Lee Burgess: Welcome back to the Law School Toolbox podcast. Today we're kicking off a two-part series on third-party rights in contracts. In this first episode, we'll focus on assignments and delegations. Your Law School Toolbox hosts are Alison Monahan and Lee Burgess, that's me. We're here to demystify the law school and early legal career experience, so you'll be the best law student and lawyer you can be. We're the co-creators of the Law School Toolbox, the Bar Exam Toolbox, and the career-related website CareerDicta. Alison also runs The Girl's Guide to Law School. If you enjoy the show, please leave a review or rating on your favorite listening app. And if you have any questions, don't hesitate to reach out to us. You can reach us via the contact form on LawSchoolToolbox.com, and we'd love to hear from you. And with that, let's get started.

Lee Burgess: We're kicking off a two-part series on third-party rights in contracts. In this first episode, we'll focus on assignments and delegations. These concepts are crucial for understanding how contractual rights and obligations can be transferred to parties who weren't originally involved in the agreement. Let's dive in.

Lee Burgess: Third-party rights are implicated whenever someone who is not a party to the original contract tries to enforce the contract. These third-party rights generally involve issues of assignments, delegations, or third-party beneficiaries. Today we'll cover assignments and delegations, and in our next episode, we'll discuss third-party beneficiaries and apply these concepts to some practical scenarios.

Lee Burgess: Let's start with assignment and delegation. Assignment and delegation involve a decision by a party to a contract to transfer their rights and/or obligations under the contract to a third party. Specifically, an assignment is the transfer of a contractual right – for example, to be paid or to receive goods or services. A delegation is the transfer of a contractual obligation – for example, the obligation to make a payment or provide goods or services. Note that while these are technically separate concepts, the particular language of the assignment is very important in determining whether an assignment is merely a transfer of rights, or also a delegation of duties. For example, an assignment that uses broad language, like "assignment of the contract", will often be interpreted to include a delegation of the unperformed duties under a contract.

Lee Burgess: Before we move on to our rules, we should take a moment to review the terminology used to describe the parties to an assignment or delegation. These terms can get a little confusing, because the same parties are called different things in different contexts. If you're having a hard time keeping them straight, you might find it helpful to draw a quick diagram to illustrate the relationships between the terms.

Lee Burgess: The party that makes an assignment is called the obligee under the original contract, because they are the beneficiary of the contractual obligation. The other party to the original contract is called the obligor. When the obligee makes the assignment, they become the assignor of their right to receive performance. The party to whom that right is assigned is called the assignee.

Lee Burgess: A party that makes a delegation is called the obligor under the original contract, because they have the obligation to perform. As we just discussed, the other party to the original contract is the obligee. When the obligor makes the delegation, they become the delegator of their obligation. The party to whom the obligation is delegated is the delegatee, also sometimes referred to as the delegate.

Lee Burgess: As you can see, things can get a little confusing because every contract contains both rights and obligations going in both directions. As a result, the same party can be called several different things, depending on their relationship to the other parties involved. Let's try to put these terms in context with a quick illustration.

Lee Burgess: Let's say Painter and Homeowner enter into a contract in which Painter agrees to paint Homeowner's house for $5,000. With respect to the obligation to paint Homeowner's house, Painter is the obligor and Homeowner is the obligee. But with respect to the obligation to pay $5,000, Homeowner is the obligor and Painter is the obligee.

Lee Burgess: Now let's say that Homeowner assigns his right to have his house painted to Neighbor. In that case, Homeowner becomes the assignor and Neighbor becomes the assignee. If, however, instead of assigning his right to painting services, Homeowner delegates his obligation to pay $5,000, Homeowner then becomes the delegator and Neighbor becomes the delegatee. And yes, if Homeowner both assigns his rights and delegates his obligations to Neighbor, then Homeowner is both an assignor and delegator, and Neighbor is both an assignee and delegatee. The same would apply to the painter's rights and duties if he were to assign or delegate to a subcontractor, for example.

Lee Burgess: Okay, let's move on to our rules, starting with assignment. Here's the general rule: Rights and benefits under a contract may be transferred to a third party if, (1) the assignor manifests his intent to transfer the rights; and (2) the assignee assents to the assignment. Consideration is not required for an assignment. But if consideration is provided, the assignment becomes irrevocable. Gratuitous assignments may subsequently be revoked, unless an exception applies. We won't go into those exceptions today.

Lee Burgess: An assignment is valid unless, (a) it materially alters what is expected under the contract; (b) it is prohibited by law or public policy; or (c) it is precluded by contract. B and C are pretty straightforward, but what does it mean for an assignment to materially alter what is expected under the contract? Well, that could occur when the assignment, (a) materially changes the duty of the obligor; (b) materially increases the burden or risk imposed on the obligor; (c) materially impairs the obligor's chance of obtaining return performance; or (d) materially reduces the value of the return performance.

Lee Burgess: To illustrate, let's revisit our earlier example of the contract between Homeowner and Painter. Let's assume Homeowner lives in a community of identical houses in identical condition. If Homeowners assigns his right to have his house painted to his next-door neighbor, the assignment will likely be valid, because it does not materially alter what is expected under the contract. There is no additional burden on Painter, because the neighbor's house is the exact same size in the exact same condition, and essentially in the same location as Homeowner's house.

Lee Burgess: Now let's assume instead that Homeowner assigns his right to have his house painted to his friend that lives 50 miles farther away from Painter, in a dilapidated house that is twice the size of Homeowner's house. Under these facts, the assignment will likely be invalid, because it materially increases the burden on the painter. Painter will have to travel a greater distance to paint a larger house that is in worse condition.

Lee Burgess: Now that we've covered how to make a valid assignment, let's go over the rights of the assignor and assignee. An assignee may sue the obligor for non-performance. Any defense to enforcement that could be used against the assignor may also be used against the assignee. That basically means that after the assignment, the assignee steps into the shoes of the assignor when seeking to enforce the contract. An assignee may also sue the assignor for wrongful revocation of an assignment or for breach of an implied warranty.

Lee Burgess: Alright, that's it for our assignment rules. Let's move on to the rules for delegation. All contracted duties are delegable unless, (a) the contract prohibits delegations or assignments; (b) the delegation is against public policy; (c) the contract is for personal services that calls for the exercise of personal skill or discretion; or (d) the delegation materially alters the expectancy of the obligee. Generally, the obligor remains liable for non-performance of the contract, unless all the parties agree otherwise.

Lee Burgess: And that brings us to the end of our discussion on assignments and delegations. We've covered a lot of ground today, from the basic definitions to the specific

rules governing these important concepts in contract law. In our next episode, we'll explore third-party beneficiaries and apply all these concepts to some practical scenarios. We'll see how these rules play out in real world situations, which will help you tackle similar questions on an exam. Thank you for listening to Part 1 of our series on third-party rights in contracts. Be sure to join us for Part 2, where we'll complete our exploration of this important topic.

Lee Burgess: If you enjoyed this episode of the Law School Toolbox podcast, please take a second to leave a review and rating on your favorite listening app. We'd really appreciate it. And be sure to subscribe so you don't miss anything. If you have any questions or comments, please don't hesitate to reach out to myself or Alison at lee@lawschooltoolbox.com or alison@lawschooltoolbox.com. Or you can always contact us via our website contact form at LawSchoolToolbox.com. Thanks for listening, and we'll talk soon!

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