

Law Reform Essay Example (Discursive, OSCOLA)

Topic: *Should the UK Abolish the Doctrine of Privity of Contract?*

Demonstrates: A university-level law reform essay using OSCOLA referencing, balanced academic analysis, policy evaluation, and a reasoned conclusion.

Should the UK Abolish the Doctrine of Privity of Contract?

Introduction

The doctrine of privity of contract has long been regarded as one of the defining principles of English contract law. The rule provides that only parties to a contract may enforce its terms or be bound by its obligations. While this principle promotes contractual autonomy and certainty, it has also been criticised for producing unjust outcomes where third parties clearly intended to benefit from contractual promises are denied legal remedies. Throughout the twentieth century, courts attempted to soften the harshness of the doctrine through numerous exceptions, culminating in the enactment of the **Contracts (Rights of Third Parties) Act 1999**. The Act significantly reformed the law by granting enforcement rights to certain third-party beneficiaries while preserving the traditional doctrine as the general rule.

Despite this statutory intervention, debate continues regarding whether the doctrine itself should now be abolished entirely. Some scholars argue that privity remains an unnecessary historical relic that complicates commercial transactions and produces arbitrary distinctions. Others contend that abolishing the doctrine would undermine freedom of contract by exposing contracting parties to obligations towards individuals with whom they never intended to contract.

This essay argues that the United Kingdom should **not abolish the doctrine of privity entirely**. Instead, the current model established by the Contracts (Rights of Third Parties) Act 1999 strikes an appropriate balance between contractual autonomy and fairness. Although the common law doctrine was historically rigid, complete abolition would create significant uncertainty while offering relatively few practical advantages over the present statutory framework.

The Traditional Doctrine of Privity

The classical doctrine of privity developed alongside nineteenth-century principles of contractual freedom. The central rule is straightforward: only parties who provide consideration and enter into a contract acquire rights and obligations under it.

The leading authority remains **Tweddle v Atkinson**, where the claimant attempted to enforce a promise made between his father and father-in-law for his financial benefit. Although the contract expressly intended to benefit him, the court held that he was

neither a party to the agreement nor a provider of consideration and therefore lacked standing to sue.

This position was reaffirmed in **Dunlop Pneumatic Tyre Co Ltd v Selfridge & Co Ltd**, where Lord Haldane famously stated that only a person who is party to a contract can sue upon it.

These decisions established two closely connected principles:

- only parties may sue on a contract; and
- consideration must move from the promisee.

Together they created a highly formalistic approach that often ignored commercial expectations.

The advantages of the doctrine were nevertheless clear. It promoted legal certainty by clearly identifying who possessed contractual rights. It also protected freedom of contract by preventing courts from imposing obligations or benefits upon individuals outside the contractual relationship.

However, these strengths increasingly came at the expense of justice.

Problems Created by Privity

The principal criticism of privity is that it frequently defeated the genuine intentions of contracting parties.

Many contracts are specifically designed to benefit third parties. Examples include:

- life insurance policies;
- construction contracts;
- employment-related insurance;
- family settlements;
- consumer warranties.

Under the traditional doctrine, these intended beneficiaries often possessed no legal remedy if the promisor failed to perform.

The decision in **Beswick v Beswick** illustrates this difficulty. Mr Beswick transferred his business to his nephew in exchange for a promise that the nephew would pay an annuity to Mrs Beswick after the transferor's death. When the nephew failed to honour the agreement, Mrs Beswick could not enforce the contract in her personal capacity because she was not a contracting party.

The House of Lords ultimately avoided injustice only by allowing her to sue as administratrix of her husband's estate. Although justice was achieved, the reasoning exposed the artificiality of the doctrine.

Lord Reid openly acknowledged that the law had become overly technical.

Similarly, in commercial construction projects involving chains of contracts, privity often prevented property owners or subcontractors from enforcing obligations despite obvious commercial expectations.

Such outcomes encouraged litigation based on legal fictions rather than straightforward contractual enforcement.

Judicial Attempts to Circumvent the Doctrine

Long before Parliament intervened, judges recognised that strict adherence to privity frequently produced injustice.

Consequently, English courts developed numerous exceptions.

These included:

- agency;
- collateral contracts;
- trusts of contractual promises;
- assignment;
- restrictive covenants;
- negligence claims for economic loss in limited circumstances.

The famous decision in **Jackson v Horizon Holidays Ltd** represented an especially creative attempt to circumvent privity. Lord Denning allowed a father to recover damages not only for his own disappointment but also for the loss suffered by his family members despite their not being parties to the holiday contract.

Although later confined by **Woodar Investment Development Ltd v Wimpey Construction UK Ltd**, the case demonstrated judicial dissatisfaction with strict privity.

The proliferation of exceptions ultimately weakened the conceptual coherence of the doctrine itself.

If numerous exceptions were continually required to avoid injustice, critics questioned whether the underlying rule remained justified.

The Contracts (Rights of Third Parties) Act 1999

The Law Commission concluded that piecemeal judicial reform could no longer adequately address the doctrine's deficiencies.

The result was the **Contracts (Rights of Third Parties) Act 1999**, representing one of the most significant reforms of English contract law in the modern era.

Section 1 provides that a third party may enforce a contractual term where:

- the contract expressly permits enforcement; or
- the term purports to confer a benefit upon the third party unless the contracting parties intended otherwise.

The Act therefore reverses the common law presumption in favour of excluding third-party rights.

Importantly, however, the legislation preserves party autonomy.

Under section 1(2), contracting parties remain free to exclude third-party enforcement altogether.

Likewise, section 2 protects third parties from losing accrued rights once they have relied upon the contract.

Rather than abolishing privity completely, Parliament chose a more balanced solution that respects contractual intentions while avoiding obvious injustice.

Arguments for Abolishing Privity Entirely

Supporters of abolition argue that the doctrine no longer performs any meaningful function.

First, they contend that contractual intention should determine enforcement rights rather than formal notions of contractual status.

Modern contract law increasingly prioritises substance over form. If both contracting parties clearly intended to benefit another person, denying enforcement merely because that person did not sign the agreement appears unnecessarily technical.

Secondly, abolition could simplify contract law.

The coexistence of the common law doctrine, statutory rights, and numerous judicial exceptions creates considerable complexity. Students, practitioners, and commercial parties must navigate multiple overlapping rules to determine whether third-party enforcement is possible.

A single principle based upon contractual intention might produce greater coherence.

Thirdly, abolition would better reflect commercial reality.

Complex commercial transactions frequently involve multiple interconnected parties. Construction contracts, outsourcing agreements, insurance arrangements, and shipping contracts often depend upon third-party performance.

Modern commerce increasingly recognises network relationships rather than simple bilateral contracts.

Finally, many comparative jurisdictions have already moved away from strict privity without significant disruption.

Both American and several Commonwealth legal systems recognise broader third-party beneficiary rights, suggesting that complete abolition need not undermine contractual certainty.

Arguments Against Abolition

Despite these criticisms, powerful arguments remain for retaining the doctrine.

The most important concerns freedom of contract.

Contractual obligations arise through voluntary agreement between identifiable parties. Allowing unlimited third-party enforcement risks imposing legal consequences extending beyond those whom the contracting parties contemplated.

The current doctrine ensures that contractual rights remain fundamentally consensual.

Secondly, complete abolition would generate uncertainty.

Determining precisely which third parties possess enforceable rights could become highly fact-sensitive. Courts would frequently be required to infer contractual intentions from ambiguous language, increasing litigation and reducing commercial predictability.

The 1999 Act already addresses this concern by establishing clear statutory criteria.

Thirdly, many supposed injustices have already disappeared.

The Contracts (Rights of Third Parties) Act 1999 allows enforcement whenever parties genuinely intend third-party benefit unless they expressly exclude it.

Consequently, most practical problems associated with **Tweddle** and **Beswick** have been resolved without abolishing privity itself.

Fourthly, abolition could produce unintended commercial consequences.

Businesses often deliberately restrict contractual rights to manage legal risk. If broad categories of third parties automatically acquired enforcement rights, contractual drafting would become significantly more complicated.

Commercial certainty remains one of English contract law's principal strengths internationally.

Evaluating the Current Law

The central question is whether abolition would produce meaningful improvements beyond those already achieved by statutory reform.

In practice, the answer appears doubtful.

The Contracts (Rights of Third Parties) Act 1999 successfully addresses the principal injustice underlying the traditional doctrine while preserving contractual autonomy.

Where parties intend third-party enforcement, the Act generally permits it.

Where they do not, the law respects their decision.

This reflects an appropriate balance between competing policy objectives.

Furthermore, empirical evidence suggests that commercial parties frequently exclude the Act through contractual drafting where broader enforcement rights are considered undesirable.

This demonstrates that party autonomy remains commercially valuable.

The continuing existence of privity also preserves conceptual clarity.

Contract law fundamentally governs voluntarily assumed obligations. Abandoning this foundation risks blurring the distinction between contractual liability and broader obligations recognised in tort or equity.

Rather than abolishing privity, future reform should focus on improving the operation of the 1999 Act.

Greater judicial guidance regarding contractual interpretation, clearer drafting practices, and modest statutory amendments would likely achieve more practical benefits than complete abolition.

Conclusion

The doctrine of privity undoubtedly represented one of the harshest rules of traditional English contract law. Decisions such as *Tweddle v Atkinson* and *Beswick v Beswick* demonstrated that rigid adherence to formal contractual relationships could frustrate both commercial expectations and basic fairness. Judicial attempts to circumvent the doctrine ultimately revealed that reform had become unavoidable.

Nevertheless, abolition is neither necessary nor desirable. The Contracts (Rights of Third Parties) Act 1999 has already transformed the law by allowing intended

beneficiaries to enforce contractual promises while preserving the essential principle of contractual autonomy. The statute successfully reconciles fairness with certainty, eliminating many historical injustices without creating the uncertainty that complete abolition could produce.

Accordingly, the United Kingdom should retain the doctrine of privity as the general rule while continuing to rely upon the carefully calibrated statutory exceptions introduced by the 1999 Act. The future of English contract law lies not in abandoning privity altogether but in refining the existing legislative framework to ensure that contractual intention, commercial certainty, and fairness remain appropriately balanced.

Bibliography (OSCOLA)

Table of Cases

Beswick v Beswick [1968] AC 58 (HL).

Dunlop Pneumatic Tyre Co Ltd v Selfridge & Co Ltd [1915] AC 847 (HL).

Jackson v Horizon Holidays Ltd [1975] 1 WLR 1468 (CA).

Tweddle v Atkinson (1861) 1 B & S 393.

Woodar Investment Development Ltd v Wimpey Construction UK Ltd [1980] 1 WLR 277 (HL).

Legislation

Contracts (Rights of Third Parties) Act 1999.

Books

Beale H (ed), *Chitty on Contracts* (35th edn, Sweet & Maxwell 2023).

McKendrick E, *Contract Law: Text, Cases and Materials* (10th edn, OUP 2024).

Poole J, *Textbook on Contract Law* (16th edn, OUP 2023).

Treitel G, *The Law of Contract* (15th edn, Sweet & Maxwell 2020).

Journal Articles

Law Commission, *Privity of Contract: Contracts for the Benefit of Third Parties* (Law Com No 242, 1996).

Stevens R, 'The Contracts (Rights of Third Parties) Act 1999' (2004) 120 *Law Quarterly Review* 292.

Approximate word count (excluding bibliography): 1,650 words.

