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LAW CAPSULE

For Law Competitive Exams



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CONTRACT OF INDEMNITY AND GUARANTEE

A Contract by which one party promises to save other from loss caused to him by the conduct of the promisor himself or by the conduct of any other person, is called a Contract of Indemnity (Section 124 of the Contract Act, 1872).

In simple terms Indemnity is security against or compensation for loss. Further it may be added that this definition covers indemnity caused by human agency only.

Guarantee is a Contract to perform the promise, or discharge the liability of a third person in case of default. (Section 127 of the Contract Act, 1872)

Main Features

- In India – Contract may be oral or written
- In England – Contract must be in writing and signed
- Pre-supposes a principal debt. Surety liable if principal debtor fails to discharge his obligation
- Benefit to the principal debtor is sufficient consideration for surety's promise
- Consent of surety should be free of misrepresentation and concealment
- Surety's liability is co-extensive with the principal debtor

The differences between Contract of Indemnity and Contract of Guarantee are enumerated hereinbelow in tabular form:-

Sl. No.	Contract of Indemnity	Contract of Guarantee
1.	Two parties	Three parties
2.	One Contract	Three Contracts
3.	For reimbursement of some loss only	Pre-supposes a principal debt
4.	Liability of indemnifier is primary	Liability of surety is secondary
5.	Loss falls on indemnifier	Surety can realize the payment made by him
6.	England – Indemnity may be either oral or in writing India-Oral or Writing	England – Guarantee- Writing India-Oral or writing
7.	Expressed and Specified Contract	Implied Contract

Discharge of Surety from Liability

- Revocation by Surety- [Section 130] Continuing Guarantee may be revoked by notice to the creditor
- By Surety's death – [Section 131] Death of surety operates as revocation of Continuing Guarantee [future transaction]
- By variance in the terms of contract section [Section 133] – without consent of surety – discharge
- By release or discharge of principal debtor [Section 128] – liability of surety is co-extensive with principal debtor
- Where creditor compounds with, gives time to or agrees not to sue the principal debtor [Section 135]
- By creditor's act or omission impairing surety's eventual remedy
- By loss of security by creditor [Section 141] – casts duty to preserve the security

Rights of Surety

- Right of subrogation [Section 140]
 - Invested with all rights of creditors
- Right to securities with the Creditors [Section 141]
- Right of indemnity against the principal debtor [Section 145]
- Right of Contribution against co-sureties
 - Equal share of the whole debt

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