

A janitorial service contracted in writing with a hospital for a one-year term. Under the terms of the contract, the janitorial service agreed to clean the hospital daily in accordance with the hygiene standards of the city's health code. Because the janitorial service did not clean a patient's room in accordance with the required hygiene standards, the patient contracted an infection that required continued hospitalization. In addition to suing the hospital, the patient sued the janitorial service for breach of contract.

Which of the following statements is most accurate with respect to the breach of contract claim against the janitorial service?

- A. The janitorial service is liable to the patient as a matter of public policy, because it violated the city's health code.
- B. The patient cannot sue on the contract, because she was not named in the contract.
- C. The patient has no claim for breach of contract against the janitorial service, because she is an incidental beneficiary.
- D. The patient is an intended third-party beneficiary under the contract, because the janitorial service's promise was intended to benefit all hospital patients.

Explanation:

A **third-party beneficiary** is a nonparty to a contract who receives some advantage or benefit from that contract. There are two types of third-party beneficiaries:

- **Intended** – who receive a *direct benefit* from the contract because the **contracting parties so intended** (eg, the contract provides that payment will go directly to a third party)
- **Incidental** – who receive some *indirect benefit* from the contract even though there was **no contractual intent** to benefit them (ie, all third-party beneficiaries who are not intended beneficiaries)

Only **intended beneficiaries**—not incidental beneficiaries—have **contractual rights** and may sue to enforce them.

Here, the patient is an incidental beneficiary to the janitorial service–hospital contract because there is no indication that the parties intended for the contract to directly benefit the patient (**Choice D**). Instead, the contract was designed for all patients to indirectly benefit from hygienic rooms. Therefore, the patient has no claim for breach of contract against the janitorial service.*

*The patient may, however, have a tort claim against the janitorial service.

(Choice A) A contractual party's violation of public policy may render that contract unenforceable, but it does not provide a nonparty with the right to sue under that contract.

(Choice B) The patient could have sued on the contract had she been a named or unnamed intended beneficiary.

Educational objective:

Intended beneficiaries receive a *direct* benefit from a contract because the contracting parties so intended, while incidental beneficiaries receive an *indirect* benefit from a contract even though there was no contractual intent to benefit them. Only intended (not incidental) beneficiaries can sue to enforce the contract.

References

- Restatement (Second) of Contracts § 302 (Am. Law Inst. 1981) (intended and incidental beneficiaries).
- Restatement (Second) of Contracts § 315 (Am. Law Inst. 1981) (no right to enforce for incidental beneficiaries).

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Third-party beneficiaries

Nonparties who benefit from contract

Intended beneficiaries

- Receive direct benefit because parties intended to benefit them
- Eg, A promises to paint B's house if B promises to pay \$500 to C

Right to enforce contract

Incidental beneficiaries

- Receive indirect benefit even though parties did not intend to benefit them
- Eg, A promises to buy B a car manufactured by C

No right to enforce contract