



CONTRACTS OF INDEMNITY AND GUARANTEE

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CONTRACT OF INDEMNITY

It is a contract by which one party promises to save the other from loss caused to him by the conduct of the promisor himself or by the conduct of any other person. It is made in order to protect the promisee against anticipated loss.

CONTRACT OF INDEMNITY contd...

There are only two parties involved in these contracts i.e. the person who promises to make good the loss generally known as the indemnifier (promisor) and the person whose loss is to be made good called as the indemnified (promisee).

CONTRACT OF INDEMNITY contd...

- 1. There is only one contract between the parties.**
- 2. There is an undertaking on the part of the indemnifier to be answerable for the debt or default of another.**
- 3. The liability of the indemnifier to the indemnified is primary and independent.**
- 4. This contract is for the reimbursement (compensation) of loss.**

ESSENTIALS

- **Contract of indemnity must contain all the essentials of a valid contract**
- **The promisee or the Indemnity-holder must have suffered a loss.**

RIGHTS OF INDEMNITY HOLDER

- **Section 125 lays down that an indemnity holder is entitled to recover the following from the promisee:**
- **Damages**
- **Cost of litigation**
- **Sums paid under the conditions of compromise**

RIGHTS OF INDEMNIFIER

- **The Contract Act is silent about the rights of indemnifier but as per the provisions of Section 141 and various court verdicts , the rights of the indemnifier are analogous to the rights of a surety , which are as under:**
- **Rights under Doctrine of Subrogation**
- **To sue against third party after indemnifying the indemnity holder**
- **Not to compensate for losses not covered under contract of Indemnity.**

CONTRACTS OF GUARANTEE

A Contract of Guarantee is a contract to perform the promise or discharge the liability of a third person in case of his default. It is made to enable a person to get a loan or goods on credit or an employment.

CONTRACT OF GUARANTEE CONTD.....

- 1. There are three parties involved i.e. the person who gives the guarantee known as the surety, the person in respect of whose default the guarantee is given known as the principal debtor and the person to whom the guarantee is given known as the creditor.**
- 2. There are three contracts first between the creditor & the principal debtor, second between the surety & the creditor and third between the surety & the principal debtor.**
- 3. The primary liability is of principal debtor and the surety has a secondary liability which means that the payment is to be made by the surety only if the debtor fails to pay.**
- 4. This contract is for the security of the creditor.**
- 5. This contract can be oral or written but cannot be implied . Till such time as the obligation of the principal debtor does not arise the surety is also free from his obligation.**

TYPES OF GUARANTEE

A guarantee may be of the following types:

- 1. Retrospective guarantee**
- 2. Prospective guarantee: This guarantee is of two types -**

Specific Guarantee : It is given for single debt or obligation and comes to an end when the debt guaranteed has been paid or obligation guaranteed has been discharged. Thus, where A gives a loan to B for which C stands guarantee, it is a case of a specific guarantee. In this case, there is a specific debt and the guarantee shall come to an end the moment the loan is repaid.

Continuing Guarantee : A continuing guarantee is one where the guarantee given is not for a single or specific debt or obligation, but for a series of debts.

Revocation/termination of continuing guarantee

- **A Continuing guarantee is terminated in the following two ways:**
- **By Notice**
- **By Surety's Death**

INVALID GUARANTEE

A guarantee becomes invalid in the following circumstances:

- a) Guarantee obtained by Misrepresentation**
- b) Guarantee obtained by Concealment**
- c) Guarantee obtained on the condition of joining co-surities**

LIABILITY OF SURETY

- **There are two important points regarding the liability of the surety:**
- **The liability of surety is co extensive with that of the principal debtor**
- **Liability of surety commences with the default of the principal debtor**
- **Liability of co – surities**

DISCHARGE OF SURETY FROM LIABILITY

- **The surety is discharged from his liability in the following situations:**
- **By notice of revocation**
- **By surety's death**
- **By variation in the terms of the original contract**
- **By release of the principal debtor**
- **Agreement with the principal debtor**
- **By the creditor's act or omission impairing surety's remedy**
- **Loss of security by the creditor**
- **Guarantee obtained by misrepresentation or concealment**
- **Guarantee given under the condition of joining of co-sureties.**

RIGHTS OF SURETY

- **Under the Indian Contract Act, a surety has the following rights against the principal debtor, the creditor and the co-sureties:**
- **Right of Subrogation**
- **Right to Securities**
- **Right when the creditor loses or parts with the securities of the principal debtor**
- **Right of Reimbursement**

THANK YOU 😊