

CONTRACT OF INDEMNITY

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DEFINITION

- 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 contract of the promisor himself, or by the conduct of any other person, is called a contract of indemnity.



Example

'A' contracts to indemnify 'B' against the consequences of any proceedings which 'C' may take against 'B' in respect of a certain sum of Rs. 200. This is a contract of indemnity.



Parties

- The person who gives the indemnity is called the '*indemnifier*' and the person for whose protection it is given is called the '*indemnity holder*' or '*indemnified*'.



Meaning

- '*To indemnify*' means to make good the loss of another in certain events.
- Indemnity is a security against or compensation for loss, etc.
- A contract of indemnity is a kind of contingent contract.



- It is an original and direct engagement between two parties whereby one promises to save another harmless from the result of the conduct of the promisor or of any other person.
- The general principles of the law of contract are applicable to a contract of indemnity.



- Thus, consideration or object of an indemnity contract must be lawful.
- *For example,* an agreement by an accused to indemnify the person who has given bail is illegal.



- Under the Indian Law, the scope of indemnity is restricted to cases where there is promise to indemnify against loss, caused –
 - By the promisor himself,
 - By any other person.
- Thus, the definition excludes from its purview cases of loss arising from accidents like fire or perils of the sea.



Case Law

- In *Dugdale v. Lovering*, (1875) 32 LT 155, the plaintiffs were in possession of certain trucks which were claimed both by the defendants and one K.P. Co. the defendants demanded delivery and the plaintiffs asked for an indemnity bond, but received no reply.



- Yet, they delivered the trucks to the defendants. It was held that the defendant was liable to indemnify the plaintiff as the indemnity bond led to the creation of an implied promise.



English Law

- The English definition of indemnity is wide enough to include a promise of indemnity against loss arising from any cause whatsoever, *for example*, loss caused by fire or by some other accident.



Insurance Contracts

- Contracts of insurance, which are the commonest examples of contracts of indemnity under the English law, are not contracts of indemnity under the Indian Contract Act.
- In English Law indemnity is restricted to those cases only in which the loss which is sought to be reimbursed, is caused by the conduct of the promisor or any other person. The loss must be such as the promisor has taken upon himself to indemnify.

