Chap 5 unit 7 Contract of Indemnity and Guarantee

- When one person → Indemnifier
  promises to other → Indemnity holder
  to save him from loss → which may cause
  - due to fault of promisor
  - due to fault of 3rd party
  - not due to Act of God
  - not due to promisee

  expressed / implied

- Right of Indemnity holder when sued by 3rd party
  - ✓ damage paid on suit
  - ✓ cost of suit
  - ✓ amt paid as compromise

contract of guarantee

It is contract
where a person promises → surety
to perform the promise / discharge the liability
of a 3rd party in case of his default → Principal debtor

PD → Creditor (Loan obtained)
If PD. defaults
Surety → Creditor: contract to indemnify the creditor

Features
→ Principal Debtor
→ consideration between creditor and surety is not required. Exception to the Rule
No contract No Contract
: consideration to PD will be sufficient consideration for surety's promise to creditor
→ existance of Liability

Types
- Specific → when guarantee is given for particular trans only
- Continuing → when guarantee is given for series of transactions

M. Imp

Discharge of Surety

1 By Revocation of continuing guarantee

- By giving notice to creditor : prospective / future trans. only
- Death of surety : automatic revocation : surety remains liable for past trans
- Novation → By mutual agreement → old ~~contract~~ → New ✓ contract

2 By Creditor's Conduct

- By variance in the terms without surety's consent
  - ↳ surety will be discharge from the date of variance
  - ↳ exception : variance in favour of surety
    eg interest reduction
- Discharge of Principal debtor
- compounds with P.D / give time / agreement not to sue the P D
- creditor's omission → impairing the eventual remedies of surety

Imp

eg. ship built → 1/3 rd → Payment made by creditor 100 /
surety is liable upto 1/3 rd payment only not 100%

3. By Invalidation of Contract

- active conment of material facts by creditor
- missrepresentation by creditor
] @ contract of guarantee

eg → employer terminated employee in past due to theft by employee material fact
→ employee wants to rejoin and employer seeks surety
→ $\boxed{\text{Surety}}$ offers guarantee to $\boxed{\text{creditor}}$
Duty of creditor
aware

- joing of co-surety is the condition → and other co-surety refuses

Right of surety Imp.

1 against the principal debtor

a) right of subrogation

replacement → surety makes full payment to creditor on the default of P.D → all the rights of creditor against the P.D will be transfered to surety

b) implied promise from P.D to surety to indemnify surety on the payment to creditor

- rightfully paid ✓
- ~~wrongfully paid~~

2 against the creditor

a) right to claim $\boxed{\text{security}}$

If creditor claims full amt from surety on the default of P.D on the hand over of security to surety

↳ If creditor fails to return the security to surety, then surety will be discharged upto market value of security

- security sold by creditor
- security returned to P.D.
- security lost by creditor etc

b) set off

$\boxed{\text{P D}}$ ← loan ₹10L ← creditor

sold some goods on credit ₹3L

Surety is liable on the default of PD

₹10L − ₹3L set off ✓

c) right to claim reduction in case of insolvency of P.D.

Bankruptcy Dividend 30% ✓

Surety liable for 70%

3 Right against co-sureties more than 1 surety

- contribution in equal ratio however the contract may provide otherwise

- excess paid by one co-surety can be claimed from other co-sureties

contract may provide otherwise i.e. max. limit can be put @ contract