

Contract of Indemnity

Contract of Indemnity is a type of contingent contract. The term 'indemnity' simply means 'make somebody safe' or 'paying somebody back'. A contract by which one party promises to save the other from loss caused to him by the conduct of promisor himself, or by the conduct of any other person, is called a contract of indemnity.

Thus, indemnity is an act to compensate or protect somebody against loss, or to make good the loss suffered.

It is protection against loss especially in the form of promise to pay or payment for loss of money. The contingency upon which the whole contract of indemnity depends is the event of suffering loss by the other party.

The party who gives indemnity, i.e., who promises to compensate for or to make good the loss, is called "indemnifier". And the party for whose protection or safety the indemnity is given, i.e., the party whose loss is made good, is called indemnified or indemnity holder.

Thus the promisor is known as indemnifier and the promisee is known as indemnity holder or indemnified.

Example : P went to the cinema hall to watch a movie and kept his scooter at vehicle stand. When the show was over, P came out and found that he had lost the token given by the gate keeper of the stand. The gate keeper refused to release P's scooter without receiving the token back. P contracted with R, the contractor of the stand, to indemnify R against any loss which R will suffer in case any other personal claim that scooter in future.

This contract is a contract of indemnity here. P is the indemnifier and R is the indemnity holder or indemnified.

The definition covers indemnity for loss caused by human agency only. It does not deal with those classes of cases where the indemnity arises from loss caused by events or accidents which do not or may not depend upon the conduct of indemnifier or any other person.

Definition in Section 124 : The English definition of Indemnity is wide enough to include a promise of indemnity against loss arising from any from any cause what contract of insurance, other than life assurance, is a contract of Indemnity. But the definition of "indemnity" in Section 124 of the Indian Contract Act is some what narrower. It is like this :

Section 124 : A contract by which one party promises to save the other from loss caused to him by the conduct of promisor himself, or by the conduct of any other person, is called a "contract of indemnity". The person who promises to make the 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).

Examples :

(1) 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.

(2) A and B go into a shop. B says to the shopkeeper "Let him (A) have the goods. I will see you paid". The contract is one of indemnity.

Definition is not exhaustive :- The definition of 'contract of indemnity' as given in the Indian Contract Act is not exhaustive. It includes :

(a) express promises to indemnity, and (b) cases where the loss is caused by the conduct of the promisor himself or by the conduct of any other person. It does not include - (a) implied promises to indemnity, and (b) cases where loss arises from accidents and events not depending on the conduct of the promisor or any other person.

The definition excludes from its purview cases of loss arising from accidents like fire or perils of the sea. Loss must be caused by some human agency. Contracts of insurance against accidental loss are covered on contingent contracts (Section 31-36).

Rights Of Indemnity Holder When Sued (Section 125) :

Section 125 deals with the rights of Indemnity holder (i.e, indemnified) when sued. Section 125 lays down the extent of liability. The indemnity holder, acting within the scope of his authority is entitled to recover from the promisor (i.e, indemnifier).

(1) All damages which may be compelled to pay in any suit in respect of any matter to which the promise to indemnity applies.

(2) All costs which he may be compelled to pay in bringing or defending such suits. But the indemnified should have acted as any prudent man would act under similar circumstances in his own case, or with the authority of the indemnifier, and

(3) All sums which he may have paid under the terms of any compromise of any such suit. The compromise should not be contrary to the orders of the indemnifier and should be prudent or authorised by the indemnifier.

Contract Of Indemnity (Section 124) :

Leading Cases :

(1) **Goulson Discount Co Ltd Vs Clark (1967)** : A and B go into a shop. B says to the shopkeeper "Let him (A) have the goods, I will see you paid". The contract is one of Indemnity.

(2) **Gajanan Moreshwar Vs Moreshwar Madan (1942) AIR , Bom 302** : The scope of Section 124 is narrower than the concept of " indemnity" under English Law. As observed by the

Bombay High Court in Gajanan. Section 124 deals with one particular kind of indemnity which arises from a promise made by the indemnifier to save the indemnified from the loss caused to him by the conduct of indemnifier himself or by the conduct of any other person.

(3) **Dugdale Vs Lovering (1975)** : Under the English Law promise to indemnify may be express or implied. In this case, certain trucks were in possession of the plaintiff. The defendant as well as a company claimed them on the demand of delivery of trucks by the defendants, the plaintiff demanded an indemnity bond, but no reply was received, yet they delivered the truck to the defendants. Subsequently, the company sued the plaintiff for conversion of property and succeeded in the suit. It was held that the defendants were liable to indemnify the plaintiff for in the opinion of the court the demand of indemnity bond led to the creation of an implied promise.

It may, however, be noted that Section 124 is not exhaustive and it has been held that the " courts would apply the same principles that the courts in England".

References :

- (1) Business Law (6th edition) : MC Kuchhal and Vivek Kuchhal (Vikas Publishing House, Noida)
- (2) Indian Contract Act (12th edition) : RK Bangia (Allahabad Law Agency, Faridabad)
- (3) Indian Contract Act (12th edition) : Avtar Singh (Eastern Law Company, Noida)