AILET

Contract of Indemnity and Contract of Guarantee for CLAT

Aparna Shukla · 19 Nov 2020

Indian Contract Act 1872 can be divided into two parts – the General Principles concerning the Contract and provisions concerning Special Contracts like Contract of Indemnity and Contract of Guarantee. Section 124 to Section 238 of the Indian Contract Act 1872 lay down the provision concerning the special contracts. There are five special contracts enumerated in the Act:

1. Contract of Guarantee
2. Contract of Indemnity
3. Contract of Bailment
4. Contract of Pledge
5. Contract of Agency

In this article, we will be dealing with the first two kinds i.e. Contract of Indemnity and Contract of Guarantee.

Contract of Guarantee

Section 126 of the Indian Contract Act 1872 defines the contract of Guarantee as*'A contract of guarantee is a contract to perform the promise, or discharge the liability, of a third person in case of his default.'* There are three parties involved in this kind of special contract – Creditor, Surety and Principal Debtor. In this case, this liability is of the principal debtor and surety can sue the principal debtor. There are three agreements involved in the contract of guarantee – the agreement between the creditor and principal debtor, the agreement between creditor and surety and agreement between principal debtor and surety. In simple words contract of guarantee is the contract to discharge the liability if the third person when he makes default to perform.

Illustration: Ashish promised to pay Tanu Rs 10000 on behalf of Mayank, if Mayank makes default in returning Rs 2000 to Tanu, Ashish will pay. In this case, Ashish is the surety, Tanu is the creditor and Mayank is the Principle debtor.

Contract of Indemnity

Section 124 of the Indian Contract Act defines Contract of Indemnity as*'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*.' Under this contract, there are two parties – Indemnifier or Indemnity Holder. The main objective of the contract is to protect the promisee from the loss. The primary liability is of the Indemnifier and Indemnifier cannot sue a third party in this case. Unlike contract of Guarantee, there is only one agreement i..e agreement between indemnifier and indemnity holder.

Illustration: Akash contracted to indemnify a sum of Rs. 100 to Aman for the loss that he will suffer in the transaction between Aman and Anil. This is an example of a contract of indemnity. Here, Akash is the indemnifier and Aman is the indemnity holder.