This introduction is the most important section in this text. It gives an overview of the analytical process for evaluating a dispute involving a contract and is a reference point for all topics discussed in the text. If students review this section as they work through each subsequent section, they will have an analytical process firmly in mind for evaluating a transaction involving a contract.

There are six steps for analyzing the law of contracts. Within each step, issues of major importance are identified and discussed. Because each step is the foundation for the next, it is important to understand each step before going on to the next.

The six steps and the chapters in which each will be examined in depth are:

- **Step One:** Determining the Applicable Law (Choice of Law)
  - Chapter 1

- **Step Two:** Contract Formation
  - Chapters 2 through 6

- **Step Three:** Contract Enforceability
  - Chapters 7 through 9

- **Step Four:** Plaintiff’s Allegation of Defendant’s Breach of Contract
  - Chapter 10

- **Step Five:** Defendant’s Response to the Plaintiff’s Allegation of Breach
  - Chapters 11 through 14

- **Step Six:** Plaintiff’s Remedies for the Defendant’s Breach of Contract
  - Chapters 15 and 16
Exhibit I-1 Breach of Contract Road Map
Sixteen chapters are necessary to cover the six steps in the analysis. The Introduction, therefore, provides only an overview of the issues in each step of the Road Map. Do not attempt to memorize the Introduction but return to it often for an overview of the course (see Exhibit I–1).

**STEP ONE: DETERMINING THE APPLICABLE LAW (CHOICE OF LAW)**

*Choice of law* is the selection of the legal rules under which the dispute will be resolved. Choice of law, therefore, is the threshold step in any contract analysis. Choice of law questions arise in a number of settings: conflicting laws of different countries; conflicting federal and state laws; conflicting laws of two different states; conflicting laws within a state.

If the contracting parties are from different countries, three issues may arise: whether any dispute arising from the contract should be resolved through arbitration or litigation; if litigation is chosen, whether the law of country A or the law of country B should apply; and which court will be the forum court.

**Example**

A Florida citrus grower contracts to sell 100 carloads of oranges to a Russian buyer. In the contract the parties provide a mandatory arbitration provision. The Russian wants to avoid litigating in an American court and the American wants to avoid litigating in a Russian court. They also want the adjudicator to have expertise in the commercial citrus market.

Before the oranges can be shipped, a Category 5 hurricane moves through Florida, destroying the grower’s orange crop. The buyer believes that the seller breached by not delivering the oranges. The seller believes that it was excused from delivering due to an act of God.

By including the mandatory arbitration provision in their contract, the parties will present their dispute to an arbitrator for adjudication.

**Example**

If the parties in the previous example had not included a mandatory arbitration provision in their contract, and if, at the time of the dispute, they could not agree on arbitration, the dispute would be resolved through litigation.
The question is whether Russian law or Florida law governs the transaction. Since one party has a business in Florida (and the United States is a contracting state for the Commission on the International Sale of Goods, or CISG), the parties will find it necessary to determine whether Russia is a contracting state as well. If it is, then CISG applies to the transaction unless the parties have opted out. If the parties have opted out, then their choice of law would apply (if compatible with the law of the forum) unless they have not chosen which law applies. In that case, the choice of law rules of the forum would be applied to determine the appropriate law.

**Example**

If the parties in the previous example litigate, will the litigation take place in Russia or Florida (or in a third location)? Did the parties discuss choice of forum in their contract and, if so, will the court acquiesce to the forum selected? If the parties did not discuss choice of forum, the plaintiff would select the location of the court and the defendant could challenge this location. (Note that at times the court in one state or one country will use the law of another state or country.)

A conflict may exist between federal and state law. Federal law, for example, may preempt or override state law in some aspects of a consumer transaction.

**Example**

Buyer purchases a VCR for home use from a department store. The Seller of a consumer product, in making a written warranty, must follow the requirements set forth in the federal Magnuson-Moss Warranty—Federal Trade Commission Improvement Act. This Act establishes federal minimum standards for written warranties, limitations on disclaimers of implied warranties, and remedies that are separate and apart from state remedies. The Buyer, therefore, acquires rights under federal law that exceed those rights acquired under state law.

If state law applies, geographic considerations raise choice of law questions. In a transaction spanning several states, which
state's law governs must be determined at the outset. An **interstate transaction** (also known as a multistate transaction) is a transaction spanning several states. Does the law of State A or the law of State B govern the transaction?

**Example**

A New Yorker owns a yacht that she is interested in selling. The New Yorker mails a letter to a potential Buyer in California promising to sell the yacht for $175,000. After sending this letter but before receiving a response from the California Buyer, the Seller sells the yacht to someone else for $200,000. Upon completing this sale, the Seller mails a letter to the California Buyer revoking her offer. After the Seller's letter of revocation has been sent but before it has been received, the California Buyer mails a letter to the Seller accepting the Seller's offer. Upon receiving the California Buyer's letter of acceptance, the Seller notifies the California Buyer that she has sold the yacht to someone else. (See Exhibit I–2.)

<table>
<thead>
<tr>
<th>NY Seller makes offer to CA Buyer</th>
<th>NY Seller sells to another</th>
<th>NY Seller mails revocation to CA Buyer</th>
<th>CA Buyer mails acceptance to NY Seller</th>
<th>CA Buyer receives revocation</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>Revocation effective in California; no contract under California law</td>
<td>Acceptance effective in New York; contract under New York law</td>
<td></td>
</tr>
</tbody>
</table>

**Exhibit I–2 Timeline for NY Seller/CA Buyer**

Under both New York and California law, an offer sent by mail is effective when sent. New York and California, however, have different rules as to when revocation is effective. In New York revocation is effective when received. In California revocation is effective when sent. If California law applies, the Seller's revocation of her offer was effective (when sent) before the Buyer's acceptance was effective (when sent). If New York law applies, the Buyer's acceptance is effective (when sent) before the Seller's revocation is effective (when received). Therefore, the choice

**interstate transaction**

A transaction spanning several states. Also known as a multistate transaction.
between New York and California laws will determine whether a contract between the New York Seller and the California Buyer has been formed.

Once the appropriate state is determined, the investigation considers whether a special body of law within that state applies to the transaction. If the transaction is a sale of goods, for example, the appropriate state’s version of Article 2 of the Uniform Commercial Code (UCC) will govern the transaction rather than the state’s common law. If the transaction is a lease of goods, Article 2A of the UCC will govern. The Uniform Commercial Code is a comprehensive compilation of rules drafted by the American Law Institute (ALI) and the National Conference of Commissioners on Uniform State Laws (NCCUSL). The UCC becomes the law of a given state upon enactment by that state’s legislature and signature of the governor. The common law is the body of law derived from judicial decisions (i.e., court-made law).

**Example**

Owner takes her car to Garage for repair. The car needs new parts, body work, and painting. The bill is itemized at $300 labor and $300 parts. After three months, the paint blisters. If the transaction is governed by Article 2 of the UCC (sale of goods), there will be an implied warranty that the paint would be fit for the ordinary purpose, and Owner could recover. If, however, the transaction is not viewed as a sale of goods but only as a sale of services, the transaction is not governed by Article 2 of the UCC, no implied warranty attaches to the transaction, and Owner could not recover for the blistering paint job unless Garage expressly warranted that the paint would not blister.

While this example illustrates the impact of Article 2 of the UCC on contract law, the UCC is not the only body of specialized state law that affects contracts. Another illustration involves identifiable groups of contracting parties who may be unable to protect themselves. A state legislature may enact special rules to protect consumers, minors, and the mentally incapacitated. The legislature may change other court-made rules of contract law as well.

Once choice of law issues have been resolved, the next and one of the most important questions in the analysis must be raised—“Has a contract been created?”

**Uniform Commercial Code**

A comprehensive compilation of rules drafted by the American Law Institute and the National Conference of Commissioners on Uniform State Laws that includes a number of topics including sale of goods and which becomes the law of a given state upon enactment by that state’s legislature and signature of the governor.

**common law**

Common law has several meanings. The common law is the body of law and jurisprudential theory that originated and developed in England. Common law, as distinguished from law created by legislative enactment, is derived from custom and usage and from judicial decisions recognizing and enforcing custom and usage.
STEP TWO: CONTRACT FORMATION

The second step in the analysis focuses on the two components of contract formation: the offer and the acceptance.

The Offer

An offer is a manifestation of willingness to enter into a bargain, which justifies another person in understanding that his or her assent to that bargain is invited and will conclude it. What constitutes an offer and when an offer has been made are basic inquiries at this stage. The offeror is the party who makes the offer. The offeree is the party who receives the offer and is asked to accept it and thus form a contract.

What constitutes an offer is determined by the components of the offer. An offer may be for a bilateral contract or for a unilateral contract. When the offer is for a bilateral contract, the offeror makes a promise to entice the offeree to make a promise (a promise for a promise). If the offeree accepts by promising, a contract is formed. The offeree’s performance of his or her promise will occur after contract formation.

Example

“I promise to pay you $1,000 for your promise to paint my house.”

When the offer is for a unilateral contract, the offeror makes a promise to entice the offeree to perform (a promise for a performance). The offeror does not want the offeree's promise. The offeror only wants the offeree’s performance. If the offeree accepts by performing, a contract is formed. The offeree’s performance occurs before contract formation. The vast majority of contracts are bilateral. Unilateral contracts are very rare.

Example

“I promise to pay you $1,000 for your painting my house.”

Consideration is what the promisor wants in exchange for his or her promise. If the promisor makes a promise without demanding something in return, the promisor’s promise is “not supported by consideration” and there is “no offer.” The promisor has only made a promise to make a future gift.
We have chosen to include the concept of consideration as a crucial element of both offer and acceptance. Often, the concept of consideration is treated as a third element of contract formation: offer, acceptance, and consideration. If consideration is treated as a separate element and not a part of the offer, the conclusion might very well be “offer, but no consideration.” Although this difference may appear to be semantic, it goes to the heart of what an offer is: a promise for consideration.

Even if the promisor has made a promise and has stated a consideration for his or her promise, the promise and consideration must be connected. The promisor must make his or her promise to induce the promisee to give what the promisor says he or she is seeking. Thus, the sequence of events is important.

Example

When Henrietta returned John’s lost dog, Toby, John promised to pay Henrietta $50 for her efforts. Since Henrietta had already returned Toby to John when he made his promise to pay her, John’s promise was not intended to induce her to act. Thus, there was no consideration for John’s promise, and it was only a gift promise. If John refuses to pay Henrietta, she has no contract upon which to sue him.

Once the promisor makes a promise in exchange for the promisee’s promise or performance and communicates his or her intentions to the promisee, the offer is created. At this time, the promisor becomes the offeror and the promisee becomes the offeree.

The Acceptance

Once an offer has been made, attention focuses on acceptance. An acceptance is the offeree’s manifestation of assent to the terms of the offer. The basic questions are: What constitutes acceptance and when does an attempt to accept become an effective acceptance? The components of acceptance parallel those of an offer. If the offer was for a bilateral contract (a promise for a promise), the acceptance is the offeree’s promise that is made to secure the offeror’s promise.

Example

Offer: “I promise to pay you $1,000 for your promise to paint my house.”
Acceptance: “I promise to paint your house for your promise to pay $1,000.”
If the offer was for a unilateral contract (a promise for a performance), the acceptance is the offeree’s performance that was made to secure the offeror's promise.

**Example**

Offer: “I promise to pay you $1,000 for your painting my house.”
Acceptance: Painting the house (i.e., painting the house for your promise to pay $1,000).

The consideration for the offeree’s promise or performance is the offeror's promise. If consideration for the offeree's promise or performance is lacking, the conclusion is “no acceptance” and not “acceptance but no consideration.”

The fact that an attempt to accept an offer has taken place does not always lead to the conclusion that a contract has been formed. One of the following events may have occurred and rendered the attempted acceptance ineffective:

- The offer may have lapsed because it was not accepted within the time stated in the offer or, if no time was stated, within a reasonable time.
- The offeror may have revoked the offer.
- The offeree may have rejected the offer before attempting to accept it.
- The offeror or offeree may have died or become incapacitated.

If none of these events has occurred, the attempted acceptance of the offer is effective, and a contract is formed.

**STEP THREE: CONTRACT ENFORCEABILITY**

Once a contract is formed, the next step is determining whether the contract is enforceable. The focus shifts from “freedom of contract” (i.e., the parties' power to create their own contract terms and structure their relationship as they choose) to the governmental regulation of contract. A number of policy considerations, resulting in legislative enactment or judicial decision, may preclude enforcement of the contract. These policy grounds may be grouped into three categories. The legislature or the judiciary may seek the following goals:

- To protect a selected class of people unable to protect themselves (e.g., minors and those who are mentally incapacitated)
To protect a contracting party from overreaching by the other contracting party (e.g., unconscionability, fraud, duress)
To protect the integrity of the judicial process (e.g., potential perjury due to a lack of writing [Statute of Frauds], illegality, and inappropriate forum selection)

If unenforceable, the contract may be rescinded, or depending on the nature of the problem, the contract may be reformed, thereby eliminating the obstacle precluding its enforcement. **Rescission** is revocation (termination) of the contract. Unlike the revocation of an offer that has not been accepted (no contract has been formed), rescission is the revocation (termination) of an existing contract. **Reformation** is the revision of a writing to conform to the true agreement or intention of the parties.

**STEP FOUR: PLAINTIFF'S ALLEGATION OF DEFENDANT'S BREACH OF CONTRACT**

When the conclusion at Step Three is that the contract is enforceable, the analysis focuses on the plaintiff’s allegation of the defendant’s breach of the contract. Who is complaining and what is the complaint?

In a bilateral contract, the promises are reciprocal: the offeror promises the offeree and the offeree promises the offeror. The offeror, by promising the offeree, has a duty to the offeree to perform; the offeree, by being the recipient of the offeror’s promise, has a right to receive the offeror’s promised performance. The offeror, by having the duty, is the promisor. A **promisor** is the party who makes the promise. The offeree, by having the right, is the promisee. A **promisee** is the party to whom a promise is made. Therefore, when the offeror says “I promise to sell you my car,” the offeror (promisor) has the duty to sell the car to the offeree, and the offeree (promisee) has the right to receive the car from the offeror.

The offeree, by promising the offeror, also has a duty to perform; the offeror, by being on the receiving end of the offeree’s promise, has a right to receive the offeror’s promised performance. The offeree, by having the duty, is the promisor; the offeror, by having the right, is the promisee. Therefore, when the offeree says “I promise to pay you $5,000,” the offeree (promisor) has the duty to pay the offeror $5,000, and the offeror (promisee) has the right to receive $5,000 from the offeree (see Exhibit I–3).

Because the offeror is both promisor and promisee and the offeree is both promisor and promisee in a bilateral contract, the label **promisee** refers to the party claiming the unperformed right, and the label **promisor** refers to the party who owes the duty associated with the right. Therefore, the complainant is the promisee.
The defendant responds to the plaintiff’s allegation of breach—“I am complying with the terms of the contract.”

The promisee, as complainant, will allege that the promisor has breached a contractual duty by either notifying the promisee that the promise will not be performed when the performance is due (breach by anticipatory repudiation) or by having not performed when the performance was due.

**STEP FIVE: DEFENDANT’S RESPONSE TO THE PLAINTIFF’S ALLEGATION OF BREACH**

The promisor has five responses to the promisee’s allegation of breach.

1. **No breach–compliance**: “I am complying with the terms of the contract, and therefore I have not breached the contract.”

**Example**

A homeowner’s insurance policy provides that Insurance Company will pay Insured for all losses due to fire. When Insured’s valuable art collection is stolen, she files a claim, and Insurance Company rejects the claim on the ground that the loss was not due to fire. If Insured sues Insurance Company for breach of contract alleging that her claim was not paid, Insurance Company will respond, “No breach–compliance.” Insurance Company is in compliance with the terms of the contract because it does not become obligated to pay until Insured has a loss by fire. Because no fire loss has occurred, the contract has not been breached, and Insured has no cause of action for breach of contract.
2. **No breach–excuse**: “Although I am not complying with the terms of the contract, my nonperformance was excused, and therefore I have not breached the contract.”

This response combines the promisor’s admission of nonperformance under the contract with the promisor’s claim that this nonperformance was excused and therefore was not a breach. “It is true that I didn’t do what the promisee said I didn’t do, but I was excused from doing it.”

**Example**

Singer contracts to perform for a week for a Las Vegas hotel. After the first performance, Singer becomes seriously ill and cannot perform for the remainder of the engagement. If the hotel sues Singer for breach of contract alleging that Singer breached by not performing, Singer could respond, “No breach–excuse. Although I am not complying with the terms of the contract, I am excused from performing due to my serious illness.” Unlike the first response (“No breach–compliance”), the condition (serious illness) was not an express term in the contract. Even though this condition (an act of God) was not an express term, it may excuse Singer’s nonperformance. If Singer is excused, she is not in breach, and the hotel cannot maintain a cause of action for breach of contract.

3. **No breach–justification**: “Although I am not complying with the terms of the contract, my nonperformance was justified by your breach of this contract, and therefore I have not breached the contract.”

This response to the plaintiff’s allegation of breach joins the promisor’s admission of nonperformance with the promisor’s claim that his or her nonperformance was justified because the party alleging breach had breached the contract.

**Example**

Builder contracts to build a house for Owner. Owner promises to pay every 30 days as the work progresses. Builder begins to build, but Owner does not pay. After two months, Builder stops work. If Owner sues Builder for breach of contract alleging that Builder breached by stopping work, Builder would respond, “No breach–justification. My stopping work was justified because you did
not pay me.” Builder’s nonperformance is not a breach; it is a justified nonperformance. Because Owner rather than Builder is the breaching party, Owner’s action for breach of contract against Builder cannot be maintained.

4. **No breach–terminated duty:** “Although I am not complying with the terms of the contract, my duty to perform the contract has been terminated, and therefore I have not breached the contract.”

This response contains both the promisor’s admission of non-performance and a claim that the promisor’s contractual duty has ended either by agreement or by law, and therefore the promisor has not breached the contract.

**Example**

Employer and Employee have a contract whereby Employer is to pay Employee “a reasonable wage.” After Employee works for a month, a dispute arises between the parties about the meaning of “a reasonable wage.” Employer gives Employee a check that carries the notation “Payment in Full.” Employee cashes the check and then demands still more money from Employer. The Employer refuses. If Employee sues Employer for breach of contract alleging that Employer breached by not paying him a reasonable wage, Employer would respond, “No breach, my duty has been terminated.” Employer’s duty to pay “a reasonable wage” is terminated by the subsequent contract in the form of Employer’s check with the notation “Payment in Full” and by Employee’s cashing the check. Because Employer is not a breaching party, Employee cannot maintain a breach of contract action.

The previous example demonstrates an accord and satisfaction. An **accord** is a contract to pay a stated amount to discharge an obligation which is uncertain either as to its existence or amount. The **satisfaction** is the performance of the accord contract. Employer’s tendering the check is the offer for an accord contract (“I promise to pay you this amount for your promise to take this amount as full payment of my obligation to you”). Employee’s cashing the check implies the Employee’s “promise to take the check as full payment for Employer’s promise to pay the stated amount” and therefore is the acceptance of the offer for the accord contract. Employee’s
cashing the check is also the “satisfaction” or the performance of the accord contract.

The terminating event may be unilateral—such as a release. A release is the intentional relinquishment of a right.

**Example**

Abner hires Rachel to work for him as an assistant manager for one year. After six months, Abner wrongfully fires Rachel. Rachel may release her right to recover under the contract, thus terminating Abner’s duty.

Mutual release terminates both parties’ duties to perform. After a release, the party who released the other cannot successfully assert that the other has breached his or her duty. That duty to perform has been terminated.

The terminating event may occur by operation of law. A Statute of Limitations provides for a specified period of time within which a cause of action may be brought.

**Example**

Martina entered into a written lease of a store front from Ricardo Realty Corporation. Prior to the time when Martina was to occupy the store front, Ricardo Realty told Martina that the property was no longer available. Three years and two days later, Martina brought a breach of contract action against Ricardo Realty. If the Statute of Limitations was three years, Ricardo Realty’s duties under the contract terminated two days before Martina brought her breach of contract action.

5. Breach: “I admit I have breached the contract.”

The fifth and final response to the plaintiff’s allegation of defendant’s breach is an admission by the defendant. Whether the defendant’s breach is intentional or unintentional is irrelevant. The law of contracts does not evaluate the mental state accompanying nonperformance. The only question is whether the defendant has not performed his or her duty under the terms of the contract.

If the defendant is unable to maintain his or her response to the plaintiff’s allegation of breach (the defendant is unable to prove “no breach–compliance,” “no breach–excuse,” “no breach–justification,” or “no breach–terminated duty”), or if the defendant admits breach, the plaintiff has established a cause of action for breach of contract. A cause of action is the theory upon which relief should
be granted. The plaintiff can now proceed to Step Six and pursue his or her remedies for the defendant's breach. A remedy is the relief sought if a cause of action can be maintained.

STEP SIX: PLAINTIFF’S REMEDIES FOR THE DEFENDANT’S BREACH OF CONTRACT

The nonbreaching party may maintain an action for breach of contract and is entitled to a remedy if the conclusion at Step Five is that the contract has been breached. The remedies for breach of contract are designed to protect not only the nonbreaching party's expectation interest but that party's reliance and restitution interests as well.

When parties enter into a contract, both have expectations regarding what the net economic gain will be once the contract has been fully performed. Protecting the nonbreaching party's expectation interest places him or her in as good a position as if both parties had fully performed the contract according to its terms. The nonbreaching party may receive damages. Damages are compensation awarded by a court to a party who has suffered loss or injury to rights or property. In the unusual case when money damages would be inadequate compensation and the subject of the contract is unique, the court may award specific performance. Specific performance is a remedy whereby a court directs the breaching party to deliver the subject of the contract to the nonbreaching party. In some cases, an appropriate remedy may be an injunction. An injunction is an order issued by a court directing the breaching party to refrain from doing specified acts.

When parties contract, each party’s performance may rely on the other’s promise to perform. Protecting the nonbreaching party's reliance interest places that party in the position that he or she was in before relying on the other's promise. The nonbreaching party is compensated, not on the basis of expectation, but for the injury suffered as a result of reliance on the other's promise. The measure of damages is the reasonable value to the nonbreaching party for the injury suffered by relying on the other's promise.

When parties contract, one party, while performing under the contract, may confer a benefit on the other party. Protecting the nonbreaching party's restitution interest will place that party in the position he or she was in before conferring the benefit on the other. The nonbreaching party is compensated, not on the basis of either expectation or reliance on the other's promise, but for the value of the benefit conferred. The measure of damages is the reasonable value of the benefit to the party receiving the benefit.

remedy
A remedy is the relief sought if a cause of action can be maintained.

expectation interest
Protecting the nonbreaching party's expectation interest places the nonbreaching party in the position he or she would have been in had the contract been fully performed by both parties according to the contract.

damages
Damages are compensation awarded by a court to a party who has suffered loss or injury to rights or property.

specific performance
Specific performance is a remedy whereby a court directs a party to do a specified act.

injunction
An injunction is an order issued by a court directing a party to refrain from a specified act.

reliance interest
Protecting the nonbreaching party's reliance interest places the breaching party back to the position he or she was in prior to relying on the breaching party's promise.

restitution interest
Protecting the nonbreaching party's restitution interest places the breaching party back to the position he or she was in prior to receiving the benefit conferred upon him or her by the nonbreaching party.
THIRD-PARTY INTERESTS

Although they are not involved as a step in the contracts analysis, three other groups of parties who were not parties to the original contract (third parties) may have or may acquire an interest in the contract. The first type of third party is the third-party beneficiary to the contract. A third-party beneficiary is a party who will be benefited by the performance of a contract and may be a creditor, donee, or incidental beneficiary. The creditor and donee beneficiaries are intended beneficiaries. Incidental beneficiaries, on the other hand, do not have a court-protected interest. The third-party beneficiary acquires rights as a result of the contract but never acquires duties.

Example

On Wednesday Jane borrowed $100 from Caroline promising to repay her on Monday. On Friday Agnes borrowed $100 from Jane promising to pay Caroline on Monday for Jane. Caroline is a creditor beneficiary of the Agnes/Jane contract.

Example

Mary, wishing to leave her estate to her niece Sarah, contracts with an attorney to draft her will. Sarah is the donee beneficiary of the attorney/client contract.

Example

The City, in preparing for the Fourth of July, hires the Stars and Stripes Fireworks Company to supply the fireworks for the celebration. John Q. Public is only an incidental beneficiary of the City/Stars and Stripes contract.

The second type of third party consists of assignees and delegates. An assignment is the transfer of a contractual right. A delegation is the empowerment of one by the obligor to perform that party’s contractual duty.

third-party beneficiary
A third-party beneficiary is a party who will be benefited by the performance of a contract. A third-party beneficiary may be a donee, creditor, or incidental beneficiary. An incidental beneficiary has no enforceable rights under the contract.

assignment
An assignment is the transfer of a contractual right.

depend
tion
A delegation is the empowering of another by the obligor to perform the obligor’s contractual duty.
Example

Sally borrowed $1,000 from Friendly Finance. Friendly transferred its right to receive Sally’s repayment to Easy Credit Company. Friendly’s transfer of its right to receive Sally’s money is an assignment of that right.

Example

The Six Flags Coal Company contracted to sell 300,000 carloads of coal to the Ever Ready Power Company. The contract provided that the coal was to be mined at Six Flags mine no. 6. Six Flags sold its mine no. 6 and its contract to deliver coal to Ever Ready to A-1 Coal Company. A-1 is the delegatee of the Six Flags/Ever Ready contract.

The third type of third party neither has a right under the original contract nor has subsequently acquired a right or duty relating back to the original contract. This type of third party has committed a wrong by interfering with existing contract rights.

Example

Rinaldo, a tenor, has a one-year contract to sing at the Gotham Opera Company. The Metropolis Opera Company offers Rinaldo more money and thus entices him to breach his contract with the Gotham Opera Company. The Metropolis Opera Company has committed a wrong by interfering with the Rinaldo/Gotham contract.