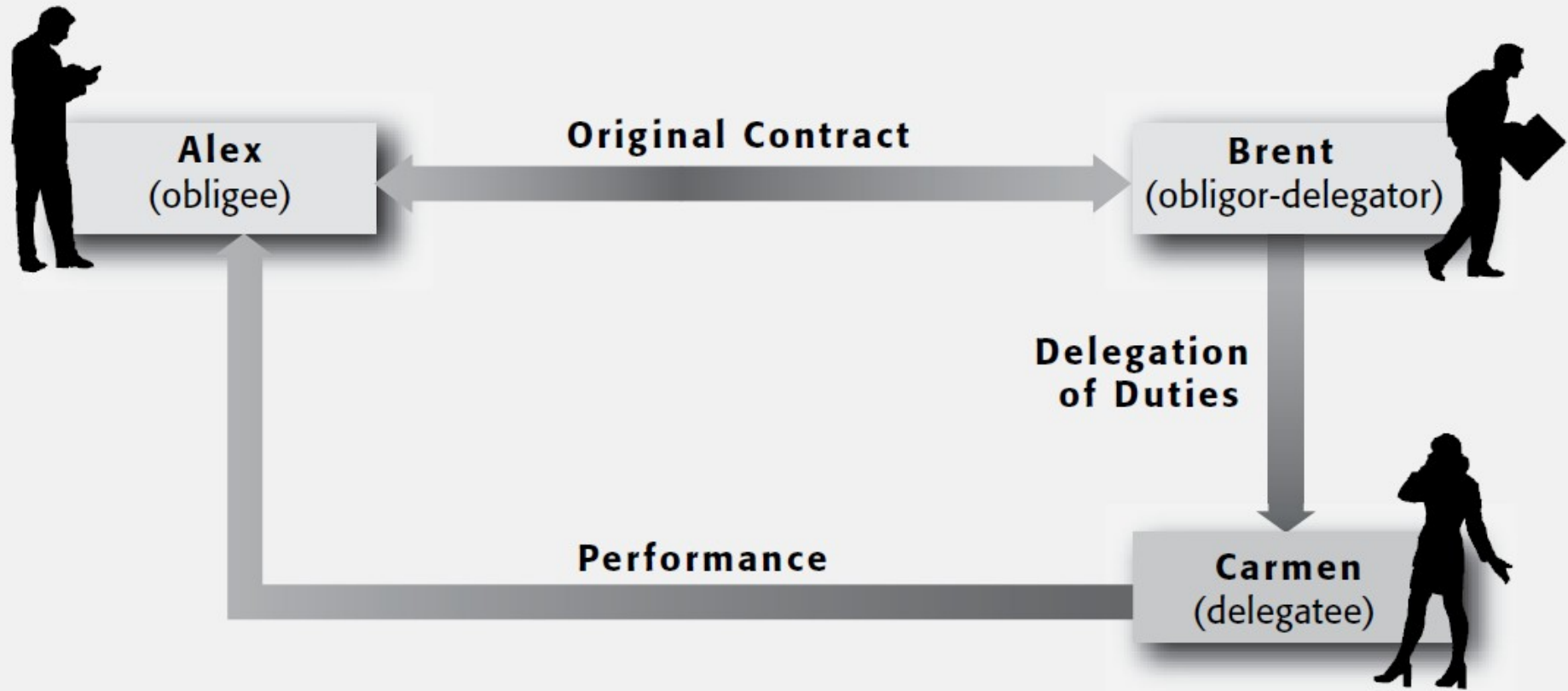
Issues With Notice of Assignment

1. If the assignor assigns the same right to two different persons, the question arises as to which one has priority—that is, the right to performance by the obligor.
2. Until the obligor has notice of assignment, the obligor can discharge his or her obligation by performance to the assignor, and performance by the obligor to the assignor constitutes a discharge to the assignee.

Delegations

- **The transfer of a contractual duty to a third party. The party delegating the duty (the delegator) to the third party (the delegatee) is still obliged to perform on the contract if the delegatee fails to perform.**

Delegations



Delegations

- **Effect of a delegation.**
 - If a delegation of duties is enforceable, the obligee must accept performance from the delegatee.
- **Liability of the delegatee.**
 - Assumption of duty: breach of this duty makes the delegatee liable to the obligee.
- **Assignment of “All Rights”.**

Duties That Cannot be Delegated

- **Generally, any duty can be delegated, except:**
 1. When performance depends on the personal skill or talents of the obligor.
 2. When special trust has been placed in the obligor.
 3. When performance by a third party will vary materially from that expected by the obligee.
 4. When the contract prohibits delegation.

- **Third party beneficiaries: One who is not a party to a contract but for whose benefit a promise is made in the contract.**
 1. Intended beneficiaries.
 2. Incidental beneficiaries.

Intended Beneficiaries

- **A third party for whose benefit a contract is formed; intended beneficiaries can sue the promisor if such a contract is breached.**



Intended Beneficiary: Vesting

- **An intended third party beneficiary cannot enforce a contract against the original parties until the rights of the third party have vested, which means the rights have taken effect and cannot be taken away.**

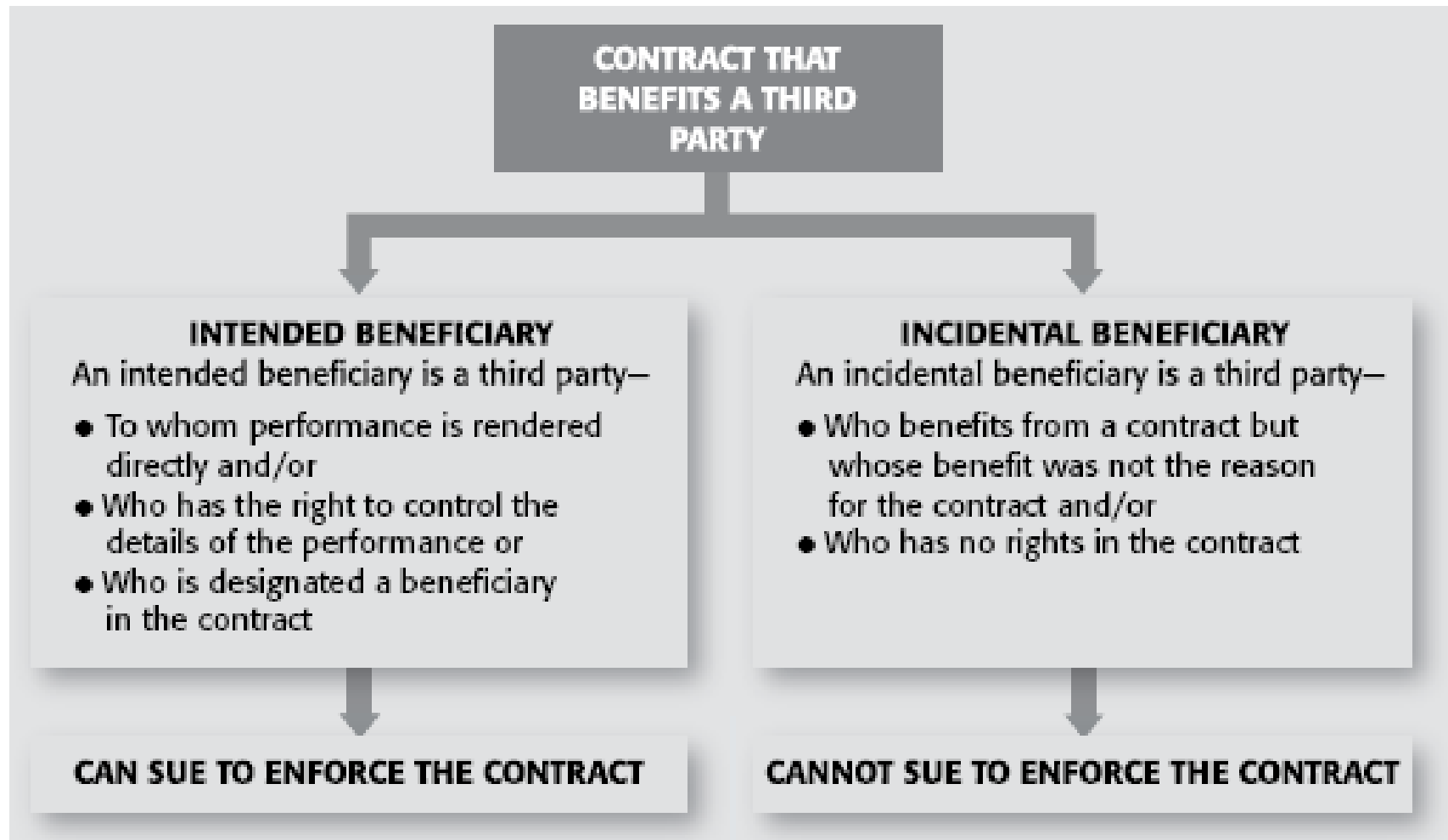


Vesting: When?

1. When the third party demonstrates manifest assent to the contract, such as by sending a letter or note consenting to a contract formed for his or her benefit.
2. When the third party materially alters his or her position in detrimental reliance on the contract.



Third Party Beneficiaries



Incidental Beneficiaries

- **Incidental beneficiary: A third party who incidentally benefits from a contract but whose benefit was not the reason the contract was formed.**
- **An incidental beneficiary has no rights in a contract and cannot sue the promisor if the contract is breached.**

Intended or Incidental Beneficiary?

- **Three factors to indicate an intended benefit:**
 1. Performance rendered directly to the third party.
 2. The right of the third party to control the details of the performance.
 3. Express designation in the contract.