

<p>I. INDEMNITY & GUARANTEE (THE INDIAN CONTRACT ACT, 1872)</p>
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PROBLEM NO. 1

A promises B to indemnify him against the consequences of any proceedings which C may take against B to recover a sum of Rs.1,000 due from B to C. Is this a contract of indemnity?

ANSWER:

Sec. 124 of the Indian Contract Act, 1872 defines Indemnity as a direct contract between two persons. Here one person promises to save another from loss. The loss is assured to be compensated by the promisor himself or by any other person.

The person who promises to make good the loss is called the Indemnifier (promisor) and the person whose loss is to be made good is called the Indemnified or Indemnity-holder (promisee). Thus, the promisee must incur a loss, if he has to be indemnified by the promisor.

Going by the above definition, the above case is an example of contract of Indemnity, wherein A is the Indemnifier or promisor and B is the Indemnified or promisee.

PROBLEM NO. 2

'A' Guarantees payment to 'B' of the price of five sacks of flour to be delivered by 'B' to 'C' and to be paid for in a month. 'B' delivers five sacks flour to 'C'. 'C' pays for them. Afterwards 'B' delivers four sacks of flour to 'C' which 'C' does not pay for it. What is the liability of 'A'? Give reason.

ANSWER:

According to Sec. 126 of the Indian Contract Act, 1872, a contract of guarantee is a contract to perform the promise or discharge the liability of a third person in case of his default.

Guarantee is classified into two types viz. specific guarantee and continuing guarantee. Specific guarantee deals with a single transaction. It is also known as simple guarantee. A specific guarantee cannot be revoked, when the liability is incurred. It comes to an end when the guaranteed debt is duly discharged or promised, is performed.

The instant case is a classic example of a specific guarantee. In this case, A guarantees to B only in respect of five sacks of flour to be delivered to C, the payment of which shall be made in a month's time. C makes the payment within the time frame allotted and thus the guarantee of A is discharged.

Further to this, B again delivers four sacks of flour to C which the latter defaults in payment.

The guarantee furnished by A was only a specific guarantee for the first transaction and therefore, he is not liable for the price of the four sacks later delivered by B to C.

PROBLEM NO. 3

‘A’ signed a surety for his friend who obtained a loan from a nationalized bank. As his friend did not repay the loan the bank filed a suit for recovery against ‘A’. ‘A’ objected on the basis that the bank had not exhausted its remedies against his friend – Decide.

ANSWER:

As per Sec. 128 of the Indian Contract Act, 1872, the liability of the Surety is co-extensive with that of the Principal debtor unless it is otherwise provided for in the contract.

It means that the Creditor can recover the loan amount from the Surety directly without taking steps to recover from the Principal debtor; It also means that the liability of the Surety is the same as that of the Principal debtor.

Thus, in the above case, the action of the nationalized bank in filing a suit for recovery against A, the Surety, for the repayment of the loan taken by his friend, is very well within their right to do so. A’s objection on the basis that the Bank has not exhausted its remedies against his friend before filing a suit for recovery from him is not tenable as the Bank has no compulsion as per law to do so.

Both the Principal debtor and the Surety are jointly and severally liable.

PROBLEM NO. 4

B owes to C, a debt guaranteed by A. The debt becomes payable. C does not sue B for a year after the debt has become payable. B becomes insolvent. Thereafter C sues A for the debt. A pleads C’s forbearance to sue B for a year as a defence. Is this a good defence?

ANSWER:

No. A cannot plead C’s forbearance to sue B for a year as a defence to exonerate his liability.