

Privity to contract

Position under Common Law

- PC is the common law doctrine which provides that as a general rule a contract confers rights/impose obligations only to the parties under it and not any other person.
- In other words, only the parties to a contract can enjoy the benefits of that contract or suffer the burden of it.
- That is to say a person could not sue on a contract if the consideration was provided by another, even where the contract was made for his benefit.

- See the case of **Tweddle V Atkinson (1861) 121 ER 762 (QB)** it was held that, a son could not enforce the promise despite the fact that the contract was for his benefit since he given no consideration for it. **Wightman J** also states that *it is now a established that no stranger to the consideration can take advantage of a contract although made for his benefit*

- See also the case of **Dunlop Pneumatic Tyre Co. Ltd V Selfridge & Co. Ltd [1915] AC 847**

Position in Tanzania

- The LCA, Cap 345 is silent in the issue of the privity to contract, however under s. 2(1)(d) of the Act, allow a third party to furnish a consideration on behalf of the promisee. But such act will not entitle a third party to sue on that contract.
- In Tz the principle of privity to contract is applied through a reception clause under s. 2(3) f JALA Cap 358.
- The case of **Tarlok Singh V Sterting General Insurance (1966) E.A 144** it was held that, *the 2nd plaintiff being a stranger in the contract, could not himself sue on it, although he could sue through the insured as his trustee or direct if the trustee refused...*

Exceptions to the general rule

- **i. Collateral contracts.**

This are contracts which are created to supplement the main contract, and can be made between parties of the main contract and or with a third party. See the case of **Shanklin Pier V Detel Products Ltd [1951] 2 KB 854** it was held that, *there was also a collateral contract between the claimant and the defendant that the paint would last for seven years.*

III Negotiable instruments

- The Bill of Exchange Act [CAP 215] empowers the holder of a bill to sue on it his own name. he may sue any person whose signature appears on a bill.

ii. agency

- An agency relationship occurs where one party, the agent, is authorized by another, the principal, to negotiate and enter into contracts on behalf of the principal. **See s. 134 of LCA**
- However the agent must have the authority to act as agent for the principal(**see s. 140 of LCA**)
- The power of enforcing contracts entered by an agent is provided under **s. 178 of LCA**, whereby the obligations arising under that contract and acts done through it may be enforced in the same manner and will have the same legal consequences as if that contract was entered by the principal in person.
- Read the whole **Part IX of the LCA**

IV Third Party Insurance

- Under the Road Traffic Act allows a person injured in a road accident to claim from the insurance company despite the fact that he is not a party to the motor vehicle insurance arrangement.