

Practice questions for Chapter 5 – An introduction to the law of contract

Essay question

Discuss how the law relating to the doctrine of privity of contract was unsatisfactory prior to the passing of the Contracts (Rights of Third Parties) Act 1999, and explain how the 1999 Act has improved the law.

Introduction

- State that this essay is going to discuss the doctrine of privity of contract, notably how the law has been affected by the passing of the Contracts (Rights of Third Parties) Act 1999. In order to do this, the law prior to 1999 will be discussed and the relevant provisions of the 1999 Act will be examined.

The law prior to 1999

- The doctrine of privity of contract consists of two rules and you will want to briefly explain these two rules. The first rule provides that only parties to the contract may enforce the contract and that third parties cannot enforce the contractual rights of others.¹ The second rule provides that a contract only imposes obligations on those persons who are parties to it. Contracts cannot impose binding obligations on third parties.
- You will want to argue whether or not the pre-1999 law was unsatisfactory in any way. There is little doubt that the pre-1999 doctrine was capable of unfairness, notably where a contract contained a term that was designed to expressly benefit a third party. In such cases, the third party would be unable to enforce the term that benefitted him. In such cases, the doctrine of privity could serve to defeat the purpose of the entire contract. Given that a principal purpose of contract law is to give effect to the wishes of the parties, this is a severe criticism. The case of *Tweddle v Atkinson*² provides an excellent example of how the doctrine of privity could serve to defeat the purpose of a contract. Feel free to briefly state the facts in order to demonstrate this.
- Judges, academics and the Law Commission were highly critical of this and argued that, in certain cases, a third party should be able to enforce a term of a contract. The Law Commission published a draft Bill which would achieve this and the Bill was passed (with some amendments) and became the Contracts (Rights of Third Parties) Act 1999.

The Contracts (Rights of Third Parties) Act 1999

- The Contracts (Rights of Third Parties) Act 1999 provides an important exception to the first rule of the doctrine of privity. Section 1(1) of the Act provides that a third party may enforce a term of the contract if (i) the contract expressly provides that he may, or (ii) the term purports to confer a benefit on him.
- As a result of s 1(1), had *Tweddle v Atkinson* been decided under the Act, the result of the case would have been completely reversed and the claimant would have been able to recover the £200 promised under the contract. Section 1(1) provides the default position (or, as the Law Commission stated, a 'rebuttable presumption') that third parties can enforce a term that confers a benefit upon them.

¹ *Tweddle v Atkinson* (1831) 1 B & S 393.

² (1831) 1 B & S 393.

- A third party's right to enforce a contract would be severely emasculated if the parties to a contract could discharge the contract, or vary it to remove the right conferred upon the third party. However, it would also be unfair to allow a third party to unduly restrict the freedom of the contracting parties to vary the contract.
- Accordingly, s 2(1) provides that the parties to a contract are free to discharge or vary the contract, except where such a discharge or variation would extinguish a third party's rights under the term, and (i) the third party has communicated his assent to the term of the promisor, (ii) the promisor is aware that the third party has relied on the term, or (iii) the promisor can reasonably be expected to have foreseen that the third party would rely on the term and the third party has in fact relied on it.

Conclusion

- There is little doubt that the 1999 Act has, in some respects, improved the law. Prior to 1999, the law prevented a third party from enforcing a contract that was entered into entirely for his benefit, thereby defeating the entire purpose of the contract. The 1999 Act remedies this problem by allowing third parties to enforce terms that benefit them, thereby upholding the wishes of the parties in a way that the pre-1999 law might not do so.

Problem question

Discuss the following situations, focusing on whether or not the parties involved have the capacity to contract and, if so, to what extent is any resulting contract binding:

- Lukas is 13 years old. He enters into a contract with Leah (an adult) to purchase a guitar. Leah then decides that she does not wish to sell the guitar and alleges that no valid contract exists as Lukas is too young to be able to enter into a legally binding contract. Is Leah correct? Would your answer differ if Lukas changed his mind and did not wish to purchase the guitar, but Leah wished to enforce the agreement?
- Ross is mentally disabled. He enters his local BMW showroom and enters into an agreement to purchase a new M3 coupé for £50,000. Ross later regrets entering into the agreement and argues that, due to his mental disability, the agreement is not binding. Is he correct?
- Louise decides to leave school at the age of 16, once she hears that a friend is looking for an apprentice for his carpentry firm. Louise enters into a contract that states that she shall be an apprentice of the firm. A week before she is due to start work, she changes her mind and decides to complete her A Levels. Does the carpenter have a cause of action against Louise?
- Georgie enters into a contract to rent a small flat when she is 17 years and 10 months old. The contract provides that her tenancy shall last a minimum of 12 months, after which time she can cancel the agreement by giving one month's notice. Eight months later, she cancels the agreement, arguing that as she made the contract when she was a minor, it is not binding on her. Can Georgie cancel the contract?
- Ceri is walking home one Saturday night after spending an evening in the pub with her friends. She has drunk two bottles of wine and is clearly drunk. She walks into a local 24-hour supermarket and buys three mobile phones, four jackets and three bottles of Moët & Chandon champagne at a total cost of £600. The next day she takes the purchases back to the supermarket and argues that, as she was drunk, no contract exists and she should be entitled to her money back. Is she entitled to recover the £600?

Lukas is 13 years old. He enters into a contract with Leah (an adult) to purchase a guitar. Leah then decides that she does not wish to sell the guitar and alleges that no valid contract exists as Lukas is too young to be able to enter into a legally binding contract. Is Leah correct? Would your answer differ if

Lukas changed his mind and did not wish to purchase the guitar, but Leah wished to enforce the agreement?

- Leah is not correct. The general rule is that a minor (that is, any person under the age of 18)³ lacks the capacity to make many types of contract. However, it does not follow from this that a contract entered into by a minor is void. Where a minor lacks capacity, any contract entered into by that minor is not void, but is voidable at the minor's instance.
- In other words, the party contracting with the minor cannot enforce the contract and cannot avoid the contract on the ground of the minor's age. The minor can, however, enforce the contract. Accordingly, should Leah not wish to sell the guitar, then Lukas can enforce the contract.
- However, if Lukas changed his mind and did not wish to purchase the guitar, then, as the contract is voidable at Lukas' instance, Leah could not enforce the contract and Lukas would not be bound to purchase the guitar.

Ross is mentally disabled. He enters his local BMW showroom and enters into an agreement to purchase a new M3 coupé for £50,000. Ross later regrets entering into the agreement and argues that, due to his mental disability, the agreement is not binding. Is he correct?

- The Mental Capacity Act 2005, s 2(1) provides that a person will lack capacity (including contractual capacity) if 'at the material time, he is unable to make a decision for himself in relation to a matter because of an impairment of, or a disturbance of the functioning of, the mind or brain.'
- Accordingly, one would expect that such a person would lack capacity to enter into binding contracts. However, this is not the case. A contract entered into by a person who lacks capacity under s 2(1) is normally binding, so the default position is that Ross would be bound to purchase the car. However, there are two exceptions to this.
- First, if the salesman in the BMW showroom knew of Ross' mental incapacity, then the contract would be voidable at Ross' instance.⁴ You are not told whether the salesman knew of Ross' impairment, so hypothesise both outcomes.
- Second, if Ross' affairs are subject to the control of the Court of Protection, then any contract that interferes with such control will not bind the incapacitated individual, but it will bind the other party.⁵ Again, you are not told whether this is the case, so hypothesise both outcomes.
- Where the contract is one for 'necessaries' then different rules apply, but this is not the case here.

Louise decides to leave school at the age of 16, once she hears that a friend is looking for an apprentice for his carpentry firm. Louise enters into a contract that states that she shall be an apprentice of the firm. A week before she is due to start work, she changes her mind and decides to complete her A Levels. Does the carpenter have a cause of action against Louise?

- As noted, the general rule is that a minor who enters into a contract is not bound by the contract, but the other party is should the minor wish to enforce it. However, in certain cases, a minor is capable of entering into a contract that will fully bind both the minor and the other party. In such cases, the minor acquires full contractual capacity and neither the minor nor the other party will be able to escape the contract on the ground of the minor's age.
- One such case where a minor acquires full contractual capacity is in relation to contracts for service, namely contracts of employment and apprenticeship. The law allows minors to leave school before

³ Family Law Reform Act 1969, s 1.

⁴ *Molton v Camroux* (1849) 4 Ex 17.

⁵ *Re Walker* [1905] 1 Ch 160 (CA).

the age of 18 and pursue an occupation and therefore minors should be free to enter into contracts that allow them to acquire an occupation. Accordingly, it would appear the Louise has entered into a legally binding contract and she would therefore be in breach if she did not honour it.

- However, it should be noted that a contract for service will only be binding on a minor if it is for his benefit as a whole. There is nothing to indicate that the contract is not for Louise's benefit, but it would be worth noting that, if it was not for her benefit overall, she would not be bound.⁶

Georgie enters into a contract to rent a small flat when she is 17 years and 10 months old. The contract provides that her tenancy shall last a minimum of 12 months, after which time she can cancel the agreement by giving one months notice. Eight months later, she cancels the agreement, arguing that as she made the contract when she was a minor, it is not binding on her. Can Georgie cancel the contract?

- As noted, the general rule is that a minor who enters into a contract is not bound by the contract, but the other party is should the minor wish to enforce it. However, in certain cases, a minor is capable of creating a voidable contract. This means that the minor will be bound by the contract, but can repudiate it before he turns 18 or within a reasonable time afterwards.⁷
- Contracts concerning land, including contracts for the rental of property,⁸ are such a type of contract. Accordingly, Georgie and the landlord are generally bound by the agreement, but Georgie can repudiate the agreement before she turns 18, or within a reasonable time afterwards. Georgie has sought to repudiate the agreement six months after she turned 18. It is likely that this will not constitute a reasonable time and so Georgie will be bound. Should she seek to terminate the tenancy before it has last for 12 months, then she will be in breach of contract.

Ceri is walking home one Saturday night after spending an evening in the pub with her friends. She has drunk two bottles of wine and is clearly drunk. She walks into a local 24-hour supermarket and buys three mobile phones, four jackets and three bottles of Moët & Chandon champagne at a total cost of £600. The next day she takes the purchases back to the supermarket and argues that, as she was drunk, no contract exists and she should be entitled to her money back. Is she entitled to recover the £600?

- If a person enters into a contract, and at that time, he is intoxicated (through drink or drugs) to such an extent that he is able to understand the transaction, then the contract is normally valid and binding. However, if the other party realises that the other person is intoxicated to such an extent, then the contract will be voidable at the intoxicated person's instance.⁹
- Accordingly, if Ceri is so intoxicated that she cannot understand the transaction and the checkout employee knows this, then Ceri will be able to set the contract aside, give the goods back and recover the £600 she paid.
- However, if Ceri is not drunk to this extent, or the checkout operator does not know that Ceri is drunk to the required extent, then Ceri is bound to pay a reasonable price for the goods under the contract.¹⁰

⁶ *De Francesco v Barnum* (1890) 45 ChD 430 (Ch).

⁷ *Edwards v Carter* [1893] AC 360 (HL).

⁸ *Keteley's Case* (1613) 1 Brownl 1.

⁹ *Gore v Gibson* (1843) 13 M & W 643.

¹⁰ Sale of Goods Act 1979, s 3(2).