

## **Contract of Indemnity**

### **Indemnity means Insurance or Security or Protection.**

Indemnity is an obligation by a person (/indemnifier) to provide compensation for a particular loss suffered by another person (indemnity holder).

Indemnities form the basis of many insurance contracts; for example, a car owner may purchase different kinds of insurance as an indemnity for various kinds of loss arising from operation of the car, such as damage to the car itself, or medical expenses following an accident.

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 express or implied from the circumstances of the case”.

This view was illustrated in the case of **Adamson vs 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.

Section 124 - 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 a "contract of Indemnity".

Illustration - 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.

This definition provides the following essential elements –

1. There must be a loss.
2. The loss must be caused either by the promisor or by any other person (in Indian context loss is to be caused by only by a human agency.)

3. Indemnifier is liable only for the loss. Thus, it is clear that this contract is contingent in nature and is enforceable only when the loss occurs.

### **Rights of the indemnity holder:**

Section 125, defines the rights of an indemnity holder. These are as follows - The promisee (Indemnity holder) in a contract of indemnity, acting within the scope of his authority, is entitled to recover from the promisor (Indemnifier). These are:

1. Right of recovering Damages
2. Right of recovering Costs
3. Right of recovering Sums

In the case of **Mohit Kumar Sahavs New India Assurance Co AIR 1997**, Calcutta HC held that the indemnifier must pay the full amount of the value of the vehicle lost to theft as given by the surveyor. Any settlement at lesser value is arbitrary and unfair and violates art 14 of the constitution.

In general, as per the definition given in section 124, it looks like an indemnity holder cannot hold the indemnifier liable until he has suffered an actual loss. This is a great disadvantage to the indemnity holder in cases where the loss is imminent and he is not in the position to bear the loss. In the celebrated case of **Gajanan Moreshwar vs Moreshwar Madan, AIR 1942**, Bombay high court observed that the contract of indemnity held very little value if the indemnity holder could not enforce his indemnity until he actually paid the loss. If a suit was filed against him, he had to wait till the judgement and pay the damages upfront before suing the indemnifier. He may not be able to pay the judgement fees and could not sue the indemnifier. Thus, it was held that if his liability has become absolute, he was entitled to get the indemnifier to pay the amount.