

Department of Commerce (CA)

BUSINESS LAW

18BCA33C

Semester : 3

II B.Com. (CA)

UNIT IV

Contract of Indemnity and Guarantee -
Rights - Liabilities of Surety - Discharge of
Surety - Bailment - Rights and duties of
bailor and bailee - Pledge by non-owners

REFERENCE BOOK

REFERENCE BOOK

BUSINESS LAW

N.D. KAPOOR

Prepared by Dr. T. KALPANA

Associate Professor & Head

UNIT 4INDEMNITY

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 person is known as Contract of Indemnity

Parties to Contract of Indemnity

There are 2 parties

Indemnifier or Promisor

The person who promises to make good the loss is called Indemnifier.

Indemnified or Indemnity Holder or Promisee

The person whose loss is to be made good is indemnified

GUARANTEE

It is a contract to perform the promise or discharge the liability of a third person in case of his default.

Parties to Contract of Guarantee

There are 3 parties

1) Surety - The person who gives the guarantee

2) Principal Debtor - The person in respect of whose default the guarantee is given

3) Creditor - The person to whom the guarantee is given

Essential features of a Contract of Guarantee

1. Concurrence
2. Primary liability in some person
3. Essentials of a valid contract
4. Writing not necessary

Kinds of Guarantee

1) Specific Guarantee:

When a guarantee extends to a single transaction

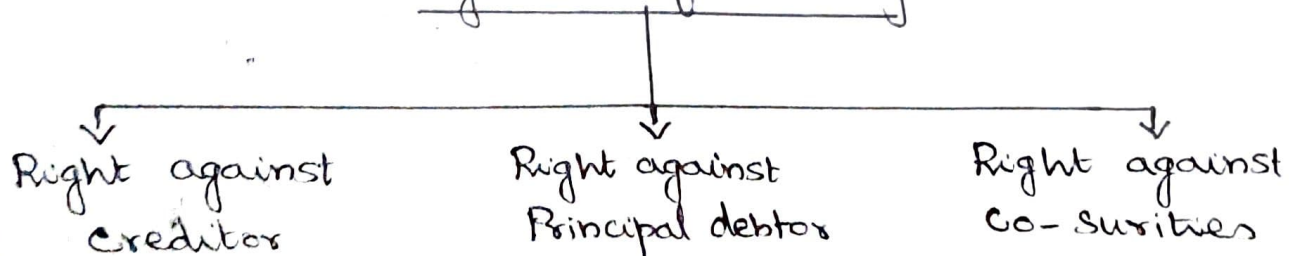
2) Continuing Guarantee

When a guarantee extends to a series of transaction

Revocation of a Continuing Guarantee

1. By notice
2. By death of surety
3. By Novation (new Contract)
4. By variance in terms of contract
5. By release of Principal debtor
6. By Compounding with Principal debtor
7. By loss of security

Rights of Surety



Right against creditor

- 1) Before payment of the guaranteed debt
- 2) Right of set-off
- 3) On payment of the guaranteed debt
- 4) Right to equities
- 5) Right of subrogation

Right against Principal Debtor

- 1) Right to be relieved of liability
- 2) Right to indemnity

Right against Co-Sureties

- 1) Right of contribution
 - a) Equal contribution
 - b) In different sums
- 2) Release of co-surety

Distinction between a contract of indemnity and a contract of guarantee

Contract of indemnity

1. There are *two parties* to the contract, viz., the indemnifier (promisor) and the indemnified (promisee).
2. The liability of the indemnifier to the indemnified is *primary* and independent.
3. There is *only one contract* in the case of a contract of indemnity, i.e., between the indemnifier and the indemnified.
4. It is *not necessary* for the indemnifier to act at the request of the indemnified.
5. The liability of the indemnifier arises only on the happening of a contingency.
6. An indemnifier *cannot sue a third party* for loss in his own name, because there is no privity of contract. He can do so only if there is an assignment in his favour.

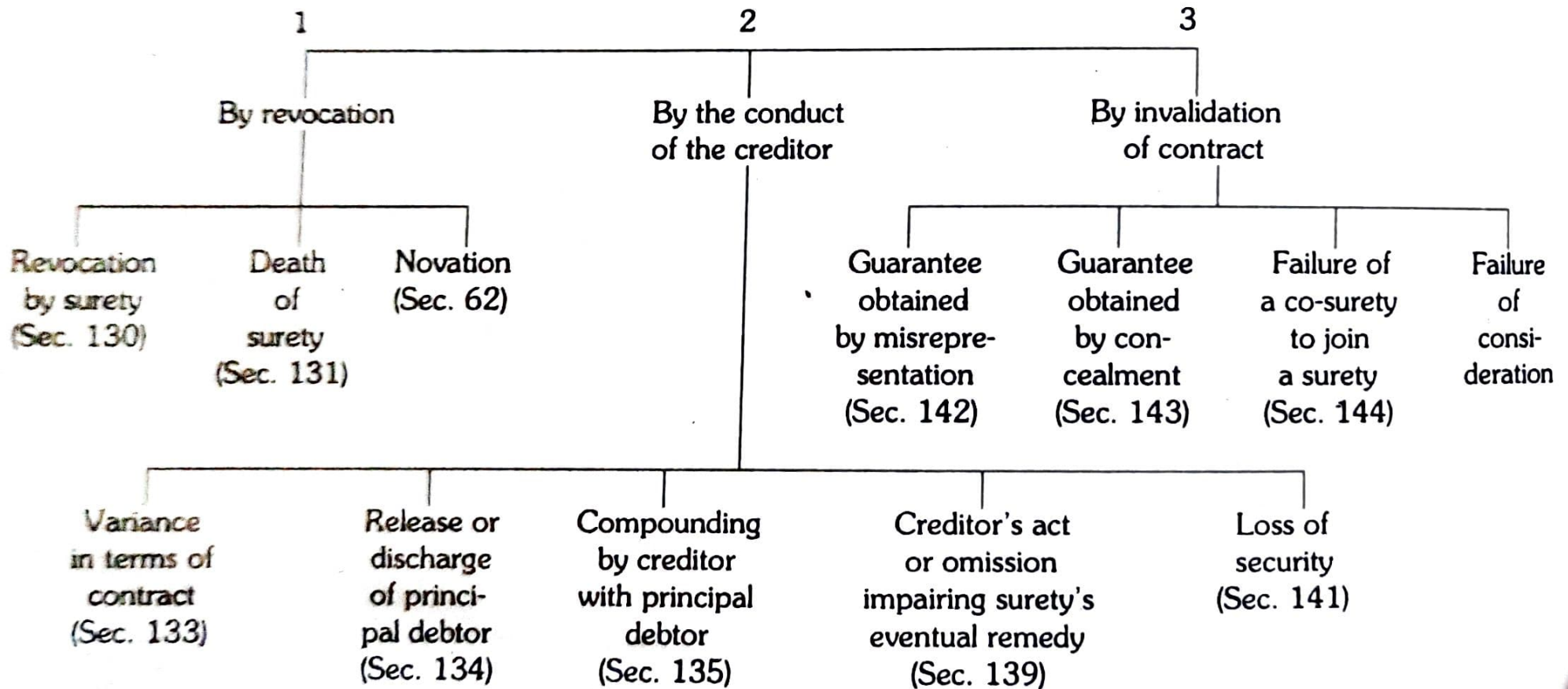
Contract of guarantee

1. There are *three parties* to the contract, viz., the creditor, the principal debtor and the surety.
2. The liability of the surety to the creditor is *collateral or secondary*, the primary liability being that of the principal debtor.
3. In a contract of guarantee, there are *three contracts* : one between the principal debtor and the creditor, the second between the creditor and the surety and the third between the surety and the principal debtor.
4. It is necessary that the surety should give the *guarantee at the request of the debtor*.
5. There is usually an *existing debt or duty*, the performance of which is guaranteed by the surety.
6. A surety, on discharging the debt due by the principal debtor, steps into the shoes of the creditor. *He can proceed against the principal debtor* in his own right.

DISCHARGE OF SURETY

A surety is said to be discharged when his liability comes to an end. The various modes of his discharge are shown in the chart given below :

Discharge of surety



BAILMENT

Bailment

The word bailment is derived from the French word bailier which means to deliver

Meaning

It is the delivery of goods by one person to another for some purpose, upon a contract, that they shall, when the purpose is accomplished, be returned or otherwise disposed of according to the direction of the person delivering them

Parties to Bailment

There are 2 parties

Bailor : The person delivering the goods

Bailee : The person to whom the goods are given

Requisites of Bailment

1. Contract
2. Delivery of possession
3. For some purpose
4. Return of specific goods

Types of Bailment

↓
On the basis
of benefits

- 1) Exclusive benefit of bailor
- 2) Exclusive benefit of bailee
- 3) Mutual benefit

↓
On the basis
of purpose

- 1) Gratuitous bailment
- 2) Non-gratuitous bailment

Duties of Bailor

- 1) To disclose known faults
- 2) To bear extraordinary expenses
- 3) To indemnify bailee for premature termination
- 4) To indemnify bailee in case of loss of goodwill
- 5) To compensate bailee

Duties of bailee

- 1) To take reasonable care of the goods bailed
- 2) Not to make unauthorised use of goods
- 3) Not to mix the goods with his own goods
- 4) Not to set up an adverse title
- 5) To return any accretion to the goods
- 6) To return the goods

Rights of bailor

1. Enforcement of rights
2. Avoidance of contract
3. Return of goods lent gratuitously
4. Compensation from wrong doer

Rights of bailee

1. Delivery of goods to one of several joint bailors
2. Delivery of goods to bailor without title
3. Right to apply to the court to stop delivery
4. Right of action against trespassers
5. Bailee's lien

LIEN

lien means the right of a person to retain possession of some goods belonging to another until some debt is cleared.

Types of Lien

1. Particular lien
2. General lien

Particular lien

A particular lien is one which is available to the bailee against only those goods in respect of which he has rendered some service

General lien

It is a right to retain all the goods or any property of another until all the claims of the holder are satisfied

FINDER OF GOODS

Meaning :

A person who finds goods belonging to another and takes them into his custody is subject to the same responsibility as a bailee

Rights of finder of goods

1. Right of lien
2. Right to sue for reward
3. Right of sale
 - a) If the true owner cannot be found with reasonable diligence
 - b) If the owner refuses to pay lawful charges
 - c) If the goods are in the danger of perishing
 - d) If the lawful charges exceeds $\frac{2}{3}$ of value

Obligations of finder of goods

- a) He must take reasonable care of goods
- b) He must not use the goods
- c) He must not mix the goods
- d) He must try to find the owner

Termination of bailment

1. on the expiry of the period
2. on the achievement of the object
3. Inconsistent use of goods
4. Destruction of the subject matter
5. In case of gratuitous bailment - at any time
6. Death of the bailor or bailee
7. Insolvency of the bailor or bailee
8. Insanity of the bailor or bailee
9. Bailor or bailee becomes Alien enemy

PLEDGE

The bailment of goods as security for payment of a debt or performance of a promise is called Pledge

Parties to Bailment

There are 2 parties to bailment.

Pledger or Pawnor

The bailor is called Pledger

Pledgee or Pawnee

The bailee is called pledgee or pawnee