

## ABSTRACT

This thesis examines the doctrine of privity in Malaysia and argues that its application to contracts made for the benefit of third parties is inadequate and requires statutory reform. The main obstacle of this doctrine is that it frustrates the contracting parties' intention to benefit third parties. The difficulty is exacerbated by the growth of contracts made for the benefit of third parties in recent years. It is submitted that contract theory can accommodate third party rights. The development of common law mechanisms to overcome the doctrine of privity in England, Australia and Canada are analysed to consider their application to the position in Malaysia. The common law mechanisms discussed include promisee's remedies for breach of contract and mechanisms which grant direct rights to the third party to enforce a contract such as trust, agency, tort, Himalaya clauses and others. A comparative study of the use of these mechanisms in the jurisdictions analysed shows that a number of important judicial developments can be undertaken by the Malaysian courts. However, this study also shows that there are limitations with judicial reform of the doctrine of privity and that the more effective solution is through statutory reform. For this purpose, a study on the statutory development of third party rights in England, New Zealand, Australia, together with the position in the United States and the Principles of European Contract Law which are applicable to members of the European Union is also included in this discussion. This comparative study shows that the framework adopted in England now found in Contracts (Rights of Third Parties) Act 1999 is the preferred model for reform subject to a few changes to suit local conditions and circumstances.

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## LIST OF ABBREVIATION

### CASES

AC	:	Appeal Cases
ACSR	:	Australian Corporations and Securities Reports
ALR	:	Australian Law Reports
ALCLC	:	Australian Company Law Cases
AIR	:	All India Reports
All ER	:	All England Law Reports
AMR	:	All Malaysia Reports
App Cas	:	Law Reports, Appeal Cases, House of Lords 1875-1890
BCAC	:	British Columbia Appeal Cases
Burr	:	Burrow Reports
Build LR	:	Building Law Reports
CLR	:	Commonwealth Law Reports
Ch	:	Chancery Division
CLJ	:	Current Law Journal
Con LR	:	Construction Law Reports
DLR	:	Dominion Law Reports
ER	:	English Reports
EWCA	:	England and Wales Court of Appeal
EWHC	:	England and Wales High Court
Exch	:	Exchequer Reports (Welsby, Hurlstone and Gordon) 1847-1856
FCA	:	Federal Court of Appeal
FMSLR	:	Federated Malaysia and Singapore Law Reports
Hare	:	Hare's Chancery Reports
IPR	:	Intellectual Property Reports
ILR	:	Indian Law Reports
Ir Eq R	:	Irish Equity Reports
KB	:	King's Bench Division
Ky	:	Kylie
Lloyd's Rep	:	Lloyd's Law Reports
LNS	:	Unreported Cases obtained from CLJ
Mer	:	Merivale's Chancery Reports 1815-1817
MLJU	:	Malayan Law Journal Unreported
NSWSC	:	New South Wales Supreme Court
NZCLC	:	New Zealand Company Law Cases
NZDCR	:	New Zealand District Court Reports
NZHC	:	New Zealand High Court
NZLR	:	New Zealand Law Reports
QB	:	Queen's Bench Division
QBT	:	Queensland Building Tribunal
QCA	:	Queensland Court of Appeal
Qd R	:	Queensland Reports
QDC	:	Queensland District Court
QSC	:	Queensland Supreme Court
SCR	:	Supreme Court Cases
SASC	:	South Australia Supreme Court

SC(HL)	:	Scottish Courts (House of Lords)
SLR	:	Singapore Law Reports
VSC	:	Victoria Supreme Court
WLR	:	Weekly Law Reports
WAR	:	Western Australia Reports
WASC	:	Western Australia Supreme Court
WASCA	:	Western Australia Supreme Court of Appeal

## ARTICLE

ALJ	:	Australian Law Journal
AULR	:	Auckland University Law Review
ABLR	:	Australian Business Law Review
ABR	:	Australian Bar Review
Ad Bus	:	Advising Business: Law & Practice
Alta LR	:	Alberta Law Review
Am JLH	:	American Journal of Legal History
Am Rev Int'l Arb	:	American Review of International Arbitration
Anglo-Am L Rev	:	Anglo-American Law Review
APLJ	:	Australian Property Law Journal
AR	:	Arbitration International
Aust J Asian L	:	Australian Journal of Asian Law
BLR	:	Business Law Review
Bond LR	:	Bond Law Review
Bost CLR	:	Boston College Law Review
CBLJ	:	Canadian Business Law Journal
CLP	:	Current Legal Problems
Can B Rev	:	Canadian Bar Review
CLJ	:	Current Law Journal
C.L.J.	:	Cambridge Law Journal
CLT	:	Consumer Law Today
CLWR	:	Common Law World Review
Col LR	:	Columbia Law Review
Comm Leases	:	Commercial Leases
Con & Eng Law	:	Construction and Engineering Law
Conn Ins LJ	:	Connecticut Insurance Law Journal
Conn J Int'l L	:	Connecticut Journal of International Law
Const LJ	:	Construction Law Journal
Constr Lawyer	:	Construction Lawyer
Conv	:	Conveyancer
Corn LR	:	Cornell Law Review
Dalhousie LJ	:	Dalhousie Law Journal
Duq L Rev	:	Duquesne Law Review
ELR	:	Edinburgh Law Review
F&CL	:	Finance & Credit Law
Fordham L Rev	:	Fordham Law Review
HanseLR	:	Hanse Law Review
Harv LR	:	Harvard Law Review
HKLJ	:	Hong Kong Law Journal

HR	:	Hill & Redman
ICLQ	:	International and Comparative Law Quarterly
IIUM	:	International Islamic University Malaysia
ILJ	:	Insurance Law Journal
INSAF	:	Journal of Malaysian Bar
ITLQ	:	International Trade Law Quarterly
IJL&IT	:	International Journal of Law and IT
ILM	:	Insurance Law Monthly
Is L Rev	:	Israel Law Review
ITLT	:	IT Law Today
J Mar & Com	:	Journal of Maritime Law & Commerce
JBL	:	Journal of Business Law
JCL	:	Journal of Contract Law
JMCL	:	Journal of Malaysian and Comparative Law
LMCLQ	:	Lloyds' Maritime Commercial Law Quarterly
LQR	:	Law Quarterly Review
Lit	:	Litigation
LS	:	Legal Studies
LSG	:	Law Society's Gazette
Mal LR	:	Malayan Law Review
McGill LJ	:	McGill Law Journal
MLR	:	Modern Law Review
MelbJIL	:	Melbourne Journal of International Law
MLAAZ	:	Maritime Law Association of Australia and New Zealand
MLJ	:	Malayan Law Journal
MULR	:	Melbourne University Law Review
MurUEJL	:	Murdoch University Electronic Journal of Law
NILQ	:	Northern Ireland Legal Quarterly
NZULR	:	New Zealand University Law Review
New Eng L Rev	:	New England Law Review
NLJ	:	New Law Journal
NLR	:	National Law Review
OJLS	:	Oxford Journal of Legal Studies
O.U.C.L.J.	:	Oxford University Commonwealth Law Journal
OHLJ	:	Osgoode Hall Law Journal
Otago L Rev	:	Otago Law Review
Pac Rim L & Pol'y	:	Pacific Rim Law & Policy Journal
RLR	:	Restitution Law Review
SAcLJ	:	Singapore Academy Law Journal
SJLS	:	Singapore Journal of Legal Studies
SMU L Rev	:	Southern Methodist University Law Review
Stan LR	:	Stanford Law Review
Syd L Rev	:	University Sydney Law Review
Tel Aviv U Stud L	:	Tel Aviv University Studies in Law
Tex L Rev	:	Texas Law Review
Tex Tech L Rev	:	Texas Tech Law Review
Tul Mar LJ	:	Tulane Maritime Law Journal
Tul LR	:	Tulane Law Review
TLJ	:	Tort Law Journal



U Chi L Rev	:	University of Chicago Law Review
U Tas LR	:	University of Tasmania Law Review
U Mich JLR	:	University of Michigan Journal of Legal Reform
UBCL	:	University of British Columbia Law Review
UTFLR	:	University of Toronto Faculty of Law Review
U Tor LJ	:	University of Toronto Law Journal
UNSWLJ	:	University New South Wales Law Journal
UQLJ	:	University of Queensland Law Journal
Utah L Rev	:	Utah Law Review
UWALR	:	University of Western Australia Law Review
Va L Rev	:	Virginia Law Review
VUWLRev	:	Victoria University of Wellington Law Review
Wash & Lee L Rev	:	Washington and Lee Law Review
WkoLRev	:	Waikato Law Review
WLMR	:	William & Mary Law Review
Yale LJ	:	Yale Law Journal

## **JUDGE**

CJ	:	Chief Justice
FCJ	:	Federal Court Justice
J	:	Justice
JA	:	Justices of Appeal
JC	:	Judicial Commissioner
JCA	:	Justice of Court of Appeal
SCJ	:	Supreme Court Justice

## **COURT**

CA	:	Court of Appeal
FC	:	Federal Court
PC	:	Privy Council