

	S	M	T	W	T	F	S
MAY 2018	6	7	8	9	10	11	12
	13	14	15	16	17	18	19
	20	21	22	23	24	25	26
	27	28	29	30	31		

14

THURSDAY
JUNE 2018

UNIT-7

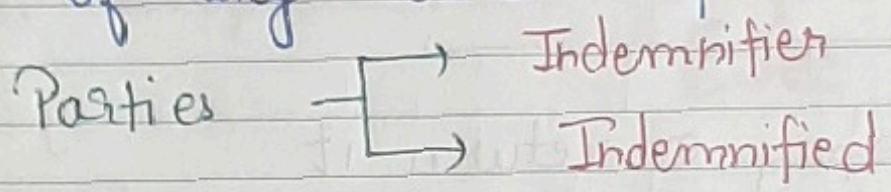
CONTRACT OF INDEMNITY & GUARANTEE

Loss की भरपाई

[Security against loss
 To make good the loss
 To compensate the party who
 has suffered some loss.

Acc. to ICA, 1872 (Section 124)

A contract by which a party promises to save other from losses caused (by) to him by the conduct of the promisor himself, or by the conduct of any other person.



Indemnifier → The party who promises to indemnify from loss / save the other party

M	T	W	T	F	S	S
					1	8
30	31	4	5	6	7	JUL 2018
2	3	10	11	12	13	14
9	10	17	18	19	20	21
16	17	24	25	26	27	28
23	24	25	26	27	28	29

2018

FRIDAY
JUNE

WK 24 • 166-199
15

Indemnified : Party who promised to be saved against the loss.

- Loss occasioned by
 - accident
 - act of God
 - Natural event

Not covered

Case law : Gajaman Moreswar v/s Moreswar Madam (1942)

Modes of contract of indemnity

Express

When a person expressly promises to compensate other from loss

Implied

Inferred from the conduct of parties.

16

SATURDAY
JUNE

2018

	S	M	T	W	T	F	S
MAY 2018			1	2	3	4	5
	6	7	8	9	10	11	12
	13	14	15	16	17	18	19
	20	21	22	23	24	25	26
	27	28	29	30	31		

→ Must fulfill all the essential elements of contract.

Promisee can recover damages which he may have been compelled to pay in defending/bringing the suit.

Rights of indemnify holder when sued

Cost of suit can be recovered by promisee.

All costs which he may have paid in compromise the suit.

17

SUNDAY

When does liability of an indemnifier commence?

as soon as liability becomes absolute and certain

M	T	W	T	F	S	S
30	31				1	JUL
2	3	4	5	6	7	8
9	10	11	12	13	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28	29

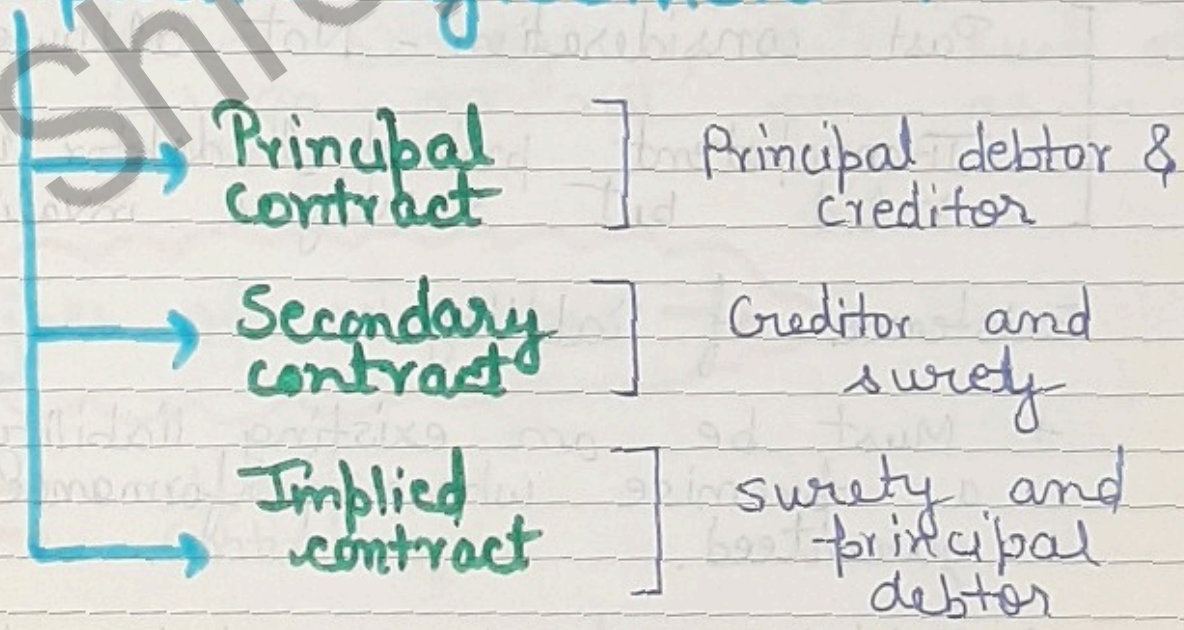
CONTRACT OF GURANTEE ÷

- Perform the promise
 - Discharge liability
- of third person

Three parties ÷

- Surety
- Principal debtor
- Creditor

Tripartite agreement ÷



	S	M	T	W	T	F	S
MAY 2018	6	7	8	9	10	11	12
	13	14	15	16	17	18	19
	20	21	22	23	24	25	26
	27	28	29	30	31		

ESSENTIAL FEATURES ÷

1. Purpose :

- To secure the payment of a debt
- No principal debt, no valid guarantee.

2. Consideration

- Guarantee without consideration is void.
- No need for a direct consideration between the surety and the creditor.
- As per Sec 127 ÷

[Past consideration - Not allowed]
 [Incompetent principal debtor is valid but surety is invalid]

3. Existence of liability ÷

- Must be an existing liability or a promise whose performance is guaranteed.
- liability or promise must be enforceable

M	T	W	T	F	S	S
30	31	1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30	31	1	2

4. No misrepresentation or concealment [Section 142 and 143] - Void

Any guarantee which the creditor has obtained by means of keeping silence as to material circumstances is invalid (Sec 143)

5. Writing not necessary

Can be oral too

6. Joining of other co-surety

- The Guarantee by surety is not valid if the condition is imposed by a surety that some other person must also join as a co-surety, but such other person does not join as a co-surety.

Types of guarantee :-

- Specific
- Continuing

	S	M	T	W	T	F	S
MAY 2018	6	7	8	9	10	11	12
	13	14	15	16	17	18	19
	20	21	22	23	24	25	26
	27	28	29	30	31		

Specific :-

- Extends to single debt
- Liability comes to end] Principal debtor is discharged

Promise is performed

Continuing :-

- Extends to a series of transaction
- Continues until revocation of guarantee.
- Not to a specific no. of transactions but to any number of transactions.

Makes surety liable for the unpaid balance at the end of the guarantee

Nature and extent of surety's liability [Sec 128]

- The liability of the surety is [Co-extensive]

M	T	W	T	F	S	S
30	31	4	5	6	7	1
2	3	4	5	6	7	8
9	10	11	12	13	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28	29

- Liability of surety] - Secondary nature] He is liable only on the default of principal debtor.

- Debtor cannot be held liable on account of any defect in the document

Liability of the surety also ceases.

- Creditor may choose to proceed against a surety first

7.6 Liability of two persons, primarily liable not affected by arrangement between them that one shall be surety on others default.

→ When two persons contract with third person to undertake liability then such third person can claim from any of such person irrespective of contract between them.

	S	M	T	W	T	F	S
MAY 2018	6	7	8	9	10	11	12
	13	14	15	16	17	18	19
	20	21	22	23	24	25	26
	27	28	29	30	31		

Discharge of surety :-

- By revocation
- By conduct of the creditor
- On invalidation of contract of guarantee.

By revocation of the contract of guarantee :-

(i) By notice, revocation of continuing guarantee :-

→ May be revoked at any time by the surety for future transactions

→ Once revoked, surety is not liable for any future transaction.

24 SUNDAY

(ii) Revocation by surety's death :-

→ Guarantee revoked for all transactions after death

→ For past transactions surety's estate remains liable

M	T	W	T	F	S	S
						1
30	31	4	5	6	7	8
2	3	11	12	13	14	15
9	10	18	19	20	21	22
16	17	25	26	27	28	29
23	24					

WK 26 • 176-189

MONDAY
JUNE

25

2018

(ii) By novation ÷ [Sec 62]

New contract instead of old contract

If fresh contract is entered between principal dr. and creditor then surety is discharge when it is without consent

• By conduct of creditor ÷

(i) By variance in terms of contract
Change

When terms of contract are changed without surety's consent then his guarantee is also withdrawn.

(ii) Release / Discharge of principal debtor (Sec 134)

- Fresh / New contract
Does act or omission] , Discharge of principal debtor.

	S	M	T	W	T	F	S
MAY	1	2	3	4	5	6	7
2018	6	7	8	9	10	11	12
	13	14	15	16	17	18	19
	20	21	22	23	24	25	26
	27	28	29	30	31		

(iii) Discharge of surety when creditors compound, give time or agree to sue; principal debtor.

① Composition

→ If creditor makes composition with Principal Debtor

Surety Discharged.

② Promise to give time ÷

→ When due dates arrives, it is one of the duties of the creditor towards the surety not to allow the principal debtor more payment time

③ Promise not to sue ÷

If creditor promises principal debtor not to sue him

Surety discharged.

M	T	W	T	F	S	S
30	31	1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30	31	1	2

JUL
2018

2018

WEDNESDAY
JUNE

Wk 26 • 173-187

27

By the invalidation of the contract of guarantee :-

- By the misrepresentation
- By concealment
- Creditor shall not act on it until co-surety joins

[(Sec 144)]

Cases where surety is not discharged :-

1. Agreement made with third person to give more time to Principal debtor] Not discharge (surety)
2. Creditor's forbearance to sue does not discharge surety [Sec 137]
3. Discharge of surety by creditors Act or omission impairing surety's eventual remedy.

(i) Creditor does any act which is inconsistent with his act

	S	M	T	W	T	F	S
MAY 2018	6	7	8	9	10	11	12
	13	14	15	16	17	18	19
	20	21	22	23	24	25	26
	27	28	29	30	31		

Or

Omit any act which impairs surety remedy

Surety is discharged to such amount of impairment

Rights of surety :-

(a) Against Principal debtor :-

① Rights of subrogation on payment of debt by surety

On payment of debt surety steps into shoes of the creditor.

② Implied promise to indemnify surety (Section 145)

— Surety can recover from Principal debtor amount paid by him

Can recover - sum he has rightfully paid but not sums which he paid wrongfully

M	T	W	T	F	S	S
					1	JUL
31	3	4	5	6	7	8
2	3	4	5	6	7	8
9	10	11	12	13	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28	29

(b) Rights against creditor :

1. Surety's right to benefit of creditor's securities [Section 141]

Surety has right to get benefit of every security which creditor has against Principal Debtor.

2. Rights to set off :

which principal debtor has against creditor.

3. Claim reduction :

Principal debtor insolvent.

(c) Rights against co-sureties :

1. Liable to contribute equally.
2. Principal of equal contribution is subject to max. limit fixed by surety.