

CONTRACT OF IMDEMNITY

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1. Introduction

A contract of indemnity basically involves one party promising the other party to make good its losses. These losses may arise either due to the conduct of the other party or that of somebody else. To indemnify something basically means to make good a loss. In other words, it means that one party will compensate the other in case it suffers some losses.

The principle of indemnity originated in the case of **Adamson v. Jarvis**,

In this case, the plaintiff on the instructions of the defendant sold the livestock to some person. Later, it was realized that the defendant was not the real owner of the livestock and the plaintiff had to pay damages for such sale.

2. Meaning

Contract of indemnity meaning is a special kind of contract. The term indemnity literally means security or protection against a loss or compensation. 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 conduct of the promisor himself, or by the conduct of any other person, is called a contract of indemnity”.

Parties

There are generally two parties in indemnity contracts. The person who promises to indemnify for a loss is the **Indemnifier** AND, the person whose losses the indemnifier promises to make good is the **Indemnity Holder**.

Indemnifier is the person who promises to compensate for the loss if any. Indemnifier is also known as promisor. Indemnity Holder is the person in whose favour indemnifier makes the promise. Indemnity Holder is also known as a promisee or indemnified.

The objective of entering into a contract of indemnity is to protect the promisee against unanticipated losses.

3. Types of Indemnity

- **Express indemnity**

This is a written agreement to indemnify, where the terms and conditions by which the concerned parties must abide are usually indicated. These include insurance indemnity contracts, construction contracts, agency contracts, etc.

- **Implied indemnity-**

This is an obligation to indemnify that arises, not from a written agreement, but more from circumstances or the conduct of parties involved. One practical example is an agent-principal business relationship. When the principal refuses to accept the goods that the agent supplies him, the agent can sell them to others; however, if the agent sustains a loss while selling, the principal is obligated to pay for it.

4. Essentials of Contract of Indemnity

- **Parties to a Contract:** There must be two parties, namely, promisor or indemnifier and the promisee or indemnified or indemnity-holder.
- **Protection of Loss:** A contract of indemnity is entered into for the purpose of protecting the promisee from the loss. The loss may be caused due to the conduct of the promisor or any other person.
- **Essentials of a Valid Contract:** A contract of indemnity is a special kind of contract. The principles of the general law of contract contained in Section 1 to 75 of the Indian Contract Act, 1872 are applicable to them. Therefore, it must possess all the essentials of a valid contract.
- **Number of Contracts:** In a contract of Indemnity, there is only one contract that is between the Indemnifier and the Indemnified
- **Indemnity was restricted only to the loss occurred by human agency only.**

In Gajanan Moreshwar vs. Moreshwar Madan.[A.I.R. 1942 Bom. 302, at p.303]

In this case it was stated the definition of indemnity 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 the indemnifier or any other person, or by reason of liability incurred by something done by the indemnified at the request of the indemnifier.

5. Comparison Between English Indemnity and Indian Indemnity

Under English Law, the word **indemnity** carries a much wider meaning than given to it under the Indian Act. Under English law, a contract of insurance (other than life insurance) is a contract of indemnity. Life insurance contract is, however, not a contract of indemnity, because in such a contract different consideration applies.

In the old English law, Indemnity was defined as “a promise to save a person harmless from the consequences of an act. Such a promise can be expressed or implied from the circumstances of the case”. This view was illustrated in the case of,

Adamson v. Jarvis 1872.

In this case, the plaintiff, an auctioneer, sold certain goods upon the instructions of a person. It turned out that the goods did not belong to the person and the true owner held the auctioneer liable for the goods. The auctioneer, in turn, sued the defendant for indemnity for the loss suffered by him by acting on his instructions. It was held that since the auctioneer acted on the instructions of the defendant, he was entitled to assume that if, what he did was wrongful, he would be indemnified by the defendant.

This gave a very broad scope to the meaning of Indemnity and it included promise of indemnity due to loss caused by any cause whatsoever.

What is the difference between Contract of Indemnity in Indian Law and English Law?

Basis	Indian Law	English Law
Types of Contracts	Indian law only accepts expressed contracts of indemnity.	English law accepts both expressed and implied contracts of indemnity.
Cause of Loss	In Indian Law cause of loss can be only via a human agency and not otherwise.	In English Law, the cause of loss could be human agencies as well as events and accidents.
Enforceability	Indian laws are silent about the enforceability of indemnity contracts.	In English, Law enforceability depends upon the payment of losses.

6. Rights of the indemnity holder:

Section 125, defines the rights of an indemnity holder which are as follows

1. **Right of recovering Damages** - All damages that he is compelled to pay in a suit in respect of any matter to which the promise of indemnity applies.

Gokuldas v. Gulab rao (AIR 1926 Nag. 108)

In this case court held that the indemnifier cannot plead that he was not a party to a dispute hence the result should be implemented upon him

Nallappa Reddi v. Vridhachala Reddi (1914)37 Mad270

In this court held that indemnifier cannot escape from the responsibility of providing the damages to the indemnified

2. **Right of recovering Costs** - All costs that he is compelled to pay in any such suit if, in bringing or defending it, he did not contravene the orders of the promisor and has acted as it would have been prudent for him to act in the absence of the contract of indemnity, or if the promisor authorized him in bringing or defending the suit.

Gopal Singh v. Bhawani Prasad (1888) ILR 10 ALL531

In this case court held that only those costs would be recoverable that are supposed to be incurred by a prudent man.

3. **Right of recovering Sums** - All sums which he may have paid under the terms of a compromise in any such suite, if the compromise was not contrary to the orders of the promisor and was one which would have been prudent for the promisee to make in the absence of the contract of indemnity, or if the promisor authorized him to compromise the suit.

4. **Right to sue for Specific Performance**

An indemnity holder is entitle to sue for specific performance if he has incurred absolute liability and the contract covered such liability

Rights of Indemnifier

As per the Indian Contract Act, 1872 indemnifier does not have any right. But in the case of,

Jaswant Singh v Section of State (14 BOM 299.)

It has been decided that the rights of the indemnifier are similar to those of a security under Section 141, where it has the right to benefit from all the securities that the creditor has against the principal debtor, whether or not he has been aware of them.

7. Contract of Indemnity and Contract Of Insurance

The Study of Principle of Indemnity with respect to Insurance is of much importance as insurance is a Social security and Indemnity in insurance compensates the beneficiaries of the policies for their actual economic losses, up to the limiting amount of the insurance policy. Insurance is meant to protect men against uncertain events which may otherwise be of some disadvantage to them. If it is an assurance that a sum of money will be paid to the person insured if a particular event happened. Insurance business and the need for the insurance cover are growing with the growing complexity of life, trade and commerce, and consequently, there is now bewildering variety of insurance covers. So it is essential that to know what are the essentials and exceptions attached to principle of Indemnity and insurance. Indemnity or in other words the contract of insurance and the contract of Guarantee are the development on contract of indemnity. Similarly, the doctrine of Subrogation has been introduced to carry out the fundamental rule that of indemnity. Every contract of Insurance, except life assurance, is a contract of indemnity and no more than an indemnity.

Thus, if under a contract of insurance, an insurer promises to pay compensation in the event of loss by fire, such a contract does not come within the purview of section-124. Such contracts are valid contracts, as being contingent contracts as defined in section-31.

Difference between Contract of Indemnity and Contract of Insurance?

Basis	Contract of Indemnity	Contract of Insurance
Scope	It has a wider scope since all contracts of insurance are the contract of indemnity except life insurance.	It has a narrow scope since all contracts of indemnity are not contracts of insurance.
The element of Uberrimae Fides(Utmost Good Faith)	The element of Uberrimae Fides is absent in contract of indemnity.	The element of Uberrimae Fides is essential for a contract of insurance.
Premium Paid	No premium is to be paid to make good of losses.	Continuous premium is to be paid to make good of losses.

8. Distinguish Between Contract of Indemnity and Guarantee

9. Conclusion