

Ch-2

Unit - 7

* Indemnity :

To make good the loss incurred by another person. (Gajanan Moreswar Vs Moreswar Madan)

* Parties :

- i) 'Indemnifier' - who promises to compensate for loss.
- ii) 'Indemnity Holder' or the 'Indemnified' - whose loss is to be made good.

* Rights of Indemnity Holder:

⇒ Right to recover all damages

⇒ Right to recover costs of suit

⇒ Right to recover other sums

* Guarantee :

Contract to perform the promise; or discharge the liability, of a third person in case of his default.

* Parties :

- i) Surety: who gives the guarantee

ii) Principal Debtor: In respect of whose default the guarantee is given,

iii) Creditor: To whom guarantee is given.

* Essentials:

- Purpose
- Enforceable debt or liability
- Consideration
- No misrepresentation or concealment
- A contract of guarantee maybe written or oral
- Joining of other Co-sureties.

* Type of Guarantee:

⇒ Specific Guarantee -

1. Guarantee which extends to a single debt / specific transaction
2. Surety's liability comes to an end when the guaranteed debt is duly discharged.

⇒ Continue Guarantee -

1. Guarantee which extends to a series of transaction
2. Surety's liability continues until the revocation of the guarantee.

* Modes of Discharge of Surety:

• By Revocation -

1. By Notice
2. By Surety's death
3. By Novation

• By Conduct of the Creditors -

1. By variance in terms
2. By release or discharge of PD
3. Composition with PD
4. Impairing surety's remedy

• On invalidation of contract of guarantee -

1. Guarantee obtained by misrepresentation
2. Guarantee obtained by concealment
3. Guarantee on contract that creditors shall not act on it until co-surety joins.

* Rights of A Surety:

i) Against Principal Debtor -

1. Right of Subrogation
2. Right of Indemnity

ii) Against creditors -

1. Right to security

2. Right to set off

3. Right to share reduction.

iii) Against Co - shareholders -

1. Right to claim contribution equally

2. Right to claim contribution only agreed sum