

- B.A.LL.B. FIVE YEARS COURSE
- II SEMESTER
- II UNIT
- SPECIAL CONTRACT-2
- CO-SURETY LIABILITY & RIGHTS

## CO-SURETIES:

- 2 or more sureties for a single contract of guarantee are called co-sureties.
- The co-sureties are liable as between themselves, to pay each an equal share of the unpaid debt (when there is no agreement).

example: A, B, C are sureties to D for the sum of Rs. 1000 lent to E.

A, B, C agreed to be responsible to the extent of one-quarter, one-quarter and one-half respectively. E makes default in payment. Now A is liable to pay Rs. 250, B-Rs. 250, C-Rs. 500.

## SURETY's LIABILITIES:

- The liability of the surety is co-extensive with that of the principal debtor : It means the surety has the same liability of the principal debtor.
- Reduction of liability : The surety may limit his liability at the time of entering into the contract of guarantee to a fixed sum.

## SURETY'S LIABILITIES:

- **Exclusive liability**: Only when principal debtor is minor, the surety is alone liable to the creditor.
- **Void contract**: Where the original contract between the principal debtor and the creditor is void or voidable, the surety is not discharged.
- **Legal proceedings**: A surety can be sued without even suing the principal debtor.

Right of a surety against the co-surety  
(Sec 146):

Where two or more persons are co-sureties for the same debt or duty, either jointly or severally and whether under the same or different contracts, and whether with or without the knowledge of each other, the co-sureties, are liable, as between themselves to pay each an equal share of the whole debt or of that part of it which remains unpaid by the principal debtor.



- The surety's liability does **not depend** on the fact that whether he shall be **able to recover this amount** from the debtor (once he pays to creditor).
- **Creditor can choose to sue the debtor only.** His such suit cannot be rejected on the ground that he has not taken a combined action against both the debtor and surety.
- Similarly, a **creditor may decide to sue the surety only**, without taking any action against the debtor.



## Illustrations:

A and B make a joint and several promissory note to C, A makes it in fact as surety for B, and C knows that at the time when the note is made. The fact that A, to the knowledge of C, made the note as surety for B is no answer to a suit by C against A upon the note.

Rights (1) and (3) above are the rights of surety against the principal debtor. Right (2) is the right of surety against a creditor and right (4) is the right of a surety against his co-surety.