

### **Disclaimer:**

These are the compilation notes on *SPECIAL CONTRACTS* [Module-1/2/3] for the courses of **BFM, BAF & B.COM (TCSC)**.

*\*Do refer the syllabus to check the topics contained for your particular course.*

### **REFERENCES: -**

- **Indian Contract Act 1982**
- **Indian Contract Act by Jhabwalla and co.**
- **Ipleaders blogs**
- **Dr. S Gopal & others – Business law core course**

*(Recommended reading for students- optional)*

- *Anson- Law of contract*
- *Avtar Singh- The law of contract*
- *Prof. Pithawalla- Leadin Cases on the Law of Contracts*

*(in case of queries regarding alterations or errors in these notes \*after cross-checking\* contact the author, [11jidnyasamhatre@gmail.com](mailto:11jidnyasamhatre@gmail.com) )*

## **CONTRACT OF INDEMNITY**

Contract of indemnity meaning is a special kind of contract. The term 'indemnity' literally means "security or protection against a loss" or compensation. According to **Section 124** of the Indian Contract Act, 1872 "A contract by which one party promises to save the 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."

Example: P contracts to indemnify Q against the consequences of any proceedings which R may take against Q in respect of a certain sum of money.

The *objective* of entering into a contract of indemnity is to protect the promisee against unanticipated losses.

A contract of indemnity has *two parties*:-

The promisor or **indemnifier**

The promisee or the **indemnified or indemnity-holder**

The promisor or indemnifier: He is the person who promises to bear the loss. The

promisee or the indemnified or indemnity-holder: He is the person whose loss is covered or who are compensated.

## **ESSENTIALS OF CONTRACT OF INDEMNITY**

**1. PARTIES TO A CONTRACT:** There must be two parties, namely, promisor or indemnifier and the promisee or indemnified or indemnity-holder.

**2. PROTECTION OF LOSS:** A contract of indemnity is entered into for the purpose of protecting the promisee from the loss. The loss may be caused due to the conduct of the promisor or any other person.

**3. EXPRESS OR IMPLIED:** The contract of indemnity may be express (i.e. made by words spoken or written) or implied (i.e. inferred from the conduct of the parties or circumstances of the particular case).

**4. ESSENTIALS OF A VALID CONTRACT:** A contract of indemnity is a special kind of contract. The principles of the general law of contract contained in Section 1 to 75 of the Indian Contract Act, 1872 are applicable to them. Therefore, it must possess all the essentials of a valid contract.

**5. NUMBER OF CONTRACTS:** In a contract of Indemnity, there is only one contract that is between the Indemnifier and the Indemnified.

Under section 125- Indemnity Holder holds right to recover damages, costs incurred by him regarding suits relating to matter and amount paid under compromise of suit.

## CONTRACT OF GUARANTEE

Contract of Guarantee means a contract to perform the promises made or discharge the liabilities of the third person in case of his failure to discharge such liabilities.

As per **Section 126** of Indian Contract Act, 1872, a contract of guarantee has three parties: –

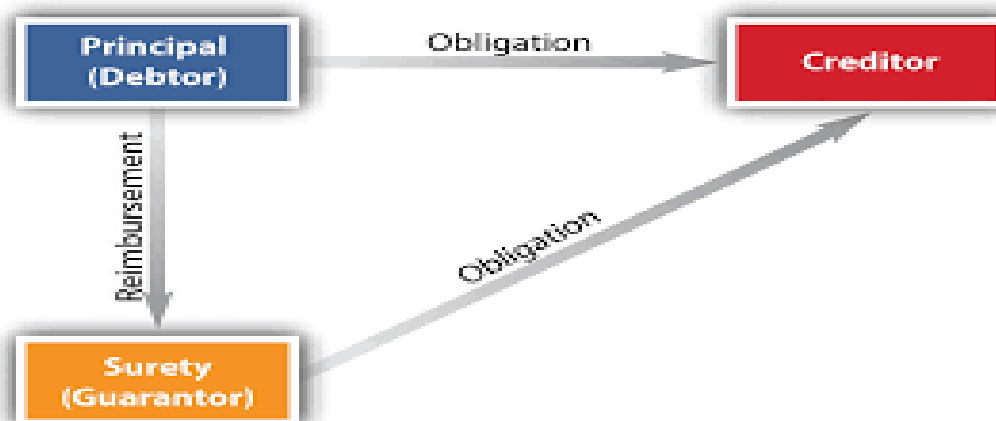
**Surety:** A surety is a person giving a guarantee in a contract of guarantee. A person who takes responsibility to pay a sum of money, perform any duty for another person in case that person fails to perform such work.

**Principal Debtor:** A principal debtor is a person for whom the guarantee is given in a contract of guarantee.

**Creditor:** The person to whom the guarantee is given is known as the creditor.

### Tripartite agreement in the contract of guarantee

A tripartite agreement is a legal document involving three parties, in the case of guarantee usually there is a sale of goods agreement between party B and C, an indemnity contract between party A and B and a contract of guarantee between A and C.



## ESSENTIALS OF CONTRACT OF GUARANTEE

1. Essentials of valid contract – elaborate
2. Consideration for guarantee is necessary
3. Three Competent parties
4. Existence of a recoverable debt
5. No misrepresentation or concealment of facts
6. Primary liability of Principle debtor and Conditional liability of surety
7. Promise by surety either expressed/implied.

## **DIFFERENCE BETWEEN INDEMNITY AND GUARANTEE**

<b>Contract of Guarantee</b>	<b>Contract of Indemnity</b>
<b>Definition</b>	
A contract by which one party promises to save the 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.	A contract where one party promises to save the other from any loss caused to him by the conduct of promisor himself or any other person is called contract of indemnity.
<b>Section</b>	
Section 126 of contract act, 1872	Section 124 of contract act, 1872
<b>Parties</b>	
Three parties in this contract: 1. Creditor 2. Principal Debtor 3. Surety	Two parties in this contract: 1. Indemnifier 2. Indemnity Holder
<b>Number of Contract</b>	
Three contracts involved: ❖ Creditor and Principal Debtor ❖ Principal Debtor and Surety ❖ Creditor and Surety	One contract involved: ❖ Indemnifier and Indemnity Holder
<b>Type of contracts</b>	
❖ Contract between surety and principal debtor is implied contract. ❖ Between creditor and principal debtor is Express contract	Between indemnifier and indemnity holder Express and specific contract
<b>Object/Purpose</b>	
To give assurance to creditor.	To compensate the loss.
<b>Maturity</b>	
When there is any default by promise (Principal Debtor).	When any incident happens.
<b>Existence of liability</b>	
The liability of surety exists when the principal debtor is on his default.	The liability of indemnifier does not exist.

## CONTRACT OF BAILMENT

The word “Bailment” has been derived from the French word “ballier” which means “to deliver”. Bailment etymologically means ‘handing over’ or ‘change of possession’.

As per **Section 148** of the Act, bailment is the delivery of goods by one person to another for some purpose, upon a contract, that the goods shall, when the purpose is accomplished, be returned or otherwise disposed of according to the directions of the person delivering them. The person delivering the goods is called the “bailor”. The person to whom they are delivered is called the “bailee”.

### **The essential elements of a contract of bailment are—**

- (a) **Contract:** Bailment is based upon a contract. The contract may be express or implied. No consideration is necessary to create a valid contract of bailment.
- (b) **Delivery of goods** It involves the delivery of goods from one person to another for some purposes. Bailment is only for moveable goods and never for immovable goods or money.

*The delivery of the possession of goods is of the following kinds:*

- i. *Actual Delivery: When goods are physically handed over to the Bailee by the bailor.*
- ii. *Constructive Delivery: Where delivery is made by doing anything that has the effect of putting goods in the possession of the Bailee or of any person authorized to hold them on his behalf.*

- (c) **Purpose:** The goods are delivered for some purpose. The purpose may be express or implied.
- (d) **Possession:** In bailment, possession of goods changes. Change of possession can happen by physical delivery or by any action which has the effect of placing the goods in the possession of Bailee. The change of possession does not lead to change of ownership.
- (e) **Bailee is obliged to return the goods physically to the bailor.** The goods should be returned in the same form as given or may be altered as per bailor’s direction.

### **Rights and Duties of Bailor**

- Right of termination of bailment – Sec 153
- Right to demand the goods back – Sec 159
- Right to demand the return of goods on completion of bailment – Sec 160

- Right to claim any increase or profit – Sec 163
- Right to file a suit against the wrong doer – Sec 180
- Duty to put bailee in possession of the bailed goods [Section 149]
- Duty to disclose material defects in so bailed goods [Section 150]
- Duty to pay for non- disclose material defects in so bailed goods [Section 150]
- Duty to indemnify bailee in case where title of bailor of goods is defective and bailee has suffered loss.

### **Rights & Duties of Bailee**

- Right to claim compensation in case of faulty goods (Sec. 150)
- Right to claim extraordinary expenses (Sec. 158)
- Right of indemnification in case of gratuitous bailment [Section 159]
- Right of indemnification in case of defective title [Section 164]
- Right to Deliver the Goods to any one of the Joint Bailors [Section 165]
- Right to deliver the goods to the bailor in good faith (Sec. 166)
- Right to Apply to Court to Decide the Title to the Goods [Section 167]
- Right to claim damages in case of bailor's refusal to receive back the goods •
- Right of lien for payment of services [Section 170]
- Suit by bailor & bailee against wrong doers [Section 180]
- Apportionment of relief or compensation obtained by such suits [Section 181]
- Duty to take care of goods as man of prudence [Section 151]
- Duty to not make wrongful use of goods bailed [Section 154]
- Duty to not mix with his own goods [Section 156-157]
- Duty to return bailed goods. [Section 159]

## **CONTRACT OF AGENCY**

According to **Section 182** of the Contract Act an 'Agent' is a person employed to do any act for another or to represent another in dealings with third persons. The person for whom such act is done, or who is so represented, is called the 'principal'.

Thus, It is clear from the definition, that an agent is a connecting link between his principal and third parties.

### **Principles of Agency**

Contracts of agency are based on two important principles, namely:

- Whatever a person can do personally shall also be allowed to be done through an agent except in case of contracts involving personal services such as painting, marriage, singing, etc.
- He who does not act through a duly authorized agent does it by himself, i.e., the act of the agent are considered the acts of the principal (Sec. 226)

### **Essential features of contract of agency**

- Agreement between agency and principal
- Competency of principal
- Competency not required for an agent
- Contractual relationship
- Creation of legal relations
- Consideration not required
- Intention of the person to act