

- Case law based devices to avoid the privity doctrine – these retain some relevance due to the limited scope of the legislative reform. They are however acknowledged to have introduced artificiality and complexity in to the law.
- Recommendations for statutory reform of the third party rule to allow, in some circumstances, a third party to enforce provisions of a contract that are intended for their benefit i.e. Law commission report: Privity of Contract.

The statutory reform is contained in the Contract (Rights of Third Parties) Acts 1999.

S1(1)(a)

Subject to the provisions of this act, a third party may in his own right enforce a contract if-

- (a) The contract expressly provides that he may, or
- (b) Subject to subsection 2, the term purports to confer a benefit on him.

S1(2)

Subsections 1b does not apply if on a proper construction of the contract appears that the parties of the contract did not intend the term to be enforceable by the third party.

Does the contract purport to benefit the third party?

Dolphin & Maritime & Aviation services Ltd v The Swedish club 2009

- The contract merely benefitted the third party by incidental effect rather than benefiting the third party by purpose of bargaining between the contracting parties. The third party in this case was therefore unable to enforce the contract as the contract did not 'purport' a benefit to the third party.

Does the contract need to purport a benefit on the third party?

Nisshin Shipping Co Ltd v Cleaves & Co Ltd

- This is not necessary as the test of enforceability was satisfied s1(1)(a)

The limitation of the test of enforceability s1(3)

- The third party must be expressly identified in the contract by name, as a member of a class or as answering a particular description, but need not be in existence when the contract is entered in to.

Avraamides v Colwill 2006 (CA)

A employed C to refurbish As bathroom. This was defective, but before enforcement, B sold his business to C and A attempted to enforce the contract against C.

However, A is not a third party to the contract between B/C and thus was unable to enforce the agreement made between A and B as A was not expressly identified in the contract between B and C. as in s1(3).