

CASEBRIEFS

The Understanding Video Lecture Series™

Third Party Rights and Obligations

Assignments & Delegations

- You assign rights and delegate duties.
 - You can completely assign rights (give them to another), but it's virtually impossible to delegate duties without remaining responsible for performance of those duties
 - Happens AFTER contract formation.
 - The assignee steps into the SHOES of the assignor, in terms of rights and obligations



K

Assignor

assignment



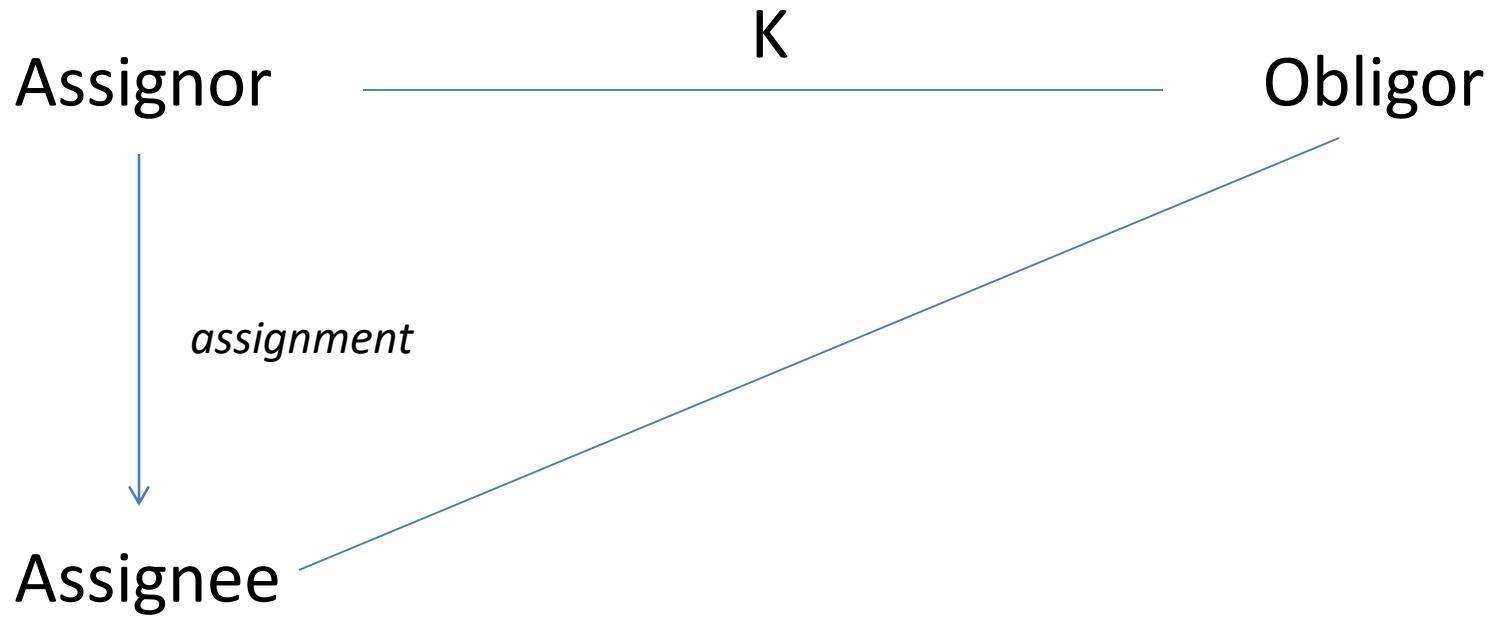
Assignee

Obligor

delegation



Obligee



Hypo: “I owe this to...?”

Paint has painted O’s house, for which O now owes \$10K due on 3/1.

On 2/1, Paint telephones O and says, “I want to give a gift to my son Sam, so you must pay the debt to Sam, not to me, on 3/1.”

On 2/15, Paint tells O, “I’ve changed my mind. Pay the \$10K directly to me.”

O doesn’t pay either on or after 3/1.

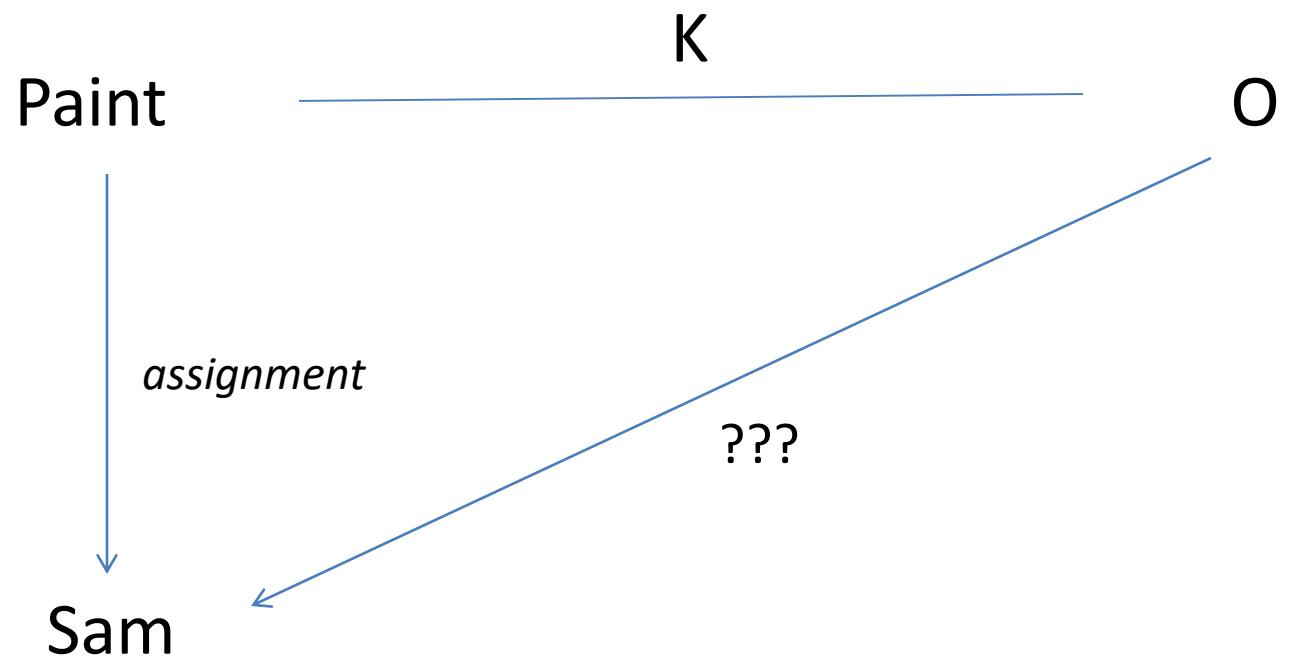
Sam sues O for \$10K.

Can he recover?

Assignment & Delegation

Gratuitous assignments (i.e., not for consideration) are deemed revoked if the assignor does any of these:

- dies;
- makes a subsequent assignment of the same right to a third person; or
- gives notice to either the assignee or the obligor that the assignment has been revoked.



Answer: Assignment & Delegation

- No, Sam can't recover from O.
- The phone call to O was a revocation, and was immediately effective,
 - even though Sam wasn't notified about it,
 - and even though O hasn't yet paid Paint.
 - Though Paint can still sue O.

Hypo: Assignment & Delegation

Paint agrees to paint O's house for \$10K, and O gives \$2K deposit.

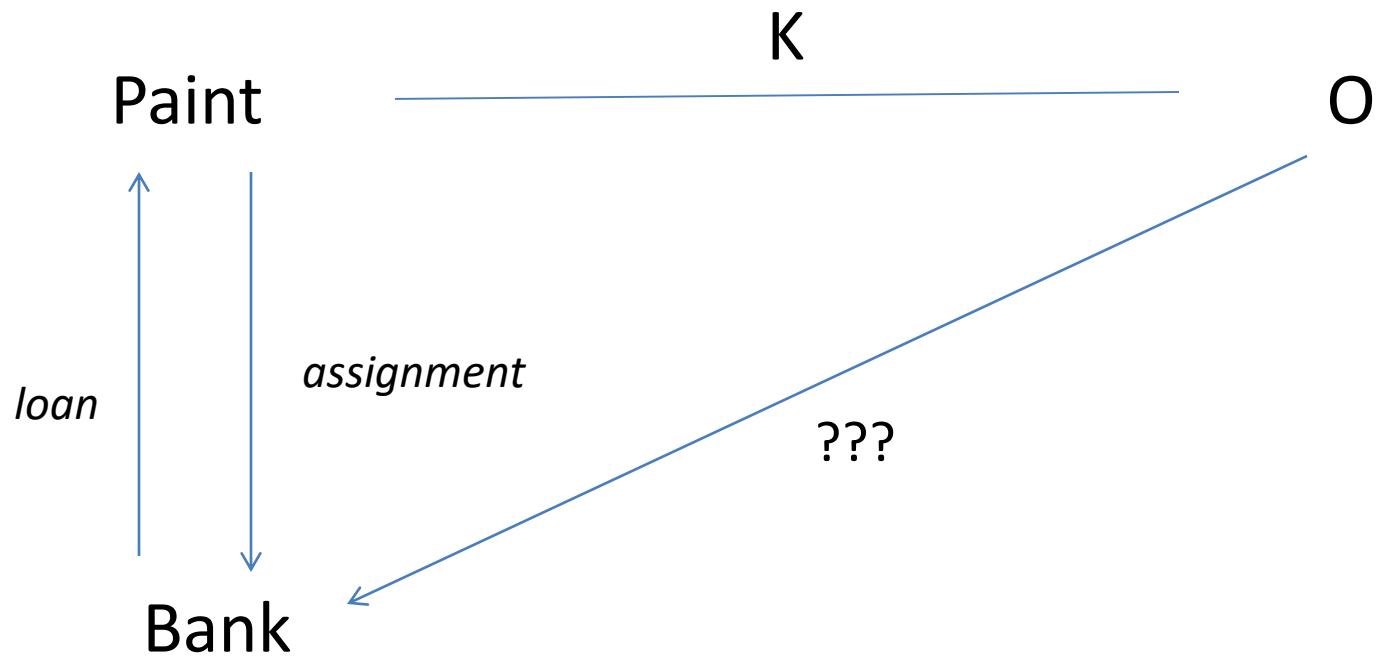
Paint assigns his contract and collection rights from this K to Bank in return for a loan of \$6K.

With the work half done, Paint abandons the job.

O reasonably spends \$9K to have the job completed by X.

Bank sues O for \$6K, and O counterclaims for damages.

Who can recover what from whom in this suit?



Answer: Assignment & Delegation

- Neither party can recover anything.
- O has been damaged to a net amount of \$1K
 - (he's already paid \$2K + \$9K for a job that should have cost \$10K).
- He can use his \$9K payment to X as a “recoupment” to wipe out Bank's \$6K claim.
- But O can't recover the last \$1K from Bank, because Bank didn't assume Paint's obligations under the K,
 - so O can't get an “affirmative recovery,” just the recoupment.
 - If Paint is still around, O can try to recover from Paint.

Assignment & Delegation

Rule on Assignee vs. Obligor suits:

- Assignee “stands in the shoes of the assignor.”
- So Assignee takes subject to all defenses, set-offs and counterclaims which the obligor could have asserted against the obligor.
- But Assignee cannot be subject to affirmative recovery if Assignee never assumed Assignor’s duties.

Hypo: “Personal service Ks”

Cli signed a contract with Dent, an orthodontist, for Dent to install braces.

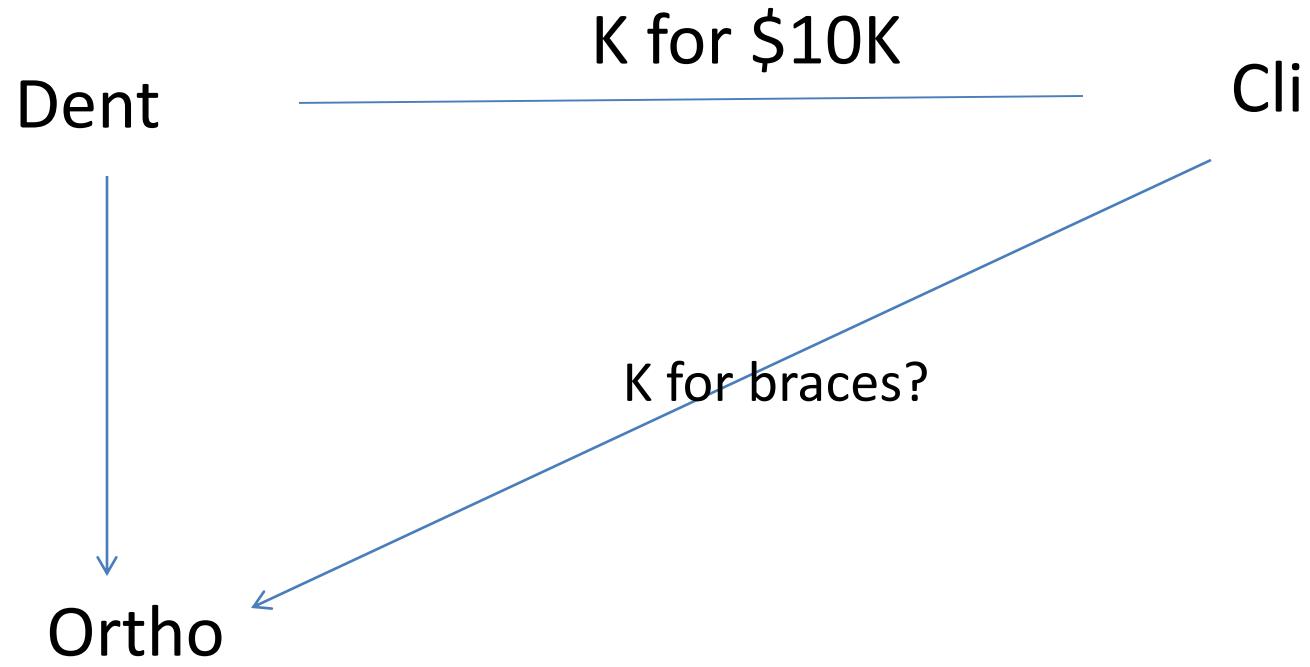
This K was silent about assignment or delegation rights on Dent's part.

Before work began, Dent sold his practice to Ortho, another orthodontist of comparable skill.

Ortho supplied Cli with information that would indicate to a reasonable person that Ortho was as qualified as Dent.

Cli refused to let Ortho do the work.

Can Ortho recover breach damages from Cli?



Answer: Assignment & Delegation

- Ordinarily, rights are assignable and obligations are delegable, if the K is silent on the issue.
- But duties will be non-delegable if the recipient of the duty has a “substantial interest” in having the delegator perform.
 - That’s true in K’s calling for the delegator’s performance of personal services, such as the orthodontic services here.
 - So Cli was entitled to refuse no matter how qualified Ortho was.

Hypo: “Consenting to delegation”

Same facts as previous hypo.

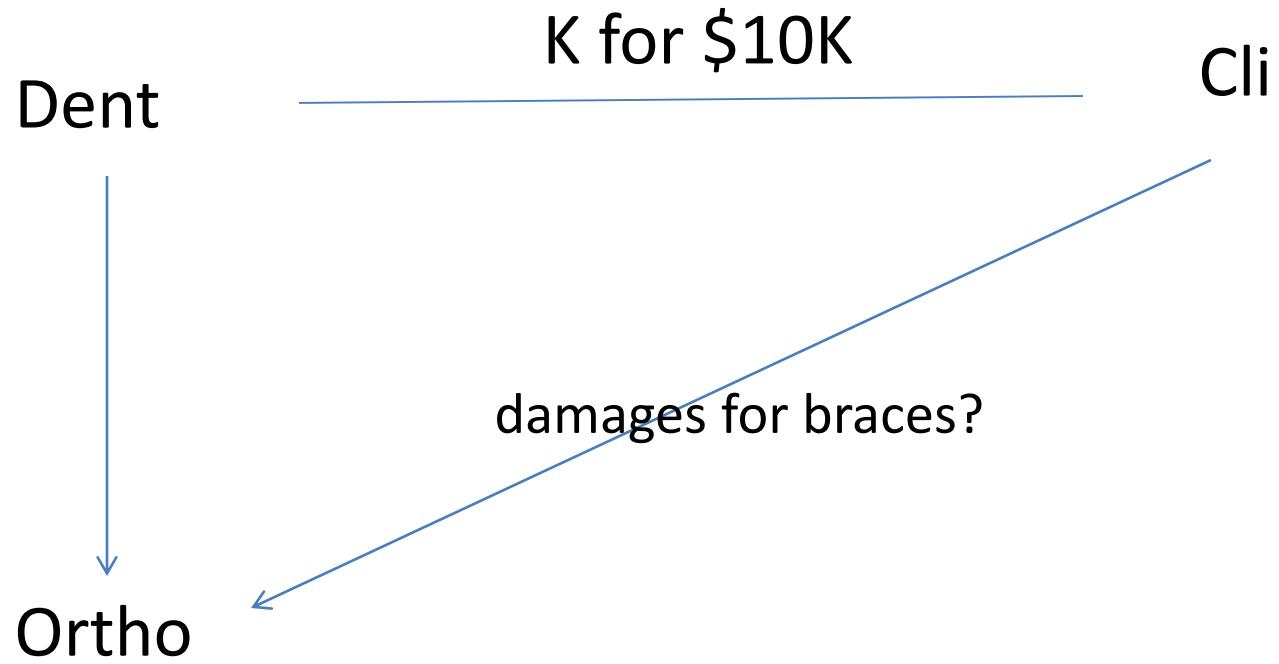
Cli and Dent contract, and Dent sells the biz and its Ks to Ortho, w/ Ortho agreeing to do the work.

But Cli consents.

Ortho puts on a different type of braces than called for in the Cli/Dent K.

Assume Cli's damages are \$5K.

Against whom may Cli recover, and for how much?



Answer: Assignment & Delegation

- \$5K against Dent or Ortho.
- Cli can recover against Dent because,
 - in the absence of a novation,
- an assignment of a “contract” and delegation of duties doesn’t take the assignor off the hook of K’1 liability to the promisee (Cli).
- Cli can recover against Ortho because when Ortho agreed with Dent that Ortho would complete the K, Cli was an intended beneficiary of that promise.
 - (But Cli can only get 1 satisfaction.)

Third Party Beneficiaries

Intended at the TIME OF THE CONTRACT. This is key
Only “intended” beneficiaries may sue:

- Creditor beneficiaries (performance of promise will satisfy promisee’s obligation to pay money to beneficiary, whatever promisee’s “intent” was);
- Non-creditor intended beneficiaries (promisee intended to give the beneficiary the benefit of the promised payment or performance)

All others are “incidental” beneficiaries who can’t sue.

Hypo: “The stiffed beneficiary”

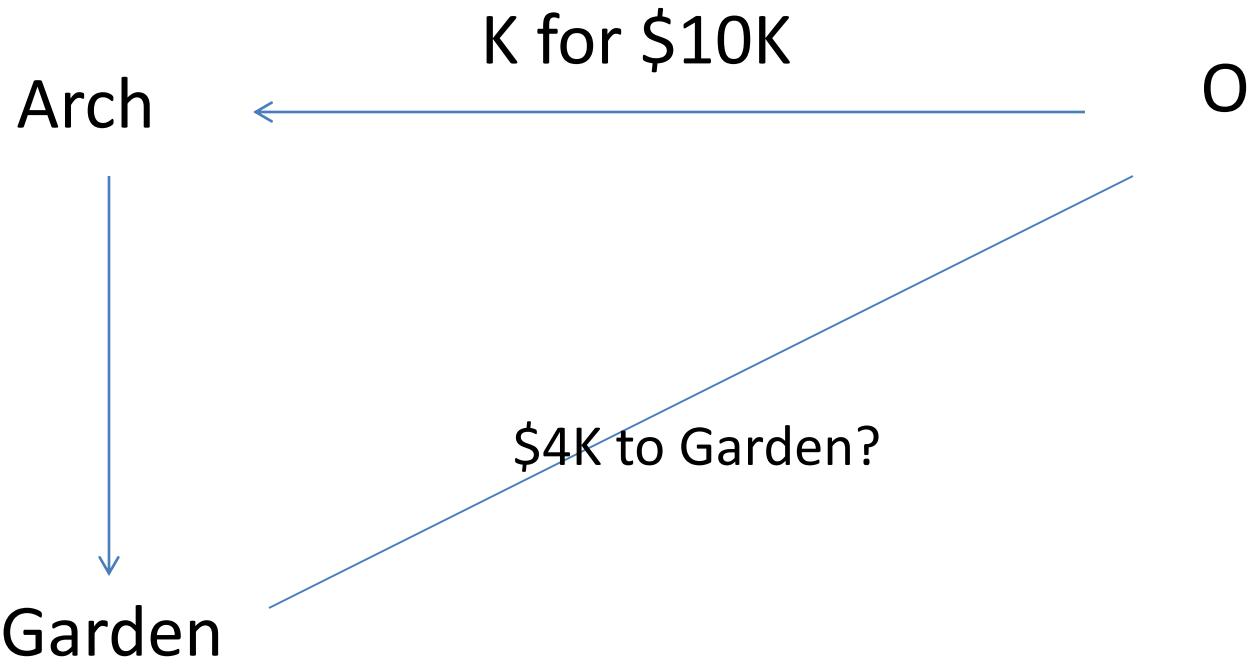
O, a homeowner, contracted with Arch, a landscape architect, for Arch to do a landscaping plan for O’s house, for \$10K.

Arch owed \$4K to Garden, a gardener, for previous work.

The O-Arch K specified that when the fee came due, O should pay \$4K of it directly to Garden.

Arch did the work, but O paid just \$6K to Arch.

If Garden sues O for \$4K can he recover?



Answer: Third Party Beneficiaries

- Yes. Garden is a creditor beneficiary
 - (O's performance of O's promise to pay \$4K to Garden will satisfy the debt of Arch, the promisee, to Garden).
- That's true whether or not Arch was motivated by desire to benefit Garden.
- Therefore, Garden may sue O, the promisor, on the promise.

Hypo: “Intended or incidental?”

Paint agrees to paint O’s house.

Contract specifies that Paint buy and use
“Benjamin Moore Cream paint, to be bought
locally so returns are allowed.”

Retail is the only local store that sells Benjamin
Moore.

Paint buys from mail order instead because they,
too, have a right of return.

*Can Retail sue Paint for profit Retail would have
made on the cream paint?*



Answer: Third Party Beneficiaries

- No. Retail can recover only by showing that O was in part motivated by a desire to confer a benefit on Retail
 - (or at least on some member of the class of local retailers).
- Here, where O was merely trying to further his own interests (right or return), this test is not met
 - and Retail will be an incidental rather than intended beneficiary.

Third Party Beneficiaries

3 ways promisor & promisee lose right to modify or cancel the promise:

1. Beneficiary materially changes position in reliance;
2. Beneficiary brings suit on promise;
3. Beneficiary manifests assent to promise at request of promisor or promisee.

Each must happen before beneficiary gets notice of modification.

Hypo: Third Party Beneficiaries

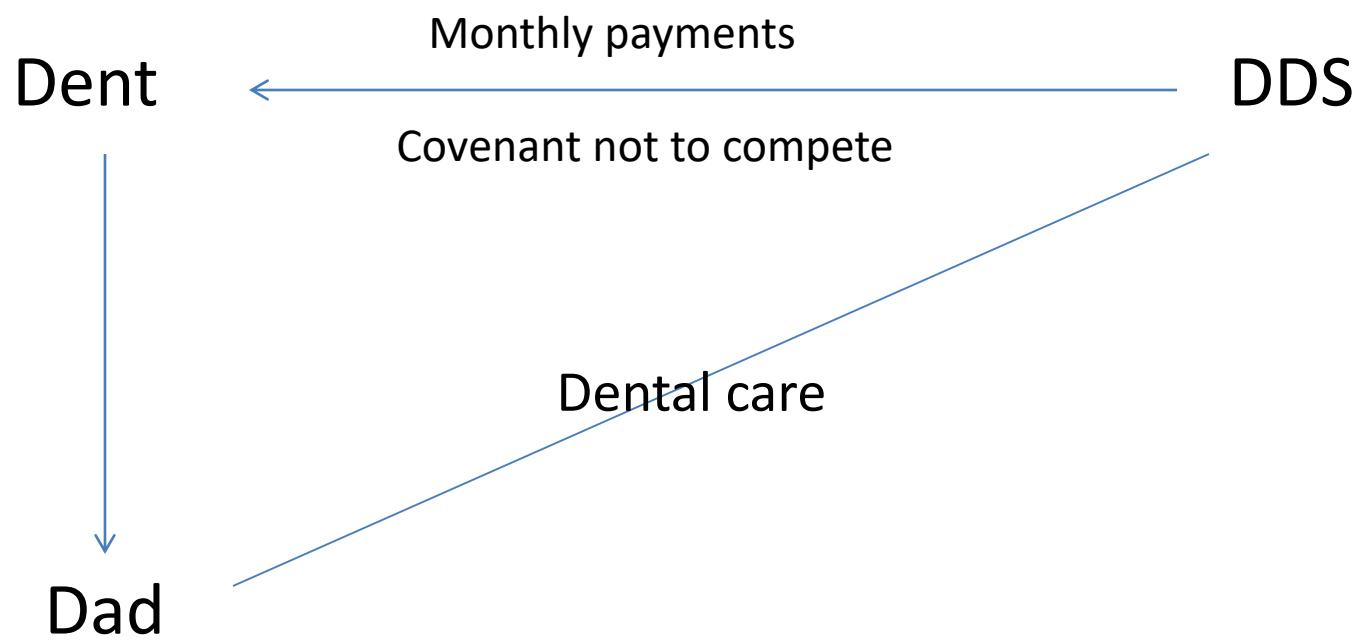
Dent sells his dental practice to DDS.

Under the sale contract, in addition to monthly payments by DDS to Dent, DDS promises to supply dental care to Dent's father Dad for 2 years.

As part of the sale, Dent promises not to compete for patients within a 25 mile radius of the practice now run by DDS.

1 year later, Dent opens up a competing office. DDS stops paying Dent, and refuses to treat Dad.

Can Dad recover for breach against DDS?



Answer: Third Party Beneficiaries

- No. The promisor can raise against a 3pB any defense or claim that could be raised against the promisee.
- If Dent sued DDS for missed payments, DDS could defend on grounds that his payment obligations were constructively conditioned on Dent's not breaching the non-compete.
- The same is true of Dad's suit:
 - Dent's competition supplies a defense as against Dad.