11. Privity of contract and third party rights

The Casebook series provides a comprehensive selection of case law that addresses all aspects of the subject encountered on undergraduate courses. This chapter examines privity of contract, its relationship with consideration, and the ability of third parties to enforce contractual provisions for their benefit. The doctrine of privity of contract provides that the benefits of a contract can be enjoyed only by the parties to that contract and only parties can suffer the burdens of the contract. At common law, third party beneficiaries could not enforce a contractual provision in their favour so various devices were employed seeking to avoid privity. Statute now allows for direct third party enforcement but in limited circumstances. This chapter examines the background to privity and the attempted statutory reform in the Contracts (Rights of Third Parties) Act 1999 as it has been interpreted in the case law. The chapter also discusses the common law means of avoiding privity as illustrated by the case law, e.g. agency, collateral contracts, and trusts of contractual obligations. Finally it assesses the remedies available to the contracting party to recover on behalf of the third party beneficiary of the promise,
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including the narrow and broad grounds in Linden Gardens Trust. It concludes by briefly considering privity and burdens—and the exceptional situations where a burden can be imposed on a person who is not a party to the contract.

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