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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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
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