

Chap 5 unit 7 Contract of Indemnity and Guarantee

- When one person promises to other to save him from loss
 - Indemnifies
 - Indemnity holder
 - 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

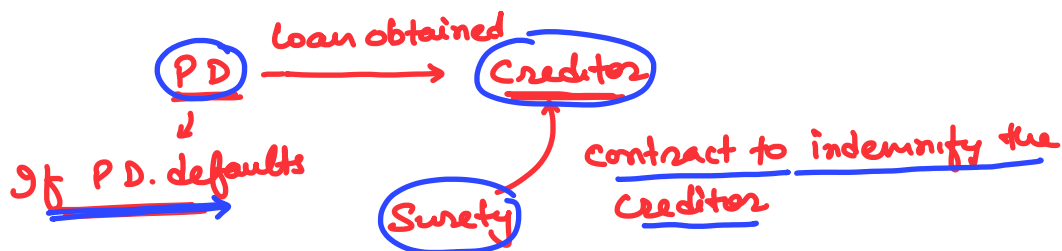
- ✓ damage paid on suit
- ✓ cost of suit
- ✓ amt paid as compromise

⇒ Contract of guarantee

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

→ surety

→ Principal debtor



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

→ existence of liability

Types

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

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
- Discharge of Principal debtor eg interest reduction
- Compounds with P.D / give time / agreement not to sue the P.D
- Creditor's omission → impairing the eventual remedies of surety

eg. ship built → $\frac{1}{3}$ rd → Payment made by creditor (100 /
 surety is liable upto $\frac{1}{3}$ rd payment only not 100%

3. By Invalidation of Contract

- active concealment of material facts by creditor
 - misrepresentation 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
 → Surety offers guarantee to creditor
 aware Duty of creditor

- joining 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 transferred 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

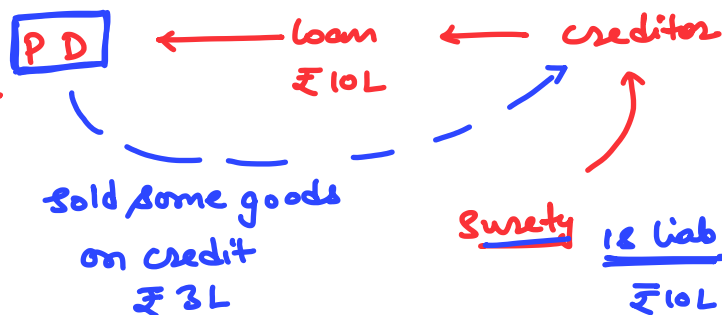
a) right to claim Security

↓
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



Surety is liable on the default of P.D.
 $₹10L - ₹3L$ set off ✓

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

Surety liable for 70%

Bankruptcy Dividend
30% ✓

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