An Evaluation of the Doctrine of Privity of Contract in Nigeria

By
B.O. Alloh*

Abstract
A contract is a private relationship between the parties who make it, and no other person can acquire rights or incur liabilities under it. Therefore, a person seeking to sue upon a contract must satisfy the court that, he is a party to the contract and that he has given consideration for the promise he seeks to enforce or that the contract is under seal. The objective of this paper is to examine the doctrine of privity of contract. The researcher adopted the doctrinal method of research. In this paper, it was found that, any person who intends to enforce a contract must show that he gave consideration and that he is a party to that contract. The paper also found that, as social or economic necessity invites some new extension of the principle of insurance, the rule may disappoint reasonable expectation of the parties. The paper recommends that, statutes passed to redress grievance should not be isolated in order not to render their operation uncertain. This is because some Acts passed to redress grievance, have been isolated exceptions to the general rule of the common law, thus rendering its operation uncertain. The paper concludes that, the effect of the doctrine of privity of contract may well be salutary and in some circumstances may prove inconvenient or even unjust.
Keywords*:* Contract, Privity, Rights, Obligations, Enforcement.

1.1 Introduction

A contract may be defined as a transaction which consists wholly or mainly of a legally binding promise or set of promises. Although, no promise is binding in law, unless it either satisfies certain requirements of form, or is given for valuable consideration.[1]The Black's Law Dictionary[2] defines contract as an agreement between two or more parties creating obligations that are enforceable or otherwise recognizable to law. A contract may also be defined as an agreement between two parties intended by them to have legal consequences and to be legally enforceable.[3] Although, there are some contract which may not be enforceable in a court of law. A contract cannot be enforced by a person who is not a party, even if the contract is made for his benefit, and purports to give the right to sue upon it.[4] In

*Acting Head, Department of Jurisprudence and International Law, Faculty of Law, Delta State University Oleh Campus, Oleh, Delta State, Nigeria. Tel: 08028531415; 07069651115.
Email: boalloh@yahoo.com
[1] William Geldart, Revised by William Holdsworth and H.G. Hanbury, Elements of English Law (London, Oxford University Press, 1959) p. 146.
[2] Bryan A. Garner, Black's Law Dictionary Eight edition. (St. Paul, West Publishing Co.) 2004, p. 341
[3] Bankers L.J. in Rose & Frank C. v. J.R. Crompton x Bros Ltd. (1923) 2 K.B 216 at 282.
[4] Tweddle v. Akinson (1861), 1 B. & S. 393.

the case of *Bilante International Ltd. v. Nigeria Deposit Insurance Corporation,*[5] the court defined contract as an agreement between two or more persons which creates an obligation to do or not to do a particular thing and that, its essentials are competent parties, subject matter, a legal consideration, mutuality of agreement and mutuality of obligation.[6]

Moreover, in the case of *GTB Plc. & Anor v. Anyanwu*, *Esq*.[7], it was held that, a contract is an agreement which the law will enforce or recognize as affecting the legal rights and duties of the parties and that it is also a promise or set of promises the law will enforce. However, contract is a case law subject which depends so much on precedent and continuity.[8] Thus, in the case of *Foakes v. Beer,*[9] the rule in Pinnel's case[10] was affirmed on the ground that the rule had stood unchallenged for well over two centuries. Moreover, it is common to find English decisions containing run-down of earlier cases, highlighting, their applicability or non-applicability to the facts of the case in point, or their acceptance or non acceptance as establishing general principles.[11]It can be stated therefore that, cases are the most important source of the law of contract. For example it has been used by English judges to develop the common law of contract doctrines for example the doctrine of privity of contract of promissory estopel, of frustration, consideration, fundamental breach. Privity of contract is a common law doctrine which states that a contract is a private relationship between the parties who make it, and no other person can acquire rights or incur liabilities under it. This general principles is stated with great lucidity in the case of *Dunlop Pneumatic Tyre Co. ltd v. Selfridges & Co. Ltd*.[12] This principle was followed by the Supreme Court in the case of *Ikpeazu v. African Continental Bank Limited.*[13] Therefore, this article seeks to examine the doctrine of privity of contract. It discusses, the nature of contract and the exceptions to the doctrine of privity of contract.

1.2 The Nature of Contract

The word contract has no universally acceptable definition and has been variously defined. However, a contract is an agreement between parties, which is binding and legally enforceable between the parties. It is therefore, an agreement which is legally enforceable under the law. Thus, any agreement that is not supported by consideration is not enforceable in law and social and domestic agreements are not legally binding except in certain cases. In the case of *Bilante International Ltd. v. Nigeria Deposit Insurance*

[5] (2011) LPELR-781(SC)
[6] Lamoureu v. Burrillville Racing Ass'n 91 R. 194, 161A. 2d 213, 215
[7] (2011) LPELR-4220 (CA)
[8] (1884) 9 App. Cas. 605.
[9] (1884) 9 App. Cas. 605.
[10] (1602), 5 Co. Rep. 117a
[11] Williams v. Roffey Bros & Nicholls (Contractors) Ltd. (1990) 1 All E.R. 912, The Hannah Blumethal (1983 I.A.C 854;
[12](1915) A.C. 847.
[13](1965) NMLR 374 at 377.

Corporation,[14]one of the issues before the Supreme Court, has to do with, whether or not there was any enforceable contract between the parties. It was held by the Supreme Court that, to constitute a binding contract between parties, there must be a meeting of the mind often referred to as *consensus ad idem* and that, the mutual consent relates to offer and acceptance. Offer is an indication of willingness to do or refrain from doing something that is capable of being converted by acceptance into a legally binding contract.[15] While acceptance is defined as a thing in good part, and as it were a kind of agreeing to some act done before, which might have been undone and avoided if such acceptance had not been.[16]

A contract may be defined as an agreement between two parties, which is intended by them to have legal consequences.[17] This definition is said to be preferred to the one frequently encountered defining a contract as a legally enforceable agreement, since there are some contracts which, may not be enforceable in court of law.[18] However, while every contract is based on an agreement of the parties, not every agreement between parties is necessarily a contract.[19] A contract can be said to be a legally binding agreement made between two or more persons, by which rights are acquired by the parties. Alternatively, a contract can also be said to be, an agreement entered into by at least two parties, which is enforceable by an action for damages, wherein one or more of the parties promises, expressly or by implication, to do or refrain from doing certain acts at the request or for the benefit, of another party, a promise which may be given for valuable consideration or embodied in a particular form. A contract therefore, can be said to be a legally binding promise between two parties. Where parties to a contract do not infringe some legal prohibition, the authority of the state, through its courts, will secure to the promise, the expectations created by the promise made to him. But it has been stated by Cheshire and Fifoot[20]that, a legally binding promise has certain characteristics which are:

i. A promise involves two parties, one making it and the other receiving it.
ii. The parties must be ascertainable because the rights created by a promise of this nature, are rights which can only be enforced by a party as, the rights are *in perso nam*. That is a right available only to ascertainable persons.
iii. A promise imports a willingness to be bound *vis-à-vis,* the person making it. As a result, once a promise is made, it imposes a duty on the part of the promise or

[14](2011) LPELR-781 (SC).
[15]Elizabeth A. Martin, Oxford Dictionary of Law, New Edition (Oxford: Oxford University Press) Fourth Edition, p. 319.
[16]John B. Saunders, Mozley & Whiteley's Law Dictionary, Ninth Edition (London: Butterworth) 1977, p.4.
[17] W.F. Frank, The General principles of English Law, 6th Edition (London, Harrap Limited) 1975, p. 80.
[18] Ibid
[19] Balfour v. Balfour, (1919) 2 K.B 571).
[20]G.C. Cheshire and C.H. S. Fifoot, The law of contract (London: Butterworth & Co. (Publishers) Ltd., 1960) P. 93.

to fulfill his promise and to the person to whom it is made (promisee) and it also gives a right to claim its fulfillment, if need be in a court of law.

iv. A promise must be accepted by the promisee before it can become the law of the parties. A promise therefore, takes the form of an agreement. That is, mutual assent by the parties and the law it is said, does not proclaim the existence of a contract merely because of the presence of mutual promises

Thus, contract in the words of Lord Stowell:

> *"Must not be the sports of an idle hour mere mattos of pleasantry and badinage, never intended by the parties to have any serious effect whatever".*[21]

Intention however, is an essential element of contract, because, parties to a contract must intend to create legal relations. According to professor Williston[22], a distinguished American jurist:

> *The separate element of intention, he says is foreign to the common law, imported from the continent by academic influences in the nineteenth century and useful only in systems which lack the test of consideration to enable them to determine the boundaries of contract.*

He further declared that:

> *The common law does not require any positive intention to create a legal obligation as an element of contract,…A deliberate promise seriously made is enforced irrespective of the promisor's view regarding his legal liability.*[23]

It is true however, that if the parties are speaking in jest or uttering idle boasts, the law will take no notice of their words. It is also true that if they clearly indicate their intention not to create legal obligations, the law will respect their intention and not regard them as bound. However, if they use language which reasonable persons would construe as importing mutual promises, their real intention is irrelevant.

Professor Williston further added that:

> *"There seems no reasons why merely social engagements should not create a contract, if the requisites for the formation of a contract exist."*

Professor Williston's view may thus, be reduced to four propositions as follows;

[21] Dalrymple v. Dalrymple (1811), 2 Hag.com 54, at p. 105.
[22] Professor Williston's Views are supported by Mr. Tuck in Canadian Bar Review (1943), Vol. xx1, p.123.
[23] Ibid

v) The test of contractual intention is objective, not subjective. What matters is not what the parties had in their minds, but what inferences reasonable people would draw from their words or conduct.
i) If reasonable people would assume that, there was no intention in the parties to be bound, there is no contract.
ii) If the parties expressly declare or clearly indicate their rejection of contractual obligations, the law accepts and implements their intention.
iii) Mere social engagements, if accompanied by the requisite technicalities, such as consideration, may be enforced as contracts.

However, to make a bargain is to assume liability and to invite the sanction of the courts. Therefore a contract is an agreement that is binding on the parties thereto and maybe enforced by the courts against the party or parties and its essential elements are as follows:
i) It is an agreement made by offer and acceptance,
ii) The parties intend to create legal relations between themselves and
iii) It is a bargain by which obligations assumed by each party are supported by consideration given by the other.

The validity of a contract however, may be affected by any of the following:
i. A contract can only be enforced if it is sufficiently complete and precise in its terms and some terms which the parties do not express maybe implied. Moreover, some express terms are overridden by statutory rules.
ii. Some contracts must be made in a particular form or supported by written evidence.
iii. The validity of a contract may be affected by mistake, misrepresentation, duress or undue influence.
iv. The court will not enforce a contract which is deemed to be illegal or contrary to public policy.
v. Some persons have only restricted capacity to enter into contracts and are not bound by agreements made outside those limits.

A contract that is not valid maybe either void, voidable or enforceable. A void contract is not a contract at all. The parties are not bound by it and if they transfer property under it, they can sometimes recover their goods even from a third party, unless it is also an illegal contract. On the other hand, a voidable contract is a contract which one party may void at his option. However, property transferred before avoidance is usually irrecoverable from a third party. But, an unenforceable contract is a valid contract and property transferred under it cannot be recovered even from the other party to the contract. But if either party refuses to perform or to complete his part of the performance of the contract, the other party cannot compel him to do so. A contract therefore, is usually enforceable when the required evidence of its term, for example, written evidence of a contract relating to land, is not

available.[24]Moreover, a contract has been defined as an "agreement which is binding on the parties thereto and which may be enforced by the courts against the defaulting parties"[25] while agreement is:

> *…either an act (i.e. conduct from which a contract is implied), and or a memorandum or writing which, if not itself an agreement, is the evidence of such agreement; and or the legal consequence of all what has transpired between the parties (even though it may not be known to them as constituting a contract in law).*

1.3 The Doctrine of Privity of Contract

In the middle of the nineteenth century, the common law judges reached a decisive conclusion upon the scope of a contract and declared that, no one may be entitled to or bound by the terms of a contract to which he is not an original party.[26] During this period, the English judges re-affirmed the idea of bargain as the foundation of English contract, and they not unnaturally drew the inference that only the parties to the bargain, themselves incurring reciprocal obligations, should enjoy reciprocal rights, because it was not just to subject strangers to liabilities which they had had no hand in framing. The whole assumption of contract as a juristic concept, is the intimate or exclusive relationship between the parties who have made it. Under Roman Law, a third party would neither be liable nor entitled under a contract and in France, contracts have effect only between the contracting parties.[27]In England, if a third party seeks to sue upon promise, he is faced with two obstacles as follows:

i. That he has given no consideration and
ii. That he is a stranger to the contract

The doctrine of privity of contract was therefore, re-affirmed by the House of Lords in the case of *Dunlop v. Selfridge*,[28] where the plaintiff sold a number of their tyres to Dew & Co., described as "motor accessory factors", on the terms that Dew & Co. would not re-sell them below certain scheduled prices and that, in the event of a sale to trade customers, they would extract from the latter a similar undertaking. Dew & Co. sold the tyres to Selfridge, who agreed to observe the restrictions and to pay to Messrs. Dunlop the sum of £5 for each tyre sold in breach of this agreement. Selfridge in fact supplied tyres to two of their own customers below the listed price. However between Dew and Selfridge, this act was undoubtedly a breach of contract for which damages could have been recovered. But action for damage was brought by Messrs. Dunlop who sued to recover two sums of £5 each as

[24] ICSA Study Text, English Business Law (London B.PP Publishing Limited) 1990, p.4
[25] M.C. Nduaguibe. The Law of Contract, No. 1 (Law Students Manual Series) Link Advertising Ltd. p.2
[26] Price v. Easton (1833) 4B. & Ad. 433; Tweddle v. Akinson (1861), 1 V&S, 393.
[27]Ibid at p. 367.
[28] (1915) A.C. 847.

liquidated damages and asked for an injunction to restrain further breaches of agreement. They were however, met by the objection that they were not parties to the contract and had furnished no consideration for the defendants promise. The objection was obvious and plaintiffs' counsel, not daring to contest it, sought to evade its application by pleading that their clients were in the position of undisclosed principals. The House of Lords not unnaturally, considered such a suggestion difficult to reconcile with the facts of the case and gave judgment for the defendants and held that plaintiff could not recover damages under a contract to which the plaintiff was not a party. According to Lord Haldane.[29] In the law of England certain principles are fundamental. One is that only a person who is a party to a contract can sue on it. Our law knows nothing of a *jus quasitum tertio* arising by way of contract. Such a right may be conferred by way of property, as, for example, under a trust, but it cannot be conferred on a stranger to a contract as a right to enforce the contract *inpersonam*.

However, it is natural that, the courts should be unwilling to allow a person who is not a party to a contract to use its terms in order to evade a duty to which he would otherwise be subject. This fact is evident in the case of *Midland Silicones, Ltd. v. Scruttons, Ltd*.[30] where a drum containing chemicals was shipped in New York by X on a ship owned by the United States Lines and consigned to the order of the plaintiffs. The bill of lading contained a clause limiting the liability of the ship owners, as carriers, to 500 dollars (£179). The defendants were Stevedores who had contracted with the United States Lines to act for them in London on the terms that the defendants were to have the benefit of the limiting clause in the bill of lading. The plaintiffs were ignorant of the contract between the defendants and the United States lines. Owing to the defendant negligence the drum of chemicals was damaged to the extent of £593. The plaintiffs sued the defendants in negligence and the defendants pleaded the limiting clause in the bill of lading. The court gave judgment for the plaintiffs because, it was clear that the defendants were not parties to the bill of lading. Of them, the plaintiffs know nothing and with them contemplated no legal relations. Thus, the defendants were caught by the principle enunciated in the case of *Dunlop v. Selfridge*[31] and there was no reason of convenience, justice or law why they should expect the court to relax the application of the doctrine of privity of contract in their favour. It should be noted however that, the effect of the doctrine of privity of contract may well be salutary in some instances and may also prove inconvenient or even unjust in certain circumstances. But of importance, is the fact that, any person who intends to enforce a contract must show not only that he gave consideration, but also that, he is a party to that contract. This is because, a contract exists only between the parties to it and a person who is not a party to a contract cannot sue upon it. Thus, only those who are partiesto a

[29] Ibid at p. 853
[30] (1959) 2 W.L.R. 761
[31] (1915) A.C. 847.

contract can enjoy the rights and be subject to the obligations arising from the contract. It should be noted however, that privity of contract exists between the contracting persons, and they only can enforce it or take action upon its breach. As a general rule therefore, only a person who is a party to a contract has enforceable rights or obligations under it.[32]

In the case of *Tanko v. Nongha*,[33] the court held the appellants to be total strangers and stated that, the appellants being total strangers may not establish a case in contract against the respondents. According to the court, the doctrine of privity of contract cannot confer rights or impose obligations on strangers to it. As a general rule therefore, a contract affects only the parties to it and cannot be enforced by or against a person who is not a party thereto, even if the contract was made for his benefit and purports to give him the right to sue or to make him liable upon it.[34]Thus, the principle of privity of contract recognizes that only parties to a contract can maintain an action there under.[35] In the case of *UBA v. Jargaba*, it was held by the Supreme Court that:

> *…the doctrine of privity of contract is all about the sanctity of contract between the parties to it. It does not extend to others from outside. The doctrine will not apply to have, unwittingly, been dragged into the contract with a view to becoming a shield or scape-goat against the non-performance by one of the parties…Court of law does not make orders in vain or in vacuum. Court orders affect directly, those persons who have had course to be subjected to the litigation process before the court either directly or by necessary extension of such processes…*

The above fact was accepted by the Court of Appeal in the case of Mediterranean *Shipping Co. S.A. & Anor. v. Enemaku & Anor*.[36] Moreover, in the case of *F.A.T.B Ltd. v. Partnership Inv. Co. Ltd*.,[37]it was held that, the law of privity of contract is to the effect that a stranger to a contract is precluded from suing on it as nothing of *jusquaesitum ter- tio* arises by way of contract. The principle of privity of contract was restated in similar context in the case of *L.S.D.P.C. v. N.L.& S.F. Ltd.*[38]where it was stated by Olatawura JSC that:

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[32] Ikeapeazu v. ACB (1965) NMLR 374,
[33] (2005) LPELR 11405 (CA).
[34] Keighley, Maxsted and Co. v. Durat (1901) AC 240 HL. Negbenebor v. Negbenebor (1971) All NLR 210. 293 at P. 293.
[35] Ebhota v. P.I. & P.D. Co. Ltd. (2005) 15 NWLR (Pt. 948) 266 (2005) 7.S.C. (Pt. 111) S(SC); Attorney General of the Federation v. A. I.C. Ltd (2000) 10 NWLR (675)
[36] (20012) LPELR 9253.
[37] (2001) 1 NWLR (Pt 695) 517.
[38] (1992) 5 NWLR (Pt. 244) 653 at 658.

> *Generally, only parties to a contract can enforce the contract. A person who is not a party to it cannot do so even if the contract is made for his benefit and purports to give the right to sue upon it…*

In the case of *B.M. Ltd v. Woermann-Line*,[39] the court explained what the doctrine of privity of contract portrays as follows;

> *…The doctrine of privity of contract portrays that as a general rule, a contract affects the parties thereto and cannot be enforced by or against a person who is not a party to it. In short only parties to a contract can sue or be sued on the contract and a stranger to a contract can neither sue or be sued on the contract even if the contract is made for his benefit so as to make him liable upon it. Moreover, the fact that a person who is a stranger to the consideration of a contract stands in such near relationship to the party from whom the consideration proceeds, that he may be considered a party to the consideration does not entitle him to sue or be sued upon the contract…*

The main reasons for the doctrine of privity of contract are based on the fact that a contract is a private relationship between the parties who make it, and no other person can acquire rights or incur liabilities under it. Moreover, a contract belongs to the parties and they are always free to vary or discharge it by agreement. Thus, it was held in the case of *C.A.P Plc v. Vital Inv. Ltd*.[40] that, the reason for the enunciation of the principle of privity of contract is based on *consensus ad idem* and that, it is only the contracting parties that know what their enforceable rights or obligations are and therefore, a stranger should not be saddled with the responsibility. Moreover, in the case of *Makwe v. Nwukor*,[41] it was held by the court that, it is trite law that, as a general rule, a contract affects only the parties thereto and cannot be enforced by or against a person who is not a party to it and that, the fact that a person who is a stranger to the consideration of a contract, stands in such near relationship to the party from whom the consideration proceeds that, he may be considered a party to the consideration, does not entitle him to sue or to be sued upon the contract. Thus only the parties to a contract can sue or be sued on the contract and the doctrine of privity of contract, has two aspects as follows:

i) No one can acquire rights under a contract to which he is not a party
ii) No one can incur liabilities under a contract to which he is not a party

[39] (2009) 13 NWLR (Pt. 1157) 149.
[40] (2006) 6 NWLR (Pt. 976) 220 (CA)
[41] (2001) 14 NWLR (Pt. 733) 356.

Flowing from the above, it is clear that, the doctrine of privity of contract may well be salutary and in certain circumstances may prove inconvenient or even unjust. For example, where insurance is taken by one person on behalf of another, may be, a husband for his wife or a parent for his child. The latter has no claim at common law.[42] This is rather inconsistent with the needs of the modern world. However, from time to time Acts have been passed by Parliament to redress a particular grievance. Thus, husband and wife have in reversal of the common law rule, been enabled to take out life insurance policies in favour of each other or of their children. Third parties have also been allowed, in certain circumstances, to sue on marine or fire insurance policies.[43]But these statutes are only so many isolated exceptions to the general rule of the common law, rendering its operation uncertain, but not impairing its ultimate validity.[44] Moreover, it has been stated that, as social or economic necessity invites some new extension of the principle of insurance, so the rule may once more disappoint the reasonable expectation of the parties.[45] It is therefore recommended that, statues passed to redress grievance should not be isolated in order not to render their operation uncertain. This is because, some Acts passed to redress grievance, have been isolated exceptions to the general rule of the common law, thus rendering its operation uncertain.

1.4 Exceptions to the Doctrine of Privity of Contract

The doctrine of privity of contract, while not an irrational inference from the nature of contract in general and of English contract in particular has in its incidence worked injustice and proved inadequate to modern needs.[46] However, there are exceptions to the doctrine of privity of contract as follows:

i) **In the Law of Agency:** One exception to the doctrine of privity of contract is, where agency relationship can be established. In the case of *Makwe v. Nwukor*,[47]it was held that, without doubt, the principle of privity of contract admits of "number of exceptions and that, these include the case of a contract made by an agent on behalf of an undisclosed principal, who again, as a general rule, is entitled to sue and liable to be sued on such a contract etc. Thus, where an agent has entered into a contract within the scope of his authority, his principal may sue or be sued, because the agent was really only an intermediary. For example, where B is secretly acting as agent for X, X can intervene to enforce the contract between A and B in which case B drops out and the contract subsists directly between A and X. this is called

[42] Cleaver v. Mutual Reserve fund Life Association, (1892) 1 QB. 147, at p. 152
[43] Section 11 of the married Women's Property Act, 1882, Section 14 (2) of the Marine Insurance Act, 1906; Section 47 (1) of the Law of Property Act 1925.
[44]Ibid
[45]G.C. Cheshire and C.H.S Fiftoot,The Law of Contract Fifth Edition, (London: Butterworth & Co (Publishers Ltd) 1960, 169 p. 16
[46]G.C. Cheshire and C.H.S Fiftoot, The Law of Contract,Op.cit. p 370.
[47](2001) 14 NWLR (Pt. 733) 356.

the Doctrine of the Undisclosed principal. Thus, a principal may sue on a contract made on his behalf by his agent, since a principal acts through his agent whom is only an intermediary.

ii) **In the Law of Trust:** The doctrine of privity of contract will not be applicable where a party to a contract constitutes himself a trustee in favour of a stranger to the contract. In such a situation, the third party on whose behalf the trustee acted can maintain an action to enforce the contract.[48] In the case of Vessel "Leona II" v. First Fuels Ltd.,[49] it was held that, the doctrine of trust applied also to contracts and that, where equity can spell out a contract made between A and B for the benefit of C, the construction that B intended to contract as trustee for C, even though nothing was said about any trust in the contract, C is a beneficiary under the contract and is allowed in equity to enforce it. Thus, where a contract between two persons creates a trust in favour of a third party, the latter can enforce the trust in equity.

iii) **In Respect of Restrictive Covenants**: Restrictive covenants affecting land may be enforced against subsequent purchasers having notice thereof. Moreover, where a tenant enters into covenants with his landlord, the covenants can be enforced against a third party to whom the tenant assigns his interest. Thus with respect to restrictive covenant, relating to the land and accepted by the purchasers as part of the contract of sale, will bind subsequent transferees of the land, even when they are not originally parties to the original sale. In the case of *Adejumo v. Ayantegbe*,[50] it was held by the court that, it is well settled that some members of a family, such as the Plaintiff here, can sue to set aside a sale of the family land by the Head of the family and some members of the family, if all the branches of the family have not been consulted. Moreover, in the case of *Tulk v. Moshay*,[51]the court held that, the defendant was restrained by an injunction on the ground that the defendant was aware of the existence of the restrictive covenant. Thus, **w**ith respect to contract under seal, the subsequent successor in title to a landlord acquires the right under the lease to sue and enforce the terms enjoyed by the original landlord.

iv) **Contract for the Hire of a Chattel:** This exception is concerned with contract relating to Charter parties. Thus, in the case of *DeMattos v. Gibson*,[52] A chartered a ship to B and during the currency of the charter party, A mortgaged the ship to C who was aware of the existence of the of the charter party. B then alleged that C as mortgagee had threatened to sell the ship in total disregard of his contractual rights. He then applied for an interlocutory injunction to restrain C from doing so. The

[48]A.M. Adebayo, Case Book on Law of Contract, 1st Edition (Lagos: Princeton & Associates Publishing Co. Ltd) 2015, p. 450.
[49](2003) LPELR, 284 SC.
[50](1989) 3 NWLR (Pt.110) 417.
[51] (1848) 2 PH. 774
[52] (859) 4 De G & J. 276.

trial court refused the application and B. appealed. On appeal, the court granted an interlocutory injunction.

v) **In Respect of Insurance Contracts:** The law of insurance is also an example of exception to the doctrine of privity of contract. Thus, in the case of *J.E. Oshivere Ltd. v. Tripoli Motors*[53]it was held by the Supreme Court that, there was privity of contract between the parties. According to the court, in a situation where the owner of a vehicle takes it to a repairer for repairs and indicates that the cost of repairs would be borne by his insurers and introduces the said insurers to the repairer, and his insurer expressly agree to settle the cost of repairs. Then there exist a tripartite contract involving the owner of the vehicle, the repairer and the insurers. That each acquires rights and comes under obligations thereunder. That under such circumstances, there is a contract between the owner of the car and the repairer. That there was therefore privity of contract between the appellant and the respondent and the appellant was entitled to sue the respondent without joining his insurance company.

vi) **In Respect of Banker's Commercial Credits:** Exception to privity of contract is also related to banker's commercial credits and international commerce. Thus it was stated by Belgore JSC (as he then was) in the case of *Abusomwan v. Merchantile Bank of Nigeria Ltd*.,[54] that:

> **…***While in few remaining cases, privity is still good law, the banking law and transactions are so vital to international maritime and commercial business that, to apply principle of privity of contract would destroy initiative and sometimes make transactions impossible.*

vii) **In Respect of Assignment of Choses in Action[55]:** Matters relating to the assignment of choses in action is also one of the exceptions to the doctrine of privity of contract. In the case of *Ben Electronic Co. Nig. Ltd. v. ATS & Sons & Ors.*,[56] Agube J.C.A. stated that:

> *…the term chose in action has been in common use for a long time, but some doubts have been recently raised as to its precise meaning…chose in action is a known legal expression used to describe all personal rights of property which can only be claimed or enforced by action, and not by taking physical possession….it has long been settled beyond per adventure on the authorities of Harding v. Harding (1886) 17 QBD442; Re Westerton (supra) at page 104 and Holt v. Heather- field Trust Ltd. (1942) 2 K.B. 1,5, that*

[53] (1997) 5 NWLR (Pt. 503)1.
[54] (1987) 2 NSCC 828 at 891.
[55] Section 25 (6) of Judicature Act now replicated in Section 136 of the Law of Property Act 1925.
[56] (2013) LPELR 20870.

consideration is not regarded in statutory assignment of a chose in action.

viii) **In Respect of Receivership:** Under this exception, when a receiver is appointed under power in a debenture or trust deed, he is the agent of the debenture holders and as such the debenture holders are liable as his principal upon contracts he makes during receivership. In the case of *Arnco Foods (Nig) Ltd. v. Mainstreet Bank Limited & Anor*,[57] it was held by the court that, when a receiver is appointed under power in a debenture or trust deed, he is the agent of the debenture holders and as such the debenture holders are liable as his principal upon contracts he makes during receivership.

ix) **Liability in Tort:** One of the exceptions to the doctrine of privity of contract is in liability for tort of negligence. In the case of *Okwejiminor v. Gbakeji*,[58] It was held that, even where there is absence of privity of contract between plaintiff and defendant, which *per se* does not preclude liability in tort, there is the proposition that manufacturers of product owe a duty of care to the ultimate consumer or user.

x) **In Respect of Sale of Family or Communal Land/Property:** A contract relating to sale of family land under customary law is one of the exceptions to the doctrine of privity of contract recognized in Nigeria. Thus, in the case of *UBA v. Folarin*,[59] it was held by the court that a well-known exception to the doctrine of privity of contract and with which we are too familiar with in this country, is in respect of a contract relating to sale of family land under customary law.

xi) **Under the Decree of Specific Performance:** A person may hold the fruits of a judicial remedy for the benefit of a person not a direct party, but intended to take a benefit.For example, under the administration of Estate Law 1959, on the death of any person, all causes of action subsisting against or rested in him shall survive against or as the case may be, for the benefit of his estate.[60]

xii) **In Labour Law:** Under the, Workmen's Compensation Act and the Fatal Accidents Act, the dependents of a deceased employee may bring an action based on the contract of employment of the deceased.

xiii) **In Insurance Law:** Under this law, the husband or the wife may sue on the insurance taken on the life of the other spouse at the death of anyone of them.

xiv) **In the Law of Negotiable Instrument:** Under this law, a holder for value of a negotiable instrument may sue patties from whom the instrument has passed. For example, if X is the holder for value of a Bill of Exchange, he may sue the drawer upon the bill.

[57] (2013) LPELR-20725 (CA)
[58] (2008) 5 NWLR (Pt. 1079) 172.
[59] (2003) 7 NWLR (Pt. 818) 18.
[60]Section 15(1) of the Administration of Estates Law 1959.

xv) **Under the Road Traffic Act:** Under section 206(3) Road Traffic Act, 1960, a person may sue on a contract to which he is not a party.

1.5 Conclusion/Recommendation

This paper has shown that, a contract is an agreement between two or more parties creating obligations that is enforceable or otherwise recognizable at law and that as a general rule, only a person who is a party to a contract has enforceable rights or obligations under it. The paper has also revealed that, the doctrine of privity of contract is also about the sanctity of contract between the parties to it and that, the doctrine does not extend to others from outside. Thus, the doctrine cannot apply to a non-party to the contract who may have, unwittingly, between dragged into the contract with a view to becoming a shield or scape-goat against the non-performance by one of the parties.

The paper has also established the fact that, there are exceptions to the doctrine of privity of contract in the areas of negotiable instruments, constructive trust, agency, restrictive covenants, procedural facilities etc. however, it is recommended that, statutes passed to redress grievance should not be isolated in order not to render their operation uncertain. Thus it can be concluded that, the effect of the doctrine of privity of contract may well be salutary and in some circumstances may prove inconvenient or even unjust.