# **IMPORTANT CASE LAWS ON CONSIDERATION AND PRIVITY OF CONTRACT**

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# ***Chinnaya vs. Ramayya*[[1]](#footnote-1)**

**Facts:**

A lady granted/ gifted a property consisting of some land to her daughter (defendant) by a gift deed. The deed was registered to the proper authorities. One of the terms of the deed was that the daughter had to pay a sum of Rs.653 annually. Later the old lady died, and the defendant refused to pay the money the sister whom she had promised to pay so. And hence the plaintiff sued the defendant for the recovery of the same.

**Issue:**

Whether the plaintiff can bring an action against the defendant for the amount promised in a contract where the consideration for such promise has been furnished by the mother of the defendant (plaintiff’s sister)?

**Appellants argument:**

The consideration for getting the property was a promise to pay the amount annually to the plaintiff.

**Respondents argument:**

The plaintiff was not a party to contract, hence was had no right to compel respondent for paying the promised amount.

**Judgement:**

The Madras High Court held that in this agreement between the defendant and plaintiff the consideration has been furnished on behalf of the plaintiff (sister) by her own sister (respondents’ mother). Although the plaintiff was stranger to the consideration but since he was a party to the contract, he could enforce the promise to the promisor, since under law, Consideration may be given by the promise or anyone on her behalf – vide section 2(D) of Indian Contract Act,1872.

Thus, consideration furnished by the old lady constitutes sufficient consideration for the plaintiff to sue the defendant on her promise.

Held, *the sister was entitled to a decree for payment of the annual sum of money.*

**Conclusion:**  In Indian Law, consideration may be given by the promise or any other person. In India, there is a possibility that consideration for the promise may move not from the promise but a third person, who is not a party to the contract, different from the English Law in which the consideration must move from only the promise.

# ***Dunlop Pneumatic Tyre Co Ltd v Selfridge & Co Ltd***

***Facts***

Dunlop made tyres. It did not want them sold cheaply but to [maintain a standard resale price](https://en.wikipedia.org/wiki/Resale_price_maintenance). It agreed with its dealers (in this case, Dew & Co.) not to sell them below its recommended retail price. It also bargained for dealers to get the same undertaking from their retailers (in this case, Selfridge). If retailers did sell below the list price, they would have to pay £5 per tyre in liquidated damages to Dunlop. Dunlop thus was the third party to a contract between Selfridge and Dew. When Selfridge sold the tyres at below the agreed price, Dunlop sued to enforce the contract by [injunction](https://en.wikipedia.org/wiki/Injunction) and claimed [damages](https://en.wikipedia.org/wiki/Damages). Selfridge argued that Dunlop could not enforce the burden of a contract between Dunlop and Dew, which Selfridge had not agreed to.

At trial, the judge of the first instance, found in favour of Dunlop. At appeal the damages and injunction were reversed, saying that Selfridge was not a principal or an [agent](https://en.wikipedia.org/wiki/Agency_(law)) and thus was not bound.

***Judgment***

The House of Lords held that Dunlop could not claim damages from Selfridge for selling below its resale price because it had no contractual relationship.

[Viscount Haldane](https://en.wikipedia.org/wiki/Richard_Haldane,_1st_Viscount_Haldane), said there were three principles:

* First, the [doctrine of privity](https://en.wikipedia.org/wiki/Privity_in_English_law) requires that only a party to a contract can sue.
* Second, the [doctrine of consideration](https://en.wikipedia.org/wiki/Consideration) requires a person with whom a contract not under seal is made is only able to enforce it if there is a consideration from the promisee to the promisor.
* Third, the [doctrine of agency](https://en.wikipedia.org/wiki/Agency_(law)) requires that a principal not named in the contract (an [undisclosed principal](https://en.wikipedia.org/wiki/Undisclosed_principal)) can only be sued if the promisor was contracted as an agent.

In application to the facts, Haldane could not find consideration between Dunlop and Selfridge, nor could he find any indication of an agency relationship between Dew and Selfridge, for which separate consideration from that paid contractually by Selfridge to Dew would need to have been found. Consequently, Dunlop's action must fail into the jungle.

Lord Dunedin, Lord Atkinson, Lord Parker of Waddington, Lord Sumner, and Lord Parmoor agreed.

# ***Tweddle v Atkinson[[2]](#footnote-2)***

**Facts**

The son and daughter of the parties involved in this dispute were getting married. As such, the father of the groom and father of the bride entered into an agreement that they would both pay sums of money to the couple. Unfortunately, the father of the bride died before he paid the money to the couple and the father of the son died before he could sue on the agreement between the parties. As a result of this, the groom brought a claim against the executor of the will for the payment that was previously agreed between the fathers.

**Issue**

The primary issue for the court was whether or not the son could, as a third party to the agreement, enforce the contract between the fathers, which was ultimately for the benefit of him and his wife. It was argued that the intention of the agreement between the fathers was for the couple to derive a benefit from the payment of the money. Moreover, it was argued that preventing the son from being able to enforce the contract would effectively ignore the intention of the fathers.

**Held**

The groom’s claim was rejected by the court. It was held that the groom was not a part of the agreement between the fathers and he did not provide any consideration for the promise made by the father of the bride. Also, as a stranger to the contract, the son could not enforce it. On this basis, the court found in favour for the executor of the will.

# ***Dutton v Poole[[3]](#footnote-3)***

**Facts**

A son made a contract with his father for his father to not cut down an oak woodland. As consideration for this, the son would make a payment to his sister of £1000 once she had married. The money gained from the woodland would have been paid to the sister. The father died before the sister was married and the son subsequently refused to pay his sister the money as was previously agreed, at the time of her marriage. The sister sued her brother for the amount that was originally promised between the father and son.

**Issue**

The concept of privity of contract had not been fully established at this stage and therefore this decision had significant importance to the broader subject. The court had to understand whether the daughter could be considered to be privy to the contract between the father and son regarding the payment. Within this, it was vital for the court to establish whether the daughter had given consideration for the promise that was made by the son, to his father, to pay the daughter the sum of money upon her marriage.

**Held**

The court found in favour for the sister on the basis that the relationship between the father and the daughter had made the sister a party to the agreement, even if she was not included at the time the contract was agreed. The relationship between father and daughter was found to extend the consideration that the father gave in the promise to the children.

# ***Khwaja Muhammad Khan vs. Husaini Begum[[4]](#footnote-4)***

**Facts:**

The plaintiff, namely Husaini Begam, who was a Mohammedan lady, married the son of the defendant, namely Khwaja Muhammad Khan. As per Islamic customs the plaintiff was to be given Rs. 500 as Kharch-i-Pandan. The agreement was enforced by the defendant at the time of marriage. The agreement was to be initiated after her reception into conjugal domicile, which started 6 years of their marriage. After 13 years of being together, the plaintiff abandoned her husband’s home and stayed in Moradabad as a result of certain altercations. The husband Rustam Ali Khan never bought an action against his wife for the restoration of conjugal rights.3The plaintiff sued the defendant for recuperation of Kharch-i-Pandan.

**Issue:**

The contract between Khwaja Mohammad Khan and Husaini Begum existed, as according to rule of privity of contract, no stranger to contract can sue the parties in agreement to enforce the contract.

**Judgement:**

The plaintiff was allowed to enforce the contract. The court said that the rule of privity of contract does not apply to the said case, as the facts and circumstances of this case are different.

**Ratio Decidendi:**

The court advocated the fact that in India and among communities circumstanced as the Mohammedans, among whom marriages are contracted for minors by parents and guardians it might occasion serious injustice if the common law doctrine was applied to agreements entered into in connection with such contracts.

1. ILR (1876-82) 4 Mad 137 [↑](#footnote-ref-1)
2. # (1861) 1 B&S 393

   [↑](#footnote-ref-2)
3. # (1678) 2 Lev 210

   [↑](#footnote-ref-3)
4. (1907) ILR 29 All 222 [↑](#footnote-ref-4)