

CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 2001

Chapter 2

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AN ACT

to make provision for the enforcement of contractual terms by third parties.

WE, your Majesty's most dutiful and loyal subjects, the Council and Keys of the said Isle, do humbly beseech your Majesty that it may be enacted, and be it enacted, by the Queen's Most Excellent Majesty, by and with the advice and consent of the Council and Keys in Tynwald assembled, and by the authority of the same, as follows (that is to say):—

1. Right of third party to enforce contractual term

(1) Subject to the provisions of this Act, a person who is not a party to a contract (a "third party") may in his own right enforce a term of the 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.

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

(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 into.

(4) This section does not confer a right on a third party to enforce a term of a contract otherwise than subject to and in accordance with any other relevant terms of the contract.

(5) For the purpose of exercising his right to enforce a term of the contract, there shall be available to the third party any remedy that would have been available to him in an action for breach of contract if he had been a party

to the contract (and the rules relating to damages, injunctions, specific performance and other relief shall apply accordingly).

(6) Where a term of a contract excludes or limits liability in relation to any matter references in this Act to the third party enforcing the term shall be construed as references to his availing himself of the exclusion or limitation.

(7) In this Act, in relation to a term of a contract which is enforceable by a third party —

"the promisor" means the party to the contract against whom the term is enforceable by the third party, and

"the promisee" means the party to the contract by whom the term is enforceable against the promisor.

2. Variation and rescission of contract

(1) Subject to the provisions of this section, where a third party has a right under section 1 to enforce a term of the contract, the parties to the contract may not, by agreement, rescind the contract, or vary it in such a way as to extinguish or alter his entitlement under that right, without his consent if —

- (a) the third party has communicated his assent to the term to the promisor,
- (b) the promisor is aware that the third party has relied on the term, or
- (c) 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.

(2) The assent referred to in subsection (1)(a) —

- (a) may be by words or conduct, and
- (b) if sent to the promisor by post or other means, shall not be regarded as communicated to the promisor until received by him.

(3) Subsection (1) is subject to any express term of the contract under which —

- (a) the parties to the contract may by agreement rescind or vary the contract without the consent of the third party, or
- (b) the consent of the third party is required in circumstances specified in the contract instead of those set out in subsection (1)(a) to (c).

(4) Where the consent of a third party is required under subsection (1) or (3), the court or arbitrator may, on the application of the parties to the contract, dispense with his consent if satisfied —

- (a) that his consent cannot be obtained because his whereabouts cannot reasonably be ascertained, or
- (b) that he is mentally incapable of giving his consent.

(5) The court or arbitrator may, on the application of the parties to a contract, dispense with any consent that may be required under subsection (1)(c) if satisfied that it cannot reasonably be ascertained whether or not the third party has in fact relied on the term.

(6) If the court or arbitrator dispenses with a third party's consent, it or he may impose such conditions as it or he thinks fit, including a condition requiring the payment of compensation to the third party.

3. Defences etc. available to promisor

(1) Subsections (2) to (5) apply where, in reliance on section 1, proceedings for the enforcement of a term of a contract are brought by a third party.

(2) The promisor shall have available to him by way of defence or set-off any matter that —

- (a) arises from or in connection with the contract and is relevant to the term, and
- (b) would have been available to him by way of defence or set-off if the proceedings had been brought by the promisee.

(3) The promisor shall also have available to him by way of defence or set-off any matter if —

- (a) an express term of the contract provides for it to be available to him in proceedings brought by the third party, and
- (b) it would have been available to him by way of defence or set-off if the proceedings had been brought by the promisee.

(4) The promisor shall also have available to him —

- (a) by way of defence or set-off any matter, and
- (b) by way of counterclaim any matter not arising from the contract,

that would have been available to him by way of defence or set-off or, as the case may be, by way of counterclaim against the third party if the third party had been a party to the contract.

(5) Subsections (2) and (4) are subject to any express term of the contract as to the matters that are not to be available to the promisor by way of defence, set-off or counterclaim.

(6) Where in any proceedings brought against him a third party seeks in reliance on section 1 to enforce a term of a contract (including, in particular, a term purporting to exclude or limit liability), he may not do so if he could not have done so (whether by reason of any particular circumstances relating to him or otherwise) had he been a party to the contract.

4. Enforcement of contract by promisee

Section 1 does not affect any right of the promisee to enforce any term of the contract.

5. Protection of promisor from double liability

Where under section 1 a term of a contract is enforceable by a third party, and the promisee has recovered from the promisor a sum in respect of —

- (a) the third party's loss in respect of the term, or
- (b) the expense to the promisee of making good to the third party the default of the promisor,

then, in any proceedings brought in reliance on that section by the third party, the court or arbitrator shall reduce any award to the third party to such extent as it or he thinks appropriate to take account of the sum recovered by the promisee.

6. Exceptions

(1) Section 1 confers no rights on a third party in the case of a contract on a bill of exchange, promissory note or other negotiable instrument.

(2) Section 1 confers no rights on a third party in the case of any contract binding on a company and its members under section 20 of the Companies Act 1931¹.

(3) Section 1 confers no right on a third party to enforce —

- (a) any term of a contract of employment against an employee,
- (b) any term of any other work contract against the worker;

(4) In subsection (3) —

"contract of employment" includes a contract of apprenticeship;

"work contract" means any other contract, whether express or implied and (if express) whether oral or in writing, whereby an individual ("the worker") undertakes to do or perform personally any work or services for another party to the contract whose status is not by virtue of the contract that of a client or customer of any profession or business undertaking carried on by the worker.

(5) Section 1 confers no rights on a third party in the case of —

- (a) a contract for the carriage of goods by sea, or

¹ XIII p.235

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- (b) a contract for the carriage of goods by road, or for the carriage of cargo by air, which is subject to the rules of the appropriate international transport convention,

except that a third party may in reliance on that section avail himself of an exclusion or limitation of liability in such a contract.

(6) In subsection (5) "contract for the carriage of goods by sea" means a contract of carriage —

- (a) contained in or evidenced by a bill of lading, sea waybill or a corresponding electronic transaction, or
- (b) under or for the purposes of which there is given an undertaking which is contained in a ship's delivery order or a corresponding electronic transaction.

(7) For the purposes of subsection (6) —

- (a) "bill of lading", "sea waybill" and "ship's delivery order" have the same meanings as in Part 1 of the Merchant Shipping (Miscellaneous Provisions) Act 1996², and
- (b) a corresponding electronic transaction is a transaction within section 1(5) of that Act which corresponds to the issue, indorsement, delivery or transfer of a bill of lading, sea waybill or ship's delivery order.

(8) In subsection (5) "the appropriate international transport convention" means —

- (a) in relation to a contract for the carriage of goods by road, the Convention which has the force of law in the Island under section 1 of the Carriage of Goods by Road Act 1965 (an Act of Parliament)³, as it has effect in the Island⁴, and
- (b) in relation to a contract for the carriage of cargo by air —
 - (i) the Convention which has the force of law in the Island under section 1 of the Carriage by Air Act 1961 (an Act of Parliament)⁵, as it has effect in the Island⁶, or
 - (ii) the Convention which has the force of law under section 1 of the Carriage by Air (Supplementary Provisions) Act 1962 (an Act of Parliament)⁷, as it has effect in the Island⁸, or
 - (iii) either of the amended Conventions set out in Part B of Schedule 2 or 3 to the Carriage by Air Acts

² 1996 c.20

³ 1965 c.37

⁴ SI 1981/1543

⁵ 1961 c.27

⁶ GC 417/92

⁷ 1962 c.43

⁸ GC 417/92

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(Application of Provisions) Order 1967⁹, as it has effect in the Island¹⁰.

7. Supplementary provisions relating to third party

(1) Section 1 does not affect any right or remedy of a third party that exists or is available apart from this Act.

(2) Section 5(2) of the Misrepresentation and Unfair Contract Terms Act 1980¹¹ (restriction on exclusion etc. of liability for negligence) shall not apply where the negligence consists of the breach of an obligation arising from a term of a contract and the person seeking to enforce it is a third party acting in reliance on section 1.

(3) In sections 5 and 8 of the Limitation Act 1984¹² the references to an action founded on a simple contract and an action upon a specialty shall respectively include references to an action brought in reliance on section 1 relating to a simple contract and an action brought in reliance on that section relating to a specialty.

(4) A third party shall not, by virtue of section 1(5) or 3(4) or (6), be treated as a party to the contract for the purposes of any other Act.

8. Short title and commencement

(1) This Act may be cited as the Contracts (Rights of Third Parties) Act 2001.

(2) Subject to subsection (3), this Act does not apply in relation to a contract entered into before the end of the period of 6 months beginning with the day on which this Act is passed.

- (3) Subsection (2) does not apply in relation to a contract which —
- (a) is entered into on or after the day on which this Act is passed, and
 - (b) expressly provides for the application to it of this Act.

⁹ SI 1967/480

¹⁰ SD 555/97

¹¹ 1980 c.18

¹² 1984 c.18